

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 CITY OF CHARLOTTESVILLE, VIRGINIA,)
 et al.,)
)
 Defendants.)

Case No.: CL17-000145-00

FILED
10/17/18 e 11:05am
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Michelle A. Dugger, Clerk
by *[Signature]*
Clerk

MOTION FOR PROTECTIVE ORDER STAYING THE DEPOSITIONS OF A. MICHAEL SIGNER, WESLEY BELLAMY, KATHLEEN GALVIN, AND KRISTIN SZAKOS

Pursuant to Virginia Supreme Court Rule 4:1(c), Defendants A. Michael Signer, Wesley J. Bellamy, Kathleen M. Galvin, and Kristin L. Szakos (“the Councilors”), by their pro bono counsel, respectfully move this Honorable Court to enter a Protective Order delaying the depositions of the Councilors pending resolution of (a) the Councilors’ August 28, 2018 Motion for Reconsideration of Denial of Legislative Immunity, and, if necessary (b) the Councilors’ Verified Petition for Writ of Mandamus from the Virginia Supreme Court (attached), which the Councilors intend to file with that Court on or after October 23, 2018, absent favorable resolution of their right to legislative immunity in the interim. Because the resolution of either the reconsideration motion or the mandamus petition may prohibit or severely curtail any depositions of the Councilors, such depositions should not proceed at this time.

The Councilors are protected from sitting for depositions for three independent reasons.

First, as explained in detail in the Councilors’ August 27, 2018 Motion for Reconsideration of Denial of Legislative Immunity, and again in the attached mandamus petition, the Councilors are immune from suit under well-established principles of common law legislative immunity and

should be dismissed from this litigation. *See, e.g., Bd. of Supervisors v. Davenport & Co.*, 285 Va. 580, 588–89 (2013). As the Councilors have explained in both their August 27 Motion for Reconsideration and the attached mandamus petition, requiring the Councilors to continue defending themselves against litigation based on their legislative acts contravenes centuries of precedent granting legislators immunity for their votes. That immunity exists to promote the public good. Left uncorrected, the Court’s ruling denying the Councilors immunity will foster uncertainty and anxiety on the part of current and future lawmakers and chill the willingness of qualified individuals to serve zealously, if at all. And legislative immunity, once denied, cannot be remedied after trial, for the immunity is a protection against suit itself, not merely a shield against liability. Any depositions must therefore await resolution of the immunity issue, lest the Councilors continue to suffer irreparable harm to their common law right to be free from the burden of suit.

Second, legislative privilege shields the Councilors from being questioned about their legislative acts regardless of whether they are parties to this suit. *See, e.g., Edwards v. Vesilind*, 292 Va. 510, 526–28 (2016) (legislative privilege covers “communications or functions integral to the legislative process”); *see Covell v. Town of Vienna*, 78 Va. Cir. 190, 199–204 (2009) (town councilmembers’ thinking protected by rule of legislative privilege “whose pedigree cannot be seriously questioned”); *cf. Davenport*, 285 Va. at 587 (legislative immunity “preclude[s] judicial inquiry into the motives of legislative bodies elected by the people” (quoting *Ames v. Painter*, 239 Va. 343, 349 (1990))).

Legislative privilege exists to “support the rights of the people” and “encourage ... republican values”: It “protects against both compulsory testimony and compulsory production of evidence” to allow legislators to “freely engag[e] in the deliberative process necessary to the business of legislating.” *Edwards*, 292 Va. at 526 (citations omitted).

Third, the Councilors' depositions are unnecessary, unduly burdensome, and serve no legitimate purpose, because Plaintiffs are already in possession of all non-privileged information relevant to this lawsuit. What the Councilors thought (or think) about the statutes at issue in this action, or what motivated them to vote the way they did, is completely irrelevant to deciding whether Virginia Code §§ 15.2-1812 and 15.2-1812.1 apply to the statutes. The Councilors' state of mind is relevant, if at all, only to this Court's statutory immunity ruling. *See* June 13, 2018, Letter Ruling 2-4 (discussing Virginia Code § 15.2-1405). But because the Councilors are entitled to *common law* legislative immunity, the question of *statutory* immunity need not be addressed. Thus, the Councilors' state of mind is irrelevant to this litigation and there is no need to depose them.

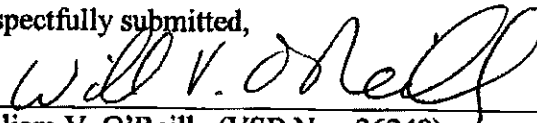
While reserving all rights, including the right to object to the Councilors' depositions on grounds of absolute common law legislative immunity and privilege, the parties have scheduled depositions of the Councilors to begin as early as November 2, 2018. The obligation of the Councilors to sit for those depositions remains unresolved. Also unresolved is the scope of the questions the Councilors might be obligated to answer even if their depositions were otherwise appropriate. Given the Councilors' intention to seek mandamus relief from the Virginia Supreme Court to resolve the common law legislative immunity issue if this Court does not grant their Motion to Reconsider, the Councilors seek an Order from this Court that their depositions should be delayed pending resolution of the issue of legislative immunity.

Finally, counsel for the Councilors has attempted, in good faith, to confer with Plaintiffs' counsel to resolve this issue without court action, as required by Rule 4:1(c). However, those efforts have proved unfruitful.

A proposed form of order follows.

Dated: October 17, 2018

Respectfully submitted,



William V. O'Reilly (VSB No.: 26249)

woreilly@jonesday.com

William G. Laxton (VSB No.: 75110)

wglaxton@jonesday.com

Jones Day

51 Louisiana Avenue, N.W.

Washington, D.C. 20001

Telephone: (202) 879-3939

Facsimile: (202) 626-1700

*Counsel for Defendants Signer, Bellamy, Galvin,
and Szakos*

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**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION
FOR PROTECTIVE ORDER STAYING THE DEPOSITIONS OF A. MICHAEL
SIGNER, WESLEY BELLAMY, KATHLEEN GALVIN, AND KRISTIN SZAKOS**

In light of Defendants' pending Motion for Reconsideration of Denial of Legislative Immunity, filed August 27, 2018, and their intention to seek mandamus relief from the Virginia Supreme Court if that motion is denied,

IT IS on this ____ day of _____, 2018, hereby

ORDERED that the depositions of A. Michael Signer, Wesley J. Bellamy, Kathleen M. Galvin, and Kristin L. Szakos are stayed pending resolution of the reconsideration motion and, if necessary, the mandamus petition.

Hon. Richard E. Moore

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2018, pursuant to Rule 1:12 of the Rules of the Supreme Court of Virginia, I served a true copy of the foregoing documents by electronic mail and by U.S. Mail, first-class, postage pre-paid, as follows:

Ralph E. Main, Jr.
Dygart, Wright, Hobbs & Heilberg
415 4th Street, N.E.
Charlottesville, VA 22902
rmain@charlottesvillelegal.com

Counsel for Plaintiffs

S. Braxton Puryear
P.O. Box 291
121 South Main Street
Madison, VA 22727
sbpuryear@verizon.net

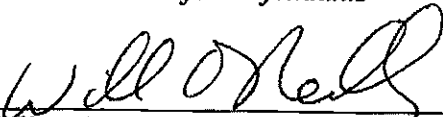
Counsel for Plaintiffs

Lisa A. Robertson
Chief Deputy City Attorney
City of Charlottesville
Office of the City Attorney
P.O. Box 911
615 East Main Street
Charlottesville, VA 22902
robertsonl@charlottesville.org

Counsel for Defendants

Richard H. Milnor
Zunka, Milnor & Carter, Ltd.
P.O. Box 1567
414 Park Street
Charlottesville, VA 22902
rmilnor@zmc-law.com

Counsel for Defendants



William V. O'Reilly (VSB No.: 26249)
woreilly@jonesday.com

William G. Laxton (VSB No.: 75110)
wglaxton@jonesday.com

Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

*Counsel for Defendants Signer, Bellamy, Galvin,
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