SENATE OF VIRGINIA

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COMMERCE AND LABOR
FINANCE AND APPROPRIATIONS
REHABILITATION AND SOCIAL SERVICES
RULES

October 26, 2025

Dr. Paul Mahoney
Interim President
University of Virginia
P.O. Box 400224
Charlottesville, VA 22904

Ms. Rachel Sheridan
Rector, Board of Visitors
University of Virginia
P.O. Box 400224
Charlottesville, VA 22904

Re: Constitutional Concerns Regarding October 22, 2025 DOJ Standstill Agreement

Dear President Mahoney and Rector Sheridan:

We are writing to you to relay our deep concerns about the University of Virginia's October 22, 2025 standstill agreement with the United States Department of Justice. While we understand the tremendous pressure the University has faced—pressure that ultimately led to President Ryan's resignation— we believe UVA capitulated to legally dubious federal overreach without mounting necessary constitutional challenges. The agreement raises serious questions under *South Dakota v. Dole* and related Spending Clause jurisprudence that warrant immediate reconsideration.

I. The Agreement Likely Violates South Dakota v. Dole

The U.S. Supreme Court's decision in *South Dakota v. Dole*, 483 U.S. 203 (1987), established that Congress may condition federal funds on state compliance only if such conditions meet five requirements: (1) pursuit of the general welfare; (2) unambiguous conditions; (3) germaneness to the federal interest; (4) no violation of independent constitutional bars; and (5) non-coercion. The DOJ-UVA agreement appears to fail at least three of these tests.

These are not merely theoretical concerns. Federal courts across the country have recently issued injunctions against similar federal attempts to condition funding on policy compliance, finding violations of both the Spending Clause and the Administrative Procedure Act.

A. Recent Federal Court Precedents

In September 2025, U.S. District Judge Allison D. Burroughs ruled that the Trump Administration's freeze of over $2.6 billion in research funding to Harvard University was unconstitutional, striking down the freeze and granting Harvard a permanent injunction. The court found the funding cuts violated Harvard's First Amendment rights and constituted impermissible coercion under the Spending Clause, noting that the government's conditions had "everything to do with Defendants' power and political views" rather than legitimate civil rights enforcement. The court also ruled the freeze violated the Administrative Procedure Act because it was "arbitrary and capricious"—federal agencies had gathered virtually no evidence prior to issuing termination orders.

Similarly, in the Maine transgender athlete case, U.S. District Judge John Woodcock issued a temporary restraining order blocking the USDA from freezing federal nutrition program funding, finding Maine was likely to succeed on claims that USDA had not complied with federal procedural requirements and that the funding freeze for food assistance programs was unrelated to the underlying Title IX athletics dispute—a classic failure of the "germaneness" requirement from Dole.

These cases establish that executive agencies cannot bypass constitutional Spending Clause requirements simply by invoking civil rights enforcement. Courts have consistently held that such conditions must satisfy Dole's tests and comply with Administrative Procedure Act requirements for reasoned decision-making.

B. Ambiguity of Conditions

The agreement requires UVA to comply with the DOJ's "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" issued July 29, 2025, and to complete "planned reforms prohibiting DEI at the university." Yet these terms remain fundamentally undefined. What specific actions constitute complete "elimination" of DEI programs? How does quarterly presidential certification work when the very standards for compliance appear to be moving targets subject to ongoing DOJ interpretation?

Dole mandates that conditions be stated "unambiguously" so recipients know what obligations they are undertaking. 483 U.S. at 207. The vagueness here is not merely academic—it creates ongoing legal exposure for University leadership through 2028 and beyond. President Mahoney or any ultimate permanent President of UVA must personally certify quarterly compliance with standards that lack clear definition, creating potential False Claims Act liability or even perjury exposure if DOJ later reinterprets its own "guidance."

C. Lack of Germaneness

The *Dole* Court emphasized that conditions must bear some relationship "to the particular national projects or programs to which the money is directed." 483 U.S. at 207-08 (emphasis added). In Dole itself, the Court upheld withholding highway funds to enforce a drinking age because of the direct connection between young drivers, alcohol, and highway safety.

Here, by contrast, the agreement conditions UVA's eligibility for all "future grants and awards" on university-wide changes to admissions, hiring, and programming across every department and function. A condition on National Science Foundation biology research grants cannot plausibly be "germane" to DEI programming in the English department or admissions policies for the law school. This sweeping approach—tying compliance in one area to funding streams wholly unrelated to that area—transforms conditional spending into general regulatory authority, precisely what Dole prohibits.

The Maine court explicitly recognized this problem when it noted that the USDA had frozen nutrition program funding based on athletics policy violations—the two were simply not related. UVA faces the same germaneness problem, but on a vastly larger scale.

D. Unconstitutional Coercion

In *NFIB v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court held that threatening to withhold all Medicaid funding unless states expanded their programs was unconstitutionally coercive—a "gun to the head" that left states no real choice. Chief Justice Roberts emphasized that financial inducements become impermissibly coercive when they pass the point of "pressure" and become "compulsion." Id. at 580.

UVA receives billions in federal research funding across dozens of agencies and programs. The agreement's threat to UVA's eligibility for all future federal grants and awards—not merely funding related to admissions or DEI—**constitutes precisely the sort of comprehensive funding cutoff that Sebelius condemned**. The sequence of events confirms the coercive nature: DOJ investigations beginning in April 2025, President Ryan's forced resignation in June after stating "the stakes were too high for others on campus if he opted to 'fight the federal government,'" and UVA's capitulation in October after initially declining the "Compact for Academic Excellence" just days earlier.

This is coercion, not cooperation. The Harvard court recognized exactly this dynamic when it found the government's funding freeze constituted impermissible retaliation and coercion aimed at forcing the university to adopt the administration's preferred ideological positions. Instead of following Harvard's success on these cases, UVA simply capitulated without even putting up a fight.

II. Executive Spending Conditions Require Explicit Congressional Delegation

Even if the conditions themselves satisfied *Dole's* requirements, a threshold question remains: Did Congress actually authorize DOJ to impose these conditions, or has the Executive Branch unilaterally created new spending conditions without congressional approval?

Professor Douglas Spencer's exhaustive analysis in "Sanctuary Cities and the Power of the Purse: An Executive Dole Test," 106 Iowa L. Rev. 1209 (2021), demonstrates that executive conditions on federal spending are constitutionally problematic absent clear congressional delegation of authority to add such conditions. Spencer argues persuasively that:

1. The authority to add conditions on spending does not inherently attach to delegations to implement federal grant programs—it must be delegated separately and unambiguously;
2. Executive conditions should face stricter scrutiny than congressional conditions because "inter-branch coordination poses a greater threat to state sovereignty than either Congress or the Executive acting alone"; and
3. The delegation of condition-setting authority "should not act as a loophole in the Dole doctrine."

Spencer's framework is directly applicable here. What statute authorized DOJ to condition all federal grant eligibility on elimination of DEI programs and compliance with executive "guidance"? The Civil Rights Act of 1964 authorizes DOJ to investigate discrimination and enforce existing statutory prohibitions—it does not grant DOJ carte blanche authority to create new, university-wide policy mandates as conditions for federal funding across all agencies.

The current Supreme Court, with its emphasis on limiting administrative power through doctrines like the major questions doctrine (*West Virginia v. EPA*, 597 U.S. 697 (2022)), would likely be skeptical of DOJ's assertion of standardless discretion to rewrite university policies through "guidance" backed by threats to comprehensive federal funding.

III. The July 29 Guidance Goes Far Beyond Existing Civil Rights Law

The DOJ's July 29, 2025 "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" to which UVA has agreed to adhere represents a dramatic, unauthorized, and an expansion of federal civil rights law that has not been settled in the courts. This is the crucial legal point: the guidance goes well beyond the requirements of Title VI, Title IX, the Equal Protection Clause, and the Supreme Court's decision in Students for *Fair Admissions, Inc. v. Harvard (SFFA)*.

A. The Guidance Exceeds SFFA's Holding

The DOJ guidance purports to rely on *SFFA* but fundamentally mischaracterizes its holding. In *SFFA*, Chief Justice Roberts explicitly stated: "nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise." 600 U.S. 181, 230 (2023). The Court held that race can be salient if an applicant discusses how personal experience with race will prepare them for college or how they will contribute to a university community.

President Ryan understood this distinction and sought to keep UVA faithful to *SFFA's* actual requirements. Under his leadership, UVA eliminated race as a factor in admissions decisions while preserving the ability for applicants to discuss their lived experiences—exactly what *SFFA* permits. This was the legal point President Ryan presumably wanted to make but was unable to articulate before being forced to resign.

The July 29 guidance, however, goes much further. It essentially forbids any consideration of race in hiring, admissions, or other programs, even when such consideration would be permissible under *SFFA*. The guidance prohibits universities from considering an applicant's discussion of how race has shaped their perspective or experiences—directly contradicting what *SFFA* explicitly allows.

B. The Guidance Has Been Challenged and Enjoined

Recognizing that the July 29 guidance exceeds statutory authority, multiple federal courts have issued injunctions blocking its enforcement. In March 2025, U.S. District Judge Julie Rebecca Rubin issued a preliminary injunction in a case brought by the American Association of Colleges for Teacher Education, blocking the Department of Education from terminating $600 million in federal funding to teacher preparation programs based on the guidance. The court found DOJ failed to follow required procedures and that the guidance's interpretation of civil rights law was likely unlawful.

These judicial rejections of the guidance underscore a fundamental problem with UVA's agreement: the University has **committed** to comply with DOJ "guidance" that federal courts have found exceeds the Department's legal authority. UVA is thus agreeing to do more than federal law requires—indeed, more than federal law allows under proper statutory interpretation. This is a bizarre capitulation that raises serious questions about the motives of all involved.

C. The Fatal Flaw in DOJ's Narrative

DOJ and UVA both claim this agreement simply requires compliance with existing law. This talking point is demonstrably false. If the agreement merely required compliance with Title VI, Title IX, the Equal Protection Clause, and SFFA as properly interpreted by courts, there would be no controversy—UVA was already in compliance with those requirements under President Ryan's leadership.

The agreement is controversial precisely because it requires UVA to comply with the July 29 guidance, which interprets civil rights law far more expansively than courts have done. The guidance prohibits programs and practices that are lawful under actual judicial interpretations of Title VI, Title IX, and SFFA. By agreeing to comply with the guidance rather than with the statutes themselves as interpreted by courts, UVA has agreed to a more restrictive regime than federal law actually requires.

This distinction is critical. An agreement to comply with federal law would be unobjectionable. But an agreement to comply with agency "guidance" that exceeds statutory authority is an agreement to go beyond what the law requires. That is exactly what UVA has done here.

IV. Why Challenge Matters: Precedent, Principle, and Virginia's Sovereignty

We understand why UVA's leadership sought to end the investigations and restore funding certainty. But by acquiescing without challenge, UVA has:

1. Established dangerous precedent for other Virginia public institutions;
2. Allowed untested legal theories to go unchallenged, emboldening further federal overreach;
3. Surrendered institutional autonomy without requiring DOJ to prove its legal authority in court; and
4. Subjected University leadership to ongoing personal legal exposure through mandatory quarterly certifications of compliance with undefined standards.

As a public university established by the Commonwealth of Virginia, UVA has obligations not merely to its current students and faculty, but to the principles of federalism and state sovereignty embedded in our constitutional structure. Virginia's taxpayers fund UVA. The Virginia General Assembly charters it. Yet the University has now agreed to ongoing federal micromanagement of its core academic functions without testing whether such federal power actually exists.

Concerns About Independent Legal Counsel

The University's capitulation in light of these serious legal problems continues to raise troubling questions about whether Attorney General Jason Miyares is both competent and capable of providing truly independent legal advice to Virginia's public universities in this area of the law, especially when dealing with the Trump DOJ. President Trump has publicly endorsed Attorney General Miyares for re-election shortly before this agreement was inked, creating an inherent conflict of interest when the AG must advise state institutions on how to respond to federal pressure from that same administration.

Did the Attorney General's office advise UVA that the DOJ's legal theories were sound? Did they encourage capitulation rather than constitutional challenge? Or was UVA denied the vigorous, independent legal representation that a state institution deserves when facing federal overreach? These questions demand answers, as they affect not only UVA but every public college and university in Virginia that may face similar federal pressure.

Virginia's public universities need legal counsel who will zealously defend state sovereignty and institutional autonomy—not counsel whose political fortunes are tied to the very administration applying the pressure. The Attorney General's responsibility is to the Commonwealth of Virginia and its institutions, not to federal political interests.

Other universities—including private institutions with fewer sovereignty concerns—declined the Trump Administration's "Compact for Academic Excellence." UVA's initial refusal on October 17 was principled and correct. Yet within five days, facing continued pressure, the University reversed course and accepted an agreement that may be even more problematic than the Compact because it operates through enforcement "guidance" rather than transparent contractual terms.

V. Direct Conflict with Virginia Law

Perhaps most troubling is that the DOJ agreement appears to place UVA in direct violation of Virginia state law. As a state agency, the University is subject to the control of the General Assembly and must comply with Virginia law. Virginia Code § 2.2-602(B) explicitly requires that:

> *"The heads of state agencies shall establish and maintain a comprehensive diversity, equity, and inclusion strategic plan in coordination with the Governor's Director of Diversity, Equity, and Inclusion."*

The statute further mandates that this DEI plan must:

- Integrate diversity, equity, and inclusion goals into the agency's mission, operations, programs, and infrastructure;
- Address potential barriers to equal employment opportunities;
- Foster pay equity;
- Promote diversity and equity in hiring, promotion, retention, and leadership opportunities; and
- Submit an annual report to the Governor and General Assembly by July 1 of each year assessing the plan's impact.

This is not optional—it is a mandatory requirement of Virginia Law, duly enacted by the General Assembly and signed by the Governor. Yet the DOJ agreement requires UVA to eliminate DEI programs as a condition of maintaining federal funding eligibility.

Moreover, this agreement was disturbingly executed with zero consultation with the General Assembly, despite the fact that the General Assembly controls the University and provides the bulk of its government funding. Virginia Code § 23.1-2200(A) is explicit and unambiguous: The Board of Visitors of the University of Virginia "shall at all times be under the control of the General Assembly." This is not a suggestion—it is a statutory command regarding the governance structure of the University.

Yet the Board and University administration entered into a sweeping agreement with the federal government that directly conflicts with state law, commits the University to eliminate legislatively mandated programs, subjects the University President to personal certification requirements, and potentially places UVA in violation of its statutory obligations—all without any consultation with the legislative body that the statute says controls the institution. This represents a fundamental breach of the governance relationship between the University and the Commonwealth.

This pattern of evading legislative oversight is not new. Senator Creigh Deeds has been attempting since August 1, 2025 to obtain answers about President Ryan's forced resignation, sending an initial letter with 46 questions to Rector Sheridan and Vice Rector Wilkinson. The Board responded through outside counsel but failed to answer 38 of the 46 questions. Senator Deeds characterized the Board's response as inadequate. When Senator Deeds sent additional follow-up questions in October, those too went largely unanswered. The Board has repeatedly claimed it cannot provide information due to "ongoing DOJ investigations," yet somehow found itself able to enter into this comprehensive agreement with DOJ without any legislative consultation or transparency.

The Board owes the General Assembly—and the people of Virginia—a specific and detailed explanation of why it entered into this agreement without any consultation with the legislative body that controls the University and provides its state funding.

How does the University plan to comply with Virginia law while simultaneously satisfying the DOJ's demand to eliminate DEI programs?

This presents a fundamental question of state sovereignty and the hierarchy of legal obligations. UVA is a creature of Virginia law, established by the Commonwealth and subject to the General Assembly's authority. The federal government cannot—through conditional spending or otherwise—compel a state institution to violate state law. To accept such federal dictation would be to subordinate Virginia's legislative authority to executive agency "guidance," undermining the very foundation of our federal system.

The University must clarify to the General Assembly:

1. Whether UVA intends to continue complying with Virginia Code § 2.2-602(B)'s DEI plan requirement;
2. If not, what legal authority permits UVA to ignore state law;
3. Whether UVA sought an opinion from the Attorney General regarding this conflict;
4. How UVA can simultaneously comply with both state law and the DOJ agreement; and
5. Whether the University has considered that violating state law to satisfy federal demands may itself create legal liability for University officials.

If the DOJ agreement requires UVA to violate Virginia law, that alone should be grounds for challenging the agreement's validity.

The Supreme Court has repeatedly emphasized that the Spending Clause is not a blank check for federal control of state institutions. As Justice O'Connor wrote in *New York v. United States*, 505 U.S. 144, 188 (1992), "the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." The same principle applies to executive agencies acting without clear congressional authorization.

VI. Requested Actions

In addition to answering the questions above, we respectfully request that the Board of Visitors and University leadership:

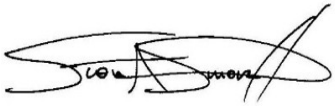
1. Commission independent constitutional analysis of the October 22 agreement from outside counsel with Spending Clause expertise;
2. Explore whether the agreement's terms permit withdrawal or judicial review of DOJ's compliance interpretations;
3. Coordinate with the Virginia Attorney General's office regarding the Commonwealth's interests in challenging federal overreach into state university governance;
4. Consider joining with other public universities facing similar pressure to mount coordinated constitutional challenges; and
5. Provide the General Assembly with detailed briefing on: (a) what statutory authority DOJ claims for these conditions; (b) what specific actions UVA must take to satisfy "elimination of DEI" requirements; (c) how UVA intends to comply with both the DOJ agreement and Virginia Code § 2.2-602(B); and (d) what legal protections exist for University officials certifying compliance.
6. President Mahoney and Rector Sheridan attend a hearing of the Senate Finance & Appropriations Committee Subcommittee on Education for further questioning.

UVA should not have to choose between its constitutional rights and its federal funding. That is precisely the choice that Dole and Sebelius prohibit. By accepting the agreement without challenge, the University has validated DOJ's dubious legal theory and made it more difficult for other institutions—including other Virginia colleges and universities—to resist similar pressure.

We urge you to reconsider this agreement and to defend the University's autonomy, Virginia's sovereignty, and the constitutional limits on federal power. Thomas Jefferson founded this University to be a beacon of enlightenment and independence. It should not become a cautionary tale of capitulation to federal overreach.

Please provide your response to us by November 7, 2025. In addition, we would welcome the opportunity to discuss these concerns with you and with the full Board of Visitors.

Respectfully,



Senator Scott A Surovell
34th District
Senate Majority Leader

Senator L. Louise Lucas
18th District
President Pro Tempore and
Chair, Senate Finance and
Appropriations Committee

cc: Members, UVA Board of Visitors
Attorney General Jason Miyares
Secretary of Education Aimee Guidera
Delegate Luke E. Torian, Chair, House Appropriations Committee
Senator Ghazala F. Hashmi, Chair, Senate Education and Health Committee
Delegate Sam Rasoul, Chair, House Education Committee
Senator Creigh Deeds, 11th District