

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2021CP1004397

**MOTION FOR  
TEMPORARY INJUNCTION  
AND  
RESTRAINING ORDER**

ASHLEIGH TUCKER, BLAKE ALVEY,  
CHRIS P. QUINN, DAVID JOHNSON,  
DENISE COBB, ELIZABETH MOFFAT,  
JANE DOE DISPATCHER, JEFFREY D  
WATSON, JENNIFER SCIARROTTA,  
JOHN DOE DEPUTY #1, JOHN DOE  
DEPUTY #2, JOHN DOE DEPUTY #3,  
JONATHAN JOURDAN, LARRY  
DONALD HALL JR, MATTHEW  
HUTCHINSON, MCKENZIE EVERHAM,  
PAXTON CHEL HATCHELL PRETTEL,  
SHANNA MASCIA, STUART JOEY  
PRETTEL II, TIMOTHY JOSEPH  
CARROLL, DALE MCCANTS, JR.,  
JOHN CHRISTOPHER ADAMS, DAVID  
JOHNSON, and RICKIE BIGGS,

Plaintiffs,

vs.

ANNA B. JOHNSON, in her official and  
individual capacities; HENRY E. DARBY,  
in his official and individual capacities;  
HERBERT RAVENEL SASS, III, in his  
official and individual capacities; KYLON  
JEROME MIDDLETON, in his official and  
individual capacities; ROBERT L.  
WEHRMAN, in his official and individual  
capacities; TEDDIE E. PRYOR, SR., in his  
official and individual capacities; and  
CHARLESTON COUNTY,

Defendants.

Please take notice that the Plaintiffs, by and through their undersigned counsel, respectfully move for an injunction prohibiting the Defendants from enforcing Charleston County's Vaccine Mandate ("Mandate") to the named Plaintiffs and all other similarly situated individuals. Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, the grounds of this motion are as

follows:

**PARTIES**

1. Plaintiff Ashleigh Tucker is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.
2. Plaintiff Blake Alvey is, and at all times herein, was employed by the County of Charleston.
3. Plaintiff Chris P. Quinn is, and at all times herein, was a deputy the Charleston County Sheriff's Office.
4. Plaintiff David Johnson is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.
5. Plaintiff Denise Cobb is, and at all times herein, was employed by the County of Charleston.
6. Plaintiff Debra Blum is, and at all times herein, was a Vendor for the County of Charleston.
7. Plaintiff Elizabeth Moffat is, and at all times herein, was a Vendor for the County of Charleston.
8. Plaintiff Jane Doe Dispatcher is, and at all times herein, was employed by the County of Charleston.
9. Plaintiff Jeffrey D. Watson is, and at all times herein, was firefighter with the County of Charleston.
10. Plaintiff Jennifer Sciarrotta is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.
11. Plaintiff John Doe Deputy #1 is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.
12. Plaintiff John Doe Deputy #2 is, and at all times herein, was a deputy employed by the

Charleston County Sheriff's Office.

13. Plaintiff John Doe Deputy #3 is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.

14. Plaintiff Jonathan Jourdan is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.

15. Plaintiff Larry Donald Hall, Jr. is, and at all times herein, was employed by the County of Charleston.

16. Plaintiff Matthew Hutchinson is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.

17. Plaintiff McKenzie Everham is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.

18. Plaintiff Paxton Chel Hatchell Prettel is, and at all times herein, was employed by the Charleston County EMS.

19. Plaintiff Shanna Mascia is, and at all times herein, was employed by the County of Charleston.

20. Plaintiff Stuart Joey Prettel, II is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.

21. Plaintiff Timothy Joseph Carroll is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.

22. Plaintiff Dale McCants, Jr. is, and at all times herein, was a Vendor for the County of Charleston.

23. Plaintiff John Christopher Adams is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.

24. Plaintiff Rickie Biggs is, and at all times herein, was a deputy employed by the Charleston County Sheriff's Office.
25. The Plaintiffs are informed and believe that Defendant Anna B. Johnson, Defendant Henry E. Darby, Defendant Herbert Ravenel Sass, III, Defendant Kylon Jerome Middleton, Defendant Robert L. Wehrman, Defendant Teddie E. Pryor, Sr. at all times relevant to this action are County Council Members of Charleston County ("Mayor"), duly elected under and by the virtue of laws of the State of South Carolina.
26. The Plaintiffs are informed and believe that the Defendant Charleston County ("the County") at all times relevant to this action is a governmental agency and/or political subdivision of the State of South Carolina, as defined in S.C. Code Ann. § 15-78-10, existing under the laws of the State of South Carolina, and is located in the Charleston County, South Carolina.
27. That venue is properly laid in this Court pursuant to § 15-7-30 South Carolina Code of Laws Annotated [Law. Co-op. 1976].

### **FACTUAL ALLEGATIONS**

28. The Defendants issued the County's Vaccine Mandate ("Mandate"), attached as **Exhibit A**, which purported to impose a mandatory vaccine requirement on all city employees, volunteers, and interns, whether working on a full or part time schedule ("employees").
29. The Mandate dictates that compliance is a condition of continued employment.
30. The Mandate sets the compliance date as November 7, 2021.
31. The individual plaintiffs are County employees and outside vendors as defined in the Mandate who want to exercise control over their own medical treatment and are being forced to choose between their rights privileges and liberties as citizens on the one hand

and their employment, careers, and financial futures on the other.

32. Plaintiffs seek an order declaring the mandate as unenforceable because it conflicts with the South Carolina Constitution's guarantee of free expression, violates the South Carolina's Home Rule Act, violates DHEC's General Supervision of Vaccination, Screening, and Immunization, would result in a common law wrongful discharge of the Plaintiffs, violates Substantive Due Process under the Fourteenth Amendment to the United States Constitution, conflicts with the United States Constitution's guarantee of equal protection, free exercise, and due process, and deprives plaintiffs of their fundamental right to refuse medical treatment.

33. Article I, Section 2 of the South Carolina Constitution states:

“The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.”

34. Plaintiffs are under the belief that the right to control their own medical destinies is both *expressive speech* in the form of opposition to the COVID-19 vaccine, and *expressive conduct* in opposition to the vaccine mandate.

35. Defendants' Mandate is directed as the substance of that opinion and the subject of Plaintiffs' communications it is constitutionally impermissible.

36. South Carolina's Home Rule Act, S.C. Code Ann. §§ 5-7-10 to -310 (2004), allows a city to declare a state of emergency under an alleged need to preserve the “health, peace, order and good government of its citizens.”

37. However, the Home Rule doctrine in no manner serves as a license for local governments to countermand state law or the South Carolina Constitution. See, e.g., *Charleston County*,

306 S.C. at 156, 410 S.E.2d at 571 (noting a grant of police power to local governments is given with the caveat that the locality may not enact ordinances that conflict with state law). see also *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) (explaining Home Rule “bestow[s] upon municipalities the authority to enact regulations . . . so long as such regulations are not inconsistent with the Constitution and general law of the state”).

38. Resolving a conflict between state law and a city (or county) ordinance invokes the principle of preemption.

Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible. See *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 530, 476 S.E.2d 477, 480 (1996) (“To determine whether the ordinance has been preempted by Federal or State law, we must determine whether there is a conflict between the ordinance and the statutes and whether the ordinance creates any obstacle to the fulfillment of Federal or State objectives.”); . . . 56 Am. Jur. 2d *Municipal Corporations* [§] 392 [(2000)] (“[Implied] conflict preemption occurs when an ordinance prohibits an act permitted by a statute, or permits an act prohibited by a statute[.]”) . . . .

*S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 400–01, 629 S.E.2d 624, 630 (2006).

39. Defendant’s Mandate is unconstitutional under Article I, Section 2 of the South Carolina constitution and completely controverts the principle of the Home Rule Act.

40. Article VIII, Section 14 of the South Carolina Constitution states:

**“In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside: (1) The freedoms guaranteed every person; (2) election and suffrage qualifications; (3) bonded indebtedness of governmental units; (4) the structure for and the administration of the State's judicial system; (5) criminal laws and the penalties and sanctions for the transgression thereof; and (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity. (1972 (57) 3184; 1973 (58) 67.)”** (emphasis added)

41. S.C. Code Ann. § 44-29-40 states:

(A) The Department of Health and Environmental Control shall have general direction and supervision of vaccination, screening, and immunization in this State. The Department of Health and Environmental Control has the authority to promulgate regulations concerning vaccination, screening, and immunization requirements.

42. The Department of Health and Environmental Control (DHEC) has the authority to declare regulations concerning vaccination and immunization requirements; South Carolina municipalities do not.

43. The County's mandate is unconstitutional under Article VIII, Section 14 of the South Carolina constitution and completely controverts the principle of the DHEC's General Supervision of Vaccination, Screening, and Immunization.

44. Plaintiffs have an individual, fundamental right to protect bodily integrity and refuse unwanted medical treatment. A forceable injection into a nonconsenting person's body represents a substantial interference with that person's liberty. *Washington v. Harper*, 494 U.S. 210, 229 (1990); see also *Cruzan v. Director of Mississippi Department of Public Health*, 497 U.S. 261, 278 (1990); *King v. Rubenstein*, 825 F.3d 206, 222 (4th Cir. 2016).

45. The State has not mandated vaccines, nor has the Governor, nor has the Department of Health and Environmental Control (DHEC).

46. The defendants, therefore, have no statutory authority to order the vaccine of its employees, volunteers, vendors, etc. and all immunization requirements are based on the South Carolina Department of Health and Environmental Control.

47. Strict scrutiny therefore applies to defendants' policy, requiring that their restrictions of plaintiffs' fundamental right must be narrowly tailored to serve a compelling state interest. *Mohamed v. Holder*, 266 F. Supp. 3d 868, 877 (E.D. Va. 2017).

48. Unconstitutional conditions doctrine prevents the government from coercing people into giving up their enumerated Constitutional rights. *Memorial Hosp. v. Maricopa Cty.*, 415 U.S. 250 (1974).

49. The First Amendment of the United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances.

50. Defendants are violating Plaintiffs' First Amendment protected right of free speech to express a message with which the Plaintiffs disagree with. See *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S.Ct. 1719, 1729 (2018) (cake design can be expressive speech); *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 339 (2010) (holding money is equivalent to speech).

51. Article I Section 3 of the South Carolina Constitution states,

“The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

52. The County's mandate grants some employees and vendors of Charleston County the ability to be employed and provide services, which is a privilege, which does not equally belong to all employees and vendors of Charleston County. The Mandate on its face only applies to some County Employees and Vendors. The Mandate fails to explain why it applies to only certain employees and vendors and not others.

53. Article XIV Section 1 of the United States Constitution states:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”



54. Defendants Mandate states that Charleston County employees and vendors are prohibited from engaging in work if they are not fully vaccinated. The Mandate deprives Plaintiffs of their property interest in their jobs at Charleston County without due process. To the extent Plaintiffs are treated differently from other similarly situated employees and vendors the Mandate is also a violation of the Plaintiffs' right to equal protection under the law.
55. Plaintiffs have suffered and are likely to continue to suffer immediate, irreparable harm without the issuance of an injunction and restraining order.
56. Plaintiffs' ability to work for Charleston County has been prejudiced by the excessive and unconstitutional Mandate and therefore, has resulted in and persists to be an irreparable harm to Plaintiffs.
57. Plaintiffs are informed and believe it is likely to succeed on the merits of these claims.

### **CONCLUSION**

Based on the above, the Plaintiffs would ask for an order from the Court prohibiting the Defendants from enforcing the County Vaccine Mandate until such time a determination can be made on the merits of the case. The Plaintiffs would request that the duration of such an order be until such time as the accompanying litigation has been resolved. Plaintiffs would also request such other remedies of law or other acceptable relief that the Court may deem just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Plaintiffs,

vs.

ANNA B. JOHNSON, in her official and  
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WEHRMAN, in his official and individual  
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official and individual capacities; and  
CHARLESTON COUNTY,

Defendants.

The undersigned hereby certifies that on September 24, 2021, a copy of the foregoing *Motion For Temporary Injunction And Restraining Order* was duly served on Defendants counsel 4045 Bridge View Dr., North Charleston, SC 29405.

*SIGNATURES NEXT PAGE*

September 24, 2021

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## **Charleston County Mandatory Vaccination Procedures – for All Employees**

(these procedures are subject to change)

***Council Directive “Adopt a policy to require that all County employees must have received their last shot to be immunized against COVID-19 by October 24, 2021, and direct the County Administrator to develop procedures to implement this policy.”***

***POLICY: All Charleston County employees and other covered individuals must as a condition of continued employment become fully vaccinated and upload their vaccination card by midnight, November 7, 2021.***

### 1. Definitions –

**Employees** – All employees of Charleston County Government including the Charleston County Public Library. The following Elected and Appointed officials are responsible for implementation and enforcement of the vaccination policy within their offices: Auditor, Clerk of Court, Coroner, Probate Judge, Register of Deeds, Sheriff, Solicitor, Treasurer, Public Defender\*, Master in Equity\*, Magistrates\*, BEVR Executive Director\*, and Veterans Affairs Director\*. (\*=officials appointed by authorities outside County government). Elected and Appointed officials who choose to enforce this policy of Charleston County Government should follow the same procedural steps outlined in this document.

**Other Covered Individuals** - All volunteers, interns, contracted employees, and agency temps. Procurement will notify vendors and make any necessary contract changes with these organizations.

**COVID-19 Vaccine** – Any vaccine approved by the FDA to prevent the virus caused by COVID-19 or variants of COVID-19. This includes vaccines with full FDA approval and those with emergency approval.

**Fully Vaccinated** – An individual who no less than two weeks prior has completed the entire recommended series of a COVID-19 Vaccination.

2. Vaccination Cards – HR will utilize NeoGov eForms which provides a system for employees to submit vaccination verification cards and deferrals or exemptions digitally through a secure and confidential site accessible only by designated HR staff. HR will provide specific instructions to employees as to how to upload vaccination cards or deferral or exemption request forms to HR. It is anticipated

that employees will be able to upload a photo of their card via a smartphone, among other options.

3. Compliance Deadline – The final date all employees must upload their vaccination card showing full vaccination is midnight, Sunday, November 7, 2021.

4. Deferrals and Exemptions – HR will make deferral and exemption request forms available to all staff. The completed request form must be received through NeoGov eForms no later than midnight, Thursday, October 14, 2021.

A. Employees may request deferrals of the deadline if they are on extended medical or military leave and will not be returning to work until after the deadline. Employees will be required to comply with the vaccination requirement prior to returning to work.

B. Employees may request a medical deferral of the deadline or an exemption from receiving the vaccine.

C. Employees may request a religious exemption from receiving the vaccine.

Employees will receive a written response either granting or denying their request. If an employee's request is granted, refer to section 5. *Accommodations for Individuals Granted Deferrals and Exemptions* below. If an employee's request is denied, they will be given five (5) weeks from the date of denial to become fully vaccinated and to upload their vaccination card as confirmation. Should the employee not be fully vaccinated and upload their vaccination card by midnight November 7, 2021, they will be required to comply with section 5.

*Accommodations for Individuals Granted Deferrals and Exemptions* below. Failure to comply by the established date will be deemed non-compliance with this policy.

5. Accommodations for Individuals Granted Deferrals and Exemptions – Individuals who are granted deferrals or exemptions will be deferred or exempt from the vaccination requirement only – they will not be exempt from the essential job duty of participating in workplace safety via their reasonable accommodation/alternate means of performing that duty. Accommodation requests will be evaluated for each employee and shall include wearing an approved mask during all work hours and breaks at the worksite and providing to

HR through a secure portal evidence of a negative COVID-19 test weekly. Negative test results must be uploaded through NeoGov eForms by Thursday at noon each week. At home tests will not be accepted. The employee will be responsible for any cost incurred for testing. See the DHEC website for locations providing free testing. <https://scdhec.gov/covid19/covid-19-testing-locations>. In limited circumstances, an alternate accommodation could include an unpaid leave of absence.

Applicable laws do not require accommodations that would impose undue employer hardships or which would pose a direct threat to the health and safety of other employees.

6. Separation from Employment Due to Non-Compliance with this Policy – Separation from employment due to non-compliance with this policy will be considered a voluntary resignation. Individuals will become eligible to apply for any posted position with Charleston County Government upon becoming fully vaccinated.

On the first business day after the deadline for submission of a vaccination card showing full vaccination, HR will provide to each department a list of employees who did not comply. Departments and offices will follow all established procedures for separation from employment. Separation from employment due to non-compliance with this policy is not grievable pursuant to Charleston County's Grievance Procedure 7.40. Providing a falsified vaccination card or a falsified request for deferral or exemption is grounds for termination.