

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

BRUCE WRIGHT,

Plaintiff,

Case No:

v.

CITY OF ST. PETERSBURG,

Defendant.

_____ /

COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

1. Florida’s Government in the Sunshine Law, § 286.011, Fla. Stat. (2012), and Article I, § 24(b) of the Florida Constitution requires all official acts to be taken at meetings open to the public.

2. Plaintiff Rev. Bruce Wright (Wright) brings this action to challenge actions by the Defendant City of St. Petersburg (City) to amend City Code § 20-30 in violation of the Sunshine Law and in violation of statutory requirements for adoption of ordinances set forth in § 166.041, Fla. Stat. (2012).

3. Wright challenges actions taken at a closed attorney-client session that exceeded the City’s statutory authority under § 286.011(8), Fla. Stat. (2012).

JURISDICTION

4. This action seeks an injunction to enforce §§ 286.011 & 166.041, Fla. Stat. (2012). The circuit courts of this state have jurisdiction to enforce the provisions of these section pursuant to §§ 286.011(2) & 26.012(3), Fla. Stat (2012).

5. This action also seeks a declaration that the actions taken by the City violated

§§ 286.011 & 166.041, Fla. Stat. (2012). The circuit court has jurisdiction to issue declaratory judgment pursuant to § 86.011, Fla. Stat. (2012).

VENUE

6. Venue in Pinellas County is proper pursuant to § 47.011, Fla. Stat. (2012). Defendant is located and the cause of action accrued in Pinellas County.

PARTIES

7. Plaintiff Rev. Bruce Wright is a citizen and resident of the City of St. Petersburg, Florida.

8. Defendant City of St. Petersburg is a municipal corporation located in Pinellas County with the capacity to sue and be sued.

FACTUAL ALLEGATIONS

Federal Lawsuit

9. In May 2009, six homeless plaintiffs filed a lawsuit¹ against the City in the U.S. District Court for the Middle District of Florida challenging, *inter alia*, the constitutionality of St. Petersburg City Code § 20-30 (authorization to issue trespass warnings for public property) both on its face and as-applied. *Catron et al. v. City of St. Petersburg*, Case No. 8:09-cv-00923 (M.D. Fla.).

10. On September 28, 2011, on appeal from a final judgment in favor of City, the Eleventh Circuit ruled that plaintiffs had stated a claim for relief that § 20-30 was unconstitutional on its face and as-applied in violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution and in violation of the right to intrastate

¹ Wright was not a plaintiff in the 2009 federal lawsuit.

travel guaranteed by the Florida Constitution. *Catron et al. v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011).

11. On October 18, 2011, the City filed a Petition for Rehearing En Banc with the Eleventh Circuit, which was denied on November 29, 2011. The mandate issued on December 13, 2011, remanding the case to the U.S. District Court for further proceedings.

12. On December 16, 2011, the City filed in the District Court a Motion to Dismiss plaintiffs' claims that § 20-30 is unconstitutional asserting that the procedural due process claims were moot because the City amended § 20-30 of the City Code while its Petition for Rehearing En Banc was pending before the Eleventh Circuit.

13. The City represented in the motion that the amendments to § 20-30 were passed into law after approval by the City Council at two public hearings and mayoral approval. The first reading allegedly occurred on October 13, 2011, and a second reading on November 3, 2011, by the St. Petersburg City Council.

City Council Meeting on October 13, 2011

14. The agenda for the October 13, 2011, City Council meeting does not list a first reading to amend § 20-30 of the City Code. (Ex. 1.)

15. The October 13th agenda listed as Agenda Item E "An Attorney-Client Session, pursuant to Florida Statutes 286.011(8), in the case of *Anthony Catron et al v. City of St. Petersburg*, Case No. 8:09CV923-T-17EAJ." (*Id.*)

16. This attorney-client session was announced on the October 6, 2011, agenda and at the City Council meeting on October 6th. The City Attorney John Wolfe stated that they would be discussing at the session the meaning of the opinion from the Eleventh

Circuit Court of Appeals.

17. The October 13th agenda item for the attorney-client session stated that “[t]he subject matter of the meeting shall be confined to settlement negotiations.” (*Id.*)

18. The City closed its Council meeting to the public on October 13th to go into the “attorney-client session.” The Chair of the Council announced that “any or all of the following named persons will be attending this meeting: James Kennedy, Chair; Karl Nurse, Vice-Chair; Herbert E. Polson; Bill Dudley; Leslie Curran; Steve Cornell; Wengay Newton; Jeff Danner; Mayor Bill Foster; Attorneys for the City John Wolfe, Mark Winn, Joe Patner.” He also stated the meeting would be recorded by a court reporter. (*Id.*; Ex. 2, 10/13/2011 Council Meeting Tr. 2:2-25.)

19. After conclusion of the closed attorney-client session, the Chair of the City Council reopened its meeting to the public and announced termination of the closed session. (Ex. 3, 10/13/2011 Attorney-Client Session Tr. 34:18-20.)

20. City Attorney John Wolfe said, “We’re now back in open session, if there’s any motions you would like to make.” (*Id.*, Tr. 34:21-22.)

21. City Council member Curran stated, “I move for approval.” (*Id.*, Tr. 34:23.) City Council member Newton said, “second.” (*Id.*, Tr. 34:24.)

22. City Council member Kennedy then stated, “And that’s moving for approval of Section 20-30(i); providing for appeals.” (*Id.*, Tr. 34:25-35:2.)

23. City Attorney John Wolfe instructed the City Council that the City Clerk needs to read the full title as soon as she gets a copy of the ordinance. (*Id.*, Tr. 35:3-4.)

24. The Clerk read the title of the proposed ordinance into the record, “An

ordinance creating a new Section 20-30(i); providing for appeals to the issuance of trespass warnings in certain situations; providing for hearing masters and procedures for appeals; clarifying and formalizing the process for an appeal of a trespass warning; amending Section 20-30(e) to provide that trespass warnings shall identify the right to an appeal of a trespass warning; and providing an effective date.” (*Id.*, Tr. 35:7-15.)

25. The City Council unanimously approved the ordinance without discussion on the record or asking for public comment. (*Id.*, Tr. 35:16-36:6.)

26. The Clerk announced the next reading and public hearing would be held on October 20, 2011. (*Id.*, Tr. 36:11-12.)

27. A hearing to discuss amending Section 20-30 was not held on October 20, 2011.

Attorney-Client Session pursuant to Fla. Stat. § 286.011(8) on October 13, 2011

28. A transcript was prepared of the closed attorney-client session held on October 13, 2011, immediately prior to the City Council’s approval of the amendments to § 20-30. (Ex. 3.)

29. The transcript of the October 13, 2011 attorney-client session (Ex. 3) was not made part of the public record until after the conclusion of the *Catron* litigation on October 11, 2012.

30. The transcript of the closed attorney-client session shows that the following individuals were present: City Council members James Kennedy, Herbert E. Polson, Bill Dudley, Leslie Curran, Wengay Newton, Steve Kornell, and Jeff Danner; Mayor Bill Foster; and City Attorneys John Wolfe, Mark Winn, and Joseph Patner. (*Id.*)

31. At the closed attorney-client session, Assistant City Attorney Patner discussed the status of the *Catron* litigation. Assistant City Attorney Patner stated that in response to the Eleventh Circuit's decision that there was no appeal process to challenge trespass warnings issued under § 20-30 of the City Code, he drafted a revised version of the ordinance "which does provide for the appeal process." (*Id.*, Tr. 6:7-9:2.)

32. Assistant City Attorney Patner passed out a copy of the draft amendments to § 20-30 at the meeting and explained the revisions. (*Id.*, Tr. 9:3-15.) He explained that the purpose for adopting these revisions to the ordinance was so that he can argue to the District Court that the case was moot, and that plaintiffs' counsel were not prevailing parties and were not entitled to attorneys' fees. (*Id.*, Tr. 9:16-11:11.)

33. City Attorney Wolfe explained that this closed attorney-client session is related to "litigation expenditures" as opposed to "settlement" because they were discussing how to avoid paying attorneys' fees to plaintiffs' counsel. (*Id.*, Tr. 11:12-18.)

34. City Attorney Wolfe suggested to the City Council that they approve the ordinance on the first reading because otherwise it takes away one of the "tools to reduce the attorneys' fees." (*Id.*, Tr. 17:16-20.)

35. City Council member Dudley stated that he moves to approve the ordinance, when City Council member Kennedy stated that they cannot approve the ordinance in this session. (*Id.*, Tr. 17:22-24.) City Attorney Wolfe stated they could approve the ordinance once they came out of the session. (*Id.*, Tr. 17:25-18:1.)

36. Then the City Council discussed the substance of the ordinance, and how the appeal process for trespass warnings is designed. (*Id.*, Tr. 18:25-24:14.)

37. City Council member Polson asked whether council members could be deposed as to their intent in amending the ordinance. (*Id.*, Tr. 25:4-27:3.)

38. The City Council then discussed general enforcement concerns with issuing trespass warnings under § 20-30. (*Id.*, Tr. 27:5-30:20.)

39. City Council member Newton questioned what would happen if they did not pass the amended version of the ordinance. (*Id.*, Tr. 30:22-31:1.) The Assistant City Attorney responded that unless the City corrects the constitutional “defect” with the ordinance, that they would have to fight about it in the District Court and could be liable for attorneys’ fees if they lost. (*Id.*, Tr. 31:2-16.)

40. Mayor Foster stated he thought the amended ordinance “should be passed.” (*Id.*, Tr. 33:24-25.)

41. City Attorney Wolfe stated that his recommendation was that once they came out of the closed session, they should “pass it on the first reading, the title could be read, and just set it for public hearing.” (*Id.*, Tr. 34:5-8.)

42. The City Council terminated the closed session. (*Id.*, Tr. 34:18-22.)

43. The City Council unanimously approved the amendments to § 20-30 without any discussion or repeating their deliberations on the record regarding the amendments to the ordinance that took place during the closed attorney-client session. (*Id.*, Tr. 34:23-36:6.)

City Council Meeting on November 3, 2011

44. The agenda for the November 3, 2011, City Council meeting lists as Item No. F (Public Hearings): “Ordinance 2-H creating a new Section 20-30(i); providing for appeals

to the issuance of trespass warnings in certain situations; providing for hearing masters and procedures for appeals; clarifying and formalizing the process for an appeal of a trespass warning; and amending Section 20-30(e) to provide that trespass warnings shall identify the right to an appeal of a trespass warning.” (Ex. 4.)

45. At the November 3rd meeting, Assistant City Attorney Winn stated that several of the City’s ordinances had been challenged and that they prevailed on everything but the Eleventh Circuit noted there were concerns that the City did not have an appeals procedure when trespass warnings were issued. (Ex. 5, 11/3/2011 City Council Meeting, Tr. 2:14-22.) He said “[w]e don’t necessarily agree with that...But just to ensure that there is a clearly written procedure that formally lays out a process, we have established this trespass appeal warning process so that anybody that’s issued an appeal or a trespass warning will know what the process is.” (*Id.*, Tr. 2:23-3:6.)

46. The City Council begins to vote on the ordinance without discussion when the Clerk tells them there is a person who wishes to make a public comment. (*Id.*, Tr. 3:10-14.)

47. The member of the public questions the projected amount of fees associated with hiring Hearing Masters to conduct the trespass warning appeals. (*Id.*, Tr. 4:1-7.) Council Member Newton then asks the City Attorneys about the costs of the appeal process and how the Hearing Masters are retained. (*Id.*, Tr. 5:10-8:5.)

48. There is no further discussion from the City on the record about the ordinance.

49. The City Council subsequently voted and unanimously passed the amendments to § 20-30. (*Id.*, Tr. 8:9-9:3.)

50. The effective date of the ordinance was November 10, 2011, at 5:00 p.m.

(Ex. 6.)

51. The amendments to § 20-30 did not set out in full the entire ordinance. The amendments approved by the City Council only set forth in writing an addition of subsection (i) and amendments to subsection (e) of the ordinance. (*Id.*)

52. However, what the City claims is subsection (e) was actually subsection (d) of the original ordinance. (*Compare Ex. 6 with Ex. 7 (§ 20-30, enacted 3/3/2005).*)

53. The version of the ordinance that appeared in the City Code immediately after the November 2011 contained an additional subsection (c) that did not appear in writing in either the version of the ordinance in effect prior to the November 2011 amendments nor was it in writing in the amendments to § 20-30 approved by the City Council on November 3, 2011. (Ex. 8.) Subsections (e) through (h) in the 2011 version of the ordinance have been relettered from how they appeared in the original ordinance as subsections (d) through (g). (*Compare Ex. 7 with Ex. 8.*)

54. This subsection (c) defines “rights-of-way” and continues to appear in the ordinance even though this provision was never presented to the City Council in writing nor voted on by the City Council at any time.

Subsequent Amendment to § 20-30

55. In June 2012, the City subsequently amended portions of Section 20-30(i). (Ex. 9.)

56. The City Council did not have any discussion on the record as to the purpose for amending Section 20-30(i) nor did it revisit its deliberations on the record from the October 13, 2011, closed attorney-client session.

57. A full copy of the ordinance, as amended in June 2012, is attached as Ex. 10.

58. This version was produced by the City Clerk in February 2013 in response to a public records request pursuant to Ch. 119, Fla. Stat. (2012).

**COUNT 1 -
Violation of Florida's Government in the Sunshine Law,
§ 286.011, Fla. Stat. (2012), and Art. I, § 24(b), Fla. Const.**

59. Plaintiff alleges and adopts paragraphs 1-58 by reference here.

60. Florida's Sunshine Law requires that all meetings of any commission of a municipal corporation "at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such a meeting." § 286.011(1), Fla. Stat. (2012).

61. A commission "must provide reasonable notice of all such meetings." *Id.*

62. The purpose of the notice requirement is to apprise the public of the pendency of matters that might affect their rights, afford them opportunity to appear and present their views, and afford them reasonable time to make an appearance.

63. Section 286.011 applies to the entire decision-making process of the City Commission, and not merely to the final vote to ratify a decision previously made.

64. All steps in the decision-making process to amend an ordinance must be open to the public.

65. A statutory exemption to the requirements of the open meetings requirement of the Sunshine Law is provided for meetings between a city council and its attorneys held

for the purpose of discussing settlement negotiations or litigation strategy related to expenditures for pending litigation to which a city was a party. § 286.011(8), Fla. Stat. (2012).

66. The City did not provide reasonable notice that it would hold a first reading of City Code § 20-30 on October 13, 2011.

67. Even if the first reading of § 20-30 were properly noticed, the decision-making process to amend the ordinance was not open to the public at all times.

68. The City Council discussed the amendments to § 20-30 at the closed attorney-client session on October 13, 2011, and reached a decision to amend the ordinance at that session.

69. The City Council went on the record only for the purposes of a perfunctory ratification or ceremonial acceptance of otherwise closed-door deliberations to amend § 20-30.

70. The manner in which the official action was taken deprived the public of any contemporaneous knowledge of what was going on and why the City Council was making these amendments to § 20-30.

71. The City Council violated § 286.011, Fla. Stat. (2012), and Article I, § 24(b) of the Florida Constitution by failing to have a meeting to amend § 20-30 that was open and noticed to the public.

72. The City Council failed to provide proper notice of the reason for its closed attorney-client session under § 286.011(8), Fla. Stat. (2012). The public notice of the meeting listed in the October 13, 2011, City Council Agenda stated the purpose of the meeting was to discuss “settlement negotiations” related to the *Catron* litigation, but the

City Council never discussed “settlement negotiations.”

73. The City Council exceeded its statutory authority under § 286.011(8), Fla. Stat. (2012), at the closed attorney-client session by deliberating over substantive amendments to § 20-30 and reaching a decision to amend the ordinance at that session.

74. The City Council exceeded its statutory authority under § 286.011(8), Fla. Stat. (2012), at the closed attorney-client session by discussing enforcement issues regarding trespass warnings issued under § 20-30 at a meeting that was not open to the public.

75. Actions taken at meeting held in violation of the Sunshine Law are void *ab initio*.

76. The 2011 amendments to § 20-30 were enacted in violation of the Sunshine Law, and are void *ab initio*.

**COUNT 2 -
Violation of Procedures for Adoption of City Ordinances,
§ 166.041, Fla. Stat. (2012)**

77. Plaintiff alleges and adopts paragraphs 1-58 by reference here.

78. Subsection (c) of City Code § 20-30 was never introduced in writing or adopted by the City Council at a public meeting.

79. This subsection of the ordinance was not validly adopted consistent with requirements of § 166.041, Fla. Stat. (2012).

80. Subsection (c) of City Code § 20-30 is void due to violations of § 166.041, Fla. Stat. (2012).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that the St. Petersburg City Council violated Florida's Government in the Sunshine Law, § 286.011, Fla. Stat. (2012), and Article I, § 24(b) of the Florida Constitution on October 13, 2011; that the violation was not cured in accordance with applicable law; and that the amendments to City Code Section 20-30 effective on November 10, 2011, are null and void *ab initio*;
- B. Declare that Section 20-30(c) was not properly enacted consistent with requirements of §§ 166.041 & 286.011, Fla. Stat. (2012) and Article I, § 24(b) of the Florida Constitution, and is therefore void;
- C. Issue an injunction voiding Section 20-30 *ab initio*, as amended in 2011, due to violations of § 286.011 and Article I, § 24(b) of the Florida Constitution;
- D. Award Plaintiff attorneys' fees and costs pursuant to § 286.011(4), Fla. Stat. (2012);
- E. Award any other relief this court deems just and proper.

Dated: November 21, 2013

Respectfully Submitted,

/s/ Kirsten Clanton

KIRSTEN CLANTON, Fla. Bar No. 17179
kirsten.clanton@southernlegal.org
debby.johnson@southernlegal.org
lennette.daneils@southernlegal.org
Jodi Siegel, Fla. Bar No. 511617
jodi.siegel@southernlegal.org
Alice K. Nelson, Fla Bar No: 211771
alice.nelson@southernlegal.org
Southern Legal Counsel, Inc.
1229 NW 12th Avenue

Gainesville, Florida 32601
(352) 271-8890
(352) 271-8347 (facsimile)

ATTORNEYS FOR PETITIONER