

# THE RUTHERFORD INSTITUTE

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“The very word ‘secrecy’ is repugnant in a free and open society; and we as a people are inherently and historically opposed to secret societies, to secret oaths, and to secret proceedings.”—John F. Kennedy

September 8, 2010

Via Email & U.S. Mail

Charlottesville City Council  
1646 Cherry Avenue  
Charlottesville, VA 22903

Albemarle County Board of Supervisors  
401 McIntire Road  
Charlottesville, VA 22902

**Re: Closed City-County Meetings**

Dear Charlottesville City Council Members and Albemarle Supervisors:

The basis of any democracy is accountability. It likely follows that a democratic government is one which is accountable to the people—and that means being open to the public. Otherwise, democratic government, for all intents and purposes, ceases to exist.

Unfortunately for the residents of Charlottesville and Albemarle County, the decision by the Charlottesville City Council and the Albemarle County Board of Supervisors to hold closed, secret meetings on matters of public interest jeopardizes the very system of government that you, our elected representatives serving on these esteemed bodies, were charged with upholding.<sup>1</sup>

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<sup>1</sup> See Brandon Shulleeta, “Closed city-county meetings questioned,” *Daily Progress* (Aug. 28, 2010), available at <http://www2.dailyprogress.com/news/2010/aug/28/closed-city-county-meetings-questioned-ar-477904/>

Thus, while we certainly applaud your commitment to holding “successful” meetings and getting “something accomplished” at these meetings<sup>2</sup>, such goals cannot be achieved at the cost of the public’s right to know what is being discussed, their right to express their own views in response to what is being discussed, and their right to assemble and petition their government over what is being discussed. Moreover, not only do these secret meetings violate the people’s constitutional rights, but they violate the media’s right to freedom of press and information as well, thereby undermining core values enshrined in the First Amendment.

Frankly, this state of affairs is unacceptable, especially for a community that prides itself on its Jeffersonian connections, and must be remedied immediately. Those who drafted the Constitution never contemplated, nor would they have tolerated, a secretive government. The people of Charlottesville and Albemarle County are equally intolerant of such secrecy in our government bodies.

We are particularly alarmed by the stated desire and intent of the City Council and Board of Supervisors to flout public policy and undermine democratic principles. According to public remarks by members of both elected bodies, city and county officials intentionally chose a limited participation format for these meetings for the express purpose of circumventing public scrutiny and press coverage of the public business being discussed.<sup>3</sup>

In this respect, city and county officials appear to exhibit a distrust of the press and a hostility to the right of the public to know the positions and ideas of public servants with respect to important matters of governance. Instead of devising ways to avoid public exposure of these discussions, board and council members should embrace the ideals embodied in fundamental, constitutional principles of an informed electorate and maximum transparency of government. As Thomas Jefferson remarked, “If once [the

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<sup>2</sup> “Albemarle Supervisor Dennis S. Rooker said that the closed meetings are more likely to be successful because officials are more frank. ‘I think that the meetings have a greater chance of success if people can speak candidly,’ Rooker said. ‘And sometimes when the press is there, people are posturing for the press, and ... rather than an open discussion, it becomes something that becomes more contentious because of quotes that are taken out into the press.’ Supervisor Rodney S. Thomas added: ‘They’re not open to the public ... because we want to get something accomplished. That’s why we only have two supervisors there.’” *As quoted in* Brandon Shulleeta, “Closed city-county meetings questioned.”

<sup>3</sup> “To avoid violating Freedom of Information Act requirements for meetings, the county executive and city manager appointed no more than two members from each of the localities’ school boards, as well as the City Council and Board of Supervisors members. There have also been unelected officials at the meetings.” *As quoted in* Brandon Shulleeta, “Closed city-county meetings questioned.”

people] become inattentive to the public affairs, you and I, and Congress and Assemblies, Judges and Governors, shall all become wolves.”<sup>4</sup>

Secrecy will serve only to intensify public distrust of elected officials and further erode the constitutional rights of citizens to participate in their government. After all, we live in a democracy, which literally means “rule from the people.” Thus, the people elect representatives who govern according to our rule of law, the Constitution. Because the whole basis of a democracy is openness and accountability, when public officials make decisions, cast votes or debate important issues that impact the community, such as fire and rescue services, revenue sharing and school funding, they must do those things in the open. Meetings must be open to the public. Public records must be accessible to all citizens. If those running the government aren’t open and accountable, they become a law unto themselves and it quickly becomes a lawless government.

These fundamental, constitutional principles of open and representative government are further reinforced by Virginia’s Freedom of Information Act (FOIA), which establishes, with limited and well-defined exceptions, that public bodies must conduct their business in the open, not in secret. However, city and county officials have candidly admitted that these secret meetings were arranged in a manner to evade the requirements of FOIA, undermine transparency in government, and restrict public involvement by limiting the number of members assigned to be present at each meeting.<sup>5</sup>

Yet the requirements of FOIA are not so easily sidestepped. Although the council and board have sought to avoid FOIA’s requirements by having only two or fewer persons from each public body attend these meetings, a Virginia Attorney General Opinion makes clear that the statute still applies.

In 1990, Attorney General Mary Sue Terry addressed the question of whether a prearranged meeting between two members of a seven-member board of supervisors and two members of a seven-member town council, scheduled to discuss joint governmental business, constitutes a “meeting” as that term is defined in FOIA. The attorney general pointed out that, as with the recent local meetings, the respective public bodies had designated the persons who were to meet. “Since each of these two-member delegations was selected for a specific purpose and was not merely an ad hoc, two-member group from each public body,” she wrote, “it is my opinion that each of the two-member delegations constitutes a ‘committee’ within the meaning of § [2.2-3701] (‘public body’), and must, therefore, comply with the requirements of the Act.”<sup>6</sup>

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<sup>4</sup> Thomas Jefferson to Edward Carrington, 1787.

<sup>5</sup> Brandon Shulleeta, *op. cit.*

<sup>6</sup> 1990 Va. Op. Atty Gen. 8 (Feb. 21, 1990).

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Thus, in accordance with this Attorney General Opinion, the City Council and Board of Supervisors may not evade the requirements of FOIA simply by designating two or fewer persons from each body to attend each meeting. Such meetings must still comply with the letter and spirit of FOIA, as well as the U.S. Constitution, by being publicly advertised and open to the public.

It is our hope that the City Council and Board of Supervisors will make haste to comply with the law, renounce their undemocratic stance, cease their practice of holding secret, closed-door joint meetings, and in so doing, reaffirm their commitment to upholding the rule of law and respecting the rights of their constituents.

Should you have any questions about how best to do so, The Rutherford Institute is at your service.

Sincerely yours,



John W. Whitehead  
President

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