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."
2. Public Comment.

3. Discussion.

4. Recommendations.

5. Other Business.

6. Adjournment.

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Subcommittee Members

Delegate Mike A. Cherry          William Coleburn
Lola Rodriguez Perkins           Cullen Seltzer
Bruce Potter

Staff

Alan Gernhardt, Esq., Executive Director
Joseph Underwood, Esq., Senior Attorney
Lauren Waller, Research Associate