

**IN THE CIRCUIT COURT OF
THE 12TH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY**

CITIZENS FOR SUNSHINE,
INC., a Florida not-for-profit
corporation, and ANTHONY
LORENZO,

CASE NO. 2008 CA 8108 SC

Plaintiffs,

v.

CITY OF VENICE, et al.,

Defendants.

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS' FEE APPLICATION**

The Reporters Committee for Freedom of the Press asks this Court grant it leave to file an *amicus curiae* brief in support of the Plaintiffs' fee application. The brief is attached to this motion as Exhibit "A."

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and freedom of information litigation since 1970. The Reporters Committee's interest in this case is in recognizing that law and public policy are furthered when any citizen brings a lawsuit to enforce open government laws. In cases where those citizens prevail, it should be the unlawful government body, not the citizen serving the public interest, who should bear the financial burden.

Indeed, citizens have always had the right to bring lawsuits such as this one, effectively enforcing open government laws. When they prevail so significantly such as here, it is clear they

should never have had to file the lawsuit to begin with. *Amicus* argues this is precisely the rationale for awarding attorney's fees and costs. When citizens — or public interest groups or the news media — step forward to bring such lawsuits and prevail, they must not be penalized for doing so, as a denial of attorney's fees and costs here would effectively do.

The Reporters Committee for Freedom of the Press respectfully requests that the Court grant it leave to file an *amicus curiae* brief and deem the attached brief filed.

DATED: Aug. 13, 2009.

Respectfully Submitted,

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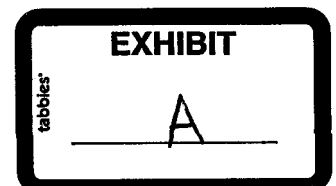


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INTEREST OF *AMICUS*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and freedom of information litigation since 1970. The Reporters Committee's interest in this case is in recognizing that law and public policy are furthered when any citizen brings a lawsuit to enforce open government laws. In cases where those citizens prevail, it should be the unlawful government body, not the citizen serving the public's interest, that bears the financial burden.

SUMMARY OF ARGUMENT

The Plaintiffs, a non-profit organization and a citizen activist, brought this lawsuit alleging violations of Florida's Government in the Sunshine Law and Public Records Act by members of the Venice City Council. The violations centered on the Venice Municipal Airport and the Airport Advisory Board. The litigation ultimately revealed numerous violations of these open government laws and after almost a year of litigation, the parties entered into a settlement agreement. Notably, the City of Venice agreed to maintain an e-mail system for all city officials that adequately preserved messages and directed all officials to use such accounts while transacting official business, with the intention of better public recordkeeping in furtherance of public accountability and oversight.

Plaintiffs, consistent with the terms of the settlement agreement and Florida law, now seek an award of attorney's fees and costs. *Amicus* urges the Court to note the considerable public interest served by the Plaintiffs in bringing the suit and the ultimate effect of the litigation in uncovering the Defendants' unlawful record-keeping and meetings practices. Without this

litigation, Defendants may have continued to disregard these open government laws, flaunting the procedural mechanisms that allow a democracy to function. Plaintiffs took on the burden to restore transparency in government on behalf of all citizens. Such service in the public interest should be recognized and attorney's fees and costs should be awarded in this case.

ARGUMENT

I. The Plaintiffs are entitled to attorney's fees under the statutory framework and the settlement agreement.

Florida's open government laws, the Public Records Act and the Government in the Sunshine Law put Florida at the forefront of the openness when compared to other states and the federal government. *See* Sandra F. Chance & Christina Locke, *The Government-in-the-Sunshine Law then and now: A model for implementing new technologies consistent with Florida's position as a leader in open government*, 35 Fla. St. U. L. Rev. 245, 257 (2008). These laws expansively require open meetings and public accessibility of government information, furthering a public policy of transparency in government. *See* Fla. Stat. § 119.01. To this end, both laws have provisions requiring prevailing plaintiffs to be awarded attorney's fees for demonstrating violations of the laws. *See* Fla. Stat. § 119.12; Fla. Stat. § 286.011(4). Additionally, the parties in this case have entered into a settlement agreement where the Defendant City of Venice has admitted to violations of these statutes and acknowledged that the Plaintiffs are entitled to an award of attorney's fees. (Settlement, ¶ 7.)

The Public Records Act provides that, "if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorney's fees." Fla. Stat. § 119.12. Likewise, the Sunshine Law provides, "Whenever an action has been filed against any board or commission . . . which action was taken in violation of this

section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency. . . .” Fla. Stat. § 286.011(4), *see also Indian River County Hosp. Dist. v. Indian River Mem'l Hosp. Inc.*, 766 So. 2d 233 (Fla. 4th DCA 2000) (awarding attorney's fees for hospital's violations of the Sunshine law).

By the Defendants' own admission in the settlement agreement, the Plaintiffs have demonstrated both violations of the Sunshine Law and Public Records Act. (Settlement, ¶ 2, ¶ 7: “The City of Venice acknowledges that Plaintiffs are entitled to an award of attorneys fees and costs under both Chapter 119 and Chapter 286 of the Florida Statutes. . . .”). As such, they should be awarded attorney's fees.

Where the Plaintiffs so clearly demonstrated systematic violations of the open government laws, where defendants admitted their guilt, where the City's record keeping and meeting practices changed significantly as a result of the lawsuit and its settlement, and where the Plaintiffs' persistence in correcting the process received widespread public accolades, there can be no question that the Plaintiffs must be awarded fees and costs.

II. The policy underlying the open government laws favors an award of attorney's fees where the Plaintiffs' pursuit of this case was in the public interest.

Florida's laws require an award of reasonable attorney's fees when a plaintiff has demonstrated a violation of the law. Reasonable fees are especially warranted here due to the significant public interest that was served by the Plaintiffs bringing this case. The Plaintiffs here stood to make no pecuniary gain from the suit. Indeed, activists such as the Plaintiffs are increasingly at the forefront of fights for open government compliance. Seth F. Kreimer, *The Freedom of Information Act and the Ecology of Transparency*, 10 U. Pa. J. Const. L. 1011, 1024

(2008) (“Whether because of resource constraints, political caution or cooptation, news media have not been prominent at the vanguard of successful FOIA inquiries. . . . It has been predominantly the availability of well-financed NGOs, combined with the possibility of assistance from the private bar, that has made FOIA a force to be reckoned with in this arena.”).

Citizens have always had the right to bring lawsuits such as this one, effectively enforcing open government laws. And when they prevail, it is clear they should never have had to file the lawsuit to begin with, which is precisely the rationale for awarding attorney’s fees and costs. When citizens — or public interest groups, the news media, or anyone — step forward to bring such lawsuits and prevail, they must not be penalized for doing so, as a denial of attorney’s fees and costs here would effectively do.

The public interest served when a requester brings this type of lawsuit is the same, regardless of whether the plaintiff is a private citizen, part of the news media, or a public interest group. Various courts addressing the issue of attorney’s fees in open government cases under state and federal statutes similar to Florida’s have recognized this point. *See e.g. Church of Scientology of California v. U.S. Postal Service*, 700 F.2d 486, 494 (9th Cir. 1983) (“[W]here plaintiff is . . . a nonprofit public interest group, an award of attorney’s fees furthers the FOIA policy of expanding access to government information.”); *Electronic Frontier Foundation v. Office of Director of Nat’l Intelligence*, 2008 WL 2331959, 3 (N.D. Cal. 2008) (“Thus, plaintiff is neither seeking damages for itself, nor profiting commercially in such cases. In fact, as a nonprofit organization, plaintiff is the sort of requester that Congress intended to recover attorney’s fees under FOIA.”); *Gwich’in Steering Committee v. State, Office of the Governor*, 10 P.3d 572 (Alaska 2000) (declaring a non-profit a “public interest” litigant in an open records case). The contribution to the public interest and democracy the Plaintiffs have made in

successfully bringing this case must be taken into account and supports the award of fees.

Indeed, Florida's courts have recognized the important public policy reasons behind the statutory language on attorney's fees. In a case involving a newspaper's pursuit of records, the Florida Supreme Court held that:

Section 119.12(1) is designed to encourage public agencies to voluntarily comply with the requirements of chapter 119, thereby ensuring that the state's general policy is followed. If public agencies are required to pay attorney's fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents. Additionally, persons seeking access to such records are more likely to pursue their right to access beyond an initial refusal by a reluctant public agency. The purpose of the statute is served by decisions like *Brunson* and *Sun-Sentinel* in which a unit of government that unquestionably meets the statutory definition of an agency refuses to allow the inspection of its records.

New York Times Co. v. PHH Mental Health Services, 616 So.2d 27, 29 (Fla. 1993).

Likewise, another Florida court noted this and the importance of compensating plaintiffs who successfully bring lawsuits for violations of the open records laws.

The attorney's fees provision may be viewed by the records keeper as a penalty for noncompliance. In one sense this is accurate and thus it may have a tendency to motivate the records holder to be more responsive and careful when a request for disclosure is made. It is at the same time a means of compensating members of the public where a request for disclosure is frustrated when no specific exemption is involved.

Office of the State Attorney v. Gonzalez, 953 So.2d 759, 763 (Fla. Dist. Ct. App. 2007) (citation omitted).

Here, the Plaintiff is a citizen activist with a non-profit organization formed for purposes such as these. The lawsuit received significant news media attention throughout the process, from the time it was filed until the present day. *See e.g.* Kim Hackett, *Venice officials sued over Sunshine Law, Activist says 2 held illegal meetings, and he wants it to stop*, Sarasota Herald-Tribune, May 22, 2008 at A1; Kim Hackett, *Legal fee argument will cost*, Sarasota Herald-Tribune, July 9, 2009 at B1. News stories reported that the lawsuit uncovered the flagrant

disregard for the open government laws engaged in by the City of Venice and its officials. *See* Eric Ernst, *They fixed problem, but didn't move on*, Sarasota Herald-Tribune, Mar. 13, 2009 at B1. The lawsuit also received attention because of the Plaintiffs' willingness to bring an action in which they stood to gain no pecuniary benefit. *See* Kim Hackett, *Activist has Venice perplexed, Sarasotan sues a city he doesn't live in, and some wonder about his motives*, Sarasota Herald-Tribune, May 25, 2008 at A1.

It is evident from the news accounts of this case, the settlement agreement, and the changes in practices by the city that the plaintiffs took a substantial financial risk, and made a significant impact on the ability of Venice citizens to monitor the conduct of their elected officials. Government in this community now has a better chance of operating in the sunshine instead of behind closed doors. Such an impact should be appropriately considered in the calculation of attorney's fees.

CONCLUSION

Given the clear statutory mandate for award of attorney's fees for violations of the Public Records Act and Sunshine Law; admission of violations of these laws by the Defendants in the Settlement Agreement; and the important public interest served by the Plaintiffs prevailing in this lawsuit, the Plaintiffs should be awarded attorney's fees.

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