

VOTING REGISTRATION AND FEDERAL HOUSING ASSISTANCE: A PRACTICAL SOLUTION TO INCREASE DEMOCRATIC PARTICIPATION

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Congress passed the National Voter Registration Act of 1993 (NVRA) to maximize voter registration opportunities and correct a century of discriminatory and overly complicated State voter registration laws. Section 7 of the NVRA was designed to increase voter registration among low-income and minority citizens by requiring States to provide voter registration services at public assistance agencies. However, a three-decade campaign by state governments to resist implementing the NVRA has undermined its effectiveness.

As a part of this campaign, States interpret Section 7 narrowly to limit its scope. Under Section 7, each State must designate as Voter Registration Agencies (VRAs) "all offices in the State that provide public assistance." Congress used this broad language out of a concern that states would limit the number of Voter Registration Agencies. However, this is exactly what States have done. Notably, no State has ever designated Public Housing Authorities (PHAs) as Voter Registration Agencies.

Public Housing Authorities are state agencies that administer housing aid programs funded by the U.S. Department of Housing and Urban Development (HUD). PHAs serve millions of low-income and minority citizens who are least likely to be registered to vote. Providing voter registration services at PHAs would effectively increase democratic participation and diversify the electorate.

This paper argues that the plain text and legislative intent of the NVRA require States to designate Public Housing Authorities as Voter Registration Agencies. This paper uses prior case law and statutory interpretation techniques to demonstrate that PHAs are "offices in the State" that "provide public assistance." These are the only requirements under Section 7. Therefore, States are out of compliance with the NVRA for failing to designate PHAs as VRAs. This paper recommends that the U.S. Department of Justice and private citizens use the statutory right of action included in the NVRA to force State compliance.

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INTRODUCTION

The United States is one of the only developed democracies in the world that places the responsibility of maintaining voter registration on its citizens.¹ This policy contributes to the U.S. having lower levels of democratic participation than many other democracies,² reducing the effectiveness and legitimacy of U.S. governmental institutions.³ U.S. voter registration rates are also depressed due to its history of voter registration laws, which developed as an intentional means of disenfranchising minority and low-income citizens.⁴ To address these problems, Congress passed the National Voting Rights Act of 1993 (NVRA) with the intention of “maximizing opportunities for voter registration.”⁵

The NVRA created national standards for voter registration laws and facilitated the registration of millions of additional voters.⁶ The NVRA is commonly known as the Motor-Voter Law because it combined voter registration with driver’s license applications.⁷ Section 7 of the NVRA requires state governments to provide voter registration services at public assistance offices.⁸ Congress added this section out of concern that the Motor-Voter provision of the law would be ineffective at registering eligible citizens with

¹ Jennifer S. Rosenberg & Margaret Chen, *Expanding Democracy: Voter Registration Around the World*, BRENNAN CTR. FOR JUST. N.Y. UNIV. SCH. OF LAW, at 1 (2009), <https://www.brennancenter.org/sites/default/files/legacy/publications/Expanding.Democracy.pdf> [<https://perma.cc/K4CK-V75G>].

² Drew DeSilver, *Turnout in U.S. Has Soared in Recent Elections but by Some Measures Still Trails that of Many Other Countries*, PEW RESEARCH CENTER, (Nov. 1, 2022) <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/> [<https://perma.cc/Z9MU-M329>].

³ Russell J. Dalton, *Is Citizen Participation Actually Good for Democracy?*, DEMOCRATIC AUDIT UK (Aug. 22, 2017) <https://www.democraticaudit.com/2017/08/22/is-citizen-participation-actually-good-for-democracy/> [<https://perma.cc/PXJ4-U2Q2>] (last visited 8/7/2022).

⁴ Laura Williamson et al., *Toward a More Representative Electorate: The Progress and Potential of Voter Registration through Public Assistance Agencies*, DEMOS, 4 (Dec. 2018), <https://www.demos.org/research/toward-more-representative-electorate> [<https://perma.cc/C97Y-Y4HX>].

⁵ *United States v. Louisiana*, 196 F. Supp. 3d 612, 670 (M.D. La. 2016).

⁶ Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133, 157 (2001).

⁷ *See Motor Voter Law*, PENNSYLVANIA DEPARTMENT OF MOTOR VEHICLES, <https://www.dmv.pa.gov/Information-Centers/Laws-Regulations/Pages/Motor-Voter-Law.aspx> [<https://perma.cc/4RS4-V6DC>] (last visited 8/8/22) (explaining that residents can register to vote as they get their driver’s license).

⁸ *See* 52 U.S.C. § 20506.

lower incomes or disabilities or citizens belonging to racial minorities.⁹ Section 7 has proved to be a very effective solution to these concerns; an analysis of 2016 census data found that 49% of citizens making less than \$30,000 per year and 35% of Black citizens registered to vote through public assistance agencies.¹⁰

However, voter registration rates and overall democratic participation in the U.S. still lag behind other developed democracies.¹¹ In 2020, over 27% of the U.S. citizen voting-age population – more than 63 million citizens – were not registered to vote.¹² Further, low-income and minority citizens continue to register at rates below those of wealthier and white citizens.¹³ The low voter registration rate in the U.S. presents a significant barrier to democratic participation.¹⁴ Even the historically high, by U.S. standards, turnout of 62.8% in the 2020 presidential placed the U.S. thirty-first worldwide for voter turnout rates.¹⁵

State governments' resistance to vigorous implementation of the NVRA is a significant cause of the United States' low voter registration rates.¹⁶ One way this resistance manifests is through States' narrow interpretations of NVRA Section 7.¹⁷ This section requires that "[e]ach State shall designate as voter registration agencies . . . all offices in the State that provide public assistance."¹⁸ Despite this broad language, many States include only a limited number of public assistance agencies in their Section 7 agency programs.¹⁹ Notably, no

⁹ See H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.) (expressing a concern that states would limit their Voter Registration Agency programs to discriminate against "the poor and persons with disabilities who do not have driver's licenses" and "distinct portion[s] of its population"); see also 52 U.S.C. § 20501(a)(3) (finding 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").

¹⁰ Williamson et al., *supra* note 4, at 8.

¹¹ See *infra* Section III.A.

¹² Jacob Fabina and Zach Scherer, Voting and Registration in the Election of November 2020, at 3, U.S. Census Bureau, (2022) <https://www.census.gov/library/publications/2022/demo/p20-585.html>. (showing that the United States had a citizen voting age population of 231,600,000, and registered voter population of 168,300,000, leaving 63,300,000 individuals who are included in the citizen voting age population but who are not registered to vote).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See, *infra* Section III.A.

¹⁷ *Id.*

¹⁸ 52 U.S.C. § 20506(a).

¹⁹ See, e.g., Ga. State Conf. of the NAACP v. Kemp, 841 F. Supp. 2d, 1320, 1324 (N.D. Ga. 2012) (noting that Georgia's statute implementing the NVRA only designates offices providing food stamps; Medicaid; Women, Infants, and Children; and Temporary Assistance for Needy Families programs as VRAs).

State has designated Public Housing Authorities (PHAs)²⁰ as Voter Registration Agencies (VRAs),²¹ even though PHAs are state agencies that administer public housing assistance.²²

²⁰ Federal statutes use the term “public housing agency” rather than “public housing authority.” *See, e.g.*, 42 U.S.C. § 1437a(b)(6)(A). However, the term “public housing authority” is more commonly used by the agencies themselves. *See, e.g.*, About NYCHA, N.Y. CITY HOUS. AUTH. <https://www.nyc.gov/site/nycha/about/about-nycha.page> [<https://perma.cc/DMJ3-MBTD>] (“The New York City Housing Authority (NYCHA), the largest public housing authority in North America, was created in 1935 to provide decent, affordable housing for low- and moderate-income New Yorkers.”). This Article will use the term “public housing authority” to match the colloquial usage.

²¹ Comprehensive data is not available on which agencies are designated as VRAs in each state. This author’s review of state statutes and state government websites in the 44 states where the NVRA applies identified no publicly available information suggesting that any state has designated a PHA as a VRA. Many sources have suggested that PHAs should be designated VRAs, indicating that states do not currently do so. *See, e.g.*, Williamson et al., *supra*, note 4 at 19. Further, the U.S. Department of Housing and Urban Development recently wrote an open letter to PHAs suggesting that they should appeal to their state election officials to seek designation as VRAs, but provided no examples of states where such an effort had been successful. Announcements, OFF. OF PUB. AND INDIAN AFF., U.S. DEP’T OF HOUS. AND URB. DEV., at 1 (Feb. 9, 2022) https://www.hud.gov/sites/dfiles/PIH/documents/PIH_announcement020922.pdf. The closest any state has come is New York, which, beginning in 2024, will require the New York City Housing Authority to provide information about applicants to the state board of elections as part of a new automatic voter registration system, but this law does not appear to designate the Housing Authority as a VRA for the purposes of the NVRA. *See* N.Y. ELEC. LAW § 5-900. Many states enumerate by statute or constitutional amendment the agencies that are designated as VRA, and do not include PHA. *See, e.g.*, ARK CONST. AMEND. 51 §5(a)(1); ALASKA STAT. § 15.07.055(a); ALA. ADMIN. CODE r. 820-2-2-.03; D.C. Mun. Regs. tit. 3 § 511.2; 15 DE CODE § 2050 (2022) (b)(1); GA. CODE § 21-2-222(a)(2); 10 ILLCS 5/1A-16.2(g); IOWA CODE § 48A.19(1)(a); KY REV STAT § 116.048(1) (2022); LA REV STAT § 18:116 A.(1); 21-A ME REV STAT § 181 1.B (2022); NE CODE § 32-321(2) (2022); N.J. STAT. § 19:31-6.11(a); N.C. GEN. STAT. § 163-82.20 (citing § 108A-24 through § 108A-70.45 and § 130A-361); OKLA. ADMIN. CODE § 230:15-5-122; S.C. CODE § 7-5-310(B); VA CODE § 24.2-411.2 (2022); WV CODE § 3-2-13(b) (2022). In other states, VRAs are not defined by statute and are designated by executive order, or by the other administrative processes. Data is difficult to find on these states, but where state agencies list VRAs, PHAs are not included. *See, e.g.*, *Voter Registration Agency Contact Roster*, CA SEC’Y OF STATE, <https://www.sos.ca.gov/elections/voter-registration/nvra/voter-registration-agencies/vr-agency-contact-roster> (last accessed Dec. 1, 2023); *NVRA Voter Registration in Colorado 2022 Annual Report*, CO SEC’Y OF STATE, at 2 (2023) <https://www.sos.state.co.us/pubs/elections/NVRA/files/reports/2022NVRARReport.pdf>; *National Voter Registration Act (NVRA)*, FL DIV. OF ELECTIONS, (Aug. 2, 2022) <https://dos.fl.gov/elections/for-voters/voter-registration/national-voter-registration-act/>; *2023 Indiana Voter Registration Guidebook*, IN ELECTION DIV., at 29, <https://www.in.gov/sos/elections/files/2023-Indiana-Voter-Registration-GB.pdf> (last accessed Dec. 1, 2023); *National Voter Registration Act*, MD. STATE BD. OF ELECTIONS, https://elections.maryland.gov/voter_registration/nvra.html (last accessed Dec. 1, 2023); Mass. 950 CMR 57.05, *Voter Registration at Registration Agencies under the NVRA*, OFF. OF THE SEC’Y OF THE COMMONWEALTH, <https://www.mass.gov/doc/950-cmr-57-voter-registration/download> (last accessed Dec. 1, 2023); MI Exec. Ord. No. 1995-1, [https://www.legislature.mi.gov/\(S\(2izt3oot4aps4t1fcp1yzwts\)\)/documents/1995-1996/executiveorder/htm/1995-EO-01.htm](https://www.legislature.mi.gov/(S(2izt3oot4aps4t1fcp1yzwts))/documents/1995-1996/executiveorder/htm/1995-EO-01.htm) (last accessed Dec. 1, 2023) (notably, Governor

This paper proposes that the NVRA requires States to designate all PHAs that administer programs funded by the U.S. Department of Housing and Urban Development (HUD) as VRAs. Applying Section 7 to PHAs would effectively increase the U.S.'s low rates of democratic participation.²³ It would also further Congress' express purpose in passing the NVRA to "establish procedures that will increase the number of eligible citizens who register to vote. . . ."²⁴

This paper proceeds in several sections. First, it explores the current legal structure of voter registration laws established by the NVRA and how discriminatory State voter registration practices influenced the creation of that structure.²⁵ Second, this paper shows that additional enforcement is necessary to overcome State resistance to implementing the NVRA and achieve Congress' intent of increasing the number and diversity of registered voters.²⁶ Third, this paper demonstrates that PHAs meet the requirements of the VRA provision of NVRA Section 7.²⁷ Therefore, States are out of compliance with

Gretchen Whitmer issued an executive order on May 1, 2022 directing state agencies to identify opportunities to expand Michigan's list of VRAs. *See* Exec. Directive 2022-4, <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2022/05/01/executive-directive-2022-4>); *Certification of Nevada Voter Registration Agencies*, NV OFF. OF THE SEC'Y OF STATE, (2020) <https://www.nvsos.gov/sos/home/showpublisheddocument/8250/637146939731870000>; *NVRA Information*, OH SEC'Y OF STATE, <https://www.ohiosos.gov/elections/voters/register/nvra-information/> (last accessed Dec. 1, 2023); *National Voter Registration Act NVRA Agency Manual*, OR SEC'Y OF STATE, at 5 (Jan. 2021), <https://sos.oregon.gov/elections/Documents/nvra-manual.pdf>; *Administration of Voter Registration in Pennsylvania 2022 Annual Report to the Pennsylvania General Assembly*, COMMW. OF PA DEPT. OF STATE, at 27, 28 (June 30, 2023), https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/Annual%20Reports%20on%20Voter%20Registration/DOS_Voter_Registration_Report_2022_FINAL.pdf; *Voter Registration Agencies*, RI BD. OF ELECTIONS, <https://elections.ri.gov/voter-resources/voter-registration-agencies> (last accessed Dec. 1, 2023); *National Voter Registration Act & Voter Registration Agencies Training for Voter Registration Agency Staff*, SD SEC'Y OF STATE, <https://sdsos.gov/elections-voting/NVRA/assets/NVRA%20Section%207%20Training.pdf> (last accessed Dec. 1, 2023); *National Voter Registration Act*, TN CNTY. TECH. ASSISTANCE SERV., <https://www.ctas.tennessee.edu/eli/national-voter-registration-act> (Last accessed Dec 1, 2023); *Implementation of the National Voter Registration Act (NVRA): State Agencies*, TX SEC'Y OF STATE, at 5-6 (May 2023), <https://www.sos.state.tx.us/elections/forms/implementing-the-nvra-state-agencies.pdf>. Other states simply parrot the language of the NVRA but provide no additional information on what agencies qualify as VRAs, or provide any indication that PHAs are included. *See, e.g.*, 18 Miss. Code R. § 14-1.15, Mo. Rev Stat § 115.155 (2022); MT Code § 13-2-221 (2022); UT Code § 20A-2-300.5 (2022).

²² *See infra* Section III.A.

²³ *See infra* Section III.B.

²⁴ 52 U.S.C. § 20501(b)(1).

²⁵ *See infra* Section I.

²⁶ *See infra* Section II.

²⁷ *See infra* Section III.

federal law for failing to designate PHAs as VRAs.²⁸ This paper concludes that designating PHAs as VRAs would help achieve the purposes of the NVRA by increasing voter registration rates and enhancing democratic participation.²⁹

I. VOTING REGISTRATION LAWS IN THE UNITED STATES

The United States is unique among advanced democracies in requiring personal voter registration that places the onus on voters to maintain their eligibility.³⁰ Registered voters represent a much smaller share of potential voters in the U.S. than in many other countries, primarily due to voter registration being an individual's responsibility and the decentralized nature of State voter registration laws.³¹ The low rate of voter registration in the U.S. is not an accident. A primary motivating factor in the development of voter registration laws in the U.S. has been the purposeful disenfranchisement of voters to consolidate political power.³²

This history shapes the current legal structure of voter registration in two critical ways. First, the modern national structure of voting registration law was created by the Voting Rights Act of 1965³³ and the National Voter Registration Act of 1993.³⁴ Congress intended both laws to correct overly restrictive State voting registration laws.³⁵ Second, despite the improvements made by these

²⁸ *Id.* The NVRA does not apply to states where same-day voter registration is legal, or that have no voter registration requirement on or after August 1, 1994. 42 U.S.C. §1973gg-2(b)(2). Therefore, Six States (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempt from this conclusion, as the NVRA does not apply to these states. *The National Voter Registration Act Of 1993 (NVRA)*, U.S. DEPT. OF JUST. CIV. RTS. DIV., <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (last accessed Dec. 1, 2023).

²⁹ *Id.*

³⁰ See Dayna L. Cunningham, *Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*, 9 YALE L. & POL'Y REV., 370, 372 (1991); Awan, *supra* note 1, at 1143.

³¹ See DeSilver, *supra* note 2 (“In other countries—notably the United States—it’s largely up to individual voters to register themselves. And the U.S. is unusual in that voter registration is not the job of a single national agency, but of individual states, counties and cities.”).

³² See Cunningham, *supra* note 29, at 374 (finding that the Republican-dominated federal government in the post-Civil War era sought to solidify its political base and consolidate Republican control by introducing voter registration and other voting requirements).

³³ Voting Rights Act of 1965, 52 U.S.C. § 10301-10314.

³⁴ 52 U.S.C. § 20501.

³⁵ See *Voting Rights Act (1965)*, NAT'L ARCHIVES, <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p20-585.pdf> [<https://perma.cc/2HR6-VRTH>] (“[The Voting Rights Act] outlawed the discriminatory voting practices adopted in many southern states after the Civil War, including literacy tests as a prerequisite to voting.”) (last visited Aug. 8, 2022); 52 U.S.C. § 20501(a) (“Congress finds that . . . discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter

laws, the poor, less educated, and minority citizens historically marginalized by voter registration laws continue to register to vote at below-average rates.³⁶

A. HISTORICAL DEVELOPMENT OF U.S. VOTER REGISTRATION LAWS

Before the late nineteenth century, there were no state or federal requirements for white men to register to vote in the United States.³⁷ States only began adopting voter registration laws following the Civil War as a part of Jim Crow in the South and as a backlash to increasing immigration rates.³⁸ In the South, voter registration laws were a direct response by White property owners to the passage of the 15th Amendment, which gave formerly enslaved people the right to vote.³⁹ These laws effectively reestablished race-based restrictions on voting by purposefully excluding newly enfranchised Black voters.⁴⁰ In Northern and Western states, voter registration laws disenfranchised immigrants and migrant workers.⁴¹ The movements to pass voter registration laws in both regions were “elitist, reactive to the threat of political insurgency, and apparently calculated to achieve political stabilization while restoring control by strongly conservative interests.”⁴²

Between 1890 to 1910, all the former confederate states adopted intricate slates of discriminatory voting laws, known as the “southern system,” which relied heavily on voter registration provisions such as literacy and residency requirements to disenfranchise Black voters.⁴³ However, loopholes were created to ensure that Whites were not affected by these provisions.⁴⁴ Typical of Southern states, Louisiana enacted harsh new voting registration requirements in 1898, but under the infamous “Grandfather Clause,” the new restrictions did not apply to anyone with a father or grandfather entitled to vote before 1867.⁴⁵ This clause precisely targeted Black voters with new restrictions while protecting the voting rights of the White political class.

participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.”).

³⁶ Fabina & Scherer, *supra* note 12, at 6-9.

³⁷ Cunningham, *supra* note 29, at 373.

³⁸ *Id.* at 373-74 n.17.

³⁹ Delk, *supra* note 6, at 138.

⁴⁰ *Id.*

⁴¹ Derek T. Muller, *What's Old Is New Again: The Nineteenth Century Voter Registration Debates and Lessons About Voter Identification Disputes*, 56 WASHBURN L.J. 109, 110 (2017).

⁴² Cunningham, *supra* note 29 at 374.

⁴³ Cunningham, *supra* note 29, at 377-78.

⁴⁴ *Id.* at 380.

⁴⁵ (1898) *Louisiana Grandfather Clause*, BLACK PAST, <https://www.blackpast.org/african-american-history/1898-louisiana-grandfather-clause/> (last visited Aug. 8, 2022) [<https://perma.cc/TM95-DFZ2>].

The discriminatory intent of southern voting registration laws could not have been more explicit. Louisiana adopted its “Grandfather Clause” in 1898 during a State Constitutional Convention which was called to “establish the supremacy of the white race”⁴⁶ by disenfranchising “as many Negroes and as few whites as possible.”⁴⁷ After the convention, Governor Foster stated in his message to the Louisiana legislature that “[t]he white supremacy for which we have so long struggled at the cost of so much precious blood and treasure, is now crystallized into the Constitution.”⁴⁸ The convention had its intended effect; from 1898 to 1900 the percentage of African Americans registered to vote in Louisiana plummeted from 85.2% to 4%.⁴⁹ Alabama’s strict Jim Crow voter registration laws were similarly effective, with just 1% of eligible African Americans in the state registered to vote in 1902, compared with 75% of Whites.⁵⁰

In Northern states, early proponents of voter registration laws claimed to be concerned about voter fraud and the corrupting influences of urban political machines.⁵¹ However, the fiercely partisan political battles of early Northern voter registration laws generally pitted urban working class and immigrant voters against nativist elites.⁵² The racist and xenophobic intent behind voter registration laws was not as blatant as in the Jim Crow South. However, it clearly motivated activists such as magazine editor George Gunton, who wrote about the “evil of ignorant voting” and complained that “too many of our foreign-born citizens vote ignorantly.”⁵³ Further, there was little evidence of the fraudulent voter registration that purportedly justified voter registration laws.⁵⁴ Documented voting fraud at the time almost always involved organized efforts by election officials, not voters.⁵⁵ Thus, the voter

⁴⁶ United States v. Louisiana, 225 F. Supp. 353, 373 (E.D. La. 1963) (quoting Judge Thomas J. Semmes, Chairman of the Judiciary Committee of the Convention and a former president of the American Bar Association)

⁴⁷ *Id.* at 373 n.44 (quoting J. A. Snider (Bossier), New Orleans Times-Democrat, Feb. 8, 1898).

⁴⁸ *Id.* at 374 (quoting La. Senate Journ. 1898, 33-35).

⁴⁹ Cunningham, *supra* note 29, at 380.

⁵⁰ *Id.*

⁵¹ See Muller, *supra* note 40, at 110 (“Across the states ‘partisan battles continued to rage’ as reformers thought [voter registration] laws might ‘limit corruption and reduce the electoral strength of immigrants, blacks, and political machines, ‘and which were ‘likely to have a disproportionate impact on poor, foreign-born, uneducated, or mobile voters.’”).

⁵² Cunningham, *supra* note 29, at 381.

⁵³ *Id.* at 373 n.17.

⁵⁴ Muller, *supra* note 40, at 110.

⁵⁵ Cunningham, *supra* note 29, at 384.

registration laws sought by activists would not have prevented the proven cases of voter fraud.⁵⁶

Discriminatory voter registration laws, whether openly, or implicitly, predominated throughout the first half of the twentieth century.⁵⁷ For example, North Carolina retained its system of discriminatory literacy tests with a “grandfather clause” exempting Whites until 1945.⁵⁸ On rare occasions when federal courts struck down discriminatory voter registration laws, states would switch to different methods to reach the same result.⁵⁹ For example, when the U.S. Supreme Court declared Oklahoma’s Grandfather Clause unconstitutional in 1915, Southern States switched to a system of “Whites Only” primary elections to keep Black voters marginalized.⁶⁰ These “Whites Only” primary systems lasted until the Supreme Court declared the practice unconstitutional in 1944.⁶¹ Another discriminatory tactic used in many states was early and arbitrary registration deadlines.⁶² Oklahoma passed a law in February 1916 after the “grandfather clause” was struck down, which automatically registered everyone previously covered by the grandfather clause, but required everyone else to register between April 30, 1916 and May 11, 1916 or be permanently banned from voting.⁶³ This law remained in Oklahoma until the Supreme Court struck it down in 1939.⁶⁴

Civil rights legislation, starting in the 1960s, began to establish national standards for voter registration.⁶⁵ Before 1965, African Americans registered to vote at a nationwide average of 29%, compared to 73% for Whites.⁶⁶ The

⁵⁶ See *id.* (“[A] Brookings Institution study concluded that in Chicago, one of three cities cited for its egregious history of fraud, nine-tenths of the election frauds were committed by the registration and election officials themselves or with their knowledge and consent.”).

⁵⁷ See, e.g., *United States v. Louisiana*, 225 F. Supp. 353, 375–78 (E.D. La. 1963) (discussing the history of voter registration laws in Louisiana from 1998–1944).

⁵⁸ *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 47 (1959).

⁵⁹ See *Delk*, *supra* note 6, at 141.

⁶⁰ *Id.* at 141–42.

⁶¹ *United States v. Louisiana*, 225 F. Supp. 353, 377 (E.D. La. 1963) (citing *Smith v. Allwright*, 321 U.S. 649 (1944)).

⁶² *Cunningham*, *supra* note 29, at 377.

⁶³ *Lane v. Wilson*, 307 U.S. 268, 271 (1939).

⁶⁴ *Id.* at 277.

⁶⁵ *Cunningham*, *supra* note 29, at 388.

⁶⁶ *Id.*

Civil Rights Act of 1964⁶⁷ and Voting Rights Act of 1965⁶⁸ curbed the worst abuses of voter registration laws and led to over 50% of eligible Black voters being registered by 1981.⁶⁹ However, there remained a “plethora of byzantine and ambiguous state registration procedures” that “often denied voters the chance to register with ease and convenience.”⁷⁰ Further, voter registration rates plateaued, and democratic participation rates decreased nationwide in the wake of the Watergate era.⁷¹ Pressure started building in the Democratic Party for a strong national voter registration law, which, after many failed attempts, resulted in the passage of the National Voter Registration Act of 1993.⁷²

B. LEGAL STRUCTURE OF THE NVRA AND SECTION 7

In passing the NVRA, Congress declared that citizens have a “fundamental right” to vote and established a “duty of the Federal, State, and local governments to promote the exercise of that right.”⁷³ Further, Congress stated that discriminatory voter registration laws have a “direct and damaging effect on voter participation” and “disproportionately harm voter participation by various groups, including racial minorities.”⁷⁴ These findings demonstrate that Congress was fully aware of the discriminatory history of State voter registration laws and intended to correct the abuses of those laws.

Congress’ primary purpose in passing the NVRA was to “establish procedures that will increase the number of eligible citizens who register to vote.”⁷⁵ To implement this purpose, the NVRA directs States to provide voter

⁶⁷ See *Civil Rights Act of 1964*, BALLOTPEDIA, https://ballotpedia.org/Civil_Rights_Act_of_1964#:~:text=Johnson%20on%20July%202%2C%201964,discourage%20racial%20segregation%20in%20schools (last visited Aug. 8, 2022) (providing an overview of the provisions of the Act) [<https://perma.cc/W9CU-6T6R>].

⁶⁸ See *Voting Rights Act (1965)*, NATIONAL ARCHIVES, <https://www.archives.gov/milestone-documents/voting-rights-act#:~:text=This%20act%20was%20signed%20into,as%20a%20prerequisite%20to%20voting.> (noting that the VRA “outlawed the discriminatory voting practices adopted in many southern states after the Civil War, including literacy tests as a prerequisite to voting”) (last visited Aug. 8, 2022) [<https://perma.cc/444D-AT3C>].

⁶⁹ Cunningham, *supra* note 29, at 388.

⁷⁰ *United States v. Louisiana*, 196 F. Supp. 3d 612, 627 (M.D. La. 2016).

⁷¹ Delk, *supra* note 6 at 149.

⁷² *Id.* at 151.

⁷³ 52 U.S.C. § 20501(a).

⁷⁴ *Id.*

⁷⁵ 52 U.S.C. § 20501(b). The other purposes of the Act are to “(2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of

registration services to driver's license applicants at State Departments of Motor Vehicles⁷⁶ and requires States to accept standardized mail voter registration forms created by the Federal Election Commission.⁷⁷

However, the drafters of the NVRA were concerned that these measures would be ineffective at registering voters who did not have driver's licenses, in particular, citizens with lower incomes or disabilities.⁷⁸ Congress included Section 7 to address these concerns by requiring States to designate certain state governmental offices as VRAs.⁷⁹ This requirement, known as the Agency System, is the subject of this paper.

Section 7 requires States to designate as VRAs "all offices in the State that provide public assistance" and those that are "primarily engaged in providing services to persons with disabilities."⁸⁰ These are known as Mandatory VRAs.⁸¹ Section 7 also requires States to designate at least some other offices, such as public libraries, public schools, and offices of city and county clerks, as VRAs.⁸² These are known as Discretionary VRAs.⁸³

Section 7 VRAs must distribute mail voter registration forms, assist applicants in completing voter registration forms, and collect and transmit completed voter registration forms to state election officials.⁸⁴ Further, VRAs that are public assistance agencies must distribute mail voter registration forms with each application for service or assistance and with each recertification, renewal, or change of address.⁸⁵ To enforce these provisions, the U.S.

eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration rolls are maintained." *Id.*

⁷⁶ See 52 U.S.C. § 20504 ("Each State motor vehicle driver's license application . . . shall serve as an application for voter registration with respect to elections for Federal office . . .").

⁷⁷ See 52 U.S.C. § 20505 ("Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission . . .").

⁷⁸ See H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.) ("If a State does not include either public assistance, agencies serving persons with disabilities . . . 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.").

⁷⁹ See 52 U.S.C. § 20501(b) (establishing the purposes of the NVRA); see also 52 U.S.C. § 20506(a)(3)(A) ("[E]ach State shall designate other offices within the State as voter registration agencies.").

⁸⁰ 52 U.S.C. § 20506(a).

⁸¹ See, e.g., *Disabled in Action v. Hammons*, 202 F.3d 110, 115 (2d Cir. 2000) (defining mandatory VRAs).

⁸² 52 U.S.C. § 20506.

⁸³ See, e.g., 202 F.3d at 115 ("[W]hile a State must designate some offices as 'discretionary' VRAs . . . the choice of which offices will be so designated is left to the State.").

⁸⁴ 52 U.S.C. § 20506(a)(4)(A).

⁸⁵ 52 U.S.C. § 20506(a)(6).

Attorney General and private citizens may bring civil actions for declaratory or injunctive relief.⁸⁶

C. EFFECTS OF THE NVRA AND SECTION 7

The NVRA quickly succeeded in raising the national rate of voter registration.⁸⁷ As a direct result of the new law, an additional 27.5 million citizens registered to vote across the 44 states, and the District of Columbia, which are covered by the NVRA.⁸⁸ Within two years of the law taking effect, nearly 73% of the voting-age population was registered to vote, the highest percentage since accurate statistics started being recorded in 1960.⁸⁹

Section 7 also successfully increased the electorate's diversity by registering low-income and minority individuals.⁹⁰ Confirming the concerns of the drafters of the NVRA, only 11% of people making less than \$30,000 per year and only 12% of Black individuals registered to vote at State Departments of Motor Vehicles in 2016.⁹¹ However, 49% of citizens earning less than \$30,000 per year, and 35% of Black citizens, registered to vote through public assistance agencies under Section 7 in 2016.⁹² These statistics demonstrate the value of Section 7 in correcting the historically discriminatory impact of State voter registration laws and show the prescience of the NVRA's drafters in recognizing that Section 7 was necessary to maximize opportunities for citizens to register to vote.

⁸⁶ 52 U.S.C. §20510.

⁸⁷ See Williamson, Cataldo & Wright, *supra* note 4, at 7 (“The Federal Election Commission . . . estimated that voter registration grew to 73 percent of the voting age population in 1996.”).

⁸⁸ See *id.* (occurred “during the 1995–1996 election cycle.”).

⁸⁹ See Delk, *supra* note 6, at 158 (“Further, by 1996, the percentage of registered voters rose to 72.77% of the voting age population. This represents the highest national voter registration percentage since reliable records were first available in 1960.”).

⁹⁰ Williamson, Cataldo & Wright, *supra* note 4, at 7 (“[T]he success of the NVRA should be especially noteworthy to those interested in closing the registration gap for low-income people, people of color, and other historically disenfranchised populations.”).

⁹¹ *Id.* at 8.

⁹² *Id.*

| | Proportion of Total Registered Population | Proportion of Total Registered through public assistance Agencies (Section 7) | Proportion of Total Registered through Departments of Motor Vehicles (Section 5) |
|--|---|---|--|
| People making less than \$30,000 per year | 11% | 49% | 11% |
| People making \$30,000 - \$49,999 per year | 14% | 19% | 15% |
| Black people | 13% | 35% | 12% |
| Latinx people | 10% | 19% | 10% |

Williamson, Cataldo, and Wright, *Toward a More Representative Electorate: The Progress and Potential of Voter Registration through Public Assistance Agencies*, Demos.org (2018) at 8. (Based on 2016 Census data).

Despite the successes of the NVRA, the law has failed to bring the United States in line with the voter registration rates of other advanced democracies.⁹³ In 2020, only 66.7% of the U.S. voting-age population was registered to vote, with only 62.8% casting a ballot.⁹⁴ Low-income individuals continue to register at lower rates than higher-income individuals.⁹⁵ Citizens from racial minorities continue to be underrepresented among registered voters, while White individuals continue to be over-represented.⁹⁶

Further, research indicates that there continue to be significant barriers preventing citizens from registering to vote. A Census Bureau study in 2020 found that almost 15% of eligible non-voters wanted to register, but State registration deadlines or lack of knowledge about voter registration procedures stopped them from successfully registering.⁹⁷ Given that over 63 million voting-age citizens in the U.S. are not registered, this study indicates that almost 10 million eligible citizens wanted to register to vote but were unable to do so.⁹⁸

⁹³ See DeSilver, *supra* note 2 (estimating that 67% of voting-age Americans are registered to vote, compared to more than 89% in Canada, the UK, New Zealand, and Germany).

⁹⁴ *Id.*

⁹⁵ Fabina & Scherer, *supra* note 12, at 9.

⁹⁶ Delk, *supra* note 6, at 158–59.

⁹⁷ Fabina & Scherer, *supra* note 12, at 16 (showing census research finding 10.6% of non-registered voters did not meet the deadline and 3.2% did not know how to register).

⁹⁸ Fabina, *supra* note 12, at 3 (discussing how in 2020, the United States had a citizen voting age population of 231,600,000, and registered voter population of 168,300,000, leaving 63,300,000 individuals who are included in the citizen voting age population but who are not registered to vote.)

Further, a Pew Research poll found that 62% of eligible unregistered voters reported they had never been asked to register.⁹⁹

One common explanation for why the NVRA has not been more effective is that it did not provide states with funding to implement voter registration activities.¹⁰⁰ However, the NVRA was highly effective at boosting voter registration rates when states first implemented the law immediately following its passage in 1993.¹⁰¹ However, the years between 1995 and 2005 saw a dramatic decline in the effectiveness of the NVRA, particularly in the number of voters registered at Section 7 public assistance agencies.¹⁰² This pattern of initial success followed by a steep decline is better explained by States being unwilling—rather than unable—to continue effectively implementing the NVRA.¹⁰³

II. ADDITIONAL ENFORCEMENT IS REQUIRED TO ACHIEVE THE PURPOSES OF THE NVRA

Beginning immediately after the passage of the NVRA, state governments have waged a continuous campaign of challenging the NVRA in court and refusing to administer the Act effectively.¹⁰⁴ To counter this resistance, the Justice Department¹⁰⁵ and non-profit organizations¹⁰⁶ have made extensive use

⁹⁹ Pew Research Center, *Why Are Millions of Citizens Not Registered to Vote?*, (2017) <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/why-are-millions-of-citizens-not-registered-to-vote> [<https://perma.cc/XY8J-QG4Y>].

¹⁰⁰ See Delk, *supra* note 6 at 155 (recounting criticisms of federal funding as a major NVRA drawback).

¹⁰¹ Williamson, Cataldo & Wright, *supra* note 4, at 9 (showing voter registration from public assistance programs peaking in the years immediately after NVRA Passage).

¹⁰² See *id.* (showing voter registration applications received from public assistance agencies decreasing from 1995 to 2004).

¹⁰³ See Williamson, Cataldo & Wright, *supra* note 4, at 14-15. (discussing the dramatic drop in the number of voters registered at Section 7 agencies in North Carolina between 2012 and 2013 when the state board of election switched from Democratic to Republican control).

¹⁰⁴ See Delk, *supra* note 6, at 153-55 (discussing state resistance to the NVRA during the 1990s); see also *Voting Section Litigation*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/crt/voting-section-litigation#nvra_cases [<https://perma.cc/GG6W-NJHB>] (last accessed Dec 2, 2022) (listing twenty-six cases brought by the Justice Department between 1994 and 2022 against state and local governments for non-compliance and an additional seven consent decrees reached with non-complying states).

¹⁰⁵ See *Voting Section Litigation*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/crt/voting-section-litigation#nvra_cases [<https://perma.cc/V9JC-S3ZA>] (last accessed Aug. 2022).

¹⁰⁶ See Williamson, Cataldo & Wright, *supra* note 4 at 9 (detailing Demos' and partner's NVRA enforcement work); see also 52 U.S.C. § 20510(b) ("A person who is aggrieved by a violation of this chapter . . . bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.").

of the civil right of action provided by the NVRA to force States to comply.¹⁰⁷ These efforts have been generally successful in court and have resulted in millions of citizens registering to vote.¹⁰⁸ The success of these enforcement efforts and the continuing State resistance demonstrate that further enforcement could help achieve the NVRA's purpose of maximizing voter registration opportunities.¹⁰⁹ Since the NVRA establishes that the federal government has a duty to promote the fundamental right of citizens to vote,¹¹⁰ the Justice Department should expand its current enforcement efforts against states that fail to comply with the NVRA.¹¹¹

A. STATES HAVE CONSISTENTLY RESISTED COMPLYING WITH THE NVRA

The campaign of State resistance to the NVRA first manifested in repeated challenges to the constitutionality of the NVRA. California was the first State to refuse to implement the NVRA, arguing that, under the 10th Amendment, Congress did not have the authority to require States to register voters.¹¹² *Wilson v. United States* rejected this argument because Article I, Section 4 of the Constitution expressly grants Congress the power to regulate the "time, place, and manner" of federal elections.¹¹³ However, this did not stop Michigan, Pennsylvania, South Carolina, and Illinois from mounting their own unsuccessful challenges to the constitutionality of the NVRA in various cases between 1995 and 2000.¹¹⁴

This string of resounding court losses would seem to put an end to this line of argument. However, when the United States sued New York in 2004 to enforce compliance with the NVRA, New York again challenged the basis

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 10.

¹⁰⁹ *See, e.g.*, *United States v. Louisiana*, 196 F. Supp. 3d 612, 670 (M.D. La. 2016) ("[the NVRA's] primary purpose was to 'increase the number of eligible citizens' to register to vote").

¹¹⁰ 52 U.S.C. § 20501(a).

¹¹¹ U.S. DEP'T OF JUSTICE, *supra* note 102.

¹¹² *See Delk, supra* note 6 at 153 ("Relying on the Supreme Court decision in *New York v. United States*, California argued ... that [Congress] could not require states to expand their resources to carry out a Congressional plan.").

¹¹³ *Id.* at 153-54 (quoting *Wilson v. United States*, 878 F. Supp. 1324 (N.D. California 1995)).

¹¹⁴ *Ass'n of Cmty. Orgs. for Reform Now v. Ridge*, Civ. No. 94-7671, Civ. No. 95-382, 1995 U.S. Dist. LEXIS 3933, at *17 (E.D. Pa. Mar. 30, 1995) (discussing Pennsylvania challenging the constitutionality of the NVRA); *see also ACORN v. Edgar*, 56 F.3d 791, 796 (7th Cir. 1995) (discussing Illinois challenging the constitutionality of the NVRA); *see also Condon v. Reno*, 913 F. Supp. 946, 966 (D.S.C. 1995) (discussing South Carolina challenging the constitutionality of the NVRA); *see also Ass'n of Cmty. Orgs. for Reform Now v. Miller*, 912 F. Supp. 976, 983 (W.D. Mich. 1995) (discussing Michigan challenging the constitutionality of the NVRA).

for the law, , arguing that enforcing it against states improperly nullified state voter registration laws.¹¹⁵ New York was rejected as well, with the District Court for the Northern District of New York noting that the “proverbial ship on that issue has long sailed.”¹¹⁶ Undeterred, Arizona took a shot at overturning the constitutionality of the NVRA in 2013.¹¹⁷ The Supreme Court rejected this attempt, too, stating that “[w]hen Congress legislates with respect to the ‘Times, Places and Manner’ of . . . elections, it *necessarily* displaces [the] . . . legal regime erected by the States.”¹¹⁸ Further, the Court noted that “the power the Elections Clause confers is none other than the power to pre-empt” state law.¹¹⁹

This extremely clear holding by the Supreme Court did not stop Louisiana from challenging the constitutionality of the NVRA in 2016.¹²⁰ An apparently exasperated District Court for the Middle District of Louisiana noted that Louisiana “misconstrues the NVRA’s constitutional basis.”¹²¹ As “history attests and as courts have recognized, the NVRA was deliberately and expressly anchored in the Elections Clause.”¹²² The court concluded that “it is well settled that the Elections Clause grants Congress ‘the power to override state regulations’ by establishing uniform rules for federal elections, binding on the States.”¹²³

Given the extensive body of case law upholding Congress’ powers under the Elections Clause and the constitutionality of the NVRA, it is difficult to believe that these States had any real expectation of succeeding in their constitutional claims. These challenges are better explained by State governments simply dragging their feet on implementing the provisions of the NVRA. This interpretation is strengthened by the creative and persistent attempts by State governments to resist implementing the NVRA in general and Section 7 in particular.

Many States were slow to implement the NVRA. Two years after the NVRA passed, twenty-five states had designated only a single voter registration

¹¹⁵ United States v. New York, 700 F. Supp. 2d 186, 196, 200 (N.D.N.Y. 2010).

¹¹⁶ *Id.* at 200.

¹¹⁷ See *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 13 (2013) (“Arizona appeals to the presumption against preemption sometimes invoked in [the Supreme Court’s] Supremacy Clause cases.”).

¹¹⁸ *Id.* at 14.

¹¹⁹ *Id.*

¹²⁰ United States v. Louisiana, 196 F. Supp. 3d 612 (M.D. La. 2016).

¹²¹ *Id.* at 657.

¹²² *Id.*

¹²³ *Id.* (quoting *Foster v. Love*, 522 U.S. 67, 69 (1997)).

agency under Section 7; four states had refused to designate any.¹²⁴ Despite the NVRA becoming law in 1993, Mississippi did not implement Section 7 until 2000, and only then because a court ordered the State to do so.¹²⁵

The foot-dragging continued even after States, in theory, implemented the NVRA. In Nevada, for example, the number of voter registrations at public assistance agencies fell by 95% between 2001 and 2010.¹²⁶ During that same period, the number of food stamp applications—which, under the NVRA, require the provision of voter registration forms—increased by 400%.¹²⁷ If Nevada’s implementation of the NVRA had been effective, the rising food stamp applications should have caused an increase in voter registrations, not a precipitous decline.

Arizona attempted to evade the NVRA by banning the voter registration forms mandated by the NVRA, creating new voter registration forms requiring registrants to prove their citizenship.¹²⁸ The 9th Circuit Court of Appeals noted that “Arizona has offered a creative interpretation of the state and federal statutes” but invalidated the law as “inconsistent with the plain language”¹²⁹

Instead of accepting this loss and using the voter registration forms mandated by the NVRA, Arizona took the case to the Supreme Court in its doomed attempt to challenge the constitutionality of the NVRA.¹³⁰ Highlighting the futility of Arizona’s constitutional claims, noted States-rights advocate Justice Scalia penned the opinion upholding the NVRA.¹³¹ Scalia was joined by Justice Roberts, who (that same year) wrote the opinion in *Shelby County v. Holder*, which struck down a major portion of the Voting Rights Act of 1965 on constitutional grounds.¹³²

Louisiana also invented creative and ultimately illegal policies to avoid registering voters at public service agencies.¹³³ The NVRA requires Section 7 VRAs to provide a mail voter registration form during “each application for

¹²⁴ Williamson, Cataldo & Wright, *supra* note 4, at 9 (“[t]wo years into implementation, only 21 covered states had designated more than one state agency to participate in voter registration, as required under Section 7, and 4 states had not designated any agencies to participate at all.”).

¹²⁵ See Delk, *supra* note 6 at 154–55.

¹²⁶ Nat’l Council of La Raza v. Cegavske, 800 F.3d 1032, 1036 (9th Cir. 2015).

¹²⁷ *Id.*

¹²⁸ Gonzalez v. Arizona, 677 F.3d 383, 388 (9th Cir. 2012).

¹²⁹ *Id.* at 398–400.

¹³⁰ See Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1, 3 (2013) (affirming the Ninth Circuit).

¹³¹ *Id.*

¹³² See *Shelby Cnty. v. Holder*, 570 U.S. 529, 557 (2013) (declaring § 4(b) of Voting Rights Act unconstitutional).

¹³³ United States v. Louisiana, 196 F. Supp. 3d 612, 670 (M.D. La. 2016) (rejecting the reading of Section 7(a)(6) of the NVRA to only apply to in-person transactions).

. . . service or assistance, and with each recertification, renewal, or change of address.”¹³⁴ However, Louisiana provided voter registration forms only to in-person applicants for public assistance and not to applicants who applied online or over the phone, even though Louisiana relied “extensively on remote means to interact with public assistance clients.”¹³⁵ The District Court for the Middle District of Louisiana found that the States’ interpretation would “directly undermine” the NVRA’s objective of “maximizing opportunities for voter registration.”¹³⁶

Louisiana also unsuccessfully argued that, while the NVRA required the state to designate VRAs, it did not require States to ensure that the VRAs actually registered voters. The court noted that a State “cannot evade its obligations under federal law by means of delegation.”¹³⁷ Louisiana’s evasive maneuvers are even more striking, considering that the State was already under an injunction issued by the 5th Circuit Court of Appeals for refusing to comply with the requirements of the NVRA.¹³⁸

States have also attempted to undermine the NVRA by narrowly interpreting which State agencies must be voter registration agencies under Section 7.¹³⁹ Ohio’s refusal to provide voter registration at county public assistance agencies was struck down by the 6th Circuit Court of Appeals.¹⁴⁰ Virginia’s refusal to provide voter registration services at the disability offices of state colleges was struck down by the 4th Circuit Court of Appeals.¹⁴¹ This ruling did not stop New York from implementing a nearly identical policy and taking the same losing arguments to the Northern District of New York.¹⁴²

The interminable legal battles to force States to comply with the NVRA can seem like a game of Whack-A-Mole. Since the passage of the NVRA, the U.S. Justice Department has sued or reached settlement agreements with 23 different states—some multiple times—to compel compliance with the

¹³⁴ 52 U.S.C. § 20506a(d)(6)(A) (emphasis added).

¹³⁵ Statement of Interest of the United States, at 1, 14, *Scott v. Schedler*, No. 2-11-00926 (E.D. La. Mar. 6, 2012).

¹³⁶ *United States v. Louisiana*, 196 F. Supp. 3d 612, 670 (M.D. La. 2016).

¹³⁷ *Id.* at 675; *see also* *United States v. Missouri*, 535 F.3d 844, 851 (8th Cir. 2008) (holding that Secretary of State’s refusal to enforce NVRA against local election agencies is relevant in determining Missouri’s NVRA compliance).

¹³⁸ *See* *Scott v. Schedler*, 771 F.3d 831, 833 (5th Cir. 2014).

¹³⁹ *See* *Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1324 (N.D. Ga. 2012) (noting that Georgia’s statute implementing the NVRA only designates the food stamp; Medicaid; Women, Infants, and Children; and Temporary Assistance for Needy Families programs as VRAs).

¹⁴⁰ *Harkless v. Brunner*, 545 F.3d 445, 457 (6th Cir. 2008).

¹⁴¹ *Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 288 (4th Cir. 1998).

¹⁴² *United States v. New York*, 700 F. Supp. 2d 186 (N.D.N.Y. 2010).

NVRA.¹⁴³ Non-profit organizations have initiated many more legal actions.¹⁴⁴ However, this endless litigation has not been in vain. In fact, enforcement efforts have had a tremendous impact on the effectiveness of the NVRA in increasing voter registration.¹⁴⁵

B. ENFORCING SECTION 7 IS AN EFFECTIVE MEANS OF INCREASING VOTER REGISTRATION

The steep decline in voter registration rates in the years after the passage of the NVRA called into question its effectiveness and design. In 1995, over 2.5 million voters were registered at Section 7 VRAs per year, but by 2005, new registrations had fallen to about 500,000 per year.¹⁴⁶ However, the legal battles over the enforcement have substantially restored the effectiveness of Section 7,¹⁴⁷ demonstrating that the falling registration rates were a matter of compliance, not design.

Starting in 2005, non-profit organizations led by Demos began a national campaign to use the NVRA's civil right of action provision to force States to comply with the NVRA.¹⁴⁸ This campaign has had dramatic results. In just over ten years, the annual number of voter registrations at public assistance agencies rose by over 400%.¹⁴⁹ Demos estimates that its enforcement campaign was directly responsible for registering over 3,044,000 voters over that period.¹⁵⁰ The following graph of Section 7 voter registration before and after the enforcement campaign highlights that enforcement of the NVRA is key to its long-term success. Further, it clearly indicates that the fall in voter

¹⁴³ *Voting Section Litigation*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/crt/voting-section-litigation#nvra_cases [<https://perma.cc/V9JC-S3ZA>] (last accessed Aug., 2022).

¹⁴⁴ Williamson, Cataldo & Wright, *supra* note 4, at 9-11.

¹⁴⁵ U.S. COMM'N ON C.R., INCREASING COMPLIANCE WITH SECTION 7 OF THE NATIONAL VOTER REGISTRATION ACT 2 (2013).

¹⁴⁶ Williamson, Cataldo & Wright, *supra* note 4, at 9.

¹⁴⁷ *Id.*

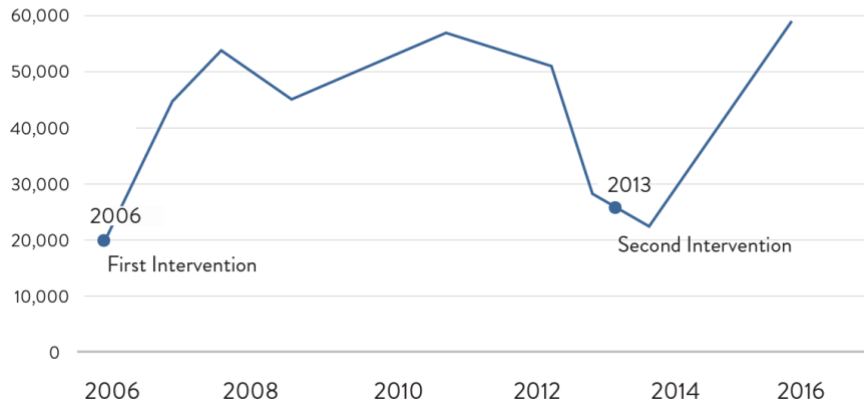
¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 11.

registration rates was caused by State resistance, not by any inherent problem with the design of the NVRA.

TOTAL VOTER REGISTRATION APPLICATIONS RECEIVED
FROM PUBLIC ASSISTANCE AGENCIES. 1995 -2016
SECTION 7 REGISTRATION IN NORTH CAROLINA



Even more telling are the results of Demos's enforcement efforts in North Carolina. In 2006, Section 7 VRAs in North Carolina only registered around 20,000 voters per year, a 73% decline since 1996.¹⁵¹ Demos conducted studies, found that North Carolina was badly out of compliance with the NVRA, and brought its findings to the attention of North Carolina election officials.¹⁵² Through active collaboration with Demos and Project Vote, North Carolina's annual registrations at Section 7 VRAs almost tripled over the next six years.¹⁵³ However, in 2012, a new State administration took over, and voter registration numbers at Section 7 agencies plunged back to the levels from 2006. This time, Demos took North Carolina to court and won an injunction ordering the State to comply with the NVRA.¹⁵⁴ Within three years, voter registrations almost tripled again.¹⁵⁵ Opposition by elected officials to implementing the NVRA is the only reasonable explanation for why Section 7 registrations plummeted and then recovered in North Carolina between 2012 and 2016.

¹⁵¹ *Id.* at 14–15.

¹⁵² *Id.* at 14.

¹⁵³ *Id.* at 14–15.

¹⁵⁴ *Id.* at 14.

¹⁵⁵ *Id.* at 14–15.

The long history of State resistance to implementing the NVRA, and the success of litigation at forcing State compliance, suggest that increased enforcement is necessary to achieve the NVRA's purpose of maximizing opportunities for voter registration.¹⁵⁶ Enforcing Section 7 effectively increases voter registration rates,¹⁵⁷ which, in turn, likely leads to higher rates of democratic participation.¹⁵⁸ One argument against increasing voter registration is that people who don't register won't vote anyway, but a recent study of U.S. states that have implemented automatic voter registration found that citizens who were added to voter rolls without registering did, in fact, vote.¹⁵⁹ Further, worldwide, democracies with higher participation rates in elections tend to have better-performing government institutions and lower levels of social inequality.¹⁶⁰ While this correlation does not show that the increased participation caused improved government performance, it is no great leap to conclude that governments provide better service when they are more accountable to voters.

¹⁵⁶ United States v. Louisiana, 196 F. Supp. 3d 612, 670 (M.D. La. 2016).

¹⁵⁷ See *infra* Section III.B (making this point).

¹⁵⁸ See DeSilver, *supra* note 2 (discussing how U.S. citizens consistently vote at high rates once they are registered); see also Fabina & Scherer, *supra* note 12, at 16 (finding that, in 2020, almost 15% of eligible non-voters wanted to register, but State registration deadlines or lack of knowledge about voter registration procedures stopped them from successfully registering. 10.6% of non-registered voters did not meet the deadline and 3.2% did not know how to register); see also Holly Ann Garnett & Peter Miller, *Registration Innovation: The Impact of State Laws on Voter Registration and Turnout*, ELECTION SCL., REFORM AND ADMIN. (2018) (researching the effect of on voter registration and turnout of four different methods of simplifying voter registration and concluding that "registration laws can have an important positive impact on both individual registration and turnout") <https://esra.wisc.edu/wp-content/uploads/sites/1556/2020/11/garnett.pdf>; see also David W. Nickerson, *Do Voter Registration Drives Increase Participation? For Whom and When?*, 77 U. OF CHIC. PRESS J. OF POLITICS, No. 1 (2015) (finding that voter registration drives on particular streets led to a small, but positive increase in participation of newly registered voters compared to similar streets that did not receive voter registration drives); see also Laura Williamson & Jesse Rhodes, *Same Day Registration: How Registration Reform Can Boost Turnout Among Black and Latinx Voters*, DEMOS https://www.demos.org/sites/default/files/2021-06/Demos_SDR_Report_DD_0.pdf. (June 2021) (finding that allowing same day registration increases voter turnout among Black and Latinx voters, suggesting that these voters may otherwise have been unable to vote due to not being registered beforehand).

¹⁵⁹ Nathaniel Rakich, *What Happened When 2.2 Million People Were Automatically Registered To Vote*,

FiveThirtyEight (Oct. 10, 2019) (finding that between 42% to 54% of the voters who were automatically registered cast a ballot in 2018. While this study acknowledged that it is difficult to determine the number of voters who would have registered and voted without being automatically registered, the author concluded that the automatic voter registration laws "deserve at least some of the credit for th[e] boost in civic participation" observed in the studies states).

¹⁶⁰ Russell J. Dalton, *Is Citizen Participation Actually Good for Democracy?*, DEMOCRATIC AUDIT UK (Aug. 22, 2017) <https://www.democraticaudit.com/2017/08/22/is-citizen-participation-actually-good-for-democracy/> [<https://perma.cc/JY7Y-H48J>] (last visited Aug. 2022).

Increasing the number of Voter Registration Agencies is an effective means of boosting voter registration rates.¹⁶¹ One of the anomalies of state implementation of the NVRA is that Public Housing Authorities (PHAs) have not traditionally been designated as VRAs.¹⁶² PHAs are state agencies that provide federal housing aid to needy families.¹⁶³ PHAs appear to be a perfect fit for the NVRA's requirement that States designate as VRAs "all offices in the State that provide public assistance."¹⁶⁴ The following analysis of the legal structure of PHAs and past court interpretations of the NVRA confirm that States are failing to comply with federal election law by not designating PHAs as VRAs. Enforcement of this requirement would effectively increase voter registration rates and further the purposes of the NVRA.

III. NVRA SECTION 7 APPLIES TO PUBLIC HOUSING AUTHORITIES

PHAs are State-created agencies that administer federal housing aid programs funded by the U.S. Department of Housing and Urban Development (HUD).¹⁶⁵ The primary housing assistance programs administered by PHAs are the Public Housing Program and the Housing Choice Voucher Program.¹⁶⁶ Both are HUD-funded programs that subsidize housing costs for low-income individuals based on the needs of applicants.¹⁶⁷ PHAs administer these HUD-funded programs by reviewing applications, conducting background and credit checks on applicants, providing information about program policies and procedures to current and prospective recipients, and updating the documentation of recipients' eligibility.¹⁶⁸ PHAs also develop, acquire, lease, and operate public housing projects; they are primarily funded by the federal government.¹⁶⁹ However,

¹⁶¹ See Awan, *supra* note 1, at 1143.

¹⁶² Williamson, Cataldo & Wright, *supra* note 4, at 19; see also *supra*, note 20 (reviewing state statutes and administrative determinations of which state agencies are designated as VRAs).

¹⁶³ See, e.g., Housing Authorities Law, Pub. L. 955, No. 265 (1937) (establishing Public Housing Authorities under Pennsylvania State law).

¹⁶⁴ 52 U.S.C. § 20506(a)(2)(A).

¹⁶⁵ See, e.g., *Agency Overview*, PHILA. HOUS. AUTH. (2020) http://www.pha.phila.gov/media/189728/pha_fact_sheet_2020_july_10.pdf [https://perma.cc/TCC9-YJLH] (last visited Aug. 1, 2022) (giving a basic overview of the Philadelphia PHA).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Rules and Responsibilities*, PHILA. HOUS. AUTH., <https://web.archive.org/web/20230129040251/http://www.pha.phila.gov/housing/housing-choice-voucher/rules-and-responsibilities.aspx> [https://perma.cc/RTQ2-BECC].

¹⁶⁹ *About PHA*, PHILA. HOUS. AUTH., <http://www.pha.phila.gov/about/> [https://perma.cc/F4C5-QQVB] (last visited Aug. 1, 2022).

HUD does not directly dictate the action of PHAs.¹⁷⁰ Instead, PHAs have contracts with HUD to provide specific services in exchange for receiving HUD funding.¹⁷¹

Nationwide, there are around 3,300 PHAs.¹⁷² PHAs administer aid from HUD programs to almost five million households.¹⁷³ As on 2019, recipients of housing aid through HUD programs had a median annual household income of \$12,500, 46.7% were Black or African American, and 19.1% were Hispanic.¹⁷⁴

No state currently designates PHAs as VRAs. However, the plain text and legislative history of Section 7 indicate that PHAs meet the criteria to be mandatory voter registration agencies under the NVRA. Designating PHAs as VRAs would further Congress' explicit intent to "increase the number of eligible citizens who register to vote" and to implement the Act in "a manner that enhances the participation of eligible citizens as voters."¹⁷⁵ Therefore, the U.S. Attorney General and private citizens should sue states that refuse to designate PHAs as VRAs.¹⁷⁶

¹⁷⁰ PHILA. HOUS. AUTH., *supra* note 162.

¹⁷¹ See 42 U.S.C. § 1437f(b)(1) ("The Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section."); see also *id.* § 1437f(b)(2) ("The Secretary is authorized to enter into annual contributions contracts with public housing agencies for the purpose of replacing public housing transferred in accordance with title III of this Act."); see also *Housing Assistance Payments Contract*, U.S. Dep't of Hous. and Urb. Dev. (These contracts establish the contractual agreement between property owners and local PHAs required for HUD to pay for tenants housing through the Housing Choice Voucher program), https://www.hud.gov/sites/documents/DOC_11737.PDF (last accessed Dec. 2, 2023).

¹⁷² *HUD's Public Housing Program*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/topics/rental_assistance/phprog [<https://perma.cc/4SJ9-FDLL>] (last visited Aug. 1, 2022).

¹⁷³ *A Snapshot of HUD-Assisted Households*, HUD USER, <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061118.html#:~:text=Today%2C%20HUD%20assists%20nearly%205,the%20provision%20of%20public%20housing> [<https://perma.cc/ZKG5-FNj8>].

¹⁷⁴ Frederick J. Eggers, *Characteristics of HUD-Assisted Renters and Their Units in 2019*, U.S. DEP'T OF HOUS. AND URB. DEV.: OFF. OF DEV. AND RSCH., at 18, 25 (June 2021) <https://www.huduser.gov/portal/sites/default/files/pdf/2019-Characteristics-Report.pdf>.

¹⁷⁵ 52 U.S.C. § 20501(b)(1)-(2).

¹⁷⁶ See 52 U.S.C. § 20510(a) ("The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this chapter."); 52 U.S.C. § 20510(b)(1)-(2) ("A person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved. If the violation is not corrected . . . the aggrieved person may bring a civil action in an appropriate district court . . .").

A. PUBLIC HOUSING AUTHORITIES ARE OFFICES IN THE STATE THAT PROVIDE PUBLIC ASSISTANCE

Section 7 of the NVRA requires that “[e]ach State shall designate as voter registration agencies . . . all offices in the State that provide public assistance.”¹⁷⁷ This is the only requirement for determining which offices States must designate as Mandatory VRAs under Section 7. The terms “offices in the State” and “public assistance” are not defined under the NVRA, and few court cases have interpreted the precise meaning of this clause.¹⁷⁸ However, litigation over other sections of the NVRA has established statutory interpretation principles and identified key legislative history that would apply to Section 7. Using the methods developed by prior caselaw demonstrates that PHAs are “offices in the State that provide public assistance.”¹⁷⁹ Therefore, Section 7 of the NVRA requires States to provide voter registration services at PHAs to applicants for federal housing aid.

1. *Statutory Interpretation Methods from NVRA Case Law*

Very few court cases have interpreted the precise meaning of the VRA provisions of Section 7. Almost none have considered whether States need to designate additional offices as VRAs. Given this paucity of precedent, any court considering whether PHAs qualify as Mandatory VRAs would likely build on the established methodology for interpreting other sections of the NVRA.

Courts interpreting the NVRA utilize a two-step process. First, interpretation of the NVRA “begins with the language of the statute.”¹⁸⁰ Courts “assume that the words Congress chose, if not specially defined, carry their plain and ordinary meaning,”¹⁸¹ usually determined based on dictionary definitions.¹⁸² When the statute’s language is plain, courts “enforce it according to its terms.”¹⁸³

¹⁷⁷ 52 U.S.C. § 20506(a)(2).

¹⁷⁸ See 52 U.S.C. § 20502(1)–(5).

¹⁷⁹ 52 U.S.C. § 20506(a)(2)(A).

¹⁸⁰ Delgado v. Galvin, No. 12-cv-10872, 2014 U.S. Dist. LEXIS 33476, at *12–13 (D. Mass. Mar. 14, 2014) (quoting Stormaway Fin. Corp. v. Hill (In re Hill), 562 F.3d 29, 32 (1st Cir. 2009)).

¹⁸¹ *Id.*; see also Nat’l Council of La Raza v. Cegavske, 800 F.3d 1032, 1045 (9th Cir. 2015) (“[W]e assume that the legislative purpose is expressed by the ordinary meaning of the words used.”) (quoting *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982)).

¹⁸² *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1337 (N.D. Ga. 2016).

¹⁸³ See 800 F.3d at 1045 (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)); see also *Gonzalez v. Arizona*, 677 F.3d 383, 399–400 (9th Cir. 2012) (rejecting a dissenting interpretation of NVRA as inconsistent with plain language).

Second, if the statute's language is ambiguous, courts consider Congress' intent when drafting the NVRA.¹⁸⁴ To do so, courts employ "the traditional tools of statutory construction, including a consideration of the language, structure, purpose, and history of the statute. . . . in their context and with a view to their place in the overall statutory scheme."¹⁸⁵

Valdez v. Squier demonstrates the first part of this two-step analysis. *Valdez* interpreted the requirement that voter registration agencies must provide mail voter registration forms "unless the applicant, *in writing*, declines."¹⁸⁶ Application forms at the New Mexico Human Services Department (NM HSD) asked if applicants wanted to register to vote and provided checkboxes for "yes" and "no."¹⁸⁷ NM HSD only provided mail voter registration forms when the applicants checked yes, but not when they checked no or failed to check either box.¹⁸⁸

Valdez found that NM HSD violated the NVRA by failing to provide mail voter registration forms to applicants who failed to check either box.¹⁸⁹ Because the NVRA does not define the term "in writing," the court consulted the Oxford English Dictionary and found that it is commonly defined to mean "written form."¹⁹⁰ Based on this definition, the court held that voter registration forms must be provided "unless the applicant declines, *in written form*."¹⁹¹ The court held that failing to check a box was "clearly at odds with the ordinary meaning" of the phrase "in writing."¹⁹² Consequently, HSD's interpretation was "directly rebutted" by the language of the statute.¹⁹³ The court concluded that if Congress had intended for an applicant's failure to check either box to relieve the agency of its obligation to provide a voter registration form, "it

¹⁸⁴ See *Ferrand v. Schedler*, No. 11-926, 2012 U.S. Dist. LEXIS 61862, at *28-29 (E.D. La. May 3, 2012) ("[T]his Court finds that the plain meaning of Section 7 is indeterminate. Thus, this Court must turn to the NVRA's legislative history to resolve any textual ambiguities.")

¹⁸⁵ *Delgado v. Galvin*, No. 12-cv-10872, 2014 U.S. Dist. LEXIS 33476, at *12-13 (quoting *In re Hill*, 562 F.3d 29, 32 (1st Cir. 2009)).

¹⁸⁶ *Valdez v. Squier*, 676 F.3d 935, 938 (10th Cir. 2012) (emphasis added).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 945

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* (quoting OXFORD ENGLISH DICTIONARY (online ed., Sept. 2011), <http://oed.com/view/Entry/230775?rskey=bbJo54&result=2&isAdvanced=false#eid14009491> [<https://perma.cc/6SPR-V757>] (last visited Jan. 25, 2009)); see also *Valdez v. Herrera*, No. 09-668 JCH/DJS, 2010 U.S. Dist. LEXIS 142209, at *18 (D.N.M. Dec. 21, 2010) (quoting *Biodiversity Legal Found. v. Babbitt*, 146 F.3d 1249, 1254 (10th Cir. 1998)) (holding that "[i]f Congress does not explain the specific meaning of a statutory term, the Court should assume that Congress intended the word to be given its ordinary meaning, 'which we may discover through the use of dictionaries.'")

¹⁹¹ 676 F.3d at 945 (emphasis added).

¹⁹² *Id.* at 946.

¹⁹³ *Id.* at 945.

presumably would have said so.”¹⁹⁴ Since the text’s plain meaning was dispositive, the court did not continue the analysis further.

Project Vote, Inc. v. Kemp demonstrates the second part of the two-step process.¹⁹⁵ *Project Vote* considered whether Section 8 of the NVRA, which requires States to disclose records concerning the “implementation of programs and activities” at VRAs, included individual voter registration applications.¹⁹⁶ The court consulted three different dictionaries but found that depending on different definitions of “implement,” the particular records “may or may not fall under the common and ordinary meaning of Section 8(i).”¹⁹⁷ Therefore, the court moved to the second step of the analysis, considering legislative history and context to resolve the ambiguity.¹⁹⁸

The court started by establishing that the “primary emphasis” of “the NVRA is to simplify the methods for registering to vote . . . and maximize such opportunities for a state’s every citizen.”¹⁹⁹ Further, the NVRA was “designed to ensure that eligible applicants in fact are registered.”²⁰⁰ The court found that limiting the disclosure requirement would hinder the public’s ability to ensure that voting registration programs accomplish the purposes of the statute.²⁰¹ Therefore, Section 8’s place in the NVRA as a whole required States to disclose individual applicant records.²⁰²

2. Court Interpretations of NVRA Section 7

Courts interpreting the statutory text of Section 7 have used the same two-step process. *Nat’l Coal. v. Allen* considered whether the NVRA requirement that States designate as VRAs “all offices in the State that provide State-funded programs *primarily engaged in providing services to persons with disabilities*” applied to offices in public colleges that assisted students with disabilities.²⁰³ This case is instructive because the statutory language “all offices in the State

¹⁹⁴ *Id.* at 946 (noting that 42 U.S.C. § 1973gg-5(a)(6) provides the exact language for the declination forms and instructions on the use of the checkboxes at issue in this case).

¹⁹⁵ See *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1337–38 (N.D. Ga. 2016) (beginning with the common and ordinary meaning of the terms, then interpreting the terms in the context of the statute).

¹⁹⁶ *Id.* at 1337 (quoting 52 U.S.C. § 20507(i)(1)).

¹⁹⁷ *Id.* at 1337–38.

¹⁹⁸ *Id.* at 1338–41.

¹⁹⁹ *Id.* at 1338 (quoting *U.S. v. Louisiana*, 196 F. Supp. 3d 612, 627 (M.D. La. 2016)).

²⁰⁰ *Id.* at 1340 (quoting *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 720 (S.D. Miss. 2014)).

²⁰¹ *Id.* (quoting 52 U.S.C. § 20501).

²⁰² *Id.* at 1341.

²⁰³ *Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 288 (4th Cir. 1998) (quoting 42 U.S.C. § 1973gg-5(a)(2)(B), which was later transferred to 52 U.S.C. § 20506(a)(2)(B) where it is currently located) (emphasis added).

that provide” from 52 U.S.C. §20506(a)(2)(B) is identical to the first portion of the requirement that States designate as VRAs “all offices in the State that provide public assistance” from 52 U.S.C. §20506(a)(2)(A).

Allen turned on the interpretation of the word “office.”²⁰⁴ First, the court analyzed the plain text of the statute. Virginia argued that the entirety of the public college was an “office,” so the “office” was not “*primarily* engaged in providing services to persons with disabilities.”²⁰⁵ The National Coalition for Students with Disabilities (NCSD) countered that Webster’s and other dictionaries defined “office” in a governmental context as “a *subdivision* of a governmental department.”²⁰⁶ NCSD used this definition to argue that the college’s department providing services for students with disabilities was the office, not the whole college.²⁰⁷ Virginia pointed to one definition from Random House that defined “office” as “a *major administrative unit*” as in “the Foreign Office.”²⁰⁸ The court found that these conflicting definitions created ambiguity and turned to the second analytical step, considering the meaning of the word “offices” in the “context of the statute as a whole.”²⁰⁹

The court noted that (under a different paragraph of Section 7) States may voluntarily designate other government offices as VRAs, including public libraries, public schools, and offices of city and county clerks.²¹⁰ From these examples, the court determined that Congress’ focus was on “locations where citizens conduct their daily business with government” because the high citizen traffic was ideal for providing voter registration services.²¹¹ The court concluded, that in the broader context of the NVRA, an office is a “subdivision of a department where citizens regularly go for service and assistance.”²¹²

The court then turned to legislative history, noting that Congress’s purpose in drafting Section 7 was to “provide adequate voter registration opportunities to citizens who may not apply for or renew driver’s licenses.”²¹³ The court

²⁰⁴ *Id.* at 292.

²⁰⁵ *Id.* at 289 (quoting 42 U.S.C. § 1973gg-5(a)(2)(B), which was later transferred to 52 U.S.C. § 20506(a)(2)(B) where it is currently located) (emphasis added).

²⁰⁶ *Id.* (quoting WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY 816 (1988)) (emphasis added).

²⁰⁷ *Id.*

²⁰⁸ *Id.* (quoting RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1844 (2d ed. 1987)) (emphasis added).

²⁰⁹ *Id.* at 290.

²¹⁰ *Id.* at 290–91 (quoting 42 U.S.C. § 1973gg-5(a)(3)(B)).

²¹¹ *Id.* at 291.

²¹² *Id.*

²¹³ *Id.* at 290.

extensively quoted the House Conference Report, which is commonly quoted by cases interpreting the NVRA.²¹⁴

According to the House Report, the office designation section of the Act is designed to “supplement the motor-voter provisions of the bill by reaching out to those citizens who are likely not to benefit from the State motor-voter application provisions.” Offices serving the disabled and recipients of public assistance were identified as the offices “most likely to serve the person of voting age who may not have driver[’s] licenses.” By requiring states to designate these offices as voter registration agencies, “we will be assured that almost all of our citizens will come into contact with an office at which they may apply to register to vote with the same convenience as will be available to most other people under the motor voter program of this Act.”²¹⁵

Based on this legislative history and context, the court concluded that offices providing services to disabled students at public colleges must be designated as VRAs because “[s]uch an office, as a subdivision of the college, fits the plain meaning of ‘office’” under the NVRA.²¹⁶

Disabled in Action v. Hammons similarly used legislative history to resolve ambiguity when it found that the statutory text was unclear.²¹⁷ *Hammons* is one of the only cases interpreting the phrase “provide public assistance” under Section 7 of the NVRA.²¹⁸ At issue was whether hospitals that assisted patients in applying for Medicare were “offices in the State that provide public assistance.”²¹⁹ The court found that private hospitals cannot be “offices in the

²¹⁴ See, e.g., Ga. State Conf. NAACP v. Kemp, 841 F. Supp. 2d 1320, 1332 (N.D. Ga. 2012) (quoting H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.) (“The House Conference Report for the NVRA expressed concern that a proposed amendment ‘would permit states to restrict their agency programs and defeat a principal purpose of this Act—to increase the number of eligible citizens who register to vote.’”); see also Vladez v. Herrera, No. 09-668 JCH/DJS, 2010 U.S. Dist. LEXIS 142209, at *24 (D.N.M. Dec. 21, 2010) (holding that “[t]he House-Senate Conference Report finalizing the NVRA . . . explains that the declination form was added to guard against the possibility of coercion of agency clients”).

²¹⁵ Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen, 152 F.3d 283, 292 (4th Cir. 1998) (quoting H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.)) (citations omitted).

²¹⁶ *Id.* at 292.

²¹⁷ *Disabled in Action of Metro. N.Y. v. Hammons*, 202 F.3d 110, 124 (2d Cir. 2000).

²¹⁸ *Id.* at 119 (quoting 42 U.S.C. § 1973gg-5(a)(2)(A) which was later transferred to 52 U.S.C. § 20506(a)(2)(A) where it is currently located); see also *Rosebud Sioux Tribe v. Barnett*, 604 F. Supp. 3d 827, 841-43 (D.S.D. 2022) (rejecting summary judgment and remanding for further processing the question of whether the similarity between the benefits provided by Workforce Innovation and Opportunity Act (WIOA) and benefits provided by the Temporary Assistance for Needy Families (TANF) required that the South Dakota Department of Labor and Regulations to be designated as a VRA. This case reached a settlement agreement on Sept. 12, 2022, without the court making a determination regarding the interpretation of the NVRA. Settlement Agreement and Stipulated Order of Dismissal, *Rosebud Sioux Tribe v. Barnett*, Civ. No. 5:20cv5058, Doc. No. 132 (D.S.D. 2022).

²¹⁹ *Hammons*, 202 F.3d at 119 (quoting 42 U.S.C. § 1973gg-5(a)(2)(A)).

state” because they are not governmental agencies.²²⁰ Conversely, public hospitals operated by New York City were “offices of local government” and, therefore, must be designated as VRAs.²²¹

New York argued that, even if the public hospitals were “offices in the state,” they were not *providing* “public assistance.”²²² Medicare is “medical assistance,” which is defined under federal law as “*payment* of part or all of the cost of medical services.”²²³ New York argued that the offices did not “provide public assistance” because they only “provide medical services or assist applicants with Medicaid applications . . . rather than provide payment for those services.”²²⁴ The court rejected this argument, stating that the “drafters of the NVRA intended the phrase ‘public assistance’ to have a broader meaning that includes not only the payment process, but the application process as well.”²²⁵

The court supported this statement by quoting extensively from the legislative history, particularly the House Conference Report, noting that “next to the statute itself,” a conference report is “the most persuasive evidence of congressional intent.”²²⁶ The court focused on the report’s statement that “[b]y public assistance agencies, we intend to include those State agencies . . . that *administer or provide services* under the food stamp, [M]edicaid, the Women, Infants and Children (WIC), and the Aid to Families With Dependent Children (AFDC) programs.”²²⁷ The court also noted the conference report’s statement that “public assistance agencies will help register more people” because “these *government* agencies . . . will be able to *assist people in registering*.”²²⁸ The court concluded that State-run hospitals that provided Medicaid application forms, assisted applicants in completing the forms, or interviewed Medicaid applicants must be designated as VRAs under Section 7.²²⁹

²²⁰ *Id.* at 121.

²²¹ *Id.* at 120.

²²² *Id.* at 122.

²²³ *Id.* at 123 (citation omitted).

²²⁴ *Id.*

²²⁵ *Id.* at 123–24.

²²⁶ *Id.* at 124 (quoting *Railway Lab. Execs. Ass’n v. I.C.C.*, 735 F.2d 691, 701 (2d Cir. 1984)).

²²⁷ *Id.* (emphasis added) (quoting H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.)), *reprinted in* 1993 U.S.C.C.A.N. 140, 144).

²²⁸ *Id.* (emphasis added).

²²⁹ *Id.* at 116, 122–23.

3. *Application of Principles to Public Housing Authorities*

Prior case law has created a blueprint with which to analyze whether Public Housing Authorities should be designated as Voter Registration Agencies under Section 7. Using the two-step analysis from NVRA case law shows that the plain text and the legislative history of Section 7 indicate that public housing authorities are “offices in the State” and that they “provide public assistance.”²³⁰ Therefore, any State that does not designate PHAs and VRA is out of compliance with the NVRA.

a) Public Housing Authorities are “Offices in the State.”

The first step of the analysis is to determine whether the ordinary and plain meaning of the term “offices in the state” encompasses public housing authorities. The Housing Act of 1937 (which established HUD) defines “public housing agency” as “any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing.”²³¹ However, individual Public Housing Authorities are created by state law, not the Housing Act of 1937.²³² For example, the Pennsylvania Housing Authorities Act established that “the policy of the Commonwealth of Pennsylvania to promote the health and welfare . . . by the creation of . . . housing authorities.”²³³ The Act further states that “[a]n Authority shall constitute a public body, corporate and politic, *exercising public powers of the Commonwealth as an agency thereof.*”²³⁴ This text clearly indicates that PHAs fit the ordinary and plain meaning of “offices *in the State*” because they are State government agencies.²³⁵

PHAs also fit the ordinary and plain meaning of “offices.” Black’s Law Dictionary defines “office” as a “place where business is conducted or services are performed.”²³⁶ Similarly, Merriam-Webster defines “office” as “a place

²³⁰ 52 U.S.C.S. § 20506(a)(2).

²³¹ 42 U.S.C. § 1437a(b)(6)(A).

²³² See, e.g., Housing Authorities Law of May 28, 1937, Pub. L. 955, No. 265 (establishing public housing agencies under Pennsylvania State law). Some housing authorities predate the Housing Act of 1937, such as the New York City Housing Authority, which was created in 1934. Ethan G. Sribnick, *Public Housing in New York City*, THE HISTORICAL PERSPECTIVE, at 25 (Summer 2012), https://www.icphusa.org/wp-content/uploads/2015/01/ICPH_UNCENSORED_3.2_Summer2012_ExcludingThePoor.pdf.

²³³ Housing Authorities Law of May 28, 1937, Pub. L. 955, No. 265.

²³⁴ 35 PA. CONS. STAT. § 1550 (2019) (emphasis added).

²³⁵ 52 U.S.C. § 20506(a)(2) (emphasis added).

²³⁶ *Office*, BLACK’S LAW DICTIONARY (11th ed. 2019).

where a particular kind of business is transacted or a service is supplied: such as a place in which the functions of a public officer are performed.”²³⁷ PHAs have physical offices where government employees work in the business of providing public housing aid.²³⁸ The Philadelphia Housing Authority, for example, invites potential applications to “visit the Admissions office at 2013 Ridge Avenue.”²³⁹

Public Housing Authorities also fit the definition of “offices” provided by *Nat’l Coal. v. Allen*, which held that, in the context of the NVRA, offices are “a subdivision of a department where citizens regularly go for service and assistance.”²⁴⁰ PHAs have many functions not involving the administration of aid to HUD program recipients, such as leasing, maintaining, and developing properties.²⁴¹ Therefore, the departments of PHAs that administer HUD programs—such as the Philadelphia Housing Authority’s Leased Housing Department, which administers the Housing Choice Voucher Program—are a subdivision of a State government agency.²⁴² PHA offices are also places “where citizens regularly go for service and assistance.”²⁴³ The Philadelphia Housing Authority’s Leased Housing Department alone “assists over 44,000 people involved in the Housing Choice Voucher Program.”²⁴⁴ The main goal of the department is to “provide exceptional customer service.”²⁴⁵

This evidence clearly shows that Public Housing Authorities fit the common and ordinary meaning of the term “offices in the state.”²⁴⁶ Therefore, a court interpreting this section should require no further analysis.²⁴⁷ However,

²³⁷ *Office*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/office> [<https://perma.cc/P556-4GHX>] (last updated Oct. 30, 2023).

²³⁸ Philadelphia Housing Authority, AGENCY OVERVIEW (July, 2020), http://www.pha.phila.gov/media/189728/pha_fact_sheet_2020_july_10.pdf [<https://perma.cc/M7JM-E65P>].

²³⁹ *Id.*

²⁴⁰ *Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 291 (4th Cir. 1998).

²⁴¹ *About*, PHILA. HOUS. AUTH., <http://www.pha.phila.gov/aboutpha/about-pha.aspx> [<https://perma.cc/BL2C-BQJZ>] (last visited Aug. 1, 2022).

²⁴² *Departments: Leased Housing Department*, PHILA. HOUS. AUTH., <http://www.pha.phila.gov/aboutpha/departments.aspx> [<https://perma.cc/85Z3-9U2F>] (last visited Aug. 1, 2022).

²⁴³ 152 F.3d at 291.

²⁴⁴ *Departments: Leased Housing Department*, PHILADELPHIA HOUSING AUTHORITY, <http://www.pha.phila.gov/aboutpha/departments.aspx> [<https://perma.cc/DLA2-F5US>].

²⁴⁵ *Id.*

²⁴⁶ 52 U.S.C. §20506(a)(2).

²⁴⁷ See *Nat’l Council La Raza v. Cegavske*, 800 F.3d 1032, 1045 (9th Cir. 2015) (discussing that “[w]hen the statute’s language is plain, the sole function of the courts . . . is to enforce it according to its terms.” (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000))).

if a court found that there was ambiguity, a consideration of the legislative history of Section 7 also shows that PHAs are the type of office that Congress intended to be voter registration agencies.

The House Conference Report expressed a concern that States would “restrict their agency program and defeat a principal purpose of this Act—to increase the number of eligible citizens who register to vote.”²⁴⁸ The report notes that restricting the number of voter registration agencies would exclude “the poor and persons with disabilities who do not have driver’s licenses” from voter registration.²⁴⁹ The report explicitly states that the intent of Section 7 was to ensure that States designated VRAs that would have “regular contact with those who do not have driver’s licenses.”²⁵⁰

Citizens receiving public housing assistance from PHAs are predominantly from the demographics that are least likely to have driver’s licenses.²⁵¹ Individuals with an annual household income lower than \$25,000 are the least likely to have driver’s licenses compared to all other income brackets.²⁵² More than 27% of Black individuals do not have driver’s licenses.²⁵³ More than 37% of Black individuals with an annual household income of less than \$25,000 do not have driver’s licenses.²⁵⁴ As of 2019, recipients of housing aid through HUD programs had a median annual household income of \$12,500, 46.7% were Black or African American, and 19.1% were Hispanic.²⁵⁵ Further, in 2010, over 49% of recipients of HUD housing vouchers were elderly or disabled.²⁵⁶ Therefore, PHAs serve and have regular contact with “the poor

²⁴⁸ H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.).

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Compare Vanessa M. Perez, *Americans with Photo ID: A Breakdown of Demographic Characteristics*, (Feb.

2015) (finding that low income individuals and racial minorities are the least likely to have drivers licenses), <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>, with Eggers, *supra*, note 164 at 18, 25 (finding that, as of 2019, recipients of HUD housing aid had a median annual household income of \$12,500, 46.7% were African American, and 19.1% were Hispanic).

²⁵² Vanessa M. Perez, *Americans with Photo ID: A Breakdown of Demographic Characteristics*, PROJECT VOTE (Feb. 2015), <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>. [<https://perma.cc/Q5QQ-6DWG>].

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ Eggers, *supra*, note 164 at 18, 25.

²⁵⁶ Sard and Alvarez-Sánchez, *Large Majority of Housing Voucher Recipients Work, are Elderly, or Have Disabilities*, CTR. ON BUDGET AND POL’Y PRIORITIES (Dec. 2, 2011) <https://www.cbpp.org/sites/default/files/atoms/files/12-2-11hous.pdf>. [<https://perma.cc/2HP6-MMMQ>]

and persons with disabilities who do not have driver's licenses" that Congress had in mind when drafting Section 7.²⁵⁷

In conclusion, both the plain text of the NVRA and the legislative history and Congressional intent of Section 7 indicate that Public Housing Authorities are "offices in the State."²⁵⁸ Therefore, if PHAs provide public assistance, they meet the only requirements under Section 7 to qualify as mandatory voter registration agencies.

b) Public Housing Authorities "Provide Public Assistance"

Interpreting the meaning of "offices in the State that provide public assistance" follows the same two-step analysis.²⁵⁹ This analysis shows that the ordinary and plain meaning of the statutory term "provide public assistance" encompasses public housing aid.²⁶⁰

The NVRA does not define "public assistance."²⁶¹ Consequently, courts interpreting Section 7 use the common canon of statutory construction that if "Congress does not explain the specific meaning of a statutory term, the Court should assume that Congress intended the word to be given its ordinary meaning, 'which we may discover through the use of dictionaries.'"²⁶² Black's Law Dictionary defines "public assistance" as "[a]nything of value provided by or administered by a social-service department of government; government aid accorded to needy people."²⁶³ Similarly, Merriam-Webster defines "public assistance" as "government aid to needy, aged, or disabled persons and to dependent children."²⁶⁴

These dictionary definitions closely match the usage of the term by government agencies. The U.S. Census Bureau states that "Public assistance refers to assistance programs that provide either cash assistance or in-kind benefits to individuals and families from *any governmental entity* . . . usually

²⁵⁷ H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.).

²⁵⁸ 52 U.S.C. § 20506(a)(2).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ 52 U.S.C. § 20502 (defining under the act only the terms: election, federal office, motor vehicle driver's license, State, and voter registration agency).

²⁶² *Vladez v. Herrera*, No. 09-668 JCH/DJS, 2010 U.S. Dist. LEXIS 142209, at *18 (D.N.M. Dec. 21, 2010) (quoting *Biodiversity Legal Found. v. Babbitt*, 146 F.3d 1249 (10th Cir. 1998)).

²⁶³ BLACK'S LAW DICTIONARY 1438 (11th ed. 2019) (public assistance).

²⁶⁴ "Public assistance," *Merriam-Webster.com Dictionary*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/public%20assistance>. [<https://perma.cc/6LZK-8262>] (last visited Aug. 3, 2022).

based on a low income means-tested eligibility criteria”²⁶⁵ The Workforce Innovation and Opportunity Act (which sets nationwide standards for State workforce development programs) defines “public assistance” as “Federal, State, or local government cash payments for which eligibility is determined by a needs or income test.”²⁶⁶ Bankruptcy courts have defined “public assistance” as “financial aid to lower income individuals and families.”²⁶⁷

Based on these definitions, federal housing aid programs are public assistance. The Housing Act of 1937 authorizes HUD to provide “assistance payments . . . [f]or the purpose of aiding low-income families in obtaining a decent place to live.”²⁶⁸ These monthly assistance payments directly benefit program recipients by making up the difference between the cost of providing housing for tenants and the subsidized rent payments made by the tenants.²⁶⁹ Similarly, the Housing Choice Voucher Program authorizes PHAs to make “tenant-based assistance” payments directly to landlords on behalf of voucher recipients.²⁷⁰ Tenant-Based Assistance is defined as “rental assistance . . . that provides for the eligible family to select suitable housing.”²⁷¹ Further, eligibility to receive assistance under HUD programs is established using income-based criteria.²⁷² Based on this statutory language, federal housing assistance is clearly a payment of government aid to or on behalf of needy persons. Therefore, housing assistance fits the ordinary and common definition of “public assistance.”

Public Housing Authorities also “provide” this public assistance to program recipients. In *Disabled in Action v. Hammons*, the 2nd Circuit Court of Appeals rejected New York’s argument that public hospitals did not

²⁶⁵ *About Public Assistance*, U.S. Census Bureau, <https://www.census.gov/topics/income-poverty/public-assistance/about.html> [https://perma.cc/63EL-PVXJ] (last visited Aug. 3, 2022) (emphasis added).

²⁶⁶ 29 U.S.C. § 3102.

²⁶⁷ *In re Woodside*, 538 B.R. 518, 524 (Bankr. C.D. Ill. 2015); *see also In re Longstreet*, 246 B.R. 611, 615 (Bkrcty. S.D. Iowa 2000) (holding that “in the context of the Iowa exemption statute and according to its common meaning, ‘public assistance benefit’ includes government aid payments”).

²⁶⁸ 42 U.S.C. § 1437f (a).

²⁶⁹ 42 U.S.C. § 1437f (c)(3) (explaining that the amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and the rent the family is required to pay).

²⁷⁰ 42 U.S.C. § 1437f (o)(1); *see also Housing Choice Vouchers Fact Sheet*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.”) https://www.hud.gov/topics/housing_choice_voucher_program_section_8 [https://perma.cc/9X2Z-KNA2] (last accessed 08/04/2022).

²⁷¹ 42 U.S.C. § 1437f(f)(7)

²⁷² See 42 U.S.C. § 1437f(o)(4)

“provide” public assistance because they only assisted applicants with their Medicaid applications and did not pay the Medicaid payments.²⁷³ Instead, the court stated that the “drafters of the NVRA intended the phrase ‘public assistance’ to have a broader meaning that includes not only the payment process, but the application process as well.”²⁷⁴ PHAs review applications for HUD programs, determine the eligibility of applicants,²⁷⁵ and assist applicants with the application process.²⁷⁶ Therefore, PHAs are clearly involved in the application process and provide public assistance as defined in *Hammons*.

Even if a court determined that there was ambiguity in the definition of the term “provide public assistance,” the legislative history and context of Section 7 also support the conclusion that PHAs “provide public assistance.” The NVRA explicitly states that “it is the duty of the Federal, State, and local governments to promote the exercise” of citizens’ fundamental right to vote.²⁷⁷ Many courts have held that the “primary emphasis” of the NVRA is to “maximize” the opportunities for “every citizen” to register to vote.²⁷⁸ Given this broad and clear language, there is no reason to think that Congress intended Section 7 to be interpreted narrowly.

Instead, there is clear evidence that Congress intended to ensure that Section 7 was not interpreted narrowly by States. The Conference Committee rejected a Senate amendment that would have made VRA designations discretionary instead of mandatory.²⁷⁹ The report notes that the “conference is concerned that the Senate amendment would permit States to restrict their agency program and defeat a principal purpose of this Act.”²⁸⁰ Congress’ main concern was that Section 7 should be effective, not that it should be limited.

²⁷³ Disabled in Action of Metro. N.Y. v. *Hammons*, 202 F.3d 110, 123 (2nd Cir. 2000).

²⁷⁴ *Id.* at 123–24.

See, e.g., Housing Choice Voucher Program Administrative Plan, N.Y. CITY HOUS. AUTH., at 13–18 (October 1, 2023) (describing eligibility requirements and policies for screening applicants for housing vouchers), <https://www.nyc.gov/assets/nycha/downloads/pdf/hcpvadministrative.pdf>.

²⁷⁶ *See* Henry Savage, *How to apply for the newly reopened Housing Choice Voucher program in Philly*, PHILA. INQUIRER (Jan. 11, 2023, 12:30 p.m.) (“Need help during the two-week application window? Call PHA at 215-999-3102 from 9 a.m.-6 p.m. or visit the PHA main offices at 2013 Ridge Ave. in North Philly.”).

²⁷⁷ 52 U.S.C. § 20501(a).

²⁷⁸ *See* United States v. Louisiana, 196 F. Supp. 3d 612, 626 (M.D. La. 2016) (holding that the “primary emphasis” of the NVRA “has always been to simplify the methods for registering to vote in federal elections and maximize such opportunities for a state’s every citizen” (quoting Colón-Marrero v. Vélez, 813 F.3d 1, 10 n.13 (1st Cir. 2016)); *see also* Nat’l Coalition for Students with Disabilities Educ. & Legal Defense Fund v. Scales, 150 F. Supp. 2d 845, 854 (D. Md. 2001) (“A main thrust of the legislation was for states to play a more active role in promoting the enfranchisement of eligible voter.”).

²⁷⁹ H.R. REP. NO. 103–66, at 19 (1993) (Conf. Rep.).

²⁸⁰ *Id.*

The only evidence in the legislative history that could be interpreted as narrowing the scope of Section 7 was the Committee’s statement that “[b]y public assistance agencies, we intend to include those State agencies . . . that administer . . . the food stamp, [M]edicaid, the Women, Infants and Children (WIC), and the Aid to Families With Dependent Children (AFDC) programs.”²⁸¹ Many States appear to view this list as exclusive,²⁸² vigorously resisting efforts to include additional State agencies under Section 7.²⁸³

However, there is no reason to believe that the Conference Committee intended this list to be exclusive. The Committee was concerned that states would restrict their voter registration agency programs, not that States would designate too many offices as VRAs.²⁸⁴ Further, the Report states that Section 7 was intended “to include” these agencies, not to limit Section 7 to that list of agencies.²⁸⁵ If Congress had intended Section 7 agencies to be strictly limited to an enumerated list, it could have easily done so explicitly in the statute.²⁸⁶ This is especially true considering that the NVRA contains a definitions section that does not define public assistance.²⁸⁷ This section could easily have provided an enumerated list if Congress had wanted to limit Section 7 with a narrow definition.²⁸⁸

In fact, the list of agencies in the committee report is additional evidence that PHAs are the type of office that Congress had in mind when drafting Section 7. Both WIC and SNAP (the new name for the Food Stamp Program) have an almost identical legal structure to HUD, with federal benefits being provided to needy individuals by state agencies in the form of

²⁸¹ *Id.*

²⁸² *See, e.g.,* Ga. State Conf. of the NAACP v. Kemp, 841 F. Supp. 2d 1320, 1324 (N.D. Ga. 2012) (noting that Georgia’s statute implementing the NVRA only designates the food stamp; Medicaid; Women, Infants, and Children; and Temporary Assistance for Needy Families programs as VRAs.).

²⁸³ *See, e.g.,* United States v. New York, 700 F. Supp. 2d 186, 188 (N.D.N.Y. 2010) (arguing that offices that service disabled students at public universities should not have to provide voter registration services); Harkless v. Brunner, 545 F.3d 445, 446-47 (6th Cir. 2008) (Arguing that county offices of the state Department of Job and Family Services should not have to comply with Section 7 of the NVRA); Disabled in Action of Metro. N.Y. v. Hammons, 202 F.3d 110, 111 (2nd Cir. 2000) (arguing that Public Hospitals that assist patients with Medicaid applications should not be voter registration agencies).

²⁸⁴ H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.).

²⁸⁵ *Id.*

²⁸⁶ In *Valdez v. Squier*, the Tenth Circuit Court of Appeals relied on this presumption when interpreting a separate section of the NVRA. 676 F.3d 935, 946 (10th Cir. 2012) (holding that “[h]ad Congress intended for an applicant’s failure to check either box to also relieve the agency of its obligation under subsection (A) to provide a voter registration form, it presumably would have said so”).

²⁸⁷ 52 U.S.C. § 20502.

²⁸⁸ *Id.*

subsidies for purchases of basic human needs.²⁸⁹ The similarity between HUD and these programs further indicates that PHAs meet the requirements of Section 7.

Courts interpreting the NVRA also consider the context and purpose of the whole statute to determine the meaning and application of ambiguous text.²⁹⁰ The “obvious and well-known purposes” of the NVRA are to establish the “duty of the Federal, State, and local governments to promote the exercise . . .” of the right of citizens to vote.²⁹¹ To effectuate these purposes, the NVRA establishes procedures to “increase the number of eligible citizens who register to vote”²⁹² Therefore, if designating Public Housing Agencies as voter registration agencies would increase the number of citizens who are registered to vote, doing so would further the goals that the NVRA set out to accomplish.

B. PROVIDING VOTER REGISTRATION SERVICES AT PUBLIC HOUSING AUTHORITIES WOULD EFFECTUATE THE PURPOSES OF THE NVRA

Designating Public Housing Authorities as voter registration agencies would be an effective means of increasing voter registration.²⁹³ PHAs predominantly provide services to low-income families and racial minorities.²⁹⁴ These groups are less likely to be registered to vote,²⁹⁵ more likely to change

²⁸⁹ Compare 42 U.S.C. § 1786 (establishing WIC: “[t]he Secretary may carry out a special supplemental nutrition program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods . . . to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements”), with 7 U.S.C. § 2013 (establishing SNAP: “the Secretary is authorized to formulate and administer a supplemental nutrition assistance program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment The benefits so received by such households shall be used only to purchase food”), and 42 U.S.C. § 1247f (establishing the HUD rental assistance programs: “[f]or the purpose of aiding low-income families in obtaining a decent place to live . . . [t]he Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may . . . make assistance payments to owners of existing dwelling units.”).

²⁹⁰ See, e.g., *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1338 (N.D. Ga. 2016) (holding that “To determine which of these meanings [of the word ‘implement’] applies, the Court next considers the language in the context of the NVRA as a whole.”).

²⁹¹ *United States v. Louisiana*, 196 F. Supp. 3d 612, 626 (M.D. La. 2016).

²⁹² 52 U.S.C. § 20501(b)(1).

²⁹³ See *Williamson, Cataldo & Wright*, *supra* note 4, at 19 (listing PHAs as one potential option for additional voter registration sites).

²⁹⁴ Eggers, *supra* note 164 at 18, 25.

²⁹⁵ Fabina & Scherer, *supra* note 12, at 9.

addresses often (which necessitates updating voter registration),²⁹⁶ and less likely to register to vote at a Department of Motor Vehicles.²⁹⁷ Further, there are around 3,300 PHAs nationwide,²⁹⁸ providing services to almost 5 million households.²⁹⁹

Based on the number and demographics of the people served by PHAs, designating them as Voter Registration Agencies would provide voter registration services to a huge number of individuals and reach the individuals most in need of voter registration services. This reach is even greater because, under Section 7, VRAs must provide voter registration services to everyone who applies for assistance—not just to those who qualify for service.³⁰⁰ For example, when the Philadelphia Housing Authority opened its housing voucher waitlist in January 2023, it received over 37,000 applications for just 10,000 waitlist spots.³⁰¹ If the Philadelphia Housing Authority was a VRA, it would have had to provide voter registration services to all 37,000 applicants, not just the 10,000 accepted to the waitlist.³⁰² PHAs are also in contact with individuals when they move to new addresses, making them particularly well suited to providing voter registration services. Taken together, all the evidence indicates that PHAs would be very effective at increasing the number of citizens who are registered to vote. Therefore, interpreting “offices in the states that provide public assistance” as including Public Housing Authorities fits the overall purpose and context of NVRA Section 7.

²⁹⁶ Mona Chalabi, *How Many Times Does the Average Person Move?* FIFTYTHREE (Jan. 29, 2015, at 7:00 am) (finding that, from 2012 to 2013, “7 percent of Americans with an annual income of \$100,000 or more moved, compared to 13 percent of those earning \$5,000 or less” and that “[10] percent of non-Hispanic white Americans moved between 2012 and 2013, compared to 13 percent of Asian-Americans, 13 percent of Hispanics and 14 percent of African-Americans.”) <https://fivethirtyeight.com/features/how-many-times-the-average-person-moves/>

²⁹⁷ Williamson, Cataldo & Wright, *supra* note 4, at 7-8.

²⁹⁸ *HUD’s Public Housing Program*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, https://www.hud.gov/topics/rental_assistance/phprog [https://perma.cc/6NHV-822Q] (last visited Aug. 1, 2022).

²⁹⁹ *A Snapshot of HUD-Assisted Households*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (June 11, 2018), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061118.html#:~:text=Today%2C%20HUD%20assists%20nearly%205,the%20provision%20of%20public%20housing> [https://perma.cc/73M3-W2XK].

³⁰⁰ 52 U.S.C. § 20506(a)(6)(A).

³⁰¹ Layla A Jones, *Nearly 37,000 People Applied for PHA Housing Vouchers. Only 10,000 Will Get on the Waiting List this Round.*, PHILA. INQUIRER (Feb. 10, 2023), <https://www.inquirer.com/politics/philadelphia/philadelphia-housing-authority-pha-voucher-lottery-20230210.html> [https://perma.cc/7KGZ-3ACM].

³⁰² *See* 52 U.S.C. § 20506(a)(6)(A) (“A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall . . . distribute with each application for such service or assistance, and with each recertification renewal, or change of address form relating to such service or assistance.”).

CONCLUSION

Congress passed the NVRA to increase democratic participation and correct historically unjust State voter registration laws. The primary means Congress chose was by providing voter registration at State Departments of Motor Vehicles. However, Congress feared that this measure would exclude low-income and disabled persons from voter registration programs.³⁰³ To correct the issue, Congress included Section 7 to maximize the number of citizens registering to vote.³⁰⁴

Analysis of Section 7 shows that the plain text of the NVRA requires States to designate Public Housing Authorities as Voter Registration Agencies. This conclusion is reaffirmed by the legislative history and statutory context of the NVRA. Further, the U.S. Department of Housing and Urban Development recently wrote an open letter to PHAs suggesting that they should appeal to their state election officials to seek designation as VRAs.³⁰⁵ However, as part of a broad campaign of resistance to implementing the NVRA, States have failed to designate PHAs as Voter Registration Agencies. This failure violates federal law.

As Congress proclaimed in the NVRA: “[T]he right of citizens of the United States to vote is a fundamental right . . . it is the duty of the Federal, State, and local governments to promote the exercise of that right.”³⁰⁶ The Department of Justice has a statutory cause of action to sue States for failure to comply with the NVRA.³⁰⁷ Designating PHAs as VRAs would effectively further the purposes of the NVRA, so the DOJ has a legal duty to enforce State compliance with this requirement. Private individuals and voting rights organizations also have a statutory right to sue states under the NVRA.³⁰⁸ Either federal or private legal action to require States to designate Public Housing Authorities as Voter Registration Agencies would be a practical and achievable means of increasing democratic participation and broadening the diversity of the electorate.

³⁰³ See H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.) (expressing a concern that the VRA could leave out “the poor and persons with disabilities who do not have driver’s licenses . . .”).

³⁰⁴ *United States v. Louisiana*, 196 F. Supp. 3d 612, 670 (M.D. La. 2016).

³⁰⁵ *Announcements*, OFF. OF PUB. AND INDIAN AFF., U.S. DEP’T OF HOUS. AND URB. DEV., at 1 (Feb. 9, 2022) https://www.hud.gov/sites/dfiles/PIH/documents/PIH_announcement020922.pdf [<https://perma.cc/SV3W-5HW7>].

³⁰⁶ 52 U.S.C. § 20501(a).

³⁰⁷ See 52 U.S.C. § 20510(a) (giving the Attorney General the right to bring a civil action in order to enforce the NVRA).

³⁰⁸ 2 U.S.C. § 20510(b) (“A person who is aggrieved by a violation of this chapter . . . bring a civil action in an appropriate district court for declaratory or injunctive relief.”).