



Agenda Report

Removed
2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

12/3/2024

Subject:

Proposed Ordinance Establishing Brevard County as a "Bill of Rights Sanctuary County."

Fiscal Impact:

None.

Dept/Office:

District 4 Commissioner

Requested Action:

It is requested that the Board of County Commissioners hold a public hearing and adopt an ordinance establishing Brevard County as a "Bill of Rights Sanctuary County." .

Summary Explanation and Background:

The proposed ordinance establishes Brevard County as a "Bill of Rights Sanctuary County." The proposed ordinance defines the term "Unlawful Act" to mean any federal act, law, rule, or regulation, which has been held by a court of competent jurisdiction in a decision binding upon the courts of Brevard County to be facially unconstitutional.

The proposed ordinance prohibits officials, agents, and employees of Brevard County acting in their official capacity and having knowledge that a federal act, law, order, rule, or regulation has been declared unconstitutional from:

1. Intentionally participating in the enforcement of such Unlawful Act; or
2. Intentionally utilizing any County assets or funds to engage in any activity that aids in the enforcement of such Unlawful Act.

The proposed ordinance creates a private cause of action allowing any person injured by a violation of the ordinance to sue the violating official, agent, or employee of Brevard County in circuit court for declaratory relief, injunctive relief, and such other relief as may be appropriate under the laws of the state.

The proposed ordinance provides that an official, agent, or employee of Brevard County who violates the ordinance may be punished in accordance with Section 1-7 of the Brevard County Code of Ordinances (i.e., a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 60 days).

Private citizens who are not officials, agents, or employees of Brevard County cannot violate the ordinance,

and thus are not subject to the newly created private cause of action or the penalty for a County ordinance violation.

Under the proposed ordinance, only courts having proper jurisdiction may determine whether a federal act, law, rule, or regulation is unconstitutional and thus an "Unlawful Act." That determination is not made by the Board of County Commissioners or other County official, agency, or department. The ordinance is intended to be applied consistently with Article III of the United States Constitution and does not purport otherwise.

The proposed ordinance is not a "nullification ordinance" in that only federal acts, laws, rules, or regulations which have been held to be unconstitutional by a court of competent jurisdiction are declared unlawful, null, and void in Brevard County. The proposed ordinance does not confer on Brevard County a power to control the constitutional measures of the federal government, and neither intends nor purports to abrogate the Supremacy Clause of Article VI of the United States Constitution.

Notice of the hearing on the adoption of the proposed ordinance was published on Brevard County's publicly accessible website on November 22, 2024.

- Attachments:**
1. Proposed Ordinance
 2. Business Impact Estimate

Clerk to the Board Instructions:

Upon approval by the Board, execution by the Chair, and attestation by the Clerk, file the ordinance with the Department of State as required by law within the 10-day deadline. Please return an executed copy of the ordinance to Commissioner Feltner, the County Attorney, and the County Manager. If adopted, the ordinance should be codified in Chapter 74 - Offenses and Miscellaneous Provisions, under a new Article IX to be titled "Bill of Rights Sanctuary County."

ORDINANCE NO. 2024-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, ESTABLISHING BREVARD COUNTY AS A BILL OF RIGHTS SANCTUARY COUNTY; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING DEFINITIONS; PROHIBITING THE FURTHERANCE OF CERTAIN DEFINED UNLAWFUL ACTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Brevard County Board of County Commissioners has growing concerns over the federal government's encroachment on the rights and privileges of its citizens; and,

WHEREAS, of particular concern are those edicts promulgated by the federal government in the form of executive orders, which circumvent the legislative process and arguably violate the fundamental American doctrine of separation of powers; and,

WHEREAS, Article I, Section 1 of the Florida State Constitution recognizes that, "[a]ll political power is inherent in the people..."; and,

WHEREAS, the Tenth Amendment to the Constitution of the United States of America states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."; and,

WHEREAS, "... federalism protects the liberty of the individual from arbitrary power...[and a]n individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate." *Bond v. United States*, 564 U.S. 211, 222, 131 S. Ct. 2355, 2364-65 (2011); and,

WHEREAS, "[t]he structural principles secured by the separation of powers protect the individual as well." *Id.*; and,

WHEREAS, the State of Florida is divided into various counties and municipalities and Article VIII, Section 1(g) of the Florida Constitution vests counties operating under county charters with "all powers of local self-government not inconsistent with general law, or with special law approved by the vote of the electors."; and,

WHEREAS, Section 125.01, Florida Statutes specifically authorizes counties to "[a]dopt ordinances and resolutions necessary for the exercise of its powers... [and p]erform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."; and,

WHEREAS, Section 125.01, Florida Statutes further provides that, "[t]he provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State

Constitution.”; and,

WHEREAS, the Federal Government may not command the States’ officers, or those of their political subdivisions, to enforce federal regulatory programs (*see, e.g., Murphy v. National Collegiate Athletic Ass’n*, 584 U.S. 453 (2018)); and,

WHEREAS, the anti-commandeering principle is absolute and categorical. *See Printz v. United States*, 521 U.S. 898, 935 (1997) (“It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”); and,

WHEREAS, “[w]here Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the “consent” of state officials.” *New York v. United States*, 505 U.S. 144, 182, 112 S. Ct. 2408, 2431 (1992); and,

WHEREAS, the Board of County Commissioners acknowledges and affirms that the Sheriff is an independent constitutional officer and not under the authority of this Board, but the Sheriff is charged with the duty to enforce County Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida:

Section 1. Title. This ordinance shall be known as the “Bill of Rights Sanctuary County Ordinance”.

Section 2. Legislative Findings and Intent. The foregoing recitals are hereby ratified and incorporated as findings of the Board of County Commissioners and as the legislative intent of this ordinance. In addition to the foregoing whereas clauses, the Board of County Commissioners of Brevard County, Florida, hereby finds and declares:

In order to secure the rights of the citizens of Brevard County as enumerated, in part, by the United States Constitution including the first ten amendments thereto, which are commonly referred to as the Bill of Rights of that Constitution, and reads as follows:

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to 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 persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in a militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Brevard County has the right to be free from the commanding hand of the federal government and has the right to refuse to cooperate with federal government officials in response to unconstitutional federal government measures, and to proclaim a Bill of Rights Sanctuary for law-abiding citizens in its County. THEREFORE, through the enactment of this Ordinance, Brevard County, Florida is hereby declared to be a Bill of Rights Sanctuary County.

Section 3. Definitions.

A. An "Unlawful Act" shall consist of:

1. Any federal act, law, order, rule, or regulation, which has been held by a court of competent jurisdiction in a decision binding upon the Circuit Court in and for Brevard County, Florida, to be facially unconstitutional.
2. Any such "Unlawful Act" is invalid in Brevard County and shall not be recognized by Brevard County, and shall be considered null, void and of no effect in Brevard County, Florida.

Section 4. Prohibitions.

A. Notwithstanding any other law, regulation, rule, or order to the contrary, no agent, employee, or official of Brevard County, a political subdivision of the State of Florida, while acting in their official capacity and having actual knowledge that a federal act, law, order, rule, or regulation is an Unlawful Act as defined herein, shall:

1. Intentionally participate in any way in the enforcement of such Unlawful Act; or,
2. Intentionally utilize any Brevard County assets, funds, or funds allocated by any entity to Brevard County, in whole or in part, to engage in any activity that aids in the enforcement of such Unlawful Act.

Section 5. Penalties.

- A. Any person injured by a violation of this ordinance may commence a civil action in the Circuit Court in and for Brevard County for declaratory relief, injunctive relief, and such other relief as may be appropriate under the laws of this state against a person who violates this ordinance.
- B. In addition to the civil liability provided for by Section A above, violation of this Ordinance shall be punishable in accordance with Section 1-7 of the Brevard County Code of Ordinances (General Penalty).
- C. Nothing herein is intended nor shall be construed to waive, alter, abrogate, or circumvent any provision of qualified immunity, sovereign immunity, or the limitations on liability set forth in Section 768.28, Florida Statutes.

Section 5. Conflicts. In the event this Ordinance conflicts with any other ordinance of Brevard County or other applicable law, the more restrictive shall apply.

Section 6. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 7. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall be made a part of the Brevard County Code of Ordinances, and that the sections of this ordinance may be renumbered to accomplish such intention.

Section 8. Effective Date. This ordinance shall take effect immediately upon its adoption.

DONE, ORDERED, AND ADOPTED by the Board of County Commissioners of Brevard County, Florida this ____ day of _____, 2024.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: _____
Rachel Sadoff, Clerk

By: _____
Rob Feltner, Chairman
(as approved by the Board on _____)

(SEAL)

Business Impact Estimate

This form must be uploaded into Granicus to be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the County's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

"BILL OF RIGHTS SANCTUARY COUNTY ORDINANCE." AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, ESTABLISHING BREVARD COUNTY AS A BILL OF RIGHTS SANCTUARY COUNTY; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING DEFINITIONS; PROHIBITING THE FURTHERANCE OF CERTAIN DEFINED UNLAWFUL ACTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Pursuant to Section 125.66, Florida Statutes, a business impact estimate is **not** required if any of the following statements apply. Check all that apply and include this page in the agenda packet for the proposed ordinance under consideration.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, *Florida Statutes*, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - c. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - d. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

In accordance with the provisions of Section 125.66, Florida Statutes, and in the absence of an exemption listed above, the County hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed ordinance establishes Brevard County as a "Bill of Rights Sanctuary County." The proposed ordinance prohibits any agent, employee, or official of Brevard County from intentionally participating or engaging in any activity that aids in the enforcement of a federal act, law, order, rule, or regulation which has been held by a court of competent jurisdiction in a decision binding upon the Circuit Court in and for Brevard County, Florida, to be facially unconstitutional (an "Unlawful Act"). The proposed ordinance creates a private cause of action for declaratory and injunctive relief against Brevard County agents, employees, or officials who violate the ordinance. The proposed ordinance provides for punishment of violations in accordance with Section 1-7 of the Brevard County Code of Ordinances.

2. Estimate of direct economic impact of the proposed ordinance on private, for-profit businesses in the County:

No direct economic impact is expected.

3. Estimate of direct compliance costs that businesses may reasonably incur if enacted:

No direct compliance costs for businesses are reasonably expected.

4. Any new charge or fee imposed on businesses subject to the proposed ordinance, or for which businesses will be financially responsible:

No new charges or fees will be imposed by the proposed ordinance.

5. Estimate of the County's regulatory costs, including estimated revenues from any new charges or fees that will be imposed on businesses to cover such costs:

No increase in County regulatory costs is expected.

6. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

Brevard County estimates that no businesses are likely to be impacted by the proposed Ordinance.

7. Additional information that the Board of County Commissioners determines useful:

N/A.