

INTRODUCTION

Plaintiff has filed a complaint seeking a declaratory judgment and injunctive relief, barring Defendants from terminating Plaintiff or taking adverse employment action against her, in response and retaliation for her opting not to agree to invasive medical treatment that would offend her deeply held religious beliefs — a COVID-19 vaccination — in violation of Article I, Section 16 of the Virginia Constitution

BACKGROUND

Plaintiff Kaycee McCoy is a 10-year employee in good standing of Defendant University of Virginia Health System (“the University”). In August, 2021, the University ordered all employees to receive injections against the COVID-19 vaccination. Failure to comply would lead to discipline, up to and including termination.

Plaintiff, a devout Christian and a Methodist, filed her application for a religious exemption to the injection requirement via the University’s VaxTrax system on September 12, 2021. The application outlined Plaintiff’s comprehensive scriptural objections based on her understanding of the Bible, and was accompanied by a letter from Plaintiff’s minister, the Rev. Nancy C. Johnson, attesting to the sincerity of Plaintiff’s belief.

On September 30, 2021, without explanation, Defendant denied Plaintiff’s request for religious exemption. 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. However, on October 14, 2021, Plaintiff received an email from Defendant 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.

On November 9, 2021, Plaintiff was suspended effectively immediately, that she was suspended effective immediately, and that she would be terminated in five days. Defendant has refused to give Plaintiff any reason as to why her request was denied, what hardship her exemption would impose upon Defendant. To this date she does not know the standard that was applied, who applied it, or why it was denied. *See* Affidavit of Kaycee McCoy.

Plaintiff immediately filed suit against Defendant, and an accompanying motion seeking an injunction to preserve the status quo until this Court can adjudicate her claims to religious freedom pursuant to Article I, Section 16 of the Virginia Constitution, and claims of arbitrary and capricious action.

STANDARD OF REVIEW

In granting a temporary injunction, the Court must look to the following criteria: (1) the likelihood of success on the merits; (2) whether the Plaintiff is likely to suffer irreparable harm if the injunction is not granted; (3) whether the balance of equities tips in Plaintiff’s favor; and (4) a showing that the injunction would not be adverse to the public interest. *See The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009) (applying the test set forth in *Winter v. NRDC, Inc.*, 555 U.S. 7 (2008)). *See also McEachin v. Bolling*, 84 Va. Cir. 76, 77 (Richmond Cir. Ct. 2011).

Virginia courts have widely adopted the *Real Truth* analysis in the absence of any specific elemental test from the Supreme Court of Virginia or applicable statutes. *See, e.g., BWX Techs., Inc. v. Glenn*, 2013 Va. Cir. LEXIS 213 (Lynchburg Cir. Ct. 2013); *McEachin* at 77. *See also*

CPM Va., L.L.C. v. MJM Golf, L.L.C., 94 Va. Cir. 404, 405 (Chesapeake Cir. Ct. 2016) (listing several Virginia Circuit Courts which have used the federal four-part test).

Plaintiff seeks a temporary injunction, enjoining UVA from administering, enforcing, and otherwise imposing the COVID-19 vaccine mandate upon her, including terminating Plaintiff's employment for exercising a religious exemption against the mandate.

A temporary injunction allows a court to preserve the *status quo* while litigation is ongoing. *Iron City Sav. Bank v. Isaacsen*, 158 Va. 609, 625, 164 S.E. 520, 525 (1932); *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 822 S.E.2d 358 (2019). In this case, the status quo is that Plaintiff was employed by UVA, and the only reason that the University of Virginia has terminated Plaintiff's employment is because of the COVID-19 vaccine mandate.

ARGUMENT

I. Plaintiff has a substantial likelihood of success on the merits

A. Count I

Plaintiff is likely to succeed on the merits, given that the challenged statute directly and significantly infringes a constitutionally enumerated and protected right set out in Article I, Section 16 of the Constitution of Virginia. Plaintiff also has a substantial likelihood of success, as the ostensible harm sought to be alleviated by the Commonwealth — addressing the spread of COVID-19 — is not resolved by the COVID-19 vaccines, in addition to being facially violative of Article I, Section 16. The history and text of Article I, Section 16 of Virginia's Constitution is abundantly clear.

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

