

Bill of Rights Sanctuary County Ordinance

On August 22, the Collier County Commission enacted an ordinance declaring the County a Bill of Rights Sanctuary County, and is perhaps the first County in the Country to do so. A copy of that ordinance is attached as Attachment 1. The ordinance passed by a 4-1 vote, having failed by a 3-2 vote in 2021. In addition to having supermajority support from our Commissioners, Sheriff Rambosk enthusiastically endorsed the legislation as well. By its terms, the ordinance only applies to unincorporated Collier County. I propose that Council consider similar legislation to protect the citizens of Marco Island from federal overreach to the same extent the County ordinance protects citizens of unincorporated Collier County.

The Bill of Rights Sanctuary City (or, in this case, City) Ordinance, if enacted, will establish the City of Marco Island, Florida as a Sanctuary City for the United States Constitution. This means that the elected officials and employees of the City will be prohibited from participating in carrying out any federal government program, order, mandate, or law that violates the federal constitutional rights of the residents of Marco Island. The City has the absolute lawful authority to refuse to participate in carrying out federal government programs. The effect of the Ordinance is that the refusal to participate in those programs that negatively impact the constitutional rights of City residents is made mandatory, and punishable by certain enumerated penalties.

As set out in great detail in the “Whereas” clauses at the beginning of the Ordinance, the Ordinance rests upon the well-established legal doctrine known as the “anti-commandeering doctrine”. This doctrine, which has been upheld by the United States Supreme Court repeatedly and consistently, affirms the right of state and local governments to not be coopted into

participation in federal government programs and initiatives. The cases cited at the outset of the Ordinance represent instances in which the federal government compelled state or local governments into executing federal regulations – such as, for instance, gun control regulations – and the state and local government officials refused. Legal challenges ensued and the local officials prevailed each and every time because of this anti-commandeering doctrine. This legal doctrine is rooted in the fundamental American principles of federalism and state sovereignty.

The Ordinance establishes both civil and quasi-criminal penalties for violation. The quasi-criminal penalty is consistent with the City's penalty imposed for all other violations of the City Code. The civil penalty allows for any resident to commence suit in the Collier County Circuit Court to seek injunctive or other equitable relief, as well as monetary damages where appropriate. This provides an easy and accessible way for *pro se* litigants to assert their constitutional rights in a forum close to home.

The Bill of Rights Sanctuary Ordinance is an important tool for localities to protect themselves against federal government overreach. The most important function of government is to protect the individual liberties of the people. Local government is in the best position to do this. It is already unlawful for government to violate the God-given rights of its citizens as enshrined in the Constitution, but sometimes this obligation is overlooked or disregarded by government officials and employees. This Ordinance is intended to create another layer of protection for individual rights by causing those officials and employees to take the time to scrutinize every regulation promulgated by the federal government and to exercise their right to refuse to cooperate with the federal government in anything that may infringe upon the rights of the residents they serve.

My thanks to Kristina Heuser, Esq., for her assistance in preparing this White Paper. The Collier County Commission relied on her input and advice in enacting the County Sanctuary ordinance. I recommend that Council agree to proceed to first reading of the proposed ordinance, which is attached as Attachment 2, at our next regularly scheduled meeting.