
Exhibit B

VIRGINIA:

IN THE CIRCUIT COURT FOR THE 31ST JUDICIAL CIRCUIT

ATI
Plaintiff

v.

Reader & Visitors
Defendant

Case No.

CL-11-3236

ORDER

THIS MATTER was heard this day, May 24, 2011, on

IT APPEARING that this Court has jurisdiction to hear and determine this matter; that each party entitled to notice has been notified; and based upon:

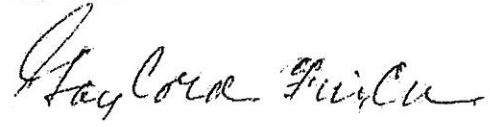
1. ☒ the agreement of the parties; OR
2. ☐ the evidence before this Court that this Order should be entered;

it is therefore

ADJUDGED, ORDERED, and DECREED as follows:

The Respondent shall complete its supply
of requested documents no later than
90 days after the date of this order, and
will supply them in electronic form

ENTERED this 24 day of May, 2011.



GAYLORD L. FINCH,
JUDGE DESIGNATE

SEEN and AGREED/OBJECTED TO:


Counsel for Plaintiff
VSB # 44522

SEEN and AGREED/OBJECTED TO:

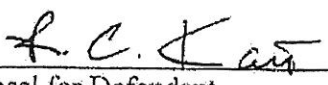

Counsel for Defendant
VSB # 13381

Exhibit C

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION
INSTITUTE, and
THE HONORABLE DELEGATE
ROBERT MARSHALL

Petitioners,

v.

RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA,

Respondent.

Civil Docket No. CL 11-3236
Protective Order

ORDER ON PROTECTION OF DOCUMENTS

Came the parties, by counsel, on May 24, 2011, to be heard upon the petitioner's Verified Petition for Mandamus and Injunctive Relief and the Respondent's Memorandum in Opposition thereto, and were heard by the Court.

By agreement of counsel and in the interest of ensuring an efficient and prompt resolution of this action and of protecting information that may be exempt from disclosure under the Virginia Freedom of Information Act (Va. § 2.2-3700 *et seq.*) ("Act"), the Court does hereby enter this Protective Order.

Therefore, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

A. DEFINITIONS

1. As used herein:

- a. "This action" means the above-captioned action pending in this Court, including any related discovery, pre-hearing, hearing, post-hearing, or appellate proceedings.
- b. "Party" means Petitioners or Respondent in this action.

c. "Requested public records" means any public records, in any form, responsive to the Petitioners' request pursuant to the Act that is the subject of this action.

d. "Exempt Information" means any requested public records the Respondent has not disclosed under authority of the Act, including any laws or constitutional provisions that apply to those public records.

e. "Disclosed Information" means any requested public records the Respondent has disclosed pursuant to the Act.

f. "Public Record" is defined as the term is used in Va. Code § 2.2-3701.

B. DESIGNATION OF PROTECTED INFORMATION

1. The Respondent may designate as Exempt Information any requested public record. Such designation shall constitute a representation to the Court that the Respondent (and counsel, if any) in good faith believes that the information so designated constitutes Exempt Information as defined herein.

2. Public records that the Respondent designates as Exempt Information, in accordance with this Order, shall be designated as such by placing on or affixing to the document containing excluded information (in such a manner as will not interfere with the document's legibility), the designation "Exempt Information", or any other appropriate notice of equivalent meaning. With respect to electronic documents, the Respondent at the time such information is produced shall specify in writing the information that is Exempt Information by identifying it (by ranges of document identification numbers or page and line numbers where applicable, or other appropriate means). For purposes of this action, any public record containing exempt or excludable information will be Exempt Information as defined herein.

C. DISCLOSURE OF EXEMPT INFORMATION

Except as otherwise authorized by this Order, and except for such uses as Respondent, its officers, agents, and employees may lawfully undertake without reference to this Order, information designated as Exempt Information shall be used only in connection with this action, shall not be disclosed to any person or entity other than the persons or entities set forth below, and may be disclosed only as necessary in connection with this action to the individuals set forth below:

1. The Court and all persons assisting the Court in this action, including court reporters and stenographic or clerical personnel;
2. Any other court of competent jurisdiction pursuant to lawful process or order;
3. Up to two of Petitioners' counsel, who shall be designated by name as of the entry of this Order and specifically identified in Appendix A to this Order.

D. USE OF PROTECTED INFORMATION IN LITIGATION

1. All Exempt Information contained or discussed in any pleading, motion, exhibit, or other paper filed with the Court shall be filed under seal. The parties shall attempt, consistent with effective advocacy in this action and their duties to their clients, to use as little Exempt Information as possible in any pleading, motion, exhibit, or other paper filed with this Court. Information filed under seal shall be placed in a sealed envelope/box with the endorsements required by the applicable rules of the Court. The Clerk shall keep such papers under seal until further order of this Court; provided however, that such papers shall be furnished to the Court and to persons and entities who may receive protected information pursuant to the Protective Order.

2. Within 30 days after the date on which Respondent supplies Disclosed Information, the Respondent shall provide the Petitioners' counsel designated pursuant to Paragraph (C) (3), above, copies of all Exempt Information in a form to be agreed upon between the parties.

3. The Petitioners shall have 90 days after receipt of the Exempt Information to review it, negotiate with the Respondents, and, if they choose, file a petition with the Court for *in camera* review for determination as to whether the Respondent properly designated the records as Exempt Information as defined herein.

E. OTHER PROCEDURES

1. This Order shall be without prejudice to the right of any party to bring before the Court the question of whether any particular information designated Exempt Information is appropriately designated. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the right of the Respondent to assert any applicable authorization to exclude the public records from disclosure. No Exempt Information pursuant to this Order shall be disclosed except as provided herein unless and until the Court orders the release of such information from the provisions of this Order.

2. Any production of information without its being designated as Exempt Information shall constitute a waiver of any exclusion claim as to such information.

3. This Order shall not apply to information in the public domain or obtained from other sources regardless of whether such information is also contained in materials designated as Exempt Information pursuant to this Order.

F. PROCEDURES UPON TERMINATION OF LITIGATION

1. Within 90 days after receiving notice of the entry of an order, judgment or decree

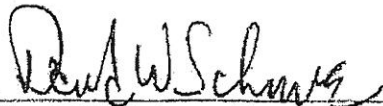
terminating this action and after the conclusion of any appeals, all persons having received Exempt Information shall, at the election of the Respondent, either return such Exempt Information and all copies thereof to counsel for the Respondent, or destroy all such material and certify that fact in writing. All ^{Exempt information} ~~protected information~~ returned to the parties or their counsel by the Court likewise shall be disposed of in accordance with this Paragraph.

Das/Rel

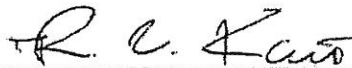
G. RIGHT TO SEEK MODIFICATION

1. The parties reserve the right to apply to the Court for any order modifying this Order or seeking further protections against use of protected information.
2. All hearings in this action, including those associated with challenges to exclusion designations, will presumptively be open to the public, except that this Court will issue further orders as necessary to protect any protected information from improper disclosure.

SO STIPULATED.

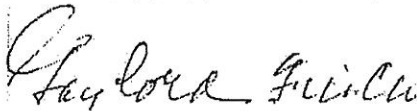


David W. Schnarc, Esquire, Ph.D.
Director
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ENVIRONMENTAL LAW CENTER
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Virginia State Bar Identification No. 44522
Counsel for Petitioners



Richard C. Kast,
Associate General Counsel
UNIVERSITY OF VIRGINIA
Madison Hall
P.O. Box 400225,
1827 University Avenue,
Charlottesville, Virginia 22904-4225
Telephone (434) 924-6436
Virginia State Bar Identification No. _____
Counsel for Respondent

ENTERED this 24 day of May, 2011



Gaylord L. Finch
Judge

APPENDIX A

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

**THE AMERICAN TRADITION
INSTITUTE, and
THE HONORABLE DELEGATE
ROBERT MARSHALL**

Petitioners,

v.

**RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA,**

Respondent.

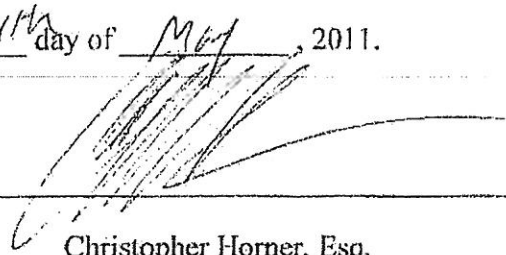
Civil Docket No. CL 11-3236
**AGREEMENT CONCERNING
CONFIDENTIALITY**

I, Christopher C. Horner, serve as Senior Director of Litigation at the Environmental Law Center of the American Tradition Institute. I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purposes of this litigation.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the Circuit Court Of Prince William County solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this 24th day of May, 2011.

A handwritten signature in dark ink, appearing to read "Christopher Horner", is written over a horizontal line.

Christopher Horner, Esq.

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

**THE AMERICAN TRADITION
INSTITUTE, and
THE HONORABLE DELEGATE
ROBERT MARSHALL**

Petitioners,

v.

**RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA,**

Respondent.

Civil Docket No. CL 11-3236
**AGREEMENT CONCERNING
CONFIDENTIALITY**

I, David W. Schnare, serve as Director of the Environmental Law Center of the American Tradition Institute. I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purposes of this litigation.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the Circuit Court Of Prince William County solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned

action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this 24th day of May, 2011.

A handwritten signature in dark ink, appearing to read "David W. Schware", is written over a horizontal line.

David W. Schware, Esq., Ph.D.

Exhibit D



August 5, 2011

Paul J. Forch, General Counsel
Office of General Counsel
University of Virginia
P.O. Box 400224
Charlottesville, VA 22904-4224

Dear Mr. Forch:

I contact you to express some serious concerns regarding actions that U.Va. lawyers are currently planning to take in the near future in response to a demand by Mr. Chris Horner (representing a group called the "American Tradition Institute" or "ATI") for thousands of my personal emails exchanged with dozens of other scientists around the country and the world over a more than five year period while I was a faculty member at U.Va.

In late May, I was pleased to learn from an editorial in the *Washington Post* ["Harassing climate-change researchers", May 29, 2011] that President Teresa A. Sullivan had promised to use "all available exemptions" to shield my personal correspondences with fellow scientists from release, and that, as indicated by a university spokesperson, U.Va. recognized that most of my personal emails were indeed exempt under a statute of the State public records law that "excludes from disclosure unpublished proprietary information produced or collected by faculty in the conduct of, or as a result of, study or research on scientific or scholarly issues."

You might imagine my dismay, however, to learn more recently that U.Va. lawyers, despite these public assurances, in fact intend within a matter of weeks to turn over all of the records, *including those judged to be exempt*, to Mr. Horner and ATI. Mr. Horner works for an industry-funded group known as the "Competitive Enterprise Institute" that has been engaged in attacks against climate scientists, including me and several of the scientists targeted in its freedom of information request, for well over a decade. As noted in the *Washington Post* editorial, "ATI's motives are clear enough. The group's Web site boasts about its challenges to environmental regulations across the country. Christopher Horner, its director of litigation, wrote a book called 'Red Hot Lies: How Global Warming Alarmists Use Threats, Fraud and Deception to Keep You Misinformed'...and declares that Mr. Mann's U-Va. e-mails contain material similar to that which inspired the trumped-up "Climategate" scandal, in which warming skeptics misrepresented lines from e-mails stored at a British climate science center".

University lawyers may not be aware that Mr. Horner has been involved in previous smear campaigns against climate scientists based on leaked confidential materials (see "Inhofe, Horner, McIntyre and Watts fabricate another phony "despicable smear" against Michael Mann" by Dr. Joe Romm of the Center for American Progress;
<http://thinkprogress.org/romm/2011/03/09/207662/inhofe-watts-horner-mcintyre-michael-mann-email/>) and several of Horner's colleagues at the Competitive Enterprise Institute launched two radio ads in May 2010 that used out-of-context quotes from stolen emails to smear many of the scientists, including me,

whose correspondence Mr. Horner is demanding under his freedom of information request.
(http://freedomaction.org/index.php?option=com_content&id=112).

Disclosure of these emails under the current agreement made by U.Va lawyers does not protect my privacy or the privacy of the other scientists involved because it allows ATI to read all of the exempt material and to share the substance of the material if not the physical documents themselves with anyone it chooses without my knowledge or the knowledge of the University, or the court (I have attached the protective order with the problematic provisions highlighted).

This procedure eviscerates privacy and academic freedom and is directly contrary to the standard and customary practice of not disclosing the exempt material but only an index or log summarizing and explaining the specific basis for withholding. I believe this agreement in fact violates the very provisions of the VFOIA law that U.Va. has stated it will uphold, which were designed to provide an unfettered zone of privacy for the creative and deliberative process.

I am told that the proper protocol for protecting this privacy interest is for the university to create a log identifying and summarizing the records being withheld and to subject the summarized emails to an in camera review by the court if necessary [See *Bland v. Virginia State University*, 272 Va. 198, 202, 630 S.E.2d 525, 527 (2006) (noting that the proper protocol in cases privacy-based exemptions to VFOIA is for the court to conduct an in camera inspection of the records)]. Given the privacy interests at stake here, the charged political atmosphere that heightens the risk of improper disclosure, and the clear purpose of the "research material" and "working papers" exemptions, the university's intention to produce all of my emails is troubling and indefensible.

The *Washington Post*, in their editorial, voiced grave concerns over the precedent that would be set by allowing Horner and ATI indiscriminate access to my private email correspondences with dozens of scientists over many years: "Going after Mr. Mann only discourages the sort of scientific inquiry that, over time, sorts out fact from speculation, good science from bad. Academics must feel comfortable sharing research, disagreeing with colleagues and proposing conclusions — not all of which will be correct — without fear that those who dislike their findings will conduct invasive fishing expeditions in search of a pretext to discredit them. That give-and-take should be unhindered by how popular a professor's ideas are or whose ideological convictions might be hurt".

On May 27th of 2010, the University of Virginia filed papers in court challenging a nearly identical demand to that by ATI, in the form of a Civil Investigative Demand (CID) from Virginia Attorney General Kenneth Cuccinelli. The University's statement of justification was both compelling, and eloquent, invoking the name of the University's founder, Thomas Jefferson (and, incidentally, one of the first to collect climate observations in America) in the defense of academic freedom. They stressed Jeffersonian principles of the "illimitable freedom of the human mind" and suggested that Cuccinelli's actions "threaten these bedrock principles." Yet, through the agreement that University lawyers have made to turn over these very same materials, these bedrock principles are now very much threatened.

The U.Va. faculty senate recognized that danger, voicing the concern ("Position Statement on FOIA Request for Dr. Michael Mann's Research Records University of Virginia Faculty Senate Executive Council May 23, 2011"): "Now, instead of the danger of overzealous and abusive prosecution, we face the more sweeping danger of excessive and unwarranted intrusion. Fortunately, the VFOIA statute explicitly recognizes the value of academic freedom and exempts state universities from having to turn over 'data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education ... in the conduct of or as a result of research on medical, scientific, technical or scholarly issues.' The Senate is firmly opposed to the release of documents that fall under this exception, as many of the requested documents evidently do." I can also assure you that my email exchanges with other scientists have never been publicly released or published and were intended by me and those with whom I corresponded to remain private and confidential.

Releasing materials that are exempt under VFOIA to ATI and Horner threatens not only my academic freedom and privacy, but that of literally dozens of scientists in the U.S. and around the world who had every reason to believe that the confidential nature of their frank and open correspondences, discussions, challenges, inquiries, and musings, carried out through private emails, would be respected. Allowing the indiscriminate release of these materials will cause damage to reputations and harm principles of academic freedom.

It is my hope that U.Va. will remain true to the ideals of Mr. Jefferson and not engage in an action which not only threatens open scientific inquiry in the Commonwealth of Virginia, but indeed threatens scientists around the country and the world who rely upon the privacy of their professional correspondences with each other in furthering their scientific investigations. Doing so would represent a threat not only to academic freedom, but to the progress of science.

It is my hope and expectation that the University will go back to the court and seek an agreement that protects the not only my academic freedom and privacy, but that of academics and scientists everywhere. Anything less would do a grave disservice to the legacy of Thomas Jefferson.

Sincerely,

A handwritten signature in cursive script that reads "Michael E. Mann".

Michael E. Mann
Professor
Director, Earth System Science Center (ESSC)

Cc: President Teresa Sullivan
Associate General Counsel Richard C. Kast
Faculty Senate Elect, George Cohen
Peter J. Fontaine, Esquire, Cozen O'Connor

Exhibit E

COMMONWEALTH OF VIRGINIA



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(434) 970-3038 (fax)

Daniel R. Bouton
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(540) 672-2433
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Sixteenth Judicial Court

Albemarle Culpeper Fluvanna Goochland
Greene Louisa Madison Orange Charlottesville

Timothy K. Sanner
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Cheryl V. Higgins
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(434) 972-4071 (fax)

John G. Berry
135 West Cameron Street
Culpeper, Virginia 22701
(540) 727-3440
(540) 727-7535 (fax)

August 30, 2010

Chuck Rosenberg, Esquire
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Wesley G. Russell, Jr. Esquire
Deputy Attorney General
Office of the Attorney General
Civil Litigation Division
900 East Main Street
Richmond, Virginia 23219

Re: The Rector and Visitors of the University of Virginia

v.

Kenneth T. Cuccinelli, II, Attorney General of Virginia
Case No.: CL10-398

Dear Counsel:

This matter came before the Court on August 20, 2010 on the Petition to Set Aside Civil Investigative Demands issued to the University of Virginia by Respondent, Kenneth T. Cuccinelli, II, on April 23, 2010. A hearing was held on August 20, 2010 and the Court took the matter under advisement to review the legal authority cited.

BACKGROUND

The Civil Investigative Demands attached as Exhibits 1 and 2 to the Petition are identical except one is issued to the University of Virginia and the other to the Rectors and Visitors of the University of Virginia.

Page 2

Pursuant to Article 19.1 of the Code of Virginia of 1950, as amended, known as the Virginia Fraud Against Taxpayers Act (FATA), the Attorney General shall investigate any violation of the Act. Section 8.01-216.4 of the Code of Virginia.

Violations of the Act include: "Any person who:

1. Knowingly presents, or causes to be presented, to an officer or employee of the Commonwealth a false or fraudulent claim for payment or approval;
2. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Commonwealth;
3. Conspires to defraud the Commonwealth by getting a false or fraudulent claim allowed or paid."

Id. 8.01-216.3

These are the violations alleged in the Civil Investigative Demands in Exhibits 1 and 2.

The Act authorizes the Attorney General to issue a civil investigative demand (CID) if he has "...reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation...."

Id. 8.01-216.10

Section 8.01-216.11 of the Code sets forth contents and deadlines of each civil investigative demand. It states: "Each civil investigative demand issued under this article shall state the nature of the conduct constituting the alleged violation of a false claims law that is under investigation, and the applicable provision of the law alleged to be violated."

The Act also contains definitions under Section 8.01-216.2 of the Code. Pertinent to this Petition is the definition of "person." "'Person' includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust."

A "claim" is defined as "any request or demand...for money or property...if the Commonwealth provides any portion of the money or property that is requested or demanded, or if the Commonwealth will reimburse...any portion of the money or property that is requested or demanded." *Id.* 8.01-216.2

A civil investigative demand (CID) is "an administrative subpoena." *In re Oral Testimony of a Witness Pursuant to Civil Investigative Demand No. 98-1*, 182 F.R.D. 196, 202 (E.D. Va. 1998)

Page 4

whole or in part, by the Commonwealth of Virginia or any of the agencies as well as data, materials and communications that Dr. Mann created, presented or made in connection with or related to the following awards/grants (hereinafter the "Grants")." What the Attorney General suspects that Dr. Mann did that was false or fraudulent in obtaining funds from the Commonwealth is simply not stated. When the Court asked Mr. Russell where it was stated in his brief the "nature of the conduct" of Dr. Mann that was a violation of the statute, Mr. Russell referred the Court to the first 15 pages of his Brief in Opposition to Petition. The Court has read with care those pages and understands the controversy regarding Dr. Mann's work on the issue of global warming. However, it is not clear what he did that was misleading, false or fraudulent in obtaining funds from the Commonwealth of Virginia.

3. IS UNIVERSITY OF VIRGINIA A PERSON UNDER STATUTE?

The University of Virginia claims it is not subject to the statute as a "person" to whom a civil investigative demand for materials may issue. It argues that the definition section of the statute omitted "State or political subdivision of a State" as a person under the statute. It says the University is an extension of the Commonwealth and is not bound by statutes of general application "unless named expressly or included by necessary implication." *Commonwealth ex rel. Pross v. Board of Sup'rs of Spotsylvania*, 225 Va. 492, 494 (1983).

The Attorney General responds that the law states the Board of Visitors of the University of Virginia is a "corporation." Section 23-69 of the Code of Virginia states: "The board of visitors of the University of Virginia shall be and remain a corporation, under the style of 'the Rector and Visitors of the University of Virginia,' and shall have, in addition to its other powers, all the corporate powers given to corporations by the provisions of Title 13.1...."

The University is a public institution. The University is controlled through a public corporation created for the purpose, and is a public institution governed and controlled by the State. *Phillips v. Rector and Visitors of the University of Virginia*, 97 Va. 472 (1899). See also *U.S. v. Bly*, 510 F.3d 453 (4th Cir. 2007)

The Court finds that the University of Virginia is a corporation in the Commonwealth and is a "person" under the definitional section of the statute. Therefore, it is a proper subject of a civil investigative demand.

4. DO CIDs INFRINGE ACADEMIC FREEDOM?

The University of Virginia argues the Attorney General cannot evaluate that academic freedom unless (1) the interests of the government are strong and (2) the extent of intrusion carefully limited. *Dow Chem. Co. v. Allen*, 672 F. 2d 1262, 1275 (7th Cir,

Page 5

1982). It says that four of the five grants listed in the CIDs are federal grants, which were not money paid by the Commonwealth of Virginia to Dr. Mann. It further says that the fifth grant listed was an internal grant awarded to Dr. Mann in 2001. Since the Virginia Fraud Against Taxpayers Act did not become effective until January 1, 2003, the fifth grant in the sum of \$214,700 is not subject to the Act.

If the Attorney General and the University agree that the first four listed grants are federal grants, this Court supports the position of the University that the Attorney General should not be able to investigate these grants for the additional reason noted hereafter. The University in its Brief in Support of Petition at page 7 states: "The Commonwealth admits that the CIDs relate to those grants listed on Dr. Mann's CV that contain any reference to the University. See Answer paragraphs 3 and 13. But Dr. Mann's CV itself shows that the first four grants identified in the CIDs were awarded by federal, not Commonwealth, funds." The CIDs do not state on their face whether or not the first four grants are federal or state funds.

As to the fifth grant of \$214,700, the Attorney General noted in his brief at page 15, "if the grant and payment documents requested showed no claims for payment made on the University and no payments made by the University related to the grants after January 1, 2003, that might obviate the need for the remainder of the investigation." The Court is of the opinion that if the fifth grant was Commonwealth of Virginia funds, and any funds were paid on the grant after January 1, 2003, the Attorney General has the right to investigate if he meets the other requirements of the statute.

5. WHAT ARE FUNDS OF THE COMMONWEALTH OF VIRGINIA?

The Attorney General argued on August 20, 2010 that funds paid to Dr. Mann by a federal grant and placed into a University of Virginia bank account became funds of the Commonwealth. This Court disagrees. The Attorney General can only investigate funds paid by the Commonwealth for a grant to Dr. Mann.

6. WHAT IS THE SCOPE OF THE INQUIRY BY THE ATTORNEY GENERAL?

In the Civil Investigative Demands, the Attorney General asked for production of materials described in the Attachment. In the Attachment Instructions it is stated "each paragraph of this Civil Investigative Demand (CID) relates to the period from January 1, 1999 through the present date." If the CIDs were allowed to go forward, this request would be limited to correspondence, emails, messages, etc. to or from Dr. Mann that relate to any information, materials or documents contained in the application for the 2001 U.Va internal grant and any information, materials, or documents provided by or to Dr. Mann that relates to approval or payment of any funds to him at any time under the grant until it ended.

Page 6

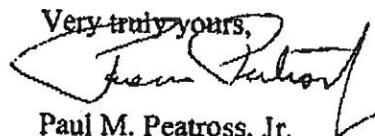
As to the fifth grant, the 2001 U.Va internal grant, the law is clear that FATA did not become effective until January 1, 2003. It is settled law the statute applies only prospectively as the General Assembly did not say expressly that it applied retroactively. Therefore, any investigation has to be into acts of Dr. Mann to obtain state money after January 1, 2003. However, information may be sought as noted above prior to January 1, 2003 as reasonable discovery to evaluate any conduct after January 1, 2003.

CONCLUSION

For the reasons stated above, this Court rules that the two CIDs in question so not show a "reason to believe" that the University of Virginia is in possession of materials relevant to a false claims law investigation and have not stated the "nature of the conduct" with sufficiency to satisfy the requirement of the statute. However, the University of Virginia is a proper subject for a CID and the Attorney General may investigate grants made with Commonwealth of Virginia funds to professors such as Dr. Mann. As noted by the Attorney General in argument to the Court, the University of Virginia is a State institution and Professor Mann was a state employee allegedly obtaining state funds to conduct his research.

Accordingly, the Court sets aside the CIDs in their entirety without prejudice to the Commonwealth to proceed according to law. Mr. Rosenberg is directed to prepare an order consistent with this opinion, circulate it to Mr. Russell for endorsement, and present it to the Court for entry.

Very truly yours,



Paul M. Peatross, Jr.
Judge Designate