UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
CASE NO. 6:22-CV-00023

VINCENT M. RINALDI, CHARLES R. MUNSEY, JR., and CHARLES VIOLI,

Plaintiffs,

vs.

BREVARD COUNTY, a political subdivision of the State of Florida,

Defendant.

MOTION FOR PRELIMINARY INJUNCTION

Under Brevard County Ordinance § 74-102(b) (the Ordinance), a registered sexual offender may not "enter into or remain within the 1,000-foot buffer zone surrounding any school, daycare center, park or playground." A violation of the Ordinance is punishable by a jail sentence and a fine. The Brevard County Commission, the County's governing body with the legal authority to enact ordinances, conducts its public meetings only in-person at the County Government Center located in Viera, Florida—there is no other way for the public to attend and address the Commission remotely, even during the COVID pandemic. But the

County Government Center is located within 1,000 feet of a school. As a result, registered sexual offenders cannot attend County Commission meetings.

On July 21 and August 25, 2020, the Brevard County Commission held public hearings and passed § 74-102.5 (the Amendment), a provision that expanded the Ordinance so that it applied to certain private businesses. Plaintiffs, property owners and residents of Brevard County who are registered sexual offenders, wanted to attend the hearings to speak against the Amendment, but did not because they feared being arrested and prosecuted under the Ordinance.

Today, Plaintiffs still cannot set foot in the Brevard County Government Center to exercise their right to address their government about *any* issue because they could be arrested for doing so. Plaintiffs have therefore been stripped of their right to speak to their elected representatives at a public hearing, in violation of the First Amendment to the United States Constitution and Chapter 286 of the Florida Statutes (the "Government in the Sunshine Law"). Thus, Plaintiffs move for a preliminary and permanent injunction prohibiting Brevard County from applying and enforcing the Ordinance, § 74-102(b), in such a manner that prevents Plaintiffs and all other registered sexual offenders from speaking at the public meetings of the Brevard County Commission.

SUMMARY OF FACTS[1]

A. Brevard County Ordinance § 74-102

In 2006, the Brevard County Commission enacted an ordinance imposing certain restrictions on registered sexual offenders and predators in Brevard County. Like ordinances in many Florida counties, the Ordinance imposes restrictions on where sexual offenders and predators can reside. §74-102(a). However, unlike most Florida counties, the Ordinance also imposes restrictions on where sexual offenders may "enter into and remain." § 74-102(b). This latter prohibition is commonly referred to as a "proximity restriction."

Specifically, the proximity restriction in § 74-102(b) states as follows: "No sexual offender or sexual predator shall enter into or remain within the 1,000-foot buffer zone surrounding any school, daycare center, park or playground except to: . . . ." *See* Verified Complaint, ¶ 17, ECF 1. None of the exceptions involve attending a County Commission or other public meeting.

A violation of § 74-102 is punishable in § 74-103 "by a fine not to exceed $500.00 or by imprisonment in the county jail, not to exceed 60 days or by both such fine and imprisonment, or if the offender is supervised by the department of corrections under conditional release, the offender may be charged with a

[1] Plaintiffs hereby adopt and incorporate herein the Statement of Facts as set forth in ¶¶ 15-58 of Plaintiffs' Verified Complaint, ECF 1.

violation of his or her supervision and be returned to state custody." Violations of the Ordinance are actively prosecuted by law enforcement agencies in Brevard County. For example, Plaintiff Munsey was arrested in 2015 for unknowingly entering a restaurant that was within 1000 feet of a day care center. *See* Arrest Report, Exhibit 1.

B. Brevard County Commission Meetings Generally

The Brevard County Commission conducts its meetings and public hearings at the Government Center building in Viera, Florida. Pursuant to County policy, any person may speak before the Board of County Commissioners if they fill out a card stating the agenda item they wish to address, adhere to the three-minute time limit, direct their comments to the Board as a body, and adhere to rules of decorum. *See* Brevard County Commission Policy No. 97, subsections E.3. and H.2., Exhibit 2. The meetings are not made available remotely or by videoconference, even during the COVID pandemic. *See* Verified Complaint ¶¶ 1, 38, ECF 1. They can be viewed in real time via a livestream feed, but a person cannot address or speak to the County officials through the system. *Id*. Appearing in person is the only way to speak at such meetings.

C. Brevard County Commission Meeting, July 21, 2020

In July of 2020, the Brevard County Commission proposed an amendment to the Ordinance that would expand the 1,000-foot buffer zone restriction to include private businesses that self-certify that they are a "park" and register with the county's Business Self-Certification Registry. The Amendment was first introduced at the regular County Commission meeting on July 21, 2020. One person spoke against the Amendment at the July 21 meeting. He appeared on behalf of his wife, a registered sexual offender who did not attend because she was afraid that she would be arrested for violating of the Ordinance. The Commission voted to proceed on the Amendment and to publish notice for a public hearing and a vote to be held on August 25, 2020. *See* Commission Minutes, July 21, 2020, at 39-46, Exhibit 3.

On July 22, 2020, the President of the Florida Action Committee (FAC), a non-profit advocacy and support organization for people on the sexual offender registries and their families, sent a letter by email to each of the five county commissioners. *See* FAC Letter, Exhibit 4. The letter explained that that many FAC members who are registered sexual offenders would have attended the July 21 meeting but did not because under the Ordinance, the meeting took place within an exclusion zone that prevented them from legally entering the building. None of the commissioners responded to the letter.

D. Brevard County Commission Meeting, August 25, 2020

Prior to the August 25, 2020, meeting, the FAC notified its members that the County was considering the Amendment and encouraged all people—registered and unregistered—to voice their opposition to the Amendment. Out of caution, the coordinator of the Brevard FAC sent an email to the Brevard County Sherriff's Office to verify whether the location of the County Government Center was a place where registered sexual offenders could enter and attend a Brevard County Commission meeting and not be in violation of the Ordinance. *See* Email Correspondence at 4, Exhibit 5. The Sheriff's Office responded in writing, stating that the Government Center was less than 700 feet from the properties of Viera High School and Viera Charter School, which would put the location within the 1000-foot buffer zone, and that attendance at a County Commission meeting was not an exception under the Ordinance. *Id*. at 1.

Plaintiff Rinaldi contacted the office of Commissioner John Tobia, requesting an in-person meeting in advance of the August 25 Commission meeting to express his opposition to the Amendment. ECF 1 at ¶ 27. Because Commissioner Tobia's office is in the Government Center building, Plaintiff Rinaldi proposed to meet him at any location outside the Government Center that was convenient for the commissioner. Commissioner Tobia refused to meet in-

person but did agree to speak to Plaintiff by phone. During their brief phone call, Plaintiff Rinaldi told Commissioner Tobia that it was fundamentally unfair that the County could consider and pass a law that directly affected him without affording him the right to speak publicly at the meeting. Commissioner Tobia made it clear that he supported the Amendment and had no intention of changing the Ordinance.

At the August 25th County Commission meeting, a total of ten people spoke at the public hearing on the Amendment. Three people spoke on behalf of family members who were registered sexual offenders who did not attend for fear of arrest. *See* Commission Minutes, August 25, 2020, at 37-49, Exhibit 6.

Plaintiffs wanted to attend and speak at the public hearing on August 25 in opposition to Amendment but could not because they feared being arrested and prosecuted for a violation of the Ordinance. Plaintiffs wish to attend future meetings and hearings at the Brevard County Government Center, but they are not permitted to do so because of the Ordinance.

ARGUMENT

Plaintiffs are entitled to a preliminary injunction enjoining the application of the Ordinance, § 74-102(b), to them in such a manner that prevents Plaintiffs, and all other registered sexual offenders, from attending and speaking at the public meetings of the Brevard County Commission at the Government Center in Viera,

Florida. A district court may issue preliminary injunctive relief when: (1) there is "a substantial likelihood that [plaintiffs] will succeed later on the merits"; (2) the plaintiffs "will suffer an irreparable injury absent preliminary relief"; (3) the plaintiffs' injuries likely "outweigh any harm that its opponent will suffer as a result of an injunction"; and (4) preliminary relief would not "disserve the public interest." *Scott v. Roberts*, 612 F.2d 1279, 1290 (11th Cir. 2010).

I. Plaintiffs Are Likely to Prevail on the Merits of Their Claim That the Ordinance Violates Their Free Speech Rights Under the First Amendment.

The Ordinance bars Plaintiffs and all other registered sexual offenders from appearing and speaking at the Commission meetings based solely on their identity and status as registered sexual offenders. This categorical exclusion violates Plaintiffs' right to free speech under the First Amendment because a) the County may not ban an entire class of people from a limited public forum, and b) the ordinance cannot survive intermediate scrutiny.

A. Barring a Class of People from a Limited Public Forum Violates the First Amendment.

Courts use the "forum analysis" to determine the legality of restrictions on private speech occurring on government property. Broadly speaking, the Supreme Court has recognized four categories of government fora: the traditional public forum, the designated public forum, the limited public forum, and the nonpublic

forum. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 215-216 (2015).

City and county commission meetings, such as the meetings where Defendant Brevard County heard public comments on the Amendment, are "limited public fora—*i.e.*, 'a forum for certain groups of speakers or for the discussion of certain subjects.'" *Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 802 (11th Cir. 2004). *See also Jones v. Heyman*, 888 F.2d 1328, 1332 (11th Cir. 1989) ("a city commission meeting is one forum where speech may be restricted 'to specified subject matter.'") (quoting *City of Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 176 n. 8 (1976)).

Generally speaking, this means that public comment at a commission meeting can be limited to the topic for which the meeting is being held—typically a specific item on the body's agenda. However, even though the Brevard County Commission can restrict public comments to certain topics, it cannot engage in other forms of content discrimination. *See Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995) ("Once it has opened a limited forum, however, the State must respect the lawful boundaries it has itself set. The State may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum, nor may it discriminate against speech on the basis of

its viewpoint."). *See also Barrett v. Walker County School District*, 872 F.3d 1209, 1225 (11th Cir. 2017) ("Although a limited public forum may rightly limit speech at the forum to only certain content, the First Amendment does not tolerate viewpoint-based discrimination against speech within the scope of the forum's subject matter.").

Nor is speaker-based discrimination constitutionally permitted in a limited public forum. In *City of Madison, Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167 (1976), the Madison teachers' union, through an unfair labor practices complaint, obtained an injunction prohibiting non-union teachers from speaking at a school board meeting about the merits of a labor contract. *Id*. at 173. But the Supreme Court reversed the injunction, holding that the First Amendment prohibited the restriction on teachers speaking at the public meeting. The Court stated: "To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees. . . . [W]hen the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of their employment, or the content of their speech." *Id*. at 175-76.

Plaintiffs are in the identical position as the non-union teachers in *Madison*. As the people most directly affected by the Ordinance and the Amendment, Plaintiffs are nonetheless denied a voice to speak directly to their elected representatives solely because of their identity and status. Such speaker-based discrimination violates the First Amendment, and the application of the Ordinance to Plaintiffs and all other registered sexual offenders seeking to appear and speak before the Brevard County Commission should be enjoined.

B. The Ordinance Cannot Withstand Intermediate Scrutiny Because Brevard County Cannot Prove that It is Narrowly Tailored To A Significant Government Interest.

The logic of *Madison* resolves the First Amendment free speech claim in this case. However, the Ordinance violates Plaintiffs' free speech rights for a different reason: it fails intermediate scrutiny. To survive intermediate scrutiny, the government must prove that the restrictions "are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Further, the regulation must not "burden substantially more speech than is necessary to further the government's legitimate interests." *Id*. at 799. To satisfy this requirement, the Supreme Court has explained, "the government must demonstrate that alterative measures that burden substantially less speech would

fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen v. Coakley*, 573 U.S. 464, 495 (2015). Brevard County cannot do that here.

Indeed, the Supreme Court recently struck down a similar statute that prohibited sexual offenders from engaging in speech in another forum: the Internet. In *Packingham v. North Carolina*, 137 S. Ct. 1730, 1733-34 (2017), the Supreme Court confronted a state law that barred registered sexual offenders from accessing any social networking site which allowed children to become members or maintain a personal web page. Applying intermediate scrutiny, the Court characterized the law as "a prohibition unprecedented in the scope of First Amendment speech it burdens[,]" noting that it "prevent[ed] . . . [sex offenders] from engaging in the legitimate exercise of First Amendment rights." *Id*. at 1737. The Court held that, even though the state had proffered a legitimate interest in protecting children, the state had not "met its burden to show that [the] sweeping law [was] necessary or legitimate to serve that purpose" and thus failed intermediate scrutiny. *Id*. *See also Doe v City of Albuquerque*, 667 F.3d 1111, 1133-34 (10th Cir. 2012) (regulation banning sexual offenders from public libraries failed intermediate scrutiny because it was not narrowly tailored).

The result should be the same here as in *Packingham*. Instead of social media sites, Defendant Brevard County has categorically banned Plaintiffs, and all registered sexual offenders, from ever appearing and speaking at County Commission meetings. Like in *Packingham*, the restriction at issue here does little if anything to protect children. The commission meetings are recorded and held in a public auditorium in full view of public officials and other attendees. Typically, there are police officers or security personnel present to assure order. Common sense dictates that such meetings are a highly unlikely venue for sexual predators to groom or sexually assault children. Any assertion that prohibiting registered sexual offenders from attending and speaking at County Commission meetings furthers the protection of children from sexual predation borders on the absurd. Brevard County cannot show that "the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994).

Moreover, the various exceptions in the Ordinance show that the Ordinance is not narrowly tailored to achieve the County's interest in protecting children. The County cannot show that permitting sexual offenders from appearing and speaking before the County commission at the Government Center in Viera poses any greater risk to children than their entering or remaining in any of the various places

and locations that that are exempted under the Ordinance.[2] Indeed, many of the places listed as exceptions pose a far greater risk of harm to children than the Government Center of Brevard County, a public facility where the county conducts public business.

Finally, in addition to being narrowly tailored to its goal, the Ordinance must also "leave open ample alternative channels for communication of information." *Ward*, 491 U.S. at 791.[3] While the First Amendment does not require that all modes of communication be available at all times and places, a restriction on expression may be invalid if the remaining means of communication are inadequate. *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984).

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[2] Under § 74-102(b), registered sexual offenders are allowed to enter a courthouse to "comply with a request or court order of the judiciary," subsection (2); to go onto a campus and enter any building to "attend a bona fide educational institution as a registered student," subsection (4); to enter any facility or building to "[a]ttend a scheduled or emergency health care visit with a licensed physician," subsection (5); to enter or remain in any place "[a]s a result of fulfilling legally allowable duties imposed by gainful employment," subsection (6); to enter any building to "[a]ttend a scheduled legal consultation meeting with an attorney who is recognized as a licensed member of the Bar of the state," subsection (9); to enter or remain in any place to "[a]ttend a church service or function," subsection (10); to enter or remain in any location to "vote at a designated polling place within his or her district," subsection (11).

[3] Should the Court find that a law is not narrowly tailored, it need not address the ample alternatives prong. *See McCullen*, 573 U.S. at 496 n. 9 (noting that "[b]ecause we find that the Act is not narrowly tailored, we need not consider whether the Act leaves open ample alternative channels of communication.").

Here, there are no comparable alternative channels of communication available to Plaintiffs. There is no other way to appear and speak to the County Commission during a public meeting other than to be physically present. The meetings are not made available remotely or by videoconference, even during the COVID pandemic. They can be viewed in real time via a livestream feed, but a person cannot speak or address the County officials through that system. Appearing in person is the *only* way to speak at such meetings. Plaintiffs are thus completely foreclosed from participating and speaking at the meetings.

Appearing in person is critical, as it carries more ability to persuade than simply submitting written comments. Indeed, "written correspondence to City Council members and proxy speakers are inadequate substitutes for public attendance and public speaking. City Council meetings and council committee meetings offer the opportunity to persuade both the Council members, and also other meeting attendees." *Brown v. City of Jacksonville*, No. 3:06-CV-122-J-20MMH, 2006 WL 385085, at *5 (M.D. Fla. Feb. 17, 2006) (banning an individual from seven city council meetings violated the First Amendment because it was not narrowly tailored).

The Ordinance cannot withstand intermediate scrutiny because it is not narrowly tailored to a legitimate interest and does not leave open ample alternative

channels for communication. The Ordinance as applied to Plaintiffs and all other registered sexual offenders fails intermediate scrutiny. Plaintiffs are likely to succeed on the merits of their First Amendment speech claim.

II. Plaintiffs are Likely to Succeed on the Merits of Their Claim That the Ordinance Violates Plaintiffs' First Amendment Right to Petition for Redress of Grievances.

The right to petition for redress of grievances and the right to speech were often thought to converge and have been described by the Supreme Court as "cognate rights." *Thomas v. Collins*, 323 U.S. 516, 530 (1945). However, in *Borough of Duryea v. Guarnieri*, the Supreme Court renewed its Petition Clause jurisprudence, describing the "special concerns" with the Clause as follows: "The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives, whereas the right to speak fosters the public exchange of ideas that is integral to deliberative democracy as well as to the whole realm of ideas and human affairs." 564 U.S. 379, 388 (2011). And more recently, the Supreme Court has recognized the right to petition as "one of the most precious liberties guaranteed by the liberties safeguarded by the Bill of Rights" and was "high in the hierarchy of First Amendment values." *Lozman v. City of Riviera Beach, Fla*., 138 S. Ct. 1945, 1949, 1954-55 (2018).

The Petition Clause expressly protects the communication of "direct petitions to the legislature and government officials." *McDonald v. Smith*, 472 U.S. 479, 482 (1985). And the government is prohibited from infringing upon this guarantee either by "implementing a general prohibition against certain forms of advocacy," or "by imposing sanctions for the expression of particular views it opposes." *Smith v. Arkansas State Highway Emp., Loc. 1315*, 441 U.S. 463, 464, (1979) (internal citations omitted).

A "petition" under the Petition Clause is not required to be in writing. Oral statements, such as those Plaintiffs sought to deliver to the Brevard County Commission at the hearings on the Ordinance, are a form of petitioning. *See Holzemer v. City of Memphis*, 621 F.3d 512, 519 (6th Cir. 2010) ("requesting assistance from a city councilman—whether in writing or in person—constitutes petitioning activity entitled to the protection of the Petition Clause of the First Amendment." … "we find no constitutional distinction between an oral and written petition for redress."); *Pearson v. Welborn*, 471 F.3d 732, 741 (7th Cir. 2006) ("We decline to hold that legitimate complaints lose their protected status simply because they are spoken. Nothing in the First Amendment itself suggests that the right to petition for redress of grievances only attaches when the petitioning takes a specific form.").

Here, the application of the Ordinance to Plaintiffs and all registered sexual offenders serves as a general prohibition which bars an entire class of people from petitioning their elected officials by speaking at the Brevard County Commission meetings. Because of the Ordinance, Plaintiffs were denied the right to speak directly to their elected officials and advocate against the Amendment at a critical time and place in the County's legislative process: the public meeting when the Amendment was passed. Their unique perspective as people subject to the restrictions was excluded from the public debate, and just as importantly, was never heard by the officials who were empowered to make policy. Thus, Plaintiffs were denied their right under the Petition Clause to engage in "a concerted effort to influence public officials." *United Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965).

Based on the above cited authorities and argument, Plaintiffs are likely to succeed on the merits of their Petition Clause claim under the First Amendment.

III. Plaintiffs Are Likely to Succeed on the Merits of Their Claim under Florida Statutes, Ch. 286.

Plaintiffs are likely to succeed in showing that the Ordinance violates their right to access public meetings and their right to a reasonable opportunity to speak on a proposed action before a board or commission under Florida's Sunshine Law, Fla. Stat. § 286. Because the Ordinance would subject plaintiffs to criminal

prosecution for attending meetings of the Brevard County Commission, it prohibits Plaintiffs from accessing and speaking at Brevard County Commission meetings. Thus, Plaintiffs are likely to succeed on their claims under Florida's Sunshine Law.

A. The Ordinance Denied Plaintiffs Their Right to Access Public Meetings Under Florida Statute § 286.011.

Florida's Sunshine Law provides that all meetings of "any authority of any county, municipal corporation, or political subdivision," where "official acts are to be taken are declared to be public meetings open to the public at all times." Fla. Stat. § 286.011(1). A body subject to this law, such as a County Commission, is also "prohibited from holding meetings at any facility or location . . . which operates in such a manner as to unreasonably restrict public access to such a facility." Fla. Stat. § 286.011(6). The law "should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed." *Zorc v. City of Vero Beach*, 722 So. 2d 891, 897 (Fla. 4th DCA 1998). By categorically barring sexual offenders from attending the July 20 and August 25, 2020, commission meetings, Brevard County held public meetings in a location that was not open to the public and operated to unreasonably restrict public access to it, in violation of § 286.011(1) and (6).

That a meeting is held in public does not make it "public" under the Sunshine Law; rather, it "depends on whether [County] residents had a 'reasonable

opportunity' to attend the meeting." *Rhea v. School Bd. Of Alachua County*, 636 So.2d 1383, 1385 (Fla. 1st DCA 1994) (quoting *Bigelow v. Howze*, 291 So.2d 645, (Fla. 2d DCA 1974)). In fact, even excluding just one person for causing a disturbance can violate § 286.011. *Ribaya v. Bd. of Trustees of City Pension Fund for Firefighters & Police Officers in City of Tampa*, 162 So. 3d 348, 355–56 (Fla. 2d DCA 2015).

Here, the violation is even more egregious than in *Ribaya*. Plaintiffs were not excluded on an individual basis, nor due to violations of the Commission's rules of decorum. Rather, Plaintiffs—and all other registered sexual offenders—could not access the meetings because they belonged to a class of citizens for whom the Ordinance made attendance criminal.

Because the Ordinance excludes Plaintiffs from attending the meetings, it denies the full public from accessing meetings of the Brevard County Commission in violation of § 286.011(1), and it operates in a manner that unreasonably restricts access to the meeting location in violation of § 286.011(6). Plaintiffs are therefore likely to succeed on their § 286.011 claim.

The statutory remedy for a violation of § 286.011 is clear: "no resolution, rule, regulation, or formal action shall be considered binding" when taken at a meeting that is not fully open to the public. Fla. Stat. § 286.011(1). The Florida

Supreme Court has confirmed that a "mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void ab initio." *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974). Moreover, "[t]he principle that a Sunshine Law violation renders void a resulting official action does not depend on a finding of intent to violate the law or resulting prejudice. Once the violation is established, prejudice is presumed." *Port Everglades Auth. v. Int'l Longshoremen's Ass'n, Loc.* 1922-1, 652 So.2d 1169, 1171 (Fla. 4th DCA 1995).

Applying these principles, numerous courts have declared various local government actions to be void because the actions were taken in violation of the Sunshine Law. *See Gradison*, 296 So.2d at 477 (zoning ordinance was void ab initio when the planning committee violated Sunshine Law by holding closed meetings); *Port Everglades Authority*, 652 So.2d at 1171 (award of a contract invalidated because the selection committee violated Sunshine Law by excluding bidders from attending each other's presentations); *Spillis Candela & Partners, Inc. v. Centrust Savs. Bank*, 535 So.2d 694 (Fla. 3d DCA 1988) (upholding trial court finding a County Board's formal recommendation void because it resulted from private deliberations in violation of § 286.011); *Blackford v. School Bd. of*

Orange County, 375 So.2d 578 (Fla. 5th DCA 1979) (overturning school board decision to close school when its decision was made outside of public eye).

Here, because the July 21, 2020, and August 25, 2020, Brevard County Commission meetings were held in violation of § 286.011, any actions taken by the Commission at those meetings—including the passage of the Amendment, § 74-102.5—are void ab initio and should be declared invalid.

B. Defendant Denied Plaintiffs a Reasonable Opportunity to Be Heard on a Proposition Before a Board or Commission in Violation of Florida Statute § 286.0114.

Florida's Sunshine Law also states that "members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission." Fla. Stat. §286.0114(2). In this case, Plaintiffs were given *no* opportunity to be heard on the expansion of the proximity restriction because they were denied the opportunity to even attend the Commission meeting at which it was discussed and voted on. The very class of citizens directly impacted by the proposition before the Commission were denied the opportunity to provide any public comment. Plaintiffs are therefore likely to establish that the Ordinance violated their right to a reasonable opportunity to be heard on a proposition before their county Commission, and thus succeed on their § 286.0114 claim.

The remedy for this violation is spelled out in the statute itself: A court may "issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state." Fla. Stat.§ 286.0114(6). Therefore, Plaintiffs request an injunction precluding Brevard County from applying the Ordinance in a manner that prevents Plaintiffs and all registered sexual offenders from attending and speaking at the Brevard County Commission meetings, or any other public meetings or hearings, held at the Government Center in Viera, Florida.

IV. Plaintiff Has Established the Remaining Criteria for a Preliminary Injunction

A. Irreparable Injury

"[I]t is well settled that the 'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitute irreparable injury.'" *KH Outdoor, LLC v. City of Titusville*, 458, F.3d 1261, 1271-72 (11th Cir. 2006) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The penalization of Plaintiff's First Amendment rights cannot be "cured by the award of monetary damages." *KH Outdoor,* 458 F.3d at 1272. *See also Brown,* 2006 WL 385085, at *5 (issuing preliminary injunction requiring city to permit an individual to appear and speak at city council meeting). Irreparable injury is therefore established.

Further, because Plaintiffs have established a likelihood of success on their Sunshine Law claims, they have also established an irreparable public injury, remedied by voiding or enjoining the Ordinance. *Gradison*, 296 So.2d at 477; *Times Publishing Co. v. Williams*, 222 So.2d 470, 476 (Fla. 1st DCA 1969) (holding that a school board's violation of § 286.011 by conducting secret meetings constituted an irreparable public injury).

B. Balance of Harms and Public Interest

The third and fourth preliminary injunction criteria are also satisfied. With respect to the balance of harms, "even a temporary infringement of First Amendment rights constitutes a serious and substantial injury." *Scott*, 612 F.3d at 1297. On the other side of the ledger, "the public when the state is a party asserting harm, has no interest in enforcing an unconstitutional law." *Id*. Enforcing unconstitutional laws also wastes valuable public resources. Finally, because the public has no interest in enforcing an unconstitutional speech restriction, an injunction against enforcement cannot "disserve" the public interest. *Id*. at 1290, 1297.

CONCLUSION

Based on the above argument and authorities, Plaintiffs respectfully requests that this Court declare that the Ordinance, § 74-102(b), violates the First

Amendment as applied to Plaintiffs and all registered sexual offenders and predators, and immediately enjoin Brevard County from enforcing the Ordinance in such manner that denies Plaintiffs and all other registered sexual offenders from attending and speaking at the Brevard County Commission meetings, or any other public meetings or hearings, held at the Government Center in Viera, Florida.

As a remedy for their Government in the Sunshine law claims, Plaintiffs request that that this Court issue an injunction pursuant to Fla. Stat.§ 286.011(2) and § 286.0114(6) enjoining Defendant Brevard County from applying the Ordinance, § 74-102(b), in such manner that denies Plaintiffs and all other registered sexual offenders from attending and speaking at the Brevard County Commission meetings, or any other public meetings or hearings, held at the Government Center in Viera, Florida. Plaintiffs further request that the Amendment, § 74-102.5, be declared non-binding and void *ab initio* pursuant Florida Statute § 286.011(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, January 5, 2022, the foregoing with the Clerk of the Court using the CM/ECF system, which will send

notification of such filing to all persons registered to receive electronic notifications for this case, including all opposing counsel. This motion is to be served on Defendant City of Pompano Beach contemporaneously with the Verified Complaint, which was filed today, January 5, 2022. Also, on today's date, I sent a copy of this Motion and its attachments via email to:

Abigail Jorandby, Abigail.Jorandby@Brevardfl.gov
Brevard County Attorney

By: *s/Ray Taseff*
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