IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

TATI ABU KING, et al., Plaintiffs, v. JOHN O'BANNON, in his official capacity as Chairman of the State Board of Elections for the Commonwealth of Virginia, et al., Defendants.	)	Civil Action No. 3:23-cv-408-JAG

DEFENDANTS' OPPOSITION TO MOTION TO ENFORCE INJUNCTION

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June 22, 2026

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INTRODUCTION

While the Court's injunction may appear straightforward, Plaintiffs and their counsel ("ACLU-VA") have been unwilling to accept that implementation is anything but straightforward. It requires coordination among several agencies, major technological reviews, providing guidance to local registrars that have independent and ultimate authority over accepting or denying registration applications, and numerous other hurdles to ensure a process that has the least possible errors. It has been further complicated by ACLU-VA's insistence that the "straightforward injunction" means something other than what it says. The Commonwealth's process was significantly delayed by having to clarify the injunction here when ACLU-VA insisted it required voting by people currently incarcerated.

The motion contains many fictions belied by Plaintiffs' own evidence or that could have been remedied by simple direct communication. The truth is that the Commonwealth has worked in good faith to develop a process that would comply with this Court's injunction. The Commonwealth requested that the ACLU-VA identify any eligible voter denied registration, and it failed to identify any. The Commonwealth has run into delays from various challenges that could not have been known immediately, but it is set to implement a process to resolve pending registrations with local registrars receiving the information needed to act on most of them by June 26, 2026.

Many of Plaintiffs' concerns could have been allayed by a simple meet-and-confer or request for consent required by Local Rule 7(E). Plaintiffs' motion asserts compliance with Rule 7(E) by asserting that the Commonwealth "refused to meet and confer with Plaintiffs." But Amadi Declaration Exhibit J plainly shows that, in response to Plaintiffs' counsel's request for a meet and confer, the Solicitor General only insisted that communications be in writing, not that they cease. Had Plaintiffs' counsel responded with its concerns and its proposed order, the Commonwealth

could have informed them that many of Plaintiffs' concerns already had been resolved, others will be resolved in short order, and the rest are infeasible or would be detrimental to the interests they purportedly serve. Because the ACLU-VA failed to inform the Commonwealth of its specific concerns, the Commonwealth will clarify here.

ARGUMENT

I. Defendants are complying with the Court's Injunction.

Plaintiffs have not identified any conduct by the Commonwealth warranting relief, and the relief they request already has been implemented, or will be within a week, or it will sow confusion among potential voters or otherwise confound voting processes. The motion should be denied.

Plaintiffs deride the Commonwealth for the fact that the Board of Elections website was timely updated with the list of statutory crimes correlating to common law crimes, but "on June 2, the Department's existing pages continued to convey the opposite." As Plaintiffs' evidence establishes at Amadi Exhibit J, Plaintiffs' counsel alerted the Office of the Attorney General to the error, and it was immediately corrected and confirmed to Plaintiffs' counsel. The Office of the Attorney General expressed appreciation for the information and requested that Plaintiffs' counsel alert it to any future errors it finds either in guidance or in registration decisions. *Id*.

Similarly, the assertion that web registration automatically rejects people who indicate having a felony conviction and not having their rights restored, Motion at 11-12, fails to acknowledge that the website error already had been recognized and addressed by Defendants before Plaintiffs filed their motion. So, ACLU-VA apparently did not check again before filing, nor did it take advantage of the Commonwealth's request that it identify anyone whose registration it believed was wrongly denied so that it can be addressed. *See* Amadi Declaration, Exhibit J.

As to the registration form, on review, the Commonwealth determined that changing the form at this time would only cause confusion. Putting aside that changing the registration form can

take months, Amadi Decl. Exhibit D, it is not so simple as "replacing one sentence and a checkbox," Motion at 16. Notably, ACLU-VA suggested the replacement sentence on its imagined registration form ask "whether the applicant has been convicted of an offense corresponding to one of the eleven common-law felonies set forth in the Final Order." Dkt. 239-1. Plaintiffs' counsel cannot even agree with its own expert (an expert who acknowledged that she cannot categorize 238 statutory crimes with certainty) on what statutory felonies correspond to the eleven common law felonies. *See post* at § II. But Plaintiffs apparently wish to place that burden on non-lawyer individuals to guess at whether their convictions correspond to 1870 common law felonies. Notably, they may not even know the statutory sections they violated. And even if the potential voter has all records handy and knows all statutory sections of conviction, additional evaluation still is necessary for some voters because some statutory crimes may correspond to 1870 common law crimes depending on the facts of the case. As it stands, the registration form asks two straightforward questions that allow the Commonwealth to engage in processes that determine voter eligibility with the greatest possible accuracy and the least risk to potential voters of wrongful registration. For most voters, the Commonwealth can quickly determine whether the registrant is eligible without additional evaluation, and, as mentioned above, the Board of Elections expects to have that process operational by June 26.[1]

[1] In a footnote, Plaintiffs misrepresent a stipulation for an extension of time as a "Consent Decree" and attempts to modify the injunction by claiming the Commonwealth "agreed to revise" certain documents in the purported "Consent Decree." Motion at 16 n.3. The document reflects no such agreement. Rather, it reflects the view at the time of the steps the Commonwealth was taking to implement the Order. On further review, the Commonwealth determined that changing the registration form would only lead to confusion and error. Given the stipulation only purported to outline the steps the Commonwealth was currently taking, and did not purport to lock in any particular procedure, it does not bind the Commonwealth to injuring potential voters. These types of mischaracterizations, which have been myriad, are why the Commonwealth now insists on written communications when the parties confer on this case. There is no "Consent Decree." ACLU-VA wrote a stipulation that included some of the pursuits the Commonwealth discussed

Plaintiffs further claim that "Defendants have (to Plaintiffs' knowledge) not updated the 'prohibited table.'" Motion at 17. Had Plaintiffs' counsel asked, they would have been informed that the table had been updated by June 1. Indeed, *on the next page*, Plaintiffs acknowledge ELECT's guidance to registrars that "Individuals whose convictions correspond to an offense on the 'applicable' list will be placed on the VERIS 'prohibited table.'" Plaintiffs next claim that "Defendants have failed to train their election officials" based on a mis-informed employee at a Fairfax County registration office is as absurd. The people that "operate the registration desk" at various registration offices are not the Defendants' election officials. Defendants do not control registrars' offices. Defendants work to provide reality-based, actionable guidance that independently-appointed registrars implement. Defendants provided guidance establishing the parameters of the Court's injunction.

Plaintiffs have not identified anyone whose eligible registration has been denied. While they flagged two individuals who were unable to complete the online voter registration application due to a technological error, they do not show that those individuals were unable to submit applications through other means (i.e. through the Department of Motor Vehicles online portal, or through a paper application). Moreover, the technological error with web registration has since been remedied. There is no requested relief that would "enforce" the Court's injunction.

II. Plaintiffs have not established that the Commonwealth's list of disqualifying felonies contravenes the Court's Order.

All parties agree that resolving whether someone was convicted of a statutory felony that existed as a common law felony in 1870 is not as simple as identifying 11 statutes that directly

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with them, Amadi Decl. Exhibit B, and the Solicitor General signed it with the understanding it was just that, then the ACLU-VA asserted that stipulation somehow modified this Court's injunction, Amadi Decl. Exhibit J, then the ACLU-VA went so far as to call the stipulation a "Consent Decree" in this motion.

correspond to the names of the common law felonies. In the past century-and-a-half, the Commonwealth has enacted numerous criminal statutes that correspond to 1870 common law felonies such that the ACLU-VA's own expert was certain that 96 corresponded to 1870 common law felonies, and she concluded that 238 more *might* correspond to 1870 common law felonies. This uncertainty, of course, is not enough to meet the Commonwealth's duties under the Order and the Constitution of Virginia. So, the Court placed the burden on the Commonwealth to review and categorize over a thousand felonies.

The Office of the Attorney General engaged with ACLU-VA in good faith to fairly and accurately implement the Order. In furtherance of those efforts, the Office of the Attorney General created a preliminary list that it shared with ACLU-VA. Amadi Decl., Exhibit B. ACLU-VA then provided individualized objections. Amadi Decl., Exhibit C. The Office of the Attorney General then culled and re-organized the list based partially on the ACLU-VA's objections. See Amadi Decl., Exhibits K & L. Hardly the story of a government that refuses to collaborate.[2] Notably, the ACLU-VA expressed disagreements with its expert on its list, insofar as the ACLU-VA agreed that some crimes she had determined definitely were 1870 common law offenses actually were not, and it insisted that many of the crimes she identified as possibly corresponding to 1870 felonies either clearly were felonies or clearly were not. Amadi Decl. Exhibit C.

[2] The ACLU-VA notes that the Commonwealth determined at one point that further discussion of certain topics would not be productive. Motion at 7. That was primarily the product of the ACLU-VA's demand that the Office of the Attorney General spend valuable time justifying its processes, including its decision not to share private voter information with the ACLU-VA that it already has determined it will not share with the Federal Government, *see U.S. v. Koski*, No. 3:26-cv-00042-RCY (E.D. Va.), or even internally across agencies unless absolutely necessary, *see*, *e.g.*, Va. Code Ann. §§ 19.2-389 & 24.2-405, when the Order does not contemplate sharing that information. *See* Amadi Decl. Exhibit D. The Commonwealth determined its limited resources would be better spent avoiding further delays in implementing the Order.

Now, the ACLU-VA insists that the *only* correct path is to defer to its expert, but only on the 96 crimes that she determined definitely were 1870 common law crimes—it fails to mention the 238 maybes. The Office of the Attorney General also found numerous maybes, 103, to be exact. *See* Amadi Decl., Exhibit L. For those crimes, the elements partially overlap with a common law crime such that, depending on the facts of the case, the person might have engaged in conduct that constituted a common law felony in 1870—similar to what led ACLU-VA's expert to conclude that some crimes might correspond to an 1870 common law felony. *See* Decl. of Carissa Hessick, Dkt. 153-3 at ¶ 41. Rather than asking non-lawyer individuals to guess at this incredibly important designation, the Office of the Attorney General has arranged for additional evaluation to determine, based on available records, whether a person was convicted of a disqualifying felony. It is possible to use tear gas in a way that maims someone to a degree that it would qualify as common law mayhem. Stealing charitable gaming funds, under some factual scenarios, will obviously be common law felony larceny as it existed in 1870. And the predicate criminal act for felony gang participation could be an 1870 common law felony, depending on the facts of the case. Thus, registrations for people convicted of these offenses will require further review. For the time being, this is the only way for the Defendants to comply with their duties under the Constitution of Virginia and this Court's injunction.

The Commonwealth adopted a policy that all felons should be re-enfranchised after their period of incarceration, and that policy is reflected in the constitutional amendment proposed to the people for the November 2026 election. If the People of the Commonwealth adopt the amendment, the injunction will be moot. Until then, the Commonwealth must enforce the Constitution of Virginia as modified by the Court's orders, regardless of whether Defendant officers who swore an oath to uphold it disagree with any of the Constitution's current provisions

as a policy matter. That means continuing to disallow registration by felons who committed crimes that correspond to felonies as they existed in 1870 and providing for registration by currently incarcerated felons in a way that allows them to vote when they are released. Defining a process that meets those requirements has been time-consuming and incredibly challenging. Nonetheless, the Commonwealth has developed that process and is currently implementing it so that eligible voters will be able to cast ballots in the August primary.

CONCLUSION

For these reasons, the Court should deny the Plaintiffs' motion.

Dated: June 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on June 22, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all parties of record.

/s/ Tillman J. Breckenridge
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