NO.

In The
Supreme Court of the United States

COREY ZINMAN,

Petitioner,

v.

NOVA SOUTHEASTERN UNIVERSITY, INC., ET AL,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

Corey J. Zinman
175 Sedona Way,
Palm Beach Gardens, Florida 33418
Tel: (561) 566-9253
CB2770@mynsu.nova.edu
Pro Se Petitioner

Table of Contents

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 03, 2021

Clerk - Southern District of Florida
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 21-11711-JJ
Case Style: Corey Zinman v. Nova Southeastern University, et al
District Court Docket No: 0:21-cv-60723-RAR

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Tiffany A. Tucker, JJ/lt
Phone #: (404)335-6193

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-11711-JJ

COREY J. ZINMAN,

Plaintiff-Appellant,

versus

NOVA SOUTHEASTERN UNIVERSITY,
a corporation,
SOUTH FLORIDA STADIUM LLC,
BROWARD COUNTY,
a Florida County and Political Subdivision of the State of Florida,
BERTHA HENRY,
individually and in her official capacity,
MIAMI-DADE COUNTY,
a Florida County and Political Subdivision of the State of Florida, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Before: JILL PRYOR, GRANT, and LAGOA, Circuit Judges.

BY THE COURT:

Here, Appellant Corey Zinman seeks review of the district court's May 14, 2021 order denying his motion for a temporary restraining order and preliminary

injunctive relief. After considering the parties' responses to the jurisdictional questions, this appeal is DISMISSED for lack of jurisdiction.

Because the district court has subsequently entered a final order of dismissal, any appeal from the district court's interlocutory denial of preliminary injunctive relief has merged into the final order and consequently rendered any direct appeal from the May 14 order moot. *See Harper v. Poway Unified Sch. Dist.*, 549 U.S. 1262, 1262 (2007) (per curiam); *Shaffer v. Carter*, 252 U.S. 37, 44 (1920); *see also Patterson v. Miami Dade Cty.*, 791 F. App'x 877, 879 (11th Cir. 2019) (unpublished) (dismissing an interlocutory appeal from the denial of a motion for a preliminary injunction because it merged with the order dismissing the case). Notably, because Zinman has filed an appeal from the final order of dismissal in Appeal No. 21-13476, he is free to raise a challenge to the district court's May 14 order in that appeal. *See Kong v. Allied Prof'l Ins. Co.*, 750 F.3d 1295, 1301 (11th Cir. 2014) (providing that an appeal from the final judgment brings up for review all preceding nonfinal orders that produced the judgment); *see also Barfield v. Brierton*, 883 F.2d 923, 930 (11th Cir. 1989).

Any pending motions are DENIED as MOOT.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-11711-JJ

COREY J. ZINMAN,

Plaintiff-Appellant,

versus

NOVA SOUTHEASTERN UNIVERSITY,
a corporation,
SOUTH FLORIDA STADIUM LLC,
BROWARD COUNTY,
a Florida County and Political Subdivision of the State of Florida,
BERTHA HENRY,
individually and in her official capacity,
MIAMI-DADE COUNTY,
a Florida County and Political Subdivision of the State of Florida, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Before: JILL PRYOR, GRANT, and LAGOA, Circuit Judges.

BY THE COURT:

Corey Zinman's December 6, 2021 motion for reconsideration of our December 3, 2021 order dismissing this appeal for lack of jurisdiction is DENIED.

"Appellant's Motion to Publish" is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CIV-60723-RAR

COREY J. ZINMAN,

Plaintiff,

v.

NOVA SOUTHEASTERN UNIVERSITY, *et al.*,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

THIS CAUSE comes before the Court upon Plaintiff Corey J. Zinman's Motion for a Temporary Restraining Order ("TRO") and Preliminary Injunctive Relief [ECF No. 6] ("Motion"), filed on April 7, 2021. Having reviewed the Motion, Defendants' Responses [ECF Nos. 18 and 22], and Plaintiff's Replies [ECF Nos. 24 and 28], and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion is **DENIED** as set forth herein.

BACKGROUND

Plaintiff is a student at Defendant Nova Southeastern University's ("Nova") law school who anticipates graduating in May of 2021. *See* Am. Compl. ¶¶ 11, 13, 17, 27. Defendant South Florida Stadium LLC operates the Hard Rock Stadium, where Nova will be hosting its May 2021 commencement ceremonies. *Id.* ¶ 13. Plaintiff filed this action on April 2, 2021 against Nova and South Florida Stadium, and filed an Amended Complaint on April 7, 2021 adding Defendants Miami-Dade County, Broward County, and Broward County Administrator Bertha Henry. In his Amended Complaint, Plaintiff alleges that Defendants discriminated against him and violated his constitutional rights by requiring him to wear a mask on campus and at the commencement ceremony due to the COVID-19 pandemic. *See generally id.*

Plaintiff, who is Jewish, contends that wearing a mask "contravene[s] his religious beliefs." *Id.* ¶¶ 10, 25. He asserts that the Jewish religion "unequivocally prohibits any and all forms of idolatry" and that following mask mandates constitutes "subservience to so-called 'experts' who claim to be able to save lives if people simply obey their commands without question—otherwise known as false idols." *Id.* ¶¶ 40-44. Plaintiff alleges that Nova and South Florida Stadium violated Title II of the Civil Rights Act of 1964; that Nova violated Title VI of the Civil Rights Act of 1964; and that Miami-Dade County, Broward County, and Broward County Administrator Bertha Henry violated 42 U.S.C. section 1983 and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). *Id.* at 12-24.

In the Motion, Plaintiff asks the Court to

> enjoin[ ] Defendants . . . (i) to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices, (ii) from excluding [Plaintiff] from participation in [Nova's] upcoming commencement ceremonies at Hard Rock Stadium in May of 2021, and (iii) otherwise denying [Plaintiff] or others similarly situated to him the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations.

Mot. at 3. The Court held a status conference with the parties on May 6, 2021. *See* Paperless Minute Entry [ECF No. 26] ("Status Conference"). At the Status Conference, Plaintiff indicated that the relief he seeks in his Motion is to be able to participate in the commencement ceremony at Hard Rock Stadium without wearing a mask. Although Plaintiff wholly failed to identify the time-sensitive nature of his Motion when he filed it, the parties clarified at the Status Conference that an immediate ruling is needed from the Court because the commencement ceremony is scheduled to take place on May 16, 2021.[1]

[1] To be clear, the Amended Complaint raises numerous claims, including purported constitutional violations by the counties. *See, e.g.*, Am. Comp. at 19. However, as recognized by Plaintiff during the Status Conference, the Motion focuses only on prospective action being taken by Defendants—namely, the

Plaintiff also conceded that Miami-Dade County, Broward County, and Broward County Administrator Bertha Henry are not proper subjects of the Motion for a TRO and Preliminary Injunction because: (i) the Hard Rock Stadium is located in Miami-Dade County and therefore Broward County does not dictate its mask policy, and (ii) neither county is currently enforcing mask mandates given Florida Governor Ron DeSantis's executive order suspending various COVID-19 restrictions, including mask mandates. *See* Motion to Dismiss Parties for Mootness [ECF No. 30].

Accordingly, Plaintiff seeks preliminary injunctive relief as to Nova and South Florida Stadium only—thereby requiring an analysis of Plaintiff's claims against both entities under Title II and Title VI.

LEGAL STANDARD

To obtain a temporary restraining order or preliminary injunctive relief, a movant must establish: "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). A preliminary injunction or temporary restraining order is "an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the burden of persuasion as to each of the four prerequisites." *Siegel v. Lepore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (quotation omitted).

imposition of a mask-wearing requirement at the forthcoming commencement ceremony. Therefore, the Court need not reach Plaintiff's constitutional claims against the counties in this Order given that they have already transpired and have no impact on the commencement ceremony. *See Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1133 (11th Cir. 2005) (indicating that because its sole function is to forestall future harm, injunctive relief is "completely at odds with a sanction for past conduct that may be addressed by adequate remedies at law.").

ANALYSIS

Here, the Court finds that Plaintiff has not established a substantial likelihood of success on the merits. Title II provides that "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." 42 U.S.C. § 2000a(a). To establish a claim under Title II, Plaintiff must show that he "(1) is a member of a protected class; (2) attempted to contract for services and afford [himself] the full benefits and enjoyment of a public accommodation; (3) was denied the full benefits or enjoyments of a public accommodation; and (4) such services were available to similarly situated persons outside [his] protected class who received full benefits or who were treated better." *Benton v. Cousins Properties, Inc.*, 230 F. Supp. 2d 1351, 1382 (N.D. Ga. 2002), aff'd, 97 F. App'x 904 (11th Cir. 2004).

Plaintiff does not allege that he is being denied entry to Nova or South Florida Stadium's property because of his religion. Rather, he alleges that Nova and South Florida Stadium have denied him an *accommodation* of his purported religious beliefs in violation of Title II. *See* Am. Compl. ¶ 66 ("Defendants' failure to accommodate individuals for whom compliance with mask mandates would violate their sincerely held religious beliefs is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a)."). However, Plaintiff has not pointed to any authority indicating that Title II requires public facilities to *accommodate* religious beliefs and practices. Indeed, at least one court has found that it does not. *See Boyle v. Jerome Country Club*, 883 F. Supp. 1422, 1432 (D. Idaho 1995) ("Those public facilities now covered by Title II are prohibited from discriminating against patrons on the basis of religion. To go beyond the intended language of Title II, and require public facilities to affirmatively accommodate patrons' religious beliefs . . . is not appropriate nor allowed under the applicable legislation.").

Further, Plaintiff has not established that Nova or South Florida Stadium are treating Plaintiff less favorably with respect to the mask wearing policy than non-Jewish students. *See Thomas v. Murphy Oil Corp.*, 777 F. App'x 377, 380 (11th Cir. 2019) (finding that plaintiff failed to state a claim under Title II because plaintiff "alleged no facts from which a factfinder could infer reasonably that Plaintiff's mistreatment was motivated by racial animus or that Plaintiff was treated less favorably than similarly situated non-African American customers."); *Trimble v. Emory Healthcare, Inc.*, No. 1:20-CV-1469-MLB, 2021 WL 1244864, at *5 (N.D. Ga. Jan. 21, 2021) ("Plaintiffs must show that [Defendant's employee] treated Plaintiffs less favorably with regard to the allegedly discriminatory act than he treated other similarly situated persons who were outside Plaintiffs' protected class.") (quoting *Dozier v. Waffle House, Inc.*, No. 1:03-cv-3093, 2005 WL 8154381, at *6 (N.D. Ga. May 4, 2005)).[2]

Lastly, Title II plaintiffs must comply with the notice requirement set forth in 42 U.S.C. § 2000a-3, which states that "if a state or local law prohibits the alleged discriminatory act and a state or local agency has authority to grant relief from the discriminatory act, no civil action can be brought until 30 days after the appropriate authority has been given written notice of the discriminatory act." The Florida Civil Rights Act prohibits an individual from being denied access to places of public accommodation based on religion, *see* Fla. Stat. § 760.08, and the Florida Commission on Human Relations is charged with investigating complaints made pursuant to the Florida Civil Rights Act. *See Strober v. Payless Rental Car*, 701 F. App'x 911, 913 n.3 (11th Cir. 2017) (citing Fla. Stat. §§ 760.03, 760.06, 760.08, 760.11).

[2] The Court finds it unnecessary to determine whether Nova and South Florida Stadium qualify as "place[s] of public accommodation" under Title II because other deficiencies in Plaintiff's claim preclude a finding of a substantial likelihood of success to warrant a TRO or preliminary injunction.

Here, there is no indication that Plaintiff has complied with the notice requirement, even though Nova notified students as early as January 2021 that masks would be required at the commencement ceremony. *See* Am. Compl. ¶ 32. The failure to comply with this notice requirement further decreases Plaintiff's likelihood of success on the merits of his Title II claim. *See Strober*, 701 F. App'x at 913 n.3 (explaining that to state a viable Title II claim, plaintiff must first exhaust state or local administrative remedies, if such remedies are available); *see also Dragonas v. Macerich*, No. 20-01648, 2021 WL 363852, at *3 (D. Ariz. Feb. 3, 2021) (finding that the court lacked jurisdiction over plaintiff's Title II claim because plaintiff did not satisfy the notice requirement); *Brown v. Zaveri*, 164 F. Supp. 2d 1354, 1359-60 (S.D. Fla. 2001) (dismissing Title II claim for failure to comply with notice requirement).

Plaintiff also has not shown a substantial likelihood of success on his Title VI claim. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. § 2000d. Notably, "Title VI does not provide for protection against discrimination on the basis of religion—only race, color, or national origin." *Lubavitch-Chabad of Illinois, Inc. v. Nw. Univ.*, 6 F. Supp. 3d 806, 816 (N.D. Ill. 2013), aff'd, 772 F.3d 443 (7th Cir. 2014); *Mohamed for A.M. v. Irving Indep. Sch. Dist.*, 300 F. Supp. 3d 857, 895 (N.D. Tex. 2018), aff'd sub nom. *Mohamed as Next Friend for A.M. v. Irving Indep. Sch. Dist.*, 758 F. App'x 352 (5th Cir. 2019) ("Title VI does not proscribe discrimination based on religion.").

To overcome the unavailability of a religion-based claim under Title VI, Plaintiff cites an executive order issued by former President Donald Trump stating that

> While Title VI does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a

> member of a group that shares common religious practices. Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.

Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019). However, the facts alleged in Plaintiff's Amended Complaint do not show discrimination based on the *race, color, or national origin* of Jewish students or any other group. Instead, Plaintiff claims that by obeying the requirement to wear a mask, he would be worshipping as "idols" the experts or authorities who recommend such mask-wearing measures. Plaintiff contends that such worship contravenes his Jewish beliefs. This claim is entirely based on a religious belief and has no connection to race, color, or national origin. Plaintiff therefore has not established a substantial likelihood of success on his Title VI claim.[3]

Although Plaintiff's failure to show a substantial likelihood of success on the merits is sufficient to deny the Motion, *see Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir. 1994), the Court notes that Plaintiff also has not shown that the balance of equities tip in his favor or that a TRO or preliminary injunction would be in the public interest. The harm to Plaintiff from being unable to attend the commencement ceremony in person without a mask does not outweigh the harm of undermining Nova and South Florida Stadium's efforts to protect the health and safety of university students, faculty, and the families who are attending the graduation. And

[3] Additionally, to establish a Title VI claim, Plaintiff must show intentional discrimination or actions having a disparate impact on groups protected by the statute, even if those actions are not intentionally discriminatory. *See Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1406-07 (11th Cir. 1993). Here, Plaintiff has not alleged facts that support a finding of intentional discrimination or disparate impact. Even if Plaintiff were able to show disparate impact, Nova and South Florida Stadium have a substantial legitimate justification for the mask requirement—protecting the health and safety of students, faculty, and staff. *Id.* at 1407 (indicating that defendants can rebut a prima facie showing of disparate impact by proving a substantial legitimate justification for the challenged practice, and if defendants meet this rebuttal burden, plaintiff must show a comparably effective alternative practice which would result in less disproportionality, or that the defendant's proffered justification is a pretext for discrimination). Plaintiff's likelihood of success on the Title VI claim is therefore low.

enjoining entities hosting large events from taking measures to slow the spread of COVID-19 does not serve the public interest of protecting human life and health in the face of a global and unpredictable pandemic.

For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion for a Temporary Restraining Order or Preliminary Injunction [ECF No. 6] is **DENIED**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 14th day of May, 2021.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

APPENDIX D

Full docket text for document 35:

PAPERLESS ORDER denying [33] Plaintiff's Emergency Motion for Stay of Proceedings Pending Appeal ("Motion"). A party seeking a stay pending appeal must show (1) likelihood of success on the merits of the appeal, (2) irreparable injury to the appellant absent a stay, (3) lack of substantial prejudice to the appellee, and (4) the stay would serve the public interest. *Sec. & Exch. Comm'n v. Nat. Diamonds Inv. Co.*, 493 F. Supp. 3d 1260, 1262 (S.D. Fla. 2020). "A stay pending appeal is an extraordinary remedy for which the moving party bears a heavy burden." *Miccosukee Tribe of Indians of Fla. v. United States*, No. 10-23507, 2011 WL 5508802, at *1 (S.D. Fla. Nov. 8, 2011). Here, because Plaintiff has not satisfied any of the relevant factors, the Motion is DENIED. Signed by Judge Rodolfo A. Ruiz, II on 5/19/2021. (as03)

PACER Service Center			
Transaction Receipt			
02/03/2022 18:19:58			
PACER Login:	coreyjzinman	**Client Code:**	
Description:	History/Documents	**Search Criteria:**	0:21-cv-60723-RAR
Billable Pages:	1	**Cost:**	0.10

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CIV-60723-RAR

COREY J. ZINMAN,

Plaintiff,

v.

NOVA SOUTHEASTERN UNIVERSITY, *et al.*,

Defendants.
_____/

ORDER AFFIRMING AND ADOPTING REPORT AND RECOMMENDATION AND DISMISSING CASE

THIS CAUSE comes before the Court upon United States Magistrate Judge Jared M. Strauss's Report and Recommendation [ECF No. 81] ("Report"), entered on August 30, 2021. The Report recommends that the Court (1) deny Plaintiff's Motion for Sanctions [ECF No. 42]; (2) grant Defendants' Broward County, Bertha Henry, and Miami-Dade County's First Motion to Dismiss [ECF No. 43]; (3) grant Defendants' Nova Southeastern University, Inc. and South Florida Stadium LLC's Second Motion to Dismiss [ECF No. 44]; and (4) deny Plaintiff's Motion to Strike [ECF No. 53]. Report at 1. Plaintiff filed objections to the Report on September 14, 2021 [ECF No. 85] ("Objections").

When a magistrate judge's "disposition" has been properly objected to, district courts must review the disposition *de novo*. FED. R. CIV. P. 72(b)(3). Because Plaintiff timely filed objections to the Report, the Court has conducted a *de novo* review of Magistrate Judge Strauss's legal and factual findings. Having carefully reviewed the Second Amended Complaint [ECF No. 38], Plaintiff's Motion for Sanctions [ECF No. 42], Defendants' First Motion to Dismiss [ECF No. 43], Defendants' Second Motion to Dismiss [ECF No. 44], Plaintiff's Motion to Strike [ECF

No. 53], Plaintiff's Amended Responses in Opposition to Defendants' First and Second Motions to Dismiss [ECF Nos. 58; 59], Defendants' Replies to Plaintiff's Responses [ECF Nos. 62; 64], the Report, the Objections, the factual record, the applicable law, and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report [ECF No. 81] is **AFFIRMED AND ADOPTED.**
2. Defendant's First Motion to Dismiss [ECF No. 43] is **GRANTED.**
3. Defendant's Second Motion to Dismiss [ECF No. 44] is **GRANTED.**
4. Plaintiff's Motion for Sanctions [ECF No. 42] is **DENIED.**
5. Plaintiff's Motion to Strike is **DENIED as moot.**
6. Plaintiff's requests for injunctive and declaratory relief are **DISMISSED** ***without prejudice*** (based upon mootness).
7. Plaintiff's Count IV is **DISMISSED** ***without prejudice*** (on mootness and standing grounds).
8. The remainder of Plaintiff's claims for damages are **DISMISSED** on the merits.
9. The Clerk is directed to **CLOSE** this case.
10. Any pending motions are **DENIED as moot.**

DONE AND ORDERED in Ft. Lauderdale, Florida, this 15th day of September, 2021.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

APPENDIX F

RECORD NO. 21-11711-JJ

In The United States Court of Appeals For The Eleventh Circuit

COREY J. ZINMAN,

Plaintiff – Appellant,

v.

NOVA SOUTHEASTERN UNIVERSITY, et al.,

Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

APPELLANT'S PETITION FOR REHEARING EN BANC

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253

Pro Se Plaintiff

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 21-11711-JJ

COREY J. ZINMAN

Plaintiff - Appellant,

v.

NOVA SOUTHEASTERN UNIVERSITY, SOUTH FLORIDA STADIUM, LLC, BROWARD COUNTY, BERTHA HENRY, MIAMI-DADE COUNTY,

Defendants - Appellees,

On Appeal From the
United States District Court
For the Southern District of Florida

APPELLANT'S CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Appellant Zinman (hereinafter "Appellant"), pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and 11th Circuit Rule 26.1-1, hereby files this Certificate of Interested Persons and Corporate Disclosure Statement, and certifies that the following persons or entities have an interest in the outcome of this appeal, listed in alphabetical order with descriptions:

1. Bean, Benjamin, Counsel for Defendant-Appellee Nova Southeastern University and Counsel for Defendant-Appellee South Florida Stadium, LLC.

2. Beauchamp, Richard, Counsel for Defendant-Appellee Nova Southeastern University and Counsel for Defendant-Appellee South Florida Stadium, LLC.
3. Broward County Office of the County Attorney, Counsel to Defendants-Appellees Broward County and Bertha Henry.
4. Henry, Bertha, Defendant-Appellee.
5. Jarone, Joseph, Counsel for Defendants-Appellees Broward County and Bertha Henry.
6. Katzman, Adam, Counsel for Defendants-Appellees Broward County and Bertha Henry.
7. McIntosh, Kristen, Counsel for Defendants-Appellees Broward County and Bertha Henry.
8. Meyers, Andrew J., Counsel for Defendants-Appellees Broward County and Berth Henry.
9. Morse, Lauren, Counsel for Defendant-Appellee Miami-Dade County.
10. Murray, David, Counsel for Defendant-Appellee Miami-Dade County.
11. Nova Southeastern University, Defendant-Appellee
12. Ruiz, Rodolfo, A., II, The Honorable District Judge, U.S. District Court for the South District of Florida.

13. South Florida Stadium, LLC, Defendant – Appellee.

14. Straus, Jared M., The Honorable Magistrate Judge, U.S. District Court for the Southern District of Florida.

15. Zinman, Corey, S. *pro se* Plaintiff - Appellant.

Appellant hereby certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

Respectfully submitted,

Corey J. Zinman

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253

RULE 35 STATEMENT

I express a belief, based on a reasoned and studied professional judgement, that the panel's decision is contrary to the following decisions of the Supreme Court of the United States as well as precedents of this Circuit and that consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court: *Shaffer v. Carter*, 252 U.S. 37 (1920), *Harper v. Poway School District*, 549 U.S. 1262 (2007), *Grupo Mexicano De Desarrollo v. Alliance Bond Fund*, 527 U.S. 308 (1999), *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950); *Burton v. Georgia*, 953 F.2d 1266 (11th Cir. 1992), *Carrizosa v. Chiquita Brands Int'l, Inc. (In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig.)*, 965 F.3d 1238 (11th Cir. 2020), *Birmingham Fire Fighters Ass'n 117 v. City of Birmingham*, 603 F. 3d 1248 (11th Cir. 2010), *Kong v. Allied Prof'l Ins. Co.*, 750 F.3d 1295 (11th Cir. 2014), and *Barfield v. Brierton*, 883 F.2d 923 (11th Cir. 1989).

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance—namely, whether an order to dismiss a complaint for failure to state a claim automatically moots an interlocutory appeal of an order denying a motion for preliminary injunctive relief, and if so, whether vacatur is required to prevent an order, review of which was prevented through happen-stance, from spawning any legal consequences.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law

Other

STATEMENT OF ISSUES MERITING EN BANC CONSIDERATION

Pursuant to Fed. R. App. P. 35, Petitioner, Corey J. Zinman ("Zinman"), respectfully files this petition for En Banc Rehearing on the ground that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Circuit and because this appeal otherwise presents one or more questions of exceptional importance.

STATEMENT OF THE COURSE OF PROCEEDINGS

By way of background, Zinman was enrolled in the Nova Southeastern University ("NSU") Shepard Broad College of Law when it made the decision to implement a mask mandate during the Fall 2020 semester. After Zinman's requests for an accommodation to NSU's mask mandate were denied, on April 2, 2021, Zinman filed a Complaint against Appellee NSU for compensatory, declaratory, and injunctive relief, as well as injunctive relief against South Florida Stadium ("SFS") to prevent it from excluding him from participation in NSU's commencement ceremonies which were to be hosted at Hard Rock Stadium in May of 2021 due to his religious objection to complying with mask mandates. However, on April 6, 2021, Zinman filed an Amended Complaint [R-5], as well as a Motion Preliminary Injunctive Relief [R-6]. Notwithstanding, on May 14, 2021, the district court entered an order denying Zinman's Motion for a Temporary Restraining Order and Preliminary Injunctive Relief [R-31]. Zinman immediately appealed to this Court on

May 19, 2021 [R-32]. Thereafter, however, on September 15, 2021, the district court entered a final order dismissing Zinman's Second Amended Complaint [R-38] for failure to state a claim and denying his claims for injunctive and declaratory relief as moot [R-86]. Thus, on that basis, the Panel dismissed the instant appeal for lack of jurisdiction on December 3, 2021. App. A.

ARGUMENT

I. EN BANC CONSIDERATION IS NECESSARY TO SECURE AND MAINTAIN UNIFORMITY OF DECISIONS IN THIS COURT AND BECAUSE THIS APPEAL OTHERWISE PRESENTS SEVERAL QUESTIONS OF EXCEPTIONAL IMPORTANCE

In dismissing this appeal for lack of jurisdiction, the Panel held that "[b]ecause the district court has subsequently entered a final order of dismissal, any appeal from the district court's interlocutory denial of preliminary injunctive relief has merged into the final order and consequently rendered any direct appeal from the May 14 order moot." Towards that end, the Panel relied upon the Supreme Court's decisions in *Shaffer v. Carter*, 252 U.S. 37 (1920) and *Harper v. Poway School District*, 549 U.S. 1262 (2007), as well as this Court's unpublished decision in *Patterson v. Miami Dade Cty.*, 791 F. App'x 877 (11th Cir. 2019) (unpublished). App. A at 2.

A. The rule set forth by *Shaffer* is inapplicable to the instant appeal.

In *Shaffer*, an application for an interlocutory injunction was denied. *Shaffer*, 252 U.S. at 44. The decree as entered not only disposed of the application but dismissed the action in its entirety. *Id.* The plaintiff, apparently unaware of this,

appealed to the Supreme Court from the refusal of the temporary injunction. *Id.* Shortly thereafter, however, the plaintiff took an appeal from the final decree dismissing the action. *Id.* In dismissing the plaintiff's first appeal, the Court held that "the denial of the interlocutory application was merged in the final decree." *Id.*

Similarly, in *Harper*, the plaintiff ("Harper") sought review of a judgment of the Ninth Circuit affirming the denial of his motion for a preliminary injunction "seeking to enjoin the school from continuing [its] violation of [his] constitutional rights." *Harper v. Poway Unified School District*, 445 F.3d 1166, 1173 (9th Cir. 2006). Thereafter, however, the district court entered final judgment dismissing Harper's claims for injunctive relief as moot. *Harper*, 549 U.S. at 1262. Accordingly, relying on the rule set forth by *Shaffer*, the Supreme Court remanded the case with instructions to dismiss Harper's appeal from the denial of his motion for a preliminary injunction as moot. *Id.*

As an initial matter, the circumstances before the Supreme Court in *Shaffer* are clearly distinguishable from those before this Court in the instant appeal. To be clear, whereas in *Shaffer* the denial of the plaintiff's motion for a temporary injunction was part and parcel of the very same decree which disposed of the action in its entirety, here the district court's final order of dismissal came over 4 months after its prior order denying Zinman's motion for preliminary injunctive relief. Additionally, in *Shaffer* the operative pleading upon which the lower court's preliminary injunctive order was grounded was the very same pleading as that which the court's final order

was based on. Conversely, the operative pleading at the time the district court issued the order denying Zinman's motion for preliminary injunctive relief was Zinman's Amended Complaint, whereas the operative pleading at the time it issued its final order of dismissal was Zinman's Second Amended Complaint. As such, the district court's final order of dismissal was premised upon a different set of factual allegations than its prior order denying Zinman's motion for preliminary injunctive relief. Thus, "the substantive validity of the final [order] does[n't] establish the substantive validity of the preliminary one." *Grupo Mexicano De Desarrollo v. Alliance Bond Fund*, 527 U.S. 308, 315 (1999) ("It would make no sense, when this is the claim, to say that the preliminary [order] merges into the final one").

Additionally, *Harper* is clearly distinguishable from the instant case as well. Notably, the district court in that case dismissed Harper's claim for injunctive relief simply because he graduated from high school[1] and therefore the requisite "case-or-controversy" no longer existed. Accordingly, even if the Supreme Court determined that the Ninth Circuit somehow erred in affirming the district court's denial of Harper's motion for a preliminary injunction, any relief that it could've granted would've served merely as an impermissible advisory opinion. *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). Conversely, if this Court were to determine that the court below erred in denying Zinman's motion for preliminary injunctive relief, it could

1. David L. Hudson Jr., *Harper v. Poway Unified School District (9th Cir.) (2006)*, THE FIRST AMENDMENT ENCYCLOPEDIA, https://www.mtsu.edu/first-amendment/article/686/harper-v-poway-unified-school-district-9th-cir.

still effectuate meaningful relief by enjoining Appellees from further engagement in a pattern and practice of acts constituting intentional discrimination. As such, the Panel's reliance upon *Shaffer* and *Harper* to suggest that the district court's final order of dismissal divested it of jurisdiction to review the district court's order denying Zinman's motion for preliminary injunctive relief is a misapplication of the rule set forth by the Supreme Court in those cases. Accordingly, to secure and maintain uniformity of decisions binding upon this Circuit and because this appeal otherwise presents one or more questions of exceptional importance, Zinman respectfully requests this Court to grant this Petition.

B. <u>The rule set forth by *Burton* is inapplicable to the instant appeal.</u>

Although an appeal from the grant of a preliminary injunction generally becomes moot when the trial court enters a permanent injunction, *see*, e.g., *Grupo Mexicano De Desarroll*, 527 U.S. at 315; *Smith v. Illinois Bell Telephone Co.*, 270 U.S. 587, 588-589 (1926), the Supreme Court has made clear that "[a] quite different situation obtains ... where ... the substantive validity of the final injunction does[n't] establish the substantive validity of the preliminary one." *Grupo Mexicano De Desarroll*, 527 U.S. at 315 ("It would make no sense, when this is the claim, to say that the preliminary injunction merges into the final one").

In *Burton v. Georgia*, 953 F.2d 1266 (11th Cir. 1992), the plaintiffs sued the State of Georgia to challenge the constitutionality of ballot language on a referendum for a proposed amendment to the State's constitution. *Id.* at 1267. Thereafter, the

district court granted a preliminary injunction temporarily prohibiting the State from certifying or announcing the results of the referendum on the proposed amendment which the State of Georgia immediately appealed. *Id.* at 1272 n.9. However, this Court stayed consideration of the State's appeal until the district court awarded final judgment. *Id.* When the district court ultimately rejected the plaintiffs' challenge to the proposed amendment, this Court dismissed "the State's appeal to the preliminary injunction because the district court's denial of permanent relief rendered that earlier ruling moot." *Id.* In doing so, this Court explained that "[o]nce a final judgment is rendered, the appeal is properly taken from the final judgment, not the preliminary injunction." *Id.* More recently, however, in *Carrizosa v. Chiquita Brands Int'l, Inc. (In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig.)*, 965 F.3d 1238 (11th Cir. 2020), this Court clarified that "*Burton* merely restated a commonsense principle: A permanent injunction order moots interlocutory review of a corresponding preliminary injunction order because the preliminary injunction order inherently merges with the permanent injunction order." *Id.* at 1245 (internal quotation marks and citation omitted). Towards that end, this Court emphasized that "[t]his rule makes sense ... [because] [t]he standard for entering a preliminary injunction echoes the standard for entering a permanent injunction." *Id.*

In *Birmingham Fire Fighters Ass'n 117 v. City of Birmingham*, 603 F. 3d 1248 (11th Cir. 2010), the plaintiffs sued the City of Birmingham alleging discriminatory employment practices. *Id.* at 1251. At the trial court level, the Northern District of

Alabama assumed a direct supervisory role over a county personnel board and appointed two individuals to the board when vacancies arose. *Id.* at 1252. The state later passed an act reconstituting the composition of the board which the district court declared void ab initio ("the September Order"), and the City of Birmingham immediately appealed. *Id.* at 1253. However, two months later, the district court issued a subsequent order reaffirming the September Order's directive that the two appointed board members serve the remainder of their respective terms as board members ("the November Order"). *Id.* at 1254. Accordingly, this Court applied the rule set forth by its prior decision in *Burton* and held that although "§ 1292 initially granted this Court jurisdiction over the city's appeal, despite the fact that the September Order was[n't] a final judgment[,] ... the November Order stripped this Court of its jurisdiction over the city's appeal because, *when a final injunction incorporates the same relief as an interlocutory injunction, an appeal is properly taken only from the final order*." *Id.* at 1254 (emphasis added).

Relying on the foregoing precedents, in *Patterson*, this Court dismissed an appeal from the denial of a motion for a preliminary injunction. *Patterson* 791 Fed. Appx. at 879 (unpublished). In doing so, it held that it "need not consider [plaintiff's] appeal of his denied motion for a preliminary injunction because the issue is moot." *Id.* Towards that end, it noted that "[w]hen the district court dismissed the case, the denial of the motion for a preliminary injunction merged with the final order." *Id.* (citing *Birmingham Fire Fighters Ass'n 117*, 603 F.3d at 1254-55).

As an initial matter, the circumstances surrounding the instant appeal are immediately distinguishable from those before this Court in *Burton* and *Birmingham Fire Fighters Ass'n 117*. Notably, whereas the district courts in those cases granted injunctions, here the district court denied Zinman's motion for preliminary injunctive relief on the merits and subsequently denied his request for a permanent injunction as moot after dismissing his Second Amended Complaint for failure to state a claim. Additionally, although at first blush, it appears as though *Patterson* is applicable to the instant appeal given that the district court denied Zinman's request for preliminary injunctive relief and subsequently dismissed Zinman's complaint for failure to state a claim, notably, however, *Patterson* is distinguishable from the instant appeal for at least two reasons. To be clear, whereas the plaintiff in *Patterson* failed to appeal the denial of his motion for a preliminary injunction until after his complaint had been dismissed, *id.*, Zinman immediately appealed the May 14th order denying his motion for preliminary injunctive relief on May 19, 2021, long before his Second Amended Complaint was eventually dismissed on September 15, 2021, nearly four months later. Furthermore, as was the case in *Burton* and *Birmingham Fire Fighters Ass'n 117*, the operative pleading upon which the *Patterson* court's preliminary injunctive order was grounded was the very same pleading as that which the court's final order was also based on. Conversely, as noted above, the operative pleading at the time the district court issued its order denying Zinman's motion for preliminary injunctive relief was Zinman's Amended Complaint, whereas the operative pleading at the time it issued its

final order of dismissal was Zinman's Second Amended Complaint. Consequently, in contrast to the circumstances before this Court in *Burton* and *Birmingham Fire Fighters Ass'n 117*, the district court's preliminary order didn't merge with its subsequent final order because the substantive validity of the latter doesn't establish the substantive validity of the former. *Grupo Mexicano De Desarrollo*, 527 U.S. 308 at 315. Moreover, pursuant to 11th Cir. R. 36-2, "[u]npublished opinions are not considered binding precedent." Thus, separate and apart from the fact that the circumstances before this Court in *Patterson* are clearly distinguishable from those surrounding the instant appeal, its holding isn't even binding upon this Court. Therefore, the Panel's reliance upon *Patterson* to suggest that the district court's final order of dismissal divested it of jurisdiction to review the district court's order denying Zinman's motion for preliminary injunctive relief is a misapplication of the rule set forth by this Court in *Burton* and its progeny.

Lastly, as this Court aptly noted in *Carrizosa*, the logic underlying the rule set forth by its decision in *Burton* is that "[t]he standard for entering a preliminary injunction echoes the standard for entering a permanent injunction." *Carrizosa*, 965 F.3d at 1245. Importantly, however, that logic is inapposite to the standard for entering a preliminary injunction and that for dismissing a complaint under Rule 12(b)(6). To be clear, whereas the former was set forth by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365 (2008), the latter is governed by the Supreme Court's decisions in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) as well

as *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Furthermore, the standard of review which applies to orders granting or denying preliminary injunctions is not the same as that which applies to orders granting motions to dismiss for failure to state a claim. Thus, the substantive validity of an order granting or denying a preliminary injunction doesn't necessarily establish the substantive validity of a subsequent order granting or denying a motion to dismiss under Rule 12(b)(6). As such, the district court's final order of dismissal didn't render Zinman's appeal from the district court's order denying his motion for preliminary injunctive relief moot. Accordingly, to secure and maintain uniformity of decisions binding upon this Circuit and because this appeal otherwise presents one or more questions of exceptional importance, Zinman respectfully requests this Court to grant this Petition.

C. The district court's May 14th order wasn't a step toward and didn't produce its final order of dismissal.

Although the Panel suggests that Zinman "is free to raise a challenge to the district court's May 14 order" in his appeal from its final order of dismissal, in *Kong v. Allied Prof'l Ins. Co.*, 750 F.3d 1295 (11th Cir. 2014), this Court made clear that an appeal from a final judgement only "draws in question [those] non-final orders and rulings *that produced the judgment*," *id.* at 1301 (emphasis added); *see also Barfield v. Brierton*, 883 F.2d 923, 930-31 (11th Cir. 1989) ("the appeal from a final judgment draws in question all prior non-final orders and rulings *which produced the judgment*") (emphasis added). As such, because the district court's order denying Zinman's motion

for preliminary injunctive relief was not a step toward and did not produce its final order of dismissal, it would be inappropriate for Zinman to attempt to raise his objections to the former in his appeal from the latter. Additionally, it's worth noting that the Panel waited until after Zinman filed his Initial Brief in his appeal from the district court's final order of dismissal on November 29, 2021, to dismiss this appeal as moot, thereby depriving Zinman of any notice that he would need to raise his objections to the district court's denial of his motion for injunctive relief in that brief if he wished for those objections to be addressed. Moreover, it would serve absolutely no purpose other than to impose an additional procedural burden upon Zinman to require him to re-brief his objections to the district court's order denying his motion for injunctive relief in his appeal from its final order of dismissal. Accordingly, to secure and maintain uniformity of decisions in this Circuit and because this appeal otherwise presents one or more questions of exceptional importance, Zinman respectfully requests this Court to grant this Petition.

D. Even if the district court's final order of dismissal did render the instant appeal moot to some extent, the district court's denial of Zinman's request for preliminary injunctive relief nevertheless remains reviewable.

There are three exceptions to the mootness doctrine which should be considered when deciding the reviewability of an appeal that is in some sense moot. *B & B Chem. Co. v. United States EPA*, 806 F.2d 987, 990 (11th Cir. 1986).

i. The issues raised by the instant appeal are "capable of repetition, yet evading review."

The first exception to the mootness doctrine concerns a situation where the issues are capable of repetition, yet evading review. *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515 (1911). This court has recognized that, in the absence of a class action, this exception is limited to cases in which: 1) the challenged action is too short in duration to be fully litigated prior to its cessation or termination, and 2) there is a reasonable expectation that the same complaining party will be subject to the same action again. *Florida Farmworkers Council v. Marshall*, 710 F.2d 721, 731 (11th Cir. 1983).

Here, the action that Zinman sought to challenge was the district court's denial of his motion for preliminary injunctive relief. However, although this appeal has been fully briefed since August 25, 2021, that action couldn't be fully litigated prior to the issuance of the district court's final order of dismissal. Furthermore, there's a reasonable expectation that if Zinman were to file another motion for preliminary injunctive relief regarding Appellees' respective mask mandates, or any other entity's mask mandate for that matter, the district court would presumably adhere to its earlier decision and deny the motion. As such, it would be unreasonable and would otherwise be a substantial waste of resources to require Zinman to file an additional motion setting forth the same exact arguments just to be denied upon the same grounds in which he seeks to appeal now.

ii. This appeal falls squarely within the "all steps necessary to perfect the appeal" exception to the mootness doctrine.

The second exception to the mootness doctrine occurs where an appellant has taken all steps necessary to perfect the appeal and to preserve the status quo before the dispute becomes moot. *United States v. Frumento*, 552 F.2d 534, 537 (3d Cir. 1977) (en banc) (recognizing that an appeal from a judgment of civil contempt resulting in imprisonment "is[n't] moot even though the appellant has been released from custody or has served his sentence if he has taken all possible steps to have the order of confinement promptly reviewed prior to his release"). However, this exception is a "narrow one that has been limited primarily to criminal defendants who seek to challenge their convictions notwithstanding that they have been released from custody." *Ethredge v. Hail*, 996 F.2d 1173, 1176-77 (11th Cir. 1993) (footnote omitted). Nevertheless, courts have recognized that this exception is an extension of the more traditional "capable of repetition, yet evading review" exception and is premised upon the important personal liberty interest at stake. *In re Kulp Foundry, Inc.*, 691 F.2d 1125, 1129 (3rd Cir. 1982). Accordingly, given the important liberty interests underlying the instant appeal—namely, Zinman's liberty to receive the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation, as well as that of those similarly situated to him, without being compelled to sacrifice their sincerely held religious beliefs—coupled with the fact that Zinman took all steps necessary to perfect the

instant appeal and to preserve the status quo before the district court eventually dismissed his case nearly four months later, the instant appeal falls squarely within the "all steps necessary to perfect" exception to the mootness doctrine.

iii. If this Court declines to exercise jurisdiction to review the district court's order denying Zinman's motion for preliminary injunctive relief, it should at least vacate the order to prevent it from "spawning" any consequences.

The last exception to the mootness doctrine occurs where the trial court's order will have possible collateral legal consequences. *See*, e.g., *Powell v. McCormack*, 395 U.S. 486, 495-500 (1969); *In re Kulp Foundry, Inc.*, 691 F.2d at 1129. However, to prevent a district court's order, "unreviewable because of mootness, from spawning any legal consequences," the Supreme Court has recognized that vacatur of the order is the "established practice." *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-41 (1950).

The leading case on vacatur is *Munsingwear* where the United States argued that a district court opinion shouldn't have been given res judicata effect when the United States was prevented from appealing the adverse judgment because the case had become moot while pending before the Court of Appeals. *Id.* at 39. In rejecting the United States argument that "those who have been prevented from obtaining the review to which they are entitled should[n't] be treated as if there had been a review," the Supreme Court noted that any unfairness to the United States was preventable because the United States had "slept on its rights" by failing to ask the Court of Appeals to vacate the district court's decision before the appeal was dismissed. *Id.* at

39-41.

Although Zinman's response to this Court's Supplemental Jurisdictional Question stated that, "[i]n the interest of preventing a situation similar to what happened in *Munsingwear*, if this Court declines to exercise jurisdiction to review the district court's May 14th Order, Zinman respectfully requests that this Court at least vacate the order to prevent it 'from spawning any legal consequences' in future litigation," the Panel nevertheless declined to do so in the absence of a declared or apparent reason for their refusal, despite the Panel's explicit reliance upon *Harper* wherein the Supreme Court held that "vacatur of the [preliminary] order [was] appropriate to 'clea[r] the path for future relitigation of the issues between the parties and [to] eliminate] a judgment, review of which was prevented through happenstance.'" *Harper*, 549 U.S. at 1262 (quoting *Anderson v. Green*, 513 U.S. 557, 560 (1995) (per curiam)). Accordingly, to secure and maintain uniformity of decisions in this Circuit and because this appeal otherwise presents one or more questions of exceptional importance, Zinman respectfully requests this Court to grant this Petition.

CONCLUSION

For the foregoing reasons, Zinman respectfully requests this Honorable Court to grant this Petition for En Banc Rehearing.

CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), and the type-volume limitations of Federal Rules of Appellate Procedure 35(b)(2)(a) and 4(b)(1), because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font and contains exactly 3,858 words, excluding the parts of the Petition exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 35-1.

Corey J. Zinman

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that, on December 6, 2021, I served a copy of the foregoing upon counsel for Appellees by filing the same via the Court's CM/ECF system, which shall cause the same to be electronically transmitted to: Benjamin Bean, Richard Beauchamp, Joseph Jarone, Adam Katzman, Kristen McIntosh, Andrew Meyers, Lauren Morse, and David Murray.

Respectfully submitted,

Corey J. Zinman

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253
Pro Se Plaintiff

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **21-cv-60723**

COREY J. ZINMAN,

Plaintiff,

v.

NOVA SOUTHEASTERN UNIVERSITY, a corporation, **SOUTH FLORIDA STADIUM, LLC, BROWARD COUNTY,** a Florida County and Political Subdivision of the State of Florida, **BERTHA HENRY,** individually and in her official capacity, **MIAMI-DADE COUNTY,** a Florida County and Political Subdivision of the State of Florida,

Defendants.

_____/

PLAINTIFF'S EMERGENCY MOTION FOR STAY OF PROCEEDINGS PENDING APPEAL

Plaintiff/Petitioner ("Zinman"), on behalf of himself and pursuant to Federal Rule of Civil Procedure 8(b), hereby moves for a stay of proceedings in this action pending the resolution of Plaintiff's appeal in the Eleventh Circuit Court of Appeals, and in support thereof, states as follows:

1. On April 2, 2021, Zinman initiated this action against Defendants Nova Southeastern University ("NSU") and South Florida Stadium ("SFS") (collectively, "the Commencement Defendants") by filing the Complaint. *See* Complaint [Doc. 1].

2. On April 6, 2021, Zinman filed an Amended Complaint joining Defendants Bertha Henry, Broward County, and Miami-Dade County as parties to this matter. *See* Amended Complaint [Doc. 5].

3. On the same day, Zinman filed a Motion for a Temporary Restraining Order and Preliminary Injunctive Relief seeking to enjoin Defendants as well as their officers, agents, employees,

representatives, and all persons acting in concert, or participating with them: (i) to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices (ii) from excluding Zinman from participation in NSU's upcoming commencement ceremonies at Hard Rock Stadium in May of 2021; and (iii) otherwise denying Zinman or those similarly situated to him the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations. See Motion for a TRO [Doc. 6]; *see also* Zinman's Opening Brief [Doc. 7].

4. On May 6, 2021, this Honorable Court entered a Paperless Order Granting Plaintiff's Ore Tenus Motion to File an Amended Complaint. See Paperless Order [Doc. 27]. Pursuant to the terms of that Order, Zinman's amended complaint is due on or before May 26, 2021.

5. On May 14, 2021, this Honorable Court entered an Order Denying Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunctive Relief. *See* Order Denying Plaintiff's Motion [Doc. 31].

6. On May 19, 2021, Zinman will be filing a Notice of Appeal to the Eleventh Circuit regarding this Court's Order Denying Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunctive Relief.

7. Zinman is likely to succeed on the merits of his appeal because: 1) his amended complaint is riddled with allegations that he was denied entry to Defendants' property on the basis of his sincerely held religious beliefs; 2) Zinman was not required to prove that he was treated less favorably than "non-Jewish students" bur rather similarly situated individuals (which he did); 3) 42 U.S.C. Section 2000a-6 explicitly states that the "district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law," and therefore Title II plaintiffs are not necessarily required to comply with Title II's notice requirements as a matter of law; and

4) Jewish ethnicity, nationhood, and religion are strongly interrelated, as Judaism is the ethnic religion of the Jewish people and therefore Zinman did not fail to establish a substantial likelihood of success on his Title VI claim.

8. The likelihood of harm and unnecessary expense to Zinman if a stay is not granted is great, whereas Defendants will not suffer any harm at all if a stay is granted.

Respectfully submitted,

Corey J. Zinman

Dated: May 19, 2021

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May 2021 that a true and correct copy of the foregoing was served via electronic mail to all counsel of record identified on the attached Service List. I also certify that a true and correct copy of the foregoing will also be filed conventionally with the Clerk of Court.

Corey J. Zinman

APPENDIX H

21-11711-JJ Corey Zinman v. Nova Southeastern University, et al "Notice of E-Filing Deficiency" (0:21-cv-60723-RAR)

ecf_help@ca11.uscourts.gov <ecf_help@ca11.uscourts.gov>
Mon 12/6/2021 11:07 AM
To: Corey Beckman <cb2770@mynsu.nova.edu>

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

United States Court of Appeals for the Eleventh Circuit

Notice of Docket Activity

The following transaction was filed on 12/06/2021

Case Name: Corey Zinman v. Nova Southeastern University, et al
Case Number: 21-11711

Docket Text:
Notice of deficiency. Petition for Rehearing En Banc filed by Corey J. Zinman. Incorrect Relief selected for document filed. Appellant cannot file a petition for rehearing en banc without the Court issuing an Opinion. If Appellant wishes to challenge the Order entered on 12/03/2021, Appellant must file a motion for reconsideration. All motions and responses must include a Certificate of Interested Persons and a Certificate of Compliance. See 11th Cir. Rules 26.1-1 through 26.1-5 and FRAP 32(g)(1) and 27(d)(2)(a).

Notice will be electronically mailed to:

Richard Arthur Beauchamp
Joseph Jarone
Adam Katzman
Kristen Monet McIntosh
Lauren Morse
Corey J. Zinman

APPENDIX I

Re-send: 21-11711-JJ Corey Zinman v. Nova Southeastern University, et al "Notice of E-Filing Deficiency" (0:21-cv-60723-RAR)

ecf_help@ca11.uscourts.gov <ecf_help@ca11.uscourts.gov>
Tue 12/7/2021 4:23 PM
To: Corey Beckman <cb2770@mynsu.nova.edu>

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

United States Court of Appeals for the Eleventh Circuit

Amended 12/07/2021 16:23:14: Notice of Docket Activity

The following transaction was filed on 12/06/2021

Case Name: Corey Zinman v. Nova Southeastern University, et al
Case Number: 21-11711

Docket Text:
ISSUED IN ERRORNotice of deficiency. Petition for Rehearing En Banc filed by Corey J. Zinman. Incorrect Relief selected for document filed. Appellant cannot file a petition for rehearing en banc without the Court issuing an Opinion. If Appellant wishes to challenge the Order entered on 12/03/2021, Appellant must file a motion for reconsideration. All motions and responses must include a Certificate of Interested Persons and a Certificate of Compliance. See 11th Cir. Rules 26.1-1 through 26.1-5 and FRAP 32(g)(1) and 27(d)(2)(a).--[Edited 12/07/2021 by JDB]

Notice will be electronically mailed to:

Richard Arthur Beauchamp
Joseph Jarone
Adam Katzman
Kristen Monet McIntosh
Lauren Morse
Corey J. Zinman

APPENDIX I

Re-send: 21-11711-JJ Corey Zinman v. Nova Southeastern University, et al "Motions Filed Panel Rehearing with En Banc" (0:21-cv-60723-RAR)

ecf_help@ca11.uscourts.gov <ecf_help@ca11.uscourts.gov>
Tue 12/7/2021 4:26 PM
To: Corey Beckman <cb2770@mynsu.nova.edu>

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

United States Court of Appeals for the Eleventh Circuit

Amended 12/07/2021 16:25:23: Notice of Docket Activity

The following transaction was filed on 12/06/2021

Case Name:	Corey Zinman v. Nova Southeastern University, et al
Case Number:	21-11711
Document(s):	Document(s)

Docket Text:
~~*FILED IN ERROR*~~ Petition for rehearing en banc (with panel rehearing) filed by Appellant Corey J. Zinman. Petition referred to the court as a motion for reconsideration, see 11th Cir. R. 35-4. [21-11711]--[Edited 12/06/2021 by TAT]--[Edited 12/07/2021 by JDB] (ECF: Corey Zinman)

Notice will be electronically mailed to:

Richard Arthur Beauchamp
Joseph Jarone
Adam Katzman
Kristen Monet McIntosh
Lauren Morse
Corey J. Zinman

The following document(s) are associated with this transaction:
Document Description: Petition for Rehearing - En Banc Filed
Original Filename: APPELLANT'S PETITION FOR REHEARING EN BANC.pdf
Electronic Document Stamp:

APPENDIX J

RECORD NO. 21-11711-JJ

In The United States Court of Appeals For The Eleventh Circuit

COREY J. ZINMAN,

Plaintiff – Appellant,

v.

NOVA SOUTHEASTERN UNIVERSITY, et al.,

Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

APPELLANT'S MOTION TO PUBLISH

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253

Pro Se Plaintiff

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 21-11711-JJ

COREY J. ZINMAN

Plaintiff - Appellant,

v.

NOVA SOUTHEASTERN UNIVERSITY, SOUTH FLORIDA STADIUM, LLC, BROWARD COUNTY, BERTHA HENRY, MIAMI-DADE COUNTY,

Defendants - Appellees,

On Appeal From the
United States District Court
For the Southern District of Florida

APPELLANT'S CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Appellant Zinman (hereinafter "Appellant"), pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and 11th Circuit Rule 26.1-1, hereby files this Certificate of Interested Persons and Corporate Disclosure Statement, and certifies that the following persons or entities have an interest in the outcome of this appeal, listed in alphabetical order with descriptions:

1. Bean, Benjamin, Counsel for Defendant-Appellee Nova Southeastern University and Counsel for Defendant-Appellee South Florida Stadium, LLC.

2. Beauchamp, Richard, Counsel for Defendant-Appellee Nova Southeastern University and Counsel for Defendant-Appellee South Florida Stadium, LLC.
3. Broward County Office of the County Attorney, Counsel to Defendants-Appellees Broward County and Bertha Henry.
4. Henry, Bertha, Defendant-Appellee.
5. Jarone, Joseph, Counsel for Defendants-Appellees Broward County and Bertha Henry.
6. Katzman, Adam, Counsel for Defendants-Appellees Broward County and Bertha Henry.
7. McIntosh, Kristen, Counsel for Defendants-Appellees Broward County and Bertha Henry.
8. Meyers, Andrew J., Counsel for Defendants-Appellees Broward County and Berth Henry.
9. Morse, Lauren, Counsel for Defendant-Appellee Miami-Dade County.
10. Murray, David, Counsel for Defendant-Appellee Miami-Dade County.
11. Nova Southeastern University, Defendant-Appellee
12. Ruiz, Rodolfo, A., II, The Honorable District Judge, U.S. District Court for the South District of Florida.

13. South Florida Stadium, LLC, Defendant – Appellee.

14. Straus, Jared M., The Honorable Magistrate Judge, U.S. District Court for the Southern District of Florida.

15. Zinman, Corey, S. *pro se* Plaintiff - Appellant.

Appellant hereby certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

Respectfully submitted,

Corey J. Zinman

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253

Appellant, Corey J. Zinman ("Zinman"), pursuant to 11th Cir. R. 36-3, respectfully moves the Court to publish its December 3, 2021 order dismissing this appeal for lack of jurisdiction. In support of this Motion, Zinman hereby states as follows:

1. On December 3, 2021, this Court dismissed this appeal, *sua sponte*, for lack of jurisdiction.
2. On December 6, 2021, Zinman filed a Petition for Rehearing En Banc. That same day, Zinman received a notice of deficiency from the Clerk's Office stating that he could not file a Petition for Rehearing En Banc. However, the next day Zinman received two more notices from the Clerk's Office stating that the notice from the previous day had been issued in error and further that his Petition had been referred to the Court as a motion for reconsideration. In doing so, the Clerk's Office relied upon 11th Cir. R. 35-4, although it did not specify the specific subparagraph upon which it relied. Notwithstanding, after lengthy discussions with several employees at the Clerk's Office, it was finally explained to Zinman that the reason his Petition had been referred to the Court as a motion for reconsideration was because the order in which he sought to review was not published.
3. Rule 35 of the Federal Rules of Appellate Procedure grants parties the right to file a Petition for Rehearing En Banc if they in good faith believe that a panel's

decision either conflicts with binding caselaw or the proceeding otherwise presents one or more questions of exceptional importance.

4. Equity demands that the panel's decision be published to prevent it from going unreviewed merely because the panel elected neither to address the merits of Zinman's appeal or to publish its decision.

5. On December 9, 2021, Zinman contacted counsel for Appellees to inquire as to their respective positions regarding the relief sought herein. However, as of the date of this filing, Appellees have failed to advise Zinman as to whether or not they object.

CONCLUSION

For the foregoing reasons, Zinman respectfully requests that this Court publish its December 3, 2021 order dismissing this appeal for lack of jurisdiction.

Corey J. Zinman

CERTIFICATE OF COMPLIANCE

This Motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), and the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font and contains less than 5,200 words.

Corey J. Zinman

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that, on December 9, 2021, I served a copy of the foregoing upon counsel for Defendants by filing the same via the Court's CM/ECF system, which shall cause the same to be electronically transmitted to: Benjamin Bean, Richard Beauchamp, Joseph Jarone, Adam Katzman, Kristen McIntosh, Andrew Meyers, Lauren Morse, and David Murray.

Respectfully submitted,

Corey J. Zinman

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253
Pro Se Plaintiff

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CV-60723-RUIZ/STRAUSS

COREY J. ZINMAN,

Plaintiff,

v.

NOVA SOUTHEASTERN UNIVERSITY, INC., *et al.*,

Defendants.
_____/

REPORT AND RECOMMENDATION[1]

THIS MATTER came before the Court upon the following motions:

(1) Plaintiff's Motion for Sanctions Regarding Submission of False or Misleading Statements by Defendant's Attorneys Richard Beauchamp and Benjamin Bean and Incorporated Memorandum ("Motion for Sanctions") [DE 42];

(2) Broward County's, Bertha Henry's, and Miami-Dade County's Joint Motion to Dismiss Plaintiff's Second Amended Complaint ("First Motion to Dismiss") [DE 43];

(3) Defendants, Nova Southeastern University, Inc., and South Florida Stadium LLC's, Motion to Dismiss Second Amended Complaint ("Second Motion to Dismiss") [DE 44]; and

(4) Motion to Strike (1) Plaintiff's Reply to Defendant's Response in Opposition to Plaintiff's Motion for Sanctions; and (2) Plaintiff/Petitioner's Memorandum of Law in Support of Plaintiff/Petitioner's Motion for Sanctions ("Motion to Strike") [DE 53].

I have reviewed the foregoing motions, all related filings, and all other pertinent portions of the record. For the reasons discussed herein, I respectfully **RECOMMEND** that the Motion for Sanctions [DE 42] be **DENIED**, that the First Motion to Dismiss [DE 43] be **GRANTED**, that

[1] This case has been referred to me for rulings on all pre-trial, non-dispositive matters and for the issuance of a Report and Recommendation on any dispositive matters [DE 40].

the Second Motion to Dismiss [DE 44] be **GRANTED**, and that the Motion to Strike [DE 53] be **DENIED as moot.**

MOTIONS TO DISMISS

I. BACKGROUND

A. ALLEGATIONS & CLAIMS

Plaintiff was a law student at Nova Southeastern University, Inc. ("Nova") in Broward County, Florida when he commenced this action against Nova and South Florida Stadium, LLC ("Stadium") on April 2, 2021. Second Amended Complaint ("SAC") [DE 38] ¶ 11. In addition to bringing claims against Nova and Stadium, the SAC asserts claims against Broward County ("Broward"), Broward Administrator Bertha Henry ("Henry"), Miami-Dade County ("Dade"), Palm Beach County Public Defender Carey Haughwout, and Palm Beach County ("Palm Beach") (Broward, Dade, and Palm Beach may collectively be referred to as the "Counties").

The claims in this case relate to mask mandates/policies adopted by the different Defendants. Each of the three county Defendants implemented emergency orders ("Emergency Orders") containing mask (and other) requirements. *See infra* Part I.B. Additionally, based upon CDC recommendations and local ordinances adopted due to the COVID-19 pandemic, Nova required individuals to wear facial coverings while on campus and while using Nova's facilities and grounds. SAC ¶ 21. Similarly, Nova informed students that they would be required to wear face masks at graduation, which was scheduled to occur on May 16, 2021 at the Hard Rock Stadium (located in Dade), which Stadium operates. *Id.* ¶¶ 13, 32; [DE 31] at 2.

Plaintiff, who is Jewish, contends that the mask mandates require actions that run contrary to his religious beliefs. Specifically, he alleges that Judaism prohibits idolatry, SAC ¶ 46, and that complying with mask mandates would be tantamount to worshiping false idols – i.e., the "so-called

'experts' who claim to be able to save lives if people simply obey their commands without question." *Id.* ¶ 57. As a result, Plaintiff sought to be excused from Nova's mask policy. Initially, he requested a "religious accommodation" from Nova to permit him to participate in a Criminal Justice Field Placement Clinic ("Clinic") without being obligated to wear a mask. *Id.* ¶ 22. That request was denied. *Id.* ¶ 23. The Palm Beach Public Defender's Officer likewise denied Plaintiff's request for a mask exemption (due to Palm Beach's mask mandate by which the office was bound), and it informed Plaintiff that it could not offer remote participation in the Clinic. *Id.* ¶¶ 28, 30. Therefore, Plaintiff withdrew from the Clinic. *Id.* ¶ 31. Thereafter, Plaintiff also separately sought to be excused from Nova's mask policy altogether, requesting that Nova "accommodate individuals for whom compliance with mandatory mask wearing policies conflicts with their sincerely held religious beliefs and/or practices." *Id.* ¶ 33. This request was denied as well. *Id.* ¶¶ 34-36.

Based upon the foregoing, Plaintiff alleges that Nova and Stadium discriminated against him. He also alleges that Defendants' mask mandates/policies violated his constitutional rights. *See id.* ¶ 83. As such, Plaintiff asserts the following claims in the SAC:

Count	Claim	Defendants
I	Intentional Discrimination (Title II of the Civil Rights Act of 1964; "CRA")	Nova Stadium
II	Intentional Discrimination (Title VI of the CRA)	Nova
III	42 U.S.C. § 1983	Nova Broward County Bertha Henry
IV	42 U.S.C. § 1983	Stadium Miami-Dade County
V	42 U.S.C. § 1983	Carey Haughwout Palm Beach County
VI	Violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA")	Broward County Miami-Dade County Palm Beach County

Pursuant to the First Motion to Dismiss, Broward and Dade seek dismissal of the counts against them – Counts III, IV, and VI. Pursuant to the Second Motion to Dismiss, Nova and Stadium seek dismissal of the counts against them. They seek dismissal of Counts I and II and also request that they be dismissed as defendants from Counts III and IV. Palm Beach and Haughwout have not yet been served. Therefore, they have not yet appeared in this matter and are not parties to the pending motions to dismiss (which do not address Count V). Nevertheless, the analysis of the claims against Broward equally applies to the claims against Palm Beach (the Dade analysis does as well except as to the issue of standing).

B. COUNTIES' EMERGENCY ORDERS

The Emergency Orders Plaintiff complains about in the SAC are Broward Emergency Order 20-21 ("Broward Order"), Dade Emergency Order 20-20 ("Dade Order"), and Palm Beach Emergency Order 2020-012 ("Palm Beach Order"). *See, e.g.*, SAC ¶¶ 121, 130, 135. The SAC generally references these three Emergency Orders, "as amended," but it does not set forth any of the specific provisions of the Emergency Orders or specifically address or refer to any of the amendments to the Emergency Orders.[2] Nonetheless, because the Emergency Orders are public records, and because they are referred to in and central to the SAC, I take judicial notice of them and the other emergency orders and amendments discussed herein.[3] *See U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 811 (11th Cir. 2015) ("[A] district court may consider an extrinsic

[2] Only the Dade Order actually has "amendments" to it. Broward and Palm Beach did not enact "amendments" to their emergency orders but instead issued further emergency orders.

[3] The Broward Order, and all of Broward's other COVID-19 emergency orders, can be found at https://www.broward.org/CoronaVirus/Pages/EmergencyOrders.aspx#County%20Emergency%20Orders%20-%20Suspended. The Dade Order, and all of Dade's other COVID-19 emergency orders, can be found at https://www.miamidade.gov/global/initiatives/coronavirus/emergency-orders.page. The Palm Beach Order, and all of Palm Beach's other COVID-19 emergency orders, can be found at https://discover.pbcgov.org/coronavirus/Pages/Orders.aspx.

document even on Rule 12(b)(6) review if it is (1) central to the plaintiff's claim, and (2) its authenticity is not challenged." (citation omitted)).

As an initial matter, all county and municipality emergency orders imposing restrictions or mandates on businesses or individuals due to COVID-19 were suspended by executive order of Florida's Governor, Ron DeSantis, on May 3, 2021. *See infra* Part III.C.1. Thus, the county mask mandates at issue in the SAC have not been in effect since at least that date. However, I will briefly provide some background regarding the suspended Emergency Orders.

The Broward Order initially became effective on July 10, 2020. Section 3 of the Broward Order required all persons in Broward to wear a facial covering with certain exceptions (listed in Section 3.B of the order). *See* Broward Order at 5-8. On December 11, 2020, Broward enacted Emergency Order 20-29, which included a Comprehensive Emergency Order ("Broward CEO") that superseded Broward's prior emergency orders, including the Broward Order. The facial covering requirements in Section 3 of the Broward CEO are essentially a more detailed and refined version of facial covering requirements set forth in the Broward Order. The Broward CEO has been updated from time to time, and the most recent version can be found at the first link identified in footnote 3 above.

The Dade Order initially became effective on April 9, 2020. It initially contained very limited facial covering requirements. *See* Dade Order ¶ 1. However, it was amended on July 2, 2020 to require all persons in Dade to wear a mask or facial covering when in public with certain exceptions. *See* Amendment No. 1 to Dade Order ¶ 1. It was also amended a second time, with an effective date of October 6, 2020. *See* Amendment No. 2 to Dade Order. The mask requirement generally remained the same, but the list of exceptions was expanded. On April 5, 2021, the Dade Order was cancelled (effective April 6, 2021) by Dade Emergency Order 33-20. The new

emergency order, however, contained a substantially similar facial covering requirement. Nevertheless, not only was Emergency Order 33-20 suspended by Governor DeSantis, but on May 6, 2021, it was formally cancelled by Dade as well.

Finally, the Palm Beach Order became effective on June 25, 2020. Like the other counties' orders, the Palm Beach Order contained facial covering requirements and exemptions thereto. *See* Palm Beach Order § 4. The facial covering component of the Palm Beach Order was extended on various occasions, but it largely remained the same until suspended by Governor DeSantis's Executive Order.

II. LEGAL STANDARD

At the pleading stage, a complaint must contain "a short and plain statement of the claim showing the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). Although Rule 8(a) does not require "detailed factual allegations," it does require "more than labels and conclusions"; a "formulaic recitation of the cause of action will not do." *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, "factual allegations must be enough to raise a right to relief above the speculative level" and must be sufficient "to state a claim for relief that is plausible on its face." *Id.* at 555, 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citing *Iqbal*, 556 U.S. at 679)).

In considering a Rule 12(b)(6) motion to dismiss, the court's review is generally "limited to the four corners of the complaint." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (quoting *St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002)). Courts

must accept the factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. *Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass'n, Inc.*, 942 F.3d 1215, 1229 (11th Cir. 2019); *Tims v. LGE Cmty. Credit Union*, 935 F.3d 1228, 1236 (11th Cir. 2019). But "[c]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Jackson v. Bellsouth Telecomms.*, 372 F.3d 1250, 1262-63 (11th Cir. 2004) (citation omitted). *See also Iqbal*, 556 U.S. at 678 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.").

III. ANALYSIS

A. COUNT I – TITLE II OF THE CRA

Under Title II, "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation[4] . . . without discrimination or segregation on the ground of race, color, religion, or national origin." 42 U.S.C. § 2000a(a). In order to state a claim under Title II, a plaintiff must plausibly allege that he:

> (1) is a member of a protected class; (2) attempted to contract for services and afford [himself] the full benefits and enjoyment of a public accommodation; (3) was denied the full benefits or enjoyments of a public accommodation; and (4) such services were available to similarly situated persons outside [his] protected class who received full benefits or who were treated better.

Benton v. Cousins Props., Inc., 230 F. Supp. 2d 1351, 1382 (N.D. Ga. 2002), *aff'd*, 97 F. App'x 904 (11th Cir. 2004) (citation omitted). *See also Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344, 350 (5th Cir. 2008); *Zinman v. L.A. Fitness Int'l LLC*, No. 21-CV-20315, 2021 WL 2530271,

[4] 42 U.S.C. § 2000a(b) sets forth the types of establishments that qualify as places of public accommodation.

at *8 (S.D. Fla. June 21, 2021); *Zinman v. Nova Se. Univ.*, No. 21-CIV-60723-RAR, 2021 WL 1945831, at *3 (S.D. Fla. May 14, 2021).[5]

> In seeking dismissal, Stadium and Nova raise the following arguments:
>
> (1) Plaintiff does not allege that [Stadium] discriminated against him in any way; (2) private businesses such as the Commencement Defendants are authorized to develop and implement facially neutral safety protocols to be followed by their students, staff and patrons; (3) Title II does not require private businesses such as the Commencement Defendants to accommodate an individual such as the Plaintiff where adherence to a facially neutral policy would allegedly violate his religious beliefs or expression; (4) NSU is not a public accommodation under Title II and Plaintiff has not alleged he was denied access to any area on NSU's campus or property that could arguably be considered a place of public accommodation; and (5) Plaintiff has failed to exhaust his administrative remedies and, therefore, this Court lacks jurisdiction over Plaintiff's claim under Title II.

Second Motion to Dismiss at 6.

I find that the final issue Stadium and Nova raise warrants dismissal – for failure to state a claim, not on jurisdictional grounds. With respect to this issue, Stadium and Nova argue that Count I should be dismissed because Plaintiff failed to comply with Title II's notice provision. That provision, 42 U.S.C. § 2000a-3(c), provides as follows:

> In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, *no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person*, provided that the court may stay

[5] *See also Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 406 F. Supp. 3d 1258, 1295 (M.D. Ala. 2019), *aff'd*, 6 F. 4th 1247 (11th Cir. 2021). ("To prevail, Coral Ridge must overcome three successive hurdles. First, it must plausibly allege that the Amazon defendants operate as a 'place of public accommodation' within the meaning of Title II. Second, it must plausibly allege that its exclusion . . . constituted the denial of 'services,' 'privileges,' or 'advantages,' etc., of the Amazon defendants as places of public accommodation. Third, it must plausibly allege that the denial of such services, privileges, advantages, etc. amounted to 'discrimination . . . on the ground of . . . religion.'" (internal citations omitted)).

> proceedings in such civil action pending the termination of State or local enforcement proceedings.

42 U.S.C. § 2000a-3(c) (emphasis added). Stadium and Nova contend that Plaintiff's failure to comply with the foregoing notice provision deprives the Court of subject matter jurisdiction. Plaintiff, however, implies that the notice provision is not jurisdictional. Regardless, he argues that he was not required to comply with the notice provision because he urgently sought injunctive relief. Finally, Plaintiff argues that he complied with the notice requirement even though he was not required to do so.

As indicated above, I agree with Plaintiff that the Court has subject matter jurisdiction over Count I (though not for the reason espoused by Plaintiff). However, I find that Plaintiff was required to comply with the notice provision and that he failed to do so. Therefore, he fails to state a claim.

As to the potential jurisdictional issue,[6] Plaintiff's implication that the notice provision is non-jurisdictional is premised upon the language of 42 U.S.C. § 2000a-6(a), which provides that "[t]he district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law." But at least two circuit courts of appeals that have considered § 2000a-3 (the notice provision) to be jurisdictional have found that § 2000a-6 does not conflict with § 2000a-3 because "§ 2000a-6 simply provides that one who, for example, has given notice to the appropriate state agency need not thereafter *exhaust* such remedy before the district court acquires jurisdiction." *See Stearnes v.*

[6] The Court must first address the jurisdictional issue because "once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974-75 (11th Cir. 2005) (quoting *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999)).

Baur's Opera House, Inc., 3 F.3d 1142, 1144-45 (7th Cir. 1993) (quoting *Harris v. Ericson*, 457 F.2d 765, 767 (10th Cir. 1972)) (emphasis added).[7] In other words, Title II's notice provision does not require one to "exhaust" administrative remedies before bringing suit, so even if it were jurisdictional, it is unaffected by § 2000a-6. *See Stearnes*, 3 F.3d at 1144-45; *Harris*, 457 F.2d at 766-67; 42 U.S.C. § 2000a-3(c).

Nevertheless, I find that Title II's notice provision, like Title VII's charge-filing requirement,[8] "is not of jurisdictional cast." *Fort Bend Cnty., Tex. v. Davis*, 139 S. Ct. 1843, 1850 (2019). The Supreme Court has "stressed the distinction between jurisdictional prescriptions and nonjurisdictional claim-processing rules, which 'seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.'" *Id.* at 1849. Ultimately, "[i]f the Legislature clearly states that a prescription counts as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue; but when Congress does not rank a prescription as jurisdictional, courts should treat the restriction as nonjurisdictional in character." *Id.* at 1850 (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515-16 (2006)) (alterations adopted).

With respect to Title II's notice provision, the Legislature did not *clearly* state that it "counts as jurisdictional." Instead, like Title VII's charge-filing provisions, it speaks to "a party's procedural obligations." *Id.* at 1851 (citation omitted). Therefore, like Title VII's charge-filing requirement, Title II's notice requirement "is a processing rule, albeit a mandatory one, not a jurisdictional prescription delineating the adjudicatory authority of courts." *Id.* In a similar vein,

[7] Like the Seventh Circuit and Tenth Circuit, the Eighth Circuit has also found Title II's notice provision to be jurisdictional. *See Bilello v. Kum & Go, LLC*, 374 F.3d 656, 659 (8th Cir. 2004); *Zean v. Choice Hotels Int'l, Inc.*, 801 F. App'x 458, 459 (8th Cir. 2020).

[8] *See* 42 U.S.C. § 2000e-5.

applying *Arbaugh* and certain other Supreme Court precedent discussed in *Davis*, the D.C. Circuit Court of Appeals has held that Title II's notice provision "does not constitute a jurisdictional prerequisite." *Brown v. Whole Foods Mkt. Grp., Inc.*, 789 F.3d 146, 153 (D.C. Cir. 2015). Additionally, the Eleventh Circuit, albeit in dicta in an unpublished case, has explained that "[t]o bring a viable claim under Title II, a plaintiff must first exhaust state or local administrative remedies, if such remedies are available." *Strober v. Payless Rental Car*, 701 F. App'x 911, 913 n.3 (11th Cir. 2017) (citing 42 U.S.C. § 2000a-3(c)). In other words, the court recognized, at least implicitly, that a lack of compliance with § 2000a-3(c) affects one's ability to bring a Title II claim – not whether the Court has jurisdiction over that claim.

Having determined that Title II's notice provision does not implicate subject matter jurisdiction, I will now consider whether Plaintiff was required to comply with the provision. This turns on the availability of state or local administrative remedies. Because such remedies were available, Plaintiff's compliance was required. Specifically, like Title II, the Florida Civil Rights Act makes it impermissible to deny an individual access to a place of public accommodation based on religion.[9] "[A]nd the Florida Commission on Human Relations ["FCHR"] is charged with investigating complaints made pursuant to the Florida Civil Rights Act." *Strober*, 701 F. App'x at 913 n.3 (citing §§ 760.03, 760.06, 760.08, 760.11, Fla. Stat.). "Thus, pursuant to Title II, Plaintiff was required, at least thirty days prior to commencing this civil action, to give written

[9] *Compare* 42 U.S.C. § 2000a(a) ("All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."), *with* § 760.08, Fla. Stat. ("All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, pregnancy, handicap, familial status, or religion."). *See also Strober*, 701 F. App'x at 913 n.3.

notice to the [FCHR] by registered mail or in person, of [Stadium's and Nova's] alleged discriminatory conduct." *L.A. Fitness*, 2021 WL 2530271, at *5.

Plaintiff, however, contends that no such notice was required because he sought injunctive relief and acted with urgency in doing so. In so arguing, Plaintiff relies on *Robinson v. Power Pizza, Inc.*, 993 F. Supp. 1458 (M.D. Fla. 1998), where the court held that Title II's notice provision "does not require Plaintiffs to provide notice to a State or local authority prior to filing a complaint in federal district court in a situation where Plaintiffs seek preliminary relief and the State or local authority provides no mechanism for obtaining such relief." *Id.* at 1461. Other decisions in this district have distinguished *Robinson* on the basis that the holding in *Robinson* is limited to situations "based on unique concerns of urgency." *L.A. Fitness*, 2021 WL 2530271, at *5; *Brown v. Zaveri*, 164 F. Supp. 2d 1354, 1360 (S.D. Fla. 2001).

Even assuming *Robinson*'s holding is correct,[10] Plaintiff has failed to demonstrate any "unique concerns of urgency." As this Court previously noted in denying Plaintiff's request for injunctive relief, "Nova notified students as early as January 2021 that masks would be required at the commencement ceremony." *Nova Se. Univ.*, 2021 WL 1945831, at *3. *See also* SAC ¶ 32. Yet, Plaintiff did not file this case and his motion for a preliminary injunction until April 2021. Thus, even if this Court were to agree with the holding in *Robinson*, Plaintiff evidently failed to

[10] *Robinson*'s holding seems to be at odds with the text of § 2000a-3(c). Even the court in *Robinson* recognized that "Congress *clearly contemplated* that actions seeking preliminary relief would be brought under section 2000a-3(a) *and that the thirty day notice requirement would apply to such actions*." 993 F. Supp. at 1460 (emphasis added). While the court proceeded to state that "the statute is silent as to whether the agency must be one that can provide the Plaintiff with the particular relief sought," *id.*, such silence does not justify writing words into the statute that Congress did not include. Moreover, the statute does not merely refer to a state or local law establishing or authorizing a state or local authority to grant relief from a discriminatory practice, it refers to a state or local law "establishing or authorizing a State or local authority to grant *or seek* relief from such practice." § 2000a-3(c) (emphasis added).

act with any sense of urgency as he would like the Court to find. As such, Plaintiff was required to comply with Title II's notice provision.

Nevertheless, Plaintiff failed to provide the requisite notice before commencing this action. He does allege that he "complied with Title II's notice requirement by filing an administrative complaint with the [FCHR] on December 16, 2020." SAC ¶ 108. However, the SAC provides no factual allegations regarding this alleged administrative complaint, and Plaintiff acknowledges in his response that he filed his administrative complaint against L.A. Fitness, [DE 59] at 18, an entity that is completely unrelated to the parties to this case. While Plaintiff contends he was required to do nothing more than alert the FCHR of an alleged discriminatory act or practice, he provides no authority to support this contention or to otherwise show that his complaint to the FCHR was not required to identify the entity(ies) that engaged in the discriminatory act or practice. After all, it seems unlikely that the FCHR could grant or seek relief against an entity of which it is unaware. Thus, Plaintiff has not complied with Title II's notice requirement. At a minimum, he has failed to plausibly allege compliance. Therefore, Count I should be dismissed.[11]

[11] Although Plaintiff's noncompliance with the notice requirement warrants dismissal on its own (making it unnecessary to reach all of the arguments for dismissal of Count I), at least certain of Stadium's and Nova's other arguments likely also independently warrant dismissal. First, Stadium correctly contends that the factual allegations are woefully inadequate to plausibly allege any discrimination by Stadium. Second, as this Court previously noted in denying Plaintiff's motion for injunctive relief:

> Plaintiff does not allege that he is being denied entry to Nova or South Florida Stadium's property because of his religion. Rather, he alleges that Nova and South Florida Stadium have denied him an *accommodation* of his purported religious beliefs in violation of Title II. *See* Am. Compl. ¶ 66 ("Defendants' failure to accommodate individuals for whom compliance with mask mandates would violate their sincerely held religious beliefs is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a)."). However, Plaintiff has not pointed to any authority indicating that Title II requires public facilities to *accommodate* religious beliefs and practices. Indeed, at least one court has found that it does not. *See Boyle v. Jerome Country Club*, 883 F. Supp. 1422, 1432 (D. Idaho 1995) ("Those public

B. COUNT II – TITLE VI OF THE CRA

Plaintiff's Title VI claim fails for the reasons discussed in this Court's earlier order denying Plaintiff's motion for injunctive relief. *See Nova Se. Univ.*, 2021 WL 1945831, at *3-4. Under Title VI, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. As this Court made clear, though, "Title VI does not provide for protection against discrimination on the basis of religion—only race, color, or national origin." *Nova Se. Univ.*, 2021 WL 1945831, at *3 (collecting cases).

Nova correctly argues that the SAC does not contain any factual allegations to show that Nova's mask mandate was implemented to intentionally discriminate against any race, color, or national origin, nor that it disproportionately impacts any race, color, or national origin. [DE 44] at 17. Plaintiff responds to this argument by pointing out that the SAC states this "is an action for intentional discrimination based on race and religion." [DE 59] at 19. However, this allegation is not a factual allegation – it is conclusory. Plaintiff also notes that he has alleged that he is Jewish, which applies to his religion, race, and national origin. *Id.* at 19-20. Even if the Court were to

> facilities now covered by Title II are prohibited from discriminating against patrons on the basis of religion. To go beyond the intended language of Title II, and require public facilities to affirmatively accommodate patrons' religious beliefs . . . is not appropriate nor allowed under the applicable legislation.").

Nova Se. Univ., 2021 WL 1945831, at *2. *See also L.A. Fitness*, 2021 WL 2530271, at *6 n.5 ("[T]he Court must highlight that it is questionable whether Title II requires Defendant to *accommodate* Plaintiff's religious beliefs. Indeed, the crux of Plaintiff's claim is that he was treated unlawfully because Defendant refused to accommodate his religious beliefs by exempting him from the facial covering policy. However, at least one court has held that Title II does not extend to claims against public facilities for failure to accommodate." (internal citations omitted)). The same allegation from paragraph 66 of the Amended Complaint in this case (which is referenced in the order denying injunctive relief) is included in paragraph 106 of the SAC.

assume that one's race or national origin can be "Jewish" for purposes of a Title VI claim, Plaintiff fails to include factual allegations to show that Nova's mask mandate was discriminatory from a racial or national origin perspective. That is because Plaintiff implies that the issue with the mask mandate is that compliance with it is tantamount to worshiping false idols, and that it is impermissible for Jewish people to worship idols. *See* SAC ¶¶ 44-49, 57; *Nova Se. Univ.*, 2021 WL 1945831, at *1-4. However, this issue pertains to a religious belief, not a racial characteristic. If the Court were to accept Plaintiff's argument, then one who discriminates against a Jewish person would automatically be liable for discrimination based on race, religion, and national origin, without any regard to what the nature of the discriminatory act was. Such a broad and overgeneralized position, however, is untenable. Accordingly, for the foregoing reasons, and for the reasons discussed in the Court's order denying injunctive relief, Count II should be dismissed.

C. COUNTS III & IV – 42 U.S.C. § 1983

Plaintiff fails to state a claim under § 1983 as he fails to plausibly allege a violation of any of his constitutional rights. "Section 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (citation omitted). "The first step in any such claim is to identify the specific constitutional right allegedly infringed." *Id.* Here, Plaintiff alleges various constitutional violations stemming from the mask mandates/policies at issue, including several First Amendment violations in addition to substantive due process violations. Prior to addressing the merits of the alleged constitutional violations, section 1 below first addresses the threshold issues of mootness and standing. As discussed therein, Plaintiff's requests for injunctive and declaratory relief are moot, and Plaintiff lacks standing to pursue his § 1983 damages claim against Dade and Stadium (Count IV). Section 2 below addresses the merits of the alleged constitutional violations,

determining that Plaintiff has failed to, and cannot, plausibly allege any constitutional violations. Finally, section 3 below addresses Henry's claim that she is entitled to qualified immunity, finding that even if Plaintiff could plausibly allege any constitutional violations, Henry would still be entitled to qualified immunity.

Before proceeding to sections 1-3 below, I find it important to note that the SAC is a flawed pleading to say the least. It is light on relevant factual allegations and heavy on rhetoric and hyperbole, especially when it comes to the § 1983 claims. It very likely qualifies as a shotgun pleading because it is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Barmapov v. Amuial*, 986 F.3d 1321, 1325 (11th Cir. 2021) (quoting *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1322 (11th Cir. 2015)). Further, it contains 52 footnotes and numerous legal citations. Complaints should rarely contain footnotes (certainly not 52 of them), and they should rarely (if ever) contain citations to case law. With respect to the § 1983 counts themselves, the allegations are about as conclusory as they come and fail to set forth the specific facts constituting the alleged constitutional violations – merely incorporating the majority of the general allegations in which the constitutional violations are alleged (albeit poorly). Notwithstanding these deficiencies, I am recommending dismissal on the merits (aside from the aspects that should be dismissed on mootness or standing grounds) for the reasons discussed in this Report.

Separately, I also note that while Palm Beach has not appeared or moved for dismissal (because it has not been served), the analysis applicable to the claims against Broward and Henry equally applies to the claims against Palm Beach and Haughwout. Therefore, the claims against Palm Beach and Haughwout should similarly be dismissed on the merits (except that the declaratory and injunctive relief claims should be dismissed based upon mootness).

Finally, I note that the analysis of the § 1983 claims does not address the issues that Nova and Stadium raise as to those counts. Nova and Stadium argue that they should be dismissed from the § 1983 claims because they are private entities, not state actors. However, they do not argue, like the Counties, that Plaintiff fails to plausibly allege any constitutional violations. Nonetheless, because the Counties correctly posit that the SAC fails to plausibly allege any such violations, it is not necessary to reach the state actor argument raised by Nova and Stadium. In other words, because the mask mandates did not violate Plaintiff's constitutional rights, Stadium and Nova cannot be liable even if they are state actors.

1. Mootness & Standing

Count IV of the SAC should be dismissed because Plaintiff's requests for declaratory and injunctive relief are moot and because Plaintiff does not have standing to pursue damages related to Count IV. Plaintiff's requests for injunctive and declaratory relief in Count III (and Count V) are likewise moot. However, Plaintiff has standing to pursue damages related to the claims alleged in Count III (and Count V).

"Federal courts are courts of limited jurisdiction." *Gardner v. Mutz*, 962 F.3d 1329, 1336 (11th Cir. 2020) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). "The most notable—and most fundamental—limits on the federal 'judicial Power' are specified in Article III of the Constitution, which grants federal courts jurisdiction only over enumerated categories of 'Cases' and 'Controversies.'" *Id.* (citing U.S. Const. art. III, § 2). "This case-or-controversy requirement comprises three familiar 'strands': (1) standing, (2) ripeness, and (3) mootness." *Id.* (citing *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011)).

Standing has been characterized as the "most important" or "most central" of Article III's jurisdictional prerequisites. *Id.* at 1337. One reason "is that whereas ripeness and mootness are fundamentally temporal—ripeness asks whether it's too soon, mootness whether it's too late—standing doesn't arise and evanesce; rather, it 'limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong.'" *Id.* (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). "Standing asks, in short, whether a particular plaintiff even has the requisite stake in the litigation to invoke the federal 'judicial Power' in the first place." *Id.* (citing U.S. Const. art. III, § 2). "So, to compare [mootness and standing], the plaintiff whose suit goes moot once had a 'Case' but lost it due to the march of time or intervening events, whereas the plaintiff who lacks standing never had a 'Case' to begin with." *Id.* Importantly, a plaintiff is required to establish standing for each type of relief sought. *Tokyo Gwinnett, LLC v. Gwinnett Cnty., Ga.*, 940 F.3d 1254, 1262 (11th Cir. 2019) (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)). For instance, he may have standing to pursue declaratory relief or damages even though he lacks standing to pursue the other. *See id.*

Here, Dade argues that Plaintiff's § 1983 claim against it is moot because its mask mandate was rescinded prior to Nova's graduation ceremonies at Stadium's venue. Plaintiff does not challenge Dade's mootness argument in responding to the First Motion to Dismiss. Broward did not raise any mootness argument in the First Motion to Dismiss. Nevertheless, it appears to claim in the Counties' reply that Plaintiff's challenge to its mask mandate is also moot because the mandate is no longer in place. *See* [DE 64] at 2. While an argument may not be raised for the first time in a reply, *see infra* note 21, "it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking." *Univ. of S. Ala. v. Am. Tobacco*

Co., 168 F.3d 405, 410 (11th Cir. 1999) (citations omitted). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

Plaintiff's requests for injunctive and declaratory relief, in both Counts III and IV (and V) are moot due to a recent executive order signed by the governor of Florida. On May 3, 2021, Governor DeSantis, signed Executive Order 2021-102, which "eliminate[d] and supersede[d] any existing emergency order or ordinance issued by a county or municipality that imposes restrictions or mandates upon businesses or individuals due to the COVID-19 emergency." *L.A. Fitness*, 2021 WL 2530271, at *7-8 (quoting Fla. Exec. Order No. 2021-102). The Executive Order provides that:

> For the remaining duration of the state of emergency initiated by Executive Order 20-52, no county or municipality may renew or enact an emergency order or ordinance, using a local state of emergency or using emergency enactment procedures under Chapters 125, 252, or 166, Florida Statutes, that imposes restrictions or mandates upon businesses or individuals due to the COVID-19 emergency.

Id. at *8 (quoting Fla. Exec. Order No. 2021-102). As Judge Bloom recently noted in *L.A. Fitness*, a separate case brought by Plaintiff, Plaintiff's effort to challenge the constitutionality of Palm Beach's mask mandate became moot as a result of the aforementioned Executive Order. *See id.* at *7-8. For the same reason, Plaintiff's challenges to the mask mandates imposed by Dade and Broward are moot in light of the Executive Order. Therefore, Plaintiff's requests for declaratory and injunctive relief in Counts III and IV (and V) are not premised upon a live case or controversy and should be dismissed.

However, that does not end the inquiry because Plaintiff's § 1983 claims are not limited to requests for injunctive and declaratory relief. Plaintiff also seeks damages stemming from the alleged constitutional violations. Simply because the mask mandates are no longer in place does not mean any claims for damages that became ripe prior to Governor DeSantis's Executive Order

were mooted out by the Executive Order. Therefore, the Court must consider the threshold jurisdictional question of whether Plaintiff has standing to pursue his claims for damages under § 1983 before the Court considers the merits of the dispute. *See S. Grande View Dev. Co., Inc. v. City of Alabaster, Ala.*, 1 F. 4th 1299, 1305 (11th Cir. 2021) (citing *Elend v. Basham*, 471 F.3d 1199, 1204 (11th Cir. 2006)).

Plaintiff has standing to seek damages against Broward (and Palm Beach) but not Dade. To have standing, a plaintiff must establish three prerequisites:

> (1) an injury in fact—an invasion of a legally protected interest that is both (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) a causal connection between the plaintiff's injury and the challenged action of the defendant; and (3) a likelihood, not merely speculation, that a favorable judgment will redress the injury.

Gardner, 962 F.3d at 1338 (quoting *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019)) (cleaned up).

The reason that Plaintiff does not have standing to pursue damages related to Dade's mask mandate (and Stadium's related mask policy) is because Plaintiff did not suffer an injury-in-fact as a result of the mandate. By way of comparison, when Plaintiff filed this case, he had already allegedly suffered an injury-in-fact (assuming the mask mandate is unconstitutional) because he was unable to participate in the Clinic due to Palm Beach's mask mandate. Similarly, prior to the commencement of this case, Broward's mask mandate (and Nova's related mask policy) allegedly prevented Plaintiff from being on Nova's campus, where he was enrolled as a student, without complying with the mask policy. However, Plaintiff's only alleged injury related to Dade's mask mandate and Stadium's mask policy is that Plaintiff claims he would not be able to attend his graduation without complying with the mask mandate. But unlike the alleged injuries suffered as a result of the other Broward and Palm Beach mandates, no injury would have ever materialized

from the Dade mask mandate because, by the time graduation occurred, Dade's mask mandate was no longer in effect. *See Tokyo Gwinnett, LLC*, 940 F.3d at 1263 ("But this alleged injury relates to future or prospective harm, not imminent or actual harm. Because the old ordinances were repealed and replaced, these alleged injuries stemming from those ordinances will never materialize and cannot support Article III standing." (internal citations omitted)). *See also Elend*, 471 F.3d at 1205 ("If an action for prospective relief is not ripe because the factual predicate for the injury has not fully materialized, then it generally will not contain a concrete injury requisite for standing.").

For the foregoing reasons, Plaintiff's requests for injunctive and declaratory relief are moot. Additionally, while Plaintiff has standing (at least at this stage) to seek damages under § 1983 against Broward and Palm Beach, he does not have standing to do so against Dade. As such, Count IV should be dismissed in its entirety (without prejudice).[12]

2. Alleged Constitutional Violations

a. Free Exercise Clause

As set forth in the First Amendment, "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof* [.]" *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1253 (11th Cir. 2012) (quoting U.S. Const. amend. I). "The Free Exercise Clause of the First Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment." *Id.* (citation omitted). The protections it provides "prevent the government from discriminating against the exercise of religious beliefs or conduct motivated by religious beliefs." *Id.* (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S.

[12] "A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice." *MSP Recovery Claims, Series LLC v. QBE Holdings, Inc.*, 965 F.3d 1210, 1221 (11th Cir. 2020) (citation omitted).

520, 532 (1993)). Pleading a claim for relief based on the Free Exercise Clause requires a plaintiff to "allege that the government has impermissibly burdened one of [his] sincerely held religious beliefs." *Cambridge Christian Sch.*, 942 F.3d at 1246 (citing *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1294 (11th Cir. 2007)) (internal quotation marks omitted). The pleading requirement has two components: "(1) the plaintiff holds a belief, not a preference, that is sincerely held and religious in nature, not merely secular; and (2) the law at issue in some way impacts the plaintiff's ability to either hold that belief or act pursuant to that belief." *Id.* (quoting *GeorgiaCarry.Org*, 687 F.3d at 1256-57). Provided that a plaintiff satisfies these initial pleading requirements – thereby triggering the Free Exercise Clause – courts proceed to consider whether the law at issue is subject to rational basis review or strict scrutiny. *See GeorgiaCarry.Org*, 687 F.3d at 1256. It is questionable at best whether Plaintiff has included sufficient factual allegations to satisfy the initial pleading requirements. Nevertheless, I will proceed to consider whether mask mandates are subject to rational-basis or strict scrutiny and whether they survive the level of review to which they are subject.

"If a law is one that is neutral and generally applicable, then rational basis scrutiny should be applied, requiring that the plaintiff show that there is not a legitimate government interest or that the law is not rationally related to protect that interest." *Id.* at 1255 n.21 (citing *Church of the Lukumi Babalu Aye*, 508 U.S. at 531). "If, however, a law is not neutral or generally applicable, either because the law is facially discriminatory or, alternatively, because 'the object of [the] law is to infringe upon or restrict practices because of their religious motivation,' then strict scrutiny is the proper framework." *Id.* When strict scrutiny applies, a defendant must "show there is a compelling governmental interest and that the law is narrowly tailored." *Id.* (citing *Church of the Lukumi Babalu Aye*, 508 U.S. at 531-32).

Here, rational basis review applies because the mask mandates are neutral and generally applicable. They are neutral because they do not have the object of "infring[ing] upon or restrict[ing] practices because of their religious motivation." *Keeton v. Anderson-Wiley*, 664 F.3d 865, 879 (11th Cir. 2011) (quoting *Church of the Lukumi Babalu Aye*, 508 U.S. at 533). They are generally applicable because the government has not "in a selective manner impose[d] burdens only on conduct motivated by religious belief." *Id.* (quoting *Church of the Lukumi Babalu Aye*, 508 U.S. at 543). Therefore, the mask mandates are only subject to rational basis review, even if they have "the incidental effect of burdening a particular religious practice." *Id.* (quoting *Church of the Lukumi Babalu Aye*, 508 U.S. at 531). As such, the mask mandates are "presumed constitutional," and Plaintiff has the burden to demonstrate otherwise by showing that they are "not rationally related to a legitimate government interest." *Id.* (citation omitted). Notably, other courts reviewing mask mandates have similarly found that they are subject to rational basis review. *See Resurrection Sch. v. Hertel*, No. 20-2256, 2021 WL 3721475, at *16 (6th Cir. Aug. 23, 2021) (finding that mask mandate did not violate Free Exercise Clause because it was "neutral and of general applicability and satisf[ied] rational-basis review"); *W.S. by Sonderman v. Ragsdale*, No. 1:21-CV-01560-TWT, 2021 WL 2024687, at *2 (N.D. Ga. May 12, 2021) (finding, in equal protection clause context, that "[r]ational basis is the proper standard of review for [a] mask mandate" and that mask mandate "passe[d] rational-basis scrutiny"); *Delaney v. Baker*, 511 F. Supp. 3d 55, 74 (D. Mass. 2021) (finding mask mandate to be neutral and of general applicability and, consequently, determining that it "need only be rationally related to the interest in stemming the spread of COVID-19"); *Resurrection Sch. v. Gordon*, 507 F. Supp. 3d 897, 902 (W.D. Mich. 2020) ("The Court finds that the challenged face-mask requirement is neutral and generally applicable. Any burden on Plaintiffs' religious practices is incidental, and therefore, the orders are

not subject to strict scrutiny."). *See also Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 229 (2d Cir. 2020) (Park, J., dissenting) (disputing neutrality of COVID-19 executive order under review, but finding that, unlike that order, mask mandates "impose *neutral* public-health guidelines" (emphasis added)).

Plaintiff has not shown, and cannot plausibly allege, that the mask mandates are not rationally related to a legitimate government interest. Broward and Dade contend that the mask mandates are rationally related to their legitimate interest in stemming the spread of COVID-19. [DE 43] at 8. The Emergency Orders (and other related emergency orders) similarly explain the Counties' interests in addressing the COVID-19 pandemic. Plaintiff does not dispute that the counties have a legitimate interest in stemming the spread of COVID-19. [DE 58] at 7. Instead, he argues that implicit in the counties' assertion is "the erroneous assumption that masks somehow serve to promote that end, rather than contribute to the further loss of human lives and other harsh consequences produced by COVID-19." *Id.* Nonetheless, while Plaintiff "may disagree with the public health efficacy of mask orders . . . federal courts do not sit in a policy-checking capacity to second guess the wisdom of state legislative acts." *Oakes v. Collier Cnty.*, 515 F. Supp. 3d 1202 (M.D. Fla. 2021) (granting motion to dismiss). *See also infra* note 19; *Denis v. Ige*, No. CV 21-00011 SOM-RT, 2021 WL 1911884, at *8-10 (D. Haw. May 12, 2021) (finding that mask mandates survive rational basis review and, therefore, dismissing free exercise clause challenge to mask mandates). And it is certainly rational for Defendants to believe, based on the guidance provided by the CDC and other experts, that mask mandates will help control the spread of COVID-19. Because Defendants' mask mandates/policies are rationally related to a legitimate governmental interest, Plaintiff's Free Exercise Clause challenge fails.

b. Free Speech & Expression

The First Amendment also prohibits "abridging the freedom of speech." U.S. Const. amend. I. This protection encompasses not just spoken or written words but "offers safeguards for 'expressive conduct, as well.'" *Burns v. Town of Palm Beach*, 999 F.3d 1317, 1336 (11th Cir. 2021) (quoting *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004)). However, while some forms of "symbolic speech" receive First Amendment protection, *see United States v. O'Brien*, 391 U.S. 367, 376 (1968), that protection only extends to conduct that is "inherently expressive." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc. ("FAIR")*, 547 U.S. 47, 66 (2006). Indeed, the Supreme Court has "rejected the view that conduct can be labeled speech whenever the person engaging in the conduct intends thereby to express an idea." *Id.* at 65-66 (internal citations omitted). Therefore, "[i]n determining whether the government has violated free speech rights, the initial inquiry is whether the speech or conduct affected by the government action comes within the ambit of the First Amendment." *One World One Fam. Now v. City of Miami Beach*, 175 F.3d 1282, 1285 (11th Cir. 1999). To determine "whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play," the two-part *Johnson* test asks: (1) "whether '[a]n intent to convey a particularized message was present,'" and (2) whether "the likelihood was great that the message would be understood by those who viewed it." *Burns*, 999 F.3d at 1336 (citing *Texas v. Johnson*, 491 U.S. 397, 404 (1989)).

Plaintiff appears to argue that requiring him to wear a mask compels him to engage in expressive conduct conveying a message of subservience to authority and that the refusal to wear a mask is inherently expressive of his disapproval of that message and the mask mandates themselves. However, neither wearing or not wearing a mask is inherently expressive. In the

context of COVID-19, wearing a mask does not evince an intent to send a message of subservience to authority – or any message at all. Rather, wearing a mask would typically be viewed as a means of limiting the spread of COVID-19 (regardless of Plaintiff's beliefs in the efficacy of masks for that purpose). *See Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214, 237 (D. Md. 2020). While Plaintiff may interpret mask wearing as subservience or akin to worship of idols, that message would not be "overwhelmingly apparent" to one observing him or anyone else wearing a mask. *See FAIR*, 547 U.S. at 66 (distinguishing law schools' treatment of military recruiters from the inherently expressive conduct of flag burning at issue in *Johnson*); *Antietam Battlefield*, 461 F. Supp. 3d at 237. Thus, wearing a mask is not "inherently expressive" such that the challenged mask mandates constitute compelled speech subject to First Amendment analysis.[13]

Similarly, the act of not wearing a mask is not inherently expressive under *Johnson*. Even positing Plaintiff's intent to convey a message of protest against authority by not wearing a mask,[14] he cannot satisfy the second prong of the *Johnson* test because there is no great likelihood that such a message would be understood by one observing his conduct. There are myriad reasons why someone may not be wearing mask – the person may qualify for a medical exemption, may be apathetic towards or unconcerned about COVID, may have simply forgotten their mask, or, indeed,

[13] Nor can one reasonably argue, as Plaintiff does, [DE 58] at 10, that his refusal to wear a mask "manifests the expressive quality of a parade, a newsletter, or the editorial page of a newspaper." The inherent purpose of publishing a newsletter or editorial page or of holding a parade is to convey a particular message. *See Hurley v. Irish–Am. Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 568 (1995) ("[W]e use the word 'parade' to indicate marchers who are making some sort of collective point, not just to each other but to bystanders along the way."). The same can hardly be said about wearing or not wearing a mask.

[14] Defendants Broward, Dade, and Henry appear to concentrate their arguments on the second prong of the *Johnson* test, arguing that "whatever [Plaintiff] purports to be expressing is not apparent." [DE 43] at 9. They do not explicitly question his intent to convey some message. While Plaintiff's intent to convey his message is not precisely alleged in the SAC, his subjective intent can be inferred from his allegations overall. In any event, Plaintiff's theory fails under the second prong of the *Johnson* test.

may be attempting to send a political or religious message as Plaintiff contends. However, there is no way for an observer to know the reason why without additional explanation. *See Minnesota Voters Alliance v. Walz*, 492 F. Supp. 3d 822, 837-838 (D. Minn. 2020). As the Supreme Court explained in *FAIR*, "[t]he fact that such explanatory speech is necessary is strong evidence that the conduct at issue here is not so inherently expressive that it warrants protection under *O'Brien*." 547 U.S. at 66. Moreover, simply framing defiance of a law or regulation as a means of communicating disagreement with that law or regulation cannot alone trigger a First Amendment analysis. Again, as the Supreme Court articulated in *FAIR*,

> For instance, if an individual announces that he intends to express his disapproval of the Internal Revenue Service by refusing to pay his income taxes, we would have to apply *O'Brien* to determine whether the Tax Code violates the First Amendment. Neither *O'Brien* nor its progeny supports such a result.

Id.[15] The same might be said of, say, refusing to wear a seatbelt or a motorcycle helmet, despite laws requiring such safety measures, in protest of being told to do so. In short, Plaintiff's argument that the challenged mask mandates limit his ability to protest mask mandates by requiring him to wear a mask does not make his desire to not wear a mask inherently expressive conduct within the ambit of First Amendment protection.

Multiple federal courts since the start of the COVID-19 pandemic have rejected the argument that wearing or not wearing a mask is "inherently expressive" conduct and concluded that mask mandates are not subject to *O'Brien* or other First Amendment scrutiny. *See, e.g.*, *Antietam Battlefield*, 461 F. Supp. 3d at 237; *Minnesota Voters*, 492 F. Supp. 3d at 837-38; *Stewart*

[15] By the same logic, Plaintiff's argument that requiring him to wear a face mask is tantamount to forcing him to "adopt the government's message" – to the extent that message is that one should comply with the requirement to wear a face mask – is unavailing. Requiring someone to wear a mask is no more "compelling speech" in favor of mask wearing than requiring people to pay taxes is "compelling speech" in favor of the Tax Code.

v. Justice, 502 F. Supp. 3d 1057, 1066 (S.D.W. Va. 2020); *Denis*, 2021 WL 1911884, *10-11. Significantly, Plaintiff cites no authority reaching the opposite conclusion. For the reasons articulated above, I find that the challenged mask mandates do not implicate expressive conduct protected by the First Amendment, and, consequently, Plaintiff's Free Speech challenge fails.

Defendants Broward, Dade, and Henry contend that, even if wearing or not wearing a mask were considered inherently expressive conduct, the challenged mask mandates would satisfy intermediate scrutiny under the First Amendment. [DE 43] at 9-11. Plaintiff fails to respond to this argument, though certain allegations in his SAC suggest the view that the mask requirements amount to content or viewpoint discrimination, requiring strict scrutiny. SAC ¶¶ 59-63. The Court need not reach the question, because the conduct at issue is not inherently expressive. However, even if the Court were to consider mask-wearing inherently expressive, the Defendants are correct that intermediate scrutiny would apply and that the mask mandates contained in the Emergency Orders satisfy such scrutiny.

The Emergency Orders' mask mandates are (at most) subject to intermediate scrutiny because the Counties' purpose in enacting the orders was unrelated to the suppression of expression. "If the governmental purpose in enacting the regulation is unrelated to the suppression of expression, then the regulation need only satisfy the 'less stringent' standard from *O'Brien* for evaluating restrictions on symbolic speech." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) (citing *Johnson*, 491 U.S. at 403; *O'Brien,* 391 U.S. at 377). Plaintiff does not appear to contend – nor could he plausibly contend – that the Counties' purpose in enacting the Emergency Orders was anything other than to protect public health by limiting the spread of COVID-19. Notably, this purpose is made clear in the Emergency Orders. Thus, the Emergency Orders' purposes are

unrelated to the suppression of speech and subject to *O'Brien*'s intermediate scrutiny (if they come within the ambit of the First Amendment at all).

Under *O'Brien*,

> a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

O'Brien, 391 U.S. at 377. There is no dispute here that the Counties had the power to issue the Emergency Orders at issue. Nor does Plaintiff dispute that the Counties had an important and substantial interest in stemming the spread of COVID-19. *See* SAC ¶ 68; [DE 58] at 7. And, again, that interest is clearly unrelated to the suppression of speech.

Plaintiff does contest, with conclusory allegations and vague references to scientific studies unrelated to COVID-19, the efficacy of masks as a means of preventing the spread of COVID-19. But these allegations are insufficient to plausibly maintain that the challenged Emergency Orders fail to further the Counties' important interest, particularly when nearly every public health institution in the country has recommended mask-wearing as a means of slowing the virus's spread. *See Oakes*, 515 F. Supp. 3d at 1216 (finding a similar mandate satisfied intermediate scrutiny and noting "at this point in the pandemic, just about every public health body promotes" mask-wearing and social distancing for their effectiveness); *Minnesota Voters*, 492 F. Supp. 3d at 838 (finding a similar mask mandate satisfied intermediate scrutiny and noting that "federal health officials recommend face coverings as an effective way to slow the spread of COVID-19, and this recommendation finds support in recent studies.").

Moreover, the challenged mask mandates impose only an incidental burden on speech and are narrowly tailored to further the Counties' substantial interest. Importantly, "an incidental

burden on speech is no greater than is essential, and therefore is permissible under *O'Brien*, so long as the neutral regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *FAIR*, 547 U.S. at 67 (quoting *United States v. Albertini*, 472 U.S. 675, 689 (1985)). The interest in slowing the spread of a virus transmitted through respiratory droplets would certainly be achieved less effectively without the challenged mask mandates, and, to the extent that requiring wearing of a mask incidentally burdens the speech of those who disagree with the need for such a requirement, the mandates could not be more narrowly drawn without making them less effective. Moreover, and importantly, the challenged mask mandates leave open many alternative channels of communication. *See DA Mortg., Inc. v. City of Miami Beach*, 486 F.3d 1254, 1269 (11th Cir. 2007). Indeed, Plaintiff is free to express his opinion about mask requirements in virtually every way other than not wearing a mask – including, say, wearing a mask with an explicit message of protest written on it. In sum, even if the challenged mask mandates do burden expressive conduct, they nonetheless satisfy intermediate scrutiny, and Plaintiff's Free Speech challenge fails.

c. Assembly & Association

Plaintiff's SAC also purports to base the § 1983 claims on violations of his First Amendment rights to assembly and free association. SAC ¶¶ 67, 68, 83. Defendants Broward, Dade, and Henry briefly argue that the challenged mask mandates do not violate these rights for the same reasons they do not violate Plaintiff's freedom of expression – i.e., they are content-neutral regulations narrowly tailored to furthering the substantial government interest of protecting public health. [DE 43] at 11. Plaintiff does not respond at all to this argument. To the extent the Court should even consider the argument further, Defendants are correct that Plaintiff cannot state a claim based on the rights to assembly and free association for the same reasons described above.

The only allegation in the SAC articulating how the challenged mask mandates violate Plaintiff's rights to peacefully assemble and freely associate[16] is that the mandates "substantially impact" these rights by "effectively prohibit[ing] individuals from gathering unmasked." SAC ¶ 68. As another Court has said regarding a similar challenge to another Florida county's mask mandate, "[t]his claim is a head scratcher." *Oakes*, 515 F. Supp. 3d at 1215. The mask mandates do nothing to prevent Plaintiff from assembling or associating with others; they simply require that he be masked while doing so.[17] Thus the mask mandates seem to have, at most, a minimal impact – and certainly not the alleged "substantial impact" – on Plaintiff's rights to assemble and associate independent of the alleged burdens (rejected elsewhere) on his rights of free exercise and freedom of expression.

Even to the extent the mask mandates could be interpreted as placing any burden on Plaintiff's rights of assembly and association, at most they would amount to "time, place, and manner" restrictions subject to the same intermediate scrutiny described above. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). That is, again, because the mask mandates are content

[16] As the Supreme Court has observed, "while the First Amendment does not in terms protect a 'right of association,' our cases have recognized that it embraces such a right in certain circumstances." *City of Dallas v. Stanglin*, 490 U.S. 19, 23-24 (1989). The Supreme Court has recognized a constitutionally-protected "right of association" in two senses: (1) the right to make choices to enter into and maintain certain "intimate human relationships"; and (2) the right to associate for the purpose of engaging in activities protected by the First Amendment – speech, assembly, petition for the redress of grievances, and the exercise of religion. *Id.* at 24 (citing *Roberts v. United States Jaycees*, 468 U.S. 609, 617-618 (1984)). Here, Plaintiff appears to be referring to his right to associate for purposes of engaging in other First Amendment-protected activities. *See* SAC ¶ 63. However, Plaintiff fails to allege how the challenged mask mandates prevent him from associating with others for the purpose of engaging in First Amendment-protected activities except to the extent that those mask mandates allegedly burden those First Amendment-protected activities themselves (which claims are analyzed, and rejected, elsewhere).

[17] To the extent the Emergency Orders placed other restrictions, such as on the specific types of establishments where people could or could not gather, the SAC does not address, or complain of, such restrictions.

neutral, applying generally to everyone, and aimed at the purpose of protecting public health, not curbing speech. *See id.*; *Oakes*, 515 F. Supp. 3d at 1215. Yet, for the same reasons articulated above, the mask mandates are narrowly tailored to further the significant government interest in protecting public health. Thus, to the extent Plaintiff premises his § 1983 claims on the rights of assembly and association, he again fails to state a claim.

d. Substantive Due Process

Plaintiff has failed to plausibly allege any substantive due process violation. "Substantive due process is a doctrine that has been kept under tight reins, reserved for extraordinary circumstances." *Maddox v. Stephens*, 727 F.3d 1109, 1127 (11th Cir. 2013) (quoting *Nix v. Franklin Cty. Sch. Dist.*, 311 F.3d 1373, 1379 (11th Cir. 2002)). "Ordinarily, the substantive component of the Due Process Clause protects those rights that are fundamental, that is, rights that are implicit in the concept of ordered liberty." *Worthy v. Phenix City, Ala.*, 930 F.3d 1206, 1221 (11th Cir. 2019) (quoting *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir. 1994)) (cleaned up). "The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *AHE Realty Assoc., LLC v. Miami-Dade Cnty., Fla.*, 320 F. Supp. 3d 1322, 1335 (S.D. Fla. 2018) (quoting *Albright*, 510 U.S. at 272). "Absent a 'compelling state interest' and an infringement 'narrowly tailored' to serve that interest, the government may not violate" a fundamental right. *Hillcrest Prop., LLP v. Pasco Cnty.*, 915 F.3d 1292, 1297 (11th Cir. 2019). However, "[s]ubstantive due process challenges that do not implicate fundamental rights are reviewed under the 'rational basis' standard." *Kentner v. City of Sanibel*, 750 F.3d 1274, 1280 (11th Cir. 2014) (citing *Fresenius Med. Care Holdings, Inc. v. Tucker*, 704 F.3d 935, 945 (11th Cir. 2013)).

A plaintiff asserting a substantive due process violation faces a high bar. *Maddox*, 727 F.3d at 1119. "[C]onduct by a government actor will rise to the level of a substantive due process violation only if the act can be characterized as arbitrary or conscience shocking in a constitutional sense." *Id.* (quoting *Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1305 (11th Cir. 2003)). "[O]nly the most egregious official conduct can be said to be arbitrary in the constitutional sense." *Id.* (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)) (internal quotation marks omitted). "A deprivation is of constitutional stature if it is undertaken for improper motive and by means that were pretextual, arbitrary and capricious, and without rational basis." *Hoefling v. City of Miami*, 811 F.3d 1271, 1282 (11th Cir. 2016) (citation omitted). Significantly, "the Supreme Court 'has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended.'" *Maddox*, 727 F.3d at 1120 (quoting *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125 (1992)).

Here, Plaintiff primarily argues that the "mask mandates constitute a compulsory bodily intrusion." *E.g.*, [DE 58] at 13. *See also* SAC ¶ 71. Relatedly, he implies that requiring individuals to wear masks is essentially forcing medical treatment upon them. *See* SAC ¶ 72. Additionally, Plaintiff alleges that the mask mandates violate "the fundamental right to freedom of movement." *Id.* ¶ 74. However, Plaintiff's challenges clearly fail.

With respect to Plaintiff's bodily intrusion and medical treatment contentions,[18] such characterizations are implausible. A mask requirement does not plausibly qualify as a "compulsory bodily intrusion." Wearing a mask on the outer surface of one's face to cover one's

[18] *See Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 269 (1990) (One "notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment.").

nose and mouth does not "intrude" within one's body; it certainly is significantly different in kind and degree from the circumstances at issue in the cases upon which Plaintiff generally relies. *See Washington v. Harper*, 494 U.S. 210 (1990); (concerning the forced administration of antipsychotic drugs to a prison inmate); *Cruzan*, 497 U.S. 261 (concerning the withdrawal of life-sustaining nutrition and hydration treatment from a patient in a vegetative state). Nor can one plausibly allege that the government is requiring medical treatment by requiring individuals to wear a face mask.

As to Plaintiff's freedom of movement contention, Plaintiff likewise fails to plausibly allege that the mask mandates impact one's freedom of movement. The mandates only require individuals to wear a mask in certain circumstances. They do not impact their freedom of movement in any manner. However, Plaintiff generally complains that the mask mandates arbitrarily require individuals to wear masks where social distancing of at least six feet is not possible. *See* [DE 58] at 14-15. There are at least a few issues with his argument. First, it is only the Broward Order that contains six-feet language. Second, the six-feet component is not arbitrary. It is common knowledge at this point that the CDC and other experts have recommended social distancing of at least six feet.[19] In fact, Chapter 4 of the Broward CEO even explains that "Social Distancing means staying at least 6 feet away . . . in accordance with CDC Guidelines." In other words, the Broward CEO shows that Broward did not arbitrarily pull "six feet" out of thin air.

[19] As discussed in the next paragraph, rational basis review applies to Plaintiff's substantive due process challenge. Under rational basis review, CDC guidelines are more than sufficient to justify the six-feet component of Broward's Order and Broward's CEO. *See Kentner*, 750 F.3d at 1281 ("Under rational basis scrutiny, governments are not required to convince the courts of the correctness of their legislative judgments. Rather, those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." (internal citation and quotation marks omitted)).

Third, even if the six-feet component was arbitrary, Plaintiff fails to show how it is "arbitrary in the constitutional sense."

Because Plaintiff did not, and cannot, plausibly allege a violation of any fundamental right, his substantive due process challenge is only subject to rational basis review. As discussed above, the mask mandates survive rational basis review (quite easily) because they are rationally related to a legitimate government interest. Moreover, the mask mandates cannot plausibly be characterized as egregious or "arbitrary or conscience shocking in a constitutional sense." *Cf. McCants v. City of Mobile*, 752 F. App'x 744, 749 (11th Cir. 2018) ("Greene's bare and conclusory allegations fail to meet her burden of pleading an egregious intentional wrong. Hence, the court properly dismissed her substantive due process claim against Officer Chandler."); *Case v. Ivey*, No. 2:20-CV-777-WKW, 2021 WL 2210589, at *22 (M.D. Ala. June 1, 2021) (finding that substantive due process challenge to mask mandate should be dismissed for two reasons, including that the allegations of the complaint failed to "plausibly demonstrate that Defendants' conduct in enacting the mask requirement rose to the 'conscience-shocking level'"). Therefore, Plaintiff fails to state a claim for any substantive due process violation. *Cf. Stewart*, 502 F. Supp. 3d at 1068 (rejecting substantive due process/freedom of movement challenge to mask mandate).

3. Qualified Immunity (as to Henry)

Although Plaintiff's § 1983 claims should be dismissed – for the reasons discussed above – without any need to reach Henry's qualified immunity argument, should the Court reach the issue of qualified immunity, it should find that qualified immunity protects Henry from any damages claim.[20] "Qualified immunity attaches when an official's conduct does not violate clearly

[20] Qualified immunity only applies to claims for monetary damages, not claims for injunctive or declaratory relief. *Ratliff v. DeKalb Cnty., Ga.*, 62 F.3d 338, 340 n.4 (11th Cir. 1995); *D'Aguanno v. Gallagher*, 50 F.3d 877, 879 (11th Cir. 1995).

established statutory or constitutional rights of which a reasonable person would have known." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting *White v. Pauly*, 137 S. Ct. 548, 551 (2017)). "To invoke qualified immunity, a public official must first demonstrate that he was acting within the scope of his or her discretionary authority." *Jones v. Fransen*, 857 F.3d 843, 851 (11th Cir. 2017) (citing *Maddox*, 727 F.3d at 1120). A public official acts within the scope of his discretionary authority when his actions "(1) [are] undertaken pursuant to the performance of his duties, and (2) [are] within the scope of his authority." *Id.* (quoting *Jordan v. Doe*, 38 F.3d 1559, 1566 (11th Cir. 1994)).

It is undisputed that Henry was acting within the scope of her discretionary authority. Therefore, the burden shifts to Plaintiff to show that qualified immunity is inappropriate. *Id.* To satisfy his burden, Plaintiff must show both that Henry violated a constitutional right and that the right was "clearly established" at the time the violation occurred. *Id.* As discussed in the preceding sections, neither Henry nor the other Defendants violated any of Plaintiff's constitutional rights. Therefore, qualified immunity attaches.

Nonetheless, even if the Court were to find that Henry violated any of Plaintiff's constitutional rights, the rights at issue were certainly not clearly established. In determining whether the law was clearly established at the time of the violation, courts look to see whether there was "fair warning" at the time that the subject conduct occurred. *Id.* (citing *Coffin v. Brandau*, 642 F.3d 999, 1013 (11th Cir. 2011)). Fair warning or fair notice generally exists in the form of binding case law making it clear to reasonable officials in the defendant's place that his conduct violates federal law. *Id.* (citing *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 926 (11th Cir. 2000)). However, there are three separate ways in which a plaintiff may satisfy his burden. First, he may point to "materially similar" binding precedent. *Id.* at 852 (citing *Loftus v.*

Clark-Moore, 690 F.3d 1200, 1204 (11th Cir. 2012)). Under this approach, courts consider "whether the factual scenario that the official faced is fairly distinguishable from the circumstances facing a government official in a previous case." *Id.* (citing *Loftus*, 690 F.3d at 1204). "Second, a plaintiff may invoke a 'broader, clearly established principle' that he asserts 'should control the novel facts [of the] situation.'" *Id.* (citing *Loftus*, 690 F.3d at 1204-05). Third, "a right is 'clearly established' when the defendant's conduct 'lies so obviously at the very core of what the [relevant constitutional provision] prohibits that the unlawfulness of the conduct was readily apparent to the official, notwithstanding the lack of case law.'" *Id.* (quoting *Loftus*, 690 F.3d at 1205). "Similarly, [courts] recognize the obvious-clarity exception where conduct is 'so bad that case law is not needed to establish that the conduct cannot be lawful.'" *Id.* (quoting *Vinyard v. Wilson*, 311 F.3d 1340, 1350 (11th Cir. 2002)). Nevertheless, this final category is narrow. *Id.*

It is unclear which, if any, of these avenues Plaintiff relies on to satisfy the "clearly established" requirement. If anything, he is probably pointing to the "materially similar" binding precedent avenue, as he contends in his response that the SAC "includes approximately nine pages of case law explaining how Defendants' actions violate the aforementioned constitutional rights, all of which was [sic] clearly established at the time" Henry enacted and enforced the Broward Order. [DE 58] at 16. However, Plaintiff's argument is conclusory, and his response fails to discuss any of this case law to satisfy his burden of showing that the constitutional rights at issue were clearly established. Of course, "liberal construction of pro se pleadings [to the extent Plaintiff is even entitled to such liberal construction as a law school graduate] 'does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.'" *Smitherman v. Decatur Plastics Prod. Inc*, 735 F. App'x 692, 692 (11th Cir. 2018) (quoting *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014)).

Regardless, it is inconceivable that Henry could have violated any clearly established constitutional rights, based on materially similar binding precedent, by enacting or enforcing an emergency order aimed at a pandemic that this country and this world have never seen before. In other words, it is highly unlikely that any materially similar binding precedent could have even existed at the time that Broward implemented the Broward Order. At the very least, Plaintiff evidently fails to point to any binding precedent that would qualify as such. Notably, the fact that numerous courts – bound to follow the Supreme Court decisions cited in the SAC – have rejected challenges identical to Plaintiff's challenges (as catalogued in the preceding sections), whereas Plaintiff has failed to cite even a single decision in his favor, further highlights that no materially similar binding precedent clearly establishes the rights Plaintiff claims exist. Therefore, even if the Court were to find that the mask mandate violated any constitutional rights, such rights were certainly not clearly established. As such, Henry is entitled to qualified immunity.

D. COUNT VI - RLUIPA

In Count VI, Plaintiff appears to assert that the Emergency Orders containing the mask mandates violate three RLUIPA provisions, 42 U.S.C. § 2000cc(a)(1), (b)(1), and (b)(2). However, Plaintiff has failed to state a claim because he has failed to include factual allegations to plausibly show that the "land use regulation" requirement – which is in each of the three provisions – is satisfied.

Section 2000cc(a)(1), which is referred to as RLUIPA's substantial-burden provision, provides that:

> No government shall impose or implement a *land use regulation* in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling interest; and (B) is the least restrictive means of furthering that compelling governmental interest.

Thai Meditation Ass'n of Ala., Inc. v. City of Mobile, Ala., 980 F.3d 821, 828 (11th Cir. 2020) (quoting 42 U.S.C. § 2000cc(a)(1)) (emphasis added). Section 2000cc(b)(1), which is referred to as RLUIPA's equal-terms provision, prohibits governments from imposing or implementing "a *land use regulation* in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." *Id.* at 833 (quoting 42 U.S.C. § 2000cc(b)(1)) (emphasis added). Finally, section 2000cc(b)(2), which is referred to as RLUIPA's nondiscrimination provision, prohibits governments from imposing or implementing "a *land use regulation* that discriminates against any assembly or institution on the basis of religion or religious denomination." *Id.* at 834 (quoting 42 U.S.C. § 2000cc(b)(2)) (emphasis added).

Thus, all three RLUIPA provisions only apply to "land use regulations." Under RLUIPA, a "land use regulation" is defined as

> a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

42 U.S.C. § 2000cc-5(5). Therefore, to state a claim under any or all of the three provisions at issue, the complained of Emergency Orders must involve zoning or landmarking laws. *See Harris v. Mukasey*, 265 F. App'x 461, 462 (9th Cir. 2008) (finding that complaint failed to state claim because RLUIPA only allows a plaintiff to challenge laws involving zoning and landmarking laws (citing *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1036 (9th Cir. 2004))). Additionally, Plaintiff must have "an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest" in order to state a claim. *Chabad Lubavitch of Litchfield Cnty., Inc. v. Borough of Litchfield*, No. 3:09-CV-1419 (JCH), 2016 WL 370696, at *26 (D. Conn. Jan. 27, 2016). *See also Vision Church v. Vill. of Long*

Grove, 468 F.3d 975, 998 (7th Cir. 2006) ("Under this definition, a government agency implements a 'land use regulation' only when it acts pursuant to a 'zoning or landmarking law' that limits the manner in which a claimant may develop or use property in which the claimant has an interest." (quoting *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 434 (6th Cir. 2002))).

Here, Plaintiff fails to state a RLUIPA claim for at least two reasons. First, the Emergency Orders are not zoning or landmarking laws, nor do they involve the application of zoning or landmarking laws. *Cf. Cross Culture Christian Ctr. v. Newsom*, 445 F. Supp. 3d 758, 771 (E.D. Cal. 2020) (finding that RLUIPA did not apply to state and county stay-at-home orders because the orders regulated conduct, not land use); *Abundant Life Baptist Church of Lee's Summit, Mo. v. Jackson Cnty., Mo.*, No. 4:20-00367-CV-RK, 2021 WL 1970666, at *15 (W.D. Mo. May 17, 2021) (finding that the plaintiff failed to state a RLUIPA claim because RLUIPA did not apply to the emergency public health orders at issue). Second, Plaintiff has failed to allege that the emergency orders limit or restrict his use or development of land in which he has an interest (specifically, "an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest"). Therefore, Plaintiff has failed to state a claim under RLUIPA.

MOTION FOR SANCTIONS

I. LEGAL STANDARD

Rule 11 is intended "to deter baseless filings in district court and thus streamline the administration and procedure of federal courts." *Peer v. Lewis*, 606 F.3d 1306, 1311 (11th Cir. 2010) (citation omitted). When an attorney signs and files a pleading (and other court papers), the attorney is certifying, *inter alia*, that: "(1) the pleading is not being presented for an improper purpose; (2) the legal contentions are warranted by existing law or a nonfrivolous argument to

change existing law; and (3) the factual contentions have evidentiary support or will likely have evidentiary support after discovery." *Id.* (citing Fed. R. Civ. P. 11(b)). Consequently, sanctions may be imposed under Rule 11 "when a party files a pleading that (1) has no reasonable factual basis; (2) is based on a legal theory that has no reasonable chance of success; or (3) is filed in bad faith for an improper purpose." *Vient v. Highlands News-Sun*, 829 F. App'x 407, 409 (11th Cir. 2020) (quoting *Silva v. Pro Transp., Inc.*, 898 F.3d 1335, 1341 (11th Cir. 2018)). In evaluating a motion for sanctions under Rule 11, an objective standard is applied. *Id.* (citing *Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003)). The objective standard requires consideration of "(1) whether the party's claims are objectively frivolous, and (2) whether the person who signed the pleadings should have been aware that they were frivolous." *Peer*, 606 F.3d at 1311 (quoting *Byrne v. Nezhat*, 261 F.3d 1075, 1105 (11th Cir. 2001)). *See also Benedek v. Adams*, 725 F. App'x 755, 761 (11th Cir. 2018) ("The standard used to evaluate an alleged violation of Rule 11 is 'reasonableness under the circumstances.'" (citing *Worldwide Primates, Inc. v. McGreal*, 26 F.3d 1089, 1091 (11th Cir. 1994))).

Filing a Rule 11 motion, however, may pose some risk to the filer. *Plantation Open MRI, LLC v. Infinity Auto Ins. Co.*, 818 F. App'x 891, 893 (11th Cir. 2020). "If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion." *Id.* (quoting Fed. R. Civ. P. 11(c)(2)). Stated differently, a Rule 11 motion "is itself subject to the requirements of the rule and can lead to sanctions." *Id.* (quoting *Smith v. Psychiatric Sols., Inc.*, 750 F.3d 1253, 1260 (11th Cir. 2014)). Therefore, if "a party files a Rule 11 motion for an improper purpose, the court may award fees to the target of the motion." *Id.* (quoting *Smith*, 750 F.3d at 1260). No cross-motion for sanctions is required for a court to render such an award. *Smith*, 750 F.3d at 1260.

II. ANALYSIS

The Motion for Sanctions is frivolous and should be denied. In his 2-page Motion for Sanctions, Plaintiff seeks sanctions against two defense attorneys "for their submission of [allegedly] false or misleading statements to" the Court, which they "knew or should have known lacked factual merit." [DE 42] at 2. The Motion for Sanctions does not identify the alleged statements. Instead, it refers to an attached memorandum. However, no such memorandum was filed with the Court at the time the Motion for Sanctions was filed. As a result, the response [DE 45] posits that the Motion for Sanctions should be denied in light of Plaintiff's failure to submit a memorandum of law as required by Local Rule 7.1(a)(1). Notably, defense counsel attaches emails to the response showing that counsel informed Plaintiff of his failure to file a memorandum of law. Although Plaintiff provided a copy of the memorandum to defense counsel, he nevertheless did not file a copy of the memorandum with the Court (as required) prior to the deadline to respond to the Motion for Sanctions. Therefore, defense counsel did not respond to the substantive arguments in their response (instead primarily limiting the response to the Local Rule 7.1(a)(1) argument).

It was only when Plaintiff filed his reply [DE 46] that he finally filed his memorandum with the Court [DE 47]. In his reply, Plaintiff claims to have submitted his memorandum to the Clerk's office along with the Motion for Sanctions and has the audacity to blame the Clerk's office for "ma[king] an error in the processing of [his] filing." [DE 46] at 3. While the Clerk's office employs human beings, and while human beings make mistakes from time-to-time, the type of error alleged by Plaintiff is simply not conceivable. It is one thing for a human being to accidentally not scan a page, but it is quite another to miss 12 of 14 pages as Plaintiff would like the Court to believe. Moreover, the fact that Plaintiff did not file his memorandum until June 23, 2021, even though defense counsel brought the issue to Plaintiff's attention on June 9, 2021 and

again on June 11, 2021, *see* [DE 45-1], further belies the accusations Plaintiff directs at the Clerk's office. It was evidently Plaintiff who made the error, and more significantly, Plaintiff who chose not to correct it for two weeks after it was brought to his attention.

Because Plaintiff did not file his memorandum until he filed his reply, and because they both improperly raise arguments for the first time,[21] defense counsel filed the Motion to Strike [DE 53], requesting that the Court strike Plaintiff's reply and memorandum. Alternatively, they request an opportunity to respond to the substantive arguments raised in the reply and memorandum. Nevertheless, as the substantive arguments Plaintiff raises clearly fail (as discussed herein), the Motion to Strike should be denied as moot.

Although defense counsel raises procedural issues – as to Plaintiff's noncompliance with the Local Rules[22] – that justify denial of the Motion for Sanctions, the Motion for Sanctions should nevertheless be denied on the merits. In his memorandum and reply, Plaintiff complains of the following 4 statements made by defense counsel in prior filings: (1) statement indicating that in *Strober*, the court found that the "plaintiff failed to state a claim under Title II because she did not exhaust her state administrative remedies," [DE 18] at 14; [DE 19] at 17; (2) "Plaintiff does not even allege that the mask requirements of the Commencement Defendants are motivated by

[21] *See Friedman v. Schiano*, 777 F. App'x 324, 332 n.13 (11th Cir. 2019) ("It is well settled that a party cannot argue an issue in its reply brief that was not preserved in its initial brief." (quoting *Tallahassee Mem'l Reg'l Med. Ctr. v. Bowen*, 815 F.2d 1435, 1446 n.16 (11th Cir. 1987))); *United States v. Oakley*, 744 F.2d 1553, 1556 (11th Cir. 1984) ("Arguments raised for the first time in a reply brief are not properly before the reviewing court." (citation omitted)).

[22] *See McNeil v. United States*, 508 U.S. 106, 113 (1993) ("[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel."); *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) ("[A]lthough [courts] are to give liberal construction to the pleadings of pro se litigants, '[courts] nevertheless have required them to conform to procedural rules.'" (citing *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002))). It is also worth noting, again, that Plaintiff, while not yet a member of the bar, is a law school graduate.

discriminatory intent," [DE 18] at 16; (3) "Plaintiff does not allege that he was denied access to any public accommodations within NSU's campus," [DE 18] at 13; and (4) "Plaintiff fails to identify an injury beyond his potential disappointment and embarrassment that will result from his lack of in-person participation at NSU's May 16, 2021 commencement ceremony," [DE 18] at 18.

As to the first statement – regarding *Strober* – defense counsel's statement is completely accurate, and Plaintiff's contention to the contrary is completely frivolous. In *Strober*, the Eleventh Circuit stated in no uncertain terms that "Strober failed to state a claim under Title II because," *inter alia*, "she did not exhaust her state administrative remedies." *Strober*, 701 F. App'x at 912-13. The court further explained that "[t]o bring a viable claim under Title II, a plaintiff must first exhaust state or local administrative remedies, if such remedies are available." *Id.* at 913 n.3 (citing 42 U.S.C. § 2000a-3(c)). While Plaintiff is correct that the foregoing statements are dicta – the court found the plaintiff's Title II argument to be abandoned but addressed the merits anyway, *see id.* at 912 – the court still made the findings. Moreover, defense counsel never argued that *Strober* (an unpublished, non-binding decision) or the findings in *Strober* were binding. Regardless, "[d]icta can, of course, have persuasive value." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 762 (11th Cir. 2010) (citation omitted).

Moreover, on June 21, 2021, two days before Plaintiff filed his reply and memorandum, Judge Bloom entered an order in another case Plaintiff filed in this district, wherein Judge Bloom rejected essentially the same argument Plaintiff raises here. *See L.A. Fitness*, 2021 WL 2530271, at *8. In doing so, Judge Bloom specifically noted that the Court in this case had already "cit[ed] *Strober* for the *same proposition* cited to by Defendant's counsel." *Id.* (citing *Nova Se. Univ.*, 2021 WL 1945831, at *3). Even without Judge Bloom's order, Plaintiff's argument regarding defense counsel's *Strober* contention is completely meritless, and his use of the argument in a Rule

11 motion, which is supposed to be reserved to combat the most baseless, frivolous arguments, adds insult to injury. Furthermore, Plaintiff's decision to advance the argument, after both Judge Bloom and the Court in this case had given him indication that his claim was meritless, is worse still. It suggests bad faith and raises serious concerns regarding whether Plaintiff possesses the requisite character and fitness to become a member of the Florida Bar. At the very least, it demonstrates that Plaintiff still has much to learn about how professionals practice law and treat each other. To the extent Plaintiff did not receive Judge Bloom's order until after he filed his reply and memorandum, he should have immediately withdrawn his Motion for Sanctions upon receiving Judge Bloom's order. His decision not to do so is highly questionable, if not inexplicable.

With respect to the second, third, and fourth statements to which Plaintiff takes exception, none of the statements are frivolous. They are not clear misrepresentations of material facts as Plaintiff contends. They are facially – or, at a minimum, arguably – accurate statements regarding Plaintiff's Amended Complaint [DE 5], which was the operative pleading at the time the statements were made. Even if it is reasonable for Plaintiff to argue that the contrary can be inferred from the allegations of the Amended Complaint or his Brief [DE 7] in support of his motion for injunctive relief, defense counsel's contentions are likewise reasonable. Moreover, they concern largely trivial statements that should have been addressed in briefing (if at all) and not through a Rule 11 motion. *See Smith*, 750 F.3d at 1261 ("Rule 11 motions should not be made or threatened for minor, inconsequential violations." (quoting Fed. R. Civ. P. 11 advisory committee's note)). Plaintiff's decision to address these issues through a Rule 11 motion evidences a gross misuse of, and misunderstanding regarding, Rule 11. Just as Judge Bloom concluded regarding the motion for sanctions Plaintiff filed in his other case, Plaintiff's Motion for Sanctions

in this case appears to represent nothing more than an improper strong-arm tactic. *L.A. Fitness*, 2021 WL 2530271, at *8. It should undoubtedly be denied.[23]

That leaves one remaining issue. Defense counsel has requested an award of reasonable expenses, including attorney's fees, for having to respond to Plaintiff's frivolous Motion for Sanctions. Like Judge Bloom decided in Plaintiff's other case, it is a close call. *Id.* at *9. The Court surely has discretion to render an award against Plaintiff in accordance with Rule 11(c)(2) in light of the circumstances described above. However, I recommend that no such award be rendered here. Like Judge Bloom, I expect that Plaintiff, who sat (or at least planned to sit) for the July 2021 Florida Bar Exam, will learn from this experience and that he will not repeat the mistakes he has made here. Were plaintiff already a member of the Bar, I would not hesitate to recommend an award of sanctions against him. However, given Plaintiff's status as a recent law school graduate who has not yet been admitted to the Florida Bar, and given that defense counsel did not incur time responding to the *substance* of, or attending a hearing on, the Motion for Sanctions, I recommend that no sanctions be awarded against Plaintiff at this time. That said, Plaintiff needs to dedicate serious thought to the type of attorney he wishes to be. If he does not change the way he treats opposing counsel, and the analytical rigor with which he considers his filings, he will not make it very far.

[23] In addition to requesting sanctions under Rule 11, Plaintiff also requests that sanctions be awarded under section 57.105 of the Florida Statutes and/or under the Court's inherent powers. As to section 57.105, as Judge Bloom explained in Plaintiff's other case, "because this action arises under federal law and does not invoke the Court's diversity jurisdiction, Section 57.105 does not apply." *Id.* at *2 n.4 (citation omitted). With respect to the Court's inherent powers, Plaintiff is not entitled to sanctions because he has not demonstrated anything even close to bad faith on the part of defense counsel (for the reasons discussed above). *See Hyde v. Irish*, 962 F.3d 1306, 1310 (11th Cir. 2020) ("In the context of inherent powers, the party moving for sanctions must show *subjective* bad faith." (citations omitted)).

CONCLUSION

For the reasons discussed above, I respectfully **RECOMMEND** that the District Court **DENY** the Motion for Sanctions [DE 42], **GRANT** the First Motion to Dismiss [DE 43], **GRANT** the Second Motion to Dismiss [DE 44], **DENY as moot** the Motion to Strike [DE 53], **DISMISS** Plaintiff's requests for injunctive and declaratory relief without prejudice (based upon mootness), **DISMISS** Count IV without prejudice (on mootness and standing grounds), and **DISMISS** all other claims for damages on the merits.[24]

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable Rodolfo A. Ruiz, II, United States District Judge. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1.

DONE AND SUBMITTED in Fort Lauderdale, Florida this 30th day of August 2021.

Jared Strauss

Jared M. Strauss
United States Magistrate Judge

[24] As noted above, the claims against Palm Beach and Haughwout (who have not appeared or filed a motion to dismiss) should be dismissed for the same reasons that the claims against Broward and Henry should be dismissed. Nevertheless, should the Court disagree, I note that Plaintiff has failed to serve Palm Beach and Haughwout even though the SAC was filed more than 90 days ago. Therefore, if the Court does not dismiss the claims against Palm Beach and Haughwout for the reasons discussed in this Report, it should consider dismissal without prejudice (as to Palm Beach and Haughwout), after notice to Plaintiff, in accordance with Fed. R. Civ. P. 4(m).

APPENDIX L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **21-cv-60723**

COREY J. ZINMAN,

Plaintiff,

v.

NOVA SOUTHEASTERN UNIVERSITY, a corporation, **SOUTH FLORIDA STADIUM, LLC, BROWARD COUNTY**, a Florida County and Political Subdivision of the State of Florida, **BERTHA HENRY**, individually and in her official capacity, **MIAMI-DADE COUNTY**, a Florida County and Political Subdivision of the State of Florida,

Defendants.

_____/

AMENDED COMPLAINT

COMES NOW the Plaintiff, COREY J. ZINMAN ("Zinman"), hereby complaining of the Defendants, NOVA SOUTHEASTERN UNIVERSITY, Inc. ("NSU") and SOUTH FLORIDA STADIUM, LLC ("Hard Rock Stadium"), BROWARD COUNTY, BROWARD COUNTY ADMINISTRATOR BERTHA HENRY ("County Administrator"), and MIAMI-DADE COUNTY, states as follows:

L

INTRODUCTION

1. This is an action for intentional discrimination based on race and religion in violation of Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a, et seq.) as well as Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, et seq.).
2. Zinman seeks compensatory and punitive damages as well as declaratory and injunctive relief against Defendants for a pattern and practice of acts which constitute an intentional and outrageous deprivation of statutorily guaranteed civil rights.
3. Zinman seeks injunctive, declaratory, and compensatory relief against Defendants Broward County and Miami-Dade County under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), as it appears in volume 42 of the United States Code, beginning at § 2000cc et seq.
4. Zinman also seeks injunctive, declaratory, and compensatory relief against Defendant County Administrator pursuant to Section 1983 of the United States Code (Pub. L. 96-170) for, under color of law, causing Zinman to be deprived of various rights guaranteed by the Constitution and laws of the United States.
5. Zinman further seeks to recover his costs associated with the filing and litigation of this action pursuant to 29 U.S.C. § 2000e-5(k), 42 U.S.C. § 12205, and Rule 54 of the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

6. This action arises under federal law. This court has jurisdiction of the federal claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
7. Jurisdiction to grant injunctive relief is conferred by Rule 65 of the Federal Rules of Civil Procedure.

8. Jurisdiction to grant a declaratory judgement is conferred by 28 U.S.C. § 2201 as well as 28 U.S.C. § 2202.

9. The claims asserted in this action arose within this district. Venue of this action is proper pursuant to 42 U.S.C. § 2000a– 6(a)(3) and 28 U.S.C. § 1391.

PARTIES

10. The Plaintiff, Zinman, is a Jewish man who was, at all times relevant to this complaint, a resident of the state of Florida, residing in Palm Beach County, and is otherwise *sui juris*.

11. Zinman is currently enrolled at Nova Southeastern University in Broward County.

12. At all times material hereto, Defendant NSU was and is a domestic corporation duly organized and existing under and by virtue of the laws of the State of Florida.

13. Defendant Hard Rock Stadium operates the Hard Rock Stadium, located in Miami-Dade County. It has negotiated and entered into an agreement with NSU to host the University's commencement ceremonies in May of 2021.

14. Defendant Broward County is a County and political subdivision of the State of Florida, duly organized and existing under Florida law.

15. Defendant Bertha Henry is the County Administrator for Broward County. She is the Chief Executive Officer of the Broward County government and directs the day-to-day functions thereof.

16. Defendant Miami-Dade County is a County and political subdivision of the State of Florida, duly organized and existing under Florida law.

FACTS

17. Zinman enrolled at NSU Shepard Broad College of Law in August of 2018.

18. NSU's *Return of the Shark's: Student Guidelines* mandate that all faculty, staff, students, and visitors adhere to all NSU health and safety policies and guidelines as a condition to access, use, or visit any NSU location, facility, grounds or public spaces.
19. NSU's *Return of the Shark's: Student Guidelines* further provide that "based on recommendations from the CDC and local ordinances, all NSU individuals—students, faculty, staff, visitors, and clinic patients—are required to wear a face covering while on campus or using any NSU facilities or grounds."
20. On or about December 25, 2020, Zinman requested a religious accommodation from NSU so that he could participate in the University's Criminal Justice Field Placement Clinic without being required to wear a facial covering.
21. On or about December 30, 2020, Zinman received notice from NSU College of Law Professor Mark Dobson that the University had decided not to extend him an accommodation to participate in the University's Criminal Justice Field Placement Clinic without being required to wear a facial covering.
22. On December 30, 2020, Zinman received an e-mail from NSU Assistant Dean Sanguigni stating that some of the offices participating in the University's Criminal Justice Field Placement Clinic would be operating remotely and therefore some internships would be completed virtually.
23. On December 30, 2020, Zinman renewed his request for a religious accommodation which would allow him to participate in the University's Criminal Justice Field Placement Clinic in a remote capacity.
24. On December 31, 2020, Zinman received a letter from NSU Shepard Broad College of Law Dean Juárez Jr. stating that participation in the Criminal Justice Field Placement

Clinic was optional but that the College of Law was willing to provide him with "alternative live-client experiential opportunities and/or coursework." Further, Dean Juárez Jr. advised Zinman that failure "to register for an alternative clinic and/or coursework by the end of the add/drop period on January 10th, or [failure] to successfully complete the required credit hours working at the Palm Beach County Public Defender's Office ... will delay your graduation from the College of Law."

25. On January 1, 2021, Zinman responded to Dean Juárez Jr. requesting to be "afforded the ... same opportunity to participate in and earn credit for the criminal justice clinic as is being offered to all other students" without being forced to contravene his religious beliefs.

26. On January 4, 2021, Dean Juárez Jr. sent a memo to the entire NSU Law community stating that "I know we are all hopeful that the arrival of vaccines in the coming months will mean that we can return to our pre-pandemic lives, including a return to full access to the Leo Goodwin Sr. Building. Returning to normal operations, however, is still at least a few months away ... I know that wearing a mask can be uncomfortable, and I assure you that I will celebrate when we no longer have to wear masks to protect each other. But, just as you will be required to disclose harmful evidence pursuant to a lawful discovery request, you are now required to wear a mask and socially distance when you are on the NSU campus."

27. In an effort to avoid being forced to sacrifice his religious beliefs in order to timely graduate, Zinman withdrew from the University's Criminal Justice Field Placement Clinic and enrolled in alternative courses.

28. On January 24, 2021, Zinman sent a letter to Dean Juárez Jr. objecting to his optimism "that the arrival of vaccines would somehow be a catalyst for a return to life as we once knew it," and further requesting that the University amend its campus guidelines to "accommodate individuals for whom compliance with mandatory mask wearing policies conflicts with their sincerely held religious beliefs and/or practices."

29. On January 26, 2021, Zinman received a letter from Assistant Dean for Student Development Michelle Manley stating that: "NSU is within its right to mandate that students, staff, and faculty as well as community members wear a mask while on University controlled property. NSU's mask policy does not infringe upon an individual's ability to exercise and/or adhere to religious practices/doctrines. The current BlendFlex model utilized by the NSU College of Law offers face-to-face, online, and hybrid student experiences running simultaneously. Therefore, law students who may be uncomfortable for any reason, including attending class on campus and/or adhering to the health and safety protocols and procedures on campus can fully participate in their academic pursuit without stepping on the grounds of NSU campuses."

30. On January 27, 2021, Zinman sent a letter in response to Dean Manley, objecting to her assertion that "NSU is within its right to mandate that students, staff, and faculty as well as community members wear a mask while on University controlled property," and requesting that she cite to the specific authority upon which the University based its determination.

31. On January 29, 2021, Zinman received an e-mail from Dean Manley stating that "the University's position remains unchanged" and further that his "request for a religious accommodation relative to the NSU mask mandate has been denied."

32. On January 22, 2021, NSU President and CEO George L. Hanbury II sent a memo to the entire NSU community stating that the University was "planning to hold commencement ceremonies with masks, physical distancing, and completely outside with sanitized seating and facilities ... To enable us to maintain appropriate physical distancing ... we are making arrangements to hold our series of graduating ceremonies where the Miami Dolphins play—at the Hard Rock Stadium—this May."

33. On February 16, 2021, NSU President and CEO George L. Hanbury II sent a memo to the entire NSU community stating that the University "will be seating graduates on the playing field at a safe social distance of six feet ... Instead of walking across the stage, [graduates] will stand individually when [their] name is called."

34. On March 22, 2021, Dean Juárez Jr. sent an e-mail to the entire NSU Law community stating that: "The sooner we are all vaccinated the sooner we can return to the full range of in-person activities on campus – and the sooner we will all be protected from this virus."

35. The Preamble to the Florida Constitution provides as follows:

> "We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution."

GENERAL ALLEGATIONS

36. Religious liberty is enshrined in the text of the constitutions of the United States and the State of Florida.

37. Religious liberty is not merely a right to personal religious beliefs; it also encompasses religious observance and practice. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion "is in its nature an unalienable right" because the duty owed to one's Creator "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society."

38. Jewish people are an ethnoreligious group as well as a nation originating from the Israelites and Hebrews of historical Israel and Judah. Jewish ethnicity, nationhood, and religion are strongly interrelated, as Judaism is the ethnic religion of the Jewish people.

39. According to the Hebrew Bible, Israelites and descendants thereof are required to worship Yahweh exclusively.

40. Judaism unequivocally prohibits any and all forms of idolatry.

41. Unquestioningly obeying the affirmative commands of any other being but the Almighty Himself constitutes idolatry.

42. It is a violation of Judaic law and considered a great insult to God to worship any of His creations, including any man or group of men.

43. Jews are required to sacrifice their own lives in order to avoid desecrating God's name through the public transgression of His commandments.

44. NSU intentionally discriminated against Zinman on the basis of his religion as well as the racial group to which he belongs by denying him the full and equal enjoyment of its goods, services, facilities, privileges, advantages, and accommodations unless he agreed to sacrifice his sincerely held religious beliefs by symbolizing his faith in and subservience to so-called "experts" who claim to be able to save lives if people simply obey their commands without question—otherwise known as false idols.

45. NSU intentionally discriminated against Zinman on the basis of his religion as well as the racial group to which he belongs by arbitrarily determining that their "mask policy does not infringe upon an individual's ability to exercise and/or adhere to religious practices/doctrines," and further that it was within "its right to mandate that students, staff, and faculty as well as community members wear a mask while on University controlled property."

46. Mandating the wearing of facial coverings does not serve to protect the public health, safety, or welfare.

47. SARS-CoV-2 (i.e., the virus that causes COVID-19) virions are microscopic bioaerosol agents with a particle diameter ranging from 50 to 200 nanometers (nm). *See* Marcelo Guzman, *An overview of the effect of bioaerosol size in coronavirus disease 2019 transmission*, INT. J. HEALTH PLANN. MGMT., 36: 257-266 (2021).

48. According to a study published by the American Journal of Infection Control, "the maximum penetration of particles through the fiber-charged N95 respirators occurred in the 50-100 nm size range." *See* Anna Balazy, Mike Toivola, Atin Adhikari, Satheesh K. Sivasubramani, *Do N95 respirators provide 95% protection level against airborne viruses, and how adequate are surgical masks?*, AM. J. INFECT. CONTROL,

Vol. 34, 2:51-57 (Mar. 2006). Further, the study emphasized that "N95-certified respirators may not ... provide a proper protection against virus, which is considerably smaller than the accepted most penetrating particle size of 300 nm used in the certification tests." *Id.* Moreover, with respect to surgical masks, the study concluded that such "masks will let a significant fraction of airborne viruses penetrate through their filters, providing very low protection against aerosolized infectious agents in the size range of 10 to 80 nm." *Id.*

49. According to a report published by the Annals of Occupational Hygiene, "common fabric materials ... provide marginal protection against nanoparticles including those in the size ranges of virus-containing particles in exhaled breath." *See* Samy Rengasamy , Benjamin Eimer, Ronald E. Shaffer, *Simple respiratory protection–evaluation of the filtration performance of cloth masks and common fabric materials against 20-1000 nm size particles*, ANN. OCCUP. HYG, Vol. 50, 8:751-764 (Nov. 2006).

50. Research conducted by National Institute of Allergy and Infectious Diseases ("NIAID") author and pathologist Jeffery Taubenberger, M.D., Ph.D., suggests that the vast majority of deaths during the 1918-1919 influenza pandemic were not caused directly by the then-unidentified influenza virus, but rather resulted from severe secondary pneumonia caused by various bacteria. *See* David M. Morens, Jeffery K. Taubenberger, Anthony S. Fauci, *Predominant Role of Bacterial Pneumonia as a Cause of Death in Pandemic Influenza: Implications for Pandemic Influenza Preparedness*, J. INFECT. DIS., Vol. 198(7): 962-970 (Oct. 2008). Further, in the words of former NIAID Director Anthony S. Fauci, M.D. himself, "the weight of

evidence we examined from both historical and modern analyses of the 1918 influenza pandemic favors a scenario in which viral damage followed by bacterial pneumonia led to the vast majority of deaths."

51. Facial coverings serve as a highly effective medium for bacterial pathogens which tend to thrive in moist mucus-soaked environments, such as the inside of a facemask. *See* Pipat Luksamijarulkul, Natkitta Aiempradit, Pisit Vatanasomboon, *Microbial Contamination on Used Surgical Masks among Hospital Personnel and Microbial Air Quality in their Working Wards: A Hospital in Bangkok*, Oman Med. J., Vol. 29(5) (2014).

52. Viruses can alter the host's susceptibility to bacterial infections by altering both environmental conditions in the lung which favor bacterial replication as well as by suppressing the host's defense mechanisms which prevent clearance of the bacteria. *See* Babiuk LA, Lawman MJ, Ohmann HB, *Viral-bacterial synergistic interaction in respiratory disease*, ADV. VIRUS RES., 35:219-49 (1988). Inhalation of bacteria directly into the lungs of a patient incubating respiratory viruses risks synergistic interaction which can cause a rapid deterioration in the patient's condition, commonly resulting in death. *Id.* Mandating the wearing of facial coverings therefore fails to promote the health, safety, or welfare of the community and actually tends to put the public at greater risk than it otherwise would have faced due to the outbreak of the novel coronavirus (i.e., SARS-CoV-2).

53. Hard Rock Stadium is home to the Miami Dolphins. Football players are just as capable of contracting and transmitting viruses, including SARS-CoV-2, as any other individual. Hard Rock Stadium is therefore without adequate justification for

permitting the Dolphins to play football unmasked while also demanding that Zinman wears a mask in order to attend his graduation.

54. NSU intends to discriminate against Zinman as well as those similarly situated to him on the basis of their religion and the racial group to which they belong by requiring that they be vaccinated in order to "return to the full range of in-person activities on campus," as evidenced by Dean Juárez Jr.'s email to the NSU Law community on March 22, 2021.

55. The future chilling of Zinman's rights as well as that of those similarly situated to him is an absolute certainty unless and until this Court grants appropriate injunctive and declaratory relief.

56. The violations of Zinman's civil rights alleged herein have caused and will continue to cause Zinman to suffer extreme hardship, as well as actual and impending irreparable injury for which there is no adequate remedy at law.

57. As a direct, substantial, and proximate result of the Defendants' pattern and practice of acts which constitute intentional discrimination, Zinman has suffered and will continue to suffer emotional distress, mental anguish, humiliation, anxiety, loss of dignity, as well as loss of enjoyment of life.

COUNT I – INTENTIONAL DISCRIMINATION (TITLE II – CRA of 1964)

58. Zinman realleges paragraphs 1-57 as if fully set forth herein.

59. Title II of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000(a), provides as follows:

"All persons shall be entitled to the full and equal enjoyment of the goods services, facilities, privileges, advantages, and accommodations of any place of public accommodation ... without discrimination or segregation on the ground of race, color, religion, or national origin."

60. Subsection (b) of § 2000a of volume 42 of the United States Code provides in pertinent part as follows:

"Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter ... any ... establishment which provides lodging to transient guests ... any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises ... any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and ... any establishment ... which is physically located within the premises of any establishment otherwise covered by this subsection, or ... within the premises of which is physically located any such covered establishment, and ... which holds itself out as serving patrons of such covered establishment."

61. NSU's Don Taft University Center is a 366,000 square-foot facility featuring a 4,500-seat arena, state-of-the-art wellness and fitness center, performing and visual arts wing, food court, a Starbucks Coffee as well as the Flight Deck Pub, all of which are held open to the general public.

62. The following dining establishments are located on NSU's Fort Lauderdale/Davie Campus and are held open to the general public as well: 1) Einstein's Bros Bagels (Carl DeSantis Building); 2) HPD Café (Terry Administrative Building); 3) HPD

Koffee Kiosk (HPD Library/Laboratory Building); 4) Parker Kiosk (Parker Building); 5) Supreme Court Café (Leo Goodwin Sr. Hall); and 6) West End Ave Deli (Alvin Sherman Library).

63. NSU offers the following housing options to students: 1) Leo Goodwin Sr. Residence Hall; 2) The Commons Residence Hall; 3) Founders, Farquhar, and Vettel Apartments; 4) Cultural Living Center; 5) Mako Hall; 6) Rolling Hills Building A; 7) Rolling Hills Building C; and 8) University Pointe Apartments.

64. NSU constitutes a place of public accommodation and is therefore subject to the provisions of Title II of the Civil Rights Act of 1964 because it provides lodging to students, hosts numerous establishments which are principally engaged in selling food for consumption upon their Fort Lauderdale/Davie campus, and also has an on-campus sports arena in addition to a Performing and Visual Arts wing in the Don Taft University Center wherein various productions, performances, and art exhibits are presented to the general public.

65. Hard Rock Stadium constitutes a place of public accommodation and is therefore subject to the provisions of Title II of the Civil Rights Act of 1964 because it is a stadium which hosts numerous establishments principally engaged in selling food for consumption upon its premises.

66. Defendants' failure to accommodate individuals for whom compliance with mask mandates would violate their sincerely held religious beliefs is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a).

67. The discrimination against and disparate treatment of Zinman by NSU with respect to the denial of the full and equal enjoyment of its goods, services, facilities, privileges,

advantages, and accommodations is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a).

68. The imminent discrimination against and disparate treatment of Zinman by Hard Rock Stadium with respect to its intended denial of the full and equal enjoyment of its goods, services, facilities, privileges, advantages, and accommodations is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a).

69. Zinman is entitled, pursuant to 42 U.S.C. § 2000(a) *et seq.*, to obtain appropriate relief against Defendants, to-wit:

(a) A temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from denying the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations to individuals for whom compliance with mask mandates would violate their sincerely held religious beliefs;

(b) Monetary damages which compensate Zinman for the injury that he has sustained as the consequence of Defendants' pattern and practice of acts which constitute intentional discrimination on the basis of race and religion.

COUNT II – INTENTIONAL DISCRIMINATION (TITLE VI – CRA of 1964)

70. Zinman realleges paragraphs 1-57 as if fully set forth herein.

71. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000(d) provides as follows:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

72. The Civil Rights Restoration Act of 1987 (Pub. L. 100-259) amended Title VI of the Civil Rights Act of 1964 to say that "programs" or "programs and activities" means "all of the operations of" any department, agency, or instrumentality of a state or local government, any part of which is extended federal financial assistance. The amended definition of "programs and activities" also makes clear that Title VI does not only apply to activities of a recipient of federal assistance that are federally funded, but rather applies to "all the operations of" a recipient as well, even those that are not federally funded.

73. President Donald Trump recently issued an executive order entitled "Combating Anti-Semitism" (Executive Order 13899 of December 11, 2019) which in pertinent part provides as follows:

"While Title VI [of the Civil Rights Act of 1964] does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices. Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin ... It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in

anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI."

74. On April 22, 2020, NSU acknowledged signing and returning to the U.S. Department of Education the Certification and Agreement for Emergency Financial Aid Grants to Students in order to access funds under section 18004(a)(1) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Pursuant to that agreement, the University received $7,157,194, and further certified that it would "comply with all applicable assurances in Office of Management and Budget (OMB) Standard Forms 424B and D ... including the assurances relating to ... nondiscrimination."

75. OMB Standard Form 424B requires applicants to "comply with all Federal statutes relating to nondiscrimination," including but not limited to Title VI of the Civil Rights Act of 1964.

76. NSU singled out and intentionally discriminated against Zinman on the basis of his religion as well as the racial group to which he belongs by treating him less favorably than similarly situated students who were allowed to participate in the University's Criminal Justice Field Placement Clinic without being required to wear a facial covering.

77. NSU intends to discriminate against Zinman and those similarly situated to him on the basis of their religious beliefs as well as the racial group to which they belong by excluding them from participation in the University's upcoming commencement ceremonies hosted by Hard Rock Stadium unless they forego their sincerely held religious beliefs by symbolizing their faith in and subservience to false idols.

78. The discrimination against and disparate treatment of Zinman by NSU with respect to its failure to offer him the same opportunity that it offered to other similarly situated students to participate in the Criminal Justice Field Placement Clinic without being required to wear a facial covering was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(d).

79. The imminent discrimination against and disparate treatment of Zinman as well as those similarly situated to him by NSU with respect to its intent to exclude them from participation in the University's upcoming commencement ceremonies hosted by Hard Rock Stadium unless they forego their sincerely held religious beliefs is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(d).

80. Zinman is entitled, pursuant to 42 U.S.C. § 2000(d) *et seq.*, to obtain appropriate relief against Defendant NSU, to-wit:

    (a) Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining NSU, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to honor its Certification and Agreement for Emergency Financial Aid Grants to Students by complying with all applicable assurances in OMB Standard Forms 424B and D, including those relating to nondiscrimination;

    (b) Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining NSU from excluding Zinman, or those similarly situated to him, from participation in the University's upcoming commencement ceremonies on the basis of their sincerely held religious beliefs.

COUNT III – VIOLATION OF 42 U.S.C. § 1983

81. Zinman realleges paragraphs 1-57 as if fully set forth herein.

82. Section 1983 of the U.S. Code which has been entitled "Civil action or deprivation of rights" and codified as 42 U.S.C. § 1983, in pertinent part provides as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...."

83. Defendant County Administrator acted under color of law within the scope and meaning of Section 1983 by enacting Broward County Administrator's Emergency Order 20-21 pursuant to authority apparently delegated to her under the State Emergency Management Act (Fla. Stat. § 252.31 *et seq*).

84. Defendant County Administrator acted under color of law within the scope and meaning of Section 1983 by continuing to enforce Broward County Administrator's Emergency Order 20-21.

85. Defendant County Administrator's enactment and continued enforcement of Broward County Administrator's Emergency Order 20-21 has caused Zinman, as well as those similarly situated to him, to be deprived of various constitutionally and statutorily guaranteed rights in violation of the Constitution and laws of the United States.

86. As a direct, substantial, and proximate result of the intentional discrimination perpetuated by Defendants, Zinman has suffered and will continue to suffer emotional

distress, mental anguish, humiliation, anxiety, loss of dignity, as well as loss of enjoyment of life.

87. Zinman is entitled, pursuant to Section 1983 to obtain appropriate relief against Defendants, to-wit:

(a) A temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from enforcing Broward County Administrator's Emergency Order 20-21, at least while Zinman as well as those similarly situated to him are actively engaged in constitutionally protected activities within traditional public fora;

(b) Monetary damages which compensate Zinman for the injury that he has sustained as the consequence of Defendant County Administrator's enactment and continued enforcement of Broward County Administrator's Emergency Order 20-21.

COUNT VI – VIOLATION OF THE RLUIPA

88. Zinman realleges paragraphs 1-57 as if fully set forth herein.

89. Section 2 of the RLUIPA which has been entitled "Protection of land use as religious exercise" and codified as 42 U.S.C. § 2000cc, in pertinent part provides as follows:

"No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person ... unless the government demonstrates that imposition of the burden on that person ... is in furtherance of a compelling governmental interest ... and is the least restrictive means of furthering that compelling governmental interest."

90. Section 2 of the RLUIPA further provides as follows:

> "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less equal terms with a nonreligious assembly or institution."

91. Additionally, Section 2 of the RLUIPA also provides that:

> "No government shall impose or implement a land use regulation in a manner that discriminates against any assembly or institution on the basis of religion or religious denomination."

92. Section 4 of the RLUIPA which has been entitled "Judicial relief" and codified as 42 U.S.C. § 2000cc-2, in pertinent part provides as follows:

> "A person may assert a violation of this chapter as a claim ... in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim ... under this section shall be governed by the general rules of standing under article III of the Constitution."

93. Section 5 of the RLUIPA which has been entitled "Rules of construction" and codified as 42 U.S.C. § 2000cc-3, in pertinent part provides as follows:

> "This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."

94. Section 8 of the RLUIPA which has been entitled "Definitions" and codified as 42 U.S.C. § 2000cc-5, in pertinent part provides as follows:

> "The term 'claimant' means a person raising a claim ... under this chapter ... The term land use regulation' means a zoning or landmarking law, or the application

of such a law, that limits or restricts a claimant's use ... of land, if the claimant has an ... easement ... or other property interest in the regulated land ... The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief."

95. Defendants Broward County and Miami-Dade County constitute "government[s]" within the scope of § 8(4)(A)(i) of the RLUIPA.

96. Zinman qualifies as a "claimant" within the scope of § 8(1) of the RLUIPA.

97. Broward County Administrator's Emergency Order 20-21 and Miami-Dade County Emergency Order 20-20, as amended, constitute "land use regulation[s] ... under which a government makes or has in place formal or informal procedures or practices that permit the government to make individualized assessments of the proposed uses for the property involved," within the scope of § 2(a)(2)(c) of the RLUIPA, 42 U.S.C. § 2000cc(a)(2)(C).

98. Broward County Administrator's Emergency Order 20-21 and Miami-Dade County Emergency Order 20-20, as amended, constitute "zoning or landmarking law[s], or the application of such a law, that limits or restricts a claimant's use ... of land" within the scope of § 8(5) of the RLUIPA.

99. Zinman's intended use of traditional public fora affected by Broward County Administrator's Emergency Order 20-21 and Miami-Dade County Emergency Order 20-20, as amended, constitute a "religious exercise" within the scope of § 8(5) of the RLUIPA.

100. Broward County and Miami-Dade County's enactment of and continued enforcement of their respective mask mandates has violated and will continue to

violate Zinman's rights guaranteed to him by the Constitution and laws of the United States because it has imposed a land use regulation in a manner that:

(a) Treats Zinman as well as those similarly situated to him on less equal terms with nonreligious assemblies or institutions by excluding them from all retail, commercial, governmental, charitable, nonprofit, and other businesses or organizations, as well as any amenity including pools, beaches, and parks;

(b) Discriminates against Zinman as well as those similarly situated to him purely on the basis of their religion.

101. Defendants' enactment and continued enforcement of Broward County Administrator's Emergency Order 20-21 and Miami-Dade County Emergency Order 20-20, as amended, have violated and will continue to violate Zinman's rights under the Constitution and laws of the United States, as well as that of those similarly situated to him, because it has imposed a land use regulation in a manner that inflicts a substantial burden upon constitutionally and statutorily guaranteed religious liberty in the absence of any credible evidence that such burden is:

(a) In furtherance of a compelling governmental interest; and

(b) The least restrictive means of furthering a compelling governmental interest.

102. Zinman is entitled, pursuant to § 4(a) of the RLUIPA to obtain appropriate relief against Defendants Broward County and Miami-Dade County, to-wit:

(a) A temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from enforcing Broward County Administrator's Emergency Order 20-21 and

Miami-Dade County Emergency Order 20-20, as amended,, at least while Zinman as well as those similarly situated to him are actively engaged in constitutionally protected activities within traditional public fora;

(b) Money damages which compensate Zinman for the injury that he has sustained as the consequence of Defendants' enactment and continued enforcement Broward County Administrator's Emergency Order 20-21 and Miami-Dade County Emergency Order 20-20, as amended.

COUNT III – INJUNCTIVE RELIEF

103. Zinman realleges paragraphs 1-102 as if fully set forth herein.

104. As a direct and proximate result of Defendants' pattern and practice of acts which constitute an intentional and outrageous deprivation of statutorily guaranteed civil rights, Zinman has been, and will continue to be irreparably harmed.

105. As a direct and proximate result of Defendants' intent to require facial coverings in order to participate in the NSU's upcoming commencement ceremonies, Zinman as well as those similarly situated to him will be irreparably harmed.

106. As a direct and proximate result of NSU's intent to require vaccinations to "return to the full range of in-person activities on campus," Zinman as well as those similarly situated to him will be irreparably harmed.

107. The harm which has already been, and which will imminently be inflicted upon Zinman as well as those similarly situated to him is not fully compensable with monetary damages.

108. Zinman is likely to prevail on the merits of his claims.

109. The threat of continued forfeiture of Zinman's statutorily guaranteed civil rights, as well as that of those similarly situated to him, is both great and immediate.

110. The objective harm posed to Zinman as well as to those similarly situated to him from continued forfeiture of their statutorily guaranteed civil rights outweighs any subjectively perceived harm posed to either Defendants or the general public from unmasked individuals.

111. The public interest is benefited when civil rights are vindicated by the Courts.

112. Unless restrained and enjoined by this Court, Defendants will continue engaging in a pattern and practice of acts which constitute an intentional and outrageous deprivation of statutorily guaranteed civil rights.

113. Zinman is entitled to injunctive relief.

COUNT IV – DECLARATORY RELIEF

114. Zinman realleges paragraphs 1-102 as if fully set forth herein.

115. An actual controversy has arisen between Zinman and Defendants in that it is Zinman's position that, as a direct and proximate result of Defendants' pattern and practice of acts which constitute an intentional and outrageous deprivation of statutorily guaranteed civil rights, Zinman as well as those similarly situated to him have been irreparably harmed.

116. Defendants' actions are hostile to a reasonable interpretation of longstanding legal principals as they pertain to discrimination in places of public accommodation and federally funded programs.

117. Zinman desires a judicial determination holding that NSU's conduct constitutes an intentional deprivation of statutorily guaranteed rights in violation of 42 U.S.C. § 2000(a) as well as 42 U.S.C. § 2000(d).

118. Zinman desires a judicial determination holding that Defendants have no right to mandate that individuals for whom compliance with mask mandates conflicts with their sincerely held religious beliefs and/or practices comply with such mandates in order to receive the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations.

119. Zinman desires a judicial determination holding that Defendants have no right to mandate that individuals inoculate themselves with any vaccine, let alone those which have not received full-blown FDA approval, in order to receive the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations.

120. Zinman desires a judicial determination holding that the State Emergency Management Act (Fla. Stat. 252.31 *et seq*) is unconstitutional on the ground that it is violative of the nondelegation doctrine.

121. Zinman desires a judicial determination holding that Broward County Administrator's Emergency Order 20-21 and Miami-Dade County Emergency Order 20-20, as amended, are unconstitutional on the ground that they are violative of: 1) Freedom Speech and Expression; 2) the Free Exercise of Religion; 3) Freedom of Association and Assembly; 4) Due Process; 5) Equal Protection; 6) the Supremacy Clause; and 7) the constitutional separation of powers doctrine.

RELIEF REQUESTED

WHEREFORE, Zinman prays that this Court:

a. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from discriminating against individuals on the basis of their religion or the racial group to which they belong;

b. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices;

c. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining NSU, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to honor its Certification and Agreement for Emergency Financial Aid Grants to Students by complying with all applicable assurances in OMB Standard Forms 424B and D, including those relating to nondiscrimination;

d. Issue a Declaration holding that NSU's failure to accommodate individuals for whom compliance with mask mandates would violate

their sincerely held religious beliefs is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a);

e. Issue a Declaration holding that NSU's failure to offer Zinman the same opportunity that it offered to other similarly situated students to participate in the Criminal Justice Field Placement Clinic without being required to wear a facial covering was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(d);

f. Issue a Declaration holding that Defendants' intent to exclude Zinman as well as those similarly situated to him from participation in the University's upcoming commencement ceremonies hosted by Hard Rock Stadium unless they forego their sincerely held religious beliefs constitutes impermissible discrimination in violation of 42 U.S.C. § 2000(a) and 42 U.S.C. § 2000(d);

g. Issue a Declaration holding that Defendants have no right to mandate that individuals inoculate themselves with any vaccine, especially those which have not received full-blown FDA approval, in order to receive the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations;

h. Issue a Declaration holding that the State Emergency Management Act (Fla. Stat. 252.31 *et seq*) is unconstitutional;

i. Issue a Declaration holding that the Broward County Administrator's Emergency Order 20-21 and Miami-Dade County Emergency Order are unconstitutional;

j. Enter judgement in favor of Zinman awarding nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined at trial based upon Defendants' willful, wanton, and deliberate indifference to Zinman's constitutionally and statutorily guaranteed rights, as well as that of those similarly situated to him; and

k. Enter a judgement awarding Zinman the actual costs of filing and litigating this action as authorized by 29 U.S.C. § 2000e-5(k), 42 U.S.C. § 12205, as well as Rule 54 of the Federal Rules of Civil Procedure.

CERTIFICATION

Under Federal Rule of Civil Procedure 11, by signing below, I HEREBY CERTIFY to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Dated: April 6, 2021

Respectfully submitted,

Corey J. Zinman

Corey J. Zinman
E-Mail: cb2770@mynsu.nova.edu
175 Sedona Way,
Palm Beach Gardens, FL 33418
Telephone: (561) 566-9253
Pro Se Plaintiff

APPENDIX M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **0:21-cv-60723-RAR**

COREY J. ZINMAN,

Plaintiff,

v.

NOVA SOUTHEASTERN UNIVERSITY, Inc., **SOUTH FLORIDA STADIUM**, LLC, **BROWARD COUNTY**, a Florida County and Political Subdivision of the State of Florida, **BERTHA HENRY**, individually, **MIAMI-DADE COUNTY**, a Florida County and Political Subdivision of the State of Florida, **PALM BEACH COUNTY**, a Florida County and Political Subdivision of the State of Florida, **CAREY HAUGHWOUT**, in her official capacity as Public Defender of Palm Beach County,

Defendants.

_____/

PLAINTIFF'S SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff, COREY J. ZINMAN ("Zinman"), hereby complaining of Defendants, NOVA SOUTHEASTERN UNIVERSITY, Inc. ("NSU") SOUTH FLORIDA STADIUM, LLC ("Hard Rock Stadium"), BROWARD COUNTY, a Florida County and Political Subdivision of the State of Florida, BERTHA HENRY, individually, MIAMI-DADE COUNTY, a Florida County and Political Subdivision of the State of Florida, PALM BEACH COUNTY, a Florida County and Political Subdivision of the State of Florida, and CAREY HAUGHWOUT, individually and in her official capacity as Public Defender of Palm Beach County, states as follows:

INTRODUCTION

1. This is an action for **intentional** discrimination based on **race and religion** in violation of Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a, et seq.) as well as Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, et seq.).
2. Zinman seeks compensatory and punitive damages as well as declaratory and injunctive relief against Defendants for a pattern and practice of acts which constitute an **intentional** and outrageous deprivation of statutorily guaranteed civil rights.
3. Zinman seeks injunctive, declaratory, and compensatory relief against Defendants pursuant to Section 1983 of the United States Code (Pub. L. 96-170) for, under color of law, causing Zinman to be deprived of various rights guaranteed by the Constitution and laws of the United States.
4. Zinman seeks injunctive, declaratory, and compensatory relief against Defendants Broward County, Miami-Dade County, and Palm Beach County under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), as it appears in volume 42 of the United States Code, beginning at § 2000cc et seq.
5. Zinman further seeks to recover his costs associated with the filing and litigation of this action pursuant to 29 U.S.C. § 2000e-5(k), 42 U.S.C. § 12205, and Rule 54 of the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

6. This action arises under federal law. This court has jurisdiction of the federal claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
7. Jurisdiction to grant injunctive relief is conferred by 35 U.S.C. § 283 and Rule 65 of the Federal Rules of Civil Procedure

8. Jurisdiction to grant a declaratory judgement is conferred by 28 U.S.C. § 2201 and § 2202.

9. The claims asserted in this action arose within this district and the alleged statutory violations occurred in this district. Venue of this action is proper pursuant to 42 U.S.C. § 2000a– 6(a)(3) and 28 U.S.C. § 1391.

PARTIES

10. The Plaintiff, Zinman, is a Jewish man who was, at all times relevant to this complaint, a resident of the state of Florida, residing in Palm Beach County, and is otherwise *sui juris*.

11. Zinman is currently enrolled at Nova Southeastern University in Broward County.

12. At all times material hereto, Defendant NSU was and is a domestic corporation duly organized and existing under and by virtue of the laws of the State of Florida.

13. At all times material hereto, Defendant Hard Rock Stadium has operated the Hard Rock Stadium, located in Miami Gardens, Florida. It has negotiated and entered into an agreement with NSU to host the University's commencement ceremonies in May of 2021.

14. At all times material hereto, Defendant Broward County was and is a County and political subdivision of the State of Florida, duly organized and existing under Florida law.

15. At all times material hereto, Defendant Bertha Henry was and is the County Administrator of Broward County. As County Administrator, she serves as Chief Executive Officer of Broward County and directs the functions of County Government under the auspices of the Board of County Commissioners. She was

appointed to this office in October of 2008. Defendant Henry's actions complained of herein were taken under color of state law and were related to the performance of the duties of her office. She is sued in her individual capacity.

16. At all times material hereto, Defendant Miami-Dade County was and is a County and political subdivision of the State of Florida, duly organized and existing under Florida law.

17. At all times material hereto, Defendant Palm Beach County was and is a County and political subdivision of the State of Florida, duly organized and existing under Florida law.

18. At all times material hereto, Defendant Carey Haughwout was and is the Public Defender of Palm Beach County. She was appointed to this office in January of 2001. Defendant Haughwout's actions complained of herein were taken under color of state law and were related to the performance of the duties of her office. She is sued in her individual and official capacities.

FACTS

19. Zinman enrolled at NSU Shepard Broad College of Law in August of 2018.

20. NSU's *Return of the Shark's: Student Guidelines* mandate that all faculty, staff, students, and visitors adhere to all NSU health and safety policies and guidelines as a condition to access, use, or visit any NSU location, facility, grounds or public spaces.

21. NSU's *Return of the Shark's: Student Guidelines* further provide that "based on recommendations from the CDC and local ordinances, all NSU individuals—students, faculty, staff, visitors, and clinic patients—are required to wear a face covering while on campus or using any NSU facilities or grounds."

22. On or about December 25, 2020, Zinman requested a religious accommodation from NSU so that he could participate in the University's Criminal Justice Field Placement Clinic without being required to wear a facial covering.

23. On or about December 30, 2020, Zinman received notice from NSU College of Law Professor Mark Dobson that the University had decided not to extend him an accommodation to participate in the University's Criminal Justice Field Placement Clinic without being required to wear a facial covering.

24. On December 30, 2020, Zinman received an e-mail from NSU Assistant Dean Nancy Sanguigni stating that some of the offices participating in the University's Criminal Justice Field Placement Clinic would be operating remotely and therefore some internships would be completed virtually.

25. On December 30, 2020, Zinman renewed his request for a religious accommodation which would allow him to participate in the University's Criminal Justice Field Placement Clinic in a remote capacity.

26. On December 31, 2020, Zinman received a letter from NSU Shepard Broad College of Law Dean Beto Juárez Jr. stating that participation in the Criminal Justice Field Placement Clinic was optional but that the College of Law was willing to provide him with "alternative live-client experiential opportunities and/or coursework." Further, Dean Juárez Jr. advised Zinman that failure "to register for an alternative clinic and/or coursework by the end of the add/drop period on January 10th, or [failure] to successfully complete the required credit hours working at the Palm Beach County Public Defender's Office ... will delay your graduation from the College of Law."

27. On January 1, 2021, Zinman responded to Dean Juárez Jr. requesting to be "afforded the ... same opportunity to participate in and earn credit for the criminal justice clinic as is being offered to all other students" without being forced to contravene his religious beliefs.

28. On January 4, 2021, Zinman sent a letter to Ms. Schnelle Tonge of the Palm Beach County Public Defender's Office requesting an accommodation which would allow him to participate in NSU's criminal justice clinic without being required to contravene his sincerely held religious beliefs.

29. On January 4, 2021, Dean Juárez Jr. sent a memo to the entire NSU Law community stating that "I know we are all hopeful that the arrival of vaccines in the coming months will mean that we can return to our pre-pandemic lives, including a return to full access to the Leo Goodwin Sr. Building. Returning to normal operations, however, is still at least a few months away ... I know that wearing a mask can be uncomfortable, and I assure you that I will celebrate when we no longer have to wear masks to protect each other. But, just as you will be required to disclose harmful evidence pursuant to a lawful discovery request, you are now required to wear a mask and socially distance when you are on the NSU campus."

30. On January 5, 2021, Zinman received an email from Professor Mark Dobson stating that: "I have heard from Ms. Tonge at the Palm Beach PD's office about having you either exempted from the office mask policy or alternatively, be able to do the Clinic remotely. The office declined either alternative. As to a mask exemption, the office noted it has strict rules on mask wearing and also is bound by the Palm Beach mask mandate. As to a remote clinic, the office is just not logistically equipped to do that."

31. In an effort to avoid being forced to sacrifice his religious beliefs in order to timely graduate, Zinman withdrew from the University's Criminal Justice Field Placement Clinic and enrolled in alternative courses.

32. On January 22, 2021, NSU President and CEO George L. Hanbury II sent a memo to the entire NSU community stating that the University was "planning to hold commencement ceremonies with masks, physical distancing, and completely outside with sanitized seating and facilities ... To enable us to maintain appropriate physical distancing ... we are making arrangements to hold our series of graduating ceremonies where the Miami Dolphins play—at the Hard Rock Stadium—this May."

33. On January 24, 2021, Zinman sent a letter to Dean Juárez Jr. objecting to his optimism "that the arrival of vaccines would somehow be a catalyst for a return to life as we once knew it," and further requesting that the University amend its campus guidelines to "accommodate individuals for whom compliance with mandatory mask wearing policies conflicts with their sincerely held religious beliefs and/or practices."

34. On January 26, 2021, Zinman received a letter from Assistant Dean for Student Development Michelle Manley stating that: "NSU is within its right to mandate that students, staff, and faculty as well as community members wear a mask while on University controlled property. NSU's mask policy does not infringe upon an individual's ability to exercise and/or adhere to religious practices/doctrines. The current BlendFlex model utilized by the NSU College of Law offers face-to-face, online, and hybrid student experiences running simultaneously. Therefore, law students who may be uncomfortable for any reason, including attending class on campus and/or adhering to the health and safety protocols and procedures on campus can fully

participate in their academic pursuit without stepping on the grounds of NSU campuses."

35. On January 27, 2021, Zinman sent a letter in response to Dean Manley, objecting to her assertion that "NSU is within its right to mandate that students, staff, and faculty as well as community members wear a mask while on University controlled property," and requesting that she cite to the specific authority upon which the University based its determination.

36. On January 29, 2021, Zinman received an e-mail from Dean Manley stating that "the University's position remains unchanged" and further that his "request for a religious accommodation relative to the NSU mask mandate has been denied."

37. On February 16, 2021, NSU President and CEO George L. Hanbury II sent a memo to the entire NSU community stating that the University "will be seating graduates on the playing field at a safe social distance of six feet ... Instead of walking across the stage, [graduates] will stand individually when [their] name is called."

38. On March 22, 2021, Dean Juárez Jr. sent an e-mail to the entire NSU Law community stating that: "The sooner we are all vaccinated the sooner we can return to the full range of in-person activities on campus – and the sooner we will all be protected from this virus."

39. On April 2, 2021, Zinman initiated this action against Defendants Nova Southeastern University ("NSU") and South Florida Stadium ("SFS") by filing the Complaint.[1]

40. On April 6, 2021, Zinman filed an Amended Complaint joining Defendants Bertha Henry, Broward County, and Miami-Dade County as parties to this matter.[2]

---

1. *See* Complaint [Doc. 1].
2. *See* Amended Complaint [Doc. 5].

41. On April 6, 2021, Zinman also filed a Motion for a Temporary Restraining Order and Preliminary Injunctive Relief seeking to enjoin Defendants as well as their officers, agents, employees, representatives, and all persons acting in concert, or participating with them: (i) to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices (ii) from excluding Zinman from participation in NSU's upcoming commencement ceremonies at Hard Rock Stadium in May of 2021; and (iii) otherwise denying Zinman or those similarly situated to him the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations.[3]

42. On April 26, 2021, Defendant NSU filed its Response and Opposition to Zinman's Motion for a Temporary Restraining Order and Preliminary Injunctive Relief.[4] Defendant NSU argued that Zinman is unlikely to succeed on the merits of his claims on the ground that: 1) the Commencement Defendants allegedly have an implied contractual right to impose mask mandates; 2) Title II allegedly does not require the Commencement Defendants to accommodate Zinman's religious beliefs; 3) Defendant NSU is allegedly not a place of public accommodation; 4) Zinman allegedly failed to comply with Title II's notice requirement; and 5) Title IV allegedly does not cover religious discrimination.[5]

43. On May 3, 2021, Broward County, Bertha Henry, and Miami-Dade County (collectively, the "Government Defendants") filed their Joint Response [in

3. *See* Motion for a TRO [Doc. 6]; see also Zinman's Opening Brief [Doc. 7].
4. *See* NSU's Response and Opposition [Doc. 18].
5. *See Id.*

opposition] to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunctive Relief.[6]

GENERAL ALLEGATIONS

44. Jewish people are an ethnoreligious group as well as a nation originating from the Israelites and Hebrews of historical Israel and Judah. Jewish ethnicity, nationhood, and religion are inextricably interrelated, as Judaism is the ethnic religion of the Jewish nation.

45. According to the Hebrew Bible, Israelites and descendants thereof are required to worship Yahweh exclusively.

46. Judaism unequivocally prohibits any and all forms of idolatry.

47. Unquestioningly obeying the affirmative commands of any other being but the Almighty Himself constitutes idolatry.

48. It is a violation of Judaic law and considered a great insult to God to worship any of His creations, including any man or group of men.

49. Jews are required to sacrifice their own lives in order to avoid desecrating God's name through the public transgression of His commandments.

50. Mandating the wearing of facial coverings runs counter to the overwhelming weight of scientific authority with respect to viral pandemics. Research conducted by National Institute of Allergy and Infectious Diseases ("NIAID") author and pathologist Jeffery Taubenberger, M.D., Ph.D., suggests that the vast majority of deaths during the 1918-1919 influenza pandemic were not caused directly by the then-unidentified influenza virus, but rather resulted from severe secondary

6. *See* Government Defendants' Joint Response [Doc. 22].

pneumonia caused by various bacteria.[7] In the words of former NIAID Director Dr. Anthony S. Fauci, "the weight of evidence we examined from both historical and modern analyses of the 1918 influenza pandemic favors a scenario in which viral damage followed by bacterial pneumonia led to the vast majority of deaths."[8]

51. Facial coverings serve as a highly effective medium for bacterial pathogens which tend to thrive in moist mucus-soaked environments, such as the inside of a facemask.[9]

52. Viruses can alter a host's susceptibility to bacterial infections by altering both environmental conditions in the lung which favor bacterial replication as well as by suppressing the host's defense mechanisms which prevent clearance of the bacteria.[10]

53. Inhalation of bacteria directly into the lungs of a patient incubating COVID-19 risks synergistic interaction which can cause a rapid deterioration in the patient's condition, commonly resulting in death.[11] Mandating the wearing of facial coverings therefore fails to promote the health, safety, or welfare of the community and actually tends to put the public at greater risk than it otherwise would have faced due to the outbreak of the novel coronavirus SARS-CoV-2.

54. Religious liberty is enshrined in the text of the constitutions of the United States and the State of Florida.

---

7. *See* David M. Morens, Jeffery K. Taubenberger, Anthony S. Fauci, *Predominant Role of Bacterial Pneumonia as a Cause of Death in Pandemic Influenza: Implications for Pandemic Influenza Preparedness*, J. INFECT. DIS., Vol. 198(7): 962-970 (Oct. 2008).
8. *See* Press Release, NATIONAL INSTITUTE OF HEALTH [NIH], *Bacterial Pneumonia Caused Most Deaths in 1918 Influenza Pandemic* (August 19, 2008), https://www.nih.gov/news-events/news-releases/bacterial-pneumonia-caused-most-deaths-1918-influenza-pandemic.
9. *See* Pipat Luksamijarulkul, Natkitta Aiempradit, Pisit Vatanasomboon, *Microbial Contamination on Used Surgical Masks among Hospital Personnel and Microbial Air Quality in their Working Wards: A Hospital in Bangkok*, Oman Med. J. Vol. 29(5) (2014).
10. *See* Babiuk LA, Lawman MJ, Ohmann HB, *Viral-bacterial synergistic interaction in respiratory disease*, ADV. VIRUS RES., 35:219-49 (1988).
11. *See Id.*

55. As James Madison explained in his *Memorial and Remonstrance Against Religious Assessments*, Religious Liberty "is in its nature an unalienable right" because the duty owed to one's Creator "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society."[12] Accordingly, religious liberty is not merely a right to personal religious beliefs; it also encompasses religious observance and practice.

56. At minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs.[13] However, the Free Exercise Clause extends beyond facial discrimination and "forbids subtle departures from neutrality" as well as "covert suppression of particular religious beliefs."[14] Accordingly, laws imposing incidental burdens upon the free exercise of religion which are either not neutral or not generally applicable must be justified by a compelling governmental interest and must also be narrowly tailored to advance that interest.[15]

57. Requiring individuals to wear a facial covering to engage in constitutionally protected religious activities constitutes a substantial burden upon fundamental First Amendment freedoms because such a requirement effectively forces individuals to choose between compliance with the fundamental tenets of their religion, only to face potential legal repercussions, or compliance with the affirmative commands of so-called "experts" who claim to be able to save lives if people simply obey their commands without question—otherwise known as false idols. Accordingly, Broward

---

12. *See* James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785).
13. *See Bowen v. Roy*, 476 U.S. 693, 703 (1986) (recognizing that it was "historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause").
14. *See Gillette v. United States*, 401 U.S. 437, 452 (1971); *see also Bowen*, 476 U.S., at 703.
15. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993) ("Neutrality and general applicability are interrelated, and ... failure to satisfy one requirement is a likely indication that the other has not been satisfied").

County Administrator's Emergency Order 20-21, Miami-Dade County Emergency Order 20-20, and Palm Beach County Order No. 2020-012, as amended, are unconstitutionally overbroad because they impose impermissible burdens upon fundamental First Amendment freedoms by granting unbridled discretion to their respective officers, agents, employees, representatives, and all persons acting in concert, or participating with them to determine whether, when, and how to permit religious activities.[16]

58. The scope of the protection accorded to freedom of expression under Article I, § 4 of the State of Florida Constitution is the exact same as is mandated pursuant to the First Amendment to the United States Constitution.[17] Accordingly, content-based regulations are presumptively invalid under both federal and Florida law.[18]

59. Viewpoint discrimination is an egregious form of content discrimination which governments must abstain from.[19] Accordingly, Courts have long held that the "First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others."[20]

60. Due to the fact that the rationale underlying the prohibition of content discrimination is that it "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace," the First Amendment prohibition against content/viewpoint discrimination applies differently in the context of proscribable

16. *See Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972) (recognizing that a facially neutral regulation may nonetheless offend the constitutional requirement for governmental neutrality in its application if it unduly burdens the free exercise of religion").
17. *See Florida Canners Association v. State Department of Citrus*, 371 So.2d 503 (Fla. 2d DCA 1979); *see also Dep't of Educ. v. Lewis*, 416 So. 2d 455, 461 (Fla. 1982).
18. *See Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991).
19. *See Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017).
20. *See Id. (quoting Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 394 (1993)).

speech as opposed to the area of fully protected speech.[21] Accordingly, the extent to which the Government can regulate expressive activity depends upon the nature of the relevant forum.[22]

61. Given that a principal purpose of public fora is the free exchange of ideas, speakers can be excluded from such a forum only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.[23]

62. Within the context of the First Amendment, "the overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process."[24] Accordingly, the overbreadth doctrine permits individuals whose speech or conduct has been prohibited to challenge an enactment "because it also threatens others not before the court—those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid."[25]

63. Requiring individuals to wear a facial covering to engage in constitutionally protected expressive activities constitutes a substantial restraint upon First Amendment freedoms because such a requirement effectively renders any form of speech or

---

21. *See R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 387–88 (1992) (*quoting Simon & Schuster*, 502 U.S., at 116); *see also Leathers v. Medlock*, 499 U.S. 439, 448 (1991).
22. *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985).
23. *See* Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45-46 (1983); *see also Hague v. CIO*, 307 U.S. 496, 515 (1939).
24. *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002); *see also Firestone v. News–Press Publ'g Co.*, 538 So.2d 457, 459 (Fla. 1989) (recognizing that restrictions upon First Amendment freedoms must be supported by a compelling governmental interest and must be narrowly drawn to insure that there is no more infringement than absolutely necessary).
25. *See Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985); *see also Wyche v. State*, 619 So. 2d 231, 235 (Fla. 1993).

conduct which is critical toward mask mandates utterly meaningless. Accordingly, Broward County Administrator's Emergency Order 20-21, Miami-Dade County Emergency Order 20-20, and Palm Beach County Order No. 2020-012, as amended, are unconstitutionally overbroad because they impose impermissible burdens upon fundamental First Amendment freedoms by granting unbridled discretion to the respective County's officers, agents, employees, representatives, and all persons acting in concert, or participating with them to determine whether, when, and how to permit expressive activities.[26].

64. The Supreme Court's compelled-speech cases establish the principle that governments may not compel speakers to adopt their message.[27]

65. Just as wearing a facial covering is a symbolic form of protected expression, not wearing a facial covering is a form of protected symbolic expression as well.[28]

66. Similar to a parade organizer's choice of parade contingents, Zinman's decision to refuse to wear mask in defiance of CDC guidance and local emergency orders is inherently expressive. Accordingly, Zinman's conduct manifests the expressive quality of a parade, a newsletter, or the editorial page of a newspaper; being forced to

---

26. *See City of Daytona Beach v. Del Percio*, 476 So.2d 197, 202 (Fla.1985) (recognizing that the logical judicial assumption underlying the overbreadth doctrine is that an overbroad statute will have a chilling effect on constitutionally protected conduct).

27. *See Hurley v. Irish–American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 566 (1995) (state law cannot require a parade to include a group whose message the parade's organizer does not wish to send); *see also Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 20–21 (1986) (plurality opinion); *see also id.* at 25 (Marshall, J., concurring in judgment) (state agency cannot require a utility company to include a third-party newsletter in its billing envelope); *see also Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (right-of-reply statute violates editors' right to determine the content of their newspapers).

28. *See United States v. O'Brien*, 391 U.S. 367, 376–77 (1968); *see also NAACP v. Button*, 371 U.S. 415, 433 (1963) (recognizing that because First Amendment freedoms need "breathing space to survive, government may regulate in the area only with narrow specificity"); *see also Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 69 (1981) (recognizing that laws restricting freedom of expression incidentally still must be narrowly drawn to avoid unnecessary intrusion).

accommodate the government's message under penalty of law is therefore compelled speech.

67. The First Amendment to the United States Constitution, as applied to the States via the Fourteenth Amendment, secures the right of the people peaceably to peaceably assemble, and to petition the Government for a redress of grievances.[29] Additionally, Courts recognize the right of the people to freely associate as flowing from the protections of the First Amendment as well.[30] Accordingly, when laws have a substantial impact upon freedom of association or assembly, they must be supported by a compelling governmental interest and must also be narrowly drawn to involve no more infringement than is absolutely necessary.[31]

68. Mask mandates have a substantial impact upon the rights to freedom of association and peaceful assembly given that such mandates effectively prohibit individuals from gathering together unmasked. However, although protecting the public health is undoubtedly a compelling interest, Defendants cannot meet their burden to show that mask mandates serve to promote the public health at all, let alone that they're somehow narrowly tailored toward that end.

69. Government actions which infringe upon fundamental substantive due process rights are subject to strict scrutiny and therefore must be justified by a compelling government interest and must be narrowly tailored to achieve that interest.[32] To determine whether a substantive due process right is fundamental, courts inquire

---

29. *See De Jonge v. State of Oregon*, 299 U.S. 353, 365 (1937) ("peaceable assembly for lawful discussion cannot be made a crime"); *see* also *Thomas v. Collins*, 323 U.S. 516, 539 (1945).
30. *See Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).
31. *See First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *see also Buckley v. Valeo*, 424 U.S. 1 (1976); *see also Winn-Dixie Stores, Inc. v. State*, 408 So. 2d 211, 212 (Fla. 1981).
32. *See Reno v. Flores*, 507 U.S. 292, 302 (1993).

whether the right is deeply rooted in the Nation's history and traditions, and whether it is implicit in the concept of ordered liberty.[33]

70. The protections of substantive due process have been accorded to matters relating to bodily integrity and bodily intrusions throughout our Nation's history, and by the Supreme Court of the United States specifically since 1891.[34]

71. Requiring individuals to wear facial coverings constitutes a compulsory bodily intrusion.

72. If competent individuals have a right to refuse life-saving medical treatment, then they must also have a right to refuse nonlife-saving or potentially life-threatening medical treatment as well.[35] Accordingly, mask mandates are unconstitutional on the ground that they constitute impermissible compulsory bodily intrusions for which no overriding justification exists and also deprive individuals of their rights to bodily integrity and self-determination without due process of law.

73. The fundamental right to freedom of movement is well-established under both federal and Florida law. Accordingly, Courts have consistently struck down regulations

---

33. *See Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *see also Palko v. Connecticut*, 302 U.S. 319, 325 (1937); *see also Rochin v. California*, 342 U.S. 165 (1952); *see also Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

34. *See Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891) (recognizing that "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law," and further that the right "to be let alone" was not merely a liberty interest to be balanced against governmental interests but rather a "complete immunity"); *see also Washington v. Harper*, 494 U.S. 210, 214-22 (1990) (recognizing that compulsory bodily intrusions unto "a nonconsenting person's body represents a substantial interference with that person's liberty," and further that individuals possess "a significant liberty interest in avoiding the unwanted administration of [compulsory bodily intrusions] under the Due Process Clause of the Fourteenth Amendment"); *see also Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 287 (1990) (O'Connor, J., concurring) (recognizing that "because our notions of liberty are inextricably entwined with our idea of physical freedom and self-determination, the Court has often deemed state incursions into the body repugnant to the interests protected by the Due Process Clause"); *see also Riggins v. Nevada*, 504 U.S. 127, 133-36 (1992) (recognizing an individual's right to refuse compulsory medical treatment absent a finding of overriding justification).

35. *See Cruzan*, 497 U.S. 261; *see also Riggins*, 504 U.S. 127; *see also Glucksberg*, 521 U.S. at 725.

attempting to impose free-floating buffer zones around people on Substantive Due Process grounds.[36]

74. Requiring that all persons wear masks where "social distancing" of at least 6-feet is not possible constitutes an impermissible free-floating buffer zone and is therefore a substantial burden upon the fundamental right to freedom of movement.

75. The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws."[37] Similarly, Article 1, § 2 of the Florida Constitution declares that all "natural persons ... are equal before the law." Thus, under both federal and Florida law, similarly situated individuals must be treated alike.[38]

76. Hard Rock Stadium is home to the Miami Dolphins. Football players are just as capable of contracting and transmitting viruses, including SARS-CoV-2, as any other individual. Hard Rock Stadium was therefore without adequate justification for permitting the Dolphins to play football unmasked while simultaneously demanding that Zinman wear a mask in order to attend his graduation ceremony.

77. While the Legislature is permitted to transfer subordinate functions "to permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions," under Article II, § 3 of the Florida

---

36. *See Schenck v. Pro-Choice Network Of W. New York*, 519 U.S. 357, 377 (1997) ("The floating buffer zones prevent defendants ... from communicating a message from a normal conversational distance or handing leaflets to people ... who are walking on the public sidewalks"); *see also Wyche*, 619 So. 2d at 235 ("Hailing a cab or a friend, chatting on a public street, and simply strolling aimlessly are time-honored pastimes in our society and are clearly protected under Florida as well as federal law"); *see also State v. J.P.*, 907 So. 2d 1101, 1113-1116 (Fla. 2004) (recognizing that **the fundamental right** to freedom of movement may only be governmentally burdened if the government has a compelling interest and the regulation is narrowly tailored to achieve that interest by the least intrusive means available) (emphasis added).

37. *See Plyler v. Doe*, 457 U.S. 202, 216 (1982); *see also City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

38. *See Cleburne Living Ctr.*, 473 U.S. at 439.

Constitution, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law."[39] This prohibition, known as the nondelegation doctrine, requires that "fundamental and primary policy decisions ... be made by members of the legislature who are elected to perform those tasks."[40]

78. Sections 252.31-252.60 of the Florida Statutes collectively comprise the State Emergency Management Act ("SEMA").[41] Section 252.311 of the SEMA which has been entitled "Legislative intent," provides in pertinent part as follows: "The Legislature finds and declares that the state is vulnerable to a wide range of emergencies, including natural, technological, and manmade disasters, all of which threaten the life health and safety of its people."[42] In order to reduce the vulnerability of the State of Florida to such emergencies, the Legislature apparently found it incumbent upon themselves "... to confer upon the Governor, the Division of Emergency Management, and the governing body of each political subdivision of the state ..." sweeping emergency powers.[43] Such emergency powers authorize the Governor to, in the event of an emergency beyond local control, "assume direct operational control over all or any part of the emergency management functions."[44] Further, the SEMA empowers political subdivisions "... to ... to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to ... performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community."[45] Moreover,

---

39. *See Bush v. Schiavo*, 885 So. 2d 321, 332 (Fla. 2004) (citations omitted).
40. *See Id.*
41. *See* §§ 252.31-252.60, Fla. Stat.
42. *See* § 252.311, Fla. Stat.
43. *See* § 252.32, Fla. Stat.
44. *See* § 252.36, Fla. Stat.
45. *See* § 252.38, Fla. Stat.

any person who violates any provision of the SEMA or any rule or order made pursuant thereto is guilty of a misdemeanor of the second degree.[46]

79. The SEMA is unconstitutionally vague because it impermissibly delegates extensive legislative authority to non-elected public officials in the absence of minimal standards or guidelines ascertainable by reference to the enactment.[47] Specifically, section 252.38 of the SEMA is unconstitutional on its face because it grants unbridled discretion to political subdivisions to waive "procedures and formalities" required of them by law and otherwise fails to define the scope of the power delegated so that political subdivisions would be precluded from acting through whim, showing favoritism, or exercising unbridled executive discretion.[48] Thus, section 252.38 of the SEMA violates the non-delegation doctrine because it fails to announce any semblance of adequate standards which would guide political subdivisions in providing "for the health and safety of persons and property," or "taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community," without subjecting the people of the State of Florida to unconscionable totalitarian authority.[49]

80. Section 1983 (Pub. L. 96-170) which has been entitled "Civil action for deprivation of rights" and which appears in volume 42 of the United States Code, provides as follows:

---

46. *See* § 252.50, Fla. Stat.
47. *See Lewis v. Bank of Pasco County,* 346 So.2d 53, 55–56 (Fla.1976); *see also Bush*, 885 So. 2d at 332 (recognizing that statutes delegating legislative power "must clearly announce adequate standards to guide ... in the execution of the powers delegated ... [and] must so clearly define the power delegated that the executive is precluded from acting through whim, showing favoritism, or exercising unbridled discretion").
48. *See* § 252.38, Fla. Stat.
49. *See Fabick v. Evers*, 2020AP1718-OA, 2021 WI 28 (Mar. 31, 2021) ("our constitutional structure does not contemplate unilateral rule by executive decree. It consists of policy choices enacted into law by the legislature and carried out by the executive branch").

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

81. A State can be held responsible for a private decision if it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.[50]

82. A private party can be viewed as a "state actor" for Section 1983 purposes if one of the following three tests is met: "(1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ('State compulsion test'); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ('public function test'); or (3) the State had so far insinuated itself into a position of interdependence with the [private parties] that it was a joint participant in the enterprise ('nexus/joint action test')."[51]

83. The actions of Defendants violate numerous constitutional and statutory rights guaranteed under the constitution and laws of the United States, including but not limited to the right to: 1) free speech; 2) free expression; 3) free association; 4) freedom of assembly; 5) free exercise of religion; 6) to be free from compulsory bodily intrusions; 6) freedom of travel; and 7) equal protection of the laws.

---

50. *See Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

51. *See Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992); *see also Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001) (citations and internal quotation marks omitted).

84. The future chilling of Zinman's rights as well as that of those similarly situated to him is an absolute certainty unless and until this Court grants appropriate injunctive and declaratory relief.

85. The violations of Zinman's civil rights alleged herein have caused and will continue to cause Zinman to suffer extreme hardship, as well as actual and impending irreparable injury for which there is no adequate remedy at law.

86. As a direct, substantial, and proximate result of Defendants' intentional discrimination, Zinman suffered and will continue to suffer emotional distress, mental anguish, humiliation, anxiety, loss of dignity, as well as loss of enjoyment of life.

87. As a direct and proximate result of NSU's intent to require vaccinations to "return to the full range of in-person activities on campus," Zinman as well as those similarly situated to him will be irreparably harmed.

88. The harm which has already been, and which will imminently be inflicted upon Zinman as well as those similarly situated to him is not fully compensable with monetary damages.

89. The threat of continued forfeiture of Zinman's statutorily guaranteed civil rights, as well as that of those similarly situated to him, is both great and immediate.

90. The objective harm posed to Zinman as well as to those similarly situated to him from continued forfeiture of their statutorily guaranteed civil rights outweighs any subjectively perceived harm posed to either Defendants or the general public from unmasked individuals.

91. The public interest is benefited when constitutional and civil rights are vindicated by the Courts.

92. Unless restrained and enjoined by this Court, Defendants will continue engaging in a pattern and practice of acts which constitute an intentional and outrageous deprivation of constitutionally and statutorily guaranteed rights.

COUNT I – INTENTIONAL DISCRIMINATION (TITLE II – CRA of 1964)
(Defendants NSU and Hard Rock Stadium)

93. Zinman realleges paragraphs 1-2, 6-13, 19-53, and 82-92 as if fully set forth herein.

94. Title II of the CRA of 1964 (Pub. L. 88-352), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000(a), provides as follows:

> All persons shall be entitled to the full and equal enjoyment of the goods services, facilities, privileges, advantages, and accommodations of any place of public accommodation ... without discrimination or segregation on the ground of race, color, religion, or national origin.

95. Subsection (b) of § 2000a of volume 42 of the United States Code provides in pertinent part as follows:

> Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter ... **any ... establishment which provides lodging to transient guests ... any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises** ... any motion picture house, theater, concert hall, sports arena, **stadium or other place of exhibition or entertainment**; and ... any establishment ... which is physically located within the premises of any establishment otherwise covered by this subsection, or ... within the premises of which is physically located any such covered establishment, and ... which holds itself out as serving patrons of such covered establishment.

96. NSU's Don Taft University Center is a 366,000 square-foot facility featuring a 4,500-seat arena, state-of-the-art wellness and fitness center, performing and visual arts wing, food court, a Starbucks Coffee as well as the Flight Deck Pub, all of which are held open to the general public.

97. The following dining establishments are located on NSU's Fort Lauderdale/Davie Campus and are held open to the general public as well: 1) Einstein's Bros Bagels (Carl DeSantis Building); 2) HPD Café (Terry Administrative Building); 3) HPD Koffee Kiosk (HPD Library/Laboratory Building); 4) Parker Kiosk (Parker Building); 5) Supreme Court Café (Leo Goodwin Sr. Hall); and 6) West End Ave Deli (Alivin Sherman Library).

98. NSU offers the following housing options to students: 1) Leo Goodwin Sr. Residence Hall; 2) The Commons Residence Hall; 3) Founders, Farquhar, and Vettel Apartments; 4) Cultural Living Center; 5) Mako Hall; 6) Rolling Hills Building A; 7) Rolling Hills Building C; and 8) University Pointe Apartments.

99. NSU constitutes a place of public accommodation and is therefore subject to the provisions of Title II of the Civil Rights Act of 1964 because it provides lodging to students, hosts numerous establishments which are principally engaged in selling food for consumption upon their Fort Lauderdale/Davie campus, and also has an on-campus sports arena in addition to a Performing and Visual Arts wing in the Don Taft University Center wherein various productions, performances, and art exhibits are presented to the general public.

100. Hard Rock Stadium constitutes a place of public accommodation and is therefore subject to the provisions of Title II of the Civil Rights Act of 1964 because it is a stadium which hosts numerous establishments principally engaged in selling food for consumption upon its premises.

101. Defendant NSU **intentionally** discriminated against Zinman **on the basis of his religion as well as the racial group to which he belongs** by arbitrarily determining

that their "mask policy does not infringe upon an individual's ability to exercise and/or adhere to religious practices/doctrines," and further that it was within "its right to mandate that students, staff, and faculty as well as community members wear a mask while on University controlled property."

102. Defendants NSU and Hard Rock Stadium **intentionally** discriminated against Zinman **on the basis of his religion as well as the racial group to which he belongs** by denying him the full and equal enjoyment of its goods, services, facilities, privileges, advantages, and accommodations unless he agreed to sacrifice his sincerely held religious beliefs by symbolizing his faith in and subservience to so-called "experts" who claim to be able to save lives if people simply obey their commands without question—otherwise known as false idols.

103. Defendants NSU and Hard Rock Stadium **intentionally** discriminated against Zinman **on the basis of his religion as well as the racial group to which he belongs** by selectively enforcing its mask policy against him while failing to do so for countless other similarly situated individuals.

104. Defendant Hard Rock Stadium singled out and **intentionally** discriminated against Zinman **on the basis of his religion as well as the racial group to which he belongs** by treating him less favorably than similarly situated students who were allowed to participate in NSU's commencement ceremonies at Hard Rock Stadium without being required to wear a facial covering.

105. NSU intends to discriminate against Zinman as well as those similarly situated to him **on the basis of their religion and the racial group to which they belong** by

requiring that they be vaccinated in order to "return to the full range of in-person activities on campus."

106. Defendants' failure to accommodate individuals for whom compliance with mask mandates would violate their sincerely held religious beliefs is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a).

107. The discrimination against and disparate treatment of Zinman by Defendants with respect to the denial of the full and equal enjoyment of its goods, services, facilities, privileges, advantages, and accommodations is an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a).

108. Zinman complied with Title II's notice requirement by filing an administrative complaint with the Florida Commission on Human Rights ("FCHR") on December 16, 2020.

WHEREFORE, Zinman prays that this Court:

a. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from discriminating against individuals on the basis of their religion or the racial group to which they belong;

b. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices;

c. Issue a Declaration holding that NSU's failure to accommodate individuals for whom compliance with mask mandates would violate their sincerely held religious beliefs was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a);

d. Issue a Declaration holding that Defendant NSU and Hard Rock Stadium's decision to exclude Zinman as well as those similarly situated

to him from participation in the NSU's commencement ceremonies hosted by Hard Rock Stadium was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(a);

e. Enter judgement in favor of Zinman awarding nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined at trial based upon Defendants' willful, wanton, and deliberate indifference to Zinman's statutorily guaranteed rights, as well as that of those similarly situated to him; and

f. Enter a judgement awarding Zinman the actual costs of filing and litigating this action as well as such other relief as this Court deems appropriate.

COUNT II – INTENTIONAL DISCRIMINATION (TITLE VI – CRA of 1964) (Defendant NSU)

109. Zinman realleges paragraphs 1-2, 6-12, 19-53, and 82-92 as if fully set forth herein.

110. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000(d) provides as follows:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

111. The Civil Rights Restoration Act of 1987 (Pub. L. 100-259) amended Title VI of the Civil Rights Act of 1964 to say that "programs" or "programs and activities" means "**all of the operations of**" any department, agency, or instrumentality of a state or local government, any part of which is extended federal financial assistance. The amended definition of "programs and activities" also makes clear that Title VI does not only apply to activities of a recipient of federal assistance that are federally

funded, but rather applies to "**all the operations of**" a recipient as well, even those that are not federally funded.

112. President Donald Trump recently issued an executive order entitled "Combating Anti-Semitism" (Executive Order 13899 of December 11, 2019) which in pertinent part provides as follows:

> While Title VI [of the Civil Rights Act of 1964] does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices. **Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race**, color, **or national origin** ... **It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination** prohibited by Title VI.

113. On April 22, 2020, NSU acknowledged signing and returning to the U.S. Department of Education the Certification and Agreement for Emergency Financial Aid Grants to Students in order to access funds under section 18004(a)(1) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Pursuant to that agreement, the University received $7,157,194, and further certified that it would "comply with all applicable assurances in Office of Management and Budget (OMB) Standard Forms 424B and D ... **including the assurances relating to ... nondiscrimination**."

114. OMB Standard Form 424B requires applicants to "**comply with all Federal statutes relating to nondiscrimination**," including but not limited to Title VI of the Civil Rights Act of 1964.

115. NSU singled out and **intentionally** discriminated against Zinman **on the basis of his religion as well as the racial group to which he belongs** by treating him less

favorably than similarly situated students who were allowed to participate in the University's Criminal Justice Field Placement Clinic without being required to wear a facial covering.

116. NSU singled out and **intentionally** discriminated against Zinman **on the basis of his religion as well as the racial group to which he belongs** by treating him less favorably than similarly situated students who were allowed to participate in the University's commencement ceremonies without being required to wear a facial covering.

117. The discrimination against and disparate treatment of Zinman by NSU with respect to its failure to offer him the same opportunity that it offered to other similarly situated students to participate in the Criminal Justice Field Placement Clinic without being required to wear a facial covering was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(d).

118. The discrimination against and disparate treatment of Zinman by NSU with respect to its failure to offer him the same opportunity to participate in his commencement ceremony without being required to wear a facial covering was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(d).

WHEREFORE, Zinman prays that this Court:

a. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendant NSU, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from discriminating against individuals on the basis of their religion or the racial group to which they belong;

b. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendant NSU, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to accommodate individuals for whom

compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices;

c. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining NSU, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to honor its Certification and Agreement for Emergency Financial Aid Grants to Students by complying with all applicable assurances in OMB Standard Forms 424B and D, including those relating to nondiscrimination;

d. Issue a Declaration holding that NSU's failure to offer Zinman the same opportunity that it offered to similarly situated students was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(d).

e. Issue a Declaration holding that NSU's decision to exclude Zinman as well as those similarly situated to him from participation in the NSU's commencement ceremonies hosted by Hard Rock Stadium was an unlawful discriminatory practice in violation of 42 U.S.C. § 2000(d);

f. Enter judgement in favor of Zinman awarding nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined at trial based upon Defendant NSU's willful, wanton, and deliberate indifference to Zinman's statutorily guaranteed rights, as well as that of those similarly situated to him; and

g. Enter a judgement awarding Zinman the actual costs of filing and litigating this action as well as such other relief as this Court deems appropriate.

COUNT III – 42 U.S.C. § 1983
(Defendants NSU, Bertha Henry, and Broward County)

119. Zinman realleges paragraphs 3, 6-12, 14-15, and 19-92 as if fully set forth herein.

120. Bertha Henry and Broward County coerced or at least significantly encouraged Nova Southeastern University to implement its policy on facial coverings.

121. Defendants NSU, Bertha Henry, and Broward County acted under color of law within the scope and meaning of Section 1983 by enforcing Broward County Administrator's Emergency Order 20-21, as amended, pursuant to authority

apparently delegated to political subdivisions under the State Emergency Management Act (Fla. Stat. § 252.31 *et seq*).

122. Nova Southeastern University's campus contains a variety of fora including unlimited designated public fora.

123. The regulation of free speech within a public forum is a traditional and exclusive public function.[52]

124. Defendants intentionally subjected Zinman and those similarly situated to him to unequal and discriminatory treatment because of his religion as well as the racial group to which he belongs.

125. Defendants' actions were and are the direct and proximate cause of the constitutional and statutory violations and injuries suffered by Zinman.

126. Defendants' actions were intentional, willful, and in reckless disregard for Zinman's rights secured by the constitution and laws of the United States.

WHEREFORE, Zinman prays that this Court:

a. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from discriminating against individuals on the basis of their religion or the racial group to which they belong;

b. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices;

c. Issue a Declaration holding that Defendants' actions violate the constitution and laws of the United States.

---

52. *See Marsh v. Alabama*, 326 U.S. 501, 505–06 (1946); *see also Lee v. Katz*, 276 F.3d 550, 555 (9th Cir. 2002).

d. Issue a Declaration holding that Defendants' deliberate failure to offer Zinman the same opportunities that it offered to similarly situated individuals is an unlawful discriminatory practice in violation of the constitution and laws of the United States.

e. Enter judgement in favor of Zinman awarding nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined at trial based upon Defendants' willful, wanton, and deliberate indifference to Zinman's constitutionally and statutorily guaranteed rights; and

f. Enter a judgement awarding Zinman the actual costs of filing and litigating this action as well as such other relief as the Court deems appropriate.

COUNT IV – 42 U.S.C. § 1983
(Defendants Hard Rock Stadium and Miami-Dade County)

127. Zinman realleges paragraphs 3, 6-12, 13, 16, and 39-92 if fully set forth herein.

128. According to Hard Rock Stadium's website, it continues "to comply with all NFL and government mandates both nationally and locally."

129. Miami-Dade County coerced or at least significantly encouraged Hard Rock Stadium to implement its policy on facial coverings.

130. Defendants Hard Rock Stadium and Miami-Dade County acted under color of law within the scope and meaning of Section 1983 by enforcing Miami-Dade County Emergency Order 20-20, as amended, pursuant to authority apparently delegated to political subdivisions under the State Emergency Management Act (Fla. Stat. § 252.31 *et seq*).

131. Defendants' actions were and are the direct and proximate cause of the constitutional and statutory violations and injuries suffered by Zinman.

132. Defendants' actions were intentional, willful, and in reckless disregard for Zinman's rights secured by the constitution and laws of the United States.

WHEREFORE, Zinman prays that this Court:

a. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from discriminating against individuals on the basis of their religion or the racial group to which they belong;

b. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices;

c. Issue a Declaration holding that Defendants' actions violate the constitution and laws of the United States.

d. Issue a Declaration holding that Defendants' deliberate failure to offer Zinman the same opportunities that it offered to similarly situated individuals is an unlawful discriminatory practice in violation of the constitution and laws of the United States.

e. Enter judgement in favor of Zinman awarding nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined at trial based upon Defendants' willful, wanton, and deliberate indifference to Zinman's constitutionally and statutorily guaranteed rights; and

f. Enter a judgement awarding Zinman the actual costs of filing and litigating this action as well as such other relief as the Court deems appropriate.

COUNT V – 42 U.S.C. § 1983
(Defendants Carey Haughwout and Palm Beach County)

133. Zinman realleges paragraphs 3, 6-12, 17-18, 22-28, 30-31, and 44-92 as if fully set forth herein.

134. Palm Beach County coerced or at least significantly encouraged Defendant Carey Haughwout and the Palm Beach County Public Defender's Office to implement its policy on facial coverings.

135. Defendants Carey Haughwout and Palm Beach County acted under color of law within the scope and meaning of Section 1983 by enforcing Palm Beach County Order No. 2020-012, as amended, pursuant to authority apparently delegated to political subdivisions under the State Emergency Management Act (Fla. Stat. § 252.31 *et seq*).

136. Defendants' actions were and are the direct and proximate cause of the constitutional and statutory violations and injuries suffered by Zinman.

137. Defendants' actions were intentional, willful, and in reckless disregard for Zinman's rights secured by the constitution and laws of the United States.

WHEREFORE, Zinman prays that this Court:

a. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from discriminating against individuals on the basis of their religion or the racial group to which they belong;

b. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices;

c. Issue a Declaration holding that Defendants' actions violate the constitution and laws of the United States.

d. Enter judgement in favor of Zinman awarding nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined at trial based upon Defendants' willful, wanton, and deliberate indifference to Zinman's constitutionally and statutorily guaranteed rights; and

e. Enter a judgement awarding Zinman the actual costs of filing and litigating this action as well as such other relief as the Court deems appropriate.

COUNT VI – VIOLATION OF THE RLUIPA (42 U.S.C. § 2000cc)
(Defendants Broward, Miami-Dade and Palm Beach County)

138. Zinman realleges paragraphs 4, 6-12, 14, 16-17, 19-57 as if fully set forth herein.

139. Section 2 of the RLUIPA which has been entitled "Protection of land use as religious exercise" and codified as 42 U.S.C. § 2000cc, in pertinent part provides as follows:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person ... unless the government demonstrates that imposition of the burden on that person ... is in furtherance of a compelling governmental interest ... and is the least restrictive means of furthering that compelling governmental interest.

140. Section 2 of the RLUIPA further provides as follows:

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less equal terms with a nonreligious assembly or institution.

141. Additionally, Section 2 of the RLUIPA provides that:

No government shall impose or implement a land use regulation in a manner that discriminates against any assembly or institution on the basis of religion or religious denomination.

142. Section 4 of the RLUIPA which has been entitled "Judicial relief" and codified as 42 U.S.C. § 2000cc-2, in pertinent part provides as follows:

A person may assert a violation of this chapter as a claim ... in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim ... under this section shall be governed by the general rules of standing under article III of the Constitution.

143. Section 5 of the RLUIPA which has been entitled "Rules of construction" and codified as 42 U.S.C. § 2000cc-3, in pertinent part provides as follows:

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

144. Section 8 of the RLUIPA which has been entitled "Definitions" and codified as 42 U.S.C. § 2000cc-5, in pertinent part provides as follows:

> The term 'claimant' means a person raising a claim ... under this chapter ... The term land use regulation' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use ... of land, if the claimant has an ... easement ... or other property interest in the regulated land ... The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

145. Defendants Broward County, Miami-Dade County, and Palm Beach County constitute "government[s]" within the scope of § 8(4)(A)(i) of the RLUIPA.

146. Zinman qualifies as a "claimant" within the scope of § 8(1) of the RLUIPA.

147. Broward County Administrator's Emergency Order 20-21, Miami-Dade County Emergency Order 20-20, and Palm Beach County Order No. 2020-012, as amended, constitute "land use regulation[s] ... under which a government makes or has in place formal or informal procedures or practices that permit the government to make individualized assessments of the proposed uses for the property involved," within the scope of § 2(a)(2)(c) of the RLUIPA, 42 U.S.C. § 2000cc(a)(2)(C).

148. Broward County Administrator's Emergency Order 20-21, Miami-Dade County Emergency Order 20-20, and Palm Beach County Order No. 2020-012, as amended, constitute "zoning or landmarking law[s], or the application of such a law, that limits or restricts a claimant's use ... of land" within the scope of § 8(5) of the RLUIPA.

149. Zinman's intended use of traditional public fora affected by Broward County Administrator's Emergency Order 20-21, Miami-Dade County Emergency Order 20-20, and Palm Beach County Order No. 2020-012, as amended, constitutes a "religious exercise" within the scope of § 8(5) of the RLUIPA.

150. Broward County Administrator's Emergency Order 20-21, Miami-Dade County Emergency Order 20-20, and Palm Beach County Order No. 2020-012, as amended, has violated and may continue to violate Zinman's rights guaranteed to him by the Constitution and laws of the United States because it has imposed a land use regulation in a manner that:

a. Treats Zinman as well as those similarly situated to him on less equal terms with nonreligious assemblies or institutions by excluding them from all retail, commercial, governmental, charitable, nonprofit, and other businesses or organizations, as well as any amenity including pools, beaches, and parks;

b. Discriminates against Zinman as well as those similarly situated to him purely on the basis of their religion.

151. Defendants' enactment and continued enforcement Broward County Administrator's Emergency Order 20-21, Miami-Dade County Emergency Order 20-20, and Palm Beach County Order No. 2020-012, as amended, have violated and will continue to violate Zinman's rights under the Constitution and laws of the United States, as well as that of those similarly situated to him, because it has imposed a land use regulation in a manner that inflicts a substantial burden upon constitutionally and statutorily guaranteed religious liberty in the absence of any credible evidence that such burden is:

a. In furtherance of a compelling governmental interest; and

b. The least restrictive means of furthering a compelling governmental interest.

WHEREFORE, Zinman prays that this Court:

a. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, from discriminating against individuals on the basis of their religion or the racial group to which they belong;

b. Issue a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants, and their officers, agents, employees, representatives, and all persons acting in concert, or participating with them, to accommodate individuals for whom compliance with mask mandates would conflict with their sincerely held religious beliefs and/or practices;

c. Issue a Declaration holding that Defendants' actions violate the RLUIPA.

d. Enter judgement in favor of Zinman awarding nominal and/or compensatory and/or special and/or exemplary damages in an amount to be determined at trial based upon Defendants' willful, wanton, and deliberate indifference to Zinman's constitutionally and statutorily guaranteed rights; and

e. Enter a judgement awarding Zinman the actual costs of filing and litigating this action as well as such other relief as the Court deems appropriate.

CERTIFICATION

Under Federal Rule of Civil Procedure 11, by signing below, I HEREBY CERTIFY to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Dated: May 25, 2021

Respectfully submitted,

Corey J. Zinman

CERTIFICATE OF FILING AND SERVICE

In compliance with Supreme Court Rule 39(2), I hereby certify that, on February 14, 2022, I mailed the foregoing document, along with ten copies, to the Supreme Court of the United States at 1 First Street, NE, Washington, DC 20543. In accordance with Supreme Court Rule 29(3), I further certify that all parties required to be served have been served with a single copy of the foregoing via mail, including counsel for Respondents Nova Southeastern University Inc. and South Florida Stadium LLC, Benjamin Bean and Richard Beauchamp, 2400 East Commercial Boulevard, Coastal Towers, Suite 905, Fort Lauderdale, Florida 33308, (954) 390-0100, counsel for Respondents Broward County and Bertha Henry, Andrew Meyers and Adam Katzman, 115 S. Andrews Avenue, Suite 423, Fort Lauderdale, FL 33301, (954) 357-7600, and counsel for Respondent Miami-Dade County, Geraldine Bonzon-Keenan and Lauren Morse, 111 N.W. 1st Street, Suite 2810, Miami, Florida 33128, (305) 375-5151.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Dated: February 14, 2022

Corey J. Zinman

COREY J. ZINMAN

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 14th day of February 2022, by COREY J. ZINMAN.

Samantha Cavaliero

NOTARY PUBLIC