

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
DEBORAH MIHAL, and AMERICAN)
CIVIL LIBERTIES UNION OF SOUTH)
CAROLINA,)
)
)
)
Plaintiff,)
)
)
vs.)
)
)
GOVERNOR HENRY MCMASTER, in)
His Official Capacity; and MARCIA S.)
ADAMS, Executive Director of the South)
Carolina Department of Administration, in)
Her Official Capacity,)
)
)
Defendant.)
)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No.:

**AFFIDAVIT FOR
DEBORAH MIHAL**

PERSONALLY appeared before me, Deborah Mihal, who after being duly sworn, deposes and says as follows:

1. I am over the years of eighteen and submit this Affidavit to supplement the allegations in my Complaint.
2. I have been a state employee for twenty-two years, and I have worked for my current employer, the College of Charleston, in my current position, Director of Disability Services, for over ten years. In my role, I oversee the Center for Disability Services, which is responsible for ensuring that the College’s programs and services are accessible for all students. I directly supervise three people and am in the process of hiring a fourth person.
3. My team has been working remotely since March 2020, and we have been able to do so very effectively. Much of our work involves interfacing with students. This is particularly true of our work approving and providing reasonable accommodations, such as extended test-taking time or

audio-recording class lectures, for students with disabilities, which is one of our office's primary responsibilities.

4. Prior to the pandemic, we already had a system in place to hold student meetings related to accommodations via video, since it was not uncommon for such meetings to take place over the summer, before students returned to campus in the fall. When we started working remotely, it was easy to transition all student meetings to this system. We also migrated our accommodation request process online. Previously, students submitted requests for accommodations to our office on paper forms, myself or others in the office would review the paper form to determine whether to approve the accommodation, and someone else in my office would input the information from the form into an online system once that decision was made. We now use a single computer program for all aspects of the request process: students submit their requests online; we review them online; we communicate with students, faculty, and the administration; and we make records of approved accommodations, all through this program. Being forced to make this change while working remotely has actually allowed us to do this significant part of our work more effectively.

5. Another big part of my job involves serving on various committees with people outside of my department, including the Student Affairs Leadership Team and the commencement committee. We have been able to hold our regular meetings over Zoom very effectively.

6. Myself and two of my reports also have childcare responsibilities. I have a nine-year-old son who attends remote school, five days a week, and I serve as his primary caregiver during the school day. My husband works for an engineering firm that requires him to be in the office full-time. He leaves every morning before 8:00 a.m. and does not get home until 5:30 p.m. Monday through Thursday, and after lunch on Friday. I also have a seventeen-year-old son, who also attends remote school and has a part-time job. We have never felt comfortable leaving our

seventeen-year-old to care for our nine-year-old alone. My younger son is very joyful, but he is also very high energy, he moves around a lot, and requires a lot of attention. Between remote school, part-time work, and my younger son's needs, my seventeen-year-old is not a viable option as a regular caretaker for my younger son. One of the women that reports to me is a single parent with two children, who are both in remote school. My other report takes care of her sister's children during the day, since her sister is a first responder. We have all been able to balance our caregiving responsibilities and working from home very effectively.

7. There is just one aspect of our work, proctoring exams for the small number of students who take their exams in-person and have exam accommodations, that has required a physical presence in the office, even during the pandemic. I have been able to go to the office to proctor exams on Friday afternoons, and have done so since January 2021, because my husband gets off work after lunch on Fridays and is able to care for our son.

8. I first learned about the Governor's order requiring state employees to return to in-person work, via an email on the evening of Friday, March 5, from my supervisor to me and the other directors on the Student Affairs Leadership Team at the College. I was concerned to learn about the order. But, I assumed the College would make reasonable accommodations for employees who are caregivers, like myself and my reports, since our supervisors have been aware of our childcare responsibilities since the beginning of the pandemic.

9. On Monday, March 8, all College employees received an email from the President of the College explaining the Governor's order. The email stated that the College had to communicate a plan for bringing people back into the office to the State by Wednesday, March 10, and was trying to come up with that plan as quickly as possible. I became more worried after receiving this email. It felt like we were all holding our breath, waiting to see how the College

would come up with a plan that would work for employees with childcare responsibilities and others who would be unable to return to the office.

10. When I received the College's plan, which had been approved by the State, I was shocked. We got the plan on Thursday, March 11. It stated that most employees had to be back in the office by the following week. All remaining employees, other than those with high-risk health conditions, had to be back in the office by Monday, April 5. The plan specifically addressed those of us with childcare concerns. It explained that all employees with childcare responsibilities would have to return by April 5, even if we had not found alternative childcare arrangements. The plan actually said by the week of April 5, "a lack of childcare is no longer a reason to remain in a remote working status." I was absolutely dumbfounded. We later learned that faculty were exempted from having to return to the office, to minimize the disruption to the academic progress of the College's students.

11. On Monday, March 15, my supervisor emailed me a form she stated needed to be filled out by Friday, March 19, with plans for returning to the office for myself and my reports. I submitted our plans the same day, March 15, but my supervisor responded that they did not comply with the College's guidelines because we stated we would be without childcare until the end of the school and could not return to the office full-time before then. My department was given until the following Wednesday, March 24, to update our plans to comply. I had no idea how I was going to come up with alternative childcare before then.

12. My nine-year-old son attends virtual school five days a week through the Charleston County School District. The school district asked parents to choose whether their children would attend in-person or virtual school, first in late summer 2020 for the first semester of the year, and again in January 2021 for the second semester of the year. Both times we selected virtual school.

The school required us to commit for the full semester to ensure there was appropriate staffing and resources for both programs. At this point, we have committed to virtual school through the end of the school year. We made that decision with the understanding that I would continue to be able to work remotely.

13. We have been scrambling to figure out how I can comply with the Governor's order without putting myself or my family at risk—and even the childcare options I have pursued for my son would entail risks. When I found out I would need to return to the office, I reached out to my son's school to see whether he could switch from remote to in-person school, but I have not heard back. I reached out because it seems like we may have no other options, but we continue to be very concerned about him returning to in-person school this year. We are worried about how it will affect his learning. There have already been so many other disruptions this year. While remote, he has had four different teachers, and if he transitions to in-person school, he will once again be assigned a new teacher since at his school, teachers' classes are either fully in-person or fully remote.

14. We are also very worried about the exposure to the virus if he returns to in-person school. We are worried that his school, which was underfunded before the pandemic, does not have the resources to enforce all of the necessary protocols to keep our son safe. I have been to his school and seen staff members in the building with their masks pulled down below their faces. I cannot imagine how the school can enforce safety procedures for young children if they cannot do so with their employees. If he returns to in-person school he will be dealing with a new environment, new classmates, a new teacher, and new rules. We are worried he will struggle with all of this and will not be able to adopt the behaviors he needs to be safe.

15. Despite having many of the same concerns about other group care settings, we have looked into them as well. We inquired into whether my son could enroll in his school's afterschool

programs and have been told there is no availability. The College does not currently offer childcare. We were told that the College might start to offer childcare sometime in the future, but so far this has not happened. Hiring a nanny, which would allow our son to continue remote schooling while minimizing his exposure to the virus, is too expensive. Even if it were not, we do not have enough time to find and hire someone we trust before I am expected to return to the office. This is especially true given the risk of COVID-19 exposure. We cannot require them to get vaccinated or make sure they are not engaging in behavior that would put themselves and my son at greater risk of exposure. We have been looking, but have not been able to find alternative childcare that will work for my son. Given his age, it would be unsafe to leave him alone during the day. Without adequate supervision, he would likely struggle in school, and could even harm himself. I will not put my son's well-being at risk, so if we cannot find him the care he needs and I cannot remain working remotely, I may lose my job to take care of him.

16. I have also not been vaccinated yet. I scheduled my vaccine appointment as soon as I could, but the first appointment available is not until after I am expected to return to the office, on April 12. I am getting the one-shot vaccine, so I will not be fully protected until two weeks after my appointment, but am expected to be in the office before then.

17. I have also asked about accommodations to allow me to continue to work remotely. The College has a telecommuting policy, but, pursuant to the Department of Administration's memo with guidance for implementing the Governor's order, the College has suspended the approval of any new telecommuting agreements, even if employees are working as or more effectively remotely. I have asked my supervisor about possible accommodations and met with Human Resources (HR) and the Equal Employment Opportunity (EEO) office. Unfortunately, the

options that have been proposed are unworkable. They do not address my childcare issues and they would make it much more difficult to do my job effectively.

18. The College has stated that employees can opt into flexible schedules and come into the office outside of typical business hours. But, the flexible schedule that was initially proposed was 8:00 a.m. to 4:00 p.m., five days a week, which would barely make a difference in terms of childcare. The College has also stated that we can use accrued leave if we cannot return to the office. Annual leave is an earned benefit that I would use up before the school year is over—and then would have no leave remaining. My understanding is we are not able to use sick leave for more than three days in a row without documentation from a doctor that we are actually sick. I have gotten no indication that policy has changed. Even assuming I could use my sick leave to take care of my son, I will have no leave to use in the event I or my family gets sick.

19. When I followed up with the EEO office, they suggested I could try forming a pod with other College employees with childcare responsibilities. I have the same concerns about this, that I do about other group care options. I would not be able to control whether others in the pod took actions that put them and ultimately my son at risk of COVID-19 exposure. A pod would still require each of us to not be in the office for some part of the week, which would likely mean we would still have to use our leave to care for our children. My supervisor suggested I could comply with the requirement that I work 37.5 hours in the office by coming in evenings, for example, 3:00 p.m. to 7:00 p.m., and on weekends. HR made a similar suggestion. I live 45 minutes away from my office. If I adopted this schedule, my son would still be left without childcare for several hours in the afternoon, Monday through Thursday, until my husband returned home at 5:30 p.m.

20. What is more, it would be very difficult to do many aspects of my job if I worked on the schedule they are proposing. There are parts of my job that would not be affected—I could, for

example, review accommodation requests in the office after hours. But, much of my job involves meeting with people and being available during normal business hours. Students may not want to meet to discuss accommodations and other accessibility issues after hours, and very likely not on weekends. I would therefore likely have to have all such meetings in the late afternoons, and with less availability, students would have to wait longer to see me. This would not just be inconvenient, it would affect my office's ability to provide students with disabilities accommodations in a timely manner, which is something the College takes very seriously.

21. Being available to meet during normal business hours is also essential to a number of responsibilities I have as Director, including convening and training a search committee and meeting with candidates for a new position, meeting with the Student Affairs Leadership Team and other committees, leading a weekly all-staff meeting for my team, and interfacing with the Dean of Students office regarding accommodations approvals, case management, and student care. If I adopt the proposed evenings and weekends schedule while others keep normal business hours, the working hours of my full team and other offices I interface with would only overlap for a few hours every day, making scheduling critical meetings, and conducting other real-time communication very difficult. I would not be able to do many of these aspects of my job while I am at home with my son, because the College has expressly told me I am not allowed to work from home. Even if I could be in the office for a limited amount of time during business hours, I have too many responsibilities to be able to fulfill them during that limited time.

22. At this point, we have not found alternative childcare for my son, and this entire process has just been withering. I feel defeated and totally unsupported. I and others have asked what will happen if we are unable to comply with the Governor's order and return to the office by Monday. We have not received an answer. For this week, I had already planned to use my annual

leave, because it is spring break for South Carolina public schools and my nine-year-old will not be in school. Beginning next week, I will be forced to take time off and use my leave to care for him. This is an earned benefit and I will burn through it. I do not know what will happen when my leave runs out, which it will before the school year is over. I fear that I will lose my job.

FURTHER, YOUR DEPONENT SAYETH NAUGHT.



Deborah Mihal

Sworn to and subscribed before me
this 4 day of April, 2021

Nancy Bloodgood
Notary Public for the State of South Carolina

My Commission Expires: 3/1/2026

NANCY BLOODGOOD
Notary Public, State of South Carolina
My Commission Expires 3/1/2026