

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

Kaycee McCoy,)
Plaintiff,)
)
v.)
)
Rector and Visitors of the)
University of Virginia,)
University of Virginia Health System,)
)
Defendants.)
_____)

CASE No: CL21000544-00

**PLAINTIFF’S SUPPLEMENTAL MEMORANDUM ON
SCIENTIFIC UPDATE REGARDING THE COVID VACCINE, AND
MOTION FOR LEAVE TO FILE**

COMES NOW Plaintiff, Kaycee McCoy, by counsel, and files this Supplemental Brief requesting this Court to consider the dramatic changes that have occurred with respect to the safety and efficacy of the COVID-19 injection since this matter was last heard in this Court in November 2021. Plaintiff asserts that these changes affect the balance of equities between the parties and render injunctive relief all the more appropriate. Plaintiff likewise asserts that she suffers a continuing constitutional injury due to Defendant’s conduct.

Plaintiff prays that this Honorable Court will grant leave to file this memorandum update which is being submitted later than anticipated due to surgery of counsel last Friday, and will enter an injunction in her favor against Defendants. In support thereof, Plaintiff states as follows:

I. The Scientific Perspective Regarding the COVID-19 Injection Has Changed Dramatically Since November 2021.

A. Is There Really a Pandemic of the Unvaccinated?

The [UVA Website](#) on “Employee Covid-19 Vaccination Information” continues to assert that CDC and FDA have determine the vaccines are “safe and effective — agencies which are following the direction of the President. *See also* [“Important Information ABOUT Vaccination Requirements for all UVA Employees”](#) and [“UVA Health to Require COVID-19 Vaccination for Team Members Effective Nov. 1.”](#) Vaccines were required to restrict the spread of COVID-19. Much has happened to disprove the science underlying those claims since, in September 2021, a frustrated¹ President Biden assured the American people: people vaccinated for COVID-19 “do not spread the disease to anyone else.” Even PolitiFact was forced to rate this statement “Mostly False,” in a headline that asserts: “That’s not what CDC says.”²

President Biden’s statement defending vaccine mandates was extraordinary: ‘This is a pandemic of the unvaccinated,’ Biden said in the full interview. “The unvaccinated. Not the vaccinated, the unvaccinated. That’s the problem. Everybody talks about freedom and not to have a shot or have a test. Well guess what? How about patriotism? How about **making sure that you’re vaccinated, so you do not spread the disease** to anyone else.” [*Id.* (emphasis added).]

¹ President Biden expressed his frustration that efforts to encourage voluntary vaccination had not achieved the ever-evolving government goals. *See, e.g.*, Al. Nazaryan, [“A ‘frustrated’ Biden lashes out at the unvaccinated as he announces new plan to battle Delta variant,”](#) *MSN News* (Sept. 9, 2021).

² A. Sherman, [“Biden says that vaccinated people can’t spread COVID-19. That’s not what CDC says,”](#) *PolitiFact* (Dec. 22, 2021).

The fact that vaccinated persons can spread the disease was even in September so widespread that the CDC was compelled to post the following correction to its website:

CDC expects that **anyone with Omicron infection can spread the virus** to others, even if they are vaccinated or don't have symptoms. ["Omicron Variant: What You Need to Know," *CDC* (Dec. 20, 2021) (emphasis added).]

If there had been any lingering doubt about the science, it was resolved last month. In January 2022, *The Lancet*, a prestigious, weekly, peer-reviewed medical journal, published an article by Carlos Franco-Paredes on the "[Transmissibility of SARS-CoV-2 among fully vaccinated Individuals](#)." It identified the various studies which demonstrate the fundamental error of the assumption underlying the UVA policy — that unvaccinated transmit the virus, while the vaccinated do not. The study explained scientifically how and why both the vaccinated and unvaccinated transmit the virus:

there is growing evidence that **peak viral titres** in the upper airways of the lungs and culturable virus are **similar in vaccinated and unvaccinated** individuals. A recent investigation by the US Centers for Disease Control and Prevention of an outbreak of COVID-19 in a **prison in Texas** showed the **equal** presence of infectious virus in the nasopharynx of vaccinated and unvaccinated individuals. Similarly, researchers in **California** observed **no major differences** between vaccinated and unvaccinated individuals in terms of SARS-CoV-2 viral loads in the nasopharynx, even in those with proven asymptomatic infection. Thus, the current evidence suggests that **current mandatory vaccination policies might need to be reconsidered...** [*Id.* (emphasis added).]

And the scientific facts as to transmission were verified by studies in the UK and US demonstrating the vaccinated transmit COVID-19 just as the unvaccinated:

A prospective cohort **study in the UK** by Anika Singanayagam and colleagues regarding community transmission of SARS-CoV-2 among unvaccinated and vaccinated individuals ... showed that the **impact of vaccination** on community transmission of circulating variants of SARS-CoV-2 appeared to be **not significantly different from the impact among unvaccinated** people. The **scientific rationale for mandatory vaccination in the USA relies on the**

premise that vaccination prevents transmission to others, resulting in a “pandemic of the unvaccinated”. Yet, the demonstration of COVID-19 **breakthrough infections among fully vaccinated** health-care workers (HCW) in Israel, who in turn may transmit this infection to their patients, **requires a reassessment of compulsory vaccination policies leading to the job dismissal of unvaccinated HCW in the USA.** [*Id.* (emphasis added).]

As *Lancet* advises, since the vaccinated spread the virus as readily as the vaccinated, the “compulsory vaccination policies leading to the job dismissal of unvaccinated [Health Care Workers] in the USA” must be reconsidered.

On top of everything else, the UVA mandate irrationally continues to require the COVID-19 shot for those who have had COVID-19, even though the CDC admitted on January 19, 2022, that natural immunity is superior to vaccine immunity. *See* D. Charbonneau, Ph.D., [“CDC Admits Natural Immunity Trumps Vaccine Immunity — 5 Months After Touting Vaccines as Superior,”](#) *the Defender* (Feb. 2, 2022). Inexplicably, UVA has not rescinded its mandate and continues to resist this suit.

B. Could There Be A Pandemic of the Vaccinated?

Not addressed in the *Lancet* paper was an even more shocking probability identified by vaccinologist Dr. Robert W. Malone, the inventor of the mRNA vaccine. He has explained that since vaccinated people have fewer symptoms than the unvaccinated, but are fully able to spread the virus, the vaccinated will be more likely to be at work, and thus more likely to spread the virus, than the unvaccinated. Thus, the vaccinated may be the true super-spreaders of the virus. *See, e.g.*, J. Loffredo, [“Fully Vaccinated Are COVID ‘Super-Spreaders,’ Says Inventor of mRNA Technology,”](#) *the Defender* (Oct. 12, 2021) (“If you consider the scientific fact that vaccinated people have less symptoms than the unvaccinated, but can still easily

spread disease, consider your fellow vaccinated worker, whose unvaccinated son brought the disease home and gave it to him.... He might not have any symptoms ... but he'll definitely be producing the virus. And he's going to say, hey, I can go to work today. But he's going to be spreading the virus like crazy.”).

Therefore, based on the current state of “science,” a UVA rule that would have limited the access of vaccinated persons to the workplace would have made more sense than the rule barring the unvaccinated. In any event, together, these medical facts completely undermine any rationale for the UVA Vaccine Mandate.

C. The Omicron Variant is Much Less Dangerous Than Prior Variants.

A [study published by the CDC](#) demonstrated that the now prevalent Omicron variant of COVID-19 is much less dangerous than prior variants. See L. Brown, [“Omicron 91 percent less likely to be fatal compared to Delta: CDC study,”](#) *New York Post* (Feb 7, 2022) (“just one of the 52,297 people infected with Omicron died.... Breakthrough infections of those who were vaccinated or had previously had COVID were far more likely to be Omicron, the study said.”).

D. The Terrible Risks of the COVID-19 Shot.

The Application for a Temporary Injunction is further supported by the ever expanding list of known dangers from the COVID-19 Shot. The authors of a recent paper autopsied 15 patients who died from seven days to six months after receiving the COVID shot and discovered that, in 14 of the 15 patients, there was widespread evidence of the body attacking itself, something that had never been seen before. See S. Bhakdi & A. Burkhardt, [“On COVID vaccines: why they cannot work, and irrefutable evidence of their causative role in](#)

[deaths after vaccination](#),” *Doctors for COVID Ethics* (Dec. 15, 2021) (“Histopathologic analysis show clear evidence of vaccine-induced autoimmune-like pathology in multiple organs. That myriad adverse events deriving from such auto-attack processes must be expected to very frequently occur in all individuals, particularly following booster injections, is self-evident. Beyond any doubt, injection of gene-based COVID-19 vaccines places lives under threat of illness and death. We note that both mRNA and vector-based vaccines are represented among these cases, as are all four major manufacturers.” (Emphasis added).) Even more recently, a video explaining and updating this study has been posted: “[Dr Sucharit Bhakdi: Organs Of Dead Vaccinated Proves Auto Immune Attack - 22/12/2021](#),” *Bitchute* (Dec. 24, 2021).

World renowned Internist and Cardiologist Peter A. McCullough, M.D., MPH, FACC, FAHA, FASN, FNKE, FNLA, FCRSA, one of the most published physicians in the nation, has exposed the concerted effort to distort information about the risks and benefits of the COVID-19 vaccine. *See, e.g.*, “[COVID-19 Vaccine Safety and Efficacy and the Urgent Need for Early Ambulatory Therapy](#),” Presentation at Calvary Chapel Chattanooga (Dec. 15, 2021).

Scientist and entrepreneur Steve Kirsch, an inventor of the optical mouse and founder of the COVID-19 Early Treatment Fund, catalogued what he believed to be the 11 biggest lies being perpetrated about COVID-19 and the COVID-19 vaccine. *See* S. Kirsch, “[COVID pandemic: The 11 biggest lies](#)” (Dec. 7, 2021). A recent book by Robert F. Kennedy, Jr. has literally blown the cover off the prevailing COVID vaccine narrative. *See* R.F. Kennedy, Jr., [The Real Anthony Fauci](#) (Skyhorse: 2021). The inventor of the mRNA vaccine, Robert Malone, has led the fight against the COVID-19 vaccines, describing the psychosis behind the

COVID-19 narrative. See Robert W. Malone, M.D., M.S., “[Mass Formation Psychosis](#)” (Dec. 9, 2021).

The government has not been forthcoming in revealing the risks of the COVID-19 shots that it has mandated. On February 7, 2022, it was reported that the FDA removed from its website, and then restored, a document revealing the rate of serious heart inflammation suffered by young men after receiving the experimental COVID-19 shots. See “[FDA deletes, then restores data showing increased heart inflammation for young men after Moderna shot](#)” *LifeSiteNews* (Feb. 7, 2022). The document was entitled the “Summary basis for Regulatory Action” (SBRA), which states that “post-authorization safety surveillance has identified serious risks of myocarditis and pericarditis, particularly within 7 days following the second dose of Moderna COVID-19 Vaccine.” It continues: “The observed risk is higher in males under 40 years of age than among females and older males,” the report continued, adding that “[t]he observed risk is highest in males 18 through 24 years of age.”

II. Defendant’s Termination of Plaintiff Constitutes An Ongoing Constitutional Injury.

As previously reported to this Court, on January 15, 2022, Governor Youngkin issued [Executive Directive Number Two \(2022\)](#), declaring no state employees shall be required to be vaccinated as a condition of their employment. Nevertheless, UVA continues to require vaccinations for state employees of UVA Health System, likely based on a federal regulation issued by the Center for Medicare and Medicaid Services. After the U.S. Supreme Court stayed two injunctions against the CMS regulations (which allow exemptions for medical or religious reasons) in [Biden v. Missouri](#), on February 7, 2022, Attorneys-general from 16

states, led by Louisiana, and including Virginia, filed a [new legal challenge](#) to COVID-19 mandates for healthcare workers, such as UVA Health Systems. *See* Michael Nevradakis, [“16 States File New Lawsuit Challenging Vaccine Mandates for U.S. Healthcare Workers,”](#) *The Defender* (Feb. 7, 2022).³ On January 26, 2022, Attorney General Miyares issued an [Advisory Opinion](#) to Governor Youngkin which suspended a prior Advisory Opinion on which UVA relied to require COVID-19 shots for students (not employees).

Plaintiff seeks to regain her prior position with University of Virginia Health System. She has not yet been able to obtain employment that substantially replaces her lost position. The *Richmond Times-Dispatch* reported on January 19, 2022 that despite E.D. 2, “[e]mployees of UVA Health [such as Plaintiff was] are still required to be vaccinated under a mandate by the Centers for Medicare and Medicaid Services.” *Id.* Accordingly, *even though the applicable Medicare/Medicaid rules explicitly recognize a religious exemption*, Defendant still refuses to recognize Plaintiff’s free exercise rights under Article I, Section 16 of Virginia’s Constitution. “[T]he temporary violation of a constitutional right itself is enough to establish irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976). In the context of the Free Exercise Clause, the Fourth Circuit has defined substantial burden as one that “put[s] substantial pressure on an adherent to modify his behavior and to

³ Federal judges in other cases recently have issued injunctions against vaccine mandates in similar challenges. On January 21, 2022, the U.S. District Court for the Southern District of Texas issued an injunction against two executive orders of President Biden that mandated vaccines for federal civilian employees. *See Feds for Medical Freedom v. Biden*, 2022 U.S. Dist. LEXIS 11145 (Jan. 21, 2022). On January 27, 2022, the U.S. District Court for the District of Arizona became the fifth federal court to issue an injunction against the federal government’s vaccine mandate for federal contractors and subcontractors. *See Brnovich v. Biden*, 2022 U.S. Dist. LEXIS 15137 (Jan. 27, 2022).

violate his beliefs,” or one that forces a person to “choose between following the precepts of her religion and forfeiting [governmental] benefits, on the one hand, and abandoning one of the precepts of her religion ... on the other hand. [*Young v. Northam*, 2021 Va. Cir. LEXIS 35, at *9-10 (Culpeper Cir. Ct. 2021).] Accordingly, Plaintiff has suffered a continuing injury at the hands of Defendants, and injunctive relief is necessary to end her ongoing irreparable harm.

CONCLUSION

As plaintiffs have previously explained, the COVID-19 shot is not even a “vaccine” as always understood, but an experimental gene therapy. To market an injection that most would have otherwise resisted, the definition of the word “vaccine” has actually been changed — demonstrating the power of the forces demanding others be vaccinated. *See* Plaintiff’s Memorandum of Law in Support of Injunctive Relief (November 24, 2021) at 38-38. Despite every effort to “sell the vaccine” to the public and to suppress voices critical of the COVID-19 shots, the people have been awakened and, fortunately are rapidly turning away from the narrative with which they have been inundated by government, Big Pharma, and the establishment press which Big Pharma’s commercials support. With the threat of death and serious injury that the vaccines (drugs) pose to the vaccinated, the OSHA vaccine mandate passes the stage of being unsupported, reckless, arbitrary, and capricious, and can be seen to be inhumane, vicious, evil, and believed by many to be even worse. The perpetrators of the

COVID-19 shot should be criminally investigated, not relied upon as spokesmen for true science.⁴

Plaintiff respectfully requests this Court to grant leave to file this supplemental memorandum, to find that the equities support her Application, to find that the injury to her is continuing, and to grant her injunctive relief as requested in her Complaint.

Respectfully Submitted,

Kaycee McCoy
Plaintiff,
by Counsel

_____/s/_____

Rick Boyer, VSB No. 80154
INTEGRITY LAW FIRM, PLLC
P.O. Box 10953
Lynchburg, VA 24506
Telephone: (434) 401-2093
Facsimile: (434) 239-3651
rickboyerlaw@gmail.com

William J. Olson, VSB No. 15841
Robert J. Olson, VSB No. 82488
WILLIAM J. OLSON, P.C.
114 Creekside Lane
Winchester, Virginia 22180
Telephone: (540) 450-8777
Facsimile (540) 450-8771

⁴ University of Virginia’s David E. Martin, Ph.D. has assembled what he terms “The Fauci/Covid-19 Dossier” demonstrating that the Department of Health and Human Services had funded efforts to enhance coronaviruses between 1999 and 2002, before SARS was detected in humans, in the form of an indictment that he believes should be brought. *See, e.g.*, “David E Martin, The Fauci / Covid-19 Dossier,” *Principia Scientific International* (Nov. 10, 2021).

wjo@mindspring.com

Patrick M. McSweeney, VSB No. 5669
MCSWEENEY, CYNKAR & KACHOUROFF, PLLC
3358 John Tree Hill Road
Powhatan, Virginia 23139
Telephone: (703) 621-3300
Facsimile: (703) 365-9395
patrick@mck-lawyers.com

Christopher M. Collins, VSB No. 28770
VANDERPOOL, FROSTICK & NISHANIAN, P.C.
9200 Church Street, Suite 400
Manassas, Virginia 20110
Telephone: (703) 369-4738
Facsimile: (703) 369-3653
ccollins@vfnlaw.com

David Browne, VSB No. 65306
SPIRO & BROWNE, PLC
2400 Old Brick Road
Glen Allen, Virginia 23060
Telephone: (840) 573-9220
Facsimile: (804) 836-1855
dbrowne@sblawva.com

Attorneys for Plaintiff Kaycee McCoy

CERTIFICATION

I, Rick Boyer, Esq., counsel for Plaintiff in this matter, hereby certify that I caused a true and accurate copy of this Memorandum of Law to be sent by electronic mail and U.S. Postal mail to the following counsel, this 8th day of February, 2022:

Bret Daniel, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
901 East Byrd Street, Suite 1300
Richmond, VA 23219
Telephone: 804-663-2403
Fax: 804-225-8641
Email: bret.daniel@ogletree.com

Elizabeth Ebanks, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
901 East Byrd Street, Suite 1300
Richmond, VA 23219
Telephone: 804-663-2403
Fax: 804-225-8641
elizabeth.ebanks@ogreedeakins.com
Counsel for Defendants

Rick Boyer