

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM

B. ALAN GLOSS,
CAROL D. FOX, and
TAMMY L. SPINKS,

Petitioners,

v.

Case No. 20-7521

ANN B. WHEELER,
in her official and individual capacities,
Serve: 13931 Shelter Manor Drive
Haymarket, VA 20169-2448

VICTOR S. ANGRY,
in his official and individual capacities,
Serve: 13316 Nassau Drive,
Woodbridge, VA 22193

MARGARET ANGELA FRANKLIN,
in her official and individual capacities,
Serve: 2629 Cast Off Loop
Woodbridge, VA 22191

KENNY BODDYE,
in his official and individual capacities,
Serve: 3923 Penshurst Lane, Apt. 101
Woodbridge, VA 22192

and

ANDREA O. BAILEY,
in her official and individual capacities,
Serve: 4265 Moot Drive
Dumfries, VA 22025

Respondents.

Pursuant to § 8.01-300, also serve:

COUNTY ATTORNEY MICHELE R. ROBL
One County Complex Court
Suite 240
Prince William, VA 22192

JEANINE LAWSON, member of the Board of Supervisors,
9449 Innovation Drive
Manassas, VA 20110

YESLI VEGA, member of the Board of Supervisors,
13476 Dumfries Road
Manassas, VA 20112

PETER CANDLAND, member of the Board of Supervisors,
7001 Heritage Village Plaza
Suite 210
Gainesville, VA 20155

PETITION FOR MANDAMUS AND INJUNCTION

Petitioners, by counsel, state the following for their Petition for Mandamus and Injunction pursuant to Code of Virginia § 2.2-3713:

1. This is a proceeding to enforce provisions of the Virginia Freedom of Information Act mandating open meetings by public bodies, such as the Prince William County Board of Supervisors (the Board), in which appropriate notice to the public and every member of the Board and free entry for the public must be provided. Respondents are five of the eight members of the Board who participated in a meeting on May 31, 2020 at approximately 1:00 p.m. (the May 31 meeting) in the absence of the three other members of the Board and without providing notice to those three other Board members or to the public. Respondents attended and participated in that meeting for the purpose of discussing public matters of interest and concern to the people of Prince William County in violation of the Virginia Freedom of Information Act.
2. Petitioners are citizens of Virginia and residents of Prince William County.
3. Respondents Ann B. Wheeler, Victor S. Angry, Kenny A. Boddye, Andrea O. Bailey and Margaret Angela Franklin are incumbent members of the Prince William County Board of Supervisors. They are proper parties respondent pursuant to Code of Virginia § 2.2-3714.
4. The Board of Supervisors of Prince William County is the governing body of the County, which is a political subdivision of the Commonwealth and a public body within the meaning of § 2.2-3701.

5. Jurisdiction is established in this Court pursuant to Code of Virginia §§ 2.2-3713 and 17.1-513.

6. Venue is proper in this Court pursuant to Code of Virginia § 2.2-3713.

7. An affidavit of Petitioner Gloss demonstrating good cause for bringing this action is attached hereto as Exhibit A.

8. On Sunday, May 31, 2020, Respondents Wheeler, Angry, Boddye, Bailey and Franklin attended a meeting arranged by the Prince William County Citizen's Advisory Board to discuss matters of public concern affecting the residents of the County at the Prince William County Police Department's Central District Station.

9. The individual who chairs the Citizen's Advisory Board is the husband of Respondent Bailey.

10. The May 31 meeting constituted a "meeting" as that term is defined in Code of Virginia § 2.2-3701, meaning the attendance at an informal assemblage of three or more members of the Board of Supervisors, in that five of the eight members of the Board attended the informal assemblage, even though no votes were cast or minutes taken during the proceedings.

11. Christopher E. Martino, who is the County Executive, Michelle R. Robl, who is the County Attorney, Barry M. Barnard, who is the Chief of the County Police Department, and Jarad L. Phelps, who is the County's Deputy Police Chief, also attended the May 31 meeting.

12. There had been no notice of the May 31 meeting posted or published as required by Code of Virginia § 2.2-3707.

13. Three incumbent members of the Board, Jeanine M. Lawson, Yesli Vega and Pete K. Candland, did not attend, were not aware in advance of the May 31 meeting, and had not been

notified through the statutorily prescribed means of the May 31 meeting by Respondents, County personnel or the host organization that made arrangements for the meeting.

14. During the May 31 meeting, Respondents Wheeler, Angry, Boddye, Bailey and Franklin posed questions and comments to Police Chief Barnard and Deputy Police Chief Phelps concerning the Police Department's actions on May 30, 2020, in response to public protests and disturbances on that date. Such questions and comments by Respondents constitute discussion of a matter of public business within the meaning of § 2.2-3707(A) of the Code of Virginia.

15. Each of the Respondents had received explanations about their responsibilities under the Virginia Freedom of Information Act in person and by written materials before May 31, 2020.

COUNT ONE

16. All allegations contained in other paragraphs of this Petition are incorporated here by reference.

17. Section 2.2-3700 of the Code of Virginia provides: "Unless a public body or its officers and employees specifically elect to exercise an exemption provided by this chapter [Chapter 37 of Title 2.2] or any other statute, every meeting shall be open to the public...."

18. Section 2.2-3707(A) of the Code of Virginia provides: "All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711."

19. Section 2.2-3711(A) of the Code of Virginia provides that public bodies may hold closed meetings only for the purposes specified in that section of the Code, which do not include the purposes of the May 31 meeting.

20. The May 31 meeting attended by Respondents, which was prearranged by the Citizen's Advisory Committee, was conducted in secrecy, without notice to the public, and in a manner

that precluded free access and free entry to that meeting by the general public because it was by invitation and, therefore, restricted.

21. Participation by Respondents in the May 31 meeting at which they discussed matters of public business of the Board was a violation of §§ 2.2-3700 and 2.2-3707 of the Code of Virginia.

22. Respondents knowingly and willfully violated the provisions of §§ 2.2-3700 and 2.2-3707(A) by participating in a meeting for which notice had not been published or posted as required, and was not, for all practical purposes, open to the public.

COUNT TWO

23. All allegations contained in other paragraphs of this Petition are incorporated here by reference.

24. Section 2.2-3707(C) mandates that notice of all meetings of public bodies be provided to the public at least three working days prior to the meeting "in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body."

25. No notice of the May 31 meeting was posted in compliance with § 2.2-3707(C).

26. Respondents were responsible for assuring that the public notice required by § 2.2-3707(C) was published and, in failing to do so, Respondents knowingly and willfully violated § 2.2-3707(C).

COUNT THREE

27. All allegations contained in other paragraphs of this Petition are incorporated here by reference.

28. Section 2.2-3707(D) mandates that notice of a meeting of the public body be provided to all members of the public body.

29. Three members of the Board, namely, Jeanine M. Lawson, Yesli Vega and Pete K. Candland, were intentionally not given notice of the May 31 meeting by any of the Respondents or by County personnel.

30. Respondents were responsible for assuring that the notice required by § 2.2-3707(D) was given to every Board member and, in failing to do so, the Individual Respondents knowingly and willfully violated § 2.2-3707(D).

COUNT FOUR

27. All allegations contained in other paragraphs of this Petition are incorporated here by reference.

28. Section 2.2-3712(A) provides: "No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711."

29. No recorded vote was taken regarding the May 31 meeting.

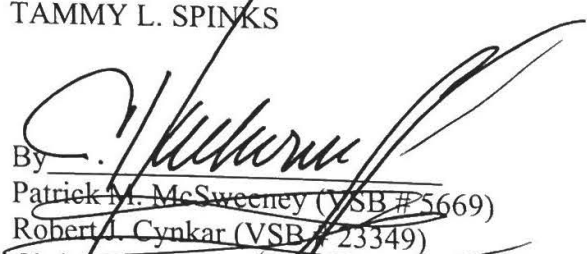
30. Respondents knowingly and willfully violated § 2.2-3712(A) of the Code of Virginia.

WHEREFORE Petitioner requests that the Court enter an Order and Judgment:

- (a) Finding that Respondents knowingly and willfully violated §§ 2.-3700, 2.2-3707(A), 2.2-3707(C), 2.2-3707(D), 3711(A) and 2.2-3712(A) of the Code of Virginia;
- (b) Mandating that Respondents comply with the provisions of §§ 2.2-3700, 2.2-3707(A), 2.2-3707(C), 2.2-3707(D), 2.2-3711(A) and 2.2-3712(A) of the Code of Virginia in the future;

- (c) Permanently enjoining Respondents from conducting future meetings of the Board without the required notice to the public and all Board members and assuring access and entry to such meetings for the general public;
- (d) Imposing on Respondents appropriate civil penalties pursuant to § 2.2-3714 of the Code of Virginia;
- (e) Awarding Petitioners their reasonable costs and attorneys' fees incurred in this proceeding; and
- (f) Granting such other relief as the Court deems proper in the circumstances.

B. ALAN GLOSS
CAROL D. FOX
TAMMY L. SPINKS

By 
~~Patrick M. McSweeney (VSB # 5669)~~
~~Robert J. Cynkar (VSB # 23349)~~
Christopher Kachouff (VSB # 44216)
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Washington, D.C. 20024

Of Counsel to Petitioners

EXHIBIT A

AFFIDAVIT

I, B. Alan Gloss, after being duly sworn, state the following facts from my personal knowledge under oath and subject to the penalty of perjury:

1. I am over the age of 21 and am competent to provide the information contained in this affidavit.

2. On May 31, 2020, I learned of a meeting arranged by the Prince William County Citizen's Advisory Board held at the County Police Department's facility at its Central District Station.

3. I have since May 31 reviewed a message sent by Yelsi Vega, a member of the Prince William County Board of Supervisors, to the Chair of the Board of Supervisors, Ann Wheeler, and to County Executive Chris Martino requesting an emergency meeting of the Board before 6:00 P.M. on that date.

4. I have also reviewed an email reply sent by Supervisor Andrea Bailey at 12:30 P.M. on May 31, 2020, stating that she would "be in a community meeting with the NAACP at 1pm and available to meet at 3 or 4pm."

5. At 1:08 P.M. on May 31, 2020, Board Chair Ann Wheeler replied to Supervisor Vega's message stating that she was "in a meeting with the police and community leaders" and instructing the County Executive to arrange an emergency meeting of the Board at 4:00 P.M.

6. The emergency meeting of the Board convened at 4:00 P.M. on May 31, 2020. I have reviewed the recording of that meeting and discovered that at least three members of the eight-member Board of Supervisors attended the 1:00 P.M. meeting with community leaders and County Police Department officials but that three other members of the Board were not notified of that 1:00 P.M. meeting and did not attend.

7. I have also reviewed the recording of the June 2, 2020, meeting of the Board of Supervisors and learned that five members of the Board acknowledged their participation in the May 31, 2020, meeting at 1:00 P.M. with County Police Department officials and community leaders.

8. I have confirmed with three members of the Board, Jeanine Lawson, Yelsi Vega and Peter Candland, that they were not provided formal notice of the May 31, 2020, meeting at 1:00 P.M. and did not attend.

9. I communicated by telephone with the Deputy County Police Chief, Jarad L. Phelps, about the May 31, 2020, meeting at the Department's Central District Station. He confirmed that five members of the Board, Ann Wheeler, Victor Angry, Margaret Franklin, Kenny Boddye and Andrea Bailey, attended that meeting and participated actively in the discussion of public business, namely, police responses to events occurring in the County overnight on May 30-31, 2020, including the concerns of those five Board members regarding tactics used by the Police Department.

10. Because the participation of the five Board members in the May 31, 2020, meeting at the Police Department involved discussion of a matter of public concern and, therefore, constituted a

Board meeting requiring notice to the public, I was denied the right and opportunity to attend that meeting and to observe the proceedings as the Virginia Freedom of Information Act mandates.

11. Other residents of Prince William County have shared with me their concern, which mirrors mine, that this violation of the Virginia Freedom of Information Act warrants review by the Circuit Court for Prince William County and an appropriate order enjoining the five Board members from attending meetings of three or more Board members without complying with the requirements of the VFOIA, mandating that they comply with the VFOIA in the future, and imposing on each of the five Board members who violated the VFOIA a civil penalty for their willful and knowing violations.

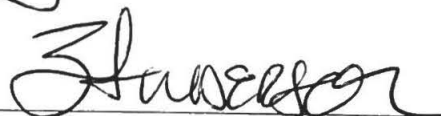
12. The foregoing is true and correct to the best of my personal knowledge.



B. Alan Gloss

COMMONWEALTH OF VIRGINIA
COUNTY OF PRINCE WILLIAM

Subscribed and sworn to before me this 30th day of July, 2020.



Notary Public

My commission expires

11/31/23 -



FILED

2020 JUL 31 PM 2:39

CIRCUIT COURT CLERK'S OFFICE
PRINCE WILLIAM COUNTY, VA

BY _____ DEPUTY