

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

LUTHER SCOTT, JR., *et al.*,

Plaintiffs-Appellees

v.

TOM SCHEDLER,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS-APPELLEES AND URGING AFFIRMANCE

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF
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STATEMENT OF THE ISSUES

The United States will address the following issues:

1. Whether the National Voter Registration Act, 42 U.S.C. 1973gg-5 (NVRA), which requires certain designated state agencies to distribute voter registration applications unless “the applicant, in writing, declines to register to vote,” requires agencies to distribute applications to those who do not check a box

for either “yes” or “no” on a preference form asking whether they wish to register to vote.

2. Whether the NVRA requires certain designated agencies that must provide voter registration services with each benefits application, renewal, recertification, or change of address to provide those services with remote transactions conducted via telephone, mail, or internet, rather than in person.

INTEREST OF THE UNITED STATES

The Attorney General has enforcement responsibility for the National Voter Registration Act (NVRA), 42 U.S.C. 1973gg *et seq.* See 42 U.S.C. 1973gg-9(a). This appeal raises questions concerning the interpretation of Section 7 of the NVRA, 42 U.S.C. 1973gg-5, which expands opportunities for voter registration at certain State offices, including those that provide public assistance and serve persons with disabilities. The United States filed a statement of interest in the district court arguing that Section 7 requires state agencies to provide voter registration services, including access to voter registration forms, to those who contact the agencies remotely, rather than in person. RE 107, 111. Resolution of these issues may affect the Department of Justice’s enforcement responsibilities

and opportunities for citizens to receive voter registration forms and assistance in registering.¹

STATEMENT OF THE CASE

Plaintiffs, the Louisiana State Conference of the NAACP and a Louisiana citizen who has applied for public assistance, sued state officials alleging violations of Section 7 of the NVRA, 42 U.S.C. 1973gg-5. RE 103.² They made several allegations, including that Louisiana's public assistance agencies improperly failed to offer voter registration opportunities or assistance to people who applied for benefits remotely (by telephone, mail, or over the internet), rather than in person. Doc. 111-12 at 29; RE 105-106, 118. They also alleged that the State's agencies violated the NVRA by failing to give voter registration forms to clients who checked neither "yes" nor "no" on questionnaires asking if they would like to register to vote. RE 85. The district court ruled for plaintiffs in a bench trial, finding several NVRA violations. RE 85, 90-91. The court noted that after the suit was filed the State had achieved substantial compliance with the NVRA,

¹ Pursuant to its enforcement authority, on July 12, 2011, the United States sued Louisiana and relevant State officials and agencies in the Middle District of Louisiana, alleging they did not meet its obligations under Section 7. See *United States v. Louisiana*, No. 3:11-CV-00470-JJB-RLB (M.D. La.) (complaint filed July 12, 2011). That suit is still in the discovery stage.

² "Doc. _" refers to pages in the district court record, by docket number. "RE _" refers to pages in appellant's record excerpts, using appellant's pagination. "Br. _" refers to pages in appellant's opening brief.

and imposed an injunction requiring agencies to comply fully and to certify their compliance. RE 63, 99.

STATEMENT OF THE FACTS

1. *Statutory Framework*

In 1993, Congress enacted the NVRA to expand voter registration opportunities. Under the statute, citizens must be allowed to register to vote by mail, when they get a driver's license, or, most relevant here, "by application in person * * * at a Federal, State, or nongovernmental office designated under [Section 7 of the NVRA]." 42 U.S.C. 1973gg-2(a)(3)(B). Section 7 provides that certain offices *must* act as voter registration agencies, including "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." 42 U.S.C. 1973gg-5(a)(2). Section 7 requires a State to select some of its offices such as public schools, libraries, or fishing and hunting license bureaus to serve as voter registration agencies. See 42 U.S.C. 1973gg-5(a)(3)(B)(i)-(ii).

Section 7 of the NVRA, codified at 42 U.S.C. 1973gg-5, explains a mandatory voter registration agency's duties in detail. It must distribute a voter registration application at every covered transaction – that is, any benefit application, recertification, renewal, or address change – "unless the applicant, in

writing, declines to register to vote.” 42 U.S.C. 1973gg-5(a)(6)(A).³ Section 7 also requires mandatory voter registration agencies to provide a preference form distinct from the voter registration form; each form has different content and serves different purposes. See 42 U.S.C. 1973gg-5(a)(6)(A) and (B).⁴ The voter preference form asks:

If you are not registered to vote where you live now, would you like to apply to register to vote here today?

42 U.S.C. 1973gg-5(a)(6)(B)(i). The preference form must have

boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), “IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”

42 U.S.C. 1973gg-5(a)(6)(B)(iii).

Finally, the agencies must help applicants fill out the voter registration application. Section 7 requires that agencies “provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the

³ Voter registration agencies may use a national mail voter registration form developed by the Election Assistance Commission or an agency-developed form that requires the equivalent information. 42 U.S.C. 1973gg-5(a)(6)(A)(i) and (ii); 42 U.S.C. 1973gg-7.

⁴ While defendant and the district court refer to this form as a “voter preference/declaration form” (RE 91) or a “voter declination form” (Br. 9), we refer to this document as a “preference form.”

completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.” 42 U.S.C. 1973gg-5(a)(6)(C). Furthermore, “[i]f a voter registration agency * * * provides services to a person with a disability at the person’s home,” the agency must also provide voter registration assistance at the person’s home. 42 U.S.C. 1973gg-5(a)(4)(B).

Louisiana accepts online applications for many benefits programs. See Doc. 111-12 at 9. One state official testified that of the 30,000 Medicaid applications her department receives each month, about 18% apply online. Doc. 111-12 at 10. Another employee stated that *most* applications come in either by mail or online. Doc. 111-16 at 7-8. “Our face-to-face contact with the public is minimal because many of our processes have been automated,” he explained. Doc. 111-19 at 2. Of the 30,000 or 40,000 monthly renewal applications one office processes, “the majority” were done “without [in-person] contact by the applicant.” Doc. 111-12 at 17, 19. Most changes of address for Medicaid are done by telephone. Doc. 111-12 at 22.

Louisianans can apply for the Supplemental Nutrition Assistance Program (SNAP, or food stamps) and related benefits online. About 15,000 applications a month – amounting to a third of all applications for SNAP – are submitted online and the percentage of online applicants is rising. Doc. 111-25 at 14, 31. Applicant

interviews and changes of address for SNAP are usually done remotely, by telephone, and most applicants are approved without *any* face-to-face interaction with the agency. Doc. 111-25 at 4; Doc. 111-26 at 9; Doc. 111-28 at 3; Doc. 111-30 at 7.

2. *Facts And Procedural History*

Plaintiffs sued the State's benefits agencies and the Louisiana Secretary of State (alleging he, as the chief state election official, had failed to coordinate the State's responsibilities under Section 7). RE 105-106. Plaintiffs alleged in part that the State does not offer voter registration opportunities or assistance to people who engage in covered transactions with state agencies remotely (by telephone, mail, or over the internet), rather than in person. RE 105-106, 118; Doc. 111-12 at 29.

Individual plaintiff Luther Scott alleged that the State did not give him a voter registration application or offer to help him with registration on multiple occasions when he visited a Department of Children and Family Services office to apply for food stamps or change his address. RE 73-74, 104. When given a voter registration preference form, Scott did not check "yes" or "no" on a question asking him if he wanted to vote. Indeed, one employee in a Medicaid processing office explained that no one gave applicants voter registration forms if they left the check boxes blank. Doc. 111-12 at 26.

Plaintiffs prevailed in a bench trial. The court found that the State was not in compliance with the NVRA at the time the lawsuit was filed, but also recognized that the State had made substantial progress towards compliance with the NVRA as the litigation progressed. The court found that the State's agencies had violated the act because (among other things) they (1) did not give out voter registration applications unless applicants checked "yes" on the preference form asking if they wanted to register to vote; and (2) did not provide voter registration opportunities with covered transactions conducted remotely, rather than in person. RE 85, 90-91. The court ruled that Section 7 applies to remote transactions, and a mandatory voter registration agency must distribute a mail voter registration application "with each application, recertification, renewal, or change of address * * * regardless of whether the transaction is done in person or remotely." RE 109 (citing 42 U.S.C. 1973gg-5(a)(6)). Furthermore, a mandatory voter registration agency must "provide the same degree of assistance to the applicant as it provides with their own forms," and "this assistance must be provided during all transactions, including remote transactions." RE 109. The court also found other NVRA violations. RE 85.

The court recognized that the State had made substantial progress towards compliance with the NVRA after this suit was filed. Agencies had changed their procedures, the court noted, and were now in "substantial compliance" with the

NVRA. RE 90, 92, 94, 99-100. Because the State was not in full compliance, the court concluded there “is some potential danger that future violations may occur” and entered a permanent injunction. RE 63, 99. That injunction requires the State’s agencies to comply with the NVRA and certify their compliance with the court.

Louisiana Secretary of State Tom Schedler appealed. The other two defendants, representatives from the Department of Health and Hospitals and the Department of Children and Family Services, did not appeal.

SUMMARY OF ARGUMENT

Section 7 requires voter registration agencies, including state agencies in this case, to give clients voter registration applications unless they decline “in writing.” 42 U.S.C. 1973gg-5(a)(6). Accordingly, the district court properly held that relevant agencies must distribute voter registration applications when applicants fail to check either “yes” or “no” on a question asking them whether they wish to register to vote. The Tenth Circuit, the only court of appeals to have decided the issue, has reached the same result. *Valdez v. Squier*, 676 F.3d 935, 945 (2012). This interpretation properly applies the ordinary meaning of the phrase “in writing,” as failure to give any answer is not a written declination. Other parts of Section 7, the NVRA’s statutory objective, and its legislative history, moreover, support this interpretation.

The district court also correctly decided that mandatory voter registration agencies must distribute voter registration forms to those who contact the agencies by mail, internet, or telephone rather than in person. The statute requires mandatory voter registration agencies to provide a voter registration application “with each” application for services or assistance or other covered transaction. 42 U.S.C. 1973gg-5(a)(6). “Each” ordinarily means every one, and the statutory language does not encompass exceptions. Furthermore, the NVRA’s general requirement that voter registration agencies, including mandatory voter registration agencies, must provide opportunities for in-person voter registration does not narrow or negate Section 7’s plain requirements describing mandatory voter registration agencies’ specific duties. Section 7’s requirements for those agencies are not limited to in-person voter registration.

Defendant’s narrow reading of the statute would produce odd results plainly contrary to Congress’s intent and the Act’s central purpose. Many if not most applications, recertifications, renewals, and changes of address for public assistance benefits occur remotely in Louisiana. Under defendant’s interpretation, the majority of citizens Congress had in mind when it included Section 7 would be beyond its reach. Such a reading would defeat the NVRA’s aim of increasing opportunities for voter registration. It would also frustrate Congress’s efforts to ensure that poorer citizens and those with disabilities – people who are less likely

to hold driver's licenses and register at driver's license offices – have comparable opportunities to register to vote.

ARGUMENT

I

AN UNANSWERED QUESTION ON THE VOTER REGISTRATION PREFERENCE FORM DOES NOT SATISFY SECTION 7'S REQUIREMENT THAT A DECLINATION TO REGISTER BE "IN WRITING"

The NVRA requires voter registration agencies to ask its clients, via a written questionnaire on the voter preference form, whether or not they wish to vote. Someone who fails to choose either "yes" or "no" on the voter preference form has not declined to vote for purposes of 42 U.S.C. 1973gg-5(a)(6). As the Tenth Circuit has recently explained, "an applicant's failure to mark either the 'YES' or 'NO' box on the declination form does not constitute a declination 'in writing'" as the statute mandates. *Valdez v. Squier*, 676 F.3d 935, 945-946 (2012). Any contrary conclusion is at odds with the plain meaning of the statutory text and "is directly rebutted by the language of [subparagraph (A)]," which requires a written declination. *Ibid.* The Tenth Circuit in *Valdez*, like the district court in this case, reached the right result. There is no reason for this Court to break with that precedent.

A. *The District Court's Decision Properly Applies The NVRA's Plain Language, In Keeping With Proper Principles Of Statutory Interpretation*

This Court reviews issues of statutory interpretation de novo. *United States v. Orellana*, 405 F.3d 360, 365 (5th Cir. 2005). When interpreting a statute, the court “begin[s] with ‘the language of the statute itself’” and “follow[s] the ‘plain and unambiguous meaning of the statutory language.’” *Ibid.* (quoting *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). This Court “must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-254 (1992). It “interpret[s] undefined terms according to their ordinary and natural meaning and the overall policies and objectives of the statute,” *Orellana*, 405 F.3d at 365, and should “give effect, if possible, to every clause and word of a statute,” *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (citation and internal quotation marks omitted).

The NVRA unambiguously requires that voter registration agencies give applicants voter registration applications unless they decline “in writing.” 42 U.S.C. 1973gg-5(a)(6). The statute does not define “in writing,” but “writing” usually means “letters or characters formed on a surface that serve as visible signs of ideas.” *Webster’s Third New International Dictionary* 2641 (9th ed. 1993); see also *Random House Dictionary of the English Language* 2193 (2d ed. 1987) (defining “writing” as “characters or matter written with a pen or the like”).

Black's Law Dictionary defines writing as an "intentional recording" by words or symbols. *Black's Law Dictionary* 1748 (9th ed. 2009). Indeed the *Valdez* court explained that "the key phrase 'in writing'" is "commonly defined to mean '[t]he state or condition of having been written or penned; written form.'" *Valdez*, 676 F.3d at 945 (quoting *Oxford English Dictionary*, Online Edition, <http://www.oed.com/view/Entry/230775?rskey=fKhoES&result=1&isAdvanced=false#eid> (last visited May 28, 2013)).

Failure to make any marks in response to the question on the voter preference form hardly qualifies as "writing" in the ordinary sense. As the *Valdez* court noted, an unchecked box is not a written declination, and the statute plainly requires a written declination. *Valdez*, 676 F.3d at 945-946. The State's argument is "at odds with the ordinary meaning" of "in writing." See *id.* at 946. Unchecked boxes on a voter preference form do not relieve a voter registration agency from the simple task of handing out a voter registration form as required under 42 U.S.C. 1973gg-5(a)(6). See *Valdez*, 676 F.3d at 945.

B. Other Parts Of The NVRA Support The Conclusion That Failure To Complete The Voter Preference Form Does Not Constitute A Written Declination To Register To Vote

In arguing that an unanswered question qualifies as a written declination, defendant erroneously relies on a separate subparagraph, 42 U.S.C. 1973gg-5(a)(6)(B), in an attempt to override subparagraph (a)(6)(A)'s plain requirement

for a *written* declination. See Br. 19, 54. Subparagraph (a)(6)(B) lays out the required contents and format for the voter preference form, including the question about voter registration and the requisite check boxes. The subparagraph provides that the voter registration preference form advise applicants that: “IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.” 42 U.S.C. 1973gg-5(a)(6)(B)(iii); see also Br. 19, 54.

Defendant claims that this required notice to applicants essentially changes the meaning of subparagraph (a)(6)(A), nullifying its requirement for a response in writing. But the capitalized language required in subparagraph (B) does not change the fact that an unanswered question on the preference form is not a declination “in writing.” A required notice to applicants should not be interpreted to negate a separate, express statutory requirement that all declinations be in writing. See *Valdez*, 676 F.3d at 946 (rejecting the state’s argument that “the phrase ‘in writing,’ as employed in [subparagraph] (A), is ‘essentially define[d]’ by [subparagraph] (B)”).

Indeed the statute makes clear that the required notice has a more limited purpose. Other language in subparagraph (B) provides that “failure to check either box [is] deemed to constitute a declination to register *for purposes of*

subparagraph (C).” 42 1973gg-5(a)(6)(B)(iii) (emphasis added).⁵ Subparagraph (C) lays out the agency’s obligations to help clients complete voter registration applications. 42 U.S.C. 1973gg-5(a)(6)(C). Failure to check a box relieves the voter registration agency of its duty to help a client fill out a voter registration form. *Ibid.*; see also *Valdez*, 676 F.3d at 946 (stating “failure to check either box * * * relieves the agency from its duty to provide the applicant with assistance in completing a voter registration form”). Through the interplay of these two provisions, Congress has quite reasonably established a statutory scheme where an applicant may “opt out,” in writing, from receiving a voter registration form, but must “opt in” to get help completing the registration form.

Defendant’s alternate reading would ignore portions of the statutory text. Treating a question left blank as a declination “in writing” allowing the State to withhold a voter registration application essentially treats the unanswered question as a declination for *all purposes*. It reads the limiting phrase “for purposes of subparagraph (C)” out of the statute, contravening the “duty to give effect, if possible, to every clause and word of a statute.” *Duncan*, 533 U.S. at 174 (citation and internal quotation marks omitted). “Had Congress intended for an applicant’s

⁵ Defendant claims, (Br. 56-57), that the NVRA’s legislative history supports his position. See H.R. Rep. No. 66, 103d Cong., 1st Sess. 20 (1993) (H.R. Conf. Rep. 66). The text he cites merely parallels the language of 1973gg-5(a)(6)(B)(iii).

failure to check either box to also relieve the agency of its obligation under [subparagraph] (A) to provide a voter registration form, it presumably would have said so.” *Valdez*, 676 F.3d at 946; see also *Russello v. United States*, 464 U.S. 16, 23 (1983) (noting Congress’s use of different text reflects a purposeful distinction).

C. The NVRA’s Objectives And Legislative History Also Support The District Court’s Interpretation

Even if the text or structure of Section 7 were ambiguous or inconsistent, the NVRA’s legislative history and purposes support a requirement that voter registration agencies distribute voter registration forms unless an applicant checks “no” on a voter preference form. Two primary objectives of the NVRA are to “establish procedures that will increase the number of eligible citizens who register to vote” and “enhance[] the participation” by eligible voters by expanding the opportunities for voter registration. See 42 U.S.C. 1973gg(b)(1)-(2); 42 U.S.C. 1973gg-3; H.R. Conf. Rep. 66 at 16. Given these goals, it makes sense that Congress would require mandatory voter registration agencies to hand out voter registration forms unless applicants opt out. This interpretation is certainly more reasonable than defendant’s strained assertion that “[n]ot checking a box in those circumstances constitutes the affirmative act of declining.” Br. 57.⁶

⁶ In support of his argument, defendant cites (Br. 56) a flow chart in the Federal Election Commission’s *Guide to Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples* (continued...)

At the same time, Congress was concerned about potential intimidation, whether real or perceived, when applicants seek benefits from state officials. See H.R. Conf. Rep. 66 at 19. To address this, the Conference Committee added a prohibition on intimidation. See *Ibid.*; 42 U.S.C. 19733gg-5(a)(5)(D).

Significantly, Congress also modified subparagraph 5(a)(6)(B), which originally provided for an optional voter preference form, to require the mandatory form described above. See H.R. Conf. Rep. 66 at 19-20. The form not only asks applicants if they wish to register to vote, but explains that benefits will not be affected by the decision and notifies applicants they may fill out the voter registration form in private. Congress explained:

the [preference form] is intended to deal with concerns raised about * * * the possibility of intimidation or coercion. Concern was expressed that in

(...continued)

(1994), 1-9, available at <http://www.eac.gov/assets/1/Page/Implementing%20the%20NVRA%20of%201993%20Requirements%20Issues%20Approaches%20and%20Examples%20Jan%201%201994.pdf> (FEC Guide). The Federal Election Commission's responsibilities under the NVRA were subsequently transferred by statute to the U.S. Election Assistance Commission. See 42 U.S.C. 15532. The guide offers a flow chart explaining what to do if a patron "declines [an] application" on the one hand or "completes an application" on the other. The flow chart does not say what to do when patrons fail to answer the question on the voter information form and have neither declined nor completed a voter registration application. Similarly, the publication's statement that those "who decline to register to vote must do so in writing or by not checking a box on the form" merely acknowledges that an unanswered question can be a declination for purposes of subparagraph (C), if not for all purposes. FEC Guide at 4-6. Indeed, the statement defendant cites recognizes that there is a difference between a declination "in writing" and "not checking a box."

agencies that provide benefits, staff might suggest that registering to vote could have some bearing on the availability of services or benefits provided by that agency. In addition to the provisions in the House bill relating to coercion and intimidation, [subparagraph B] includes specific provisions to address that situation.

See H.R. Conf. Rep. 66 at 19.

An applicant for services may be embarrassed or have other reasons for not registering to vote at a state agency. That same applicant, however, may feel comfortable completing a voter registration form at a later time, at home, or somewhere away from the perceived, conspicuous eye of an agency that is determining eligibility for public benefits. See *Valdez*, 676 F.3d at 946 (“[I]t is conceivable that an applicant who chooses not to register to vote [at the time of seeking services at a voter registration agency] might still be interested in receiving a mail voter registration form and completing it at another time and/or location.”). Under the district court’s interpretation, an applicant can easily apply by mail at a later time. Regardless of whether a client expressed an interest in voter registration during a session with benefits officials, the client would have a voter registration form. Allowing an applicant’s failure to respond on the voter preference form, which may be due to ambivalence, confusion, or other concerns, to constitute a declination to register is contrary to the statutory goals of expanding and maximizing opportunities for voter registration.

II

SECTION 7 REQUIRES STATE AGENCIES TO OFFER VOTER REGISTRATION SERVICES TO PATRONS WHO CONTACT THEM REMOTELY, VIA TELEPHONE, MAIL, OR INTERNET

A. *Section 7's Plain Language Requires States To Provide Voter Registration Whenever Clients Engage In A Covered Transaction*

The district court also properly held that voter registration agencies must provide voter registration services for covered transactions done by telephone, mail, and internet. The language of the statute requires this reading. Section 7 requires that voter registration agencies “shall 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) (emphasis added). With these covered transactions voter registration agencies must also distribute the voter registration preference form asking applicants whether they want to register to vote. 42 U.S.C. 1973gg-5(a)(6)(B).

The statutory text does not permit States to carve out certain types of transactions, such as telephone transactions or internet transactions, from the NVRA's requirement that it distribute registration applications and preference forms. “The word ‘each’ is not uncertain” in its inclusive meaning. *Leroux & Co. v. Merchants Distilling Corp.*, 165 F.2d 481, 482 (7th Cir. 1948) (holding that the phrase “each party” must include all parties). “Each,” as used in the statute, is all-

encompassing. It ordinarily means “every one of a group considered individually.” *American Heritage Dictionary of the English Language* 560 (4th ed. 2006); see also *Sierra Club v. EPA*, 536 F.3d 673, 678 (D.C. Cir. 2008) (citing dictionary definition in holding statute’s use of “each” means “every one”). “Clear statutory terms, however succinct, should be read to mean what they say.” *Quarles v. Saint Clair*, 711 F.2d 691, 699 n.20 (5th Cir. 1983).

As the Northern District of Georgia (the only court other than the district court below to have decided the issue) has explained, “[t]here is no clear textual basis in the operative language of Section 7” which would support a limitation on “the mandatory distribution of forms to only those instances when such application, recertification, renewal, or change of address is made in person.” *Georgia State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1329 (2012) (citation and internal quotation marks omitted). Such a reading would “ignore the ordinary meaning of the plain language of Section 7.” *Ibid.*

Defendant cannot square his limited interpretation of the NVRA with Section 7’s requirement that state agencies distribute a voter application form “with *each* application for such service or assistance, and with *each* recertification, renewal, or change of address form.” Indeed, defendant does not even mention this language in his discussion of remote transactions. See Br. 38-45. Courts must “read the statute as a whole, so as to give effect to each of its provisions without

rendering any language superfluous.” *Waggoner v. Gonzales*, 488 F.3d 632, 636 (5th Cir. 2007). Defendant’s reading would ignore the meaning of the word “each.”⁷

Moreover, the Department of Justice, which is responsible for enforcing the NVRA, 42 U.S.C. 1973gg-9(a), has provided guidance for applying Section 7. “Many Section 7 designated agencies [and] offices routinely provide services [or] assistance such as application for, or renewal of, services or change-of-address notification through the internet, by telephone, or by mail. States should ensure the availability of voter-registration opportunities to individuals using such remote service [or] assistance opportunities.” The National Voter Registration Act of 1993 (NVRA): Questions and Answers, http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php (last visited May 28, 2013). The Department’s policy statements “reflect a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” *Federal Express Corp. v. Holowecki*, 552 U.S. 389, 399 (2008) (citation and internal quotation marks omitted). They are “entitled to a measure of respect.” *Ibid.* (citation and internal quotation marks omitted); see

⁷ Nor does Section 4’s use of the phrase “[a]t a[n] * * * office,” (Br. 40), contravene Section 7’s plain requirements. *Kemp*, 841 F. Supp. 2d at 1331 (refusing to “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)”).

also *Martin v. Occupational Safety & Health Review Comm'n*, 499 U.S. 144, 157 (1991) (noting “informal interpretations are still entitled to some weight”).

B. Section 4 Of The NVRA Does Not Undercut Section 7’s Broadly Inclusive Language

Defendant argues that another section of the NVRA, Section 4, supports Louisiana’s decision to distribute voter registration applications only when applicants visit voter registration agencies in person. Section 4 states:

(a) In general

* * * in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office—

(1) by application made simultaneously with an application for a motor vehicle driver’s license * * *

(2) by mail application * * * and

(3) by application *in person*—

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section [7] of this title.

42 U.S.C. 1973gg-2(a) (emphasis added).

Contrary to defendant’s argument, nothing in Section 4’s language sets limits on a voter registration agency’s obligations during covered transactions that occur remotely. Section 4 simply mandates that States provide in-person voter registration services at voter registration agencies designated pursuant to Section 7, as well as at the voter registrar’s office of the person’s residence. Certainly, Section 4 would prevent a voter registration agency from offering voter registration

solely by mail or via the internet, but it in no way suggests that a voter registration agency is not required to offer voter registration services to applicants and clients who engage in a covered transaction via telephone, mail, or the internet.

Seen as a whole, Section 4 simply ensures that those who visit a voter registration agency will have the opportunity to register to vote in person. Section 7, on the other hand, imposes specific and additional duties on voter registration agencies to provide voter registration applications and assistance whenever clients engage in certain covered transactions. Section 4 requires States to “establish procedures” to facilitate voter registration at certain state agencies. Section 7 defines, in more detail, the duties of mandatory voter registration agencies.

The “general language of a statute * * * will not be held to apply to a matter specifically dealt with in another part of the same enactment.” *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 228 (1957) (citation and internal quotation marks omitted); see also *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007) (“[N]ormally the specific governs the general” in statutory construction.). Here, Section 4 broadly summarizes the general requirements of the NVRA. It is the statute’s first provision, after the definitions section. It should not be interpreted to override the more particular requirements in Section 7, which specify how mandatory voter registration agencies must distribute voter registration applications and preference forms.

Had Congress meant for Section 7's requirements to apply only to "each *in-person* application, recertification, renewal, or address change" instead of "each application for such service or assistance, and * * * each recertification, renewal, or change of address form," one would expect Congress to include this restriction in Section 7 itself. See *Bates v. United States*, 522 U.S. 23, 29 (1997) ("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.") (citation omitted). Instead, Section 7 uses broadly inclusive language.⁸

This court should reject a reading which produces such odd and obviously unintentional results. *Cf. Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 454 (1989) (noting a court should not adopt a reading which "would compel an odd result") (citation and internal quotation marks omitted). Mandatory voter registration agencies were "intended to * * * reach[] out to those citizens who are likely not to benefit from the State motor-voter registration application provisions," H.R. Rep. No. 9, 103d Cong., 1st Sess. 12 (1993), to assure they could "register to

⁸ In 1993, when the NVRA was enacted, online applications, renewals, and changes of address for public assistance benefits probably did not exist. The majority of interactions likely occurred in person. However, there were remote transactions by mail and telephone when Congress enacted the NVRA, and there is no indication that Congress did not intend for Section 7's obligations to extend to them. H.R. Conf. Rep. 66 at 19.

vote with the same convenience as will be available to most other people under the motor voter program” benefitting driver’s license holders, H.R. Conf. Rep. 66 at 19.⁹ It makes no sense within the statute’s structure, and given the overall purpose of the provision, to limit Section 7’s reach only to in-person transactions.

Furthermore, if remote transactions are not covered under the NVRA, the State could reduce in-person services for address changes, renewals, or other routine procedures in order to avoid its responsibilities under the statute or even in an attempt to reduce registration rates for benefits recipients. See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997) (rejecting a statutory interpretation that would lead to “perverse incentive[s]”). It would make no sense to allow a State to escape its obligations under Section 7 merely by eliminating or reducing its in-person services and replacing them with remote services.

⁹ Indeed, Congress rejected suggestions that it allow States to choose whether to designate public assistance and disability offices as voter registration agencies, on the grounds that this “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.” H.R. Conf. Rep. 66 at 18-19. In particular, not requiring these offices to be mandatory voter registration agencies would allow States to “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.” *Id.* at 19. Under defendant’s reading of the NVRA, States would be able to restrict voter registration opportunities for people who use public assistance and disability benefits by refusing to offer remote voter registration services even as they increasingly complete covered transactions, such as benefits applications and address changes, over phone and internet.

C. The NVRA's Objectives And Legislative History Also Support Application Of The Statute To Remote Transactions

As mentioned previously, pp. 16-17, *supra*, the NVRA was promulgated to increase voter registration and expand registration opportunities. See 42 U.S.C. 1973gg(b)(1)-(2); 42 U.S.C. 1973gg-3 to 1973gg-5; H.R. Conf. Rep. 66 at 16. Congress included Section 7 “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 v. Brunner*, 545 F.3d 445, 449 (6th Cir. 2008) (quoting H.R. Conf. Rep. 66 at 16). Congress intended to “make the agency-based program as comprehensive as possible.” S. Rep. No. 6, 103d Cong., 1st Sess. 15 (1993). This Court should adopt the district court’s reading as it not only comports with the statute’s plain language, but is “more consistent with the broader context” and “primary purpose” of the statute. *Robinson*, 519 U.S. at 346; see also *Murkeldove v. Astrue*, 635 F.3d 784, 792 (5th Cir. 2011).

Because Louisiana uses remote communications extensively, its narrow reading threatens to exclude many – and perhaps most – public assistance applicants from receiving the voter registration opportunities mandated in Section 7. Most Medicaid applications, renewal applications, and changes of address are done remotely. Doc. 111-12 at 17, 19, 22; Doc. 111-16 at 7-8; Doc. 111-19 at 2. Similarly, most SNAP beneficiaries get approvals, renewals, and address changes

without any face-to-face contact. Doc. 111-30 at 7; Doc. 111-26 at 9; Doc. 111-25 at 4. Online transactions are increasing, and the defendant's reading could lead to citizens who receive public assistance and disability services having fewer and fewer opportunities to register in comparison with wealthier Americans and those without disabilities.

Indeed, the narrow interpretation could severely curtail voter registration opportunities nationwide, as many States offer benefits and services through remote transactions. Some 39 States use online food stamp applications and 36 have online Medicaid applications. See Center on Budget & Policy Priorities, *Online Services for Key Low-Income Benefit Programs* (2011), available at <http://www.cbpp.org/cms/index.cfm?fa=view&id=1414>. As online transactions increase, it may soon be the case that *the vast majority of* covered transactions at mandatory voter registration agencies happen remotely. Most citizens Congress had in mind when it included Section 7 would then be beyond its reach, if defendant's argument were to prevail.

CONCLUSION

This Court should affirm the district court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2013, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES AND URGING AFFIRMANCE with the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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1. This brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B), because:

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