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21-6868

No. 21-A_____

In The
Supreme Court of the United States

MAJOR MIKE WEBB, D/B/A FRIENDS FOR MIKE WEBB, MAJOR MIKE WEBB FOR U.S. CONGRESS (VA8), MAJOR MIKE WEBB FOR VA and MAJOR MIKE WEBB FOR ARLINGTON PUBLIC SCHOOL (APS) BOARD,

*Pro Se Applicant,*

v.

ANTHONY S. FAUCI, in official and individual capacities, NATIONAL INSTITUTE FOR ALLERGY & INFECTIOUS DISEASE (NIAID), ROCHELLE WALENSKY, in official and individual capacities, CENTERS FOR DISEASE CONTROL & PREVENTION, JANET WOODCOCK, in official and individual capacities, FOOD & DRUG ADMINISTRATION (FDA), MOHAMMED NORMAN OLIVER, in official and individual capacities, VIRGINIA DEPARTMENT OF HEALTH (VDH), PFIZER, INC., BIONTECH SE, MODERNATX, INC., JOHNSON & JOHNSON, INC., JANSSEN GLOBAL SERVICES, LLC, FACEBOOK, INC., DIONNE HARDY, in official and individual capacities, OFFICE OF MANAGEMENT & BUDGET (OMB), JENNIFER R. PSAKI, in official and individual capacities, WHITE HOUSE COMMUNICATIONS AGENCY, VIVEK MURTHY, in official and Individual capacities, OFFICE OF THE SURGEON GENERAL, MARK R. HERRING, in official and individual capacities, OFFICE OF THE STATE ATTORNEY GENERAL, RALPH S. NORTHAM, in official and individual capacities, LLOYD J. AUSTIN, in official and individual capacities, DEPARTMENT OF DEFENSE (DOD), CHRISTINE E. WORMOTH, in official and individual capacities, DEPARTMENT OF THE ARMY (DA), XAVIER BECCERA, in individual and official capacities, DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS), TED BRITT FORD OF FAIRFAX, RICHARD D. HOLCOLM, in individual and official capacities,

VIRGINIA DEPARTMENT OF MOTOR VEHICLES, INGRID H. MORROY, in individual and official capacity, COMMISSIONER OF REVENUE FOR COUNTY OF ARLINGTON, CAPITAL INVESTMENT ADVISORS, LLC, A-1 TOWING OF NORTHERN VIRGINIA, and JOHN and JANE DOES

*Respondents.*

**To the Honorable John Roberts, Chief Justice of the United States Supreme Court and Acting Circuit Justice for the Fourth Circuit**

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**Resubmitted Conforming Application for Writ of Certiorari to Review a Case Before Judgment**

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## I. QUESTIONS PRESENTED

The following questions are presented for decision to the Court:

1. Whether, pursuant to S.Ct.R. 11, see also 28 U. S. C. § 2101(e)[1], upon application for prejudgment relief, in "a case pending in a United States court of appeals, before judgment is entered in that court", a requester, "deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions," in accordance with 5 U.S.C. § 552(c)(i), is entitled, pursuant to 5 U.S.C. § 552(a)(4)(B), on complaint to "the district court of the United States in the district in which the complainant resides" to compel that Court "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant", so as to remedy a derogation of his rights to equal protection and due process, as well as a right to redress of grievances, substantive right, irreparably harmed.

2. Whether, pursuant to S.Ct.R. 11, see also 28 U. S. C. § 2101(e), "upon application for prejudgment relief, in "a case pending in a United States court of appeals, before judgment is entered in that court", where, in accordance with Fed.R.Civ.Pro. 56(a), "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law," summary judgement may be granted, where, under 18 U.S.C. § 248(a)(2), under the direction of the President, a private party, "by force or threat of force or by physical obstruction, intentionally injure[d], intimidate[d] or interfere[d] with or attempt[ed] to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship", and "subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c)", so as to remedy a derogation of his rights to equal protection and due process, as well as rights to free exercise, substantive rights, constituting an irreparable harm.

## II. PARTIES AND RULE 29.6 STATEMENT

Applicant is MAJOR MIKE WEBB, d/b/a FRIENDS FOR MIKE WEBB,

[1] "An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment." *Id.*

MAJOR MIKE WEBB FOR U.S. CONGRESS (VA8), MAJOR MIKE WEBB FOR VA and MAJOR MIKE WEBB FOR ARLINGTON PUBLIC SCHOOL (APS) BOARD. Applicant was the Plaintiff in the United States District Court for the Eastern District of Virginia, in the matter, *Webb v. Fauci*, Civil Action No. 3:21CV432 (E.D.Va. 2021), dismissed on October 29, 2021, and noticed for appeal at the Fourth Circuit and timely filed, in person, with the Clerk on December 14, 2021, simultaneously with a filing of the Informal Brief at the Circuit Court of Appeals. Applicant has no parent corporation, and there is no publicly held corporation owning 10% of more of its stock.

Respondents are various, but for the present application, in relevant part, include DIONNE HARDY, in official and individual capacities, hereinafter referred to as "HARDY" and the OFFICE OF MANAGEMENT & BUDGET (OMB). Respondents were Defendants in the United States District Court for the Eastern District of Virginia, Richmond Division, in an action commenced on July 7, 2021, ordered amended by the Court on July 13, 2021, refiled as amended on August 13, 2021, a matter now on appeal to the Fourth Circuit, as of December 14, 2021.

Respondents in application also include FACEBOOK, INC., about which "CEO and founder Mark Zuckerberg said the company would change its name to META during an October 28 conference", of report "a key stride in its rebrand from Facebook this month, acquiring the exclusive rights to the name "META" from a South Dakota bank in a $60 million transaction", Derek Saul, "Facebook Owner Pays $60 Million For 'Meta' Name Rights," *Forbes*, December 13, 2021, and, hence, hereinafter referred to as "META PLATFORMS". Respondent was a Defendant in the United States District Court for the Eastern District of Virginia, Richmond Division, in an action commenced on July 7,

2021, ordered amended by the Court on July 13, 2021, refiled as amended on August 13, 2021, a matter now on appeal to the Fourth Circuit, as of December 14, 2021.

## III. DECISIONS BELOW

All decisions in this case in the lower courts are styled *Webb v. Fauci et al.* The text of the order of the United States District Court for the Eastern District of Virginia, dated July 13, 2021, ordering an amendment to the Verified Complaint, the "Order to Amend) (unpublished), and the Dismissal Order are included in Appendix. No transcript record has been created. The Order to Amend has not been designated for publication in the Federal Supplement. The docket number in the United States District Court for the Eastern District of Virginia, Richmond Division is Civil Action No. 3:21CV432, and the docket number at the Fourth Circuit Court of Appeals is Record No. 21-2394.

## IV. JURISDICTION

At least prior to the omicron variant, equipped with "several mutations that may have an impact on how it behaves, for example, on how easily it spreads or the severity of illness it causes, " Staff, "Update on Omicron," *WHO*, November 28, 2021, https://www.who.int/news/item/28-11-2021-update-on-omicron (accessed January 4, 2021), the pathology of COVID-19 was such that it could only be deployed, and Applicant had an action, Civil Action No. 3:21CV432, pending before the United States District Court for the Eastern District of Virginia, Richmond Division, pursuant to 28 U.S.C. § 1331, dismissed on October 29, 2021, from which arose a timely appeal, filed December 14, 2021, to the United States Court of Appeals for the Fourth Circuit, and assigned Record No. 21-2394, granting preliminary grounds for standing in under

S.Ct.R. 11.

### A. A Case of Imperative Public Importance

On application for prejudgment intervention, pursuant to S.Ct.R. 11, Applicant presents only two issues for decision, one commenced in the U.S. District Court under the civil remedy provisions of the *FOIA*, 5 U.S.C. § 552(a)(4)(B), determining the origins and ownership of a novel coronavirus, presently attributed to the deaths of 5,446,753, as of January 4, 2021, Staff, "WHO Coronavirus (COVID-19) Dashboard," *WHO*, December 14, 2021, WHO Coronavirus (COVID-19), https://covid19.who.int/ (accessed January 4, 2021), and the other under the *FACE Act*, 18 U.S..C. § 248(c)(1), a case of first impression for claims brought for blocking access to a place of worship, of significance of themselves in redress of a violation of substantive rights in due process and equal protection, as to the action brought under the *FOIA*, which provides a civil remedy upon an Agency failure to comply with the disclosure provisions, and, in the case of the violation of the *FACE Act*, additionally a redress of violation of substantive rights to free exercise of religion, all of which constitute irreparable harms, *see Cohen v. Rosenstein*, 691 F. App'x 728, (Mem)–730 (4th Cir. 2017), an element of proof for a grant of injunctive relief, *see Winter v. NRDC*, 555 U.S. 7 (2008), and, as substantive rights, triggering review under strict scrutiny for Applicant who is also a member of a suspect class, as an African American, under *Gray v. Commonwealth*, 274 Va. 290 (2007). *But see* Marianna Sotomayor and Mike Memoli, "Biden apologizes for saying African Americans 'ain't black' if they back Trump re-election," *NBC News*, May 22, 2020.

#### 1. FOIA Claim

In a historic decision by this Honorable Court, in which, writing for the Court, Chief Justice Warren Burger, had paused to quote from Chief Justice Marshal, reminding all concerned that "'[i]t is emphatically the province and duty of the judicial department to say what the law is', " *U.S. v. Nixon*, 418 U.S. 683 (1974) (quoting *Marbury v. Madison*, 1 Cranch 137 (1803)), the rule was handed down dictating that, "[a]bsent a claim of need to protect military, diplomatic, or sensitive national security secrets, the confidentiality of Presidential communications is not significantly diminished by producing material for a criminal trial under the protected conditions of *in camera* inspection, and any absolute executive privilege under Art. II of the *Constitution* would plainly conflict with the function of the courts under the *Constitution*", *Nixon*, 418 U.S., at 683, the very justiciable controversy that was the gravamen of this averment in the suit commenced in the U.S. District Court in July, and, ever mindful that "when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with other values arises", as yet, unresolved, and finding not even public comment by the White House, nor the members of the press, giving rise to a "reasonable inference of suspicion". *See generally Terry v. Ohio,* 392 U.S. 1 (1968). *See also Williams v. Commonwealth*, 4 Va. App. 53 (1987); *cf. Illinois v. Wardlow*, 528 U.S. 119 (2000)[2], and indicative of that which appears to be an illegitimate state interest.

[2]"[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion. Headlong flight - wherever it occurs - is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id.* (citations omitted)

*Nollan v. Calif. Coastal Comm'n*, 483 U.S. 825 (1987)[3].

It is clear that the White House, at a minimum, has elected a dubious "right to remain silent", most often "accompanied by the explanation that anything said can and will be used against the individual in court" and "an absolute prerequisite to interrogation", well-recognized as a "privilege under the *Fifth Amendment* to the *Constitution* not to be compelled to incriminate himself", *Miranda v. Arizona*, 384 U.S. 436 (1966) applicable only to those matters that are codified as criminal prosecutions, and does not extend to civil liability. *See generally U.S. v. Kimble*, 719 F.2d 1253 (5th Cir. 1983).

**2.** FACE Act Claim

Under the *FOIA*, it was President Obama who had "directed departments and agencies not to withhold information 'merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears'". *Department of Justice Guide to the Freedom of Information Act*, "President Obama's *FOIA* Memorandum and Attorney General Holder's FOIA Guidelines," *supra* (quoting *Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act*, 74 Fed. Reg. 4683).

As this Honorable Court had observed, "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Buckley v. Valeo*, 424 U.S. 1 (1974) (quoting

[3] "The Court finds this an illegitimate exercise of the police power, because it maintains that there is no reasonable relationship between the effect of the development and the condition imposed." *Id.*

*Monitor Patriot Co. v. Roy*, 401 U. S. 265 (1971), and, for this constitutional guaranty Applicant's campaign for political office would thereby apply, identified as being "against current government efforts and recommendations for safety during the COVID-19 pandemic" Staff, "Mary Kadera: Democrat," *Progressive Voters Guide*, September 15, 2021, https://progressivevotersguide.com/virginia/2021/general/mary-kadera?language_content_entity=en (accessed October 1, 2021).

Moreover, barely over a month after Applicant's qualification for the ballot, Scott McCaffery, "Two candidates end up on Arlington School Board ballot," *Arlington Sun Gazette/Inside NOVA*, June 9, 2021[4], and just a little over a week after the commencement of the present action at the U.S. District Court, the White House had indicated that it would be flagging actions and identifying problematic accounts on social media, and it was reported: "White House press secretary Jen Psaki said Thursday the Biden administration is identifying "problematic" posts for Facebook to censor because they contain "misinformation" about COVID-19. Steven Nelson, "White House 'flagging' posts for Facebook to censor over COVID 'misinformation'" *New York Post*, July 15, 2021. *See also* Melissa Quinn, "Biden says he's asked intelligence community to 'redouble' efforts in examining origins of COVID-19," *CBS News*, May 27, 2021. *But see generally* Barbara Maranzani, "How Watergate Changed America's Intelligence Laws," *History*, March 7, 2017, *updated* October 16, 2018.

[4] "Major Mike Webb, who has floated around the periphery of the Northern Virginia political scene for nearly the past decade, qualified for the School Board ballot. He will be the lone opposition to Kadera, who last month won the Democratic endorsement over Miranda Turner." *Id.*

On July 19, 2021, just four days after the announcement, Applicant's Facebook account was permanently disabled by Meta Platforms, citing "security reasons", and having occurred within "a reasonable time," presenting in evidence a reasonable inference, under the time/decision rule, articulated in *Reid v. Merit Systems Protection Board*, 508 F.3d 674 (Fed. Cir. 2007), wherein a complainant "need not demonstrate the existence of a retaliatory motive. . . to establish that [the protected activity]. . . was a contributing factor", *Kewley v. HHS*, 153 F.3d 1357 (Fed. Cir. 1998) (quoting *Marano v. DoJ*, 2 F.3d 1137(Fed. Cir. 1993)).

Under 18 U.S.C. § 248(a)(2), it is expressly prohibited, in strict liability, for any person to, "by force or threat of force or by physical obstruction, intentionally injure[], intimidate[] or interfere[] with or attempt[] to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the *First Amendment* right of religious freedom at a place of religious worship", constituting an irreparable harm, and tortious interference with a business expectancy. *See Dunlap v. Cottman Transmission Sys. LLC*, Case Number No. 11-2327, (4th Cir. 2013)(Unpublished).

"Between the passage of *FACE i*n 1994 and 2005, the Department of Justice (DOJ) obtained the convictions of 71 individuals in 46 criminal prosecutions for violations of *FACE*", and "DOJ brought 17 civil lawsuits under FACE, which have resulted in injunctive relief, damages, and/or penalties", Staff, "*Freedom of Access to Clinic Entrances (FACE) Act*," *National Abortion Federation (NAF)*, http://prochoice.org/pubs_research/publications/downloads/about_abortion/face_act.pdf (accessed August 26, 2021), but no civil action, of record, has been brought regarding a place of worship.

Accordingly, it is clear that the disabling of Appellant's account on Meta Platforms did infringe upon his *First Amendment* rights, and this is truly "a case of imperative importance." S.Ct.R. 11, and it is clear that this decision "will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court", Sup.Ct.R. 20, are fully satisfied.

**B. Requirement for Immediate Action**

In the proper administration of justice, "[t]he ultimate purpose of the judicial process is to determine the truth." *Caldor, Inc. v. Bowden*, 330 Md. 632 (1993), and it has been stated by the Courts of the Commonwealth that a court "must yield to the proper administration of justice, which requires that the law be applied in an objective fashion to the facts of each case", and, "[a]bove all things, the court must ensure that every phase of every trial is fair, impartial, and governed by the rule of law." *Commonwealth v. Long*, 2007 WL 2905354 (Orange Cy. Cir. 2007) (Trial Order). Moreover, " '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers "which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) (quoting *U.S. v. Hudson*, 7 Cranch 32, 11 U. S. 34 (1812) (additional citations omitted)

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## VII. TO THE HONORABLE JOHN ROBERTS, CHIEF JUSTICE OF THE SUPREME COURT AND ACTING CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

Pursuant to Rule 11 of the Rules of this Court, incorporating Rules 10-14, 29, 30, 33.2, 34 and 39 for *pro se* filers *in forma pauperis*, Guidance Concerning Clerk's Office Operations, dated November 13, 2020 and 28 U.S.C. § 1651, Applicant Major Mike Webb, a/k/a Michael D. Webb, ("Applicant" or "Webb") respectfully requests prejudgment relief arising from claims averred in the Amended Verified Complaint under the *FOIA*, 5 U.S.C. § 552, and the *FACE Act*, 18 U.S.C. § 248, two ministerial actions that could have been completed, in the discretion of the Trial Court immediately after commencement of the actions raising these averments, but which, for whatever reason, to date, have not been completed, to the great detriment and derogation of Applicant's constitutionally guaranteed rights, and, raising a reasonable inference of suspicion, a matter before a jurist who chose to dismiss the action, immediately after Applicant had filed, in person, a motion to disqualify, on November 5, 2021, less than a week after a dismissal order had been entered, with no indication of the status of the case by the Clerk, and that had raised concerns, *inter alia*, that the presiding judge in the case, at a most suspicious time, had been nominated for a promotion to fill a vacancy at the Fourth Circuit, Press Release, "Warner & Kaine Recommend Three for Vacancy on U.S. Court of Appeals for the Fourth Circuit," *Senator Tim Kaine*, May 24, 2021, anticipating a thing of value that would increase her salary from $218,600 to $231,800, Staff, "Judicial Compensation," *US Courts*, https://www.uscourts.gov/judges-judgeships/judicial-compensation (accessed November 1, 2021), at least presenting the appearance of impropriety, mindful that in

the Commonwealth "a judge must diligently avoid not only impropriety but a reasonable appearance of impropriety as well", *Davis v. Commonwealth*, 21 Va. App. 587 (1996), and mindful that "[t]he bribery statute, § 201(b)(1), makes it a crime to 'directly or indirectly, corruptly give[ ] ... anything of value to any public official ... with intent ... to influence any official act'", *U.S. v. Heard*, 709 F.3d 413 (5th Cir. 2013).

Specifically, Applicant seeks first, pursuant to 5 U.S.C. § 552(a)(4)(B), entitling a requester, deemed to have exhausted all administrative remedies, *see* 5 U.S.C. § 552(c)(i), injunctive relief, enjoining the Respondents from withholding responsive documents requested.

And it necessarily follows that the Trial Court was fully aware, though the initial order to amend, issued on July 13, 2021, and through the dismissal, on a rational that was outside the judicial functions, that these orders fall squarely within the realm of that which is adjudicative and not judicial, piercing the veil of judicial immunity, *Battle v. Whitehurst*, 831 F. Supp. 522, (E.D. Va. 1993), *aff'd*, 36 F.3d 1091 (4th Cir. 1994), at least invoking the supervisory powers of this Honorable Court. S.Ct.R. 10(a).

While, even *sua sponte*, it was within the inherent powers of the Trial Court to have enjoined Respondents Hardy and OMB from withholding release, in derogation of Applicant's rights to equal protection and due process, as well as to petition the government, an irreparable harm, without articulation of a justification, since acknowledgment of receipt of the initial request on March 23, 2021, and as this Honorable Court has stated that "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury*, 1 Cranch, at 137.

Additionally, in redress of his religious liberties guaranteed under the *First*

*Amendment*, as extended to the separate states through the *Fourteenth Amendment*, *see Whitehill v. Elkins*, 389 U.S. 54 (1967) (citing *Edwards v. South Carolina*, 372 U. S. 229 (1963))[5], as well as a statutorily granted right in a strict liability crime, felonious in character, for a specific legal remedy, 18 U.S.C. § 248(c)(1)(A), on application for a prejudgment decision, Applicant brings this matter before this Honorable Court.

## VIII. STATEMENT OF THE CASE

### A. The *FACE Act*

Under 18 U.S.C. § 248(a)(2), the *Freedom of Access to Clinic Entrances (FACE) Act*, it is expressly prohibited, in strict liability, to block the entrance to a place of worship, subject to civil remedy18 U.S.C. § 248(c)(1)(A), for conduct felonious in character, constituting an irreparable harm.

Citing to no evidence, other than reports he claimed to have heard, the Virginia Governor, ranked 15th in the nation for elderly fatalities, Meredith Freed, *et al.*, "What Share of People Who Have Died of COVID-19 Are 65 and Older – and How Does It Vary By State?" *KFF*, July 24, 2020; *see also* Meredith Freed , Juliette Cubanski & Tricia Neuman, "COVID-19 Deaths Among Older Adults During the Delta Surge Were Higher in States with Lower Vaccination Rates," *Kaiser Family Foundation*, October 1, 2021[6], has claimed, generically, that "data shows nearly everyone who is getting

[5] "Moreover, the *First Amendment*, which protects a controversial as well as a conventional dialogue (*Terminiello v. Chicago*, 337 U. S. 1), is as applicable to the States as it is to the Federal Government, and it extends to petitions for redress of grievances (*Edwards v. South Carolina*, 372 U. S. 229, 372 U. S. 235) as well as to advocacy and debate." *Id.*

[6] "Older adults continue to be one of the populations hardest hit by the coronavirus pandemic. Since the start of the pandemic, people 65 and older have been at greatest risk of hospitalization and death due to COVID-19 compared to other age groups, and represent nearly 80% of all COVID-19 deaths as of September 29, 2021, similar to the rate observed in a July 2020 KFF analysis. At the same time, older adults, among the first groups prioritized to receive the COVID-19 vaccine, have the highest vaccination rate among all age groups, with 83.3% of the 65 and older

COVID is unvaccinated," Charles Owens, "Northam blames the unvaccinated for Virginia virus surge," *Bluefield Daily Telegraph*, September 27, 2021[7], and has "blamed churches for contributing to the spread of the virus". Charlie Spiering, "Gov. Ralph Northam Tightens Coronavirus Restrictions: You Don't Have to Sit In Church for God to Hear Your Prayers," *Breitbart*, December 10, 2020.

"[I]t has been held that a. . . [person] who, in good faith, relying upon the false representations of a man, contracts what she believes to be a valid. . . [agreement], but which is in fact void, and thereafter" is placed in detrimental reliance thereupon, until he or "she ascertains the fraud that has been perpetrated. . . , may recover". *Alexander v. Kuykendall*, 192 Va. 8 (1951), and, "[u]nder the rational basis test, '[t]he general rule is that legislation. . . is presumed to be valid and will be sustained if the classification drawn by the [circuit court] is rationally related to a legitimate state interest." *Hawkins v. Grese*, 68 Va. App. 462 (2018) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985)).

Applicant, "who has floated around the periphery of the Northern Virginia political scene for nearly the past decade, qualified for the School Board ballot," Staff, "Morning Notes: Candidate Adds Military Rank to His Name," *ARL Now*, June 10, 2021, who's birthday has been acknowledged since 2015 by Politico, *see generally* Mike Allen, "A MEATY, CONTENTIOUS CONGRESS AHEAD. . .," *Politico*, January 2, 2015; Rachel Bade & Jack Stanton, "POLITICO Playbook: 4 startling polls you should

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population fully vaccinated as of September 29, 2021. Vaccination rates for adults 65 and older range from 71.3% in West Virginia to 95.3% in Vermont." *Id.*

[7] "I want to repeat that. Nearly everyone who is getting COVID is unvaccinated." *Id.*

read about Jan. 6," *Politico*, January 2, 2022, and who remains unvaccinated, had his Facebook account disabled by Facebook on July 19, 2021 that at least offered in pretext that such was done for "security reasons", where he had maintained a political figure page, capable of reaching over 670,000 unique users, Lowell Feld, "Arlington School Board Member James Lander (D) Draws Porn Tab Guy. . ." *Blue Virginia*, December 28, 2016; mahatmakanjeeves, "Mike Porn Tabs Webb Running for Arlington School Board," Democrat Underground, December 28, 2016; Dan Evon, "Congressional Candidate Posts Screengrab with Porn Tabs," *Snopes* May 17, 2016; Newsroom, "Conservative Congressional Candidate Accidentally Reveals Porn Tabs," *CBS News*, May 17, 2016; Scott Broadbeck, "Webb: I Was Testing Porn Sites for Viruses," *ARL Now*, May 17, 2016; Scott Broadbeck, "Most-Read Arlington Stories of 2016 (#11-15): 13. Congressional Candidate's Apparent Porn Post Going Viral (18,390 views)," *ARL Now*, December 28, 2016; Justin Wm. Moyer, "Politicians, take note: Don't post screenshots that show your porn tabs," *Washington Post*, May 17, 2016; Ryan Bort, "Politicians and Porn: 10 Great Internet Fails," Rolling Stone, September 14, 2017; Staff, "Politicians and Porn—Five Classic Online Fails," Nigeria Today, September 15, 2017, almost immediately after the White House had identified several high profile accounts, including "Robert F. Kennedy Jr., a prominent figure in the anti-vaccine movement," accounts". Donie O'Sullivan, "White House turns up heat on COVID 'disinformation dozen'," *Mercury News*, July 16, 2021, *updated* July 18, 2021. *But see* Newsroom, "Rhode Island Lawmaker Accidentally Distributes Documents with Porn References," *CBS News*, July 11, 2017. *But see also* Kari Donnovan, "Virginia: Democrats Tim Kaine and Don Beyer Implicated in Bribe of Black Conservative Mike

Webb," Populist Media, October 31, 2018; Scott Broadbeck, "GOP Congressional Candidate Fails to File FEC Report on Time, Blames 'Cyber Attack'," *ARL Now*, April 26, 2016.

"Viewing the record as a whole and in the light most favorable to the nonmoving party," *Washlefske v. Winston*, 60 F. Supp. 2d 534 (E.D. Va. 1999), *aff'd on other grounds*, 234 F.3d 179 (4th Cir. 2000), credible evidence suggests that the "proffered explanation is unworthy of credence." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981) (citing *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973)).

The actions alleged against the White House, in failure to respond to a request submitted under the *Freedom of Information Act (FOIA)*, 5 U.S.C. § 552, below, would be deemed to have occurred within a reasonable time, "a reasonable time," raising in credible evidence a reasonable inference, under the time/decision rule, articulated in *Reid*, 508 F.3d, at 674, wherein a complainant "need not demonstrate the existence of a retaliatory motive. . . to establish that [the protected activity]. . . was a contributing factor", *Kewley*, 153 F.3d, at 1357 (quoting *Marano*, 2 F.3d, at 1137).

**B. The *Freedom of Information Act (FOIA)***

This relatively simple case presents evidence, beyond a reasonable doubt of violations of conspiracy to evade a summons, 18 U.S.C. § 1512(b), a predicate offense under the federal racketeering statute, wherein a praecipe, dated October 8, 2021, to issue summonses was ignored, 18 U.S.C. § 1961(1)(B), conspiracy to violate civil rights, 18 U.S.C. § 241, and alteration of government documents, docket a motion to request a temporary restraining order against the White House, dated September 22, 2021, 18 U.S.C. § 1519, arising from mere routine administrative actions, outside the veil of

judicial immunity, *Battle*, 831 F. Supp., at 522.

### C. Executive Order 12,958

Under Executive Order 12,958, Part I, Sec. 1.2(a)(2), "[i]nformation may be originally classified under the terms of this order only if, in relevant part, "the information is owned by, produced by or for, or is under the control of the United States Government". Furthermore, under Executive Order 12958, Part I, Section 1.1(b), "'[i]nformation' means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is *owned by, produced by or for, or is under the control of the United States Government.*" (emphasis added) *See also* Executive Order No. 12,356, *National Security Information*, Section 6.1(b)[8].

### D. Reasonably Calculated

In *Whole Women's Healthcare v. Hellerstedt*, 579 U.S. ___ (2016), this Court determined that there "there was no significant health-related problem that the new law helped to cure." *Id.* (quoting *Whole Woman's Health* v. *Lakey*, 46 F. Supp. 3d 673 (2014)", and "[s]tates may regulate abortion procedures in ways rationally related to a legitimate state interest", *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U. S. 483 (1955), just as before any burden may be imposed by the State against any person or any class of persons in sufferance of their rights, there must be established an "essential nexus," *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). And, Anthony Fauci has conceded that "markers in vaccinated patients' blood that would indicate protection against COVID-19, what's known as 'correlates of immunity'," or

[8] "'Information' means may information or material, regardless of its physical form or characteristics, *that is owned by, produced by or for, or is under the control of the United States Government." Id.*

"neutralizing antibodies — proteins made by the immune system that are known to disarm the coronavirus" have been determined to be "associated with higher levels of vaccine efficacy." Joe Palca, "New Evidence Points To Antibodies As A Reliable Indicator Of Vaccine Protection," *NPR*, August 23, 2021.

Yet, "infectious dose," or "how much of the pandemic virus it takes to become infected," Christopher Snowbeck, "University of Minnesota leads work group on infectious dose of COVID-19," *Star Tribune*, July 11, 2020, a standard clinical metric, *see generally Principles of Epidemiology in Public Health Practice, Third Edition: An Introduction to Applied Epidemiology and Biostatistics*, "Lesson 3: Measures of Risk: Section 2: Morbidity Frequency Measures", *CDC*, May 18, 2012, CDC has conceded that "[t]he infectious dose of SARS-CoV-2 needed to transmit infection has not been established", Staff, "Scientific Brief: SARS-CoV-2 Transmission," *CDC*, May 7, 2021.

Infectious dose, however, is a metric required to determine the proper correlates of protection to develop an effective vaccine, without the requirement for large stage three clinical trials, Shuo Feng, *et al.*, *Correlates of protection against symptomatic and asymptomatic SARS-CoV-2 infection*, MedRix, June 24, 2021, doi: https://doi.org/10.1101/2021.06.21.21258528, a metric not even discussed by Dr. Anthony Fauci in a White House Briefing until the same day that the Pfizer vaccine was rushed to approval at the Food & Drug Administration. Joe Palca, "New Evidence Points To Antibodies As A Reliable Indicator Of Vaccine Protection," *supra. But see* Joe Palca, "New Blood Tests Should Show How Long A COVID-19 Vaccine Will Protect You," *NPR*, April 28, 2021. Consequently, vaccine developers like Moderna TX, utilized randomly selected dosages for efficacy and safety testing of their COVID-19

countermeasure product for approval for release under the *Emergency Use Authorization*, consisting of "2 injections of 25 µg, 50 µg, 100 µg, or 250 µg of mRNA-1273 given 28 days apart." Marion F. Gruber, *Emergency Use Authorization (EUA) for an Unapproved Product Review Memorandum (ModernaTX, Inc., Application 27073)*, November 30, 2020.

1. Transmission Risk

In epidemiology a rate is "a measure of risk", and "an attack rate is the proportion of the population that develops illness during an outbreak", while also, synonymous with secondary attack rate, "is sometimes calculated to document the difference between community transmission of illness versus transmission of illness in a household, barracks, or other closed population", and "is calculated as: Number of cases among contacts of primary cases divided by Total number of contacts× $10^n$." *Principles of Epidemiology in Public Health Practice, Third Edition: An Introduction to Applied Epidemiology and Biostatistics*, "Lesson 3: Measures of Risk: Section 2: Morbidity Frequency Measures," *supra.*

Centers for Disease Control & Prevention Director Rochelle Walensky has asserted that "[w]ith the delta variant, the R-naught is 8 or 9"), Rich Mendez, "Delta variant is one of the most infectious respiratory diseases known, CDC director says," *CNBC*, July 22, 2021; however, the CDC has expressly rejected this method because it employs stochastic and mathematical methods to project models, *see* Ying Liu Y, *et al.*, *The reproductive number of COVID-19 is higher compared to SARS coronavirus*, 27 J. Travel Med. 2 (2020), doi:10.1093/jtm/taaa021, and, *inter alia*, it is "easily misrepresented, misinterpreted, and misapplied." Paul Delameter, *et al.*, *Complexity*

*of the Basic Reproduction Number ($R_0$)*, 25 Emerging Infectious Diseases 1 (January 2019).

From the origins, and recognizing that, "[w]ith an $R_0$ value of more than 1, the transmission is likely to continue in a population, and in case the $R_0$ is below 1, the transmission will probably wane off because one infectious case will infect less than one person on average", Arun Kumar Yadav, *Demystifying R Naught: Understanding What Does it Hide?* 46 Indian J. Comm. Med. 1, pp. 1-7, (January to March 2021), world public health authorities, using secondary attack rate, had found "[b]etween 1% and 5% of contacts were subsequently laboratory confirmed cases of COVID-19, depending on location"[9], but, less than ethically projected, and inaccurately, "a relatively high $R_0$ of 2-2.5", *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19),* dated February 16-24, 2020, so as to present what appeared to satisfy an assumed 20% threshold, on a scale of 1 to 10, to validate person to person transmission, *see generally* Julia Belluz, "China's cases of Covid-19 are finally declining. A WHO expert explains why," *Vox*, March 2, 2020, *updated* March 3, 2020 ("In flu, you'll find this virus right through the child population, right through blood samples of 20 to 40 percent of the population."), where they had determined, based upon cases, "it is not clear whether this correlates with the presence of infectious virus". *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19).*

Unlike a rate, "$R_0$ is a dimensionless number and not a rate, which would have

[9]This is a finding revalidated in the largest sample size tracer contact study, to date, examining over three million laboratory cases, but finding a secondary attack rate of only 4.6%. Ramanan Laxminaraya, *Epidemiology and transmission dynamics of COVID-19 in two Indian states*, pp. 691-697, Science 370 (2020).

units per time", and "can be calculated for various communicable diseases irrespective of their route of spread" with the formula: $R_0$ = Infection/contact (transmissibility) × contact/time (average rate of contact) × time/infection (duration of infectiousness). Arun Kumar Yadav, *Demystifying R Naught: Understanding What Does it Hide? supra*, providing an early signal with the problem with the WHO estimate. "$R_0$ is nearly always estimated retrospectively from seroepidemiologic data or by using theoretical mathematical models", Paul Delameter, *et al., Complexity of the Basic Reproduction Number ($R_0$), supra*, and, because of the varying factors, one researcher has assigned to measles an $R_0$ of up to 20, buy got chickenpox an $R_0$ of only 5. Arun Kuma The basic reproduction number ($R_0$) of measles: a systematic review, Yadav, *Demystifying R Naught: Understanding What Does it Hide? supra.* Others have calculated the $R_0$ for measles to range between measles is one of the most contagious infections. For measles, R0 is often cited to be 12 and 18. Fiona M. Guerra, *The basic reproduction number (R 0) of measles: a systematic review*, 17 Lancet Infect Dis. 12, pp. e420-e428, (December 2017), doi: 10.1016/S1473-3099(17)30307-9, only complicating matters later. persons for the epidemic to reverse."

A super spreader event requires a biological agent with at least a 60% secondary attack rate, or a very low infectious dose, Martin J. Blaser & Lee S. Newman, *A Review of Human Salmonellosis: I. Infective Dose*, 4 Reviews of Infectious Diseases 6, pp. 1096–1106 (November 1982), which is easily satisfied by pathogens like measles (90% person to person infection rate), Derek R. MacFadden, MD and Wayne L. Gold, MD Measles, 186 CMAJ 6, April 1, 2014, *see also* Staff, "Transmission of Measles," CDC, February 5, 2018, https://www.cdc.gov/measles/transmission.html (accessed August 20, 2020),

as well as chicken pox (90% person to person infection rate), Staff, "Chickenpox (Varicella): For Healthcare Professionals," CDC, December 31, 2018, https://www.cdc.gov/chickenpox/hcp/index.html (accessed August 29, 2020).

**2.** Calculating the Delta

However, Dr. Walensky has claimed, the delta variant is "one of the most transmissible viruses we know about", stating, "[m]easles, chickenpox, this – they're all up there." Paul LeBlanc, Maggie Fox & Elizabeth Cohen, "CDC document warns Delta variant appears to spread as easily as chickenpox and cause more severe infection," *CNN*, July 30, 2021, but assigning an $R_0$ of 8 or 9, Rich Mendez, "Delta variant is one of the most infectious respiratory diseases known, CDC director says," *supra*, continuing the rudimentarily prepared R-Naught model from the outset, which begins to implode upon itself. *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19).*

Under the rule stated in *Thompson v. Bacon*, 245 Va. 107 (1993), "[a] party alleging fraud must prove by clear and convincing evidence (1) a false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to him", *id.* (citing *Winn v. Aleda Constr. Co.*, 227 Va. 304 (1984), and "[c]lear and convincing evidence is such proof as will establish in the trier of fact a firm belief or conviction concerning the allegations that must be established. *Id.* citing *Walker Agency, Inc. v. Lucas*, 215 Va. 535 (1975). And, subject to sanctions, pursuant to Fed.R.Civ.Pro. 11(c), any representation to the Court has been certified, "to the best of the person's knowledge," contains "information, and belief, formed after an inquiry reasonable under the

circumstances". Fed.R.Civ.Pro. 11(b).

Yet, the CDC's reliance on R-Naught, in this instance, provides a clear example why, prior to claims of "evolving science", AP, "The AP Interview: CDC Director on evolving science," *USA Today*, December 9, 2021, failing to satisfy constitutional muster, *Regents of the University of California, 591 U.S.*, at ___ , (quoting from *Michigan v. EPA*, 576 U. S., at 743), they had prudently taken the position that R-Naught can be "easily misrepresented, misinterpreted, and misapplied." Paul Delameter, *et al.*, *Complexity of the Basic Reproduction Number ($R_0$)*, 25 Emerging Infectious Diseases 1 (January 2019), contributing to injury of Intervenor's free exercise rights, an irreparable harm as a substantive right, *Cohen*, 691 F. App'x, at 728, placing him, and similarly situated others in a detrimental reliance, *Winter*, 555 U.S., at 7.

Rejecting the standard measure, secondary attack rate, early studies estimated a wide range of assessments of transmission risk, finding "two studies using stochastic methods to estimate $R_0$, reported a range of 2.2–2.68 with an average of 2.44.1," another "six studies using mathematical methods to estimate $R_0$ produced a range from 1.5 to 6.49, with an average of 4.2.2," another "three studies using statistical methods such as exponential growth estimated an $R_0$ ranging from 2.2 to 3.58, with an average of 2.67", and yet another review finding "the average $R_0$ to be 3.28 and median to be 2.79, which exceed WHO estimates from 1.4 to 2.5." Ying Liu Y, *et al.*, *The reproductive number of COVID-19 is higher compared to SARS coronavirus, supra.*

Yet, it is known with regard to chickenpox, the reference used by CDC for the delta variant, Paul LeBlanc, Maggie Fox & Elizabeth Cohen, "CDC document warns

Delta variant appears to spread as easily as chickenpox and cause more severe infection," *supra*, is "one of the most contagious viruses known", and "[e]ach individual can spread the virus to as many as '90% of the people close to that person'". Michaeleen Doucleff, "The Delta Variant Isn't As Contagious As Chickenpox. But It's Still Highly Contagious," *NPR*, August 11, 2021. *See also* Staff, "Chickenpox (Varicella): For Healthcare Professionals," *CDC*, December 31, 2018, https://www.cdc.gov/chickenpox/hcp/index.html (accessed August 29, 2020).

According to contemporaneous reports regarding "[t]he B.1.617.2 variant, now dubbed the Delta variant," it was determined that "British scientists recently estimated that it might be 40% to 50% more transmissible than the B.1.1.7 variant, or Alpha, which in turn is more transmissible than the original virus and quickly spread across the globe", Brianna Abbott, "Covid-19 Delta Variant First Found in India Is Quickly Spreading Across Globe," *Wall Street Journal*, June 9, 2021, indicating, if using the validated secondary attack rate, would have found a 7.5% infectious biological agent, too low to be validated as infectious, but under the projected R-Naught, a disease estimated to be between 7.98 and 8.5, roughly a converted 80 to 85% secondary attack rate, and reported by CDC Director Rochelle Walensky to be between 8 or 9, Rich Mendez, "Delta variant is one of the most infectious respiratory diseases known, CDC director says," *supra*, or 80 to 90% in converted secondary attack rate, with not much potential to escalate any higher.

Despite the fact that, by R-Naught, COVID-19 could not escalate much higher in transmissibility, according to a pre-Christmas report, "[t]he best estimates are that Omicron is 25% to 50% more transmissible than the Delta variant", Editorial Board,

"Omicron creates confusion and threat, but this holiday season, safety is easier," *Buffalo News*, December 23, 2021[10], indicating an R-Naught as high as 135% in converted secondary attack rate, which is simply impossible, and, by definition, "not reasonably calculated to prevent the outbreak", *Fever's Alcoholic Beverage Control Board*, 24 Va.App. 213 (1997). *Easley v. Virginia Alcoholic Beverage Control Bd.*, 57 Va. Cir. 15 (2001). *See also Whole Women's Healthcare*, 579 U.S., at ___ (citing *Roe* v. *Wade*, 410 U. S. 113, 150 (1973) (quoting *Morey v. Doud*, 354 U. S. 457 (1957); internal quotation marks omitted))[11]; *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), justifying previous CDC reservations against using R-Naught as a measure of transmissibility risk. Paul L. Delameter, *Complexity of the Basic Reproduction Number ($R_0$), supra.*

**3.** "Secret History"[12]

In 2016, from nowhere, the first independent infection, not a coinfecting agent, from the common human coronavirus, OC229E, an anomaly, presented in Athens. Alex Knapp, "The Secret History of the First Coronavirus," *Forbes*, April 11, 2020. And, according to one account, "[c]oronaviruses (CoVs family *Coronaviridae*) are the etiological agent(s) of respiratory, enteric, hepatic, and neurological diseases in animals and humans", and "[t]he first coronavirus (infectious bronchitis virus) *was isolated* in chicken embryos in 1937 (Beaudette and Hudson, 1937), with *subsequent*

[10] "It's doing that now with a vengeance. The best estimates are that Omicron is 25% to 50% more transmissible than the Delta variant, which is 50% more transmissible than the Alpha variant. And Alpha is 50% more transmissible than the original version of the virus." *Id.*

[11] "a requirement that simply is not based on differences' between abortion and other surgical procedures 'that are reasonably related to' preserving women's health, the asserted 'purpos[e] of the Act in which it is found.'" *Id.*

[12] Alex Knapp, "The Secret History of the First Coronavirus," *Forbes*, April 11, 2020.

*viral isolations* in rodents, domestic animals, and humans." Wen Wang, *et al.*, *Discovery, diversity and evolution of novel coronaviruses sampled from rodents in China*, 474 Virology, pp. 19-27, November 9, 2014. (emphasis added)

According to one account, "[t]he history of human coronaviruses began in 1965 when Tyrrell and Bynoe [footnote omitted] found that they could *passage a virus* named B814." Jeffrey S. Kahn & Kenneth McIntosh, *History and Recent Advances in Coronavirus Discovery*, 24 The Pediatric Infectious Disease Journal 11, pp. S223-S227 (November 2005) (emphasis added). After discussing the Severe Acute Respiratory Syndrome (SARS) virus, and some others, this account goes on to speculate that the coronavirus population had become active, but tentatively postulated that "[i]t *may be* that some of the newer coronaviruses represent strains similar to the original B814 and OC strains that could not be further characterized in the 1960s. *Id.* (emphasis added)

Yet, hence, it is clear, by simple probability, that the coronaviruses possessed the optimal opportunity to create multiple potential emerging pathogen threats, but, failed, until recently, and yet, of this "linear molecule of single-stranded RNA which is polyadenylated and infectious", with regard to human coronaviruses, two decades before, suddenly, five emerged from bat coronaviruses, between 2003 and 2005, Jeffrey S. Kahn & Kenneth McIntosh, *History and recent advances in coronavirus discovery*, 24 Pediatr Infect Dis J. 11(Suppl.), S223-7, discussion S226 (November 2005), doi: 10.1097/01.inf.0000188166.17324.60. PMID: 16378050 ("Since 2003, at least 5 new human coronaviruses have been identified, including the severe acute respiratory syndrome coronavirus, which caused significant morbidity and mortality.").

4. Origin Clues in Mysterious MERS

National public health authorities have admitted that "[p]erson-to-person spread of MERS-CoV, *usually after close and prolonged contact* such as caring for or living with an infected person, has been well documented," and, most importantly, "most people who had close contact with someone who had MERS did not get infected or become ill." Staff, "Frequently Asked Questions," *CDC*, August 2, 2019, https://www.cdc.gov/coronavirus/mers/faq.html (accessed July 20, 2020). (emphasis added) And, while stating tentatively, "we don't fully understand the precise ways that it spreads", they have nonetheless conceded that "[r]esearchers studying MERS have not seen any ongoing spreading of MERS-CoV in the community." Staff, "Middle East Respiratory Syndrome (MERS): Transmission," *CDC*, August 2, 2019, https://www.cdc.gov/coronavirus/mers/about/transmission.html (accessed January 2, 2021), contrary to news reports suggesting "[i]t's. . . spread with just a handshake." Helen Branswell, "U.S. reports first case of local transmission of MERS: CDC," *Global News*, May 18, 2014, *updated* May 19, 2014. They concede that "transmission among household contacts is variable", Marie E. Killerby, *et al.*, *Middle East Respiratory Syndrome Coronavirus Transmission*, 26 Emerg. Inf. Dis. 2, pp. 191-198 (February 2020), https://doi.org/10.3201/eid2602.190697, and that "MERS-CoV in healthcare settings spread predominantly before MERS-CoV infection was diagnosed". Jennifer C. Hunter, *et al.*, *Transmission of Middle East Respiratory Syndrome Coronavirus Infections in Healthcare Settings, Abu Dhabi*, 22 Emerg. Inf. Dis. 4, pp. 647-656 (April 2016), https://doi.org/10.3201/eid2204.151615.

SARS-CoV, MERS-CoV and SARS-CoV-2 are all bat coronaviruses that did not

present themselves until 2003 in the outbreak in Hong Kong, *see generally* Vivaldo Gomes da Costa, Marcos Lázaro Moreli & Marielena Vogel Saivish, *The emergence of SARS, MERS and novel SARS-2 coronaviruses in the 21st century*, Archives of Virology, March 25, 2020, https://doi.org/10.1007/s00705-020-04628-0, and, despite what may be popularly perceived, "SARS-CoV and MERS-CoV spread between humans mainly through nosocomial transmission". Emmie de Wit, *et al.*, *SARS and MERS: recent insights into emerging coronaviruses*, 14 Nature Reviews, pp. 523-534 (August 2016).

The association to dromedary camels for MERS-CoV is well supported by research literature, which generally notes that the pathogen the *found primarily nosocomial infections* has yet to be explained for this zoonotic evolution during outbreaks on the Arabian peninsula, Emmie de Wit, *et al.*, *SARS and MERS: recent insights into emerging coronaviruses*, *supra*, or, more intriguingly, South Korea, where the pathogen had its largest outbreak outside of the Middle East. Ji Yeon Lee, *et al.*, *The clinical and virological features of the first imported case causing MERS-CoV outbreak in South Korea, 2015*, 17 BMC Inf. Dis, p. 498 (2017), DOI 10.1186/s12879-017-2576-5.

**5.** An Ugly Duckling

In an email from Kristian Andersen to Anthony Stephen Fauci, Director for Respondent National Institute for Allergy and Infectious Disease (NIAID), dated January 31, 2020, titled, "Re: FW: Science: Mining coronavirus genomes for clues to outbreak's origin," Andersen stated: "The unusual features of the virus make up a really small part of the genome (<0.1%) so has to look really closely at all the sequences

to see that some of the features (potentially) look engineered".

Andersen states emphatically, "I should mention that after discussions earlier today, Eddie, Bob, Mike and myself all find the genome inconsistent with expectations from evolutionary theory." Email from Andersen, Kristian to Fauci, Anthony, Subject: "Re: FW: Science: Mining coronavirus genomes for clues to outbreak's origin," dated January 31, at 10:32 p.m.

In *WHO-convened Global Study of Origins of SARS-CoV-2: China Part Joint WHO-China Study 14 January-10 February 2021 Joint Report*, dated February 10, 2021, a 120-page report, dedicates less than three pages to the topic of "Introduction through a laboratory incident," states that "[w]e did not consider the hypothesis of deliberate release or deliberate bioengineering of SARS-CoV-2 for release, the latter has been ruled out by *other scientists* following analyses of the genome [footnote omitted]". And, not long after the release of the study, news accounts reported that "[t]he World Health Organization's director-general said the research team's assessment on whether the coronavirus entered the human population as a result of a laboratory incident was not "extensive enough," and that he believes it requires further investigation. Alexandra Hein, "WHO chief says coronavirus origin report not 'extensive enough' on lab assessment," *Fox News*, March 30, 2021.

Tedros' comments came after the agency released its inconclusive report on the possible origin of coronavirus and said that introduction through a laboratory incident was "extremely unlikely." *Id.* Researchers involved in the report after its release acknowledged during a media briefing that they did not conduct a full investigation of the labs in China "or any labs around the world for that matter," and therefore could

not definitively reach any results other than what was stated in the report. *Id.*

However, Tedros called for "more robust conclusions." *Id.*, or the annotated reference supporting the conclusion, referencing how "the latter has been ruled out by *other scientists* following analyses of the genome", but citing to only one reference: Kristian G. Andersen, *et al.*, *The proximal origin of SARS-CoV-2*, 26 Nature Medicine, pp. 450-455 (April 2020), a brief report that had only concluded that predict that in engagement of the ACE2 enzyme "*the interaction is not ideal*".

More concerning than the decision to discard a review of evidence after April 2020, are the conclusions contained in that report, Kristian G. Andersen, *et al.*, *The proximal origin of SARS-CoV-2*, *supra*, which significantly depart from Andersen's statement that "some of the features (potentially) look engineered" and that "Eddie, Bob, Mike and myself all find the genome inconsistent with expectations from evolutionary theory." Email from Andersen, Kristian to Fauci, Anthony, Subject: "Re: FW: Science: Mining coronavirus genomes for clues to outbreak's origin," dated January 31, at 10:32 p.m.

Andersen stated that "SARS-CoV-2 is the seventh coronavirus known to infect humans; SARS-CoV, MERSCoV and SARS-CoV-2 can cause severe disease, whereas HKU1, NL63, OC43 and 229E are associated with 'mild symptoms"; however, , Zhiqiang Wu, *et al.*, *SARS-CoV-2's origin should be investigated worldwide for pandemic prevention*, The Lancet Correspondence, September 17, 2021, DOI:https://doi.org/10.1016/S0140-6736(21)02020-1, a recent zoonotic evolution report, with disclosed connection to the Wuhan Virology Institute, relies upon Andersen's work to conclude that "laboratory leakage is extremely unlikely", in addition to Holmes

the United States government, under Executive Order 12,958[14].

1. "The *Means* of Knowledge"[15]

It is of at least probative value that Applicant had served in the capacity of the most junior commissioned officer to have ever served as the Operations Officer for all U.S. Army strategic counterintelligence in the continental United States, and has sufficient training and experience to be certified, to be certified as an expert under Fed.R.Evid. 702 and 703, having also served as the *Aide de Camp* to the Commander, having played a critical staff role in during the formation of the Armed Forces Medical Intelligence Center (AFMIC), *see generally* DODD 6420.1, *Armed Forces Medical Intelligence Center (AFMIC)*, September 30, 1996 , the precursor to the National Medical Intelligence Center (NMIC), *see generally* DODI 6420.01, National Center for Medical Intelligence (NCMI), March 20, 2009, *incorporating* Change 3, *effective* September 8, 2020, which was the subject of the ABC News report, Josh Margolin & James Gordon Meek, "Intelligence report warned of coronavirus crisis as early as November: Sources 'Analysts concluded it could be a cataclysmic event,' a source said," *ABC News*, April 8, 2020.

2. "Separate but Equal"[16]

One landmark case decided by this Honorable Court had determined that separation "generates a feeling of inferiority as to their status in the community that

[14] Such information would resolve the unanswered question regarding the zoonotic or laboratory origins of a novel coronavirus, since, in accordance with the holdings of this Honorable Court in *Association for Molecular Pathology v. Myriad Genetics*, Docket No. 12-398, 566 U.S. ___ (2013) and *Diamond v. Chakrabarty*, 447 U. S. 303 (1980).
[15] "'Means of knowledge, with the duty of using them, are, in equity, equivalent to knowledge itself'", *Kian v. Kefalogiannis*, 158 Va. 129 (1932) (quoting *Cordova v. Hood*, 84 U.S. 1 (1873)).
[16] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

may affect their hearts and minds in a way unlikely ever to be undone", *Brown v. Bd. of Educ. of Topeka, KS* , 347 U.S. 483 (1954), and, in disparate treatment, *vis á vis* similarly situated others, it is a fact that after Applicant's request for information, 866 pages were released to the Washington Post, *see* Damian Paletta & Yasmeen Abutaleb, "Anthony Fauci's pandemic emails: 'All is well despite some crazy people in this world'," *Washington Post*, June 1, 2021, and, of report, "[m]ore than 3,200 pages of emails obtained through a *FOIA*t filed by BuzzFeed News — covering the period from January to June 2020". Natalie Bettendorf & Jason Leopold, "Anthony Fauci's Emails Reveal The Pressure That Fell On One Man," *BuzzFeed*, June 1, 2021, *updated* June 2, 2021.

## IX. REASONS FOR GRANTING THE APPLICATION

**A. Whether, pursuant to S.Ct.R. 11, *see also* 28 U. S. C. § 2101(e), upon application for prejudgment relief, in "a case pending in a United States court of appeals, before judgment is entered in that court", a requester, "deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions," in accordance with 5 U.S.C. § 552(c)(i), is entitled, pursuant to 5 U.S.C. § 552(a)(4)(B), on complaint to "the district court of the United States in the district in which the complainant resides" to compel that Court "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant", so as to remedy a derogation of his rights to equal protection and due process, as well as a right to redress of grievances, substantive right, irreparably harmed.**

Applicant has fully complied with the provisions, pursuant to Fed.R.Civ.Pro. 65(b), but the Trial Court, in error, had refused to docket the matter for hearing, on rationale that the adverse party has not yet received proper notice, was aware, or should be aware that this Court has stated that "the government violates due process if. . . the evidence is *of such a nature that the defendant would be unable to obtain comparable evidence by any other reasonable means.' " Park v. Commonwealth*, 32

Va.App. 407 (2000) (quoting *California v. Trombetta*, 467 U.S. 479 (1984)).

Hence, pursuant to Fed.R.Civ.Pro. 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law", to remedy a derogation of Applicant's equal protection and due process rights.

Accordingly, having established proper jurisdiction, pursuant to S.Ct.R. 11, a grant of writ for certiorari should issue for "before judgment has been rendered in the court of appeals may be made at any time before judgment." 28 U.S.C. § 2101(e).

**B. Whether, pursuant to S.Ct.R. 11, see also 28 U. S. C. § 2101(e), "upon application for prejudgment relief, in "a case pending in a United States court of appeals, before judgment is entered in that court", where, in accordance with Fed.R.Civ.Pro. 56(a), "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law," summary judgement may be granted, where, under 18 U.S.C. § 248(a)(2), under the direction of the President, a private party, "by force or threat of force or by physical obstruction, intentionally injure[d], intimidate[d] or interfere[d] with or attempt[ed] to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship", and "subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c)", so as to remedy a derogation of his rights to equal protection and due process, as well as rights to free exercise, substantive rights, constituting an irreparable harm.**

In view of the reasonable suspicions regarding attempts at censorship that the facts above describe, in view of the deprivation of religious liberties, the very first freedoms expressed in the *Bill of Rights*, that are adversely affected, in the record, and, in view of the statutorily prescribed legal remedy to which Applicant is entitled therefore, it could only be proper to grant the relief to which he is entitled, and for so long has labored and endured to obtain that which is his entitlement under 18 U.S.C. § 248.

## X. CONCLUSION

For the reasons stated in this application, Applicant respectfully requests that the Circuit Justice or the Court enjoin the Respondents from continuing to withhold documents requested under the *FOIA*, and grant summary judgment on his claims, under *the FACE Act*, there being no genuine issue of fact, entitling him to prevail as a matter of law, for redress for derogation of Applicant's rights to free exercise, petitioning of grievances, due process and equal protection, and to grant such other relief as deemed proper by this Honorable Court.

I declare under penalty of perjury that the foregoing is true and correct.

Name of Party (Print or Type): Major Mike Webb, 955 S. Columbus Street, Unit # 426, Arlington, Virginia 22204, GiveFaithATry@gmail.com, 856-220-1354.

MCL

Signature of Party

Executed on: 1-6-22
(Date)

Subscribed, acknowledged and sworn to before me, the undersigned Notary Public in the County of Arlington in the Commonwealth of Virginia, this 6 day of January 20 22.

MISHEL E TIPAN
NOTARY PUBLIC
REG. #7966925
MY COMMISSION EXPIRES
06/30/2025
COMMONWEALTH OF VIRGINIA

NOTARY PUBLIC

My commission expires: 06/30/2025 Registration Number: 7966925