

VIRGINIA: IN THE SIXTEENTH JUDICIAL CIRCUIT OF THE COMMONWEALTH
IN THE CIRCUIT COURT OF CULPEPER COUNTY

MICHAEL V. MCCLARY,)
)
and)
)
CHRISTINA STOCKTON)
Plaintiffs,)
)
v.) CASE NUMBER: CL 18-1373
)
SCOTT H. JENKINS, in his official capacity)
as Sheriff of Culpeper County)
)
and)
)
)
BOARD OF SUPERVISORS OF)
CULPEPER COUNTY,)
Defendants.)

MOTION CRAVING OYER

Comes now before this Honorable Court, the Board of Supervisors of Culpeper County, by its counsel, County Attorney Bobbi Jo Alexis, who files this Motion Craving Oyer with regard to the Complaint, and provides the following in support of its Motion:

The whole of the Complaint is comprised of three (3) counts. Counts I and II of the Complaint allege causes of action against only Sheriff Scott H. Jenkins (hereinafter referred to as the “Sheriff”). Count III of the Complaint is the only count directed towards the Board of Supervisors of Culpeper County (hereinafter referred to as the “County”). As such, the County’s pleadings and papers filed herein this lawsuit are directed solely towards those several legal defects with regard to Count III of the Complaint, unless otherwise specifically noted.

A. Summary of Count III, as alleged

1. Count III (improperly) seeks declaratory judgment against the County requesting the Court to declare County appropriation of funds to the Sheriff *absent a condition prohibiting the*

use of funds to pay for salaries, costs, and expenses relating to the enforcement of federal civil immigration law to be unconstitutional, unlawful, ultra vires, and void ab initio.

B. Motion Craving Oyer - Generally

2. If a plaintiff's claim is based on a document that is not filed with the complaint, the defendant may make a motion craving oyer, and the court may order the document produced and filed, and thus it becomes a matter of record upon which the defendant can rely in its demurrer. One can have oyer of only documents upon which the plaintiff has based a claim or justification. A defendant can crave oyer of and force the plaintiff to produce bonds, deeds, letters of administration, court records, etc. Historically oyer of instruments not under seal was not allowed, but the practice of the courts is now well established otherwise. See Exhibit A, relevant caselaw and other legal authorities.

C. Importance and Appropriateness of Oyer in this Case

3. At para. 94 of the Complaint, Plaintiffs allege that the Board of Supervisors has appropriated, continues to appropriate, and will appropriate funds, including local tax revenue, to the Sheriff that will pay for the salaries, costs, or expenses relating to the enforcement of federal civil immigration law.

4. At para. 95 of the Complaint, Plaintiffs allege that the Board of Supervisors' appropriation of funds, including local tax revenue, to the Sheriff in relation to the 287(g) Agreement or otherwise is thus unconstitutional, unlawful, ultra vires, and void ab initio.

5. At para. 96 of the Complaint, the Plaintiffs allege that the Board of Supervisors' appropriation of funds, including local tax revenue, to the Sheriff in relation to the 287(g) Agreement directly and immediately harms Plaintiffs.

6. At para. 97 of the Complaint, Plaintiffs request the Court to enter an order declaring the Board of Supervisors' appropriation of funds, including tax revenue, to the Sheriff without any condition prohibiting the use of those funds to pay the salaries, costs, or expenses relating to the enforcement of federal civil immigration law, by way of the 287(g) Agreement or otherwise, to be unconstitutional, unlawful, ultra vires, and void ab initio.

7. All powers granted to Virginia localities under the laws of the Commonwealth of Virginia are vested in their governing bodies. Governing bodies of localities of Virginia perform their necessary duties, obligations, and functions, by the adoption of ordinances, resolutions, and motions. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of the Virginia Freedom of Information Act (VFOIA).

Moreover, pursuant to Va. Code Ann., Sec. 15.2-1428, specifically, no ordinance or resolution appropriating money exceeding the sum of five hundred dollars shall be passed except by recorded affirmative vote of a majority of all members elected to the governing body. Pursuant to VFOIA, minutes of governing bodies of localities are required to be recorded. Moreover, VFOIA requires that those minutes shall be in writing and shall include:

- (a) the date, time, and location of the meeting;
- (b) the members of the public body recorded as present and absent; and
- (c) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken.

Any violation of VFOIA carries with it civil penalties against the governing body and/or its members, and County employees, individually.

8. The gravamen of the allegations and the only cause of action averred against the County at Count III of the Complaint exclusively center around alleged improper appropriations made by the Board of Supervisors to the Sheriff during the fiscal years 2018 and 2019.¹ Nonetheless, none of the governing/controlling instruments/documents, namely all of the appropriation resolutions, or legally mandated recorded votes of any such actions as maintained by the Honorable Clerk of the Circuit Court - or the relevant collateral documents which are necessary to Plaintiffs' claim² - upon which the Plaintiffs wholly rely in their Complaint and all of which allegedly serve as the sole justification in support of their alleged cause of action, as against the County are attached to the Complaint.

9. All of the aforementioned documents are public records as a matter of law under VFOIA. They are required to be made publically available and published under VFOIA and other statutory mandates found in Title 15.2 of the Code of Virginia (1950), as amended. Most of the aforementioned documents, if not all of them, are maintained by the Honorable Clerk of this Circuit Court. The same are also made available on the County's website and the public meeting management platform. As such, Plaintiffs enjoy legally mandated access to the documents upon which they purport to rely.

10. Oyer of the actual appropriations of the Board of Supervisors, and the relevant collateral budget documents, is fully warranted under Virginia law, and will facilitate just and expeditious resolution of the claims against the County that are presently before this Honorable Court.

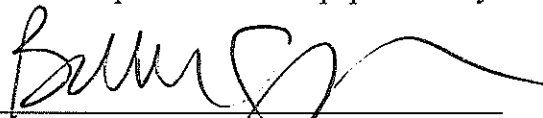
Prayer for Relief

¹ The facts alleged at para. 32 of the Complaint, as are incorporated and relied upon in Count III at para. 85 of the Complaint, establish the relevant timeframe.

² Pursuant to Va. Code Ann., § 15.2-2503(B), the governing bodies of localities shall prepare and approve a budget for informative and fiscal planning purposes. Furthermore, the County, by statute, is legally required to publish the budget.

WHEREFORE, the County respectfully requests the Court (i) **GRANT** the County's Motion Craving Oyer, and (ii) **ORDER** the Plaintiffs to produce and file with the Clerk of Court the appropriation resolutions, and/or legally mandated recorded votes upon which Plaintiffs rely, along with the relevant collateral documents which are necessary to Plaintiffs' claim (specifically the attendant budget resolutions) to be annexed to their Complaint. Those documents are attached hereto as Exhibit B. In the alternative, the County requests pursuant to Va. Code Ann., Sec. 8.01-388, the Court take JUDICIAL NOTICE of the contents of the official publications of Culpeper County, Virginia, a political subdivision of the Commonwealth of Virginia, as identified in Exhibit B, which official publications are required to be published pursuant to the laws of the Commonwealth.

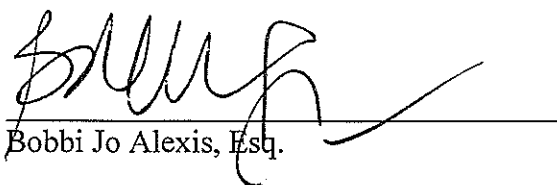
Respectfully submitted,
Board of Supervisors of Culpeper County



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CERTIFICATE OF SERVICE

This Motion Craving Oyer is served upon Plaintiffs through their counsel of record via US first class postage prepaid directed to: Vishal Agraharkar, Esq. with the American Civil Liberties Union Foundation of Virginia at 701 E. Franklin Street, Suite 1412, Richmond, Virginia 23210 and Dale G. Mullen, Esq., Casey Lucier, Esq., Travis Gunn, Esq., Ashley Peterson, Esq. with McGuire Woods LLP at 800 East Canal Street, Richmond, Virginia 23219 on this 20th day of December 2018.



Bobbi Jo Alexis, Esq.