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July 6, 2021

**NOTE: Personalized versions of this letter were sent to the President and Board Chair of the following Public Colleges and Universities in Virginia:**

Christopher Newport University  
College of William & Mary  
George Mason University  
James Madison University  
Longwood University  
Old Dominion University  
Radford University  
University of Mary Washington  
University of Virginia  
Virginia Commonwealth University  
Virginia Military Institute  
Virginia Tech

Subject: Request for Reconsideration and Revocation of Mandate of COVID-19 Experimental Genetic Vaccine; and Request for Records Under Virginia Freedom of Information Act (FOIA)

This is our second letter to you, following up on our letter of June 17, 2021, on behalf of the following organizations:

1. [Center for Medical Freedom](#)
2. Health Freedom Virginia
3. Virginia Coalition for Medical Freedom
4. CNU Parent Covid-19 Mandate Concerns
5. University Parents for Informed Consent
6. Students for Medical Freedom
7. Virginia Tech Freedom of Choice
8. JMU Freedom of Choice Parents
9. [Virginia Freedom Keepers](#)
10. [The Virginia Project](#)
11. [America's Future](#)

12. Students for America<sup>1</sup>

These organizations represent thousands of parents and students from across the Commonwealth of Virginia who have come together due to your illegal and onerous mandates of an EUA-authorized vaccination in addition to weekly prevalence testing for those granted exemptions.

This letter explains our view as to why your institution is no longer protected by the Attorney General's Advisory Opinion issued April 26, 2021, even if you believe that it once provided that protection. It then renews and broadens our FOIA request for documents and provides you with new information about the dangerous nature of this experimental vaccine. We ask you to consider the following new information.

**I. THE ATTORNEY GENERAL'S ADVISORY OPINION IS NO LONGER OPERATIVE NOW THAT THE STATE OF EMERGENCY HAS EXPIRED.**

We have been advised that many colleges and universities implemented their mandatory vaccine policies in the belief that the [Advisory Opinion 21-030](#) issued by Attorney General Herring on April 26, 2021 provides them such authority.

The Attorney General's Advisory Opinion letter concluded that:

Virginia's state institutions of higher education ... may determine that in-person attendance ... presents a risk to students or others, and that it may condition attendance upon being vaccinated ... **during this time of pandemic** ... and our public colleges and universities should be prepared to provide **reasonable accommodations for medical condition and/or religious objections**.  
[Emphasis added.]

First, in four separate places (at 1, 2, and 3) the AG's letter references and seemingly authorizes colleges and universities to require "an approved COVID-19 vaccine." The AG must be presumed to have known that there was no FDA-approved COVID-19 vaccine as of the date of that letter April 26, 2021, and that fact remains true as of today. All that exists is an "Emergency Use Authorization," certainly not the same as an FDA approval.<sup>2</sup>

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<sup>1</sup> Similar letters were sent to 29 other Virginia Colleges or Universities as well.

<sup>2</sup> See [Emergency Use Authorization for Vaccines Explained](#), FDA (Nov. 20, 2020) ("An Emergency Use Authorization (EUA) is a mechanism to facilitate the availability and use of medical countermeasures, including vaccines, during public health emergencies, such as the current COVID-19 pandemic. Under an EUA, FDA may **allow the use of unapproved medical products** ... to diagnose, treat, or prevent serious or life-threatening diseases or

Second, the AG’s letter expressly limited its scope to requiring approved vaccines only “during the pandemic.” As of this date, there is no pandemic. Governor Northam’s declaration of emergency (Executive Order No. 51) of March 12, 2020, expired on June 30, 2021.

Moreover, it would be absurd for anyone to believe that there is currently a state of emergency. According to the Virginia Department of Health, the 7-day average of cases is 163 per day in Virginia, in a state of 8.5 million persons. That translates to a new daily infection rate of .0000192 (0.00192%). COVID-19 in Virginia: Cases, <https://www.vdh.virginia.gov/coronavirus/covid-19-in-virginia-cases/> (as of 6/27/21, visited 7/6/21).

The Attorney General’s Advisory Opinion stated that “[t]here is no question that the General Assembly” can require vaccine administration “as a valid exercise of the Commonwealth’s police powers,” and then further stated that the General Assembly “currently grants the Commissioner of Health” certain authority with respect to vaccines during “an epidemic of any disease of public health importance.” *See* Va. Code §§ 32.1-43, 32.1-48. However, neither of those authorities have mandated vaccines for college students. The Advisory Opinion never asserts that the General Assembly delegated such a power to the public boards of visitors, but only relies on the general authority of institutions to make rules for students. Since the General Assembly granted this power to mandate vaccines to some officials, but not to others, such a power should not be read into the general grant of power to colleges to make rules for students.

The Supreme Court of Virginia has held that “[w]hen a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way.”<sup>3</sup> The General Assembly expressly states the persons who are authorized to mandate the administration of vaccinations and the circumstances under which that authority may be exercised. Thus, since boards of visitors generally are not specifically authorized to mandate vaccinations, they cannot assume this power, which is specifically granted to other state officials.

The State of Arizona has a similar statutory structure to Virginia and takes the view that colleges and universities have no such inherent power. When Arizona colleges tried to impose a vaccine mandate, Arizona Governor Ducey issued Executive Order No. 2021-15 prohibiting

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conditions when certain statutory criteria have been met, including that there are no adequate, approved, and available alternatives.”) (Emphasis added.)

<sup>3</sup> Commonwealth v. Brown, 259 Va. 697, 705, 529 S.E.2d 96, 100 (2000) (quoting Grigg v. Commonwealth, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982) (explaining the maxim *expressio unius est exclusio alterius*)).

that state's colleges from requiring vaccinations. He explained that under that state's law, "only the Governor, in consultation with the Arizona Department of Health Services may issue orders that mandate vaccination of persons due to imminent threat of highly contagious disease and highly fatal disease." The protections of that Executive Order has now been enacted into law in Arizona. *See* 2021 Ariz. Sess. Laws Ch. 410, p. 3.

## II. INSTITUTIONS ARE NOT REQUIRING INFORMED CONSENT AND NOTIFICATION OF THE RIGHT TO REFUSE PRODUCTS AS REQUIRED UNDER EUAs.

Attorney General Herring's Advisory Opinion letter stated that there are no federal laws prohibiting public colleges and universities from imposing a vaccination requirement. However, he did not discuss the federal requirement that informed consent be obtained before administering a product under an EUA, and that under federal guidance, each person has the right to refuse such a vaccine. The FDA's Published Guidance document spells out how products that are under EUAs are to be administered:

[S]ection 564 does provide EUA conditions **to ensure that recipients are informed** about the MCM they receive under an EUA. For an unapproved product (section 564(e)(1)(A)(ii)) and for an unapproved use of an approved product (section 564(e)(2)(A)), the statute requires that FDA ensure that recipients are informed to the extent practicable given the applicable circumstances:

- That FDA has authorized emergency use of the product;
- Of the significant known and potential **benefits and risks** associated with the emergency use of the product, and of the extent to which such benefits and risks are unknown;
- That they have the **option to accept or refuse** the EUA product and of any consequences of refusing administration of the product; .... and
- Of any **available alternatives** to the product and of the risks and benefits of available alternatives. [FDA, "[Emergency Use Authorization of Medical Products and Related Authorities: Guidance for Industry and Other Stakeholders](#)," (January 2017) (emphasis added).]

Paradoxically, the CDC website "[COVID-19 Vaccine Toolkit for Institutions of Higher Education \(IHE\), Community Colleges, and Technical Schools](#)" (May 24, 2021) provides extensive information about how institutions can propagandize their students and staff to be vaccinated, but appears to provide minimal information about risks except to describe them to be minor and of short duration. *See* [Possible Side Effects After Getting a COVID-10 Vaccine](#) (June 24, 2021).

You must know that when students or staff of your institution go to get vaccinated, they normally are told almost nothing about risks. Since your institution is the mandating authority, it should ensure that students and staff have full disclosure of risks.

**FOIA REQUEST A: Under FOIA, we ask you to provide copies of all documents that are provided to students and staff to inform them of risks and benefits, the option to refuse, and alternatives that may exist.**

### **III. STUDENTS AND STAFF NEED TO KNOW THAT COLLEGE AND UNIVERSITY DECISION-MAKING IS NOT COMPROMISED.**

It is known that pharmaceutical companies, including those which are making billions of dollars from the vaccines, make grants and offer contracts to colleges and universities, generally for research. If your institution receives any funds from any pharmaceutical company, its decision-making could be compromised by those potential financial ties to the industry that your vaccine mandate is enriching.<sup>4</sup>

**FOIA REQUEST B: Under FOIA, we ask you to provide all documents that reflect grants and contracts that the University has received for the past five years, and all grants and contracts for which it is now being considered, including but not limited to vaccines and COVID-10, either directly or indirectly, from the following companies and government agencies:**

**Moderna, Inc.**  
**Janssen: Pharmaceutical Companies of Johnson & Johnson**  
**AstraZeneca**  
**Merck & Company**  
**Pfizer/BioNTech**  
**Centers for Disease Control and Prevention**  
**U.S. Food and Drug Administration**  
**U.S. National Institute of Allergy and Infectious Diseases**  
**National Institutes of Health**  
**U.S. Department of Health and Human Services**

### **IV. A MANDATORY VACCINE REQUIREMENT BY COLLEGES AND UNIVERSITIES VIOLATES VIRGINIA LAW.**

**Contracts of Adhesion.** Furthermore, to the extent that students have no negotiating power when it comes to the agreements they enter with the colleges, those agreements are

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<sup>4</sup> See J. Kollwe, "[From Pfizer to Moderna: who's making billions from COVID-19 vaccines?](#)" *The Guardian* (Mar. 6, 2021).

essentially contracts of adhesion. To the extent that they impose policies which deprive students of informed consent to receive the COVID-19 vaccinations or otherwise take away a student's choice in order to attend Virginia's public colleges, it is against public policy, and as such, should not be permitted to bind students that are subject to those abusive terms. *See, e.g., McIntosh v. Flint Hill School*, 100 Va. Cir. 32 (Fairfax Cir. 2018).

**Covenant of Good Faith and Fair Dealing.** Particularly when a student enters your institution based on the policies that were in existence at that time, it is a violation of the implied covenant of good faith and fair dealing to impose the requirement that such persons take an experimental vaccine.

**FOIA Request C: Under FOIA, we ask you to provide the documents on which your institution (including its President, medical officials, or boards) relied in adopting the policy mandating vaccines, including all background information distributed to your governing boards, and all questions raised and answers provided.**

## V. UNIVERSITY POLICY ON RELIGIOUS EXEMPTIONS.

Because this Commonwealth's universities and colleges are divisions of the state, any deprivation of a liberty or property interest committed by them is subject to due process. *See Board of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78 (1978). Thus, the student's liberty or property interest to make decisions affecting his or her own body is being affected by the COVID-19 vaccine mandate, where students have no right to have their objections heard and ruled upon. Reports have been made of students asserting a Religious Exemption — which the Attorney General's letter stated was required — but the institutions have denied those requests without a hearing. Thus, the public universities and colleges are violating students' due process rights. Moreover, the Government of Virginia has no right to second guess the religious views of its citizens. The Virginia Declaration of Rights states that matters of religion are between man and God, with the government having no role whatsoever:

That **religion, or the duty which we owe to our Creator**, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the **free exercise of religion, according to the dictates of conscience**; and that it is the mutual duty of all to practise Christian forbearance, love, and charity toward each other.  
[Emphasis added.]

**FOIA REQUEST D: Under FOIA, we request copies of your policies which govern how student medical and religious exemptions to your mandatory vaccination policy have been handled since January 2, 2021, and what due process rights are given to students, as well as records which show how**

**many such applications were received and their disposition during 2021, with identifying information appropriately redacted.**

## **VI. NEW INFORMATION ABOUT RISKS OF COVID-19 VACCINES.**

Since our last letter, there has been a flood of information detailing the risks to persons taking this vaccine. For example, on June 23, 2021, the Attorneys General of Louisiana, Montana, and Alabama wrote the CDC’s COVID-19 Vaccine Task Force, accusing the CDC of misleading the public about the risks of the vaccines and urging the CDC not to give final approval to the vaccines at this time. Furthermore, the letter urged the CDC “to immediately pause recommendation for use of these vaccines in healthy young adults and children pending further clinical studies on these relevant populations of young adults.”

Then, on June 25, 2021, the FDA issued the requirement that Moderna and Pfizer-BioNTech add a new [Black Box warning](#) to their vaccines. That warning reveals the increased risks of myocarditis (inflammation of the heart muscle) and pericarditis (inflammation of the tissue surrounding the heart). There is no question that the COVID-19 vaccine that you are mandating is killing people. The VAERS data, which is voluntarily reported, show over 6,000 deaths in the United States through June 18.

**We ask you: just how dangerous will this COVID-19 vaccine need to be shown to be before your institution will rescind its mandate?**

## **VII. ASSUMING THE CONSEQUENCES OF YOUR INSTITUTION’S VACCINE MANDATE.**

The CDC’s COVID-19 “[Guidance for Institutions of Higher Education \(IHEs\)](#)” urges colleges and universities to accept at least some responsibility for the adverse consequences of the vaccines that they are urging their students and staff to take:

- Offer flexible, supportive sick leave options (e.g., paid sick leave), in accordance with applicable laws and IHE policies, for employees with side effects after vaccination. See CDC’s post-vaccination Considerations for Workplaces.
- Offer flexible excused absence options for students receiving vaccination and those with side effects after vaccination.

Sick leave for staff and excused absences for students are rather minimal types of support for persons who are vaccine-injured due to your institutions’s policies. If your institutions truly believed that the vaccines are “safe and effective,” then it should have no problem accepting full financial responsibility for adverse effects. Have you made, or are you willing to make, that commitment to your students and staff?

**FOIA REQUEST E: Under FOIA, we request copies of any policies which provide sick leave for staff, excused absences for students, workers compensation insurance coverage, student health protection, medical expense reimbursement, pain and suffering compensation, or other financial or nonfinancial support for students and staff injured by the COVID-19 vaccine.**

### **VIII. FOIA FEE WAIVER REQUEST**

We ask, due to the importance of this matter and the public benefit from obtaining the information requested, that your institution waive the fees of providing the documents requested above. If not, we will authorize the payment of \$250 in search and copying fees. If possible, please provide these documents electronically.

### **CONCLUSION**

So long as your institution requires students and/or staff to use an experimental gene therapy for COVID-19, it assumes legal risk for the consequences of that decision. However, it also has moral responsibility for this decision. We again urge you to reconsider and rescind this mandate without delay.

Sincerely yours,

*/s/ Patrick M. McSweeney*

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