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June 18, 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 Mandatory COVID-19 Inoculation Requirement; Notice to Preserve Documents

It is our understanding that [your institution] was adopted a policy by which students are being required to receive an experimental vaccine against COVID-19 before returning to campus for the fall semester.[1] We are writing to urge you in the strongest possible terms to reconsider and revoke this coercive policy, before your students are harmed or killed by these dangerous experimental inoculations.

This letter is sent on behalf of parents, students, and a variety of other organizations, some of which have formed specifically to oppose Virginia college and university policies requiring students and staff to receive the COVID-19 inoculation before returning to campus:

[1] A similar letter is being written to each of the Virginia colleges and universities that have been identified as requiring COVID-19 vaccinations for students and/or staff, based on a variety of sources, since we have found no one depository of this information in the Commonwealth. If your institution does not require such vaccination, we would greatly appreciate your advising us so we can let others know.

- Center for Medical Freedom
- Health Freedom Virginia
- Virginia Coalition for Medical Freedom
- CNU Parent Covid-19 Mandate Concerns
- University Parents for Informed Consent
- Students for Medical Freedom
- Virginia Tech Freedom of Choice
- JMU Freedom of Choice Parents
- Virginia Freedom Keepers
- The Virginia Project
- America's Future
- Students for America

It is our understanding that these groups include parents of students or students attending most, if not all, of the colleges and universities in Virginia.

EXECUTIVE SUMMARY

There are many thousands of students who have been planning to attend Virginia colleges and universities this fall, but who refuse to yield to mandates that they first participate in **unmonitored experimental genetic therapy** by taking the COVID-19 vaccine. Your institution's policy is putting these students, and their parents, in an untenable situation, where they must choose between accepting the significant risk of bodily injury, possible lifelong disability, or death or continue their education at your institution.

The evidence is now clear that **some statistically significant number of those students receiving the inoculation will be harmed seriously, and some may die**. We cannot see how imposing the risk of such harm is consistent with your fiduciary duty of protection of these students. Moreover, a policy of coercion can impose on your institution **great responsibility, as well as liability. Have you counted the cost?** The same principles apply to your institution's staff to the extent the vaccination mandates apply to them.

Indeed, it is our view that this coercive policy is contrary to law, contrary to science, and out of line with how other institutions are handling this issue, and therefore flawed from its inception.

This letter first explains that the federal government has refused to adopt the type of draconian policies adopted by your institution, making your decision an outlier. Next, we bring to your attention new evidence that has been developed against the vaccine. Then we address the medical arguments against mandating the COVID-19 experimental inoculation and the legal arguments. We conclude by asking your institution to reconsider and revoke that decision, and failing that, to take certain steps to preserve documents. Please take these steps

now, as each day more and more students are being vaccinated due to these mandatory policies.

YOUR INSTITUTION'S POLICY IS OUT OF STEP WITH NOTED EXPERTS IN THE FIELD

If coerced COVID-19 vaccinations were necessary as a matter of public health, it would have been adopted by the same federal government that granted the Emergency Use Authorizations ("EUAs"). However, the federal government recently adopted a policy for its employees which is completely opposite your institution's policy. The federal government does not generally require **federal employees or contractors** to be vaccinated. More than that, federal agencies may not require federal employees or contractors to disclose such information about vaccination status. *See* General Services Administration Safer Federal Workforce Vaccination Status.

If coerced vaccinations were necessary as a matter of public health, surely the federal agency charged with being "the nation's medical research agency" — the **National Institute of Health** ("NIH") — would have mandated it. However, on April 25, 2021, the Director, Francis S. Collins, told NBC News that he will not mandate his employees at NIH to get vaccinated: "I'm certainly encouraging everyone who works for me … to get vaccinated, but I'm not mandating it."

Likewise, if coerced vaccinations were necessary as a matter of public health, surely the **Centers for Disease Control and Prevention** ("CDC") — the national public health agency of the United States — would require its employees to be vaccinated, but Dr. Anthony Fauci, in Congressional Testimony,[2] estimated that "a bit more than half, around 60 percent," of CDC employees had been vaccinated.

Finally, if coerced vaccinations were necessary as a matter of public health, surely it would be required for the United States military. However, in a recent interview with NBC's Today Show, President Biden stated that **even if the experimental COVID-19 inoculation were to receive full FDA approval**, which it has not, he called it a "tough call" as to whether members of the **military** would be required to receive it — and that he would leave that

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[2] On May 11, 2021, the Senate Committee on Health, Education, Labor & Pensions held a hearing on ongoing federal efforts to combat COVID-19. https://www.help.senate.gov/hearings/an-update-from-federal-officials-on-efforts-to-combat-covid-19. The witnesses at that hearing were **Anthony Fauci**, Director, National Institute of Allergy and Infectious Diseases, NIH; **David Kessler**, Chief Science Officer, HHS; **Peter Marks**, Director, CBER, FDA; and **Rochelle Walensky**, Director, CDC. The answer about vaccination rates at the other national health agencies was similar. https://youtu.be/qW8MF98wCgs?t=8421.

decision to the military, rather than compelling the vaccine. Thereafter, at a press briefing on May 20, 2021, the Acting Assistant Secretary of Defense for Health Affairs, Dr. Terry Adirim, stated: "there's no plans at this time to make the vaccine mandatory. If and when the FDA does license the vaccine we'll make a decision at that time."

Your institution's mandatory vaccine policy is out of step with the policies that have been adopted by these federal institutions.

CHANGED CIRCUMSTANCES REQUIRE RECONSIDERATION OF ANY MANDATORY INOCULATION POLICY

Some colleges and universities adopted their forced vaccination policies weeks ago, well before deeply troubling new information about the risks of accepting the vaccine were known. In recent days, **new information** about these inoculations has emerged which ethically **require your reconsideration** of this decision, and a revocation of this mandate, for many reasons.

On June 2, 2021, Forbes reported that Israel's health ministry said it has observed a correlation between the Pfizer vaccine and myocarditis, particularly in young males.

On June 9, 2021, Dr. Tess Laurie, Director, Evidence-based Medicine Consultancy Ltd. in the United Kingdom, recommended that all COVID vaccinations be suspended after examining the British Equivalent of the American Vaccine Adverse Event Reporting System ("VAERS"), the Yellow Card System, based on data received through May 26, 2021:

> We are sharing this preliminary report due to the urgent need to communicate information that should lead to **cessation of the vaccination roll out** while a full investigation is conducted….
>
> The MHRA now has more than enough evidence on the Yellow Card system [similar to the VAERS system in the United States] to declare the COVID-19 vaccines **unsafe for use in humans**. Preparation should be made to scale up humanitarian efforts to assist those harmed by the COVID-19 vaccines and to anticipate and ameliorate medium to longer term effects. [Open Letter to Dr. Raine, the Chief Executive of the MHRA from Dr Tess Laurie (Director, Evidence-based Medicine Consultancy Ltd and EbMC Squared CiC Bath, UK) (emphasis added).]

On June 10, 2021, Germany's vaccine advisory committee recommended that only children and adolescents with pre-existing conditions should be given the COVID-19 vaccine. "German panel gives limited approval for COVID-19 shot for adolescents," *Reuters* (June 10, 2021).

On June 10, 2021, the American Academy of Pediatrics reported that the CDC has confirmed 226 cases of myocarditis or pericarditis in persons ages 30 and younger who have received an mRNA COVID-19 vaccine and are investigating about 250 more reports. As a result, the Advisory Committee on Immunization Practices ("ACIP") of the Centers for Disease Control and Prevention will hold an emergency meeting on June 18, 2021, to assess this new development.

On June 12, 2021, Reuters reported that the "Italian government said on Friday it was restricting the use of the AstraZeneca COVID-19 vaccine to people over the age of 60, after a teenager who had taken the shot died from a blood clot." "Italy halts AstraZeneca vaccine for under-60s after teenager dies," *Reuters* (June 12, 2021).

As of June 14, 2021, George Mason University, the largest public university in Virginia with over 37,000 students, reported two student positives and zero employee positives in the past 14 days.

On June 14, 2021, the *Wall Street Journal* published an article entitled "University Vaccine Mandates Violate Medical Ethics: College Students Aren't Guinea Pigs." That article stated:

> Some 450 U.S. colleges and universities — including our institutions — have announced policies mandating that all students be fully vaccinated against Covid-19 before the fall semester, with some requiring vaccination now for the summer term. Schools have for decades required vaccination against infectious diseases, but **these mandates are unprecedented — and unethical**. **Never before have colleges insisted that students or employees receive an experimental vaccine** as a condition of attendance or employment. [Emphasis added.]

On June 15, 2021, Jane M. Orient, M.D. wrote an article explaining the recent information on risk to the heart and other threats posed by the vaccinations, citing a recent video by Dr. Peter A. McCullough, M.D., MPH:

> You might be able to get a college degree with a damaged heart, but the door may be slammed permanently on athletics, military service, or any physically demanding occupation.
>
> Your daughter also is at risk. The heart problems are less frequent in women, but women are not exempt. And where else do those lipid nanoparticles enclosing the instructions for spike protein go? Those college administrators don't know, and if Dr. Fauci knows, he's not telling.
>
> Would putting a hold on your college education be worth it? [Jane M. Orient, M.D., "Sending your son to college? Is the vaccine risk worth it?" WND (June 15, 2021).]

This letter is written in agreement with the *Wall Street Journal* article — believing that these mandates are not only unprecedented, but also are unethical. Moreover, your policy is subjecting students to great danger with virtually no corresponding benefit, particularly as college and university age students face little danger from this virus.

ARGUMENT

I. MEDICAL ARGUMENTS

A. None of the Experimental COVID-19 Inoculations Have Been Approved by the FDA.

None of the so-called COVID-19 "vaccines" have been approved by the FDA. Here is the status of each of these products:

Pfizer-BioNTech
Emergency Use Authorization (EUA) issued December 11, 2020
Revised EUA issued December 23, 2020
Second Revised EUA issued February 25, 2021
Status: Currently authorized for emergency use

Moderna
EUA issued December 18, 2020
Revised EUA issued February 25, 2021
Status: Currently authorized for emergency use

Janssen (formerly called Johnson & Johnson)
EUA issued February 27, 2021
Revised EUA issued June 20, 2021
Paused on April 13, 2021 (after six cases of blood clots reported)
Resumed on April 23, 2021
Status: Currently authorized for emergency use

AstraZeneca
Submitted letter seeking approval to U.S. clinical trial investigators April 21, 2021
FDA responded with a request for more data
Status: Additional data required before authorization for use

Merck
Status: Vaccine development discontinued January 25, 2021

If and when FDA approval is obtained, it would mean "the agency has determined, based on substantial evidence, that the drug is:

- effective for its intended use, and
- that the benefits of the drug outweigh its risks when used according to the product's approved labeling."[3]

The EUAs for those vaccines specifically require the manufacturers to pursue full FDA approval, but until then, because this approval has not been obtained, it can be understood that:

- the vaccines **HAVE NOT** been shown to be **effective** for their intended use, and
- the **benefits** of the vaccine **HAVE NOT** been shown to **outweigh** the **risks**.

Based on this fact alone, mandatory vaccines are simply wrong.

B. COVID-19 Inoculations Are Not Typical Vaccines.

Vaccines are well known to the American people as "any preparation used as a preventive inoculation to confer immunity against a specific disease, usually employing an innocuous form of the disease agent, as killed or weakened bacteria or viruses, to stimulate antibody production." Dictionary.com. The COVID-19 inoculations are of an entirely different nature from traditional vaccines. They are better understood as a type of experimental gene therapy. The Mayo Clinic describes the vaccines as follows:

> Both the Pfizer-BioNTech and the Moderna COVID-19 vaccines use **messenger RNA** (mRNA). Coronaviruses have a **spikelike structure** on their surface called an S protein. COVID-19 mRNA vaccines give cells instructions for how to make **a harmless piece of an S protein**….
>
> The Janssen/Johnson & Johnson COVID-19 vaccine is a **vector vaccine**. In this type of vaccine, **genetic material from the COVID-19 virus** is inserted into a different kind of weakened live virus, such as an adenovirus. When the weakened virus (viral vector) gets into your cells, it delivers **genetic material** from the COVID-19 virus that gives your cells instructions to make copies of the S protein…. ["COVID-19 vaccines: Get the facts," Mayo Clinic (emphasis added).]

The use of a SPIKE Protein in these vaccines had been thought to be benign, but increasingly it is being understood that the SPIKE Protein itself is the problem. Dr. Mike Yeadon, former Vice President and Chief Scientific Officer of the Allergy and Respiratory Unit of Pfizer Drugs, has explained: "The spike protein is not a passive protein that the virus uses to anchor to human cells. Its biologically active … and prompts cells to stick together." https://www.bitchute.com/video/gVKni96l1Bg8/

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[3] FDA, "Understanding the Regulatory Terminology of Potential Preventions and Treatments for COVID-19."

Additional medical, legal, and anecdotal reports about problems with the "vaccine" are collected at www.centerformedicalfreedom.com.

C. The Efficacy of the Experimental Inoculation.

An article in the *International Journal of Vaccine Theory, Practice, and Research* assesses that the efficacy of the COVID-19 vaccines, based on data provided by the manufacturers, is negligible:

> While the high estimates of risk reduction are based upon relative risks, the **absolute risk reduction is a more appropriate metric** for a member of the general public to determine whether a vaccination provides a meaningful risk reduction personally. In that analysis, utilizing data supplied by the vaccine makers to the FDA, the **Moderna** vaccine at the time of interim analysis demonstrated an absolute risk reduction of **1.1%** ($p = 0.004$), while the **Pfizer** vaccine absolute risk reduction was **0.7%** ($p < 0.000$) (Brown 2021). ["Worse than the disease? Reviewing Some Possible Unintended Consequences of the mRNA Vaccines Against COVID-19," *International Journal of Vaccine Theory, Practice, and Research* (Vol. 2, no. 1 (2021)).]

See also Lancet Microbe Comment: COVID-19 vaccine efficacy and effectiveness — the elephant (not) in the room (April 20, 2021) ("the absolute risk reduction (ARR), which is the difference between attack rates with and without a vaccine, considers the whole population. ARRs tend to be ignored because they give a much less impressive effect size than RRRs: **1·3%** for the AstraZeneca–Oxford, **1·2%** for the Moderna–NIH, **1·2%** for the J&J, **0·93%** for the Gamaleya, and **0·84%** for the Pfizer–BioNTech vaccines. ARR is also used to derive an estimate of vaccine effectiveness, which is **the number needed to vaccinate (NNV) to prevent one more case** of COVID-19 as 1/ARR. NNVs bring a different perspective: **81** for the Moderna–NIH, **78** for the AstraZeneca–Oxford, 108 for the Gamaleya, **84** for the J&J, and 119 for the Pfizer–BioNTech vaccines." (Emphasis added))

Furthermore, when weighed against the very low mortality rate among the age range typical of college students, the benefits do not outweigh the risks. According to CDC Data, only 0.2 percent of COVID-19 deaths were younger than 25. "COVID-19 Deaths By Age," Heritage Foundation (February 17, 2021).

D. The VAERS System Now Shows Tremendous Death and Illness from the Disease.

On June 16, 2021, the most recent date that data are available, VAERS[4] has received 326,239 events (a range of adverse events) reported for the COVID-19 vaccines.[5] Of this, there are **4,946 deaths** that have been reported to be related to the COVID-19 vaccines. The number of COVID-19 vaccine-related deaths **exceeds the 4,598 deaths for every other vaccine-related deaths** reported to VAERS as long as records are available up to December 31, 2020 (including 19 deaths related to the COVID-19 vaccine during that time period).

The VAERS data, based on a voluntary reporting system, is generally understood to significantly underestimate adverse reactions. Steve Kirsch, Executive Director of the COVID-19 Early Treatment Fund, presented a video analysis of CDC data on TrialSiteNews on June 16, 2021, showing that the number of vaccine-related deaths thus far is more likely to be about 25,000 ("Kirsch video").

Beyond the demonstrated danger for all those who are inoculated, what is most remarkable is the disproportionate appearance of young people in those Adverse Event Reports:

> **More than half** of the cases reported to the U.S. Vaccine Adverse Event Reporting System (VAERS) after people had received their second dose of either the Pfizer/BioNTech or Moderna (MRNA.O) vaccines were in people **between the ages of 12 and 24**, the CDC said. Those age groups accounted for **less than 9%** of doses administered. ["Heart inflammation in young men higher than expected after Pfizer, Moderna vaccines - U.S. CDC," *Reuters* (June 10, 2021).]

E. The COVID-19 Inoculation Does Not Protect All Inoculated Persons from Contracting COVID.

Even proponents of the COVID-19 inoculation do not claim that it prevents the recipient from getting the COVID-19 infection — what is known as "sterilizing immunity." Consider the following:

> **Eight people in Maine have died with COVID after being fully vaccinated**, according to the latest numbers from Maine's Centers for Disease Control and Prevention (CDC), which confirmed a total of **457 breakthrough cases** in the state.... In

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[4] *See* https://vaers.hhs.gov/data.html.

[5] VAERS data is updated every Friday, and it is believed that there is a significant backlog of reports that the CDC has not yet processed.

> Maine and other states, anyone who tests positive for SARS-Cov-2 two weeks after receiving the single-dose Johnson & Johnson shot or completing the two-dose Moderna or Pfizer vaccination is recorded as a breakthrough case. ["8 Fully Vaccinated Die of COVID in Maine, as States Continue to Report 'Breakthrough' Cases," *Clarion News* (June 14, 2021).]

F. Persons Have Very Little Need for the Inoculation Due to the Availability of Successful Treatments.

An EUA can be issued only when the underlying infecton is not treatable. And if COVID-19 is readily treatable, it alters the risk/benefit calculation dramatically. As just one example of a treatment, COVID-19 is being successfully treated around the world with Ivermectin. On June 1, 2021, it was reported that Ivermectin is overwhelmingly successful in treatment of COVID-19. "Ivermectin obliterates 97 percent of Delhi cases," *The Desert Review* (June 1, 2021). This same result has been shown in other countries: "The impact of ivermectin use in Zimbabwe," *MedicalUpdateOnline* (April 19, 2021); "Uttar Pradesh COVID-19 Case Decline Continues as Authorities Lift Restrictions in 72 or 75 State Districts: What Was in those Medicine Kits?" *TrialSiteNews* (June 6, 2021); "Immediate Use of Ivermectin Medicine Globally Can End COVID-19 Pandemic: Scientists," *Newsbreak* (May 8, 2021); "Latest peer-reviewed research: Immediate global ivermectin use will end COVID-19 pandemic," Association for the Advancement of Science (May 7, 2021); "Ivermectin in COVID-19," Front Line COVID-19 Critical Care Alliance (FLCCC). *See also* Kirsch video, *supra*, addressing numerous effective treatments which are currently being used.

G. Persons Who Have Had COVID-19 Should Not Be Vaccinated.

The vaccine can be more dangerous for people who have already had COVID-19. Any policy must take into account the protections already afforded by national antibodies present in the human body, which are far superior to the immunity that could be obtained by a vaccine.

H. Vaccinated Women Are Experiencing Serious Bleeding Disorders.

A published letter to the British Medical Journal states:

> Many women across the world after receiving CoViD vaccines are complaining of irregularities in their menstrual bleeding; some experiencing heavy menstrual bleeding (menorrhagia), some bleeding before their periods were due or bleeding frequently (metrorrhagia/polymenorrhea), whereas some are complaining of postmenopausal bleeding.
>
> As of 5th April 2021, there have been ~958 cases of post-vaccination menstrual irregularities, including vaginal haemorrhages, that were recorded in MHRA's adverse event reports. There were twice more cases of menstrual irregularities with CoViD Vaccine AstraZeneca than Pfizer (643 vs 315

> respectively)…. It is anticipated that the actual numbers of cases are much higher than the numbers recorded in the pharmacovigilance systems as many women in different cultural context may have felt uncomfortable to talk about it, may not have thought that it was vaccine-related, or may have not been encouraged by their clinicians to make an official report into the adverse events reporting system. ["Thrombosis after covid-19 vaccination," *The BMJ* (April 14, 2021).]

Professor Peter McCullough, M.D., MPH, provided a lengthy video interview (beginning at 1:10) discussing the many dangers posed by the vaccines, including to pregnant women, who were excluded from the COVID-19 trials.

II. LEGAL ARGUMENTS

A. Attorney General Herring Advisory Opinion Provides No Cover for Coerced Vaccines, particularly by Private Colleges and Universities.

On April 26, 2021, Virginia Attorney General Mark R. Herring issued a Legal Opinion (21-030) which concluded that the Commonwealth's **public colleges and universities** have the authority to impose a requirement that students must provide evidence of receipt of an approved COVID-19 vaccination in order to attend the institution in person. His opinion relied on Virginia Code section 32.1-48, which authorizes the Commissioner of Health to require "immunization of all persons in case of an epidemic of any disease of public health importance for which a vaccine exists other than a person to whose health the administration of a vaccine would be detrimental as certified in writing by a physician licensed to practice medicine in this Commonwealth," and Virginia Code section 32.1-43, which served as the basis for an opinion of a previous Attorney General that the Health Commissioner has the power "to require quarantine, vaccination or treatment of any individual when he determines any such measure to be necessary to control the spread of any disease of public health importance." The Commissioner of Health has not exercised this power.

Mr. Herring's opinion then reasoned that each public board of visitors and the State Board for Community Colleges can require vaccination as a condition of in-person attendance, citing Virginia Code sections 23.1-1301(A)(1), 23.1-1304(B)(14), 23.1-2904, and 23.1-2905. Those statutes authorize such boards to make regulations relating to protecting the general physical and psychological well-being of students.

Neither the Herring opinion nor the opinion of his predecessor addresses the issue of whether the student may oppose a vaccination requirement by asserting a constitutional right to bodily autonomy or other traditional objections based on medical, religious belief or conscience. Additionally, the Herring opinion refers to "an approved COVID-19 vaccine," but there is no such approved vaccine.

It is our view that this Legal Opinion is flawed, does not apply to the unapproved COVID-19 inoculations, and does not address the issue of exemptions.

B. Coerced COVID-19 Immunization Breaches a Contract with Students and Parents.

Those students who decided to attend or entered your college did so prior to any requirement of receiving an experimental vaccine. Your institution is changing the rules in the middle of the game, unilaterally changing the terms of a previously agreed upon contract.

C. It Is a Violation of Bio-Ethics to Coerce Use of An Experimental Drug.

After World War II, the United States conducted the Nuremberg War Crimes Trials. One of those was *United States v. Karl Brandt, et al.* where Karl Brandt was prosecuted for crimes against humanity in conducting medical experiments with prisoners. The U.S. Holocaust Memorial Museum has preserved the documents of that trial. The Court's decision established what came to be called the Nuremberg Code, establishing 10 principles governing medical experimentation on human subjects. The experimental COVID-19 vaccine being forced on students is very much subject to the principles governing medical experimentation, and it fails on the very first point. The students objecting to the COVID-19 vaccine cannot be said to have given their voluntary consent. In fact, some may be below 18 years of age and do not have the legal capacity to give consent. They are not able to exercise free power of choice without coercion. Nor are they being given sufficient information about the dangers to make an informed choice, and thus these students do not accept the hazards that have been shown to occur with some regularity.

> The **voluntary consent** of the human subject is absolutely essential. This means that the person involved should have **legal capacity** to give consent; should be situated as to be able to **exercise free power of choice**, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or **coercion**, and should have **sufficient knowledge and comprehension of the elements of the subject matter** involved as to enable him to make an **understanding and enlightened decision**. This latter element requires that before the acceptance of an **affirmative decision by the experimental subject** there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; **all inconveniences and hazards reasonably to be expected**; and the **effects upon his health or person** which may possibly come from his participation in the experiment. The duty and responsibility for ascertaining the quality of the consent **rests upon each individual who initiates**, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity. [*Id*. (emphasis added).]

Lastly, these Nuremberg Principles require the following:

> During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required by him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject. [*Id*.]

The United States has a long and sad history of conducting experiments on humans without full disclosure, full understanding of risks, and full assumption of risks. Just one illustration of this practice was the "Tuskegee Study of Untreated Syphilis in the Negro Male," conducted between 1932 and 1972 in Tuskegee, Alabama by the U.S. Public Health Service.

Another case came to light in *United States v. Stanley*, 483 U.S. 669 (1987), which ruled that a U.S. Serviceman given LSD without his consent could not sue the U.S. Army for damages, but was later awarded over $400,000. The dissenting opinion of Justice O'Connor is instructive:

> No judicially crafted rule should insulate from liability the involuntary and unknowing human experimentation alleged to have occurred in this case. Indeed, as Justice Brennan observes, the United States military played an instrumental role in the criminal prosecution of Nazi officials who experimented with human subjects during the Second World War … and **the standards that the Nuremberg Military Tribunals developed** to judge the behavior of the defendants stated that **the 'voluntary consent of the human subject is absolutely essential** … to satisfy moral, ethical and legal concepts.' ….If this principle is violated the very least that society can do is to **see that the victims are compensated**, as best they can be, by the perpetrators. [*Id*. at 709-710 (emphasis added).]

In 1964, the international medical community, working through the World Medical Association, adopted the **Declaration of Helsinki**, which contains bio-ethical principles designed to restrict human experimentation. It appears that the minimum requirements of that Declaration have not been met here. Based on the information that we have seen, none of the Virginia colleges and universities have observed complete disclosure of the risks of the COVID-19 vaccine, have not made an effort to ensure students understand those risks, and thus have not obtained true "informed consent" of the students. As such, these students have been coerced into participating in a dangerous human trial without meeting the minimum standards required by modern notions of Bio-Ethics. At some point, those injured by these vaccines will seek compensation, and it will be very difficult for any institution that mandates these vaccines to avoid liability for its coercive policy.

D. Every College or University Must Offer a Religious and Medical Exemption.

Virginia Code section 23.1-800 ("Health histories and immunizations required; exemptions") states:

> Any student is exempt from the immunization requirements set forth in subsections B and C who (i) objects on the grounds that administration of immunizing agents **conflicts with his religious tenets or practices**, unless the Board of Health has declared an emergency or epidemic of disease, or (ii) presents a statement from a licensed physician that states that his physical condition is such that administration of one or more of the required immunizing agents would be **detrimental to his health**. [Emphasis added.]

We have been advised that some colleges and universities are not expressly advising students of these two exemptions, which would violate this code section.

Also, some colleges and universities appear to be tightening the requirement for a religious exemption beyond that which was previously applied, requiring detailed statements about the basis for a religious exemption, as if the college and university would be a judge over the personal religious beliefs of the student. In our view, any such effort would violate both the statute and the Constitution of Virginia, Article I, Section 16 ("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.").

Additionally, the Virginia Department of Health's Administrative Code, 12 VAC5-110-80, allows for exemptions from immunization requirements by those who can demonstrate existing immunity. We have not seen a mandatory policy which provides this allowance.

E. Colleges and Universities Should Not Mandate Use of Pharmacologic Products Developed or Manufactured Using Aborted Fetal Tissue.

The religious and moral objections of many persons who object to use of vaccines which may have been developed or tested with or manufactured using aborted fetal tissue should be honored. *See* "Which COVID-19 vaccines are connected to abortion?," *LifeSiteNews* (Dec. 11, 2020).

F. Bodily Autonomy under Virginia Law.

A recent survey of the law of bodily integrity by Professor Caitlin Borgmann provides this historical background of the right to bodily integrity:

> The common law right not to have our bodies touched or invaded without our consent is so well established that most of us take its existence for granted. The Supreme Court has described it as the most "sacred" of rights. [Caitlin Borgmann, *The Constitutionality of Government-Imposed Bodily Intrusions,* 2014 U. ILL. L. REV. 1059 (2014).]

For this principle, Professor Borgmann cites *Union P.R. Co. v. Botsford*, 141 U.S. 250, 251 (1891) ("No right is held more sacred or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law."). As Professor Borgmann explains, the Supreme Court has been uneven in its defense of the notion of bodily integrity, but that ambiguous record should provide no comfort to educators who should respect that right of students and staff.

A challenge to a vaccination requirement imposed by a private institution likely would be based on the common law right to determine "what shall be done with one's own body." *Cruzan v. Dir., Mo. Dep't of Health,* 497 U.S. 261, 305-09 (1990) (Brennan, J., dissenting) (tracing the history of the common law right). The common law right to be free from unwanted medical attention is "a right to evaluate the potential benefit of treatment and its possible consequences according to one's own values and to make a personal decision whether to subject oneself to the intrusion." *Id.* at 309. In *Albright v. Oliver,* 510 U.S. 266, 272 (1994), the Court recognized that "matters relating to marriage, family, procreation, and the right to bodily integrity" are subject to substantive due process challenge.

It would be tragic indeed if colleges and universities were to rely for authority on the U.S. Supreme Court's decision in *Buck v. Bell,* 274 U.S. 200 (1927), which upheld Virginia's statute authorizing sterilization of "feeble-minded" individuals, but has never been overruled. Moreover, the Virginia statute at issue in *Buck v. Bell* has since been repealed, and the Supreme Court appeared to limit that ruling in *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535 (1942).

G. Federal Law Prevents Coerced Administration of the Vaccine.

Finally, we urge you to consult with your counsel about whether your institution has any authority to impose any COVID-19 vaccine mandate, when the Federal statute governing EUAs specifies the conditions on which the EUA products may be authorized and administered.

> (ii) Appropriate **conditions designed to ensure that individuals to whom the product is administered are informed—**
>
> (I) that the Secretary has authorized the emergency use of the product;
>
> (II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

> (III) of **the option to accept or refuse administration** of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks. [21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (emphasis added).]

Note that this federal statute expressly anticipates that each individual will be given the option to refuse the EUA product.

REQUESTED RELIEF

For the reasons set out above, and on behalf of our clients, we respectfully, but in the strongest possible terms, urge you to reconsider and then revoke your policy mandating an experimental COVID-19 inoculation for students or staff. Further, we make the following requests.

A. Request for Your Institution's Policy.

Many colleges and universities are advising students and staff of their vaccine requirements via email or their website, with changing views on how their policy will be implemented. To avoid confusion, we would ask that we be provided a copy of your institution's current COVID-19 Vaccine Policy or revised policy rescinding the mandate, which we would be able to share with others.

With the illness and death of increasing numbers of students around the country, there will come a time of accountability for compelling a dangerous experimental inoculation. Therefore, and in the interest of transparency, it is critical for the public to know who made the decision. Was it a vote of your governing board? Was it a decision of the President? Who were the lawyers who advised that this policy be adopted? What information did they have available to them when the decision was made? Did the institution reconsider that decision in response to this letter, or for some other reason?

B. Request for a Commitment to Assume Financial Liability for Death, Disability, or Illness of Students Being Required to Take the COVID-19 Inoculation.

Federal law immunizes vaccine manufacturers from liability, and appears to immunize those administering vaccines, but does not appear to immunize colleges and universities from liability for coercing students and staff to get vaccines.

We are not privy to the insurance coverage that your institution may have that could apply here. Moreover, while Virginia's public colleges and universities may be able to assert a variety of defenses to assert against liability, there is no guarantee that such efforts will be successful. Certainly the mere possibility of immunity should never cause anyone to make decisions which endanger others.

We would suggest that you ask your institution's legal counsel about liability and whether you should advise your insurance carriers of potential claims. Parents and students would like to know if your institution has the resources and/or insurance coverage to ensure payment for personal injury claims resulting from your coercive mandates.

C. Notice to Preserve Evidence.

Pursuant to the Virginia and federal rules of civil procedure, we are placing your institution on notice to preserve electronic and discoverable evidence. This requires your immediate attention without regard to what position you may or may not ultimately take concerning any institutional vaccination and exemption policy.

This notice applies to the institution's on- and off-site computer systems and removable electronic media plus all computer systems, services, and devices (including all remote access and wireless devices) used for your institution's overall operation. Email and other electronic communications are especially important to preserve. This means halting any automatic erasure or deletion of documents or communication that are relevant to the institution's medical policy or practices in connection with its student body and staff. Please notify your IT department immediately to cease adherence to its record retention disposition policy. This includes disposition of electronically stored information and hard copies of documents.

As litigation often involves complex issues, we are also requesting that all student and staff documentation involving past vaccinations, boosters, immunizations, and related voluntary or mandatory medical treatment required or solicited as a condition of admission, matriculation, or employment, be preserved. This request also covers PHI, student records protected under federal law, and all waivers, exemptions, and exceptions to any vaccination, vaccination-related, or preventive or protective medical policy or practice of the institution. This request includes without limitation and by way of example, TB, meningitis, flu, SARS, and COVID-19 data, records, policies, and exemptions.

This request to preserve also covers medical licensing and insurance documentation. This includes documents and communications authorizing institutional agents, contractors, and employees' state medical licensure documentation, including claims and malpractice history for each such person going back 10 years. It also includes any documents that authorized unlicensed persons to administer vaccinations and hold harmless, indemnification and release agreements or forms that may be relevant.

Our request covers the institution's insurance policies, communications specific to vaccination coverage and liability, and any riders specifically related to coverage or waiver of liability for harm caused pursuant to a mandatory vaccination policy. Please ask your counsel about your duty to place all such carriers on notice of a possible claim and request assignment of legal counsel under a reservation of rights if necessary.

We are advised that many institutions require students to obtain health insurance as a condition of admission to the institution. Student Health and Wellness records come within

this preservation request as well as all records, communications, and documents addressing coordination among health insurance carriers of claims arising from illness, disability, injury, or death resulting from an institutionally required vaccination. Records identifying who pays, in what amounts, and in what order, including policy limits, reinsurance, and institutional liability beyond policy limits are also to be preserved.

Moreover, please preserve all records consulted in developing an institutional vaccination policy. These include records related to preservation or exercise of any individual right associated with declining medical treatment. This in turn also covers records pertaining to development of a policy protecting the individual right to refuse blood or blood transfusions from COVID-19 vaccinated persons or sources and liability associated with malpractice relating thereto.

Our request to preserve also includes all privileged documents and communications. A court can sort out production of those documents under seal or *in camera* or otherwise later on. Since these matters are often discussed at the Board and administrative level, we want you to understand that communications regarding COVID-19, the institution's responses and policies, as well as vaccination-related communications by and between the Board and its institutional decision makers and/or administrative officers, are of particular importance to ensure unaltered preservation. Often these communications take place on both institutionally issued computers and phones, but in many instances personal devices are used.

This notice to preserve covers all devices without regard to institutional ownership. Normally, a letter to that effect would be sent to your governing Board and officers as well as your General Counsel. That letter should include this communication and also ensure that all such devices are physically delivered to the institution. Once delivered, each of their drives, texts, and emails must all be secured on an ongoing basis. If in civil discovery, we find this notice or procedure was not followed or your Board members were not placed on immediate notice, court rules provide for sanctions to punish this behavior. *See* Va. R. Sup. Ct. 4:1; Fed.R.Civ.P. 37(e)(1).[6] Please consult with your legal counsel.

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[6] Fed.R.Civ.P. Rule 37(c): Failure to Preserve Electronically Stored Information.

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

We are also advised that the CDC has addressed "COVID-19 Racial and Ethnic Health Disparities." *See* https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/index.html. Our request to preserve documents is intended to address all such documentation identified in the CDC memorandum regarding special attention the institution has taken in connection with its COVID policy as it affects racial and ethnic minority groups disproportionately affected by COVID-19. We assume that any companion development of a COVID-19 *vaccination policy* will have thoroughly addressed the equivalent concerns regarding the health effects of vaccinations on racial and ethnic minority groups disproportionately *affected by vaccinations*. This request to preserve includes all such policy and developmental documents addressing the health effects of vaccinations on racial and ethnic minority groups disproportionately affected by vaccinations, including any COVID-19-related vaccinations.

Since electronically stored information is easily corrupted, altered, and deleted in normal daily operations, an important method for preserving data in its original state is to have a forensic image (mirror image or clone image) made of pertinent hard drives of both office and home computers used for business and of network servers. This image captures all current data, including the background or metadata about each document. Simply copying data to a CD-ROM or other common backup medium is not adequate. For each captured image file, record and identify the person creating the image and the date of creation. Secure the file to prevent subsequent alteration or corruption, and create a chain of custody log. Once the forensic data image file is created, the pertinent computer or other device can be placed back into operation.

This preservation notice covers the above items and information between the following dates: January 1, 2020, to date, except as otherwise noted.

Again we remind you that to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift, or destruction of hardware. Notify all individuals and affiliated organizations of the need and duty to take the necessary affirmative steps to comply with the duty to preserve evidence.

CONCLUSION

On May 25, 2021, the Chancellor of Virginia's Community Colleges, Glenn Dubois, issued a policy for those institutions:

> After consulting with presidents and senior leaders across our 23 community colleges, I believe it is in the best interests of our faculty, staff, and students to encourage everyone to get their COVID-19 vaccine. However, **we will not require an individual be vaccinated** to attend or to work at one of our colleges. ["No Vaccine Mandate to Attend, Work at a Virginia Community College Masks are Optional for Those Fully Vaccinated Against COVID-19," Virginia's Community Colleges News (May 25, 2021) (emphasis added).]

The Community College policy apparently was based in part on "lack of residence halls on community college campuses" (*id.*), but there are great numbers of students at Virginia's four-year colleges which live off campus. There is no reason to believe that Chancellor Dubois is less concerned about the health of his students than the four-year colleges requiring vaccines.

On April 24, 2021, the Association of American Physicians and Surgeons ("AAPS") issued an Open Letter to Universities entitled "Allow Students Back Without COVID Vaccine Mandate." In this letter, which is attached as an appendix, Paul M. Kempen, M.D., Ph.D., AAPS President, offered 15 facts supporting the recommendation. The AAPS letter concludes:

> **Please reverse your decision** to mandate experimental COVID-19 vaccines before more students are harmed and make the vaccines rightfully optional. Both unvaccinated and vaccinated students should be permitted on campus. ["Open Letter from Physicians to Universities: Allow Students Back Without COVID Vaccine Mandate," *AAPS* (Apr. 24, 2021) (emphasis added).]

On behalf of the organizations, students, and parents we are writing, we join AAPS' request. Please reconsider and revoke your policy requiring COVID-19 vaccines of students and staff.

Sincerely yours,

/s/ Patrick M. McSweeney

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Appendix: AAPS Open Letter

Association of American Physicians and Surgeons
Open Letter from Physicians to Universities:
Allow Students Back Without COVID Vaccine Mandate

Dear Deans, Governing Boards and Trustees,

On behalf of the Association of American Physicians and Surgeons, I am writing to ask you to reconsider your new policy mandating COVID-19 vaccination of students prior to returning to campus.[i] Institutions of higher learning are divided on this issue.[ii] ,[iii] Although, at first glance, the policy may seem prudent, it coerces students into bearing unneeded and unknown risk and is at heart contrary to the bedrock medical principle of informed consent.

There are multiple reasons to reverse your policy. I ask you to consider the following:

1. Young adults are a healthy and immunologically competent and vibrant group that is at, "extraordinary low risk for COVID-19 morbidity and mortality."[iv]
2. College and University students, however, are under significant mental health strain already from COVID-19 fears, circumstances, distance learning problems and the imposition of government health policy restrictions.[v]
3. Even though the FDA granted Emergency Use Authorization (EUA) for three COVID-19 vaccines, they are not FDA approved to treat, cure or prevent any disease at this time. Clinical trials will continue for at least two years before the FDA can even consider approval of these vaccines as effective and safe.
4. The COVID-19 vaccines on the market in the U.S., mRNA (Moderna and Pfizer) and DNA (Johnson & Johnson – Janssen), have caused notable side effects, pathology and even death (4.178 deaths per VAERS as of May 5, 2021). These adverse reactions result in absence from school and work, hospital visits, and even loss of life.[vi]
5. College-age women may be at unique risk for adverse events following administration of the experimental COVID vaccinations currently available. According to the CDC, all cases of life-threatening blood clots, subsequent to receiving the J&J vaccine, reported so far in the United States, occurred in younger women.[vii] The vast majority of cases of anaphylaxis have also occurred in women.[viii] In addition, "women are reporting having irregular menstrual cycles after getting the coronavirus vaccine,"[ix] and 95 miscarriages have been reported to the U.S. Vaccine Adverse Effects Reporting System (VAERS) following COVID vaccination as of April 24, 2021.[x]
6. Recent research data demonstrates that the spike protein, present on the SARS-CoV-2 virus and the induced primary mechanism of action of COVID-19 vaccines, are the primary cause of disease, infirmity, hospitalization and death.[xi]
7. Students who have had self-limited cases of COVID-19 already possess antibodies, activated B-cells, activated T-cells (detectable by lab testing). This durable, long-term immunity would not only prevent them from getting recurrent COVID-19, but would also represent herd immunity to protect others in the college or university community.[xii],[xiii]
8. COVID-19 convalescent students may be harmed by college and university policy requiring COVID-19 vaccines.[xiv] They already have extensive immunity and would be likely harmed from a forced confrontation with COVID-19 vaccine induced spike protein causing autoimmune reactions leading to illness and possible death.[xv]

9. Students and their families may justifiably believe these policies discriminate against individuals who aren't candidates for this vaccine, have pre-existing conditions, previous COVID-19 disease, cite religious objections, or are otherwise exercising their freewill choosing not to participate in this optional vaccine experiment. Refer to the Nuremberg code from WWII, which requires individuals, "to be able to exercise free power of choice, without the intervention of any element of force…."[xvi]
10. Institutional policies that permit faculty to choose or refuse vaccination, but do not allow students the same options, raise equal protection constitutional issues.
11. The ADA, Americans with Disabilities Act, requires "reasonable accommodations," be provided based on an individual's own unique health situation. This includes rejection of an experimental vaccine intervention which may exacerbate known health problems and thereby cause harm.
12. Colleges and Universities should consider whether they might be liable for damages, poor health outcomes, and loss of life due to mandatory COVID-19 vaccination policies.[xvii]
13. "Positive cases," as defined by laboratory testing alone, may be false positive testing errors or asymptomatic infection that is not clinically proven to spread disease.
14. Ambulatory outpatient early treatment for SARS-CoV-2 infection / COVID-19 has been demonstrated effective in adults.[xviii]
15. Informed consent is the standard for all medical interventions. The FDA factsheet for the healthcare provider reads, "The recipient or their caregiver has the option to accept or refuse (Pfizer-BioNTech) vaccine."
Please reverse your decision to mandate experimental COVID-19 vaccines before more students are harmed and make the vaccines rightfully optional. Both unvaccinated and vaccinated students should be permitted on campus. Thank you for your time and attention. We would appreciate hearing back from you as soon as possible and welcome further discussion with you and other leaders at your institution.
Sincerely,
Paul M. Kempen, M.D., Ph.D. – AAPS President (2021)
[Footnotes omitted.]