

*7020 Entertainment, LLC v. Miami-Dade County*, No. 20-25138-civ-Scola, 2021 WL 516282 (S.D. Fla. 2021)

### **Southern District of Florida Dismisses Restaurant’s Claim That COVID-19 Curfew Violated Its Rights Under the First Amendment, Fourth Amendment, and Governor’s Emergency Orders**

In response to the COVID-19 pandemic, Miami-Dade County (“County”) enacted several emergency declarations to stop the spread of COVID-19. One of the emergency declarations imposed a curfew, requiring individuals in the County to remain in their homes from 10:00 PM to 6:00 AM. The curfew’s duration was later reduced to 12:01 AM to 6:00 AM. While the County continued to extend its emergency declarations, Governor DeSantis issued an executive order in September 2020, stating that “no COVID-19 emergency ordinance may prevent an individual from working or from operating a business” (the “Executive Order”). The County continued to renew the curfew emergency declaration, citing the need to protect the health of its citizens.

7020 Entertainment owns and operates a restaurant in the County that includes live entertainment on several stages throughout the venue. In response to the County’s continued renewal of the curfew emergency order, 7020 Entertainment brought suit against the County. 7020 Entertainment argued that the curfew (1) infringed upon its First Amendment rights, (2) violated the Fourth Amendment by enforcing the curfew and “unlawfully seiz[ing] its property,” and (3) that the County’s order was preempted by Governor DeSantis’ Executive Order.

In response to a motion to dismiss by the County, the court dismissed all of 7020 Entertainment’s claims. First, the court dismissed 7020 Entertainment’s argument that the curfew violated its First Amendment rights. The Court reasoned that the County’s curfew was narrowly tailored to meet the legitimate purpose of protecting against the spread of COVID-19. Second, the court rejected 7020 Entertainment’s claim that the curfew violated the Fourth Amendment, reasoning that 7020 Entertainment failed to show that there was a consistent pattern of violations committed by the County. “Far from a pattern, [the County’s] early curfew enforcements seem to be isolated incidents pertaining to a policy that has been in place for over 7 months.”

Lastly, the court dismissed the claim that the County’s curfew emergency order was preempted by the Governor’s Executive Order. In dismissing this claim, the court distinguished a prior decision where the court determined that Broward County’s curfew was preempted by the Governor’s Executive Order. The court noted that in its prior decision, Broward County’s curfew was preempted because it did not provide “the economic impact of each restriction, limitation or requirement on those restaurants impacted, and explain why each limitation or requirement is necessary for public health.” In contrast, the County provided specific details about the effect of the emergency declaration and the justification for why the order needed to remain in effect. This case has been appealed to the Eleventh Circuit.