

Judge says Miami anti-protest law has 'serious constitutional problems'

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MIAMI -- A federal judge said Thursday that he sees "serious constitutional problems" with a controversial Miami law that dictates the rules of public protest.

The law was enacted in November, days before the Free Trade Area of the Americas meetings, as the city anticipated mass demonstrations.

"Frankly, I think if any judge looks at the law and looks at the ordinance, it appears as though the statute is not constitutional," U.S. District Judge Donald L. Graham observed during a brief court hearing.

Lake Worth for Global Justice Inc., mounted the first legal challenge to the ordinance, suing the city Wednesday in federal court.

The Palm Beach County activist group contended that the law violates the First Amendment by placing unconstitutional restrictions on the right to political protest.

Marc Steier, an attorney with Miami Activist Defense, said he was encouraged by the judge's remarks.

The group also sought a restraining order to keep officials from enforcing the law Thursday night at Miami City Hall, where about a dozen people decried what they called a brutal use of force by police during the anti-globalization protests.

The need for an emergency court order was circumvented when the city arrived in court with a permit allowing the group to demonstrate without obtaining an insurance bond.

At City Hall, Miami Police Chief John Timoney praised his officers' conduct during the protests in a glowing, 66-page report he presented to the city's independent Civilian Investigative Panel, which is investigating allegations of police misconduct.

As Timoney prepared to address the panel, a small group of protesters outside re-created November's violent clashes between demonstrators and police.

Two protesters dressed in makeshift police uniforms towered over bandaged demonstrators, threatening them with billy clubs and cardboard guns.

Others held signs that said: "Welcome to story hour," and "Enjoy tall tales and fictional internal reports."

Steps away, a woman stood silently in front of a large photo of one of her breasts, bruised purple by a rubber bullet fired by police.

"It's still painful right now," said Holley Rauen, 51, a Fort Myers nurse.

Artist Nikki Hartman said she read the entire "after-action" report the police department issued and said she was appalled.

"It's an outrage," said Hartman, spreading the hair on her head to show a dime-sized scar she said was the result of a rubber bullet. "Beautiful piece of fiction. But I was there that day."

Panel members will have to reconcile two versions of events -- one from protesters who said police used excessive force and another from police, who said they struggled to keep peace in spite of "violent mobs."

During his presentation, Timoney told the panel's members his officers prevented the situation from escalating, and called the operation a success.

A 45-minute video police produced depicted officers on FTAA details as friendly public servants who used force only when attacked.

"That's not to say that everything went perfectly," Timoney said. "Only a fool would make that charge."

In his report, Timoney made reference to only a couple of minor problems with the police response.

He said riot gear should not be used unless there is a reliable, specific concern for officer safety because some might regard the gear as too intimidating.

Timoney, whose department was assisted by 38 other law enforcement agencies, said the security operation could have benefited from better coordination between departments. He said the team largely operated as one, but noted that one Miami Beach police officer unnecessarily used tear gas on a crowd of protesters, despite orders against using it.

Otherwise, the chief said, the police operation ran smoothly.

"The people and businesses of Miami faced a minimum of inconvenience with resiliency and good humor," the chief said in his report. "Those who came to commit violence faced an intelligent, measured police plan determined to minimize the effect of their criminal acts."

Protesters, however, called the report a whitewash that undermined the agency's credibility.

"They're either purposefully ignoring what happened or they're incompetent and don't realize what happened," said activist Naomi Archer.

Max Rameau, a frequent police critic, said, "They should get out of the law enforcement business and get into the relations business."

As panel members investigate allegations against police, it will be up to the courts to sort through whether the city's law passes constitutional muster. A trial to make that determination was set for April.

The law, enacted as the city geared up for mass demonstrations, restricts what protesters can carry in the streets and requires a permit for public gatherings of seven or more people if they last more than 30 minutes.

Despite its implementation, police did not use the newly created law for any of the 231 arrests made during the protests.

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