

CERTIFICATE OF SERVICE

I hereby certify that I today caused true and correct copies of Intervenor-Respondent's Notice of Hearing on Motion to Stay Production Pending Application for a Stay from the Virginia Supreme Court, and the accompanying Memorandum of Law, to be served by email and U.S. First Class Mail on:

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By Counsel



Shannon L. Beebe

Dated: May 23, 2016

academics, including Dr. Maibach, and dated September 1, 2015 (the “September 1 Letter”).

3. As detailed more fully in his Motion for Leave to Intervene, the supporting Memorandum of Law, and his attached Affidavit, filed concurrently with this motion, Dr. Maibach argues that disclosure of his emails in this case violates the protections of VFOIA, his First Amendment rights, and his rights to privacy and academic free thought and expression.
4. On April 22, 2016, the Court ordered that Dr. Maibach’s emails be produced to Petitioners. At oral argument on May 13, 2016, the Court dissolved the protective order governing roughly 140 pages of Dr. Maibach’s emails, which had been shared with the Court and Petitioners for the purposes of choosing exemplars for *in camera* review. The Court also ruled that the rest of Dr. Maibach’s emails responsive to Petitioners’ VFOIA request must be produced.
5. Dr. Maibach learned on May 19, 2016 that GMU planned to produce an additional 1,000 to 1,500 pages or so of his emails to Petitioners on May 23, 2016.
6. On May 23, 2016, Dr. Maibach filed a Motion for Leave to Intervene, requesting that the Court allow him to intervene in this action and to deem filed this Motion to Stay Production Pending Application for a Stay from the Virginia Supreme Court.
7. Dr. Maibach’s Motion for Leave to Intervene, supporting Memorandum of Law, and attached Affidavit further sets forth all of the ways in which GMU has recently failed to protect his interests, and how he will be harmed if Mr. Horner and CEI are permitted to access and publish his personal and professional emails that are specifically exempted

from disclosure under VFOIA. The reasons for exemption are also further detailed in Dr. Maibach's Motion for Leave to Intervene and Supporting Memorandum of Law.

8. The hearing on Dr. Maibach's Motion for Leave to Intervene has been requested for May 31, 2016. Assuming *arguendo* that at the hearing the Court permits Dr. Maibach to join in the action on that date but the production has occurred or occurs before Dr. Maibach can reasonably pursue a legal response, then his intervention will be rendered meaningless and his privacy and personal interests will remain unprotected.
9. Furthermore, if production is not stayed before Dr. Maibach has an opportunity to pursue his legal rights, then Mr. Horner and CEI are each allowed to publish thousands more pages of Dr. Maibach's personal and professional emails, and Dr. Maibach will suffer irreparable harm to his business, reputational, and other interests because Mr. Horner and CEI will have gained unfettered access to, including ability to widely publish, Dr. Maibach's thoughts, ideas, discussions of personal matters, and scholarly materials.
10. Dr. Maibach's pursuit of a stay before this Court is a request for a limited stay, seeking only a stay pending a request to the Virginia Supreme Court. Unlike GMU's earlier request for a full stay pending adjudication on the merits before the Virginia Supreme Court – made before Dr. Maibach sought leave to intervene and before Dr. Maibach learned that his interests had diverged from GMU's – Dr. Maibach seeks only a brief stay that will allow him to give the Supreme Court an opportunity to consider whether a stay pending appeal is warranted.
11. Such a temporary stay is warranted whether the Court grants or denies the motion for leave to intervene, since, if the motion is denied, Dr. Maibach would also appeal such a ruling.

12. Dr. Maibach plans to promptly file a request for a stay before the Virginia Supreme Court, as well as ensure that a timely Notice of Appeal has been filed – both before the proposed hearing on May 31, 2016. This should result in the minimum possible delay.
13. Any detriment that Petitioners may claim because of Dr. Maibach’s proposed modest stay is far outweighed by the great and irrevocable harm to Dr. Maibach should thousands of pages of his personal and professional emails be released to Petitioners before he has an opportunity to seek an appeal.
14. Moreover, to the extent that Petitioners argued before this Court on May 13 that their need for Dr. Maibach’s emails was “urgent” due to a pending subpoena served on CEI, that argument has since been mooted. On May 16, 2016, CEI announced that the purportedly relevant subpoena, served by the Attorney General of the Virgin Islands, had been withdrawn days earlier. (For a copy of CEI’s May 16, 2016 announcement, see attached hereto to this Motion as Exhibit A.)
15. In the alternative, Dr. Maibach respectfully requests that the court reconsider its May 13, 2016 denial of a stay, its April 22, 2016 order denying protection of his emails under VFOIA, or some combination thereof. Virginia courts retain the discretion to reconsider prior decisions. *See, e.g., Hiett v. Barcroft Beach, Inc.*, No. 85646, 1990 WL 751426, at *4 (Loudon Cir. Ct. Mar. 23, 1990) (granting motion for reconsideration as initial decision was premised on certain assumptions which the Court, upon reconsideration, determined should be removed).

WHEREFORE, Intervenor-Respondent Edward Maibach respectfully requests that this Court stay GMU’s production of documents, pending application for a stay before the Virginia Supreme Court, and that the Court schedule a hearing, and grant such further and other relief as the Court deems necessary and proper.

Respectfully Submitted,

EDWARD MAIBACH

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