

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:22-cv-24066-KMM

GRACE, INC. *et al.*,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

PLAINTIFFS' MOTION FOR CLARIFICATION
REGARDING ORDER SETTING HEARING

Plaintiffs respectfully request clarification regarding the Court's Order Setting Hearing on Expedited Motion for Preliminary Injunction (ECF 38), as detailed below:

1. Plaintiffs filed a Motion for Preliminary Injunction on February 10, 2023. ECF 26. Pursuant to Local Rule 7.1(b)(2),¹ Plaintiffs included a section titled Request for Hearing, "request[ing] oral argument should the Court find it useful to ask questions of counsel." *Id.* at 26. Pursuant to the Local Rule, Plaintiffs noted they "do not request an evidentiary hearing, but are prepared for one should Defendant request it." *Id.*

2. On March 10, the City filed its memorandum of law in response to Plaintiffs'

¹ Local Rule 7.1(b)(2) provides: "A party who desires oral argument or a hearing of any motion shall request it within the motion or opposing memorandum in a separate section titled 'request for hearing.' The request shall set forth in detail the reasons why a hearing is desired and would be helpful to the Court and shall estimate the time required for argument. The Court in its discretion may grant or deny a hearing as requested, upon consideration of both the request and any response thereto by an opposing party."

Motion for Preliminary Injunction. ECF 36. The City did not request oral argument or a hearing pursuant to Local Rule 7.1(b)(2). *Id.* The City also did not file any papers in support of its response.

3. On March 15, the Court issued the Order Setting Hearing, scheduling an Evidentiary and Preliminary Injunction Hearing; setting deadlines for notices regarding the time each side anticipates needing to present its case, for witness lists, and for serving exhibits; and requiring exhibits to be pre-marked.

4. On the morning of March 17, Plaintiffs' counsel emailed defense counsel to confirm whether the City intended to call witnesses at the hearing, given the fact the City did not request an evidentiary hearing in its opposing memorandum. Plaintiffs' counsel emailed again on the afternoon of March 20.

5. On the afternoon of March 21, defense counsel responded, stating that the City does intend to call witnesses at the hearing.

6. In light of the above, the Local Rule, and the Order Setting Hearing, Plaintiffs seek clarification on whether the Court will permit the City to call witnesses at the hearing.

7. Plaintiffs continue to rely on the papers attached to their Motion for Preliminary Injunction and will not call witnesses at the March 29 hearing. Given this, Plaintiffs also seek clarification on whether the Court wishes Plaintiffs to mark as exhibits the papers attached to their Motion. *See* ECF 38 ¶ 3.

8. Should the City call witnesses, Plaintiffs seek clarification of whether any papers that are not already in the record and which Plaintiffs use to impeach witnesses will need to be served by the March 24 deadline for serving exhibits. *See* ECF 38 ¶ 4.

9. To streamline their cross-examination at the hearing, Plaintiffs intend to depose the witnesses the City plans to call. Defense counsel has objected to that request. Should the Court

permit the City to call witnesses, Plaintiffs request the opportunity to depose them before the hearing and to know the topics about which the City will call them to testify. Doing so will allow an efficient cross-examination of witnesses that Plaintiffs have not otherwise had an opportunity to examine, and to permit Plaintiffs to prepare impeachment materials. *See, e.g.*, Scheduling Order at 12, *Singleton v. Merrill*, No. 2:21-cv-1291 (S.D. Ala. Nov. 23, 2021), ECF 45 (three-judge court permitting parties to depose witnesses before preliminary injunction hearing in racial gerrymandering case); *see also Vitoria Telecom, LLC v. MET One LLC*, 2021 WL 10257113, at *1 (S.D. Fla. May 17, 2021); *Quantum Commc'ns Corp. v. Star Broad., Inc.*, 382 F. Supp. 2d 1362, 1366 (S.D. Fla. 2005).

WHEREFORE, Plaintiffs respectfully request that the Court clarify its Order Setting Hearing as discussed above.

LOCAL RULE 7.1(a)(3) CERTIFICATION

Counsel for Plaintiffs conferred with counsel for Defendant in a good faith effort to resolve the issues raised in this motion and have been unable to do so, with the exception of the request for clarification regarding exhibit markings in ¶ 7, which Defendant does not oppose.

Respectfully submitted this 22nd day of March, 2023,

/s/ Nicholas L.V. Warren

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