

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

Kaycee McCoy
Amherst, Virginia

An individual,

Plaintiff,

v.

Rector and Visitors of the
University of Virginia
Charlottesville, Virginia

and

University of Virginia Health System
Charlottesville, Virginia

Serve:

Attorney General Mark Herring
202 North Ninth Street
Richmond, VA 23219

Defendants.

CASE No: CL21-544

FILED
11/10/21 @ 1:20 pm
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Llezele A. Dugger, Clerk
By [Signature]
Deputy Clerk

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT, INJUNCTIVE RELIEF**

COMES NOW Plaintiff Kaycee McCoy (hereinafter "McCoy" or "plaintiff"), by counsel, and moves this Court for: (1) declaratory relief in the form of a finding that Defendants Rector and Board of Visitors of the University of Virginia and the University of Virginia Health System (hereinafter "University" or "Defendants") refusal to honor Plaintiff's Religious Exemption from the COVID-19 Vaccine violates Article I, Section 16 of the Constitution of Virginia; (2) issuance

Virginia, a resident of Amherst, Virginia, and an employee of University of Virginia Health System, who applied for a religious exemption under the University's vaccination policy and the University denied Plaintiff's application.

4. Defendant Rector and Board of Visitors of the University of Virginia govern the University of Virginia, which is a public institution of higher education as defined in Virginia Code section 23.1-100. Defendant University Health Systems is a component of the University.

JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to section 8.01-328.1(A)(1) of the Virginia Code because the University is transacting business in the Commonwealth, and pursuant to section 8.01-328.1(A)(3) of the Virginia Code because the University is causing tortious injury by its acts and omissions within the Commonwealth.

6. Venue is appropriate in this Court pursuant to section 8.01-261(15)(c) because the Plaintiff is seeking injunctive relief against the acts of the University which acts take place within this jurisdiction.

FACTUAL BACKGROUND

7. Plaintiff Kaycee McCoy is employed by the University of Virginia Health Systems, and was so employed at the time that the University adopted its COVID-19 vaccination policy. Plaintiff has worked for defendants since 2011.

8. The University imposed a mandate that all employees of Virginia Health Systems receive the injection described as a COVID-19 vaccine.

9. In a news release dated August 25, 2021, Defendants stated, "UVA Health will consider requests for exemptions to the vaccine policy for medical and religious reasons and

continues to work to answer any questions team members may have about the vaccines.” *See* Swensen, Eric, “UVA Health to Require COVID-19 Vaccination for Employees, Effective Nov. 1.”

10. Defendants directed all employees wishing to file an exemption to do so by September 13, 2021.

11. University employees who seek religious exemptions must apply online on the University’s “VaxTrax” system.

11. On September 12, 2021, Plaintiff timely filed her request for religious exemption with the University. A true and correct copy of Plaintiff’s application is attached hereto as Exhibit A.

12. Plaintiff also submitted a letter from the Rev, Nancy C. Johnson, the pastor of her church, Emmanuel United Methodist Church in Amherst, Virginia, attesting to the sincerity of Plaintiff’s beliefs. A copy of Johnson’s letter is attached hereto as Exhibit B.

13. On September 30, 2021, Plaintiff received an email from Defendants refusing her initial request for religious exemption. A copy of the refusal email is attached hereto as Exhibit C.

14. On October 4, 2021, Plaintiff sent an email asking why her exemption was denied, and requesting to submit additional supporting evidence for her exemption claim. A copy of Plaintiff’s email is attached hereto as Exhibit D. Defendants never responded with a justification for its denial.

15. From that point on, Plaintiff’s status on Defendants’ VaxTrax system registered as “pending.”

16. On October 14, 2021, Plaintiff received an email from Defendants stating that all decisions of the “vaccine religious exemption committee” were final, and that no appeal process would be allowed. The email stated that after November 1, 2021, any employees not in “compliance” would be subject to adverse employment action, including termination. A copy of that email is attached hereto as Exhibit E.

17. Plaintiff was on vacation during the first week of November 2021.

18. On November 9, 2021, Plaintiff came in to work as usual. She was told to report to the office of a supervisor for a meeting at 1:00 p.m.

19. At the meeting, Plaintiff was told that her religious exemption request had been denied, that she was suspended effective immediately, and that she would be terminated in five days.

20. After being suspended and notified that she would be terminated, at 3:30 p.m. on November 9, 2021, Plaintiff finally received an email from Defendants’ VaxTrax system stating that her religious exemption request had in fact been denied. A copy of the denial email is attached hereto as Exhibit F.

21. Defendants have refused to provide Plaintiff any reason as to why her request was denied, what hardship her exemption would impose upon Defendants, or why Defendants claimed that no reasonable accommodation could be made for Plaintiff’s religious beliefs.

22. The University’s vaccination mandate is set forth on its website. The mandate entitled “UVA Health to require COVID-19 Vaccination for Team Members Effective Nov. 1,” reads as follows:

At UVA Health, we ... will now require all team members without

a religious or medical exemption to be vaccinated against COVID-19 by November 1, 2021. Any team member not meeting the vaccination requirement deadline will be subject to disciplinary action *up to and including termination*. [Emphasis added.]
[\[https://hr.virginia.edu/news/uva-health-covid-19-vaccination-requirement.\]](https://hr.virginia.edu/news/uva-health-covid-19-vaccination-requirement)

A copy of the mandate is attached hereto as Exhibit G.

23. Defendants' mandatory vaccination Policy SEC-045, which applies to "UVA faculty and staff" states:

All full-time and part-time UVA faculty and staff, including those working remotely, must have received their final vaccination dose by January 4, 2022, unless they have a University-approved medical or religious exemption. Faculty and staff with approved medical or religious exemptions will be subject to mandatory saliva PCR testing once each week or as otherwise directed by the University.
[\[https://uvapolicy.virginia.edu/policy/SEC-045\]](https://uvapolicy.virginia.edu/policy/SEC-045)

A true and accurate copy of Policy SEC-045 is attached as Exhibit H.

25. In promulgating its vaccine policy, the University relies heavily on an opinion issued by the Virginia Attorney General, Mark R. Herring, issued on April 26, 2021. A copy of Virginia Attorney General Mark R. Herring, Advisory Opinion to Delegate Mark L. Keam dated April 26, 2021 ("Herring Opinion") is attached hereto as Exhibit I.

26. Under the heading, "Rationale for Policy Requirement" the University provides the following:

Can the University mandate vaccines that are currently only subject to Emergency Use Authorizations? Yes. The Virginia Attorney General issued an official opinion that Virginia colleges and universities "may condition in-person attendance on receipt of an approved COVID-19 vaccine" during the time of pandemic to keep their students, faculty, staff, and surrounding communities safe and healthy. As the AG opinion noted, no federal law bars Virginia institutions of higher education from mandating the COVID-19 vaccine. Additionally, the Equal Employment

Opportunity Commission (EEOC) has provided guidance that employers may mandate the COVID-19 vaccine even though it is only under an Emergency Use Authorization (EUA).

[\[https://coronavirus.virginia.edu/vaccinations.\]](https://coronavirus.virginia.edu/vaccinations.)

A copy of the University's Policy Rationale is attached hereto as Exhibit J.

27. In that opinion, Attorney General Herring presents the question to which he is responding as:

[W]hether Virginia's public institutions of higher education, as specified in Title 23.1 of the Code of Virginia, may condition in-person attendance on receipt of an approved COVID-19 vaccine during this time of pandemic. [Herring Opinion at 1.]

28. In that opinion, Attorney General Herring advises that Virginia institutions of higher education "may condition attendance upon being vaccinated." Herring Opinion at p. 4. 29.

The Herring Opinion contains a specific caveat related to religious exemptions, which admonition is stated as:

While it is my belief that our public colleges and universities may condition in-person attendance on receipt of an approved COVID-19 vaccine during this time of pandemic, it is not without complication and our public colleges and universities should be prepared to provide **reasonable accommodation** for medical conditions and / or **religious objections**. [Herring Opinion (emphasis added)].

30. On August 23, 2021, the FDA approved BioNTech Mfg. GmbH to manufacture its COVID-19 Vaccine mRNA to be distributed under the name "Comirnaty." See FDA Biologics License Application Approval dated August 23, 2021, p.1, and attached hereto as Exhibit K ("FDA Comirnaty Approval").

31. Despite this approval, Comirnaty does not yet possess final labeling or packaging approval from the FDA. *Id.* at p. 3.

32. Comirnaty is not currently available and it is not known when Comirnaty will be available to the general public.

33. The Pfizer-BioNTech Covid-19 mRNA Vaccine (“Pfizer Vaccine”) remains subject to the restrictions set forth in the FDA’s Emergency Use Authorization (EUA) originally issued on December 11, 2020 and revised and re-issued on August 23, 2021. See FDA’s revised and reissued EUA for the Pfizer Vaccine dated August 23, 2021, pp 1-2, attached hereto as Exhibit L (“FDA Pfizer EUA”).

34. The FDA Pfizer EUA is specifically caveated to note the unavailability of Comirnaty and the continued use of the Pfizer Vaccine due to supply issues. *Id.* at n. 9 (“Although COMIRNATY (COVID-19 Vaccine, mRNA) is approved to prevent COVID-19 in individuals 16 years of age and older, there is not sufficient approved vaccine available for distribution to this population in its entirety at the time of reissuance of this EUA....” (emphasis added)).

35. The Pfizer Vaccine, as well as the alternative vaccines offered by Moderna and Johnson and Johnson, remain subject to the restrictions set out in their respective EUAs. 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 conditions when certain statutory criteria have been met, including that there are no adequate, approved, and available alternatives.”) (emphasis added).

36. Governor Northam’s declaration of emergency (Executive Order No. 51) of March

12, 2020, which is relied upon in footnote 1 of the Herring Opinion, expired on June 30, 2021.

37. On October 15, 2021, and again on November 1, 2021, Counsel for Plaintiff contacted ss on two occasions via letter requesting that Defendant refrain from taking any action with respect to Plaintiff's employment until her religious exemption was acknowledged and, further presenting Defendants with the legal and factual information supporting Plaintiff's religious exemption. Defendants declined to respond to those letters. Copies of those letters are attached hereto as Exhibits M and N.

COUNT I

VIOLATION OF THE RIGHT OF FREE EXERCISE OF RELIGION GUARANTEED UNDER ARTICLE I, SECTION 16 OF THE VIRGINIA CONSTITUTION

38. Paragraphs 1 through 37 are realleged and incorporated herein.

39. Article I, Section 16 of the Virginia Constitution protects the "free exercise of religion":

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 practice Christian forbearance, love, and charity towards each other. **No man** shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor **shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief**; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district

within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.. [Emphasis added.]

40. The Virginia Supreme Court has set out the different texts of the “free exercise” provisions in Article I, Section 16 of the Virginia Constitution and the First Amendment of the U.S. Constitution, but it does not appear to have distinguished between the free exercise clauses in these constitutions. *See Bowie v. Murphy*, 271 Va. 126, 133, 624 S.E.2d 74 (2006). However, the protection afforded the free exercise of religion by Article I, Section 16 can be viewed to be more robust than the protection afforded under the First Amendment. As Professor A.E. Dick Howard has explained:

state courts are free to give stricter readings to the religion clauses of state constitutions than might be required even under the First Amendment. So many of the milestones of religious liberty, such as Jefferson’s Bill for Religious Liberties and Madison’s Memorial and Remonstrance, have sprung from Virginian sources that it is not surprising if the Virginia courts see Virginia’s religious guarantees as having a vitality independent of the Federal Constitution. [A.E. Dick Howard, Commentaries on the Constitution of Virginia (Univ. Press of Virginia: 1974) at 303 (emphasis added).]

41. In *Reid v. Gholson*, the Virginia Supreme Court stated:

The constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been more scrupulously observed. [*Id.*, 229 Va. 179, 187 (1985).]

42. Therefore, a proper understanding of Article I, Section 16 must be based on a view of the text and its history. and tradition of the Virginia Constitution, rather than simply seeking

guidance from federal cases analyzing the First Amendment's free exercise guarantee.

43. The protection of the free exercise of religion described in Thomas Jefferson's Statute of Religious Liberties, and James Madison's Memorial and Remonstrance, were rooted not in the Enlightenment, but rather in the recognition of a separate civil and ecclesiastical jurisdiction during the late Middle Ages and the Protestant Reformation. *See* Wilken, Liberty and the Things of God.

44. The Original 1776 Text of the Statute of Religious Liberties separated the civil and religious jurisdictions. Those duties "Which We Owe to Our Creator, and the Manner of Discharging [Them] Can Be Directed Only by Reason and Conviction," were expressly defined to constitute "religion." Those duties owed to the state are enforceable by "Force" or "Violence."

45. In ancient Israel, the jurisdictional division between the authority of the state and the authority of the church was well established in Holy Writ. *See, e.g.*, I Samuel 13 (King Saul was admonished by the Prophet Samuel for offering a religious sacrifice); II Chronicles 19:11 (Jehu counseled King Jehoshaphat "And, behold, Amariah the chief priest is over you in all matters of the Lord; and Zebadiah the son of Ishmael, the ruler of the house of Judah, for all the king's matters: also the Levites shall be officers before you. Deal courageously, and the Lord shall be with the good."); II Chronicles 26 (King Uzziah was admonished by Azariah the priest for trespassing in the temple to burn incense, and judged with leprosy).

46. The jurisdictional division between the authority of the state and the authority of the church is well established in the New Testament. Matthew 28:19-20 (Great Commission); Mark 12:17 ("And Jesus answering said unto them, Render to Caesar the things that are Caesar's, and to God the things that are God's. And they marvelled at him.")

46. In an 1877 speech entitled, “The History of Freedom in Antiquity,” Lord Acton cited the words of Jesus in Mark 12:17 as both: (i) imposing the first limits on the powers of the state, and (ii) birthing of the freedom of individuals:

... when Christ said: “Render unto Caesar the things that are Caesar’s, and unto God the things that are God’s” ... gave to the civil power, under the protection of **conscience**, a sacredness it had never enjoyed, and **bounds** it had never acknowledged; and they were the repudiation of absolutism and the **inauguration of freedom**. For our Lord not only delivered the precept, but created the force to execute it.... [Lord Acton, “The History of Freedom in Antiquity: An Address Delivered to the Members of the Bridgnorth Institute,” Acton Institute (Feb. 26, 1877) (emphasis added).]

47. The history of the early church in the New Testament also confirms that authority of individuals to resist orders of the state that exceed the state’s jurisdiction. *See generally* Acts 4:19 (“Whether it be right in the sight of God to hearken unto you more than unto God, judge ye.”) Acts 5:29 (“Then Peter and the other apostles answered and said, We ought to obey God rather than men.”).

48. As Professor A.E. Dick Howard explained the development of the Virginia Declaration of Rights in his Commentaries on the Constitution of Virginia:

George Mason’s original draft stated ... “that all Men should enjoy the fullest Toleration in the Exercise of Religion according to the Dictates of Conscience....” [citation omitted.] The emphasis on toleration ... could be taken to mean only a limited form of religious liberty: toleration of dissenters in a state where there was an established church. James Madison thought that stronger language was needed and drafted a substitute declaring that “all men are equally entitled to the full and free exercise” of religion... Madison’s draft, **substituting the language of entitlement for toleration** sounded more of a **natural right** than did Mason’s version. [A.E. Dick Howard, Commentaries on the Constitution of Virginia (Univ. Press of Virginia: 1974) at 290 (emphasis added).]

49. Section 16 of the Virginia Declaration of Rights, as adopted by Virginia constitutional Convention (June 12, 1776), as modified by James Madison, clearly recognized this jurisdictional division:

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.]

50. Thus, the Virginia Bill of Rights was fundamentally different than other state constitutions, such as the Massachusetts Constitution of 1780 crafted by John Adams.

51. Professor Robert Louis Wilken explains that religious freedom is more robust than mere religious toleration.

Toleration is forbearance of that which is not approved, a political policy of restraint toward those whose beliefs and practices are objectionable. [R]eligious freedom, or liberty of conscience, [is] a natural right that belongs to all human beings, not an accommodation granted by ruling authorities. [R.L. Wilken at 5.]

52. Section 16 of the Virginia Declaration of Rights now appears as the first portion of Article I, Section 16, of The Virginia Constitution:

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 practice Christian forbearance, love, and charity towards each other contract as he shall please. [Emphasis added.]

53. Less than a month later, on July 4, 1776, the Declaration of Independence reaffirmed these truths (July 4, 1776).

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, **Liberty and the pursuit of Happiness**.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.... [Emphasis added.]

(Plaintiff is not basing her claim on the Declaration of Independence, and includes it here only for a full historical presentation.)

54. James Madison's Memorial and Remonstrance Against Religious Assessments

(June 20, 1785) reiterated the jurisdictional limitation on the state:

Because we hold it for a fundamental and undeniable truth, "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**." **The Religion then of every man must be left to the conviction and conscience of every man**; and it is the right of every man to exercise it as these may dictate. This right is in its nature an **unalienable right**. It is unalienable, because **the opinions of men**, depending only on the evidence contemplated by their own minds **cannot follow the dictates of other men**: It is unalienable also, because what is here a right towards men, is a **duty towards the Creator**. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is **precedent**, both in order of time and in degree of obligation, **to the claims of Civil Society**. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. **We maintain therefore that in matters of Religion, no mans right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance**. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority. [Emphasis added.]

55. Thomas Jefferson's Virginia Statute for Establishing Religious Freedom (January 19, 1786) embraced the same distinction:

Whereas, **Almighty God hath created the mind free**; that all attempts to influence it by **temporal punishments or burthens**, or by **civil incapacitations** tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being Lord, both of body and mind yet chose not to propagate it by coercions on either, as was in his Almighty power to do, that the **impious presumption of legislators and rulers, civil as well as ecclesiastical**, who, being themselves but **fallible and uninspired men** have assumed dominion over the faith of others, **setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others**, hath established and maintained false religions over the greatest part of the world and through all time; that **to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical**; that even the forcing him to support this or that teacher of his own religious persuasion is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the Ministry those temporary rewards, which, proceeding from an approbation of their personal conduct are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry, that therefore the proscribing any citizen as unworthy the public confidence, by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages, to which, in common with his fellow citizens, he has a natural right, that it tends only to corrupt the principles of that very Religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments those who will externally profess and conform to it; that though indeed, these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that **to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous**

fallacy which at once destroys all religious liberty because he being of course judge of that tendency will make his opinions the rule of judgment and approve or condemn the sentiments of others only as they shall square with or differ from his own; that **it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order**; and finally, that Truth is great, and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.... [Emphasis added.]

56. The First Amendment to the U.S. Constitution, ratified in 1791, provides:

Congress shall make no law respecting an establishment of **religion**, or prohibiting the **free exercise** thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [Emphasis added.]

(Plaintiff is not basing her claim on the First Amendment of the U.S. Constitution, and includes it here only for a full historical presentation.)

57. Although the Virginia Supreme Court has not yet been asked to recognize and honor the jurisdictional principle on which Article I, Section 16 is based, to constrain the state's power over colleges and universities, that Court has repeatedly and faithfully recognized that jurisdictional principle in other contexts.

58. In *Reid v. Gholson*, the Virginia Supreme Court explained:

The constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been more scrupulously observed. These principles **prohibit the civil courts from resolving ecclesiastical disputes** which depend upon inquiry into questions of faith or doctrine." [*Id.*, 229 Va. 179, 187, 327 S.E. 2d 107 (1985).]

59. In *Cha v. Korean Presbyterian Church*, the Virginia Supreme Court ruled:

It is well established that a civil court may neither interfere in matters of **church governance** nor in **matters of faith and doctrine....**

It has thus become established that the decisions of religious entities about the **appointment and removal of ministers and persons** in other positions of similar theological significance are **beyond the ken** of civil courts. Rather, such courts must defer to the decisions of religious organizations ‘on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law.’

Indeed, most courts that have considered the question whether the **Free Exercise Clause divests a civil court of subject matter jurisdiction** to consider a pastor’s defamation claims against a church and its officials have answered that question in the affirmative. [*Id.*, 262 Va. 604, 611-12, 615, 553 S.E.2d 511, 513-515 (2001) (citation omitted) (emphasis added).]

60. Most recently, in *Bowie v. Murphy*, the Virginia Supreme Court described the “free exercise” jurisdictional principle, as follows:

courts **lack subject matter jurisdiction** to resolve issues of **church governance** and disputes over **religious doctrine**. This prohibition arises from the religion clauses of the Constitution of the United States and the Constitution of Virginia. [*Id.*, 271 Va. 126, 133, 624 S.E. 2d 74 (2006).]

61. In *District of Columbia v. Heller*, Justice Scalia set out the rule by which all constitutional provisions — including state constitutional provisions — should be understood:

The very enumeration of the right takes out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all. **Constitutional rights are enshrined with the scope they were understood to have when the people adopted them**, whether or not future legislatures or (yes) even future judges think that scope too broad. [*District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008) (emphasis added).]

62. The “free exercise” clauses in other state constitutions do not have the same text,

history, and tradition, possibly leaving the matter in some doubt in those states, but it is unmistakable that in Virginia, the government's role is not limited by a duty to "tolerate" the exercise of religion, or to regulate it, but rather the Commonwealth of Virginia has no jurisdiction whatsoever over the "free exercise" of religion due to Article I, Section 16.

63. While the Attorney General and defendants may believe that the enhancement of "public health" vests in public colleges authority over students, that view cannot conflict with the religious liberties of students who understand that the COVID-19 vaccine intrudes into the area of health and healing.

64. Indeed, there is more support for the principle that healing falls under the authority of the Church, rather than the authority of the State. *See, e.g.*, James 5:14-15 (Is any sick among you? let him call for the elders of the church; and let them pray over him, anointing him with oil in the name of the Lord. And the prayer of faith shall save the sick, and the Lord shall raise him up; and if he have committed sins, they shall be forgiven him.) *See also*, Leviticus 14:1-7.

65. Likewise in the Old Testament, the text argues strongly that jurisdiction over medical issues was given to the ecclesiastical authorities, not the civil authorities.

66. The Mosaic law had prescriptions for quarantine for sufferers of highly infectious and generally incurable diseases such as leprosy. But the quarantines were enforced by the priests, the religious leaders, not the civil government. It was left to the priests to diagnose symptoms and declare rare cases to be cured.

67. Leviticus 13 imposes a quarantine for victims of leprosy. "He is a leprous man, he is unclean: the priest shall pronounce him utterly unclean.... All the days wherein the plague shall

be in him he shall be defiled; he is unclean: he shall dwell alone; without the camp shall his habitation be.” Lev. 13:44, 46.

68. Tellingly, the text lays out a voluminous set of tests the priest must conduct to determine a victim to be infected, before quarantine could be enforced. There was no quarantine for healthy citizens.

69. The following chapter lays out the responsibilities of the priests to pronounce victims cured. “And the priest shall go forth out of the camp; and the priest shall look, and, behold, if the plague of leprosy be healed in the leper ... he shall sprinkle upon him that is to be cleansed from the leprosy seven times, and shall pronounce him clean....” Lev. 13: 3, 7.

70. Numbers 31 lays out a brief quarantine for returning soldiers who might have been exposed to infectious diseases from dead bodies on the battlefield. “And do ye abide without the camp seven days: whosoever hath killed any person, and whosoever hath touched any slain ... And ye shall wash your clothes on the seventh day, and ye shall be clean, and afterward ye shall come into the camp.” Num. 31:19-24.

71. But there is no enforcement power given to civil authorities to enforce the quarantine. Nowhere in Scripture is the civil government given jurisdiction over public health.

72. However, the COVID-19 vaccine raises serious issues not present with other vaccines that make them particularly fall under the protection of the “Free Exercise of Religion.”

73. All COVID-19 vaccines are based on experimental gene therapy. Prior to the COVID-19 vaccine, all vaccines employed weakened (attenuated) or dead pathogens (e.g., viruses) to trigger an immune response that could later fend off an exposure to the live virus, except for the hepatitis B vaccine which is produced from a recombinant surface antigen of that

virus. The three COVID-19 vaccines approved for emergency use in the United States (Johnson & Johnson, Moderna, and Pfizer) use experimental gene therapy --- outside of the traditional definition of a vaccine. Indeed, the definition of vaccine has now been supplemented to include gene therapy, to afford vaccine manufacturers protection from liability and to facilitate the imposition of this novel, untested medical intervention on the people.

74. These vaccines use a totally new and exotic technology that utilizes cutting edge nanotechnology to introduce into our bodies lipid platforms (i.e., “lipid nanoparticles”) or virus-delivery systems (e.g., adenovirus, as is the case with the Johnson & Johnson vaccine) for the purpose of bypassing the innate immune systems that God gave us by way of genetic instructions to produce the SARS CoV-2 spike protein to gain entry into the recipient’s nucleus and therein alter the DNA. The mRNA vaccines can permanently alter our inherently fixed and stable human genetic code in such a way that these changes are irrevocable and produce lasting harm to potentially every cell in the body. From the published and peer-reviewed scientific data published thus far, it can be concluded the vaccines will inflict widespread damage to many of those who receive them.

75. These COVID-19 vaccines seek to alter God’s creation. The Holy Bible teaches: God created man in his own image: in the image of God, he created them male and female. *Genesis* 1:26-27. God created every “kind” to procreate after its own “kind.” *Genesis* 1:11, 12, 21, 24, 25. He specifically proscribes the mixing of kinds. *Leviticus* 19:19; *Deuteronomy* 22:9.

76. All COVID-19 vaccines use aborted fetal cell lines at some stage of their design, testing, development, or manufacture. the Institute for Clinical Systems Improvement (ICSI) in Bloomington, Minnesota states:

mRNA COVID-19 vaccines do not contain any aborted fetal cells. Fetal cell lines are not the same as fetal tissue. Fetal cell lines are cells that grow in a laboratory. They descend from cells taken from elective abortions in the 1970s and 1980s. Those individual cells from the 1970s and 1980s have since multiplied into many new cells over the past four or five decades, creating fetal cell lines. Current fetal cell lines are thousands of generations removed from the original fetal tissue.

In the Pfizer-BioNTech and Moderna vaccines, no fetal cell lines were used to produce or manufacture the vaccine, and they are not inside the injection you receive from your doctor/nurse. Fetal cells may have been used to test efficacy and/or proof of concept (see sources below).

The Johnson and Johnson vaccine did use fetal cell cultures, specifically PER.C6 (a retinal cell line that was isolated from a terminated fetus in 1985), in order to produce and manufacture the vaccine.

77. Use of vaccines based in any way on aborted fetal cell lines violates fundamental Biblical imperatives. “Before I formed you in the womb I knew you.” Jeremiah 1:5 (NASB). The thinly veiled excuse that the fetal cells that once belonged to the body of a soul that came from and belongs to God cannot disguise the human blood that stains the creation of SARS CoV-2 in the Wuhan Institute of Virology, research that was supported with the help and funding of the National Institutes of Health and major academic institutions. Without abortions there would be no fetal tissue, no fetal cell lines, through gain of function studies of the bioengineered SARS CoV-2 virus in “humanized mice,” and no COVID pandemic. Abortion and its manufactured byproducts are integral to the development of vaccines and their manufacture.

78. Accordingly, Plaintiff cannot in good conscience receive the mandated injection

based on her sincerely held religious belief, and defendants cannot command her to receive this injection in a matter that is outside the authority of the Commonwealth and its subsidiary entities.

COUNT II

DEFENDANTS' RETALIATION AGAINST PLAINTIFF WAS ARBITRARY AND CAPRICIOUS AND SHOULD BE ENJOINED

79. Paragraphs 1 through 78 are realleged and incorporated herein.

80. Actions of an administrative agency such as a state university are reviewable for abuse of discretion if the agency acts arbitrarily and capriciously.

81. The Virginia Court of Appeals has explained in *Loudoun Hosp. Ctr. v. Stroube*, 50 Va. App. 478, 491 (Va. Ct. App. 2007):

Where ... the issue concerns an agency decision based on the proper application of its expert discretion, the reviewing court will not substitute its own independent judgment for that of the agency but rather will reverse the agency decision only if that decision was arbitrary and capricious. [I]n reviewing an agency decision, the courts are required to consider the experience and specialized competence of the agency and the purposes of the basic law under which the agency acted.

82. On information and belief, the University of Virginia, of which University Health System is a part, has granted most religious exemption requests of students who have sought to opt out of the injection and yet remain enrolled as on-campus students.

83. Yet Plaintiff, who in all significant respects is similarly situated to students, has been informed by Defendants that her exemption was rejected and that she is being terminated shortly.

84. There is no objective reason for the University of Virginia to deny the religious exemption of Plaintiff, an employee, while granting the religious exemptions of students.

85. If the purpose of mandates is to prevent the spread of the coronavirus, Defendant's mandate is arbitrary and capricious, due to the pervasive evidence that both vaccinated and unvaccinated individuals can spread the virus.

86. "Actions are defined as arbitrary and capricious when they are 'willful and unreasonable' and taken 'without consideration or in disregard of facts or law or without determining principle.' Black's Law Dictionary 105 (6th ed. 1990)." *Loudoun Hosp. Ctr.*, 50 Va. App. at 504-05.

87. Plaintiff is 35 years old, and has no significant health conditions known to make her more susceptible to COVID infection. Most students range from 18-24 years old. It is widely known that older people and people with respiratory problems may be more susceptible to COVID infection. However, none of those risk factors apply to Plaintiff. 88. "An 'arbitrary and capricious' decision was defined in *State Board of Health v. Godfrey*, 223 Va. 423, 433-4, 290 S.E.2d 875 (1982), as 'one made through abuse of discretion, bad faith, unfairness or one tainted by unfair prejudice or animosity.'" *Sweeny v. Commonwealth*, 11 Va. Cir. 274, 1988 Va. Cir. LEXIS 23 *2 (Richmond Cir. Ct. 1988).

89. There is no conceivable determining principle whereby Defendants could, while granting most or all student requests for religious exemption, question the sincerity of Plaintiff's sincerely held religious beliefs or deny Plaintiff's well-documented request.¹ Her Religious Exemption was even supported by a letter from her pastor.

¹ See also *Sch. Bd. v. Wescott*, 254 Va. 218, 224 (1997). The Supreme Court found that a school board's termination of an employee was *not* arbitrary and capricious because (unlike in the case at bar) there was no evidence that the plaintiff was subjected to a different standard than other employees.

90. As to employees, where a system for obtaining religious exemptions was established, if all exemptions were denied, the system would be a meaningless exercise, and if some exemptions were denied, there would be no reason to reject plaintiffs' exemption.

91. In addition, Defendants have refused, despite Plaintiff's request, to provide any rationale for its decision to terminate her or identified the standards by which such determinations are made, or by whom they are made. Despite two letters sent by counsel for Plaintiff dated October 15, 2021 and November 1, 2021, Defendant elected not to provide Plaintiff with any response nor any rationale for their decision to deny her religious exemption. *See Exhibits M and N.*

92. "An arbitrary or capricious decision is subject to many definitions throughout the law but the central theme running through all of them is that it is a decision made by an administrative agency without any reasons being given for its decision or without any facts upon which to make its decision." *Keefer v. City of Virginia Beach Dep't of Soc. Servs.*, 6 Va. Cir. 256, 1985 Va. Cir. LEXIS 132 *3 (Virginia Beach Cir. Ct. 1985).

93. Accordingly, Plaintiff has rebutted the presumption of regularity that normally attends agency action, and has shown that Defendants' retaliatory actions against her were arbitrary and capricious.

94. This Court should review and reject Defendants' arbitrary action and enjoin Defendants from taking adverse employment action against Plaintiff.

RELIEF SOUGHT

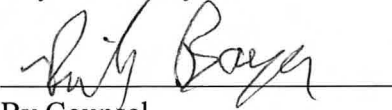
WHEREFORE, Plaintiff Kaycee McCoy requests relief against Defendants as follows:

- A. A declaration that Defendants have violated the rights of Plaintiff guaranteed under Section 16 of the Virginia Constitution through the imposition of burdensome and coercive restrictions on the Plaintiff's free exercise of religion through its vaccination mandate, and for such other relief as the Court deems proper and just.
- B. A temporary and permanent injunction forbidding Defendants from either requiring Plaintiff to receive medical treatment that offends her religious beliefs, and from taking adverse employment action against Plaintiff for the exercise of her religious beliefs and, should Defendants take adverse employment action against Plaintiff before this Court can rule on Plaintiff's request, an order reinstating Plaintiff to her position with full back pay and benefits.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable.

Kaycee McCoy


By Counsel

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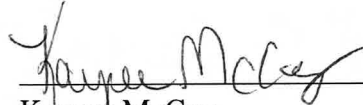
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Attorneys for Plaintiff Kaycee McCoy

VERIFICATION


I, being of adult age and a resident of the Commonwealth of, do hereby verify the factual allegations contained in the foregoing Verified Complaint as true and accurate based on my personal knowledge, information and belief.


Kaycee McCoy

State of Virginia

City/County of Amhurst

On this the 10th day of November, 2021, the individual Kaycee McCoy appeared before me and in my presence acknowledged this instrument as her statement of fact based as stated above.


Notary Public

My Commission Expires: May 31 ²⁰²⁵ ~~2021~~ CAM

