

**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)

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR  
MOTION TO ENFORCE THE COURT'S ORDER**

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## INTRODUCTION

Defendants’ Opposition to Plaintiffs’ Motion to Enforce the Court’s Order confirms their failure to comply.<sup>1</sup> Defendants filed their opposition brief (Dkt. 247 (“Opp.”)) twenty-one days after the extended June 1 deadline they requested and nearly two months after the Court’s original May 1 deadline, and conceded in that brief that (1) they were not yet in compliance with this Court’s injunction; (2) they will not be in compliance, even on their own faulty terms, until at least June 26, 2026; and (3) even on June 26, the misleading voter registration form will remain unchanged. They simultaneously insist that they “have developed [a] process and [are] currently implementing it,” Opp. at 7, while admitting that the process is neither developed nor implemented. Defendants attach no exhibits substantiating any step they claim to have taken and instead deride Plaintiffs for failing to know information Defendants have chosen not to provide.

Defendants attempt to blame Plaintiffs for their admitted non-compliance, faulting Plaintiffs for—among other things—not flagging errors quickly enough and not identifying every voter whose registration has been denied. But the Injunction does not run against Plaintiffs; it runs against Defendants. Dkt. 223 (“Injunction”) ¶ 4 (“[D]efendants SHALL not deny a person attempting to register to vote...”). The duty to implement—and the burden of doing so accurately, promptly, and uniformly—falls on Defendants. Yet they ask the Court to take them at their word that fixes have been made—without specifying which, when, or how. This has been Defendants’ response at every step: both before and after the implementation deadline, refusing to share the

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<sup>1</sup> Defendants appear to conflate ACLU Foundation of Virginia with Plaintiffs and also imply that it is the only counsel of record in this case. Opp. 1 (“Plaintiffs and their counsel (‘ACLU-VA’)”). The named Plaintiffs and representatives of the certified class are Tati Abu King and Toni Heath Johnson; the named Plaintiffs and certified class are represented by ACLU Foundation of Virginia, Protect Democracy Project, and Wilmer Cutler Pickering Hale and Dorr LLP.

very information that would allow Plaintiffs—and now this Court—to evaluate Defendants’ plan and whether it complies with the Injunction.<sup>2</sup>

To the extent Defendants have resolved some issues—correcting Department of Elections webpages after the implementation deadline, and only after Plaintiffs flagged their deficiencies; apparently remedying the online portal block after the implementation deadline, and only after Plaintiffs informed the Court that class members who attempted to register online had already been turned away; and allegedly updating the “prohibited table” sometime before June 1—those purported corrections do not cure Defendants’ continuing non-compliance. As detailed below, Defendants remain non-compliant in at least four concrete ways: (1) the voter registration form still asks the wrong questions and continues to misinform every Virginian who attempts to complete it; (2) named Plaintiff Toni Heath Johnson remains unregistered,<sup>3</sup> with her application indefinitely on hold, even though this Court has already determined that her disqualifying convictions are *not* common-law felonies, Dkt. 222 (“Memorandum Opinion”) at 37; (3) personnel in registrars’ offices across the Commonwealth—including in Virginia’s most well-resourced counties—have not been adequately trained to apply the Injunction; and (4) Defendants have

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<sup>2</sup> Defendants assert that “[m]any of Plaintiffs’ concerns could have been allayed by a simple meet-and-confer,” Opp. at 1, but Defendants refused Plaintiffs’ repeated request for exactly that, insisting that communications “be in writing.” *Id.*; Dkt. 240-10 at 1. An exchange of written communications does not, in fact, satisfy this Court’s requirements for a meet and confer. *See* Local Rule 7(E) (“Before endeavoring to secure an appointment for a hearing on any motion, it shall be incumbent upon the counsel desiring such hearing to meet and confer *in person or by telephone* with his or her opposing counsel in a good faith effort to narrow the area of the disagreement”) (emphasis added).

<sup>3</sup> On June 2, 2026, the Fairfax County General Registrar placed Mr. King’s voter application on indefinite hold. King Decl. ¶¶ 6-10. Not until June 29, 2026 was Mr. King, in conjunction with counsel, able to confirm through the Commonwealth’s online voter portal that his registration had become active. At no point did Mr. King receive any notification from the Commonwealth that his voter application was no longer on hold or that it had been processed. And as of the date of this filing, Mr. King has yet to receive a voter registration card in the mail. *See* King Decl. ¶ 5.

constructed a two-tier categorization scheme under which convictions for more than one hundred felonies result in applicants being routed to indefinite, standardless, case-by-case “additional evaluation” by the Office of the Attorney General.

That last device—Defendants’ “additional evaluation” review queue—directly contradicts the Court’s prior guidance. The Court already rejected Defendants’ contention that implementation would require individualized inquiries, holding that the enumerated list of eleven common-law felonies solves “any problem of specificity.” Memorandum Opinion at 16, 19. The Court reiterated the point in denying Defendants’ Motion to Clarify (Dkt. 228), explaining that the Injunction “provides Virginia ample time to implement the clear rule” and constitutes “a clear injunction from which the defendants can discern a rule.” Dkt. 235 at 1, 4-5; *see also* Dkt. 236 (“3/9/26 Tr.”) at 5:25-6:6, 7:20-22.

The August 4 primary is thirty-six days away. The July 24 voter-registration deadline is twenty-five days away. Early voting has already begun. Defendants do not dispute that well after the implementation deadline they requested to extend, class members have been turned away from registrars’ offices and blocked from the online portal, yet Defendants offer no timeline that would deliver compliance before any of these dates pass. The Court should grant Plaintiffs’ Motion to Enforce the Court’s Order (Dkt. 239), order the relief Plaintiffs requested, Dkt. 239-1 (“Proposed Order”), and direct the Commonwealth to be brought into compliance with the Injunction. Five months after entry of the Injunction, class members long disenfranchised, who should have been re-enfranchised by this Court’s clear and administrable order, still cannot register—not because compliance was complicated, but by Defendants’ choice.

## ARGUMENT

### I. DEFENDANTS HAVE NOT COMPLIED WITH THE INJUNCTION

#### A. Defendants Concede That That They Did Not Meet The June 1 Deadline

Defendants' Opposition is, in substance, an admission. Stripped of rhetoric, it concedes key facts underlying Plaintiffs' Motion. Defendants concede (Opp. at 1, 3) they missed the stipulated June 1 deadline they themselves requested. Dkt. 238 ("Joint Stipulation") at 2. Defendants do not—and cannot—claim that any of the five steps that they represented to the Court they were undertaking was complete on June 1: not the voter registration form revision, not the VERIS rebuild, not the prohibited-table overhaul, not the guidance to election officials, and not the public-education plan. *Id.* at 2-3. This is unsurprising given Defendants' admission at the March 9 hearing—already several weeks after the Court's Injunction—that they had not yet begun providing guidance to registrars and were instead "awaiting guidance" on the predicate categorization question. 3/9/26 Tr. at 14:22-15:7.

Defendants also concede that even their newly self-imposed June 26 target—twenty-five days past the stipulated deadline—will only partially close the gap. Defendants state only that "the Board of Elections expects to have th[e] process operational by June 26" for "most voters" with "[no] additional evaluation" needed, while expressly declining to revise the voter registration form at all. Opp. at 2-3. Defendants thus admit that, even on their own new timeline, the form will continue to misinform every registrant about eligibility through the July 24 voter registration deadline and the August 4 primary.

These are not litigation positions to be parsed. They are admissions, drawn directly from Defendants' own brief. Failure to implement an injunction within the contemplated timeframe renders the relief "utterly worthless" to the parties' interests and warrants further injunctive relief. *See North Carolina Fisheries Ass'n v. Evans*, 152 F.Supp. 2d 870, 880-82 (E.D. Va. 2001). In

light of these admissions, and for the reasons explained in Plaintiffs’ Motion, Defendants have failed to comply with the Injunction.

**B. The Voter Registration Form Still Asks The Wrong Questions And Defendants’ Supplemental Form Violates Federal Law**

The most consequential point of non-compliance is the simplest to fix: the voter registration form. Every Virginian who attempts to complete the form today still encounters the pre-Injunction question—“Have you ever been convicted of a felony?”—followed by the question of whether the applicant’s rights have been restored. Dkt. 240-8. The Court’s Injunction has rendered the first question legally irrelevant and has rendered the second question both confusing and affirmatively misleading: the question does not specify whether it is intended to refer to restoration of rights by the Governor or some other source, and under the Injunction, gubernatorial restoration is not required for any class member whose conviction does not correspond to one of the eleven enumerated common-law felonies. Injunction ¶ 4. Rather than correct those defects, Defendants have layered on a supplemental process to attempt to manage the confusion the form itself creates. Applicants who answer “yes” to a felony conviction are diverted out of the ordinary registration workflow and required, in many cases, to complete a separate form demanding detailed information about each conviction, including offense, citation, and jurisdiction. Amadi Decl. Ex. A (“Supplemental Form”).<sup>4</sup>

This bespoke and byzantine approach departs from the basic structure of voter registration, where the baseline is *attestation*. As with citizenship, residency, age, and competency, applicants attest to eligibility under penalty of perjury, and the State verifies those attestations through existing systems where appropriate. *See, e.g.*, Amadi Decl. Ex. C (Florida Voter Registration

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<sup>4</sup> The Supplemental Form attached as Exhibit A was publicly available on the Virginia Department of Elections website as of June 22, 2026, but is no longer accessible at that URL as of June 29, 2026. *See* Amadi Decl. Ex. B.

Application) (requiring applicant to “affirm” eligibility); Amadi Decl. Ex. D (Alabama Voter Registration Application) (same). Even where disenfranchisement turns on the nature of the offense of conviction, states present the governing rule and rely on attestation rather than requiring applicants to supply criminal histories or supporting records. *See* Dkt. 186 (“Plaintiffs’ Remedies Br.”) at 17-18. Alabama, for example, instructs applicants to attest that they are “not barred from voting by reason of a disqualifying felony conviction” and directs them to a publicly available “list of disqualifying felonies” for further guidance. Amadi Decl. Ex. D; *see also* Ala. Code § 17-3-30.1. Mississippi similarly lists disqualifying offenses on the face of the form but still relies on a sworn attestation of eligibility. Amadi Decl. Ex. E (Mississippi Voter Registration Application). Neither state requires voters to produce criminal records or submit to individualized legal review as a condition of registration. *Id.*; Amadi Decl. Ex. D; *see* Plaintiffs’ Remedies Br. at 17-20.

Rather than asking all applicants to attest to eligibility and applying uniform verification on the back end, Defendants have constructed a separate, more burdensome regime for a subset of voters. The unchanged voter registration form and the supplemental process thus operate together: the former misstates the governing rule, and the latter imposes an individualized inquiry that other applicants need not navigate. Defendants’ two-paragraph defense (Opp. at 2-3, 6) of this central failure does not withstand scrutiny.

**First**, Defendants assert that changing the form “can take months” and “would only cause confusion.” Opp. at 2-3. But Defendants have had nearly half a year. And regardless, Defendants’ own Solicitor General signed a consent decree in *NAACP Virginia State Conference v. O’Bannon*, No. 1:25-cv-01937 (E.D. Va. June 4, 2026), in which the Commonwealth agreed—just weeks ago—to revise and supplement the instructions on the very same Virginia Voter Registration Application, add new language to its first page, and insert corresponding revisions into the online

and motor-voter registration interfaces. The Commonwealth cannot tell one federal court that revising this form is straightforward, and another federal court that the same revision is unworkable. *See* Mot. at 16 n.3.<sup>5</sup>

**Second**, Defendants argue that Plaintiffs’ proposed form improperly conscripts non-lawyers to “guess” which modern offenses correspond to common-law felonies. Opp. at 2-3. Eight months after the parties briefed this very issue, *see* Dkt. 186 at 17-20, Defendants mischaracterize what Plaintiffs propose. Plaintiffs are not proposing that voters (or registrar office personnel) make their own legal judgements about whether a conviction corresponds to a common-law felony. The form should simply ask whether the applicant has been convicted of a disqualifying offense. *See* Proposed Order. Defendants would presumably pair that question with a defined, publicly available list of disqualifying offenses—the same approach deployed by other states, such as Alabama and Mississippi. *See* Amadi Decl. Ex. D (applicant attests that they are “not barred from voting by reason of a disqualifying felony conviction,” with a link to a published list); Amadi Decl. Ex. E (listing disqualifying offenses on the face of the form).<sup>6</sup>

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<sup>5</sup> In a footnote, Defendants accuse Plaintiffs of “misrepresent[ing] a stipulation for an extension of time as a ‘Consent Decree.’” Opp. at 3 n.1. Plaintiffs did no such thing. The “consent decree” Plaintiffs cited is in fact a consent decree, in a different case—signed by Solicitor General Breckenridge himself, on behalf of the Commonwealth, agreeing to update the very voter registration form Defendants now insist cannot be updated. *See NAACP Virginia State Conference v. O’Bannon*, No. 1:25-cv-01937 (E.D. Va. June 4, 2026), Dkt. 122.

<sup>6</sup> Defendants’ approach is similar to requiring a voter to list every address she has every occupied over the past decade rather than attesting to her residence. The Constitution does not permit the franchise to turn on such burdens. “[The] interest of the State ... is limited to the power to fix qualifications,” related to the applicant’s qualifications as a voter, and the right to vote is “too precious, too fundamental to be so burdened or conditioned.” *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668, 670 (1966). Requiring applicants to reconstruct criminal records imposes a condition on registration that is not tied to any voter qualification and that, in practice, excludes those unable to satisfy it.

In contrast, the current form improperly suggests to voters that *any* felony conviction is disqualifying. That is factually and legally wrong, and has the entirely predictable effect of deterring eligible voters from even attempting to register. Dkt. 243 (“Mahon-Haft Decl.”) ¶¶ 11-13; Dkt. 244 (“Rose Decl.”) ¶ 11 (online voting applicant “nervous that if [he] make[s] a mistake and [his] registration is improper, [he] may inadvertently be committing a crime”). The Commonwealth’s chosen alternative places the cost of any error squarely on the voter: under Va. Code § 24.2-1016, a materially false statement on a voter registration application is itself a Class 5 felony. Plaintiffs’ proposed revision, by contrast, accurately states the legal eligibility rule the Court has imposed and pairs the voter applicants’ attestation with the Commonwealth’s existing back-end record review against the prohibited table. The fact that Defendants prefer a flawed form to a corrected one is not a defense; it is a violation.<sup>7</sup>

Plaintiffs do not ask the Court to eliminate verification of felony status. They ask the Court to require Defendants to administer that requirement on the same terms as every other eligibility criterion. Proposed Order ¶ 8 (directing Defendants to administer eligibility “on the same terms ... as citizenship, age, residency, and competency”). Defendants already rely on front-end attestation and back-end verification for those criteria. There is no basis to treat felony status differently.

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<sup>7</sup> The voter registration form’s non-compliance has independent statutory consequences that the Opposition does not address. Defendants are silent on Plaintiffs’ showing (Mot. at 16) that the unchanged form violates the National Voter Registration Act (“NVRA”), 52 U.S.C. §§ 20507(a)(5)(A), 20508(b)(2), by failing to accurately reflect current eligibility criteria, and that the case-by-case “hold” process imposes nonuniform burdens forbidden by 52 U.S.C. §§ 20507(a), (b). Defendants’ silence concedes the point. The NVRA requires a uniform registration process and limits states to requiring only information necessary to determine eligibility. *See* 52 U.S.C. § 20508(b)(2). Defendants’ supplemental criminal-history regime imposes additional, selective burdens on one class of applicants and requires information that is not material to eligibility.

**C. Defendants Unlawfully Held The Named Plaintiffs' Registration Applications And Are Denying Ms. Johnson The Right To Vote**

Defendants' assertion that "Plaintiffs have not identified anyone whose eligible registration has been denied," Opp. at 4, is directly contradicted by the named Plaintiffs' experiences. This Court has already determined that the felony convictions which rendered Tati Abu King and Toni Heath Johnson ineligible "do not fall into 'felonies at common law,'" as the Court defined that term, and that both were being unlawfully disenfranchised on the basis of those convictions in violation of federal law. Memorandum Opinion at 37. Ms. Johnson's voter registration was placed on indefinite hold by the Smyth County registrar on June 15. Dkt. 241 ("King Decl."); Dkt. 242 ("Johnson Decl."). As of the date of this Reply, Ms. Johnson has not been registered in violation of the Injunction and state law.<sup>8</sup>

Mr. King's voter registration was similarly placed on an indefinite hold by the Fairfax County General Registrar on June 2, 2026. King Decl. ¶¶ 6-10. It was not until twenty-seven days later that Mr. King, in conjunction with counsel, was able to confirm through the Commonwealth's online voter portal that his registration had become active. Mr. King did not receive any notification from the Commonwealth that his application was no longer on hold or that it had been processed. *See supra* note 3. Defendants' response—that the Fairfax employee was "mis-informed," Opp. at 4—only confirms the problem. Mr. King interacted with more than one Fairfax official, including a supervisor, in one of the Commonwealth's most well-resourced counties. King Decl. ¶¶ 6-9. Ms. Johnson had the same experience with a "mis-informed employee" nearly two weeks later, in a different county. Johnson Decl. ¶¶ 3-6. Two named Plaintiffs, in two counties,

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<sup>8</sup> Virginia law requires that "[a]ny person who is not registered to vote, but would otherwise be a qualified voter, is entitled to register to vote as provided in this chapter. Any person who is registered to vote and is a qualified voter shall be entitled to vote in the precinct where he resides." Va. Code § 24.2-400.

met three separate registrar office personnel who were untrained on the Injunction. That is not the conduct of “mis-informed” employees. That is the predictable consequence of Defendants’ failure to train.

Moreover, an indefinite “hold” is effectively a denial. Defendants offered no timeline for resolving named Plaintiffs’ applications, and no commitment that those applications would be processed before the July 24 registration deadline—let alone before early in-person voting, which has been underway since June 18. Defendants’ disingenuous attempt to split hairs between their indefinite hold of Ms. Johnson’s application, and the outright refusal to register Ms. Johnson is both legally and practically meaningless—“[f]ailing to register will deny a right to vote.” *Vote.Org v. Callanen*, 89 F.4th 459, 482 (5th Cir. 2023); *see also United States v. Christie Indus., Inc.*, 465 F.2d 1002, 1007 (3d Cir. 1972) (explaining that “where an injunction does give fair warning of the acts that it forbids, it can[not] be avoided on merely technical grounds”). Labeling the disposition of unaccepted applications as a “hold” rather than a denial does nothing to enable eligible registrants to cast a vote. “When registration is a prerequisite to voting, to prevent registration prevents voting as effectually as excluding the voter by force from the voting place, or refusing his ballot for no just cause when offered at the polls.” *Peay v. Cox*, 190 F.2d 123, 125 (5th Cir. 1951).

#### **D. Defendants Have Not Trained Registrars Or Issued Public Guidance**

Despite their obligation to take “all affirmative steps necessary to comply with the Court’s directions,” *Coppedge v. Franklin Cnty. Bd. of Educ.*, 293 F. Supp. 356, 364 (E.D.N.C. 1968) (quoting *Babee-Tenda Corp. v. Scharco Mfg. Co.*, 156 F. Supp. 582, 587 (S.D.N.Y. 1957)), and their statement that they have “provide[d] guidance establishing the parameters of the Court’s injunction,” Opp. at 4, Defendants do not identify a single written instruction issued to general registrars, deputy registrars, or election officials directing them how to process applications

consistent with the Injunction. The Fairfax and Smyth Counties experiences Plaintiffs have documented confirm that, whatever “guidance” Defendants believe they have provided, it has not reached the registration desk, or has not succeeded in adequately preparing personnel.<sup>9</sup>

The recent experience of a class member further confirms the ongoing issue and its dire consequences. On June 26, declarant Mr. Speer was able to fill out and submit the voter registration form online (despite still having to answer the misleading, pre-Injunction questions of whether he had been convicted of a felony and whether his rights had been restored). Second Speer Decl. ¶ 2. The confirmation page did not confirm that he was successfully registered, but instead stated that he had “completed his application” and would receive “further information from [his] general registrar.” *Id.* ¶ 3. But when he called his “local voter registration” for more information, as directed by the submission page, the Portsmouth General Registrar’s Office was completely unaware of the Court’s order or of any guidance issued by the Commonwealth. *Id.* ¶ 4-5. The employee at the registrar’s office said that she could not help Mr. Speer or provide any information on his application, and that he would need to apply to have his rights restored. *Id.* When he called the phone number she provided, which was the number for the Governor’s rights restoration office, no one answered his call and the voice mailbox was full. *Id.* ¶ 5. Mr. Speer is “not sure what to do next” or “how to submit the required information to have [his] registration application processed so [he] can vote in time for the August primary.” *Id.* ¶ 6. This is the entirely predictable result of the sort of “gaping absence” of “memoranda or other formal systematic

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<sup>9</sup> Notably, Defendants did not provide any of the purported “guidance establishing the parameters of the Court’s injunction” (Opp. at 4) to Plaintiffs when Defendants issued it, despite Plaintiffs’ repeated requests and efforts to assist with and communicate about implementation. *See* Dkt. 240-1 at 1-2; Dkt. 240-2 at 4; *id.* at 11; Dkt. 240-4 at 1-2. Nor did they provide that guidance to Plaintiffs in the parties’ pre-motion correspondence, notwithstanding Defendants’ Rule 7(E) obligations to engage in a “good-faith effort to narrow the area of disagreement.”

communications” that the court in *Landman* held to constitute “a direct violation” of an injunction. *Landman v. Royster*, 354 F. Supp. 1292, 1298 (E.D. Va. 1973).

## **II. CASE-BY-CASE “ADDITIONAL EVALUATION” CONTRAVENES THE COURT’S CLEAR RULE**

In attempting to demonstrate compliance, Defendants rely on their two-tier categorization scheme: 181 “applicable” felonies that automatically disqualify, *plus* more than one hundred additional statutory offenses routed to “additional evaluation” by the Office of the Attorney General to determine—based on case-specific facts—whether the underlying conduct might have constituted a common-law felony in 1870. Opp. at 5-6; *see* Dkt. 240-11; Dkt. 240-12. Defendants present this scheme as the “only way” to comply with the Injunction. Opp. at 6. In fact, the Court already rejected it.

### **A. Defendants’ Two-Tier System For Classifying Common-Law Felonies Reintroduces The Very Complexity The Court Rejected**

When Defendants opposed summary judgment, they argued—as they do now—that implementing the Injunction would require “‘thousands’ of discrete inquiries to determine which modern felonies were also felonies at common law.” Memorandum Opinion at 16. The Court rejected that contention, holding that the enumerated list of eleven common-law felonies “define[d] that expression in concrete terms, solving any problem of specificity.” *Id.* at 16, 19.

Defendants then moved to clarify or alter the Injunction on the same grounds. The Court denied that motion as well, holding that the Injunction “provides Virginia ample time to implement the clear rule,” that the Injunction is “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 1, 4-5; 3/9/26 Tr. at 5:25-6:8.

The complications that Defendants have layered on with their two-tiered system have resulted in a parallel registration process for people with felony convictions that effectively denies

the franchise to certain people, completely contrary to the purpose of the Virginia Readmission Act. The right to vote is “too precious, too fundamental to be so burdened.” *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 668, 670 (1966).

**B. Defendants’ List Of Disqualifying Felonies Sweeps Far Beyond The Injunction And Lacks Any Support In The Evidentiary Record**

Even on its own terms, Defendants’ scheme cannot stand. They do not identify the standards the Office of the Attorney General will apply in conducting case-by-case “additional evaluation”; the timeline within which any individual application will be resolved; the process by which applicants will be notified of the result, or permitted to contest it; or any commitment that pending “additional evaluation” applications will be resolved before the July 24 voter registration deadline or the August 4 primary.

That silence is not an oversight; it is the design. The “hold” exists because Defendants have refused to revise the voter registration form to ask the right question—and refused to categorize Virginia’s felony statutes against the eleven common-law felonies in a single, published list. The Court placed that categorization burden on Defendants, *not* on individual voters at the registrar’s desk and *not* on class members consigned to an indefinite review queue governed by the Office of the Attorney General. *See* Dkt. 223.

Tellingly, Defendants’ Opposition does not identify the methodology by which the Office of the Attorney General categorized the 181 “applicable” offenses. Plaintiffs requested that methodology repeatedly. *See* Dkt. 240-9 at 3, 240-2 at 1. Defendants declined to share it. The result is an opaque list that includes offenses with no plausible common-law analog—including the illegal use of tear gas, Va. Code § 18.2-312; charitable gaming penalties, Va. Code § 18.2-340.37(C); removal of a catalytic converter, Va. Code § 18.2-146; and lottery ticket theft, Va. Code § 58.1-4014(C). *See* Dkt. 240-11. Having refused to engage with Plaintiffs on this exact

issue throughout this litigation, in the Court-ordered supplemental briefing on remedies, and after Plaintiffs secured the relief they litigated for years, Defendants cannot now simply fashion a non-compliant list of “applicable” offenses and present it as the final word.

Rather than making any attempt to defend the substance of their overbroad list of disqualifying offenses, Defendants suggest that Plaintiffs’ position is internally inconsistent because it does not treat as automatically disqualifying the 238 present-day Virginia statutory felonies that Professor Hessick determined could not be definitively classified as common-law felonies. Opp. at 3, 6. There is no inconsistency. The Court’s Injunction—not Professor Hessick’s analysis—is the governing rule. Injunction ¶ 4 (enumerating the eleven felonies at common law in 1870). Plaintiffs apply that rule straightforwardly: a present-day Virginia statutory felony is disqualifying only if it corresponds to one of the eleven enumerated common-law felonies, and ambiguity is resolved in favor of registration, consistent with the Court’s holding that the Injunction is “clear” and does not require case-by-case adjudication. Dkt. 235 at 4-5. Defendants’ attempt to manufacture a conflict between Plaintiffs and their own expert is, like much of the Opposition, beside the point.

### **III. DEFENDANTS’ EXCUSES FOR NONCOMPLIANCE ARE UNAVAILING AND THEIR “FIXES” ARE INSUFFICIENT**

The Court need not credit Plaintiffs’ characterization of Defendants’ admissions to grant relief. It need only look at what Defendants still have not done.

#### **A. Defendants’ Purported Fixes Came After June 1—And After Eligible Voters Were Already Turned Away**

Defendants point to three corrections—the Frequently Asked Questions page (corrected after June 4, *see* Dkt. 240-10 at 4; Dkt. 240-9 at 1), the “How to Register” page (same), and the online voter registration portal block (purportedly corrected at some unspecified date after June 15, *see* Opp. at 4; Dkt. 244 (“Rose Decl.”) ¶ 12)—as proof of compliance. Opp. at 2. All three

corrections came after the stipulated June 1 deadline. All three came after eligible voters had already been turned away or blocked. *See* King Decl. (June 2); Johnson Decl. ¶¶ 4-6 (June 15); Rose Decl. ¶ 12; Dkt. 245 (“Speer Decl.”) ¶ 7. And Defendants’ own representation is that their underlying process remains incomplete and will, at the earliest, become “operational by June 26”—well past the date by which the Commonwealth itself agreed to comply. *Opp.* at 3.

Defendants assert that class members Mr. Rose and Mr. Speer were not “denied” voter registration because they could have tried to register “through other means (i.e. through the Department of Motor Vehicles online portal, or through a paper application).” *Opp.* at 4. That misunderstands both the Injunction and federal law. The Injunction prohibits Defendants from “deny[ing] a person attempting to register to vote.” Injunction ¶ 4. Categorically blocking class members from completing the online registration application—a channel the Commonwealth itself maintains and holds out to the public—is a denial. The National Voter Registration Act of 1993, in turn, requires uniform processing across registration channels. 52 U.S.C. §§ 20507(a), (b). Class members should not have to try more than one means of registration to vindicate their fundamental rights. Each channel the Commonwealth holds out to the public—online, in-person, DMV, and mail-in—must be a fully effective path to registration.

**B. Defendants Cannot Excuse Non-Compliance By Recasting Their Burden As Plaintiffs’**

Confronted with their non-compliance, Defendants attempt a sleight of hand: they argue that Plaintiffs should have flagged errors faster, “check[ed] again before filing,” and identified class members whose registration was denied. *Opp.* at 2, 4. That inverts the Injunction, which commands Defendants—even if Plaintiffs do nothing whatsoever—to refrain from denying registration except for those convicted of one of the eleven enumerated common-law felonies. Injunction ¶ 4. Plaintiffs have no obligation to police the Commonwealth’s compliance in real

time, to test each iteration of Defendants’ webpages, or to wait for Defendants to fix one error before seeking compliance with the Court’s order. *See De Simone v. VSL Pharms., Inc.*, 36 F.4th 518, 529 (4th Cir. 2022) (a defendant’s own actual or constructive knowledge of a violation—not the movant’s diligence in uncovering it—warrants enforcement).

Worse, Defendants’ burden-shifting rebounds on them. The “fixes” Defendants tout in the Opposition—the corrected Frequently Asked Questions page, the corrected “How to Register” page, the corrected online-portal block—were made *only after* Plaintiffs flagged the error, and in every instance *after* June 1. *See* Opp. at 2 (acknowledging a Board of Elections website error was corrected after Plaintiffs alerted Defendants); Dkt. 240-10 at 4; Rose Decl. ¶¶ 12-13 (post-June 1 online portal block); Speer Decl. ¶¶ 7-8 (same). A pattern of post-hoc, reactive corrections is not compliance. Compliance demands “energetic steps to see that the orders of the court [are] carried out” and “all affirmative steps necessary to comply with the court’s directions.” *Coppedge*, 293 F. Supp. at 364 (quoting *Babee-Tenda Corp.*, 156 F. Supp. at 587). Defendants have done neither.

**C. Defendants’ “Independent Registrars” Argument Does Not Insulate Them From The Injunction**

Defendants argue that local registrars are not “[their] election officials” and that Defendants “do not control registrars’ offices.” Opp. at 4. The argument fails on its own terms—and on the face of the docket.

Defendants include the General Registrar of Fairfax County and the General Registrar of Smyth County, both sued in their official capacities. Both are bound by the Injunction. *See* Fed. R. Civ. P. 65(d)(2). It is in the Fairfax County registrar’s office where named Plaintiff Tati Abu King’s voter registration was placed on indefinite hold on June 2; it is in the Smyth County registrar’s office where the same was done to named Plaintiff Toni Heath Johnson on June 15.

King Decl. ¶¶ 6-10; Johnson Decl. ¶¶ 4-7. Defendants cannot disclaim responsibility for their own unlawful conduct.

In any event, a state agency cannot avoid an injunction by pointing to nominally independent subordinates. As *Landman* held, government officials’ “failure to disperse information and to supervise the implementation of the Court’s order constitutes a direct violation of the same.” 354 F. Supp. at 1298. If, as Defendants now suggest, registrars are operating without clear, consistent guidance—that is itself the Injunction violation. The remedy is the written guidance Plaintiffs have requested and that Defendants have agreed to. See Joint Stipulation ¶ 5; Mot. at 21; *Landman*, 354 F. Supp. at 1298 (stating that “there is an obvious need for clear and precise guidance” when fundamental changes in the established order are instituted, as is the case here).

**D. Defendants’ Oaths To Uphold The Virginia Constitution Do Not Excuse Their Non-Compliance**

Defendants invoke their officers’ oaths to uphold the Virginia Constitution, suggesting they obligate the Commonwealth to “continu[e] to disallow registration by felons who committed crimes that correspond to felonies as they existed in 1870.” Opp. at 6-7. But the obligation imposed by Article II, § 1 to disqualify persons convicted of a felony (at common law) from voting unless their rights have been restored does not supersede the obligation of Article II, § 2, which requires the Commonwealth to “provide by law for the registration of all persons otherwise qualified to vote” and “ensure that the opportunity to register is made available.” Va. Const. art. II, § 2; see also Va. Code § 24.2-400 (“Any person who is not registered to vote, but would otherwise be a qualified voter, is entitled to register”).

Defendants’ two-tier system honors none of these obligations. It categorically disqualifies voters whose convictions correspond to no common-law felony, in violation of § 1 as modified. It

places others on indefinite “additional evaluation” hold, in violation of § 2’s command. The Virginia Constitution does not require that result. Defendants have chosen it.

**E. The Proposed November 2026 Constitutional Amendment Does Not Moot—And Cannot Cure—Defendants’ Non-Compliance**

In a closing aside, Defendants suggest that “[i]f the People of the Commonwealth adopt the [proposed] amendment, the injunction will be moot.” Opp. at 6. That is not how mootness works, and the amendment would not cure non-compliance in any event.

As an initial matter, a defendant’s voluntary cessation of *some* unlawful conduct—let alone the speculative possibility of a future constitutional change—does not deprive a federal court of jurisdiction to enforce its judgment. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000); *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012); *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982). Defendants may not leverage their own ongoing non-compliance, or the prospect of a future amendment they hope will overtake the Court’s order, to escape the Injunction’s commands. *See Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 450 (1911) (explaining that a party is not permitted to “by his own act of disobedience set [court orders] aside”). In any event, even if the proposed amendment is adopted in November, it would not retroactively cure (i) the disenfranchisement of class members through the August 4 primary; (ii) Defendants’ continuing failure to revise the voter registration form; (iii) the unlawful “hold” of named Plaintiff Johnson’s voter registration application; or (iv) the Court’s prior determination that Defendants are violating the Virginia Readmission Act. Memorandum Opinion at 37. The amendment, as Defendants describe it, addresses re-enfranchisement after incarceration; it has nothing to do with the Readmission Act rule the Court has enforced here.

The Injunction governs now. Defendants should be required to comply now.

### **CONCLUSION**

For the foregoing reasons, and for the reasons set forth in Plaintiffs' Motion to Enforce the Court's Order, Plaintiffs respectfully request that the Court grant their Motion, find that Defendants have failed to comply with the Injunction, and order Defendants to take the steps outlined in Plaintiffs' Proposed Order, Dkt. 239-1, by July 10, 2026.

Dated: June 29, 2026

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**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on June 29, 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.

*/s/ Brittany Blueitt Amadi*  
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