

IN THE SUPREME COURT OF FLORIDA

CITY OF TALLAHASSEE, FLORIDA,
et. al.,

Petitioners,

vs.

Case No.: SC21-651
DCA Case No.: 1D20-2193

FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC., JOHN DOE 1,
AND JOHN DOE 2.

Respondents.

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RESPONSE TO MOTION FOR EXTENSION OF TIME

Respondents file this Response to the Petitioner’s Motion for Extension of Time to Serve Jurisdictional Brief. The Petitioners’ motion should be denied based on Petitioners’ actions and representations to the two lower courts throughout the pendency of this very matter. In support of this Response, the Respondents offer the following:

1. The City of Tallahassee initially delayed resolution of this controversy by failing to take any firm legal position at a duly scheduled Circuit Court hearing. The City then changed its position after the close of business on that same day and demanded that

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Respondents file a second Circuit Court action within the City's own arbitrary, specified time period.

2. Counsel for the Intervenor Petitioners thereafter demanded a final hearing at the earliest possible date. The Petitioners, through their counsel, unilaterally scheduled the final Circuit Court hearing after claiming only a good faith effort to coordinate with the Respondents.

3. The Circuit Court ruled in favor of the Petitioners and the Respondents took an appeal to the District Court.

4. The Circuit Court's order was stayed by operation of the Florida Rules of Appellate Procedure. Counsel for the Petitioners argued against the automatic stay at the Circuit Court level (initially) and later in the District Court.

5. Counsel for the Petitioners simultaneously moved the District Court to afford that appeal expedited treatment. Counsel for the Petitioners argued that the appeal concerned the public's "constitutional right of access to government records". Counsel also argued that the question of law was narrow, and that the record was limited.

6. According to the Petitioners, “[u]nder well-established Florida law, it is appropriate to expedite [the District Court’s] review in order to carry out the mandates of Article I, Section 24 of the Florida Constitution and the Florida Public Records Act.”

7. The Petitioners argued that appellate courts had a long-standing policy to promptly consider any limitation upon public access to government proceedings and records.

8. The Petitioners cited with favor to an earlier District Court case in which oral argument had been held four (4) days after the submission of a Reply Brief.

9. The Petitioners asked the District Court to set a similarly accelerated briefing and oral argument schedule. It was noted that the lower court had already ruled against the Respondents and that the Respondents were seeking to challenge the lower court’s determination.

10. The Respondents’ attorneys were fresh off of being subjected to an arbitrary filing deadline and unilaterally-scheduled final hearing in the Circuit Court. They objected. The Respondents filed an extensive response and argued against expedited treatment in the District Court.

11. The District Court granted the Petitioners' motion to expedite and implemented an expedited briefing schedule. Counsel for the Respondents were directed to file the initial brief within ten (10) days after the transmittal of the record on appeal. Accelerated filing deadlines were also established for the Answer and Reply Briefs.

12. Counsel for the Respondents complied and filed the initial brief, addressing the merits of the arguments, within ten (10) days of the submission of the paginated record. The follow-up briefs were likewise submitted according to an expedited schedule which the Petitioners had suggested. No oral argument was requested. None was ordered.

13. Months later, the District Court rendered the opinion on review. The opinion was rendered on April 6, 2021. The District Court mandate was rendered on April 27, 2021.

14. The same day the mandate was entered, April 27, 2021, counsel for the City of Tallahassee issued a press release indicating that the City would seek to invoke this Court's discretionary jurisdiction. This press release was issued without contacting opposing counsel.

15. Now, with the clock ticking to file a jurisdictional brief, the Respondents are requesting an extension of time to file a jurisdictional brief due to the “press of other matters”.

16. The Petitioners’ decision to seek this Court’s discretionary review was made at least as early as April 27, 2021 when the City’s press release was distributed. The task at hand for Petitioners is to convince this Court to exercise discretionary jurisdiction over the matter as opposed to arguing the merits of the underlying controversy.

17. As the Petitioners have previously (successfully) argued: the legal issue is rather narrow. The record is limited.

18. The Respondents tirelessly pursued expedited treatment at the Circuit Court (where the Respondents were Petitioners and carried the burden) and at the District Court (where the Respondents were Appellants and carried the burden). The Respondents cannot seriously argue that at this point, when they face the burden for the first time, that the “press of other matters” should allow for any delay.

19. The public’s “constitutional right of access to government records” was an important consideration, which required prompt legal work under tight deadlines in 2020. It should be equally

important, and require equally prompt legal work in 2021. Florida appellate courts have a long-standing policy to promptly consider any limitation upon public access to government proceedings and records.

20. It must be remembered that a three-judge panel of the District Court has unanimously ruled against the Petitioners. The Petitioners are herein seeking to challenge the District Court's determination.

21. Because the Petitioners enjoyed expedited proceedings, at their insistence, throughout this very controversy: they should be precluded from requesting any extension of time. Petitioners made a decision weeks ago to seek this Court's discretionary review. One ingredient in that decision is necessarily the long-settled timelines for the submission of a jurisdictional brief. Another ingredient is the availability of counsel.

WHEREFORE, were we involved in another case or controversy: Respondent's counsel would have no issue in acquiescing to almost any request for an extension of time. But based on the history of this litigation, between these parties, represented by these attorneys, the Petitioner's request is improper and it is due to be denied. The

Respondent's attorneys were maneuvered into filing a 36-page merits brief below within ten days of record submission. Certainly the Petitioners' counsel, with weeks to prepare, being familiar with the record and issues, are rightly expected to file a 10-page jurisdictional brief in the same matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed using the Florida ePortal system and **electronic** service has been directed to:

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Respectfully submitted;

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