IN THE

Supreme Court of Virginia

RECORD NO. 160267

NOEMIE S. FRANCIS,

Plaintiff/Appellant,

v.

NATIONAL ACCREDITING COMMISSION OF CAREER ARTS & SCIENCES, INC.,

Defendant/Appellee.

BRIEF OF APPELLEE

Jacquelyn L. Thompson
Virginia Bar No. 82726
FORDHARRISON LLP
1300 19th Street, N.W., Suite 300
Washington, DC 20036
Telephone: (202) 719-2064
Facsimile: (202) 719-2077
Email: jthompson@fordharrison.com

Attorney for Defendant/Appellee

LANTAGNE LEGAL PRINTING 801 East Main Street Suite 100 Richmond, Virginia 23219 (804) 644-0477
A Division of Lantagne Duplicating Services

SCV: Submitted on 08-05-2016 15:19:03 EDT for filing on 08-05-2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. STATEMENT OF FACTS 1

II. STANDARD OR REVIEW 3

III. LEGAL ARGUMENT AND CITATION TO AUTHORITIES 4

A. The Virginia Supreme Court Has Consistently Held That Bowman Creates A Very Limited Exception To At-Will Employment 4

B. Ms. Francis Was An At-Will Employee And Her Termination Did Not Fall Within The Limited Bowman Exceptions 6

1. Ms. Francis Has Not Adequately Pled that NACCAS Discharged Her in Violation of an Established Public Policy 8

2. Ms. Francis Has Not Adequately Pled that NACCAS Violated a Public Policy Explicitly Expressed in a Statute of Which Ms. Francis was a Member Entitled to Such Protection 12

IV. CONCLUSION 17

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

CASES

Andrews v. Bon Secours-St. Mary's Hosp. of Richmond, Inc., 43 Va. Cir. 486, at 5 (1997) 9

Bailey v. Scott-Gallaher, Inc., 480 S.E.2d 502 (Va. 1997) 4, 7

Bowman v. State Bank of Keysville, 331 S.E.2d 797 (Va. 1985) ..... *passim*

CaterCorp, Inc. v. Catering Concepts, Inc., 431 S.E.2d 277 (Va. 1993) 2

City of Virginia Beach v. Harris, 523 S.E.2d 239 (Va. 2000) 5, 16

Cnty. of Giles v. Wines, 546 S.E.2d 721 (Va. 2001) 4

Doss v. Jamco, Inc., 492 S.E.2d 441 (Va. 1997) 6

Dray v. New Mkt. Poultry Prods., Inc., 518 S.E.2d 312 (Va. 1999) 5, 16

Glazebrook v. Bd. of Supervisors, 587 S.E.2d 589 (Va. 2003) 3

Hubbard v. Dresser, Inc., 624 S.E.2d 1 (Va. 2006) 3

Lawrence Chrysler Plymouth Corp. v. Brooks, 465 S.E.2d 806 (Va. 1996) 4, 9, 13

Leverton v. AlliedSignal, Inc., 991 F. Supp. 486 (E.D. Va. 1998) 14

Lockhart v. Commonwealth Educ. Sys. Corp., 439 S.E.2d 328 (Va. 1994) 5, 16

Lucker v. Cole Vision Corp., No. CIV.A. 705CV00126, 2005 WL. 2788882 (W.D. Va. Oct. 26, 2005) 13

Miller v. SEVAMP, Inc., 362 S.E.2d 915 (Va. 1987) ..... *passim*

Mitchem v. Counts, 523 S.E.2d 246 (Va. 2000) 8, 10, 11, 12

Moore v. Jefferson Hosp., Inc., 158 S.E.2d 124 (Va. 1967) 3

Pacquette v. Nestle USA, Inc., No. 4:06CV00060, 2007 WL. 1343794 (W.D. Va. May 7, 2007) 15

Perry v. Am. Home Prods. Corp., 1997 WL. 109658 (E.D. Va. March 4, 1997) 9

Rowan v. Tractor Supply Co., 559 S.E.2d 709 (Va. 2002) 5, 13, 15

Sartin v. Mazur, 375 S.E.2d 741 (Va. 1989) 4

Schmidt v. Bartech Grp., Inc., 119 F. Supp. 3d 374, 384 (E.D. Va. 2014), *aff'd,* 620 F. App'x 153 (4th Cir. 2015) 6

Steward ex rel. Steward v. Holland Family Properties, LLC, 284 726 S.E.2d 251 (Va. 2012) 3

VanBuren v. Grubb, 733 S.E.2d 919 (Va. 2012) 12

Warner v. Buck Creek Nursery, Inc., 149 F. Supp. 2d 246 (W.D. Va. 2001) 10, 14

Watson v. Shenandoah Univ., No. 5:14CV00022, 2015 WL. 5675060 (W.D. Va. May 28, 2015) 16

Wright v. Donnelly & Co., 28 Va. Cir. 185, at 2 (1992) 12

Yuzefovsky v. St. John's Wood Apartments, 540 S.E.2d 134 (Va. 2001) 3

STATUTES

Va. Code § 2.2-3903 6

Va. Code § 19.2-152 ..... 9, 10, 14, 15, 16

Defendant/Appellee National Accrediting Commission of Career Arts & Sciences ("NACCAS") hereby submits its Appellee Brief in opposition to Plaintiff/Appellant Noemie Francis' appeal. The trial court did not err when it sustained NACCAS' Amended Demurrer and dismissed this matter with prejudice. For the reasons stated in more detail below, NACCAS respectfully requests that this Court affirm the Circuit Court's decision.

I. STATEMENT OF FACTS

NACCAS employed Ms. Francis as an at-will administrative assistant from March 27, 2012 until February 9, 2015. (Joint Appendix at 3, ¶ 9; 6, ¶ 20.) On June 11, 2015, Ms. Francis filed a Complaint against NACCAS in the Circuit Court of the City of Alexandria. NACCAS filed a Demurrer on July 7, 2015, and Ms. Francis filed an Opposition on July 29. On August 12, 2015, Judge Nolan Dawkins heard oral arguments and sustained Defendant's Demurrer with leave to amend. Ms. Francis then filed an Amended Complaint on August 25, 2015. (Joint Appendix at 1.) In her Amended Complaint, Ms. Francis alleged that NACCAS wrongfully discharged her in violation of public policy.[1] (*Id.*) Ms. Francis brought this

[1] NACCAS vehemently denies that it has committed any of the wrongful actions attributed to it by Ms. Francis and further denies that she can hold it liable for any of the conduct alleged in the Amended Complaint or her Appellant Brief. However, because a demurrer admits the truth of all material facts properly pleaded, NACCAS understands that the Court will

claim under the common law doctrine this Court first elucidated in *Bowman v. State Bank of Keysville*, 331 S.E.2d 797 (Va. 1985), known as a "*Bowman*" claim.

Specifically, Ms. Francis alleged that NACCAS terminated her at-will employment because she exercised a statutory right to seek and obtain a civil protective order. (Joint Appendix at 1, ¶ 2.) She claimed her termination constituted a wrongful discharge under the public policy exception of *Bowman*. (*Id*. ¶ 1.) However, Plaintiff's Amended Complaint, like her Complaint, failed to state any valid claim for wrongful discharge in violation of public policy because she was an at-will employee and also because she did not identify any statutorily protected right that NACCAS violated by her termination. Therefore, NACCAS filed an Amended Demurrer; after oral arguments, Judge Dawkins sustained it with prejudice. (*Id*. at 39.) Ms. Francis then filed a Notice of Appeal with the Circuit Court on December 31, 2015.

Ms. Francis claims that the Circuit Court erred in sustaining NACCAS' Amended Demurrer because her Amended Complaint allegedly pled sufficient facts to state a claim for wrongful discharge in violation of

---

accept Ms. Francis' allegations as true for purposes of the demurrer analysis only. *See CaterCorp, Inc. v. Catering Concepts, Inc.,* 431 S.E.2d 277, 279 (Va. 1993).

established public policy. NACCAS asserts that Ms. Francis did not meet the necessary requirements to establish an exception to the at-will employment doctrine in Virginia.

II. STANDARD OF REVIEW

De novo is the appropriate standard of review of a decision sustaining a demurrer because it is a pure question of law. *Glazebrook v. Bd. of Supervisors,* 587 S.E.2d 589, 591 (Va. 2003). "A demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof." *Id.* However, legal conclusions are not taken as true in considering a demurrer. *Steward ex rel. Steward v. Holland Family Properties, LLC*, 284 726 S.E.2d 251, 257 (Va. 2012) (citing *Yuzefovsky v. St. John's Wood Apartments*, 540 S.E.2d 134, 137 (Va. 2001).

A demurrer will be sustained when the pleading it challenges lacks "sufficient definiteness to enable the court to find the existence of a legal basis for its judgment." *Hubbard v. Dresser, Inc.,* 624 S.E.2d 1, 4 (Va. 2006) (quoting *Moore v. Jefferson Hosp., Inc.,* 158 S.E.2d 124, 126 (Va. 1967)). Based on these well-settled principles governing review, NACCAS asserts that a *de novo* review will show that the Circuit Court did not err in sustaining NACCAS' Amended Demurrer.

III. LEGAL ARGUMENT AND CITATION TO AUTHORITIES

A. The Virginia Supreme Court Has Consistently Held That *Bowman* Creates A Very Limited Exception To At-Will Employment

"Virginia strongly adheres to the common law employment-at-will doctrine." *Cnty. of Giles v. Wines*, 546 S.E.2d 721, 723 (Va. 2001) (quoting *Bailey v. Scott-Gallaher, Inc.*, 480 S.E.2d 502, 503 (Va. 1997)). At-will employment means that the employment term extends for an indefinite period and may be terminated at any time for any reason. *Miller v. SEVAMP, Inc.*, 362 S.E.2d 915, 916-917 (Va. 1987); *Sartin v. Mazur*, 375 S.E.2d 741, 743 (Va. 1989). The employment-at-will doctrine, however, is not absolute, and this Court has recognized, under rare circumstances, certain narrow exceptions.

In *Bowman*, this Court recognized a tort claim of wrongful termination in violation of Virginia public policy and described it as a limited exception to Virginia's employment-at-will doctrine. 331 S.E.2d at 797. In the 30 years since the *Bowman* decision, this Court has consistently limited the at-will exception. Indeed, this Court has repeatedly reiterated that *Bowman* is a limited exception to Virginia's employment at-will doctrine. *See, e.g.*, *Lawrence Chrysler Plymouth Corp. v. Brooks*, 465 S.E.2d 806 (Va. 1996) (motor vehicle repairman unsuccessfully sued employer alleging discharge

for his refusal to use method of repair he believed unsafe); *SEVAMP,* 362 S.E.2d at 915 (retaliatory discharge claim rejected when employee alleged she was fired for appearing as witness at co-employee's grievance hearing); *Dray v. New Mkt. Poultry Prods., Inc.*, 518 S.E.2d 312, 314 (Va. 1999) (no cause of action when relying on statute prohibiting intrastate distribution of uninspected, adulterated, or misbranded meat and poultry products); *City of Virginia Beach v. Harris*, 523 S.E.2d 239, 245 (Va. 2000) (reversing judgment because obstruction of justice statute did not support a wrongful termination cause of action); *Rowan v. Tractor Supply Co.*, 559 S.E.2d 709, 711 (Va. 2002) (public policy exception to employment-at-will doctrine did not apply to common law wrongful termination claim by employee who alleged that she was terminated in violation of public policy underlying obstructing justice statute).

The General Assembly of Virginia has even expressed its intent to ensure that *Bowman* continues to be narrowly construed. In *Lockhart v. Commonwealth Educ. Sys. Corp.*, the Supreme Court of Virginia held that a *Bowman* claim could be based on Virginia public policy embodied in the Virginia Human Rights Act ("VHRA"). 439 S.E.2d 328, 331 (Va. 1994). This interpretation significantly broadened the scope of the public policy exception elucidated in *Bowman*, but in response to *Lockhart,* the General

Assembly amended the VHRA to state that "[c]auses of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances." Va. Code § 2.2–3903(D). In *Doss v. Jamco, Inc.*, 492 S.E.2d 441, 446–47 (Va. 1997), this Court interpreted the amendment as explicitly forbidding reliance on the VHRA in prosecuting a *Bowman* claim, thereby acknowledging the General Assembly's expressed intent to limit the scope of *Bowman.*

Here, Ms. Francis alleges that NACCAS terminated her because she exercised her statutory right to seek and obtain a protective order (Joint Appendix at 1, ¶¶1-2); she relies on the narrow *Bowman* exceptions to support her allegations. However, as Ms. Francis was an at-will employee, NACCAS cannot be held liable for her lawful termination. Moreover, as Ms. Francis' Amended Complaint does not present sufficient allegations of a true, extant public policy violation, the trial court correctly dismissed her *Bowman* claim.

B. Ms. Francis Was An At-Will Employee And Her Termination Did Not Fall Within The Limited *Bowman* Exceptions

"*Bowman* merely provides an exemption to the common law doctrine of at-will employment, which states that employers are free to terminate an employment relationship with or without cause." *Schmidt v. Bartech Grp.,*

Inc., 119 F. Supp. 3d 374, 384 (E.D. Va. 2014), *aff'd,* 620 F. App'x 153 (4th Cir. 2015).

Under state law, the plaintiffs in *Bowman* had the right to vote on each corporate matter submitted to a vote at a meeting of stockholders. 331 S.E.2d at 798-99. Because the right conferred by statute – the right to vote free of duress and intimidation by corporate management – was in furtherance of an established public policy, the employer could not lawfully use the threat of discharge of an at-will employee as a device to control the otherwise unfettered discretion of a shareholder to vote freely his or her stock in the corporation. *Id*. Consequently, applying an admittedly narrow exception to the employment-at-will rule, the Court held that the plaintiffs stated a cause of action in tort against the defendants for improper discharge from employment. *Id*. at 801.

Importantly, this Court has recognized only three categories of *Bowman* claims*:*

(a) a discharge in violation of an established public policy, *Bowman,* 331 S.E.2d at 800-801;

(b) a termination of an employee who was clearly a member of the class of persons directly entitled to the protection enunciated by the public policy, *Bailey,* 480 S.E.2d at 502; and

(c) a discharge based on the employee's refusal to engage in a criminal act,[2] *Mitchem v. Counts,* 523 S.E.2d 246, 252-253 (Va. 2000).

Thus, to survive a demurrer, the plaintiff's complaint must state a claim that falls within one of these three narrow exceptions. Here, Ms. Francis' Amended Complaint has failed to do so.

1. Ms. Francis Has Not Adequately Pled that NACCAS Discharged Her in Violation of an Established Public Policy

Ms. Francis alleges that she properly pled that NACCAS violated a policy enabling the exercise of her statutorily created right. However, as Virginia does not recognize a generalized, common-law retaliatory discharge claim, Ms. Francis must show that her termination violated a public policy designed to enable the free exercise of that right and that her termination was a result of exercising said right. *See Bowman,* 331 S.E.2d at 800-801. She has failed to do so.

This Court has stated that *Bowman* falls far short of recognizing a general cause of action for the tort of "retaliatory discharge." *SEVAMP*, 362 S.E.2d at 918. In *SEVAMP,* this Court explained that the narrow exception recognized in *Bowman* is limited "to discharges which violate

[2] Plaintiff does not allege that she was discharged based on her refusal to engage in a criminal act. *See* Appellant Brief at 6, fn 2.

public policy, that is, the policy underlying existing laws designed to protect the property rights, personal freedoms, health, safety, or welfare of the people in general." *Id*.

Thus, to succeed under this *Bowman* exception, the individual seeking relief for a discharge must be able to identify and articulate a specific statute that embodies a public policy alleged to have been violated by such termination. *Lawrence Chrysler Plymouth Corps.*, 465 S.E.2d at 806; *see also Perry v. Am. Home Prods. Corp.,* 1997 WL 109658, at *5 (E.D. Va. March 4, 1997) ("*Lawrence Chrysler* circumscribes *Bowman* claims to those in which an employer has contravened a *right conferred on an individual* by a specifically identified statute which enunciates a public policy.") (emphasis added).

To begin with, the statute relied upon by Ms. Francis, Virginia Code §§ 19.2-152.7:1 through 19.2-152.10, does not create enforceable statutory rights that provide an employee protection from discharge under the *Bowman* doctrine. General policy statements in statutes are insufficient to support a wrongful discharge claim. *Andrews v. Bon Secours-St. Mary's Hosp. of Richmond, Inc.*, 43 Va. Cir. 486, at *5 (1997).

Here, Ms. Francis argues that the narrow exception to the employment-at-will doctrine that the court recognized in *Bowman* includes

a cause of action where the former employee alleges wrongful discharge because she sought a protective order. But the exceptions Virginia courts have recognized are not so broad as to make actionable those discharges of at-will employees which violate only private rights or interests. Virginia Code § 19.2-152.10 recognizes that a court may issue a protective order to protect the health and safety of the petitioner. This is the private interest Ms. Francis utilized. Indeed, she reiterates this point when she states that she obtained the protective order because she was fearful for her own physical health and safety. (Joint Appendix at 4-5, ¶¶ 13, 18.)

Moreover, Ms. Francis' reliance on *Mitchem v. Counts,* 523 S.E.2d 246 (Va. 2000) is misplaced. In *Mitchem*, the plaintiff was terminated after she refused to engage in a sexual relationship with her employer. *Id*. at 248. She argued, and the Court agreed, that the criminal laws against fornication and lewd and lascivious behavior embody a public policy against the commission of acts of a sexual nature and, thus, an employer is subject to a common law wrongful termination claim if he discharged an at-will employee because she refused to commit those criminal acts. *Id*. at 249; *but see Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246, 263 (W.D. Va. 2001) ("because [plaintiff] does not allege that he was fired because he refused to engage in the criminal acts prohibited by the

statutes he cites, [he] does not state a wrongful discharge claim based on *Mitchem*"). Thus, *Mitchem* is inapplicable to this action. NACCAS never requested that Ms. Francis engage in any criminal behavior, and Ms. Francis explicitly states that she is not basing her allegations on this exception. *See* Appellant Brief, at 6, fn 2.

Furthermore, while the *Mitchem* Court allowed for protections under public policies, the employer is liable for wrongful discharge when the <u>established public policy is violated by the discharge from employment.</u> *Id*. (emphasis added). In *Bowman*, the employer interfered with the employees' rights to vote. 331 S.E.2d at 798. Thus, the statutory right of the employees, as stockholders, was the right to vote, which the employer was actively preventing. *Id*. Conversely, Ms. Francis' alleged right is to obtain a protective order, a right which NACCAS neither interfered with nor prevented.

In fact, NACCAS did nothing to contravene Ms. Francis' right to obtain the protective order, as evidenced by the fact that the court granted her a preliminary protective order and then extended the order. (Joint Appendix at 12-16.) Ms. Francis argues that she was wrongfully discharged after she obtained a protective order, but this is does not give her a right of action under the *Bowman* exception. As stated above, the

Court has been very clear that *Bowman* and its progeny do not create a retaliatory discharge tort. *SEVAMP*, 362 S.E.2d at 918. "The at-will employee must have some right which the employer seeks to subvert by the termination." *Wright v. Donnelly & Co.*, 28 Va. Cir. 185, at *2 (1992). Again, Ms. Francis' right to obtain a protective order is personal in nature, and NACCAS did not seek to subvert her right by terminating her. Therefore, Ms. Francis has not adequately pled a cause of action in her Amended Complaint under the first *Bowman* statutory right exception.

2. Ms. Francis Has Not Adequately Pled that NACCAS Violated a Public Policy Explicitly Expressed in a Statute of Which Ms. Francis was a Member Entitled to Such Protection

Ms. Francis also alleges that the public policy expressed in the protective order statute was explicit, and she was entitled to protection under the statute. But "[i]n a wrongful discharge case, the tortious act is not the discharge itself; rather, the discharge becomes tortious by virtue of the wrongful reasons behind it." *VanBuren v. Grubb,* 733 S.E.2d 919, 923 (Va. 2012).

A plaintiff bringing a wrongful termination claim under the second *Bowman* exception must show that her termination violated "established public policy" and that she was a "member of the class of persons that the specific public policy was designed to protect." *Mitchem,* 523 S.E.2d at

251. But it is well-settled that courts narrowly construe *Bowman* exceptions, and these exceptions extend only to specifically enumerated public policies. *See Rowan,* 559 S.E.2d at 711; *Lawrence Chrysler Plymouth Corp.*, 465 S.E.2d at 806; *SEVAMP, Inc.*, 362 S.E.2d at 918.

Moreover, the exception involves laws that do not explicitly state a public policy, but instead are "designed to protect the 'property rights, personal freedoms, health, safety, or welfare of the people in general.'" *SEVAMP, Inc.*, 362 S.E.2d at 918. However, "[s]uch laws must be in furtherance of 'an [underlying] established public policy' <u>that the discharge from employment violates</u>." *Id*. (quoting *Bowman*, 331 S.E.2d at 801) (emphasis added); *see also Lucker v. Cole Vision Corp.*, No. CIV.A. 705CV00126, 2005 WL 2788882, at *6 (W.D. Va. Oct. 26, 2005) (although the Virginia Consumer Protection Act generally protects the public at large from unfair and unethical transactions by suppliers, a statute which generally protects some degree of an interest "does not hurdle the strict policy prerequisite to trigger the exception to the employment-at-will doctrine as set forth by the Supreme Court of Virginia in *Bowman* and *SEVAMP*"). Here, Ms. Francis' discharge does not violate any established public policy.

Merely naming a statute is not enough. Ms. Francis must also show that she has a statutorily-created right which NACCAS violated by discharging her or she has to show that she was terminated for refusing to violate a statutory duty. *Warner,* 149 F. Supp 2d at 264. She has done neither. "[T]he fact that the public generally benefits from a statute does not mean necessarily that the statute protects the category of interests which were defined by the Court as public policy sources in *Bowman* and *SEVAMP.*" *Leverton v. AlliedSignal, Inc.*, 991 F. Supp. 486, 493 (E.D. Va. 1998) (plaintiff's termination "deprived him of no interest or right secured to him by the Consumer Protection Act"). Similarly, Ms. Francis' termination did not deprive her of any interest accorded to her by the protective order statute.

Finally, Ms. Francis cites no Virginia or Fourth Circuit case to support her argument that this statute can give rise to a wrongful termination claim. No court has ever applied Virginia Code § 19.2-152 to support a wrongful termination claim under this theory. In interpreting *Bowman,* the U.S. District Court for the Western District of Virginia stated:

> This string of statutes [cited by plaintiff] was unaccompanied by case law or argument showing that Virginia recognizes a public policy which was violated by Nestlé's actions. While these laws, like all laws, reflect the public policy of Virginia to some extent, the Plaintiff has not alleged any facts to show a new cause of action

> should be based upon these statutes. Furthermore, the Plaintiff has not shown that he has a "statutorily-created right" which his employer violated by discharging him nor has he shown that he was terminated for refusing to violate a statutory duty.

See Pacquette v. Nestle USA, Inc., No. 4:06CV00060, 2007 WL 1343794, at *7 (W.D. Va. May 7, 2007). Similarly, as discussed above, NACCAS did not violate the protective order statute by terminating Ms. Francis nor was she terminated for refusing to violate a statutory duty under the statute; Ms. Francis has not alleged any facts to show a new cause of action should be based on such a statute.

Additionally, there is no case in which a plaintiff has successfully used Virginia Code § 19.2-152 as the statutory basis to support a wrongful termination claim under the theory proposed by Ms. Francis. If the trial court had denied NACCAS' Amended Demurrer and moved forward with this matter, it would have opened the door for a vast expansion of the *Bowman* doctrine—a doctrine this Court has intentionally and historically limited. *See Rowan*, 559 S.E.2d at 711 ("While virtually every statute expresses a public policy of some sort, we continue to consider this exception to be a 'narrow' exception and to hold that 'termination of an employee in violation of the policy underlying any one [statute] does not

automatically give rise to a common law cause of action for wrongful discharge.'") (quoting *Harris*, 523 S.E.2d at 245).

Ms. Francis cannot base her wrongful termination claim on § 19.2-152.7:1 through 19.2-152.10 of the Code of Virginia. "Simply put, the plaintiff's pendant claim of wrongful termination is neither based on a cognizable statutory right nor a corresponding public policy of the type that would support an exception to the employment-at-will doctrine and thereby allow a common law action for wrongful termination." *See Watson v. Shenandoah Univ.*, No. 5:14CV00022, 2015 WL 5675060, at *15 (W.D. Va. May 28, 2015), *report and recommendation adopted in part, rejected in part,* No. 5:14-CV-00022, 2015 WL 5674887 (W.D. Va. Sept. 24, 2015).

Ms. Francis has not properly pled that her termination falls under any of the *Bowman* exceptions so as to allow her claim to proceed. *See SEVAMP*, 362 S.E.2d at 919 (holding that trial court correctly sustained employer's demurrer because employee's claim did not qualify as an exception to the employment-at-will doctrine); *Dray*, 518 S.E.2d at 314 (same). Allowing this matter to move forward would be an "unwarranted encroachment upon Virginia's employment-at-will doctrine, rigidly adhered to by this Court until now." *See Lockhart*, 439 S.E.2d at 332 (Compton, J., Carrico, C.J., and Stephenson, J. dissenting).

IV. CONCLUSION

The Supreme Court of Virginia should affirm the Circuit Court's December 9, 2015 Order sustaining NACCAS' Amended Demurrer.

Dated: this 9th day of August, 2016

Respectfully submitted,

By: s/ Jacquelyn L. Thompson

Jacquelyn L. Thompson
Virginia Bar No. 82726

FORDHARRISON LLP
1300 19th Street, N.W., Suite 300
Washington, DC 20036
Telephone: (202) 719-2064
Facsimile: (202) 719-2077
Email: jthompson@fordharrison.com

Attorney for Defendant/Appellee National Accrediting Commission of Career Arts & Sciences

CERTIFICATE OF SERVICE

In accordance with Rule 5:26(h), I hereby certify that on this 5th day of August, 2016, I caused a true and correct copy of the foregoing Brief of Appellee to be filed and served via VACES, with the required paper copies set to be delivered within the prescribed one business day. I further certify that on the 5th day of August, the Brief of Appellee was served via electronic mail upon the following:

Michael E. Veve
Lasa, Monroig & Veve LLP
8300 Greensboro Drive, Suite 800
McLean, Virginia 22102
meveve@aol.com
Attorney for Plaintiff/Appellant Noemie S. Francis

I further certify that this Brief of Appellee is 3,495 words.

s/ Jacquelyn L. Thompson_____
Jacquelyn L. Thompson