IN THE
SUPREME COURT OF VIRGINIA

RECORD NO. 250261

DAVID R. HINES,
in his official capacity as Sheriff for Hanover County,

and

HANOVER COUNTY,

Appellants,

v.

ALICE MINIUM,

Appellee.

OPPOSITION TO PETITION FOR APPEAL

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"The more that Government becomes secret, the less it remains free. To diminish people's information about government is to diminish the people's participation in government."

James Russell Wiggins,
FREEDOM OR SECRECY ix (1956)

I. INTRODUCTION

In August 2023, Hanover Sheriff David R. Hines employed 245 deputies. When Alice Minium asked for their names and salaries, the County and the Sheriff claimed 220 deputies were undercover. Their names were not disclosed. Ninety percent. Ninety percent of the officers employed to stop citizens, to arrest suspects, to protect the courthouse, to serve process, and to execute the law are secret. Ninety percent: what the County and Sheriff call euphemistically "a group of officers." **Petition 1, 4, 7, 25, 31.**

How is this possible? The Sheriff and County employ four stratagems. *First,* they disregard the plain implications of Code § 2.2-3706(D), which dictate that citizens may access officer names from personnel records. *Second,* they interpret "undercover" to include any officers who might be assigned as-yet undreamt undercover roles. *Third*, they construe "undercover" to include, for instance, even officers conducting routine patrol in unmarked cars. *Fourth*, they try to apply the right result for the wrong reason doctrine despite inadequate support in the record. If even one of

these stratagems fail, the judgment of the Circuit Court's must be reversed. Yet all four fail.

Thus, this Court should deny this petition for appeal.

II. STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS

On August 19, 2023, Virginia citizen Alice Minium requested from Hanover County a "roster of all sworn law enforcement employees . . . as of today's date . . . or alternatively an assortment of documents . . . sufficient to show the same," including their full name, rank, assigned unit, and 2023 salary data. **R. 100-02, 136-37, 141.** After consulting the Sheriff, the County provided a roster of requested information, but the names of only thirteen employees—the captains, majors, and lieutenant colonel—were disclosed. **R. 54, 56-57, 103, 106-115, 136-37, 141.** The response stated:

> [S]ome of the requested information is protected from disclosure under the personnel records exclusion (Va. Code § 2.2-3705.1), and is not subject to the limitations set forth in Va. Code § 2.2-3705.8 [sic]. For this reason, "overtime wages" information is not being provided and any employee whose salary is $10,000 or under annually has been removed. Similarly, the names of the court bailiffs, deputies, sergeants and lieutenants employed by the Sheriff's Office are being withheld pursuant to the limitations of Va. Code § 2.2-3706.B.10.

R. 103, 137, 141. The County Attorney later also cited § 2.2-3706(B)(8) to withhold the names. **R. 121, 138, 141.**

Minium petitioned the Hanover County Circuit Court for a writ of mandamus under the Virginia Freedom of Information Act ("VFOIA"), Code § 2.2-3700 et seq. **R. 1-10.** She sued the County Sheriff, David R. Hines, in his official capacity, and the County. **R. 8-9.** The County then provided Minium twelve additional names of "certain sworn employees of the Sheriff's Office who have highly visible roles and have established a public presence." **R. 66-67, 125-35, 139, 141.**

The parties stipulated to many of the essential facts and records. **R. 136-141**. The County's and Sheriff's case rested on the testimony of Major Judson Flagg of the Sheriff's Office. **R. 60-76.** Per his testimony, the Sheriff's Office engages in undercover operations and operates protective details. **R. 63.** A protective detail "provide[s] personal protective services for individuals under extreme duress," such as for domestic situations, threats against judicial officers, and transporting foreign dignitaries. **R. 64-65.** It may include uniform and nonuniform officers. **R. 65, 75**. He defined undercover operations as "[a]ny law enforcement activity where it's not known" or "not readily available or really apparent" that the person is a law enforcement officer. **R. 63, 70.** These officers are not necessarily in disguise. **R. 63.** They have equipment or clothes that identify them as officers, so they can move into overt operations, such as moving from surveillance to interdiction. **R.**

72. This transition from so-called “undercover” to overt operations can happen in an instant, and at the officer’s discretion. **R. 73.** Per Major Flagg, undercover operations include officers performing otherwise routine police patrol in unmarked cars, which cars may have embedded emergency lights. **R. 73.** These officers keep their badges with them at all times. **R. 73-74.** He could not state what percentage of undercover operations involve a pseudonym or a cover story, though he said some do. **R. 75.**

The staffing of these “undercover” operations is fluid. **R. 65.** One team has primary responsibility, but it will occasionally draw on either general investigative personnel or someone, under the rank of captain, with the preferred physical characteristics or skills needed. **R. 66.** Releasing the names of all law enforcement officers below the rank of captain would hamper those officers’ ability to engage in undercover field work, and so the Sheriff would have to change operations from its current form. **R. 66, 69.**

Two bailiffs were in the courtroom during the trial, wearing name tags, with their faces exposed. **R. 71, 76.** Major Flagg acknowledged their names had been withheld from Minium. **R. 71.** On the date of the request, bailiffs were in the courthouse, not acting in undercover operations, but Major Flagg did not know who they were. **R. 71-72.** He did not recall how many undercover operations were ongoing on that day. **R. 72.**

By letter opinion, the Court ruled in favor of the Sheriff and County. **R. 22-27.** The Court reasoned that if the list of officer names were released, "nothing . . . prevents someone from conducting further research, finding a picture, and publishing on social media the name and photos of all officers for the department." **R. 26.** If that happens, "it would clearly affect the Sheriff's ability to staff undercover operations." **R. 26.** Therefore, per the Court, the County and Sheriff established that § 2.2-3706(B)(8) allows them to withhold the names of deputies below the rank of captain "because the public availability of those names would interfere with the ability of the Sheriff to *staff* protective details or undercover operations, now or in the future." **R. 26.** The Court entered a final order on January 9, 2024. **R. 28-29.**

Minium appealed. A Court of Appeals panel reversed the judgment. It held §§ 2.2-3705.1(1) and -3706(D), when read together, "offer[] clear guidance" and require officers' names to be disclosed *when personnel records are requested*. **CAV Op. 5**. It also ruled the § 2.2-3706(B)(8) exemption relates to only *existing* tactical plans, staffing, or logistics:

> Hypothetical future undercover operations, by their very nature as "hypothetical," are not yet a reality and consequently do not have "tactical plans," "staffing," or "logistics" to be disclosed. The possibility of the future assignment of 220 officers to undercover duty is merely speculative. This temporal expansion is at odds with the plain meaning of the language employed in the statute . . .

***Id.* at 7.** The Court of Appeals declined to consider the § 2.2-3706(B)(10) exemption, as it "ha[d] no ruling to address as to that exception." **CAV Op. 4 n.5.** Judge Lorish, however, wrote a concurrence to note the Sheriff and County failed to prove the § 2.2-3706(B)(10) exemption applied because they "presented no evidence that any particular deputy had worked undercover, was currently working undercover, or was slated to work undercover on a specific operation. The only evidence presented was that all deputies might hypothetically serve as undercover officers in the future." **CAV Op. 10**

The Sheriff and County now seek to appeal that decision.

III. STANDARD OF REVIEW

The first assignment of error, construing § 2.2-3705.1(1), is essentially a pure question of law, and so is subject to *de novo* review. The merits of both the second and third assignments of error (construing § 2.2-3705.1(B)(10) and (8) respectively) involve mixed questions of law and fact, but seek to apply the right result for the wrong reason doctrine. Questions of law will be subject to *de novo* review, but the Court cannot apply the law if further factual resolution is needed on the record.

More specifically, the meaning of any VFOIA provision is a question of law subject to *de novo* review. *Suffolk City Sch. Bd. v. Wahlstrom*, 302 Va. 188, 204 (2023). This Court has stated:

> In interpreting VFOIA, we remain cognizant that the General Assembly enacted VFOIA to "ensure[] 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." Code § 2.2-3700(B). VFOIA guarantees such "ready access" and "free entry" because "[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." *Id.*

Id. at 204. VFOIA itself mandates that its provisions must "be liberally construed to promote an increased awareness by all persons of governmental activities" and "[a]ny exemption from public access to records . . . shall be narrowly construed and no record shall be withheld . . . unless specifically made exempt pursuant to this chapter or other specific provision of law." Code § 2.2-3700(B). "[T]his VFOIA-specific rule of construction 'puts the interpretative thumb on the scale in favor of' open government and public access." *Wahlstrom*, 886 S.E.2d at 204-05 (quoting *Fitzgerald v. Loudoun Cnty. Sheriff's Off.*, 289 Va. 499, 505 (2015)). Thus, in any truly doubtful case, the VFOIA exemption from public disclosure will not apply. *See Gloss v. Wheeler*, 302 Va. 258, 291 (Va. 2023) (construing

the "public forum" exception in the definition of public meetings under Code § 2.2-3701). Under VFOIA, the public body bears "the burden of proof to establish an exclusion by a preponderance of the evidence." Code § 2.2-3713(E).

The right result for the wrong reason doctrine cannot be applied in cases where, because the trial court has rejected the right reason or confined its decision to a specific ground, further factual resolution is needed before the right reason may be assigned to support the trial court's decision. *Whitehead v. Commonwealth*, 278 Va. 105, 115 (2009) (quoting *Harris v. Commonwealth*, 39 Va. App. 670, 675-676 (2003)). Under this doctrine, appellate deference extends only to the contested evidence actually resolved through the circuit court's ruling and the reasonable inferences therefrom, not all of the evidence presented by the prevailing party. *Fitzgerald*, 289 Va. at 505. Where the trial court's factfinding exercise rests on an improperly construed VFOIA provision, deference is not appropriate. *See id.*

IV. ARGUMENTS AND AUTHORITIES

A. The Court of Appeal Correctly Reversed the Circuit Court's Judgment Because "Personnel Records of . . . Law-Enforcement Agenc[ies] . . . Shall Be Governed By . . . Subdivision 1 of § 2.2-3705.1." (AOE 1)

To keep officers' names secret, the County and Sheriff must also keep secret Code § 2.2-3706(D). This provision so devastates their legal arguments that they chose not to even reference it in their appeal petition, *see* **Petition vi**, though it played a central role in the Court of Appeals' decision. **CAV Op. 5** ("Code § 2.2-3706(D) explicitly subjects law enforcement agency personnel records to Code § 2.2-3705.1"). In short, the General Assembly says a citizen may access any officer names from *personnel* records, but not necessarily from *other* records, such as operational reports.

To provide some context, Code § 2.2-3706 regulates public access to law enforcement records. If § 2.2-3706 conflicts with any other provision of law, § 2.2-3706 controls. Code § 2.2-3706(F). Any law enforcement agency will have many discrete types of records: financial records, personnel records, noncriminal incident records, and investigative or operational records, to name a few. *See* Code § 15.2-1722 (identifying types of records local law enforcement agencies must maintain). The General Assembly requires some of those records, or the information in those records, to be disclosed upon request. *E.g.*, Code § 2.2-3706(A). It sometimes permits entire records to be withheld. *E.g.*, Code § 2.2-3706(B)(1)-(7), (9), (11). It also prohibits certain information from being released. *E.g.*, Code § 2.2-

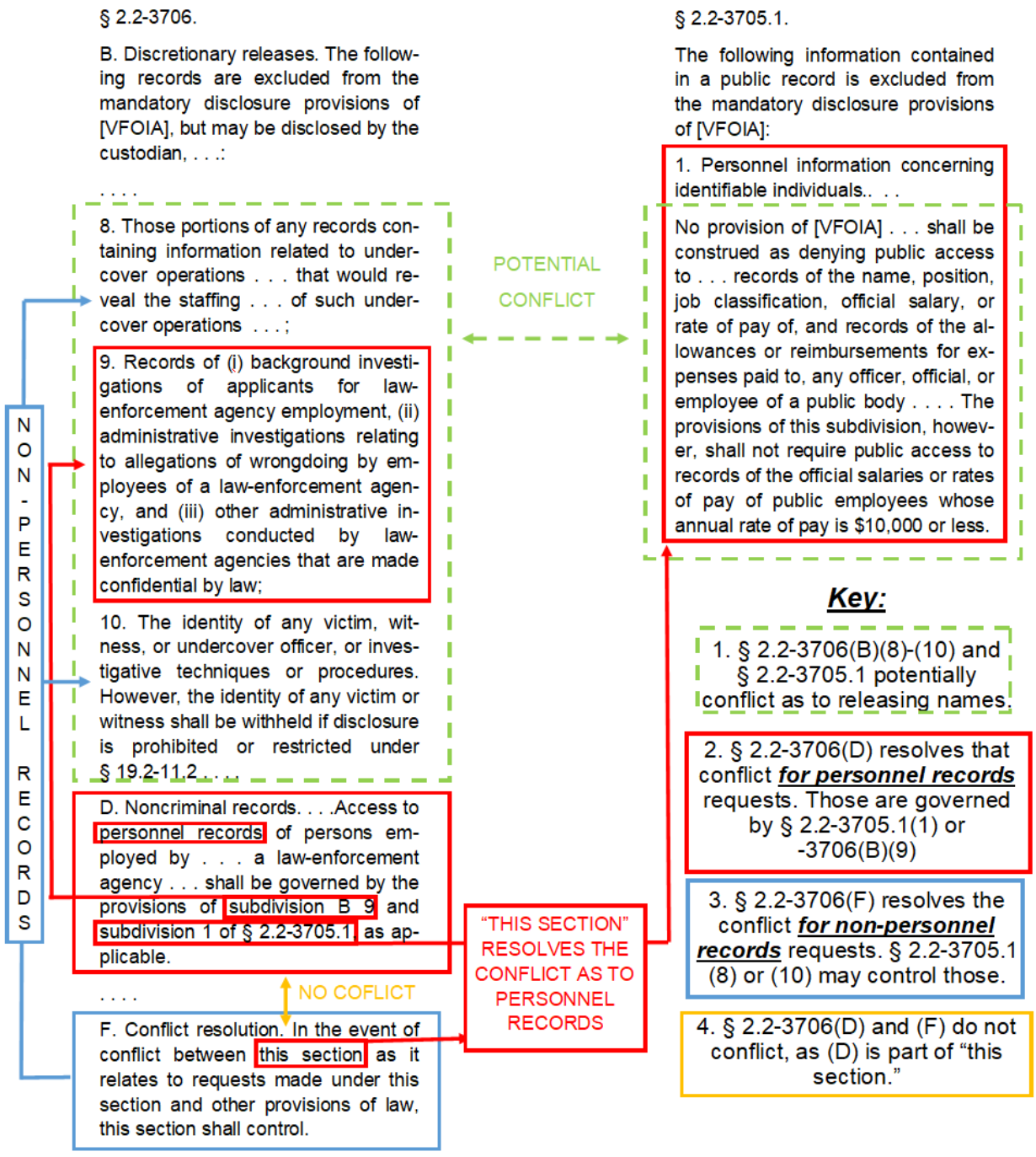
3706(C). The exemptions cited in this case, however, do not permit entire records to be withheld as exempt. Rather, under these provisions, only "identities" of undercover officers and "portions of . . . records containing information" about the staffing of undercover operations or protective details may be withheld. Code § 2.2-3706(B)(8) and (10).

Section 2.2-3706(D) stands apart from these provisions. It expressly concerns "Noncriminal records." It permits certain "portions of noncriminal incident or other noncriminal investigative reports or materials" to be withheld from mandatory disclosure. But it then states, as applicable here, "Access to personnel records of persons employed by . . . a law-enforcement agency . . . shall be governed by the provisions of subdivision B 9 and subdivision 1 of § 2.2-3705.1, as applicable." This provision is particularly significant, because § 2.2-3705.1(1) authorizes personnel information to be withheld from public disclosure but also states, as relevant here, "No provision of [VFOIA] . . . shall be construed as denying public access to . . . (ii) records of the name, position, job classification, official salary, or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body."

Sections 2.2-3705.1(1)(ii) and 2.2-3706(B)(8) and (10) appear to conflict. The former says no provision of VFOIA shall be construed to deny public access to records of public employee names, while the latter authorizes certain staffing information and identities to be withheld. But:

- Section 2.2-3706(D) resolves that apparent conflict as to "personnel records of persons employed by . . . a law-enforcement agency." It states those requests "shall be governed by the provisions of subdivision B 9 and subdivision 1 of § 2.2-3705.1, as applicable." So § 2.2-3706(B)(8) and (10) do not govern requests for personnel records. And per "subdivision 1 of § 2.2-3705.1," names and salary data are to be released.
- Section 2.2-3706(D) does not, however, resolve the conflict between §§ 2.2-3705.1(1)(ii) and 2.2-3706(B)(8) and (10) as to non-personnel records, such as criminal investigation records. Instead, per § 2.2-3706(F), requests for officer names from non-personnel records are "controlled" by § 2.2-3706, which includes the exemptions at issue in this case. So undercover officer names can be withheld, if, for instance, criminal investigation records are requested.
- Sections § 2.2-3706(D) and (F) do not conflict, because (D) is part of "this section" within the meaning of (F).

FIGURE 1 - CONSTRUING § 2.2-3706(D)



Here, Minimum requested personnel records, so § 2.2-3706(D) comes into play. **R. 101.** Therefore, the request is governed by §§ 2.2-3706(B)(9) or 2.2-3705.1(1), as applicable, not § 2.2-3706(B)(8) or (10).

Section 2.2-3706(B)(9), concerning background or administrative investigations, is inapplicable, but § 2.2-3705.1(1) is applicable. The language that now appears in § 2.2-3705.1(1)(ii) has long been construed as requiring the names of public employees to be disclosed, as discussed below. Therefore, these names are not exempt, and there is no need to even consider § 2.2-3706(B)(8) or (10).

This line of reasoning—unaddressed in the petition for appeal—entirely resolves this appeal, as the Court of Appeal recognized. **CAV Op. 5.** And the County and the Sheriff willfully disregard the issue, choosing not even to cite or reference § 2.2-3706(D).

All arguments advanced by the County and the Sheriff collapse when viewed in the light of these provisions:

First, the County and Sheriff argue § 2.2-3705.1(1)(i)-(iii) is a rule of statutory construction, to be applied only to resolve linguistic ambiguity. **Petition 18-20**. This argument fails for no fewer than six reasons.

- For Minium's request, the Sheriff and Hanover County treated § 2.2-3705.1(1)(i)-(iii) as a limitation applicable to this case. They released salary data but withheld "'overtime wages' information," for instance, based on this provision. **R. 103, 106-15.** The County and Sheriff later expressly claimed § 2.2-3705.1(1)(i)-(iii) is an "exception to the

exclusion in Code § 2.2-3705.1(1)." **CAV Appellees' Br. 25.** The County and Sheriff change their position only because the Court of Appeals determined § 2.2-3705.1(1) governs Minium's request.

- Virginia Attorneys General, the VFOIA Advisory Council, and courts have uniformly interpreted this as a limitation on the VFOIA exemptions, not a rule for resolving linguistic ambiguities. *E.g.* 1978-1979 Op. Atty Gen. Va. 310; 1983-1983 *id.* 731; 1987-1988 *id.* 110; Va. FOIA Advisory Council Ops. AO-28-01 (Mar. 31, 2001), AO-01-02 (Jan. 16, 2002), AO-07-02 (Jul. 23, 2002), AO-11-03 (Apr. 30, 2003), AO-01-09 (Mar. 25, 2009), AO-04-15 (May 13, 2015), AO-01-21 (Jan. 21, 2021), AO-06-24 (Sept. 6, 2024); *Gibbs v. Bd. of Supervisors of Roanoke Cnty.*, 3 Va. Cir. 24, 25 (Cir. Ct. 1981). In fact, the General Assembly created this provision in 1978, to reverse two Attorney General Opinions that said names and salary data of public employees are exempt. 1973-1974 Op. Atty Gen. Va. 454; 1975-1976 *id.* 416; 1978 Va. Acts 1393 (c. 810).
- Historically, this provision was in § 2.2-3705.8, which is expressly a "[l]imitation on record exclusions." *See* 2004 Va. Acts 997 (c. 690). The use of "construed" in § 2.2-3705.1(1)(i)-(iii) still parallels the language in § 2.2-3705.8.

- This language does not appear in § 2.2-3700(B) with the VFOIA rule for resolving ambiguities, as one would expect, but within the most relevant VFOIA provision if it is a limitation on the exemptions.
- If § 2.2-3705.1(i)-(iii) were a rule for resolving linguistic ambiguities in the VFOIA exemptions, it would be superfluous because exemptions are *always* to be narrowly construed, per § 2.2-3700(B).
- Accepting the argument makes no difference. Section 2.2-3705.1(1) governs this request per § 2.2-3706(D), and this Court had to construe § 2.2-3705.1(1) in *Hawkins v. Town of S. Hill*, 301 Va. 416 (2022) due to ambiguity in its terms. Therefore, § 2.2-3705.1(1)(i)-(iii) operates whenever § 2.2-3705.1(1) operates, such as in this case, to clarify the inherent ambiguities of § 2.2-3705.1(1).

Therefore, § 2.2-3705.1(1)(i)-(iii) does not merely resolve ambiguities.

Second, the County and Sheriff argue the Court of Appeals' opinion renders § 2.2-3706(B)(8) and (10) meaningless, because names of undercover officers would *always* have to be released. **Petition 17**. As illustrated in Figure 1, this is not true. Section 2.2-3706(B)(8) and (10) are not superfluous, but do not govern requests for personnel records.

Third, the County and Sheriff argue specific statutory provisions control over the general provisions, so § 2.2-3706(B)(8) and (10) control rather than § 2.2-3705.1(1). **Petition 17**. This argument also fails.

- Section 2.2-3706(D) supersedes common law rules of construction and directs that § 2.2-3705.1(1) controls.
- Before the Court determines which section controls, it harmonizes the sections as much as possible. *Chesapeake Hosp. Auth. v. State Health Comm'r*, 301 Va. 82, 96 (2022); *Phillips v. Rohrbaugh*, 300 Va. 289, 308-09 (2021). Harmonization requires the construction illustrated in Figure 1, above.
- Code § 2.2-3706(D) is the most specific of all of these provisions, so it would control. It concerns law enforcement personnel records specifically, and not personnel records generally, like § 2.2-3705.1(1), or law enforcement records generally, like § 2.2-3706(B).

For these reasons, the Sheriff's and County's first assignment of error will fail. Their petition has inexplicably disregarded the key provision of VFOIA that resolves all of their objections. Moreover, this issue is dispositive of the appeal: §§ 2.2-3705.1(1) and -3706(D) together mandate that § 2.2-3706(8) and (10) are inapplicable to this request for personnel records, and the names must be disclosed. No further analysis of § 2.2-

3706(8) and (10) is necessary. Any error committed by the Court of Appeals in connection with its § 2.2-3706(8) and (10) analysis would be mere dicta, not worthy of this Court's attention or time. The petition for appeal should be denied.

B. Code § 2.2-3706(8) and (10) Do Not Apply to Hypothetical, Future Assignments, So the Sheriff and County Failed To Prove These Exemptions Apply. (AOE 1 and 2)

The Court of Appeals' opinion and Judge Lorish's concurrence correctly conclude, respectively, that the exemptions as to § 2.2-3706(8) and (10) do not apply to hypothetical future assignments. **CAV Op. 7-8, 10**. Because the Sheriff and County rested their case without presenting evidence as to which specific officers on the roster are or have served in undercover operations, they failed to prove which "identit[ies]" or "portions of any record" could be redacted, as required under their § 2.2-3713(E) burden of proof. Therefore, the second and third assignments of error will fail, and the petition should be denied.

The Sheriff and County pretend both exemptions can extend to officers who might someday be assigned to an undercover role. But "undercover" is an operational status that may come and go. Before it comes and after it goes, the officer is not undercover. For instance, the Sheriff's sole witness, Major Flagg, acknowledged that on the date of the

request, bailiffs were in the courthouse, not undercover, and he did not know who they were. **R. 71-72.** Even if those deputies were or might someday be assigned to undercover roles, their names are not the identity of "undercover officers" and they were not "staffing" "undercover operations or protective details." Code § 2.2-3706(8), (10).

The County and Sheriff argue a broad interpretation of these exemptions is appropriate because undercover assignments vary day to day, and even hour to hour. **Petition 24.** Broad constructions violate the statutory rule of construction established in § 2.2-3700(B). Moreover, that argument misses the point. A precise construction of these exemptions is not critical to resolving this case. There can be gray areas in the application of these exemptions to specific situations, and those would have to be addressed in individual cases. But in this case, the County and Sheriff rested their evidence on the *assumption* that one or both of these exemptions cover any officer who might, at some unspecified future time, be assigned to an undercover role or protective detail as yet undreamt. If that assumption is wrong and that construction overly broad—as it clearly is—then they failed to prove their case, because they merely proved the possibility that the officers whose names were redacted might, at some unspecified time, be assigned to an undercover role or protective detail as

yet unplanned. **CAV Op. 7-8, 10**. No matter what other definition of "undercover" or "protective detail" a court may assign, the evidence failed to show the names were exempt.

Put another way, though the Sheriff and County say these exemptions should contemplate the officers' "expected job duties," **Petition at 25**, they only presented evidence about the officers *potential* and not *planned* job duties, so they have failed to prove their case. **CAV Op. 7-8, 10**. They said all officers *might* be assigned undercover tasks without showing any real *expectation* that any particular officer would indeed be assigned undercover tasks.

Finally, as to § 2.2-3706(B)(8) specifically, the Sheriff's and County's reliance on *Surovell* is misplaced. **Petition at 27-28**, *Surovell* recognized that "would jeopardize" is a probabilistic determination. *Va. Dep't of Corr. v. Surovell*, 290 Va. 255, 265 (2015). But the probabilistic element arose not from the term "would," but from the term "jeopardize." *See id.* at 264-65. Jeopardize means "to expose to danger." *Id.* at 264 (quoting Webster's Third New International Dictionary 1213 (1993)). Danger means a *risk* of harm, and so is probabilistic. "Would expose" in § 2.2-3706(B)(8) is not probabilistic. If the General Assembly wanted a probabilistic standard, they would have said "**c**ould expose." Moreover, the *Soruvell* did not extend the

exemption to cover unplanned future security arrangements, but the Sheriff and County want § 2.2-3706(B)(8) to cover unplanned staffing decisions.

For these reasons, the Court should deny the petition for appeal, as the Sheriff and County failed to prove the exemptions, properly construed, applied to any specific redacted name.

C. Code § 2.2-3706(B)(8) and (10) Do Not Apply, for Instance, to Routine Patrolling in Unmarked Cars, so the Sheriff and County Failed To Prove These Exemptions Apply. (AOE 1 and 2)

The County and Sheriff failed to prove their case because their evidence likewise assumes the exemptions cover, for instance, routine patrol in unmarked cars.

The Sheriff and County say, quoting from POLICE OFFICER, Black's Law Dictionary (11th ed. 2019), that an undercover officer is "a law enforcement officer that displays 'nothing to indicate that he or she is a police officer.'" **Petition at 23**. But the cited entry in Black's Law Dictionary says a little more:

- undercover officer. (1915) A police officer whose appearance is that of an ordinary person and who, in order to carry out an investigation, displays nothing to indicated that he or she is a police officer. • The undercover officer's job is to gather enough information about a suspect and criminal activity to enable a successful prosecution. – Also termed *undercover police officer*. Cf. PLAINCLOTHES.

POLICE OFFICER, Black's Law Dictionary (11th ed. 2019) (underlining added). "[I]n order to carry out an investigation" and "to gather enough information . . . to enable a successful prosecution" are material. So is the "Cf. PLAINCLOTHES," which provides a counterpoint:

> ● plainclothes officer. (1866) A police officer who wears civilian clothing while on duty. – Also termed *plainclothes detective; plainclothesman.* Cf. *uniformed officer*.

Id.; *see also* Black's Law Dictionary at xxx (indicating "cf." denotes a "related but contrastable term").

The evidence at trial indicates that the Sheriff's office considers officers to be undercover if, for instance, they are simply patrolling the streets in an unmarked car intending to enforce routine traffic laws, rather than engaging in an investigation. **R. 63, 70, 72-74**. Because the evidence relied on too broad a definition of "undercover," it did not show which, if any, of the officers whose names were withheld were "undercover officers" within the meaning of Code § 2.2-3706(B)(8) or (10), correctly construed. As such, they failed to prove what, if any of the names, were exempt.

D. The Sheriff and County Are Not Entitled to a Favorable Review of the Record Concerning the Application of the Exemptions, Because Their Rationale Differs From the Trial Court, Employing the Right for the Wrong Reason Doctrine Without Adequate Factual Foundation. (AOE 2 and 3)

The Sheriff and County do not rely on the rationale provided by the trial court, which held § 2.2-3706(B)(8) applies because disclosure of the names would interfere in the Sheriff's ability to staff undercover operations. **R. 25-27.** As such, their arguments depend, implicitly or explicitly, on the "right result for the wrong reason" doctrine.

In applying this doctrine, the prevailing party below is only entitled to deference to the extent the trial court's determination resolved contested issues of fact, and to the inferences therefrom. Otherwise, the record would require further factual development, and the doctrine cannot be applied on appeal. *See Whitehead*, 278 Va. at 115; *Fitzgerald*, 289 Va. at 505. In this case, the trial court accepted only the proposition that disclosing the names would impair the Sheriff's ability to staff undercover operations safely. **R. 25-27.** Despite this, the County and Sheriff repeatedly rely on a favorable reading of the evidence far beyond that finding to establish the exemptions apply when correctly construed. **Petition 6, 12, 15, 26, 32**. Their inability to rest their case on the facts the trial court accepted as true, the reasonable inferences therefore, or the facts stipulated by the parties makes the doctrine inapplicable. As such, the second and third assignments of error should be rejected.

V. CONCLUSION

For the foregoing reasons, this Court should deny this petition for appeal, and grant Minium all such further and additional relief as may be appropriate.

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CERTIFICATE

I hereby certify, that pursuant to Rule 5:18:

1. This brief contains 5,022 words.

2. A copy of this brief has been electronically transmitted on April 8, 2025, to counsel for David R. Hines, in his official capacity as Sheriff for Hanover County by email as follows:

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