IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

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only to give effect to that purpose by allowing them to proceed with their case and, if they prove the allegations in their complaint, ensure that the Commission is open to the public and the publicôs comments in future meetings. Doing so will protect not only Plaintiffsô interests but also those of all members of the public in Florida who wish to participate in their governmentôs decision-making.

II. BACKGROUND

After the tragic events at Marjory Stoneman Douglas High School in 2018, the Florida Legislature created the Marjory Stoneman Douglas High School Public Safety Commission to investigate the shooting and develop school safety policies to prevent it from reoccurring. Amended Complaint (ñCompl.ò) Æ 31. In 2018, the Commission held seven public meetings to develop its first set of recommendations, which it made in a report before the 2018-19 legislative session. Compl. Æ 40. In 2019, it held another six meetings before submitting its report for the

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and $32 per day for parking, or to pay a comparable amount, if not more, for rides to and from the resort. Eighteen dollars is more than twice Floridaôs minimum wage of $8.56 an hour and $32 is nearly four times that amount.[1] Thus, a member of the public earning minimum wage could, as far as they knew, only attend the meeting by committing 4 to 8 hours of earnings just for parking, in addition to other transportation costs and the expense of missing two full days of work. The Commission could have held its meeting at similarly-priced and more-accessible hotels. Compl. Æ 48. And it did not consider holding the meeting at an accessible public facility such as a school, library, or university. Compl. Æ 60. The organizational plaintiffs had members who were prevented from attending the meeting, and providing comment, by its location. Compl. Æ 54.

The Orlando meeting was for the purpose of preparing the Commissionôs report making legislative recommendations for the 2020 legislative session and it was the publicôs last opportunity to comment before those recommendations were finalized. Compl. ÆÆ 42, 92-94. The agenda for the meeting specified that public comments could be made to the Commission on October 16 at 4:45 p.m. Compl. Æ 77. The Commission, however, announced at 2:00 p.m. that it had finished its other work and would take public comments immediately, instead of at the regularly-scheduled time. Compl. Æ 79. Some of the few people who were there and ready to comment at that time asked the Commission to honor its posted agenda and take comments at 4:45 p.m. Compl. Æ 81. Nonetheless, the Commission ignored them and ended its proceedings while most of the people who planned to comment were still *en route*. Compl. Æ 82.

The individual plaintiffs, Kinsey Akers, Christoph s ZoellepCv oph ss anceĖ` s nd ew

which provides:

> (2) Members of the public *shall be given a reasonable opportunity to be heard* on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. é The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(emphasis added). The Commission denied Plaintiffs the opportunity to comment by announcing one time for public comment then taking comment at an earlier, unannounced time. The publicôs next opportunity to be heard was not until *after* the Commission finalized and voted on its proposals to the Florida Legislature for the 2019-2020 legislative session. Compl. ÆÆ 92-95.

III. ARGUMENT

The Commissionôs motion should be denied because Plaintiffs have alleged facts which, if true, show that it violated Floridaôs open meeting laws. *See Siegle v. Progressive Consumers Ins. Co.*, 819 So. 2d 732, 734ï35 (Fla. 2002) (ñWhen presented with a motion to dismiss, a trial court is required to ótreat the factual allegations of the complaint as true and to consider those allegations in the light most favorable to the plaintiffs.ôò (quoting *Hollywood Lakes Section Civic Ass'n, Inc. v. City of Hollywood*, 676 So. 2d 500, 501 (Fla. 4th DCA 1996))). Plaintiffs allege facts that demonstrate that their ability to attend and comment at the Commissionôs October meeting was unreasonably and illegally burdened by the Commissionôs actions. On a Motion to Dismiss, the Commission cannot prevail without showing that, if those facts are true, it is _ib! { pĐ n

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the express terms and the reasonable and obvious implications of Sections 286.011 and 286.0114. The Court should reject this effort to minimize the scope of the laws and instead look to the principles of broad construction of open meetings laws announced by the Florida Supreme Court in *Wood* and *Doran*.

B. Holding a Meeting Without Justification in a Location that Is Difficult and Expensive to Reach for Members of the Public, Particularly Low-Income Members of the Public, Violates Florida's Sunshine Law

1. Section 286.011 requires that public meetings be actually, not merely theoretically, open to the people who are affected by what transpires in them

The Commission adopts the extraordinary position that Floridaôs Sunshine Law, Section 286.011, Fla. Stat., allows it to hold its meetings at any location in the state, however inconvenient, inaccessible, and unaffordable for the overwhelming majority of those who might wish to attend, so long as it is theoretically possible for the public to attend. But a controlling Florida case has already rejected the logic #

But *Rhea* rejected this cramped and perverse reading of the statute, recognizing that ñ[f]or a meeting to be ópublic,ôò and hence satisfy the requirements of Section 286.011, ñit is essential that the public be given é a reasonable opportunity to attend.ò *Id.* at 1384ï85. To determine if the public has been afforded such an opportunity, the court held, ñ[t]he interests of the public in having a reasonable opportunity to attendò had to be ñbalanced against the Boardôs need to conduct a workshop at a site beyond the county boundaries.ò *Id.* at 1385. It then suggested various factors that would impact each side of this balancing process, such as whether transportation was provided from Alachua county to the meeting location, and whether there was any particular reason why the meeting had to be held in that location. *Id.* at 1385-86. Most importantly, it recognized that the ñexpense and inconvenience of the publicò imposed by the meeting location was an important consideration in determining whether the public had a reasonable opportunity to attend.

Rather than engage with this balancing process, the Commission seeks to limit *Rhea* to a simple rule: meetings held within the geographical boundaries of the area a public body serves are always in a reasonably accessible location so long as the public is not physically barred from entering. *Rhea* indeed did not discuss when a meeting inside a county might unreasonably deny people in that county an opportunity to attend. But nothing in its analysis of Section 286.011 is limited to meetings outside the area a body serves. Indeed, it explicitly rejected the ñbright line ruleò the plaintiffs wanted (limiting meetings to within 100 miles of the meeting place) and instead held that the proper approach was a case-by-case balancing test. *Id*.; *see also Kennedy v. Water*, No. 2009-0441-CA, 2010 WL 8427317 (Fla. 7th Cir. Ct. Sep. 27, 2010) (*Rhea* ñstands for the notion that meeting venues should be determined case-by-case, based on a weighing of the publicôs interest in having a reasonable opportunity to attend the meeting and the collegial

Plaintiffs do contend, however, that there should be a categorical rule that if a public meeting location can only be reached by car, free[3] parking must be offered and that fact must be disclosed to the public beforehand if the venue usually charges for parking. Commission staff indeed seem to have understood the reasonableness of the first part of this position, negotiating free parking when selecting the Omni as the meeting location. Compl. Æ 51. But they then did not disclose this to the public, deterring members of the public who otherwise would have been interested in attending. Compl. Æ 54.

The Commission does not attempt to argue that free parking, without any notice thereof, is all that the Sunshine Law requires. Nor could it ð the public is as deterred from attending a meeting it thinks charges $32 as one that actually does. Instead, it claims that it can hold meetings in locations that can only be accessed by paying for parking, arguing that ñsection

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In addition to being unlawful under Section 286.011(1), which *Rhea* interpreted, the Commissionôs actions also violate Section 286.011(6), which specifically forbids holding public meetings in exclusionary locations:

> All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

Ä 286.011(6), Fla. Stat.[4] Both aspects of the meeting location which Plaintiffs challenge ð its location and parking fees ð imposed an unreasonable barrier on attendance with no countervailing justification. To attend, most Plaintiffs, and most members of the public in the region, would have had to drive there in their vehicles, paying for gas and, likely, tolls and then (as far as they knew) pay $18-32 for parking. Or, if they did not have a vehicle of their own, members of the public would have had to pay a comparable or greater amount for a taxi or ridesharing service to attend the meeting.

A meeting location that imposes a significant cost on potential attendees ð the kind of money that for an ordinary person could be the difference between being able to pay a util a M tii]e Ÿ cto

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ñIf a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.ò *Id*. at Ä 286.0114(5).

Here, however, the Commission violated the policies it adopted. Hence, the statute implies that the Commission is *out of* compliance with the statute if its actions denied Plaintiffs a ñreasonable opportunity to be heard.ò The Commission claims that Plaintiffsô straight-forward interpretation of the text would ñcreate a heavy-handed set of regulations on state and local colleg] f z fe a

require public bodies to provide some guidance to the public about the structure of such long meetings. Otherwise, members of the public without the job, school, or child-care flexibility to spend two full days awaiting their opportunity to comment will be denied any opportunity to be heard, let alone a reasonable one. The right to public access to public meetings should not be limited to the childless and wealthy.

The Commission cites several cases for the proposition that Section 286.011 does not require public bodies to post agendas, but none of these cases, or any others of which Plaintiffs are aware, concern multi-day meetings like stur] ˛ ikeTtع ê عي aaaعي aaaعي aaaعي ê sÙ T lėT -

supports Plaintiffsô interpretation of Section 286.0114. The first case to consider whether public meetings must have and abide by a previously-posted agenda, on which subsequent decisions including those cited by the Commission rely, was *Hough v. Stembridge*. It held that requiring ñitems to appear on an agenda before they could be heard at a meeting would foreclose easy access to such meeting to members of the general public who wish to bring specific issues before the governmental body.ò 278 So. 2d 288, 291 (Fla. 3d DCA 1973). Under Section 286.0114, in contrast, the *absence* of notice of a specific time for public comments is what ñforeclose[s] easy access toò a meeting. The more time the public must devote to attending a meeting in order to provide a comment, even if the comment is unrelated to most of the meeting, the less ñeasy accessò the public has to providing comment.

Subsequent cases rejecting an agenda requirement likewise support requiring public bodies to specify a period for public comment at least for multiple-day meetings. *Yarbrough* held that ñforcing a public body to postpone deliberations on a given topicò because a press report indicated that the topic would not be discussed at the meeting was unreasonable. 462 So. 2d at 517. But, here, if the Commission abided by its posted schedule for comment, it would not have had to postpone anything. Commissioners would have been required only to abide by their original schedule. As noted above, the Commission cites no cases for the proposition that simply following an announced schedule burdens a public body. In *Law and Info. Services*, the court noted that it was ñconcerned that a boardôs failure to publicize an agenda item may mislead interested citizens into assuming that a matter will not be addressed at a scheduled public meetingò but held that ñwhether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature.ò 670 So. 2d at 1016. Here, again, Plaintiffs seek not to prohibit consideration of an

unnoticed agenda item but to exercise the right to comment on matters that the Commission promised them, a right the legislature has already decided to grant the public. Finally, *Grapski* simply relied on the prior cases without further analysis. 31 So. 3d at 200.

IV. CONCLUSION

What Plaintiffs ask of the Commission is simple: make a reasonable effort to hold future meetings at locations Plaintiffs and others like them can reach and to afford them the opportunity to appear and present their views at those meetings. That opportunity to participate in government decision-making is the core interest which Floridaôs open meeting laws were created to protect. For this reason, and all those above, the Commissionôs motion should be denied.

Respectfully submitted,

/s/ Samuel Boyd

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing on May 21, 2020, 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 the following:

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