

**VIRGINIA:**

**IN THE HANOVER COUNTY CIRCUIT COURT**

DAVID MORATH,

*Plaintiff,*

**v.**

HANOVER COUNTY, VIRGINIA

*Defendant*

Case No.CL25001934-00

## ORDER GRANTING PRELIMINARY INJUNCTION

This matter came before the Court on September 22, 2025, on Plaintiff's Motion for Preliminary Injunction. The Court heard sworn testimony and arguments of counsel. For the reasons stated on the record, and for good cause shown, the Court **GRANTS** the motion and **ORDERS** as follows:

## **I. Findings Required for Preliminary Injunction**

1. Plaintiff is entitled to seek both declaratory relief and preliminary (and, if supported, permanent) injunctive relief at this early stage of the proceedings.
2. The Court has not considered the allegations in the Complaint in ruling on Plaintiff's Motion.
3. The Court received the *ore tenus* testimony of Plaintiff David Morath and the exhibits presented, including the declaration of John Budesky.

## II. Conclusions of Law.

4. Plaintiff has asserted a legally viable claim based on credible facts and Plaintiff has demonstrated that the underlying claim will more likely than not succeed on the merits.

5. Plaintiff is not prohibited from seeking relief by the Last Chance Agreement he entered into with Defendant.

6. Plaintiff is likely to succeed on his claim that Virginia law protects his lawful off-duty use of cannabis oil (as defined by statute) pursuant to a valid written certification, and that Defendant may not discipline him for such lawful use.

7. The harm to Plaintiff without the preliminary injunction compared with the harm to Defendant with the preliminary injunction—favors granting the preliminary injunction.

8. Absent injunctive relief, Plaintiff faces irreparable harm, including but not limited to, the threat of discipline or termination tied to his medically authorized treatment and Defendant's failure to accommodate his due-process right to use medicine.

9. Defendant does not face the threat of irreparable harm. The Court rejects, for purposes of preliminary relief, Defendant's position that federal grant obligations require a contrary result. The Court finds no evidence that adhering to another portion of federal law will cause the County to lose federal grant funding.

10. The public interest favors granting the preliminary injunction.

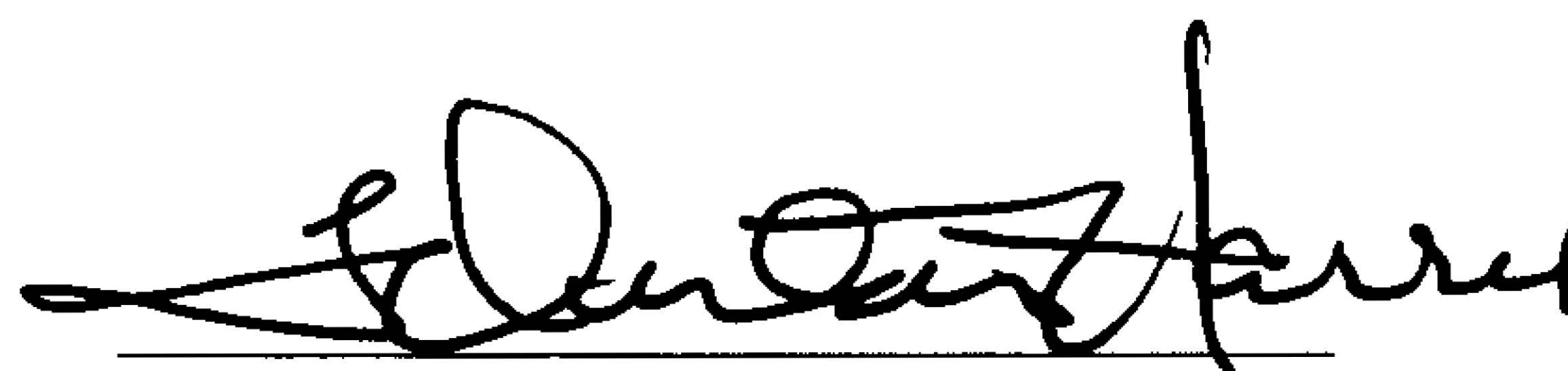
### **III. Scope of Conditions and Injunction**

11. Oil-Only Limitation. Plaintiff's medically authorized use is restricted to cannabis oil within the meaning of Virginia law. Use of botanical/plant material is not authorized by this Order.

12. No On-Duty Use; No Impairment at Work. Plaintiff shall not use cannabis oil while on duty and shall not be under the influence while working or in any manner that affects his ability to perform safely or that affects the safety of others at work.

13. Defendant is ENJOINED from terminating, disciplining, or otherwise discriminating against Plaintiff for his lawful off-duty use of cannabis oil under a valid written certification, so long as Plaintiff complies with the terms of this Order, is not impaired at work, or does not affect the safety of himself or others.

ENTERED this 16<sup>th</sup> day of October, 2025.

  
Hon. J. Overton Harris, Judge

I ask for this:

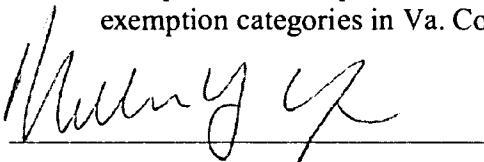
Eric Postow

Eric D. Postow, Esq

Jason H. Ehrenberg, Esq.  
Counsel for Plaintiff

**Seen and objected to, for the following reasons and those stated during the September 22, 2025 hearing:**

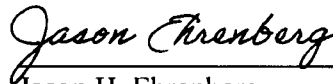
1. The Court failed to consider the allegations plead in the Complaint, including admissions made by the Plaintiff, as evidence in reaching its conclusions.
2. The issuance a temporary injunction. Virginia Code § 8.01-189, is not permitted in a Declaratory Judgment action. An independent statutory basis is needed for the issuance of an injunction. *Leggett v. Sanctuary at False Cape Condominium Ass'n, Inc.*, 303 Va. 128, 133 (2024). The Court failed to consider the Complaint, including that the Plaintiff brought this action as a declaratory judgment action, in reaching its decision.
3. The failed to properly apply the elements required by Virginia Supreme Court Rule 3:26, and the evidentiary standards articulated by other circuit courts following federal law, to the facts as it made its decision. *See, e.g., State Board of Health v. Calabash Corp.*, Case No. CL20-3434 (Hanover Cnty. Cir. Ct. Sept. 1, 2020); *State Board of Health v. Gounneltz, LLC*, 107 Va. Cir. 371 (Spotsylvania Cnty. 2021); *Freemason Str. Area Ass'n, Inc. v. City of Norfolk*, 100 Va. Cir. 172 (Norfolk 2018); *Danville Historic Neighborhood Ass'n v. City of Danville*, 64 Va. Cir. 83 (Danville 2004); *CG Riverview, LLC v. 139 Riverview, LLC*, 98 Va. Cir. 59, 62 (Norfolk 2018); *In re Volkswagen "Clean Diesel" Litigation*, 94 Va. Cir. 189, 206 (Fairfax Cnty. 2016); *Wings, LLC v. Capitol Leather, LLC*, 88 Va. Cir. 83, 89 (Fairfax Cnty. 2014); *McEachin v. Bolling*, 84 Va. Cir. 76, 77 (Richmond City 2011); *The Real Truth About Obama, Inc. v. Federal Election Commission*, 575 F.3d 342, 345 (4th Cir. 2009) (requiring movant to demonstrate each temporary injunction element by a "clear showing").
4. The Court misinterpreted and misapplied Va. Code § 40.1-27.4(C) when it found that the County had to show that it would lose federal funding if it did not maintain a drug free workplace in compliance with federal law. The Court also failed to consider the exemption categories in Va. Code § 40.1-27.4(C).



Melissa Y. York, Esq.  
Counsel for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on October 3, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the Virginia Judiciary eFiling System, which will send notice to counsel for all individuals and entities who have entered appearances in this case pursuant to the Court's VJEFS:

  
Jason H. Ehrenberg