

The University of Virginia (“University”) hereby moves for a stay of proceedings on its Petition to Set Aside Third Civil Investigative Demand pending resolution of the appeal noted by the Office of the Attorney General (“Attorney General”) to the Court’s order setting aside the two prior CIDs. In support thereof, the University states:

1. On April 23, 2010, the Attorney General issued two identical Civil Investigative Demands (“CIDs”) to the University putatively under the Virginia Fraud Against Taxpayers Act, Va. Code Ann. § 8.01-216.1 *et seq.* (“FATA”): CID 1-MM and 2-MM (the “April CIDs”). These CIDs sought extensive information from the University relating to research conducted by a former professor, Dr. Michael Mann. The University filed a petition to set aside the April CIDs in their entirety, which this Court granted. *See* Exhibit 1 (Aug. 30, 2010 Letter Opinion) and Exhibit 2 (Sept. 14, 2010 Order). On September 28, 2010, the Attorney General noted an appeal of this Court’s ruling to the Virginia Supreme Court.

2. One day after noting its appeal, on September 29, 2010, the Attorney General issued a new CID to the University. This new CID—Civil Investigative Demand 3-MM (“the September CID”)—seeks essentially the same broad scope of material relating to the grant at issue that the Attorney General sought in the April CIDs set aside by this Court. Because the September CID is invalid under FATA, just as its predecessors were, the University has filed a petition to set aside the September CID.

3. In the interests of judicial efficiency and to conserve court and party resources, the University respectfully requests that the proceedings on its petition to set aside the September CID be stayed pending resolution of the Attorney General’s appeal of the order setting aside the April CIDs. The University is seeking a stay at the earliest juncture it can—concurrent with filing its petition to set aside the September CID—so the Court may avoid dedicating judicial

resources to this petition before the appeal of the April CIDs is concluded. *See Turner Sculpture, Ltd. v. Geographics, Inc.*, 51 Va. Cir. 178, 2000 WL 33258538, at *1 (Va. Cir. Ct., Accomack County 2000) (granting stay pending resolution of proceeding involving same parties and same issue pending in another court, in the interest of judicial efficiency).

4. Courts assessing whether to grant a stay pending the outcome of action in another court consider “the identity of the parties and issues in both actions, the time of filing, promotion of judicial efficiency and possible prejudice to a party if the stay is granted.” *Gebrekidan v. Riley*, 74 Va. Cir. 215, 2007 WL 5971773, at *1 (Va. Cir. Ct., Alexandria County 2007) (citing *Potomac Savings Bank, FSB v. Lewis*, 25 Va. Cir. 184 (Va. Cir. Ct., Fairfax County 1991); *see also SettlementRoom L.C. v. Certified Environments, Inc.*, 67 Va. Cir. 69, 2005 WL 832215, 3 (Va. Cir. Ct., Fairfax County 2005).

5. All of those factors weigh in favor of a stay here. The appeal and the petition at issue here involve the same parties and largely the same issues. The Attorney General delivered the new CID one day after appealing the dismissal of the April CIDs. And the Attorney General will suffer no prejudice from delaying resolution of its third CID for the time necessary to permit the Supreme Court to consider the appeal. The grant funds at issue were distributed years ago, meaning that any investigation is limited to past conduct rather than ongoing conduct. In addition, the Attorney General has not suggested at any point an immediacy to its FATA investigation, which it would be hard pressed to do given the 10 year statute of limitations. *See* Va. Code Ann. § 8.01-216.9.

6. The University also intends to cross-assign error as to whether the University—as an agency of the Commonwealth—is a “person” even subject to FATA’s CID provision at all. If the Supreme Court accepts review of this determination and concludes that the University is not

a proper recipient of a CID, the Attorney General's new follow-on CID fails at the threshold. The Court should not dedicate its limited time and resources to reviewing what the University maintains is a legally invalid CID.

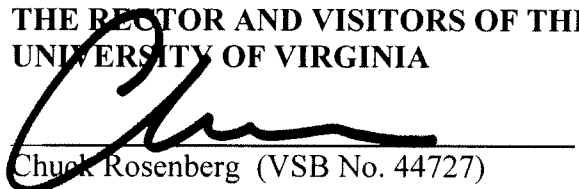
PRAYER FOR RELIEF

WHEREFORE, the University respectfully requests that the Court stay the proceedings on the University's Petition to Set Aside Third Civil Investigative Demand while the appeal of the Court's order setting aside the April CIDs is pending.

Respectfully submitted,

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

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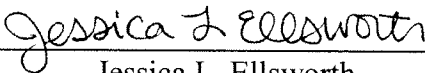
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October 2010, a true and correct copy of the foregoing was served by U.S. Certified Mail, postage prepaid, as follows:

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