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114-800  
**Top court to hear area Sunshine case**

**CAPE COUNTY LAWSUIT:**  
The court's announcement is no indication of which way it may lean, a lawyer said

**By PEG McNICHOL**  
SOUTHEAST MISSOURIAN  
Jay Purcell is getting another day in court.  
The Missouri Supreme Court agreed Tuesday to hear arguments in the Cape Girardeau County 2nd District commissioner's lawsuit against the county commission for violating Missouri's Open Meetings and Records Act.  
**ALERTS:** Go to our website to sign up for breaking news texts and e-mails.  
**STORIES:** Read previous coverage of this court case.

Jean Maneke, the Missouri Press Association's attorney, was surprised by the news. She said the state's highest court hears a Sunshine Law case "about once a year." While the announcement is good news for Pur-

cell, she said, it is no indication of which way the court might lean.  
The lawsuit stems from an April 17, 2008, closed-door commission meeting that Purcell secretly recorded. At that meeting, Purcell, Presiding Commissioner Gerald Jones, then-1st District Commissioner Larry Bock and county prosecutor Morley Swingle confronted county Auditor David Ludwig, asking for his resignation. The Sunshine Law does not provide closed-meeting protection for the discipline of officeholders.  
Purcell eventually made his secret recording public. The Missouri attorney general's office investigated Purcell over the recording — the Sunshine Law does not allow secret recordings of closed meetings — but earlier this year said it would not pursue charges.

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# Commission

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Purcell filed suit against the commission May 14, 2008, saying the April 17 meeting was not properly closed and that the commission should have publicly confronted Ludwig.

Purcell made the original motion to go into closed session to discuss a road easement, but Jones amended the motion to include a personnel issue. Purcell's suit named the commission as a defendant rather than individual commissioners.

The Missouri Eastern District Court of Appeals ruled in July the county commis-

sion cannot be sued. In the court's opinion, Judge Kurt Odenwald wrote that "because the Commission as a stand-alone entity is not a proper party to this action, we find that the trial court erred when it allowed the action to proceed against the Commission without the individual commission members named as defendants in their official capacity."

In October 2008, a Stoddard County judge ruled the commissioners did not knowingly violate the Sunshine Law.

Maneke said when a case goes before the Supreme Court, each party has the opportunity to file a new brief, but she could not say if the press association

would do so.

Purcell's attorney, J.P. Clubb, said he looks "forward to making our arguments on paper and oral arguments before the court."

Tom Ludwig, the Jackson attorney who successfully represented the county before the circuit and appellate court judges, could not be reached for comment.

Jones said he had no comment.

The hearing date will be set after Clubb and Tom Ludwig file their legal arguments.

So far the county has spent a little more than \$20,000 on the case, paying most of that amount for Tom Ludwig's legal services and about \$780 for depositions to court reporter Karen Elledge. /