Exhibit E*

*The original signed copy of the attached affidavit
was sent to the Court on April 7, 2020
via UPS overnight delivery.

V I R G I N I A :

IN THE CIRCUIT COURT OF RUSSELL COUNTY

LARRY HUGHES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. CL20-415
	)	
RALPH S. NORTHAM,	)	
	)	
Defendant.	)	
	)	

AFFIDAVIT OF M. NORMAN OLIVER, MD, MA,
VIRGINIA HEALTH COMMISSIONER

I, Dr. M. Norman Oliver, declare under penalty of perjury that the following is true and correct.

1. I currently serve as State Health Commissioner for the Commonwealth of Virginia. I have been in that role since April 2018, having served in an acting capacity before being formally appointed to the post in June 2018 by Governor Ralph S. Northam. Before my appointment as State Health Commissioner, I served as Deputy Commissioner for Population Health at the Virginia Department of Health and as a Professor and Chair of the Department of Family Medicine at the University of Virginia School of Medicine.

2. In my capacity as State Health Commissioner, I am leading the Commonwealth's effort to combat the novel coronavirus known as COVID-19.

3. I became aware of the COVID-19 virus in December 2019 through reports that China was experiencing an outbreak of a new virus causing a pneumonia-like illness. I have since followed medical literature closely as knowledge about the virus evolves.

4. On January 30, 2020, the World Health Organization declared the outbreak a "public health emergency of international concern." On January 31, United States Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency. On February 7, I declared COVID-19 a Communicable Disease of Public Health Threat for Virginia. On March 12, Governor Northam declared a State of Emergency in the Commonwealth in response to the spread of COVID-19.

5. The virus that causes COVID-19 is both extremely contagious and potentially fatal. It spreads through close person-to-person contact or by contact with the respiratory droplets produced when an infected person coughs, sneezes or talks. Because asymptomatic patients may spread the virus, and there is a lag of several days between when a person becomes infected and the onset of symptoms, an infected person may spread the virus before becoming aware of the infection. Moreover, anecdotal reports suggest that some people infected with COVID-19 never become symptomatic, increasing the risk that they will unknowingly spread the virus.[1]

6. Although many people with COVID-19 experience mild or moderate symptoms, others, particularly older patients and those with underlying health conditions such as diabetes, heart disease, and chronic lung conditions, experience much more severe outcomes, including death. Such patients often require hospitalization, intensive care, and intrusive ventilation.

7. Because of the speed with which COVID-19 spreads in a community, and the significant portion of COVID-19 patients who require hospitalization, intensive care, and intrusive ventilation, outbreaks threaten to overwhelm healthcare systems, as demonstrated by the recent experiences of Italy, Spain, Seattle, and New York, among other places.

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[1] See World Health Organization, *Coronavirus disease 2019 (COVID-19) Situation Report – 73* (Apr. 2, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2.

8. To date, there have been more than 1.3 million cases of COVID-19 reported worldwide and more than 76,000 deaths. In the United States, there have been more than 369,000 reported cases and more than 11,000 deaths.[2]

9. There is currently no proven treatment or cure for COVID-19.

10. There is currently no vaccine to address COVID-19.

11. Over the last 30 days, Virginia has experienced a growing crisis related to the spread of COVID-19.

12. Virginia recorded its first confirmed case of COVID-19 on March 7, 2020. It took 13 days to reach 100 cases and just ten days for that number to increase ten-fold to 1000 cases. As of today, there are 3,333 confirmed cases of COVID-19 across the Commonwealth, including in Russell County. The number of reported cases likely undercounts the actual number of positive cases because of limitations in testing capacity.

13. The number of fatalities continues to rise as well. Virginia reported its first death from COVID-19 on March 14, 2020. Less than 25 days later, there have been 63 deaths. The death rate will likely also increase exponentially, albeit at a lag of approximately two weeks behind the rise in new cases. It is projected that there will be thousands of deaths in the Commonwealth by early August 2020.

14. Like other places, Virginia faces a significant strain on its healthcare system as a result of the spread of COVID-19. If the number of COVID-19 hospitalizations exceeds 6,600 (which is well within even moderate estimates), the Commonwealth will face a shortage of hospital beds, intensive-care beds, and ventilators. Such a shortage would mean that the

[2] Johns Hopkins University of Medicine, *Coronavirus Resource Center* (last visited Apr. 7, 2020), https://coronavirus.jhu.edu/map.html.

healthcare system would be unable to provide adequate care to COVID-19 patients, as well as those suffering from other illnesses and injuries.

15. Faced with this novel and growing public health crisis, the Commonwealth has taken a number of escalating steps to combat the spread of COVID-19 and prepare its healthcare system for the coming increase of patients. In my capacity as State Health Commissioner, I have advised the Governor on the orders he has issued to protect the public and have also used the authority vested in me by the Code of Virginia to issue orders consistent with the needs of the declared Public Health Emergency.

16. The Governor and I have issued several orders to mitigate the spread of COVID-19 in the Commonwealth.

- On March 13, 2020, the same day he declared a State of Emergency in the Commonwealth, the Governor temporarily closed K-12 schools and limited the number of patrons in restaurants, fitness centers, and theaters to no more than ten per establishment.[3]
- On March 20, the Governor and I issued Order of Public Health Emergency One, which amended the Declaration of Public Health Emergency previously issued and made clear that willful violation of the ten-patron limit on restaurants, fitness centers, and gymnasiums was punishable as a class-1 misdemeanor and/or license suspension, and was enforceable by the Health Commissioner in a civil action.[4]

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[3] Office of the Governor, *Governor Northam Orders All Virginia K-12 Schools Closed for Minimum of Two Weeks* (Mar. 13, 2020), https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-854442-en.html

[4] Order of Public Health Emergency One is available at https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/Amended-Order-of-the-Governor-and-State-Health-Commissioner-Declaration-of-Public-Health-Emergency.pdf. Because the order amended a previous order issued on March 17, it was made effective March 16, 2020. See *id.*

- On March 24, 2020, the Governor issued Executive Order 53, which extended school closures for the remainder of the school year, temporarily prohibited private and public gatherings of more than ten individuals, and directed certain businesses (such as entertainment venues) to close their doors to the public. Other businesses (for example, restaurants) were required to close all dining and congregation areas but were permitted to engage in takeout and delivery services. Most retail businesses were also required to adhere to the ten-person limit. Certain essential businesses (such as grocery stores) were permitted to exceed the ten-person limit, but were required to adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.[5]
- On March 31, 2020, the Governor issued Executive Order 55, which imposed additional restrictions and extended the duration of the temporary gatherings restriction announced in Executive Order 53. Executive Order 55 directed all Virginians to stay at home except as needed to perform essential tasks.[6]

17. These restrictions are consistent with guidance from federal officials, who recommend maintaining person-to-person distances of at least six feet, prohibiting gatherings of more than ten people, limiting discretionary travel, and frequently washing hands and cleaning surfaces.[7] They are also consistent with restrictions put in place in States and localities across the country.

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[5] Executive Order 53 is available at https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-53-Temporary-Restrictions-Due-To-Novel-Coronavirus-(COVID-19).pdf.

[6] Executive Order 55 is available at https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf.

[7] See Briefing, *Gatherings Should Be Limited to 10 People, Trump Says*, N.Y. Times (Mar. 16, 2020) https://www.nytimes.com/2020/03/16/world/live-coronavirus-news-updates.html ("The Trump administration released new guidelines on Monday to slow the spread of the coronavirus, including closing schools and avoiding

18. In addition to these orders, the Governor and I have taken steps to prepare the healthcare system for the coming onslaught of COVID-19 patients.

- On March 20, 2020, the Governor issued Executive Order 52, which allowed hospitals to add bed space without having to comply with certificate-of-public-need and licensing requirements that would otherwise apply to such expansions.[8]
- On March 25, 2020, the Governor and I issued Order of Public Health Emergency Two, which temporarily banned elective surgery in the Commonwealth (subject to certain exceptions) to save personal protective equipment and hospital bed space in preparation for the uptick in resource use necessitated by the COVID019 pandemic.[9]
- We also have begun preparations to build temporary hospitals that can absorb overflow should the number of COVID-19 patients exceed existing hospital capacity.

19. These actions are essential to mitigating the spread of COVID-19 and easing the strain on our healthcare system. Because COVID-19 spreads from person to person through close contact, maintaining distance between people and avoiding large crowds, particularly indoors, is critical. If people retain a distance of at least six feet, the virus is unable to spread from an infected person to an uninfected person. That reduces the overall number of positive cases within a geographic area, which in turn reduces the number of hospitalizations that become necessary and the number of intensive-care beds and ventilators required to treat patients.

20. In the absence of a vaccine, cure, or treatment for COVID-19, reducing person-to-person transmission is the most effective way of mitigating the outbreak and ensuring that the

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groups of more than 10 people, discretionary travel, bars, restaurants and food courts."); see also Centers for Disease Control and Prevention, *Coronavirus 2019 (COVID-19): How to Protect Yourself* (last visited Arp. 7, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.

[8] Executive Order 52 is available at https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-52-Increases-in-Hospital-Bed-Capacity-in-Response-to-Novel-Coronavirus-(COVID-19).pdf.

[9] Order of Public Health Emergency Two is available at https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/Order-of-Public-Health-Emergency-Two---Order-of-The-Governor-and-State-Health-Commissioner.pdf.

healthcare system is not overwhelmed. This is particularly important in rural areas of the Commonwealth, many of which do not have as many healthcare resources as areas that are more heavily populated.

21. Without efforts to stop person-to-person transmission, the uncontrolled spread of COVID-19 would lead to an explosion of cases, many more severe outcomes and fatalities, and an untenable burden on our healthcare system. For that reason, consistent and widespread adherence to the restrictions imposed by the Governor and myself is critical to protecting the public from the novel and profound threat posed by COVID-19.

I, Dr. M. Norman Oliver, hereby certify that the foregoing information is true and accurate to the best of my knowledge and belief.

M. Norman Oliver MD

Dr. M. Norman Oliver,
Virginia Health Commissioner

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF Richmond, to-wit:

Subscribed and sworn to before me this 7th day of April, 2020.
My commission expires: 2-28-2022

Mary Anne Wollman

Notary Public / Deputy Clerk
Notary Registration Number: 7372482