

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

TAMARA R., *et al.*,

*Plaintiffs,*

v.

NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION, *et al.*,

*Defendant.*

Civil Action No. 23-0365 (TJK)

**JOINT MOTION FOR APPROVAL AND ENTRY OF  
PROPOSED CONSENT ORDER**

Plaintiffs Wendilee Walpole Lassiter and Plaintiff Tamara R., on behalf of her minor child, L.R. (“Plaintiffs”) and Defendants National Archives and Records Administration (“NARA”), Debra Steidel Wall, in her official capacity as Acting Archivist of the United States and Head of NARA, and National Archives Museum (together, the “Parties”) jointly move for approval and entry of the Proposed Consent Order attached herewith. In support of this motion, the Parties state as follows:

1. This action involves Plaintiffs’ claims under the First Amendment, Fifth Amendment, and Religious Freedom Restoration Act in connection with their January 20, 2023 visit to the National Archives Museum. *See* Compl., ECF No. 1. Plaintiffs allege that they were instructed by security officers during their visit to remove or cover their attire because of their pro-life messages. *See id.*

2. Plaintiffs anticipated moving for a preliminary injunction and temporary restraining order in light of Plaintiff Lassiter’s intent to return to the National Archives Museum on February 17, 2023, and Plaintiff L.R.’s intent to return to the National Archives Museum in January 2024.

3. On February 13, 2023, the Parties have agreed to the Proposed Consent Order attached herewith in order to resolve Plaintiff Lassiter and Plaintiff L.R.’s concerns that underly the basis of their anticipated motion for preliminary injunction and temporary restraining order. The Parties refer to the attached Proposed Consent Order for a description of its terms. The Parties therefore respectfully file this motion asking that the Court approve and enter the Parties’ Proposed Consent Order.

4. Before approving a proposed consent decree, or consent judgment, “a court must satisfy itself of the settlement’s overall fairness to beneficiaries and consistency with the public interest.” *Citizens for a Better Env’t v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983) (internal quotation marks omitted). Specifically, the Court must “determine that the settlement is fair, adequate, reasonable and appropriate under the particular facts and that there has been valid consent by the concerned parties.” *Id.* (citation omitted); *see also Massachusetts v. Microsoft*, 373 F.3d 1199, 1206 n.1 (D.C. Cir. 2004) (noting that any consent decree must “fairly and reasonably resolve the controversy in a manner consistent with the public interest”) (internal quotations and citation omitted); *SEC v. Hitachi, Ltd.*, Civ. A. No. 15-1573 (CKK), 2015 WL 7566666, at \*2 (D.D.C. Nov. 24, 2015). Nevertheless, as long as a decree does not “make a mockery of judicial power,” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995), an agreement of the parties should generally be accepted as “voluntary settlement of civil controversies is in high judicial favor,” and “[n]ot only the parties, but the general public as well, benefit from the saving of time and money that results from the voluntary settlement of litigation.” *Citizens for a Better Env’t*, 718 F.2d at 1126. “In reviewing the proposed consent judgment for approval and entry, the Court considers (1) whether there was valid consent by the parties to the proposed consent judgment; (2) whether the proposed consent judgment is fair, reasonable, and adequate; and

(3) whether the proposed consent judgment is consistent with the public interest.” *Hitachi*, 2015 WL 7566666, at \*2. Based on these factors, the Court should approve and enter the Parties’ Amended Stipulation of Dismissal.

5. *First*, there is valid consent by the parties to the Proposed Consent Order. The Proposed Consent Order is a product of good-faith, arms-length negotiation. The Parties took into consideration the litigation risks, the benefits to both parties avoiding those risks and of protracted litigation, and the public interest, including that the Proposed Consent Order sends a message of NARA’s intention and commitment to upholding Plaintiffs’ constitutional rights. The Parties consent to the entrance of the Proposed Consent Order, and the Parties are represented by competent counsel.

6. *Second*, the Proposed Consent Order is fair, reasonable, and adequate. The terms and conditions of the Proposed Consent Order represent the compromise that the Parties have arrived at following negotiations regarding the litigation risks associated with Plaintiffs’ anticipated motion for a preliminary injunction and temporary restraining order and the benefits of avoiding those risks.

7. *Third*, the Proposed Consent Order is consistent with the public interest. No third parties will be injured thereby, and the Parties are not aware of any third party who has objected to entry herewith. The Proposed Consent Order will also serve to memorialize NARA’s intention and commitment to upholding Plaintiffs’ constitutional rights.

8. Thus, for the reasons stated above, the Parties respectfully ask the Court to approve and enter the Proposed Consent Order.

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**CONSENT ORDER**

**Stipulation of Agreed Facts**

The parties hereby stipulate to the following agreed facts:

1. Plaintiffs allege in Paragraph 5 of their Complaint that on January 20, 2023, they were “subject to a pattern of ongoing misconduct” within the National Archives Museum by Defendants, the National Archives security officers, and Defendants John Does and Jane Doe, who allegedly targeted Plaintiffs and intentionally chilled their religious speech and expression by requiring Plaintiffs to remove or cover their attire because of their pro-life messages.

2. The National Archives and Records Administration (“NARA”) represents that its policy expressly allows all visitors to wear t-shirts, hats, buttons, etc., that display protest language, including religious and political speech.

3. NARA regrets the events of January 20, 2023, and will remind all NARA’s security officers at NARA’s facilities across the country of the rights of visitors and of the policy set forth in Paragraph 2 above.

4. Plaintiff Lassiter intends to return to the National Archives Museum wearing clothing and other attire containing pro-life messaging on February 17, 2023, and is fearful that she will be targeted and will not be permitted to exercise her First Amendment right to freedom of speech.

5. Plaintiff L.R. intends to return to the National Archives Museum wearing clothing and other attire containing pro-life messaging during her next visit in January 2024 for the 51st Annual March for Life and is fearful that she will be targeted and will not be permitted to exercise her First Amendment right to freedom of speech.

### **Consent Preliminary Injunction**

The parties consent to the following to obviate the need for motions practice on Plaintiffs' prospective request for provision injunctive relief. Accordingly, IT IS HEREBY ORDERED THAT:

1. Pursuant to Federal Rule of Civil Procedure ("Rule") 65(a), Defendants, their officers, successors in office, employees, and agents are PRELIMINARILY ENJOINED from prohibiting visitors from wearing t-shirts, hats, buttons, etc., that display protest language, including religious and political speech,<sup>1</sup> which preliminary injunction shall terminate upon the earliest of (i) a final judgment in this action; (ii) further order by this Court, or (iii) January 19, 2025.

2. NARA shall provide all security officers, as well as all other NARA personnel who interact with the public, including docents, volunteers, museum staff, and archivists who interact with the public in NARA research rooms, at every NARA facility with a copy of this Consent Order on or before February 16, 2023. NARA shall further reiterate to all NARA security officers,

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<sup>1</sup> Nothing in this Consent Preliminary Injunction addresses clothing containing profanity.

as well as all other NARA personnel who interact with the public, including docents, volunteers, museum staff, and archivists who interact with the public in NARA research rooms, that NARA policy expressly allows all visitors to wear t-shirts, hats, buttons, and other similar items, that display protest language, including religious and political speech.

3. At a time mutually agreed by NARA and Lassiter, NARA shall provide Lassiter a personal tour of the National Archives Museum on February 17, 2023, and NARA staff shall extend Lassiter a personal apology on that tour regarding the events alleged in Paragraph 1 of the Stipulation of Agreed Facts above.

4. On a date and time mutually agreed by NARA and L.R., NARA shall provide L.R. a personal tour of the National Archives Museum on a time and date to be mutually agreed, and NARA staff shall extend L.R. a personal apology on that tour regarding the events alleged in Paragraph 1 of the Stipulation of Agreed Facts above.

5. This case is hereby referred to the D.C. Circuit's Mediation Program for a period of 90 days, for purposes of exploring a potential settlement. The parties shall promptly notify the Court if a settlement agreement is reached and shall inform the Court when mediation concludes.

It is FURTHER ORDERED that this action, including all deadlines, is STAYED during the mediation period and pending further Order of the Court

SO ORDERED, this \_\_\_\_\_ day of February, 2023.

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HON. TIMOTHY J. KELLY  
United States District Judge