TWENTY-FOURTH JUDICIAL CIRCUIT
OF VIRGINIA

MICHAEL R. DOUCETTE, RETIRED JUDGE
NELSON COUNTY CIRCUIT COURT
P.O. BOX 10
LOVINGSTON, VIRGINIA 22949

TELEPHONE
(434) 263-7203

FACSIMILE
(434) 263-7027

COMMONWEALTH OF VIRGINIA
CITY OF LYNCHBURG
COUNTIES OF AMHERST, BEDFORD, CAMPBELL, AND NELSON

23 November 2026

John P. Fishwick, Esq.
Fishwick & Associates, PLC
30 Franklin Road SW, Suite 700
Roanoke, VA 24011

Julian F. Harf, Esq.
Spilman, Thomas & Battle, PLLC
P.O. Box 90
Roanoke, VA 24011

Graham K. Bryant, Esq.
Troutman Pepper Locke LLP
1001 Haxall Point, Suite 1500
Richmond, VA 23219

Re: Robert L. Dallas v. Botetourt County Board of Supervisors, et al
Botetourt Circuit Court Case No. CL26000599-00

Dear Counsel:

I have read the transcript of the closing arguments of November 16, 2026, and the post-trial briefs filed by all counsel. I want to thank you for abiding by my ten-page limit. I found each brief to be concise and succinct.

For the reasons stated in the Petitioner's Brief, I am ruling in favor of the Petitioner.[1]

During arguments held on November 10th, Counsel for the Respondents; Botetourt County, Botetourt County Board of Supervisors and Economic Development Authority of Botetourt County (EDA); stated on a number of occasions that the alleged violations of the Virginia Freedom of Information Act (VFOIA) were "technical violations" and on one occasion stated that "magic words" were not used.

Such concessions are precisely the point raised by the Petitioner. VFOIA is a technical and strictly procedural Act adopted by the General Assembly. "Magic words" must be used and "technical violations" are not excused. The required words were not used by the Respondent

[1] In addition to the reasons listed in his brief for the failure of the laches defense, I also find that the Defendant Botetourt County Board of Supervisors had "unclean hands" due to its violation of VFOIA's open meeting requirements, as set forth further in this opinion.

Botetourt County Board of Supervisors on June 24, 2025, in violation of VA Code §§ 2.2-3711(B), 2.2-3712(A), 2.2-3712(C), and 2.2-3712(D).

Specifically, I find circumstantial evidence convincingly proved that VA Code § 2.2-3711(B) was violated during the closed session on June 24, 2025; the Performance Agreement *Resolution* was *agreed to in a closed meeting*. (italicized words language of the statute). After a closed meeting lasting well over an hour, the Board of Supervisors reconvened in open session. Almost immediately, the chairperson said the following:

> "At this time, board members, I ask that we address walk-on item number one[2] for today. I think you have all seen the performance agreement ***resolution***. (emphasis added). Do you have any questions or concerns? Any questions? If not, the chair would ask for a motion to adopt the resolution. Thank you, Supervisor Clinton. Do I have a second? Second. Thank you, Supervisor Michael. Is there any discussion? Hearing none, we will proceed to vote. All in favor of this resolution, please say aye. Aye. All those who oppose, please say no. That motion has carried. Thank you."

Additionally, I find that VA Code § 2.2-3711(B) was further violated when the Board failed to follow the statutory language; *"the public body . . . reconvenes in open meeting and takes a vote of the membership on such resolution . . . that shall have its substance reasonably identified in the open meeting."* I find that the clause "that shall have its substance reasonably identified in the open meeting" modifies the words "takes a vote." I find that the position taken by the Respondents; that VA Code § 2711(B) was satisfied by welcoming Google's data center to Botetourt County during a self-congratulation ceremony in an open meeting held more than three hours after the resolution's vote and after the original open meeting was recessed but then reconvened more than twenty minutes after that recess; to be a tortured reading of the statute and failed to meet its requirements. In no way was the substance of the resolution reasonably identified to the public by the words "walk-on item number one for today" when the Board took its vote.[3]

As such, pursuant to VA Code § 2.2-3711(B), the actions taken by the Board on June 24, 2025, concerning the data center in controversy here never became effective and are therefore void *ab initio*. *Berry v. Fairfax County Board of Supervisors*, 302 Va. 114, 147-48 (2023).[4]

I therefore Deny the Respondents' plea in bar. I Order the Respondents Botetourt County Board of Supervisors and the County of Botetourt, pursuant to a writ of mandamus, to rescind all

---

[2] Clearly, the General Assembly's 2026 amendments to VA Code 2.2-3707(G) were not in place when this meeting was held in June 2025. I just note that had they been in place at the time, there may have been additional VFOIA violations committed.

[3] Given my interpretation of this statute, I find that the admonition cited by the Respondents; that courts may not, "under the guise of 'liberal construction,' rewrite the provisions of FOIA as [they] deem proper or advisable;" to be inapplicable. *Beck v. Shelton,* 267 Va. 482, 488 (2004).

[4] While I further find that the Board violated VA Code § 2.2-3712(A) and (C) by not sufficiently identifying the subject matter of Walk-on Item Number 1 before going into closed session, the remedy for such a violation is not as clear as it is for a violation of VA Code § 2.2-3711(B). However, I note this violation for any impact it may have on the awarding of attorney's fees and costs. See, *Cole v. Smyth County Board of Supervisors*, 298 Va. 625, 643-44 (2020).

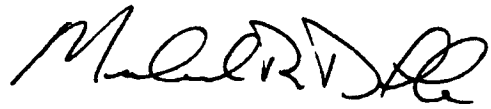
actions taken since June 24, 2025, pursuant to Performance Agreement of June 24, 2025; and enjoin the Board and the County from taking any further action pursuant to the Performance Agreement of June 24, 2025. I further Order the Respondent, Helio Capital LLC, or any person on their behalf is enjoined from performing any construction or related activity pursuant to the Performance Agreement of June 24, 2025.

The Board's remedy is simple: it is contained in the last sentence in Paragraph 83 of the Petition and in footnote 4 of *Cole v. Smyth County Board of Supervisors*, 298 Va. 615, 635 (2020). Conduct a future public hearing on this issue that conforms to the VFOIA. I am not enjoining the Board to act in a lawful manner in the future; it is given that if it does not, the result will be the same as today.

The issue of any award of attorney fees and costs is taken under advisement for the presentation of further evidence on that one specific issue.

As counsel for the prevailing party, Mr. Fishwick is directed to draft an order that conforms to this opinion. It should be forwarded to the Court for entry and to Counsel for the Respondents forthwith for their endorsement. Counsel for the Respondents need only email to the Court their endorsement page. The objections of the Respondents are noted for the record.

Sincerely,



Michael R. Doucette, Judge Designate