UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-80729-SINGHAL

DEBRA HENRY,

Petitioner,

v.

RONALD DESANTIS, in his official capacity as Governor of the State of Florida,

Respondent.
_____/

ORDER DENYING EMERGENCY INJUNCTIVE RELIEF AND DISMISSING CASE WITH PREJUDICE

This action challenges the Governor of Florida's emergency-powers authority during a public-health crisis, to compel businesses to close and to restrict the free movement of Floridians. Filed in a manner requiring expedited review, before the Court is Petitioner's Complaint and Motion for Emergency Injunctive Relief (DE [1]). The Court expedited a response from the Governor (DE [3]) and he timely filed it as a motion to dismiss (DE [9]). Reviewing the current pleadings and finding no further briefing necessary, this order follows.

BACKGROUND

At some point in December 2019, a highly contagious, novel coronavirus (SARS-CoV-2) was first detected in Wuhan, China, and, with human-to-human transmission, quickly spread across the globe. By early-March 2020, the World Health Organization declared a worldwide pandemic and by mid-May 2020, it was in 187 countries, infecting

more than 4.31 million people, and accounting for almost 295,000 deaths.[1] In most cases, COVID-19 (the disease caused by the novel coronavirus) causes fever, dry cough, and shortness of breath. In severe cases, however, it requires hospitalization and can leave a patient needing a ventilator to combat life-threatening, extreme compromise of the lungs. The virus spreads primarily through respiratory droplets, which may linger in the air or on surfaces for hours.[2] And the world learns more about this novel disease every day.

At the early outset of this pandemic, the rapid speed at which COVID-19 appeared to be spreading caused leaders and public health officials grave concern. With no vaccine or a consensus on proven therapeutics, the world community uniformly appeared to agree that, if countries and communities failed to implement serious policies targeted at limiting person-to-person contact to reduce the rapid spread of COVID-19, national health care systems could be completely overwhelmed and reach a breaking point.

The United States' Response to COVID-19

Here in the United States, on March 16, 2020, President Trump and the White House's Coronavirus Task Force ("Task Force") issued guidelines—"15 Days to Slow the Spread"—for Americans to follow that were aimed at limiting the reach of COVID-19, again, ostensibly, in an effort to prevent overwhelming numbers of infirmed individuals

[1] These data were current as of May 13, 2020, 03:35 P.M. and comes from Johns Hopkins University's Coronavirus Resource Center. *See* Johns Hopkins Univ., *Coronavirus Resource Center*, https://coronavirus.jhu.edu (last visited May 13, 2020).

[2] Tanya Lewis, *How Coronavirus Spreads Through the Air: What We Know So Far*, ScientificAmerican.com (May 12, 2020), https://www.scientificamerican.com/article/how-coronavirus-spreads-through-the-air-what-we-know-so-far1.

being rushed to local hospitals with insufficient capacity, ventilators, and intensive care units ("ICU"). The guidelines included "mitigation practices," such as maintaining six feet of space between individuals, avoiding social gathering of more than ten people, practicing strict personal hygiene, and avoiding dining in restaurants and bars. Almost overnight, society was thrust into what has been coined a new normal. Terms like "social distancing" and "flatten the curve" became part of the everyday discourse; downtown cities became ghost towns; rush hour traffic on highways that typically rendered cars idle disappeared. While the federal government did not "order" Americans to stay home, it seemed like the overwhelming majority of Americans did so to avoid coming into any contact with other people.

COVID-19 did not affect all jurisdictions uniformly. So, for example, by May 13, 2020, while New York had over 335,000 cases, Florida had fewer than 42,000.[3] And, under our federalist system, governors acted according to their states' situation. A handful exercised their emergency authority—and to various extents, ordering certain aspects of society literally to shut down within their borders. By executive order, several governors across the country deemed certain businesses "essential" (e.g., grocery stores, pharmacies, gas stations) and ordered all "nonessential" business to close under threat of civil penalty or criminal charges. *See Goldstein v. Sec'y of Commonwealth*, 142 N.E.3d 560, 567–68 (Mass. 2020) (challenging the Governor of Massachusetts's response to COVID-19); *Friends of Danny DeVito v. Wolf*, 2020 WL 1847100, at *4 (Pa. Apr. 13, 2020) (challenging the Governor of Pennsylvania's response to COVID-19); *Wisconsin Legislature v. Secretary-Designee Andrea Palm*, No. 2020AP765-OA (Wis.

[3] *See* Johns Hopkins Univ., *supra* note 1.

May 13, 2020) (challenging Wisconsin's response to COVID-19). Thus, restaurants, hair salons, fitness centers, and others were compelled by government order to close. Some states went further; some ordered their citizens to remain home—a growing national trend of "safer at home orders." *E.g.*, *Goldstein*, 142 N.E.3d at 568.

On March 29, 2020, a few days before the 15 Days to Slow the Spread was set to expire, President Trump announced troubling statistics of the number of infections across the country, the upward trajectory of that trend, and models from research institutes predicting that COVID-19 could kill up to two million Americans if the mitigation practices were eased imprudently.[4] And, on April 2, when the guidelines formally expired, the Task Force extended them through the month of April 2020 and issued "30 Days to Slow the Spread."

Florida's Response to COVID-19

In Florida, Governor DeSantis declared a state of emergency on March 9, 2020. *See* Fla. Exec. Order No. 20-52 (Mar. 9, 2020). He did not immediately join the "safer at home" trend, opting rather to encourage Floridians to follow the Task Force's guidelines in the 15 Days to Slow the Spread. The Governor did take steps by executive order designed to reduce social gatherings and minimize human-to-human transmission and the disease. *See* Fla. Exec. Order No. 20-68 (Mar. 17, 2020) (suspending the sale of alcoholic beverages for on-premises consumption); Fla. Exec. Order No. 20-70 (Mar. 20, 2020) (directing all restaurants, bars, and other food-service

[4] *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, The White House (Mar. 29, 2020, 5:43 P.M.), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-14/

businesses in Broward and Palm Beach "to close on-premises service of customers"); Fla. Exec. Order No. 20-71 (Mar. 20, 2020) (extending the on-premises food consumption ban statewide, but authorizing "all vendors licensed to sell alcoholic beverages . . . to sell alcoholic beverages in sealed containers").

However, in response to the Task Force's extending the guidelines on March 29 through the month of April, Governor DeSantis announced substantial changes to COVID-19 policies in Florida. On March 30, he issued a "safer at home" order for the four Southeast Florida counties of Monroe, Miami-Dade, Broward, and Palm Beach. *See* Fla. Exec. Order No. 20-89 (Mar. 30, 2020). At that moment, these four counties accounted for 60% of Florida's COVID-19 cases. *Id.* This "safer at home" order was now closer to what other states across the country were issuing—restricting the free movement of Floridians. Two days later, he announced that he would extend the policy statewide. *See* Fla. Exec. Order No. 20-91 (Apr. 1, 2020).

For the entire month of April 2020, 90% of Americans (and all Floridians) were subject to various state-implemented "safer at home" orders. But the mitigation strategies appeared to be working. The daily rate of increase in new cases declined precipitously throughout the month.[5] By the end of April 2020, the Task Force was focusing on "re-opening" the country.

The Governor's Re-Open Florida Task Force

As the Task Force transitioned from mitigation strategies to "re-opening" the country, Governor DeSantis announced a parallel plan in Florida. On April 29, 2020, he

[5] Data taken from The Florida Department of Health website devoted to the state's COVID-19 response. *See Florida COVID-19 Response*, Fla. Dep't of Health, https://floridahealthcovid19.gov (last visited May 13, 2020).

announced his plan to "re-open" Florida in three phases. *See* Fla. Exec. Order No. 20-112 (Apr. 29, 2020). In the so-called "Phase 1," certain types of business that were previously deemed "nonessential" were allowed to open, provided they follow strict guidelines, all in an attempt to not "re-open" imprudently or too quickly. For example, restaurants may open, but they must operate "at no more than 25 percent of their building occupancy" and maintain "a minimum of 6 feet" separation between parties. Bars, pubs, nightclubs, and other establishments "that derive at least 50 percent of sales from alcohol," however, are to remain "closed"—that is, "closed" to the extent that they had been in the previous orders.

Consistent with the "safer at home" orders initially applying only to Southeast Florida, Phase I expressly exempted Miami-Dade, Broward, and Palm Beach Counties from this first wave of re-openings. *See* Fla. Exec. Order 20-112, at § 2(A)(2) (Apr. 29, 2020). Counties outside of Southeast Florida entered Phase I on Monday, May 4, 2020. As of May 11, Palm Beach County was included in Phase I. *See* Fla. Exec. Order No. 20-120 (May 9, 2020). As of the date of this order, there appears not to be any official plan from the Governor on Broward and Miami-Dade Counties.

Petitioner Debra Henry

Petitioner is a resident of Palm Beach County and has worked in the food-service industry for forty years. For the past three years, she had worked at Pit Row (a bar) and Buffalo Wild Wings (a restaurant) in Palm Beach County. Sadly, on March 17, 2020, she was let go.[6] She maintains that the effect of the Executive Orders closed her

[6] It is unclear from the face of the complaint whether both businesses terminated her on March 17, 2020. This is not relevant, however, for the disposition of this order.

places of employment and caused her to lose her jobs. Further, she argues, because Governor DeSantis acted beyond his authority and violated her constitutional rights, the Executive Orders are unconstitutional, mandating this Court enter an emergency injunction and vacate the Executive Orders.

DISCUSSION

I. APPLICABLE LAW

A. Legal Standard for Dismissal for Failure to State a Claim

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "'When evaluating a motion to dismiss under Rule 12(b)(6), the question is whether the complaint contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Worthy v. City of Phenix City*, 930 F.3d 1206, 1217 (11th Cir. 2019) (alteration in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Court is guided by the well-known principle that, on a motion to dismiss for failure to state a claim, the Court assumes all well-pleaded allegations in the Complaint are true and views them in the light most favorable to the plaintiff. *Jackson v. Okaloosa Cty.*, 21 F.3d 1531, 1534 (11th Cir. 1994).

B. Legal Standard for a Preliminary Injunction

> A preliminary injunction is appropriate if the movant demonstrates all of these elements: (1) a substantial likelihood of success on the merits; (2) that the preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant; and (4) that the preliminary injunction would not be averse to the public interest.

Chavez v. Fla. SP Warden, 742 F.3d 1267, 1271 (11th Cir. 2014). "The grant or denial of a preliminary injunction rests within the sound discretion of the district court."

Transcon. Gas Pipe Line Co. v. 6.04 Acres, More or Less, 910 F.3d 1130, 1163 (11th Cir. 2018). "A preliminary injunction is an extraordinary and drastic remedy not to be granted until the movant clearly establishe[s] the burden of persuasion as to each of the four prerequisites." *Devs. Sur. & Indem. Co. v. Bi-Tech Constr., Inc.*, 964 F. Supp. 2d 1304, 1308 (S.D. Fla. 2013) (internal quotation omitted) (alteration in original). In deciding on a motion for a preliminary injunction, the "court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is appropriate given the character and objectives of the injunctive proceeding." *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

II. JUSTICIABILITY

Judicial power "extends only to 'Cases' and 'Controversies.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016); U.S. Const. Art. III, § 2. "[F]ederal courts can address only questions 'historically viewed as capable of resolution through the judicial process.'" *Rucho v. Common Cause*, 139 S. Ct. 2484, 2493–94 (2019) (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). There is "no justiciable controversy . . . when there is no standing to maintain the action." *Poe v. Ullman*, 367 U.S. 497, 508 (1961). And, because justiciability concepts emanate from the Constitution's case-or-controversy clause, they are jurisdictional and a court is powerless to proceed in their absence. *See Elend v. Basham*, 471 F.3d 1199, 1204 (11th Cir. 2006) (recognizing that standing presents a "threshold jurisdictional question of whether a court may consider the merits of a dispute"). Every party seeking to invoke the jurisdiction of a federal court must establish standing to prosecute the action. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560

(1992) (describing the standing requirement as "essential and unchanging"); *see also Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004).

The Court, therefore, must first determine whether Petitioner has standing to bring this action before it can address the merits of her complaint. *See Davis v. Fed. Election Comm'n*, 554 U.S. 724, 732 (2008) (reminding that the case-or-controversy requirement is jurisdictional for federal courts). Standing requires a showing of three elements: an injury, causation, and redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (identifying these three elements as the "irreducible constitutional minimum"); *see also Spokeo*, 136 S. Ct. at 1547.

A. Injury-in-Fact

"An injury in fact is 'an invasion of a legally protected interest which is: (a) concrete and particularized, and (b) actual and imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. "Plaintiffs must demonstrate a 'personal stake in the outcome.'" *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). "Abstract is not enough." *Id.* at 102. Viewing the facts as liberally as possible and in the light most favorable to Petitioner, that she has been terminated from her job seems to be sufficient for a showing of a cognizable, concrete injury for standing purposes.

B. Causation

Petitioner's action, however, fails to adequately allege causation or redressability. Causation has been explained as requiring the injury to be "fairly traceable to the challenged action." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). But the burden for Petitioner to meet is actually heightened and "substantially more

difficult to establish" in this case. *Lujan*, 504 U.S. at 561. "When the suit is one challenging the legality of government action . . . , the nature and extent of facts that must be averred . . . in order to establish standing *depends considerably upon whether the plaintiff is himself an object of the action . . . at issue*." *Id.* (emphasis added). In *Lujan*, the Supreme Court made clear the rigid requirement that, when a plaintiff's "asserted injury arises from the government's allegedly unlawful regulation . . . of *someone else*, much more is needed." *Id.* (emphasis in original).

Petitioner cannot sufficiently allege causation, much less this heightened standard. The source of her injury is her employers' decision to reduce their workforce, not the Governor's actions. It should go without saying that nowhere in the Executive Orders was there direction from the Governor to food-service businesses that they must lay-off individuals. To the contrary, again, the Executive Orders make it rather clear that their stated intent was to strike a balance in safeguarding the general public health with protecting jobs and Florida's economy.

In cases like this, where the challenged government action is the regulation of "someone else" (such as businesses), the facts necessarily "hinge on the response of the regulated . . . third party to the government action . . . ." *Lujan*, 504 U.S. at 562. Precisely for this reason, the law does not afford a remedy to Petitioner against the Governor for the response taken by her former employers.

The causal connection between Petitioner's injury and the Governor's actions seems even more tenuous when considering the Executive Orders never compelled restaurants to close *completely*. The Executive Orders prohibited food-service businesses from operating in the sale of food and alcohol for *on-premises* consumption;

these were always able to operate in the sale of take-out dining, to-go orders, and even to-go alcoholic sales. It was a business decision—a difficult and sober one, indeed—that each business across Florida was suddenly forced to make in determining whether to reduce its workforce in light of the necessary temporary changes. In terms of lost revenue and employee terminations, no industry has been rocked harder than the food-services industry. The Court is not unsympathetic to this. But there is no causal connection, as a matter of law, between the Executive Orders and Petitioner's termination from her places of employ.

C. Redressability

Redressability is defined as "a likelihood that the requested relief will redress the alleged injury." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998). To demonstrate this prong, a plaintiff must show that it is "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Lujan*, 504 U.S. at 561. This inquiry requires a court to examine whether it is "the effect of the court's judgment on the defendant—not an absent third party—that redress[es] the plaintiff's injury, whether directly or indirectly." *Lewis v. Governor of Alabama.*, 944 F.3d 1287, 1301 (11th Cir. 2019).

Here, nothing the Court can do would redress Petitioner's injury; there is no form of relief from this Court that could or would secure Petitioner's re-employment at either restaurant. First, this Court is not aware of any authority that could compel either restaurant to rehire her—and for good reason. Courts cannot run businesses. Further, because nonparties are not bound by a court's judgment, *see Arizonans for Official*

English v. Arizona, 520 U.S. 43, 66 (1997), no ruling from this Court would be binding on either restaurant.

The Governor raises another interesting and persuasive point. Palm Beach County has officially reached Phase I of the Governor's Re-Opening Plan. Restaurants in Palm Beach County are now allowed to re-open and serve food and drinks on premises, albeit at limited occupancy. If the two restaurants determine, as a matter of business, they want to expand their workforces and rehire laid-off employees, they can—and should. But this is not a matter for the Court. In other words, the relief Petitioner seeks from this Court can—and hopefully will—occur organically and by the will of market forces. Despite all of this, Petitioner has failed to establish that, even assuming a best-case scenario, either restaurant *would* rehire her.

Petitioner lacks standing to bring this action against Governor DeSantis. Accordingly, this action must be dismissed. No amendment would cure any of the deficiencies identified above. Thus, dismissal must be with prejudice.

III. PETITIONER'S CLAIM

Despite the foregoing, the public interest would be best served with an analysis (though a brief one, at that) on the merits of Petitioner's claim. Further, it would be helpful to Petitioner to understand the reasoning of the Court and the constraints of the applicable law. No one has been immune from the effects of the COVID-19 pandemic; no one has been spared, to at least some degree, the affliction of this disease, whether it be physical health, mental health, or economic health. However, while Petitioner naturally seeks guidance from the courts, this case presents issues to be handled by the government's political branches. She deserves to know why.

Her claim purports to be a civil-rights action under § 1983. She seeks a preliminary injunction. And, as explained above, for a preliminary injunction to issue, Petitioner must show a substantial likelihood of success on the merits. The Court determines she cannot do this.

"To establish a claim under 42 U.S.C. § 1983, a plaintiff must prove: (1) a violation of a constitutional right; and (2) that the alleged violation was committed by a person acting under the color of state law or a private individual who conspired with state actors." *Melton v. Abston*, 841 F.3d 1207, 1220 (11th Cir. 2016). Fatal to her claim is she has failed to identify a single constitutional right of hers that the Governor is purportedly violating. A claim under § 1983 requires, *at a minimum*, a constitutional right at issue.

A. State Constitutional Rights

Petitioner brings claims for various violations of Florida's Constitution. However, claims under § 1983 provide redress for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws [of the United States] . . . ." *Baker v. McCollan*, 443 U.S. 137, 140 (1979) (emphasis in original). In other words, for § 1983 claims, this Court can assess only violations of federal constitutional rights. Id. This rule is for good reason. "[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). Therefore, these claims based on the state constitution are not properly before this Court and must be dismissed.

B. Federal Constitutional Rights

As for the U.S. Constitution, in her complaint, Petitioner makes only passing references to the First Amendment, the Ninth Amendment, and the Fourteenth Amendment. None of the rights enshrined by these amendments to the Constitution is implicated by the Executive Orders.

Here, the Executive Orders do not violate any of Petitioner's rights protected by the First Amendment. The Supreme Court has not found a "generalized right of 'social association'" under the First Amendment's freedom of association, *see City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989); nor has Petitioner pled facts that allege a violation of her freedom of speech or free exercise of religion.

Petitioner cannot bring a claim under the Ninth Amendment, either. The Ninth Amendment "is not an independent source of constitutional rights that may be asserted in a civil rights action." *Spano v. Satz*, 2011 WL 1303147, at *7 (S.D. Fla. Mar. 31, 2011). Claims under § 1983 "must be premised on the violation of a right guaranteed by the U.S. Constitution or federal law," and the Ninth Amendment does not guarantee any rights. *Id.*

The Fourteenth Amendment provides no better outcome for Petitioner. Assuming her claims are for violations of the equal protection clause or for a violation of a fundamental right under substantive due process, both arguments fail. The Fourteenth Amendment provides, in relevant part, that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne*

Living Ctr., 473 U.S. 432, 440 (1985). This test is "highly deferential" to the government. *Gary v. City of Warner Robins*, 311 F.3d 1334, 1339 (11th Cir. 2002). "The general rule gives way, however, when a statute classifies by race, alienage, or national origin." *City of Cleburne*, 473 U.S. at 440. Such a claim is not presented here.

Applying the rational basis test, Petitioner's Fourteenth Amendment claim fails. In the Executive Orders, the Governor stated the government interest as the state's public health and slowing the spread of COVID-19 in a highly concentrated region. This is most certainly a "legitimate" government interest under the rational basis test. Southeast Florida accounted for 60% of the state's COVID-19 cases—that is four counties (of sixty-seven total) accounting for more than half. The Governor's determination to treat Southeast Florida differently than the rest of the state is, therefore, most certainly rationally related to achieving the stated goal. The Executive Orders explain the Governor used scientifically-based-research policies from the U.S. Centers for Disease Control. There is nothing arbitrary about the Governor's actions. Using science, medicine, and data, the Governor took reasonable steps clearly related to the legitimate interest in protecting the public health.

The Fourteenth Amendment also provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." At some point over the course of time, the Supreme Court determined this due process clause *created* "basic values implicit in the concept of ordered liberty." *Griswold v. Connecticut*, 381 U.S. 479, 500 (1965) (Harlan, J., concurring). Thus, "[t]he *substantive* component of the due process clause protects those rights that are 'fundamental.'" *Palko v. State of Connecticut*, 302 U.S. 319, 325 (1937) (emphasis added), *overruled on other grounds*

by Benton v. Maryland, 395 U.S. 784, 793–94 (1969). Time and again, the Supreme Court has determined that there is no fundamental right to a job, or right to work. *See Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 722 (2010) ("[T]he 'liberties' protected by substantive due process do not include economic liberties."); *Helm v. Liem*, 523 F. App'x 643, 645 (11th Cir. 2013) ("[T]he right to work in a specific profession is not a fundamental right.").

On this point, it is important to clarify that the phrase "right to work" *does* appear in the Florida Constitution. But the intent of the framers was quite clear, and, under Florida law, "constitutional language must be allowed to 'speak for itself.'" *Coastal Fla. Police Benev. Ass'n, Inc. v. Williams*, 838 So. 2d 543, 548 (Fla. 2003) (citations omitted). The use of the phrase right to work is limited only to ensuring that one's employment and right to collectively bargain is not conditioned upon forced membership in a labor union. Fla. Const. Art. I, § 6 ("The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.").

In sum, the Court is powerless to entertain challenges to the Governor's authority under state law. Petitioner has not identified a constitutional right that the Governor has violated. And there is no fundamental right to a job. For the foregoing reasons, there is no judicial labor remaining for the Court.

C. Police Power Under Federalism

Petitioner's claim, at its core, is a challenge to the Governor's authority to enact policies under the state's police power, which has traditionally and unquestionably belonged to the individual states. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 569 (1991) ("The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals . . . ."); *Jacobson v. Massachusetts*, 197 U.S. 11, 12 (1905). And they did not abdicate this power upon ratifying the Constitution. As Chief Justice Marshall explained, the police power is embodied in the

> immense mass of legislation, which embraces every thing within the territory of a State, *not surrendered to the general government*: all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, . . . are component parts of this mass.

Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 78 (1824) (emphasis added).

In the rare cases where a federal court is asked to strike a state's use of its police-power authority, the court has correctly declined the invitation. For instance, in *Jacobson*, the Supreme Court was asked to determine the constitutionality of a Massachusetts statute that authorized cities or towns to mandate and enforce compelled vaccination of its citizens. In upholding the statute, the Court recognized Massachusetts's general police power to prescribe the mode or manner in which public-health and welfare goals are accomplished. *Id.* at 24–25. The Court, again, "distinctly recognized the authority of a state to enact quarantine laws and health laws of every description." *Id.* at 25.

Legal battles over various COVID-19 policies are actively playing out across the country. Some courts find their state's policy preferences lawful. *See Friends of Danny*

DeVito v. Wolf, 2020 WL 1847100, *24 (Pa. Apr. 13, 2020). Some find their edicts repugnant to the law. *See Wisconsin Legislature v. Secretary-Designee Andrea Palm*, No. 2020AP765-OA (Wis. May 13, 2020). Either way, they are properly before, and determined by, courts under the constitutions of their state. This Court is not such a venue.

Once again, however, the extent to which the states enjoy their police power is not unvarnished. Justice Harlan, author of the *Jacobson* opinion, ended with a clarification of the Court's opinion "to prevent misapprehension," ominously warning: "[T]he police power of a state, whether exercised directly by the legislature, or by a local body acting under its authority, may be exerted . . . by regulations so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression." 197 U.S. at 38.

And this dictum is compelling. Constitutional rights do not give way to a government's perceived authority in times of crises. This pandemic, despite being unprecedented, did not suddenly nullify the people's inalienable rights. *See e.g.*, *On Fire Christian Ctr., Inc. v. Fischer*, 2020 WL 1820249 (W.D. Ky. 2020) (granting a temporary restraining order against the City of Louisville, Kentucky mayor for banning religious gathering on Easter Sunday amid the COVID-19 pandemic in clear violation of the First Amendment). No elected official can do so. Our country was founded on bedrock, core principles The Bill of Rights is not a suggestion; the Constitution is not optional. This order does not authorize elected officials to escalate the slow erosion of constitutional rights in the name of emergency authority.

But this is simply not the case here. Petitioner has not identified a constitutional right that Governor DeSantis has violated. She is not prohibited from any of her First Amendment rights. She is not confined to her house in an unreasonable seizure under the Fourth Amendment. She is not deprived of equal protection of the law under the Fourteenth Amendment. The Governor's actions are reasonable and measured, based on data and science, and rationally related to a legitimate end. In other words, Petitioner is subject to a pause in her life, as authorized by law, in exchange for and in an effort to maintain the majestic freedoms enjoyed in America prior to, during, and after this pandemic. As painful as this moment is for her and millions of other Floridians, her constitutional rights are not implicated.

CONCLUSION

There are no manuals on how to handle crises. However, there is a framework that provides an answer to who handles them. To govern is not the court's role; rather, the power of judging must be separated from legislative and executive powers. *See generally* The Federalist, No. 47 (Hamilton). Under our system, leaders elected by the will of the people are entrusted with awesome responsibility. They must act within the framework set forth in our Constitution, using reasonable measures to further public health while safeguarding the citizenry's inalienable rights. It is a balance, no doubt. And so long as the people's elected leaders are working within the confines of the people's constitutional rights, courts are not here to second-guess or micromanage their already unenviable jobs guiding us through profoundly unprecedented challenges.

The Motion for Emergency Injunctive Relief (DE [1]) is **DENIED**. Respondent's Motion to Dismiss (DE [9]) is **GRANTED** and this action is **DISMISSED WITH**

PREJUDICE. The Clerk of Court is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 14th day of May 2020.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies to counsel via CM/ECF