

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

TATI ABU KING *and* TONI HEATH JOHNSON,

Plaintiffs,

v.

JOHN O'BANNON, *in his official capacity as Chairman of the State Board of Elections for the Commonwealth of Virginia*; ROSALYN R. DANCE, *in her official capacity as Vice Chair of the State Board of Elections for the Commonwealth of Virginia*; GEORGIA ALVIS-LONG, *in her official capacity as Secretary of the State Board of Elections for the Commonwealth of Virginia*; DONALD W. MERRICKS, *in his official capacity as a member of the State Board of Elections for the Commonwealth of Virginia*; MATTHEW WEINSTEIN, *in his official capacity as a member of the State Board of Elections for the Commonwealth of Virginia*; SUSAN BEALS, *in her official capacity as Commissioner of the Department of Elections for the Commonwealth of Virginia*; ERIC SPICER, *in his official capacity as the General Registrar of Fairfax County, Virginia*; and SANDY C. ELSWICK, *in her official capacity as the General Registrar of Smyth County, Virginia,*

Defendants.

Case No. 3:23-cv-00408 (JAG)

EXPEDITED TREATMENT
REQUESTED

PLAINTIFFS' MOTION TO ENFORCE THE COURT'S ORDER

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INTRODUCTION

On January 22, 2026, this Court entered a straightforward injunction: starting May 1, 2026, Defendants “SHALL not deny a person attempting to register to vote or cancel a person’s existing registration except for convictions of” eleven enumerated common-law felonies. While the Court delayed the injunction’s effective date to allow the Commonwealth time to update its registration materials and guidance for registrars, counsel admitted at the March 9, 2026 hearing that the Commonwealth had not yet begun working on implementation. *See* Dkt. 236 at 14:12-15:9. And when Defendants requested more time for implementation in late April, Plaintiffs agreed in good faith to join Defendants’ request to extend the deadline to June 1, based on Defendants’ express representations that they were actively undertaking several implementation steps identified in Plaintiffs’ remedies briefing.

Nearly five months after this Court’s injunction was entered, Defendants still have not come close to complying with the injunction or fulfilling the commitments they made to obtain an extension of time. Instead, Defendants have not even updated the voter registration form, which still asks every applicant whether she has “ever been convicted of a felony” without reference to this Court’s order, under which many such convictions are irrelevant to eligibility. This has sown confusion among voters and registrars across the Commonwealth and run afoul of federal election law. Further, Defendants published a list of purportedly disqualifying felonies that includes numerous offenses that were plainly *not* felonies at common law in 1870—while refusing to disclose anything about the underlying methodology used to generate the list. Defendants’ list includes offenses attributable to regulatory, technological, and societal factors that did not exist in 1870 and for which there is no record evidence to support Defendants’ attempt to continue using them to disenfranchise otherwise-eligible voters.

There could be no better illustration of Defendants' failure to comply with the injunction than their June 2, 2026 refusal to register named Plaintiff Tati Abu King—whom the Court has already determined to have not been convicted of a felony at common law. As described in the attached declaration, Mr. King attempted to register to vote at the Fairfax County registrar's office. He had to check the unedited box on the registration form identifying himself as having been convicted of a felony and not having had his rights restored (by the Governor), and he was subsequently told by the election official on duty that his registration would be denied. Even after further inquiry and his identification as a named plaintiff in this lawsuit, Mr. King was informed by a supervisor that his registration would be placed "on hold" for an indeterminate period of time, because the registrar had not received clear guidance from the Commonwealth on how to implement this Court's injunction. Mr. King's registration has not been processed to date.

Mr. King's experience is not unique. Weeks later, after Plaintiffs' counsel informed Defendants of their noncompliance as to Mr. King, named Plaintiff Toni Heath Johnson had the same experience at the Smyth County Elections Office—confirming that Defendants made no substantive progress in the intervening period. The problem extends beyond in-person registration: When class members have attempted to register online, Virginia's voter registration system ("VERIS") categorically prevented them from even submitting their applications.

Before Mr. King and Ms. Johnson attempted to register this month, Plaintiffs raised concerns about these very deficiencies in detailed correspondence and during multiple meetings. Rather than engaging with Plaintiffs, Defendants extended the compliance deadline, Dkt. 238 ("Joint Stipulation"), unilaterally ended discussions with Plaintiffs days before the extended June 1 deadline, and refused to meet and confer with Plaintiffs after Defendants' failure to comply became readily apparent. Early in-person voting for the August primary begins on June 18, and

the deadline to register is July 24. Plaintiffs respectfully move this Court to enforce its order and to require Defendants to immediately and fully comply.

BACKGROUND

A. Pre-Injunction Proceedings

Plaintiffs brought this class action to challenge Defendants' disenfranchisement of persons for any felony conviction pursuant to Virginia's constitution as a violation of the Virginia Readmission Act, 16 Stat. 62, 63. *See* Second Amended Complaint, Dkt. 96 at 43. During discovery, Plaintiffs' expert Professor Carissa Hessick identified 96 present-day Virginia statutory offenses that would have constituted felonies at common law in 1870, Dkt. 153-3 ¶¶ 31-34, 39, and Plaintiffs argued that the Virginia Readmission Act prohibited Virginia from disenfranchising persons for felony convictions not included in that list, 16 Stat. 62 (1870).

Despite a Court order that they do so, Defendants never identified any present-day Virginia statutory offense that they contend should qualify as a felony at common law. *See* Dkt. 153-8 at 6-7; Dkt. 138; Dkt. 183 ("10/23/25 Tr.") at 8:21-9:22. They also did not present a competing list of common-law felonies in summary judgment briefing, *see* Dkt. 151, 147, or in the supplemental briefing that the Court ordered and in which the Court specifically directed Defendants to brief which offenses are disqualifying felonies at common law, Dkt. 182.¹

In their own supplemental brief, Plaintiffs proposed a prospective injunction prohibiting Defendants from disenfranchising otherwise eligible voters except for conviction of an offense

¹ Defendants Donald W. Merricks and Matthew Weinstein, who were named in their official capacities as members of the State Board of Elections for the Commonwealth of Virginia, have since been replaced by board members Christopher P. Stolle and Sally Hudson. *See About Us*, Virginia Dep't of Elections, <https://www.elections.virginia.gov/about.html> (visited June 11, 2026). Similarly, former defendant Susan Beals, sued in her official capacity as Commissioner for the Department of Elections, has been replaced by Virginia's new Commissioner, Steven Koski. *See Legislative Liaisons: Department of Elections*, <https://liaison.lis.virginia.gov/agency/Department-of-Elections/> (visited June 11, 2026). Plaintiffs respectfully request that the Court update the

that would have been recognized as a felony at common law in 1870. *See* Dkt. 186 at 12-14. Plaintiffs explained that compliance would require only straightforward administrative changes: modifying one item on the Commonwealth’s voter registration form—which currently asks whether the applicant has “ever been convicted of a felony” and, if so, whether the applicant’s “right to vote [has] been restored”—and updating the state’s “prohibited table” of disqualifying offenses to include only individuals convicted under specific statutes that mapped onto common-law felonies. *See id.* at 18-23.

B. The Court’s Injunction

On January 22, 2026, the Court granted Plaintiffs’ motion for class certification, denied Defendants’ *Daubert* motions and motion for summary judgment, and granted Plaintiffs’ motion for summary judgment and permanent injunctive relief. Dkt. 223 (the “Injunction”) ¶¶ 1-3. The Court also declared that Defendants violated the Virginia Readmission Act and permanently enjoined them “from using Article II, § 1 of the Virginia Constitution to violate the Virginia Readmission Act.” *Id.* ¶ 4. And it required that by May 1, 2026, Defendants “SHALL not deny a person attempting to register to vote or cancel a person’s existing registration except for convictions of” eleven enumerated common-law felonies. *Id.*

In its accompanying memorandum opinion, Dkt. 222 (“Opinion”), the Court explained why the Injunction met Rule 65(d)(1)’s requirement that it “state its terms specifically” and “describe in reasonable detail . . . the act or acts restrained or required.” Opinion at 18. And it rejected Defendants’ contention that implementation would require “‘thousands’ of discrete inquiries to determine which modern felonies were also felonies at common law,” holding that the enumerated

docket to replace defendants Donald W. Merricks, Matthew Weinstein, and Susan Beals with Christopher P. Stolle, Sally Hudson, and Steven Koski, respectively. *See* Fed. R. Civ. P. 25(d); Dkt. 222 at n.2 (replacing defendants in this action at the summary judgment stage pursuant to Rule 25(d)).

list of common-law felonies it adopted “define[d] that expression in concrete terms, solving any problem of specificity.” *Id.* at 16, 19. The Court also specifically found that named Plaintiffs Tati Abu King’s and Toni Heath Johnson’s felonies of conviction “do not fall into ‘felonies at common law’” as the Court defined that term, and that they were being unlawfully disenfranchised “because of these convictions” and in violation of federal law. *Id.* at 37.

C. Defendants’ Failure To Comply With The Court’s May 1 Deadline And Resulting Stipulated Extension

Following entry of the Injunction, Plaintiffs proactively reached out to Defendants to offer their assistance in implementing the Court’s order and Plaintiffs reiterated that offer over the months that followed. *See* Ex. A. Rather than engage with Plaintiffs, Defendants filed a motion asking the Court to “clarify” or “alter or amend” the Injunction. *See* Dkt. 228. The Court held a hearing, and on March 9, denied Defendants’ motion, finding that the Injunction “provides Virginia ample time to implement the clear rule.” Dkt. 235 at 1. The Court further emphasized that it “already gave the Commonwealth’s electoral officials until May 1, 2026, to implement the injunction” and that it “did so to allow the Virginia Department of Elections to issue operating guidelines or regulations to local electoral officials.” *Id.* at 5.

At that hearing, the Court noted that it had “delayed the effective date of the injunction in order to allow the Commonwealth to provide some sort of advice or manual to the registrars of voters on how they are to go about determining eligibility and so forth.” Dkt. 236 (“3/9/26 Tr.”) at 14:12-15:7. Nevertheless, in response to the Court asking whether the Office of the Attorney General was working on providing guidance to registrars, counsel for Defendants responded, “No, Your Honor, we are awaiting guidance on whether the ninety-six [present-day Virginia statutory

offenses that Plaintiffs' expert, Professor Hessick, would have constituted felonies at common law in 1870] are part of that." 3/9/26 Tr. at 14:22-15:7.

Over six weeks later, and with the May 1 deadline rapidly approaching, Defendants requested that the Court extend the implementation deadline to June 1. Ex. B at 11; Joint Stipulation ¶ 4. That request, and Plaintiffs' agreement to join it, was made in the same spirit of cooperation that has characterized Plaintiffs' approach throughout implementation, and it was based on Defendants' representations that they were actively "undertaking steps" to comply, including by "rebuilding the voter registration system's 'prohibited table,' . . . updating voter-registration forms and voter education materials, [and] modifying the Virginia Election and Registration Information System (VERIS) so that it will not block or cancel registrations in violation of the Final Order." Joint Stipulation ¶ 4. Defendants further represented that they were working "to prepare and distribute guidance for election officials, potentially-impacted voters, and the public." *Id.* ¶ 5. Defendants further represented that the additional time would allow them to complete implementation "in a manner that minimizes confusion among voters and election officials and ensures accurate administration consistent with federal law." *Id.* ¶ 6. The Court entered the parties' stipulation. *Id.* at 1.

D. Defendants' Failure To Comply With The Stipulated Deadline

On May 1, Defendants provided Plaintiffs with a draft list of statutory offenses they contended corresponded to the eleven common-law felonies in the Court's order. Ex. B at 10. On May 12, the parties met to discuss Defendants' draft list and their proposed implementation framework. *Id.* at 4-6. During the meeting, Defendants indicated that they did not have enough time to change voter registration forms—despite the Court's impending June 1 deadline. *See* Ex. D. Plaintiffs requested that Defendants reconsider that position, explain why it would not be

possible to update the voter registration form, and asked Defendants whether they had taken any steps to address the purported constraints. *Id.*

Plaintiffs continued to engage in good faith following the May 12 meeting. On May 13, Plaintiffs transmitted a spreadsheet identifying offenses that should be removed from the Commonwealth's list of disqualifying offenses. Ex. B at 4; Ex. C. On May 18, Plaintiffs sent Defendants a letter identifying specific concerns with Defendants' implementation framework and requesting information and corrective action, including the basis for Defendants' position that revisions to the voting registration form were infeasible, and any efforts Defendants had undertaken to address those constraints. Ex. D. Plaintiffs also underscored the necessity for clear, consistent guidance for the public on voting eligibility and for election officials on applying the revised prohibited table, as well as a public education plan regarding the implementation of the Injunction. *Id.* at 2.

Defendants did not substantively respond to Plaintiffs' letter. Instead, on May 20—less than two weeks before the June 1 implementation deadline—Defendants unilaterally cut off further engagement and collaboration, informing Plaintiffs that Defendants “do not believe further engagement on the topics in [Plaintiffs'] letter would be constructive at this time.” Ex. B at 1.

The June 1 extended deadline has come and gone. More than two weeks since then and nearly five months after entry of the Injunction, Defendants have still not fulfilled their obligations. The Virginia voter registration application remains unchanged: it still asks whether applicants have “ever been convicted of a felony” and, if so, whether the applicant's “right to vote [has] been restored.” To Plaintiffs' knowledge, Defendants also have not updated the Virginia Election and Registration Information System or the “prohibited table” as they committed to do in the Joint Stipulation, leaving registrars confused about class members' eligibility to register. And even if

Defendants had updated those materials to limit disqualification to their own list of disqualifying felonies, that list includes felony offenses that share no common law analogue and therefore still would not comply.

As of the date of this filing, Defendants' modest efforts to comply with the Injunction still contravene the Court's directive. The Department of Elections (the "Department") has created a new webpage, titled "Felony Convictions and Voter Eligibility," stating that individuals whose felony conviction does not "correlate to an applicable common law felony in 1807 [*sic*]" or "require additional review by the Office of the Attorney General" because of possible "correla[tion] to an applicable common felony in 1870" "may be eligible to register to vote without restoration of rights by the Governor." Ex. E at 1-2. And yet on June 2, the Department's existing pages continued to convey the opposite. The Department's "Election and Voter FAQ" page stated that "[a]ny person convicted of a felony loses their right to vote in Virginia and that right can only be restored by the Governor of Virginia." Ex. F at 4. The Department's "How to Register" page indicated that "[i]f convicted of a felony, your right to vote must have been restored," among other eligibility requirements. Ex. G at 1.²

E. Defendants' Resulting Disenfranchisement of Named Plaintiffs and Other Class Members

On June 2, 2026—one day after the deadline set by the Joint Stipulation—counsel accompanied Plaintiff Tati Abu King to the Fairfax County Election Office to register to vote. King Decl. ¶ 3. Mr. King requested and received a registration form. *Id.* ¶ 4. However, the form was identical to the one that existed before the Injunction. *Compare* Dkt. 186 at 5 with Ex. H. It asked Mr. King to check "yes" or "no" in response to whether he has "ever been convicted of a

² Defendants indicated on June 8, 2026 that they had updated certain Department of Elections webpages to remove the inaccurate information Plaintiffs had identified. *See* Ex. J at 3-4 (June 8, 2026 email from Solicitor General Tillman Breckenridge).

felony or judged mentally incapacitated and disqualified to vote,” followed by whether his “right to vote [has] been restored [by the Governor]” if he has been convicted of a felony. Dkt. 186 at 4; Ex. H. Accordingly, Mr. King marked that (1) he has been convicted of a prior felony, and (2) his right to vote had not yet been restored. King Decl. ¶ 4.

When the front desk election official responsible for processing voter registration applications confirmed that Mr. King had *not* had his rights restored by the Governor, she told him that his application would have to be rejected outright. *Id.* ¶ 6. She advised Mr. King that he would need to contact the Secretary of the Commonwealth directly to request restoration of his voting rights and handed him a document with the Secretary’s contact information. *Id.*

After Mr. King’s counsel inquired regarding the effect of the Injunction, a supervisor acknowledged that the Commonwealth was still in the process of providing local election officials with guidance on how to implement the “*King* decision”—more than four months after entry of the Injunction and one day past the already-extended compliance deadline in the Joint Stipulation. *Id.* ¶ 7. The supervisor then described a “prohibited list” of individuals categorically ineligible to vote based on their felony convictions and explained that registrars were still awaiting instructions from the Commonwealth on how to process applications from individuals not on the prohibited table, including whether those individuals would be required to complete a supplemental form. *Id.* The supervisor emphasized that Mr. King’s application would not be voided or canceled as Mr. King was first informed, but put “on hold” pending further review. *Id.* ¶¶ 8-9. As of the date of this filing, Mr. King’s application has not been approved.

On June 15—almost two weeks after Mr. King attempted to register—Plaintiff Toni Heath Johnson encountered the same unchanged voter registration form. Johnson Decl. ¶¶ 3-4. When Ms. Johnson attempted to register to vote at the Smyth County Elections Office, accompanied by

counsel, the election worker confirmed that the office was still waiting for guidance from the state on how to process applications like hers and that her application would be placed “on hold.” *Id.* ¶¶ 5-6. With early in-person voting beginning just three days later, Ms. Johnson was told her application would remain on hold until the state provided the necessary guidance. *Id.*

Mr. King and Ms. Johnson’s experiences are not unique. Since entry of the Injunction, the Director of The Humanization Project (“THP”)—an organization that works with formerly incarcerated individuals—has had approximately two dozen conversations with individuals who were previously disenfranchised due to felony convictions but believe they may be eligible to vote following the Injunction. Mahon-Haft Decl. ¶ 11. Every one of these individuals expressed confusion and uncertainty about whether they are now able to vote and, if so, how to register. *Id.* Some expressed fear that attempting to register could expose them to criminal liability, even if they had a good-faith basis to believe they were entitled to register. *Id.* Others worried that an unsuccessful registration attempt would jeopardize their parole. *Id.* Still others, frustrated by the lack of clarity, decided they simply did not have the time to investigate the process given the absence of information about similarly situated individuals. *Id.*

None of these individuals have received any clarifying information about their eligibility or the registration process from the Virginia Department of Elections or their local registrar’s office, and none have successfully registered to vote. *Id.* ¶ 12. As THP’s Director attests, clear guidance outlining the exact process to register, which felonies remain disqualifying, and the rationale for those determinations would help ease the widespread confusion and fear. *Id.* ¶ 13. Absent such

guidance, this confusion and fear will continue to prevent many individuals whose rights were restored by the Injunction from registering to vote. *Id.*

Defendants' failure to update their systems extends to Virginia's online voter registration portal, which categorically prevents class members from even submitting applications. On June 15, 2026, class member Jared Rose—a disabled veteran who was registered to vote before his unlawful disenfranchisement, Rose Decl. ¶¶ 3-5, 9—attempted to register online through the Commonwealth's voter registration website. *Id.* ¶ 12. After entering his identification and citizenship information, Mr. Rose truthfully answered “Yes” to the question “Have you ever been convicted of a felony or judged mentally incapacitated and disqualified to vote?” and “No” to the follow-up question “Has your right to vote been restored?”—because his pending rights-restoration application has not been approved by the Governor. *Id.* ¶¶ 6, 13. The system displayed

the error message in red below—“This is required for voters with a felony or mental incapacitated judgment”—and refused to allow Mr. Rose to proceed. *Id.* ¶ 13.

Voting Eligibility

Are you a citizen of the United States of America? *

Yes
 No

What is your residency status? *

I am residing in the U.S. and am a legal Virginia resident.
 I live outside the U.S. and Virginia was my last U.S. residence.
 I am not a resident of Virginia.

Are you currently registered to vote in any another state? *

No, I am not currently registered in another state.
 Yes, I am registered to vote in another state.

Indicate state of previous registration.
 Select a State

Have you ever been convicted of a felony or judged mentally incapacitated and disqualified to vote?*

Yes
 No

Has your right to vote been restored?

Yes
 No

This is required for voters with a felony or a mental incapacitated judgement.

Class member Erik Speer had an identical experience in June 2026: after truthfully answering the same questions, the system displayed the same error message and blocked his application entirely. Speer Decl. ¶ 8. Unlike the in-person applicants whose registrations were purportedly placed “on hold,” online applicants’ registrations were never submitted at all—the system blocked them outright. *See* Rose Decl. ¶ 13; Speer Decl. ¶ 8. The online portal thus presents class members with an impossible choice: answer the felony and restoration questions truthfully and be categorically barred from registering, or misrepresent their criminal history on a form that warns—in bold capital letters—that “**INTENTIONALLY ... MAKING A MATERIALLY FALSE STATEMENT ON THIS APPLICATION CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A**

FELONY” and that “VIOLATORS MAY BE SENTENCED UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO \$2,500.” Rose Decl. ¶ 14; Speer Decl. ¶ 9. Class members understandably refuse to take that risk. *See* Rose Decl. ¶ 11 (Mr. Rose is “nervous that if [he] make[s] a mistake and [his] registration is improper, [he] may inadvertently be committing a crime”).

F. Plaintiffs’ Final Attempt at Resolution

On June 4, Plaintiffs sent a letter to Defendants outlining the deficiencies in their compliance with the Court’s order, explaining Mr. King’s experience when he attempted to register to vote on June 2, and requesting a meet-and-confer pursuant to the Court’s local rules. Ex. I at 2-3. Defendants responded on June 8. They refused to acknowledge the implications of Mr. King’s experience and failed to identify any concrete way in which the Commonwealth is working “in good faith to comply with the Order.” Ex. J at 3-4. On June 10, Plaintiffs reiterated that the Court’s orders require Defendants to take steps to ensure that voter registrations are not improperly denied or cancelled, and renewing their request for a meet-and-confer. *Id.* at 3. Defendants responded again on June 12, asserting that Plaintiffs had not identified a violation of the Court’s Order. *Id.* at 2.

Plaintiffs responded on June 13 that they disagreed with Defendants’ assertions and again asked to meet and confer. *Id.* at 1. Defendants declined on June 15, stating that “[a]ny further communications among [the parties] will need to be in writing.” *Id.* Defendants have not, since June 15, identified to Plaintiffs any specific steps they have taken or intend to take to bring themselves into compliance with the Injunction before the August primary.

Early in-person voting for the August primary begins on June 18, 2026. The deadline to register to vote in the August primary is July 24, 2026. If the certified class of now-eligible voters

cannot register to vote during early voting or by the primary deadline, they will have been disenfranchised in an election occurring half a year after the Court entered its Injunction.

LEGAL STANDARD

“[C]ourts have inherent power to enforce compliance with their lawful orders.” *Redner’s Markets, Inc. v. Joppatowne G.P. Ltd. P’ship*, 608 F. App’x 130, 131 (4th Cir. 2015) (citing *Shillitani v. United States*, 384 U.S. 364, 370 (1966)). This power derives not only from the Court’s equitable authority but is also codified in the All Writs Act, *Kemp v. Peterson*, 940 F.2d 110, 113 (4th Cir. 1991); *see also Pennsylvania Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 40 (1985); 28 U.S.C. §1651(a), the jurisdictional statute describing the Court’s power to issue “[f]urther necessary or proper relief” to protect rights determined by its judgment, 28 U.S.C. §2202, and the federal rules that require the Court to protect the rights of the class to which it granted relief, *see Fed. R. Civ. P. 23(d)*. That includes the power to “amend the original order to require the defendants to take further steps to ensure that the Court’s order is fully implemented.” *Landman v. Royster*, 354 F. Supp. 1292, 1301-1302 (E.D. Va. 1973) (finding Virginia officials in contempt and issuing civil fine and amended order requiring further implementation steps).

ARGUMENT

I. DEFENDANTS HAVE FAILED TO TIMELY IMPLEMENT THE COURT’S INJUNCTION

The urgency of compliance is underscored by Ms. Johnson’s June 15 experience: with early voting beginning on June 18, the election worker told Ms. Johnson that her application would remain on hold indefinitely, offering no timeline to participate in the upcoming primary. Johnson Decl. ¶ 6. Defendants have violated, and continue to violate, the Court’s Order. The Court’s injunction required that by May 1, Defendants “SHALL not deny a person attempting to register to vote or cancel a person’s existing registration except for convictions of” eleven enumerated common-law felonies. Injunction ¶ 4. Defendants are violating that order through both their

processes and in substantive application of the Injunction. As to process, Defendants have denied registration to persons protected by the order and failed to enable plaintiffs protected by the order to actually register and vote pursuant to it. As to substance, Defendants have adopted an implausible interpretation of the order's eleven exempted common-law felonies to allow the exemption to swallow the rule and to enable the continued disenfranchisement of persons the Court's order protects.

A. Defendants Have Established No Working Process By Which Plaintiffs Protected By The Injunction May Actually Register And Vote

Nearly two months ago, Defendants represented to Plaintiffs and the Court that they were “undertaking steps to implement the Final Order, including” (1) “updating voter-registration forms and voter education materials,” (2) “rebuilding the voter registration system’s ‘prohibited table’ to include only those individuals who are disenfranchised based on conviction for a disqualifying felony under the Final Order,” and accordingly “modifying the Virginia Election and Registration Information System (VERIS) so that it will not block or cancel registrations in violation of the Final Order,” including by making “technical and administrative updates to VERIS” and “coordinat[ing] with relevant government agencies,” and (3) “to prepare and distribute guidance for election officials, potentially impacted voters, and the public.” Joint Stipulation ¶¶ 4-5. Now, weeks after the extended implementation deadline and nearly five months after the injunction entered, Defendants have failed to timely implement the Court's Injunction.

First, and critically, Defendants have not taken the straightforward action of updating the pre-Injunction voter registration form. Despite the Injunction, the Commonwealth's registration form continues to require potential voters to check a box if they have *any* felony conviction—and if so, state whether their rights have been restored by the Governor—even though the Court has ordered that voters may not be disenfranchised for many such convictions. *See supra* pp.4, 8.

Updating the registration form simply requires replacing one sentence and a checkbox, and should not take the Commonwealth nearly five months (and continuing) to complete.³ *See* Dkt. 186 at 5-6 (Plaintiffs’ Nov. 6, 2025 supplemental briefing describing proposed update to the registration form). Defendants’ failure to update the critical page in the Commonwealth’s voter registration form to even acknowledge the Court’s ruling sends the clear, unlawful message that any individual with a felony conviction cannot vote unless their rights have been restored by the Governor.⁴

Moreover, rather than process facially eligible applicants in accordance with the Injunction, the Commonwealth has apparently directed local registrars to withhold registration from applicants with felony convictions subject to a case-by-case evaluation.⁵ If the Commonwealth had simply updated the voter registration form to reflect the Injunction’s eligibility criteria—as it was required to do—there would be no need to place applications “on hold” pending “additional evaluation.” The “hold” exists only because Defendants continue to use a form that asks whether applicants have “ever been convicted of a felony”—a question that, under the Injunction, is no longer the relevant inquiry—rather than one that asks only about the eleven enumerated common-law

³ *See* Consent Decree, *NAACP Va. State Conf. v. O’Bannon*, No. 1:25-cv-01937 (E.D. Va. June 4, 2026), Dkt. 122 ¶¶ 2-3, 6-7 (Defendants, represented by Solicitor General Breckenridge—who signed the consent decree on their behalf—agreed to revise and supplement the instructions on the Virginia Voter Registration Application, add new language to the first page of the application, and insert corresponding instructions into online and motor voter registration services).

⁴ Defendants’ failure to update the Commonwealth’s voter registration forms and eligibility criteria also violates the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20501 et seq. The Commonwealth’s state and federal voter registration forms continue to instruct applicants that any felony conviction disqualifies them from voting unless their rights have been restored by the Governor, which violates the NVRA’s requirement that voter registration forms and instructions accurately reflect current eligibility criteria. 52 U.S.C. §§ 20507(a)(5)(A), 20508(b)(2).

⁵ This, too, is a violation of the NVRA, which forbids nonuniform burdens on eligible voters. 52 U.S.C. § 20507(a), (b).

felonies. Defendants have not identified when, or by what standards, applications placed on hold will be resolved.

Second, Defendants have (to Plaintiffs' knowledge) not updated the "prohibited table" to ensure that individuals are flagged only for commission of one of the eleven common-law felonies in the Court's order. *Supra* pp.7, 9. Moreover, even if Defendants have updated their systems, no such update would implement the requirements of the Injunction because Defendants have adopted a two-part framework that continues to treat numerous offenses as categorically disqualifying despite bearing no relationship to any common-law felony, and defers the eligibility determination for a separate set of offenses pending case-by-case "additional evaluation" by the Office of the Attorney General—a process for which Defendants have, to date, identified no timeline and no publicly available standards. Nor have Defendants provided any assurance that any individual application will be resolved before the August primary. *See* Section I.B, *infra*.

Third, Defendants have failed to train their election officials. Although they have added one new webpage on "Felony Convictions and Voter Eligibility," they have apparently not even trained the election officials that operate the registration desk in one of Virginia's most well-resourced counties that the eligibility of some individuals convicted of a felony is nonetheless protected by a Court order. *See supra* pp.8-9. The resulting "confusion" is "directly attributable to the failure of the defendants to inform their lower level personnel as to the injunctive terms of the Court's order." *Landman*, 354 F. Supp. at 1297. In fact, Defendants' failure to train is nearly indistinguishable from *Landman*, in which the court found inexcusable government officials' failure to train administrators about an injunction that required them to modify their behavior and ordered specific injunctive relief, resulting in "a gaping absence" of any "memoranda or other formal systematic communications by" the defendants "to lower personnel" and "few, if any,

comprehensive oral explanations of the Court’s decision.” *Id.* at 1297-98. Such “failure[s] to disperse information and to supervise the implementation of the Court’s order constitute[] a direct violation of the same.” *Id.* at 1298. As in *Landman*, by failing to take basic steps to enable newly qualified voters to register, Defendants “have failed to implement and obey, both in letter and spirit, the directives of th[e] Court’s injunction.” *Id.* at 1300.

B. Defendants Have Adopted A List of Disqualifying Felonies That Contravenes The Court’s Order

The Injunction prohibits Defendants from disenfranchising otherwise eligible voters except for conviction of one of the eleven enumerated common law felonies: “(1) arson; (2) burglary; (3) escape and rescue from a prison or jail; (4) larceny; (5) manslaughter; (6) mayhem; (7) murder; (8) rape; (9) robbery; (10) sodomy; and (11) suicide.” Injunction ¶ 4. Instead of restricting disenfranchisement to that narrow list of common-law felonies, Defendants have adopted their own list of hundreds of disqualifying offenses, some of which bear no resemblance to the Court’s list of common law felonies and which would, if left uncorrected, enable Defendants to disenfranchise the very voters the Court’s Injunction was designed to protect.

As the Court has explained, its order constitutes “a clear injunction from which the defendants can discern a rule.” Dkt. 235 at 4-5. But rather than map current statutory felonies to the common-law felonies consistent with the record developed in this case, Defendants adopted an overbroad and unwieldy two-list system. Defendants designated one set of Virginia statutory offenses as “applicable” common-law felonies and a separate set as requiring “additional evaluation” by the Office of the Attorney General. Ex. E; *see* Ex. K; Ex. L. Individuals whose convictions correspond to an offense on the “applicable” list will be placed on the VERIS “prohibited table”—a database of individuals flagged for denial of registration—and their applications are denied outright. *See* Ex. E at 2; Ex. K. Individuals with other felony convictions

who do not match the prohibited table will not be registered either; instead, their applications are held pending further guidance from the registrar. *See* King Decl. ¶¶ 8-9. Individuals with other felony convictions that are on the “additional evaluation” list will be evaluated case-by-case by the Office of the Attorney General. Ex. L; *see generally* Johnson Decl.

There can be no question that Defendants’ lists of disqualifying and “additional evaluation” offenses violate the Court’s injunction. Both lists are also overbroad. Defendants’ list of “applicable” common-law felonies includes offenses that plainly have no common-law analog. For example, the list includes the illegal use of tear gas, Va. Code § 18.2-312, and charitable gaming penalties, Va. Code § 18.2-340.37(c), neither of which has a plausible connection to any of the eleven enumerated common-law felonies. Indeed, the only record evidence—Professor Hessick’s analysis—demonstrates that both are definitively *not* felonies at common law. *See* Dkt. 153-3 at 69-106. The “additional evaluation” list similarly includes offenses rooted in twentieth and twenty-first-century statutory frameworks that did not even exist in any form in 1870, such as gang participation, Va. Code § 18.2-46.2. *See* Ex. L.

Defendants declined every opportunity during three years of litigation to identify which present-day Virginia statutory felonies they contend correspond to common-law felonies, despite a Court order compelling a response and supplemental briefing expressly directed to that question. When Defendants subsequently sought clarification of the Injunction, the Court denied the motion, finding that the Injunction constitutes “a clear injunction from which the defendants can discern a rule,” and that the Court should not have to “pore over the entirety of the Virginia Code” to ensure compliance. Dkt. 235 at 4-5. Nor should voters. Having submitted no expert testimony or other evidence to support classifying any offense as a common law felony beyond the 96 that Professor Hessick identified, Defendants should not now, outside of any judicial process, be permitted to

adopt a classification that sweeps well beyond the record and continues to disenfranchise class members whose convictions bear no relationship to the eleven enumerated offenses.

II. THE COURT SHOULD ORDER COMPLIANCE BY JULY 10 TO ENSURE NOW-QUALIFIED VOTERS MAY VOTE IN THE AUGUST PRIMARY ELECTION

The Court's *January* injunction was intended to provide relief to Plaintiffs by May 1, and subsequently extended to June 1—in either case, well in advance of the July registration deadline for August primary elections. Defendants cannot wait until after those elections to implement the Injunction.⁶ *See North Carolina Fisheries Ass'n v. Evans*, 152 F.Supp. 2d 870, 880-82 (E.D. Va. 2001) (failure to implement an injunction within the contemplated timeframe renders the relief “utterly worthless” to the parties’ interests and warrants further injunctive relief). The Injunction requires “energetic steps to see that the orders of the court (are) carried out,” which entails “follow[ing] through and ... tak[ing] all affirmative steps necessary to comply with the court’s directions.” *Coppedge v. Franklin Cty. Bd. Of Ed.*, 293 F. Supp. 356, 364 (E.D.N.C. 1968) (enforcing court orders where defendants claimed that “various administrative difficulties now make it impossible for them to comply”). Expedited treatment of this motion is warranted to ensure that the Court’s Injunction achieves its purpose by the upcoming voter registration deadline.

Consistent with Defendants’ obligations under the Injunction, their own representations to the Court in the parties’ Joint Stipulation to extend the implementation deadline, and the parties’ extensive supplemental briefing on remedies before the Court granted summary judgment for Plaintiffs, the Court should order that Defendants immediately take the following steps:

⁶ “[C]ourts have inherent power to enforce compliance with their lawful orders through civil contempt.” *Shillitani*, 384 U.S. at 370; *see also United States v. United Mine Workers*, 330 U.S. 258, 330 (1947) (holding that “the court ha[s] power summarily to coerce obedience to [its lawful] orders and to subject defendants to such conditional sanctions as [a]re necessary to compel obedience”); *United States v. Barnett*, 376 U.S. 681, 753-74 (1964) (recognizing “the power of the courts to compel compliance with their lawful orders by the imposition of ... civil contempt”).

1. Revise the voter registration form to ask only about convictions appearing on the list of disqualifying felonies and whether the applicant's rights have been restored;
2. Modify VERIS and the online voter registration system, online portals, and third-party interfaces to ensure that voter registrations are not blocked, rejected, placed on hold, delayed, or cancelled except on the basis of a conviction corresponding to one of the eleven enumerated common-law felonies;
3. Maintain a single, publicly available list of disqualifying offenses limited to present-day Virginia felonies that correspond to the eleven common-law felonies enumerated in the Injunction, and discontinue any process by which applications are held or evaluated on a case-by-case to determine whether a conviction corresponds;
4. Issue binding written instructions to all general registrars, deputy registrars, and election officials directing them to process applications consistent with the Injunction;
5. Review and revise all voter-facing and registrar-facing materials to ensure they accurately reflect the eligibility criteria in the Injunction;
6. Take the affirmative steps identified in the Joint Stipulation to educate potential voters, election officials, and the public about the implementation of the Injunction;
7. Register Plaintiffs Tati Abu King and Toni Heath Johnson to vote; and
8. File a status report within fourteen days describing the steps taken to comply with the Injunction.

CONCLUSION

Plaintiffs respectfully request that the Court find that Defendants have failed to comply with the Injunction and order Defendants to take immediate steps to implement its terms, including by at least completing the steps outlined in the proposed order attached to this motion, by July 10,

2026. Expedited treatment of this request is warranted given the fast-approaching voter registration deadline. Without prompt and concrete relief, class members whose voter registration applications remain on hold or otherwise unresolved will be excluded from participating in the August 4, 2026 primary, in direct contravention of this Court's Injunction.

Dated: June 18, 2026

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Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on June 18, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically e-mail notification of such filing to all counsel of record.

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