

# COMMONWEALTH OF VIRGINIA



Timothy K. Sanner  
P.O. Box 799  
Louisa, Virginia 23093  
(540) 967-5300  
(540) 967-5681 (fax)

Cheryl V. Higgins  
501 E. Jefferson St., 3rd Floor  
Charlottesville, Virginia 22902  
(434) 972-4015  
(434) 972-4071 (fax)

Dale B. Durrer  
135 West Cameron Street  
Culpeper, Virginia 22701  
(540) 727-3440  
(540) 727-7535 (fax)

## Sixteenth Judicial Court

Albemarle Culpeper Fluvanna Goochland  
Greene Louisa Madison Orange Charlottesville

July 27, 2023

Claude V. Worrell, II  
315 E. High Street  
Charlottesville, Virginia 22902  
(434) 970-3760  
(434) 970-3038 (fax)

David B. Franzén  
P.O. Box 230  
Orange, Virginia 22960  
(540) 672-2433  
(540) 672-2189 (fax)

David M. Barredo  
P.O. Box 550  
Palmyra, Virginia 22963  
(434) 591-1974  
(434) 591-1971 (fax)

Rick Boyer, Esq.  
Integrity Law Firm, PLLC  
PO Box 10953  
Lynchburg, Va. 24506

Bret G. Daniel, Eq.  
Ogletree, Deakins, Nash, Smoak & Stewart, PC  
Riverfront Plaza-West Tower  
901 East Byrd St., Suite 1300  
Richmond, Va. 23219

David Browne, Esq.  
Spiro & Browne  
2400 Old Brick Rd.  
Glen Allen, Va. 23060

Patrick M. McSweeney, Esq.  
3358 John Tree Hill Rd.  
Powhatan, Va. 23139

Christopher M. Collins, Esq.  
9200 Church St., Suite 400  
Manassas, Va. 20110

In Re: Kaycee McCoy v. Rector & Visitors UVA/UVA Health System—opinion letter-  
Charlottesville Circuit Court—CL21-44

Dear Counsel:

This matter was before the Court in November 2021 before the Hon. Richard E. Moore, who has since retired. Below is my ruling.

### Statement of Facts

The facts of this case are as follows. Kaycee McCoy, Plaintiff, was a cytotechnologist employed by the University of Virginia Health System (“UVA”) from January 2011 to November 2021. In this role, Plaintiff performed highly specialized and complex testing that involved the microscopic screening and evaluation of cytologic specimens for the detection of cancer and other pathologic conditions. As such, Plaintiff was categorized as a “Tier 1” employee and was required to be vaccinated against influenza annually. Plaintiff received this vaccine in 2019 and 2020.

In August 2021, UVA announced that it would be expanding its existing vaccination policy to include COVID-19 vaccinations and gave Tier 1 employees a deadline of November 1, 2021, to become vaccinated or secure an approved accommodation. It was announced that failure to comply with this policy could result in disciplinary action, up to and including termination of employment.

Accommodations, or exemptions, from the vaccination requirement were allowed for medical or religious reasons. Requests for a religious exemption were required to be submitted as a written statement explaining how the vaccination requirement conflicts with the requestor's sincerely-held religious beliefs. Defendants directed all employees wishing to file an exemption to do so by September 13, 2021. Plaintiff applied for a religious exemption through the university's online "VaxTrax" system on September 12, 2021. In addition to her written statement that explained her religious objections to the vaccine, she also submitted a letter from the pastor of her church attesting to the sincerity of her beliefs.

Requests for religious accommodations were reviewed by a committee comprised of human resources personnel on an individual basis to determine whether the applicant has established a sincerely held religious belief that would permit an accommodation from the vaccination requirement. On September 30, 2021, Plaintiff received an email from Defendants denying her request for a religious exemption. Plaintiff sent a response email on October 4<sup>th</sup> asking why her exemption request was denied and offered to submit more supporting information. Defendants never responded to this inquiry and Plaintiff's status in the VaxTrax system was registered as "pending."

On October 14, 2021, Plaintiff received an email from Defendants stating that all decisions of the vaccine religious exemption committee were final and that no appeal process would be allowed. Upon returning from vacation the first week of November, Plaintiff was informed that her religious exemption request has been denied, that she was suspended effective immediately, and that she would be terminated in five days.

Plaintiff brought this action to this Court the following day, November 10, 2021, seeking declaratory judgment and injunctive relief. She also brought an action for a temporary injunction and memorandum of law in support of injunctive relief. There have been several filings since that date arguing for a continued need for injunctive relief. Plaintiff was fired in due course by Defendant and is now working in a similar field in a part-time capacity.

Since the filing of the original complaint, UVA has removed its across-the-board covid vaccination policy pursuant to Governor Youngkin's executive order. However, the UVA Health System still requires its employees to be vaccinated as required by federal law for Medicare and Medicaid funding recipients. The federal vaccination policy also allows for a religious exemption with language similar to the prior state mandate.

### Standard of Review

When reviewing the actions of a governmental agency, Virginia courts will uphold the decision of such agency acting within its purview unless that decision is arbitrary and capricious. The Court of Appeals has explained this process as:

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

Loudoun Hosp. Ctr. v. Stroube, 50 Va. App. 478, 491 (2007). The Court defined arbitrary and capricious decisions as those that are taken “without a determining principle.” *Id* at 504-05. In summary, the court first looks to whether the agency is acting in its area expertise, and if so, it will leave rationally based decisions by that agency untouched. Hiring and firing decisions are those normally undertaken by human resource departments and would therefore generally be left to the discretion of those departments. However, here, we have essentially a religious test that is being applied to determine sincerity of belief, and that is violative of the separation of church and state doctrine enshrined in both the Virginia and federal constitutions. The realm of religion is outside the expert discretion of any government body, and therefore this court will review the decision to fire Plaintiff and determine its legality, which we will now discuss.

### Analysis

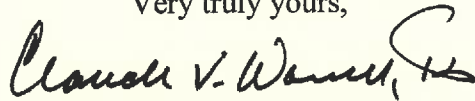
The First Amendment of the United States Constitution is the basis for doctrine of separation of church and state. There is a great body of case law outlining the contours of this separation, and Defendants correctly point out that religious rights are not absolute and religious practice can be curbed by neutral laws of general applicability. Defendants are also correct that there is no constitutional right to a vaccine exemption. *See, Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (upholding as constitutional a requirement that all inhabitants of the City of Cambridge be vaccinated against smallpox and allowing for medical exceptions only); *Nikolao v. Lyon*, 875 F.3d 310, 316 (6th Cir. 2017) (“[c]onstitutionally, there is no right to a vaccine exemption”). However, we need not consider the constitutionality of this exemptions because medical and religious exemptions have been written into the requirements for the Covid-19 vaccine.

In the present case Plaintiff met the requirements necessary to show that she had sincerely held religious beliefs that allow her to seek an exception to the vaccine requirement. Further her application was sufficient on its face that it should not have been denied. The UVA policy allowed for religious exemptions and failed to grant one to Plaintiff on arbitrary grounds.

Because UVA acted in an arbitrary and capricious manner, this court reverses their decision to fire Plaintiff for failing to be vaccinated from Covid-19. They are hereby enjoined

from preventing her employment on the basis of vaccination as long as she continues to qualify for a religious accommodation as properly applied. Plaintiff is awarded damages in the amount of her salary from the date of her wrongful firing to today, plus interest. I direct Mr. Boyer to prepare an order based on my ruling and circulate to counsel before submitting to the Court for entry.

Very truly yours,

A handwritten signature in black ink, appearing to read "Claude V. Worrell, II". The signature is written in a cursive style with a large, stylized initial "C".

Claude V Worrell, II, Judge