

FAIRCHILD & YODER, PLLC
ATTORNEYS AT LAW

LYNCHBURG OFFICE
18264 FOREST ROAD
FOREST, VIRGINIA 24551

Telephone: (434) 846-5470
Facsimile: (434) 434-385-1319

WANDA PHILLIPS YODER

BENJAMIN M. RATHSAM

ROANOKE OFFICE
1327 GRANDIN ROAD SW
ROANOKE, VA 24015

Telephone: (540) 204-7390

JAMES D. FAIRCHILD

RICK BOYER

August 26, 2021

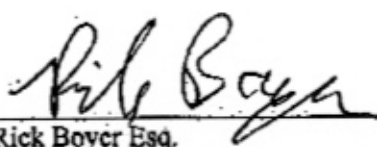
The Hon. Erica W. Conner, Clerk
Montgomery Circuit Court
55 East Main Street, Suite 1
Christiansburg, VA 24073

Dear Ms. Conner,

Please find enclosed three copies of a Complaint we are requesting to be served, along with a summons, on the two named Defendants. We are also enclosing a motion for temporary injunction. Due to the extremely time-sensitive nature of the matter, we are requesting expedited hearing on that motion. Please also find our firm's check for filing and service fees. If any additional information is needed, please let me know.

Thank you very much for your assistance.

Sincerely,


Rick Boyer Esq.

RECEIVED AND FILED

AUG 30 2021

Montgomery County Circuit Court
Erica W. Conner, Clerk

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. _____
(CLERK'S OFFICE USE ONLY)

Montgomery County

Circuit Court

Carter Brockman

PLAINTIFF(S)

v./In re:

Rector & Visitors of Virginia Polytechnic Institute

DEFENDANT(S)

President Timothy Sands, in official capacity

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- ☐ Claim Impleading Third Party Defendant
 - ☐ Monetary Damages
 - ☐ No Monetary Damages
- ☐ Counterclaim
 - ☐ Monetary Damages
 - ☐ No Monetary Damages
- ☐ Cross Claim
- ☐ Interpleader
- ☐ Reinstatement (other than divorce or driving privileges)
- ☐ Removal of Case to Federal Court

Business & Contract

- ☐ Attachment
- ☐ Confessed Judgment
- ☐ Contract Action
- ☐ Contract Specific Performance
- ☐ Detinue
- ☐ Garnishment

Property

- ☐ Annexation
- ☐ Condemnation
- ☐ Ejectment
- ☐ Encumber/Sell Real Estate
- ☐ Enforce Vendor's Lien
- ☐ Escheatment
- ☐ Establish Boundaries
- ☐ Landlord/Tenant
 - ☐ Unlawful Detainer
- ☐ Mechanics Lien
- ☐ Partition
- ☐ Quiet Title
- ☐ Termination of Mineral Rights

Tort

- ☐ Asbestos Litigation
- ☐ Compromise Settlement
- ☐ Intentional Tort
- ☐ Medical Malpractice
- ☐ Motor Vehicle Tort
- ☐ Product Liability
- ☐ Wrongful Death
- ☐ Other General Tort Liability

ADMINISTRATIVE LAW

- ☐ Appeal/Judicial Review of Decision of (select one)
 - ☐ ABC Board
 - ☐ Board of Zoning
 - ☐ Compensation Board
 - ☐ DMV License Suspension
 - ☐ Employee Grievance Decision
 - ☐ Employment Commission
 - ☐ Local Government
 - ☐ Marine Resources Commission
 - ☐ School Board
 - ☐ Voter Registration
 - ☐ Other Administrative Appeal

DOMESTIC/FAMILY

- ☐ Adoption
 - ☐ Adoption - Foreign
- ☐ Adult Protection
- ☐ Annulment
 - ☐ Annulment - Counterclaim/Responsive Pleading
- ☐ Child Abuse and Neglect - Unfounded Complaint
- ☐ Civil Contempt
- ☐ Divorce (select one)
 - ☐ Complaint - Contested*
 - ☐ Complaint - Uncontested*
 - ☐ Counterclaim/Responsive Pleading
 - ☐ Reinstatement - Custody/Visitation/Support/Equitable Distribution
- ☐ Separate Maintenance
 - ☐ Separate Maintenance Counterclaim

WRITS

- ☐ Certiorari
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prohibition
- ☐ Quo Warranto

PROBATE/WILLS AND TRUSTS

- ☐ Accounting
- ☐ Aid and Guidance
- ☐ Appointment (select one)
 - ☐ Guardian/Conservator
 - ☐ Standby Guardian/Conservator
 - ☐ Custodian/Successor Custodian (UTMA)
- ☐ Trust (select one)
 - ☐ Impress/Declare/Create
 - ☐ Reformation
- ☐ Will (select one)
 - ☐ Construe
 - ☐ Contested

MISCELLANEOUS

- ☐ Amend Death Certificate
- ☐ Appointment (select one)
 - ☐ Church Trustee
 - ☐ Conservator of Peace
 - ☐ Marriage Celebrant
- ☐ Approval of Transfer of Structured Settlement
- ☐ Bond Forfeiture Appeal
- ☒ Declaratory Judgment
- ☐ Declare Death
- ☐ Driving Privileges (select one)
 - ☐ Reinstatement pursuant to § 46.2-427
 - ☐ Restoration - Habitual Offender or 3rd Offense
- ☐ Expungement
- ☐ Firearms Rights - Restoration
- ☐ Forfeiture of Property or Money
- ☐ Freedom of Information
- ☒ Injunction
- ☐ Interdiction
- ☐ Interrogatory
- ☐ Judgment Lien-Bill to Enforce
- ☐ Law Enforcement/Public Official Petition
- ☐ Name Change
- ☐ Referendum Elections
- ☐ Sever Order
- ☐ Taxes (select one)
 - ☐ Correct Erroneous State/Local
 - ☐ Delinquent
- ☐ Vehicle Confiscation
- ☐ Voting Rights - Restoration
- ☐ Other (please specify)

☐ Damages in the amount of \$ _____ are claimed.

8/26/2021

DATE

James D. Fairchild, - Fairchild & Yoder, PLLC

PRINT NAME

18264 Forest Rd., Forest, VA 24551

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

434-846-5470

jd@fypcllaw.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

FORM CC-1416 (MASTER) PAGE ONE 07/16

James Fairchild ☐ PLAINTIFF ☐ DEFENDANT ☒ ATTORNEY FOR ☒ PLAINTIFF ☐ DEFENDANT

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY

CARTER BROCKMAN,

Petitioner,

v.

Case No. _____

RECTOR AND VISITORS OF
VIRGINIA POLYTECHNIC
INSTITUTE AND
STATE UNIVERSITY,

Serve:

Timothy Sands

800 Drillfield Dr.

Blacksburg, VA 24061

and

PRESIDENT TIMOTHY SANDS
In his official capacity

Serve:

Timothy Sands

800 Drillfield Dr.

Blacksburg, VA 24061

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, by counsel, presents this Complaint for declaratory and injunctive relief, and states as follows:

PARTIES

1. Plaintiff, Carter Brockman, is a student enrolled at Virginia Polytechnic Institute and State University. He is a resident of Christiansburg, Virginia.
2. Defendant Virginia Polytechnic Institute and State University (hereafter “VA Tech”) is a Virginia baccalaureate public institution of higher education, as described in Va. Code § 23.1-800. VA Tech is located in Montgomery County, Virginia.
3. Defendant VA Tech Board of Visitors is the “governing authority for Virginia Polytechnic Institute and State University” located in Montgomery County, Virginia.¹
4. Defendant Timothy Sands is the President of VA Tech and responsible for overseeing and implementing its policies. It is located in Montgomery County, Virginia.

JURISDICTION AND VENUE

5. This court has subject matter jurisdiction over this action pursuant to § 7 and § 11 of Article I of the Constitution of Virginia, which are self-executing provisions.
6. The Circuit court has subject matter jurisdiction over this action pursuant to Va. Code § 17.1-513.
7. The court has personal jurisdiction over the Respondents pursuant to Va. Code §§ 8.01-296, -299, and § 50-73.7.
8. Venue is proper in this Court pursuant to Va. Code § 8.01-261(2) because Defendants are officers of the Commonwealth being sued in their official capacity, and one or more of them (President Timothy Sands) has his official office in Montgomery County.
9. Venue is also proper in this Court pursuant to Va. Code § 8.01-261(15)(c) because Montgomery County is where the act is to be done, for which an injunction is requested.

¹ Virginia Tech, Board of Visitors, <https://bov.vt.edu/>.

FACTS

10. On June 8, 2021, VA Tech announced a COVID-19 vaccine mandate for all students, stating that no students could enroll in classes for the Fall 2021 semester without obtaining a completed series of the COVID-19 vaccine. According to correspondence sent to students:

All students must have documentation of completed series. Completed two doses of either the PfizerBioNTech COVID-19 vaccine OR the Moderna COVID-19 vaccine OR a single dose of the Johnson & Johnson (also known as Janssen Biotech) COVID-19 vaccine. COVID-19 vaccines authorized by the World Health Organization (e.g., AstraZeneca/Oxford and Sinopharm) are also acceptable.²

11. VA Tech declared an August 6, 2021 deadline for each student to obtain the vaccine and to submit proof of vaccination to the VA Tech Student Health website.³
12. VA Tech allows students to apply for an exemption from the mandatory COVID-19 vaccine only for religious or medical reasons.
13. If students are out of compliance with VA Tech's August 6, 2021 deadline, such student will be dis-enrolled from the Fall course schedule.
14. Even students who have already contracted and recovered from COVID-19, including those with proven immunities to COVID-19, are still required to get the COVID-19 vaccine.
15. VA Tech has stated that students may be required to take an additional vaccine booster shot.

² Virginia Tech Immunization Form, last visited August 9, 2021, https://healthcenter.vt.edu/content/dam/healthcenter_vt_edu/assets/docs/immunizationhistory_form.pdf.

³ *Id.*

16. Even graduate students studying 100% online are required to get the vaccine, but may apply for an exemption and must state they do not plan to visit any VA Tech campuses or facilities.
17. Presumably, undergraduate students studying 100% online are required to have the vaccine with no exemption for being a 100% online student.
18. Regardless of vaccination status, “Virginia Tech will require the proper use of masks by all individuals . . . when indoors in designated public areas.”⁴ Faculty meeting spaces are not subject to this requirement.⁵ Likewise, masks are “not required in on-campus residence halls because of the lower risk of transmission among a largely vaccinated student community.”⁶
19. Plaintiff is subject to these requirements.
20. At the time the VA Tech guidelines were issued, none of the mandated COVID-19 vaccines had been “approved by the Federal Drug Administration (FDA). If a product has not been approved by the FDA, it is by definition “experimental,” and referred to in FDA parlance as an “unapproved product.”
21. Instead, they were available to the public through an emergency use authorization (EUA).⁷ Because clinical trials started in the summer of 2020, officials are “not yet clear

⁴ Virginia Tech, University issues updated mask requirements for indoor spaces, August 5, 2021, <https://vtx.vt.edu/articles/2021/08/unirel-mask-requirements.html>.

⁵ *Id.*

⁶ *Id.*

⁷ See FDA.gov, FDA Takes Key Action in Fight Against COVID-19, <https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19>.

if these vaccines will have long-term side effects.”⁸ However, since their emergency approval, these vaccines have shown to have unpredicted debilitating and sometimes fatal effects on the public.

The Pfizer Vaccine

22. The Pfizer-BioNTech COVID-19 vaccine (“Pfizer Vaccine”) was the first to be given the EUA.⁹ At the time of that authorization, given on December 11, 2020, the U.S. Food and Drug Administration noted “data are not available to make a determination about how long the [Pfizer] vaccine will provide protection, nor is there evidence that the vaccine prevents transmission of SARS-CoV-2 from person to person.”¹⁰
23. The Pfizer Vaccine was originally authorized – not FDA approved, but given an emergency authorization – for persons 16 years of age or older. At the time of the initial EUA, there was “insufficient data to make conclusions about the safety of the vaccine in subpopulations such as children less than 16 years of age, pregnant and lactating individuals, and immunocompromised individuals.”¹¹
24. In November 2020, however, data on the serious “known risks” of the Pfizer Vaccine was available – and adverse reactions to the Pfizer Vaccine were more common in younger participants than older participants. According to the December 11, 2020 Emergency Use Authorization for an Unapproved Product Review Memorandum:

⁸ Mayo Clinic, COVID-19 vaccines: Get the facts, <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-vaccine/art-20484859#longterm-effects>.

⁹ FDA.gov, FDA Takes Key Action in Fight Against COVID-19, <https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19>.

¹⁰ *Id.*

¹¹ Pfizer Emergency Use Authorization for an Unapproved Product Review Memorandum, <https://www.fda.gov/media/144416/download>.

“The vaccine has been shown to elicit increased local and systemic adverse reactions as compared to those in the placebo arm, usually lasting a few days. The most common solicited adverse reactions were injection site reactions (84.1%), fatigue (62.9%), headache (55.1%), muscle pain (38.3%), chills (31.9%), joint pain (23.6%), fever (14.2%). Adverse reactions characterized as reactogenicity were generally mild to moderate. The number of subjects reporting hypersensitivity-related adverse events was numerically higher in the vaccine group compared with the placebo group (137 [0.63%] vs. 111 [0.51%]). Severe adverse reactions occurred in 0.0-4.6% of participants, were more frequent after Dose 2 than after Dose 1 and were generally less frequent in older adults (>55 years of age) (≤2.8%) as compared to younger participants (≤4.6%). Among reported unsolicited adverse events, lymphadenopathy occurred much more frequently in the vaccine group than the placebo group and is plausibly related to vaccination.”¹²

25. Additionally, this Memorandum noted there was “insufficient data to make conclusions about the safety of the vaccine in subpopulations such as children less than 16 years of age, pregnant and lactating individuals, and immunocompromised individuals.”¹³ It was warned that “[f]ollowing authorization of the vaccine, use in large numbers of individuals may reveal additional, potentially less frequent and/or more serious adverse events not detected in the trial safety population.”¹⁴ There was also the observation of “numerically greater number of appendicitis cases [that] occurred in the vaccine group” and “that the “safety database revealed an imbalance of cases of Bell’s palsy (4 in the vaccine group and none in the placebo group).”¹⁵

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

26. Subsequent letters of authorization from the FDA revised the emergency use authorization for the Pfizer Vaccine for individuals 12 years of age and older.¹⁶
27. As of June 25, 2021, the Pfizer Vaccine was labeled as an “unapproved vaccine.”¹⁷ According to literature from Pfizer, the risks of the Pfizer Vaccine include severe allergic reactions indicated by signs such as difficulty breathing, swelling of the face or throat, a fast heartbeat, rashes “all over” the body, dizziness, and weakness.¹⁸ The reported side effects include inflammation of the heart, chills, swelling, “severe allergic reactions,” chills, joint pain, fever, injection site swelling, and swollen lymph nodes.¹⁹
28. Younger patients are particularly vulnerable for myocarditis (inflammation of the heart) and pericarditis (inflammation of the tissue that forms a sac around the heart).²⁰ Over 1,000 cases of myocarditis and pericarditis have been reported after the administration of the Pfizer Vaccine or the Moderna Vaccine.²¹ The true number is unknown. According to reporting from Harvard, “The cases have been most common in male adolescents and young adults, occurring most often after the second dose, and usually within several days of receiving the vaccine.”²² Young men in particular are at risk for myocarditis and

¹⁶ FDA letter to Pfizer Inc., May 10, 2021, <https://www.fda.gov/media/144412/download>.

¹⁷ Pfizer Fact Sheet for Recipients and Caregivers, revised June 25, 2021, <https://www.fda.gov/media/144414/download>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Clair McCarthy, M.D., New Information for Parents on Myocarditis and COVID-19 Vaccines, <https://www.health.harvard.edu/blog/new-information-for-parents-on-myocarditis-and-covid-19-vaccines-202107012523>.

²¹ *Id.*

²² *Id.*

pericarditis after receiving the Pfizer Vaccine.²³ Information is “not yet available” about the long-term effects of myocarditis and pericarditis.²⁴

29. Myocarditis and pericarditis are by no means the only dangers of this vaccine. Numerous side-effects of the Pfizer Vaccine have been reported. They include:

- A 13 year-old Michigan boy died in his sleep three days after getting the second dose of the Pfizer Vaccine.²⁵ His funeral took place “just three days after a CDC advisory committee acknowledged ‘a likely association’ between the Pfizer and Moderna coronavirus vaccines and a risk of heart problems in adolescents and young adults.”²⁶
- A 15 year-old boy from Colorado “died from cardiac failure April 20, two days after receiving the Pfizer COVID vaccine.”

²³ Berkeley Lovelace Jr., CDC safety group says there’s a likely link between rare heart inflammation in young people after Covid shot, <https://www.cnbc.com/2021/06/23/cdc-reports-more-than-1200-cases-of-rare-heart-inflammation-after-covid-vaccine-shots.html>.

²⁴ Pfizer Fact Sheet for Healthcare Providers Administering Vaccine, revised June 25, 2021, <https://www.fda.gov/media/144413/download>.

²⁵ Kristen Jordan Shamus, Michigan boy dies 3 days after getting Pfizer COVID-19 vaccine, CDC is investigating, Detroit Free Press, updated July 5, 2021, <https://www.freep.com/story/news/2021/07/02/jacob-clynick-pfizer-covid-vaccine/5323095001/>.

²⁶ *Id.*

- A 58 year-old Virginia woman died hours after receiving the Pfizer Vaccine.²⁷ The emergency room doctors described her condition as “flash pulmonary edema” caused by anaphylaxis.²⁸ The state did not conduct an autopsy.²⁹
- A healthy 42 year-old female presented with a case of subacute thyroiditis soon after the first dose of the Pfizer Vaccine.³⁰
- Graves’ disease has been linked to the Pfizer Vaccine.³¹
- Twelve year-old Maddie De Garay suffered extreme reactions and nearly died “after volunteering for the Pfizer coronavirus vaccine trial.”³² Maddie experienced chest and abdominal pains, vomiting, erratic blood pressure, increased heart rate, and memory loss.³³ She now (as seen below) needs a wheelchair and is fed through a tube.³⁴

²⁷ David Li and Bianca Britton, Virginia woman dies shortly after Covid vaccination though no link has been found, NBC News, February 5, 2021, <https://www.nbcnews.com/news/us-news/virginia-woman-dies-shortly-after-receiving-coronavirus-vaccine-n1256880>.

²⁸ KBRZ, Virginia woman experiences anaphylaxis, dies within hours of receiving Pfizer vaccine, February 4, 2021, <https://www.wbrz.com/news/virginia-woman-dies-within-hours-of-receiving-pfizer-vaccine/>.

²⁹ Elisha Sauers, Virginia officials won’t say why they didn’t do autopsy of Gloucester woman who died after vaccine, The Virginia-Pilot, March 7, 2021, <https://www.pilotonline.com/news/health/vp-nw-coronavirus-drene-keyes-vaccine-investigation-20210307-nejhppci45g6rongf6fbdrx7te-story.html>.

³⁰ Stephanie Franquemont, D.O., Juan Galvez, M.D., Subacute Thyroiditis After mRNA Vaccine for Covid-19, Journal of the Endocrine Society, Volume 5, Issue Supplement 1, April-May 2021, https://academic.oup.com/jes/article/5/Supplement_1/A956/6240939.

³¹ Olga Vera-Lastra, et al., Two Cases of Graves’ Disease Following SARS-CoV-2 Vaccination: An Autoimmune/Inflammatory Syndrome Induced by Adjuvants, <https://onlinelibrary.wiley.com/doi/10.1111/cen.14555>.

³² Stephanie Giang-Paunon, Mom details 12-year-old daughter’s extreme reactions to COVID vaccine, says she’s now in wheelchair, Fox News, July 2, 2021, <https://www.foxnews.com/media/ohio-woman-daughter-covid-vaccine-reaction-wheelchair>.

³³ *Id.*

³⁴ *Id.*



30. Despite these problems and the lack of long-term testing, the FDA approved Pfizer's Biologics License Application (BLA) on August 23, 2021.³⁵ This authorized Pfizer to issue the vaccine under the proprietary name COMIRNATY.³⁶ A deeper look into the BLA letter shows just how superficial this "authorization" is. In fact, the FDA admits the current data "will not be sufficient to assess known serious risks of myocarditis and pericarditis and identify an unexpected serious risk of subclinical myocarditis."³⁷ "Furthermore, the pharmacovigilance system that FDA is required to maintain under section 505(k)(3) of the FDCA is not sufficient to assess these serious risks."³⁸ For these reasons, the FDA requires studies to evaluate the safety and effectiveness of COMIRNATY, including its effects on children (from newborns to those age 15); an evaluation of the "occurrence of myocarditis and pericarditis following administration of

³⁵ FDA "BLA Approval" Letter to Pfizer Inc., August 23, 2021, <https://www.fda.gov/media/151710/download>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

COMIRNATY”; and a “prospective cohort study with at least 5 years of follow-up for potential long-term sequelae of myocarditis after vaccination.”³⁹ Further evidencing the lack of information the FDA has concerning the long-term effects of the COMIRNATY (or Pfizer Vaccine) it requires the completion of a study on its vaccine exposure during pregnancy (due in 2025).⁴⁰ Currently, the “available data on Pfizer-BioNTech COVID-19 Vaccine administered to pregnant women are insufficient to inform vaccine-associated risks in pregnancy.”⁴¹

The Moderna Vaccine

31. The Moderna COVID-19 vaccine (“Moderna Vaccine”) was given its EUA by the FDA on December 18, 2020.⁴² According to the Moderna EUA Product Review Memorandum, completed December 18, 2020, the lymphadenopathy “occurred much more frequently in the vaccine group than the placebo group and is plausibly related to vaccination.”⁴³ “[T]wo individuals without known history of allergic reactions experienced anaphylaxis within minutes after vaccination.”⁴⁴ At that time, there was “insufficient data to make conclusions about the safety of the vaccine in subpopulations such as children less than 18 years of age, pregnant and lactating individuals, and immunocompromised

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Pfizer Fact Sheet for Healthcare Providers Administering Vaccine, August 23, 2021, <https://www.fda.gov/media/144413/download>.

⁴² FDA, Moderna COVID-19 Vaccine, <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccine>.

⁴³ Moderna Emergency Use Authorization for an Unapproved Product Review Memorandum, completed December 18, 2020, <https://www.fda.gov/media/144673/download>.

⁴⁴ *Id.*

individuals.”⁴⁵ It was conceded that the widespread use of the Moderna Vaccine “may reveal additional, potentially less frequent and/or more serious events not detected in the trial safety population.”⁴⁶ And like the trials with the Pfizer Vaccine, there were more cases of Bell’s palsy in the vaccine group than the placebo group.⁴⁷

32. Moreover, according to the Moderna Vaccine Fact Sheet for Recipients and Caregivers, there is a risk the Moderna Vaccine could cause severe allergic reactions, myocarditis, and pericarditis.⁴⁸ The “Fact Sheet” fails to list all the possible side effects of the Moderna Vaccine, as it is acknowledged to “still being studied in clinical trials.”⁴⁹ In fact, demonstrating the deficiencies of the rushed tests, on “June 25, 2021, the FDA revised the patient and provider fact sheets regarding the suggested increased risks of myocarditis (inflammation of the heart muscle) and pericarditis (inflammation of the tissue surrounding the heart) following vaccination.”⁵⁰
33. Like the Pfizer Vaccine, the Moderna Vaccine includes serious risks of adverse events – including deaths – not discovered during clinical trials. Some examples include:

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Fact Sheet for Recipients and Caregivers of Moderna Vaccine, revised June 24, 2021, <https://www.fda.gov/media/144638/download>.

⁴⁹ *Id.*

⁵⁰ FDA, Moderna COVID-19 Vaccine, <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccine>.

- A 65 year-old Pennsylvania man developing a rare blood clot and dying after receiving the Moderna Vaccine.⁵¹
- A California woman dying days after receiving “her second dose of the Moderna vaccine.”⁵²
- “Daniel Thayne Simpson, a retired accountant from Chesterfield Township who served in the Navy during the Korean War, got his first dose of the Moderna COVID-19 vaccine on Feb. 3. The next day, Simpson, 90, was dead.”⁵³

The Johnson & Johnson (Janssen) Vaccine

34. The Johnson & Johnson Vaccine (“Janssen Vaccine”) received its EUA on February 27, 2021.
35. The Janssen Vaccine Unapproved Product Review Memorandum, completed February 27, 2021, discussed the known risks associated with the vaccine. This included adverse reactions of headaches, fatigue, myalgia, tinnitus, and thromboembolic events.⁵⁴ Like the

⁵¹ Michelle Newell, A local man developed a rare case of blood clots and died after getting the Moderna vaccine, WXPI-TV, July 1, 2021, www.wpxi.com/news/top-stories/local-man-developed-rare-case-blood-clots-died-after-getting-moderna-vaccine/N7K5H7N7NBHGFLJXABXXHEP3UI/.

⁵² Jessica De Nova, Orange County woman's death after 2nd dose of Moderna vaccine spurs concern from family, ABC 7, April 30, 2021, <https://abc7.com/moderna-vaccine-covid-side-effects-orange-county-coroner-death-investigation/10562182/>.

⁵³ Kristen Jordan Shamus, Macomb County man, 90, dies after COVID-19 vaccine — but doctors say shots are safe, Detroit Free Press, updated February 20, 2021, <https://www.freep.com/story/news/health/2021/02/18/macomb-covid-vaccine-death-daniel-thayne-simpson/4380833001/>.

⁵⁴ Janssen Vaccine Emergency Use Authorization for an Unapproved Product Review Memorandum, completed February 27, 2021, <https://www.fda.gov/media/146338/download>.

Moderna and Pfizer Vaccines, it was conceded that the use of the Janssen Vaccine in large numbers might reveal more serious adverse events not detected in the trial population.⁵⁵

36. Indicative of the lack of long-term testing for the Janssen Vaccine, the FDA amended the EUA on April 23, 2021 “to include information about a very rare and serious type of blood clot in people who receive the vaccine.”⁵⁶ This occurred after a U.S. pause on the administration of the Janssen Vaccine due to the risks of these serious blood clots in the brain and other sites in the body.⁵⁷ Before the pause, a number of Americans suffered serious blood clots after receiving the Janssen Vaccine. Tragically, an Oregon woman in her 50s “developed a rare blood clot and died within two weeks of getting the Johnson & Johnson COVID-19 vaccine.”⁵⁸
37. Other side effects from the Janssen Vaccine include Guillain Barré syndrome (a neurological disorder in which the body’s immune system damages nerve cells, causing muscle weakness and sometimes paralysis); severe allergic reactions, rashes; fast heartbeat; headaches fatigue; nausea; and fever.⁵⁹ These are remarkable risks for a

⁵⁵ *Id.*

⁵⁶ FDA, Janssen COVID-19 Vaccine, <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/janssen-covid-19-vaccine>.

⁵⁷ FDA, FDA and CDC Lift Recommended Pause on Johnson & Johnson (Janssen) COVID-19 Vaccine Use Following Thorough Safety Review, April 23, 2021, <https://www.fda.gov/news-events/press-announcements/fda-and-cdc-lift-recommended-pause-johnson-johnson-janssen-covid-19-vaccine-use-following-thorough>.

⁵⁸ David Mann, Oregon woman dies from rare blood clot after Johnson & Johnson vaccine, CDC investigating, KGW8, April 22, 2021, <https://www.kgw.com/article/news/health/coronavirus/vaccine/cdc-investigating-if-oregon-womans-death-from-blood-clot-was-caused-by-johnson-johnson-vaccine/283-8258f6a3-fd30-468a-8493-15a83dc2a122>.

⁵⁹ Janssen Vaccine Fact Sheet for Recipients and Caregivers, revised July 8, 2021, <https://www.fda.gov/media/146305/download>.

vaccine that is only “66.3% effective in clinical trials at preventing COVID-19 illness in people who had no evidence of prior infection 2 weeks after receiving the vaccine.”⁶⁰

The Dangers of mRNA Vaccines

38. The mRNA vaccines (Pfizer and Moderna) “are a new type of vaccine” that instruct our cells to make what is called a “spike protein.”⁶¹ These vaccines rely on technology that “was not previously used in humans.”⁶² According to a June 15, 2021 report by Dr. Bryam Bridle, a Canadian Associate Professor of Viral Immunology, there is evidence that the mRNA vaccines do not remain at the upper arm injection site and instead travels “extensively throughout the body, to the brain and other sensitive tissues, such as bone marrow, spleen, liver, adrenal glands, ovaries.”⁶³ New data suggests spike proteins from the Moderna Vaccine “can enter the circulatory system” and apparently “can travel extensively throughout the body.”⁶⁴ This is dangerous because the spike protein, which research shows as “biologically active,” can “interact with receptors throughout the body, called ACE2 receptors, potentially causing undesirable effects such as damage to the heart and cardiovascular system, blood clots, bleeding, and neurological effects.”⁶⁵

⁶⁰ NBC 5 Chicago, J&J Vaccine: Side Effects, Guillain-Barre Syndrome and What You Should Know, July 13, 2021, <https://www.nbcchicago.com/news/coronavirus/jj-vaccine-side-effects-guillain-barre-syndrome-and-what-you-should-know/2553296/>.

⁶¹ CDC, mRNA Vaccines, updated March 4, 2021, www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mrna.html.

⁶² Dr. Bryam Bridle, PhD, COVID-19 Vaccines and Children: A Scientist’s Guide for Parents, June 15, 2021, https://www.canadiancovidcarealliance.org/wp-content/uploads/2021/06/2021-06-15-children_and_covid-19_vaccines_full_guide.pdf.

⁶³ Dr. Bryam Bridle, PhD, COVID-19 Vaccines and Children: A Scientist’s Guide for Parents, June 15, 2021, https://www.canadiancovidcarealliance.org/wp-content/uploads/2021/06/2021-06-15-children_and_covid-19_vaccines_full_guide.pdf.

⁶⁴ *Id.*

⁶⁵ *Id.*

39. Studies have shown that these vaccines will likely enter the bloodstream and entering the liver, spleen, adrenal glands, ovaries, and central nervous system (the brain and the spinal cord), instead of remaining in the area of injection.⁶⁶ As declared by European medical experts, “Complications due to blood clotting must therefore be expected.”⁶⁷ These risks could have been inferred “from the cited limited preclinical data, but were not followed up with appropriate in-depth investigations.”⁶⁸
40. According to Dr. Bridle, “the risk of serious COVID-19 is so low in children, adolescents, and young adults of child-bearing age that the standards for safety must be set much higher for them.”⁶⁹ With respect to the mRNA vaccines, these safety standards have been ignored.
41. We have provided news reports of deaths immediately following these experimental vaccines. There are thousands of adverse events from the vaccines that the media ignore. From December 14, 2020 through July 26, 2021, the Vaccine Adverse Reporting System (VAERS) received 6,340 reports of deaths from those “who received a COVID-19 vaccine.”⁷⁰
42. The CDC takes great efforts to downplay these tragic deaths, stating their “review of available clinical information, including death certificates, autopsy, and medical records,

⁶⁶ Declaration of Doctors Bhakdi, Hockertz, Palmer and Wodarg, dated July 5, 2021.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Dr. Bryam Bridle, PhD, COVID-19 Vaccines and Children: A Scientist’s Guide for Parents, June 15, 2021, https://www.canadiancovidcarealliance.org/wp-content/uploads/2021/06/2021-06-15-children_and_covid-19_vaccines_full_guide.pdf.

⁷⁰ CDC, Reported Adverse Events, July 26, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html>.

has not established a causal link to COVID-19 vaccines.”⁷¹ It would seem that the CDC has corrupted its own investigative system to ensure the connection between vaccines and deaths remain “not established,” as in many cases an autopsy was not performed. A closer inspection reveals the CDC is misrepresenting the data and asking the public to ignore the fact that these deaths closely coincide with the COVID vaccines. We provide these examples of deaths (out of thousands to choose from) from the latest 2021 VAERS data:

- A 16 year-old female died four weeks after receiving the second dose of the Pfizer Vaccine. “Diagnosed with hemophagocytic lymphohistocytosis (HLH) and ultimately died.” (VAERS ID 1420630.)
- A 16 year-old male “died 6 days after receiving dose #2.” (VAERS ID 1475434.)
- A 22 year-old male received an mRNA vaccine on April 21, 2021. On May 1, he was experiencing a racing heart, chills, fever, and headache. He had a heart attack on May 16, 2021 and died. (VAERS ID 1380716.)
- A 54 year-old man received the Pfizer Vaccine on January 4, 2021, after which he was not feeling well, began vomiting, and had trouble breathing. He passed away on January 6, 2021. None of these symptoms occurred until he received the Pfizer Vaccine. (VAERS ID 934968.)
- One woman died three days after receiving the Pfizer Vaccine. (VAERS ID 935767.)

⁷¹ *Id.*

- Reports that a doctor died after receiving the Pfizer Vaccine. (VAERS ID 938097.)
- An 81 year-old patient received the Pfizer Vaccine on January 7, 2021. He died the next day. An autopsy was not performed. (VAERS ID 940822.)
- A 71 year-old woman received the Pfizer Vaccine and was found unresponsive on her bathroom floor approximate two hours later. She was pronounced dead less than four hours after she received the vaccine. (VAERS ID 945241.)
- A 66 year-old man died two days after receiving the Pfizer Vaccine. Before his death he reported fever. (VAERS ID 947642.)
- “Patient had no immediate effects from the vaccine, but died approximately 8 hours after receiving first dose of vaccine.” (VAERS ID 947841.)
- “Headache after dose was given at 10:00 a.m. Died at after 7:30 pm the same night the dose was given.” (VAERS ID 950979.)
- “[E]xpired before receiving the second dose [of Pfizer Vaccine]; This is a spontaneous report from a contactable nurse. This nurse reported similar death events for 8 patients.” (VAERS ID 955879.)
- “Headache, pain in the injection site, threw up. A few hours later she died.” (VAERS ID 966359.)
- “[P]atient received covid vaccine and had a heart attack the next day and died.” (VAERS ID 972370.)

- Patient had second vaccine, went home and started having cramps in all her muscles. It became bad enough that she was taken to a local hospital where she “then started coughing up blood, required intubation and about 6 hrs later, died.” (VAERS ID 1006662.)
43. The VAERS data doesn’t only cover deaths. Its data is especially troubling for college-age students who are naturally at extremely low risk for COVID-19 and are left with sometimes permanent injuries. A brief sampling of the thousands of reported side-effects from the young:
- A 19 year-old experienced a rash over their whole body three days after the second dose of the Moderna Vaccine. (VAERS ID 20830.)
 - A 24 year-old male with no prior issues was diagnosed with heart failure after the Pfizer Vaccine. (VAERS ID 1497437.)
 - A healthy 20 year-old female reported shingles, Ramsay Hunt Syndrome, and facial paralysis after being vaccinated. (VAERS ID 1362148.)
 - A 23 year-old woman received her first dose on March 29, 2021. She went to the hospital on April 10, 2021 for treatment for an acute stroke. (VAERS ID 1210624.)
44. Furthermore, while we have discussed the vaccines individually and the self-reported side-effects in the United States, Norwegian studies indicate that there are frequently reported adverse conditions for all vaccines, which include: fainting; blood clots in the lungs; anaphylactic reaction; deep vein thrombosis, pneumonia; low blood platelet count;

blood clots or bleeding in the brain; hallucinations; cerebral stroke; and loss of consciousness.⁷²

45. Moreover, literature from the EUAs of these vaccines acknowledges many of the risks are unknown. Even hospitals that require vaccinations for their employees concede that “these vaccines haven’t been studied for the long-term, so it’s too soon to answer if any unknown risks may exist.”⁷³ This was proven when the Janssen Vaccine was suspended for further review. Whether the vaccines are safe for pregnant women is an unknown, as they were not subject to initial testing. In fact, there are ongoing studies testing the Pfizer vaccine in healthy pregnant women aged 18 and over.⁷⁴ The results aren’t in. Likewise, the “vaccines have not been studied on people who are breastfeeding.”⁷⁵
46. According to Jennifer Margulis, Ph.D., “It’s imperative to use the precautionary principle when it comes to this highly experimental technology. The burden of proof must be on the intervention. We have no evidence that this is safe. But ample evidence shows that it is dangerous to expose pregnant women and unborn babies to drugs and interventions that can disrupt immunity.”⁷⁶

⁷² Norwegian Medicines Agency, Reported suspected adverse reactions to coronavirus vaccines, <https://legemiddelverket.no/Documents/English/Covid-19/20210514%20Reported%20suspected%20adverse%20reactions%20coronavirus%20vaccines.pdf>.

⁷³ Houston Methodist, COVID-19 Vaccine: What Do We Know About Long-Term Side Effects?, January 15, 2021, <https://www.houstonmethodist.org/blog/articles/2021/jan/covid-19-vaccine-what-do-we-know-about-long-term-side-effects/>.

⁷⁴ ClinicalTrials.gov, Study to Evaluate the Safety, Tolerability, and Immunogenicity of SARS CoV-2 RNA Vaccine Candidate (BNT162b2) Against COVID-19 in Healthy Pregnant Women 18 Years of Age and Older, www.clinicaltrials.gov/ct2/show/NCT04754594?term=NCT04754594&draw=2&rank=1.

⁷⁵ Centers for Disease Control and Prevention, COVID-19: Pregnancy or Breastfeeding, updated August 11, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/pregnancy.html>.

⁷⁶ Megan Redshaw, Experts Warn of ‘Huge Risk’ as Moderna Launches COVID Vaccine Trials for Pregnant Women, Children’s Health Defense, July 15, 2021, <https://childrenshealthdefense.org/defender/moderna-covid-vaccine-clinical-trials-pregnant-women/>.

Extremely Low COVID-19 Risks to the Young

47. These dangers are especially concerning since the rate of death among typical college-age students contracting COVID-19 are near zero. For example, The Economist provides data showing the estimated COVID-19 risk of hospitalization at 0.05% and a risk of death at less than 0.01% for a normal 19 year-old female (a potential a college freshman or sophomore).⁷⁷
48. It isn't just that the typical college-age student is at extremely low risk from complications from COVID-19. The virus itself does not spread as well in schools as other venues: studies have demonstrated the "low risk of COVID-19 infection and spread in schools."⁷⁸ According to Angelia Farella, M.D., a pediatrician with over 25 years of experience, there is no reason to subject the young to experimental vaccine programs "from a disease that simply does not threaten them."⁷⁹
49. This data calls into question the need for college students to get these experimental vaccines. Other studies demonstrate that the mandates that the already-infected be vaccinated is misguided. According to researchers from The Rockefeller University in New York, for those who have already had COVID-19, the antibody responses following infection are more potent than those elicited from the vaccines.⁸⁰

⁷⁷ The Economist, See how age and illnesses change the risk of dying from COVID-19, <https://www.economist.com/graphic-detail/covid-pandemic-mortality-risk-estimator>.

⁷⁸ Mary Van Beusekom, Three studies highlight low COVID risk of in-person school, CIDRAP, January 8, 2021, <https://www.cidrap.umn.edu/news-perspective/2021/01/three-studies-highlight-low-covid-risk-person-school>.

⁷⁹ Declaration of Angelina Farella, M.D., dated July 24, 2021.

⁸⁰ Medical Life Sciences News, Antibody responses following SARS-CoV-2 infection more potent than vaccine-elicited ones, www.news-medical.net/news/20210801/Antibody-responses-following-SARS-CoV-2-infection-more-potent-than-vaccine-elicited-ones.aspx.

50. Other research proves the superiority of natural immunity. The World Health Organization, citing studies from The United Kingdom, the United States, and Denmark, observed that prior “infection with SARS-CoV-2 provided 80-90% protection from reinfection up to 7 months, and up to 94% protection against symptomatic disease.”⁸¹ Compare those numbers to the effectiveness of the Pfizer vaccine, which is “just 39% effective at preventing infections and 41% effective at preventing symptomatic infections caused by the Delta COVID-19 variant, according to Israel’s health ministry.”⁸²
51. And according to Dr. Marty Makary, a professor at the John Hopkins School of Medicine:
- “It appears that natural immunity is better against the Delta variant. When you get infected with COVID, your body’s immune system develops antibodies to the entire surface of the virus, not just the slight protein that the vaccine gives you, but the entire surface. And so you get a more diverse antibody portfolio in your system.”⁸³
52. In summary, these remain experimental vaccines (contrary to any FDA “approval”) that do not provide long-term immunity. The students must not be allowed to be guinea pigs.

COUNT I - Defendants’ COVID-19 Vaccine Mandate Violates Article I, Section 7 of the Constitution of Virginia.

53. Plaintiff restates and incorporate by reference Paragraphs 1-52 *supra* as if fully restated herein.

⁸¹ World Health Organization, COVID-19 natural immunity, May 10, 2021, <https://apps.who.int/iris/bitstream/handle/10665/341241/WHO-2019-nCoV-Sci-Brief-Natural-immunity-2021.1-eng.pdf?sequence=3&isAllowed=y>.

⁸² Robert Hart, Forbes, Pfizer Shot Just 39% Effective Against Delta Infection, But Largely Prevents Severe Illness, Israel Study Suggests, July 23, 2021, www.forbes.com/sites/roberthart/2021/07/23/pfizer-shot-just-39-effective-against-delta-infection-but-largely-prevents-severe-illness-israel-study-suggests/?sh=54ae77b7584f.

⁸³ Nicole Silverio, Daily Caller, Dr. Makary Says Natural Immunity Is More Effective Than Vaccine Immunity, August 5, 2021, <https://dailycaller.com/2021/08/04/dr-makary-natural-immunity-covid-19-vaccine/>.

54. Article I, Section 7 of the Constitution of Virginia states that “all power of suspending laws, or the execution of laws, by *any authority*, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.” (Emphasis added.)
55. Va. Code § 23.1-800 lists the diseases for which a Virginia public university may require (or make optional for) its students to be immunized against. Such enumerated diseases are diphtheria, tetanus, poliomyelitis, measles, mumps, rubella, meningococcal disease, and hepatitis B.
56. Va. Code § 23.1-800 does not enumerate COVID-19 as a disease that public universities may require its students be immunized against.
57. The General Assembly has convened for three sessions since the pandemic began – a Special Session near the end of 2020 lasting several months, a Regular Session during the first two months of 2021, and currently another Special Session. At no point during any of these sessions did any legislator propose amending Va. Code § 23.1-800 to add COVID-19 to the list of diseases against which public universities could require its students to be immunized.
58. By requiring their students to receive a COVID-19 vaccination, Defendants are using their authority to effectuate the suspension of Va. Code § 23.1-800 while also executing with the coercive force of law a policy that the General Assembly has clearly not consented to, both in violation of Art. I, Sec. 7.

COUNT II - Defendants’ COVID-19 Vaccine Mandate Violates the Due Process Clause of the Constitution of Virginia.

59. Plaintiff restates and incorporates by reference Paragraphs 1-58 *supra* as if fully restated herein.

60. Article I, § 11 of the Constitution of Virginia states that “no person shall be deprived of his life, liberty, or property without due process of law.”
61. Defendants are willfully and knowingly depriving their students of their fundamental liberties by requiring them to be injected with a COVID-19 vaccine, for which there has been no due process of law.
62. “The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty.” *Washington v. Harper*, 494 U.S. 210, 229 (1990).
63. Major news outlets have proffered medical experts warning that rushed vaccines may have unintended and undisclosed side effects, both short and long term.⁸⁴
64. These same outlets present historical examples of rushed vaccination programs by the U.S. government that have resulted in large numbers of illnesses and deaths. *Id.*
65. “[M]atters ... involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992).
66. The U.S. Supreme Court has been clear that states cannot terminate public benefits without providing procedural due process. See *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970). (“The constitutional challenge cannot be answered by an argument that public assistance benefits are ‘a “privilege” and not a “right.”’ Relevant constitutional restraints apply as much to the withdrawal of public assistance benefits as to disqualification for

⁸⁴ See, e.g., Jen Christensen, Past vaccine disasters show why rushing a coronavirus vaccine now would be “colossally stupid”, CNN, Sept. 1, 2020, <https://www.cnn.com/2020/09/01/health/eua-coronavirus-vaccine-history/index.html>.

unemployment compensation, or to denial of a tax exemption, or to discharge from public employment.... The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss.”)

67. The publicly-funded education Plaintiff is receiving at the Defendant school is a public benefit, termination of which may not lawfully occur in the complete absence of due process so evident in this case.
68. Va. Code § 23.1-800 lists the diseases for which a Virginia public university may require (or make optional for) its students to be immunized against. Such enumerated diseases are diphtheria, tetanus, poliomyelitis, measles, mumps, rubella, meningococcal disease, and hepatitis B.
69. Va. Code § 23.1-800 does not enumerate COVID-19 as a disease that public universities may require its students be immunized against.
70. On June 30, the COVID-19 state of emergency imposed by Virginia Gov. Ralph Northam expired.⁸⁵
71. The Virginia General Assembly has convened for three sessions since the pandemic began – a Special Session near the end of 2020 lasting several months, a Regular Session during the first two months of 2021, and currently another Special Session. At no point during any of these sessions did any legislator propose amending Va. Code § 23.1-800 to

⁸⁵ Mel Leonor, Virginia's COVID-19 state of emergency to end June 30, affecting eviction protections, mask rules, Richmond Times Dispatch, June 10, 2021, https://richmond.com/news/state-and-regional/govt-and-politics/virginias-covid-19-state-of-emergency-to-end-june-30-affecting-eviction-protections-mask-rules/article_4b657b99-7083-5a5f-8107-b3e0c72df519.html.

add COVID-19 to the list of diseases against which public universities could require its students to be immunized.

72. Accordingly, Defendants are utterly without authority to issue a mandate for students to obtain the COVID-19 vaccine, and the mandate is *ultra vires*.
73. Thus, imposing the mandate without legal authority denies Plaintiff and all students their due process of law, stripping them of an important liberty interest protected by the Virginia Bill of Rights.

REQUEST FOR RELIEF

74. In summary, Plaintiff respectfully requests that this Court issue an Order as follows:
- A. A judgment declaring that VA Tech, as a Virginia public university, is without lawful authority to mandate a vaccine for a disease not enumerated in Va. Code § 23.1-800.
- B. An immediate injunction prohibiting VA Tech, as a Virginia public university, from requiring its students to receive a COVID-19 vaccine as a condition for public benefits and privileges otherwise entitled to its students.

Respectfully Submitted,

Carter Brockman
By Counsel

/s/
J.D. Fairchild (VSB No. 83174)
FAIRCHILD & YODER, PLLC
18264 Forest Rd.
Forest, VA 24551
Phone: 434-846-5470
Fax: 434-385-1819
Email: jd@fypcllaw.com
Counsel for Plaintiff

IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY

Defendants.

Case No. _____

MOTION AND MEMORANDUM IN SUPPORT OF TEMPORARY INJUNCTIVE RELIEF

COMES NOW your Plaintiff, by counsel, and moves this Court for a temporary injunction against Defendants in this matter. In support thereof, Plaintiff states as follows:

INTRODUCTION

This is an action seeking a declaratory judgment that Defendant Virginia Polytechnic Institute and State University (“VA Tech”), as a Virginia public university, is without lawful authority to mandate a vaccine for a disease that is not enumerated in Va. Code § 23.1-800, and an injunction prohibiting VA Tech, as a Virginia public university, from requiring its students to receive a COVID-19 vaccine as a condition for public benefits and privileges to which such students are otherwise entitled.

Plaintiff argues that VA Tech, as a state public university, derives its authority from statute, and is without authority to infringe on the constitutional liberties of its students without the due process of law imposed by Virginia's statutory framework.

Va. Code § 23.1-800 lists the diseases for which a Virginia public university may require (or make optional for) its students to be immunized against. Such enumerated diseases are diphtheria, tetanus, poliomyelitis, measles, mumps, rubella, meningococcal disease, and hepatitis B.

Va. Code § 23.1-800 does not enumerate COVID-19 as a disease that public universities may require its students be immunized against.

Yet Defendants have required all students to be subjected to an untested injection with unknown risks, or be denied the right to attend the classes for which the students have already paid.

These actions by Defendants are *ultra vires*, without due process of law and in violation of the Constitution of Virginia.

STANDARD OF REVIEW

Although “[n]o Virginia Supreme Court case has definitively set out standards to be applied in granting or denying a preliminary injunction”, Virginia courts have followed standards delineated in the four-part test used by the federal courts. Under the four-part test, a party seeking the injunction must show the following:

- 1) a substantial likelihood that the movant will ultimately prevail on the merits;
- 2) a showing that the movant will suffer irreparable injury unless the injunction issues;

3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and

4) a showing that the injunction, if it is issued, would not be adverse to the public interest. *School Bd. of Richmond v. Wilder*, 73 Va. Cir. 251, at * 2 (Richmond Cir. Ct. 2007).

In effect, Virginia courts have applied the four factors delineated by the United States Supreme Court in *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 20 (2008). Under the *Winter* standard, “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”

“A litigant has standing if he has ‘a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed.’” *Howell v. McAuliffe*, 292 Va. 320, 332, 788 S.E.2d 706, 713 (2016) (quoting *Cupp v. Bd. of Sup'rs*, 227 Va. 580, 589, 318 S.E.2d 407, 411 (1984)). Standing to seek mandamus relief also requires Plaintiff to “demonstrate a direct interest, pecuniary or otherwise, in the outcome of the controversy that is separate and distinct from the interest of the public at large.” *Id.* at 330, 788 S.E.2d at 712.

ARGUMENT

1. Plaintiff is likely to succeed on the merits at trial

Defendants’ actions violate Article I, Section 7 of the Constitution of Virginia. Article I, Section 7 of the Constitution of Virginia states that “all power of suspending laws, or the execution of laws, by *any authority*, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.” (Emphasis added.)

Va. Code § 23.1-800 lists the diseases for which a Virginia public university may require (or make optional for) its students to be immunized against. Such enumerated diseases are diphtheria, tetanus, poliomyelitis, measles, mumps, rubella, meningococcal disease, and hepatitis B.

Va. Code § 23.1-800 does not enumerate COVID-19 as a disease that public universities may require its students be immunized against.

By requiring their students to receive a COVID-19 vaccination, Defendants are using their authority to effectuate the suspension of Va. Code § 23.1-800 while also executing with the coercive force of law a policy that the General Assembly has clearly not consented to, both in violation of Art. I, Sec. 7.

Likewise, Defendants' actions violate the due process clause of Virginia's Constitution. Article I, § 11 states that "no person shall be deprived of his life, liberty, or property without due process of law."

Defendants are willfully and knowingly depriving their students of their fundamental liberties by requiring them to be injected with a COVID-19 vaccine, for which there has been no due process of law. "The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." *Washington v. Harper*, 494 U.S. 210, 229 (1990).

Moreover, these statutes make clear that the Virginia legislature recognized itself as the authority to issue vaccine mandates. As the Virginia Supreme Court has explained, "In interpreting statutory language, we have consistently applied the time-honored principle *expressio unius est exclusio alterius*, because this maxim recognizes the competence of the

legislature to choose its words with care. Under this maxim, “[w]hen a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way.” Stated another way, “the mention of specific items in a statute implies that all items omitted were not intended to be included.”” *Miller & Rhoads Bldg., L.L.C. v. City of Richmond*, 292 Va. 537, 543-44 (Va. 2016) (internal citations omitted).

Accordingly, the inclusion of certain statutorily prescribed medications along with the exclusion of other presupposes that the General Assembly intended to exclude the others, including the COVID-19 vaccine. Thus, Defendants’ actions are *ultra vires* and lawless, illegally depriving Plaintiff of his constitutionally protected liberties, and Plaintiff is likely to prevail at trial.

II. Plaintiff will suffer irreparable harm in the absence of an emergency injunction

While Plaintiff has not received the vaccine, he suffers from the general harm of being subject to *ultra vires* university policies. Plaintiff is also at risk of another mandate from the university, without exemptions, now that the Food and Drug Administration has “approved” Cominarty (the name under which the Pfizer Vaccine will be marketed). Failure to grant the injunction would cause irreparable harm.

III. The balance of equities favors Plaintiff

As of August 13, 2021, Virginia Tech reported that over 90% of its students were fully vaccinated.¹ Presumably, Plaintiff is no risk to those vaccinated students. And given that the

¹ <https://vtx.vt.edu/articles/2021/08/unirel-studentvaccinationrate.html>.

school requires the vaccine, there would be small chance of liability to the school if a student refuses the vaccine and becomes infected.

On the other hand, Plaintiff has laid out in his Complaint a long list of negative health risks associated with injection with the COVID-19 vaccine.

Younger patients are particularly vulnerable for myocarditis (inflammation of the heart) and pericarditis (inflammation of the tissue that forms a sac around the heart).² Over 1,000 cases of myocarditis and pericarditis have been reported after the administration of the Pfizer Vaccine or the Moderna Vaccine.³ The true number is unknown. According to reporting from Harvard, “The cases have been most common in male adolescents and young adults, occurring most often after the second dose, and usually within several days of receiving the vaccine.”⁴ Young men in particular are at risk for myocarditis and pericarditis after receiving the Pfizer Vaccine.⁵ Information is “not yet available” about the long-term effects of myocarditis and pericarditis.⁶

Myocarditis and pericarditis are by no means the only dangers of this vaccine. Numerous side-effects of the Pfizer Vaccine have been reported. They include:

² Clair McCarthy, M.D., New Information for Parents on Myocarditis and COVID-19 Vaccines, <https://www.health.harvard.edu/blog/new-information-for-parents-on-myocarditis-and-covid-19-vaccines-202107012523>.

³ *Id.*

⁴ *Id.*

⁵ Berkeley Lovelace Jr., CDC safety group says there’s a likely link between rare heart inflammation in young people after Covid shot, <https://www.cnbc.com/2021/06/23/cdc-reports-more-than-1200-cases-of-rare-heart-inflammation-after-covid-vaccine-shots.html>.

⁶ Pfizer Fact Sheet for Healthcare Providers Administering Vaccine, revised June 25, 2021, <https://www.fda.gov/media/144413/download>.

- A 13 year-old Michigan boy died in his sleep three days after getting the second dose of the Pfizer Vaccine.⁷ His funeral took place “just three days after a CDC advisory committee acknowledged ‘a likely association’ between the Pfizer and Moderna coronavirus vaccines and a risk of heart problems in adolescents and young adults.”⁸
- A 15 year-old boy from Colorado “died from cardiac failure April 20, two days after receiving the Pfizer COVID vaccine.”
- A 58 year-old Virginia woman died hours after receiving the Pfizer Vaccine.⁹ The emergency room doctors described her condition as “flash pulmonary edema” caused by anaphylaxis.¹⁰ The state did not conduct an autopsy.¹¹
- A healthy 42 year-old female presented with a case of subacute thyroiditis soon after the first dose of the Pfizer Vaccine.¹²

⁷ Kristen Jordan Shamus, Michigan boy dies 3 days after getting Pfizer COVID-19 vaccine, CDC is investigating, Detroit Free Press, updated July 5, 2021, <https://www.freep.com/story/news/2021/07/02/jacob-clynick-pfizer-covid-vaccine/5323095001/>.

⁸ *Id.*

⁹ David Li and Bianca Britton, Virginia woman dies shortly after Covid vaccination though no link has been found, NBC News, February 5, 2021, <https://www.nbcnews.com/news/us-news/virginia-woman-dies-shortly-after-receiving-coronavirus-vaccine-n1256880>.

¹⁰ KBRZ, Virginia woman experiences anaphylaxis, dies within hours of receiving Pfizer vaccine, February 4, 2021, <https://www.wbrz.com/news/virginia-woman-dies-within-hours-of-receiving-pfizer-vaccine/>.

¹¹ Elisha Sauers, Virginia officials won't say why they didn't do autopsy of Gloucester woman who died after vaccine, The Virginia-Pilot, March 7, 2021, <https://www.pilotonline.com/news/health/vp-nw-coronavirus-drene-keyes-vaccine-investigation-20210307-nejhppci45g6rongf6fbdrx7te-story.html>.

¹² Stephanie Franquemont, D.O., Juan Galvez, M.D., Subacute Thyroiditis After mRNA Vaccine for Covid-19, Journal of the Endocrine Society, Volume 5, Issue Supplement 1, April-May 2021, https://academic.oup.com/jes/article/5/Supplement_1/A956/6240939.

- Graves' disease has been linked to the Pfizer Vaccine.¹³

Defendants' mandate not only strips Plaintiff of his constitutional liberty interests, but exposes him to this wide range of medical risks, with painfully little available medical data to allow Plaintiff to make an uncoerced medical choice in his own best interests.

The balance of the equities clearly favors Plaintiff, and an injunction should be granted.

IV. An injunction is in the public interest

The story of COVID is replete with instances of snap pronouncements and promises by "leading scientists" and government officials that have proven to be woefully wrong, and later rescinded.

U.S. government COVID-19 advisor Dr. Anthony Fauci initially took the position in March of 2020 that facemasks were unnecessary, only to reverse himself a few months later.¹⁴ In December 2020, Fauci admitted fabricating numbers relating to the effect of "herd immunity" in combatting COVID. "When polls said only about half of all Americans would take a vaccine, I was saying herd immunity would take 70 to 75 percent. Then, when newer surveys said 60 percent or more would take it, I thought, 'I can nudge this up a bit,' so I went to 80, 85," Fauci told the New York Times.¹⁵

In September 2020, as the vaccines were being developed, the Centers for Disease Control ("CDC") was repeatedly issuing and then reversing guidelines as to how it believed

¹³ Olga Vera-Lastra, et al., Two Cases of Graves' Disease Following SARS-CoV-2 Vaccination: An Autoimmune/Inflammatory Syndrome Induced by Adjuvants, <https://onlinelibrary.wiley.com/doi/10.1111/cen.14555>.

¹⁴ Kerrington Powell and Vinay Prasad, "The Noble Lies of COVID-19," Slate magazine, July 28, 2021, <https://slate.com/technology/2021/07/noble-lies-covid-fauci-cdc-masks.html>.

¹⁵ Id.

COVID was transmitted, and how it could best be prevented, leading to widespread media criticism of the agency.¹⁶ In August 2020, CDC director Dr. Robert Redfield even admitted that hospitals might have inflated total COVID infections because of financial incentives to do so.¹⁷ The story of COVID-19 has been one of rushed decisions, made perhaps as often for political and financial reasons as medical ones.

Indeed, the news media is full of stories of countless employees of medical providers across the country joining public protests against being required to take the injection, and questioning its safety.¹⁸

Given this background, it is in the public interest to allow members of the public to make such crucial and personal decisions as whether to receive the COVID injection freely and individually with their own physicians. Instead, Defendants seek to enforce another rushed decision on incomplete information, when further information may cause recommendations to change again, too late to prevent the negative health effects of the injection.

CONCLUSION

Plaintiff is likely to prevail on the merits at trial. He will suffer irreparable harm in the absence of an injunction. The balance of the equities and the public interest likewise favor action by this Court. Accordingly, under the *Winter* factors, Plaintiff is entitled to an injunction. He

¹⁶ KPIX News, “CDC Flip-Flops On COVID Guidance ‘Paint A Very Bad Picture Of What’s Going On’, UC Doctor Warns,” Sept. 22, 2020, <https://sanfrancisco.cbslocal.com/2020/09/22/cdc-flip-flops-on-guidance-regarding-coronavirus-spread/>.

¹⁷ Blake Fussell, “CDC director agrees hospitals have monetary incentive to inflate COVID-19 data,” Christian Post, Aug. 4, 2020, <https://www.christianpost.com/news/cdc-director-agrees-that-hospitals-have-monetary-incentive-to-inflate-covid-19-data.html>.

¹⁸ See, e.g., <https://www.cnn.com/2021/08/23/us/staten-island-hospital-covid-vaccine-protest/index.html>; <https://www.cbs58.com/news/i-will-not-backdown-healthcare-workers-protest-employer-covid-19-vaccine-requirements>; <https://kstp.com/coronavirus/dozens-of-health-care-workers-protest-coronavirus-vaccination-mandates/6200040/>; <https://cbs4local.com/news/local/healthcare-workers-protest-against-covid-19-vaccination-mandate-in-las-cruces>.

respectfully pray the Court for an injunction forbidding Defendants from enforcing the COVID vaccine policy against him until this matter is heard on the merits.

Respectfully Submitted,

Carter Brockman
By Counsel

_____/s/
James D. Fairchild, Esq. (VSB No. 83174)
FAIRCHILD & YODER, PLLC
18264 Forest Rd.
Forest, VA 24551
Phone: 434-846-5470
Fax: 434-385-1319
Email: jd@fypllclaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 2021, I caused a true and accurate copy of the foregoing to be sent to the following Defendant via U.S. postal mail:

Timothy Sands
800 Drillfield Dr.
Blacksburg, VA 24061
*Personally and for the Board of Visitors
of Virginia Polytechnic Institute*

_____/s/
James D. Fairchild, Esq.