IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

WILLIAM THORPE, *et al.*, Plaintiffs, v. VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*, Defendants.	Civil Case No. 2:20-cv-00007-JPJ-PMS

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE PLAINTIFFS FROM PRESENTING EVIDENCE OR ARGUMENT NOT PROVIDED IN THEIR INTERROGATORY RESPONSES

Defendants ask this Court to impose the drastic remedy of excluding vast swaths of evidence based on the purported insufficiency of Plaintiffs' responses to contention interrogatories. But Defendants' motion ignores both (1) that Plaintiffs timely objected to those interrogatories and answered subject to those objections, and Defendants never moved to compel further responses at any point during the initial discovery period or the recent supplemental discovery period; and (2) the extensive fact and expert discovery and summary judgment briefing that fully flesh out Plaintiffs' theories of the case. Defendants now seek to ambush Plaintiffs on the eve of trial by invoking purported discovery deficiencies, that, even if true, they chose to ignore and thus have essentially waived. In effect, Defendants seek a windfall—preclusion of much of Plaintiffs' case on the grounds that four interrogatory responses were purportedly deficient, while ignoring the myriad other fact and expert discovery and briefing that fully explicate the issues the parties will be trying in less than a month. Their gamesmanship should not be countenanced.

Defendants' motion rests on the incredible claim that—seven years into this litigation—they somehow do not know what facts or legal theories Plaintiffs will rely on at trial. But the parties have engaged in extensive discovery, including depositions of each named Plaintiff, and Plaintiffs have produced multiple expert reports addressing the very contentions at issue in the interrogatories. The parties then exchanged extensive summary judgment briefing in which Plaintiffs set forth in detail their theories of liability under the Eighth and Fourteenth Amendments and pointed to voluminous facts supporting those theories. The parties also recently engaged in supplemental discovery, during which Defendants once again chose not to seek additional discovery or raise any purported deficiency in Plaintiffs' interrogatory responses. That decision further undermines Defendants' assertion that they lack notice of Plaintiffs' theories of liability or that Plaintiffs' interrogatory responses were somehow inadequate.

Finally, Defendants attempt to re-litigate their objections to Plaintiffs' proposed method of determining damages—which this Court has already approved in its summary judgment opinion—under the guise of a motion *in limine*. There is no reason to revisit the Court's prior decision, as explained in Plaintiffs' concurrently filed response to Defendants' Motion *in Limine* to Exclude Plaintiffs' Evidence of Compensatory Damages, ECF No. 560 (Aug. 24, 2026).

Accordingly, Defendants' motion should be denied.

BACKGROUND

In May, 2019, Plaintiffs filed a detailed complaint cataloguing the many facts underlying their claims that the Step-Down Program violated their Eighth and Fourteenth Amendment rights. After this Court declined to dismiss those claims (including on the basis of qualified immunity), the parties engaged in extensive discovery. Defendants served their first set of interrogatories, including Interrogatory Nos. 3, 5, 6, and 12, which form the basis of this motion, in September

2021. Plaintiffs timely responded to these interrogatories, objecting to Interrogatory Nos. 3, 5, and 6 as premature and burdensome, and to the extent that they ask for attorney work product and exhibit and witness lists. Plaintiffs further objected to Interrogatory No. 6 as compound with multiple subparts. Plaintiffs objected to Interrogatory No. 12 as premature. Plaintiffs supplemented their responses to the relevant interrogatories in April 2023. ECF No. 262 at 1 (Feb. 7, 2023). Defendants never raised any objection to Plaintiffs' supplemental responses or attempted to meet and confer with Plaintiffs regarding the sufficiency of their responses. And at no point during the discovery period (or otherwise) did Defendants ever file a motion to compel further responses to any of these interrogatories.

In September 2023, the parties filed cross-motions for summary judgment on each of Plaintiffs' claims. Plaintiffs' extensive briefing in support of their motion, and in opposition to Defendants' motion, set forth in great detail the facts in the record that support their Eighth Amendment and Due Process claims against Defendants. *See*, *e.g.*, ECF No. 383 at 5–13 (Sept. 11, 2023) (describing evidence of conditions that violated the Eighth Amendment), 14–21 (setting out evidence of Defendants' deliberate indifference), and 22–24 (demonstrating how the Step-Down Program violates class members' due process rights); ECF No. 383-119 (Statement of Undisputed Material Facts).

This Court ruled on the parties' cross-motions for summary judgment on January 20, 2026. ECF No. 516. On February 23, 2026, the parties jointly submitted a proposed status conference agenda in which Plaintiffs sought supplemental discovery given the length of time that had transpired since the close of fact discovery. ECF No. 520 at 2. Defendants opposed Plaintiffs' request for any additional discovery beyond a single interrogatory, claiming it was neither "necessary [n]or appropriate" as "[d]iscovery is closed," and Defendants sought no additional

discovery from Plaintiffs. *Id.* The Court granted Plaintiffs leave to conduct limited additional fact discovery and established a May 4, 2026, deadline to supplement interrogatory responses and a May 18, 2026, deadline for the close of supplemental fact discovery.

On May 4, Plaintiffs supplemented various interrogatory responses but did not supplement or amend their objections and responses to the interrogatories at issue in this motion. Again, Defendants did not raise any purported deficiencies with Plaintiffs or move to compel further responses to Interrogatory Nos. 3, 5, 6, or 12 at that time or at any time prior to the filing of the instant motion *in limine*.

ARGUMENT

I. Defendants' Failure to Timely Move to Compel Responses Over Plaintiffs' Objections Forecloses the Relief They Now Seek.

Well over three years after the close of fact discovery, and three months after the close of supplemental fact discovery, Defendants catalogue what they claim are deficiencies in Plaintiffs' responses to four broad contention interrogatories on liability and damages. But Plaintiffs raised several objections to those interrogatories—on work product and undue burden grounds, in addition to more properly seeking expert discovery, among others—and since receiving Plaintiffs' supplemental responses, Defendants never once asked Plaintiffs to supplement those responses nor asked this Court to overrule those objections. They filed no motion to compel during or after the initial fact discovery period, nor during the three-month supplemental discovery period they opposed as unnecessary. Instead, Defendants allowed Plaintiffs' objections to stand for the entire discovery period and beyond, and now, weeks before trial, ask the Court to exclude vast swaths of otherwise admissible evidence—evidence of which they have been made well aware through other discovery and briefing avenues—on the grounds that objections they never asked this Court to resolve were improper.

Defendants' motion therefore fails as a procedural matter. Courts routinely deny motions to preclude evidence under Rule 37(c) where the party seeking the sanction failed to first move to compel evidence under Rule 37(a). *See, e.g.*, *Bowersox v. Dep't of Corr.*, No. 4:18-CV-00384, 2021 WL 12313053, at *3 (M.D. Pa. Dec. 28, 2021) (collecting cases) (noting that "courts have denied such requests, find the Rule 37(c)(1) sanction inappropriate where the party requesting the sanction has failed to follow the procedures set forth in Rule 37(a) and (b) to obtain the discovery"); *Simpson v. Saks Fifth Ave., Inc.*, No. 07-CV-0157-CVE-PJC, 2008 WL 3388739, at *8 n.9 (N.D. Okla. Aug. 8, 2008) ("Saks has not filed a motion to compel and raises a discovery dispute in a motion in limine. Without a motion to compel on file, there is no reason to even consider a routine discovery dispute so close to trial[.]"); *Liquid Cap. Exch., Inc. v. BDC Grp., Inc.*, No. 20-CV-89 CJW-MAR, 2022 WL 884919, at *5 (N.D. Iowa Mar. 24, 2022) (denying motion in limine under Rule 37(c) where moving party did not first file a motion to compel, and noting that "[i]t is improper for a party to propound discovery, dislike the response, but sit on the matter and lie in wait until trial to raise the issue for the first time"); *W.R. Grace & Co. v. Viskase Corp.*, No. 90 C 5383, 1991 WL 211647, at *4 (N.D. Ill. Oct. 15, 1991) (denying as procedurally improper motion in limine filed after the close of discovery where moving party failed to move to compel discovery); *Webb v. City of Waterloo*, No. 17-CV-2001-CJW-MAR, 2020 WL 1159755, at *5 (N.D. Iowa Mar. 10, 2020) (same); *United States ex rel. Brown v. Mindpath Care Centers, N. C., PLLC,* No. 5:19-CV-512-BO-RJ, 2025 WL 1384730, at *1 (E.D.N.C. Apr. 3, 2025) (same). Nothing here dictates a different result.

Defendants' own authorities illustrate the proper procedural course they should have taken to address any supposed deficiencies in Plaintiffs' responses, as they reflect rulings ordering additional substantive responses through grants of timely motions to compel, or ordering sanctions

only *after* a party flouted a court's order to supplement responses (neither of which is present here).[1] And the few that fall in neither camp are inapposite. One of the two cases Defendants cite for the proposition that Rule 37(c)(1) requires exclusion of the majority of the evidence and argument on Plaintiffs' constitutional claims, Defs.' Motion *in Limine* to Preclude Pls.' from Presenting Evidence or Argument Not Provided in Their Interrogatory Responses, ECF No. 559 at 18–19 (Aug. 26, 2026), *Changzhou Kaidi Elec. Co., Ltd. v. Okin America, Inc.*, 112 F. Supp. 3d 330 (D. Md. 2015), arises in the unique context of patent litigation, and hinges its analysis on the specific disclosures required by local patent rules. *See* D. Md. Loc. R. 804.1(a)-(d); *cf. Fleming v. Escort, Inc.*, No. 1:12-CV-00066-BLW, 2015 WL 1823125, at *2 (D. Id. Apr. 20, 2015) (noting uncertainty over the applicability of ordinary federal civil procedure doctrines in patent litigation, where "local rules prescribe a detailed process requiring prompt disclosure of specific bases for claims and defenses"). In *Changzhou*, the court found that the local patent rules governing invalidity contentions "*replace* contention interrogatories" by "inverting the normal allocation of the burden of production," and put the burden on the non-moving party "to produce its . . . contentions," not on the moving party "to ask for those contentions." 112 F. Supp. 3d at 335. Given this inversion of burden, the court struck the new arguments the non-moving party introduced in its expert reports, in part because that party had engaged in the "shifting sands approach to litigation the local rules seek to avoid." *Id.* at 337 (internal citations omitted).

[1] *See, e.g.*, *Nat'l Fire Ins. Co. of Hartford v. Jose Trucking Corp.*, 264 F.R.D. 233 (W.D.N.C. 2010) (order compelling more fulsome response); *Fisher v. Baltimore Life Ins. Co.*, 235 F.R.D. 617 (N.D. W.Va. 2006) (same); *Smith v. Trawler Capt. Alfred, Inc.*, No. 2:12-CV-2866-DCN, 2014 WL 1912067 (D.S.C. May 13, 2014) (same); *Herdlein Techs., Inc. v. Century Contractors, Inc.*,147 F.R.D. 103, 106–107 (W.D.N.C. 1993) (same); *U.S. S.E.C. v. Elfindepan*, S.A., 206 F.R.D. 574 (M.D.N.C. 2002) (same); *In re Savitt/Adler Litig.*, 176 F.R.D. 44 (N.D.N.Y. 1997) (same); *Smith v. US Sprint*, 19 F.3d 12, 1994 WL 62338, at *4 (4th Cir. 1994) (concluding party violated an earlier order compelling discovery).

Defendants' reliance on a case that hinges so primarily on the local rules governing accused infringer's affirmative obligation to provide complete invalidity contentions has no bearing on the issues here, where interrogatories do not have the inverted burden of production mandated in patent local rules.

The other case cited by Defendants, *Contech Stormwater Solutions, Inc. v. Baysaver Technologies, Inc*., is also distinguishable. There, the plaintiffs sought to exclude evidence that the defendants introduced only *after* close of discovery and *after* the plaintiffs had moved for summary judgment. 534 F. Supp. 2d 616, 623 (D. Md. Jan. 15, 2008). Indeed, the defendants, who asserted various counterclaims, including on invalidity, produced *no evidence* to support those claims, fact or expert, until the plaintiffs' summary judgment motion was already on file. *Id.* at 623–24. In contrast, Plaintiffs here objected to the contention interrogatories as premature and unduly burdensome, and then provided depositions, declarations, and extensive expert discovery soundly underpinning each of their claims.

As for the cases Defendants claim require exclusion of Plaintiffs' damages evidence, those cases arise in the context of parties attempting to rely on economic damages calculations they had indisputably failed to disclose in initial disclosures, expert disclosures, or in response to discovery requests.[2] They did not involve any unresolved discovery objections, especially in a case where, as here, other discovery makes plain how Plaintiffs intend to calculate damages. As Plaintiffs discuss in their contemporaneously-filed opposition to Defendants' motion *in limine* to exclude evidence of compensatory damages, such cases have no relevance here, where the damages sought are not susceptible to calculation and require no pre-trial computation.

[2] *See Deque Sys., Inc. v. Browerstack, Inc.*, 177 F.4th 585, 595 (4th Cir. 2026) (noting that plaintiff conceded it had failed to provide required disclosures); *Intercollegiate Women's Lacrosse Coaches Ass'n v. Corrigan Sports Enters., Inc.*, 698 F. Supp. 3d 814, 818–19 (M.D.N.C. 2023).

II. Plaintiffs Timely Objected To Defendants' Overbroad Interrogatories.

Although Defendants' failure to timely move to compel responses precludes the relief they seek now, much of Defendants' motion focuses on the purported deficiencies in the responses to these four interrogatories. Mot. at 7–13. But such arguments ignore that the contention interrogatories seeking the basis of Plaintiffs' constitutional claims (Interrogatory Nos. 3, 5, and 6) are improper, unduly burdensome, serve no useful purpose, and are now moot. Thus, Plaintiffs' original objections and answers—coupled with the extensive additional discovery and briefing the issues have now received in this case—relieved them of any further obligation to respond.

Defendants' interrogatories ask Plaintiffs to identify "each aspect" of the conditions of confinement and "each document" that support their Eighth Amendment claim (Interrogatory No. 3), and the dates and actions, without limitation, that each Plaintiff contends each Defendant took, failed to take, or should have taken with respect to their Eighth and Fourteenth Amendment rights (Interrogatory Nos. 5 and 6). In Defendants' view, they would require Plaintiffs to state every fact at issue in the case and identify every single document that might directly or indirectly support their claims. But those sorts of contention interrogatories are not proper:

> "[C]ontention interrogatories that systematically track all of the allegations in an opposing party's pleadings, and that ask for each and every fact and application of law to fact that supports the party's allegations, are an abuse of the discovery process because they are overly broad and unduly burdensome." Stated another way, "[c]ontention interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents." Rather, contention interrogatories may ask for the material or principal facts that support a particular allegation.

E.R. v. Beaufort Cnty. School Dist., No. 22-cv-04482-DCN, 2023 WL 3605000, at *3 (D.S.C. May 23, 2023) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). *See also Steil v. Humana*

Kansas City, Inc., 197 F.R.D. 445, 447 (D. Kan. 2000) ("The scope of the interrogatories seeking 'every fact and document,' however, is overly broad and unduly burdensome on plaintiff."); *Saint-Jean v. District of Columbia*, No. 08-CV-1769 (RWR-AK), 2014 WL 12792681, at *6 (D.D.C. Sept. 8, 2014) (quashing an interrogatory that requested each and every fact that a party planned to use in support of its claims); *Cmty. Voice Line, LLC v. Great Lakes Commc'n Corp.*, No. C12-4048-MWB, 2013 WL 4048495, at *8 (N.D. Iowa Aug. 1, 2013).

The burden on Plaintiffs to provide the sort of response in the format Defendants appear to demand is particularly unreasonable given the extensive litigation in this case, where Plaintiffs have several times, in several ways, set out their theories of liability and the facts on which those theories are based.[3] The first such example is in the detailed complaint, which contained specific and detailed facts, supported by extensive witness declarations, and set out how those facts supported Plaintiffs' Eighth and Fourteenth Amendment claims. *See, e.g.*, ECF No. 559-1 at 7 (citing nearly 100 paragraphs of the Complaint relating to the isolating conditions of confinement in the Step-Down Program). The second such example was through expert reports, which examined in detail the records produced by Defendants and the deposition testimony elicited during discovery, and explained how those records and testimony supported Plaintiffs' claims. The third time was during summary judgment briefing, during which Plaintiffs submitted extensive briefing supported by hundreds of exhibits. Defendants contend that the purpose of their contention interrogatories was "to put Defendants on notice of the case each of them must meet at trial." ECF No. 559 at 2. But the four interrogatories about which they now complain are but a small portion

[3] In addition, Plaintiffs had originally proposed filing proposed findings of fact prior to trial. *See* ECF Nos. 520-1, 524. Defendants requested, and Plaintiffs agreed, to submit proposed findings of fact after trial instead, and the parties notified the Court of this change during the August 26, 2026 pre-trial conference. This strongly suggests that Defendants are aware of the evidence and facts Plaintiffs intend to prove at trial.

of the discovery undertaken in this case. At this point, Defendants are well on notice of Plaintiffs' claims, the facts they will rely on, and their theories of liability, and these contention interrogatories are clearly moot. *See*, *e.g.*, *BB&T Corp. v. United States*, 233 F.R.D. 447, 450 (M.D.N.C. Feb. 2, 2006) ("The Court agrees with defendant that when there is an expert report which will touch on the very contentions at issue, the Court should normally delay contention discovery until after the expert reports have been served, which may then render moot any further contention discovery.").

The purpose of contention interrogatories is to refine and narrow the issues for trial. *See Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 110 (D.N.J. 1990); *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan. 2006). Due to their breadth, Defendants' contention interrogatories serve no such purpose, especially because Plaintiffs' proof at trial would not generally be limited by their responses. Fed. R. Civ. P. 33, advisory committee's note to 1970 amendment ("The general rule governing the use of answers to interrogatories is that under ordinary circumstances they do not limit proof."). Given the questionable benefit of Defendants' interrogatories, Plaintiffs' objections relating to the burden of responding to such interrogatories were well-founded. *See BB&T Corp. v. United States*, 233 F.R.D. 447, 450 (M.D.N.C. 2006) ("[C]ontention discovery often requires a party to, in essence, prepare a trial brief at an earlier time in the litigation process than normally occurs. Without some specific reason to require such an acceleration, the Court may well deem the burden to outweigh the benefit.").

Defendants further mischaracterize Plaintiffs' response as invoking Rule 33(d) to "gestur[e] at a pile of documents." Mot. at 10. But this argument proceeds as though Plaintiffs' objections—and the rest of the extensive discovery in this case—do not exist. And viewed in light of Plaintiffs' well-founded objections, Plaintiffs' responses were more than sufficient. After citing a large number of detailed allegations in their complaint that set forth, for example, the conditions

they contend violate the Eighth Amendment in response to Interrogatory No. 3, *see, e.g.*, ECF No. 559-1 at 7, Plaintiffs then provided bates numbers of specific documents containing relevant information,[4] in addition to categories of evidence they anticipate marshaling to prove their claims at trial. This is a far cry from the type of response that courts typically find inadequate, where a "responding party simply directs the interrogating party to a mass of business records or offers to make all of their records generally available," or "merely state[s] that the information was available from documents they already had produced." *Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 490 (W.D.N.C. 1998).[5]

To the extent Defendants' principal complaint is that Plaintiffs' responses were not exhaustive, the fault lies with the breadth of the interrogatory Defendants drafted and their own failure to seek relief earlier. Having sat on their hands until the eve of trial, Defendant cannot now come to the Court seeking such sweeping relief.

[4] Defendants spill much ink over the supposed irrelevance of the documents Plaintiffs cite. But they identify only a *single* document in Mr. Cornelison's response that they even claim to be irrelevant. Closer inspection of that document shows that it details Mr. Cornelison's double cell status in general population, prior to his placement in Level S, which helps support the contention, cited by Mr. Cornelison by reference to paragraph 96 of his complaint, that "*Unlike prisoners in VDOC's general population*, prisoners in solitary confinement . . . spend nearly all of their waking hours within the four walls of a single 8'x10' cell [and] are alone within their cell for the vast majority of the day." Complaint, ECF No. 1 ¶ 96 (May 6, 2019) (emphasis added). Again, to the extent Defendants had questions about this document, they could have raised this with Plaintiffs and then this Court during either of the discovery periods.

[5] Defendants' assertion that Plaintiffs may not rely on Rule 33(d) in responding to contention interrogatories, and their reference to a "document dump," is difficult to square with their own responses to Plaintiffs' contention interrogatories, which relied on Rule 33(d) and directed Plaintiffs to a substantially larger volume of documents. *See* Ex. 1 at 6–19 (nearly 14 pages of documents identified only by Bates number in response to a single contention interrogatory), 22–23 (responses to Interrogatory Nos. 5, 6, and 7).

III. The *Southern States* Factors Independently Foreclose the Relief Defendants Seek.

This Court should not reach the *Southern States* factors because, as discussed above, Defendants never attempted to challenge Plaintiffs' well-founded objections in a motion to compel. Notwithstanding that failure, even if the Court were to reach these factors, each factor favors denial of this motion in full.

On the first factor, Defendants cannot reasonably claim surprise at trial. After initial fact discovery, expert reports, summary judgment briefing, and supplemental fact discovery, Defendants are well on notice of Plaintiffs' evidence and theories. Tellingly, in contrast to *Southern States* and the cases applying its factors, Defendants do not point to anything Plaintiffs have put forward that they are seeking to exclude. The only surprise here was imposed by Defendants, who waited until the eve of trial to seek a windfall by bringing a discovery dispute concerning four interrogatories before this court.

For the second and third factors, Defendants remarkably argue that they cannot now cure any surprise resulting from the claimed deficiencies because reopening discovery now would be highly disruptive. Mot. at 16–17. Plaintiffs agree that reopening discovery at this point is inappropriate and unnecessary. Not only have Defendants received extensive discovery on all of these issues, but any claimed prejudice as a result of purported deficiencies in the responses to these four interrogatories is the result of Defendants' own decisions. Defendants had Plaintiffs' initial objections and responses since 2021, after which extensive discovery, including depositions and expert reports ensued. The parties briefed the issues through summary judgment. If that were not enough, in 2026, discovery *was* reopened for a few months. Defendants not only strongly opposed this discovery period, ECF No. 520 at 2, they also failed to use the additional discovery period to try to raise, let alone resolve, any claimed deficiencies in Plaintiffs' four interrogatory

responses. Instead, they lay in wait and forced Plaintiffs to respond to this unfounded motion during the heart of pre-trial preparation, hoping that such actions might lead to a windfall. The Court should reject such gamesmanship.

The fourth factor—importance of the evidence withheld—does not favor Defendants because it is not clear exactly what Defendants seek to exclude, other than the specter of undisclosed evidence that has not yet been brought to their attention. But to the extent Plaintiffs' experts put forward opinions they have not previously disclosed—which they do not intend to do—Defendants can move to exclude those opinions at trial, as happened in *Southern States*.

Finally, the fifth *Southern States* factor—the non-disclosing party's explanation for failure to disclose—also favors Plaintiffs. Plaintiffs made Defendants aware of their contentions and the evidence supporting them in multiple formats, as discussed, and any additional claimed deficiencies were not adequately raised by Defendants. As Defendants acknowledge, "a party's *failure to move to compel* or to supplement" undercuts its position on the explanation factor. Mot. at 18 (emphasis added). Defendants, not Plaintiffs, dragged their heels.

IV. Defendants Attempt to Re-litigate Damages.

Defendants separately argue that Plaintiffs' response to Interrogatory No. 12 (regarding damages) is insufficient. However, for the reasons stated in Plaintiffs' Opposition to Defendants Motion *in Limine*, ECF No. 560, Plaintiffs are not required to provide a damages computation for economic damages because damages for constitutional injury are an issue for the finder of fact at trial. Thus, Plaintiffs' response to Interrogatory No. 12 is sufficient to put Defendants on notice that Plaintiffs intended to seek damages based on "the number of class members and the number of days each class member has spent in solitary confinement." ECF No. 559-4 at 21. Indeed, this

is the precise method the Court approved in its summary judgment opinion, ECF No. 516 at 18–19. Defendants should not be permitted to re-litigate this ruling in the guise of a motion *in limine*.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' motion.

Respectfully Submitted,

/s/ Jared Frisch
Jared Frisch (pro hac vice)
Paul Wilson (pro hac vice)
Neal Hoopes (pro hac vice)
Covington & Burling LLP
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
jfrisch@cov.com
pwilson@cov.com
nhoopes@cov.com

Geri Greenspan (VSB #76786)
Vishal Agraharkar (VSB #93265)
Eden B. Heilman (VSB #93554)
Julia Kahn (VSB #101714)
ACLU OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Telephone: (804) 644-8022
ggreenspan@acluva.org
vagraharkar@acluva.org
eheilman@acluva.org
jkahn@acluva.org

Kathryn Ali (VSB # 97966)
ALI & LOCKWOOD LLP
501 H. St. NE, Suite 200
Washington, DC 20002
Telephone: (202) 651-2475
katie.ali@alilockwood.com

Maxwell J. Kalmann (pro hac vice)
1818 Library Street, 10th Floor
Reston, VA 20190

(650) 586-1043
maxkalmann@meta.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September 2026, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

/s/ Jared Frisch
Jared Frisch (pro hac vice)
Covington & Burling LLP
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
jfrisch@cov.com