

## FROM THE COURTS

# Justices Won't Confront Scope of Excessive Fines Clause



DIEGO M. RADZINSCHI

Colorado's six-figure fine, Gregory Garre of Latham & Watkins, above, argued, would "plunge" his client into bankruptcy and put it out of business.

by Marcia Coyle

A Colorado state court ruling that said the U.S. Constitution's excessive fines clause applies to both corporations and individuals was among the cases the U.S. Supreme Court declined to review.

The Colorado Department of Labor and Employment asked the Supreme Court in November to take the dispute, which involved a workers' compensation-related fine imposed on a motel owner. Lawyers for Dami Hospitality LLC, represented by Latham & Watkins, also asked the justices to pick up the case.

Dami, the owner-operator of a Denver motel, let its workers' compensation insurance lapse, and the company got hit with 1,698 per diem fines—totaling \$841,200. The company's lawyers argued the fine was prohibited under the Constitution's excessive fines clause.

The Colorado Supreme Court in June said the excessive fines clause does, in fact, apply to corporations—not just individuals—and that an offender's ability to pay can be considered as part of a court's review of the constitutionality of the fine. The court scrapped the fine and ordered a do-over that took into account Dami's ability to pay.

Eric Olson, the Colorado state solicitor general, challenged the state court ruling at the Supreme Court.

"The animating purpose of the clause was to prevent the government from using fines to place people in prison arbitrarily. Corporations, of course, do not have liberty rights and cannot be imprisoned for failing to pay a fine," Olson, a former Bartlit Beck partner, told the justices.

Olson, who clerked for the late Justice John Paul Stevens, said any delay in reviewing the dispute "would put the constitutionality of nearly all routine government fines in serious doubt."

The Supreme Court did not issue any statement Monday in declining to review the Colorado ruling. The justices last term looked at the reach of the excessive fines clause in a ruling that applied prohibitions to state actors. That case, *Timbs v. Indiana*, involved police seizure of a vehicle in a drug-related prosecution.

Gregory Garre of Latham & Watkins, chairman of the firm's Supreme Court and appellate team, had also asked the justices to review the Colorado Supreme Court ruling.

Garre told the justices that Colorado's petition "presents an opportunity to resolve a question the court left open more than two decades ago—whether and how a defendant's income and wealth are relevant considerations in judging the excessiveness of a fine' under the excessive fines clause."

He urged the justices to "reaffirm the fundamental, and increasingly important, protections that the Framers adopted in the excessive fines clause against ruinous financial penalties."

Garre told the court: "Regulated entities, and especially small businesses like Dami, would benefit from a ruling from this court making clear that the excessive fines clause protects corporations, too." Colorado's six-figure fine, Garre argued, would "plunge" Dami into bankruptcy and put the motel out of business.

In the Colorado state court proceedings, Dami found a friend in the Cato Institute.

"The text of the Eighth Amendment is structurally similar to the text of the First and Fourth amendments, which also forbid certain government actions, regardless of whether those actions are directed at a natural person or a corporate person," Cato lawyers and Independence Institute, said in an amicus brief.

The Supreme Court's reluctance to hear Dami's case may have stemmed from a jurisdictional issue.

The Colorado Supreme Court had remanded the case to the lower court for additional proceedings that could have run up against the justices' tendency to review only final judgments or decrees from state courts.

Garre and Olson had addressed the jurisdictional issue in their briefs, arguing that the Dami case fell within exceptions to the finality rule in which the justices have said "immediate rather than delayed review would be the best way to avoid the mischief of economic waste and of delayed justice."

Colorado's Olson argued that the federal issue, "finally decided by the highest state court, may not be available for later review because respondent may go out of business for other reasons or may choose to dissolve instead of paying whatever penalty the Colorado Department of Labor assesses."

**Marcia Coyle covers the U.S. Supreme Court. Contact her at [mcoyle@alm.com](mailto:mcoyle@alm.com). On Twitter: @MarciaCoyle.**



## CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **Council Zoning Hearing** meeting on **Wednesday, January 29, 2020, beginning at 6:00 PM**, prohibiting Medical Marijuana Treatment Center Dispensaries within all zoning districts in the City of Doral. The City Council will consider this item for **FIRST READING**. This meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

**ORDINANCE No. 2020-01**

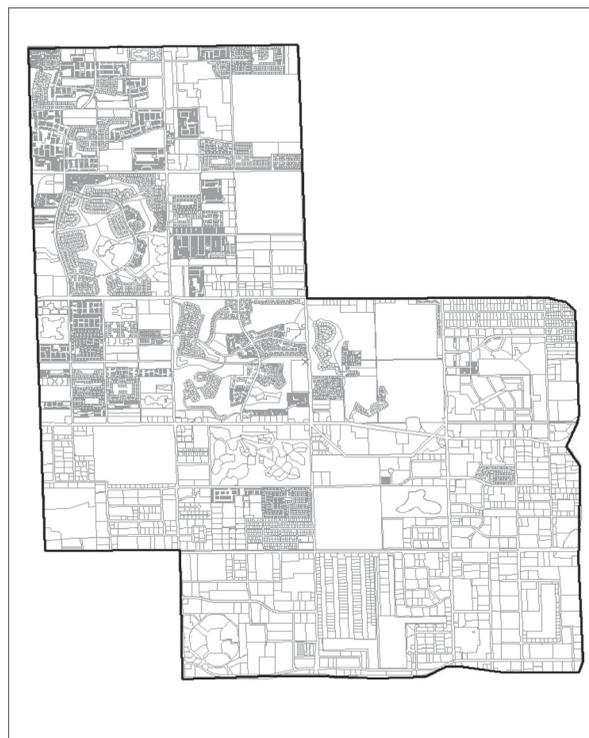
**AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AMENDING CHAPTER 53, ARTICLE II, DIVISION 5, SECTION 53-128, ENTITLED "USE COMPATIBILITY TABLE", OF THE CITY OF DORAL LAND DEVELOPMENT CODE, PROHIBITING MEDICAL MARIJUANA TREATMENT CENTER DISPENSARIES WITHIN ALL ZONING DISTRICTS IN THE CITY OF DORAL; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR CONFLICTS; PROVIDING FOR INCORPORATION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE**

**HEARING NO.:** 20-01-DOR-02

**APPLICANT:** City of Doral

**REQUEST:** The City of Doral (the "Applicant") is requesting Mayor and City Council approval to prohibit the establishment of Medical Marijuana Treatment Center Dispensaries within all zoning districts in the City of Doral.

### Location Map



Information relating the subject application is on file and may be examined in the City of Doral, Planning and Zoning Department Located at **8401 NW 53rd Terrace, Doral, FL. 33166**. All persons are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the City Clerk, **8401 NW 53rd Terrace, Doral, FL. 33166**. Maps and other data pertaining to these applications are available for public inspection during normal business hours in City Hall. Any persons wishing to speak at a public hearing should register with the City Clerk prior to that item being heard. Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

**NOTE:** If you are not able to communicate, or are not comfortable expressing yourself, in the English language, it is your responsibility to bring with you an English-speaking interpreter when conducting business at the City of Doral during the zoning application process up to, and including, appearance at a hearing. This person may be a friend, relative or someone else. A minor cannot serve as a valid interpreter. The City of Doral DOES NOT provide interpretation services during the zoning application process or during any quasi-judicial proceeding.

**NOTA:** Si usted no está en capacidad de comunicarse, o no se siente cómodo al expresarse en inglés, es de su responsabilidad traer un intérprete del idioma inglés cuando trate asuntos públicos o de negocios con la Ciudad de Doral durante el proceso de solicitudes de zonificación, incluyendo su comparecencia a una audiencia. Esta persona puede ser un amigo, familiar o alguien que le haga la traducción durante su comparecencia a la audiencia. Un menor de edad no puede ser intérprete. La Ciudad de Doral NO suministra servicio de traducción durante ningún procedimiento durante el proceso de solicitudes de zonificación.

Connie Diaz, MMC  
City Clerk  
City of Doral