

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

LINDA PARK *et al.*,

Petitioners,

v.

Record No. 200767

**RALPH S. NORTHAM,
in his official capacity as
Governor of Virginia, *et al.***

Respondents.

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*
AND FOR EXTENSION OF TIME TO FILE**

COMES NOW Liberty University, Inc. (“Liberty”), by and through the undersigned counsel, pursuant to Rules 5:4, 5:26(d), and 5:30(c) of the Supreme Court of Virginia and, for the reasons set forth below, respectfully moves the Court for leave to file its brief *amicus curiae* in support of the Petitioners, provisionally filed at the same time as this Motion, and for an extension of time to file the proposed brief *amicus curiae*. All Parties have been informed of Liberty’s intent to file this Motion. The Petitioners consent to the filing of this brief. The Respondent opposes the filing of this brief, and states that he does not intend to file any response unless directed to do so by the Court.

IDENTITY AND INTERESTS OF MOVANT

Located in Lynchburg, Virginia, Liberty is a Virginia non-profit corporation which operates one of the largest private universities in the country. Liberty enrolls students in 15 different colleges and schools, including undergraduate, graduate, and professional programs, with students coming from all 50 states and from over 80 countries. More than 15,000 of these students attend in-person at the Lynchburg campus, with more than half of those residing on campus. Liberty's facilities for instruction, residential life, health and wellness, and for extra-curricular activities related to its educational mission include more than 380 buildings, over 6.6 million square feet of indoor building space, and more than 200 classrooms. Liberty maintains 20 NCAA varsity sports programs and numerous clubs sports, and both indoor and outdoor facilities for these programs.

In addition to its indoor spaces used for academics and as residence halls, Liberty's campus includes restaurants, dining facilities, indoor athletic and event facilities, indoor recreation and fitness centers, a bowling center, an indoor "skate park," a full service firearm shooting range and club, spaces for religious worship and gathering, and numerous other indoor areas. All of these facilities, and their operations, are integral and important components of Liberty's programs, mission, and community. Liberty's athletic program includes an outdoor stadium with a capacity of 25,000, and an indoor arena with a capacity of nearly 10,000. All of

these facilities and the critical roles they play at Liberty have been and continue to be severely impacted by the Governor's Executive Orders regarding COVID-19 that are the subject of this case. Virtually all of the provisions in the Governor's orders affect some aspect of Liberty's operations. Virtually none of Liberty's operations remain untouched by the Governor's orders.

The harm suffered by Liberty is real, substantial, and particularized. As a direct result of the Governor's Executive Orders at issue in this case, Liberty was forced to severely curtail or shut down its dining facilities, recreational facilities, and limit gatherings at its campus, including halting in-person learning for its more than 15,000 resident students. These actions, forced by the Governor's Executive Orders, resulted in Liberty becoming the target of a class action lawsuit filed in federal court by its own residential students who complained of the severe curtailments and closures in meal service, recreational facilities, and in-person learning for which they had paid and expected from Liberty. *See* Complaint filed in *Student A et al. v. Liberty University, Inc.*, Case No. 6:20-CV-00023 (W.D. Va. 2020), attached hereto as Exhibit A.

As a direct result of the Governor's Executive Orders, Liberty has also been forced to cancel and refuse bookings for numerous weddings that would otherwise take place at its on-campus facilities, resulting in loss of revenue, just like the Petitioners. Liberty's facilities are also used for conventions and other educational

and commercial gatherings which have been cancelled and will continue to be cancelled, resulting in further loss of both revenue and educational opportunities for Liberty and its community. Given the size of Liberty's facilities, this harm still exists under both the current and former Executive Orders that restrict the size of gatherings.

ARGUMENT

The Court's decision on whether to decide the merits of this case, and any decision on the merits, would deeply impact the interests and operations of Liberty. Indeed, the Court's decision in this case will impact nearly every organization and person in the Commonwealth given the sheer scope of the challenged Executive Orders and the fundamental issues of executive power presented. The Governor's sweeping and ever-changing Executive Orders regarding COVID-19 have created still ongoing challenges to Liberty that are far too numerous to address completely in this Motion, but without question include all of those issues raised by the Petitioners. Like the Petitioners, Liberty has been and continues to be faced with debilitating restrictions and uncertainty on the operation of its restaurants and dining facilities, and its many spaces where people gather. The restrictions imposed by the Governor's actions render numerous aspects of the campus operations of Liberty University either impractical or impossible, and Liberty continues to suffer the same particularized harm as the Petitioners. Liberty submits

that, because of the harm similar to that of the Petitioners that it has suffered and continues to suffer, and the arguments within the proposed brief *amicus curiae* regarding matters of even broader importance, the Court's decision-making process would be aided by granting leave to file the proposed brief *amicus curiae*.

Liberty further requests that this Court grant it an extension, or otherwise grant it leave to file late, with respect to its brief *amicus curiae*. Liberty acknowledges that a plain and isolated reading of Rule 5:30(d) might otherwise govern the filing of its brief at this juncture. Yet due to the nature of an original action for mandamus relief, Liberty was not aware of the impending filing of the Verified Petition that initiated this case, at or before the time it was filed on June 9, 2020, and thus it had no opportunity to timely request leave to file a brief *amicus curiae*. Liberty subsequently became aware of and further evaluated the Verified Petition in this case following the issuance of this Court's Opinion dismissing the Verified Petition in the case of *Marrs v. Northam et al.* (Record No. 200573), and determined that it had a substantial interest in this case due to its suffering the same particular harm as the Petitioners.

Liberty believes that the arguments it is advancing in its amicus brief are highly relevant to the pending petition, not duplicative of arguments previously raised, and will be of assistance to the Court in reaching its decision. Given the substantial interest that Liberty has in this case, and the broader magnitude of this

case, Liberty respectfully requests that the Court grant it an extension of time to file its brief *amicus curiae*, and deem the provisionally filed brief *amicus curiae* to be timely filed.

Respectfully submitted,

LIBERTY UNIVERSITY, INC.

BY: /s/ Patrick M. McSweeney

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing complies with Rules 5:4, 5:6, 5:26 and 5:30, and further certifies that:

1. The *Amicus* is Liberty University, Inc. This brief *amicus curiae* is filed in support of Petitioners, who consent to its filing. Respondents oppose the filing of this brief *amicus curiae* and do not intend to file any response unless directed to do so by the Court.
2. Counsel for *Amicus* are:

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5. The Respondents are Hon. Ralph S. Northam, in his official capacity as Governor of Virginia and M. Norman Oliver, in his official capacity as State Health Commissioner.

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7. On this 13th day of July, the undersigned caused the foregoing to be electronically filed with the Supreme Court of Virginia via the VACES system, and to be served via electronic mail and first class mail on all counsel.

/s/ Patrick M. McSweeney
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