

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

SOPHIE ROGERS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Civil Action No. 1:19-cv-1149-RDA/IDD
	)	
v.	)	
	)	
VIRGINIA STATE REGISTRAR, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANT VIRGINIA STATE REGISTRAR’S  
RESPONSE TO PLAINTIFFS’ MOTION  
TO ENFORCE AND CORRECT ORDER**

**INTRODUCTION**

Defendant Virginia State Registrar (defendant) has no personal interest in asking marriage license applicants about their race or in defending a requirement that such a question be asked. The defendants in this case are simply three government officials who are doing the best they can to fulfill their obligations under both state law and the Constitution.

Defendant also intends, of course, to fully comply with this Court’s order of October 11, 2019. For the reasons explained below, defendant believes she has done so, including by continuing to use the revised marriage form distributed on September 13, 2019 (September 13 revised form). Given the differing opinions on that matter, however, defendant joins with plaintiffs in requesting this Court’s prompt guidance about the scope of its injunction.

**ARGUMENT**

**I. Defendant understands this Court’s decision as not requiring modification of the September 13 revised form**

This Court’s order enjoins “the enforcement of Va. Code Ann. § 32.1–267(A) *to the extent it burdens individuals’ fundamental right to marry.*” Order of October 11, 2019 at 18

(ECF No. 49) (October 11, 2019 order) (emphasis added). While the quoted words, standing alone, may be subject to interpretation, defendant does not understand the Court’s ruling as holding that any inquiry about race on a marriage license application—removed from any requirement that the applicant provide the information—imposes such a burden. That understanding is based on several statements in this Court’s order, as well as the broader conduct of this litigation.

First, in stating its conclusion, the Court wrote that “*requiring* Plaintiffs to disclose their race in order to receive marriage licenses burdens their fundamental right to marry.” October 11, 2019 order at 18 (emphasis added). In addition, this Court indicated that the September 13 revised form provided “temporary *relief*” to plaintiffs because, under that form, “all Plaintiffs may seek marriage licenses . . . without having to disclose their race.” *Id.* at 12 (emphasis added). The Court also indicated that “[t]his relief”—although “not permanent” and insufficient for some of the plaintiffs—“*resolve[d]* the injuries of Plaintiffs Rogers and Churchill,” who were married last Saturday after (presumably) having obtained a marriage license using the September 13 revised form. *Id.* at 12 & n.3 (emphasis added); see *Virginia Couple Marries After Helping Change Law*, N.Y. Times, at 17 (Oct. 20, 2019). In view of these statements, defendant understood the Court’s order enjoining “the enforcement of Va. Code Ann. § 32.1–267(A) to the extent it burdens individuals’ fundamental right to marry” as forbidding the use of any form (like the pre-September 13, 2019 version) that *mandates* an answer to the race query—not forms (like the September 13 revised form) that inquire about race but that do not “requir[e] [applicants] to disclose their race in order to receive marriage licenses.” October 11, 2019 order at 18.

Defendant’s understanding is consistent with the broader conduct of this litigation. Plaintiffs have repeatedly affirmed that their constitutional challenge focused on a statute

mandating that marriage-license applicants disclose their race as a condition of getting married. See, *e.g.*, Reply Mem. in Supp. of Pls.’ Mots. for S.J. and Permanent Inj. & Mem. in Opp’n to Defs.’ Mot. to Dismiss at 2 (ECF No. 41) (Plaintiffs’ Reply) (“This lawsuit seeks declaratory and injunctive relief from the requirement of Va. Code Ann. § 32.1–267 that part of ‘the information *required to complete the application for marriage license,*’ . . . is the applicant’s labeling of himself or herself by race.”) (quoting Va. Code Ann. § 20–16) (citation omitted) (emphasis added); see also Mem. in Supp. of Defs.’ Mot. to Dismiss at 14–15 (ECF No. 30) (quoting other examples). In addition, after the September 13 revised form was issued, “[p]laintiffs Rogers and Churchill *conceded* that they no longer require[d] immediate injunctive relief,” October 11, 2019 order at 6 (emphasis added); accord Plaintiffs’ Reply at 2, and defendant understood plaintiffs to have abandoned (or at least elected not to pursue) any “mere inquiry” theory in their response to defendants’ motion to dismiss. See *id.* at 7 (asserting that “the ‘mere-inquiry’ issue . . . is a mere distraction.”).

## **II. Defendant is simply endeavoring to meet her obligations under the Constitution and Virginia law**

From the inception of this litigation, defendant has been driven by two objectives: (1) ensuring no one is required to disclose their race as a condition of getting married; and (2) complying with her obligations under the federal Constitution and Virginia law. See October 11, 2019 order at 15 (emphasizing that “Clerks of the Court are required to uphold the statute”). Defendant’s conduct since the Court issued its decision—specifically, not further revising the official state form in response to this Court’s order—has been in service of both objectives. Insofar as the Court concluded that the statute “unambiguously” requires “applicants for marriage licenses . . . [to] disclose their race in order to be issued a marriage license,” October 11, 2019 order at 16, defendant understands this Court as having agreed that Virginia Code

Annotation § 32.1–267(A) “requires a question about race . . . be asked.” Attorney General Memorandum at 2. As described above, defendant does not understand the Court’s October 11, 2019 order as concluding that asking such a question violates the Constitution, and, absent such a holding, defendant believes that state law continues to require that the official state form include one.

If defendant has misunderstood the scope of the Court’s decision and injunction, defendant will promptly revise the marriage form accordingly. As defendant has repeatedly stated, defendant has no interest in burdening anyone’s right to marry and she would, in the absence of any obligation imposed by state law, happily omit any inquiry about race from the form. Defendant hopes (and expects) that the General Assembly will repeal the statute in its entirety during the next legislative session, thus allowing defendant to issue and use a new form that does not include any inquiry into race. Until then, defendant is simply endeavoring to comply with her legal obligations under the Constitution and Virginia law. Defendant appreciates the Court’s assistance in clarifying those obligations and respectfully requests that the Court do so as promptly as possible.

