

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

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

Plaintiffs,

v.

TOM 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 & Family Services, and BRUCE D.
GREENSTEIN, in his official capacity as
Secretary of the Louisiana Department of
Health & Hospitals,

Defendants.

Civil Action No. 2:11-cv-00926-JTM-JCW

ORAL ARGUMENT SCHEDULED
FEBRUARY 15, 2012

**PLAINTIFFS' CONSOLIDATED MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT,
AND IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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Plaintiffs Roy Ferrand, Luther Scott, Jr., and Louisiana State Conference of the NAACP (collectively, “Plaintiffs”), for themselves and all other persons similarly situated, file this Consolidated Memorandum in Opposition to three separate motions for partial summary judgment filed by Defendants Bruce Greenstein, Tom Schedler, and Ruth Johnson, *see* Dkt. Nos. 88, 94, and 97, and in support of Plaintiffs’ Cross-Motion for Partial Summary Judgment.

PRELIMINARY STATEMENT

Partial summary judgment for Plaintiffs is appropriate because Defendants have violated their obligations under Section 7 of the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg-5, by denying voter registration services to individuals who apply for public assistance benefits, renew/recertify benefits, or change their addresses in connection with benefits, via “remote” means, such as telephone, mail, or the internet.¹ Contrary to Defendants’ assertions, Section 7 of the NVRA is not limited only to public assistance clients who apply for benefits “in person.” In fact, the only case law directly on-point concerning this question holds that “[t]here is no clear textual basis ... [to] limit[] the application of [Section 7] to only those instances when such application, recertification, renewal, or change of address is made in person.” Ex. 1, *Ga. State Conf. of the NAACP v. Kemp*, 11-cv-01849-CAP (N.D. Ga. Jan. 30, 2012), Dkt. No. 44, at 12-13 (internal quotation marks and citation omitted).² Indeed, the term “in person” is not found in Section 7 of the NVRA *at all*, but rather appears only in a separate provision of the NVRA: Section 4, 42 U.S.C. § 1973gg-2, which Defendants improperly seek to import into the statutory provision that actually governs this case. *See* Ex. 1, *Kemp*, at 12-15.

¹ Although this motion is limited to Defendants’ failure to offer voter registration services to public assistance clients who apply for, renew/recertify, or change address in connection with benefits via remote means, Plaintiffs maintain that Defendants have also failed to fulfill their statutory obligations under the NVRA with respect to clients appearing in person at public assistance offices.

² Exhibits cited herein as “Ex. _” are attached to the accompanying Declaration of Dale E. Ho.

The NVRA was designed to “increase the number of eligible citizens who register to vote in elections for Federal office.” 42 U.S.C. § 1973gg(b)(1). Adopted as a special effort to reach “the poor and persons with disabilities who do not have driver’s licenses and will not come into contact with [motor vehicle agencies],” Section 7 of the NVRA sets forth the obligations of certain state offices as “voter registration agencies.” H.R. Rep. No. 103-66, at 16 (1993) (Conf. Rep.), *reprinted in* 1993 U.S.C.C.A.N. 140, 144; 42 U.S.C. § 1973gg-5. In particular, Section 7(a)(6) of the NVRA requires all state offices that provide Medicaid, food stamps and other public assistance benefits, to offer their clients “a mail voter registration application form,” and assistance completing the voter registration form, “*with each* application for [public] service or assistance, and *with each* recertification, renewal, or change of address form relating to such service or assistance.” 42 U.S.C. § 1973gg-5(a)(6) (emphasis added). Significantly, Section 7(a)(6) makes no exceptions based on whether those transactions occur in person at a public assistance office, or by remote means—that is, by telephone, mail, or the internet.

Defendants have systematically failed to fulfill these obligations, conceding that they have denied voter registration services when a client applies for, renews, or changes address in connection with benefits via means such as telephone, mail, or the internet. Defendants have thereby deprived tens of thousands of public assistance recipients of their statutory right to register to vote when applying for or renewing public assistance.

Against the plain text and purpose of the NVRA, Defendants argue that Section 7 excludes public assistance clients who do not appear “in person ... at voter registration agencies,” SOS Br. at 4³ (internal citation and quotation marks omitted), but can cite no

³ Throughout this memorandum, Defendant Secretary of State Tom Schedler’s Memorandum in Support of his motion for partial summary judgment, Dkt. 94-6, is referred to as “SOS Br. at ___”, Defendant Secretary of Health and Hospitals Bruce Greenstein’s Memorandum, Dkt. 88-3, is referred to as “DHH Br. at ___”, and Defendant Secretary of Children and Family Services Ruth Johnson’s

authority for that proposition. The only court to have considered this question directly, however, has clearly held that Section 7 of the NVRA is not limited only to in person transactions, *see* Ex. 1, *Kemp*, at 12-13. Defendants’ attempt to limit Section 7(a)(6) in this manner proceeds from two interpretive errors. *First*, Defendants focus on the use of the term “in person” in *Section 4* of the NVRA, 42 U.S.C. § 1973gg-2—a separate provision of the statute, directed towards a different entity and imposing different obligations—and attempt to import that language into *Section 7*, 42 U.S.C. § 1973gg-5, which governs this case. But Section 4 imposes no limitations on Section 7, which requires public assistance offices to provide their clients with an opportunity to register to vote “with each” application or renewal for public assistance benefits. 42 U.S.C. § 1973gg-5(a)(6).

Second, Defendants ignore the fact that, although the NVRA requires that all voter registration agencies provide voter registration services in person, Section 7 expressly imposes “addition[al]” obligations on public assistance offices specifically. Section 7(a)(6) of the statute expressly provides that a subset of voter registration agencies—namely, public assistance offices—have heightened obligations “in addition to conducting voter registration” at each office: they must provide an opportunity to register to vote “*with each* application” for public assistance, without limitation or regard to the place or manner in which those applications are submitted. 42 U.S.C. § 1973gg-5(a)(6) (emphasis added).

Ultimately, Defendants’ novel interpretation of Section 7(a)(6) would eviscerate the statute, enabling Defendants—and all other public assistance agencies throughout the country, which are increasingly reliant on the internet, telephone, and mail to conduct client transactions—to evade their voter registration duties by conducting their interactions with clients

Memorandum, Dkt. 97-5, is referred to as “DCFS Br. at ___”.

through remote means. Plaintiffs therefore respectfully request that this Court grant their cross-motion for partial summary judgment. A ruling in Plaintiffs' favor would comport with the plain text of the NVRA and affirm its guiding purpose: to ensure that all Americans, regardless of economic status, are affirmatively provided with an opportunity to register to vote.

STATEMENT OF FACTS

On January 12, 2011, Plaintiffs' counsel sent a Notice Letter to Defendants, identifying the State agencies they head as non-compliant with Section 7 of the NVRA. *See* Compl. ¶¶ 6, 10. Pursuant to the NVRA's 90-day notice provision, which permits the initiation of litigation if a "violation is not corrected within 90 days," 42 U.S.C. § 1973gg-9(b)(2), Plaintiffs filed suit 98 days later on April 19, 2011, alleging violations of both federal and state law. *See Ferrand v. Schedler*, No. 11-926, 2011 WL 3268700, at *6 (E.D. La. July 21, 2011).⁴

Section 7 of the NVRA, codified at 42 U.S.C. § 1973gg-5, requires States to designate certain Federal, State, and nongovernmental offices as voter registration agencies ("VRAs") "to perform voter registration activities." 42 U.S.C. §§ 1973gg-5(a)(1), 1973gg-1(5). Louisiana codified and implemented the various provisions of the NVRA, including Section 7, in state statutes in 1994. *See* H.B. 209, 1994 La. Sess. Law Serv. 3d Ex. Sess., Act No. 10.

Section 7 of the NVRA establishes a "two-tiered program" of voter registration agencies ("VRAs"). S. Rep. No. 103-6, at 13. In the first tier, States are required to designate all offices that provide "public assistance" or "services to persons with disabilities" (collectively referred to herein as "public assistance offices") as mandatory VRAs. 42 U.S.C. § 1973gg-5(a)(2). In the

⁴ Although Defendants raise the issue of adequate notice again in their briefs, the Court has already rejected Defendants Greenstein and Johnson's argument that this case was filed prematurely. *Ferrand*, 2011 WL 3268700, at *6. Plaintiffs properly filed this lawsuit on April 19, 2011, or 98 days after the January 12, 2011 Notice Letter. *See id.*; 42 U.S.C. § 1973gg-9(b). It was not until May 26, 2011, *over five weeks after the Complaint was filed*, and 45 days outside the 90-day notice period, that Defendants sent Plaintiffs a detailed letter, purportedly to inform Plaintiffs of the status of their internal NVRA compliance investigations. *See* DHH Br. at 2.

second tier, states have discretion to designate other offices within the State as VRAs, such as public libraries, marriage license bureaus, and fishing and hunting license bureaus. *See* 42 U.S.C. § 1973gg-5(a)(3); S. Rep. No. 103-6, at 13. All VRAs—whether in the first or second tier—are required to offer basic voter registration services at each office. *See* 42 U.S.C. § 1973gg-5(a)(4).

However, first tier voter registration agencies—including public assistance offices—have heightened obligations “in addition to conducting voter registration” at each office. 42 U.S.C. § 1973gg-5(a)(6). In particular, public assistance offices must also perform heightened voter registration services for their own clients 42 U.S.C. § 1973gg-5(a)(6). Section 7(a)(6) requires, *inter alia*, that all public assistance offices distribute to their own clients a voter registration application form “with each application for [public] service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance.” 42 U.S.C. § 1973gg-5(a)(6)(A) (emphasis added). Section 7(a)(6) imposes no limitations on the locations at which public assistance offices must provide voter registration forms to their clients during these transactions. *See* Ex. 1, *Kemp*, at 12-13.

As offices in Louisiana that provide public assistance within the meaning of the NVRA, the Louisiana Department of Health and Hospitals (“DHH”) and the Louisiana Department of Children and Family Services (“DCFS”) are designated as first tier mandatory voter registration agencies under the statute. *See* La. Rev. Stat. Ann. §18:116(A)(1); DHH Br. at 10; DCFS Br. at 11. Defendants Bruce Greenstein and Ruth Johnson, in their official capacities as Secretaries of DHH and DCFS, respectively, are responsible for ensuring that their offices comply with their obligations under the NVRA. Defendant Tom Schedler, as the Secretary of State (“SOS”), is the chief elections officer within the meaning of the NVRA and must coordinate the State’s responsibilities under the NVRA. La. Rev. Stat. Ann §§ 18:18, 18:421.

On June 2, 2011, Defendants filed three separate motions to dismiss Plaintiffs' claims on five separate grounds. On July 21, 2011, the Court denied Defendants' motions to dismiss on all grounds with respect to Plaintiffs' federal claims under the NVRA, but granted Defendants' motions on a single issue, relating to Plaintiffs' state law claims alone. *See Ferrand*, 2011 WL 3268700, at *8-9.⁵

Discovery in this case is ongoing, and, as discussed in further detail below, *see infra* pgs. 32-34, 40-42, has revealed that the vast majority of Medicaid and food stamps applications in Louisiana are processed via remote means, such as telephone interviews and mail-in or internet applications. Defendants, in violation of the NVRA, have not offered voter registration forms or assistance with completing voter registration forms during each of these transactions, thus depriving thousands of public assistance clients of their statutory rights under the NVRA. *See infra* pgs. 34-39, 42-48.

Defendants have filed three separate motions for partial summary judgment, seeking a ruling from this Court that would be the first of its kind, one that would ignore the plain language of Section 7(a)(6) of the NVRA, by limiting its application solely to in person transactions. Plaintiffs now cross-move for partial summary judgment based on Defendants' clear failure to offer an opportunity to register to vote "with each application for [public] service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance." 42 U.S.C. § 1973gg-5(a)(6)(A).

⁵ Although Defendant Greenstein states that "the parties have engaged in continuous settlement negotiations, and those negotiations continue," DHH Br. at 3, that statement is misleading at best. The parties participated in settlement communications in mid-2011, but have not engaged in any substantive discussions regarding settlement since August 26, 2011. During that conversation, counsel for the Defendants advised Plaintiffs that they had no authority to settle this matter at that time. Since that meeting over five months ago, the parties have had no substantive communications regarding settlement, despite Plaintiffs' willingness to continue settlement discussions.

LEGAL STANDARD

Fed. R. Civ. P. 56(a) provides that a court shall grant a motion for summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “[S]ummary judgment is appropriate where[,]” as here, “the facts are not in dispute and the issue before the court poses purely a legal question.” *Diversified Group, Inc. v. Van Tassel*, 806 F.2d 1275, 1277 (5th Cir. 1987).

ARGUMENT

I. THE TEXT AND STRUCTURE OF THE NVRA MAKE CLEAR THAT PUBLIC ASSISTANCE OFFICES ARE REQUIRED TO OFFER VOTER REGISTRATION SERVICES “WITH EACH” COVERED TRANSACTION, REGARDLESS OF WHETHER THE TRANSACTION OCCURS IN PERSON OR REMOTELY

Section 7(a)(6) of the NVRA requires that public assistance offices offer their clients an opportunity to register to vote and assistance in completing voter registration applications “*with each* application” for public assistance benefits, and “*with each* recertification, renewal, or change of address form relating to such service or assistance.” 42 U.S.C. § 1973gg-5(a)(6) (emphasis added). Section 7(a)(6) contains no limitation or qualification—public assistance offices are required to provide these services regardless of where or how the client engages in a covered transaction. Although Defendants argue that, under Section 7, “the only way to register to vote at a state office which provides public assistance or disability services is *in person*.” DHH Br. at 11 (emphasis in original), they rely entirely on a separate provision of the NVRA—Section 4. In conflating two separate sections of the NVRA, Defendants improperly seek to relieve public assistance agencies of their core responsibilities under the statute, and effectively read Section 7(a)(6) out of the statute entirely.

A. Under the Plain Language of Section 7(a)(6) of the NVRA, Public Assistance Agencies Must Provide Their Clients with a Voter Registration Form “With Each” Covered Transaction

Section 7(a)(6)’s plain language requires that public assistance offices offer their clients a voter registration form and assistance with such forms along “*with each* application” for public assistance benefits, and “*with each* recertification, renewal, or change of address form relating to such service or assistance,” 42 U.S.C. § 1973gg-5(a)(6) (emphasis added), not, as Defendants would have it, with only “some” applications or renewals. The statute imposes this affirmative duty on public assistance offices without regard to the means by or location at which these transactions occur, and with no limitations or exceptions for those applications transmitted via mail, telephone, or internet. As one court recently explained,

the language of paragraph (a)(6) of Section 7 is unambiguous: state public assistance offices designated as VRAs are required to “distribute with **each** application for such service or assistance, and with **each** recertification, renewal, or change of address form” a mail voter registration application form and a voter preference form. 42 U.S.C. § 1973gg-5(a)(6) (emphasis added). The plain meaning of this statement is clear: if an assistance office supplies an application for assistance, it must, without limitation, also distribute a voter registration form and a voter preference form. There is no clear textual basis in the operative language of Section 7 paragraph (a)(6) for ... limit[ing] the application of the mandatory distribution of forms to only those instances when such application, recertification, renewal, or change of address is made **in person**.... To sustain [that] position, the court would be forced to ignore the ordinary meaning of the plain language of Section 7 paragraph (a)(6), and the court declines to do so.

Ex. 1, *Kemp*, at 12-13 (emphasis in original).

This reading comports with the basic principle that “[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *Peavy v. WFAA-TV, Inc.*, 221 F.3d 158, 169 (5th Cir. 2000) (quoting *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985) (internal quotation marks omitted)). In its ordinary sense, the word “each” “denotes or refers to every one of the persons or things mentioned ‘Each’ is synonymous with ‘all.’”

Black's Law Dictionary 507 (6th ed. 1990). *Accord* 5 *Oxford English Dictionary* 16 (2d ed. 1989) (“each” means “every (individual of a number) regarded or treated separately.”); *The American Heritage College Dictionary* 430 (3d ed. 1997) (“Being one of two or more considered individually; every.”); *Freedom Wireless, Inc. v. Alltel Corp.*, No. 2:06CV504 (TJW-CE), 2008 WL 4647270, at *12 (E.D. Tex. Oct. 17, 2008) (construing “each” to mean “every one of two or more considered individually or one by one.”) (internal citation and quotation marks omitted).

Here, “each” is used in reference to three types of transactions covered by the statute: (1) initial applications for public assistance benefits; (2) recertification or renewal of benefits; and (3) changes of address in connections with such benefits (collectively referred to herein as “covered transactions”). The statute plainly applies to every one of these transactions, without exception, regardless of how or where they occur. Where, as here, “the words of a statute are unambiguous,” the “judicial inquiry is complete.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992) (internal citation and quotation marks omitted). The plain meaning of this language makes Congress’ intent clear: that whenever a public assistance office interacts with a client regarding any application, any recertification or renewal, or any change of address relating to the benefits provided by that office, the office must fulfill the entirety of its voter registration obligations, regardless of whether the transaction takes place in person, over the phone, through the mail, via the internet, or through any other means. *Germain*, 503 U.S. at 253-54 (“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.”) (citations omitted).

B. The Use of the Term “In Person” in Section 4 of the NVRA Does Not Limit the Plain Meaning of Section 7(a)(6)

In arguing that Section 7 of the NVRA limits public assistance offices’ obligations to their clients to in person interactions, Defendants engage in two interpretive errors. *First*,

Defendants rely on the use of the term “in person” in Section 4 of the NVRA—a separate provision of the statute altogether—and contend that this somehow limits public assistance offices’ obligations only to their in person clients under Section 7(a)(6) of the statute. *See* DHH Br. at 13-14; SOS Br. at 6-7; DCFS Br. at 9-10 (each brief quoting Section 4 of the NVRA, 42 U.S.C. § 1973gg-2, as requiring “in person” voter registration services, but ignoring the text of Section 7(a)(6) of the NVRA, 42 U.S.C. § 1973gg-5(a)(6)). But Defendants’ interpretation violates basic principles of statutory construction, ignoring the fact that Section 4 and Section 7 of the NVRA are separate provisions of the statute that impose different sets of obligations aimed at different types of entities. As explained below, Section 4 does not impose any limitations on public assistance offices’ obligations under Section 7(a)(6), but only provides a baseline of obligations, which Section 7 adds upon.

Section 4 of the NVRA, codified at 42 U.S.C. § 1973gg-2, is directed at State governments and announces a broad requirement that States establish three channels through which any citizen—not only the clients of public assistance agencies—can register to vote. Under this section, States must “establish procedures to register to vote” in three ways: (1) as part of an application for a driver’s license; (2) by mail; 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 [voter registration] office designated under section 7 [of the NVRA].

42 U.S.C. § 1973gg-2(a). Although Defendants suggest that these three methods of registration constitute the exclusive sum of obligations imposed by the NVRA, *see* DHH Br. at 11; SOS Br. at 6-9; DCFS Br. at 10, Section 4’s requirements “are not intended to be exclusive; rather, the Act seeks to encourage voter registration by setting a floor on registration acceptance methods.”

Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 1353 (11th Cir. 2005). Section 4 is simply meant to ensure that any State that did not already have these three methods of registration in place (motor vehicle departments; mail-in applications; and voter registration agencies) adopted them, and did so “in addition to any other method of voter registration provided for under State law.” 42 U.S.C. § 1973gg-2(a). By establishing these national baselines, Section 4 increases the opportunities for voter registration by expanding the number of locations at which a citizen can pick up and drop off a voter registration application form.

Section 7, codified at 42 U.S.C. § 1973gg-5, by contrast, is titled broadly as “Voter Registration Agencies,” and is directed *at the voter registration agencies themselves*, and sets forth the specific obligations that these agencies have. As explained in more detail, *infra* pgs. 13-16, all designated voter registration agencies—whether libraries, universities, or the public assistance offices at issue here—are required to make basic voter registration services available at each office. 42 U.S.C. § 1973gg-5(a)(4). Under Section 7(a)(6), however, public assistance offices have, “in addition to conducting voter registration” at each office, heightened obligations to their clients, namely, to offer a voter registration form and assistance with that form “with each” covered transaction. 42 U.S.C. § 1973gg-5(a)(6). Crucially, the requirements of Section 7(a)(6) are not limited in any way by Section 4:

Contrary, to the defendants’ assertion, Section 4 does not deal principally with the way in which states must offer voter registration forms... It 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.

Ex. 1, *Kemp*, at 15. Thus, Congress did not, as Defendants assert, circumscribe the full extent of public assistance offices’ obligations under Section 7 when it described the State’s general

obligation “to establish procedures to register to vote” under Section 4.⁶

Indeed, Defendants’ suggestion that Section 4 and Section 7(a)(6) should be “[r]ead together,” *see, e.g.*, DCFS Br. at 10, actually supports Plaintiffs’ position: the fact that Section 4 includes the term “in person,” while Section 7(a)(6) does not, underscores that Congress did *not* intend to limit public assistance offices’ additional voter registration obligations to their clients only to transactions conducted in person. “[W]here, as here, Congress expressly chose to limit the mandates of [Section 4] of the NVRA” to in person interactions, but did not include such language in Section 7, “[t]he court is bound to respect these different treatments by limiting the applicability of the former and declining to infer a limit where Congress chose not to include one in the latter.” Ex. 1, *Kemp*, at 17 (internal citations omitted). *See also Bates v. United States*, 522 U.S. 23, 29-30 (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 and purposely in the disparate inclusion or exclusion.”) (internal citation and quotation marks omitted).

Thus, Defendants’ attempt to import an “in person” limitation from Section 4 into Section 7(a)(6) crosses the line “between filling a gap left by Congress’ silence and rewriting rules that

⁶ While Section 4 does reference Section 7, that reference is merely definitional: Section 4 requires States to ensure that in-person voter registration is available at all VRAs whose designations are described in Section 7. *See* 42 U.S.C. §§ 1973gg-2(a)(3)(B), -5(a)(1)-(3). But it does not purport to limit the range of obligations set forth in Section 7. And while Defendant Greenstein notes that Section 4 of the NVRA contains a separate provision concerning mail-in voter registration applications, and infers that “[t]he duty to provide for voter registration by mail ... is not assigned to state offices which provide public assistance,” DHH Br. at 11, the NVRA’s various obligations are not mutually exclusive, and there is no authority to the contrary. Indeed, Defendant Greenstein’s assertion that public assistance offices have no obligations related to “mail” voter registration forms is clearly refuted by the text of the statute, which provides that “[a] voter registration agency that is an office that provides service or assistance” is required to “distribute ... the *mail* voter registration application form.” 42 U.S.C. §§ 1973gg-5(a)(6) (emphasis added). *See also* H.R. Rep. No. 103-9, at 9, *reprinted in* 1993 U.S.C.C.A.N. 105, 114 (“mail application forms ... may also be disseminated to [voter registration] agencies designated under [Section 7].”).

Congress has affirmatively and specifically enacted.” *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978). Limiting public assistance obligations to covered transactions conducted “in person” alone would read “absent word[s]” into the statute that Congress clearly intended to omit. *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (declining to “read an absent word into the statute,” where there is “a plain, nonabsurd meaning in view”). This Court should reject Defendants’ attempt to re-write the text of Section 7 as providing that public assistance offices must offer their clients an opportunity to register to vote only with *some* applications for benefits, rather than “with each application” for such benefits. 42 U.S.C. § 1973gg-5(a)(6). *See Duke v. University of Texas at El Paso*, 663 F.2d 522, 526 (5th Cir. 1981) (“It is well established that a statute should be construed so that each of its provisions is given its full effect.”) (citing *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973)).⁷

C. Although All Voter Registration Agencies Are Required to Provide Voter Registration Services In Person, Public Assistance Offices Have An “Addition[al]” Obligation to Provide Voter Registration Services “With Each” Covered Transaction, Regardless of Where Those Transactions Occur

Defendants’ also make a *second* interpretive error, by ignoring that Section 7 establishes a “two tiered” program of voter registration agencies, S. Rep. No. 103-6, at 13, and erroneously assuming that all voter registration agencies have identical obligations under Section 7. In the first tier, States must designate as VRAs all offices in the State that provide either: (1) public

⁷ Indeed, Defendant Schedler concedes that Section 4’s use of the term “in person” does not limit the reach of Section 7. Defendant Schedler notes that Section 7(a)(4)(B) requires disability offices that provide services in a person’s home to offer voter registration services at that person’s home, 42 U.S.C. § 1973gg-5(a)(4)(B). But this only demonstrates that Section 4’s use of the term “in person” represents a floor, not a ceiling: it does not limit the scope of Section 7 only to those situations where a public assistance client personally appears at a state office. If anything, the requirement to provide general voter registration services at an individual’s home *expands* the scope of the NVRA: it *adds* locations at which voter registration services must be made available beyond the “in person” registration sites referenced in Section 4. Section 7(a)(6) operates in the same way, imposing obligations that are not limited to any particular location.

assistance,⁸ or (2) “State-funded programs primarily engaged in providing services to persons with disabilities.” 42 U.S.C. § 1973gg-5(a)(2). *See* S. Rep. No. 103-6, at 13. In the second tier, States have discretion to designate other offices within the State as VRAs, for example public libraries, marriage license bureaus, and fishing and hunting license bureaus. *See* 42 U.S.C. § 1973gg-5(a)(3); S. Rep. No. 103-6, at 13. Here, Louisiana has exercised its discretion under Section 7 to designate, *inter alia*, all public high schools and all public colleges and universities as second tier discretionary voter registration agencies. *See* La. Admin. Code tit. 31, pt. II, § 503 (2011).

All voter registration agencies, regardless of tier, must provide three basic voter registration services “[a]t each voter registration agency” under Section 7(a)(4), which specifies that:

- (A) At *each* voter registration agency, the following services shall be made available:
 - (i) Distribution of mail voter registration application forms in accordance with paragraph (6).
 - (ii) Assistance to applicants in completing voter registration application forms
 - (iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

42 U.S.C. § 1973gg-5(a)(4) (emphasis added). Thus, in Louisiana, public high schools, colleges, and universities, as well as public assistance offices, must make these services available at the

⁸ Because early iterations of the Act included unemployment compensation offices as part of the first-tier mandatory voter registration agency designation program, *see* H.R. 2, 103rd Cong., § 7(a)(2)(A) (as passed by House, Feb. 4, 1993), the Senate Report describes unemployment agencies in the first-tier along with offices that provide public assistance and disability services. S. Rep. No. 103-6, at 13. Incorporating Amendment 177 in part, the House Conference moved unemployment compensation offices to the second-tier, allowing states discretion whether to designate them as voter registration agencies under the Act. *See* H.R. Rep. 103-66, at 15-16, *reprinted in* 1993 U.S.C.C.A.N. 140, 143-44.

office. *Id.* The “in person” voter registration obligations under Section 4 of the statute are thus fully accounted for in Section (7)(a)(4) of the statute.⁹

But a different provision of the statute is at issue in this case: Section 7(a)(6), which applies only to first tier voter registration agencies—that is, “office[s] that provide[] service or assistance,”—and imposes heightened obligations “in addition to conducting voter registration” at each office. 42 U.S.C. § 1973gg-5(a)(6). Under Section 7(a)(6):

A voter registration agency that is an office that provides service or assistance ***in addition to conducting voter registration*** shall—

(A) 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—

(i) the mail voter registration application form . . . ;

(B) provide a form that includes—

(i) the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”;...

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms....

Id. (emphasis added).

Thus, while all voter registration agencies are required under Section 7(a)(4) to make

⁹ The Fifth Circuit recognized this link between the State’s obligations under Section 4 and the related duties of all VRAs under Section 7(a)(4) in *Association of Community Organizations for Reform Now v. Fowler*, stating:

The NVRA requires all non-exempt states to establish certain procedures to facilitate voter registration. *See* [42 U.S.C.] § 1973gg-2. Specifically, states must (1) include a voter registration application form for federal elections as part of a state driver's license application, (2) accept voter registration application forms by mail, and (3) designate voter registration agencies, at which voter registration applications, and assistance and acceptance of applications, must be made available. *See id.* § 1973gg-3 to 1973gg-5.

178 F.3d 350, 354 (5th Cir. 1999).

basic voter registration services available “[a]t each voter registration agency,” Section 7(a)(6) articulates an “addition[al]” set of obligations that public assistance offices owe to their clients. *Id.*; 42 U.S.C. § 1973gg-5(a)(4). Public assistance offices must, “*in addition to* conducting voter registration” at each office: (1) distribute to their clients a voter registration application form; (2) provide each client a voter preference form which informs him/her that s/he can register to vote;¹⁰ and (3) assist their clients in completing the voter registration form. These distribution and assistance obligations are triggered for public assistance offices “*with each*” covered transaction, without any limitation. 42 U.S.C. § 1973gg-5(a)(6) (emphasis added). *See* H.R. Rep. 103-66, at 5, *reprinted in* 1993 U.S.C.C.A.N. 140, 140 (“A voter registration agency that provides [disability] services or [public] assistance *in addition to conducting voter registration* shall ... distribute [simultaneously] *with each application* for such service or assistance ... [a] mail voter registration application form.”) (emphases added).¹¹

Thus, Defendant Schedler is incorrect in asserting that applying Section 7(a)(6) to remote transactions would “wring all references to in-person applications and physical location from the

¹⁰ Defendant Schedler contends that, because this voter preference form inquires whether a client “would like to apply [to register to vote] here today,” Congress must have intended the statute to apply to in-person transactions only. SOS Br. at 11-12. That argument is speculative at best. There is no indication that Congress meant to limit the scope of the NVRA so drastically. *See* Ex. 1, *Kemp*, at 17 (“[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).”). In fact, DHH uses the exact same phrase—“here today”—in DHH’s online Medicaid application form. *See* Ex. 60, Louisiana Department of Health & Hospitals, Louisiana Medicaid General Application, at 9, *available at* <http://bhsfweb.dhh.louisiana.gov/onlinemanualspublic/eligibility/mfmpublicnonfillable/1-g.pdf>. Given that the online Medicaid application uses the term “here today,” Defendants can hardly claim that this language only makes sense in the context of in person transactions.

¹¹ Defendant Schedler ignores that the obligations described under Section 7(a)(6) are, as the statute plainly states, “in addition to” the general obligation to “conduct[] voter registration” described in Section 7(a)(4), arguing instead that Section 7(a)(6) exists only to “spell out how the distribution of voter registration forms required of each voter registration agency under [Section 7(a)(4)].” But the reference to “paragraph 6” in Section 7(a)(4) simply points out that a first tier voter registration agency must perform the “addition[al] obligations” required under Section 7(a)(6) “with each” covered transaction. While many of those transactions can occur at the office, the text of Section 7(a)(6) is clearly not limited to that context.

statute.” SOS Br. at 12. Rather, the obligation of all voter registration agencies to provide voter registration services at each agency is set forth in Section 7(a)(4) of the statute. 42 U.S.C. § 1973gg-5(a)(4). But that provision in no way limits the “addition[al]” obligations that Section 7(a)(6) specifically imposes on a subset of voter registration agencies—that is, public assistance offices—to distribute and assist in completing a voter registration application “with each application” for public assistance. 42 U.S.C. § 1973gg-5(a)(6). Ultimately, the “other parts of Section 7 ... do not compel the inference that Congress intended to limit the applicability of paragraph (a)(6) to in-person transactions conducted at the physical location of the assistance offices.” Ex. 1, *Kemp*, at 15-16.¹²

In sum, Defendants attempt to excise words from the statute, by collapsing public assistance offices’ “addition[al]” obligations under Section 7(a)(6) into the in person obligations imposed under other Section 7(a)(4). This violates a basic principle of statutory construction that courts should “give effect to *each* of [a statute’s] provisions without rendering any language superfluous.” *Waggoner v. Gonzales*, 488 F.3d 632, 636 (5th Cir. 2007) (emphasis added) (internal citation and quotation marks omitted) (cited in SOS Br. at 6-7). *See also Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 669 (2007) (“[W]e have cautioned against reading a text in a way that makes part of it redundant.”) (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)).

¹² The heightened obligations under Section 7(a)(6) are imposed only on first tier, mandatory voter registration agencies such as public assistance offices, and not on all voter registration agencies generally. Indeed, second tier voter registration agencies in Louisiana, such as public high schools and colleges, do not generally provide disability services or public assistance benefits, and are therefore exempt from these additional requirements. Reading Sections 7(a)(4) and 7(a)(6) together therefore reveals that, while all public assistance agencies have certain in person obligations, public assistance offices’ have “addition[al]” obligations to their clients that accrue “with each” covered transaction, without regard to the manner in which they are conducted. *See Khalid v. Holder*, 655 F.3d 363, 367 (5th Cir. 2011) (“[A] statutory provision ... necessarily derives meaning from the context provided by the surrounding provisions”).

II. DEFENDANTS' MISINTERPRETATION OF THE NVRA AS LIMITED TO IN PERSON TRANSACTIONS FRUSTRATES THE PURPOSE OF THE STATUTE

Even if the NVRA's text were not clear that public assistance offices have obligations to their clients "with each" covered transaction, such a reading of the statute would be compelled in light of Congressional intent. It is a "well-known canon of construction that statutes should be interpreted in harmony with their dominant purpose." *Dupuy v. Dupuy*, 511 F.2d 641, 643 (5th Cir. 1975) (citing *Kokoszka v. Belford*, 417 U.S. 642, 650-51 (1974)). The dominant purpose of the NVRA is "to make [voter] registration available on as broad a basis as possible in a State," S. Rep. No. 103-6, at 14. *See also* 42 U.S.C. § 1973gg(b)(1); H.R. Rep. No. 103-66, at 16, *reprinted in* 1993 U.S.C.C.A.N. 140, 144. That fundamental goal is served by applying Section 7(a)(6) of the NVRA according to its plain terms to each covered transaction, whether conducted remotely or in person.

By contrast, Defendants' interpretation conflicts with the NVRA's dominant purpose in three ways. *First*, given that the *majority* of public assistance clients in Louisiana conduct benefits transactions via remote means, Defendants' interpretation would deny thousands of poor citizens an opportunity to register to vote while applying for benefits, *see infra*, pgs. 32-34, 40-42. *Second*, by requiring public assistance clients to appear in person at a state office in order to register to vote, Defendants' interpretation would conflict with the specific purpose of Section 7, which is to ensure that citizens who lack access to transportation due to poverty have a means to register to vote. *Third*, although the obligations imposed by the NVRA on public assistance agencies are intended to be mandatory Defendants' interpretation of the statute would grant public assistance offices with discretion to avoid their NVRA duties entirely, by relying exclusively on remote means for conducting client transactions. In so doing, Defendants would render Section 7(a)(6)'s obligations on public assistance offices null and void.

A. The Purpose of the NVRA Is to Make Access to Voter Registration as Broad as Possible, Particularly for Impoverished Americans, By Imposing Mandatory Obligations on Public Assistance Offices

The premise underlying the NVRA is that “the purpose of our election process is not to test the fortitude and determination of the voter, but to discern the will of the majority.” S. Rep. No. 103-6, at 2; *see Ortiz v. City of Phila. Office of City Comm’rs Voter Registration Div.*, 28 F.3d 306, 339 (3d Cir. 1994). Congress enacted the NVRA to “increase the number of eligible citizens who register to vote.” 42 U.S.C. § 1973gg(b)(1); *Ferrand*, 2011 WL 3268700, at *1. The NVRA was thus intended as an aggressive effort to counteract low levels of participation in federal elections. As the House Committee Report notes:

Expanding the rolls of the eligible citizens who are registered ...is one positive action Congress can take to give the *greatest number of people an opportunity to participate*. The Committee believes that Congress should assist in reducing barriers, particularly government-imposed barriers, to apply for registration wherever possible.

H.R. Rep. No. 103-9, at 2, *reprinted in* 1993 U.S.C.C.A.N. 105, 107 (emphasis added). Consistent with the statute’s goal of increasing voter registration, the Senate Report makes clear that, in implementing the NVRA, “government should do all it can to make registration widely and easily available.” S. Rep. No. 103-6, at 13. Congress found that “it is the duty of the Federal, State, and local governments to promote the exercise of th[e] right [to vote].” 42 U.S.C. 1973gg(a)(2).

The NVRA is therefore structured to ensure that all Americans are affirmatively provided an opportunity to register to vote. While the NVRA is well-known for its “motor voter” provision, which requires voter registration services at departments of motor vehicles, *see* 42 U.S.C. § 1973gg-3, Congress observed that “motor-voter registration programs may not adequately reach low income citizens and minorities,” S. Rep. No. 103-6, at 15. *See id.* (noting

that “50 percent of those persons who do not have a driver’s license have annual incomes of less than \$10,000”). Congress expressed special concern for reaching these groups, noting that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.” *See* 42 U.S.C. § 1973gg(a)(3). Thus, while Congress enacted the NVRA to increase voter registration and turnout amongst all citizens, “Section 7 of the NVRA [was] designed 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.’” *Harkless v. Brunner*, 545 F.3d 445, 449 (6th Cir. 2008) (quoting H.R. Rep. No. 103-66, at 16, *reprinted in* 1993 U.S.C.C.A.N. 140, 144).

Section 7(a)(6) therefore requires public assistance offices to provide voter registration services to their clients “because [such offices] are considered most likely to serve persons of voting age who may not have driver licenses and therefore are not served by the motor-voter provisions.” H.R. Rep. No. 103-9, at 11, *reprinted in* 1993 U.S.C.C.A.N 105, 116. *See* S. Rep. No. 103-6, at 13 (Section 7 was designed to “enable[] more low income and minority citizens to become registered”).¹³ Notably, the House Report makes clear that public assistance offices are required to offer voter registration services because they have “contact” with low-income citizens, and does not specify the means of such “contact,” and none of the Congressional reports state that Section 7 is limited only to those public assistance clients who appear in person at a

¹³ The two-tier structure of the agency-based program mirrors this double-layered concern: although Congress gave States the discretion to designate state offices that would participate as second-tier VRAs that offer voter registration opportunities to all citizens, Congress also required the mandatory designation of public assistance offices as first-tier VRAs, and that such offices have heightened obligations to their clients, in order to “be assured that almost all of our citizens” have a regularly-accessible channel through which they would be able to register to vote. H.R. Rep. No. 103-66, at 16, *reprinted in* 1993 U.S.C.C.A.N 140, 144.

state office. *See* S. Rep. 103-6, at 13-16; H.R. Rep. No. 103-9, at 10-12 , *reprinted in* 1993 U.S.C.C.A.N 105, 115-17; H.R. Rep. 103-66, at 15-17, *reprinted in* 1993 U.S.C.C.A.N 140, 143-45.

Moreover, Congress specifically intended that the voter registration obligations of public assistance offices would be mandatory. *See* H.R. Rep. No. 103-66, at 16, *reprinted in* 1993 U.S.C.C.A.N. 140, 143-44. Indeed, in reconciling competing versions of the NVRA, Congress flatly rejected a Senate amendment that would have eliminated the mandatory designation of public assistance offices as voter registration agencies. The conference report explains that:

If a State does not include [public assistance 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 principle [sic] place to register under this Act. *It is important that no State be permitted to so restrict its agency registration program. . . .* 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. Rep. No. 103-66, at 16, *reprinted in* 1993 U.S.C.C.A.N 140, 144 (emphasis added).

In sum, the NVRA is designed to ensure that all Americans, regardless of socio-economic status, are affirmatively provided with an opportunity to register to vote.

B. Defendants’ Attempt to Impose an “In Person” Limitation on Public Assistance Offices’ Obligations Would Eviscerate Section 7

Applying Section 7 of the NVRA according to its plain text—namely, that it applies “with each” covered transaction conducted through a public assistance office—is in “harmony with [the statute’s] dominant purpose,” *Dupuy*, 511 F.2d at 643, which is to increase voter registration by “mak[ing] the agency-based [registration] program as comprehensive as possible,” S. Rep. No. 103-6, at 13. By contrast, imposing an “in person” limitation on public

assistance offices' voter registration obligations, as Defendants' urge, conflicts with the purpose of the NVRA in at least three ways, and would eviscerate Section 7. *See* Ex. 1, *Kemp*, at 18-19 (holding that applying the NVRA to remote transactions "undoubtedly effectuates the express purposes of the NVRA," whereas "limit[ing] ... NVRA services to in-person applicants as more applicants prefer to apply remotely, would conflict with these purposes.") (internal citation and quotation marks omitted).

First, Defendants' interpretation would exclude tens of thousands of individuals from the NVRA's reach. As Defendants Greenstein and Johnson have conceded, in recent years, the majority of Louisiana's interactions with public assistance clients do not occur in person, but rather through means such as telephone or mail. *See infra* pgs. 32-34, 40-42. This trend is not confined to Louisiana. According to a 2011 survey by the Center on Budget and Policy Priorities, forty States now accept Internet applications for at least one of the following forms of public assistance: the Supplemental Nutrition and Assistance Program (the current designation for food stamps), the Temporary Aid to Needy Families program, Medicaid, the Children's Health Insurance Program, and other child care assistance programs.¹⁴ Reading the NVRA so as to exclude these transactions would impose "an artificial limit that would frustrate th[e] purpose [of the statute]," Ex. 1, *Kemp*, at 20, by effectively depriving *the majority* of public assistance clients in Louisiana—and potentially many thousands more nationwide—of an opportunity to register to vote while applying for or renewing public assistance benefits. Doing so would therefore contravene the Supreme Court's directive that courts "cannot, in the absence of an unmistakable directive, construe [an] Act in a manner which runs counter to the broad goals which Congress intended it to effectuate." *F.T.C. v. Fred Meyer, Inc.*, 390 U.S. 341, 349 (1968).

¹⁴ *See* Ex. 2, Center on Budget & Policy Priorities, *Online Services for Key Low-Income Benefit Programs*, at 2 tbl. 1 (Dec. 2011), available at <http://www.cbpp.org/cms/index.cfm?fa=view&id=1414>.

Second, Defendants’ interpretation of the statute would exclude the population that Section 7 is designed to reach. As noted, Section 7 is specifically intended to provide voter registration services to impoverished citizens, who frequently lack access to a car. But in Defendants’ reading of the statute, a public assistance client must obtain transportation and physically travel to a state office in order to register to vote. That interpretation would turn Section 7 on its head, excluding the very individuals—poor Americans who lack access to transportation—that Section 7 was designed to reach. Such a result would lead to “absurd consequences” and should be rejected. *United States v. Katz*, 271 U.S. 354, 357 (1926) (“[An] application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose.”); *Durr v. Shinseki*, 638 F.3d 1342, 1349 (11th Cir. 2011) (“Because the legislature is presumed to act with sensible and reasonable purpose, a statute should, if at all possible, be read so as to avoid an unjust or absurd conclusion.” (citation and internal quotation marks omitted)).

Third, Defendants’ reading of the NVRA would also undermine Congress’s specific intention to impose *mandatory* obligations on public assistance offices to offer their clients an opportunity to register to vote. Under Defendants’ reading of the statute, a public assistance office’s duty to offer an opportunity to register to vote to its clients would depend on the *method* by which those offices *choose* to conduct covered transactions. Those offices not wishing to comply with the requirements of Section 7(a)(6) could opt out simply by conducting all public assistance transactions remotely rather than in person. But the very discretion to opt out of the NVRA that Defendants seek was rejected by Congress as antithetical to the core mission of the statute, because such discretion would provide an ability for “States to restrict their agency program and defeat a principal purpose of the Act—to increase the number of eligible citizens

who register to vote,” H.R. Rep. No. 103-66, at 16, *reprinted in* 1993 U.S.C.C.A.N 144. *See id.* (noting that “eliminate[ing] 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.”).

When Congress enacted the statute in 1993, it did not expressly enumerate all of the varied modes of remote communications that public assistance offices rely on today, such as internet applications and telephone interviews. But this is hardly surprising, given that public assistance agencies did not rely on remote methods of communication to conduct covered transactions at the time that the NVRA was implemented. *See infra*, pgs. 33, 41. The fact that computers and cellular phones are now commonplace, and that society has incorporated these devices into many of our everyday interactions, are not justifications for artificially limiting the scope of a federal statute. And, as new modes of remote communication become common in the future (*e.g.*, smart phones, tablet computers), Congress is not required to enumerate each individual technological advance in its statutes. A blanket pronouncement that Section 7 imposes obligations on public assistance agencies “with each” covered transaction, regardless of method, is sufficient. *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (“[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.”) (citation and internal quotation marks omitted).

Courts have recognized the importance of reading statutes, particularly those relating to access to services, to account for the realities of today’s remote forms of communication and service delivery. For example, many courts have realized that, to achieve the purpose of the

Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, the ADA must be read to cover services offered remotely, regardless of whether the statute contains any express language to that effect. *See, e.g., Carparts Distrib. Ctr., Inc. v. Auto Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 20 (1st Cir. 1994) (determining that because “[m]any goods and services are sold over the telephone or by mail.... [t]o exclude this broad category of businesses from the reach of Title III ... would run afoul of the purposes of the ADA.”); *Rendon v. Valleycrest Prods., Ltd.*, 294 F.3d 1279, 1283-84 (11th Cir. 2002) (finding that telephone quiz used to screen potential game show contestants was a means of access to a service, and thus covered by the ADA); *Morgan v. Joint Admin. Bd.*, 268 F.3d 456, 459 (7th Cir. 2001) (determining that, under the ADA, “[a]n insurance company can no more refuse to sell a policy to a disabled person over the Internet than a furniture store can refuse to sell furniture to a disabled person who enters the store”); *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006) (determining that the ADA applies to services offered on Target.com where those services were also offered at Target stores); *Attar v. UNUM Life Ins. Co. of Am.*, No. CA 3-96-CV-367-R, 1998 WL 574885, at *2 (N.D. Tex. Aug. 31, 1998) (“[T]here is no requirement in the Fifth Circuit that Title III applies only to goods and services acquired by entering a physical structure. It would be both unwise and unfounded to impose such a requirement.... It boggles the mind to think that Congress would include only the few people who walk into an insurance office to buy health insurance but not the millions who get such insurance at work.”) (citations and internal quotation marks omitted).

III. CASE LAW AND OTHER AUTHORITIES SUPPORT THE PLAIN MEANING OF SECTION 7 OF THE NVRA

The only court to have considered this question directly has held that Section 7 applies to public assistance clients who apply for benefits via remote means, *see* Ex. 1, *Kemp*, at 12-13,

whereas *not a single court* has held to the contrary. Moreover, courts have unanimously approved settlement agreements enforcing the NVRA with respect to public assistance transactions that occur via remote means, and the United States Attorney General, the Executive Officer tasked with enforcing the NVRA, has issued guidelines and a statement of interest stating that the NVRA applies to remote transactions. In sum, the weight of authority unanimously supports a plain reading of Section 7(a)(6): that it applies “with each application” for benefits, regardless of the location or method of such application.

A. Courts Have Invoked the NVRA’s Plain Meaning, Namely, that it Applies “With Each” Covered Transaction at a Public Assistance Agency, and Have Approved Settlement Agreements Covering Remote Transactions

Defendants’ novel interpretation of Section 7 cannot trump the collective wisdom of district courts presiding over NVRA litigation. As an initial matter, the only court to have considered this question directly has held that Section 7(a)(6) applies to public assistance clients who apply for benefits via remote means. *See* Ex. 1, *Kemp*, at 12-13. Meanwhile, others courts have regularly used language consistent with the plain meaning of the statute: that public assistance offices’ obligations to offer voter registration services to their clients are triggered “with each” covered transaction, and have not imposed any limits on the statute based on where those transactions occur. *See, e.g., Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Scales*, 150 F. Supp. 2d 845, 854-55 (D. Md. 2001) (“The plain import of the statutory language is that, *each time* a disabled student ... applies for services normally rendered by the agency, [the office] must also assume its role as a VRA and contemporaneously distribute voter registration forms,” and noting that the “telephonic and Internet resources” offered by the State were insufficient to satisfy all its obligations under the NVRA) (emphasis added)); *Harkless v. Blackwell*, 467 F. Supp. 2d 754, 757 (N.D. Ohio 2006) (“Section 7 ... requires all public assistance offices to distribute voter registration materials *with each* application, recertification,

renewal, or change of address relating to an applicant’s receipt of public assistance.”) (emphasis added), *rev’d sub nom. on other grounds Harkless v. Brunner*, 545 F.3d 445 (6th Cir. 2008); *Condon v. Reno*, 913 F. Supp. 946, 952 (D.S.C. 1995) (stating that public assistance offices must distribute voter registration forms “with each application for service or assistance (including renewals and change of address)”) (emphasis added). In sum, courts have not imposed any limitations on public assistance offices’ obligations to their clients during covered transactions based on where those transactions occur.

Moreover, every recent court-approved NVRA consent decree or settlement has included provisions requiring the distribution of voter registration forms during remote transactions, such as internet, telephone, and mail-in applications for benefits. *See, e.g., Ex. 3, Indiana State Conf. of the NAACP v. Gargano*, No. 1:09-cv-0849-TWP-DML (S.D. Ind. May 12, 2011), Dkt. No. 143-1, at 6-7 (mail, telephone, and internet transactions); *Ex. 4, United States v. Rhode Island*, No. 1:11-cv-00113-S-LDA (D. R.I. March 18, 2011), Dkt. No. 2, at 10-11 (mail, online, and telephone transactions); *Ex. 5, Valdez v. Duran*, No. 1:09-cv-668-JCH-DJS (D. N.M. Feb. 24, 2011, Dkt. No. 148), at 8 (phone, fax, electronic, and mail transactions); *Ex. 6, Harkless v. Brunner*, No. 1:06-cv-02284-PAG (N.D. Ohio Nov. 25, 2009), Dkt. No. 85, at 11 (mail, internet, and telephone transactions); *Ex. 7, Ass’n of Comm. Orgs. for Reform Now v. Levy*, No. 2:08-cv-04084-NKL (W.D. Mo. June 25, 2009), Dkt. No. 133, at 7-8 (mail, internet, and telephone transactions). Given that Defendants previously argued that federal courts lack jurisdiction to approve remedies that go beyond a statute’s scope,¹⁵ Defendants’ position would compel the

¹⁵ *See* Defs.’ Mem. in Support of Mot. to Dismiss, Dkt. No. 25-2, at 9-10 (Defendant Greenstein arguing that the district court lacks jurisdiction to impose “a court approved plan with appropriate reporting and monitoring requirements” because, in Defendants’ view, the NVRA “does not require any of the court-approved reporting and monitoring measures sought by the plaintiffs”); Dkt. No. 26-2, at 20-21 (Defendant Schedler arguing same); Dkt. No. 28-2, at 5 (Defendant Johnson arguing same).

absurd conclusion that all of the courts entering consent decrees or approving settlements encompassing remote transactions exceeded their remedial powers.

B. Not a Single Court Has Held that the NVRA Excludes Public Assistance Clients Who Conduct Transactions Via Remote Means Rather than In Person

Although Defendants Greenstein and Johnson claim that “[i]t is ... clear from the jurisprudence that the NVRA applies *solely* to applications for public assistance and disability services which are made ‘in person,’” DHH Br. at 13 (emphasis added); DCFS Br. at 13 (emphasis added), that assertion is simply incorrect. In fact, not a single court has held that the NVRA applies only to those public assistance clients who conduct benefits transactions in person.

Defendants Greenstein and Johnson rely entirely on out-of-context quotations from two cases—both of which are inapposite—to support their assertion that “the NVRA applies solely” to applications for services made “in person.” DHH Br. at 13-14; DCFS Br. at 12-13. Neither case cited by Defendants, however, held that the NVRA excludes public assistance clients engaging in remote transactions. Rather, both cases simply restate the obligation of each state to provide for in-person voter registration under Section 4 of the NVRA. Indeed, neither case discusses the relationship between the State’s general obligation to designate certain offices for in-person voter registration for all citizens under Section 4, and the “addition[al]” obligations that public assistance offices have to their own clients specifically under Section 7(a)(6).

For example, *National Coalition for Students with Disabilities Education and Legal Defense Fund v. Allen*, 152 F.3d 283 (4th Cir. 1988), did *not* hold that the scope of a public assistance office’s NVRA obligations is limited to in person transactions. In fact, the case was not concerned with the scope of public assistance offices’ obligations under Section 7(a)(6) at all. Instead, the Fourth Circuit in *Allen* simply held that offices providing services to disabled

students at public colleges are “offices” that must be designated as VRAs under Section 7(a)(2)(B). *Id.* at 288. To be sure, the court did quote Section 4 of the NVRA with respect to “in person” voter registration, but only as background for its analysis, not to render any holding as to Section 7(a)(6)’s scope. *Id.* at 285 (quoting 42 U.S.C. 1973gg-2). The passage cited by Defendants restates Section 4’s text, but does not suggest that it imposes any limitations on public assistance offices’ obligations under Section 7(a)(6).¹⁶

Defendants’ reliance on *Cox*, 408 F.3d 1349, is similarly misplaced. As in *Allen*, the court in *Cox* did *not* hold that the NVRA excludes public assistance clients who apply for public assistance via remote means. Instead, the case’s actual holding undercuts Defendants’ interpretation of the statute. Initially, the Eleventh Circuit observed that Section 4 of the NVRA expressly sets forth three registration channels (motor-voter; mail-in applications; and voter registration agencies), but then explained that these means “are not intended to be exclusive; rather, the Act seeks to encourage voter registration by setting a floor on registration acceptance methods.” *Id.* at 1353. The court went on to hold that the NVRA protects the right to conduct registration drives, even though registration drives are not explicitly mentioned in the statute. In other words, *Cox* undercuts the premise of Defendants’ position, insofar as it stands for the proposition that the methods of registration listed in Section 4 of the statute are not intended to be exclusive.

C. The Attorney General, the Executive Officer Charged with Enforcing the NVRA, Interprets the Statute to Apply to Remote Transactions

Consistent with the plain language and purpose of the statute, the Attorney General, the

¹⁶ The court in *Allen* did, however, state that “[t]he Act requires a designated office to provide certain voter registration services to persons who request the service or assistance customarily provided by that office.” *Id.* at 286. Rather than supporting Defendants’ argument, this language comports with the plain meaning of the statute: that these voter registration obligations are broad and are triggered whenever, and without limitation as to how, a client requests public assistance benefits or services.

executive officer charged with enforcing the NVRA, 42 U.S.C. § 1973gg-9(a), interprets Section 7 to apply to remote transactions. When an executive agency weighs in on the interpretation of a statute with which it has considerable expertise, as the Attorney General does here, it provides persuasive interpretive guidance as to the meaning of the statute. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (stating that, while certain agency interpretations are “not controlling upon the courts,” they “do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance”); *accord United States v. Mead Corp.*, 533 U.S. 218, 218-19 (2001).

The Attorney General has twice expressly stated that public assistance offices’ obligations under Section 7(a)(6) extend to *all* covered transactions, including those conducted via remote means such as telephone, internet, and mail—statements that provide persuasive confirmation of Plaintiffs’ plain-language reading of the statute.

First, in a Statement of Interest filed in *Georgia State Conference of the NAACP v. Kemp*, the Attorney General explained that “the statutory text provides[] that Section 7(a)(6) of the NVRA applies to each covered transaction, whether in-person or remote,” and thoroughly explained the legal basis for that understanding. Ex. 8, *Georgia State Conference of the NAACP v. Kemp*, No. 1:11-cv-01849-CAP (N.D. Ga. Oct. 5, 2011), Dkt. No. 39, at 8. That view is entitled to deference by this Court. *See Mead*, 533 U.S. at 219 (noting that an administrative judgment’s “power to persuade” increases with “the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements”) (quoting *Skidmore*, 323 U.S. at 140) (internal quotation marks omitted).

Second, the Attorney General’s view as to the statute’s applicability to remote transactions is also set forth in the United States Department of Justice’s interpretative guidance

advising States and public assistance offices on how to fulfill their NVRA obligations, a fact that Defendants acknowledge in their own briefs. *See* DHH Br. at 7-8 (citing U.S. Department of Justice, *The National Voter Registration Act of 1993: Questions and Answers*, available at http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php) (attached hereto as Ex. 9); DCFS Br. at 6-7 (same). Those guidelines clearly state that “the voter registration requirements of Section 7 of the NVRA apply to all application, renewal, recertification and change of address transactions with designated offices,” including those conducted “through the internet, by telephone, or by mail.” Ex. 9, Question 24 & Response. As Defendant Greenstein’s own counsel has acknowledged, under “guidance issued by DOJ ... we are required to make registration available even to persons who do not apply for services in-person ... courts will probably find it persuasive.” Ex. 10, Email from Darlene Hughes, DHH, to Cate McRitchie, SOS (Feb. 9. 2011) (forwarding comment from DHH counsel David McCay) (internal quotation marks omitted).

IV. DEFENDANTS HAVE VIOLATED AND ARE IN VIOLATION OF THE NVRA BY DENYING VOTER REGISTRATION SERVICES TO PUBLIC ASSISTANCE CLIENTS WHO DO NOT APPEAR IN PERSON AT STATE OFFICES

Through their policies and practices, Defendants have violated and continue to violate Section 7(a)(6) of the NVRA. As discussed below, the majority of public assistance clients in Louisiana apply for, renew, or change their address in connection with benefits via means such as telephone, mail, or internet. As a result, tens of thousands of impoverished Louisiana citizens have been denied their statutory right to complete a voter registration form while conducting a benefits transaction.

A. Defendant Greenstein Has Denied Tens of Thousands of DHH Clients Voter Registration Services that Are Required under the NVRA

Partial summary judgment for Plaintiffs is proper, because Defendant Greenstein has failed to offer Medicaid clients an opportunity to register to vote and assistance with filling out a

voter registration application “with each” benefits transaction.

1. DHH Conducts the Majority of Its Transactions Via Remote Means that Do Not Involve In Person Contact with DHH Clients

DHH Deputy Medicaid Director (and a member of DHH’s Medicaid Task Force on NVRA Compliance) Dianne Batts¹⁷ testified that DHH receives over 300,000 initial applications for Medicaid each year. *See* Ex. 11, Batts Dep. Tr. 35:3-14; *see also* Ex. 12, DHH Medicaid Applications Processed During FY ’05-06. DHH also processes over 300,000 renewals for Medicaid annually. *See* Ex. 11, Batts Dep. Tr. 57:14-21; *see also* Ex. 14, DHH, Certifications Due for Renewal By Month. Thus, even leaving aside changes of address, this translates to over 600,000 covered transactions annually.

The vast majority of these Medicaid transactions are conducted via telephone or mail, and not through an in person face-to-face interaction between Medicaid clients and DHH personnel. For instance, approximately 70% of the over 300,000 initial Medicaid applications received annually (or over 210,000 applications for Medicaid) are received through the mail, Ex. 11, Batts Dep. Tr. 36:5-15, 208:24-25; meanwhile, 18% (or approximately 54,000 applications) are received via internet, *id.* at 35:25. Notably, the process of applying for Medicaid does not require an interview of the client. *See id.* at 36:16 - 37:9. Thus, as explained by Christopher Chase, DHH’s “NVRA Specialist,”¹⁸ most applications typically involve *no personal contact whatsoever* between the Medicaid applicant and DHH personnel.¹⁹ *See* Ex. 15, Chase Dep. Tr.

¹⁷ *See* Ex. 13, Defendant Greenstein’s Initial Disclosures, at 2 (identifying Dianne Batts). *See also* Ex. 11, Batts Dep. Tr. 152:4-8 (acknowledging that Batts is a member of the DHH Medicaid NVRA Task Force).

¹⁸ Christopher Chase is a DHH employee supervised by Darlene Hughes (*see* Ex. 16, Hughes Dep. Tr. 11:16-20; 13:13-15; Ex. 15, Chase Dep. Tr. 17:20-22), who describes him as DHH’s “NVRA specialist.” Ex. 16, Hughes Dep. Tr. 32:2-8.

¹⁹ If a person applies for Medicaid by mail, DHH staff will only contact that person if the application for Medicaid is missing required information, but even when such information is missing, it is

39:25 - 40:24 (noting that the “majority [of applications] came by mail or online,” and “would not involve a face-to-face contact,” such that DHH’s contact with the public is now “minimal.”). *See also* Ex. 11, Batts Dep. Tr. 100:20 - 101:3 (explaining that DHH only contacts Medicaid applicants who apply by mail if an application is missing required information), 208:18-25 (explaining that mail-in applications generally involve no conversations between DHH personnel and the applicant); Ex. 17, Mancuso Dep. Tr. 40:3-5, 64:3-4 (Medicaid analyst explaining that most Medicaid transactions are conducted via telephone).

Similarly, the majority of renewals for Medicaid “are done without [in-person] contact” between DHH and the applicant. Ex. 11, Batts Dep. Tr. 58:20 - 59:8; *see id.* at 109:21 - 110:1. And, while DHH does not keep records as to how many changes of address it processes per year, the majority of these transactions are processed via telephone, and not in person. *See id.* at 63:10-12.²⁰

Notably, although mail-in and internet applications for Medicaid have been available “for years” *id.* at 32:10-33:12, DHH’s heavy reliance on these remote methods to conduct its transactions is a relatively new development, dating back to or before the year 2009, and represents a substantial change in practices from the time that the NVRA was enacted in 1993. *See* Ex. 15, Chase Dep. Tr. 40:9-19 (explaining that most client interactions were face to face at the time that the NVRA was enacted, but that this was no longer the case by 2009). As Mr. Chase explained in an email from July 2009, “[o]ur processes have changed quite a lot since [the

usually obtained via telephone, such that, again, no “in person” interaction occurs. Ex. 11, Batts Dep. Tr. 36:16 - 37:9 (“If we have everything that we need, we don’t need to make follow-up contact with them. If we need additional information, we will make follow-up contact. And it could be done through the mail or they could call, but we, we don’t require face-to-face interviews.”).

²⁰ In fact, prior to July 2011, there was no written form that Medicaid clients could use to change their addresses in connection with their benefits; all changes of name or address had to be reported verbally. *See* Ex. 11, Batts Dep. Tr. 61:13 – 62:15.

NVRA] was implemented. Our face-to-face contact with the public is *minimal* because many of our processes have been automated.” *Id.* at 38:25 - 39:9, 36:3-11 (emphasis added) (referencing Ex. 18, Email from Christopher Chase, DHH, to Cate McRitchie, SOS (July 7, 2009).

2. DHH Has Not Offered Clients an Opportunity to Register to Vote During Remote Transactions, in Violation of Section 7(a)(6)(A)-(B) of the NVRA

Although DHH has shifted largely to remote method such as mail, telephone, and internet to process Medicaid transactions, Defendant Greenstein has not offered Medicaid clients an opportunity to vote during such transactions, in violation of Section 7(a)(6). 42 U.S.C. § 1973gg-5(a)(6).

First, Defendant Greenstein has failed to offer Medicaid clients an opportunity to register to vote with each Medicaid transaction conducted through the mail. For years, the written initial application for Medicaid has not included an offer of voter registration services to Medicaid clients. *See* Ex. 11, Batts Dep. Tr. 85:10 - 86:14 (acknowledging, as of April 26, 2011, that the mail-in Medicaid application did not include a question concerning voter registration, and that no “declaration form” inquiring about voter registration was attached); *cf.* Ex. 19, Electronic Appointment from Edward Fowler, dated April 26, 2011, at 2 (same); Ex. 20, Louisiana General Medicaid Application (dated July 7, 2007, and lacking a question concerning voter registration); Ex. 17, Mancuso Dep. Tr. 14:6-19 (acknowledging same, until around August of 2011).²¹ Similarly, the written Medicaid renewal form also lacked a question concerning voter registration for years. *See* Ex. 11, Batts Dep. Tr. 54:4 - 55:5 (acknowledging that the Medicaid renewal form did not include a voter registration question prior to June 2011); *cf. id.* at 48:19 -

²¹ Only recently, in June 2011, approximately two months after litigation was initiated in April 2011, did DHH add a question concerning voter registration to DHH’s standard application for Medicaid. *See* Ex. 11, Batts Dep. Tr. 27:10-20 (identifying Batts Dep. Ex. 3 as the current Medicaid application, revised version as June 2011), and *id.* at 30:11-20 (explaining that a question concerning voter registration was a new addition to this version of the form, and was not included in prior versions).

49:8 and Ex. 21, Louisiana Medicaid Program Renewal Form (dated Jan. 2007, and lacking any question concerning voter registration); Ex. 16, Hughes Dep. Tr. 53:17-20 (acknowledging that initial application and renewal forms for Medicaid did not include a question concerning voter registration as of Spring 2011). And, although Defendant Greenstein's employees asserted during depositions that these forms were revised after litigation was initiated in April 2011, they acknowledged that older versions of these forms—which do not include a question concerning voter registration—remain in circulation. *See* Ex. 11, Batts Dep. Tr. 29:1-24 (explaining that, when DHH issues new versions of its Medicaid forms, older versions remain in circulation).

Thus, consistent with DHH policy, individuals who apply for or renew Medicaid through the mail have not been and are not being offered an opportunity to register to vote with each Medicaid transaction. *See* Ex. 11, Batts Dep. Tr. 63:23 - 64:4 (DHH's policy is that DHH is only "supposed to offer anyone that comes *in person* to one of our offices ... the opportunity to register to vote." (emphasis added)).²² Indeed, Stephen Mancuso, a Medicaid analyst employed by DHH for the past five years,²³ testified that prior to 2011, he had *never* distributed a voter registration form to a Medicaid client, or any kind of form asking the client if he or she would like to register to vote, and is also unaware if anyone else in his office had ever done so. *See* Ex. 17, Mancuso Dep. Tr. 25:6-8, 72:5-21.

Second, Defendant Greenstein has conceded that he has not offered voter registration to clients with each Medicaid transaction conducted over the telephone. *See, e.g.*, Ex. 23, Defendant

²² *See also id.* at 26:5-6 (applicants would only get an offer of voter registration "if they [we]re in person"); *id.* at 66:4-8 (emphasizing duty of DHH Medicaid to offer voter registration to "in person" applicants); *id.* at 69:23-70:3 (noting that DHH Medicaid will give an applicant a voter registration if the person "is applying in our office" in person); *id.* at 71:21-24 (DHH Medicaid will offer voter registration to an applicant "[i]f they are in our presence"); *id.* at 166:19-25 (DHH Medicaid policy has been that only "in-person applicants must be offered voter registration opportunities").

²³ *See* Ex. 17, Mancuso Dep. Tr. 10:24 – 11:3.

Greenstein's Responses to Plaintiffs' First Request for Admissions, Request No. 27 (admitting that "prior to January 12, 2011, DHH did not enforce or require its employees to comply with any policy, rule, or guidelines that required DHH offices to provide voter registration application forms ... to persons who applied for benefits, recertified their eligibility, and/or changed their address with respect to public assistance benefits through telephone communications with DHH"); Ex. 11, Batts Dep. Tr. at 87:16 - 88:6 (same, through at least April 26, 2011).²⁴

Third, Defendant Greenstein has also conceded that he has failed to offer voter registration with each Medicaid transaction conducted online. *See* Ex. 23, Defendant Greenstein's Responses to Plaintiffs' First Request for Admissions, Request No. 25 (admitting that "prior to January 12, 2011, DHH did not enforce or require its employees to comply with any policy, rule, or guidelines that required DHH offices to provide voter registration application forms ... to persons who applied for benefits, recertified their eligibility, and/or changed their address with respect to public assistance benefits through online transactions with DHH"); Ex. 15, Chase Dep. Tr. 85:22 - 86:1) (acknowledging that, as late as March or April of 2011, DHH did not offer an opportunity to register to vote during online Medicaid transactions); Ex. 11, Batts Dep. Tr. 86:15 - 87:2 (same, through at least April 26, 2011); *id.* at 174:22 - 175:7 (acknowledging that the DHH website did not have a link to Secretary of State's voter registration page until May 25, 2011).

Notably, training on NVRA compliance received by Medicaid personnel has not instructed staff to offer voter registration during remote transactions. For instance, Medicaid staff

²⁴ This has been the case until at least April 26, 2011. *See* Ex. 11, Batts Dep. Tr. 86:7-9. New instructions concerning applications for Medicaid received by mail, telephone, and internet, *see id.* at 128:5-10, were only issued in July 2011, *id.* at 129:11-20, but DHH's "NVRA specialist" acknowledged that he is "[n]ot sure" whether, as of today, DHH's automated telephone system offers voter registration, Ex. 15, Chase Dep. Tr. 86:21 - 88:10.

received instruction concerning the NVRA at a training event in July 2009, *see* Ex. 15, Chase Dep. Tr. 52:9-12, but DHH staff were instructed to offer voter registration to Medicaid clients during “in person” transactions only; the training did not address voter registration for individuals who apply for Medicaid by mail or online. *See id.* at 56:3-9, 58:17-24. The next training event for DHH personnel addressing the NVRA occurred in 2011, *see id.* at 62:23 - 63:1, and did not offer any different instructions. *See id.* at 98:15-25 (explaining that the content of the 2011 training was the same as the 2009 training). Moreover, the August 2009 version of DHH’s Medicaid administrative manual for employees specifically instructed DHH personnel to offer clients an opportunity to register to vote during “in person” transactions, but contained no instruction as to voter registration for clients who apply for Medicaid via remote means. Ex. 11, Batts Dep. Tr. 124:1 - 125:10; Ex. 58, MVA Administrative Manual (Aug. 6, 2009), at 2.

Astonishingly, Defendant Greenstein maintained these practices despite conceding that doing so constituted non-compliance with the NVRA. As Darlene Hughes, DHH Medicaid Eligibility Section Chief,²⁵ and a member of DHH’s Medicaid Task Force on NVRA Compliance,²⁶ testified:

Q: Prior to [the time of this email, dated May 26, 2011],²⁷ were you totally compliant with NVRA requirements with respect to providing the opportunity to vote with every application and renewal?

A. **It was our understanding that we were only required to do it face to face.**

...

Q: When this email was written[, y]ou say “It’s part of our efforts to become totally compliant with NVRA requirements.” ... **Were you not totally compliant with NVRA requirements...?**

²⁵ *See* Ex. 13, Defendant Greenstein’s Initial Disclosures, at 2-3 (identifying Ms. Hughes).

²⁶ *See* Ex. 16, Hughes Dep. Tr. 50:15-25 (acknowledging role on Task Force).

²⁷ *See id.* at 26:20 - 27:6 (noting date of email as May 26, 2011).

A. **At this point, no.**

Ex. 16, Hughes Dep. Tr. 30:11 - 31:14 (emphases added).

In sum, Defendant Greenstein has failed to offer an opportunity to register to vote “with each” covered transactions, which, as DHH personnel have themselves acknowledged, constitutes a violation of the statute. 42 U.S.C. § 1973gg-5(a)(6). Given the numbers cited, *supra*, pgs. 32-34, DHH’s non-compliance translates to at least tens of thousands of Medicaid recipients denied an opportunity to register to vote by Defendant Greenstein.

3. DHH Does Not Provide Clients with the Same Degree of Assistance with Regard to Voter Registration Forms as Is Provided with Regard to the Completion of DHH’s Own Forms, in Violation of Section 7(a)(6)(C) of the NVRA

DHH also continues to violate Section 7(a)(6)(C)’s requirement that it provide the “same degree of assistance with regard to the completion of the [voter] registration application form” as it provides “with regard to the completion of [DHH’s] own forms.” 42 U.S.C. § 1973gg-5(a)(6)(C).

With respect to its own benefits applications, DHH personnel are required to examine each Medicaid application submitted by a client, systematically checking each application line-by-line in order to ensure that all necessary information is included, that the form is legible, and that it is signed by the applicant. *See* Ex. 11, Batts Dep. Tr. 101:4 - 102:8. If any information is missing from a Medicaid application, DHH personnel do not simply reject the application, but rather are required to assist the applicant, by attempting to find the missing information through other means, or by contacting the applicant directly to obtain that information. *See id.* at 100:20 - 101:11. This level of assistance is provided regardless of whether a person submits a Medicaid application in person, mails the Medicaid application to DHH, *see id.* at 107:18-24, or submits

the Medicaid application online, *see id.* at 108:2-16. *See also* Ex. 17, Mancuso Dep. Tr. 38:3 – 39:2 (testifying that he contacts applicants if a Medicaid application form is missing any required information, if any answers are illegible, or if the form is not signed).

DHH personnel, however, do not provide the same level of assistance with respect to voter registration applications. Although DHH employees have sometimes been required to contact applicants to obtain information missing from the person’s Medicaid application, they have not been required to offer those clients an opportunity to register to vote (at least prior to 2011). *See* Ex. 11, Batts Dep. Tr. 110:15 - 111:2. Moreover, unlike with Medicaid benefits forms, DHH personnel do not assist clients with their voter registration applications by checking to ensure that those forms are complete, that they are legible, and that they are signed; when a voter registration application form is submitted to DHH, that voter registration form is simply forwarded to the parish registrar’s office. *See id.* at 89:19 - 90:10. This is “the only thing” that DHH personnel do with voter registration applications submitted by clients. *Id.* at 90:3-6. This is consistent with the training received by DHH personnel, which does not instruct Medicaid staff to review voter registration applications or process them in any way prior to forwarding them. *See* Ex. 15, Chase Dep. Tr. 60:10-20. Indeed, DHH personnel lack the training to assist clients with completing a voter registration form. As Mr. Mancuso, a DHH Medicaid analyst, testified, he is knowledgeable about and can assist clients with completing every aspect of a Medicaid application form, *see* Ex. 17, Mancuso Dep. Tr. 77:19 – 78:5, but he does not know, for instance, how a client is supposed to answer a question on the voter registration form concerning a social security number if the applicant lacks such information, *id.* at 35:8-16.

In sum, Defendant Greenstein has failed to offer “equal assistance” in the completion with voter registration forms submitted via remote means, which constitutes an independent

violation of the statute, 42 U.S.C. § 1973gg-5(a)(6)(C).

B. Defendant Johnson Has Denied Many DCFS Clients Voter Registration Services that Are Required under the NVRA

Partial summary judgment for Plaintiffs is proper, because Defendant Johnson has failed to offer DCFS clients an opportunity to register to vote and assistance with filling out a voter registration application “with each” benefits transactions.

1. DCFS Conducts Thousands of Transactions Via Remote Means that Do Not Involve In Person Contact with DCFS Clients

DCFS conducts hundreds of thousands of covered transactions annually, for programs such as SNAP benefits (“Supplemental Nutritional Assistance Program” benefits, formerly known as “food stamps”) and SNAP-related programs such as DSNAP (or natural disaster-related SNAP benefits²⁸) and LaCAP (“Louisiana Combined Application Program”²⁹); FITAP (“Family Independence Temporary Assistance Program,” or cash assistance); KCSP (“Kinship Care Subsidy Program”); and CCAP (“Child Care Assistance Program” benefits). As with DHH, tens of thousands of applicants for DCFS’s benefits programs do so via remote means, involving no “in person” contact between the applicant and DCFS staff.

Samuel Guillory, DCFS Deputy Assistant Secretary for the Division of Programs³⁰ explained that DCFS receives approximately 45,000 initial applications for SNAP benefits (colloquially referred to as “food stamps”) alone per month. *See* Ex. 24, Guillory Dep. Tr. 77:21 - 78:12 (explaining that DCFS receives approximately 15,000 SNAP applications via internet and 30,000 paper applications per month).

DCFS permits many covered transactions to be conducted via remote means. *See* Ex. 25,

²⁸ *See* Ex. 24, Guillory Dep. Tr. 112:13-20 (explaining DSNAP benefits).

²⁹ *See id.* at 66:19 – 67:8 (explaining LaCAP as “a SNAP program”).

³⁰ *See id.* at 11:2-5 (stating Guillory’s job title).

Defendant Johnson's Response to Plaintiffs Revised First Set of Interrogatories, No. 13a (stating that online applications for DCFS benefits programs have been available since May 2010; telephone interviews for applications/recertifications for DCFS benefits programs have been available since October 2007; and changes of address for DCFS benefits programs are available by mail or telephone). At present, approximately 15,000 applications for food stamps alone are submitted online per month (or approximately 180,000 per year).³¹ *See* Ex. 24, Guillory Dep. Tr. 77:21-25, 78:1-7. Since implementation of the online benefits application system, applications through that system have increased. *See id.* at 81:18-25; 82:1-3. DCFS plans to further increase online usage over the next several years. *See id.* at 82:8-11.

Unlike with Medicaid, an application for food stamps requires that the applicant be interviewed. *Id.* at 85:1-8. Currently, and according to DCFS policy as early as October 2009, the default is for initial application interviews to be conducted over the telephone rather than "in person." *See id.* at 85:14-22; Ex. 26, Young Dep. Tr. 27:12-13, 29:16-20; Ex. 27, DCFS, *Food Stamp Orientation Manual*, at 6 ("Telephone interviews must be conducted for all cases unless: The household requests a face-to-face interview; or The worker determines that a face-to-face interview is necessary to resolve certain issues that would be better facilitated by a face-to-face interview, rather than a telephone interview; or There is no telephone number on record to contact the household; or The household is eligible for expedited services and a face-to-face interview can be completed sooner than a telephone interview."); *cf.* Ex. 28, Tyson Dep. Tr. 18:10-22 (stating that most of her client interviews are in person because of the specific program (STEP) that she works on, but that such is not the normal practice for her office). According to

³¹ DCFS also offers online applications for other public assistance programs that are covered by the NVRA, including FITAP and CCAP, which each receive approximately 5,000 applications online per quarter. *See* Ex. 24, Guillory Dep. Tr. 77:21 - 82:21.

Duane Joubert, who certifies initial applications for SNAP benefits in his capacity as a Social Service Analyst with DCFS,³² “more often than not” clients are certified for SNAP benefits without ever seeing him in a face-to-face interaction. *See* Ex. 29, Joubert Dep. Tr. 73:1-10.

In addition to interviews during initial applications, SNAP clients are re-interviewed during redeterminations, which occur every year or every two years. *See id.* at 63:5-9. Effective October 2007, DCFS began conducting redetermination interviews by telephone. *See* Ex. 25, Defendant Johnson’s Response to Plaintiffs’ Revised First Set of Interrogatories, No. 13(c). DCFS Parish Manager Wendell Young,³³ explained that, as of October 2007, telephone interviews have been the default option for redetermination interviews. *See* Ex. 26, Young Dep. Tr. 50:3-14; *see also* Ex. 30, DCFS, C-410 *Food Stamp Interview Procedures*, dated October 2007, at 2 (“Telephone interviews must be conducted for all cases unless [a specified exception applies]”); Ex. 31, DCFS, C-410 *SNAP Interview Procedures*, dated May 2011, at 2 (same).

Finally, most DCFS clients report changes of address via telephone. *See* Ex. 24, Guillory Dep. Tr. 51:6-7 (“... most of our change requests are done by phone”); Ex. 29, Joubert Dep. Tr. 65:5-6 (“Usually they would tell me [about a change of address] on the telephone, call me on the telephone and tell me”).

2. DCFS Does Not Require that Clients Receive an Opportunity to Register to Vote During Remote Transactions, in Violation of Section 7(a)(6)(A)-(B) of the NVRA

Despite its heavy reliance on telephone and internet transactions with clients, DCFS has failed and continues to fail to offer voter registration during remote transactions. This has been and remains the case with respect to applications and/or renewals for various benefits programs offered by DCFS, including SNAP, CCAP, and KCSP. Moreover, DCFS has denied clients of all

³² *See* Ex. 29, Joubert Dep. Tr. at 13:15 - 14:15 (explaining Joubert’s job title and function).

³³ *See* Ex. 26, Young Dep. Tr. at 11:2 (stating Young’s job title).

of its programs an opportunity to register to vote while changing address in connection with benefits.

First, clients of the SNAP (or “food stamps”) program have routinely been denied an opportunity to register to vote while conducting covered transactions. As an initial matter, several different written applications for SNAP benefits utilized by DCFS do not and/or have not included a question concerning voter registration. For instance, Mr. Guillory, DCFS Deputy Assistant Secretary for the Division of Programs, stated that the current Disaster SNAP (“DSNAP”) application does not include a question asking clients if they would like to register to vote. *See* Ex. 24, Guillory Dep. Tr. 113:7-10, 114:23-25, 115:1-2. And, prior to May 2011, a person using the LaCAP application (which, as noted *supra* pg. 40, is an application for the SNAP program) and redetermination forms did not receive a written question asking if they wanted to register to vote. *Id.* at 68:4-11, 70:11-16, 71:20-24.³⁴

The absence of a question concerning voter registration on various SNAP forms is particularly problematic because DCFS has not required its staff to ask clients if they wish to register to vote during each benefits interview. For instance, prior to May 1, 2011, DCFS policy did not require staff to ask clients whether they would like to register to vote during benefits interviews. *See* Ex. 24, Guillory Dep. Tr. 142:24 - 143:6 (explaining that DCFS staff were not required to verbally ask clients whether they would like to register to vote during an interview, and were only required to clients of the benefits-related services offered by DCFS). Furthermore, as of September 2011, DCFS permits the interview for renewal of SNAP benefits to be waived. When it is so waived, the client is not contacted about voter registration. *See id.* at 89:17-25; Ex.

³⁴ Thus, although Defendant Johnson asserts that the written application forms for LaCAP were modified to include a question concerning voter registration, DCFS staff concedes that this was not the case at the time that this litigation was initiated in April 2011.

32, DCFS, C-210 *Responsibilities*, dated September 2011, at 1 (“It is also not necessary to contact the client regarding voter registration if the SNAP redetermination interview was waived”); *cf.* Ex. 26, Young Dep. Tr. 46:13-14 (“I think there’s certain times where an interview could be waived...”). Thus, many SNAP clients have never received an offer of voter registration while conducting a covered transaction, either on paper or verbally during a client interview.

Moreover, notwithstanding Section 7(a)(6)’s clear directive that public assistance clients must be given a voter registration form during each covered transaction, DCFS has not always required its employees to do so, *even if the client states that she would like to register to vote during an interview*. Rather, DCFS has instead maintained a policy whereby DCFS personnel have discretion to simply advise clients that they may register to vote online, rather than giving them a voter registration form. *See* Ex. 24, Guillory Dep. Tr. 143:14 – 144:5; Ex. 33, DCFS, C-210 OFS Responsibilities, dated May 2011 (Guillory Dep. Ex. 19).

Second, clients of the Child Care Assistance Program (CCAP) have routinely been denied an opportunity to register to vote during remote transactions. According to Mr. Guillory, prior to May 1, 2011, it was DCFS policy that voter registration services were not offered in conjunction with CCAP and the Kinship Care Subsidy Program (KCSP). *See* Ex. 24, Guillory Dep. Tr. 128:19-25, 129:1-3. The various application forms for CCAP do not and/or have not included a question concerning voter registration. Wendell Young, DCFS Parish Manager, admitted that the current CCAP online application does not include an offer of voter registration to clients, nor has it ever. *See* Ex. 26, Young Dep. Tr. 54:9 - 55:9. Similarly, Prior to June of 2011, individuals applying for CCAP using the written CCAP 2 form were not offered an opportunity to register to vote. *See* Ex. 24, Guillory Dep. Tr. 63:12-17. Moreover, since May 2011, DCFS employees have been instructed that because applications for CCAP do not require an interview, “it is not

necessary to contact the client to ask about voter registration.” *Id.* at 138:4-19; Ex. 59, DCFS, C-210 Responsibilities, dated September 2011 (Guillory Dep. Ex. 21); Ex. 34, DCFS, OFS Administration Procedures Manual, dated May 2011, at 1; Ex 35, DCFS, DCFS Voter Registration Training, dated August 10, 2011, at DCFS 01086; *cf.* Ex. 26, Young Dep. Tr. 45:20-21 (“Child Care doesn’t actually require an interview...”).

Third, clients of all DCFS benefits programs have been denied an opportunity to register to vote while reporting a change of address. From at least August 1998 to May 2011, DCFS written policy was not to offer voter registration to clients reporting a change of address via remote means. *See, e.g.*, Ex. 24, Guillory Dep. Tr. 129:12-17 (stating that as of January 1, 2001, it was DCFS policy that people who submitted a change of address or name remotely did not receive voter registration services). Written DCFS policies repeatedly emphasized that clients conducting a change of address should only be offered an opportunity to register to vote if they change their address through an “in person” interaction with DCFS staff.³⁵

Moreover, prior to March 24, 2011, DCFS did not utilize a written form that asked clients

³⁵ *See* Ex. 36, DCFS, *Responsibilities* (Aug. 1998), at 1 (“If the recipient reports an address or name change *in person*, ask the client, ‘Do you want your change of address/name to be used for voter registration purposes?’”) (emphasis added); Ex. 37, DCFS, *Actions on Changes* (May 2011), at 3 (“If the household reports a change of address or name in person or by phone, ask ‘Do you want your change of address/name to be used for voter registration purposes?’”); *see also* Ex. 38, DCFS, *Food Stamp Orientation Manual* (Jan. 2007), at 85 (“Inform applicants/recipients of the availability of voter registration services and eligibility requirements: - at application - at redet - reports name/address change *in person*”) (emphasis added); Ex. 39, DCFS, *Food Stamp Orientation Manual* (Oct. 2007), at 85 (same); Ex. 40, DCFS, *Food Stamp Orientation Manual* (Dec. 2007), at 85 (same); Ex. 41, DCFS, *Food Stamp Orientation Manual* (Feb. 2008), at 85 (same); Ex. 42, DCFS, *Food Stamp Orientation Manual* (June 2008), at 85 (same); Ex. 43, DCFS, *Food Stamp Orientation Manual* (Oct. 2008), at 84 (same); Ex. 44, DCFS, *Food Stamp Orientation Manual* (Jan. 2009), at 84 (same); Ex. 45, DCFS, *Food Stamp Orientation Manual* (Apr. 2009), at 84 (same); Ex. 46, DCFS, *Food Stamp Orientation Manual* (July 2009), at 84 (same); Ex. 47, DCFS, *Food Stamp Orientation Manual* (Sept. 2009), at 84 (same); Ex. 48, DCFS, *Food Stamp Orientation Manual* (Oct. 2009), at 84 (same); Ex. 49, DCFS, *SNAP Orientation Manual* (Jan. 2010), at 90 (same); Ex. 50, DCFS, *SNAP Orientation Manual* (Apr. 2010), at 89 (same); Ex. 51, DCFS, *SNAP Orientation Manual* (July 2010), at 89 (same); Ex. 52, DCFS, *SNAP Orientation Manual* (Aug. 2010), at 90 (same); Ex. 53, DCFS, *SNAP Orientation Manual* (Oct. 2010), at 90 (same); Ex. 54, DCFS, *SNAP Orientation Manual* (Nov. 2010), at 90 (same); Ex. 55, DCFS, *SNAP Orientation Manual* (Feb. 2011), at 94 (same).

submitting a change of address if they wanted to register to vote. *See* Ex. 24, Guillory Dep. Tr. 57:5-9. Although DCFS asserts that it eventually created a form for that purpose, Mr. Guillory conceded that this form was not made available to CCAP clients until May of 2011. *See id.* at 59:12-19. Johnnie Tyson, a DCFS caseworker for 30 years, *see* Ex. 28, Tyson Dep. Tr. at 8:6-16, admitted that she has *never* asked clients reporting a change of address if they would like to register to vote, and that the form she normally uses for address change purposes does not have a voter registration question on it. *See id.* at 16:3-7, 28:10-15, 33:12-20, 45:14-19. DCFS's failure to offer voter registration during a change of address constitutes a clear violation of the statute and congressional intent. *See* Ex. 1, *Kemp*, at 21 (“[T]he NVRA expresses a policy of increasing the number of eligible citizens who register to vote and implements that policy by reaching a wide range of citizens through offices they are likely to contact, especially after a change of address.”).

Despite these violations, DCFS personnel operate under the assumption that voter registration is only required to be offered during in person transactions, and that any offer of voter registration through remote transactions is unnecessary. Mr. Guillory, who is responsible for the program policies of DCFS, *see* Ex. 24, Guillory Dep. Tr. 11:6-12, stated that DCFS's view is that the NVRA “applies to in person [transactions]” only, such that any offers of voter registration during telephone transactions are “above and beyond what the law requires,” *id.* at 196:2-8. *See also* Ex. 26, Young Dep. Tr. 111:10-15 (stating that the NVRA does not apply to telephone interviews, but may be extended “as a courtesy”).

Accordingly, Defendant Johnson's policies and practices have violated and continue to violate the NVRA's requirement that a voter registration form must be “distribute[d] with each application for such service or assistance, and with each recertification, renewal, or change of

address form relating to such service or assistance.” 42 U.S.C. § 1973gg-5(a)(6).

3. DCFS Does Not Provide Clients with the Same Degree of Assistance with Regard to Voter Registration Forms as Is Provided with Regard to the Completion of DCFS’s Own Forms, in Violation of Section 7(a)(6)(C) of the NVRA

Defendant Johnson also continues to violate Section 7(a)(6)(C)’s independent requirement that it provide the “same degree of assistance with regard to the completion of the [voter] registration application form” as it provides “with regard to the completion of [DCFS’s] own forms.” 42 U.S.C. § 1973gg-5(a)(6)(C).

With respect to its own benefits applications, DCFS conducts interviews of all food stamps applicants, during which DCFS employees examine each benefits application line-by-line and “go through that application with the client to determine if the answers are correct and we have all the information that we need.” Ex. 26, Young Dep. Tr. 30:16-25; 31:1-13. DCFS employees make sure that food stamps applications are never incomplete: “[i]f the client leaves it [an answer] blank, then the worker has to get the answer from them to that particular question.” *Id.* at 30:16-25; 31:1-13. This includes ensuring that the application is signed. *Id.* at 32:8-20.

DCFS employees, however, do not provide the same level of assistance with respect to their clients’ voter registration application forms. Like DHH employees, DCFS employees do not attempt to make sure that voter registration forms are complete or have correct information. Rather, once a blank voter registration form is provided to a client, DCFS employees do not follow up with that client in any way. Ex. 29, Joubert Dep. Tr. at 76:1-8. In fact, as one DCFS caseworker explained, he has never asked a client to return the voter registration form to him and never helped a client with a voter registration form. *See id.* at 77:18-25, 78:1-4. When he receives a completed voter registration form from a client, he forwards it to the clerical staff without doing anything with it. *See id.* at 78:24-25, 79:1-3. Similarly, another DCFS caseworker

explained that she accepts completed voter registration applications and, without doing anything further with them, places them in a basket in the reception area. Ex. 28, Tyson Dep. Tr. 19:7-15.

Mr. Young, a DCFS parish manager, explicitly recognized caseworkers cannot offer effective assistance with voter registration during remote transactions, stating that, “because we don’t see [clients] face to face, we actually really can’t assist them in the same manner that we did when we did face-to-face interviews.... [Caseworkers] can answer questions over the phone to [clients], but if they are not in the office, it’s difficult to have them fill out the form.” Ex. 26, Young Dep. Tr. 121:14-25, 122:1-6.

Accordingly, Defendant Johnson has failed to provide her clients “the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms,” in violation of Section 7(a)(6)(C). 42 U.S.C. § 1973gg-5(a)(6)(C).

C. Defendant Schedler Is Liable under the NVRA for Failing to Coordinate the State’s Responsibilities as to Voter Registration for Public Assistance Clients Engaging in Remote Transactions

The Secretary of State is liable under the NVRA for his failure to coordinate Louisiana’s responsibilities to offer voter registration services at public assistance offices during remote transactions. The NVRA requires that each state’s chief election official—here, the Secretary of State—“be responsible for coordination of State responsibilities” under the statute. 42 U.S.C. § 1973gg-8. These responsibilities go beyond mere delegation of NVRA responsibilities to other state agencies. *Harkless*, 545 F.3d at 451.³⁶ The statute provides that each “state shall ensure that

³⁶ In *Harkless*, the Sixth Circuit made clear that a state’s chief election official cannot insulate himself from any liability arising from a state’s non-compliance by delegating responsibility for compliance, as such an interpretation of the statute would require plaintiffs to pursue claims against individual covered state or county offices, but never against a non-compliant state as a whole. *Id.* at 451-52.

the [public assistance] agencies complete the required tasks. And the Secretary, as [the state's] chief election officer, is responsible for 'harmonious combination' — or implementation and enforcement — of that program on behalf of [the state]." *Id.* at 452. Accordingly, "[b]ecause the State [of Louisiana] has designated the Secretary of State as its organ for NVRA compliance, it is that official ... who is ultimately responsible for the State's compliance" with the statute. *United States v. Louisiana*, Civ. No. 11-470-JJB, 2011 WL 6012992, at *6 (M.D. La. Dec. 1, 2011). *See also Harkless*, 545 F.3d at 455; Ex. 56, *Valdez v. Herrera*, No. 1:09-cv-00668-JCH-DJS (D.N.M. Dec. 21, 2010), Dkt. No. 131, at 20 ("[A] state's chief state election official bears at least some responsibility for the state's compliance with Section 7's mandates.").

Here, the failures of Defendants Greenstein and Johnson to provide voter registration to their clients during remote transactions renders Defendant Schedler similarly liable. Moreover, DHH's failure to provide voter registration services is directly attributable to direction that DHH received from Defendant Schedler. In April 2009, officials from DHH met with Cate McRitchie, Elections Program Specialist with the Secretary of State's office,³⁷ to discuss whether to provide voter registration services during remote transactions. *See* Ex. 15, Chase Dep. Tr. 39:1-18; 41:4-19. During that meeting, Ms. McRitchie advised DHH that it need not offer voter registration services to DHH clients unless those clients appear in person at a DHH office, and DHH relied on that direction in formulating its policies and practices. *Id.* at 42:8-43:19.

Moreover, training received by DHH staff concerning the NVRA, described *supra* pgs. 36-37, was conducted by the Secretary of State, and was designed specifically to omit any reference to remote transactions. *See* Ex. 16, Hughes Dep. Tr. 45:3-46:3 (explaining that Secretary of State's NVRA training powerpoint for DHH staff was revised in 2009 to make clear

³⁷ *See* Ex. 57, Defendant Schedler's Initial Disclosures, at 2.

that clients should only be offered an opportunity to register to vote during “in person” transactions); Ex. 15, Chase Dep. Tr. 56:3-9; 58:17-24; 98:15-25.

In sum, Defendants’ failure to offer voter registration services to public assistance clients “with each application” for benefits is directly attributable to the actions and omissions of Defendant Schedler. Remarkably, the Secretary of State has maintained his position regarding remote transactions, despite the fact that his Director of Voter Registration has admitted in correspondence with DHH that the NVRA applies to benefits transactions conducted online. *See* Ex. 61, Letter from Joanne Guidroz, Director of Voter Registration, SOS, to Charles Castille, Undersecretary, DHH, dated June 29, 2010 (“It is our goal with you to add our Geaux.Vote.com link to any on-line services for *full compliance* with the NVRA”) (emphasis added).

CONCLUSION

For the reasons set forth above, Plaintiffs’ Motion for Partial Summary Judgment should be granted, and Defendants’ Motions for Partial Summary Judgment should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2012, I electronically filed the foregoing with the Clerk of court by using the CM/ECF system which will send a notice of electronic filing to counsel of record who are registered participants of the Courts CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to counsel of record who are not CM/ECF participants as indicated in the notice of electronic filing.

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