

City of Coral Gables City Commission Meeting
Agenda Item J-1
June 8, 2021
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Vince Lago

Vice Mayor Michael Mena

Commissioner Rhonda Anderson

Commissioner Jorge Fors

Commissioner Kirk Menendez

City Staff

City Manager, Peter Iglesias

Assistant City Manager, Ed Santamaria

City Attorney, Miriam Ramos

City Clerk, Billy Urquia

Public Speaker(s)

Aurelio Durana (phonetic)

Maria Cruz

Agenda Item J-1 [2:41 p.m.]

Report and update regarding City of Weston, et al. v. State of Florida, et. al. (case where City joined various other municipalities and counties in challenging the penalty provision of section 790.33, F.S. relating to the regulation of firearms)

Mayor Lago: Item J-1.

City Attorney Ramos: J-1 is a report regarding the City of Weston et al. versus State of Florida. So, I'm going to give just a little bit of a primer, as I've been asked to do here, and then I'm going

City Commission Meeting

June 8, 2021

Agenda Item J-1 - Report and update regarding City of Weston, et al. v. State of Florida, et al. (case where City joined various other municipalities and counties in challenging the penalty provision of Section 790.33, F.S. relating to the regulation of firearms).

to ask for the Commission's direction on if and how to proceed. So, there is a preemption statute, 790.33, that preempts the entire regulation of firearms to the State of Florida. That statute, in and of itself, is not problematic. However, there's a penalty provision of that statute that does a number of different things. One is it assesses penalties against local government entities, and two, it assesses penalties against government officials. The penalties against local government entities are up to \$100,000 in actual damages per suit incurred by a person or organization adversely affected by the violation and reasonable attorney's fees and costs. And the penalties against local officials include the removal from office by the governor and a \$5,000 fine. The public official is also personally liable for the fine and is responsible for his or her own attorney's fees. This is a penalty provision like no other. It is, in my legal opinion, in my personal opinion, if not of most city attorneys, a serious violation of separation of powers, as well as the immunity provided to local government officials, as well as elected officials. For those reasons, in Resolution 2018-98, the City Commission directed the City Attorney to initiate and join a lawsuit challenging the penalty provision of that statute. Consequently, Coral Gables joined Weston and over 80 municipalities and elected officials in their official capacity, including then-Mayor Valdes-Fauli in a particular lawsuit. The original causes of action argued that the penalty provision of the statute violated a number of things: One, the state's constitutional limitation on the Governor's authority to remove municipal elected officials; two, legislative immunity; three, governmental function immunity; four, the right to free speech; five, the right to due process due to vagueness; six, the prohibition against arbitrary and capricious laws; and seven, the right to petition and instruct. In July of 2019, the Leon County Circuit Court ruled in favor of plaintiffs on three of the claims, and the court found in the provisions allowing the Governor to remove elected officials from office for violation of the statute violated the state constitution. In addition, the court found that the assessment of personal fines against elected officials violated legislative immunity. Finally, the court found that the assessment of fines against local governments violates governmental function immunity. As a result of that ruling, many of the defendants, with the exception of the Commission of Agriculture and Consumer Services, appealed to the First District Court of Appeals. They appealed only the legislative immunity and governmental immunity counts. In April 2021, the first DCA reversed the lower court's ruling, thereby permitting those sections to remain. Plaintiffs

represented by Weiss Serota Helfman decided to ask the first DCA to certify the question as a matter of great public importance in order to allow us to appeal the case to the Florida Supreme Court. Given that there were no Commission meetings in April, I sent an email to the then members of the City Commission with an update and explained that municipalities were very concerned about the immunity implications of this finding and recommended that we join the other plaintiffs in a motion for certification. No objection was heard from any members of the Commission at that time, and we therefore joined in that motion. On May 17th, the First District Court of Appeals denied our motion for certification. Plaintiffs represented by Weiss Serota Helfman have now decided to file a notice of intent to invoke discretionary jurisdiction from the Florida Supreme Court. And basically, we need to decide whether we join them in doing so or not. In the motion that -- in the memo that I provided to all of you and that is attached to the item on Legistar, I explained why I feel strongly that we should stay the course, that we should continue to fight for not only home rule, but for the protection of immunity provided to elected and appointed officials, and that we have been leaders in this area. And at this juncture, I think it's preferable to continue to stay the course to see if we can get the Florida Supreme Court to take jurisdiction. So, it's a two-step process if we're going to engage in it. One is a motion on jurisdiction asking the Supreme Court to take discretionary jurisdiction. This is not a matter of compulsory jurisdiction for them. And then should they grant that motion, then we'll have to brief the case substantively, and of course, argue it. I'm open to any questions.

Mayor Lago: Madam City Attorney, thank you for the brief recap. So, I'm torn here, and we've had this discussion before. And like I mentioned, since the moment that I have had the privilege of sitting up here as the Mayor, I'm trying to do everything in our power, especially after COVID, to ensure that we save as much money as possible, and that runs across every department, even my own department. You know, what I want to try to do is, I want to see how we can find ways that we can limit our exposure. I received several emails, one of them, I think, some of my colleagues were copied about the fact this is no longer an issue about firearms.

City Attorney Ramos: It really never was.

Mayor Lago: Yes. This is an issue now about immunity and our ability to represent the residents of this community. What I need to -- before I vote in favor of this, I need to understand what is our exposure in regards to costs moving forward.

City Attorney Ramos: So, we have two options. This Commission back when we -- when they directed me to join the lawsuit -- or the then Commission -- did not want to necessarily be represented with the -- remaining with the other plaintiffs. So, Abby Corbett, which is the City's First Amendment Council, was chosen to represent the City. Admittedly, she hasn't represented the City wholly in the sense that Weiss Serota is drafting a lot of the pleadings. She's collaborating with them. She's giving them advice. She went to the hearings. You know, she's been incredibly helpful, but she hasn't been filing different pleadings for Coral Gables. I want to be clear on that. So, we can move forward in the same fashion with Abby Corbett representing the City of Coral Gables. She has estimated her cost at a maximum of \$1,000 for the filing of the jurisdictional brief, and a maximum of \$2,000 for the filing of the substantive brief, if we got to that, and the argument, if she were to attend, which I do not believe is necessary. Alternatively...

Vice Mayor Mena: Which is a \$3,000 cap.

Mayor Lago: Yes.

Vice Mayor Mena: Just so I understand.

City Attorney Ramos: Correct.

Mayor Lago: I mean, I think...

City Attorney Ramos: Correct.

Mayor Lago: I don't want to interrupt you. I mean, I think that's enough for me. I think -- by the way, I want to put it on the record. Abby is an incredibly competent attorney. I've dealt with her multiple times, and you know, we're lucky to have her engaged here in the City.

City Attorney Ramos: Yeah. And I think it's important too for everybody to understand that we had a slightly different position than the other plaintiffs.

Mayor Lago: Yes.

City Attorney Ramos: Also, because we had been threatened and none of the others had been threatened at that time, so that was another reason why we felt we needed our own counsel. I think that's important.

Mayor Lago: But I want to make sure that there's a bookend. So, if you're telling me, it's a maximum of \$3,000 that we're going to spend, if we need to spend more, I want it to come to the Commission for any reason.

City Attorney Ramos: So, the only way it would be more is if we did get the Supreme Court to hear the case and they remand it, and then we had to have some pleading below, then I would come back to you.

Vice Mayor Mena: Right, please.

Mayor Lago: I'll entertain a motion.

City Clerk Urquia: Mr. Mayor, before you entertain a motion, we do have two members of the public requesting to speak.

Mayor Lago: Okay.

City Clerk Urquia: First is Mr. Aurelio Durana.

Mayor Lago: Yes. Mr. Durana, good afternoon.

Aurelio Durana: Good afternoon, Mr. Mayor....

Mayor Lago: It's great to have you.

Mr. Durana: Commission members. I was here to address -- to oppose 350 Greco Avenue, but I might as well kill two birds with one stone.

Mayor Lago: Well, we're going to -- if I may interrupt you and I apologize. We're going to...

Mr. Durana: Yes.

Mayor Lago: Hear 350 Greco in a moment.

Mr. Durana: Okay, alright. And when I say, "kill two birds with one stone," it's a figure of speech, Mr. City Manager. Don't give up the ghost, alright? You're not going to win. First DCA has already spoken. Going to the Supreme Court, what have you, is going to generate more expenses for us. These matters which ordinarily in a City Attorney's Office with four attorneys in-house would be handled in-house, is being handled by outside counsel. It's already cost us how much, 150, 200,000? Don't spend any more money. It's throwing good money down the drain, good money after bad. Alright, respect our right to bear arms. Leave us alone. We have the right to have a weapon in our possession, in our property. It's the second amendment to the US Constitution. Do not become social warriors at our expense. Thank you.

City Clerk Urquia: Mr. Mayor, the next speaker is Ms. Maria Cruz.

Mayor Lago: Ms. Cruz, the floor is yours.

Maria Cruz: Okay, here we go again. It has come to the point where there's limitless money to be used by the Attorney's Office. Every year we spend more money, every year we have more attorneys in-house and outside. I think it has come the time for you all to decide, you know what, \$3,000 is not a lot of money for most of us. Three thousand dollars is money for a lot of people. Enough is enough. Give it up. There's no reason to keep fighting. And I'm going to tell you right now, this is not the end because you heard it already. If it gets to the Supreme Court, then we'll come back and ask for more money. It's endless. We're going to keep fighting. We're going to have a name for ourselves. We're going to be in the books as the people that did all this to our expense. If the City Manager -- if the City Attorney has extra money in her budget, maybe let her use her money, but not a penny more from any other money. Enough is enough. Thank you.

City Attorney Ramos: If I could just make something clear for the record.

Mayor Lago: Yes, please.

City Attorney Ramos: In 2018-2019, the outside council budget for the City Attorney's Office was \$1.5 million and change. In 2019-2020, we spent \$1.1 million and change. We have reduced that budget by \$400,000 -- almost \$400,000. I just want to put that on the record.

Mayor Lago: Thank you. Does anyone else have any other comments in regards to this issue? I will support...

Vice Mayor Mena: No, I think -- I would just -- because I hear the comments about throwing good money after bad money, and I understand that. If this was a significant amount of money, I would probably be opposed to continuing with Abby at this point. She's a wonderful lawyer and everything, but at some point, you know, you can't justify the expense. Given that it's, from my

perspective, a fairly de minimis amount, and that's a maximum amount -- and just to address what Maria was mentioning, if I heard you correctly, you would only come back to us for potentially more expenditure if the Supreme Court remands it, meaning that now the current decision has been effectively overturned by the Supreme Court.

City Attorney Ramos: Right, and we end up either...

Vice Mayor Mena: Which would be a different...

City Attorney Ramos: In front of the First again or something else.

Vice Mayor Mena: Correct, which would be a different scenario altogether, and by...

City Attorney Ramos: Also, very unlikely.

Vice Mayor Mena: And by the way, I'll just say this now, in the unlikely event that does happen, I would probably -- we'd have to discuss it, and we'd have to talk to her -- but I would probably be in favor at that point of just sharing our fees with the Weiss Serota group to reduce the expense. You know, in retrospect, we wanted to use our own counsel, but you know, it did end up being a lot of money, and I think we're all conscious of that, you know. And we have to be mindful of that going forward. So, sitting here today, because there's a cap and it's a pretty de minimis number, I'm comfortable proceeding with it. But you know, if it does get remanded, we need to revisit whether or not we continue with Abby's representation, not because she's not an excellent lawyer. I really do appreciate all her work on it, but we do have to be conscious of the expenses involved.

City Attorney Ramos: Agreed.

Vice Mayor Mena: So, that's where I am with it.

Mayor Lago: Do we have a motion?

Vice Mayor Mena: I'll make the motion.

Mayor Lago: Do we have a second?

Commissioner Menendez: I'll second.

Mayor Lago: Call the roll.

Vice Mayor Mena: Yes.

Commissioner Menendez: Yes.

Commissioner Anderson: No.

Commissioner Fors: Yes.

Mayor Lago: Yes.

(Vote: 4-1)

Vice Mayor Mena: And Madam City Attorney, I would just ask that to the extent there's any formal engagement with her for this aspect of the representation, you know, I'd like her to document that as a maximum.

City Attorney Ramos: Yes, she's told me verbally, but certainly we can put that...

Vice Mayor Mena: Yeah.

City Attorney Ramos: In writing, of course.

Vice Mayor Mena: Okay, thank you.