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## Court Sides With Ex-Miami Mayor in Doral Whistleblower Case

Noted firebrand Joe Carollo got a boost from a federal appeals court for his whistleblower lawsuit against his ex-employers in Doral.

The onetime Miami mayor spent 15 mostly stormy months as Doral city manager. During this time he reported to the FBI, ethics regulators and local law enforcement his claims that Mayor Luigi Boria was engaged in misconduct. Carollo alleged, also publicly, that City Council member Sandra Ruiz helped Boria violate state campaign finance mandates and that Vice Mayor Christine Fraga aided the mayor in flouting financial disclosure laws.

The three Doral officials fired Carollo on April 23, 2014, and soon after he sued them and the city in federal court. Saying they retaliated against him for speaking out against corruption, Carollo sought reinstatement, lost front pay, back pay and fringe benefits, compensatory damages, pre-judgment interest, fees and costs.

The defendants moved to dismiss Carollo's First Amendment claims on the basis that his comments were covered by a city official's qualified immunity and thus not subject to retaliation.

But U.S. District Judge Ursula Ungaro in Miami decided Carollo was speaking only as a citizen before he was fired and denied the defense motion.

The U.S. Court of Appeals for the Eleventh Circuit affirmed the crux of Ungaro's order Aug. 17. After revising his pleadings, he may proceed with discovery.



Fitzgerald

Carollo's lead attorney, Diana Fitzgerald, called the ruling "fabulous" - and not only for her client.

### JOE CAROLLO, APPELLANT, V. LUIGI BORIA ET AL., . APPELLEES

Case No.: 15-11512

Date: Aug. 17, 2016

Case type: First Amendment

Court: U.S. Court of Appeals for the Eleventh Circuit

Author of opinion: U.S. District Judge Paul L. Friedman, District of Columbia

Lawyers for petitioner: Diana L. Fitzgerald, David Charles Isaacson and Erica Canas, Fitzgerald &amp; Isaacson, Miami

Lawyers for respondents: Christopher J. Stearns Jr. and Michael Ross Piper, Johnson Anselmo Murdoch Burke Piper &amp; Hochman, Fort Lauderdale; Oscar Edmundo Marrero, Lourdes E. Wydler and Alexandra Christine Hayes, Marrero &amp; Wydler, Miami

Panel: Friedman, Judge Stanley Marcus and Senior Judge Peter T. Fay

Originating court: Southern District of Florida

"Basically it shows the significance of the First Amendment's role in protecting public officials who act as whistleblowers," said Fitzgerald of Fitzgerald & Isaacson in Miami.

### YOUNG JOE

She said Carollo went public with his accusations because "he wanted to do the right thing."

"He knew at the time they might retaliate against him for speaking out against the corruption, and he said it was the right thing to do for the public, that the public should know about this and let them decide what they felt about it," Fitzgerald said.

During his long and colorful political career, Carollo, 61, hasn't been one to shrink from a fight.

One of the "Pedro Pan" kids so dear to the Cuban exile community, Carollo became a police at 18 and later started a security company. He burst into politics in 1978 at 24 when he won a seat on the Miami City Commission as its first Republican.

Amid shifting alliances between the city's Cuban-American and African-American politicians, Carollo grew a reputation as a bare knuckled brawler. He accused Maurice Ferre, his former rabbi and the city's first Hispanic mayor, of corruption in developing Watson Island as a boating center. Carollo called Howard Gary, the city's first black city manager, an "Oreo Cookie" - black on the outside, white on the inside.

He lost his commission seat in 1987 and reemerged in 1996 after the death of Mayor Steve Clark, winning a six-way race for the vacant office.

Carollo ran for reelection in 1998 and former Mayor Xavier Suarez defeated him in a runoff. Then Carollo sued in state court and ousted Suarez by proving widespread fraud in the handling of absentee ballots.

During his almost-full term as mayor, Carollo sided with Elian Gonzalez's Miami relatives and loudly protested when then-Attorney General Janet Reno had the little boy forcibly returned to his father in Cuba.

Carl Hiaasen, the satirical novelist and Miami Herald columnist, dubbed Carollo "King of the Crazies." The nickname "Crazy Joe" stuck.

"I make mistakes. I'm not perfect," Carollo told the Orlando Sentinel in 1996 when he won his first mayoral campaign.



Joe Carollo came out ahead in his beef with Doral city officials about his corruption claims against them while he was serving as city manager.

### CITIZEN CAROLLO

The Eleventh Circuit debate is important because the Doral defendants wanted the court to legitimize their position that Carollo had a duty as city manager to refrain from calling them out, Fitzgerald explained.

"Our response was that would eviscerate all First Amendment protection for any public officials, and the court agreed with us on that," she added.

The appellate panel did insist on making a distinction between Carollo's remarks in the context of his job and things he had the right to say as a private citizen.

"Carollo has plausibly pled that at least some of his speech was about matters of public concern and outside the scope of his ordinary job responsibilities and with respect to the remainder of his speech, we are, remanding to the district court to permit Carollo to amend his poorly drafted complaint to cure the defects that we identify," U.S. District Judge Paul Friedman wrote for the panel. The Washington, D.C., trial judge was sitting by designation.

For now, Carollo is a paid consultant on a second campaign for incumbent MiamiDade County Mayor Carlos Gimenez.

Still mayor of Doral, Boria has been investigated and fined \$325 for lending his last campaign \$1,700 after the election. Ruiz is challenging his reelection bid, and Fraga remains the vice mayor.

Fitzgerald said none of this should be taken to mean her client was wrong about corruption in Doral city government.

"There are a number of issues that Mr. Carollo disclosed or was part of the investigative process," Fitzgerald said. She could not comment on whether those investigations are ongoing.