

In the United States District Court
for the
District of Kansas

**Jackie Taylor;
Linda Jo Hisel.**

Plaintiffs,

vs.

**Jay Allen, M.D., in his official capacity as
Linn County, Kansas, Health Director; The
Board of County Commissioners of the
County of Linn, Kansas.**

Defendants.

Civil Action No.

Verified Complaint

Verified Complaint

Plaintiffs Jackie Taylor and Linda Jo Hisel file this Verified Complaint against Defendant Jay Allen, M.D., in his official capacity as Linn County, Kansas, Health Director, and against the Board of County Commissioners of the County of Linn, Kansas.

Introduction

1. This is a civil rights lawsuit. Two Linn County residents seek relief from a county-wide emergency order (“Order”) issued by the Linn County Health Director, Jay Allen, M.D. on May 1, 2020. Exhibit 1. There are no active COVID-19 cases in Linn County, Kansas.¹ Nonetheless, the Order requires businesses and professionals to compile, and disclose upon demand for any reason, a list of their patrons, patients, and clients. The Order applies to physicians, lawyers, banks, dentists, restaurants, and others. The Order intrudes upon doctor-patient and attorney-client relationships and is so broad, it would easily and improperly reveal a person’s movements over time.

¹ Accessible at <https://www.facebook.com/LinnCoEmergencyManagement/posts/1523426987816866>

2. The Order is unconstitutional. It authorizes warrantless searches and seizures for any purpose without any precompliance review, and deprives Plaintiffs and others similarly situated of their Fourth Amendment rights. The Order lasts in perpetuity unless revoked by Dr. Allen or the Board of County Commissioners of the County of Linn, Kansas. This Court should declare the Order's list-compiling, list-disclosure requirement ("warrantless search regime" or "warrantless regime") unconstitutional on its face and as applied, and permanently enjoin its enforcement.
3. Plaintiffs are Jackie Taylor, a Linn County, Kansas, resident who does not want her information compiled and subject to review by the government upon demand; and Linda Jo Hisel, the owner of a restaurant who will be forced to compile, and disclose upon demand for any reason, a list of her patrons. Neither Plaintiff consents to the warrantless search regime. Both object to the warrantless search regime.
4. Plaintiffs filed this action to vindicate their Fourth Amendment rights and to prevent the implementation and enforcement of the warrantless regime.

Parties

5. Jackie Taylor is a resident of Linn County, Kansas. She is the owner of Linn County News. She is also its editor, publisher, and a reporter.
6. Linda Jo Hisel is a resident of Linn County, Kansas. She owns and operates Nana Jo's restaurant in La Cygne, Kansas.
7. Defendant Jay Allen, M.D., is the Linn County Health Director and is sued in his official capacity. Dr. Allen issued the Order in this case, and according to the Order's terms, did so pursuant to his authority under KSA §§ 65-119 and 65-202.
8. Defendant Board of County Commissioners of the County of Linn, Kansas, ("Board") sits as the county board of health. KSA § 65-201. The Board appointed Dr. Allen as the local health officer. KSA § 65-201. Dr. Allen serves at the pleasure of, and as an advisor to, the Board. KSA § 65-201. Defendant Board has the power to revoke the Order, according to its terms, but has not done so. Defendant Board is a political subdivision of the State. Service of process may be made upon the Linn County Clerk.

9. At all times, Defendants were acting under color of state law which caused the deprivation of Plaintiffs' rights, protected by the United States Constitution.

Jurisdiction and Venue

10. Plaintiffs seek to vindicate their rights under the Fourth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983, and the Declaratory Judgments Act, 28 U.S.C. §§2201-02, and under 42 USC § 1988 to award attorneys fees.
11. Plaintiffs seek a temporary restraining order, preliminary and permanent prospective relief, and a declaratory judgment, all arising from the Order which requires businesses and professionals to compile, and disclose upon demand, information without a warrant or any other precompliance review.
12. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 and 42 USC 1983.
13. Venue is proper because the acts occurred in Linn County, Kansas.

Facts


14. Dr. Allen is the Linn County, Kansas, Local Health Officer and is charged with "exercise[ing] and maintain[ing] supervision" over infections or contagious disease cases and with "seeing that all such cases are properly cared for[.]" KSA § 65-119(a). He is permitted to use "all known measures to prevent the spread of any such infections, contagious or communicable disease[.]" KSA § 65-202.
15. On May 1, 2020, Dr. Allen, in his official capacity as Linn County Health Director, issued an Emergency Public Order ("Order"). The Order became effective May 4, 2020 and remains in effect in perpetuity, unless "revoked in writing, by the Linn County Local Health Officer or the Board of Linn County Commissioners, sitting as the Board of Health." Exhibit 1. Dr. Allen issued the Order pursuant to KSA § 65-119 and KSA § 65-202. Exhibit 1, page 1 of 5.

16. The Order was in response to the COVID-19 pandemic. Currently, there are no active COVID-19 cases in Linn County, Kansas.² Only five total COVID-19 cases³ existed in Linn County, Kansas out of the roughly 9,700 residents.⁴
17. The Order compels businesses and professionals to compile information about each of its in-store customers. This includes the customer's name, phone number, date of visit, arrival time, and departure time. If more than one person is in the group, the business or professional must record each person in the group. Exhibit 1, page 2 of 5.
18. The following non-exhaustive list of businesses and professionals must disclose this information upon request, for any purpose, in perpetuity:
 - a. All licensed and lawfully operated medical service providers providing human and/or animal health care, including but not limited to, clinics, veterinary clinics, chiropractic clinics, physical therapy clinics, optometrists' offices, dental offices, and pharmacies.
 - b. Law firms and lawyers
 - c. Accountants
 - d. Insurance offices
 - e. Realtors
 - f. Libraries
 - g. Banks
 - h. Restaurants
 - i. Parts stores
 - j. Lumber yards
 - k. Hardware stores
 - l. Day care facilities
19. The customers' identity "must be kept and made available to the Linn County Public Health Department upon request[.]" Exhibit 1, page 2 of 5.

² Accessible at <https://www.facebook.com/LinnCoEmergencyManagement/posts/1523426987816866>

³ Accessible at <https://www.coronavirus.kdheks.gov/160/COVID-19-in-Kansas>

⁴ Accessible at <https://www.census.gov/quickfacts/fact/table/linncountykansas,US/PST045219>

20. Contrary to state statute, according to the Order, “any person violating any provision of this order or failing to comply with any of the above requirements shall be fined, upon conviction, up to \$500 for each offense, pursuant to K.S.A. 65-127.” Exhibit 1, p. 3 of 
21. The lists must be kept for thirty days, but the duration of the Order remains in remains in effect in perpetuity, unless revoked in writing by the Linn County Local Health Officer or the Board of Linn County Commissioners, sitting as the Board of Health. Exhibit 1, page 4 of 5.
22. At all times, Defendants were acting under color of state law.
23. Defendants are enforcing the Order by threatening to impose fines for any person violating the Order (Exhibit 1), and through public comments, to the Board: “When [Linn County Health Nurse Trish Coleman] was questioned about the customer contact lists restaurants and other businesses were supposed to maintain she said ‘It contains the customer’s name, phone number and who they were with – the time in and out. The restaurant needs to keep it for 30 days.’ ... if the health department needs to call to inquire after an outbreak, they need to know who the person was with to follow the contact tracing path.” Jackie Taylor, *Customers ordered to sign-in at local restaurants*, Linn County News (May 6, 2020). The Order was made publicly available through the Linn County, Kansas Health Department Facebook page,⁶ and the Linn County, Kansas Emergency Management Facebook page.⁷ The Order has been re-published by other Linn County, Kansas governmental entities on their respective Facebook pages.
24. The Order does not contain a precompliance review process and does not prevent Defendants from searching businesses multiple times throughout the day, every day, for months on end. The subject of the search can only refuse to turn over the registry at his or her own peril.

⁵ KSA § 65-127 actually says “Any person found guilty of violating any of the provisions of K.S.A. 65-118, 65-119, 65-122, 65-123 and 65-126, and any amendments thereto, or failing to comply with any requirements thereof shall be fined, upon conviction, not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each offense.”

⁶ <https://www.facebook.com/linncountyhealthdepartment/posts/2663738533905520>

⁷ https://www.facebook.com/LinnCoEmergencyManagement/posts/1517230921769806?__tn__=-R

25. In other words, the Order authorizes warrantless, non-consensual searches at/in business locations, and authorizes penalties for noncompliance.
26. The Order's non-consensual, suspicionless, warrantless search or seizure regime is an ongoing violation of federal law.
27. The Order's non-consensual, suspicionless, warrantless search or seizure regime is a direct and proximate result of Defendants' actions or inactions.
28. There is no evidence the non-consensual, suspicionless, warrantless search or seizure regime advances any governmental purpose at all.

Jackie Taylor⁸

29. Jackie Taylor is a resident of Linn County, Kansas. She is the owner of *Linn County News*. She is also its editor, publisher, and a reporter. As part of her news gathering duties, Ms. Taylor often meets with sources at many of the businesses listed in the Order. She also frequents the businesses and medical service providers on her personal time.
30. Whether in her capacity as a reporter, or as a Linn County resident, Ms. Taylor does not want Dr. Allen or the Board to access lists that reveal with whom she meets, at what times, and for how long. Ms. Taylor does not want Dr. Allen or the Board to see whether, when, and for how long, she visits any medical services providers. Ms. Taylor does not want Dr. Allen or the Board to see whether Ms. Taylor consults with an attorney, for how long, and on what dates.
31. The Order is so broad, and applies to so many business and professions, she is incapable of avoiding the warrantless regime, in perpetuity. The Order's breadth would easily reveal Ms. Taylor's movements over time.
32. Ms. Taylor has a reasonable expectation of privacy, has not consented to this warrantless regime, has been injured by the warrantless regime, and the regime is a result of Defendants' actions or inactions.

⁸ Ms. Taylor's verification is attached.

33. Defendants' warrantless regime invades Ms. Taylor's privacy rights, causes Ms. Taylor anxiety and frustration, and pries into her private life.
34. The warrantless regime causes anguish, anxiety, frustration, and violates her rights in the following ways:
 - a. She cannot avoid the warrantless regime.
 - b. It will reveal with whom she meets, for how long and for what purpose. This includes medical service provider visits. It will also reveal her newsgathering sources.
 - c. The lists are accessible by anyone within Defendants' departments, for any reason or purpose, including simple curiosity.
 - d. The list held by Defendants could well be discoverable under the Kansas Open Records Act. The public would therefore be able to see with whom Ms. Taylor meets, for how long, and for what purpose, including medical service provider visits.
 - e. Because there is no articulable standard or precompliance review process, the lists could be used for improper purposes.
 - f. The information is capable of being used to track her whereabouts.
35. The warrantless regime has already caused Ms. Taylor to limit with whom she interacts, for what purpose, in certain locations, because she does not want to be included in the lists, accessible by Defendants, on demand. Ms. Taylor does not want her newsgathering sources included in the lists. The lists would memorialize all of her sources.
36. But for the warrantless regime, Ms. Taylor would freely, without fear, frustration or anguish, visit businesses and professionals.
37. Ms. Taylor has been and continues to be injured by the warrantless regime. She cannot freely visit businesses or professionals without fear, frustration, or anxiety.
38. The same day the warrantless regime is enjoined and/or declared unconstitutional, Ms. Taylor will freely, without anxiety, fear, or frustration, visit businesses or professionals.
39. The Order's warrantless regime is an ongoing violation of federal law.

40. But for Defendants' warrantless regime, Ms. Taylor would have suffered none of these harms or injures in the past, and would suffer none of them in the future.

Linda Jo Hisel⁹

41. Linda Jo Hisel is a resident of Linn County, Kansas. She owns and operates Nana Jo's restaurant in La Cygne, Kansas.
42. As owner and operator of Nana Jo's in Linn County, Kansas, Ms. Hisel is obligated under the Order's terms to compile daily lists of anyone who enters her restaurant, for any purpose. This includes not just patrons, but delivery persons, or anyone else who enters Nana Jo's. The information that must be compiled includes the person's name, phone number, date of visit, arrival time, and departure time. If more than one person is in the group, Ms. Hisel must record each person in the group. Exhibit 1, page 2 of 5. This is not an insignificant burden on Ms. Hisel's ability to run her business and serve her customers. The compilation requirement puts Ms. Hisel in an uncomfortable position. If a customer does not wish to be listed, Ms. Hisel is in a quandary. She can refuse to serve the customer, at her financial peril, or disregard the compilation requirement and suffer a financial penalty.
43. Ms. Hisel must compile and disclose the lists to Defendants or suffer penalty of punishment. The Order does not provide any precompliance review.
44. Defendants' warrantless regime invades Ms. Hisel's privacy and property rights, and causes Ms. Hisel anxiety, fear, and frustration. She does not know when she and her business will be the subject of a warrantless search or seizure.
45. Nana Jo's restaurant holds approximately fifty people and typically employs 4 people. The warrantless regime imposes a significant burden on Ms. Hisel. Not only will she try to serve her customers, she will be forced to simultaneously record their arrival time, the people in the party, and so on. Then, she will be forced to keep the daily lists for thirty days, in perpetuity. With few employees, trying to comply is burdensome. Ms. Hisel has already been forced to contact government entities regarding the Order.

⁹ Ms. Hisel's verification is attached.

46. The restaurant is in a small community. Acting on information and belief, the customers in Ms. Hisel's restaurant value their privacy. Ms. Hisel's customers do not want to be on lists that can be searched and seized without a warrant, or any other precompliance review process. Ms. Hisel believes the warrantless regime will discourage customers from eating at her diner, causing Ms. Hisel further injury.
47. Ms. Hisel does not consent to the warrantless regime, has been injured by the warrantless regime, and the regime is a result of Defendants' actions or inactions.
48. As the owner of a business, Ms. Hisel has a recognizable privacy interest in any records kept by herself and/or Nana Jo's, even *if* she is required by law to keep them.
49. Under *Los Angeles v. Patel*, 576 U.S. 409 (2015), the Fourth Amendment prohibits this warrantless regime because, at the very least, it does not provide for any precompliance review.
50. Because the Order does not contain a precompliance review process and does not prevent Defendants from searching businesses multiple times throughout the day, every day, for months on end, for any purpose whatsoever, Ms. Hisel can only refuse to turn over the registry at her own peril.
51. Ms. Hisel has been and continues to be injured by the warrantless regime because, among other things, she does not have an opportunity to challenge a demand by Defendants for her customer lists.
52. The Order's warrantless regime is an ongoing violation of federal law.
53. But for Defendants' warrantless regime, Ms. Hisel would have suffered none of these harms or injuries in the past, and would suffer none of them in the future.

Declaratory Judgment and Injunctive Relief

54. Plaintiffs reallege and incorporate by reference all the preceding paragraphs
55. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time.

56. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to be free from warrantless searches or seizures, and coerced surrender of their property and privacy rights.
57. It is appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring unconstitutional all relevant portions of Order at issue in this case, which empowers the non-consensual, suspicionless, warrantless search or seizure regime.
58. Pursuant to 28 U.S.C. §§ 2201, 2202 and Fed. R. Civ. P. 65, it is appropriate and requested that this Court issue a temporary restraining order, and/or preliminary and permanent prospective relief prohibiting enforcement of the warrantless regime.

Constitutional Violations

Claim One: Violations under the Fourth and Fourteenth Amendments to the United States Constitution

59. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.
60. The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” The Fourth Amendment is incorporated against the State of Kansas through the Fourteenth Amendment to the United States Constitution.
61. A search occurs for Fourth Amendment purposes when the government physically intrudes upon one of these enumerated areas, or invades a protected privacy interest, for the purpose of obtaining information. *United States v. Jones*, 565 U.S. 400, 404 (2012); *Katz v. United States*, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring).
62. The Fourth Amendment protects people, not places, and its purpose is to safeguard the privacy of individuals from government intrusions. *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018). A person does not surrender all Fourth Amendment protections by venturing into the public sphere, and in fact, the Fourth Amendment protects the privacy in the whole of their physical movements. *Id.* at 2217.

63. An enforcement agent or other government official's nonconsensual, warrantless inspection of business records plainly constitutes a "search." *See City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015).
64. The Order at issue requires businesses and professionals to compile, and disclose upon demand for any reason, in perpetuity, a list of their patrons, patients, and clients. This Order permits unreasonable, nonconsensual, suspicionless, and warrantless searches or seizures and violates the privacy rights of those required to be listed.
65. The Order's warrantless regime disbands with all constitutionally-required safeguards by permitting inspections of the records at any time, for any reason, without a warrant or even a subpoena, in perpetuity.
66. The warrantless regime does not contain any precompliance review and is therefore plainly unconstitutional. *See City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015).
67. On its face and as applied, the Order violates the Fourth and Fourteenth Amendment to the United States Constitution.
68. Defendants implemented, ratified, approved, and/or adopted the warrantless regime causing Plaintiffs injuries.
69. As a consequence of the Defendants' violations of Plaintiffs' rights, Plaintiffs have been and continue to be injured, and are therefore entitled to, among other things, entry of a temporary restraining order, prospective injunctive relief, and any other equitable or legal relief as the court deems appropriate.
70. Plaintiffs have no other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.
71. Unless the Order's unreasonable, nonconsensual, suspicionless and warrantless search or seizure regime is declared unconstitutional and permanently enjoined, Plaintiffs will continue to suffer great and irreparable harm.

Request for Relief

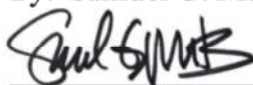
Plaintiffs respectfully request the Court grant the following relief:

- 72. Declaratory judgment that the Order's warrantless regime violates the Fourth and Fourteenth Amendments to the United States Constitution, on its face and as applied to Plaintiffs.
- 73. For entry of a temporary restraining order, preliminary and permanent prospective injunctive relief, enjoining Defendants, Defendants' officers, agents, employees, attorneys, servants, assigns, and all those in active concert or participation who receive, through personal service or otherwise, actual notice of this Court's order, from enforcing or directing the enforcement of the portion of the Order that constitutes a violation of the Fourth and Fourteenth Amendments, thus allowing Plaintiff and others similarly situated, to be free from unreasonable searches or seizures.
- 74. Reasonable costs and attorney' fees under 42 U.S.C. § 1988; and
- 75. Such other legal or equitable relief as this Court deems appropriate and just.

Jury Demand and Designation of Place of Trial

- 76. Plaintiffs request a jury trial on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure. Plaintiffs request the trial be held in Kansas City, Kansas, due to the proximity of the parties.

Dated: 5/10/20

Kansas Justice Institute
By: Samuel G. MacRoberts, 22781


Samuel G. MacRoberts
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Dated: 5/10/20

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**Jackie Taylor;
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Plaintiffs,

v.

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Defendants.

Verification of Jackie Taylor

Verification of Jackie Taylor

I, Jackie Taylor, verify under penalty of perjury that I have read the verified complaint and its contents. I verify that the information contained therein is true and accurate to the best of my knowledge and belief.

Dated: 5-10-20, 2020.

Jackie Taylor
Jackie Taylor

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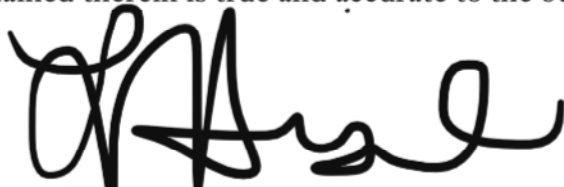
Defendants.

Verification of Linda Jo Hisel

Verification of Linda Jo Hisel

I, Linda Jo Hisel, verify under penalty of perjury that I have read the verified complaint and its contents. I verify that the information contained therein is true and accurate to the best of my knowledge and belief.

Dated: 5.16.20, 2020.



Linda Jo Hisel