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August 6, 2022

Leola McKenzie Coles Morse, Clerk
Albemarle Co. General District Court
501 E. Jefferson Street, Suite 138
Charlottesville, VA 22902-5110

Re: *Schilling v. Albemarle Co. Bd. Of Supervisors et al.*
(New Civil Suit)

Dear Ms. Morse:

Please find enclosed:

1. An original suit in the above-captioned matter.
2. Nine service copies, for service by the Sheriff upon:

Clerk, Albemarle County Board of Supervisors
401 McIntire Road
Charlottesville, VA 22902

Jeff Richardson, County Executive
401 McIntire Road
Charlottesville, VA 22902

Steven Rosenberg, Albemarle County Attorney
401 McIntire Road
Charlottesville, VA 22902

Diantha McKeel
103 Smithfield Court
Charlottesville, VA 22901

Ned Gallaway
2159 Loring Circle
Charlottesville, VA 22901

Bea LaPisto-Kirtley
1137 Club Drive
Keswick, VA 22947

Jim Andrews
2055 Spoon Hill Farm
Charlottesville, VA 22903

Donna Price
2852 Secretarys Road
Scottsville, VA 24590

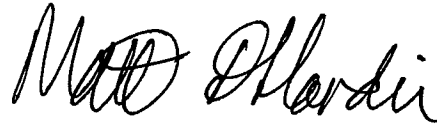
Ann Mallek
4826 Advance Mills Road
Earlysville, VA 22936

3. A check in payment of the filing and service fees.

Please file the original suit and send the copies to the Sheriff for service as indicated above. Please feel free to call or email with any questions.

Lastly, please note that although Va. Code § 2.2-3713 (C) provides for a hearing in seven days or less, Mr. Schilling hereby waives his entitlement to a hearing in the seven day period. This matter can be set on a day that is convenient for the Court and the defendants, even if such date is outside the 7 -day window.

Regards,



Matthew D. Hardin

cc: Steven Rosenberg, Esq.
Albemarle County Attorney
401 McIntire Road
Charlottesville, VA 22902

**PETITION FOR INJUNCTION OR MANDAMUS
- FREEDOM OF INFORMATION ACT AND AFFIDAVIT FOR GOOD CAUSE
OR PROTECTION OF SOCIAL SECURITY NUMBERS ACT**
Commonwealth of Virginia Va. Code §§ 2.2-3713, 2.2-3816

Albemarle County

501 E. Jefferson Street, Suite 138 Charlottesville, VA 22902-5110

CITY OR COUNTY

General District Court

STREET ADDRESS OF COURT

Robert Schilling

PETITIONER

Albemarle Co. Bd. of Sup. et al.

RESPONDENT

I, the petitioner, state under oath that:

The following rights and privileges under the Virginia Freedom of Information Act were denied to me by the respondent:
See attached Exhibit A.

These rights and privileges were denied to me by:

the respondents [] taking the actions and omitting to take the actions that are more particularly described in Exhibit A who denied me these rights and privileges by

I have good cause for filing this petition in that: I have personal knowledge of the underlying litigation, have reviewed the papers, and have talked to my attorney

The respondent [] has engaged, is engaged or is about to engage in acts in violation of the Protection of Social Security Numbers

Act by

(DESCRIBE ACTS)

I ask this court to issue:

a writ of mandamus to require the respondent to act as follows:

an injunction to enjoin (prohibit) the respondent from acting as follows:

I ask for relief as more specifically set forth in the attached Exhibit A.
(DESCRIBE ACTS TO BE REQUIRED OR PROHIBITED)

8/16/22 DATE

Robert Schilling PETITIONER

Commonwealth of Virginia, [X] City [] County of Charlottesville

Subscribed and sworn to before me this day by

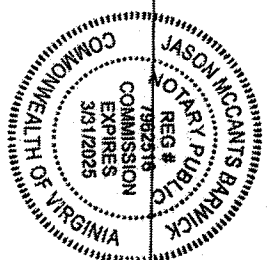
08/06/2022 DATE

Jeanne McCask Boyd, Notary Public
Notary Registration No. 79602516

CASE NO.	502 Berwick Court
Robert Schilling	Charlottesville, VA 22901
PETITIONER(S)	ADDRESS/LOCATION
Albemarle Board of Supervisors et al.	
RESPONDENT(S)	
See Attached Service List	
ADDRESS/LOCATION	
<p>PETITION FOR INJUNCTION OR MANDAMUS - FREEDOM OF INFORMATION ACT AND AFFIDAVIT FOR GOOD CAUSE OR PROTECTION OF SOCIAL SECURITY NUMBERS ACT</p>	
Matthew Hardin / Hardin Law Office	
ATTORNEY(S) FOR PETITIONER(S)	
1725 I Street NW, Suite 300, Washington DC 20006	
ATTORNEY(S) FOR RESPONDENT(S)	

HEARING DATE AND TIME

DISABILITY ACCOMMODATIONS
for loss of hearing, vision, mobility, etc. contact the court ahead of time.



VIRGINIA:

IN THE ALBEMARLE COUNTY GENERAL DISTRICT COURT

ROBERT SCHILLING,)
)
 Petitioner,)
)
 v.)
)
 ALBEMARLE COUNTY BOARD OF)
 SUPERVISORS, and)
 DIANTHA McKEEL, and)
 NED GALLAWAY, and)
 BEA LaPISTO-Kirtley, and)
 JIM ANDREWS, and)
 DONNA PRICE, and)
 ANN MALLEK,)
)
 Respondents.)

CASE NO.: _____

Serve:

Clerk, Albemarle County Board of Supervisors
401 McIntire Road
Charlottesville, VA 22902

Jeff Richardson, County Executive
401 McIntire Road
Charlottesville, VA 22902

Steven Rosenberg, Albemarle County Attorney
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Donna Price
2852 Secretarys Road
Scottsville, VA 24590

Ann Mallek
4826 Advance Mills Road
Earlsville, VA 22936

Exhibit A to
PETITION FOR WRIT OF MANDAMUS AND INJUNCTIVE RELIEF

NOW COMES Robert Schilling, by counsel, and alleges the following:

- 1) This matter is brought under the Virginia Freedom of Information Act (“VFOIA”), and seeks relief relating to unlawful actions taken at a meeting of the Albemarle County Board of Supervisors on or about July 20, 2022. Va. Code § 2.2-3713(A) authorizes this Writ and gives this Court jurisdiction.
- 2) Venue is proper in this Court pursuant to Va. Code § 2.2-3713(A)(2) because the respondent Albemarle County Board of Supervisors is the governing body of Albemarle County and because the individual respondents are all residents of Albemarle County and maintain offices in Albemarle County. Further, all of the events at issue in this lawsuit took place in Albemarle County.
- 3) Venue is also proper in this Court pursuant to Va. Code § 8.01-261 (5) because this is a Petition for a Writ of Mandamus under the Freedom of Information Act and the underling “proceeding” took place in Albemarle County. Further, this matter involves a request for an injunction against unlawful proceedings and actions by the respondents in Albemarle County, and venue therefore lies in this Court pursuant to Va. Code § 8.01-261 (15). Further, both the

petitioner and each of the individual respondents is a resident and domiciliary of Albemarle County.

4) The Petitioner is Robert Schilling. Mr. Schilling is a citizen and domiciliary of Albemarle County and of the Commonwealth of Virginia. He was the Plaintiff in a federal lawsuit captioned *Schilling v. Mallek et al.*, Case No. 3:21-cv-00022-NKM-JCH (W.D. Va.). That lawsuit was resolved with a written settlement agreement. The underlying suit asserted various causes of action against Albemarle County pollworkers Leo Mallek, David Carey, and Lawrence Bouterie.

5) The Respondents are:

a) **The Albemarle County Board of Supervisors:** The Albemarle County Board of Supervisors is the Governing Body of Albemarle County. It is established by the Constitution of Virginia. Va. Const., Art. VII, §5, see also Va. Code § 15.2-500 *et seq.* As a public body in Albemarle County, it is subject to the Freedom of Information Act. Va. Code § 2.2-3701 (definition of “public body” includes, *inter alia*, legislative bodies of counties). On or about July 20, 2022, the Albemarle County Board of Supervisors directed its County Executive, Jeff Richardson, to sign a settlement agreement in *Schilling v. Mallek et al.*, Case No. 3:21-cv-00022-NKM-JCH (W.D. Va.).

b) **Diantha McKeel:** Ms. McKeel is a member of the Albemarle County Board of Supervisors. On or about July 20, 2022, she voted to certify that the procedures for a closed meeting had been followed as contemplated by Va. Code § 2.2-3712.

c) **Ned Gallaway:** Mr. Gallaway is a member of the Albemarle County Board of Supervisors. On or about July 20, 2022, he voted to certify that the procedures for a closed meeting had been followed as contemplated by Va. Code § 2.2-3712.

d) **Bea LaPisto-Kirtley:** Ms. LaPisto-Kirtley is a member of the Albemarle County Board of Supervisors. On or about July 20, 2022, she voted to certify that the procedures for a closed meeting had been followed as contemplated by Va. Code § 2.2-3712.

e) **Jim Andrews:** Mr. Andrews is a member of the Albemarle County Board of Supervisors. On or about July 20, 2022, he voted to certify that the procedures for a closed meeting had been followed as contemplated by Va. Code § 2.2-3712.

f) **Donna Price:** Ms. Price is a member of the Albemarle County Board of Supervisors. On or about July 20, 2022, she voted to certify that the procedures for a closed meeting had been followed as contemplated by Va. Code § 2.2-3712.

g) **Ann Mallek:** Ms. Mallek is a member of the Albemarle County Board of Supervisors. On or about July 20, 2022, she voted to certify that the procedures for a closed meeting had been followed as contemplated by Va. Code § 2.2-3712. Ms. Mallek is also the lawful spouse of Leo Mallek, who was a defendant in the matter of *Schilling v. Mallek et al.*, Case No. 3:21-cv-00022-NKM-JCH (W.D. Va.).

6) To the extent that any of the individual respondents are a “public official” as differentiated from a “public body” in *Davison v. Dunnivant*, 96 Va. Cir. 48, 49 (Cir. Ct. 2017), the individuals are nevertheless proper defendants in this matter because Va. Code § 2.2-3714 contemplates suits against members of a public body and Mr. Schilling seeks relief under that section, to include civil penalties against individual members of the Board of Supervisors who wrongfully certified that the procedures for a closed meeting had been followed.

7) On August 5, 2022, all parties received a fully-endorsed agreement in the case of *Schilling v. Mallek et al.*, Case No. 3:21-cv-00022-NKM-JCH (W.D. Va.) and that case was

settled (with dismissal conditioned upon a subsequent payment). Jeff Richardson, the Albemarle County Executive, endorsed the agreement on behalf of Albemarle County.

8) Albemarle County Executive Jeff Richardson was instructed to settle the lawsuit on behalf of Albemarle County by the Board of Supervisors. Mr. Schilling knows the Board instructed the County Executive to sign the agreement because attorneys representing County employees repeatedly assured him, in writing, that the agreement needed official approval from the Board. Mr. Schilling also later received official confirmation that the agreement had received such approval from the Board. Specifically:

a) Negotiations regarding the language of the settlement agreement ended on June 6, 2022. Mr. Schilling endorsed the settlement agreement on June 7, 2022. On that day, counsel for the County's employees stated "We are actively working on the signatures and will date-stamp the agreement when we receive the final one and send it to you."

b) On June 17, 2022, after ten days had elapsed following Mr. Schilling's signature and without Mr. Schilling receiving the fully-endorsed settlement agreement, the County's employees' attorneys wrote that "My understanding is that the Board of Supervisors will consider the settlement at its July meeting."

c) On July 20, 2022, the Albemarle County Board of Supervisors had its only regularly scheduled meeting for the month of July (at least one other meeting was called in July for a special purpose not relevant hereto).

d) On July 26, 2022, attorneys for County employees wrote that "We learned yesterday that the Board has decided to direct the county executive to sign the agreement..."

e) On August 5, 2022, the County Executive signed the agreement.

9) Despite the clear evidence that the Albemarle County Board of Supervisors approved the settlement agreement in *Schilling v. Mallek et al.*, Case No. 3:21-cv-00022-NKM-JCH (W.D. Va.), and circumstantial evidence indicating such approval took place at the July 20, 2022 meeting, no vote was taken on the matter in public session.

10) Va. Code § 2.2-3710 prohibits the transaction of public business at a meeting, except when strict procedures are followed. Further, that section prohibits conducting public business by secret ballot.

11) Although the Freedom of Information Act allows *discussions* and *deliberations* about certain topics to be conducted in a closed meeting, Va. Code § 2.2-3711 (B) states that “No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.”

12) Because no public vote was taken at the July 20, 2022 meeting regarding executing a settlement agreement in the matter of *Schilling v. Mallek et al.*, Case No. 3:21-cv-00022-NKM-JCH (W.D. Va.), yet correspondence both before the meeting and after the meeting confirms that the Board of Supervisors did indeed vote on the settlement agreement at that meeting, it is inescapable that the Board of Supervisors conducted the July 20, 2022 closed session unlawfully.

13) The vote regarding the settlement agreement *Schilling v. Mallek et al.*, Case No. 3:21-cv-00022-NKM-JCH (W.D. Va.) is not recorded. It became, through the noncompliance of the Board with Virginia law, a “secret” vote. But the Freedom of Information Act was adopted to prohibit secret transaction of public business and secret balloting by elected officials and public bodies. Not only do public votes of governing boards allow taxpaying citizens to hold their

leaders accountable at the ballot box, but public voting also ensures that conflicts of interest are handled appropriately as contemplated by the State and Local Government Conflicts of Interest Act.

13) Despite the Board's facial noncompliance with the provisions of Virginia law regarding what can be discussed in closed sessions of public meetings, and which require open and public votes following discussion at closed sessions, each of the Board members nevertheless certified that the law had been complied with. Each and every Board member expressly chose, pursuant to Va. Code 2.2-3712 (D), to certify "that to the best of each member's knowledge only public business matters lawfully exempted from open meeting requirements under this chapter and only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body."

14) Due to the subject matter at issue, the Board's departure from the law of open meetings was also a departure from the law on conflicts of interest. One of the defendants in the underlying litigation was Leo Mallek, the husband of Board Member Ann Mallek. Ann Mallek's personal and marital relationships were at stake in the underlying litigation, and a judgment against her husband would have undoubtedly impacted her financial wellbeing and the financial wellbeing of her marital estate. Leo Mallek is a member of Ann Mallek's "immediate family" as that term is defined in the State and Local Government Conflicts of Interest Act, Va. Code § 2.2-3101.

15) Va. Code § 2.2-3115 (F) requires officers of local government to disclose personal interests in a transaction and, in certain circumstances, to disqualify themselves from participation in the transaction on behalf of the governing body. Further disclosure obligations

are found in subsequent subsections of the same statute, and elsewhere throughout the State and Local Government Conflicts of Interest Act.

16) Va. Code § 2.2-3107 prohibits a member of the Board of Supervisors from having a “personal interest” in any contract to which the Board is a party. A settlement agreement is a contract. A settlement agreement with one’s spouse creates a “personal interest” for the supervisor.

17) “Personal interest,” “Personal interest in a contract,” and “Personal interest in a transaction” are all defined phrases in the State and Local Government Conflicts of Interest Act. Va. Code § 2.2-3101. Within the meaning of that act, Ann Mallek had a personal interest of all three varieties in the settlement agreement between Mr. Schilling and her husband.

18) Pursuant to Va. Code § 2.2-3112 (A), it is unlawful for any member of a local governing body with a personal interest in a transaction to “attend... any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and [such person is also prohibited from] discussing the matter in which he has a personal interest with other governmental officers or employees at any time.”

19) Pursuant to Va. Code § 2.2-3700 (B), the provisions of the Freedom of Information Act should be construed broadly. Pursuant to Va. Code § 2.2-3704 (D), a single instance of denial of the rights and privileges conferred by VFOIA shall be sufficient to invoke the jurisdiction of this Court and seek mandamus or an injunction, as well as appropriate attorney’s fees.

20) Any violation of the Freedom of Information Act may be reviewed and overturned by a court of appropriate jurisdiction pursuant to Virginia Code § 2.2-3713(A).

21) At the appropriate juncture, Petitioner intends to introduce evidence of his entitlement to attorney's fees and costs pursuant to Va. Code § 2.2-3713 (D). Petitioner asserts on information and belief that he ultimately will be entitled to such fees and costs as a prevailing party.

Prayer for Relief

WHEREFORE, the Petitioner respectfully prays, through counsel, that this Court,

a) Order respondents to produce any records they have of any vote to sign the settlement agreement that is at issue in this case, and to include such a vote in the official minutes of the July 20, 2022 meeting of the Albemarle County Board of Supervisors; and

b) Order respondents to conduct a new vote pursuant to Va. Code §2.2-3712 regarding whether prohibited topics or actions were taken during a closed session at the July 20, 2022 meeting of the Albemarle County Board of Supervisors, or alternatively issue a declaration that the original vote to certify the propriety of the closed session was erroneous and unlawful; and

c) Set a briefing schedule and provide an opportunity for Mr. Schilling to present evidence of his entitlement to attorney's fees and costs following the Court's decision on the underlying merits of this petition; and

d) Order respondents to pay the Petitioner's fees and costs, including attorney's fees, pursuant to Va. Code § 2.2-3713 (D); and

f) Enjoin respondents from ever again violating Mr. Schilling's rights by taking prohibited votes or actions at a closed meeting; and

g) Asses a civil penalty, as contemplated by Va. Code § 2.2-3714, upon each and every one of the respondents for willful and knowing violations of the Freedom of Information Act; and

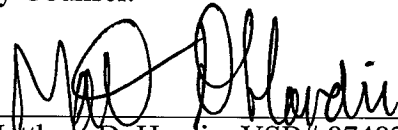
h) Refer Ann Mallek's violations of the State and Local Government Conflicts of Interest Act, as detailed herein and as may be further demonstrated at trial, to the proper prosecutorial authorities; and

i) Order such necessary and proper injunctive relief or any other relief as this Court deems just and proper.

Respectfully submitted this the 6th day of August, 2022,

ROBERT SCHILLING

By Counsel:

A handwritten signature in black ink, appearing to read "Matt D. Hardin", written over a horizontal line.

Matthew D. Hardin, VSB# 87482

Hardin Law Office

1725 I Street NW, Suite 300

Washington, DC 20006

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