

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

SABRINA CIVILS,)
Plaintiff,)
v.)
VIRGINIA SCHOOL BOARDS ASSOCIATION,)
SERVE: Elizabeth Ewing)
Virginia School Boards Association)
200 Hansen Road)
Charlottesville, Virginia 22911)
Defendant.)

Case No. CL 23003280-00

RECEIVED and/or FILED
SEP 26 2023
CLERK'S OFFICE
HANOVER CIRCUIT COURT

PETITION FOR WRIT OF MANDAMUS

Sabrina Civils, by counsel, hereby brings the following Petition against the Virginia School Boards Association and, in support thereof, states as follows:

I. Parties

- Ms. Sabrina Civils (“Civils” or “Plaintiff”) is a citizen and taxpayer of Hanover County, Virginia, and a mother of two children who attend Hanover County public schools. Her declaration showing good cause in order to file this Petition is attached hereto as Exhibit A.
- The Virginia School Boards Association (“VSBA” or “Defendant”) is a public body as defined by the Virginia Freedom of Information Act (“FOIA”).

3. VSBA is headquartered at 200 Hansen Road, Charlottesville, Virginia 22911, and is an organization in the Commonwealth made up exclusively of Virginia public school boards in order to further its member school boards' goals.

4. VSBA is an unincorporated 26 U.S.C. "Section 115" entity, exempt from taxation because it exists to perform an "essential governmental function," as specified in VSBA's IRS Section 115 approval letter ("IRS Letter"), which is attached hereto as Exhibit B.

II. Venue

5. Ms. Civils is an aggrieved party who resides in Hanover County, Virginia.

6. The Hanover County School Board is a member of the VSBA.

7. Venue is appropriate in this Court pursuant to Va. Code § 2.2-3713(A)(3).

III. Statement of Facts

MS. CIVILS' FOIA REQUEST AND VSBA'S RESPONSE

8. On June 26, 2023, during regular office hours, Plaintiff made a request (the "FIOA Request") via email to Defendant for records pursuant to the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et. seq.).

9. The FIOA Request provided, in pertinent part, as follows:

Pursuant to the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et. seq.), please provide me with the following records:

1) Records indicating the total dollar amount paid by each local public school division in Virginia to the VSBA for annual dues, conference expenses, legal fees, and any other services for each fiscal (or, alternatively, school calendar) year from 2010 to 2023.

2) Financial records (such as income statements, profit and loss statements, and balance sheets) indicating (i) VSBA's annual income, by year, for 2018 through 2022 and (ii) VSBA's total assets and liabilities as of December 31, 2022 and as of May 1, 2023.

3) Records indicating the names and titles of each employee and independent contractor, along with their respective annual salary or total wages, including any bonuses, hired or retained by the VSBA for each calendar year beginning in 2018 through 2022.

4) All tax statements, returns, or other filings submitted to the IRS on behalf of the VSBA for every year beginning in 2018 through 2022.

A true copy of the FIOA Request is attached hereto as Exhibit C.

10. Va. Code § 2.2-3701 (emphasis added) defines “public records” as follows:

“Public records” means **all writings and recordings** that consist of letters, words, or numbers, or their equivalent, . . . however stored, and regardless of physical form or characteristics, **prepared or owned by, or in the possession of a public body** or its officers, employees, or agents in the transaction of public business.

11. Ms. Civils’ request, outlined above, sought public records as defined by FOIA.

12. The requested records are matters of public concern, which would be expected to be kept as incident to the ordinary transaction of public business.

13. In responding to Plaintiff’s FIOA Request, Defendant refused to produce any of the requested records, claiming merely that it was “not a public body” to which the Virginia Freedom of Information Act applied.

14. In responding to Plaintiff’s FOIA Request, Defendant did not claim that any statutory exemptions applied to the records in Plaintiff’s FOIA Request.

15. Defendant has made no “efforts to reach an agreement with [the] requester concerning the production of the records requested” as required of “[a]ll public bodies and their officers and employees” under Va. Code § 2.2-3700(B).

16. Va. Code § 2.2-3701 (emphasis added) defines a “public body” as follows:

“Public body” means any legislative body, authority, board, bureau, commission, district, or **agency of the Commonwealth** or of **any political subdivision of the Commonwealth**, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher

education; **and other organizations**, corporations, or agencies **in the Commonwealth supported wholly or principally by public funds. It shall include** (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) **any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body. . . .**

17. VSBA is a public body under Va. Code § 2.2-3701, which is apparent for at least three independent reasons: because it is (1) an “agency of” political subdivisions of the Commonwealth; because it is (2) an entity created to perform delegated functions for other Virginia public bodies and/or to advise other Virginia public bodies; and because it is (3) an “organization[] . . . in the Commonwealth supported wholly or principally by public funds.”

VSBA—AN AGENT OF OTHER VIRGINIA PUBLIC BODIES AND AN ORGANIZATION THAT PERFORMS DELEGATED FUNCTIONS FOR, AND ADVISES, OTHER VIRGINIA PUBLIC BODIES

18. As stated on VSBA’s website Home Page (<https://www.vsba.org>), Defendant is “a voluntary, nonpartisan organization of Virginia school boards.”

19. Virginia public school boards themselves are members of VSBA.

20. Virginia public school boards are the only entities with membership in VSBA.

21. With the exception of the School Board of Warren County, Virginia, which voted to terminate its membership with VSBA on September 6, 2023, every public school board in Virginia is a member of VSBA.

22. Defendant’s governing board of directors is comprised entirely of school board members selected from among Defendant’s member school boards.

23. Delegates to the VSBA annual convention, comprised of one representative member from each member Virginia school board, vote to determine what positions the VSBA

will take on their behalf before the Virginia General Assembly as it relates to public policy issues.

24. As recognized in *Sch. Bd. v. Opportunity Educ. Inst.*, 88 Va. Cir. 317 (Norfolk 2014), VSBA was formed pursuant to Va. Code § 15.2-1303 and is designated by that statute as an instrumentality of its members—school boards—to improve Virginia public education.

25. Defendant is an entity comprised of and established for the purpose of serving the interests of Virginia school boards and is designated by them to perform certain delegated functions.

26. VSBA’s website Overview Page (<https://www.vsba.org/about-us/>), as of July 27, 2023, proclaimed: “Our mission is to assist our members in whatever ways they need so that they can fulfill their legal responsibilities as well as the many additional goals they have set.”

27. Pursuant to its purpose, Defendant regularly advises Virginia’s public school boards in matters of law, policy, and best practices.

28. Defendant routinely administers new board member training to nearly every newly elected school board member in Virginia.

29. Virginia school boards typically do not vote to approve expenditures for VSBA school board member training. Payment or reimbursements are assumed and automatic.

30. Upon information and belief, Defendant causes new school board members, during their initial training by the VSBA, to sign a ‘norms and protocols’ document agreeing to act in accordance with certain standards it sets while serving as a school board member.

31. Defendant drafts and provides model school policies for use and adoption by nearly all of Virginia’s school boards—at least 96% of them (according to a VSBA’s Member Benefits Flyer).

32. Defendant's recommended model school board policies are commonly adopted in full by the school boards, and often with little or no comment.

33. Defendant is the *de facto* public policy arm of essentially all Virginia school boards.

34. Virginia school boards typically automatically renew their annual membership expenses to the VSBA without any discussion or vote.

35. Upon information and belief, most Virginia school boards include in their annual budgets funding to pay for VSBA dues and training.

36. Defendant describes itself as the "voice of public education" in Virginia. *See* "2016-2023 Strategic Plan" (<https://www.vsba.org/about-us/>).

37. Defendant frequently performs the delegated task of searching for Virginia school boards' new district superintendents.

38. Hiring a superintendent is one of a Virginia school board's most essential tasks.

39. VSBA operates a self-insurance pool for Virginia school boards under authority provided by Va. Code § 15.2-2703. *Frederick County Sch. Bd. v. Hannah*, 267 Va. 231, 233 (2004).

40. Va. Code § 22.1-253.13:5(D) requires school boards to ensure their members receive high-quality professional development training related to their service on the board. Defendant created a policy, which has been adopted by many Virginia school boards, suggesting that the only organization from which school boards can obtain such required training at the state level is the Defendant itself.

41. Defendant acts as the *de facto* vendor and gatekeeper for the "BoardDocs" software, the online platform used by most Virginia school boards for storing and making

available to the public all of their school board policies, meeting agendas, meeting minutes, and other documents.

42. As referenced above, the Internal Revenue Service has designated Defendant pursuant to 26 U.S.C. §115 (entitled “Income of States, municipalities, etc.”) as a special, unincorporated “Section 115” entity, exempt from taxation because it exists to perform an “essential governmental function.”

43. According to a response to a FOIA request to the IRS and an online entity search, Defendant has not filed any tax returns with the IRS for at least the past 30 years, including any kind of IRS 990 forms indicating how much annual revenue it has taken in, which virtually all other types of tax-exempt entities are required to submit.

44. Defendant is not registered with the Virginia State Corporation Commission as an entity established to do business in Virginia.

VSBA—SUPPORTED WHOLLY OR PRINCIPALLY BY PUBLIC FUNDS

45. Defendant is supported wholly or principally by public funds.

46. As an organization of Virginia public school boards, Defendant receives its operating funds directly from public school boards paying annual dues, conference and convention fees, legal assistance fees, policy writing services, and other services.

47. Upon information and belief, VSBA’s operating budget is derived entirely from government funds.

48. In any event, upon information and belief, greater than 66.6% of VSBA’s operating budget is derived from government funds.

49. The percentage of VSBA’s operating budget that is derived from public funds exceeds the two-thirds threshold Virginia courts have cited to substantiate whether an entity is

supported wholly or principally by public funds. *See Voice v. Appalachian Regional Community Services, Inc.*, 89 Va. Cir. 284, 287 (Buchanan 2014); *Wigand v. Wilkes*, 65 Va. Cir. 437, 438 (Norfolk 2004).

50. As specified in the IRS Letter designating VSBA as a “Section 115” entity, Defendant’s “[i]ncome consists of dues from members based on a percentage of the local operation funds spent by the particular division, contracted services, income from conventions and conferences, and investment income.”

51. As specified in the IRS Letter, “On termination, [VSBA’s] assets will be divided among the school divisions. Consequently, the income of [VSBA] will accrue to State or political subdivisions of state.”

52. The average public school board in Virginia pays tens of thousands of dollars to Defendant each year.

53. Despite being a public body that provides “essential government functions,” receiving all its income from Virginia taxpayer dollars, and enjoying the benefits of tax-exempt status with the IRS, Defendant continues to operate with zero public accountability, transparency, or oversight, while everyday playing a central role in the education of children and school policy throughout the Commonwealth.

IV. Violation of the Virginia Freedom of Information Act

54. Virginia adopted the Virginia Freedom of Information Act, among other reasons, to ensure the people of the Commonwealth have ready access to public records in the custody of a public body or its officers and employees. Specifically, the Virginia Freedom of Information Act provides as follows:

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; . . .

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth . . . during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. . . .

B. A request for public records shall identify the requested records with reasonable specificity. . . . 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:

. . .

55. Va. Code § 2.2-3700 provides, in relevant part, that

The provisions of this chapter shall 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. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.

56. Notwithstanding Defendant's claim to the contrary, the VSBA is a public body as the term is defined by the Virginia Freedom of Information Act. Accordingly, its failure to respond promptly to Plaintiff's FOIA Request by producing the requested records was wrongful and in violation of the Virginia Freedom of Information Act.

57. Va. Code § 2.2-3713(A) permits Plaintiff to bring this action seeking to enforce the Virginia Freedom of Information Act, as follows:

Any person . . . denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. . . .

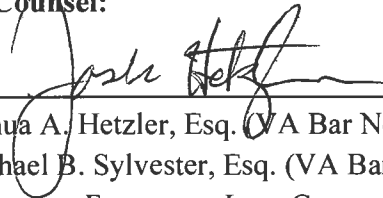
V. **Prayer for Relief**

WHEREFORE, Plaintiff requests that the Court grant the following relief:

- a. Determine and declare that Defendant is a “public body” subject to the terms of Virginia’s Freedom of Information Act;
- b. Issue a Writ of Mandamus, or injunctive relief, ordering Defendant to comply immediately with Plaintiff’s FOIA Request;
- c. Award Plaintiff’s costs and attorneys’ fees concerning this matter pursuant to Va. Code § 2.2-3713(D); and
- d. Grant such other relief as appears appropriate.

Sabrina Civils

By Counsel:



Joshua A. Hetzler, Esq. (VA Bar No. 89247)
Michael B. Sylvester, Esq. (VA Bar No. 95023)
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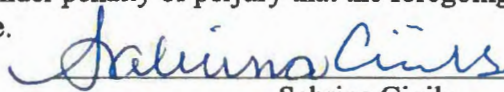
Exhibit A

DECLARATION OF SABRINA CIVILS

Sabrina Civils declares as follows:

1. My name is Sabrina Civils. I am a citizen and taxpayer of Hanover County, Virginia.
2. I am the mother of two children who attend Hanover County Public Schools (“HCPS”).
3. Hanover County School Board (“HCSB”) is a member of the Virginia School Boards Association (“VSBA”).
4. HCSB pays thousands of dollars each year to the VSBA for membership and services the VSBA provides to the HCSB.
5. On June 26, 2023, during regular office hours, I made a request to VSBA (the “Civils’ FIOA Request”) via email for records pursuant to the Virginia Freedom of Information Act (“VFOIA”). The Civils’ FIOA Request asked primarily for financial records and tax statements that are not otherwise exempt under VFOIA.
6. In response to the Civils’ FIOA Request, the VSBA refused to produce any of the records I requested.
7. The VSBA has significant influence over the policies, positions, and practices of the HCSB and the HCPS, where my children attend school.
8. As a taxpayer in Hanover County, and as a parent of children in HCPS, I have a great interest in knowing how the County’s tax dollars are being spent, and how the school funds are being allocated.
9. I submit this Affidavit in support of the civil action brought by me against the Virginia School Board Association in the referenced matter. More specifically, I submit this Affidavit in compliance with Va. Code § 2.2-3713, which provides that “Any person . . . denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause”.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.



Sabrina Civils



Date

Exhibit B

Internal Revenue Service

Department of the Treasury

Index No.: 0115.00-00

Washington, DC 20224

Mr. A. W. Patrick, III
President
Virginia School Boards Assn.
2250 Old Ivy Road
Suite 1
Charlottesville, VA 22901

Person to Contact:
Frances Simo

Telephone Number:
(202) 566-3432

Refer Reply to:
CC:FI&P:2 - TR-31-2156-91

Date: FEB 2 | 1992

Association = Virginia School Boards Association
T.I.N. 54-0633062

State = Virginia

Board of Education = Virginia Board of Education

law = Va. Code Ann. sections 15.1-20 and 22.1 (Michie 1991)

Dear Mr. Patrick:

This is in response to the request for ruling submitted on behalf of Association by your authorized representatives that the income of Association is excludable from gross income under section 115 of the Internal Revenue Code.

In State, the Board of Education has general supervision over the State school system. The Board members are appointed by the State governor and confirmed by the General Assembly. The Board of Education has the authority to create school divisions within the State.

Each school division has a local school board. Under State law, the local school boards are considered corporate bodies and each division has the power of eminent domain. Members of the local school boards are appointed by the local governing body or by a selection commission composed of qualified voters residing in the local area. It has been submitted by the taxpayer that State considers the local school boards to be political subdivisions of State.

Under State law, school boards may join to form and maintain associations to promote the welfare of the boards. Association is a not-for-profit unincorporated association, whose membership consists of the local school boards. Association is governed by a 20-person Board of Directors chosen from its members.

Purposes of the Association include to promote the general advancement of public education, to study and interpret proposed legislation that will have an impact on public education, to initiate and encourage the adoption of policies that will advance the quality of educational programs, and to provide a resource center to assist the local school boards in meeting their needs.

TR-31-2156-91

Income of the Association consists of dues from members based on a percentage of the local school operation funds spent by the particular division, contracted services, income from conventions and conferences, and investment income.

Association's bylaws provide that upon termination of Association, all assets remaining after payment of liabilities will be disposed of to the member school divisions.

Section 115(1) of the Code provides that gross income does not include income accruing to a state or political subdivision thereof derived from a public utility or from the exercise of any essential governmental function.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income from a fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its political subdivisions, is excludable from gross income under section 115 of the Code. That ruling reasons that the investment of positive cash balances by a state or a political subdivision thereof in order to receive some yield on the funds until needed to meet expenses is a necessary incident of the power of the state or political subdivision to collect taxes and raise revenues. Rev. Rul. 77-261 points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out those projects desirable from the standpoint of the state government which, on a broad consideration of the question, may be the function of the sovereign to conduct.

Rev. Rul. 71-589, 1971-2 C.B. 94, provides that the income from property held in trust by a city that was to be used by the city for certain charitable purposes is not subject to federal income tax. Although Rev. Rul. 71-589 does not specifically so state, the holding in the revenue ruling means that a determination was made that the income in question was derived from the exercise of an essential governmental function and accrued to a political subdivision within the meaning of section 115(1) of the Code. Rev. Rul. 71-589 specifically mentions several types of functions that the trust might perform, such as support of a hospital, schools, maintenance of a park, or some other purposes ordinarily recognized as a municipal function.

Providing education is an essential governmental function. Education in State is provided by Association's members, the local school boards. By providing the services described above in support of its members, Association is performing an essential governmental function. On termination, Association's assets will

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be divided among the school divisions. Consequently, the income of Association will accrue to State or political subdivisions of State.

Based on the information submitted, we conclude that Association's income is excludable from gross income under section 115 of the Code.

No opinion is expressed as to the federal income tax consequences of the transaction under any other provisions of the Code.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides it may not be used or cited as precedent.

Sincerely yours,
Assistant Chief Counsel
(Financial Institutions & Products)

By William E. Coppersmith
William E. Coppersmith
Chief, Branch 2

Enclosure:
Copy of this letter

Exhibit C

----- Forwarded message -----

From: Sabrina Civils [REDACTED]
Date: Mon, Jun 26, 2023 at 4:59 PM
Subject: Public Records Request
To: <dorothy@vsba.org>, <gina@vsba.org>

Dear Virginia School Boards Association (VSBA),

Pursuant to the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et. sec.), please provide me with the following records:

- 1) Records indicating the total dollar amount paid by each local public school division in Virginia to the VSBA for annual dues, conference expenses, legal fees, and any other services for each fiscal (or, alternatively, school calendar) year from 2010 to 2023.
- 2) Financial records (such as income statements, profit and loss statements, and balance sheets) indicating (i) VSBA's annual income, by year, for 2018 through 2022 and (ii) VSBA's total assets and liabilities as of December 31, 2022 and as of May 1, 2023.
- 3) Records indicating the names and titles of each employee and independent contractor, along with their respective annual salary or total wages, including any bonuses, hired or retained by the VSBA for each calendar year beginning in 2018 through 2022.
- 4) All tax statements, returns, or other filings submitted to the IRS on behalf of the VSBA for every year beginning in 2018 through 2022.

If possible, I am requesting all such records in electronic form, either through PDF or Excel documents, via email. However, if you would like to provide them in paper form, please let me know so I can arrange a time for pick-up.

If the cost of producing this request is projected to exceed \$100.00, please notify me in advance with a cost estimate before producing the requested records.

Thank you so much for your time.

Sabrina Civils

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Sent from Gmail Mobile