

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

LIBERTY UNIVERSITY, INC.,)

Plaintiff,)

v.)

THE NEW YORK TIMES COMPANY,)
d/b/a The New York Times, a New York)
Corporation,)

ELIZABETH WILLIAMSON,)

and)

JULIA RENDLEMAN)

Defendants.)

Case No.:

01700000657

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, the Plaintiff, Liberty University, Inc. ("Liberty"), by counsel, and files this Complaint against defendants The New York Times Company ("New York Times"), Elizabeth Williamson ("Williamson"), and Julia Rendleman ("Rendleman") (collectively, "defendants" and, each, a "defendant"), and in support thereof states as follows:

PRELIMINARY STATEMENT

1. In 2006, the managing editor of the New York Times was asked on national television, "how does it feel to be the managing editor of a paper that makes stuff up?" Fourteen years later, Liberty University has the same question.

2. On March 29, 2020, defendants published an article that intentionally misrepresented that Liberty had "reopened" its campus after spring break and suffered a COVID-19 outbreak as a result. That message was apparent to every reader from the article's plain

language. The online article announced that “Liberty Brings Back its Students, and Coronavirus, Too.” The print edition likewise proclaimed that “A University Reopened, and Students Got Sick.” Both versions stated explicitly that Liberty University “partly reopen[ed] . . . Then students started getting sick” including “nearly a dozen Liberty students . . . sick with symptoms that suggest COVID-19.” Defendant New York Times made the same claims in an official tweet about the story: “Jerry Falwell, Jr., president of Liberty University, reopened the school’s campus last week. By Friday, nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.”

3. And Williamson even more bluntly blamed these reported COVID-19 sicknesses on the purported decision to reopen in a tweet claiming the reported infections showed the “consequences” of reopening the campus during the COVID-19 pandemic: “Just posted: I visited Liberty U. as the consequences of Jerry Falwell’s decision to reopen the campus amid a pandemic *came home to roost.*” (emphasis added).

4. These asserted COVID-19 “consequences” of reopening the campus rested on the assertions that when Liberty “reopened” after spring break, “students started getting sick” and that “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.” Defendants claimed their source for this assertion was Dr. Thomas W. Eppes, Jr. (“Dr. Eppes”), who they described as the doctor who “runs Liberty’s student health service.” But defendants misrepresented both Dr. Eppes’ position and, more critically, the information he provided.

5. First, contrary to defendants’ story, Dr. Eppes did not “run Liberty’s student health service,” was not even directly involved in providing student healthcare, and had explicitly told the defendants this and instructed them to contact Dr. Joanna Thomas (“Dr. Thomas”), who actually had such direct responsibility and involvement. Williamson, however, never contacted Dr. Thomas despite reporting on the story for days, visiting the campus, taking photos, and

interviewing students, politicians, local residents and many others not officially associated with the university.

6. Second, and much more important, Dr. Eppes did not tell defendants that after returning from spring break “students started getting sick” or that “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.” In fact, he told them just the opposite: there were no known cases of COVID-19 and the bulk of the “nearly twelve” examined students *did not* have symptoms that “suggest” COVID-19, but instead symptoms of an “upper respiratory infection” – that is, a cold – not the lower respiratory infection COVID-19 and, consequently, they were not even sent for testing because they did not have COVID-19 symptoms and did not meet the criteria for testing.

7. Simply put, defendants’ claim that “Liberty Brings Back its Students, and Coronavirus, Too” was made up. Their claim that Liberty “Reopened, and Students Got Sick” was made up. Their claim that after purportedly reopening, “students started getting sick” with “nearly a dozen Liberty students . . . sick with symptoms that suggest Covid-19” was made up. And their claim that the “consequences” of reopening had “come home to roost” in the form of a COVID-19 outbreak was made up.

8. Indeed, contrary to defendants’ story, when Liberty ended classes two months after allowing students to return from spring break, not a single on-campus student had been diagnosed with COVID-19.

9. As intended, defendants’ “made up” narrative of an outbreak caused by a reopening spread rapidly throughout local and national news outlets, on social media, and among Liberty students, parents, alumni, donors, and potential applicants. For example, the Financial Times told its readers that, according to the New York Times, after Liberty’s decision to “stay open . . .

[t]welve students promptly came down with coronavirus.”¹ Other news organizations likewise republished defendants’ “made up” narrative in stories uniformly reflecting what all those who read the story understood: that after purportedly reopening, Liberty “promptly suffered a COVID-19 outbreak” (The Nation)² with “numerous students now hav[ing] the coronavirus” (Delaware County Daily Times).³ And the New York Times itself ran an opinion piece based on its own false reporting entitled, “This Land of Denial and Death,” in which it accused Liberty University’s President of “hav[ing] create[ed] his own personal viral hot spot.”⁴

10. None of this was true. There was *never* an on-campus student diagnosed with COVID-19. The only actual “viral” element of this narrative that existed was the intense “viral” internet attention it generated for the New York Times’ website and for those paying to advertise on that website.

11. There is overwhelming evidence that defendants published this false and defamatory story knowing their claims were made up and untrue. First, and most important, the story’s central COVID-19 claims were the exclusive by-product of defendants misrepresenting Dr. Eppes’ statement. Defendants falsely reported that Dr. Eppes had told them “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19,” when they knew he had told them that the bulk of the students examined had symptoms of a cold. This is why they paraphrased this part of his interview instead of quoting his actual words – even though this was the story’s lynchpin, defendants had a purported verbatim transcript of his words, and they quoted him extensively elsewhere on far less important points that nevertheless reinforced their false narrative.

¹ Edward Luce, *Let’s keep God out of this, shall we?*, FINANCIAL TIMES, April 3, 2020.

² Sasha Abramsky, *The COVID-19 Crisis is Exposing Trump’s Criminality*, THE NATION, April 3, 2020.

³ Chris Freind, *Chris Freind: What We Must Do Now to Stop Coronavirus*, THE DELAWARE COUNTY DAILY TIMES, April 1, 2020.

⁴ Paul Krugman, *This Land of Denial and Death*, THE NEW YORK TIMES, March 30, 2020.

To have used his actual words would have utterly contradicted their claims to any reader remotely informed about COVID-19 or capable of googling.

12. For the same reason, they omitted entirely Dr. Eppes' further explanation that these students were not tested for COVID-19 because they did not meet the symptomatic criteria for COVID-19 testing. This omission was necessary for defendants to spread their false narrative in a cohesive way because, if the omitted information had been included, it would have been apparent that the students did not, in fact, have symptoms that "suggest" COVID-19. This dual misrepresentation and omission created the additional false and negative impression, ultimately expressed by others quoted in the story, that Liberty not only had a COVID-19 outbreak, but was recklessly not testing students with COVID-19 symptoms.

13. Second, Williamson, a veteran reporter who had reported and commented extensively on the pandemic, was fully aware of the distinction between symptoms of an "upper respiratory" illness like a cold, and the symptoms of a lower respiratory illness like COVID-19. Moreover, the New York Times has devoted substantial resources to investigating and informing its readers about COVID-19, including on the differences between the symptoms of COVID-19 and those of a cold and the testing criteria to distinguish between the two.

14. In addition, even if Williamson was completely unaware of the difference between the cold symptoms Dr. Eppes described and COVID-19 symptoms, when a state health official told her that Liberty should be testing students with symptoms, she would have been alerted that her purported understanding was questionable. Yet, she made no further inquiry because Dr. Eppes had already explained that distinction to her, and her intent was to misrepresent what he said. She also, obviously, did not tell the expert, like she did not tell the readers, what Dr. Eppes had actually said because, if she had, the expert would not have been puzzled and concerned about

why Liberty had not tested those students. The expert was only puzzled and concerned because she repeated to him the misrepresented account that would appear in the story.

15. Third, defendants scrupulously avoided contacting the doctor actually responsible for student health services as Dr. Eppes had instructed and otherwise avoided any effort to corroborate their claim that “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.” They did not take these most basic journalistic steps to confirm the lynchpin of their story despite the fact they had ample time to do so and had otherwise taken the time and trouble to travel to the school, visit and photograph the campus, and interview in-person and by phone many other students, local residents, politicians, health care officials, and experts. Defendants elected not to take these most basic steps for the same reason they rewrote Dr. Eppes’ words. They knew doing so would contradict the false claims that were the lynchpin of their story. By avoiding the direct source, and only talking to Dr. Eppes, they sought the plausible deniability of claiming he and they misunderstood each other when he inevitably denied (as he did) the story. Misunderstanding two physicians is far less credible than one.

16. Fourth, defendants also did not even try to make a meaningful inquiry of Liberty itself despite actually visiting the school and interviewing its students and many others on campus and in Lynchburg. When defendants did contact Liberty, it was the Sunday the online story was published, the story was already written, and defendants then rushed to publish the story to prevent Liberty from providing accurate information from Drs. Thomas and Eppes. Defendants knew the story’s central message misrepresented what Dr. Eppes told them, and this would become clear as soon as someone spoke to Drs. Eppes or Thomas. Indeed, Dr. Eppes denied the relevant COVID-19 statements attributed to him immediately upon reading them in the story. Again, misunderstanding Dr. Eppes, while not credible for such an experienced investigative journalist,

seems more credible than misunderstanding him, another physician, and Liberty University. Thus, defendants waited to reach out to Liberty until there would not be time for it to comment on this claim in any informed way, and then quickly published before the claimed “deadline” when defendants realized Liberty was pressing to quickly secure and provide accurate first-hand information. This faux deadline is particularly incriminating given that Williamson took the time to travel to Lynchburg (from an actual viral hot spot) and violate Liberty’s pandemic protocols excluding visitors from campus, but did not bother to arrange to talk to a single school official until about an hour before publishing the story she had worked on for over a week.

17. Fifth, the intentional misrepresentation of Dr. Eppes’ statement is further evidenced by the other obvious intentional misrepresentations defendants made in their story. For example, defendants reported that Liberty’s President had “assured [government officials] that he fully intended to comply with Virginia’s public health directives . . . Then he changed his mind,” and otherwise ignored “pleas” from the governor and local officials to “reverse course” and comply. In fact, Liberty had always abided by those directives and defendants knew this. Indeed, in making these misrepresentations, defendants omitted from the story that Liberty had been subject to two separate “surprise” inspections by the Central Virginia Health District during and immediately after spring break, each of which found the school in full compliance with all applicable state restrictions concerning the pandemic. Defendants were aware of these facts from their reporting, and from the fact that Liberty and other media outlets publicly reported the results of the second inspection on March 24 (the day after spring break ended and five days before defendants published their story). Thus, defendants were aware that Liberty had, in fact, taken all steps necessary to comply with state health directives when they falsely reported that the school had

“changed [its] mind” about doing so and ignored “pleas” from officials to “reverse course” and comply.

18. Likewise, defendants reported that Liberty had “encouraged” students to return to campus after spring break, when they knew from the communications they reviewed that this was categorically untrue. And they misrepresented that “for critical weeks in January and February, the nation’s far right dismissed the seriousness of the pandemic,” and cited President Falwell as an example of this uniquely “far right” attitude, when, in fact, the New York Times itself, as well as liberal politicians in the nation’s viral hotspots, made the very same claims more often and more strenuously than anyone during that very period.

19. Sixth, defendants’ knowledge that they had misrepresented Dr. Eppes’ words is also reflected in their post-publication behavior. After publication, defendants asked Dr. Eppes if Liberty was correct that he did not run the student health services, but they inexplicably avoided asking about his claim that they had misrepresented what he said about ill students. In possession of a verbatim transcript of what he actually said, defendants risked him asking to see it and pointing to proof he had been misrepresented. Consistent with this intent, Williamson declined to provide Dr. Eppes a copy of the transcript when he asked to see it after publication even though she, presumably, should have wanted to know if she misunderstood his words and even though he had been so gracious and forthcoming in getting her information that he had no obligation to provide. Moreover, defendants never even updated their story to note that Dr. Eppes disputed their account of what he said, even though they did update to include other information reinforcing their misrepresented version of his comments.

20. Similarly, the day after defendants published the story and made it go “viral” with the sensational headline, “Liberty Brings Back its Students, *and Coronavirus, Too*,” they changed

the online headline to “Liberty Brings Back its Students, *and Coronavirus Fears, Too.*” (emphases added). This material change to the story’s sensational headline reflects defendants’ understanding that their central claim was false.

21. Other circumstantial evidence of defendants’ malice is their associate general counsel David McCraw’s letter in response to Liberty’s demand for a retraction (the “McCraw Letter”). On April 8, 2020, counsel for Liberty wrote to the New York Times pointing out the story’s false message that “students started getting sick” after and because the school “reopened” and that there were not “nearly a dozen Liberty students sick with symptoms that suggested COVID-19.” In response, the McCraw Letter simply denied the story ever explicitly asserted that plain and intended message that was universally understood by every reader. Mr. McCraw could not admit the story contained this message because that message was factually baseless and indefensible.

22. Moreover, Mr. McCraw’s hyper-technical defense indicates the defendants were carefully crafting their story to send a message they knew was not true, while not explicitly saying it because they knew they could not defend it factually. This misleading engineering is consistent with their failure to use Dr. Eppes’ actual words, their omission of his account on testing, and their after-the-fact editing of the online story to eliminate their “click-bait” claim that as students returned, “Coronavirus [did], too.” Indeed, the McCraw Letter also refers exclusively to the scrubbed *post hoc* headline, and ignores the original “click-bait” headline in asserting that what the story plainly said was never said.

23. Even worse, Mr. McCraw ultimately attempted to blame Dr. Eppes for defendants’ untrue reporting, arguing that they were justified in relying on him because he “was most directly involved in student health care and was most definitive.” This defense is simply more

misdirection. Dr. Eppes was not involved in providing student health services, and was certainly not the person “most directly involved.” Indeed, he told defendants this at the time, and instructed them to contact the physician who was actually involved. Moreover, to say they used him because he was most “definitive” reveals that they had other inconsistent information, yet elected to never speak to Dr. Thomas or anyone at Liberty who was aware of the actual facts and then published before the people they did speak with at the eleventh-hour could get them the facts.

24. More important, as the McCraw Letter reveals, defendants have a purported transcript of Dr. Eppes’ comments, and a carefully cropped section of that transcript in the letter confirms that his words were, as he claimed, misrepresented because he did tell them the students had symptoms of an “upper respiratory” cold, not COVID-19. Moreover, the McCraw Letter, like the story, omits the rest of Dr. Eppes’ explanation on testing and other caveats, reflecting Mr. McCraw also fully understood that the actual transcript contradicts the story that was published.

25. In sum, the McCraw Letter confirms that defendants: misrepresented their source’s words; were carefully crafting the story to avoid responsibility for what they knew was misleading; communicated a story that McCraw cannot even acknowledge says what it says and cannot factually defend; and that McCraw himself is aware the story is inaccurate but will not retract or correct.

26. Seventh, this tale was written before any reporting began. The New York Times once bragged it was “The Paper of Record” that reported “without fear or favor,” but massive financial pressures in the digital age have transformed the organization into a social media production company. In a 2019 book, former New York Times Executive Editor, Jill Abramson, described how massive financial pressures began eroding “the independence of the newsroom,” and ultimately overwhelmed and recast it as a tool for the paper’s massive internet advertising and

marketing operation. According to her account, among other changes, the New York Times became a paper for hire, generating substantial “advertising” revenues by allowing companies to underwrite stories written by the organization’s reporters that were inevitably favorable to the patron writing the check.

27. With respect to its internally generated reporting, Ms. Abramson described how the new talisman became “clickbait” – *i.e.*, storylines, subjects, and headlines that would lure the maximum number of internet users to click on the paper’s website. The reason was simple, “clickbait brought subscriptions” and generated traffic that increased advertising revenue. According to Abramson, this new business model generated an “arms race for clicks,” with marketing teams scrutinizing oceans of data to identify “traffic generating subjects,” editors directed to produce stories about those subjects, and reporters tasked with writing those storylines with maximizing “emotional content.” The result, according to Abramson, was “[c]lickbait headlines that seduced readers into clicking on stories that delivered little, if anything, of what the headlines promised.”

28. According to Abramson’s description, the election of President Trump was a “lifeline” for the failing paper, and a steroid for its new “clickbait” business model: “Given its mostly liberal audience, there was an implicit financial reward for the Times in running lots of Trump stories – almost all of them negative. They drove big numbers . . . [and] inflated subscriptions to 4 million people by 2018.” The result, Abramson acknowledged, was coverage that was “unmistakenly anti-Trump” and irreconcilable with the paper’s past creed of reporting “without fear or favor.”

29. This biased dynamic has continued since the publication of Abramson’s book. On the eve of this suit, New York Times Op-Ed editor Bari Weiss publicly authored a blistering

resignation letter laying bare the paper's deep-seated bias and social media addiction.⁵ That letter described a publication where truth is not equated with the facts but rather an adherence to a "predetermined narrative" that "explicitly promote[s] progressive causes" and "orthodoxy," and tolerates anti-Semitism. If a story is likely to "inspire backlash internally or on social media" it is unacceptable, and understood as such internally, in what Weiss described as a "new McCarthyism."

30. Describing in even more stark terms the same cult-like faith Abramson described, Weiss explains that "Twitter has become its ultimate editor. As the ethics and mores of that platform have become those of the paper, the paper itself has increasingly become a kind of performance space" in which "[s]tories are chosen and told in a way to satisfy the narrowest of audiences" and through which it has "betray[ed] [its] standards and lo[st] sight of [its] principles."

31. Those who do not comply, who engage in "Wrongthink" that is not "ideologically kosher," are "bull[ied]," called Nazis, racists, and bigots, subjected to "[o]nline venom" and discriminated against. With respect to politics, this requires a pure anti-Trump, anti-conservative "new orthodoxy" that continues the relentless anti-Trumpism Abramson earlier described.

32. President Trump's strong support among conservative Christians, Liberty's prominence among conservative Christian institutions, and Liberty President Jerry Falwell, Jr.'s strong personal support of President Trump made Liberty an obvious target under this new business model. While mostly ignored by the New York Times for years, now Liberty lengthened the paper's Trump "lifeline" by providing another source for anti-Trump "clickbait" headlines.

33. Thus, when defendant Williamson traveled to Lynchburg, she was not there to learn and report the facts "without fear or favor." She was there as a producer and director to engineer

⁵ <https://www.bariweiss.com/resignation-letter>.

a specific fictional tale that portrayed Liberty and its President as a caricature the New York Times' liberal audience would love: backward, irresponsible, anti-science, responsible for getting people sick in a pandemic, and closely tied to and mirroring President Trump.

34. That is why they decided to report on a story about the “consequences” of Liberty’s decision to “reopen” when it had never closed, when there had been no adverse consequences from remaining open, when they knew state inspections had confirmed that Liberty was in full compliance with all state health directives but reported otherwise, and when they knew that the school’s decision to allow students to return to the still opened campus was the same decision made by many, if not most, of the universities in the country, including Williamson’s alma mater. That is why they manufactured a story about a conservative school’s purportedly reckless comments about coronavirus even though they knew those comments were indistinguishable from the views expressed by their own paper, by the nation’s leading medical experts, and by liberal government leaders in actual viral hotspots like New York and Washington, D.C. That is why they made up a statement from Dr. Eppes, and omitted another, when what he said contradicted the tale they were producing. That is why they made no effort to corroborate this most critical fact with anyone else with knowledge of those facts. And that is why they have refused to correct or retract this fiction to date.

35. Defendants’ “clickbait” effort was a spectacular success. The March 29, 2020 report that Liberty had brought back its students “and Coronavirus, too” with nearly a dozen students sick just days later went viral. Immediately upon publication, defendants began promoting the sensational headline on social media, including through tweets receiving 15,000 “likes” that were retweeted over 10,000 times, and the story became one of the highest trending stories on the internet. And immediately, and certainly before Liberty had a meaningful time to

respond to defendants' questions, the unmistakable (false) message about the (non-existent) "consequences" of this (non) decision to "reopen" was repeated and linked to on virtually every liberal cable news network and website, in innumerable internet and print news publications, and ubiquitously on twitter, blogs, and other social media.

36. As a direct result of the article, Liberty has and continues to sustain enormous harm to its business and reputation for which damages are legally presumed. These damages include, but are not limited to, lost enrollment revenue and the substantial costs incurred responding to and mitigating defendants' false and defamatory allegations.

PARTIES

37. Plaintiff Liberty University is a conservative Christian university located in Lynchburg, Virginia.

38. Defendant The New York Times Company is a corporation organized under the laws of New York with its principal place of business in New York. The New York Times Company publishes the *New York Times* in both print and online editions.

39. Defendant Elizabeth Williamson is an individual who resides in Washington, D.C. At all times relevant hereto, Ms. Williamson was a feature writer for, and employee and/or agent of, the New York Times.

40. Defendant Julia Rendleman is an individual who resides in Richmond, Virginia. At all times relevant hereto, Ms. Rendleman was a photographer for, and agent of, the New York Times.

41. At all times relevant hereto, the New York Times was acting through its employees, agents, servants, workmen, and/or joint venturers, including, but not limited to, Williamson and/or Rendleman.

42. At all times relevant hereto, Williamson was acting in the course and scope of her employment and/or agency with the New York Times.

43. At all times relevant hereto, Rendleman was acting in the course and scope of her engagement by and/or agency with the New York Times.

44. The New York times is responsible for the actions of its employees, agents, servants, workmen, and/or joint venturers, including Williamson and/or Rendleman, under the doctrines of *respondeat superior*, vicarious liability, agency, and/or other applicable doctrine.

JURISDICTION AND VENUE

45. This Court has personal jurisdiction over the New York Times under Virginia's long-arm statute, Va. Code Ann. § 8.01-328.1, as well as under the Due Process Clause of the U.S. Constitution, because, among other things, the New York Times regularly transacts business in Virginia, the causes of action in this complaint arise from the New York Times transacting business in Virginia, causing tortious injury by an act or omission in Virginia, and by causing injury in Virginia by acts occurring both inside and outside of Virginia. Exercising jurisdiction over the New York Times would not offend traditional notions of fair play and substantial justice because the New York Times should have reasonably foreseen being hauled into a Virginia court in connection with false and defamatory articles about a university located in Virginia and events that transpired in Virginia, where it directed its reporter and photographer to work, and commit trespass in, one of which article it published in a newspaper with readership and wide circulation in Virginia, and another of which article it published in an online edition of the newspaper that is created on a digital platform which was available in Virginia.

46. This Court has personal jurisdiction over Williamson under Virginia's long-arm statute, Va. Code Ann. § 8.01-328.1, as well as under the Due Process Clause of the U.S.

Constitution, because, among other things, the causes of action in this Complaint arise from Williamson causing tortious injury by an act or omission in Virginia, including when she traveled to Virginia in connection with multiple publications of the New York Times article, including her tweeting of the story and her defamatory comments that accompanied that tweet, and by causing injury in Virginia by acts occurring both inside and outside of Virginia. Exercising jurisdiction over Williamson would not offend traditional notions of fair play and substantial justice because Williamson should have reasonably foreseen being hauled into a Virginia court in connection with false and defamatory articles about a university located in Virginia and events that transpired in Virginia, after traveling to Virginia to work on the article, trespassing and violating a health safety containment zone at Liberty in Virginia, and authoring a story published in a newspaper with readership and wide circulation in Virginia, and also in an online edition of the newspaper that is created on a digital platform and available in Virginia.

47. The Court has personal jurisdiction over Ms. Rendleman because she is a citizen of Virginia.

48. Venue is proper in this circuit under Va. Code Ann. § 8.01-262 because Liberty is located in this Circuit and causes of action asserted herein arose in this Circuit.

FACTS

I. LIBERTY UNIVERSITY

49. Liberty is a conservative Christian university in the evangelical tradition located in Lynchburg, Virginia. It was founded in 1971 as the Lynchburg Baptist College by the Reverend Jerry Falwell, Sr. and Elmer L. Towns. It is accredited by the Southern Association of Colleges

and Schools. In 2007, Reverend Falwell passed away, and his son, Jerry Falwell, Jr. (“President Falwell”) became president of the University.

50. Liberty is one of the most heavily enrolled colleges in the country. It offers over 550 total programs, 366 on-campus and 289 online. There are 144 graduate programs and 4 doctoral programs offered on campus. It is classified as a doctoral research university and is recognized by the NSA and DHS as a National Center of Academic Excellence in Cyber Defense Education.

51. Liberty currently enrolls approximately 15,000 students at its Lynchburg campus and more than 100,000 in distance learning programs. Over 30,000 military students and 800 international students attend Liberty University. It has one of the top-ten college campuses by size, with over 7,000 acres, and been ranked the sixth-best college campus in America.

52. Liberty is the pioneer in collegiate distance learning. It began the program in 1985 with the use of VHS tapes, and began to provide online programs with the advent of high-speed internet in 2005. This program became a model for such programs in the country and is currently one of the largest collegiate online programs, offering associates-level to doctorate degrees. It has been ranked the “Best Online College” in America.

53. Liberty has been repeatedly ranked as “The Most Conservative College” in America by Niche, is regularly ranked one of the top-ten conservative colleges in the U.S. by Young America’s Foundation, and has been called a “bastion of the Christian right.” Because of its politically conservative character and its evangelical Christian principles, Liberty has been a focus for conservative politicians since the time of President Reagan. It has been described as a “stage of choice in Republican presidential politics” and a “pilgrimage site for GOP candidates.”

54. President Ronald Reagan had a very close relationship with Liberty and its founder Reverend Jerry Falwell, Sr., and his successor, George H.W. Bush, was the first sitting President to give the school's commencement speech. United States Supreme Court Justice Clarence Thomas gave the commencement address six years later. President Trump gave the commencement speech in 2017 and his vice president, Michael Pence, did so in 2019.

55. However, Liberty has also invited liberal politicians to the school. In 2018, former President Carter gave the commencement address, and Senator Ted Kennedy, Bernie Sanders, and Jesse Jackson have spoken there. Some have refused invitations to speak, including President Obama, Vice President Biden, and Senator Hillary Clinton.

56. President Falwell was one of the first prominent leaders among the evangelical Christian movement to personally endorse Donald Trump for president, and he has continued that personal support to the present. Liberty has never endorsed any political candidate and did not do so with respect to President Trump. Since President Trump's election, Liberty has seen a substantial increase in media coverage from liberal news organization, typically critical.

II. THE CORONAVIRUS PANDEMIC

57. The coronavirus pandemic that originated in Wuhan, China in late 2019 and spread around the world has been an unprecedented experience for virtually every American, and certainly every government, business, and educational official. Initially, there was virtually universal agreement that the virus posed little risk to the United States. On January 21, 2020, Dr. Anthony Fauci, the head of the National Institute of Allergy and Infectious Diseases, told the American people that the virus "is not a major threat for the people of the United States" and six days later explained again that it "isn't something that the American public needs to worry about or be frightened about." A month later, at the end of February, he told the American public "there

is no need to change anything that you are doing on a day to day basis right now, the risk is still low.” On March 9, 2020, he told people, “there is no reason if you want to go on a cruise ship, go on a cruise ship.”

58. Nevertheless, on January 31, 2020, President Trump announced a ban on all travel to the United States by people who had been in China within the prior two weeks. The decision was derided by a tsunami of liberal politicians and media outlets as racist and xenophobic, Vice President Biden among them.

59. Indeed, throughout January and February the liberal media downplayed the risk from the virus, none more so than the New York Times. For example, on January 8, 2020, the New York Times reported that the virus, “doesn’t appear to be readily spread to humans,” and cited official Chinese sources claiming, “we can assume that this virus transmissibility is not that high.” On February 5, 2020, the New York Times called Trump travel ban, “unjust.” On February 26, 2020, the New York Times mocked the President’s strong response, recommending, “call[ing] it the Trump virus,” and the next day a New York Times reporter tweeted, “I fundamentally don’t understand the panic: incidence of the diseases is declining in China. Virus is not deadly in the vast majority of the cases.”

60. By the end of February, the United States experienced its first known case of “clean” exposure, not traceable to contact with an external location. It was not until March 11, 2020, that WHO declared a global pandemic, which means a worldwide spread of an infection for which the majority of populations will not have immunity. On March 13, 2020, the federal government declared a national state of emergency with the effect of releasing funds and resources to deal with the pandemic.

61. During this March period, international and domestic organizations and governments, businesses, and individual citizens took various approaches to dealing with this unfolding and uncertain event. By way of example, New York, the nation's epicenter, declared a state of emergency on March 7, 2020, and ordered a localized "containment" zone in one small local community outside New York City in which public gatherings were prohibited and schools closed.

62. But both the Governor and Mayor of New York City downplayed the risk of significant impacts more broadly. For example, at the end of February, Mayor De Blasio told New Yorkers, "It's important to just go about your lives, continue living as you have because there is no indication that casual contact with someone who is infected could lead to others contracting the disease. Yes, people should enjoy the lunar new year. I am going to be participating myself. I want to urge everyone to be part of these celebrations." On March 2, 2020, he told New Yorkers, "I'm encouraging New Yorkers to go on with their lives and get out on the town despite coronavirus," and Governor Cuomo admonished New Yorkers to not overreact because "we don't even think it will be as bad as it was in other countries." On March 5, 2020, Governor Cuomo explained, "we can really keep this thing contained," while Mayor De Blasio explained, "go about your daily lives. We will tell you the second we think you should change behavior" and "this is not something you are going to contract in a subway or on a bus." The Mayor repeated this admonishment several times over the next two weeks, including on March 10, 2020 when he advised that "life is going on pretty normally right now. We want to encourage . . . if you're under 50 and you're healthy, which is most New Yorkers, there is very little threat here. This disease, even if you were to get it, basically acts like the flu, and transmission is not that easy." Governor

Cuomo later in March likewise explained again, “this virus is not as dangerous as many of the viruses we’ve seen before . . . I think the anxiety is unduly high.”

63. The downplaying of the virus’ threat in the nation’s viral epicenter was reflected elsewhere in the country where the virus’ impact was much less significant. For example, the day after the federal government imposed additional travel bans on travel from Europe, except Britain and Ireland, on March 11, the NBA suspended, but did not end, its season, and MLB suspended spring training while announcing opening day would be delayed just two weeks.

64. Despite its being the epicenter of infection in the United States, New York did not even issue a partial “shut-down” order until March 22, 2020 that closed “non-essential businesses” but left parks, playgrounds, and public places open and election dates intact. At the time, New York had over 52,000 cases, and 728 deaths. In contrast, Lynchburg, Virginia had none.

65. During this same period, many U.S. cities, states, and municipalities similarly started implementing various steps to slow the spread of the virus, while others did not. The pace at which such measures were adopted predictably tracked the severity of the outbreak in that state. By April 13, 2020, however, the New York Governor and New York City Mayor said “it is now time to start opening the valve slowly and carefully.”

66. Across the country, colleges and universities took a similarly evolving and diversified approach with virtually all of them transferring to online education, allowing or requesting students return to their permanent homes if they could, and keeping dorms open and providing services for those students who had needs for those services.

67. For example, in the nation’s viral epicenter and home of the New York Times, its largest university, Columbia University, told students they were “encouraged to leave” in mid-March but only after resident students were diagnosed with the illness and one died, but it did not

close its dorms and students were not ordered to leave. Indeed, not all students could leave, as one Columbia student explained publicly: “I realized that if I were forced to evacuate [campus housing] I would have nowhere to go. With the number of coronaviruses cases rising daily, I felt so vulnerable.” Accordingly, on March 25, 2020, Columbia acknowledged, “some students will not be able to leave the dorms because they rely on the university for housing, for us to care for them.” For those who had reason to remain, essential services remained open. Moreover, Columbia, one of the city’s largest landlords, not only did not tell its 5,000 post-graduate students to leave the housing they rented from Columbia, it insisted that they continue to pay rent.

68. Other prominent New York City universities took the same approach as NYU. It was not until the state informed NYU that its dorms would be needed as contingency field hospitals that they were vacated.

69. In the nation’s capital, Georgetown University, a short trip from Williamson’s home, was completing spring break in mid-March, and, on March 11, 2020, assured students that “the campus remains open with limited services for small numbers of students who have indicated a compelling need to stay.” They reiterated two days later that the “campus remains open with key services” because the university recognized “the important need that some students have to remain on campus”

70. One of those students explained to the press, “Westchester County, where I’m from, had a much higher outbreak and my mom worked in retail . . . So I couldn’t self-quarantine and since I am at risk that could be deadly combo.” Ultimately, these students were not only allowed to stay through the end of the spring semester, they were allowed to stay into the summer term.

71. As reflected in the reporting tracking college and university responses to the pandemic, outright campus closures were:

raising concerns about students who can't just easily pick up and go or may not have an actual home to which to return. The precautions colleges are taking are creating logistical and financial hardships, among other challenges, for low-income and other vulnerable groups of students as well as international students . . . ⁶

These concerns were not just shared by students, but also by experts in the education field and politicians representing and championing underprivileged communities. As reported:

“What I worry is the responses can actually exacerbate pre-existing inequalities,” said Anthony Abraham Jack, an assistant professor of education at Harvard University whose research focuses on lower-income undergraduate students. . . . “For a lot of students, college is the only place where they have access to food on a consistent basis,” said Jack, author of *The Privileged Poor: How Elite Colleges Are Failing Disadvantaged Students* (Harvard University Press, 2019). “Oftentimes, especially at residential colleges, it’s the only place that they have shelter . . . To say, ‘Don’t come back after spring break,’ assumes that students leave in the first place, and that is fundamentally not true, because the reality is a significant number of students – disproportionately those from lower-income backgrounds – remain on campus because they can’t afford to leave . . . An additional issue will be lost wages from campus jobs, which some students use to help support their families,” he said.⁷

72. These and other concerns led to the vast majority of colleges deciding to remain open for students who needed to stay, although the standard for remaining varied, as responses varied everywhere, depending on local conditions, including the composition and needs of the student body, whether the university was in an active hot zone, the relative density of its student residences, the difficulty maintaining “social distancing” on a given campus, and each institution’s relative judgment on its own individual set of circumstances and tolerance for allowing resident students to determine their best choice.

⁶ Elizabeth Redden, *Go Home? For Some Students It’s Not Easy*, INSIDE HIGHER ED, March 12, 2020, available at <https://www.insidehighered.com/news/2020/03/12/colleges-confronting-coronavirus-tell-students-move-out-many-urge-attention-needs>.

⁷ *Id.*

73. For example, Northeastern University in Boston – a severely infected locale unlike Lynchburg, Virginia – kept its campus open and committed to “maintaining continuity of campus life” with staffing at normal levels. Auburn, also located in a declared “virus hotspot,” remained open, as did, among many others, including University of Northern Alabama, UCLA, Texas A&M, and Arizona State University.

74. Included in this list of schools that allowed students to remain in campus residences was Williamson’s alma mater Marquette University located in the COVID-19 hotspot of Milwaukee, Wisconsin. Marquette announced on March 23, 2020, the day Liberty reconvened after spring break, that students who had the need to stay on campus “will be allowed to remain.”

75. In Virginia, Governor Northam declared a state of emergency on March 12, 2020, but did not issue a “stay at home” order until March 30, 2020. Liberty’s spring break ended a week before that “stay at home” directive, on March 23, 2020 (the same day Marquette announced students who needed to remain “will be allowed to remain”). Realizing, *like every other university* in the country, that some percentage of its campus population would not be able to quickly reposition their lives if the campus suddenly closed, Liberty decided to keep its campus open to provide those students safe accommodations, food, and services, letting students determine whether to remain on campus or move elsewhere based on their individual needs.

76. Thus, on March 16, during spring break and only a week after Dr. Fauci encouraged people to continue going on cruise ships, Liberty announced that campus classes would be conducted online after spring break through the end of term, but the campus would remain open because there were students who would need to stay. At the time, students were encouraged to carefully consider whether it was better for them to remain home or elsewhere and to discuss the matter with their parents. That message was reiterated four days later. As President Falwell

explained, “Many of our international students are simply unable to return to their home countries and other students don’t have a safe place to go, so we must keep our campus residence halls and dining services staffed anyway, although we are modifying the way meals are picked up and consumed.” A copy of Liberty’s March 16 announcement was provided, in advance, to the City of Lynchburg and the Virginia Governor’s office. It generated no objections or complaints.

77. In making this decision, Liberty weighed the various competing factors as they related to Liberty’s particular situation. The university’s expansive campus did not pose the density and social distancing obstacles that some other schools grappled with, especially in New York and Washington, D.C. There were a significant number of international students and others from around the country for whom repositioning would be difficult. And most importantly, unlike New York, Washington, D.C., and other viral hot spots, Lynchburg did not have a single diagnosed case of COVID-19 at the time Liberty weighed whether it was safer for the students to remain on campus or be forced home to places like New York, New Jersey, Illinois, and Washington, D.C. The latter seemed reckless and inconsistent with the school’s Christian mission statement and obligation to care for its students.

78. In the end, Liberty’s decision was generally comparable with and resulted in the same types and numbers of students living on campus as most other similarly situated universities in the country, including those in the nation’s epicenter, New York City – where the New York Times chose not to report on any university – and its capital, where Williamson chose not to write about any university.

79. Of course, although the campus remained open after spring break, Liberty implemented significant measures to protect the safety of its students and faculty, manage the spread of the virus, and comply with all applicable executive orders and guidance. By March 23,

Liberty had moved most residential classes online, with all classes operating online shortly thereafter. Liberty also, among other precautions, converted dining halls to take-out only, prohibited gatherings of 10 or more, closed the campus to visitors, closed indoor recreation and fitness centers, suspended sports, and increased sanitation. And both before and immediately after classes resumed, environmental health inspectors from the Central Virginia Health District performed “surprise” inspections of Liberty’s campus and found no violations of the State of Virginia’s Executive Order 53, which temporarily placed restrictions on certain businesses and organizations during the coronavirus pandemic.

80. Indeed, on March 24, 2020, one day after classes reconvened and five days before the New York Times would report that Liberty had broken assurances that it would comply with all state health directives, it was publicly reported that two environmental health specialists from the Central Virginia Health District had been dispatched to Liberty’s campus for a “surprise inspection” and that “[n]o violations of the State of Virginia’s Executive Order 53 (imposing temporary restrictions on certain businesses and organizations during coronavirus concerns) were found.”⁸

III. THE NEW YORK TIMES

81. The New York Times long cast itself as the “paper of record” that reported the news “without fear or favor.” In the last ten years, however, the pressures of the digital internet age have recast the organization into a digital and social media production company driven not by the traditional journalistic standards that it once epitomized, but by the amount of traffic on its website and how much advertisers would pay based on that traffic.

⁸ See, e.g., Eddie Callahan, *No violations found after Liberty University gets surprise inspection following coronavirus concerns from community*, WDBJ, dated March 24, 2020, available at <https://www.wdbj7.com/content/news/Liberty-University-gets-surprise-inspection-after-coronavirus-concerns-from-community-569079361.html>

82. Although apparent to all, this descent was chronicled in the 500-page book by the New York Times' first ever female executive editor, Jill Abramson, published in 2019. Ms. Abramson joined the New York Times in 1997 from the Wall Street Journal and served as its Washington, D.C. bureau chief, managing editor, and then executive editor from 2011 to 2014. She was listed as the fifth most powerful woman by Forbes and one of the most powerful women in the world by Foreign Policy Magazine. Her deep roots at the New York Times are reflected by a New York Times tattoo.

83. According to Ms. Abramson, the dawn of the digital internet age foundered the organization's traditional print format which was lapped by digital news providers. "In the end, the only product the Times had to sell was the quality of its journalism" but in the digital age that product was devalued by the speed, convenience, and additional media capabilities of the internet. By 2008-09, newspapers were in "freefall," including hers, which was on the brink of insolvency and had a plummeting stock price.

84. Over the next ten years, the organization would abandon the main elements of its old storied reputation to survive. The once sacrosanct newsroom and editors would be under increasing pressure to work with, and ultimately work for, the advertising and marketing business side of the organization. Ms. Abramson explained that beginning in 2010 there was "increasing tension between church and state" and "the independence of the newsroom was something I watched erode." The owners now "expected the ideas for new revenue producing products to come from the newsroom," and the pope of the newsroom, the executive editor, now was focused mainly on business revenues, not news.

85. Ms. Abramson was given the lead in developing a competitive digital version of the New York Times, and was "so determined and worked so hard to be the transitional editor who

would succeed in making the newsroom digital first without causing a cultural meltdown or letting the best traditions die, like protecting the newsroom from being colored by crass commercialism, without stooping to the tactics used by BuzzFeed. There would be no metrics charts influencing editors to promote stories according to their traffic. We would not use clickbait headlines that seduced readers to click on stories that delivered little if anything the headlines promised.” However, an internal study on her efforts found them to be what she described as an “epic fail.” It was “a call to arms [for] more collaborations between the news and business sides, the wall was getting in our way the report concluded.”

86. Although the newsroom resisted, it was futile. As financial pressure continued, the newsroom acquiesced to money-making. Instead of searching for the most newsworthy subjects or events to cover, the newsroom would now “target news coverage likely to increase subscriptions” which meant producing stories “that featured traffic-generating subjects.” “Audience Committees” between editors and marketing executives were created. “Soon the Times had a full-fledged ad agency working within . . . but was also allowing brands to sponsor specific lines of reporting” next to which would be their ads.

87. For example, the Oreo manufacturer bought ads and directly sponsored groups of writers to write stories it selected without disclosing that the “reporting” was paid for by a corporate patron. Samsung paid 12 million dollars to run visual features that used its cameras. Not surprisingly, the paid-for coverage was favorable to the corporate patron. According to Ms. Abramson, it became “harder and harder to tell the line between advertising and news and the line between financial interests and journalism.”

88. Abramson felt these business considerations had too much influence over the coverage, but her superiors did not. To the contrary, they set a goal of being a “digital powerhouse” and doubling digital revenue in 2020.

89. What emerged was “an arms race for clicks” with the organization obsessed with how many “clicks” stories generated. Marketing and advertising executives worked with editors to identify the coverage most likely to drive traffic to the website, generate subscriptions, and increase advertising revenue. Reporters who once were to write the news, but not be the news, were now to become celebrities with TV appearances and contracts, book deals, and growing audiences on social media. And when they wrote a story, they were not writing from a blank slate based on the facts discovered, but from an assigned storyline they were expected to fulfill with maximum “emotional content.”

90. Likewise, as reporters covered stories, their colleagues would be writing sponsored stories about the same subjects to offset bad press of their corporate patrons. Coverage was also generated as marketing tools for advertisers who sought to identify readers most receptive to their marketing, and what sort of stories, topics, and emotional content would best resonate with those identified readers.

91. According to Abramson, the 2016 election of Donald Trump was a “lifeline” to the company for its “call to arms” to overhaul the way it had always done business. At first, the New York Times lost subscriptions cancelled by its liberal readers angry with its campaign coverage of President Trump. But the publisher wrote a public apology and promised to change. And change it did: “Given its mostly liberal audience, there was an implicit financial reward for the Times in running lots of Trump stories, almost all of them negative. They drove big traffic numbers and, despite the blip of cancellations after the election, inflated subscriptions orders to 4 million in

2018.” The New York Times became “unmistakably anti-Trump” and it became impossible to maintain its long-held “without fear or favor” tradition.

92. The Trump “clickbait” business model extends to any subjects associated with the President, his election, or those who would otherwise provide similar “emotional content” and clicks to the New York Times’ audience. One of the main subjects in this category since the election has been Liberty and its President Jerry Falwell, Jr. As the largest evangelical Christian university in the country, Liberty is a powerful symbol for Republican presidential candidates seeking that important constituency’s support, and Democrats seeking to blunt that constituency’s support. This may never have been more so than in the 2016 presidential election in which evangelical Christians played a critical role in the election of President Trump. In addition, President Falwell’s own personal endorsement and close relationship with President Trump was, in many views, an important part of this constituency’s support.

93. For all these reasons, Liberty and President Falwell provide substantial “emotional content” to drive “clicks” for the defendants, and have been the subject of significant attention from them and other news organizations selling to the same liberal audience since the election. As universities across the country wrestled with their responses to the evolving pandemic, the topic provided a prime “clickbait” opportunity for defendants to generate a negative story about Liberty University and its President’s response that would appeal to its liberal target audience. And the defendants decided to produce just such a story.

IV. THE NEW YORK TIMES’ MARCH 29, 2020 “CLICKBAIT” STORY

94. Having identified a strong “clickbait” opportunity concerning Liberty’s coronavirus response, the New York Times sent Williamson and Rendleman to Liberty to produce and direct a tale depicting Liberty’s response to the pandemic as unscientific, ignorant, and

reckless. By that time, Liberty had already ordered its campus closed to outside visitors on March 23, which was public information immediately posted on its website, and also announced prominently on multiple no trespassing signs posted at all entrances to its campus stating: “Liberty University Campus **Open ONLY To Students, Employees & Those Conducting University Business Until Further Notice NO TRESPASSING.**” (emphasis in original). Nonetheless, on March 27, 2020, Rendleman trespassed by breaching this exclusion zone. Williamson, who had traveled from a viral hot spot, likewise, violated Liberty’s exclusion zone, and tweeted about it when defendants’ story was published: “I visited Liberty U. as the consequences of Jerry Falwell’s decision to reopen the campus amid the pandemic came home to roost.”

95. In anticipation of the “clickbait” reporting underway and soon to be published, on March 27, the New York Times warmed up its audience with an op-ed titled “The Religious Right’s Hostility to Science is Crippling Our Coronavirus Response.” The central thesis of the op-ed was that the “denial of science and critical thinking among religious ultraconservative now haunts the American response to the coronavirus crisis.” The op-ed identified President Falwell and Liberty as an example of these “religious ultraconservatives” who lacked “critical thinking” abilities and denied science, citing a March 10 television appearance in which President Falwell’s opined that the media’s response to the coronavirus was “hype” and “overstated.” In characterizing President Falwell’s comments as indicative of unthinking, unscientific “religious conservatives,” the op-ed failed to mention the even more strenuous challenges to the seriousness of the virus published by the New York Times and liberal politicians in the nation’s viral hotspots long before and even after President Falwell’s statement.

96. Having warmed up the audience, on March 29, 2020, defendants published an article that intentionally misrepresented that Liberty had “reopened” its campus after spring break

and suffered a COVID-19 outbreak as a result. That message was apparent to every reader from the article's plain language. The online article announced that "Liberty Brings Back its Students, and Coronavirus, Too." The print edition likewise proclaimed that "A University Reopened, and Students Got Sick." Both versions stated explicitly that Liberty University "partly reopen[ed] . . . Then students started getting sick," including "nearly a dozen Liberty students . . . sick with symptoms that suggested Covid-19." The New York Times made the same claims in an official tweet about the story: "Jerry Falwell, Jr, President of Liberty University, reopened the school last week. By Friday, nearly a dozen Liberty students were sick with symptoms that suggest Covid-19." And Williamson tweeted, "Just posted: I visited Liberty U. as the consequences of Jerry Falwell's decision to reopen the campus amid a global pandemic *came home to roost.*" (emphasis added).

97. Defendants' story was false and defamatory in multiple respects, all designed to contribute to the emotional narrative that the evangelical university led by a supporter of President Trump was recklessly disregarding science and common sense in response to the pandemic and caused a COVID-19 outbreak as a result. Specifically, the manufactured false claims set forth in this initial "clickbait" online story, include, among others, the following:

- a. Liberty University "reopened" its campus after spring break despite the pandemic, when, in fact, its campus, like the campus at virtually every other university during spring break, was never closed and housed numerous students who chose not to travel for spring break.
- b. Liberty University's President "assured [local officials] that he fully intended to comply with Virginia's public health directives and close the school to virtually all students . . . Then he changed his mind," when, in fact, Liberty did comply with all Virginia's public health directives, never resisted or delayed in meeting those directives, those directives never required Liberty to close the campus, two surprise inspections during and immediately after spring break found full compliance, and President Falwell never changed his mind about complying with state directives or keeping the campus open to students.

- c. The Virginia Governor, Lynchburg city officials, and the school community “urged” President Falwell to change course “but such pleas have only prompted a stream of often conflicting statements,” when, in fact, Liberty University adjusted operations multiple times to meet evolving directives from the Governor and requests from local officials, all of whom were kept informed in real-time. None of these state or local officials registered a single complaint, objection, or request upon learning of the decision to move campus classes online and keep the campus open and in compliance with the state and local directives then in place.
- d. President Falwell “initially said only international students or those with nowhere else to go would remain. Then he welcomed back a much bigger group of about 1900 students to campus housing last week,” when, in fact, Liberty University’s first announcement about moving campus classes online issued during spring break on March 16, which was provided to state and local officials in advance, clearly stated that residential students could complete their classes online anywhere if they had relocated or on campus if they needed to return. There was no change of Liberty’s position as communicated to the public and government officials.
- e. “[A]ll Liberty students were encouraged to return” to Liberty after spring break, when, in fact, Liberty and residential advisors explicitly made it clear that the choice was the student’s that should be carefully considered, even discussed with parents, and that the university was not requiring or encouraging them to return to campus.
- f. President Falwell reflected the reckless views of “far-right” conservatives in “downplaying” the seriousness of the pandemic “for critical weeks in January and February,” when, in fact, defendants and other liberal media outlets as well as liberal politicians in viral hot spots much more frequently and unequivocally downplayed the risks of the virus during these periods.
- g. Liberty “Brings Back its Students, and Coronavirus, Too,” and, “Reopened, and Students Got Sick,” when, in fact, not a single campus resident student had been diagnosed with COVID-19 at the time the defendants investigated and published their story, not a single campus resident ever tested positive for COVID-19 after spring break, let alone one returning from spring break, and the single COVID-19 case in the entire “student” community was a graduated online student, taking online classes from the Lynchburg home where he lived with family, and who had not been to the campus all semester, before, during, or after spring break.
- h. According to the doctor who ran “Liberty’s student health services,” immediately after Liberty “reopen[ed]” “students got sick,” including “nearly a dozen Liberty students . . . sick with symptoms that suggest COVID-19,” when, in fact, the source they cited did not run student health services, did not tell them students had become sick, and did not tell them “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19” but just the opposite, that the bulk of those students who came for treatment had symptoms of a cold and consequently were not sent for testing.

- i. “I visited Liberty U. as the consequences of Jerry Falwell’s decision to reopen the campus amid a pandemic came home to roost,” when, in fact, there were no COVID-19 consequences at Liberty as a result of allowing student to return to campus and thus no evidence that “a pandemic came home to roost.”

98. These statements were materially false, intentionally misrepresented the facts, and were designed to mislead. Indeed, two days before the article was published online, Ms. Williamson interviewed Dr. Eppes, the president of Central Virginia Family Physicians which runs both the health clinic on Liberty’s campus as well as a health clinic off campus. When asked whether any students had tested positive for COVID-19, Dr. Eppes responded that three students had been sent for testing, but that no results were available yet; and that eight other students had “varying degrees of *upper* respiratory infection” which are not suggestive of COVID-19 and do not meet the criteria for testing for COVID-19, which is a *lower* respiratory illness. Dr. Eppes never informed Ms. Williamson that “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19,” nor did he provide any facts or data to support that claim, and in fact no such data existed. It is untrue.

99. As the defendants know, and as anyone who can google would find out, an “upper respiratory infection” is known in the vernacular as a cold. COVID-19 is a lower respiratory infection with very different symptoms. Thus, while Dr. Eppes informed Ms. Williamson that eight students had a cold and were not sent for testing, defendants told their readers he had said these students had symptoms of COVID-19.

100. Significantly, despite providing Ms. Williamson with information concerning the number of students that had been tested, Dr. Eppes cautioned Ms. Williamson that he was not “on the ground” at the student health services clinic, and thus, directed Ms. Williamson to speak with Dr. Thomas, who was on-site, to confirm and supplement the information he provided. Ms.

Williamson, however, never reached out to Dr. Thomas to confirm the true state of affairs on Liberty's campus before or since the article was published.

101. Indeed, Ms. Williamson never made any meaningful effort to confirm the information with anyone at Liberty. Instead, at approximately noon on Sunday afternoon, Ms. Williamson sent Liberty official, Scott Lamb, a list of twelve questions for a story that she stated was going to run the next day. But defendants did not wait for Liberty's response. Rather, within twenty minutes of contacting Liberty, after Mr. Lamb told her they would investigate and revert promptly, Ms. Williamson wrote to say that the story would go online in the next few hours. As Liberty scrambled to research the questions, President Falwell called Ms. Williamson directly, and told her they were working on answers that would be forthcoming. Nevertheless, defendants rushed ahead to post the article, which went online at 3:00 p.m. on March 29.

102. Beyond misrepresenting the existence of a COVID-19 outbreak on Liberty's campus, the article also falsely implied that Liberty's decision not to close the campus after spring break was inconsistent with local, state, and federal recommendations and mandates and the course of conduct of other large higher education institutions.

103. Liberty, however, at all times has operated its campus consistent with local, state, and federal guidelines. After spring break, Liberty, among other precautions, moved all courses online, provided work-from-home options for faculty and staff, and cancelled or postponed all large gatherings such as graduation. Liberty allowed students who needed to return to campus to do so, and continued to provide essential services for those students, but had measures in place to address the coronavirus pandemic, such as having dining halls provide take-out dining only and reserving an unoccupied housing annex, with single rooms, for students who needed to self-isolate or quarantine. Indeed, as of March 24, Liberty was found to be in total compliance with State of

Virginia's Executive Order 53, which placed temporary restrictions on certain non-essential businesses and organizations during the coronavirus pandemic.

104. Liberty's post-spring-break operations are also entirely consistent with how other universities of comparable size operated after spring break. For example, UCLA, Texas A&M, Arizona State University, and Virginia Tech have all kept their campuses and student housing complexes open for students who were unable to return home after spring break and maintained essential services for those students.⁹ While UCLA and Virginia Tech reported that only a couple hundred students remained in on-campus housing, Arizona State University and Texas A&M reported over a thousand students living on-campus after spring break. Contrary to the article's implications, Liberty is not an outlier among large universities in allowing its students to return to on-campus housing after spring break. To the contrary, most colleges in the country still had students living on campus from spring break to the completion of the school year, and schools of similar size typically had more students than Liberty University on campus after spring break.

V. LIBERTY INFORMS THE NEW YORK TIMES THAT THE ARTICLE IS INACCURATE AND LIBELOUS AND DEMANDS A RETRACTION

105. Within two hours of publication of the online version of the article, and before a print version of the article was published on March 30, 2020, Liberty official, Scott Lamb, informed defendants by e-mail that defendants' article was factually inaccurate and materially misleading and demanded a retraction.

106. Mr. Lamb's e-mail, sent to Williamson at approximately 4:30 p.m. on March 29, informed her that "[t]he information on 'student' cases you supposedly got from Dr. Thomas Eppes cannot be confirmed." Mr. Lamb provided the following information that Liberty "confirmed . . .

⁹ <https://newsroom.ucla.edu/faq-for-students-COVID-19;> [https://www.tamu.edu/coronavirus/;](https://www.tamu.edu/coronavirus/)
<https://eoss.asu.edu/health/announcements/coronavirus/faqs;> [https://vt.edu/content/vt_edu/en/covid-19/faq/student-faq.html.](https://vt.edu/content/vt_edu/en/covid-19/faq/student-faq.html)

with local and state public health of [sic] officials.” (i) “[w]e are not aware of any students in our residence halls testing positive for COVID-19 or, in fact, being tested at all;” (ii) following the U.S. Surgeon General’s recommendations concerning persons from the New York City metropolitan areas, Liberty University asked four students who returned to their campus residence hall rooms from that area and their roommates to self-quarantine for the recommended period in our otherwise unoccupied housing annex (a few miles from campus), in single rooms, (iii) these measures were “precautionary and not based on any symptoms consistent with COVID-19,” all of “these students are asymptomatic for COVID-19,” and “[h]ealth professionals did not recommend these asymptomatic students be tested and they were not;” (iv) Liberty was aware of one off-campus student who returned from spring break from a location experiencing a high number of COVID-19 cases who was experiencing a fever and a cough, was tested, and advised to self-isolate and that this student voluntarily elected to return to his permanent residence instead of remaining on campus; (v) “another off-campus student came in for COVID-19 testing during spring break and her results came back negative;” (vi) Liberty was aware of “a recently-graduated student who lives off-campus with his family and who remained in Lynchburg during spring break who was advised to self-isolate based on his reported symptoms while his test results were being processed;” and (vii) “Liberty has a protocol in place for informing members of the University community as necessary in the event we confirm a student or employee on our campus tests positive for COVID-19,” but “[n]o such notification stands in place as of yet.”

107. At approximately 6:25 p.m. on Sunday, March 29, defendants updated the article to include a statement from Kerry Gateley, the health director of the Central Virginia Health District that covers Lynchburg: “I can’t be sure what’s going on with individuals who are not being tested but who are advised to self-isolate . . . I would assume that if clinicians were concerned

enough about the possibility of Covid-19 disease to urge self-isolation that appropriate screening and testing would be arranged.” In eliciting this statement, defendants did not provide the official with Dr. Eppes’ actual statement, but instead their misrepresented version of what Dr. Eppes said, and thereby secured a quote that created the false impression that Liberty not only had a COVID-19 outbreak, it was inexplicably not testing students who had symptoms of the illness.

108. The updated article also added the updated information that reinforced their false narrative including that that “after initial publication” the university “had said that it has asked four students who returned from the New York area and two of their roommates to self-quarantine, but none of them were referred for testing and none have symptoms. One student who returned from a county with a high number of cases was running a fever and had a cough. He was tested and elected to go home pending the results rather than self-quarantine, the university said.”

109. However, the defendants omitted the information provided that showed Liberty was not suffering a COVID-19 outbreak and did not have nearly a dozen students with COVID-19 symptoms. Thus, it failed to explain that, at that time, no Liberty student on campus had tested positive for COVID-19, and no campus students had been tested at all because none were symptomatic.

110. Consequently, Mr. Lamb e-mailed defendant Williamson again at approximately 7:00 p.m. on March 29, reiterating that the “published story is false” and informing her that “according to Dr. Eppes misrepresents what he told [her].” Mr. Lamb again demanded a correction.

111. Mr. Lamb’s statements were echoed in an e-mail from David Corry, Liberty’s general counsel, sent to the New York Times corrections desk at nytnews@nytimes.com and Williamson at approximately 7:25 p.m. on Sunday, March 29. Mr. Corry’s e-mail attached a press

release issued by Liberty in response to the New York Time's allegations and resent the text of the attachment in the body of an e-mail at about 8:00 p.m. Among other things, the press release stated that: (i) Dr. Eppes denied he ever told the New York Times reporter that Liberty had a dozen students sick with symptoms suggesting COVID-19; (ii) "Liberty is not aware of any student in its residence halls testing positive for COVID-19 or being tested at all, much less any residence hall students having sufficient symptoms of COVID-19 to prompt testing based on current CDC guidelines;" (iii) Liberty, following the U.S. Surgeon General's recommendations concerning persons who had been in the New York City metropolitan area, asked four students that had recently been in that area and were living in campus residence halls, and their roommates, to self-quarantine in single rooms at Liberty's unoccupied housing annex; (iv) asking these students to quarantine was "precautionary and not based on any symptoms consistent with COVID-19;" (v) "Liberty is also aware of an off-campus student who was running a fever and had a cough after returning from a county out-of-state with a high number of reported cases" who was tested and advised to self-isolate pending result, but "elected to return to his permanent residence after testing instead;" (vi) "another off-campus student came in for COVID-19 testing during spring break and her results came back negative;" (vii) "Liberty is also aware of a recently graduated student who is taking additional online classes and who lives off campus with his family" and "remained in Lynchburg during spring break" who was "advised to self-isolate based on his reported symptoms while his test results were being processed;" and (viii) "Liberty has a protocol in place for informing members of the University community as necessary in the event we confirm a student or employee on our campus tests positive for COVID-19," but "[n]o such notification stands in place as of yet."

112. The press release Mr. Corry sent to the New York Times also corrected the New York Times' "misleading narrative" about Liberty's decision to keep the campus open after spring

break and provided a link to Liberty's March 16 public statement announcing Liberty's decision to move classes online and keep residence halls and dining service open, giving students the option to choose where to reside. The press release stated that the March 16 public statement was provided, in advance, to the City of Lynchburg and the Governor's office, both of which initially thanked Liberty for the announced decision, and that the statement assured the public that Liberty "will remain in compliance with all applicable government directives and guidance concerning Covid-19," contrary to the defendants' claim Liberty had stated and done otherwise.

113. The foregoing communications on March 29 further informed defendants – before publishing the print-version of their story on March 30 – that the information published in the online article on March 29 was false and misleading.

114. At 8 p.m. on March 29, Dr. Eppes contacted Ms. Williamson to inform her that one of the three students tested for COVID-19 had tested positive. This student, he told her, lived off campus and had done no traveling for spring break. Dr. Eppes also clarified that the four students with "no to minimal symptoms" were from within 150 miles of New York City and were told to self-isolate as were two of their close contacts at the school; two of these individuals went home and the other four were in 14-day isolation.

VI. THE NEW YORK TIMES REPUBLISHES THE DEFAMATORY STATEMENTS IN THE PRINT-VERSION OF THE ARTICLE

115. In the face of all the previous and new information demonstrating their story was false, defendants nevertheless proceeded to publish the same false claims in their print edition on March 30, with the headline, "A University Reopened, and Students Got Sick." Among these continuing false claims was the core assertion that Liberty re-opened its campus despite local, state, and federal mandates and "[t]hen students started to get sick," including "nearly a dozen Liberty students . . . sick with symptoms that suggest Covid-19."

116. The online-version of the article was also amended on Monday March 30 at 11:29 a.m. to include the following new information: (i) “[a]s of 8 p.m. on March 29, of those students tested, one was positive, one was negative and one student’s results are still pending;” (ii) “the student who tested positive for Covid-19 lives off campus;” (iii) Liberty “asked four students who returned from the New York area and two of their roommates to self-quarantine, but none of them were referred for testing and none had symptoms;” and (iv) “[o]ne student who returned from a county with a high number of cases was running a fever and had a cough” and “was tested and elected to go home pending the results rather than self-isolate.” The online article was also amended on March 30 to remove “epidemiologically and otherwise” and the online article’s headline was changed from “Liberty University Brings Back Its Students, and Coronavirus, Too” to “Liberty University Brings Back Its Students, and Coronavirus *Fears*, Too” (emphasis added).

117. Nevertheless, each of the core defamatory statements from the original publication remained in all published versions, with the addition of the false implication that Liberty was inexplicably not testing students with symptoms of COVID-19.

VII. THE NEW YORK TIMES CONTINUES TO REFUSE TO RETRACT ITS CLAIMS DESPITE CLEAR EVIDENCE TO THE CONTRARY

118. On March 31, Dr. Eppes again wrote to Ms. Williamson to correct the errors reported. Significantly, Dr. Eppes reiterated to Ms. Williamson that while he is the president of the practice group that was contracted to run Liberty’s student health services (as well as an off-campus clinic), he does not have an official role at Liberty. Dr. Eppes further explained that he spoke with President Falwell in connection with Liberty’s decision to cancel in-person classes and, based on his recommendation, President Falwell canceled convocation which would have gathered 10,000 students in one building at the same time. Dr. Eppes also informed Ms. Williamson that,

as of that morning, no more students had been tested and that the one off-campus student who had tested positive for COVID-19 was in self-isolation.

119. On April 8, outside counsel for Liberty sent a letter to the New York Times, identifying the false and defamatory statements in the articles it published, again providing the New York Times with the accurate data on Liberty's coronavirus precautions, testing, and results, and demanding a retraction of the articles' false and misrepresented statements. Nevertheless, the New York Times, again, refused to correct or retract the defamatory statements in the article.

120. Rather, in response, the New York Times conceded that Dr. Eppes never informed Ms. Williamson that "nearly a dozen Liberty students were sick with symptoms that suggest Covid-19," or provided any facts to support that assertion. To the contrary, the New York Times admitted that Dr. Eppes stated that, while three students were tested, the remainder of the students who were directed to self-isolate were asymptomatic of COVID-19, which is a lower respiratory infection, but instead displayed symptoms of the upper respiratory infections which was not suggestive of the virus:

If LU has any doubts about what Dr. Eppes told our reporter, let me put those doubts to rest. Here, verbatim, is what he told her on Friday, March 27:

"The student health service sent 3 people to be tested, no results back on any of the 3. One of the 3 was during spring break. And they've had 8 others that were there with varying degrees of upper respiratory infection . . ."

121. The New York Times also admitted that, following publication of the online-version of the article on March 29, it received e-mails from Mr. Lamb and Mr. Corry stating that the figures reported by the article were incorrect and purporting to provide the correct figures. Nevertheless, the New York Times purported to explain that they received conflicting figures and

simply chose to rely on Dr. Eppes because he “was most directly involved in student health care and was most definitive.” Significantly, the New York Times failed to explain why it did not disclose both sets of data so that the reader could draw its own conclusion based on all available facts and why it had omitted other material parts of Dr. Eppes’ statement. The defendants failed to do so even though they knew that the information provided by Dr. Eppes was inherently unreliable because, among other things: (i) Dr. Eppes informed Williamson that he was not, as defendants claimed, “most directly involved in student health care” and certainly not “definitive” in the information he provided; (ii) Dr. Eppes directed Williamson to speak to Dr. Thomas to confirm the information he had provided because she was on-site at Liberty’s student health services, but Williamson had not done so; (iii) after working for a week on the story, defendants did not make a meaningful effort to secure corroboration or first-hand information concerning their claims and rushed to publish before Liberty could provide such information; (iv) immediately following publication of the article, Dr. Eppes denied the core facts attributed to him and clarified this directly with Ms. Williamson; and (iv) two Liberty officials, and Dr. Eppes himself, told the New York Times that the statements it attributed to Dr. Eppes were inaccurate.

122. Moreover, the New York Times declined to correct the article to clarify between students living on-campus and those taking online classes and living off-campus, taking the preposterous position that “the relevance of that distinction is unclear: [w]hen LU invited on-campus students to return, it was inevitable that some of them would interact with the students living off-campus.” This statement is a complete non-sequitur. As Dr. Eppes, Mr. Lamb, and Mr. Corry made clear, at the time the article was published there were no campus students who had tested positive for COVID-19 and the only student who subsequently tested positive had graduated, was enrolled only in online classes, lived off campus with his family, had not travelled

during spring break, and had not been to the campus all semester. He might as well have been living “off-campus” in an entirely different state and thus the relevance of the distinction, in the context of the story, was clear, significant, and intentionally omitted.

VIII. OTHER MEDIA OUTLETS REPUBLISH THE DEFAMATORY STATEMENTS SET FORTH IN THE NEW YORK TIMES ARTICLE

123. Immediately following the publication of the article, other media outlets began repeating the article’s clear defamatory meaning – that Liberty was experiencing a coronavirus outbreak because the university and President Falwell had permitted students to return after spring break. Innumerable other media outlets and publications republished and referred to the defendants’ story, including, by way of example, the following.

124. On March 29, 2020, the Huffington Post published an article titled *Liberty University Students Showing Signs Of COVID-19 After Returning To Campus* which stated: “Nearly a dozen students at Liberty University, a private, evangelical Christian school in Lynchburg, Virginia, are showing symptoms of COVID-19, the disease caused by the coronavirus, after coming back to campus after spring break, according to a New York Times report.”

125. On March 30, 2020, the New York Times published an article titled *This Land of Denial and Death*, a syndicated column stating that “Jerry Falwell, Jr. . . . seems to have created his own personal viral hot spot.”

126. On March 30, 2020 the Daily Beast published an article titled *Liberty University Students Sick With Coronavirus Symptoms*, which stated that “Liberty University, which partly reopened its campus amid the coronavirus pandemic, confirmed they now have almost a dozen students sick with potential COVID-19 symptoms.”

127. On April 1, 2020, Raw Story published an article titled *Jerry Falwell Jr Seems to Want Credit from Trump for Drinking His Coronavirus Kool-Aid: Op-Ed*, which stated: “Liberty

University president Jerry Falwell Jr. has reopened the school's campus in the midst of the coronavirus pandemic. Now, according to a report from the New York Times, 'nearly a dozen' students at the evangelical school have developed symptoms similar to those of COVID-19 as of this Friday, with at least one student testing positive for the virus."

128. On April 1, 2020 the Delaware County Daily Times published an article titled *Chris Freind: What We Must Do Now to Stop Coronavirus*, stating: "[Falwell] encouraged students to return during a full-blown pandemic, even though they would have to travel throughout the nation to do so. Any guesses as to the result? Ding, ding . . . numerous students now have coronavirus!"

129. On April 3, 2020 the World News Group published an article titled *Liberty in a Pandemic*, stating that "[o]n March 29, the New York Times reported up to 12 Liberty students were exhibiting COVID-19 symptoms after returning to campus after spring break."

130. On April 3, 2020 the Outsider Club published the article *3 Reasons We Haven't Hit Bottom*, which stated that "[o]ne thousand students were allowed back on campus last Sunday. And wouldn't you know it, by the middle of the week, eight students tested positive for COVID-19. That number will grow."

131. On April 3, 2020, the Financial Times published an article titled *Let's Keep God out of This, Shall We?* which stated: "Jerry Falwell Jr, last week said that his family-run Liberty University in Virginia would stay open in defiance of the college norm. Twelve students promptly came down with coronavirus. The inhabitants of Lynchburg, where the university is based, were understandably upset by Falwell's hubris."

132. On April 4, 2020, The Nation published an article titled *The COVID-19 Crisis Is Exposing Trump's Criminality*, which stated that "Jerry Falwell Jr. brought back to campus his students, who promptly suffered a COVID-19 outbreak."

133. On April 6, 2020, Salon published an article titled *Franklin Graham Tells Judge Jeannine That Pandemic Happened Because World 'Turned Its Back on God'* which stated: "The evangelical college Liberty University, which is run by Dr. Jerry Falwell Jr., was criticized for allowing students to return to campus after one of nearly a dozen students who exhibited symptoms consistent with COVID-19 tested positive for the virus, according to the New York Times."

134. Plaintiff contacted all of these publications promptly after their articles were published and informed them that the information that they published from the New York Times' article was false and defamatory. In response, at least three of these publications promptly removed or corrected the defamatory statements in their articles.

IX. DEFENDANTS' MALICE

135. There is overwhelming evidence that defendants issued this false and defamatory story knowing their claims were made up and untrue, including, by way of example, the following:

- a. Defendants misrepresented what Dr. Eppes told them in reporting that when Liberty "reopened" "students got sick," including "nearly a dozen sick with symptoms that suggest Covid-19."
- b. Defendants omitted entirely Dr. Eppes further explanation that the bulk of the students purportedly sick with symptoms of COVID-19 were not tested because they did not meet the symptomatic criteria for COVID-19 or for being tested for COVID-19.
- c. Defendants were fully aware of the distinction between symptoms of an "upper respiratory" illness like a cold, and the symptoms of a lower respiratory illness like COVID-19 described by Dr. Eppes.
- d. Williamson misrepresented Dr. Eppes' statement to the Virginia health official she interviewed, was alerted that her account was dubious by his response, but undertook no effort to clarify or corroborate her claim because she knew she was misrepresenting what Dr. Eppes said.
- e. Defendants scrupulously avoided contacting the doctor actually responsible for student health services as Dr. Eppes had instructed, or otherwise attempting to corroborate that "nearly a dozen Liberty students were sick with symptoms that suggest Covid-19."

- f. Defendants did not even try to make a meaningful inquiry of Liberty itself despite actually visiting the school and interviewing students and many others on campus and in Lynchburg, and rushed to publish to prevent Liberty from being able to provide accurate information from Drs. Thomas and Eppes.
- g. After publication, defendants asked Dr. Eppes if Liberty was correct that he did not run the student health services, but they inexplicably avoided asking about his claim that they had misrepresented what he said about ill students.
- h. Defendants never updated their story to note Dr. Eppes disputed their account of what he said, even though they did update to include other information reinforcing their misrepresented version of his comments.
- i. After defendants published the story with its sensational headline, “Liberty Brings Back its Students, *and Coronavirus, Too*,” they changed the headline online to “Liberty Brings Back its Students, *and Coronavirus Fears, Too*” (emphases added), but did not remove the equally false and misleading text within the article.
- j. The McCraw Letter simply denied the story ever asserted the plain, universally understood and intended message received by every other reader because the defendants knew that plain message is factually unsupported and indefensible.
- k. The McCraw Letter indicates the defendants were carefully crafting their story to send a message they knew was not true, while not explicitly saying it for the same reason.
- l. The McCraw Letter refers only to the scrubbed *post hoc* headline, and ignores the original “click-bait” headline in asserting what it said was never said.
- m. The McCraw Letter attempts to blame Dr. Eppes for defendants’ untrue reporting by misrepresenting that he “was most directly involved in student health and was most definitive” even though defendants knew he was not even involved in student health services and certainly not the one “most directly involved” or “definitive.”
- n. The McCraw Letter admits that they chose to use only Dr. Eppes’ “definitive” account despite knowing he had no personal knowledge, indicating they cherry-picked among conflicting data to depict the false story they intended.
- o. The McCraw Letter quotes a purported transcript excerpt that confirms defendants misrepresented what Eppes said, and omits, like in the story, the rest of his statement contradicting defendants’ claims.
- p. Defendants misrepresented that the school was reopened after spring break, when they knew that it had never closed.
- q. Defendants misrepresented that President Falwell had “changed his mind” about his assurances that Liberty would “comply with Virginia public health directives and close the school” when they knew the school had complied without delay with

all directives, had been twice inspected and found to be in compliance, and no directive required closure of the school.

- r. Defendants misrepresented that Liberty University had ignored the “urg[ing] of the governor and local officials to “change course” knowing that the school had complied with all the Virginia Governor’s directives and provided local officials with notice of all actions regarding moving classes online and permitting residential students to return in real time without objection.
- s. Defendants misrepresented that Liberty University had encouraged students to return to school after spring break, when they knew from the public announcements that it had encouraged them only to carefully consider whether to remain home or elsewhere and expressly declined to endorse any recommendation either way.
- t. Defendants portrayed Liberty’s “reopening” as reckless and irresponsible when they knew that its response was entirely representative of the comparable responses across the country, especially in New York and Washington, D.C., where the defendants are based, and particularly among schools of similar size.
- u. Defendants had an open and notorious “clickbait” business model, the objective of which was to publish sensational stories about subjects like Liberty that their liberal audience would like and this article was the product of that business model, which valued “emotional content” over accuracy.
- v. Defendants made and maintain these false claims knowing at the time, and being informed since, that they were false but have refused to retract or correct their stories.

X. PLAINTIFF’S DAMAGES

136. Defendants’ defamatory statements about Liberty caused enormous harm to Liberty’s business and reputation for which damages are presumed.

137. The article was republished by multiple news outlets, resulting in the defamatory statements reaching an even wider audience than the New York Times’ readership and amplifying the defamatory statements’ impact on Plaintiff. As a result, Plaintiff has endured wide-reaching public scorn.

138. Moreover, as a direct and proximate result of the article, Liberty has expended and continues to expend substantial monies and resources to respond to the false claims set forth in the

article and mitigate the damages caused by defendants. These expenses include but are not limited to advertising expenses, media, public relations, and legal expenses.

COUNT ONE
DEFAMATION
(MARCH 29 AND 30 ARTICLES AND ACCOMPANYING TWEETS)
Defendants New York Times and Williamson

139. The preceding paragraphs are hereby incorporated as if fully set forth herein.

140. The New York Times and Williamson published three online versions of the article on March 29, 2020 at approximately 3:00 pm and 6:25 pm respectively, and on March 30, 2020. The article was published to a worldwide audience on the New York Times' website. True and correct copies of the online edition of the article are attached hereto and incorporated by reference as **Exhibit A, B, and C**, respectively.

141. Moreover, the 3:00 pm edition was published on Twitter by the New York Times and Williamson. True and correct copies of defendants' respective tweets are attached hereto as **Exhibits D and E**.

142. The New York Times and Williamson published the print edition of the article on March 30, 2020. The article was published to a worldwide audience in the New York Times print edition and delivered to its subscribers (the print edition, collectively, with the online versions of the article, the "Articles"). A true and correct copy of the print edition of the article is attached hereto and incorporated by reference as **Exhibit F**.

143. The Articles, and accompanying tweets, contain the following statements that are each false and defamatory concerning the Plaintiff:

- a. "Liberty University Brings Back Its Students, and Coronavirus, Too." *See Ex. A.*
- b. "The decision by the school's president, Jerry Falwell Jr., to partly reopen his evangelical university enraged residents of Lynchburg Va. Then students started getting sick." *See Exs. A, B, C, F.*

- c. "So President Falwell - a staunch ally of President Trump and an influential voice in the evangelical world - reopened the university last week igniting a firestorm, epidemiologically and otherwise. As of Friday, Dr. Eppes said, nearly a dozen Liberty students were sick with symptoms that suggest Covid-19, the disease caused by the virus. Three were referred to local hospital centers for testing. Another eight were told to self-isolate." *See Ex. A.*
- d. "So Mr. Falwell — a staunch ally of President Trump and an influential voice in the evangelical world — reopened the university last week, igniting a firestorm. As of Friday, Dr. Eppes said, nearly a dozen Liberty students were sick with symptoms that suggested Covid-19, the disease caused by the virus. Three were referred to local hospital centers for testing. Another eight were told to self-isolate." *See Exs. B, C, F.*
- e. "The mayor and city manager here, Bonnie Svrcek, felt relieved two weeks ago, when President Falwell assured them that he fully intended to comply with Virginia's public health directives and close the school to virtually all students, most of whom were scattering for spring break. Then he changed his mind." *See Exs. A, B, C, F.*
- f. "But as spring break drew to a close in mid-March, all Liberty students were encouraged to return." *See Exs. A, B, C, F.*
- g. "I visited Liberty U. as the consequences of Jerry Falwell's decision to reopen the campus amid a pandemic came home to roost." *See Ex. D.*
- h. "Jerry Falwell Jr., president of Liberty University, reopened the school's campus last week. By Friday, nearly a dozen Liberty students were sick with symptoms that suggest Covid-19." *See Ex. E.*
- i. "A University Reopened, and Students Got Sick." *See Ex. F.*

144. The foregoing statements, individually and collectively, give rise to the false and defamatory impression that Liberty recklessly caused a COVID-19 outbreak and got students sick by disregarding state health directives and encouraging students to return to the Liberty's campus after spring break.

145. Moreover, the Article contained the following statement from Kerry Gateley, the health director of the Central Virginia Health District,

"I can't be sure what's going on with the individuals who are not being tested but who are advised to self-isolate . . . I would assume that if clinicians were concerned

enough about the possibility of Covid-19 disease to urge self-isolation that appropriate screening and testing would be arranged.” *See Exs. B, C, F.*

The quote from Ms. Gately, which was made in response to misrepresentations of the facts that Dr. Eppes had communicated to defendants Williamson and the New York Times, created the false and defamatory implication that Liberty was not taking appropriate and adequate steps to address the coronavirus, including failing to test students who met the criteria for COVID-19 testing.

146. The New York Times and Williamson published these statements with actual malice, with knowledge of their falsity and defamatory implications and/or with a reckless disregard for the truth.

147. The New York Times and Williamson also published these statements with spite and ill-will toward the Plaintiff.

148. By publishing these false statements, the New York Times and Williamson caused substantial damage to Plaintiff’s reputation, business, trade, profession, and occupation. As a direct and proximate result of these false statements by the New York Times and Williamson, Plaintiff suffered damages, including, *inter alia*, injury to its reputation, harm to Liberty’s prestige and standing in its field of business, and embarrassment, humiliation, and pecuniary damages, including lost business revenues and advertising and legal expenses.

149. Plaintiff is entitled to an award of punitive damages arising out of the New York Times’ and Williamson’s malicious, willful, and wanton, and/or reckless conduct as set forth herein.

COUNT TWO
DEFAMATION (“THIS LAND AND DENIAL AND DEATH” ARTICLE)
Defendant New York Times

150. The preceding paragraphs are hereby incorporated as if fully set forth herein.

151. The New York Times published the online and print editions of the article entitled “This Land of Denial and Death” on March 30, 2020 and March 31, 2020, respectively. The article was published to a worldwide audience on the New York Times’ website and to a worldwide audience in the New York Times print edition and delivered to its subscribers. True and correct copies of the online and print editions of the article are attached hereto and incorporated by reference as **Exhibits G and H**.

152. The article “This Land of Denial and Death” contains the following statement that is false and defamatory and gives rise to a defamatory implication concerning the Plaintiff:

“What lies behind Republican science denial? The answer seems to be a combination of fealty to special interests and fealty to evangelical Christian leaders like Jerry Falwell Jr., who dismissed the coronavirus as a plot against Trump, then reopened his university despite health officials’ warnings, and seems to have created his own personal viral hot spot.” *See Exs. G, H.*

153. This statement is false and defamatory and creates the false impression that Liberty recklessly caused a COVID-19 outbreak and got students sick by disregarding state health directives and reopening Liberty’s campus after spring break

154. The New York Times published this statement with actual malice, with knowledge of its falsity and defamatory implication and/or with a reckless disregard for the truth.

155. The New York Times also published this statement with spite and ill-will toward the Plaintiff.

156. By publishing this false statement, the New York Times caused substantial damage to Plaintiff’s reputation, business, trade, profession, and occupation. As a direct and proximate result of the false statement by the New York Times, Plaintiff suffered damages, including, *inter alia*, injury to its reputation, harm to Liberty’s prestige and standing in its field of business, and embarrassment, humiliation, and pecuniary damages, including lost business revenues and advertising and legal expenses.

157. Plaintiff is entitled to an award of punitive damages arising out of the New York Times' malicious, willful, and wanton, and/or reckless conduct as set forth herein.

COUNT THREE
DEFAMATION *PER SE*
Defendants New York Times and Williamson

158. The preceding paragraphs are hereby incorporated as if fully set forth herein.

159. The New York Times' and Williamson's false statements, as set forth herein, are actionable *per se*.

160. The New York Times' and Williamson's false statements impugn Plaintiff in its business, profession, or trade as a university.

161. The New York Times and Williamson made these statements with actual malice, with knowledge of their falsity and defamatory implications and/or with a reckless disregard for the truth.

162. The New York Times and Williamson also made these statements with spite and ill-will toward the Plaintiff.

163. By publishing these false statements, the New York Times and Williamson caused substantial damage to Plaintiff's reputation, business, trade, profession, and occupation. As a direct and proximate result of these false statements by the New York Times and Williamson, Plaintiff suffered damages, including, *inter alia*, injury to its reputation, harm to Liberty's prestige and standing in its field of business, and embarrassment, humiliation, and pecuniary damages, including lost business revenues and advertising and legal expenses.

164. Plaintiff is entitled to an award of punitive damages arising out of the New York Times' and Williamson's malicious, willful, and wanton, and/or reckless conduct as set forth herein.

COUNT FOUR
CIVIL TRESPASS

Defendants New York Times, Williamson, and Rendleman

165. The preceding paragraphs are hereby incorporated as if fully set forth herein.

166. Plaintiff owns and fully possesses the land that encompasses Liberty University.

167. Plaintiff maintains actual possession over this land.

168. On March 23, 2020, Liberty issued a public statement declaring that, as part of Liberty's ongoing efforts to respond to the coronavirus pandemic, the campus would be closed to visitors, but remain open to students, staff, employees, and business invitees of Liberty.

169. On or about March 23, 2020, Liberty posted multiple "No Trespassing" signs at every entrance to its campus. A true and correct copy of a photograph of one such sign is attached hereto and incorporated by reference at **Exhibit I**.

170. Between March 23 and March 29, 2020, defendants Williamson and Rendleman entered Liberty's campus in defiance of Liberty's March 23 trespassing mandate. Defendants Williamson and Rendleman willfully entered Liberty's campus at the direction of the New York Times for the sole purpose of gathering photos and information to include in the defamatory Articles published by the New York Times on March 29 and March 30. This intrusion, occurring after Plaintiff closed the campus, interfered with Plaintiff's right of exclusive possession of the land. Such an intentional intrusion harmed Plaintiff's reputation and endangered Liberty's students and employees on campus because both Williamson and Rendleman came from outside Lynchburg, thus increasing potential exposure to coronavirus.

171. Plaintiff is entitled to an award of punitive damages arising out of the New York Times', Williamson's, and Rendleman's intentional and willful conduct, as set forth herein.

PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES.

WHEREFORE, Plaintiff moves this the Court for judgment against the New York Times, Williamson, and Rendleman, jointly and severally, in the amount of TEN MILLION DOLLARS (\$10,000,000), plus taxable costs, with pre-verdict interest from March 29, 2020, and post-verdict interest on all of these amounts, as well as, THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000) in punitive damages, attorneys' fees, and costs, and for such other and further relief as the Court deems just, equitable, and proper.

Dated: July 15, 2020

LIBERTY UNIVERSITY, INC.

By: _____
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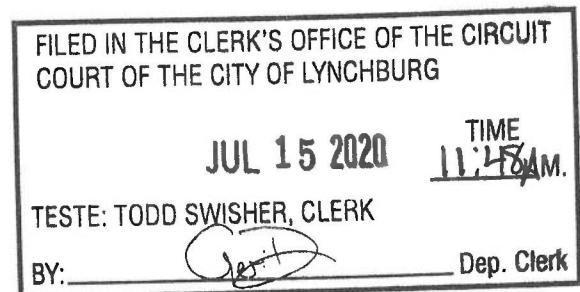


Exhibit A

The New York Times

Liberty University Brings Back Its Students, and Coronavirus, Too

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By Elizabeth Williamson

March 29, 2020, 3:00 p.m. ET

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"We've lost the ability to corral this thing," Dr. Thomas W. Eppes Jr. said he told Mr. Falwell. But he did not urge him to close the school. "I just am not going to be so presumptuous as to say, 'This is what you should do and this is what you shouldn't do,'" Dr. Eppes said in an interview.

So Mr. Falwell — a staunch ally of President Trump and an influential voice in the evangelical world — reopened the university last week, igniting a firestorm, epidemiologically and otherwise. As of Friday, Dr. Eppes said, nearly a dozen Liberty students were sick with symptoms that suggest Covid-19, the disease caused by the virus. Three were referred to local hospital centers for testing. Another eight were told to self-isolate.

"Liberty will be notifying the community as deemed appropriate and required by law," Mr. Falwell said in an interview on Sunday when confronted with the numbers. He added that any student returning now to campus would be required to self-quarantine for 14 days, most likely in a hotel the university owned off-campus.

Of the 1,900 students who initially returned last week to campus, he said more than 800 had left. But he said he had "no idea" how many students had returned to off-campus housing.

"If I were them, I'd be more nervous," he added, because they live in more crowded conditions.

For critical weeks in January and February, the nation's far right dismissed the seriousness of the pandemic. Mr. Falwell derided it as an "overreaction" driven by liberal desires to damage Mr. Trump.

Though the current crisis would appear epidemiological in nature, Dr. Eppes said he saw it as a reflection of "the political divide."

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"We think it's irresponsible for so many universities to just say 'closed, you can't come back,' push the problem off on other communities and sit there in their ivory towers," Mr. Falwell said on Wednesday on a radio show hosted by a far-right conspiracy theorist, Todd Starnes.

"We're conservative, we're Christian, and therefore we're being attacked," he said.

Michael Gillette, a former mayor of Lynchburg and a bioethicist now working with its hospitals on allocating scarce ventilators, disagrees.

"To argue that criticism of Liberty is based on political bias is unfounded and unreasonable," he said. "Liberty just did not take this threat as seriously as others have."

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Students who remained at home had to return last week to clean out their rooms, a requirement that was later relaxed. Faculty members were at first ordered back to

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Mr. Falwell and his administration have worked to tamp down dissent. After a Liberty undergraduate, Calum Best, [wrote on his personal Facebook page](#) that students should receive refunds, he said Liberty's spokesman, Scott Lamb, called his cellphone to berate him. Asked about the call, Mr. Lamb said he was objecting to an error in the post, and Mr. Best was "spinning."

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But as spring break drew to a close in mid-March, all Liberty students were encouraged to return.

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Mr. Falwell echoes Mr. Trump’s talking points on the coronavirus, which he often calls the “flu.”

“It’s just strange to me how many are overreacting” to the pandemic, Mr. Falwell said on “Fox & Friends” on March 10. “It makes you wonder if there is a political reason for that. Impeachment didn’t work and the Mueller report didn’t work and Article 25 didn’t work, and so maybe now this is their next attempt to get Trump.”

Lynchburg is particularly ill-prepared to become a hot spot. Hospitals in the region have a total of 1,174 beds, only 55 of them intensive care, according to [a recent analysis](#) by the Harvard Global Health Institute. Those must serve 217,000 adults, nearly 50,000 of whom are 65 or older. Tests for the coronavirus remain in short supply.

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Kristin Hussey contributed reporting. Kitty Bennett contributed research.

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Exhibit B

The New York Times<https://nyti.ms/2UkAmli>

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- **Is there a vaccine yet?**

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Exhibit C

The New York Times<https://nytimes.com/2020/03/29/us/politics/coronavirus-liberty-university-falwell.html>

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By Elizabeth Williamson

Published March 29, 2020 Updated March 30, 2020, 11:29 a.m. ET

Updated March 30, 2020: This story has been changed to reflect the first known positive coronavirus test of a Liberty University student.

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As of 8 p.m. on March 29, of those three students tested, one was positive, one was negative and one student's results are still pending, according to Dr. Eppes, who added that the student who tested positive for Covid-19 lives off campus.

"Liberty will be notifying the community as deemed appropriate and required by law," Mr. Falwell said in an interview on Sunday when confronted with the numbers. He added that any student now returning to campus would be required to self-quarantine for 14 days.

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When contacted by The New York Times, Northwell Health denied that Dr. Hyman provided any formal guidance to Liberty, adding that he is not an infectious disease specialist. In a statement, the hospital system said that Dr. Hyman was a personal friend of the Falwell family, who told them in private conversation “that reconvening classes would be a ‘bad idea.’”

Kristin Hussey contributed reporting. Kitty Bennett contributed research.

The Coronavirus Outbreak >

- **Answers to Your Frequently Asked Questions**

Updated March 24, 2020

- **How does coronavirus spread?**

It seems to spread very easily from person to person, especially in homes, hospitals and other confined spaces. The pathogen can be carried on tiny respiratory droplets that fall as they are coughed or sneezed out. It may also be transmitted when we touch a contaminated surface and then touch our face.

- **Is there a vaccine yet?**

READ MORE



Exhibit D



Elizabeth Williamson
@NYTLiz

JUST POSTED: "We need help to go home." I visited Liberty U. as the consequences of Jerry Falwell's decision to reopen the campus amid a pandemic came home to roost.



Liberty University Brings Back Its Students, and Coronavirus Fears, Too
The decision by the school's president, Jerry Falwell Jr., to partly reopen his evangelical university enraged residents of Lynchburg, Va. Then students started ...
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Exhibit E



NYT Politics ✓
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Jerry Falwell Jr., president of Liberty University, reopened the school's campus last week. By Friday, nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.



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
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15.3K Retweets **14.7K** Likes

Exhibit F

A University Reopened, And Students Got Sick

Williamson, Elizabeth . New York Times , Late Edition (East Coast); New York, N.Y. [New York, N.Y.]30 Mar 2020: A.13.

 ProQuest document link

FULL TEXT

The decision by the school's president, Jerry Falwell Jr., to partly reopen his evangelical university enraged residents of Lynchburg, Va. Then students started getting sick.

LYNCHBURG, Va. – As Liberty University's spring break was drawing to a close this month, Jerry Falwell Jr., its president, spoke with the physician who runs Liberty's student health service about the rampaging coronavirus. "We've lost the ability to corral this thing," Dr. Thomas W. Eppes Jr. said he told Mr. Falwell. But he did not urge him to close the school. "I just am not going to be so presumptuous as to say, 'This is what you should do and this is what you shouldn't do,'" Dr. Eppes said in an interview.

So Mr. Falwell – a staunch ally of President Trump and an influential voice in the evangelical world – reopened the university last week, igniting a firestorm. As of Friday, Dr. Eppes said, nearly a dozen Liberty students were sick with symptoms that suggested Covid-19, the disease caused by the virus. Three were referred to local hospital centers for testing. Another eight were told to self-isolate.

"Liberty will be notifying the community as deemed appropriate and required by law," Mr. Falwell said in an interview on Sunday when confronted with the numbers. He added that any student now returning to campus would be required to self-quarantine for 14 days.

"I can't be sure what's going on with individuals who are not being tested but who are advised to self-isolate," said Kerry Gateley, the health director of the Central Virginia Health District, which covers Lynchburg. "I would assume that if clinicians were concerned enough about the possibility of Covid-19 disease to urge self-isolation that appropriate screening and testing would be arranged."

After initial publication of this article, the university said it had asked four students who returned from the New York area and two of their roommates to self-quarantine, but none of them were referred for testing and none had symptoms. One student who returned from a county with a high number of cases was running a fever and had a cough. He was tested and elected to go home pending the results rather than self-isolate, the university said. Of the 1,900 students who initially returned last week to campus, Mr. Falwell said more than 800 had left. But he said he had "no idea" how many students had returned to off-campus housing.

"If I were them, I'd be more nervous," he added, because they live in more crowded conditions.

For critical weeks in January and February, the nation's far right dismissed the seriousness of the pandemic. Mr. Falwell derided it as an "overreaction" driven by liberal desires to damage Mr. Trump.

Though the current crisis would appear epidemiological in nature, Dr. Eppes said he saw it as a reflection of "the political divide."

"If Liberty sneezes, there are people who don't like the fact that Liberty sneezed," he said in an interview. "Mr. Falwell called me to listen to a view that wasn't exactly his. Great leaders do that type of thing."

The city of Lynchburg is furious.

"We had a firestorm of our own citizens who said, 'What's going on?'" said Treney Tweedy, the mayor.

Some Liberty officials accuse alarmed outsiders of playing politics. Ms. Tweedy has called Mr. Falwell "reckless." And within the school, there are signs of panic.

"I'm not allowed to talk to you because I'm an employee here," one student on campus wrote in an email. But, he

pleaded, "we need help to go home."

Under the Falwell family's leadership, Liberty University has grown in five decades from a modest Baptist college to an evangelical powerhouse with cash investments and endowments of nearly \$2 billion, nearly 46,000 undergraduates and a campus that sprawls across Lynchburg and neighboring counties in Virginia. Total enrollment, including online students, exceeds 100,000.

The institution is a welcome and generous presence in this Blue Ridge Mountain region, where the percentage of Lynchburg residents living in poverty is twice the state average. Liberty and its Thomas Road Baptist Church donate goods and services, its medical students conduct free health screenings, and its students participate in city beautification, maintenance and charity projects.

The university was founded by Mr. Falwell's famous father as a bastion of social conservatism, one that was unabashedly combative as it trained what it called "Champions for Christ." If anything, the younger Mr. Falwell has made it more so since his father's death.

The mayor and city manager here, Bonnie Svrcek, felt relieved two weeks ago, when Mr. Falwell assured them that he fully intended to comply with Virginia's public health directives and close the school to virtually all students, most of whom were scattering for spring break. Then he changed his mind.

"We think it's irresponsible for so many universities to just say 'closed, you can't come back,' push the problem off on other communities and sit there in their ivory towers," Mr. Falwell said on Wednesday on a radio show hosted by Todd Starnes, a far-right conspiracy theorist.

"We're conservative, we're Christian, and therefore we're being attacked," he said.

Michael Gillette, a former mayor of Lynchburg and a bioethicist now working with its hospitals on rationing scarce ventilators, disagrees.

"To argue that criticism of Liberty is based on political bias is unfounded and unreasonable," he said. "Liberty just did not take this threat as seriously as others have."

Gov. Ralph Northam of Virginia, Lynchburg city officials and a growing number of Liberty students, parents and employees have urged Mr. Falwell to reverse course, but such pleas have only prompted a stream of often conflicting statements.

"Our messages did change throughout the week as the governor's orders changed," Mr. Falwell said. "We had to adapt."

Mr. Falwell initially said only international students or those with nowhere else to go would remain. Then he welcomed back a much larger group of about 1,900 students to campus housing last week, in addition to faculty members and staff. Others returned to off-campus rentals in Lynchburg.

Students who remained at home had to return last week to clean out their rooms, a requirement that was later relaxed. Faculty members were at first ordered back to campus, even though they would be teaching online. Then some were allowed to work from home.

Mr. Falwell also waffled on whether the school would issue refunds to students who did not return for the semester, before announcing on Friday that most would receive a \$1,000 credit for next year's bills.

Mr. Falwell and his administration have worked to tamp down dissent. After a Liberty undergraduate, Calum Best, wrote on his personal Facebook page that students should receive refunds, he said Liberty's spokesman, Scott Lamb, called his cellphone to berate him. Asked about the call, Mr. Lamb said he was simply objecting to an error in the post, and Mr. Best was "spinning."

After Marybeth Davis Baggett, a professor, wrote an open letter asking the university's board of trustees to close the campus, Mr. Falwell mocked her on Twitter as "the 'Baggett' lady."

Jeff Brittain, a Liberty parent, wrote on Twitter: "I'm as right wing as they get, bud. But as a parent of three of your students, I think this is crazy, irresponsible and seems like a money grab." Mr. Falwell replied, calling him a "dummy."

All of this has left even his critics scratching their heads.

"It's honestly hard to figure out what his motives are," Mr. Best, the student who wrote the Facebook post, said in

an interview. "If he had purely political motives, he's being way more conservative than even Trump is being right now. Trump is at least allowing doctors to say their piece. Jerry is not. It kind of shocks me at this point."

On campus, the administration says it is adhering to Virginia's public health mandates, but students are flouting them. While security guards appear to be enforcing state advisories requiring a six-foot distance from others and gatherings of no more than 10 people, students are still assembling in closer proximity to eat, play sports, study and use dormitory restrooms. Decals slapped on furniture that say "Closed for Social Distancing" have wound up on laptops and car bumpers. Study tables are farther apart, but shared computer terminals remain. While some students are trying to adhere to social distancing guidelines, they live in group houses, pile onto city buses and crowd the few businesses that remain open in Lynchburg.

It was not supposed to be that way. As the number of reported cases of the coronavirus in Virginia began rising, Ms. Tweedy said Mr. Falwell personally assured her that the school would not fully reopen. "We have some students who cannot go anywhere or they have nowhere to go," she recalled his telling her. "The number on that day was 300 or so students, and even if it was a few more, we said, 'OK, well, thank you.'"

But as spring break drew to a close in mid-March, all Liberty students were encouraged to return.

"We never discussed numbers, and I never told them the dorms would be closed," Mr. Falwell said on Sunday.

"We're going to have to agree to disagree on what was said."

Mr. Falwell runs Liberty his own way, and his word is law. Professors are not tenured and can be fired at will. The administration controls the student newspaper.

Mr. Falwell echoes Mr. Trump's talking points on the coronavirus, which he often calls the "flu."

"It's just strange to me how many are overreacting" to the pandemic, Mr. Falwell said on "Fox & Friends" on March 10. "It makes you wonder if there is a political reason for that. Impeachment didn't work and the Mueller report didn't work and Article 25 didn't work, and so maybe now this is their next attempt to get Trump."

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Kristin Hussey contributed reporting. Kitty Bennett contributed research.

Photograph

About 1,900 students initially returned to Liberty University. (PHOTOGRAPH BY JULIA RENDLEMAN FOR THE NEW YORK TIMES)

DETAILS

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People: Falwell, Jerry Jr

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Exhibit G

The New York Times

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This Land of Denial and Death

Covid-19 and the dark side of American exceptionalism.



By Paul Krugman

Opinion Columnist

March 30, 2020, 5:35 p.m. ET

Death comes at you fast. Just three weeks ago the official line at the White House and Fox News was that the coronavirus was no big deal, that claims to the contrary were a politically motivated hoax perpetrated by people out to get Donald Trump. Now we have a full-blown health crisis in New York, and all indications are that many other cities will soon find themselves in the same situation.

And it will almost certainly get much worse. The United States is on the [worst trajectory](#) of any advanced country — yes, worse than Italy at the same stage of the pandemic — with confirmed cases doubling every three days.

I'm not sure that people understand, even now, what that kind of exponential growth implies. But if cases kept growing at their current rate for a month, they would increase by a factor of a thousand, and almost half of Americans would be infected.

We hope that won't happen. Many although not all states have gone into lockdown, and both epidemiological models and some early evidence suggest that this will “flatten the curve,” that is, substantially slow the virus's spread. But as we wait to see just how bad our national nightmare will get, it's worth stepping back for a few minutes to ask why America has handled this crisis so badly.

Incredibly bad leadership at the top is clearly an important factor. Thousands of Americans are dying, and the president is boasting about his [TV ratings](#).

Paul Krugman's Newsletter: *Get a better understanding of the economy — and an even deeper look at what's on Paul's mind.*

But this isn't just about one man. Neither the scientific denial that crippled the initial response to this pandemic, nor the tens of thousands of unnecessary deaths that now seem likely, are unique to Covid-19. Among advanced countries, the United States has long stood out as the land of denial and death. It's just that we're now seeing these national character flaws play out at a vastly accelerated rate.

About denial: Epidemiologists trying to get a handle on the coronavirus threat appear to have been caught off guard by the immediate [politicization](#) of their work, the claims that they were perpetrating a hoax designed to hurt Trump, or promote socialism, or something. But they should have expected that reaction, since [climate scientists](#) have faced the same accusations for years.

And while climate-change denial is a worldwide phenomenon, its epicenter is clearly here in America: Republicans are the world's only major [climate-denialist party](#).

Nor is climate science the only thing they reject; not one of the candidates contending for the G.O.P.'s 2016 nomination was willing to endorse the [theory of evolution](#).

What lies behind Republican science denial? The answer seems to be a combination of fealty to special interests and fealty to [evangelical Christian leaders](#) like [Jerry Falwell Jr.](#), who dismissed the coronavirus as a plot against Trump, then reopened his university despite health officials' warnings, and seems to have created his own personal viral hot spot.

The point, in any case, is that decades of science denial on multiple fronts set the stage for the virus denial that paralyzed U.S. policy during the crucial early weeks of the current pandemic.

About death: I still sometimes encounter people convinced that America has the world's highest life expectancy. After all, aren't we the world's greatest nation? In fact, we have the [lowest life expectancy](#) among advanced countries, and the gap has been steadily widening for decades.

This widening gap, in turn, surely reflects both America's unique lack of universal health insurance and its equally [unique surge](#) in "deaths of despair" — deaths from drugs, alcohol and suicide — among working-class whites who have seen economic opportunities disappear.

Is there a link between the hundreds of thousands of excess deaths we suffer every year compared with other rich countries and the tens of thousands of additional excess deaths we're about to suffer from the coronavirus? The answer is surely yes.

In particular, when we conduct a post-mortem on this pandemic — a stock phrase that, in this case, isn't a metaphor — we'll probably find that the same hostility to government that routinely undermines efforts to help Americans in need played a crucial role in slowing an effective response to the current crisis.

What about the larger picture? Is there a link between the uniquely American prevalence of science denial and America's uniquely high mortality? To be honest, I'm still trying to figure this out.

One possible story is that the U.S. political landscape gives special power to the anti-science religious right, which has lent its support to anti-government politicians. But I'm not sure whether this is the whole story, and the power of people like Falwell is itself a phenomenon that demands explanation.

In any case, the point is that while America is a great nation with a glorious history and much to be proud of — I consider myself very much a patriot — the rise of the hard right has, as I said, also turned it into a land of denial and death. This transformation has been taking place gradually over the past few decades; it's just that now we're watching the consequences on fast forward.

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Exhibit H

PAUL KRUGMAN

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SETH HERALD/AGENCE FRANCE PRES

Your Bus Ride Risks a Driver's

Steven Greenhouse

MILLIONS of white-collar workers are telecommuting from home to stay safe as the coronavirus extends its terrifying reach across America. But millions of other workers — supermarket cashiers, pharmacists, warehouse workers, bus drivers, meatpacking workers — still have to report to work each day, and many are furious that their employers are not doing enough to protect them against the pandemic.

Some companies are not providing their workers with gloves or hand sanitizer, and some are even prohibiting employees from wearing masks for fear of frightening customers. Many workers feel they're putting their lives on the line each day by interacting with customers who might be infected and by working in places they're convinced have not been adequately sanitized against the virus.

Fearing retaliation, American workers are generally far more reluctant to stick their necks out and protest working conditions than are workers in other industrial countries. But with greater fear of the disease than of their bosses, workers have set off a burst of walkouts, sickouts and wildcat strikes.

With their employer's business booming, workers at Instacart, the grocery delivery service, held a strike on Monday

on strike because they thought not enough was being done to protect them from contracting the coronavirus from infected passengers, and bus drivers in Detroit staged a sudden sickout for the same reason. Sanitation workers in Pittsburgh engaged in a work stoppage over their coronavirus worries.

“We want better equipment, protective gear. We have no masks,” one of the sanitation workers told the television station WPXI. “We want hazard pay. Hazard pay is very important.”

These workers are demanding what everyone else wants during the worst epidemic in a century — safety. They feel their companies are taking them and their safety for granted, and they don't want to risk their lives for a paycheck, often a meager one. Many workers are angry that while their employers are doing a lively business, they haven't given them raises or hazard pay, which some other companies have provided.

“We're not getting nothing — no type of compensation, no nothing, not even no cleanliness, no extra pay,” said Kendalyn

workers two weeks need to take off work but in a stinging slap, rate America demand exemption for companies 500 employees.

This month, 20 workers at McDonald's in Cicero, Ill., staged a strike, claiming that their restaurant was balking at giving them a day off due to them and

Adriana Alvarez, a union leader, said some employees were because they couldn't work. The 30-minute walkout ended with workers agreeing to obtain paid time off, Alvarez said.

Alexander Colvin, a professor at the University School of Industrial Relations, told me that the strikes “is a function of a system where we get so much from our employer to employer.”

“We see some employees doing the right thing, standing up during this crisis,” he said, “doing much at all.”

As often happens with flex their collective muscle, they have gotten results. In transportation, authorities have reduced the number of passengers on off front seats and have exit only by the rear

Millions of workers are left needlessly exposed and undercompensated.

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With their employer's business booming, workers at Instacart, the grocery delivery service, held a strike on Monday, demanding that the company provide hazard pay and more personal protective supplies. Workers at an Amazon warehouse on Staten Island walked out on Monday because the company did not close the building and thoroughly clean it after several workers tested positive for the coronavirus. And a workers group at Whole Foods has called for a strike on Tuesday to demand hazard pay, the temporary closure of any store where a worker tests positive, and more generous health coverage and sick leave.

Last Tuesday, after a mechanic tested positive, more than half the workers at Bath Iron Works, a shipyard in Maine, stayed home from work to pressure their employer to thoroughly clean the shipyard. Workers walked out at a Fiat Chrysler truck plant in Warren, Mich., because there was no hot water for washing up. Bus drivers in Birmingham, Ala., went

everyone else wants during the worst pandemic in a century — safety. They think their companies are taking them and their safety for granted, and they don't want to risk their lives for a paycheck, often a meager one. Many workers are angry while their employers are doing a li business, they haven't given them raise or hazard pay, which some other companies have provided.

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Millions of workers are left needlessly exposed and undercompensated

Granville, who led a strike by 50 workers at a Perdue poultry processing plant in Kathleen, Ga. "We're up here risking life for chicken."

Some of the strikers have said they sent risking their lives while chief executives earn millions and their companies more highly paid white-collar employees are working safely at home.

The anger behind these work actions fed by the disregard and disrespect many American employers show workers by failing to provide fundamental protections that are universal in other industrial nations.

The United States is the only western nation that doesn't have a national guaranteeing workers paid parental leave and paid vacations. And until the passage of an emergency coronavirus law it was one of the few industrial nations not guaranteeing workers paid leave. The new law gives many Ameri-

Living the Pandemic as a

Sydney Goins
SUWANEE, GA.

COLLEGE was supposed to be my ticket to financial security. My parents were the first ones to go to college in their family. My grandpa said to my mom, "You need to go to college, so you don't have to depend on a man for money." This same mentality was passed on to me as well.

I had enough money to last until May — \$1,625 to be exact — until the coronavirus ruined my finances.

My mom works in human resources. My dad is a project manager for a mattress company. I worked part time at my university's most popular dining hall and lived in a cramped house with three other students. I don't have a car. I either walked or biked a mile to attend class. I have student debt and started paying the accrued interest last month.

I was making it work until the coronavirus shut down my college town. Students first got an email saying that spring break was extended by two weeks with the assumption that campus would reopen in late March, but a few hours after that, all 26 colleges in the University System of Georgia canceled in-person classes.

Professors are now adapting their courses for online learning. Students were advised to not return to the campus in Athens from their vacations or hometowns. Our May graduation ceremony was canceled, with no hope of rescheduling offered.

After this news, one of my housemates drove for 12 hours to her mom's house in Chicago. Another gave me a few rolls of toilet paper and left with her boyfriend for a neighboring county.

The dining hall I worked at remained open. We provided to-go meals for those without a place to go who were still living in their dorms. Student workers who didn't

leave for the break could call in to their jobs and ask to work their usual shifts on many occasions, nobody would answer the phone.

Some students are asking for class to be graded pass-fail. This would help without access to Wi-Fi or a distraction-free environment. As for me, I am somewhat lucky: My laptop broke in November and I was finally able to afford to repair it a few weeks ago.

What if, though, I had to do interschoolwork on a lagging smartphone? The last three years, I have relied on libraries and other on-campus resources like interlibrary loans and the bus system to complete my coursework. Now, the

College was supposed to give us hope for our financial future.

university is refunding us around \$128 of tuition for services that we may need semester online.

I will graduate in May. The two highly selective creative writing programs I applied to, though, sent me rejections.

I pivoted. I thought I could find an restaurant job in Athens or hope for a summer internship until I could apply to grad school again. But now, many restaurants here have closed indefinitely or only takeout. They are not hiring anyone soon.

An Athens coffee shop and bar, Her Shots, has started a GoFundMe for out-of-work employees with around \$10,000 raised so far. Just the Tip: At Virtual Tip Jar also allows restaurant customers to send their favorite server tip money they would normally leave at night out. Many service industry workers have added their names to this.

Not all college students are galleys across the white sand beaches of Florida.

Exhibit I

Liberty University Campus
Open ONLY To
Students, Employees, & Those
Conducting University Business
Until Further Notice
NO TRESPASSING

PRIVATE
DRIVE
NO THRU
STREET

PRIVATE
PROPERTY

UNAUTHORIZED
PERSONS
PROHIBITED

UNAUTHORIZED
VEHICLES
REMOVED

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

LIBERTY UNIVERSITY, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No.:
)	
THE NEW YORK TIMES COMPANY,)	
d/b/a <i>The New York Times</i> , a New York)	
Corporation, ELIZABETH)	
WILLIAMSON and JULIA)	
RENDLEMAN)	
)	
)	
<i>Defendants.</i>)	

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT JULIA RENDLEMAN**

Pursuant to Rule 4:9 of the Rules of the Supreme Court of Virginia, Plaintiff Liberty University, Inc. ("Liberty"), by and through its undersigned counsel, requests that defendant Julia Rendleman, produce the documents identified below for inspection and copying at the offices of Gentry Locke, SunTrust Plaza, 10 Franklin Road S.E., Suite 900, P.O. Box 40013, Roanoke, VA 24022-0013, within twenty-eight (28) days of service.

DEFINITIONS

1. "Action" shall mean this litigation pending in the Circuit Court for the City of Lynchburg, captioned *Liberty University v. The New York Times Corporation, et al.*
2. "Campus Containment Policy" shall mean Liberty's policy closing its campus to outside visitors, which was publicly announced on or around March 23, 2020 and displayed prominently in multiple "no trespassing" signs posted at the entrances to Liberty's campus.

3. “Communication” shall mean every written or oral manner of transmitting or receiving facts, ideas, information, and opinions, including, without limitation: correspondence, telexes, telecopies, electronic mail; all attachments and enclosures thereto; text messages; computer tapes; discs; telephone tape recordings; recordings of any other type in any medium of written or oral communications; phone logs; message logs; and notes and memoranda of, referring to, or relating to, written or oral communications.

4. “Complaint” shall mean the complaint filed by Plaintiff Liberty University against the Defendants in this Action.

5. “Defamatory Articles” shall mean the articles written by Williamson and published by the New York Times: (i) online, on March 29, 2020, with the headline “Liberty University Brings Back its Students, and Coronavirus, Too,” and updated from time to time, including to change the headline to “Liberty University Brings Back its Students, and Coronavirus Fears, Too;” and (ii) in print, on March 30, 2020, in Section A, Page 13 of the New York Times print edition with the headline “A University Reopened, and Students Got Sick.”

6. “Document(s)” shall have the broadest possible meaning under law and shall include, by way of example, but not limitation, all originals and non-identical copies (whether by reason of interlineation, alteration, or marginal notes, etc.) of the following items, whether printed, recorded or reproduced by mechanical process, or written or produced by hand: all contracts, agreements, representations, warranties, certificates, and opinions; all letters or other forms of correspondence or communication, including e-mail, e-mail attachments, envelopes, notes, text messages, SMS messages, MMS messages, telegrams, cables, voice-mail messages, messages sent or received via social media platform; websites, webpages, and social media posts (including, but not limited to, Facebook or Twitter); all memoranda, reports, financial

statements, valuations, notes, transcripts, tabulations, studies, analyses, evaluations, projections, work paper, notebooks, corporate or other records or hard copies thereof, list, comparisons, questionnaires, survey, charts, graphs, summaries, extracts, statistical records, and compilations; all records of telephone conversations, transcripts or records of conversations, meetings, or interviews, tape recordings, videotapes and summaries or records of meetings or conferences; all desk and pocket calendars, appointment books, diaries, logs, file cards, logs, and minutes; all brochures, pamphlets, circulars, press releases, books, scrapbooks, articles, speeches, magazines, newspaper booklets, circulars, bulletins, notices, instructions, and manuals; all photographs, microfilm, microfiche, photographs, tapes, or other records, punch cards, magnetic tapes, disks, data cells, drums, and printouts; all presentation materials, including computer generated or other electronic presentation page, slides, overhead projections overlays, handouts, posters, films, and videos; all other writings of kind or nature whatsoever (including any marginal comments appearing on any document and/or draft of any of the foregoing) and any tape or other electronic data compilations from which information can be obtained (translated into usable form).

7. “Liberty” shall mean Plaintiff Liberty University, including, but not limited to, its employees, representatives, agents, or assigns.

8. “New York Times” shall mean Defendant The New York Times Company, d/b/a *The New York Times*, including, but not limited to, its employees, representatives, agents, or assigns, including but not limited to defendants Williamson and Rendleman.

9. “Person” shall mean any natural person, corporation, partnership, association, firm, and/or other business enterprise or legal entity, including any employee, representative, or agent thereof, and means both the singular and plural.

10. The terms “concerning” “relating to,” “pertaining to,” “reflecting,” “evidencing,” and “constituting” are used for purposes of these requests, as equivalent term including the others and mean constituting, comprising, evidencing, reflecting, respecting, discussing, referring, pertaining, stating, describing, recording, reporting, noting, considering, embodying, evaluating, analyzing, mentioning, containing, or studying, or any other term synonymous with or similar to the foregoing.

11. “Rendleman” shall mean Defendant Julia Rendleman.

12. “Williamson” shall mean Defendant Elizabeth Williamson.

13. “You” or “Your” shall mean Rendleman.

INSTRUCTIONS

A. These requests for production of documents (“Requests”) include those Documents within the possession, custody, or control of You, Your agents, and Your representatives—including, but not limited to, attorneys.

B. Unless otherwise specified, the Requests seek Documents and Communications prepared, created, transmitted, received, edited, or otherwise altered, between January 1, 2020 and the present.

C. These Requests are to be considered continuing in nature so as to require the service of supplemental responses in the event that You obtain, discover, or become aware of any additional Documents responsive to these Requests.

D. If You object to one or more of these Requests, whether on the basis of privilege or otherwise, please indicate the specific ground(s) on which You object, separately state the part of each request to which You object, and respond to any portion of the Request(s) you deem not objectionable.

E. If any Documents covered by these Requests is withheld – either in whole or in part – by reason of a claim of privilege, furnish a list identifying each Document for which that privilege is claimed, together with all information required by Supreme Court of Virginia Rule 4:1(b)(6).

F. Electronically stored information (“ESI”) shall be produced in reasonably useable form that preserves metadata, including specifically any ability to search or perform calculations with the information in the form it is maintained by You.

G. Any verb used in any tense shall be read to mean all of its tenses so as to bring within the scope of these Requests any Document that might otherwise be considered outside their scope.

H. The singular shall include the plural and vice versa, so as to bring within the scope of these Requests any Document that might otherwise be considered outside their scope.

I. The terms “and” and “or” shall be read conjunctively and disjunctively so as to bring within the scope of these Requests any Document that might otherwise be considered outside their scope.

J. Responses should be produced to Andrew M. Bowman, Gentry Locke, SunTrust Plaza, 10 Franklin Road S.E., Suite 900, P.O. Box 40013, Roanoke, VA 24022-0013.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All Documents and Communications concerning Your work in connection with the Defamatory Articles, including without limitation:

- (a) Documents and Communications concerning Your retention by the New York Times in connection with the Defamatory Article;
- (b) Documents and Communications reflecting any agreements between You and the New York Times;

- (c) Documents and Communications concerning Your visit to and entry onto Liberty's campus;
- (d) Documents and Communications concerning Liberty's Campus Containment Policy;
- (e) all photographs, videos, recordings, and other media collected by You in connection with the Defamatory Article;
- (f) Documents, Communications, or notes reflecting Communications between You and Liberty, Liberty's agents or representatives, Liberty students, or Virginia state and local government officials related to the Defamatory Article; and
- (g) all notes, writings, text messages, e-mails, and other Communications concerning the Defamatory Article.

LIBERTY UNIVERSITY, INC.

By: 
Of Counsel

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served along with the Complaint by private process server on Defendants New York Times, Elizabeth Williamson, and Julia Rendleman.

A handwritten signature in blue ink, appearing to be 'CMG', is written above a horizontal line.

By Counsel