

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

LUTHER SCOTT, JR., and the LOUISIANA)
STATE CONFERENCE OF THE NAACP, for)
themselves and all other persons similarly)
situated)

Plaintiffs,)

v.)

J. THOMAS SCHEDLER, in his official capacity)
as the Louisiana Secretary of State, RUTH)
JOHNSON, in her official capacity as Secretary)
of the Louisiana Department of Children and)
Family Services, and BRUCE D. GREENSTEIN,)
in his official capacity as Secretary of the)
Louisiana Department of Health and Hospitals)

Defendants.)
_____)

CIVIL ACTION NO. 2-11-00926
JTM-JCW
SECTION "H"

STATEMENT OF INTEREST OF THE UNITED STATES

I. INTRODUCTION

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517, because this case presents an important question regarding the proper construction of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg *et seq.* In addition to providing a private right of action, Congress gave the Attorney General broad authority to enforce the NVRA. *See* 42 U.S.C. § 1973gg-9(a). Pursuant to that enforcement authority, on July 12, 2011, the United States brought an enforcement action in the U.S. District Court for the Middle District of Louisiana against the State of Louisiana, Louisiana Secretary of State J. Thomas Schedler, the Louisiana Department of Health and Hospitals (“DHH”) and its Secretary, Bruce D. Greenstein, and the Louisiana Department of Children and Family Services (“DCFS”) and its Secretary, Ruth Johnson. *See United States v. Louisiana*, Civil Action No. 3:11-CV-00470-JJB-DLD (M.D. La.). The United States’ complaint alleges that the defendants have failed to provide voter registration opportunities and assistance to eligible applicants for and recipients of public assistance and disability services in Louisiana, as required by Section 7 of the NVRA, 42 U.S.C. § 1973gg-5. The Complaint filed by private parties before this Court likewise alleges that Secretaries Schedler, Greenstein, and Johnson, each sued in their official capacity (“Defendants”), have failed to ensure the provision of voter registration services to public assistance clients and applicants as required by Section 7 of the NVRA. In this as in all NVRA cases, the United States has a strong interest in ensuring that the statute is vigorously and uniformly enforced.

Each of the Defendants’ motions for partial summary judgment asks this Court to decide that Louisiana’s public assistance agencies may limit NVRA-mandated voter registration opportunities solely to those clients who appear at those agencies in person. *See* Dkt. 88-3 at 1; Dkt. 94-6 at 5; Dkt. 97-5 at 1. In other words, they argue that such agencies can lawfully refuse

to offer voter registration to persons who apply for public assistance by phone, internet, or mail.

Id. As explained below, however, Defendants’ argument is contrary to the NVRA’s plain language and would lead to absurd results that undermine Congress’s intent that States offer comprehensive voter registration opportunities through public assistance and disability services offices. Defendants’ argument should be rejected.

II. STATUTORY FRAMEWORK

Congress passed the NVRA to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” 42 U.S.C. § 1973gg(b). Congress found that the right to vote is fundamental; that Federal, State, and local governments have a duty to promote the exercise of that right; and that discriminatory and unfair registration laws and procedures can negatively affect voter participation in Federal elections and disproportionately harm voter participation by groups including the poor and persons with disabilities. *See id.* at § 1973gg(a); *Harkless v. Brunner*, 545 F.3d 445, 449 (6th Cir. 2008).

The NVRA thus requires States to provide three methods of voter registration for Federal elections: registration as part of the application or renewal form for a driver’s license; registration by mail; and registration through State-designated voter registration agencies. *See* 42 U.S.C. §§ 1973gg-3 – 1973gg-5; *Young v. Fordice*, 520 U.S. 273, 275 (1997). States must “establish procedures” to provide registration through each of these methods. *Id.* at § 1973gg-2(a).¹

This case involves agency-based registration. Under Section 7 of the NVRA, States must designate as voter registration agencies (“VRAs”) all offices in the State that provide 1) public

¹ While certain States are exempt from these requirements, *see* 42 U.S.C. § 1973gg-2(b), Louisiana is not one of them.

assistance, and 2) State-funded programs primarily serving persons with disabilities. 42 U.S.C. § 1973gg-5(a)(2)(A)-(B).² Congress designed the agency-based registration provisions “specifically to increase the registration of ‘the poor and persons with disabilities who do not have driver’s licenses and will not come into contact with the other principal place to register under this Act [motor vehicle agencies].” *Harkless*, 545 F.3d at 449 (quoting H.R. CONF. REP. NO. 103-66, at 19 (1993), as reprinted in 1993 U.S.C.C.A.N. 140, 144).

In establishing these mandatory designations, “Congress rejected a system that would ‘permit States to restrict their agency program and defeat a principal purpose of this Act – to increase the number of eligible citizens who register to vote.’” *United States v. New York*, 700 F. Supp. 2d 186, 200 (N.D.N.Y. 2010) (quoting H.R. CONF. REP. NO. 103-66, at 19 (1993)). Thus, Congress specifically rejected giving States the choice of whether to designate public assistance agencies and certain disability services offices, explaining that “[t]he only way to assure that no State can create an agency registration program that discriminates against a distinct portion of its population is to require that the agencies designated in each State include an agency that has regular contact with those who do not have driver’s licenses.” H.R. CONF. REP. NO. 103-66, at 19 (1993).

Beyond designation of these “mandatory” VRAs under Section 7(a)(2), each State must also designate additional offices as VRAs under Section 7(a)(3), but may decide which Federal, State, local, or non-governmental offices to select; Federal and nongovernmental offices may be designated only by agreement with those offices. See 42 U.S.C. § 1973gg-5(a)(3)(A)-(B); *Nat’l Coalition for Students with Disabilities Educ. and Legal Defense Fund v. Gilmore*, 152 F.3d 283,

² Although not at issue in this case, Section 7(c) mandates that Armed Forces recruitment offices of the United States also be treated as designated voter registration agencies for NVRA purposes. See 42 U.S.C. § 1973gg-5(c)(2).

285-86 (4th Cir. 1998) (describing the NVRA’s mandatory and discretionary designation requirements).³

The responsibilities of States generally and designated VRAs specifically are set out in NVRA Sections 4 and 7. Section 4(a), captioned, “In general,” sets out the three modes by which voter registration opportunities are expanded by the NVRA:

- (1) by application made simultaneously with an application for a motor vehicle license . . .
- (2) by mail application . . . ; and
- (3) by application in person . . .
 - (B) at a Federal, State, or nongovernmental office designated under [Section 7].

42 U.S.C. § 1973gg-2.

As this paragraph’s title suggests, Section 4 does no more than identify a State’s *general* obligation to “establish procedures” for voter registration in each of the three circumstances. Thus, if prior to the enactment of the NVRA, a State did not already offer voter registration through each of these three of these methods, Section 4 required States to “adopt procedures” to do so “in addition to any other method of voter registration provided for under State law.”

42 U.S.C. § 1973gg-2(a). The NVRA’s subsequent three provisions set forth detailed requirements regarding motor-voter registration (Section 5), mail-in registration (Section 6), and agency-based registration (Section 7). *Id.* at §§ 1973gg-3 - 1973gg-5.

Thus, Section 7 dictates what designated voter registration agencies must actually do. Section 7(a)(4) requires every designated VRA to distribute mail voter registration application forms, offer assistance in completing such forms, and accept and transmit completed registration forms to the appropriate State election official. 42 U.S.C. § 1973gg-5(a)(4)(A); *see also New*

³ Such “discretionary” VRAs may include public schools, libraries, offices of city and county clerks, marriage license bureaus, fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, additional offices providing disability services not already covered by the NVRA, as well as non-governmental and Federal offices. *See* 42 U.S.C. § 1973gg-5(a)(3)(B)(i)-(ii).

York, 700 F. Supp. 2d 186 at 201 (stating that “[o]ffices designated as mandatory or discretionary VRAs must . . . furnish voter registration application forms to applicants, offer applicants assistance with the completion of those forms, and accept completed forms for transmittal”).⁴

Section 7(a)(6) imposes additional and more particularized obligations on a subset of designated VRAs. *See* 42 U.S.C. 1973gg-5(a)(6). Under this provision, those VRAs “that provide[] service or assistance in addition to conducting voter registration” must also “distribute with each application for such service of assistance, and with each recertification, renewal or change of address . . . the mail voter registration application form” unless “the applicant declines in writing to register to vote.” *Id.* Section 7(a)(6) also requires such VRAs to provide their clients and applicants with a form that advises VRA clients of rights and opportunities with respect to voter registration. *Id.* Thus, “in addition to” making voter registration applications and assistance generally available at each voter registration agency as required by Section 7(a)(4), Section 7(a)(6) requires those VRAs that provide services or assistance to clients through an application process – including all public assistance and disability services offices – to also provide specific voter registration opportunities with “each” service application, renewal, or

⁴ In addition to distributing, assisting with, and accepting voter registration applications “[a]t each voter registration agency,” Section 7(a)(4)(B) requires VRAs that “provide services to a person with a disability at the person’s home” to distribute, assist with and accept voter registrations at the person’s home. 42 U.S.C. § 1973gg-5(a)(4)(B). This subparagraph reflects Congress’s attention to the manner in which some VRAs provided services to clients with disabilities based on common practices that Congress was aware of when the NVRA was enacted. This provision does not restrict a VRA’s duties when engaging in other modes of communication. Instead, it reflects the “broad scope [of the NVRA’s provisions] with regard to agency-based registration for persons with disabilities” and Congress’s explicit intention to ensure that home-bound persons with disabilities are equally served by VRAs. S. REP. 103-6, at 16 (1993).

change of address.⁵ *Id.*; *cf. Valdez v. Herrera*, Civ. No. 09-668 JCH/DJS, 2010 U.S. Dist. LEXIS 142209 at *15 -*18 (D.N.M. Dec. 21, 2010) (describing the requirements that mandatory VRAs integrate voter registration into their benefits/service application process), *aff'd, Valdez v. Squire*, No. 11-2063 (10th Cir. Feb. 21, 2012). No statutory language limits Section 7(a)(6)'s application to in-person transactions only. *See Georgia State Conference of the NAACP v. Kemp*, No. 1:11-cv-1849-CAP, 2012 U.S. Dist. LEXIS 14326 at *17 (N.D. Ga. Jan. 30, 2012) (holding that the plain meaning of Section 7(a)(6) requires that “if an assistance office supplies an application for assistance, it must, without limitation, also distribute a voter registration form and a voter preference form”).

III. ARGUMENT

Defendants' position is inconsistent with the NVRA's plain text and structure, and would instead lead to absurd results at odds with Congressional intent. The NVRA establishes a framework through which all VRAs must offer in-person voter registration opportunities

⁵ The additional requirements in Section 7(a)(6) do not apply to all designated VRAs because not all VRAs provide “service or assistance in addition to conducting voter registration” through an application process. 42 U.S.C. § 1973gg-5(a)(6). While the requirements in Section 7(a)(6) apply to all mandatory VRAs (*e.g.*, public assistance agencies and offices providing state-funded disabilities programs), they will not apply to some discretionary VRAs. For example, many states have designated public high schools, municipal buildings, and tax collection offices as discretionary voter registration agencies. Louisiana has designated all public high schools as discretionary VRAs and also allows for municipal buildings to be designated. *See* La. Admin. Code tit. 31, pt. II, § 503 (2011). Such discretionary VRAs may not conduct the types of transactions that are covered by Section 7(a)(6) (*e.g.*, applications, recertifications, renewals, and changes of address for a “service or assistance” other than voter registration). The designation of such offices nonetheless serves an important purpose because it assures that basic “registration services – [including the distribution of voter registration] forms and assistance in completing such forms – will be available routinely and year round in many government and private sector offices.” S. REP. 103-6, at 14. *See also id.* (“Many persons will visit a public office or facility – a public assistance office, an unemployment office, a tax office, a library – in the course of a year. Agency-based voter registration provides a method whereby citizens may easily register to vote and fulfills the requirement that government should do all it can to make registration widely and easily available.”).

generally (in accord with Section 7(a)(4)), while those VRAs that provide services or assistance in addition to voter registration must also integrate voter registration services into “each” qualifying client transaction (in accord with Section 7(a)(6)). The only other court that has decided this question squarely held that the requirements imposed by Section 7(a)(6) are *not* limited to “in-person transactions conducted at the physical location of the assistance office” but instead apply “without limitation” to all covered applicant and client transactions. *Kemp*, 2012 U.S. Dist. LEXIS 14326 at *17. This Court should likewise conclude, as the statutory text provides, that Section 7(a)(6) of the NVRA applies to each covered transaction, whether in-person or remote.⁶

A. Defendants misconstrue the plain text of the NVRA’s mandatory voter registration agency requirements.

Here, as in all statutory construction cases, the “starting point is the language of the statute itself.” *S.D. v. Hood*, 391 F.3d 581, 588 (5th Cir 2004) (citations omitted). Section 4 of the NVRA requires States to “establish procedures to register to vote . . . by application in person” at all offices designated under Section 7. 42 U.S.C. § 1973gg-2. Section 7(a)(4) applies to all VRAs and imposes direct obligations on them by requiring them to provide basic voter registration services “[a]t each voter registration agency.” *Id.* at § 1973gg-5(a)(4).

⁶ The views of the Department of Justice – as the agency charged with enforcing the NVRA – “constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001); 42 U.S.C. § 1973gg-9(a). Consistent with the text, structure, and animating purposes of the NVRA, the Department of Justice has explained that designated VRAs are required to offer voter registration opportunities with all application, renewal, recertification and change of address transactions. *See, e.g.*, http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php. Such interpretative statements are entitled to respect under the Supreme Court’s decision in *Skidmore v. Swift*, 323 U.S. 140 (1944), in accordance with their persuasive power. *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000).

Section 7(a)(6), however, goes further by requiring those VRAs that provide “service or assistance” to do more than simply provide in-person voter registration services generally. Such VRAs – “*in addition* to conducting voter registration” generally – must also “distribute with *each* application for such service or assistance, and with *each* recertification, renewal, or change of address form relating to such service or assistance . . . the mail voter registration application form” as well as the declaration/preference form that, among other things, provides the opportunity to record in writing the client’s acceptance or declination of the opportunity to register. *Id.* at § 1973gg-5(a)(6)(A) (emphasis added).

As used here, “each” is commonly defined to mean “every (individual of a number) regarded or treated separately.” 5 OXFORD ENGLISH DICTIONARY 16 (2d ed. 1989); *see Sierra Club v. EPA*, 5 F.3d 673, 678 (D.C. Cir. 2008) (“There can be no doubt about the plain meaning of this phrase. ‘Each’ means ‘[e]very one of a group considered individually.’”) (quoting AMERICAN HERITAGE DICTIONARY 269 (4th ed. 2001) (alternation in original); *Quarles v. St. Clair*, 711 F.2d 691, 699 n.20 (5th Cir. 1983) (“Clear statutory terms, however succinct, should be read to mean what they say.”). Nothing in Section 7(a)(6) limits its scope to in-person transactions only. Indeed, the statute’s plain language makes clear that voter registration must be offered to clients and applicants with “each” covered transaction, and that such obligations are “in addition to” the in-person voter registration opportunities required by Section 4 and Section 7(a)(4).

Thus, while Congress made clear that all VRAs are obligated to offer certain in-person voter registration services at their offices as a result of the general language in Section 4 and Section 7(a)(4), the NVRA does not limit the additional obligations imposed by Section 7(a)(6) according to the manner in which the qualifying transaction is conducted. In urging a contrary

reading of the statute, Secretaries Greenstein and Johnson argue that “if a statute provides for a specific kind of application for public assistance or disability services, other ways of applying for such services are excluded and cannot be applied.” Dkt. 88-3 at 13; Dkt. 97-5 at 13. But there is no reference in Section 7(a)(6) to where or how public assistance or disability applications are completed – the text of Section 7(a)(6) simply requires that voter registration services be offered with “each” application, recertification, renewal or change of address transaction. *See Kemp*, 2012 U.S. Dist. LEXIS 14326 at *20 (Section 4 “says nothing of the manner in which voter registration forms or voter preference forms must be distributed or provided. Section 7 paragraph (a)(6) regulates those forms. Section 4 simply regulates a different requirement under the NVRA”). Moreover, that Congress opted to use the term “in-person” in Section 4, but to not use that term in Section 7(a)(6), is significant. “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Bates v. United States*, 522 U.S. 23, 29-30 (1997) (citation omitted). Accordingly, Section 7(a)(6)’s requirements target VRA clients during specifically enumerated transactions and go beyond the requirements imposed by Section 4 and Section 7(a)(4).

This reading of the statute is further compelled by the canon of statutory construction that the “the specific governs the general.” *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007). Section 4 merely proscribes a State’s “general” obligation to “establish procedures” for in-person agency registration, 42 U.S.C. § 1973gg-2, and Section 7(a)(4) embodies those procedures by broadly requiring distribution, assistance with, acceptance and transmittal of voter registration forms “[a]t each voter registration agency.” *Id.* at § 1973gg-5(a)(4). In contrast, Section 7(a)(6) imposes defined requirements – without any reference to location – that apply at

specific points in time (application, recertification, renewal, and change of address) only to the subset of VRAs that carry out such qualifying transactions. Secretary Greenstein is thus mistaken when arguing that Section 4 is “read . . . out of the act” or rendered “inoperative” by this statutory construction. Dkt. 138 at 10, 11. That is not so. All designated VRAs – be they public high schools, public assistance offices, municipal buildings, or tax collection offices – must offer in person voter registration services generally as a result of Section 4 and Section 7(a)(4). VRAs that offer “services or assistance” through an application process – as Defendants do in administering public assistance programs – have specific, additional obligations under Section 7(a)(6) to provide voter registration opportunities with “each” application, renewal, or change of address. Thus, for example, the NVRA requires that a Louisiana Medicaid client must both be able to visit a parish Medicaid office in person and request and receive a voter registration form, as well as be affirmatively offered the opportunity to register with each covered transaction – regardless of how those transactions are conducted.

Rather than read the statute so that all requirements of Section 4 and Section 7 are given effect, Defendants ignore Section 7(a)(6)’s “in addition to” language and its requirement that voter registration forms be distributed with “each” covered transaction.⁷ Such a reading violates the basic principle of statutory construction that courts are to “give effect to each of [a statute’s] provisions without rendering any language superfluous.” *Bustamante-Barrera v. Gonzales*, 447 F.3d 388, 397 (5th Cir. 2006). Nothing in Section 4’s plain text purports to limit

⁷ Although Defendants maintain that the plain language of the statute compels their restrictive reading, the actual language contained in Section 7(a)(6) – requiring VRAs to “distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance . . . the mail voter registration application form,” 42 U.S.C. § 1973gg-5(a)(6) – is not quoted at all in either Secretary Schedler’s opening memorandum or his consolidated opposition/reply and is mentioned only in passing in the briefs filed by Secretaries Greenstein and Johnson.

the additional, substantive requirements imposed directly on certain VRAs subject to Section 7(a)(6). And nothing in Section 7 suggests that Congress meant something else when it imposed “addition[al]” obligations on such VRAs by requiring them to provide voter registration opportunities with “each” application for service, renewal, or change of address. *Dodd v. United States*, 545 U.S. 353, 357 (2005) (courts “must presume that [the] legislature says in a statute what it means and means in a statute what it says there.”) (brackets in original, citation omitted).⁸

Defendants likewise fail to find support for their reading in the NVRA cases that they cite. In *National Coalition for Students with Disabilities Education and Legal Defense Fund v. Allen*, the court stated that the NVRA requires the designation of “various offices as ‘voter registration agencies’ where application for registration may be made in person.” 152 F.3d 283, 285 (4th Cir. 1998). Similarly, in *Charles H. Wesley Education Foundation, Inc. v. Cox*, the court stated that the NVRA requires states to offer “registration in person at various official locations[.]” 108 F.3d 1349, 1352 (11th Cir. 2005). Each of these general statements is correct – as a result of the procedures that States must promulgate under Section 4 and the requirements imposed on all designated VRAs under Section 7(a)(4), each designated VRAs must provide in-person voter registrations services. However, neither of these isolated statements – taken from cases which did not address the question before this Court – contradicts the fact that the plain

⁸ Secretary Schedler argues that his reading of the statute is also supported by the fact that the voter declaration/preference form that VRAs must distribute with each covered transaction asks the question “If you are not registered to vote where you live now, would you like to apply to register to vote here today?” See Dkt. 94-6 at 12. The language in the declaration/preference form – “here today” – merely focuses on the applicant’s opportunity to register at the time he or she is in contact with the VRA. It does not restrict the specific requirements imposed on VRAs by Section 7(a)(6). See 42 U.S.C. § 1973gg-5(a). Indeed, the court in *Georgia State Conference of the NAACP v. Kemp* explicitly rejected such arguments. 2012 U.S. Dist. LEXIS 14326 at *22 (“[T]he court will not infer from ambiguous words such as ‘here’ or phrases such as ‘at an office’ in other provisions a limitation that these words and phrases do not demand and that would contradict the plain language of Section 7 paragraph (a)(6).”).

language of Section 7(a)(6) imposes *additional* requirements on VRAs during specific client interactions. Secretary Schedler's reliance on *Harkless v. Brunner* is likewise misplaced. See Dkt. 139 at 6. *Harkless* stated that "in accordance with the NVRA, any time a person enters a DJFS office to receive [public assistance], that person should receive a voter registration form for federal elections and assistance in filling out the form." 545 F.3d at 450. Neither does this statement address what the NVRA requires when a client applies for public assistance remotely. Again, the only court that has considered the specific legal question at issue here rejected the arguments made by Defendants and instead held that the plain language of Section 7(a)(6) is "unambiguous" in requiring public assistance offices designated as VRAs to provide voter registration opportunities with each application, recertification, renewal, or change of address for services or assistance, regardless of how or where such transactions are conducted. *Kemp*, 2012 U.S. Dist. LEXIS 1432 at *17-*18.

B. Defendants' position leads to absurd results in light of the statutory structure for agency registration and Congress's intent in adopting that structure.

Defendants' position also leads to absurd results when the statute is viewed as a whole. See *Murkeldove v. Astrue*, 635 F.3d 784, 792-93 (5th Cir. 2011) (declining to adopt a construction that "significantly frustrates the purpose and efficacy" of a federal statute).

Section 7(a)(2) requires "all offices in the State that provide public assistance" and "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities" to be designated as mandatory VRAs. 42 U.S.C. § 1973gg-5(a)(2)(A)-(B). The statute does not link a State's obligation to designate public assistance and disability services offices as VRAs to the method by which they receive applications for benefits and services. Defendants' reading thus significantly undermines the mandatory designation structure that Congress adopted. Functionally, Defendants' position is that, by adopting remote

methods to interact with clients, States can simply exempt their public assistance and disability services offices from the voter registration requirements in Section 7(a)(6) that otherwise apply to such mandatory VRAs. But Congress specifically rejected giving States this sort of discretion. In reconciling the versions of Section 7 that were initially passed in the House and Senate, the Conference Committee flatly rejected a Senate amendment which would have eliminated the mandatory designation of public assistance and disability services agencies. The conference report explains that

The conference is concerned that the Senate amendment would permit States to restrict their agency program and defeat a principal purpose of this Act—to increase the number of eligible citizens who register to vote. If a State does not include either public assistance, agencies serving persons with disabilities, or unemployment compensation offices in its agency program, it will exclude a segment of its population from those for whom registration will be convenient and readily available—the poor and persons with disabilities who do not have driver’s licenses and will not come into contact with the other principal place to register under this Act. *It is important that no State be permitted to so restrict its agency registration program.* To eliminate the mandatory agency program altogether will not accomplish the objectives of this Act, since the States are already free to establish agency registration. The only way to assure that no State can create an agency registration program that discriminates against a distinct portion of its population is to require that the agencies designated in each State include an agency that has regular contact with those who do not have driver’s licenses.

H.R. CONF. REP. NO. 103-66, at 19 (emphasis added). Defendants’ position cannot be squared with Congress’s insistence that public assistance and disability services agencies *must* be given significant voter registration responsibilities and that discriminatory voting registration practices must end. *See In re Timbers of Inwood Forest Associates, Ltd.*, 793 F.2d 1380, 1399 n.33 (5th Cir. 1986) (“[B]ecause the conference report represents the final state of terms agreed to by both houses, next to the statute itself it is the most persuasive evidence of Congressional intent.”) (citations omitted); *see also* 42 U.S.C. § 1973gg(a)(3) (noting harm caused by “discriminatory and unfair registration laws and procedures”). Nor does it cohere with the statute’s plain

language, which imposes heightened obligations on VRAs – including public assistance and disability offices – when they interact with clients. The “artificial limit” that Defendants read into Section 7(a)(6) is thus fundamentally incompatible with Congress’s intent to “provid[e] as many eligible voters as possible with the opportunity to register.” *Kemp*, 2012 U.S. Dist. LEXIS 14326 at *25 -*27.⁹

The absurd effects that Defendants’ reading of the statute would have in thwarting Congress’s intentions are not hypothetical. Louisiana relies extensively on remote means to interact with public assistance clients. For example, DHH Deputy Medicaid Director Diane S. Batts has testified that approximately 70% of Louisiana Medicaid applications are received through the mail, and that another 18% are received online. Dkt. 111, Pltfs.’ Ex. 11, Batts Dep. Tr. at 35:25 & 208:24-25. Ms. Batts further testified that there is no face-to-face interview required to submit a Medicaid application. Pltfs.’ Ex. 11, Batts Dep. Tr. at 36:16 - 37:9. At DCFS, clients can submit initial applications, redeterminations, and changes of address all by remote means. Dkt. 111, Ex. 25, Defendant Johnson’s Response to Plaintiffs’ Revised First Set of Interrogatories, No. 13a. Indeed, DCFS Deputy Assistant Secretary Samuel Guillory testified that approximately one-third of initial applications for the Supplemental Nutrition Assistance Program (“SNAP”) are received online. Dkt. 111, Pltfs.’ Ex. 24, Guillory Dep. Tr. 77:21 – 78:12. While an interview is a standard part of the SNAP application process, the default under

⁹ Defendants make no attempt to argue that their construction can be reconciled with the Congressional findings and purposes embodied in the NVRA. Instead, Defendants assert that it is improper to note the obvious and irreconcilable gap between clearly-stated Congressional intentions and their position. *See* Dkt. 138 at 17-18; Dkt. 141 at 13-14. While this Court can and should reject Defendants’ contentions based on the NVRA’s plain text and structure, it is certainly not improper to hold in the alternative, as the district court in *Georgia State Conference of the NAACP v. Kemp* did, that even if the mandates of Section 7 were ambiguous, Defendants position must still be rejected “in light of congressional findings and the purposes and legislative history of the NVRA.” 2012 U.S. Dist. LEXIS 14326 at *23.

DCFS policy is for that interview to be conducted by telephone, not face-to-face. Pltfs.' Ex. 24, Guillory Dep. Tr. 85:9-22; Dkt. 111, Pltfs.' Ex. 26, Young Dep. Tr. 29:16-20. DCFS also relies extensively on telephone contacts in receiving changes of address and conducting redetermination interviews. Pltfs.' Ex. 24, Guillory Dep. Tr. 51:6-7; Pltfs.' Ex. 26 Young Dep. Tr. 50:3-20. Such facts make clear that Defendants' statutory interpretation would gut the NVRA's requirement that public assistance clients be regularly and affirmatively provided with the opportunity to register to vote.

These consequences are not limited to Louisiana. According to a 2011 survey by the Center on Budget and Policy Priorities, 40 States now accept internet applications for at least one of the following forms of public assistance: SNAP, the Temporary Aid to Needy Families program, Medicaid, the Children's Health Insurance Program, and other child care assistance programs.¹⁰ Although the plain language of the statute supports the United States' position in any event, Congress could not have foreseen the now widespread use of internet-based public assistance applications when it enacted the NVRA in 1993. Such technological change should not be allowed to thwart a central purpose of the NVRA. In any event, the specific mandates contained in Section 7(a)(6) – requiring voter registration services to be provided with “each” covered transaction – are broadly drafted so as to continue to apply to all evolving methods through which states may choose to receive public assistance and disability services applications. *See Massachusetts v. EPA*, 549 U.S. 497, 532 (2007) (“[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth”) (citations omitted, alteration in original). Accordingly, VRAs may not deny NVRA-

¹⁰ See <http://www.cbpp.org/cms/index.cfm?fa=view&id=1414> (last visited March 6, 2012).

mandated voter registration opportunities to clients who conduct covered transactions remotely rather than in person.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests this Court conclude that VRAs providing services and assistance, including all mandatory VRAs, must provide voter registration opportunities with each application, recertification, renewal, or change of address, regardless of how or where such transactions are conducted.

Date: March 6, 2012

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing STATEMENT OF INTEREST OF THE UNITED STATES with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties in this matter via electronic notification or otherwise.

This 6th day of March, 2012.

s/ Anna M. Baldwin

ANNA M. BALDWIN
Trial Attorney, Voting Section
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