

**IN THE CIRCUIT COURT OF MARIES COUNTY  
TWENTY-FIFTH JUDICIAL CIRCUIT  
STATE OF MISSOURI**

RON AND ANNE CALZONE,  
33867 Highway E  
Dixon, MO 65459

Plaintiffs,

v.

MARIES COUNTY COMMISSION; VIC STRATMAN,  
in his official capacity as Maries County  
Commissioner; ED FAGRE, in his official  
capacity as Maries County Commissioner; and  
DOUG DREWEL, in his official capacity as  
Maries County Commissioner;

Serve: Vic Stratman, Presiding Commissioner  
Maries County Commission  
211 Fourth Street  
Vienna, MO 65582

Defendants.

Case No. \_\_\_\_\_

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**SUGGESTIONS IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

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**INTRODUCTION**

At issue is the practical application of what may be the most fundamental element of our constitutional republic: The idea that we are a self-governing people, including transparent, accountable representation and the right to petition the government for a redress of grievances. Absent those concepts, we cease to be a republic.

Missouri's open meeting laws, found in chapter 610 RSMo, are based on those seminal

principles.

The facts of this case are easy to verify, particularly the lack of posting notice of meetings and tentative agenda required by 610.020.1 RSMo, and the failure to report the justification for holding closed meetings and votes in the meeting minutes as required by 610.020.4, 610.022.1, and 610.022.2. See Exhibit 1.

Admittedly, the authority to hold closed meetings during a declared state of emergency may be subject to more debate, but two simple matters of law and one matter of practicality should make it easy to issue a TRO. First, is the unusual statutory provision that places the “burden of persuasion” on the governmental agency. Similar to a strict scrutiny analysis, this court is obligated to start with the assumption that the County Commission is wrong for holding closed general meetings. See 610.027.2 RSMo.

Could it be that the legislature understood that governmental agencies that hold meetings and take votes outside public scrutiny are, indeed, violating the *fundamental* rights of the people, the very thing that triggers a strict scrutiny analysis?

The second simple matter of law is equally easy to evaluate: There are simply no exceptions to the requirement to post meetings that are planned in advance like the weekly meetings at issue, and there are absolutely no exceptions to the requirement to justify closed meetings with an entry in the minutes.

**Those two considerations make it *highly likely* that the Plaintiffs will prevail on the claims relating to posting notice of meetings and the content of the minutes once the case is fully adjudicated.**

The matter of practicality relates to the ease with which the Commission can comply with a TRO. If they don't want to open the Court House to the public, they need only find another

venue for their meetings. And creating a prominent place to post meeting announcements would be a simple matter by using the bulletin board that already exists in the main entrance to the Court House. Other notices are already posted at that entrance and the other entrances.

**The bottom line is that there would be negligible cost or time involved with compliance to a TRO.**

### **STATEMENT OF FACTS**

Plaintiffs' incorporate by reference the facts detailed in their Petition to the court.

Among the facts more germane to the motion for a TRO are the following:

A. The Maries County Commission has been holding closed meetings addressing general topics in the Court House during a time when the state is under a declaration of emergency. The Commission chose to close the Court House to the general public and elected to continue holding its twice per week meeting in their usual Court House space. The meeting reported in Exhibit 1 is one such meeting.

B. The Plaintiffs were excluded from the meeting of April 6, 2020. Exhibit 1.

C. Substantive issues have been dealt with in closed meetings, including an order that limits the free movement of law-abiding citizens, limits the use of private property, forbids certain activities, and conveys enforcement and rule-making power to the health department. Exhibit 2.

D. Any posting of meeting notices inside the Court House, including any that might exist near the space usually used for Commission meetings, are not “easily accessible to the public,” since the Court House is closed to the public. 610.020.1 RSMo.

E. None of the entrances to the Court House include notices of Commission meetings or a designated place citizens might reasonably find notices. Exhibits 3 and 4.

## STANDARD OF REVIEW

For the purposes of granting temporary or preliminary relief, this court must consider “(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties; (3) the probability that movant will succeed on the merits; and (4) the public interest.” *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). While the movant bears the burden of demonstrating the existence of these factors, “[n]o single factor in itself is dispositive,” *Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1472 (8th Cir. 1994) (internal quotation marks omitted), and Plaintiff does not even need to show a “fifty percent chance of” success on the merits, *PCTV Gold, Inc. v. SpeedNet, LLC*, 508 F.3d 1137, 1143 (8th Cir. 2007) (internal quotation marks omitted). Once a movant demonstrates this likelihood of success on the merits, this court may presume that he has been irreparably harmed. *Calvin Klein Cosmetics Corp. v. Lenox Labs., Inc.*, 815 F.2d 500, 505 (8th Cir. 1987).

## ARGUMENT

### I. *The threat of irreparable harm to the movant.*

With every lost opportunity to be present or participate in a meeting of the Maries County Commission, the Plaintiffs are harmed by virtue of the fact that they have been denied the right to petition the government and act as watchdogs over those who have the power to affect their lives and liberty.

In these unprecedented times of orders restricting the free movement of law-abiding people (e.g. stay at home orders), prohibitions against plying one's trade and earning a living for his family, of reduced access to goods one finds important or even necessary, government agents deciding who is “essential” and who is “non-essential,” and even limits on how honest people can exercise their religion, concerns about office holders affecting lives and liberty are NOT mere platitudes.

Every meeting of the Maries County Commission that takes place – and there are generally two per week – is an opportunity for the Commission to issue an order that harms the Plaintiffs interests.

II. *The state of balance between this harm and the injury that granting the injunction will inflict on other parties.*

This motion requests that the court direct the Commission to do that which it *should* be doing on its' own – posting notice of the meetings where such postings are accessible to the public, as required by law. “All public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered,” Section 610.020.1 RSMo.

“Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of meetings of a particular public governmental body concurrent with the notice being made available to the members of the particular governmental body and posting the notice on a **bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose** at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.” Emphasis added. Section 610.020.1 RSMo.

Compliance could be as simple as moving what they *should* already be posting near the meeting room less than 50 feet to the entrance of the Court House, where a bulletin board already

exists. (Compliance in spirit if not letter of the law, would include a labeled, designated space that would be obvious even when there were no notices to display.)

Compliance with the posting requirements would be a *minimal* burden to the Commission.

The same could be said of an additional paragraph, or so, justifying closed meetings, when such meetings are believed to be lawful.

“When it is necessary to hold a meeting on less than twenty-four hours' notice, **or at a place that is not reasonably accessible to the public**, or at a time that is not reasonably convenient to the public, the nature of the good cause **justifying that departure** from the normal requirements **shall be stated in the minutes.**”  
Emphasis added. Section 610.020.4 RSMo.

With respect to open meetings, Plaintiffs are not suggesting that the Court House be opened to the public while there are concerns about Covid 19. Plaintiffs *are* suggesting that there are *other* places the Commission could hold their meetings. Perhaps the library, right across the street from the Court House, and a place that is likely to be otherwise unused as long as the Court House is closed to the public.

In any event, the cost and inconvenience to holding a meeting at some place other than the Court House is minimal. Certainly it is less than the lives and blood shed to secure the right of Americans to petition their government.

The final element of a TRO, a stay on the enforcement of provisions of any orders passed in inappropriately closed meetings, requires only inaction.

III. *The probability that movant will succeed on the merits.*

The facts and law speak for themselves. As stated in the introduction, the “burden of persuasion” is on the Commission's shoulders. Section 610.027.2 RSMo.

Absent proof that the Plaintiffs are mistaken about the lack of posted notices and entries in the minutes justifying closed meetings, that claim is cut and dry.

A claim by a governmental body that they are exempt from the open meetings laws during a time *when openness and transparency are much more important than usual*, is a tough row to hoe.

#### *IV. The public interest.*

The interests of the Plaintiffs are shared by every citizen of Maries County, whether they have an interest in the current affairs or some future issue. On information and belief, there were representatives for other businesses that wanted to attend the same meeting the Plaintiffs were turned away from, and they were told by phone that they would not be permitted in the Court House for the meeting.

### **CONCLUSION**

All of the prerequisites for this court to issue a temporary restraining order are in place. Unless something changes, the same is true of the preliminary injunction.

The facts and law are simple and easy to evaluate. Both a temporary restraining order and preliminary injunction are very much in order.

WHEREFORE, Plaintiff requests this Court:

- A. Enter a temporary restraining order consistent with the forgoing motions.
- B. Enter a preliminary injunction that is consistent with the forgoing motions.

Respectfully submitted,

/s/ Ron Calzone  
Ronald J. Calzone, pro se.  
33867 Highway E  
Dixon, MO 65459

/s/ Anne Calzone  
Anne R. Calzone, pro se.  
33867 Highway E  
Dixon, MO 65459

Dated April 20, 2020

**Certificate of Service**

I, Ronald J. Calzone, and Anne R. Calzone do hereby certify that a true and correct copy of the foregoing brief was provided to the Maries County Sheriff on, April 20, 2020, to be served on the following defendants.

Vic Stratman, Presiding Commissioner  
Maries County Commission  
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Vienna, MO 65582  
FOR DEFENDANTS

By     /s/ Ron Calzone      
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