IN THE SUPREME COURT OF FLORIDA

SARASOTA CITIZENS FOR RESPONSIBLE GOVERNMENT, INC., and CITIZENS FOR SUNSHINE, INC.,

Appellants,

v. CASE NO. SC10-1647

CITY OF SARASOTA, BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, SHANNON STAUB, NORA PATTERSON, and JOE BARBETTA,

Appellees.
_____/

BRIEF OF *AMICUS CURIAE* SUPPORTING APPELLANTS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Statutes and Constitutional Provisions

Other

Miscellaneous

INTERESTS OF *AMICUS CURIAE*

The First Amendment Foundation ("Foundation") is a Florida nonprofit corporation founded in 1984 by the Florida Press Association, the Florida Society of Newspaper Editors, and the Florida Association of Broadcasters and represents more than 200 members. The Foundation was created to advocate the public interest in free speech, free press and open government and to providing training and legal advocacy.

This case requires the Court to interpret the Florida Constitution and Florida Statutes regarding the role and duties of collegial bodies throughout the State of Florida and the rights of persons who participate in those public meetings. The Foundation is interested in this case because the issues are of great public concern and will impact all Floridians, not just those who conduct or participate in public meetings within the State of Florida.

The Foundation files this brief in support of the position of Appellants Sarasota Citizens for Responsible Government, Inc., and Citizens for Sunshine, Inc.

SUMMARY OF THE ARGUMENT

Point I: This Court has repeatedly emphasized that it is for the Legislature to consider matters of policy and to enact exceptions to the Sunshine Law and Public Records Law based on such policy. The Florida Legislature enacted an exemption for certain *records* held by an economic development agency. It did not, however, enact an exemption for the *meetings* of an economic development agency. The Legislature obviously knows how to exempt meetings from the Sunshine Law. Because there is no such exemption, this Court must give effect to the Legislature's expressed policy that the meetings of an economic development agency are not exempt from the Sunshine Law and that all citizens are entitled to advance notice of such meetings.

Point II: Engrafting an intent requirement onto the Sunshine Law would have severe ramifications and dilute the public purpose the law serves. The Legislature included an intent element into the criminal provisions of the Sunshine Law. Its failure to do so for the civil provision can only be read as imposing strict liability for noncriminal violations of the statute. This Court's precedent has never required an intent element for civil violations of the Sunshine Law.

ARGUMENT AND CITATIONS OF AUTHORITY

I.

THE MEETINGS OF AN ECONOMIC DEVELOPMENT AGENCY ARE NOT EXEMPT FROM FLORIDA'S SUNSHINE LAW.

A. Background

This case provides a troubling glimpse into the clash between citizens' rights to obtain knowledge of their government's economic development negotiations and some business and public officials' desire for secrecy. The current economic recession has highlighted the public policy of taxpayer-funded subsidies pouring into private corporations in the name of local economic development.[1] The debate over the use of public dollars to create private-sector jobs is not new. Wrangling for the award of state subsidies in the form of tax incentives to attract private business has a long pedigree. The state of New Jersey gave a tax exemption for a manufacturing facility owned by Alexander Hamilton in 1791.[2] Although common, subsidies are highly controversial. A large body of literature from

[1] Stephanie Simon, *More States Considering Tax Breaks to Woo Jobs*, WALL STREET JOURNAL, Feb. 2, 2009, A1, available at http://online.wsj.com/article/NA_WSJ_PUB:SB123353481151637695.html (last accessed Aug. 31, 2010)

[2] Jennifer L. Gilvert, *Selling the City Without Selling Out: New Legislation on Development Incentives Emphasizes Accountability*, 27 URB. LAW. 427, 446 (1995).

academics, state auditors, investigative journalists and non-profit research groups has raised serious questions about whether economic development incentives benefit the public or merely shift limited resources to private entities.[3]

This case involves government funding for facilities for spring training activities of the Baltimore Orioles. The controversy over taxpayers' subsidizing stadium construction for professional sports teams has also received widespread attention. Numerous peer-reviewed studies raise questions about the true economic impact of stadium subsidies and the cost to taxpayers.[4] Additionally, critics have cited specific examples where professional sports franchises abused the use of economic development incentives by threatening to relocate unless a

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[3] *See, e.g.*, Dale, Ivan C., *Economic Development Incentives, Accountability Legislation and a Double Negative Commerce Clause*, 46 St. Louis L.J. 247 (Winter 2002).

[4] *See, e.g.*, Baade, Robert A., Baumann, Robert, and Matheson, Victor, *Selling the Game: Measuring the Economic Impact of Professional Sports Through Taxable Sales*, Southern Economic Journal, Vol. 74:2 (October, 2007); Gessing, Paul J. "*Public Funding of Sports Stadiums: Ballpark Boondoggle*." (National Taxpayers Union Foundation, Policy Paper No. 133, February 28, 2001); Keating, Raymond J. "*We wuz robbed!: The subsidized stadium scam*." Policy Review, No. 82, pp. 54-57 (March/April, 1997); Baade, Robert A. "*Stadiums, Professional Sports, and Economic Development: Assessing the Reality*," Heartland Policy Study No. 62, March 1994; *see also* Ken Belson, *Stadium boom deepens municipal woes*, New York Times, Dec. 25, 2009, A1, available at http://www.nytimes.com/2009/12/25/sports/25stadium.html (last accessed Sept. 3, 2010); Dennis Coates, *A Closer Look at Stadium Subsidies*, The Journal of American Enterprise Institute (April 29, 2008), available at http://www.american.com/archive/2008/april-04-08/a-closer-look-at-stadium-subsidies (last accessed on Sept. 3, 2010).

municipality subsidizes a stadium.[5] Additionally, baseball's antitrust exemption has been the subject of much ridicule. *See, e.g.*, *Major League Baseball v. Crist*, 331 F.3d 1177, 1179 (11th Cir. 2003). "For better or worse, professional baseball has long enjoyed an exemption from the antitrust laws. The scope of this exemption-a judge-made rule premised upon dubious rationales and labeled an "aberration" by the Supreme Court-has been the subject of extensive litigation over the years." (Footnotes omitted).

Congress recently held a series of hearings on this issue and concluded that the process was "neither transparent nor democratically accountable[,]" stating:

> [T]he practice of providing taxpayer subsidies to the building of sports stadiums is a transfer of wealth from the many taxpayers to the few wealthy owners. The new Yankee Stadium is no exception to the rule. Just like the current financial crisis, the story is similar: Businesses and government actors who, by law and practice, are not accountable to the public, are free to conduct deals to the public's detriment. Here not only are city and state taxpayers on the hook. . . , but also Federal taxpayers are deprived of hundreds of millions of dollars of tax revenues because the bondholders will pay no Federal taxes on the $950 million of bonds issued to construct the stadium.[6]

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[5] *See* Neil deMause & Joanna Cagan, *Field of Schemes: How the Great Stadium Swindle Turns Public Money Into Private Profit*, University of Nebraska Press (2008).

[6] *Gaming the Tax Code: The New York Yankees and the City of New York Respond to Questions about the New Yankee Stadium: Hearing before the Subcommittee on Domestic policy of the H. Comm. on Oversight and Government Reform*, 110th Cong. 1–2 (Oct. 24, 2008) (statement of Rep. Kucinich, Chairman), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:49622.wais (last accessed Sept. 5, 2010).

Recent disclosures that Major League Baseball turned huge profits while negotiating stadium subsidies has only fueled the controversy.[7]

Opponents argue that such economic development practices erode the tax base, causing public services to decline. Proponents argue that it creates jobs and economic stimulus. Government action should always be transparent. Government action taken in the midst of such controversy deserves the utmost public scrutiny. Regardless of the wisdom of using the public treasury to grant economic development incentives to wealthy private entities, the public has an undeniable interest in the economic development context where the public treasury is opened for the benefit of private entities. The public has the right to see what tax concessions for roads, infrastructure, demographics, traffic, or environmental remediation costs are offered before the deal is signed by local governments. Denial of that right eviscerates the public purpose and philosophy behind sunshine laws and undermines public confidence in good government. Taxpayers cannot scrutinize and provide pre-voting input to elected officials on issues about which they know nothing.

[7] *See* Rabin, Charles, *Miami mayor looks for payback in Florida Marlins stadium deal*, Miami Herald, Aug. 27, 2010, available at http://www.miamiherald.com/2010/08/26/1794306/mayor-looking-for-payback-in-stadium.html (last accessed Sept. 3, 2010).

Against this backdrop comes § 286.011, Florida Statutes, Florida's revered Sunshine Law, which opens government meetings to members of the public. In another context, this Court noted the impact the trend towards privatization of governmental operations has on the Sunshine Law:

> This case results from the natural tension between the privatization of traditionally public services and this State's constitutional commitment to public access to records and meetings concerning public business. The current trend toward privatization in respect to public tax-supported hospitals includes the transfer from public to private agencies of both public functions and the public assets supporting such functions. This case represents a continuation of efforts during the past two decades to privatize public hospitals in Florida.

Mem'l Hosp.-W. Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 376-77 (Fla. 1999).

Important aspects of transparency are at stake in this case. Does the right to observe the entire decision-making process extend to the negotiations of an economic development agency empowered to grant incentives from the public treasury? Must the Sunshine Law be construed to frustrate devices which evade the public's ability to learn about these activities *before* a deal is struck, not when the final vote occurs? Yes. As will be demonstrated below, in the absence of a specific statutory exemption, the answer is that such negotiations must be transparent and open to the public.

B. Florida's Sunshine Law

The citizens of Florida have given their consent to be governed. In doing so they have constitutionally mandated that such governance occur only with their ability to have knowledge of each step in the decision-making process. *See* Art. I, § 24(b), Fla. Const. The Third District Court of Appeal, in *Krause v. Reno*, 366 So.2d 1244 (Fla. 3d DCA 1979), extolled many of the interests served by an unadulterated Sunshine Law. Open meetings facilitate the marketplace of ideas that allows a governmental agency to have input from the citizens affected by the governmental action. Open meetings also produce stability and public confidence in government and insure that our system of government will function as a genuine participatory democracy. Public meetings prevent governmental abuses and allow citizens to evaluate "public officials and their projects by being privy to the decision-making process." *Id*. at 1250-1251. Also, open meetings enable citizens to understand "more completely the decision-making processes of government and thereby consider future governmental developments and the consequences of those developments for their own lives." *Id*. at 1251.

Florida's Sunshine Law and Public Records Law were enacted for the benefit of the public. "'Statutes enacted for the public benefit should be interpreted most favorably to the public.'" *Grapski v. City of Alachua*, 31 So.3d 193, 198-99 (Fla. 1st DCA 2010), reh'g denied (Apr. 1, 2010) (quoting *Bd. of Pub. Instruction*

of Broward County v. Doran, 224 So.2d 693, 699 (Fla.1969)). As such, courts have construed exceptions to these laws quite narrowly and limited to their stated purpose. *Barfield v. City of Ft. Lauderdale Police Dept.*, 639 So.2d 1012, 1014 (Fla. 4th DCA 1994). Any doubts must be resolved in favor of transparency. *Nat'l Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010).

This Court has held that it is for the Legislature to determine the policy reasons animating exceptions to the Sunshine Law and Public Records Law. *Neu v. Miami Herald Pub. Co.*, 462 So.2d 821, 824 (Fla. 1985) ("[t]here is a good bit of wisdom in petitioners' argument [for an exception] but … we have no constitutional or statutory authority to create an exception to the Sunshine Law[.]"); *Marston v. Gainesville Sun Pub. Co., Inc.*, 341 So. 2d 783, 785 (Fla. 1st DCA 1976) ("We are cautioned that courts are not to be concerned with the wisdom of giving the public meetings Act its full intended play."). The courts are not permitted to read an exception into the law where none exists. As explained in *Canney v. Bd. of Pub. Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973):

> Various boards and agencies have obviously attempted to read exceptions into the Government in the Sunshine Law which do not exist. Even though their intentions may be sincere, such boards and agencies should not be allowed to circumvent the plain provisions of the statute. The benefit to the public far outweighs the inconvenience of the board or agency. If the board or agency feels aggrieved, then the remedy lies in the halls of the Legislature and not in efforts to

> circumvent the plain provisions of the statute by devious ways in the hope that the judiciary will read some exception into the law.

Id. at 264. These fundamental principles must govern analysis of the issues here.

C. Economic Development Agencies

For at least three reasons, the Foundation asserts that the Legislature never intended that economic development agencies be exempt from the requirements of the Government in the Sunshine Law. The individuals involved in the Baltimore Orioles negotiations acted as an agency encompassed by the Act's open meeting requirements. No exemption applies. Each contention is outlined below.

i. The Statutory Language

As with every case, the starting point is to examine the statute itself. *See GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007) ("The plain meaning of the statute is always the starting point in statutory interpretation.") (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). "[I]f the meaning of the statute is clear then this Court's task goes no further than applying the plain language of the statute." *Id.* In this regard, the Legislature has broadly defined an economic development agency ("EDA"), enumerating six separate definitions. An EDA is:

1. The Office of Tourism, Trade, and Economic Development;

2. Any industrial development authority created in accordance with part III of chapter 159 or by special law;

3. Space Florida created in part II of chapter 331;

4. The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;

5. Any research and development authority created in accordance with part V of chapter 159; or

6. Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

§ 288.075(1)(a), Florida Statutes (2009). As noted by Citizens in its brief, two of the six definitions are at issue in this case. While many of records of an EDA may be exempt under the Public Records Act, its meetings are not exempt from public scrutiny. An EDA's meetings are open.

First, § 288.075(1)(a) 4 provides that "the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality" qualify as an EDA.

Second, § 288.075(1)(a) 6 states that "[a] … person, … when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county[,]" is also an EDA.

These two statutory provisions make it clear that one or more public employees (or those acting on behalf of a governmental body) constitute an EDA if

their duties include promoting the "general business interests" of the governmental unit. Because § 286.011(1), Fla. Stat., requires that "[a]ll meetings … of any agency or authority of any county, municipal corporation, or political subdivision," be open and noticed to the public, it is axiomatic that an EDA is an agency required to comply with the Sunshine Law.

The Foundation asserts that it would set a dangerous precedent to carve out an exception to the Sunshine Law for the economic development activities of one individual—whether a staff member or not—who has been expressly delegated authority from a board to conduct negotiations during which the details for the award of subsidies from the public treasury are discussed. That person would be an EDA under the plain statutory language. The same danger would be present when a group of city and county staff members, acting jointly as an EDA, hold meetings and conduct negotiations unnoticed to the public. The result is the same: significant public business would be conducted to a point just shy of ceremonial acceptance by the governing body. The potential for abuse is exacerbated when one or more members of an EDA conduct individual meetings with the governing body just prior to a vote.[8] There is simply no valid public purpose served by

[8] The Foundation is quite troubled with the e-mail from Mr. Bullock to the attorney for the Orioles in which he reported that he had privately briefed commissioners on the status of negotiations and encouraged them not to discuss the matter in any detail at the public meetings. *See* Appellants' Appendix, Ex. 29.

evasive devices that prevent the public from having a firsthand observation of each step in the decision-making process.

The statutory definition of an EDA reflects a legislative intent that focuses not on the name of an individual or the particular makeup of a group, but on the *activities* of that individual or group. Precedent teaches the same principle when considering application of the Sunshine Law. See *News-Press Pub. Co., Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982) ("we must look to the substance of the committee rather than its form.").

Similarly, the Attorney General has opined that one individual can be subject to the Sunshine Law. Op. Att'y Gen. Fla. 1974-294 (delegation of authority to one board member to secretly negotiate a lease violates Sunshine Law). *See also IDS Properties, Inc. v. Town of Palm Beach*, 279 So.2d 353, 356 (Fla. 4th DCA 1973) *approved and remanded sub nom. Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974) ("Those to whom public officials delegate de facto authority to act on their behalf in the formulation, preparation and promulgation of plans on which foreseeable action will be taken by such public officials stand in the shoes of such public officials insofar as the application of the Government in the Sunshine Law is concerned."). "It is elementary that the officials cannot do indirectly what they are prevented from doing directly." *Jones v. Tanzler*, 238 So.2d 91, 93 (Fla. 1970) (Adkins, J., specially concurring). Such a

construction frustrates evasive devices. Any other view would eviscerate the Sunshine Law and allow the name of a group or its constituent members, and not their activities, to determine whether the Sunshine Law applied.

Given the evolving trend of privatizing government business through the creation of non-profit economic development entities, a growing threat exists to the ability of citizens to observe firsthand how and why expenditures from the public treasury occur. That staff performs that function at the direction of the governing board makes no difference. In *IDS Properties, supra,* the Fourth District Court of Appeal rejected a similar notion and said:

> Although admittedly, the zoning plan was born when the Town Council (acting in the sunshine) voted upon the ordinance at a public meeting, the conception, which is an inseparable part of the life-giving process, took place (in the dark) with the appointment of the Citizens' Planning Committee….The action of the Citizens' Planning Committee was an indispensable requisite to and integral part of the official acts or formal action of the Town Council."

279 So. 2d at 356 (internal quotation marks omitted).

The plain language of the statute requires that the activities of one staff member or a group of staff members assigned the duty of promoting the general business of a county or municipality is an EDA that must conduct its business in the Sunshine. Several government employees, essentially chaired by the Deputy County Administrator functioned as an economic development agency for

purposes of negotiating with the Orioles. The EDA's meetings should have been conducted in the sunshine.

ii. No Specific Exemption for Meetings

It is beyond question that the policy of this state requires this Court to operate from the presumption that all meetings of any joint collegial body, board or agency are open to the public. The citizens in this state mandated this requirement by enacting a constitutional amendment. *See* Art. I, Sec. 24(b), Fla. Const. Absent a specific statutory exemption, such meetings must be noticed in advance and be open to the public.

The County and City can point to no specific exemption for the meetings of an EDA. This alone ends the inquiry. At best, the governmental entities can argue only that the Legislature enacted an exemption for the *records* of an EDA. *See* § 288.075(2), Fla. Stat. However, no similar exemption exists for the meetings of an EDA and one cannot conclude that the exemption for certain records of an EDA implies that its meetings should also be exempt. Indeed, the Legislature has explicitly stated as much in Section 119.07(7), Florida Statutes. "An exemption from this section [Public Records Act] does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided."

The Legislature knows how to exempt meetings during which public bodies engage in certain types of negotiations. For example, § 286.0113(2)(a), Florida

Statutes (2009), specifically exempts negotiations with a vendor conducted pursuant to § 287.057(1), Florida Statutes.[9] *See also* § 497.172(1), Fla. Stat. (exempting probable cause panel meetings of the Board of Funeral, Cemetery and Consumer Services); § 440.3851, Fla. Stat. (exempting meetings relating to claims of the Florida Self-Insurers Guaranty Association); § 395.1056(3), Fla. Stat. (exemption for any portion of a public meeting that would reveal information contained in a comprehensive emergency-management plan). That the Legislature did not choose to do so for EDAs must be considered intentional.

iii. Attorney General Opinions

The Attorney General, in several opinions, has expressly opined that it is a proper construction of the statutory scheme to require EDAs to comply with the Sunshine Law. *See* Op. Att'y Gen. Fla. 2004-19 (2004) ("the exemption expressed in section 288.075(2), Florida Statutes, applies only to records and does not constitute an exemption from the provisions of the Government in the Sunshine Law, section 286.011, Florida Statutes."). *See also* Op. Att'y Gen. Fla., 2001-26 (2001); Op. Att'y Gen. Fla. 080-78 (1980). Although an opinion of the Attorney General is not binding, "it is entitled to careful consideration and generally should

[9] Even in that circumstance a recording of the meeting must be made and "no portion of the meeting may be held off the record." § 286.0113(2)(b), Fla. Stat.

be regarded as highly persuasive." *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp.*, 908 So.2d 459, 473 (Fla. 2005).[10]

The Legislature is certainly aware of the opinions of the Attorney General. Had the Legislature not intended this result, one would presume that it would have amended the statute to reflect such an intention. *See City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971) (the Legislature was aware of the construction given to the Sunshine Law, but has not amended it). Since the Legislature amended the statute in 2007, and did not include a provision exempting the meetings of an EDA from the Sunshine Law, it can only mean that this was the intended result for EDAs.

Allowing secrecy in such negotiations keeps the public from knowing what companies government officials are courting, what property could be affected, any rezoning that might be needed, tax breaks being considered and how the deal could affect the economy or physical environment of a community.

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[10] The State Attorney of the First Judicial Circuit recently concluded that a not-for-profit private agency responsible for carrying out economic development activities in the Panhandle was deemed an EDA subject to the Sunshine Law. See *Report of the Office of the State Attorney*, First Judicial Circuit of Florida, (Oct. 6, 2009). According to the Report, "[t]here was … a reluctance to believe that the Sunshine Law applied because it would limit TEAM Santa Rosa's ability to compete with Alabama and Mississippi in the area of economic development." *Id*. at 2.

In the end, there is no right to negotiate in secret and then make details available to the public just before the up or down vote by the governing body. Unless this Court upholds the constitutional right of citizens to attend meetings of an EDA, including its negotiations, the increasing subsidization of private enterprises and privatization of governmental operations will have the effect of rendering the Sunshine Law meaningless.

II.

INTENT IS NOT AN ELEMENT OF A VIOLATION OF THE SUNSHINE LAW.

The trial court correctly determined that substantive discussions, via electronic communications, by two or more elected officials on a board about public business coming before that board violates the Sunshine Law. The Foundation, however, is quite concerned about the trial court's focus on intent in gauging whether the Sunshine Law was violated. It is well established that intent is not an element of the civil provisions of § 286.011, Florida Statutes. This Court held long ago that good faith is irrelevant, stating:

> Few, if any, governmental boards or agencies deliberately attempt to circumvent the government in the sunshine law. We feel that the Town Council of Palm Beach acted in good faith, but any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law.

Town of Palm Beach v. Gradison, 296 So. 2d 473, 476 (Fla. 1974).

The relevant portion of the civil sanctions for violation of the Sunshine Law states that:

> Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, *and the court determines that the defendant or defendants to such action acted in violation of this section*, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

§ 286.011(4), Florida Statutes (2009) (Emphasis added).[11] The only requirement is that a court find that action was taken in violation of the statute.

Concerns about the use of electronic communications being used to skirt the requirements of the Sunshine Law have arisen in Florida and gained national attention. Appellants have cited several sources and the Foundation will not repeat them here. See Appellants' Brief on the Merits at 41.

Penalties for noncompliance with the Sunshine Law must be preserved for a variety of reasons. Citizens' groups are increasingly at the forefront of fights for

[11] An entirely separate provision of the statute expressly sets forth criminal penalties for intentional violations of the Sunshine Law. § 286.011(3), Fla. Stat.

open government compliance as the traditional defenders of these laws, the press, have been less able to do so as their financial resources diminish. Seth F. Kreimer, *The Freedom of Information Act and the Ecology of Transparency*, 10 U. Pa. J. Const. L. 1011, 1024 (2008) ("Whether because of resource constraints, political caution or cooptation, news media have not been prominent at the vanguard of successful FOIA inquiries . . . . It has been predominantly the availability of well-financed NGOs, combined with the possibility of assistance from the private bar, that has made FOIA a force to be reckoned with in this arena."). Imposing an intent analysis, as the trial court did in this case, is nothing short of a device that frustrates open meeting laws.

If the end result in cases such as this is that the good faith of public officials determines whether sanctions apply for violations of the Sunshine Law, an entire body of Florida jurisprudence established over the past 40 years will have evaporated. Public officials will seek the shelter of ignorance of the law to excuse noncompliance. Worse, future Sunshine Law claims will necessarily focus on intent, requiring a greater burden of proof by citizens enforcing open government laws. Enforcement would not be eroded; it would disappear altogether.

The deterrent value of strict liability civil sanctions for violations of the Sunshine Law fosters open and honest government. Such sanctions have the effect of inducing public officials to refrain from noncompliance with greater caution.

Intent to violate the Sunshine Law should only be considered when the criminal provisions of the statute are being applied. Excusing the public officials in any case because they did not intend to violate the Sunshine Law ameliorates the deterrent value served by the sanctions available under § 286.011, Florida Statutes.

CONCLUSION

The activities of EDAs and the subsidies they dispense are at the forefront of public debate. Florida's Sunshine Law mandates that the meetings of EDAs be open and noticed to the public. Additionally, modern technology and the lack of intent should not serve to frustrate the important goals served by the Sunshine Law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 10th day of September, 2010, via ☒ U.S. Mail; ☐ Facsimile; ☐ Overnight Delivery ☒ Electronic Mail to: ANDREA FLYNN MOGENSEN, 200 S. Washington Blvd., Suite 7, Sarasota, FL 34236; GREGG THOMAS and PAUL McADOO, 400 N. Ashley Drive, Suite 1100, Tampa, FL 33602; FREDERICK J. ELBRECHT, 1616 Ringling Blvd., Sarasota, FL 34236; ROBERT FOURNIER, 1 S. School Avenue, Sarasota, FL 34237; SUSAN H. CHURUTI and MIKE DAVIS, One Tampa City Center Suite 2700, Tampa, Florida 33602; EDWARD W. VOGEL, III, and MICHAEL L. WIENER, 2115 Harden Boulevard, Lakeland, FL 33803; and DENNIS J. NALES, Esq., 2071 Ringling Blvd., Sarasota, FL 34237.

s/ Victor Lee Chapman
VICTOR LEE CHAPMAN

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements set forth in Rule 9.210(a)(2), Florida Rules of Appellate Procedure, and that I have complied with AOSC04-84 by submitting an electronic copy as set forth therein.

s/ Victor Lee Chapman
VICTOR LEE CHAPMAN