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

FILED
NOV 03 2023
MARLAINA WALLACE
CIRCUIT CLERK
PHELPS COUNTY, MO

REBECCA VARNEY,

Plaintiff,

v.

CITY OF EDGAR SPRINGS, *et al.*,

Defendants.

Case No. 20PH-CV01430

Division No. I

JUDGMENT

This matter was brought before the Court by the Plaintiff, Rebecca Varney, who alleged nine counts against the Defendants, the City of Edgar Springs and its Chief of Police. The Court has already granted Varney summary judgment as to four of those nine counts. The Court held a trial in this matter on September 1, 2023, for the purpose of establishing a factual record upon which it could rule upon the five unresolved counts. Having carefully considered that evidence, the Court now makes the following findings of fact and conclusions of law. The Court concludes that the Plaintiff is entitled to judgment in her favor on four of the five remaining counts. The

Court incorporates by reference relevant facts stated in the Court's November 15, 2022 Judgment, which have already been established in light of the Defendants' failure to comply with Rule 74.04(c)(2).[1]

FINDINGS OF FACT

Defendant City of Edgar Springs, Missouri is a municipality and political subdivision of the State of Missouri. Defendant Joseph Hohner is the City's Chief of Police. Plaintiff Rebecca Varney is a citizen of the United States, a resident of the City a taxpayer of the State of Missouri. Varney has lived in Edgar Springs almost her whole life but did not become concerned about city governance until around Valentine's Day in 2018 when she was given a citation for failure to stop at a stop sign. Varney suspected that the Edgar Springs Police Department was using traffic stops as a revenue generating mechanism for the City, and she believed that looking into the City's public records would allow her to determine whether this was the case. She was also concerned at that time about other issues related to the city's

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[1] Where a party has failed to comply with Rule 74.04(c)(2) in responding to its opponent's statement of uncontroverted material facts, those facts are deemed admitted. *The Lamar Co., LLC v. City of Columbia*, 512 S.W.3d 774, 774 n2 (Mo. App. W.D. 2016). Where a party has admitted facts alleged in a case, the party "waives or dispenses with the production of evidence and concedes for the purpose of the litigation that a certain proposition is true." *Briar Road, LLC v. Lezah Stenger Homes, Inc.*, 321 S.W.3d 488, 497 (Mo. App. S.D. 2010). The effect of such an admission is "to remove the proposition in question from the field of disputed issues in the particular case wherein it is made." *Id.* (citations omitted). As the Court has already recognized, "[i]n light of the Defendants' failure to comply with Rule 74.04(c)(2), this Court must treat all of the facts Varney asserted in connection with her motion for partial summary judgment as admitted." November 15, 2022 Judgment at 3. Those facts are binding upon the proceedings of this case; Varney needs to offer no evidence to prove them and the Defendants are not permitted to attempt to disprove them. *Meekins v. St. John's Regional Health Ctr., Inc.*, 149 S.W.3d 525, 531 (Mo. Ap. S.D. 2004).

governance, including potential misuse of grant funds and the City's sewer funds. Varney testified that she did not want to make accusations against public officials unless she had documents to back up her assertions.

Varney began going to the Edgar Springs City Hall in early March 2018 for the purpose of submitting Sunshine Law requests for public records—she would usually go every other day, but occasionally would go on back-to-back days.[2] Once at City Hall, then-City Clerk Paula James would provide her with an official Sunshine Law request form the City had prepared. Although the City delivered some records fairly quickly, James told Varney on March 15, 2018, that certain financial records would not be available until December 30, 2018. Additionally, James charged Varney $20.00 for "research time" to produce a copy of Edgar Springs Ordinance 6. Varney paid the $20 "research" fee under protest, but she believed both the estimated time to produce the financial records and the charge for locating Edgar Springs Ordinance 6 were inconsistent with the Sunshine Law's requirements. Varney told James that she was dissatisfied with the City's responses and said that if they did not provide records more quickly, Varney would file a complaint with the Attorney General's office. When James continued to claim that it would take several months to produce the records Varney was requesting, Varney began submitting complaints to the Attorney General's office. Also, in order to avoid unnecessary charges for making copies of public records, she started asking to review the records she had requested in person

[2] It was also about this time that Varney began regularly attending public meetings held at City Hall.

at City Hall. Around that same time, Varney had submitted requests for public records to the Edgar Springs Police Department. Because the Police Department had not provided the records she had requested, Varney also submitted to the Attorney General's office complaints about the Police Department's non-compliance with the Sunshine Law.

In accordance with Varney's request to review records in person, James suggested that Varney should come to City Hall on March 29, 2018, to review the City financial records she had requested. On that date, Varney arrived at City Hall in accordance with the appointment they had made. At that time, City Hall was open to the public between the hours of 8:00 a.m. and noon every weekday. Varney arrived shortly after City Hall opened for the day. Carol Dunham and Darlene Laumeyer (city employees) were both present in the building at that time. Varney asked for the records she was there to review, but was told the records were not available because James was not there. Since the records she had come to review were not available, Varney asked for a Sunshine Law form so she could submit another request. Dunham and Laumeyer seemed visibly unhappy about it, but they did locate a form and provide it to Varney.

As Varney was filling out this new form, James emerged from another room with the folder of financial records that Varney had come to review. Once James had provided Varney the records, Varney sat down to review them. She wanted to have copies that she could review later and use in support of her criticisms of City officials, so she started to take photos of the records with her phone. When James saw that

Varney was taking photos of the records, she shouted that Varney was not allowed to photograph the records. Varney believed she had a legal right to take pictures of the records she was inspecting,[3] but she did not argue with James; she started making handwritten notes instead. But before Varney had finished reviewing the records, James began shouting at her that she had to stop. Varney did not know why James was telling her to stop, as it was not near time for City Hall to be closed. Nevertheless, James said that if Varney did not stop reviewing the records and leave, James would call the police.[4]

Varney was confident she had not done anything wrong, so she continued inspecting the City's financial records and taking notes. Varney had not raised her voice or used any foul language (indeed, no witnesses suggested that Varney had ever been anything but calm and composed when requesting public records at City Hall), but James still called the police. The Phelps County Sheriff's Department incident report shows that James's complaint that day was that Varney was "harassing her and the City by staying inside the building for unreasonable amounts of time." When (around 10:00 a.m.) Varney finished reviewing the records, she continued to sit at City Hall waiting for law enforcement to arrive, but James said Varney did not need to wait for the police, so Varney left the building. Varney later spoke to the deputies

[3] See § 109.190, RSMo.

[4] At the trial James testified that an unnamed alderwoman had been present at City Hall on March 29 and that the alderwoman was "getting upset about the whole thing." James also stated that she did not intend for Varney to be arrested and that it was not her idea to have Varney banned from City Hall.

the Phelps County Sheriff's Department sent in response to James's phone call. The deputies did not suggest that Varney had done anything wrong, but they did suggest that Varney should make an appointment if she wanted to review public records. Varney responded that she had, indeed, made an appointment to review records at City Hall that day.

Varney quickly made arrangements with Laumeyer, James's replacement as City Clerk, to return and review ordinances at City Hall in the next few weeks. Varney was particularly interested in seeing what the ordinances said about whether City officials were required to live in the City. When Varney went to City Hall to review those ordinances, Alderman Sam Newman came into the building and took a seat near the police station; Newman did not appear to ask for anything from the Clerk. Some time after Newman arrived, he addressed Varney, saying that she "had fifteen minutes." He did not explain what his statement was supposed to mean. Varney had not been given any time limit for reviewing the records she was there to inspect and she assumed she would be free to inspect those records as long as City Hall was open to the public. After fifteen minutes had passed, Newman got up and went outside. Varney finished inspecting the records, made arrangements to return on April 13, 2018, and exited City Hall; she had been in the building about forty minutes to an hour that day. As she was leaving the building Newman, who was across the street, called out, "Did you find what you were looking for?" Varney responded, "No, but I'll be back."

On April 12, 2018 – the evening before Varney was to return to City Hall to review public records – Varney's granddaughter had come to visit her home. Late that evening after Varney and her granddaughter had gone to bed, two Edgar Springs police officers started banging on Varney's door. They handed her a "No Trespass Notice" that prohibited Varney from entering or remaining on the property of City Hall except to attend City Council meetings; if she attempted to enter or cross the property at any other time, she would be "arrested without warrant." The notice stated that "any other official documentation request must be sent via certified mail, city attorney, or at monthly counsel [sic] meeting." Varney found the officers' demeanor to be scary and intimidating. This City Hall ban prevented Varney from entering and being present at City Hall on the same terms and at the same times that the building was open to all other citizens. Varney is the only person the City ever banned from entering City Hall. The City's ban had no expiration date and ended up being in effect for more than *four years*, until July 11, 2022, when the City notified Varney that she would once again be permitted to enter City Hall at the same times and on the same terms as other citizens.[5]

Although Varney believed the City had no authority to ban her from City Hall, she did not test the No Trespass Notice by attempting to enter City Hall other than to attend public meetings. Varney began submitting her Sunshine Law requests by certified mail, just as the notice had instructed her to do, but this process was both

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[5] Varney filed this lawsuit on November 9, 2020. Thus, the City allowed the ban to remain in place for more than a year and a half *after* Varney sued the City.

expensive and slow. She would first have to send a letter requesting Sunshine Law forms from the Clerk, then she would have to send her requests back to the Clerk via certified mail.[6] Eventually Varney sent the Clerk a link to the Attorney General's website, which specified that public governmental bodies cannot require citizens to use the government's forms to submit requests for public records. After that, Varney was able to submit her requests via email, but the Clerk frequently did not respond to requests submitted in this manner.

At several City Council meetings Varney asked the aldermen to lift the No Trespass Notice. At one meeting the City Council even began the process of taking a vote to rescind the ban, but then-Police Chief Kody Lucas interrupted, saying that he was the only one who had the authority to remove the ban, and that he refused to do so. After Lucas's statements the City Council did not finish voting on the issue and the ban remained in place. Varney was aware that the Police Chief and several city officials were unhappy with her ongoing criticisms, as they would make hostile comments toward her at public meetings and also on social media; the police department also blocked her from its Facebook page. Mayor William Gallion even sued her for taking pictures of him, although the Phelps County Circuit Court dismissed his lawsuit for lack of evidence. Despite this ongoing hostility, Varney continued her criticism of city officials and city policies and began gathering

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[6] No other citizen was required to submit records requests in this manner rather than submitting requests in person at City Hall, and no other citizen was similarly prohibited from reviewing public records in person at City Hall.

signatures in an effort to have the City audited. She also continued to complain about the City's violation of the Sunshine Law.

On the morning of Saturday, November 9, 2019, Varney saw several of the City Council members' vehicles parked outside of City Hall. The City had not posted any notice of a public meeting to be held that morning, but because Varney recognized the vehicles of the City Council members she believed that a quorum of the Council might be present and holding an illegal meeting. She went to City Hall to investigate. Upon arrival, Varney opened the door to the room in which City Council meetings typically are held and she leaned inside. She saw Mayor Gallion, Alderman Rick Brewer, Alderman Terry Austin, Alderman Butch Lucas, all gathered around the table at which the City Council members typically sit during City Council meetings; Jeff Jordan, the City employee responsible for maintaining the City's sewer and wastewater system, was also present.[7]

The Court found the testimony of city employee Jeff Jordan to be credible and that this was an impromptu gathering. The testimony at trial established that those present were discussing maintenance that had been performed on the city sewer system that day. Varney asked if they were having a meeting, which Mayor Gallion denied. Varney accused them of conducting a meeting. When Gallion again denied

[7] Earlier that morning two of the aldermen had helped Jordan perform some work on a lift station located elsewhere in the City.

that the gathering constituted a meeting, Varney departed City Hall without saying anything else. She was present at City Hall that day for no more than two minutes.

The Court does not find this to have been a meeting of a public governmental body as defined in Chapter 610. No votes were taken, there was no agenda nor minutes taken. The Court finds there was no intent on the part of those present to, in fact, conduct city business.

Mayor Gallion called the Phelps County Sheriff's Department and reported Varney for trespassing; he asked the deputies who responded to his call to arrest her. The Court is disturbed by the willingness of city officials to resort to the use of law enforcement officers to warn, intimidate and even arrest Varney for her persistent watchfulness over city government.

When the deputies agreed to speak to Varney, but declined to arrest her, Gallion told them to tell her that she was no longer allowed to come to City Hall for any purpose, including City Council meetings. On Monday, November 11, 2019, the new Edgar Springs Police Chief, Joseph Hoehner, delivered to Varney a second No Trespass Notice, which stated that she would be arrested if she entered or crossed City Hall property. The new No Trespass Notice did not include any exception for attending City Council meetings.

The next regularly scheduled City Council meeting was held at City Hall on November 25, 2019. Varney wanted to attend the meeting and invited Attorney Roland to come to Edgar Springs in an effort to persuade the City officials that she

had a legal right to do so. Attorney Roland spoke to the Police Chief just outside of City Hall as the meeting was about to begin, notifying him that denying Varney access to the City Council meeting would violate her rights under the U.S. Constitution, the Missouri Constitution, and the Sunshine Law, that the Sunshine Law provided for civil penalties and an award of attorney fees to a citizen who proves a knowing or purposeful violation of the Sunshine Law, and that Varney would sue the City if she was not permitted to attend the meeting.[8] In spite of this, the Police Chief stated that if Varney attempted to attend the meeting she would be treated as a trespasser. In light of this threat, Varney chose not to try to enter the building that evening; the risk of being arrested was the only reason she did not attempt to attend that public meeting.

The evidence in the record leads to the unmistakable conclusion that City officials, including specifically Mayor Gallion and the Police Chief,[9] imposed the City Hall ban on Varney and left that ban in place at least in part because they were angry about the criticisms that Varney had leveled (and continued to level) against the City, its officials, and its police department. The record does not include any other plausible explanation for (1) the City's choice to ban Varney from City Hall in the first place, and (2) the City's decision to leave the ban in place for more than four years. Personal

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[8] The record shows that the Attorney General's office had also previously notified the City and its Police Department that they were subject to the Sunshine Law's requirements.

[9] The Court notes that Varney has named current Police Chief Hoehner in his official capacity only; her allegations run against the *office* of the Edgar Springs Chief of Police, not Hoehner individually. On this basis, the actions of Hoehner's predecessor in office may properly be considered and the office itself held accountable for those actions.

hostility against Varney is also evident from the fact that Police Chief Lucas intervened to prevent the City Council from lifting the ban in 2018, claiming that the decision about who would be allowed into City Hall was his alone, and also from Mayor Gallion's effort to have Varney arrested on November 9, 2019, simply because she (quite briefly) investigated the meeting the Mayor and a quorum of aldermen were holding in the meeting room at City Hall.

Varney's actions, requesting to see and copy city records and ordinances, going to city hall, attending council meetings and criticizing city officials may have been an imposition on city officials and employees but there is scant, if any evidence she was disruptive so as to justify her exclusion from city hall during business hours and/ or city council meetings

The evidence reveals that at all times relevant to this action the City and its Police Chief were aware that they were bound by the requirements of the Sunshine Law. Varney had personally informed them they were subject to the Sunshine Law, and in response to the complaints Varney filed with the Attorney General's office in early 2018 the Attorney General's office notified them as such. Additionally, the Police Chief was directly informed on the evening of November 25, 2019, that the Sunshine Law did not allow the City to exclude members of the public from open public meetings, that the Sunshine Law authorized specific consequences for knowing or purposeful violations, and that Varney would indeed sue the City if it denied her access to that evening's meeting.

The evidence also shows that the City held closed public meetings on September 16, 2019; October 21, 2019; and February 10, 2020. The minutes of the September 9, 2019 City Council meeting do not include any reference to the specific exception allowed pursuant to the provisions of § 610.021 that would authorize the closure of the September 16, 2019 meeting, nor do they document the votes of each City Council member regarding the decision to hold a closed meeting on September 16, 2019. The minutes of the October 7, 2019 City Council meeting state that the City Council intended to hold a "closed door meeting" at 6:00 p.m. on October 21, 2019 "to discuss the 2020 City Budget," but the minutes do not include any reference to the specific exception allowed pursuant to the provisions of § 610.021 that would authorize the closure of a meeting for the purpose of discussing the City budget, nor do they document the votes of each City Council member regarding the decision to hold a closed meeting on October 21, 2019. The City did not preserve minutes of the closed portion of the October 21, 2019 City Council meeting. The City Council closed part of the February 10, 2020 City Council meeting, stating that the closure was based on § 610.021(3), which allows closure of a meeting to the extent it relates to "hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded." The minutes for the closed portion of that meeting show that the City Council actually used the closed portion of this meeting to discuss paid time off for City employees; the minutes do not indicate discussion of "hiring, firing, disciplining

or promoting" of any particular employee, nor do they suggest that any "personal information about [an] employee [was] discussed or recorded."

CONCLUSIONS OF LAW

I. The Sunshine Law imposes stringent requirements regarding public meetings and the Defendants did not comply with those requirements.

The Sunshine Law's provisions regarding public records and public meetings apply to all "public governmental bodies." § 610.011. The statute defines a "public governmental body" as "any legislative, administrative or governmental entity created by the Constitution or statutes of this state," including "[a]ny department or division of the state, of any political subdivision of the state, of any county or of any municipal government... including but not limited to sewer districts, water districts, and other subdistricts of any political subdivision." § 610.010(4)(c). In relevant part the statute defines "public meeting" as "any meeting of a public governmental body subject to sections 610.010 to 610.030 at which *any public business is discussed*, decided, or public policy formulated[.]" § 610.010(5) (emphasis added). The term "public business" means "all matters which relate *in any way* to the performance of the public governmental body's functions or the conduct of its business." § 610.010(3) (emphasis added). The Sunshine Law requires courts to construe its provisions "liberally" and to construe any exceptions "strictly" in order to promote the state's express public policy of government transparency. § 610.011.

Regarding public meetings, the Sunshine Law requires public governmental bodies to take and retain "[a] journal or minutes of open and closed meetings... including, but not limited to, a record of any votes taken at such meeting." § 610.020.7. Public governmental bodies are required to provide "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[.]" § 610.020.1. The statute also requires a public governmental body to post 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." § 610.020.1. The notice "shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body[.]" § 610.020.2.

The Sunshine Law provides that if a portion of a public meeting is to be closed, there must be "an affirmative public vote of the majority of a quorum of the public governmental body," and "[t]he vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote *by reference to a specific section of this chapter* shall be announced publicly at an open meeting of the governmental body and entered into the minutes." § 610.022.1 (emphasis added). A public governmental body may also hold a closed meeting if it first complies with the requirements of § 610.020 and "give[s] notice of the time, date, and place of such closed meeting or vote and the

reason for holding it by reference to the specific exemption allowed *pursuant to the provisions of section 610.021.*" § 610.022.2 (emphasis added). Where a public governmental body is holding a closed meeting, it "shall be closed *only to the extent necessary for the specific reason announced to justify the closed meeting*[.]" § 610.022.3. The Sunshine Law expressly prohibits discussion of "any business in a closed meeting, record or vote which does not *directly* relate to the *specific* reason announced to justify the closed meeting or vote." § 610.022.3 (emphasis added).

"Any aggrieved person, taxpayer to, or citizen of this state" may file a lawsuit to enforce the Sunshine Law's provisions.[10] § 610.027.1. Where a plaintiff alleges violations of the Sunshine Law, there are three distinct phases of analysis. First, the party seeking enforcement of the Sunshine Law must demonstrate (1) that their opponent is subject to the Sunshine Law's requirements,[11] and (2) that it has held a closed meeting, record, or vote. *Colombo v. Buford*, 935 S.W.3d 694, 694 (Mo. App. W.D. 1996); § 610.027.2, RSMo. If the plaintiff makes this showing, the public governmental body and its members then bear the burden of proving that they complied with the Sunshine Law's requirements. *Librach v. Cooper*, 778 S.W.2d 351,

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[10] Section 610.027.5 requires a plaintiff to bring suit "within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation." At trial Varney established that the City did not provide her the meeting minutes for the September and October 2019 meetings until after November 9, 2019. She could not have ascertained the minutes-related violations of the Sunshine Law she has alleged until the City provided her copies of the relevant sets of minutes. Given that she filed this suit on November 9, 2020, less than one year after the City provided her copies of these minutes, her challenges are timely.

[11] The City has never disputed that it is a public governmental body subject to the requirements of the Sunshine Law.

353 (Mo. App. E.D. 1989); § 610.027.2. If the public governmental body *cannot* prove that it complied with the Sunshine Law's requirements, the burden then shifts back to the plaintiff, who much show "by a preponderance of the evidence" that the public governmental body's violation was either knowing or purposeful. A preponderance of the evidence is evidence that, as a whole, shows the fact to be proved to be more probable than not. *Tipton v. Barton*, 747 S.W.2d 325, 332 (Mo. App. E.D. 1988) (finding that evidence supported finding of purposeful violation of Open Meetings Act).

A. The City did not show that it complied with § 610.022, RSMo., in connection with the closed public meeting the City Council held on September 16, 2019.

The minutes from the September 9, 2019 City Council meeting show that the City Council planned to hold a closed meeting at 10:00 a.m. on Monday, September 16, 2019, for the purpose of discussing "personnel." Although § 610.021(3) allows the closure of meetings to the extent they relate to "[h]iring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded," the indication that the City Council intended to discuss "personnel" does not in any way suggest that its discussion would be limited to the limited, specific circumstances authorized under § 610.021(3).[12] The City kept minutes of this closed meeting. Neither the minutes from

[12] The City had the opportunity to present evidence that the discussion during this closed meeting was, in fact, limited to the statutorily-acceptable subject matter. It did not present any such evidence.

the September 9, 2019 City Council meeting nor the September 16, 2019 closed meeting include reference to any specific section of the Sunshine Law justifying closing of part of the September 16, 2019 meeting. The minutes of the September 9, 2019 meeting do not document the votes of each City Council member regarding the closure of part of the September 16, 2019 meeting. The City did not put on any evidence that this Court might rely upon to conclude that it complied with the requirements of § 610.022. Consequently, the Court holds that the City violated § 610.022 in regard to the closed public meeting the City Council held on September 16, 2019.

B. The City did not show that it complied with § 610.022, RSMo., in connection with the closed public meeting the City Council held on October 21, 2019.

The minutes from the October 7, 2019 City Council meeting show that the City Council planned to hold a "closed door" meeting at 6:00 p.m. on Monday, October 21, 2019, for the purpose of discussing the 2020 City budget. The City did not keep minutes of the October 21, 2019 closed meeting. The minutes from the October 7, 2019 City Council meeting did not include a reference to any specific section of the Sunshine Law justifying the closing of part of the October 21, 2019 meeting. The minutes of the October 7, 2019 meeting do not document the votes of each City Council member regarding the closure of part of the October 21, 2019 meeting. The failure to include any of this information or to keep minutes of the closed portion of the October 21, 2019 meeting violated § 610.022.

C. The City did not show that it complied with § 610.022, RSMo., in connection with the closed public meeting the City Council held on February 10, 2020

The minutes from the February 10, 2020 City Council meeting show that the City Council voted to go into closed session "[u]nder State Statute 610.021(3)." As noted above, § 610.021(3) allows public governmental bodies to close meetings where "[h]iring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about an employee is discussed or recorded." That subsection clarifies that "the term 'personal information' means information relating to the performance or merit of individual employees." § 610.021(3). The City kept minutes of this closed session. The minutes from the closed session of the February 10, 2020 meeting do not show that the City Council discussed hiring, firing, promoting, or disciplining any particular employee during the closed session. The minutes from the closed session of the February 10, 2020 meeting do not show that the City Council discussed information relating to the performance or merit of any individual employee during the closed session. Instead, the minutes from the closed session of the February 10, 2020 meeting show that the City Council discussed paid time off for City employees—a subject not authorized to be discussed in closed session under § 610.021(3). Consequently, the City violated § 610.022 by discussing business in a closed meeting "which does not directly relate to the specific reason announced to justify the closed meeting or vote."

D. The City did not violate § 610.020 on November 9, 2019 because the gathering at city hall was not a meeting of a public governmental body.

As stated, the court found city employee Jeff Jordan to be a credible witness and that the gathering at city hall on November 9, 2019 was impromptu and not a public or closed meeting within the meaning of the statute.

E. The Defendants knowingly violated §§ 610.011, 610.015, and 610.023 when they denied Varney access to the November 25, 2019 City Council meeting.

If the Sunshine Law makes any specific point clear, it is that citizens are entitled to be present when public governmental bodies hold meetings. Section 610.011.2 states, "Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020[.]" Section 610.015 states, "All public meetings shall be open to the public[.]" Section 610.020 provides a detailed set of requirements with which public governmental bodies must comply if they are to hold public meetings, all of which are aimed toward ensuring that the public is aware of these meetings and has the opportunity to attend these meetings.

The Defendants admitted that the November 25, 2019 City Council meeting held at City Hall was an open public meeting. Varney, a member of the public, wished to attend this meeting. The City prevented Varney from attending the meeting because the Second No Trespass Notice issued to Varney by the City banned her from entering that location. A prior Police Chief had taken the position that the Police Chief is solely responsible for deciding whether a citizen will be excluded from City Hall. As the November 25, 2019 City Council meeting was about to begin, Chief Hohner stated that Varney would be treated like a trespasser if she attempted to enter City Hall. Because Hohner said she would be treated like a trespasser if she

entered City Hall, Varney chose not to try to enter the building that evening. Thus, the City violated §§ 610.011, 610.015, and 610.020 by denying Varney, a member of the public, access to a public meeting.

To establish a "knowing" violation of the Sunshine Law, a plaintiff only needs to show that the defendant had actual knowledge that the conduct at issue would violate a provision of the Sunshine Law. *See Strake v. Robinwood West Community Improvement Dist.*, 473 S.W.3d 642, 645 (Mo. banc 2015). At all times relevant to this case the City was aware that it was subject to the requirements of the Sunshine Law. The City knew in 2018 that the Sunshine Law would not permit it to exclude Varney from public meetings, which is why the First No Trespass Notice specifically allowed her to come to City Hall for that purpose. When the City issued the Second No Trespass Notice, it knew that it would be violating the Sunshine Law by excluding Varney from the public meetings held at City Hall. Further, on the evening of November 25, 2019, Chief Hohner was specifically notified that excluding Varney from the public meeting that evening would violate the Sunshine Law—he did it anyway. It was only when the City was formally threatened with this litigation that it notified Varney that she could once again attend public meetings being held at City Hall. Because at the time it excluded Varney from attending the November 25, 2019 public meeting the Defendants had actual knowledge that it would violate the Sunshine Law to exclude a member of the public from attending open public meetings, their violations of §§ 610.011, 610.015, and 610.020 were "knowing" within the meaning of § 610.027.3.

II. The Defendants violated Varney's constitutional rights by retaliating against her due to the way she had exercised her freedom of expression and her right to petition government for redress of grievances.

To establish a First Amendment retaliation claim, a plaintiff must show that (1) they engaged in a protected activity, (2) a government official took adverse action against the plaintiff that would chill a person of ordinary firmness from continuing in the activity, and (3) the adverse action was motivated at least in part by the exercise of the protected activity. *Rinne v. Camden County*, 65 F.4th 378, 383 (8th Cir. 2023).

"It is firmly established that the First Amendment's aegis extends further than the text's proscription on laws 'abridging the freedom of speech, or of the press,' and encompasses a range of conduct related to the gathering and dissemination of information." *Glik v. Cunniffe*, 655 F.3d 78, 82 (9th Cir. 2011). "Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting 'the free discussion of governmental affairs.'" *Id.* "Ensuring the public's right to gather information about their officials not only aids in the uncovering of abuses, but also may have a salutary effect on the functioning of government more generally." *Id.* at 82-83. "Criticism of public officials and the administration of government policies 'lies at the heart of speech protected by the First Amendment.'" *Rinne* at 383. Furthermore, federal courts have observed that when the government holds meetings that are open to the public, it may violate the First Amendment to exclude particular members of the public. *Lee v. Driscoll*, 871 F.3d 581, 585 (8th Cir. 2017). "A prohibition on entering

county property is a concrete consequence that would objectively chill a person of ordinary firmness from criticizing [public officials]... the prohibition itself and the threat of enforcement are sufficient to produce a chilling effect on speech." *Rinne* at 384. The Eighth Circuit recently denied qualified immunity to officials of a Missouri county because it is so firmly established that the government cannot ban a citizen from public property or public meetings in response to the citizen's exercise of First Amendment rights. *Id.* at 384-85.

The facts of this case show that Varney engaged in a range of activities protected by the First Amendment. Specifically, she regularly and repeatedly attempted to gather information about City officials in order to understand how they were discharging their official duties. These information-gathering efforts included attending open public meetings, reviewing public records, and taking pictures that involved matters of public interest, including the behavior of public officials. She made a point of publicly criticizing City officials in a variety of ways, including posting on social media, communicating with newspapers, circulating a petition to have the City audited, and also asking questions and otherwise speaking out at open public meetings. City officials—specifically, former Mayor Gallion and former Police Chief Lucas—grew frustrated with Varney as a result of her activities and, thus, the City's decision to ban her from City Hall and Gallion's effort to have her arrested on November 9, 2019, was motivated "at least in part" by her exercise of First Amendment rights. Consequently, the Defendants violated the First Amendment by retaliating against Varney in the manner she has alleged.

The Court wishes to emphasize again, the actions of defendants in this case, apparently seeking to intimidate and silence Varney from exercising her rights to right to examine and be knowledgeable about the workings of her city government are disturbing, especially when considered in the context of the free and open democratic society in which we are purported to live.

III. The Defendants violated Varney's constitutional rights by denying her the right to enter City Hall at the same times and on the same terms that were available to other members of the public.

"Equal protection of the law means equal security or burden under the laws to everyone similarly situated; and that no person... shall be denied the same protection of the laws which is enjoyed by other persons... in the same place and under like circumstances." *Ex parte Wilson*, 48 S.W.2d 919 (Mo. banc 1932). Where a government entity decides to treat a citizen differently than it treats other citizens, courts must ask whether that different treatment implicates a fundamental right secured under the state or federal constitution. *See Peeper v. Callaway Cnty. Ambulance Dist.*, 122 F.3d 619 (8th Cir. 1997); *Mo. Corrections Officers Ass'n, Inc. v. Mo. Office of Admin.*, 662 S.W.3d 26 (Mo. App. W.D. 2022). If the differential treatment does implicate a fundamental right, courts must apply strict scrutiny to the differential treatment and it will be considered constitutional only if the government shows that the restriction is narrowly tailored to serve a compelling state interest. *Id.* at 40.

In this case, the Defendants clearly singled Varney out for differential treatment under the law when they imposed an indefinite ban on her going to City

Hall.[13] The City did not restrict any other citizen from going to City Hall during regular business hours. It did not require any other citizen to submit Sunshine Law requests in writing rather than going to City Hall to submit requests and review records. And on the evening of November 25, 2019, every other citizen was allowed to attend the City Council's open public meeting held at City Hall—only Varney was excluded. The evidence in this case makes clear that the City subjected Varney to this differential treatment because she had engaged in information gathering, petitioning, and criticism of public officials—all activities that are protected under the First Amendment. And finally, the differential treatment the Defendants imposed on Varney directly limited her ability to engage in those activities protected under the First Amendment. Consequently, this Court must apply strict scrutiny to the Defendants' restrictions, meaning they can only have been justified if the Defendants had demonstrated that banning Varney—and no one else—from City Hall was an action that was narrowly tailored to serve a compelling state interest. The Defendants made no such showing. The City did not offer any legitimate basis at all for excluding Varney from coming to City Hall at the same times and on the same terms as any other citizen. Again, the Court notes, Varney's actions may have been an imposition on city employees and office holders but they were not disruptive. As a

[13] It is important to note that in *Rinne* the government had only banned the plaintiff from county property for one year. The No Trespass Notices the Defendants enforced against Varney *had no expiration date*. As noted above, the City did not lift the City Hall ban until more than four years had elapsed since the City first imposed the ban.

result, the City's treatment of Varney violated her rights under the Equal Protection Clause of the Fourteenth Amendment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. The City violated § 610.022 by holding a closed public meeting on September 16, 2019, without identifying the specific reason for closing that City Council meeting by reference to the specific section of the Sunshine Law that allowed the closure of that meeting;
2. The City violated § 610.022 by holding a closed public meeting on October 21, 2019, without identifying the specific reason for closing that City Council meeting by reference to the specific section of the Sunshine Law that allowed the closure of that meeting and it violated § 610.020.7 by failing to take and retain minutes of this closed meeting;
3. The City violated § 610.022 by discussing business in the closed portion of its February 10, 2020 City Council meeting which did not directly relate to the specific reason announced to justify the closed meeting;
4. The City knowingly violated §§ 610.011, 610.015, and 610.023 by prohibiting Varney—a member of the public—from attending an open public meeting even though it was aware that the Sunshine Law did not permit it to single out a citizen for exclusion from an open public meeting;
5. The Defendants violated the First Amendment and Article I, sections 8 and 9 of the Missouri Constitution by retaliating against Varney, taking action against her that would have chilled a person of ordinary firmness from

persisting in constitutionally-protected activities such as criticizing City officials, circulating a petition to have the City audited, and speaking out at public meetings;

6. The Defendants violated the Equal Protection Clause of the Fourteenth Amendment by, without justification, denying her right to enter City Hall and request public records at the same times and on the same terms as every other citizen, including those who had engaged in disruptive behavior at City Hall;
7. In addition to the civil penalties the City was ordered to pay in the Court's November 15, 2022 Judgment, the City is ordered to pay Varney a $50 civil penalty as a consequence of its knowing violation of the Sunshine Law;
8. The City is ordered to pay Varney a total of $100.00 in nominal damages for its violations of her rights to Due Process, Equal Protection of the Laws, Free Expression and her freedom to petition the government for redress of grievances;
9. The City is ordered to pay the costs and reasonable attorney fees associated with Varney's efforts to prove the violation of her rights under the U.S. Constitution and Missouri's Sunshine Law;
10. Because Varney has now prevailed on most of her claims against the City (although not in relation to the alleged meeting of November 9, 2019) and the Court has also previously determined that Attorney Roland's proper hourly rate for this litigation is $350 per hour, the Court hereby amends its February 14, 2023 Judgment to allow Varney to recover for 100 percent of the 125.7

hours this Court recognized as properly accounted for up to that point in the litigation, resulting in a total award of $43,995.00 for those hours;

11. Within fourteen days of the entry of this Judgment Varney shall submit to the Court all materials related to the amount of additional costs and attorney fees associated with this matter that she believes to have been reasonably accrued after November 29, 2022, the most recent date for which Varney reported attorney fees awarded in the February 14, 2023 Judgment. No later than seven days after Varney submits these materials to the Court the Defendants may file any arguments opposing the reasonableness of the requested costs and attorney fees. The Court will consider these written materials and then will amend this Judgment accordingly.

SO ORDERED.

11-3-23

Date

Hon. Judge John Beger

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