

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

TATI ABU KING, *et al.*,  
Plaintiffs,

v.

Civil Action No. 3:23cv408

JOHN O'BANNON, in his official  
capacity as Chairman of the State Board  
of Elections for the Commonwealth of  
Virginia, *et al.*,  
Defendants.

**ORDER**

This matter comes before the Court on a notice of constitutional questions filed by the defendants. (ECF No. 200.) On June 26, 2023, the plaintiffs, Tati Abu King and Toni Heath Johnson,<sup>1</sup> filed this class action challenging the provision in Virginia's constitution which disenfranchises all felons. (ECF No. 1 ¶ 67 (citing Va. Const. Art. II, § 1).) Under the plaintiffs' theory, Virginia's constitution conflicts with the federal Virginia Readmission Act of 1870, which permits Virginia to disenfranchise only those convicted of "felonies at common law" as defined in 1870. (See ECF No. 96 ¶¶ 112–126.) The defendants, a group of Virginia election officials, dispute the plaintiffs' interpretation of the Virginia Readmission Act.<sup>2</sup>

After holding a summary judgment hearing, the Court ordered the parties to file supplemental briefing. (ECF No. 182.) The briefing concerned two issues in this case: (1) what

---

<sup>1</sup> This suit initially had two additional named plaintiffs: an individual named Melvin Lewis Wingate and a nonprofit called Bridging the Gap in Virginia ("Bridging the Gap"). (See ECF No.1.) Wingate left the suit on August 31, 2023. (ECF No. 58.) Further, on March 18, 2024, this Court dismissed Bridging the Gap for lack of standing. (ECF No. 88.)

<sup>2</sup> In their answer, the defendants raised five affirmative defenses: sovereign immunity, non-judiciability under the political questions doctrine, unenforceability by private parties, failure to state a claim, and failure to establish a class. (ECF No. 103 ¶¶ 157–161.)

crimes are felonies at common law and (2) what form a potential injunction might take. (*Id.*) On November 20, 2024, the defendants filed a supplemental brief which raised three constitutional concerns related to this case. (ECF Nos. 199, 200.) The defendants then immediately filed a notice of constitutional questions pursuant to Federal Rule of Civil Procedure 5.1. (ECF No. 201.)

Under Rule 5.1(a), a “party that files a pleading, written motion, or other paper drawing into question the constitutionality” of a federal statute must file a notice and then serve “the Attorney General of the United States.” Upon such notice, the Court “must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.” Fed. R. Civ. P. 5.1(b).

To fulfill its obligation under Rule 5.1, the Court CERTIFIES the following questions to the Attorney General of the United States:

- 1) Whether the Virginia Readmission Act violates the Equal Footing Doctrine by imposing restrictions on Virginia’s sovereignty that do not apply equally to all its sister States. *See, e.g., Coyle v. Smith*, 221 U.S. 559, 573 (1911).
- 2) Whether the Virginia Readmission Act violates the Anticommandeering Doctrine because it purports to prohibit Virginia from amending its constitution in certain respects. *See, e.g., New York v. United States*, 505 U.S. 144, 175–76 (1992); *Murphy v. National Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1478 (2018).
- 3) Whether the Virginia Readmission Act is unconstitutionally vague because it fails to provide “fair notice” of which modern crimes would constitute a felony at common law. *See, e.g., United States v. Johnson*, 576 U.S. 591, 595 (2015); *Sessions v. Dimaya*, 584 U.S. 148, 183–84 (2018) (Gorsuch, J., concurring in the judgment).

To this end, the Court DIRECTS the Clerk to serve this Order on the United States Attorney for the Eastern District of Virginia for transmittal to the Attorney General of the United States. *See* Fed. R. Civ. P. 5.1; 28 U.S.C. § 2403.

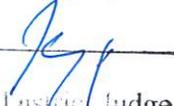
For the avoidance of doubt, this certification does not determine whether these questions were timely raised, whether these questions were earlier waived, or whether these questions were

otherwise lost. Further, the Court expresses no opinion on the validity of these constitutional claims.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 25 November 2025  
Richmond, VA

*/s/*   
John A. Gibney, Jr  
Senior United States District Judge

RETRIEVED FROM DEMOCRACYDOCKET.COM