



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

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November 22, 2023

10:00 AM

South Subcommittee Room #210

General Assembly Building

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PROPOSED AGENDA (Annotated)

Meetings Subcommittee of the Virginia Freedom of Information Advisory Council

1. Call to Order, introduction of members.

The FOIA Council directed the Subcommittee to study recent decisions of the Supreme Court of Virginia with the goal to provide guidance to public bodies on how best to comply with the Supreme Court's rulings. The decisions are summarized as follows:

- [Berry v. Bd. of Supervisors of Fairfax County](#) (March 23, 2023). The Supreme Court held that a zoning ordinance adopted by the County at an electronic meeting conducted during the COVID-19 pandemic was *void ab initio* because the meeting failed to comply with FOIA's open meetings requirements. Note that the meeting at issue was conducted under the electronic meetings language in the State Budget (2020-2022 State Budget Item 4-0.01(g)), not under the provisions in FOIA regarding electronic meetings during a declared state of emergency (Code § 2.2-3708.2). A notice of rehearing, petition for rehearing, and amicus briefs have been filed in the case.
- [Gloss v. Wheeler](#) (May 18, 2023). The Supreme Court ruled that five members of a county board of supervisors held an improper meeting in violation of FOIA under the facts of the case when they met with police officials and others in regard to protests that were held in the county concerning the death of George Floyd in Minnesota in 2020. The Supreme Court held that in the context of public meetings, "for a topic to constitute public business it must not just be something that conceptually could at some point come before a public body, but rather, the topic must be something that is either before the public body or is likely to come before the body in the foreseeable future."

The Subcommittee met on September 6, 2023 to consider these cases. Regarding Berry, the Subcommittee discussed possible legislative actions but decided to wait because a petition for rehearing had been filed with the Supreme Court of Virginia. The Supreme Court subsequently refused rehearing in October.

2. Staff Presentations:

- **Other States' Laws.** At its last meeting the Subcommittee directed staff to research whether other states had addressed the issues raised by these cases.
- **Drafts.** At its last meeting, the Subcommittee directed staff to prepare draft language to address the issues raised by these cases, summarized as follows:
 - **Virginia Freedom of Information Act; proceedings for enforcement.** Amends the enforcement provisions of the Virginia Freedom of Information Act (FOIA) to state that no violation of FOIA shall render void any otherwise lawful action taken by a public body. The bill is a response to the decision of the Supreme Court of Virginia in the case *Berry v. Bd. of Supervisors* (2023), in which the Supreme Court ruled that a board of supervisors lacked the authority to hold an electronic meeting at which it enacted a zoning ordinance and the zoning ordinance was therefore *void ab initio*.
 - **Virginia Freedom of Information Act; statute of limitations.** Provides that any action to enforce the rights and privileges conferred by this chapter shall be brought within two years after the right to bring such action has accrued. The bill is a response to the decision of the Supreme Court of Virginia in the case *Berry v. Bd. of Supervisors* (2023), in which the Supreme Court ruled that a board of supervisors lacked the authority to hold an electronic meeting at which it enacted a zoning ordinance and the zoning ordinance was therefore *void ab initio*.
 - **Virginia Freedom of Information Act; definition of "meeting."** Amends the definition of "meeting" to clarify that a gathering of two or more members of a public body is not a "meeting" if there is no discussion or transaction of public business by the members of the public body. The bill is in response to the decision of the Supreme Court of Virginia in *Gloss v. Wheeler* (2023), in which the Supreme Court opined that "consideration" of topics that are on a public body's agenda or soon will be is the public business of the public body regardless of "whether the topics are raised by a member of the body, another governmental employee, or a member of the community."

3. Public Comment.

4. Discussion.

5. Recommendations.

6. Other Business.

7. Adjournment.

Subcommittee Members

Delegate Mike A. Cherry
Lola Rodriguez Perkins
Bruce Potter

William Coleburn
Cullen Seltzer

Staff

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