

Attachment #2

# Florida's Government in the Sunshine Law

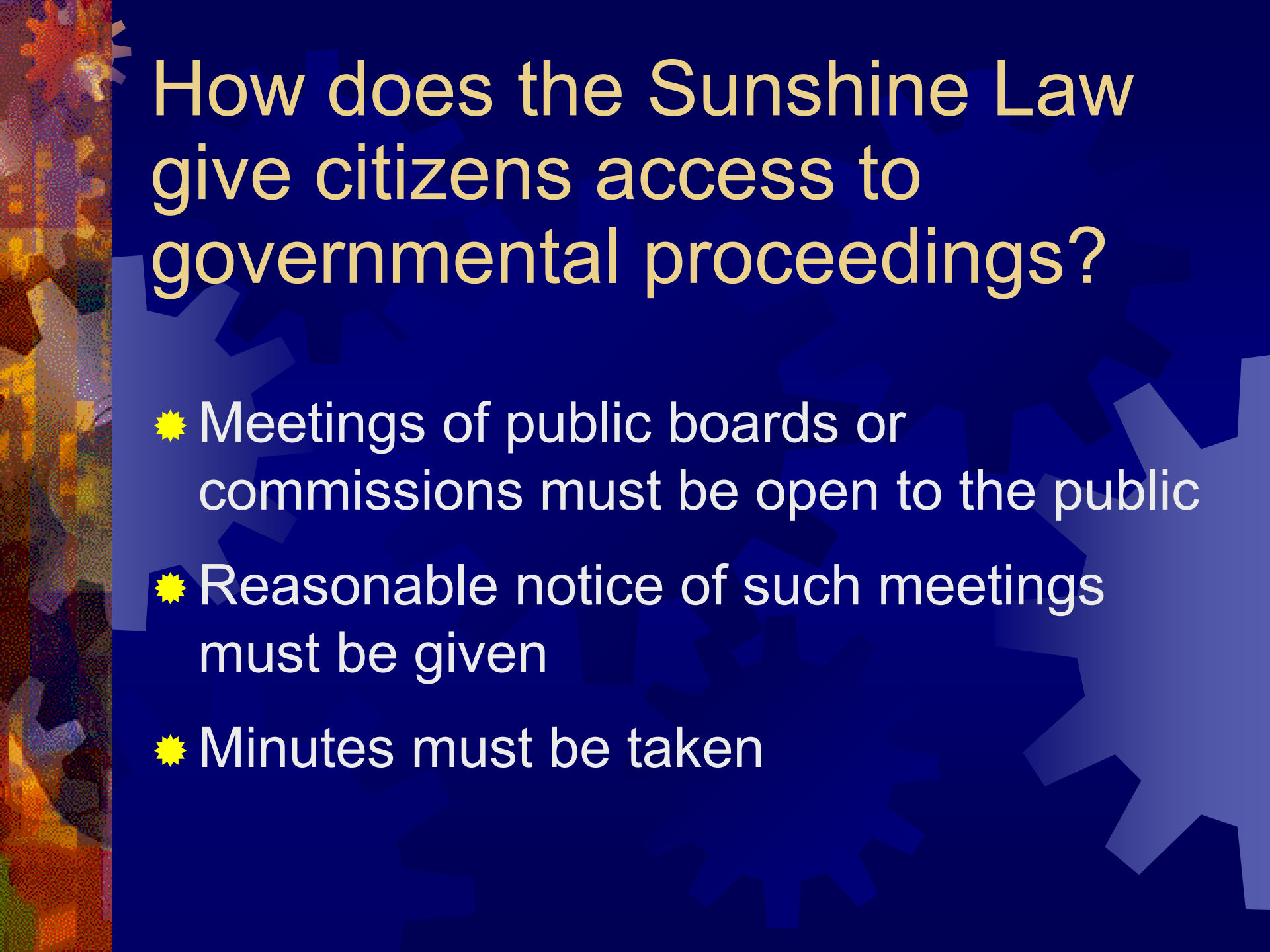
Article I, section 24, Florida Constitution and  
Section 286.011, Florida Statutes



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# What is the purpose of Florida's Sunshine Law?

- ✦ To give citizens a right of access to governmental proceedings

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# How does the Sunshine Law give citizens access to governmental proceedings?

- ☀ Meetings of public boards or commissions must be open to the public
- ☀ Reasonable notice of such meetings must be given
- ☀ Minutes must be taken



# Why is public access to governmental proceedings so important?

- ✦ Citizens have the right to know the entire decision-making process
- ✦ Every expressed thought or affirmative act of a public official as it relates to official duties is a matter of public concern
- ✦ In 1992, the Florida Constitution was amended to include the open meetings requirement

# What is “a meeting subject to the Sunshine Law?”

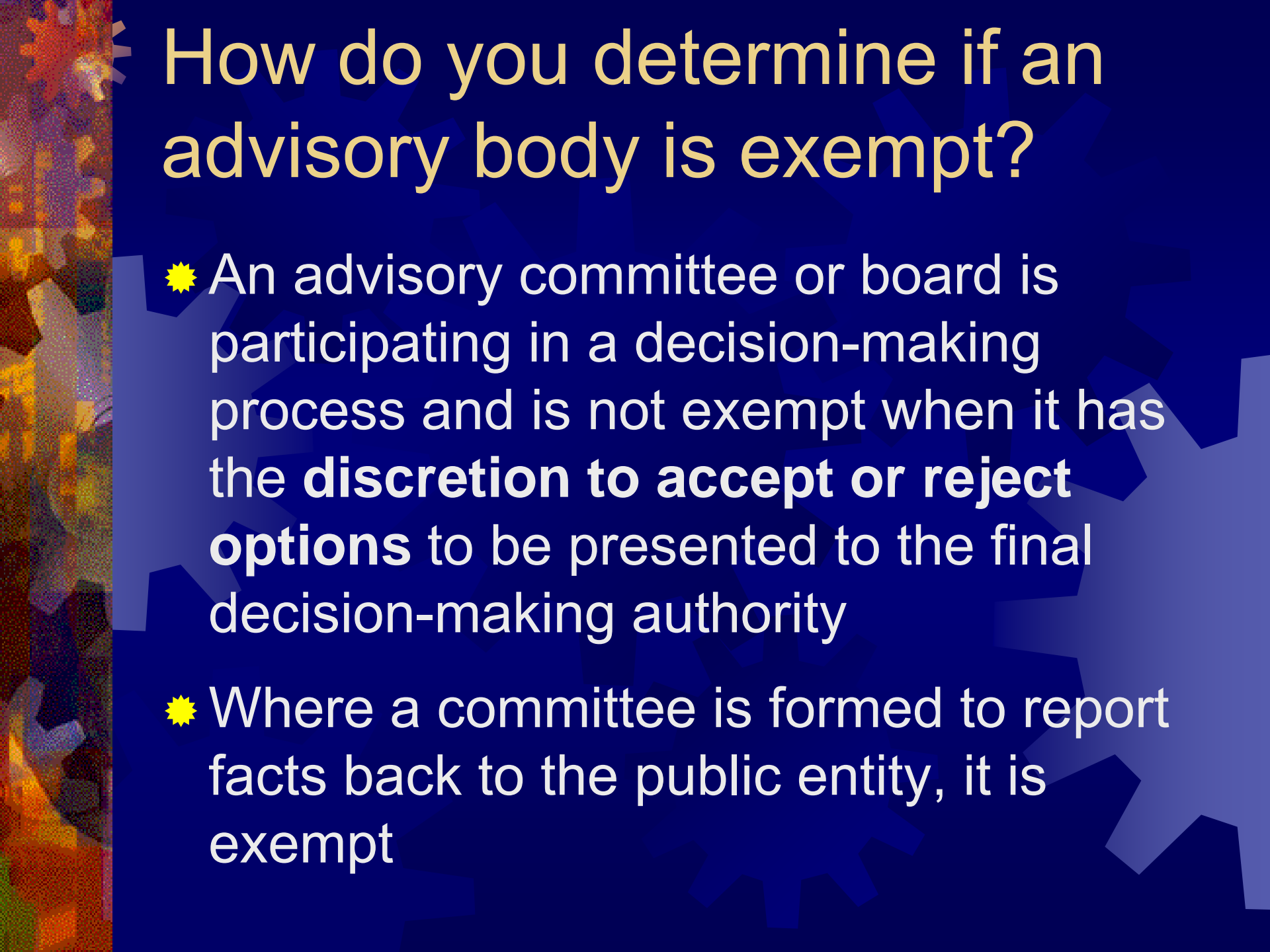
- ★ **Any gathering or interaction, formal or casual, of two or more members of the same public board, commission, or committee to discuss a matter on which foreseeable action will be taken by such public board, commission, or committee**

# What entities are subject to the Sunshine Law?

- ✦ Any board, commission, agency, authority, or advisory committee of the County
  - ✦ This applies to both elected officials and appointed members
  - ✦ This applies to both permanent and temporary or ad hoc committees such as a task force

# Are there any exemptions?

- ✦ Yes—exemptions are created by general law or caselaw
- ✦ An advisory body established for *fact finding or information gathering which has no decision-making authority* is not subject to the Sunshine Law



# How do you determine if an advisory body is exempt?

- ★ An advisory committee or board is participating in a decision-making process and is not exempt when it has the **discretion to accept or reject options** to be presented to the final decision-making authority
- ★ Where a committee is formed to report facts back to the public entity, it is exempt



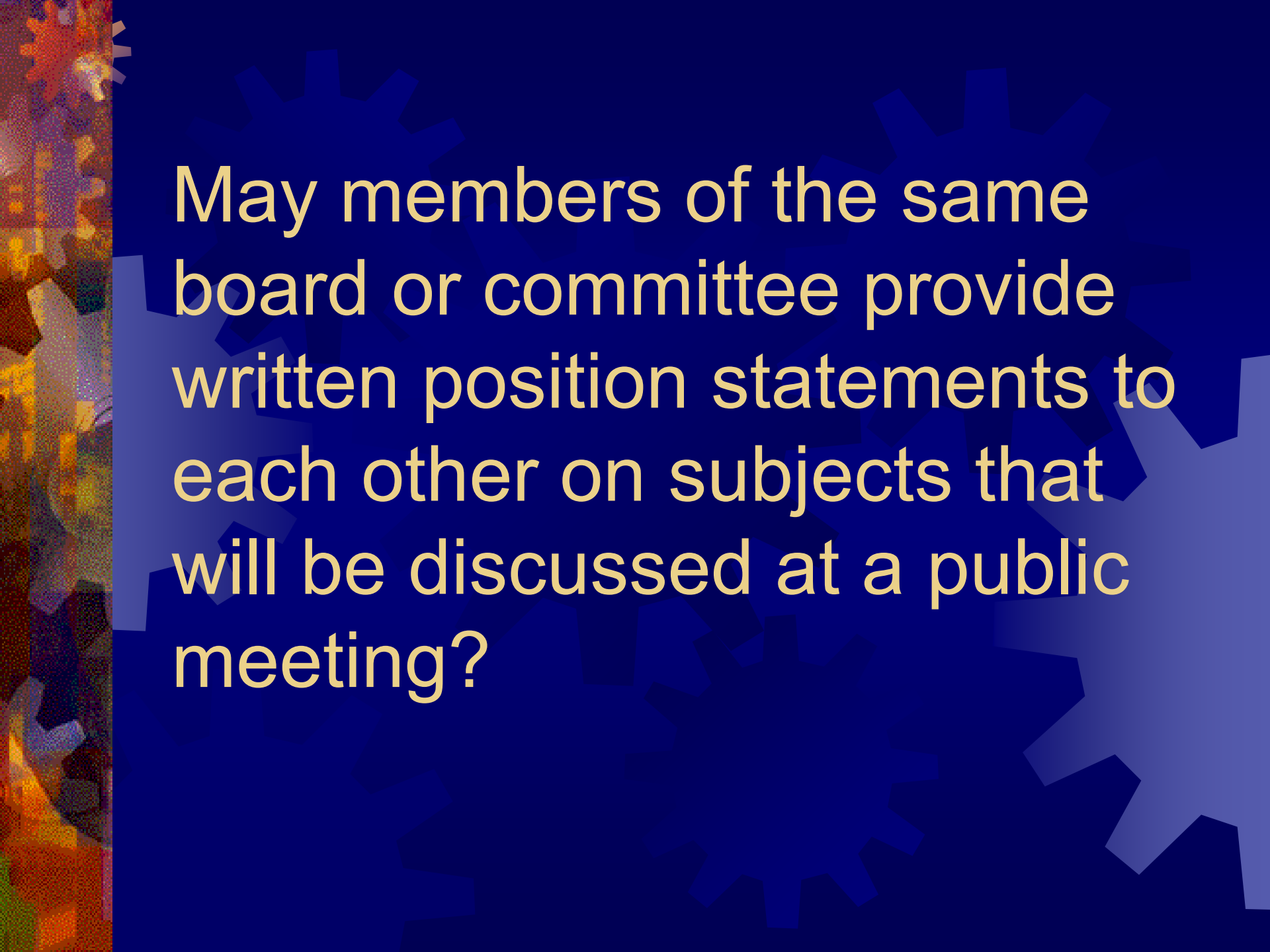
# Does the Sunshine Law apply to staff?

- ✦ Not unless the staff member has been delegated decision-making functions outside his or her normal staff functions
- ✦ The focus is on the *nature of the act performed*: a staff committee making non-binding recommendations or assisting in evaluating proposals **would** be subject; a staff committee relaying facts **would not** be subject



★ The law is not violated when:

- ★ a government executive uses staff for a fact-finding and advisory function in fulfilling his or her *executive* duties
- ★ informal meetings are held between a county commissioner and staff,
  - ★ where the discussions are merely informational
  - ★ where no one has the authority to make a final decision during that meeting, and
  - ★ no formal action is or could be taken


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May members of the same board or committee provide written position statements to each other on subjects that will be discussed at a public meeting?



☀ Yes, so long as

- ☀ There is no interaction related to the report among the members
  - ☀ The report is not used as a substitute for action at a public meeting, and
  - ☀ The written report is maintained by the records custodian as a public record
- ☀ The circulation of a written report which does not result in an exchange of comments or responses on subjects requiring board action is not a *meeting* subject to the Sunshine Law

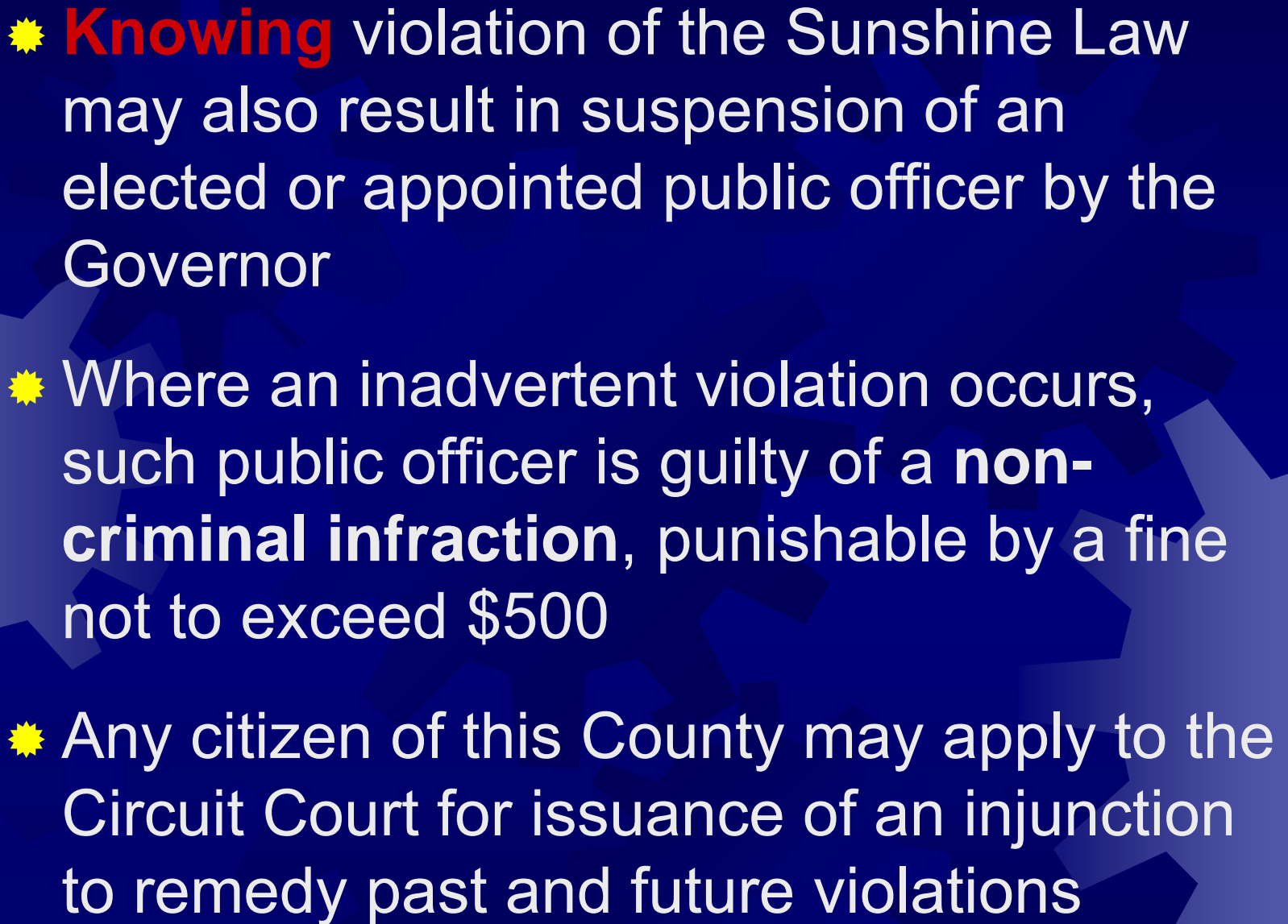
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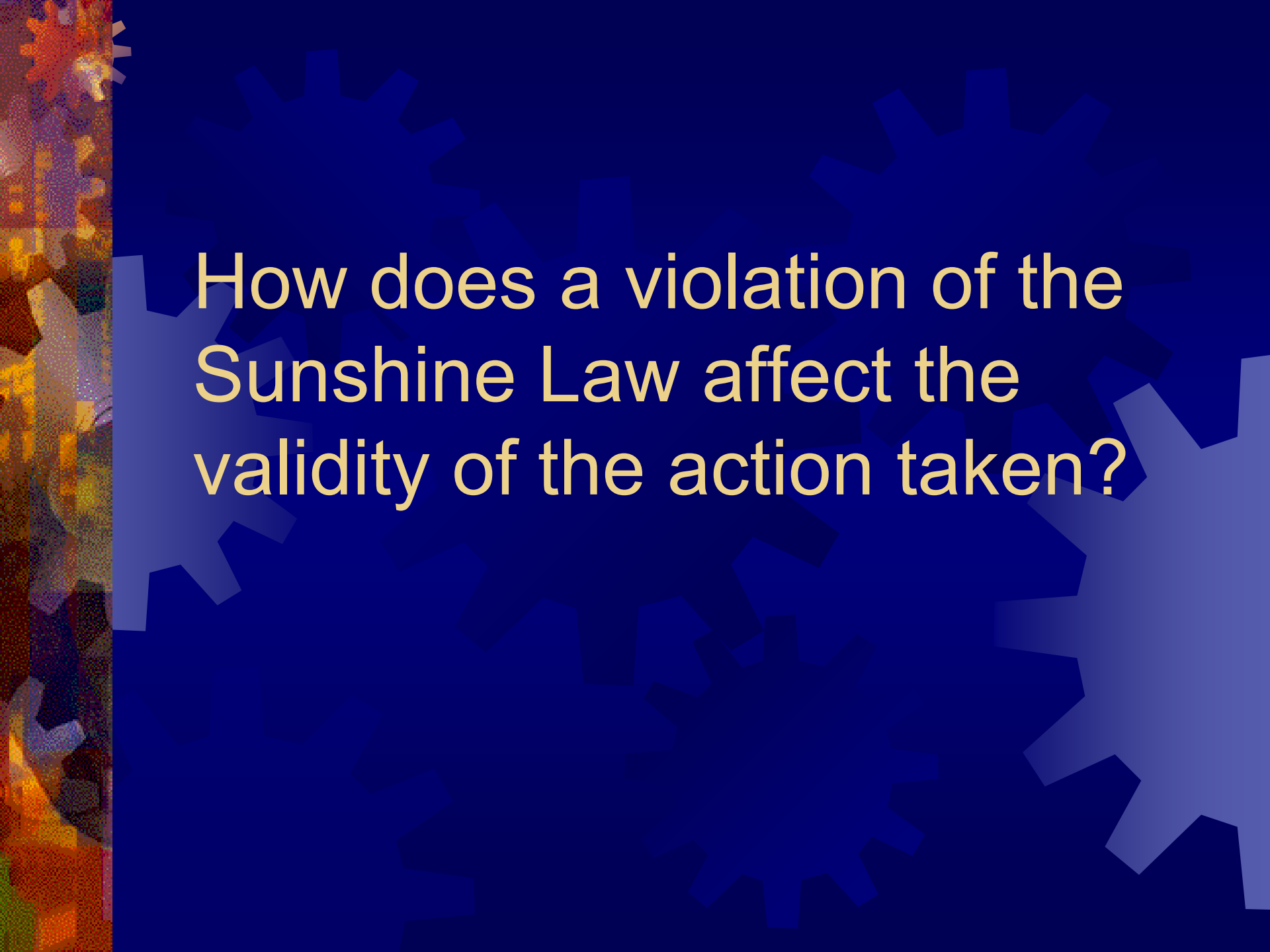
# Are telephone conversations and e-mails subject to the Sunshine Law?

- ★ Yes! Members of the *same board or committee* should not call or e-mail each other on matters which may *foreseeably* come before that board or committee

# What are the consequences for noncompliance?

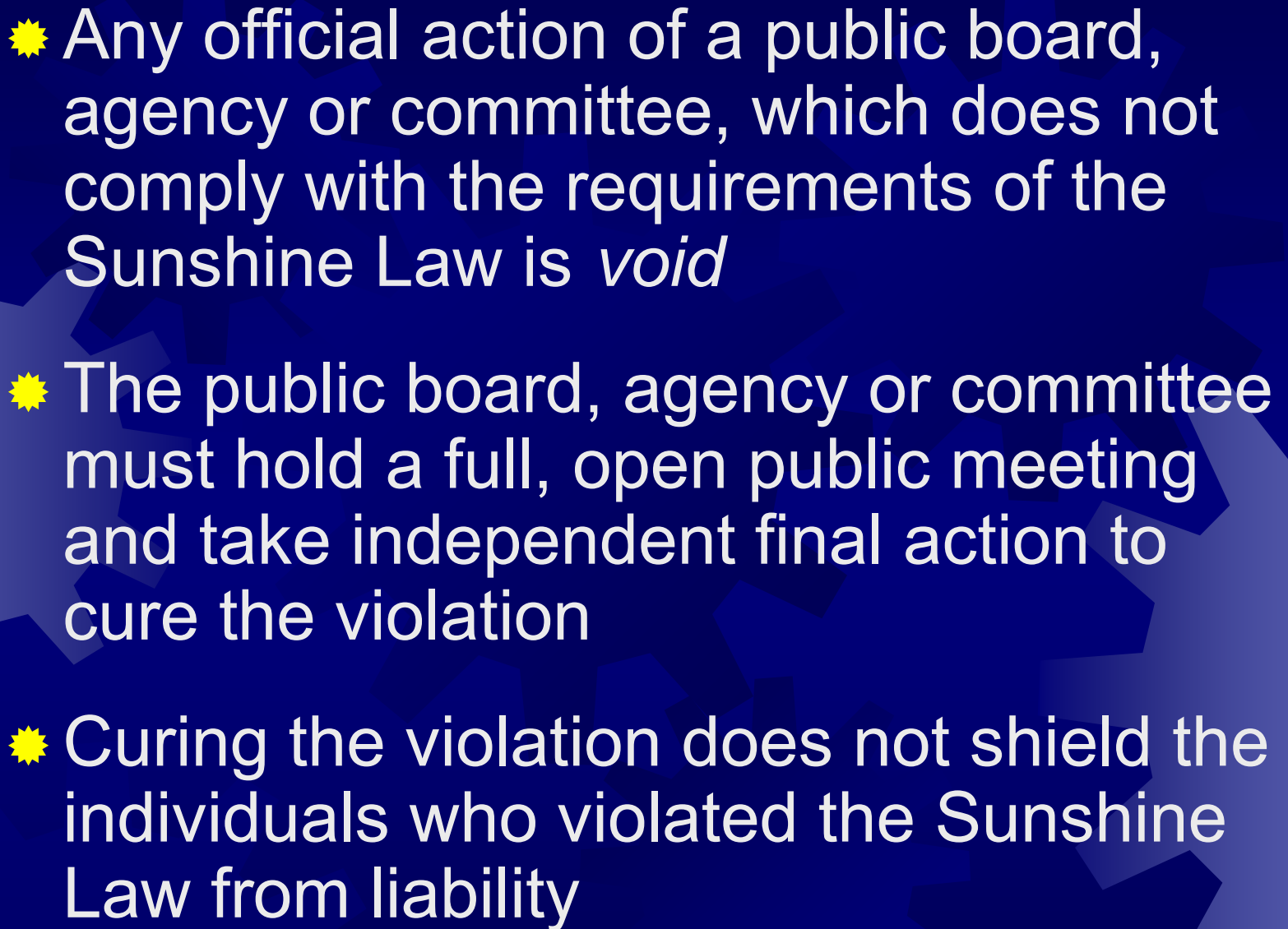
- ✦ Any member of a board, commission, committee or agency of the county who **knowingly** violates the Sunshine Law is guilty of a misdemeanor of the second degree
- ✦ Persons convicted of this may be sentenced to jail for up to 60 days and/or fined up to \$500

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- ★ **Knowing** violation of the Sunshine Law may also result in suspension of an elected or appointed public officer by the Governor
  - ★ Where an inadvertent violation occurs, such public officer is guilty of a **non-criminal infraction**, punishable by a fine not to exceed \$500
  - ★ Any citizen of this County may apply to the Circuit Court for issuance of an injunction to remedy past and future violations

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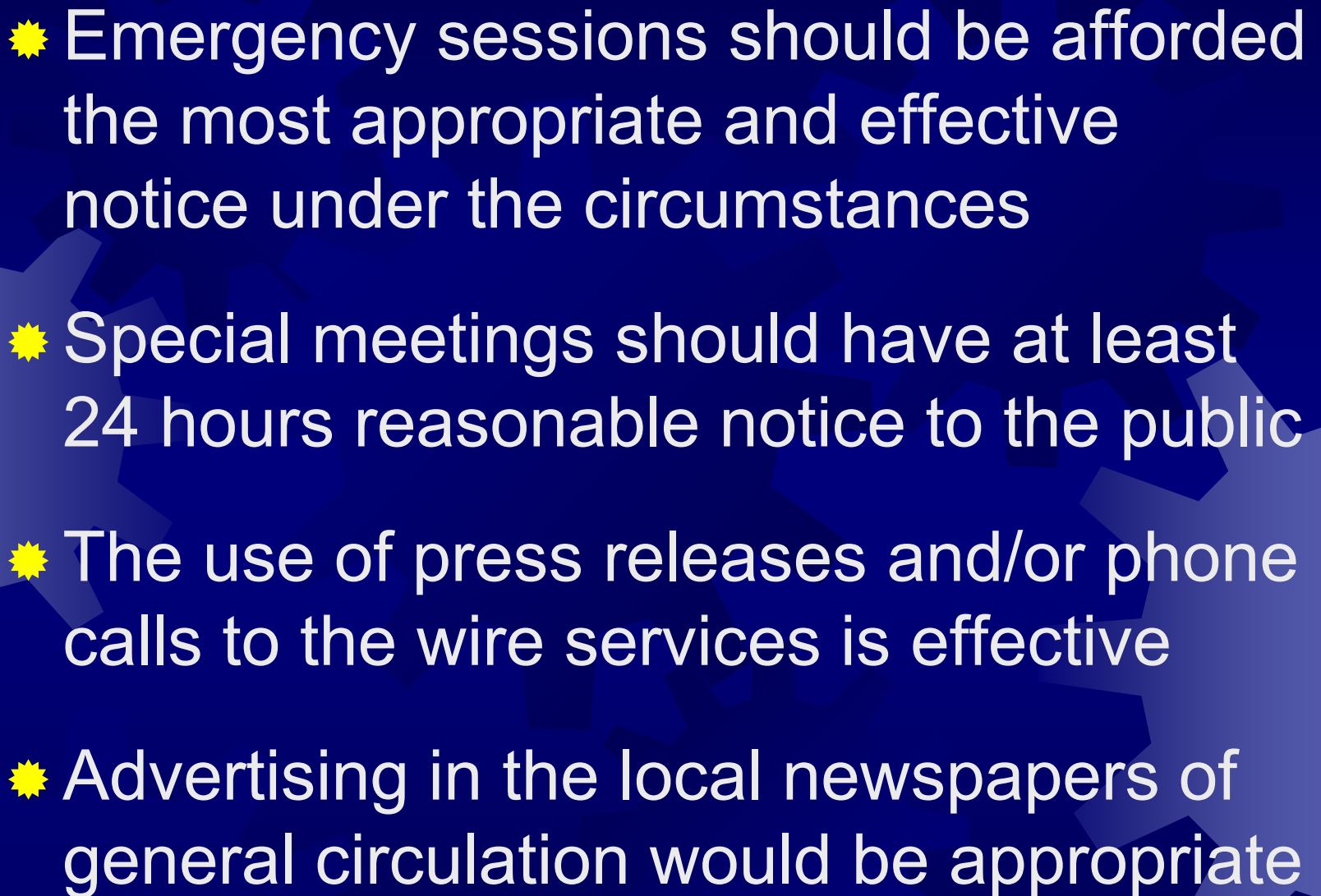
How does a violation of the  
Sunshine Law affect the  
validity of the action taken?

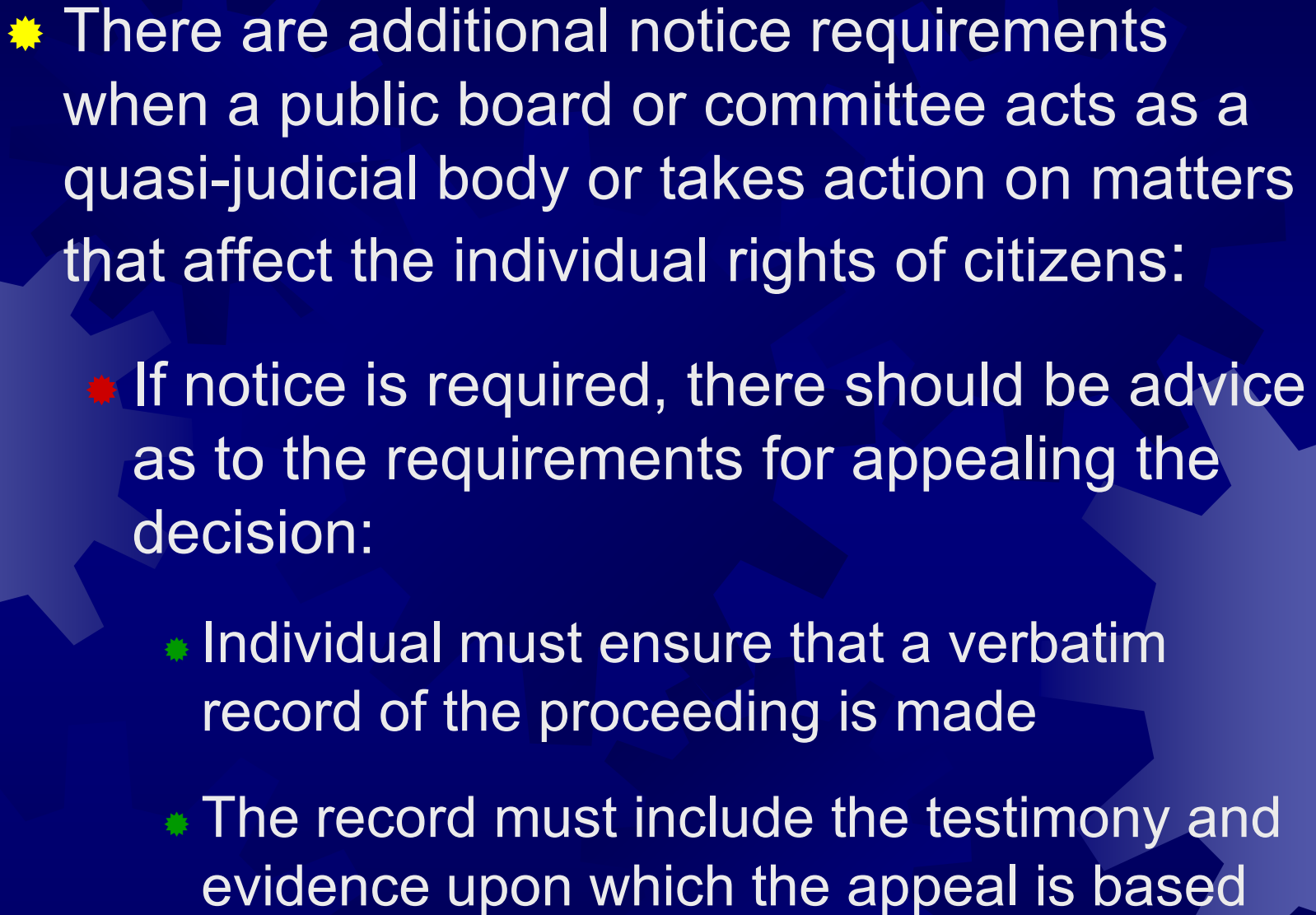



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- ★ Any official action of a public board, agency or committee, which does not comply with the requirements of the Sunshine Law is *void*
  - ★ The public board, agency or committee must hold a full, open public meeting and take independent final action to cure the violation
  - ★ Curing the violation does not shield the individuals who violated the Sunshine Law from liability

# What are the guidelines for complying with the notice requirement?

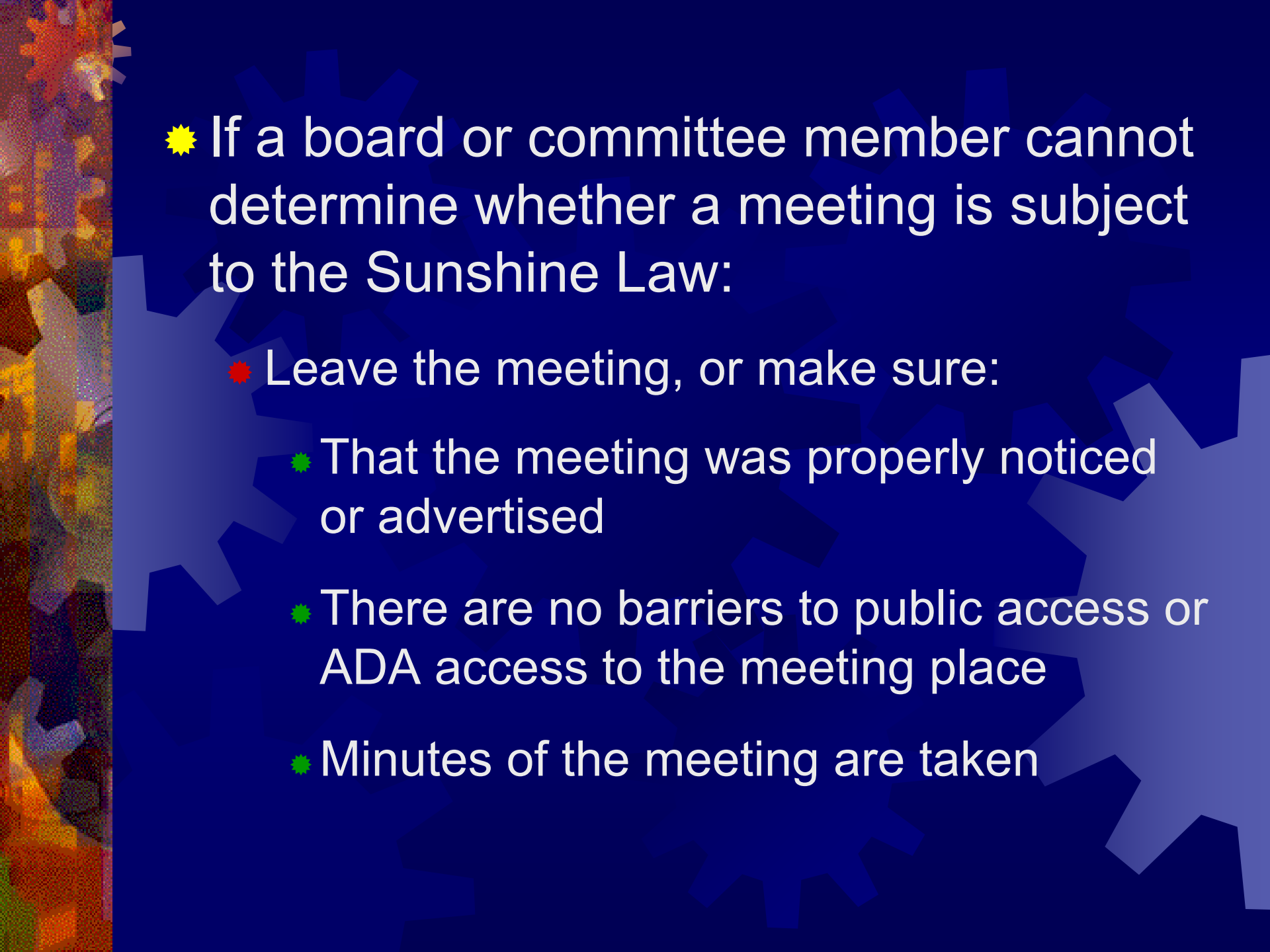
- ✦ The notice should contain the time, date and place of the meeting *and*, if available, an agenda or subject matter summation
- ✦ It should be prominently displayed in the area the County sets aside for that purpose

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- ✦ Emergency sessions should be afforded the most appropriate and effective notice under the circumstances
  - ✦ Special meetings should have at least 24 hours reasonable notice to the public
  - ✦ The use of press releases and/or phone calls to the wire services is effective
  - ✦ Advertising in the local newspapers of general circulation would be appropriate

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- ★ There are additional notice requirements when a public board or committee acts as a quasi-judicial body or takes action on matters that affect the individual rights of citizens:
    - ★ If notice is required, there should be advice as to the requirements for appealing the decision:
      - ★ Individual must ensure that a verbatim record of the proceeding is made
      - ★ The record must include the testimony and evidence upon which the appeal is based



How can members of public boards or committees avoid liability for Sunshine violations relating to notice and access to the public?

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★ If a board or committee member cannot determine whether a meeting is subject to the Sunshine Law:

- Leave the meeting, or make sure:
  - ★ That the meeting was properly noticed or advertised
  - ★ There are no barriers to public access or ADA access to the meeting place
  - ★ Minutes of the meeting are taken