22-308

No. _____

In The
Supreme Court of the United States

RAMIN SEDDIQ,

Petitioner,

v.

VIRGINIA INDIGENT DEFENSE COMMISSION
and
MARIA JANKOWSKI,
in her official capacity as the Deputy Executive Director of Virginia Indigent Defense Commission,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Virginia Freedom of Information Act afford the citizens of Virginia with a statutorily created liberty interest for Fourteenth Amendment purposes?

2. As part of its guarantee of fundamental fairness in Virginia Freedom of Information Act proceedings, does the Fourteenth Amendment's Due Process Clause require timely and complete disclosure of judicial conflicts?

RELATED PROCEEDINGS

Pursuant to U.S. Sup. Ct. R. 14(1)(b)(iii), this case arises from the following proceedings:

- Ramin Seddiq (Petitioner) v. Virginia Indigent Defense Commission and Maria Jankowski, in her official capacity as the Deputy Executive Director of Virginia Indigent Defense Commission (Respondents); Circuit Court of Arlington, Virginia; Case No.: CL20005336-00; hearing on Respondents' demurrers and motion to dismiss; order dated April 8, 2021 (unreported). R. 189-190, Pet. App. 5a-6a.

- Ramin Seddiq (Petitioner) v. Virginia Indigent Defense Commission and Maria Jankowski, in her official capacity as the Deputy Executive Director of Virginia Indigent Defense Commission (Respondents); Circuit Court of Arlington, Virginia; Case No.: CL20005336-00; hearing on Petition for Injunction and Writ of Mandamus; order dated June 30, 2021 (unreported). R. 1109-1110, Pet. App. 2a-4a.

- Ramin Seddiq (Petitioner-Appellant) v. Virginia Indigent Defense Commission and Maria Jankowski, in her official capacity as the Deputy Executive Director of Virginia Indigent Defense Commission (Respondents-Appellees); Supreme Court of Virginia; Record No.: 210917; Petition for Appeal (order dated April 13, 2022) (unreported) (Pet. App. 1a); Petition for Rehearing (order dated June 29, 2022) (unreported). Pet. App. 7a.

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PETITION FOR A WRIT OF CERTIORARI

Ramin Seddiq (hereinafter, "Petitioner") respectfully petitions for a writ of certiorari to review the decision of the Supreme Court of Virginia.

OPINIONS BELOW

Order dated April 13, 2022, from the Supreme Court of Virginia (Record No. 210917) refusing Petition for Appeal. Pet. App. 1a.

Final Order dated June 30, 2021, from the Circuit Court of Arlington, Virginia (Case No.: CL20005336-00) adjudicating hearing on Petition for Injunction and Writ of Mandamus. Pet. App. 2a-4a.

Order dated April 8, 2021, from the Circuit Court of Arlington, Virginia (Case No.: CL20005336-00) adjudicating Respondents' demurrers and motion to dismiss. Pet. App. 5a-6a.

Order dated June 29, 2022, from the Supreme Court of Virginia (Record No. 210917) denying Petition for Rehearing. Pet. App. 7a.

BASIS FOR JURISDICTION IN THIS COURT

The Supreme Court of Virginia (hereinafter, the "Court Below") refused Petitioner's Petition for Appeal on April 13, 2022. The Court Below denied Petitioner's Petition for Rehearing on June 29, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

Relevant sections of the Virginia Freedom of Information Act (hereinafter, "VFOIA"), located at § 2.2-3700 et seq. of the Code of Virginia[1] and other statutory provisions involved are noted in the Table of Authorities and included in the Appendix (see Pet. App. 8a-37a).

STATEMENT OF THE CASE

This case is before the Court to confirm that VFOIA affords the citizens of Virginia with a statutorily created liberty interest for Fourteenth Amendment purposes and to establish that Fourteenth Amendment due process in VFOIA proceedings requires timely and complete disclosure of judicial conflicts.

Petitioner interned at the Office of the Public Defender for Arlington County and the City of Falls Church (hereinafter, "APD") during the fall 2020 semester. Petitioner's observations of and interactions with APD—both before and after the

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[1] Unless otherwise specified, the complete citation for the sections of VFOIA cited in this Petition is: Va. Code Ann. § 2.2-3700 et seq. (West, Westlaw current through the 2022 Regular Session and include 2022 Sp. Sess. I, cc. 1 and 2).

inception of the internship—led to concerns about dysfunction, disparate treatment and unethical conduct.

On October 2, 2020, Petitioner sent a letter to the Virginia Indigent Defense Commission (hereinafter, "VIDC").[2] R.[3] 32-34. The letter conveyed to VIDC the dysfunctional nature of the intern recruitment process at APD and offered suggestions for improvement. Respondents did not respond to this letter.

On October 26, 2020, Petitioner sent a VFOIA request to VIDC (hereinafter, the "October 26 VFOIA Request"). R1115-1116. Pursuant to Va. Code Ann. § 2.2-3704(B), Petitioner's VFOIA request identified the requested public records with reasonable specificity.

On October 28, 2020, Respondent Jankowski[4] emailed Petitioner stating: "I have received your FOIA request and am working on it. When you do have time to discuss so I am 100% clear on what you want." [sic]. When Petitioner expressed a preference to handle clarifications in writing, Jankowski

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[2] APD is a constituent part of VIDC and operates under the direction and authority of VIDC. VIDC is a commission of the state government and a "public body" as this term is defined in Va. Code Ann. § 2.2-3701. APD does not have VFOIA protocol independent of VIDC.

[3] Record on Appeal Abbreviations: "R." = Record (pages 1 to 1142); "RA." = Record Addendum (pages 1 to 669); "Tr." = Corrected Transcript, located at RA. 461-669.

[4] Respondent Maria Jankowski (hereinafter, "Jankowski") is the Deputy Executive Director of VIDC. At that time, VIDC did not post on its official public government website the name and contact information for its VFOIA officer as it is required to do so by Va. Code Ann. § 2.2-3704.1(A)(2) and Va. Code Ann. § 2.2-3704.2(B). After Petitioner sent the October 26 VFOIA Request, Jankowski temporarily assumed the role of VFOIA officer.

responded stating that she preferred to talk on the phone. When Petitioner wrote to Jankowski asking her to specify the portions of the request for which she sought clarification so that Petitioner could be prepared for the call, Jankowski demurred, citing illness and workload. R. 41-43.

On October 29, 2020, Jankowski called Petitioner. The call lasted for close to one hour. Despite requesting the call to seek clarification regarding the October 26 VFOIA Request, Jankowski spent most of the call attempting to litigate the internship matter in what appeared to be an effort to convince Petitioner to forgo the VFOIA request. At that time, Bradley R. Haywood, the Chief Public Defender for Arlington County and the City of Falls Church (hereinafter also, "Haywood"), had two pro se lawsuits pending against the judges of the Arlington Circuit Court. Jankowski expressed concern about the possible impact the VFOIA request could have on these high-profile cases.

In a November 2, 2020 email,[5] Haywood made an effort at damage control. Haywood attempted to arrange an offsite, in-person meeting with Petitioner stating in relevant part that "[m]y intention was basically to tell you about what's in the records ... and there's a lot that's not in the records that I can share in order to provide context." Petitioner declined the offer and stated in a reply to Haywood: "I appreciate the offer. I'll review the documents once received and I will certainly reach out if I have questions or need clarification."

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[5] This email was not included in the record because it is part of an October 29, 2020 email chain in which a pending case was mentioned.

On November 9, 2020, after Jankowski had timely exercised the seven-workday extension permitted by law (see Va. Code Ann. § 2.2-3704(B)(4)), Respondents responded to the VFOIA request but did not do so fully and completely. The records arrived by U.S. Mail and with a cover letter. R. 1132-1133. Of note in this packet (hereinafter, the "First Packet"), was an August email exchange (see R. 47-50) between Haywood and Lauren Brice,[6] which is described below:

On August 19, 2020, Brice forwarded Petitioner's August 18, 2020 email to Haywood and to Allison Carpenter[7] asking: "Did we get any guidance[8] on this?" On August 20, 2020, Haywood responded to Brice stating: "Yes, we've been told to lie to him." On August 21, 2020 at 2:13 p.m., Brice wrote to Haywood stating "Done.", indicating to Haywood that she would comply with Haywood's direction to lie to Petitioner and at 4:29 p.m. on the same day, Brice sent an email containing the lie to Petitioner with a blind carbon copy to Haywood and to Carpenter. R. 47-50.

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[6] Lauren Brice (hereinafter also, "Brice") is Senior Assistant Public Defender at APD.

[7] Allison H. Carpenter (hereinafter, "Carpenter") is the Deputy Public Defender at APD.

[8] During the June 17, 2021 VFOIA Hearing (hereinafter, the June 17 VFOIA Hearing), Haywood testified as to the source of the "guidance" (see Tr. 85:17-20 ("Q: Mr. Haywood, in this e-mail chain, you state to Ms. Brice, We've been told to lie to him. A: Yup."); Tr. 86:18-21 ("THE COURT: The question specifically, Mr. Haywood, was who -- in your statement, Yes, we've been told to lie to him, who told you? That was the question I heard Mr. Seddiq ask."); Tr. 87:5-6 ("THE WITNESS: It was a conversation with my boss, Dave Johnson.")).

The documents provided by VIDC as a result of the October 26 VFOIA Request were incomplete. On November 17, 2020, Petitioner wrote to Jankowski via email requesting that APD comply fully and completely with the October 26 VFOIA Request. R. 51-53. On November 18, 2020, Jankowski wrote to Petitioner via email stating in part: "I will be sending a follow-up packet tomorrow." R. 51-53.

During the week of November 23, 2020, Petitioner received from Jankowski a "follow-up" VFOIA packet (hereinafter, the "Second Packet"). The Second Packet arrived by U.S. Mail and with a cover letter dated November 18, 2020. R. 1134-1135. The Second Packet did not contain a significant number of new records and it contained some records that were repetitive from the First Packet. Respondents' stated responses in the Second Packet were evasive[9] and not among the responses specified in the law (see Va. Code Ann. § 2.2-3704(B)).

Unable to secure meaningful cooperation and compliance from Respondents, Petitioner filed a Petition for Injunction and Writ of Mandamus on December 30, 2020 (hereinafter, the "VFOIA Petition"). R. 1-88. On February 11, 2021 (ninety days past the due date), Respondents (through counsel) produced yet another set of records (R. 1093-1108) (hereinafter, the "February 11 Production") that had been described with reasonable specificity in the October 26 VFOIA Request.

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[9] See, e.g., R. 1135 (Jankowski: "You assume a level of sophistication and organization that simply does not exist"); R. 1135 (Jankowski: "You assume a depth and breadth of thought and consideration that simply does not exist").

The February 11 Production evidenced even more dishonesty and deception by Respondents. Text messages between APD attorneys provided as part of the February 11 Production show that in January 2020 (when Petitioner inquired about a summer 2020 internship), the attorneys were looking up[10] Petitioner, exchanging texts and gossiping about his age and his dated record.[11] The February 11 Production also shows that in April 2020, after Petitioner had applied for the fall 2020 internship, APD attorneys were once again Googling Petitioner and chattering about him. R. 1096. In August 2020, after Petitioner had been offered the internship for fall 2020, APD attorneys colluded to lie to Petitioner stating "[s]ay he didn't pass background check? ... Blame them [HR]" R. 1100. APD attorneys then schemed to deceive Petitioner stating: "Ramin is planning to come to court on some Fridays. All attorneys should know that so they don't say something to tip him off that we were not being completely candid with him. Not sure if interns should as well." R. 1104.

As the June 17, 2021 VFOIA hearing date drew closer, Respondents provided yet another set of

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[10] Just months after this episode (on July 1, 2020) Virginia Code § 15.2-1505.3 went into effect which prohibits localities and agencies from inquiring whether a prospective employee has ever been arrested for, or charged with, or convicted of any crime unless the inquiry takes place during or after a staff interview of the prospective employee (see Va. Code Ann. § 15.2-1505.3(C)). Pet. App. 35a-36a.

[11] Petitioner has a thirteen-year-old conviction for misdemeanor simple assault. Respondents do not ask internship applicants about past convictions. They do not have an application for their internship program (Tr. 108:5-17) and they do not run background checks on prospective interns. Tr. 104:12-14.

records—209 days past the due date. Guessing at what else Petitioner may know about, on June 10, 2021, Respondents embedded within their VFOIA production to the court (R. 197) twenty-three additional pages of records, which were described in the October 26 VFOIA Request and not previously produced. R. 721-725.

Haywood testified that Respondents were embarrassed by the VFOIA disclosures. Tr. 82:11-12. However, rather than demonstrating contrition and a willingness to fall in line with the letter and spirit of VFOIA, Respondents, displaying an air of vindictiveness, have attempted to shift the focus to Petitioner's dated record. As part of their defense strategy, Respondents have liberally, malevolently and giddily flaunted an unpublished Virginia Court of Appeals opinion related to Petitioner's dated record. Respondents have done this without citing to a single Virginia statute or regulation supporting the contention that a Virginia citizen's VFOIA rights are diminished or extinguished because of a dated record. Respondents have also failed to provide a legal basis for their implicit assertion that the Commonwealth is either privileged or licensed to lie to Virginia citizens with dated records or otherwise.

Significant judicial conflicts existed in this matter[12] which were fully disclosed to Petitioner midtrial and only when 0.3 percent of the Period of Litigation (defined herein) was remaining, leaving Petitioner surprised, unable to adequately assess the situation, unable to adjust litigation strategy, unable

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[12] In the Circuit Court of Arlington, Virginia (hereinafter, the "Trial Court"), this matter was extinguished on June 17, 2021, through a blanket grant of Respondents' motion to strike. R. 1109-1110, Pet. App. 2a-4a.

to select alternate witnesses and exposed to time, strategy and financial costs were he to object at that very late stage. Petitioner's procedural due process rights were curtailed and denied for 99.7 percent of the Period of Litigation.

Most public bodies in the Commonwealth are professional, honest and organized. Confirmation that VFOIA affords the citizens of Virginia with a statutorily created liberty interest and an articulation of the minimum constitutional procedures required for VFOIA proceedings become even more paramount when a citizen is confronted with a public body that is dishonest, disorganized and averse to the letter and spirit of VFOIA.

The questions presented in this Petition were first raised (as Assignment of Error VI (see Pet. App. 37a-43a)) in the Petition for Appeal filed in the Court Below on September 28, 2021, pursuant to Va. Code Ann. § 8.01-384 (Pet. App. 34a-35a) and Va. Sup. Ct. R. 5:25 (Pet. App. 37a). They were raised again during the oral argument held before the Court Below on April 5, 2022 (Pet. App. 47a-48a), and yet again in the Petition for Rehearing, filed on April 26, 2022. Pet. App. 44a-46a. The Court Below refused the Petition for Appeal and denied the Petition for Rehearing.

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari and hold that VFOIA affords the citizens of Virginia with a statutorily created liberty interest for Fourteenth Amendment purposes.

A. The liberty guaranteed by the Fourteenth Amendment exceeds mere freedom from bodily restraint and includes the liberty guaranteed to the citizens of Virginia by VFOIA.

In *Meyer v. Nebraska* this Court stated that the liberty guaranteed by the Fourteenth Amendment:

> ... denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

262 U.S. 390, 399 (1923) (internal citations omitted).

In *Bolling v. Sharpe*, this Court asserted that liberty under law is not confined to mere freedom from bodily restraint and extends to the full range of conduct which the individual is free to pursue. 347 U.S. 497, 500 (1954). In *Ingraham v. Wright*, this Court stated that liberty includes "a right to be free from and to obtain judicial relief, for unjustified

intrusions on personal security." 430 U.S. 651, 673 (1977). In *Obergefell v. Hodges*, this Court held that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right and that liberty. 576 U.S. 644, 675 (2015).

To determine whether due process requirements apply in the first place, we must look not to the weight but to the nature of the interest at stake. *Board of Regents v. Roth*, 408 U.S. 564, 570-571 (1972) (internal citations and quotations omitted). "'Liberty' and 'property' are broad and majestic terms. They are among the '(g)reat (constitutional) concepts ... purposely left to gather meaning from experience .... (T)hey relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged.'" *Id.* at 571 (citing and quoting *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (1948) (Frankfurter, J., dissenting)).

This Court's precedent makes it clear that the liberty guaranteed by the Fourteenth Amendment encompasses more than mere freedom from physical restraint. However, the types of interests that constitute "liberty" and "property" for Fourteenth Amendment purposes are not unlimited; the interest must rise to more than "an abstract need or desire," *id.* at 577, and must be based on more than "a unilateral hope." *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 465 (1981).

First, for the purposes of VFOIA, "freedom"[13] and "liberty"[14] are synonymous. Liberty is a subcategory of freedom, providing an entitlement and an exemption from government control over the Virginia citizen's ability to obtain the records and information described in VFOIA. Replacing the term "freedom" with the term "liberty" does little to change the meaning or effect of the statute. Virginians are unlikely to understand a statute titled "The Virginia Liberty of Information Act" to be any different in intent, purpose and function from a statute termed "The Virginia Freedom of Information Act."

Second, the nature of the interest at stake is one of liberty. As this Court noted in *McBurney v. Young*, "Virginia's FOIA was enacted to 'ensur[e] the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted.'" 569 U.S. 221, 228 (2013) (citing and quoting Va. Code Ann. § 2.2-3700(B) (Lexis 2011)). VFOIA affords the citizens of the Commonwealth the liberties of "ready access" and "free entry." VFOIA commands that the provisions of the statute "shall

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[13] Freedom (bef. 12c) 1. The quality, state, or condition of being free or liberated; esp., the right to do what one wants without being controlled or restricted by anyone. 2. A political right. FREEDOM, Black's Law Dictionary (11th ed. 2019).

[14] Liberty (14c) 1. Freedom from arbitrary or undue external restraint, esp. by a government <give me liberty or give me death>. 2. A right, privilege, or immunity enjoyed by prescription or by grant; the absence of a legal duty imposed on a person <the liberties protected by the Constitution>. — Also termed legal liberty. LIBERTY, Black's Law Dictionary (11th ed. 2019).

be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government." Va. Code Ann. § 2.2-3700(B). This is a right and entitlement provided to the citizens of Virginia by legislative grant. It is a liberty.

Third, the liberty interest granted to the citizens of Virginia by VFOIA is an essential pathway to useful knowledge. VFOIA "provides a service that is related to state citizenship." *McBurney* 569 U.S. at 224. The citizens of the Commonwealth are intricately associated with their government. They pay taxes to Virginia, they elect state and local representatives, they live under Virginia's laws and regulations, some are licensed by the Commonwealth, some work for the Commonwealth, many attend public schools in Virginia, and all are affected by the power of the government. "The state FOIA essentially represents a mechanism by which those who ultimately hold sovereign power (i.e., the citizens of the Commonwealth) may obtain an accounting from the public officials to whom they delegate the exercise of that power. See Va. Const., Art. I, § 2; Va. Code Ann. § 2.2–3700(B)." *Id.* at 228. It is incontrovertible that "at all times the public is to be the beneficiary of any action taken at any level of government." Va. Code Ann. § 2.2-3700(B). As such, it is likewise irrefutable that knowledge of the actions and affairs of the government of Virginia is useful to the citizens of Virginia and in many cases, VFOIA is the only mechanism by which citizens can obtain that knowledge.[15]

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[15] John Locke's definition of liberty validates the liberty interest in useful knowledge—particularly knowledge of

Fourth, VFOIA's unambiguous text expresses an intent of liberty. If the intent of a statute is plain, and it is free from constitutional objection, courts have no choice but to enforce it. *Sch. Bd. of Stonewall Dist. No. 1 v. Patterson*, 111 Va. 482, 487 (1910). [W]e continue to presume that the legislature chose, with care, the specific words of the statute and that the act of choosing carefully some words necessarily implies others are omitted with equal care. *Wal-Mart Stores E., LP v. State Corp. Comm'n*, 299 Va. 57, 70 (2020) (internal citations, quotations and brackets omitted). VFOIA's eloquent preamble states in part that "[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy..."; that "[b]y enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access ... and free entry."; and that "[a]ll public records and meetings shall be presumed open, unless an exemption is properly invoked." Va. Code Ann. § 2.2-3700(B). By its unmistakable words, VFOIA guarantees the citizens of Virginia the liberty of free entry to meetings of public bodies, the liberty of access to public records and the liberty to know[16] the actions of government.

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government actions. Locke states that "[f]reedom of people under government is to be under no restraint apart from standing rules to live by that are common to everyone in the society and made by the lawmaking power established in it .... Persons have a right or liberty to [(1)] follow their own will in all things that the law has not prohibited and [(2)] not be subject to the inconstant, uncertain, unknown, and arbitrary wills of others." John Locke, Two Treatises on Government: A Translation into Modern English, at viii (Indus. Sys. Research 2013) (1690).

[16] To be deprived of the ability to know the actions of Virginia's government is not only to be deprived of the right and

The essential and patently unobjectionable purpose of state government is to serve the citizens of the state. *McBurney* 569 U.S. at 236 (citing *Reeves, Inc. v. Stake*, 447 U.S. 429, 442 (1980) (internal quotations omitted)). The liberty interest afforded by VFOIA to the citizens of Virginia is more than an abstract need or desire. It is manifest and vital. Holding that the liberty guaranteed by the Fourteenth Amendment includes the liberty guaranteed to the citizens of Virginia by VFOIA comports with constitutional jurisprudence; it is in line with the letter and spirit of the statute; it appeals to the common sense; it stands the test of logical reasoning; and it is supported by *Meyer* and *McBurney*.

B. VFOIA provides the citizens of Virginia with a statutory entitlement.

An individual claiming a protected interest must have a legitimate claim of entitlement to it. *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). In *Paul v. Davis*, this Court stated that:

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entitlement to useful knowledge that VFOIA has bestowed upon the citizens of the Commonwealth but by extension it is also a deprivation of the Virginia citizen's liberty of enjoyment of his or her faculties as it pertains to the processing and absorption of that useful knowledge. This Court has stated that the word "liberty" contained in the Fourteenth Amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well. *Grosjean v. Am. Press Co.*, 297 U.S. 233, 244 (1936) (internal citation omitted). "As [John] Milton said in the Areopagitica, 'Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.'" *Eisenstadt v. Baird*, 405 U.S. 438, 458 (1972) (Douglas, J., concurring).

> ... there exists a variety of interests[17] which are difficult of definition but are nevertheless comprehended within the meaning of either 'liberty' or 'property' as meant in the Due Process Clause. These interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law, and we have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the State seeks to remove or significantly alter that protected status.

424 U.S. 693, 710-711 (1976).

In *Goss v. Lopez*, an Ohio statute directed local authorities to provide free education to all residents between six and 21 years of age and a compulsory attendance law required attendance for a school year of not less than 32 weeks. This Court ruled that Ohio, having chosen to extend right of education to people, could not withdraw that right on grounds of misconduct absent fundamentally fair procedures to

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[17] For example, in *Bell v. Burson*, Georgia, by issuing drivers' licenses recognized in its citizens a right to operate a vehicle on the highways of the state. This Court held that the state could not then take away the licenses without that procedural due process required by the Fourteenth Amendment. *Bell v. Burson*, 402 U.S. 535, 543 (1971). Furthermore, in *Morrissey v. Brewer*, Iowa afforded parolees the right to remain at liberty as long as the conditions of their parole were not violated. This Court held that a parolee's liberty involves significant values within the protection of the Due Process Clause of the Fourteenth Amendment, and termination of that liberty requires an informal hearing to give assurance that the finding of a parole violation is based on verified facts to support the revocation. *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972).

determine whether the misconduct has occurred. *Goss v. Lopez*, 419 U.S. 565, 574 (1975). In *Goldberg v. Kelly*, this Court stated that welfare benefits are a matter of statutory entitlement for persons qualified to receive them and their termination involves state action that adjudicates important rights. 397 U.S. 254, 262 (1970). Citing *Board of Regents v. Roth*, this Court stated in *Perry v. Sindermann* that a person's interest in a benefit is a property[18] interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing. 408 U.S. 593, 601 (1972).

Petitioner agrees with this Court that there is no [inherent] constitutional right to have access to particular government information and that the Constitution itself is not a Freedom of Information Act (see *Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978) (internal citations and quotations omitted)). Petitioner is a citizen of Virginia and VFOIA has provided Petitioner with a statutory entitlement.[19] If Petitioner requests records in accordance with Va.

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[18] This Court's precedent does not establish a categorical distinction between a deprivation of liberty and one of property. See, e.g., *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972) ("[T]he dichotomy between personal liberties and property rights is a false one"); *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974) (a hearing is generally required before final deprivation of property interests, and "a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State.").

[19] A statute will create an entitlement to a governmental benefit either if the statute sets out conditions under which the benefit must be granted or if the statute sets out the only conditions under which the benefit may be denied. David Grais, Statutory Entitlement and the Concept of Property, 86 Yale L. J. 695, 709 (1977).

Code Ann. § 2.2-3704, the public body must[20] produce the records. If Petitioner chooses to enter meetings of public bodies wherein the business of the people is being conducted, access must be granted. Va. Code Ann. § 2.2-3707. If a public body intends to hold a meeting, Petitioner must have notice. *Ibid.* If a public body does not intend to produce Petitioner's requested records within the time period specified by

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[20] See, e.g., *Virginia Public Traffic Records*, Virginia Public Records ("VFOIA guarantees access to public records maintained by the different agencies in the state."), available at: https://virginia.staterecords.org/trafficrecords (last visited: Sept. 5, 2022); *[VFOIA] Policy*, Virginia Board of Accountancy ("The Virginia Freedom of Information Act guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials and public employees."), available at: https://boa.virginia.gov/consumers/foia/ (last visited: Sept. 5, 2022); *Attorney General's Opinion 1975-76 #410*, Office of the Attorney General of Virginia ("The Virginia Freedom of Information Act guarantees, to the public, certain rights relative to the conduct of public business by governmental bodies, agencies and institutions."), available at: https://www.opengovva.org/foi-opinions/76ag410 (last visited: Sept. 5, 2022); *Rights & Responsibilities: The Rights of Requesters and the Responsibilities of York-Poquoson Sheriff's Office Under the Virginia Freedom of Information Act*, York-Poquoson Sherriff's Office ("[VFOIA] guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees."), available at: https://www.yorkcounty.gov/DocumentCenter/View/1480/Sheriffs-Office-Freedom-of-Information-Act-PDF?bidId= (last visited: Sept. 5, 2022); *VFOIA – Rights of Requestors and Responsibilities of the Virginia Lottery*, Virginia Lottery ("VFOIA ensures the following individuals have ready access to public records in the custody of a public body or its officers and employees..."), available at: https://www.valottery.com/-/media/pdf/VFOIA-Rights-and-Responsibilities-Statement.ashx?la=en&hash=A8FE1ECBB9AF6F09A4515D979254B1141E3A815A (last visited: Sept. 5, 2022).

Va. Code Ann. § 2.2-3704, it must provide Petitioner with one of the specific responses[21] stated in Va. Code Ann. § 2.2-3704(B). If Petitioner (as a requestor) wishes to comment on the quality of assistance provided to him by a public body, the public body must have a link on its website to the Freedom of Information Advisory Council's online public comment form, enabling such requests. Va. Code Ann. § 2.2-3704.1(B). If Petitioner wishes to find the name and contact information of the public body's FOIA officer, he must be able to find an up-to-date version of this information posted on the public body's official public government website. Va. Code Ann. § 2.2-3704.2(B). This is not an exhaustive list of the statutory entitlements VFOIA affords to the citizens of the Commonwealth.

C. VFOIA creates substantive predicates to guide and limit official discretion and it contains explicitly mandatory language requiring particular outcomes.

In *Kentucky Dep't of Corr. v. Thompson*, this Court stated:

> The fact that certain state-created liberty interests have been found to be entitled to due process protection, while others have not, is not the result of this Court's judgment as to what interests are more significant than others; rather, our method of inquiry in

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[21] See, e.g., *Harki v. VDOC*, 105 Va. Cir. 72, 6 (2020) (unpublished opinion) ("It should be further noted that [VDOC's] response is not one of the approved responses to a FOIA Request as prescribed by Va. Code Ann. § 2.2-3704(B).")

> these cases always has been to examine closely the language of the relevant statutes and regulations.

490 U.S. at 461.

A state statute creates a protected liberty interest by placing substantive limitations on official discretion. *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). A substantive limitation, or substantive predicate, is something more than a mere procedural requirement, it is a "particularized standard[ ] or criteri[ion] [to] guide the State's decisionmakers." *Henderson v. City of Roanoke*, 504 F.Supp.3d 530, 536 (W.D. Va. 2020) (citing *Kentucky Dep't of Corr.*, 490 U.S. at 462). In addition to creating substantive predicates to guide official discretion, a state law must contain "explicitly mandatory language" in order to create a protected liberty interest. *Kentucky Dep't of Corr.*, 490 U.S. at 463. Explicitly mandatory language are specific directives to the decisionmaker that if the statute's substantive predicates are present, a particular outcome must follow. *Ibid.*

VFOIA substantially and substantively limits the public body's discretion, and it contains mandatory language requiring particular outcomes when the substantive predicates are found. As examples, in the section titled "Public records to be open to inspection; procedure for requesting records and responding to request ... ", VFOIA states: "Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses

in writing [substantive predicate]." Va. Code Ann. § 2.2-3704(B). The four statutorily prescribed responses that follow contain mandatory language (see Va. Code Ann. § 2.2-3704(B)(1-4) (Pet. App. 14a-15a)).

Furthermore, VFOIA states:

> A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record [substantive predicate]. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld [substantive predicate], and all portions of the public record that are not so excluded shall be disclosed [mandatory language].

Va. Code Ann. § 2.2-3704.01.

Moreover, in the section titled "Closed meetings procedures; certification of proceedings" (see Va. Code Ann. § 2.2-3712), VFOIA subsections A (particularized criteria guiding and limiting the public body's discretion and actions in convening a closed meeting) and C (particularized criteria guiding and limiting the public body's discretion in the matters discussed in closed meetings) create substantive predicates and subsection D contains mandatory language, mandating that if a closed meeting takes place, a roll call or other recorded vote

certifying adherence to subsection C must follow. Pet. App. 28a-30a.

D. Petitioner was deprived of a protectable liberty interest.

Article III of the Constitution restricts the power of federal courts to "Cases" and "Controversies." *Chafin v. Chafin*, 568 U.S. 165, 171 (2013); see U.S. Const. art. III, § 2. Under the case-or-controversy limitation, the federal courts may not decide questions that cannot affect the rights of litigants in the case before them or give opinions advising what the law would be upon a hypothetical state of facts. *Chafin*, 568 U.S. at 171 (internal quotations, brackets and citations omitted). Accordingly, to invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990).

Petitioner was deprived of his VFOIA rights and entitlements, and this deprivation continues to this day with no indication of abating. The VFOIA Petition details the claims. R. 1-88. The Record on Appeal is extensive and comprehensive and evidences the deprivation of a protectable liberty interest that begs this Court's review.

II. This Court should grant certiorari and hold that Fourteenth Amendment due process in VFOIA proceedings requires timely and complete disclosure of judicial conflicts.

A. Fundamental fairness requires an impartial tribunal.

Procedural due process rights attach to liberty interests that are created by non-constitutional law, such as a statute. *Kerry v. Din*, 576 U.S. 86, 97-98 (2015) (plurality opinion). "Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." *Olim*, 461 U.S. at 250 (internal citation omitted). *In Marshall v. Jerrico, Inc.*, this Court stated:

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness, generating the feeling, so important to a

> popular government, that justice has been done, by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

446 U.S. 238, 242 (1980) (internal citations and quotations omitted).

Two material judicial conflicts (hereinafter, the "Judicial Conflicts") were present during the Trial Court phase of this lawsuit. First, based on the information disclosed to date, Respondent Jankowski[22] is an acquaintance[23] of the Presiding Judge.[24] Second, based on the information disclosed

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[22] Jankowski and the Presiding Judge "at least at one point served together on a statewide board." Tr. 16:17-18. Trial Court: "Yes. We -- that's right regarding drug courts. That's how I know Ms. Jankowski. I'm on an executive committee and an operations committee that provides support, administrative advice and some policy regarding drug courts in Virginia. And that's how I know Ms. Jankowski." Tr. 16:20–17:4.

[23] For the purpose of this Petition, the term "acquaintance" is defined as per the definition stated in ABA Comm'n on Ethics & Prof. Responsibility, Formal Op. 19-488 (Sept. 5, 2019) (hereinafter, "Formal Op. 488"). Pet. App. 66a-80a. "A judge and lawyer should be considered acquaintances when their interactions outside of court are coincidental or relatively superficial, such as being members of the same place of worship, professional or civic organization, or the like." Formal Op. 488 at 4 (internal citation omitted). A judge and a party should be considered acquaintances in the same circumstances in which a judge and lawyer would be so characterized. Formal Op. 488 at 4.

[24] The same judge of the Trial Court (hereinafter, the "Presiding Judge") served as the judge during the April 6 hearing on Respondents' demurrers and motion to dismiss and

to date, Respondent employee Lauren Brice[25] is a friend[26] of the Presiding Judge.

On April 6, 2021, when the Trial Court heard oral arguments on Respondents' demurrers and motion to dismiss (R. 90-125, 126-146, 189-190), the Trial Court knew of the Judicial Conflicts, Respondents knew[27] of the Judicial Conflicts, Petitioner was left unaware.

On June 14, 2021 (just three days before the June 17 VFOIA Hearing), Respondents filed a Motion for Recusal. R. 1038-1042, Pet. App. 49a-52a. Respondents' Motion for Recusal was based on two factors: First, Lauren Brice and Bradley Haywood "regularly appeared as advocates before each judge" of the Trial Court and second, Haywood had filed

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during the June 17 VFOIA Hearing. The identity of the judge assigned to preside over the June 17 VFOIA Hearing was not known until the start of the June 17 VFOIA Hearing.

[25] From 2013 to 2014, Lauren Brice worked as a law clerk for the Trial Court and worked closely with the Presiding Judge. Tr. 101:20–102:13.

[26] "In contrast to simply being acquainted, a judge and a party or lawyer may be friends. 'Friendship' implies a degree of affinity greater than being acquainted with a person; indeed, the term connotes some degree of mutual affection. Yet, not all friendships are the same; some may be professional, while others may be social." Formal Op. 488 at 4.

[27] Respondents claim they did not know the fact that Lauren Brice was a law clerk for the Presiding Judge at the same Trial Court at which she now works as a public defender (see Resp. Am. Br. in Opp. to Pet. for App. 18). However, at a minimum, Respondents would have had inquiry knowledge and constructive knowledge. Brice is an employee of Respondent VIDC (Senior Assistant Public Defender at APD). When hiring Brice, Respondent VIDC would have inquired as to her education and employment history and would have had access to Brice's state employment application.

civil actions[28] against the judges[29] of the Trial Court, one of which was pending at the time. Resp. Am. Br. in Opp. to Pet. for App. 3. When Respondents filed their Motion for Recusal, Respondents knew of the Judicial Conflicts. Respondents chose to not disclose the Judicial Conflicts to Petitioner either in their Motion for Recusal or in any other manner.

On June 15, 2021, Petitioner filed Petitioner's Opposition to Respondent's Motion for Recusal R. 1067-1077, Pet. App. 53a-63a. In the course of preparing and filing the Opposition, Petitioner had not been informed of the Judicial Conflicts and given that discovery was not authorized in this case (Tr. 27:13-14, Pet. App. 50a), Petitioner had no way of discovering the Judicial Conflicts.

On June 17, 2021, the Trial Court heard arguments on Respondents' Motion for Recusal. Tr.

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[28] In 2020, Bradley Haywood filed two lawsuits (on a pro se basis) in the Supreme Court of Virginia against the judges of the Trial Court. Although Haywood's litigation advocacy, including his lawsuits against the Trial Court judges, was expounded as being separate and independent of his employment at VIDC (R. 1038-1042), he utilized the resources and personnel of APD/VIDC for this endeavor. Petitioner was one of the individuals at APD/VIDC who was tasked with assisting in the research and preparation of the lawsuits. Petitioner's pleadings and filings in the Trial Court made no direct mention of the Haywood lawsuits until Respondents made them an issue in the instant matter. Even then, out of an abundance of caution, Petitioner omitted presentation during the June 17 VFOIA Hearing of those exhibits that specifically mentioned the Presiding Judge.

[29] Haywood's grievances were primarily directed at two of the four judges of the Trial Court. This is evidenced in part by the substance of at least one of the lawsuits and by media reports. It is probable that the Trial Court would have been aware of this and could have chosen to assign a judge for the instant matter who was not a target of Haywood's grievances.

12:15-16:9. Petitioner's Opposition to Respondents' Motion for Recusal explicitly noted the need for disclosure of conflicts. Pet. App. 56a. During arguments, the Trial Court had knowledge of the Judicial Conflicts, Respondents knew of the Judicial Conflicts, Petitioner was not informed of the Judicial Conflicts.

When the Trial Court ruled on the Motion for Recusal and denied the motion (Tr. 16:9), the Trial Court was aware of the Judicial Conflicts, Respondents were aware of the Judicial Conflicts, Petitioner did not know if it.

After the Trial Court had ruled on Respondents' Motion for Recusal, Respondents, for the very first time, disclosed that Jankowski was an acquaintance of the Presiding Judge (Tr. 16:13-19) and hinted at their elation with the uneven playing field. Tr. 17:11.

It was not until almost half of the June 17 VFOIA Hearing had elapsed—until after the parties had exchanged hearing exhibits, after preliminary matters had been disposed of, after opening statements had finished and after Haywood had testified and been dismissed as a witness—that the Trial Court disclosed for the very first time the fact that Brice was a friend of the Presiding Judge. A judge should disclose to the other lawyers and parties in the proceeding information about a friendship with a lawyer or party that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification. Formal Op. 488 at 6 (internal quotations and citations omitted). Disclosure is the lesser remedy. *Id.* at 2.

In short, for 99.7 percent of the Period of Litigation,[30] Respondents knew of the Judicial Conflicts, the Trial Court knew of the Judicial Conflicts, but Petitioner was left nescient of the Judicial Conflicts. It is not a strain of logical reasoning to surmise that the delayed and piecemeal disclosure amounted to consequential negligence at best and an artifice at worst. Regardless, it was a denial of due process.

In the Court Below, Respondents have suggested that providing a party with disclosure and an opportunity to object at any time during the proceedings amounts to sufficient process. Resp. Am. Br. in Opp. to Pet. for App. 17. It does not. Leaving a party in the dark regarding substantial and significant judicial conflicts during all but 0.3 percent of the Period of Litigation is not only violative of our Nation's principles, values and traditions, but it also contravenes this Court's admonition to "hold the balance nice, clear, and true." *Tumey v. State of Ohio*, 273 U.S. 510, 532 (1927). Never in a court of law should a party be subjected to the boiling frog syndrome and Respondents are wrong to view such a stratagem as being satisfactory and sufficient due process. Indeed, countenancing such an abysmally low standard would be repugnant to the Constitution, an invitation to arbitrariness and a sapping of the distilled common law.

In *Caperton v. Massey*, this Court stated that there are objective standards that require recusal when the probability of actual bias on the part of the

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[30] The time between the date that the VFOIA Petition was filed (December 30, 2020) and second half of the day when the June 17 VFOIA Hearing took place (June 17, 2021).

judge or decisionmaker is too high to be constitutionally tolerable. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 877 (2009) (internal citations and quotations omitted). This Court held that in the "extreme"[31] circumstances of that case, there was a serious, objective risk of actual bias that required Justice Benjamin's recusal. *Id.* at 886. Should this Court determine that the judicial conflicts present in the instant matter are extreme enough to merit recusal, then Petitioner would support such a finding. However, the marrow of Petitioner's fundamental fairness argument is timely and complete disclosure, not recusal. Petitioner heeds Justice Roberts' counsel stated in the *Caperton* dissent and is neither jumping on a *Caperton* bandwagon, nor is he entering a contest to claim the title of "most extreme" or "most disproportionate." See *id.* at 900 (Roberts, J., dissenting).

B. The minimum process due is determined as a matter of federal constitutional law, not state statutory law.

The right to due process is conferred, not by legislative grace, but by constitutional guarantee. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (internal citation and quotations

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[31] In the Court Below, Petitioner used the capitalized phrase "Extreme Judicial Conflict" and specifically defined it as referring collectively to the two conflicts that exist in the instant matter (the relationships between the Presiding Judge and Jankowski (acquaintance) and Brice (friend)). Petitioner's phrase "Extreme Judicial Conflict" is in no way intended to compete with the standard for "extreme" articulated in *Caperton*.

omitted). The minimum procedural requirements for the deprivation of life, liberty or property are a matter of federal law; they are not diminished by the fact that the state may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action. *Ibid.* (internal citations, quotations and brackets omitted).

VFOIA provides a cause of action for citizens denied the rights and privileges conferred by the statute (see Va. Code Ann. § 2.2-3713). The same section of the statute addresses venue. Va. Code Ann. § 2.2-3713(A); it also states that "[a] single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein." Va. Code Ann. § 2.2-3713(D); and that "[a]ny failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter." Va. Code Ann. § 2.2-3713(E). However, VFOIA is generally silent on VFOIA hearing procedure.

The minimum procedural requirements afforded as a matter of federal constitutional law take on even greater significance given the paucity of procedure associated with VFOIA hearings. For example, in the instant matter,[32] despite Petitioner having waived the expedited (seven-day) hearing option provided by Va. Code Ann. § 2.2-3713(C), no discovery of any type was authorized or permitted. Tr. 27:13-14, Pet. App. 50a. Furthermore, the Trial Court issued no pretrial scheduling order, and it

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[32] The Trial Court agreed with Petitioner that VFOIA is "not conventional litigation" (Tr. 10:12) and described it as being a "unique process" (Tr. 11:13) but did not define or explain the characteristics of VFOIA hearing procedure.

declined to review[33] the VFOIA production. Tr. 204:17-19. Moreover, the parameters of an adequate and lawful VFOIA search are barely defined in Virginia law and no affidavit process akin to that in federal FOIA procedure exists for VFOIA. Absent its rightful constitutional minimum procedural requirements, VFOIA is feeble and futile, often unable to achieve its stated objectives.[34]

C. Timely and complete disclosure of judicial conflict is necessary to meet the impartial tribunal standard.

This Court has developed a three-part balancing test for determining whether or not an individual has received due process:

> To determine what procedural protections the Constitution requires in a particular case, we weigh several factors: 'First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the

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[33] During the April 6, 2021 hearing on Respondents' demurrers and motion to dismiss, the Trial Court advised the parties to provide the Trial Court with copies of all records produced in response to Petitioner's October 26 VFOIA Request to—according to Respondents— "assist in the Court's evaluation of the merits of the Petition." R. 197. Both the Petitioner and the Respondents had the same understanding of the Trial Court's explanation (R. 197, 721) and filed the records with the Trial Court prior to the June 17 VFOIA Hearing.

[34] The Petition for Appeal and the Petition for Rehearing, filed in the Court Below, further illustrate and elaborate on VFOIA's non-constitutional procedural shortcomings.

> probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'

Zinermon v. Burch, 494 U.S. 113, 127 (1990) (citing and quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

The private interest is timely and complete access to important and useful records, information and knowledge that a citizen of Virginia is entitled, by statue, to receive; it is the liberty interest afforded to the Virginia citizen by VFOIA; it is the interest in holding the government of the Commonwealth accountable, promoting transparency and reducing corruption; it is the Virginia citizen's interest in the enforcement mechanism that VFOIA provides (see Va. Code Ann. § 2.2-3713) when he or she has been denied the rights and privileges conferred by the statute; and it is the meaningful implementation of VFOIA's enforcement mechanism.

The procedures used, elevate to an unacceptable level, the risk of an erroneous deprivation of the interests. First, a late disclosure and concomitant opportunity to object is simply inadequate as it is beyond cavil that a litigant is entitled to due process at every stage in the litigation.[35] Second, even if the

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[35] Petitioner's decision to not object (see Tr. 17:6-7, 102:15-16) when full disclosure was finally made (after all but 0.3 percent

litigant objects and the court grants a retrial, delayed and piecemeal disclosure imposes strategic, financial and time costs on the litigant. Third, disclosure in the middle or during the latter part of trial prevents the litigant from having the time to properly consider the circumstances. If the litigant is a pro se layperson, he or she will not have sufficient opportunity to consult with counsel. If the litigant is an attorney, he or she will not have sufficient opportunity to research the law. Fourth, piecemeal disclosure denies the litigant the occasion to assess all the existing conflicts together and simultaneously before forming and issuing his or her opinion on the matter. Fifth, delayed disclosure made in the midst and heat of trial precludes a sequestered opportunity for the litigant to inquire and ask questions regarding the nature, breadth and extent of the relationships that form the conflicts. Sixth, delayed and piecemeal disclosure deprives the litigant of the option of selecting alternate witnesses who do not have relationships with the judge or additional witnesses to compensate for the existing conflicts. Seventh, delayed and piecemeal disclosure results in a poisoned atmosphere of doubt and distrust. Eighth, delayed and piecemeal disclosure invites chaos and risks transforming the proceedings into a mare's nest. Ninth and finally, delayed and piecemeal disclosure of judicial conflicts is antithetical to our national principles, values and traditions.

Timely and complete disclosure of judicial conflict is in the government's interest. First, timely and complete disclosure preserves the public's confidence in the integrity of the judicial system. As

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of the Period of Litigation had already elapsed) is neither material nor relevant to this argument.

Justice Frankfurter luminously put it, "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954). This Court has stated that the public perception of judicial integrity is a state interest of the highest order. *Caperton*, 556 U.S. at 889 (internal citations and quotations omitted). Virginia's John Marshall took it further stating that a judge must "observe the utmost fairness," striving to be "perfectly and completely independent, with nothing to influence or controul him but God and his conscience." Address of John Marshall, in Proceedings and Debates of the Virginia State Convention of 1829–1830, p. 616 (1830). Second, timely and complete disclosure reduces expense and promotes judicial efficiency. Judicial efficiency is an important value. *Stutson v. United States*, 516 U.S. 193, 197 (1996). If delayed and piecemeal disclosure leads to objection and a mistrial, the government would suffer the time, money and strategy costs associated with a new trial. Third, timely and complete disclosure enhances the stature of the government in the eyes of all the parties involved in the litigation. Fourth, timely and complete disclosure promotes and protects a robust VFOIA. Fifth, in the instant matter, timely and complete disclosure is consistent with the Trial Court's own spirit of transparency and timely disclosure (see, e.g., Pet. App. 64a-65a). Sixth, as happened here, during the occasions when a litigant's case crosses paths (in terms of some facts) with another high-profile case, timely and complete disclosure emphasizes isonomy and the avowal that in our Nation, a litigant's rights will never be compromised or sacrificed because more weighty issues may be at stake.

The fiscal and administrative burdens associated with timely and complete disclosure are minimal to nonexistent. First, a conference call[36] with the parties (arranged by judicial chambers) to issue the disclosures at the outset of the litigation would likely take no longer than fifteen minutes (including time for the parties to ask questions regarding the nature and extent of the relationships). Second, Judges typically review the initial pleadings as part of their work and preparation and assuming the initial pleadings place the judge on notice of the involvement of individuals with whom the judge has relationships (as was the case in the instant matter), then no additional time or expense is required to discover the conflicts.

CONCLUSION

For the foregoing reasons, the Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted this 27th day of September 2022,

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[36] In the alternative and at a minimum, the judge could issue the disclosures at the beginning of the first hearing the court holds for the case.