

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

Mark J. McBurney, Roger W. Hurlbert, and	)	
Bonnie E. Stewart,	)	
	)	
Plaintiffs,	)	
v.	)	Civ. No. 3:09cv044 (JRS)
	)	
Hon. William C. Mims, Attorney General,	)	
Commonwealth of Virginia, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DECLARATION OF BONNIE E. STEWART**

1. I am Bonnie E. Stewart, one of the Plaintiffs in the above-captioned action. I make this declaration to respond to statements set forth in the State Defendants' Response to Plaintiffs' Motion to Amend (hereinafter "Defendants' Response").

2. Defendants' Response (at 2) argues that "a preliminary injunction is unwarranted as to Professor Stewart," because I "was directed by Virginia Tech to a website [the Chronicle of Higher Education] that contained information about pay for Presidents of institutional of higher education." The Response goes on to cite a few publicly available statistics about the pay of Virginia Commonwealth University's President in 2006-07, and the compensation of Virginia Tech's President in 2008. *Id.* at 2-3.

3. The fragmented information referred to in Defendants' Response does not respond to the FOIA requests that I filed. As is set forth in Paragraphs 21-29 of the Amended Complaint that I verified and was filed on my behalf, I requested pursuant to Virginia's Freedom of Information Act the actual 2008-2009 **contracts** for the Presidents of Virginia Tech and Virginia Commonwealth University. *See* ¶ 21. Salary and


compensation information would, of course, be included in those contracts, but I asked for the contracts and made clear that I wanted the then-current contracts for the 2008-2009 academic term. By letter dated February 21, 2009, Virginia Commonwealth University denied my request solely because I am not a citizen of Virginia. By letter dated February 17, 2009, Virginia Tech responded to my FOIA request by making what I think is the implausible assertion that the University's President operates without a contract. To follow up, I spoke with Ms. Bobbie Jean Norris, Special Assistant to the Vice President of Virginia Tech, who claimed that Virginia Tech had no responsive records but that, in any event, the University would not provide me with records because I am not a citizen of Virginia. Ms. Norris did refer me to the Chronicle of Higher Education website, as Defendants' Response states, but the information on that website was out-of-date and not useful for my students.

4. As I said, I requested 2008-2009 **contracts** while the information on the Chronicle's website referred to compensation levels in prior years without providing any of the underlying contracts. As explained in the Amended Complaint, the point of the assignment was to have students read and understand the current contracts as well as to compare compensation levels for the current year. The assignment would have lost its value if the students were reduced to simply pulling down information about compensation from various websites, when that information involved multiple academic years and did not provide the contracts themselves for the students to analyze.

5. The Defendants' Response (at 3) also suggests that I have not been clear about my future intentions regarding using Virginia's FOIA to obtain information from Virginia agencies and that the "discovery process" is needed to ascertain my intentions. I

believe that the Amended Complaint, paragraph 29, states my intentions clearly. There I say that "Because of Ms. Norris's assertion" that I "would not be able to obtain records under Virginia's FOIA due" to my non-citizenship, I "did not make any further requests under the statute." That is so. My experience in trying to obtain the contracts from Virginia public universities has led me to believe that, absent judicial intervention, Virginia agencies will continue to refuse to process FOIA requests and provide me public records that would be available as a matter of course to Virginia citizens solely because I am not a citizen of Virginia. I have therefore not made any further requests. I would add, however, that should the Court rule that the Virginia's FOIA may be used by non-Virginia citizens, I would routinely invoke Virginia's FOIA to obtain public information from Virginia agencies, just as I routinely use other states' open record laws to obtain information from those states. See Amended Complaint ¶¶ 22, 24.

Pursuant to 28 U.S.C. ¶ 1746, I hereby state under the penalty of perjury that the foregoing is true and correct. Executed on this 10<sup>th</sup> day of April, 2009, in Morgantown, West Virginia.

  
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Bonnie E. Stewart