

July 9, 2024

// A special meeting of the Council of the City of Lynchburg was held on the 9th day of July, 2024, at 2:00 p.m. in the Council Chamber, City Hall, Stephanie Reed, President, presiding. The following Members were present:

Present: Stephanie Reed, MaryJane Dolan, Jeff Helgeson, Martin Misjuns, Larry Taylor,

Sterling A. Wilder 6

Absent: Chris Faraldi 1

// Clerk of Council Alicia Finney read a letter from Vice Mayor Chris Faraldi into the record, which explained his recusal from the agenda items due to a potential conflict of interest. In the letter, Vice Mayor Faraldi requested a copy of the email be included in the official minutes:



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Alicia Finney
Clerk of Council
900 Church Street
Lynchburg, VA 24504

SENT VIA ELECTRONIC MAIL

Madam Clerk,

The special meeting called for today is clearly related to an active court proceeding of which I am a named participant in and closely involved with.

Therefore, with an abundance of caution and an overwhelming desire to avoid any perception of or an actual conflict of interest, I am compelled to excuse myself from the 2 o'clock meeting today and recuse myself for the matters presented in said agenda.

I do request this letter be included in the official record and you read it before any business is discussed.

Regards,

Chris Faraldi, M.A.
Ward IV Representative, Vice Mayor
Lynchburg City Council

cc: Stephanie Reed, Mayor of Lynchburg
cc: Wynter Benda, City Manager
cc: Matthew Freedman, City Attorney

Paid for & Authorized by Faraldi for Lynchburg

Not Printed at Taxpayer Expense

Phone: (434) 515-2167 | Email: hello@chrisfaraldi.com | Mail: P.O. Box 4803, Lynchburg, VA 24502

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Mayor Reed asked if Councilmember Misjuns would like to recuse himself from the discussion and votes today because he was also a named affiant in this same lawsuit.

Councilmember Misjuns replied no, he was not named in a capacity other than as a witness, so he could continue to execute his job on City Council in an objective manner.

Mayor Reed confirmed that there was consensus from Council to consider the following agenda items as a whole rather than individual items:

- Consideration of adopting Resolution #R-24-___ pledging our commitment as a governing body to comply with §2.2-3710 of the Code of Virginia, and to prohibit city staff from bypassing the deliberative process by the selective solicitation of votes, outside of meetings, away from the public eye.
- Consideration of adopting Resolution #R-24-___ to prohibit the expenditure of public funds controlled by the City of Lynchburg to provide legal representation, consultation, or support to City Council members for the defense of personal interests, including but limited to litigation assistance for political campaigns or political party nomination contests.
- Consideration of adopting Resolution #R-24-___ to formally request an opinion from the Virginia Office of Attorney General regarding the use of public funds to defend the personal interests of a political party candidate in a challenged nomination contest, and interpretation of how campaign finance law or other Virginia law restricts or allows the use of municipal attorneys to provide in-kind contributions in the form of legal consultation, litigation support, or defense of political campaigns or candidates.
- Consideration of adopting Resolution #R-24-___ directing the Office of the City Attorney for the City of Lynchburg to promote transparency and accountability in our election process by fully complying with requests for discovery in a timely manner and prohibiting the City of Lynchburg from taking an adversarial or obstructive position on valid requests

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for disclosure during contested challenges of political party nominations that are carried out by the City of Lynchburg's Electoral Board and Registrar's Office.

- Consideration of adopting Resolution #R-24-__ to waive attorney-client privilege on an email from City Attorney Matthew Freedman, on June 29, 2024, at 2:28:08 PM addressed to City Council, City Manager Wynter Benda, and Clerk of Council Alicia Finney with Subject Line "*Peter Alexander v. Chris Faraldi (election contest)*," to promote transparency and provide context to the public for the business conducted during this special called meeting.

David Levy, Chairman of the Lynchburg City Electoral Board, addressed Council. He provided information to Council regarding the operations and procedures of the General Registrar, the Electoral Board, and the Virginia Department of Elections in relation to the *Alexander v. Faraldi* lawsuit and the June 18, 2024 primary election. He clarified that the Electoral Board is not represented by counsel in the pending case; Daniel Pense, the Registrar, is now represented by counsel and is properly refraining from making any further comment until his deposition in the suit. He noted that the complaint in the lawsuit is based on an erroneous and mistaken understanding of the VERIS information system maintained by the state and not with the General Registrar's and Electoral Board's administration of the June 18, 2024 primary. He clarified that all of the 125 marked ballots of concern in the lawsuit were mailed or dropped in the Registrar's drop-box and were vetted by staff for compliance. All 125 voters specifically named in the affidavit are recorded in VERIS as having voted, their names also show up in the log kept by the Electoral Board, and the tabulation of the counts by the central absentee precinct confirmed that the votes were counted. He explained that the lawsuit will have no actual trial with evidence from the parties; there will be evidence taken from depositions. There is a three-judge panel that can broaden the suit, but the statute specifically states that no amendments will be done unless pursuant to rule of court, which is a distinct limitation. He clarified that the Electoral Board and the City of Lynchburg have a Memorandum of

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Understanding (MOU) that governs their relationship. The General Registrar and the Electoral Board are not requesting the City Attorney to represent them, and they are not requesting the City Council take a position on the election results. He reiterated that the Electoral Board stands by its certification of the votes for the June 18, 2024 primary election.

Mayor Reed asked what the result would be if the lawsuit were successful. Mr. Levy said that in that case, the judge would determine there was no candidate, and the local political party would have to determine who the candidate would be, likely decided per the rules of that party. He noted that this suit was brought to challenge the qualifications of a candidate and not to challenge whether the vote was wrong or right; that was usually done by the recount statute. However, they did not have the recount margin to call for a recount in this case.

Councilmember Taylor asked if the 125 ballots in question had been counted. Mr. Levy confirmed that was correct. Councilmember Taylor asked why it was being stated that they were not counted. Mr. Levy said that the lawsuit was suggesting that the ballots should have progressed from the pre-processed status to being marked on machine, while that in fact was not how the process worked. The lawsuit questioned where those 125 ballots are, but they had already been counted.

Councilmember Misjuns asked if the Mayor had previously discussed any potential questions asked at today's meeting with Mr. Levy; Mr. Levy replied no. Councilmember Misjuns asked if there was a vote from the Electoral Board to ask the City Attorney to represent the Electoral Board or Registrar in this litigation; Mr. Levy replied no. Councilmember Misjuns asked if the amendment to the MOU between the Electoral Board and the City had anything to do with the agreement for representation; Mr. Levy replied no. Councilmember Misjuns asked if the MOU required a written agreement for the City Attorney's Office to represent the Electoral Board; Mr. Levy said yes. Councilmember Misjuns asked if the Electoral Board had considered intervening in the lawsuit; Mr. Levy replied yes. Councilmember Misjuns asked if the Electoral

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Board had requested the City Attorney to enjoin or intervene on behalf of the Electoral Board; Mr. Levy replied no.

Mayor Reed asked if Mr. Levy could provide information regarding the state code referring to the Electoral Board as employees of the City. Mr. Levy said that he did not have the specific citation, but he could confirm that it is in the state code and is written in their MOU with the City. Mayor Reed asked if the Electoral Board and General Registrar are named in the lawsuit. Mr. Levy replied no; Daniel Pense had retained private counsel to file an appearance in the lawsuit in order to be heard by the judge. The judge had reached out with his initial notice of a hearing to include Mr. Pense in the lawsuit, but did not send such notification to the Electoral Board.

Councilmember Helgeson asked Mr. Levy if the City had asked the Electoral Board to be enjoined in any way with the case; Mr. Levy replied no. Councilmember Helgeson asked if there were any discussions with the Electoral Board regarding potential amendments to the MOU so the City could represent them as well. Mr. Levy said no; the Electoral Board members had held discussions among themselves when the lawsuit was filed about the fact that they were not requesting representation as an Electoral Board, and they discussed with Mr. Pense what he would do about representation. Councilmember Helgeson asked when Mr. Levy first heard about this litigation. Mr. Levy answered that he obtained a copy of the complaint on June 29, 2024. Councilmember Helgeson asked how he received the complaint. Mr. Levy replied that he received it from a news media representative who he believed had received it from Mr. Alexander's counsel. He noted that the lawsuit is public information.

City Attorney Matthew Freedman stated that he would like to take a moment to address the many statements made by Councilmembers Helgeson and Misjuns in the media regarding himself and the City. He clarified that the City is not representing Vice Mayor Faraldi in the pending *Alexander v. Faraldi* lawsuit. Councilmembers Helgeson and Misjuns are not attorneys, not qualified to speak on matters of law, and not in charge of the law business of the City. He

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noted that the City does have cognizable interest in the lawsuit because the result may potentially impact thousands of City voters and makes serious accusations of the operations of the General Registrar and Electoral Board. He stated that he does not think these matters that Councilmembers Helgeson and Misjuns have presented are worthy of consideration on this dais and that City Council, if it so chose, could indefinitely block consideration of these matters brought forward by Councilmembers Helgeson and Misjuns by motion.

Councilmember Dolan motioned, seconded by Councilmember Wilder, to block consideration of the agenda items indefinitely. Councilmember Dolan said that the reasons stated by the City Attorney spoke to why she would approve blocking these matters from consideration. Councilmember Wilder stated that there is currently a legal case regarding this matter; it would be resolved through the process of the courts and thus consideration by Council is unnecessary.

Councilmember Misjuns expressed concern that the City Attorney was unable to be an impartial party in this matter and that attorney-client privilege was being used to prevent pertinent information from being shared with the public. He emphasized that the City Attorney did not represent the Electoral Board and that the MOU should be followed as such. He stated that he would not support the motion because he wanted to ensure transparency of City business to the public. He noted that there could have been a special meeting to consider whether the City should intervene in the lawsuit and take a public vote on the matter, but that action had not been taken. Mr. Freedman clarified that attorney-client privileges were held by the Council as a body because the City is the client; Councilmembers Misjuns and Helgeson are not individual clients. The determination of whether the attorney-client privilege can be waived is the decision of the body, so there must be a majority vote to do so. He clarified that he answered to a majority of City Council and could not be directed by individual members of Council.

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Councilmember Helgeson asked if information could not be released unless a majority of Council agreed to do so; Mr. Freedman said that was correct. Councilmember Helgeson expressed concern that Mr. Freedman had violated attorney-client privilege by mentioning items in his statement that he had in an email he sent earlier in the week. Mr. Freedman clarified that while the subject matter may be similar, he did not provide any confidential information in his previous remarks. Councilmember Helgeson asked how Mr. Freedman first heard about this litigation. Mr. Freedman said that he would not divulge anything that would be confidential information, but as Mr. Levy said, these were public records. Councilmember Helgeson said that he would not be voting in favor of the resolution because he was concerned about the bypassing of the public deliberative process of Council.

Councilmember Dolan stated that the things mentioned by Mr. Freedman in his email and the statements he made today were items to substantiate state code and explain to Council why he took the position he did.

Mayor Reed stated that the City Attorney was not present at the previously called special meeting to explain the City's and his office's role in this matter. She clarified that many statements being made were misrepresentations on what the City Attorney had the right to enter in on behalf of Council as a whole and individually, and she encouraged the press to speak to the City Attorney to clarify this information. She emphasized that press conferences in the City Council chambers have been reserved for emergencies in order to communicate the significance of the information presented, which she would continue to uphold.

Mayor Reed called the vote to block consideration of the agenda items indefinitely.

Councilmember Misjuns appealed for a point of order; he stated that he was trying to motion to make a substitute motion.

Mr. Freedman asked if there was a desire from Council to consider anything other than the motion to block consideration of these matters indefinitely.

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Councilmember Helgeson stated that he would be in favor of a substitute motion to allow the consideration of some of the items such as following state law and having open meetings.

Councilmember Misjuns asked for a formal, recorded vote to be taken for the appeal of allowing a substitute motion to be made.

The following vote was recorded:

Ayes: Misjuns, Helgeson	2
Noes: Dolan, Taylor, Wilder, Reed	4
Absent: Faraldi	1

Mayor Reed called the vote to block consideration of the agenda items indefinitely. With no further discussion from the Council, the following vote was recorded:

Ayes: Dolan, Taylor, Wilder, Reed	4
Noes: Helgeson, Misjuns	2
Absent: Faraldi	1

// The meeting adjourned at 3:03 p.m.

Clerk of Council