

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.)
_____)

**PLAINTIFFS’ REPLY TO DEFENDANT BREVARD COUNTY’S AMENDED
RESPONSE TO PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

In their Amended Complaint, Doc. 23, and motion, Doc.2, Plaintiffs seek two forms of prospective relief: injunctive and declaratory. See *Checker Cabs Inc., v. Miami-Dade County*, 899 F.3d 908, 916 (11th Cir. 2018) (injunctive and declaratory relief “are inherently prospective in nature.”). First, Plaintiffs moved for a preliminary and permanent injunction prohibiting Brevard County from applying County Ordinance §74-102(b) in such a manner that prevents Plaintiffs and all other registered sexual offenders from attending and speaking at public meetings of the Brevard County Commission at the Government Center in Viera, Florida. Doc. 23 at 20. And second, Plaintiffs sought a declaratory judgment that the actions taken on July 21, 2020, and August 25, 2020, wherein the Brevard County Commission passed an amendment to

§74-102(b), violated Fla. Stat. §286.011 and are non-binding as a matter of law and that the amendment, §74-102.5, is *void ab initio* pursuant to Fla. Stat. §286.011(1). *Id.* at 21.

Plaintiff's Constitutional Claims for Injunctive Relief

In its Amended Response to Plaintiffs' Motion for a Preliminary Injunction, Defendant argues that Plaintiffs' claim for injunctive relief is moot. See Doc. 34 at 2-4. In response to Plaintiffs' lawsuit and motion for injunctive relief, the Brevard County Commission on April 19, 2022, approved amendments to §74-102(b), see Docs. 35, 35-1, which create additional exceptions to the ordinance's proximity restrictions. These recent amendments appear to allow Plaintiffs and other registrants to enter government buildings to attend and speak at public meetings subject to Chapter 286, Florida Statutes, in all county and municipal government buildings in Brevard County that are located within the 1000-foot buzzer zone. Thus, it appears that preliminary injunctive relief on Plaintiffs' constitutional claims is no longer needed.¹

However, Plaintiffs' injunctive constitutional claims are not necessarily moot. When a defendant changes its behavior in response to a lawsuit, that is an indication that it has not unambiguously terminated its unlawful conduct. See *Rich v. Sec'y, Florida Dep't of Corr.*, 716 F.3d 525, 532 (11th Cir. 2013). Plaintiffs are currently conducting discovery and should they find evidence that the County does not adhere to the changes made in the recent amendments or somehow seeks to return to its "old ways," Plaintiffs will renew their motion for injunctive relief. *Sheely v. MRI Radiology*

¹ Given this change, Plaintiffs do not believe it is necessary to address whether and how their alleged delay in bringing this lawsuit affects their entitlement to injunctive relief, but Plaintiffs will do so if they renew their motion.

Network, P.A., 505 F.3d 1173, 1183 (11th Cir. 2007). Further, although Defendant does not contend otherwise, it is important to note that Plaintiffs' constitutional claims for damages remain at issue. See *Keister v. Bell*, 29 F.4th 1239,² (11th Cir. 2022) quoting *Checker Cab Operators, Inc.*, 899 F.3d at 916 ("Ceasing an offending policy going forward does not redress an injury that occurred in the past."). And the Supreme Court recently held in *Uzuegbunam v. Preczewski*, that a claim seeking solely nominal damages saves a matter from becoming moot when the plaintiff bases his claim on a completed violation of a legal right. -- U.S. --, 141 S. Ct. 792, 801–02, (2021).

Plaintiffs' Claims Under Chapter 286, Florida Statutes

Defendant also argues that any preliminary relief the Court orders "should not include declaring that the Amendment, §74-102.5 [passed in August 2020] be declared non-binding and *void ab initio* because Plaintiffs do not claim harm fairly traceable to the Amendment as opposed to the Ordinance." Doc. 34 at 9-10. The County misapprehends Plaintiffs' claim for declaratory relief and is wrong for two reasons.

First, a claim for declaratory relief under Fla. Stat. §286.011 and § 286.011(1), Florida's "Government in Sunshine Law," does not depend on or require personal harm or prejudice. 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).³ The Sunshine Law "on its face[] gives the appellant

² At the time of this filing, *Keister v. Bell* is cited at 29 F. 4th 1239, but, inexplicably, Westlaw had not assigned individual page numbers in the body of the decision.

standing without regard to whether he suffered a special injury.” *Florida Citizens All., Inc. v. Sch. Bd. of Collier County*, 328 So. 3d 22, 25 n. 3 (Fla. 2d DCA 2021), rev. denied, SC21-1599, 2022 WL 775104 (Fla. Mar. 15, 2022) citing *Godheim v. City of Tampa*, 426 So. 2d 1084, 1088 (Fla. 2d DCA 1983).

Moreover, even in the case of an “innocent technical violation with no prejudice resulting,” “[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). See also *Grapski v. City of Alachua*, 31 So. 3d 193, 200 (Fla. 1st DCA 2010) (upon finding a violation of Chapter 286, “prejudice is presumed”). 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).

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

³ The purpose of the Government in Sunshine Law is to protect the public’s interest in open government. The “statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken. .” *Town of Palm Beach v. Gradison*, 296 So. 2d at 477.

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 Savings 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. None of these cases was premised on a finding of harm to the party bringing the challenge.

Here, the County has offered no evidence or argument to counter the undisputed fact that the Brevard County Commission considered and passed §74-102.5 (the Amendment) at meetings which were held "in such a manner as to unreasonably restrict public access." Fla. Stat. § 286.011(6). Because Plaintiffs and other registrants were denied access to the July 21, 2020, and August 25, 2020, County Commission meetings, Plaintiffs move this Court to declare that the Amendment, §74-102.5, is non-binding as a matter of law and is *void ab initio* pursuant to Fla. Stat. § 286.011(1).

Second, Plaintiffs *have* stated a claim for prospective relief for the ongoing harm fairly traceable to §74-102.5 (the Amendment).⁴ As a direct result of the Commission's enactment of §74-102.5, which occurred in violation of federal and state law, Plaintiffs and all other registrants—as persons directly affected by and subject to possible criminal prosecution for a violation of the Amendment—continue to suffer ongoing, future harm. The Amendment expanded the proximity restrictions and the one-thousand-foot buffer of the original Ordinance, §74-102, to now include private

⁴ Defendant County's suggestion that Plaintiffs lack standing for declaratory relief, see Doc. 34 at 9, stands in contrast to the County's answer to Plaintiffs' Amended Complaint which was submitted without filing a motion to dismiss. Nor was such issue raised by the County in response to Plaintiffs' original Complaint.

businesses who self-certify that they fall within the County's definition of a "park." Once certified, the business is included in the list of places—school, daycare center, and park or playground—where registered sexual offenders cannot enter or remain. See §74-102.5, "Business self-certification registry," Exhibit 1.

In support of its argument that declaratory relief should not be granted, the County asserts for the first time in its Amended Response that there "is currently no private business that has self-certified as 'park' and registered with the County's 'Business Self-Certification Registry.'" Doc. 34 at 9-10. But the County has presented *no evidence* of this. Confusingly, even though §74-102.5(c) requires the registry to be listed on the county's official website, a review of the site, <https://www.brevardfl.gov/eGovernment>, does not even acknowledge or reveal the existence of a self-certification registry. Adding further to the lack of legal clarity, the Amendment states, remarkably, that: "The county will attempt to ensure that the information in the registry is accurate and complete. However, the county relies on other sources for the information. As a result, the county makes no express or implied guarantee concerning the accuracy or completeness of any information or data in the registry." See §74-102.5(d), Exhibit 1.

Plaintiffs are thus left to guess where they can and can't "enter or remain" in Brevard County and must live under a constant fear that by unknowingly entering into business that has self-certified as a "park," they could be arrested and prosecuted for a violation of the Amendment. See *Leverett v. City of Pinellas Park*, 775 F.2d 1536, 1539 (11th Cir. 1985) ("the authentic interest of the plaintiff in engaging in the prohibited

conduct can establish standing even though the only threat of enforcement comes from the very existence of the statute.”).

Plaintiffs’ factual allegations in their Amended Complaint reveal the specter of ongoing legal harm that the Amendment poses to Plaintiffs. As stated above, Plaintiffs, as registered sexual offenders, are subject to criminal prosecution for any alleged violation of the law. See Verified Amended Complaint, Doc. 23 at ¶¶ 12-14. Plaintiff Violi asserts that the proximity restrictions currently limit his ability to travel within the county and because there is no county issued map or list of prohibited locations, he lives in constant fear that wherever he goes in the county, he may be violating the law. *Id.* at ¶ 48. Plaintiff Munsey claims that the proximity restrictions are currently affecting his and his family’s ability to raise his granddaughter. *Id.* at ¶ 47. Munsey wants to attend, for example, her piano recitals and soccer games but fears that by attending such events at certain locations, he may be unknowingly violating the law. *Id.*

Plaintiffs’ legal status thus remains adversely affected as a direct result of the Commission’s unlawful actions. The threat of future harm to Plaintiffs has not dissipated and prospective relief is available “to prevent future injuries.” *Adler v. Duval County School Board*, 112 F.3d 1475, 1477 (11th Cir. 1997). Plaintiffs respectfully request that this Court grant prospective relief and declare that the Amendment, §74-102.5, is non-binding as a matter of law and is *void ab initio* pursuant to Fla. Stat. § 286.011(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, April 22, 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.

By: s/Ray Taseff
Ray Taseff

- **Sec. 74-102.5. - Business self-certification registry.**

(a) The Brevard County Business Self-Certification Registry Regarding Sexual Offenders and Sexual Predators, also known as the "business self-certification registry", is hereby created. The board of county commissioners finds that such a registry is necessary and proper to ensure the public health, safety, and welfare is protected from those who commit certain sex-related offenses. A private business that is:

(1) Used for recreational purposes; and

(2) An area where children regularly congregate may voluntarily self-certify that they fall within the county's definition of "park" for purposes of this article.

(b) The business self-certification registry shall contain the address of the business, the purpose of the business, and a summary of what activities take place on the event which allow it to qualify as a park.

(c) The business self-certification registry shall be maintained by the county; shall be listed on the county's official website, which may include, but is not limited to, reference to the Brevard County Sheriff's Office Sex Offender Registration and Tracking Unit; and may contain links to other sex offender and/or sexual predator registries to be used as informational resources by the general public.

(d) The county will attempt to ensure that the information in the registry is accurate and complete. However, the county relies on other sources for the information. As a result, the county makes no express or implied guarantee concerning the accuracy or completeness of any information or data in the registry.

(e) Businesses that register do so voluntarily in order to assist law enforcement, but it shall ultimately be law enforcement's responsibility to determine whether a private business meets the definition of "park."

(Ord. No. 2020-13, § 3, 8-25-20)