

**Voting Registration and Federal Housing Assistance:
A Practical Solution to Increase Democratic Participation**

I. 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 which in turn reduces the effectiveness and legitimacy of U.S. governmental institutions.³ U.S. voter registration rates are also depressed due to the 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

¹ Naila Awan, *When Names Disappear: State Roll-Maintenance Practices*, 49 U. MEM. L. REV. 1107, 1143 (2019).

² Drew Desilver, *In past elections, U.S. trailed most developed countries in voter turnout*, Pew Research Center, (2020) <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/>.

³ Russell Dalton, *Is Citizen Participation Actually Good for Democracy?*, Democracy Audit UK (2017) <https://www.democraticaudit.com/2017/08/22/is-citizen-participation-actually-good-for-democracy/> (last accessed 8/7/2022).

⁴ Williamson, Cataldo, and Write, *Toward a More Representative Electorate: The Progress and Potential of Voter Registration through Public Assistance Agencies*, Demos, (2018) at 4, <https://www.demos.org/research/toward-more-representative-electorate>

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

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 lower incomes or from racial minorities.⁹ Section 7 has proved to be very successful at providing voter registration services to these groups.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 below-average rates.¹³ The low rate of voter registration in the U.S. presents a significant barrier to democratic participation.¹⁴ In 2016, only 55% of the U.S. voting-

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 [Dmv.pa.gov, Motor Voter Law, https://www.dmv.pa.gov/Information-Centers/Laws-Regulations/Pages/Motor-Voter-Law.aspx](https://www.dmv.pa.gov/Information-Centers/Laws-Regulations/Pages/Motor-Voter-Law.aspx) (Last accessed 8/8/22).

⁸ See 52 USC § 20506 (LexisNexis, Lexis Advance through Public Law 117-161, approved July 29, 2022).

⁹ See H.R. Conf. Rep. No. 103-66, at 19 (1993).

¹⁰ Williamson, Cataldo, and Write, *Supra*, note 4, at 7.

¹¹ Desilver, *In past elections, U.S. trailed most developed countries in voter turnout, supra*, Note 2.

¹² Fabina and 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>.

¹³ *Id* at 8.

¹⁴ See Day and File, *Most People Who Are Registered to Vote Actually Do Vote*, U.S. Census Bureau,

age population voted, placing the U.S. thirty-second worldwide for voter turnout rates.¹⁵

A significant cause of these low voter registration rates is the resistance of state governments to vigorously implementing the NVRA.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, States generally include only a limited number of public assistance agencies in their Section 7 agency programs.¹⁹ Notably, no State has designated Public Housing Authorities (PHAs) as Voter Registration Agencies (VRAs),²⁰ even though PHAs are state agencies that administer public housing assistance.²¹

This paper proposes that the NVRA requires States to designate all Public Housing Authorities that administer programs funded by the U.S. Department of Housing and Urban Development (HUD) as Voter Registration Agencies. Applying

(2020), <https://www.census.gov/library/stories/2020/10/what-can-recent-elections-tell-us-about-the-american-voter-today.html>

¹⁵ 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 (2022) <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/>.

¹⁶ See, *supra*, Section III.A.

¹⁷ *Id.*

¹⁸ 52 USC § 20506(a) (2018).

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 stamp; Medicaid; Women, Infants, and Children; and Temporary Assistance for Needy Families programs as VRAs).

²⁰ See, Williamson, Cataldo, and Write, *Supra*, note 4 at 19.

²¹ See, *supra*, Section IV.A.

Section 7 to PHAs would effectively increase the U.S.'s low rates of democratic participation.²² 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."²³

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.²⁴ 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.²⁵ Third, this paper demonstrates that PHAs meet the requirements of the Voter Registration Agencies provision of NVRA Section 7.²⁶ Therefore, States are out of compliance with federal law for failing to designate PHAs as VRAs.²⁷ This paper concludes that designating PHAs as VRAs would help achieve the purposes of the NVRA by effectively increasing voter registration rates and enhancing democratic participation.²⁸

²² See, *Supra*, Section IV.B.

²³ 52 USC § 20501(b)(1) (2018).

²⁴ See, *supra*, Section II.

²⁵ See, *supra*, Section III.

²⁶ See, *supra*, Section IV.

²⁷ *Id.*

²⁸ See, *supra*, Section V.

II. 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.²⁹ 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 responsibility and the decentralized nature of State voter registration laws.³⁰ 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.³¹

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 1965³² and the National Voter Registration Act of 1993.³³ Congress' intent with both laws was to correct abessive State voting registration laws.³⁴ Second, despite the

²⁹ See Dayna L. Cunningham, *Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*, YALE LAW & POLICY REVIEW, Vol. 9, 372 (1991); Awan, *supra*, note 1 at 1143.

³⁰ See Desilver, *In past elections, U.S. trailed most developed countries in voter turnout*, *supra* note 2.

³¹ See Cunningham, *Supra*, note 29, at 374.

³² Voting Rights Act of 1965., 79 Stat. 437

³³ 52 USC § 20501 (2018).

³⁴ 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.> (last accessed 8/8/22) (The VRA "outlawed the discriminatory voting

improvements made by these laws, the poor, uneducated, and minority citizens historically marginalized by voter registration laws continue to register to vote at below-average rates.³⁵

A. Historical Development of Voter Registration Laws

Prior to the late nineteenth century, there were no State or federal requirements for white men to register to vote in the United States.³⁶ State 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.³⁷ 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.³⁸ These laws effectively reestablished race-based restrictions on voting, purposefully excluded newly enfranchised Black vote.³⁹ In Northern and Western states voter registration laws disenfranchised immigrants and migrant workers.⁴⁰ The movements to pass voter registration laws in both regions were "elitist,

practices adopted in many southern states after the Civil War, including literacy tests as a prerequisite to voting."); 52 USC § 20501(a) (2018) ("Congress finds 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.").

³⁵ Fabina & Zach Scherer, *supra*, note 12, at 3.

³⁶ Cunningham, *supra*, note 29, at 373.

³⁷ *Id.*

³⁸ See Delk, *supra*, note 6 at 138.

³⁹ *Id.*

⁴⁰ See 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, 100 (2017).

reactive to the threat of political insurgency, and apparently calculated to achieve political stabilization while restoring control by strongly conservative interests."⁴¹

Typical of Southern states, Louisiana enacted harsh new voting registration requirements in 1898 that included literacy qualifications and property-owning requirements.⁴² However, under the infamous "Grandfather Clause," the new restrictions did not apply to anyone with a father or grandfather entitled to vote before 1867.⁴³ This clause precisely targeted the new restrictions at Black voters.

Louisiana passed these laws during a State Constitutional Convention which was called explicitly to "establish the supremacy of the white race"⁴⁴ by disenfranchising the "mass of corrupt and illiterate voters."⁴⁵ The convention had its intended effect; by 1900 the percentage of African Americans registered to vote in Louisiana plummeted from 85.2% to 4%.⁴⁶ Alabama's strict Jim Crow voter registration laws were similarly effective, with just 1% of eligible African Americans in the

⁴¹ Cunningham, *supra*, Note 29 at 374.

⁴² *Id.*

⁴³ See (1898) Louisiana Grandfather Clause, Black Past, <https://www.blackpast.org/african-american-history/1898-louisiana-grandfather-clause/> (last accessed 8/8/22).

⁴⁴ Cunningham, *supra*, note 29 at 374 (quoting Francis T. Nicholls, former Governor of Louisiana and then Chief Justice of the Louisiana Supreme Court calling the Constitutional Convention to order)

⁴⁵ *Id.* (quoting United States v. Louisiana, 225 F. Supp. 353, 373 (E.D. La. 1963) (quoting the President of the Convention, Ernest B. Kruttschnitt stating that "[w]e are all aware that this Convention has been called...to eliminate from the electorate the mass of corrupt and illiterate voters who have during the last quarter century degraded our politics."))

⁴⁶ *Id.* at 380.

state registering to vote in 1902, compared with 75% of Whites.⁴⁷

In Northern States, early proponents of voter registration laws claimed to be concerned about voter fraud and the corrupting influences of urban political machines.⁴⁸ However, the fiercely partisan political battles of early Northern voter registration laws generally pitted urban working class and immigrant voters against nativist elites.⁴⁹ 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."⁵⁰ Further, there was little evidence of the fraudulent voter registration that purportedly justified voter registration laws.⁵¹ Documented voting fraud almost always involved organized efforts by election officials, not voters.⁵² Thus, the voter registration laws sought by activists could not have prevented the only proven cases of voter fraud.⁵³

Despite the clear discriminatory intent of many voter registration laws,⁵⁴ state courts mostly upheld these laws

⁴⁷ *Id.*

⁴⁸ See Muller, *supra*, note 40, at 110.

⁴⁹ Cunningham, *supra*, Note 29 at 381.

⁵⁰ *Id.* at 373.

⁵¹ Muller, *supra*, note 40 at 110.

⁵² Cunningham, *Supra*, Note 29 at 384.

⁵³ See *id.*

⁵⁴ Or, more likely, because of it.

throughout the first half of the twentieth century.⁵⁵ On the rare occasions when federal courts struck down discriminatory voter registration laws, States would switch to different methods to reach the same result.⁵⁶ 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.⁵⁷

Civil rights legislation starting in the 1960s began to establish national standards for voter registration.⁵⁸ Prior to 1965, African Americans registered to vote at a nationwide average of 29%, compared to 73% for Whites.⁵⁹ The Civil Rights Act of 1964⁶⁰ and Voting Rights Act of 1965⁶¹ curbed the worst abuses of voter registration laws and led to over 60% of eligible Black voters being registered by 1986.⁶² However, there remained a "plethora of byzantine and ambiguous state registration procedures" that "often denied voters the chance to register with ease and convenience."⁶³ Further, voter

⁵⁵ Muller, *supra*, note 40, at 111.

⁵⁶ See Delk, *supra*, note 6 at 141.

⁵⁷ *Id.*

⁵⁸ Cunningham, *supra*, note 29 at 388.

⁵⁹ *Id.*

⁶⁰ See Civil Rights Act of 1964, Ballotpedia.org, https://ballotpedia.org/Civil_Rights_Act_of_1964#:~:text=Johnson%20on%20July%202%2C%201964,discourage%20racial%20segregation%20in%20schools (Last accessed 8/8/22).

⁶¹ 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 accessed 8/8/22).

⁶² Cunningham, *supra*, note 29 at 388.

⁶³ United States v. Louisiana, 196 F. Supp. 3d 612, 626 (M.D. La. 2016).

registration rates plateaued and democratic participation rates decreased nationwide in the wake of the Watergate era.⁶⁴ 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 1993.⁶⁵

B. Legal structure of the NVRA and Section 7

In passing the NVRA, Congress found that citizens have a “fundamental right” to vote and that it is the “duty of the Federal, State, and local governments to promote the exercise of that right.”⁶⁶ 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.”⁶⁷ 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 State laws.

Congress' primary purpose in passing the NVRA was to “establish procedures that will increase the number of eligible citizens who register to vote.”⁶⁸ To implement this purpose, the

⁶⁴ Delk, *supra*, note 6 at 150.

⁶⁵ *Id.*

⁶⁶ 52 USC § 20501(a) (2018).

⁶⁷ *Id.*

⁶⁸ *Id.* 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 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.”

NVRA directs States to provide voter registration services to driver's license applicants at State Departments of Motor Vehicles⁶⁹ and requires States to accept standardized mail voter registration forms created by the Federal Election Commission.⁷⁰

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 with disabilities.⁷¹ Congress included Section 7 to address these concerns by requiring States to designate certain state governmental offices as Voter Registration Agencies.⁷² This requirement, known as the Agency System.

Section 7 (now consolidated as 52 USC § 20506) requires States to designate as voter registration agencies "all offices in the State that provide public assistance" or are "primarily engaged in providing services to persons with disabilities."⁷³ These are known as mandatory voter registration agencies. 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.⁷⁴ These are known as

⁶⁹ See 52 USC § 20504 (2018).

⁷⁰ See 52 USC § 20505 (2018).

⁷¹ See H.R. Conf. Rep. 103-66 at 19 ("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 place to register under this Act.").

⁷² 52 USC § 20503(a)

⁷³ *Id.*

⁷⁴ *Id.*

discretionary voter registration agencies.

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.⁷⁵ 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.⁷⁶ To enforce these provisions, the Attorney General and private citizens may “bring a civil action...for declaratory or injunctive relief.”⁷⁷

C. Effects of the NVRA and Section 7

The NVRA quickly succeeded in raising the national rate of voter registration.⁷⁸ As a direct result of the new law, an additional 27.5 million citizens registered to vote.⁷⁹ Within two years of the law taking effect 73% of the voting age population was registered to vote; the highest percentage since accurate statistics started being recorded in 1960.⁸⁰

Section 7 also successfully increased the electorate's diversity by registering low-income and minority individuals.⁸¹ 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

⁷⁵ *Id.*

⁷⁶ 52 USC §20506(a)(6) (2018).

⁷⁷ 52 USC §20510 (2018).

⁷⁸ See Williamson, Cataldo, and Write, *supra*, note 4 at 7.

⁷⁹ during the 1995-1996 election cycle.

⁸⁰ See Delk, *supra*, note 6.

⁸¹ Williamson, Cataldo, and Write, *supra*, note 4 at 7.

individuals registered to vote at State Departments of Motor Vehicles in 2016.⁸² However, 49% of citizens making less than \$30,000 per year and 35% of Black citizens register to vote through public assistance agencies under Section 7 in 2016.⁸³ These statistics demonstrate Section 7's value in correcting the historically discriminatory of State voter registration laws and show the prescience of the NVRA's drafter's recognition that Section 7 was necessary to achieve their purpose of maximizing opportunities for citizens to register to vote.

Despite the successes of the NVRA, the law has failed to bring the U.S. in line with the voter registration rates of other advanced democracies.⁸⁴ In 2016, only 64% of the U.S. voting-age population was registered to vote, with only 56% casting a ballot.⁸⁵ Low-income individuals continue to register at lower rates than higher-income individuals.⁸⁶ Citizens from racial minorities continue to be underrepresented among registered voters, while White individuals continue to be overrepresented.⁸⁷

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

⁸² *Id.* Statistics based on 2016 Census data.

⁸³ *Id.* Statistics based on 2016 Census data.

⁸⁴ See Drew Desilver, *In past elections, U.S. trailed most developed countries in voter turnout*, *supra* note 2.

⁸⁵ *Id.*

⁸⁶ Fabina & Zach Scherer, *supra*, note 12.

⁸⁷ Delk, *supra*, note 6 at 155.

eligible non-voters wanted to register, but State registration deadlines or lack of knowledge about voter registration procedures stopped them from successfully registering.⁸⁸ 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.⁸⁹ Further, a Pew Research poll found that 62% of eligible unregistered voters reported that they had never been asked to register.⁹⁰

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.⁹¹ However, in the first several years after implementation the NVRA was highly effective at boosting voter registration rates.⁹² By contrast, 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.⁹³ This pattern of initial success followed by a steep decline is better explained by States being unwilling—rather than unable—to effectively implement the NVRA.

⁸⁸ Fabina & Zach Scherer, *supra*, note 12.

⁸⁹ Drew Desilver, *In past elections, U.S. trailed most developed countries in voter turnout*, *Supra*, note 2.

⁹⁰ 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>.

⁹¹ See Delk, *supra*, note 6 at 155.

⁹² Williamson, Cataldo, and Write, *supra*, note 4 at 9.

⁹³ *Id.*

III. 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. To counter this resistance, the Justice Department⁹⁴ and non-profit organizations⁹⁵ have made extensive use of the civil right of action provided by the NVRA to force States to comply.⁹⁶ These efforts have been generally successful in court and have resulted in millions more registered voters.⁹⁷ 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 register opportunities.⁹⁸ Since the NVRA establishes that the federal government has a duty to promote the fundamental right of citizens to vote,⁹⁹ the Justice Department should expand its current enforcement efforts against States that fail to comply with the NVRA.¹⁰⁰

A. States have consistently resisted complying with the NVRA

⁹⁴ U.S. Department of Justice, Voting Section Litigation, https://www.justice.gov/crt/voting-section-litigation#nvra_cases (Last accessed 8/8/22)

⁹⁵ Williamson, Cataldo, and Write, *supra*, note 4 at 11.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *See, e.g.,* United States v. Louisiana, 196 F. Supp. 3d 612, 670 (M.D. La. 2016)

⁹⁹ 52 USC § 20501(a) (2018).

¹⁰⁰ U.S. Department of Justice, Voting Section Litigation, https://www.justice.gov/crt/voting-section-litigation#nvra_cases (Last accessed 8/8/22)

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.¹⁰¹ *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.¹⁰² However, this did not stop Rhode Island, Kansas, Louisiana, Michigan, Mississippi, New York, Pennsylvania, South Carolina, Vermont, Virginia, and Illinois from mounting their own unsuccessful challenges to the constitutionality of the NVRA in various cases between 1995 and 2000.¹⁰³

This string of resounding court losses would seem to put an end to this line of argument. However, New York again challenged the constitutionality of the NVRA in 2010.¹⁰⁴ New York was again rejected, with the District Court for the Northern District of New York noting that the “proverbial ship on that issue has long sailed.”¹⁰⁵ Undeterred, Arizona took a shot at overturning the constitutionality of the NVRA in 2013.¹⁰⁶ The Supreme Court rejected this attempt, too, stating that “[w]hen Congress

¹⁰¹ See Delk, *supra*, note 6 at 155.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *United States v. New York*, 700 F. Supp. 2d 186 (N.D.N.Y. 2010).

¹⁰⁵ *Id.* at 200.

¹⁰⁶ *Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247 (2013).

legislates with respect to the 'Times, Places and Manner' of...elections, it necessarily displaces [the] legal regime erected by the States."¹⁰⁷ Further, the Court noted that "the power the Elections Clause confers is none other than the power to pre-empt" state law.¹⁰⁸

This extremely clear holding by the Supreme Court did not stop Louisiana from challenging the constitutionality of the NVRA in 2016.¹⁰⁹ An apparently exasperated District Court for the Middle District of Louisiana to noted that Louisiana "misconstrues the NVRA's constitutional basis."¹¹⁰ As "history attests and as courts have recognized, the NVRA was deliberately and expressly anchored in the Elections Clause."¹¹¹ 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."¹¹²

Given the extremely 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 on the merits of their constitutional claims. These challenges are

¹⁰⁷ *Id.* at 2257 (emphasis in the original).

¹⁰⁸ *Id.*

¹⁰⁹ *United States v. Louisiana*, 196 F. Supp. 3d 612 (M.D. La. 2016).

¹¹⁰ *Id.* at 657

¹¹¹ *Id.*

¹¹² *Id.* (quoting *Foster v. Love*, 118 S. Ct. 464 (1997) (quoting *U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842 (1995))).

better explained by State governments simply dragging their feet on implementing the provisions of the NVRA. This interpretation is confirmed 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 agency under Section 7, four states had refused to designate any.¹¹³ Despite the NVRA becoming law in 1993, Mississippi did not implement its provisions until 2000, and only then because a court ordered the State to do so.¹¹⁴

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 2010.¹¹⁵ During that same period, the number of food stamp applications—which, under the NVRA, require the provision of voter registration forms—increased by over 400%.¹¹⁶ If Nevada's implementation of the NVRA had been effective rising food stamp applications should have caused an increase in voter registrations, not a precipitous decline.

Arizona attempted to evade the NVRA by creating new voter registration forms that required registrants to provide proof of

¹¹³ Williamson, Cataldo, and Write, *supra* note 4, at 9.

¹¹⁴ See Delk, *supra*, note 6 at 155.

¹¹⁵ Nat'l Council of La Raza v. Cegavske, 800 F.3d 1032, 1036 (9th Cir. 2015).

¹¹⁶ *Id.*

citizenship and banning the voter registration forms mandated by the NVRA.¹¹⁷ 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” of the NVRA.¹¹⁸

Instead of accepting this loss and the voter registration forms mandated by the NVRA, Arizona took the case to the Supreme Court in their doomed attempt to challenge the constitutionality of the NVRA.¹¹⁹ Highlighting the futility of Arizona’s constitutional claims, noted States-rights advocate Justice Scalia penned the opinion upholding the NVRA.¹²⁰ Scalia was joined by Justice Roberts, who (that same year) wrote the opinion in *Shelby County v. Holder* that struck down a major portion of the Voting Rights Act of 1965 on constitutional grounds.¹²¹

Louisiana also invented creative and ultimately illegal policies to avoid registering voters at public service agencies.¹²² The NVRA requires Section 7 VRAs to provide a mail voter registration form during “each application for...service or assistance, and with each recertification, renewal, or change of address.”¹²³ However, Louisiana’s provided voter registration

¹¹⁷ *Gonzalez v. Arizona*, 677 F.3d 383, 388 (9th Cir. 2012).

¹¹⁸ *Id.*

¹¹⁹ See *Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247 (2013).

¹²⁰ See *id.*

¹²¹ See *Shelby Cty. v. Holder*, 133 S. Ct. 2612 (2013).

¹²² *United States v. Louisiana*, 196 F. Supp. 3d 612, 670 (M.D. La. 2016).

¹²³ 42 USC § 1437a(d) (6) (A) (2018) (emphasis added).

forms only to in-person applicants for public assistance, not applicants who applied online or over the phone, even though Louisiana relied “extensively on remote means to interact with public assistance clients.”¹²⁴ The District Court for the Middle District of Louisiana found that the State’s interpretation would “directly undermine” the NVRA’s objective of “maximizing opportunities for voter registration.”¹²⁵

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.”¹²⁶ Louisiana’s evasive maneuvers are even more striking considering that it was already under an injunction issued by the 5th Circuit Court of Appeals for refusing to comply with the requirements of the NVRA.¹²⁷

States have also attempted to undermine the NVRA by narrowly interpreting which State agencies must be voter registration agencies under Section 7.¹²⁸ Ohio’s refusal to provide voter registration county public assistance agencies was

¹²⁴ U.S. Department of Justice, *Statement of Interest, Scott v. Schedler* (2012) <https://www.justice.gov/crt/case-document/si-scott-v-schedler> (last accessed 8/7/22).

¹²⁵ *United States v. Louisiana*, 196 F. Supp. 3d 612, 670 (M.D. La. 2016)

¹²⁶ *Id.* at 675; *See also United States v. Missouri*, 535 F.3d 844 (8th Cir. 2008) (holding that Secretary of State could not refuse to enforce the provisions of the NVRA against local elections agencies).

¹²⁷ *See Scott v. Schedler*, 771 F.3d 831, 833 (5th Cir. 2014).

¹²⁸ *See Ga. State Conference 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 provision the food stamp; Medicaid; Women, Infants, and Children; and Temporary Assistance for Needy Families programs as VRAs).

struck down by the 6th Circuit Court of Appeals.¹²⁹ 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.¹³⁰ This ruling did not stop New York from implementing the exact same policy and taking the exact same losing arguments to the Northern District of New York.¹³¹

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 25 different states—some multiple times—to compel compliance with the NVRA.¹³² Non-profit organizations have initiated many more legal actions, often successfully.¹³³ However, this mountain of litigation has not been in vain. In fact, enforcement efforts have had a tremendous impact on the effectiveness of the NVRA at increasing voter registration.¹³⁴

B. Enforcement efforts of NVRA Section 7 are an effective means of increasing voter registration

The steep decline in voter registration rates in the years

¹²⁹ Harkless v. Brunner, 545 F.3d 445, 457 (6th Cir. 2008).

¹³⁰ Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen, 152 F.3d 283, 288 (4th Cir. 1998).

¹³¹ United States v. New York, 700 F. Supp. 2d 186 (N.D.N.Y. 2010).

¹³² U.S. Department of Justice, Civil Rights Division, *Voting Section Litigation*, https://www.justice.gov/crt/voting-section-litigation#nvra_cases (last accessed 8/7/22).

¹³³ Williamson, Cataldo, and Write, *supra*, note 4 at 11.

¹³⁴ U.S. Commission on Civil Rights, *Increasing Compliance with Section 7 of the National Voter Registration Act*, Briefing Report, (2013), at 2. <https://www.usccr.gov/reports/2016/increasing-compliance-section-7-national-voter-registration-act>.

after the passage of the NVRA called into question the effectiveness of the design of the NVRA. In 1995, over 2.5 million voters were registered at Section 7 VRAs per year, but by 2005, new registrations had fallen to below 500,000 per year.¹³⁵ However, the legal battles over the enforcement have substantially restored the effectiveness of the NVRA,¹³⁶ demonstrating that the falling registration rates were a matter of compliance, not design.

Starting in 2005, non-profit organization 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.¹³⁷ 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%.¹³⁸ Demos estimates that its enforcement campaign was directly responsible for registering over 3,044,000 voters over that period.¹³⁹ 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 registration rates was caused by State resistance, not

¹³⁵ Williamson, Cataldo, and Write, *supra*, note 4 at 9.

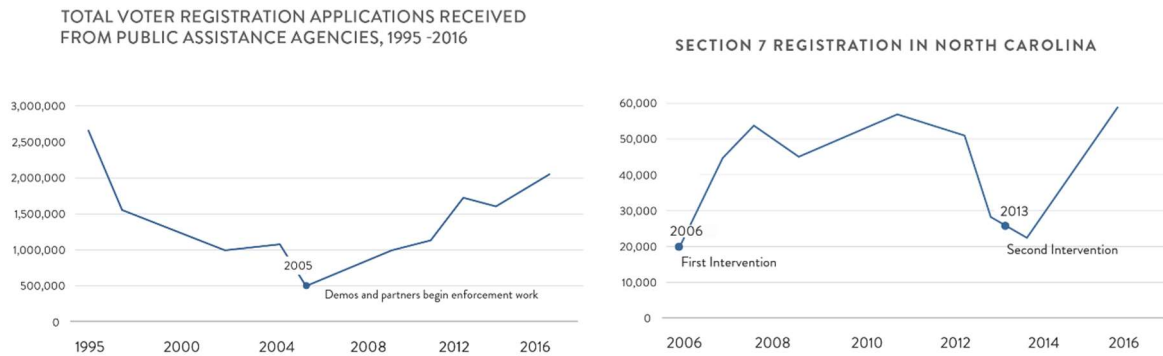
¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at 11.

by any inherent problem with the design of the NVRA.



Even more telling are the results of Demos's enforcement efforts in North Carolina. In 2006, Section 7 VRAs in NC only registered around 20,000 voters per year, a 73% decline since 1996.¹⁴⁰ Demos conducted studies, found that NC was badly out of compliance with the NVRA, and brought their findings to the attention of NC election officials.¹⁴¹ Through active collaboration with Demos and Project Vote, North Carolina's annual registrations at Section 7 VRAs almost tripled over the next six years.¹⁴² 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.¹⁴³ Within three years, voter registrations almost tripled again.¹⁴⁴

The long history of State resistance to implementing the

¹⁴⁰ *Id.* at 15.

¹⁴¹ *Id.* at 14.

¹⁴² *Id.*

¹⁴³ *Id.* at 11.

¹⁴⁴ *Id.*

NVRA and the success of litigation at forcing States compliance suggest that increased enforcement is necessary to achieving the NVRA's purpose of maximizing opportunities for voter registration.¹⁴⁵ Enforcing Section 7 would effectively increase voter registration rates,¹⁴⁶ leading to higher levels of democratic participation because U.S. voters consistently vote at high rates once they have registered.¹⁴⁷ Worldwide, democracies with higher participation rates in elections tend to have better-performing government institutions and lower levels of social inequality.¹⁴⁸ While this correlation does not show that the increased participation caused the improved government performance, it is no great leap to conclude that governments provide better service when they are more accountable to voters.

Increasing the number of voter registration agencies is an effective means of boosting voter registration rates.¹⁴⁹ One of the anomalies of State implementation of the NVRA is that Public Housing Authorities (PHAs) have never been designated as Voter Registration Agencies.¹⁵⁰ PHAs are state agencies that provide federal housing aid to needy families.¹⁵¹ PHAs appear to be a

¹⁴⁵ United States v. Louisiana, 196 F. Supp. 3d 612, 670 (M.D. La. 2016).

¹⁴⁶ See, *supra*, Section IV.B.

¹⁴⁷ See Desilver, *In past elections, U.S. trailed most developed countries in voter turnout*, *supra*, note 2.

¹⁴⁸ Dalton, *Is Citizen Participation Actually Good for Democracy?*, Democracy Audit UK (2017) <https://www.democraticaudit.com/2017/08/22/is-citizen-participation-actually-good-for-democracy/> (last accessed 8/7/2022)

¹⁴⁹ See Awan, *supra*, note 1 at 1144.

¹⁵⁰ Williamson, Cataldo, and Write, *supra*, note 4 at 9.

¹⁵¹ See, e.g., 25 Pa.C.S. § 1102 (establishing Public Housing Authorities under Pennsylvania State law).

perfect fit for the NVRA's requirement that States designate as VRAs all "offices in the state that provide public assistance."¹⁵² 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. Federal enforcement of this requirement would effectively increase voter registration rates and further the purposes of the NVRA.

IV. NVRA Section 7 Applies to Public Housing Authorities

Public Housing Authorities are State-created agencies that administer federal housing aid programs funded by the U.S. Department of Housing and Urban Development.¹⁵³ The primary housing assistance programs administered by PHAs are the Public Housing Program and the Housing Choice Voucher Program.¹⁵⁴ Both are HUD-funded programs that subsidize housing costs for low-income individuals based on the needs of applicants.¹⁵⁵ PHAs' administrative duties include 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

¹⁵² 52 USC § 20506(a)(2) (2018).

¹⁵³ Philadelphia Housing Authority, Agency Overview, http://www.pha.phila.gov/media/189728/pha_fact_sheet_2020_july_10.pdf, (last visited 8-1-2022).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

recipients' eligibility.¹⁵⁶ PHAs also build, acquire, lease, and operate public housing projects, all funded by HUD programs.¹⁵⁷ However, HUD does not directly dictate the action of PHAs. Instead, PHAs have contracts with HUD to provide specific services in exchange for receiving HUD funding.¹⁵⁸

Nationwide there are over 3,300 PHAs.¹⁵⁹ PHAs administer aid from HUD programs to almost 5 million households.¹⁶⁰ Recipients of housing aid through HUD programs have an average annual income of \$15,846, and 46% are Black or African American.¹⁶¹

No State currently designates public housing authorities as voter registration agencies. 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

¹⁵⁶ Philadelphia Housing Authority, Rules and Responsibilities, <http://www.pha.phila.gov/housing/housing-choice-voucher/rules-and-responsibilities.aspx>

¹⁵⁷ About PHA, <http://www.pha.phila.gov/aboutpha/about-pha.aspx> (last visited 8-1-2022)

¹⁵⁸ Philadelphia Housing Authority, Rules and Responsibilities, <http://www.pha.phila.gov/housing/housing-choice-voucher/rules-and-responsibilities.aspx>

¹⁵⁹ U.S. Department of Housing and Urban Development, Hud's Public Housing Program, https://www.hud.gov/topics/rental_assistance/phprog (last visited 8-1-2022)

¹⁶⁰ A Snapshot of HUD-Assisted Households, <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061118.html#:~:text=Today%2C%20HUD%20assists%20nearly%205,the%20provision%20of%20public%20housing.>

¹⁶¹ U.S. Department of Housing and Urban Development, Resident Characteristics Report, <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>

participation of eligible citizens as voters.”¹⁶² Therefore, the U.S. Attorney General and private citizens should sue States for failing to designate public housing authorities as voter registration agencies.¹⁶³

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.”¹⁶⁴ This is the only requirement for determining which offices States must designate as VRAs under Section 7. The terms “offices in the State” and “public assistance” are not defined under the NVRA.¹⁶⁵ Further, very few court cases have interpreted the precise meaning of this clause. 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.”¹⁶⁶ Therefore, Section 7 of the NVRA requires States

¹⁶² 52 USC § 20501(b)(1)-(2) (2018).

¹⁶³ See 52 USC § 20510(a) (2018) (“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 Act.”); 52 USC § 20510(B)(1)-(2) (2018) (“A person who is aggrieved by a violation of this Act 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 for declaratory or injunctive relief with respect to the violation.”).

¹⁶⁴ 52 USC § 20506(a)(2) (2018).

¹⁶⁵ See 52 USC § 20502 (2018). “Definitions”

¹⁶⁶ 52 USC § 20506(a)(2) (2018).

to provide voter registration services at PHAs to applicants for federal housing aid.

1. Statutory Interpretation In NVRA Case law

Very few court cases have interpreted the precise meaning of the Voter Registration Agencies 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 Public Housing Authorities 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.”¹⁶⁷ Courts “assume that the words Congress chose, if not specially defined, carry their plain and ordinary meaning,”¹⁶⁸ usually determined based on dictionary definitions.¹⁶⁹ In general, when the statute's language is plain, courts will “enforce it according to its terms.”¹⁷⁰ Courts will reject legal interpretations inconsistent with the plain language of the NVRA, ending the analysis.¹⁷¹

¹⁶⁷ Delgado v. Galvin, Civil Action No. 12-cv-10872, 2014 U.S. Dist. LEXIS 33476, at *12-13 (D. Mass. Mar. 14, 2014) (quoting *In re Hill*, 562 F.3d 29, 32 (1st Cir. 2009)).

¹⁶⁸ *Id.*; See also *La Raza*, 800 F.3d at 1035 (holding that “we assume that the legislative purpose is expressed by the ordinary meaning of the words used”) (quoting *Am. Tobacco Co. v. Patterson*, 102 S. Ct. 1534 (1982)).

¹⁶⁹ *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1337 (N.D. Ga. 2016).

¹⁷⁰ *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1035 (9th Cir. 2015) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 120 S. Ct. 1942 (2000)).

¹⁷¹ See *Gonzalez v. Arizona*, 677 F.3d 383, 399-400 (9th Cir. 2012).

Second, if the statute's language is ambiguous, courts will consider Congress' intent when drafting the NVRA.¹⁷² 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."¹⁷³

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."¹⁷⁴ Application forms at the New Mexico Human Service Department (NM HSD) asked if applicants wanted to register to vote and provided checkboxes for "yes" and "no."¹⁷⁵ 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.¹⁷⁶

Valdez found that NM HSD violated the NVRA by failing to provide mail voter registration forms to applicants who failed to check either box.¹⁷⁷ Because the NVRA does not define the term "in writing," the court consulted the Oxford English Dictionary

¹⁷² See *Ferrand v. Schedler*, No. 11-926, 2012 U.S. Dist. LEXIS 61862, at *28-29 (E.D. La. May 3, 2012) (holding that "this 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.").

¹⁷³ *Delgado*, LEXIS 33476, at *12-13 (quoting *Davis v. Mich. Dept. of Treas.*, 109 S. Ct. 1500, (1989)).

¹⁷⁴ *Valdez v. Squier*, 676 F.3d 935, 938 (10th Cir. 2012) (quoting 52USCS § (a)(6)) (emphasis added).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 945

¹⁷⁷ *Id.*

and found that it is commonly defined to mean "written form."¹⁷⁸ Based on this definition, the court held that voter registration forms must be provided "unless the applicant declines, *in written form*."¹⁷⁹ The court held that failing to check a box was "clearly at odds with the ordinary meaning" of the phrase "in written form."¹⁸⁰ Consequently, HSD's interpretation was "directly rebutted" by the language of the statute.¹⁸¹ 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 presumably would have said so."¹⁸² 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.¹⁸³ *Project Vote* considered whether the requirement under Section 8 of the NVRA that States disclose records concerning the "implementation of programs and activities" at VRAs included individual voter registration applications.¹⁸⁴ The court consulted three different dictionaries

¹⁷⁸ *Id.* (quoting *Oxford English Dictionary*, Online Edition, Sept. 2011); See also *Vladez v. Herrera*, No. 09-668 JCH/DJS, 2010 U.S. Dist. LEXIS 142209, at *18-25 (D.N.M. Dec. 21, 2010) (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.") (quoting *Biodiversity Legal Found. v. Babbitt*, 146 F.3d 1249, 1254 (10th Cir. 1998)).

¹⁷⁹ *Id.* (emphasis added)

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 946.

¹⁸² *Id.* (noting that 52 USC § 20506(a)(6) provides the exact language for the declination forms and instructions on the use of the checkboxes at issue in this case).

¹⁸³ See *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320 (N.D. Ga. 2016).

¹⁸⁴ *Id.* at 1337 (N.D. Ga. 2016) (quoting 52 U.S.C. § 20507(i)(1)).

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.”¹⁸⁵ Therefore, the court moved to the second step of the analysis, considering legislative history and context to resolve the ambiguity.¹⁸⁶

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.”¹⁸⁷ Further, the NVRA was “designed to ensure that eligible applicants in fact are registered.”¹⁸⁸ 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.¹⁸⁹ Therefore, Section 8's place in the NVRA as a whole required States to disclose individual applicant records.¹⁹⁰

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 voter registration agencies “all offices in the State that provide State-funded programs *primarily engaged in providing services to*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 1338-41

¹⁸⁷ *Id.* (quoting *U.S. v. Louisiana*, 196 F. Supp. 3d 612, (M.D. La. 2016)).

¹⁸⁸ *Id.* (quoting *True the Vote v. Hosemann*, 43 F. Supp. 3d 693 (S.D. Miss. 2014)).

¹⁸⁹ *Id.* (quoting 52 USC § 20501).

¹⁹⁰ *Id.* at 1341.

persons with disabilities" applied to offices in public colleges that assisted students with disabilities.¹⁹¹ This case is instructive since the statutory language "all offices in the State that provide" from 52 USC §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 USC §20506(a)(2)(A), which is the subject of this paper.

Allen turned on the interpretation of the word "office."¹⁹² 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."¹⁹³ The National Coalition for Students with Disabilities (NCSW) countered that Websters and other dictionaries defined "office" in a governmental context as "a *subdivision* of a governmental department."¹⁹⁴ NCSW used this definition to argue that the college's department providing services for students with disabilities was the office, not the whole college.¹⁹⁵ Virginia found its own dictionary, quoting one definition from Random House that defined "office" as "a *major administrative unit*" as

¹⁹¹ Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. *Allen*, 152 F.3d 283, 288 (4th Cir. 1998) (quoting 52 USCS § 20506(a)(2)(B) (Emphasis added).

¹⁹² *Id.* at 292

¹⁹³ *Id.* at 289

¹⁹⁴ *Id.* (quoting Webster's II New Riverside University Dictionary 816 (1988) (emphasis added).

¹⁹⁵ *Id.*

in "the Foreign Office."¹⁹⁶ 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."¹⁹⁷

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.¹⁹⁸ 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 made them ideal for voter registration.¹⁹⁹ 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."²⁰⁰

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."²⁰¹ The court extensively quoted the House Conference Report, which is commonly quoted by cases interpreting the NVRA.²⁰²

¹⁹⁶ *Id.* (quoting Random House Dictionary of the English Language 1844 (2d ed. 1987)) (emphasis added).

¹⁹⁷ *Id.* at 290

¹⁹⁸ *Id.* (quoting 52 USC §20506(3)(B))

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *See, e.g.,* Ga. State Conference of the NAACP v. Kemp, 841 F. Supp. 2d 1320, 1331-32 (N.D. Ga. 2012) (noting that "[t]he House Conference Report for the NVRA expressed concern that a proposed amendment "would permit states to

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."²⁰³

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.²⁰⁴

Disabled in Action v. Hammons similarly used legislative history to resolve ambiguity when it found that the statutory text was unclear.²⁰⁵ *Hammons* is one of the only cases interpreting the phrase "provide public assistance" under

restrict their agency programs and defeat a principal purpose of this Act—to increase the number of eligible citizens who register to vote." H.R. Conf. Rep. No. 103-66, 1993 WL 235764 at *16."); *Vladez v. Herrera*, No. 09-668 JCH/DJS, 2010 U.S. Dist. LEXIS 142209, at *18-25 (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").

²⁰³ *Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 288 (4th Cir. 1998) (quoting H.R. Rep. No. 103-9, at 12 (1993) (citations omitted)).

²⁰⁴ *Id.*

²⁰⁵ *Disabled in Action v. Hammons*, 202 F.3d 110, 124 (2d Cir. 2000).

Section 7 of the NVRA.²⁰⁶ At issue was whether hospitals that assisted patients in applying for Medicare were “offices in the State that provide public assistance.”²⁰⁷ The court found that private hospitals cannot be “offices in the state” because they are not governmental agencies. Conversely, public hospitals operated by New York City were “offices of local government” and therefore must be designated as VRAs.²⁰⁸

New York argued that, even if the public hospitals were “offices in the state,” they were not providing “public assistance.”²⁰⁹ Medicare is “medical assistance,” which is defined under federal law as “payment of part or all of the cost” of medical services.²¹⁰ 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.”²¹¹ 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

²⁰⁶ See also the ongoing litigation in *Rosebud Sioux Tribe v. Barnett*, No. 5:20-cv-5058, 2022 U.S. Dist. LEXIS 94721, at *25-27 (D.S.D. May 26, 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 voter registration agency).

²⁰⁷ *Hannoms*, 202 F.3d at 119 (quoting 52 USC §20506(a)(2)).

²⁰⁸ *Id.* at 120.

²⁰⁹ *Id.* at 123.

²¹⁰ *Id.*

²¹¹ *Id.*

the application process as well.”²¹²

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.”²¹³ 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.”²¹⁴ 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*.”²¹⁵ 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 7.²¹⁶

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

²¹² *Id.*

²¹³ *Id.* at 125 (quoting *Railway Labor Executives' Ass'n v. ICC*, 735 F.2d 691 (2d Cir. 1984)).

²¹⁴ *Id.* at 124 (quoting H.R. Conf. Rep. No. 103-66, at 19 (1993), *reprinted in* 1993 U.S.C.C.A.N. 140, 144.) (emphasis added).

²¹⁵ *Id.* (emphasis added).

²¹⁶ *Id.* at 116, 121, 123

as Voter Registration Agencies under Section 7. Using the two-step analysis from prior NVRA cases 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."²¹⁷ 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."²¹⁸ However, Public Housing Authorities are created by state law, not the Housing Act of 1937.²¹⁹ For example, the Pennsylvania Housing Authorities Act established "the policy of the Commonwealth of Pennsylvania to promote the health and welfare...by the creation of...housing authorities."²²⁰ The Act further states that "[a]n Authority shall constitute a public body, corporate and politic,

²¹⁷ 52 USCS §20506(a) (2)

²¹⁸ 42 USCS § 1437a(d) (6) (A)

²¹⁹ *Id.*; see also e.g. 25 Pa.C.S. § 1102 (establishing public housing agencies under Pennsylvania State law).

²²⁰ 25 Pa.C.S. § 1102

exercising public powers of the Commonwealth as an agency thereof."²²¹ This text clearly indicates that PHAs fit the ordinary and plain meaning of "offices *in the state*" because they are State government agencies.²²²

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."²²³ Similarly, Merriam-Webster defines "office" as "a place 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."²²⁴ PHAs have physical offices where government employees work in the business of providing public housing aid.²²⁵ The Philadelphia Housing Authority invites potential applications to "visit the Admissions office at 2013 Ridge Avenue."²²⁶

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

²²¹ 35 P.S. § 1550 (emphasis added).

²²² 52 USCS §20506(a)(2) (Emphasis added).

²²³ Black's Law Dictionary (11th ed. 2019), office

²²⁴ Merriam-webster online, <https://www.merriam-webster.com/dictionary/office>

²²⁵ Philadelphia Housing Authority, Agency Overview, http://www.pha.phila.gov/media/189728/pha_fact_sheet_2020_july_10.pdf, (last visited 8-1-2022).

²²⁶ *Id.*

assistance."²²⁷ PHAs have many functions not involving the administration of aid to HUD program recipients, such as leasing, maintaining, and developing properties.²²⁸ 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.²²⁹ PHA offices are also places where "citizens regularly go for service and assistance."²³⁰ The Philadelphia Housing Authority's Leased Housing Department alone "assists over 44,000 citizens involved in the Housing Choice Voucher Program."²³¹ The main goal of the department is to "provide exceptional customer service."²³²

This evidence clearly shows that Public Housing Authorities fit the common and ordinary meaning of the term "offices in the state."²³³ Therefore, a court interpreting this section should require no further analysis.²³⁴ However, 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

²²⁷ Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen, 152 F.3d 283, 288 (4th Cir. 1998).

²²⁸ About PHA, <http://www.pha.phila.gov/aboutpha/about-pha.aspx> (last visited 8-1-2022).

²²⁹ Philadelphia Housing Authority, Departments, Leased Housing Department, <http://www.pha.phila.gov/aboutpha/departments.aspx> (last visited 8-01-2022).

²³⁰ Nat'l Coal. v. Allan, 152 F.3d at 288.

²³¹ Pha.phila.gov, Home, About PHA, Departments, Leased Housing Department, <http://www.pha.phila.gov/aboutpha/departments.aspx>

²³² *Id.*

²³³ 52 USC §20506(a)(2) (2018).

²³⁴ See Nat'l Council of La Raza v. Cegavske, 800 F.3d 1032, 1035 (9th Cir. 2015) (holding that "when the statute's language is plain, the sole function of the courts...is to enforce it according to its terms.").

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.”²³⁵ 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.²³⁶ 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.”²³⁷

Citizens receiving public housing assistance from PHAs are predominantly from the demographics that are least likely to have driver's licenses. 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.²³⁸ More than 27% of Black individuals do not have driver's licenses.²³⁹ More than 37% of Black individuals with an annual household income of less than \$25,000 do not have driver's licenses.²⁴⁰ Recipients of housing aid through HUD programs have an average annual income

²³⁵ H.R. Conf. Rep. 103-66 at 19.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Perez, *Americans with Photo ID: A Breakdown of Demographic Characteristics*, (2015), <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>

²³⁹ *Id.*

²⁴⁰ *Id.*

of \$15,846, and 46% are Black or African American.²⁴¹ Further, in 2010, over 49% of recipients of HUD housing vouchers were elderly or disabled.²⁴² Therefore, PHAs serve and have regular contact with “the poor and persons with disabilities who do not have driver's licenses” that Congress had in mind when drafting Section 7.²⁴³

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.”²⁴⁴ 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 that provide public assistance” follows the same two-step analysis.²⁴⁵ This analysis shows that the ordinary and plain meaning of the statutory term “provide public assistance” encompasses public housing aid.²⁴⁶

The NVRA does not define “public assistance.”²⁴⁷

²⁴¹ Resident Characteristics Report, U.S. Department of Housing and Urban Development, <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>.

²⁴² Sard and Alvarez-Sánchez, *Large Majority of Housing Voucher Recipients Work, are Elderly, or Have Disabilities*, Center on Budget and Policy Priorities, (2011) <https://www.cbpp.org/research/large-majority-of-housing-voucher-recipients-work-are-elderly-or-have-disabilities>.

²⁴³ H.R. Conf. Rep. 103-66 at 19.

²⁴⁴ 52 USC §20506(a) (2) (2018).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ 52 USC §20502 (2018) (this section provides definitions for the act and only includes the terms: election, federal office, motor vehicle driver's license, State, and voter registration agency).

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.’”²⁴⁸ 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.”²⁴⁹ Similarly, Merriam-Webster defines “public assistance” as “government aid to needy, aged, or disabled persons and to dependent children.”²⁵⁰

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 based on a low income means-tested eligibility criteria”²⁵¹ 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

²⁴⁸ *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)).

²⁴⁹ Black's Law Dictionary (11th ed. 2019), public assistance

²⁵⁰ “Public assistance.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/public%20assistance>. Accessed 3 Aug. 2022.

²⁵¹ *Census.gov, About Public Assistance*, (last accessed, 08/03/2022) (Emphasis added) <https://www.census.gov/topics/income-poverty/public-assistance/about.html>

payments for which eligibility is determined by a needs or income test.”²⁵² Bankruptcy courts have defined “public assistance” as “financial aid to lower income individuals and families.”²⁵³

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.”²⁵⁴ 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.²⁵⁵ Similarly, the Housing Choice Voucher Program authorizes PHAs to make “tenant-based assistance” payments directly to landlords on behalf of voucher recipients.²⁵⁶ Tenant-Based Assistance is defined as “rental assistance...that provides for the eligible family to select suitable housing.” Further, eligibility to receive assistance under HUD programs is established using income-based criteria.²⁵⁷ Based on this

²⁵² 29 USC § 3102 (2018).

²⁵³ In re Woodside, 538 B.R. 518, 524 (Bankr. C.D. Ill. 2015)

²⁵⁴ 42 USC § 1437f (a) (2018).

²⁵⁵ 42 USC § 1437f (c) (3) (2018) (setting the amount of the monthly assistance payment)

²⁵⁶ 42 USC § 1437f (o) (1) (2018); see also Hud.gov, *Housing Choice Vouchers Fact Sheet*, (“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

²⁵⁷ See 42 U.S.C.S. § 1437f (o) (4) (LexisNexis, Lexis Advance through Public Law 117-161, approved July 29, (2022))

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 "provide" public assistance because they only assisted applicants with their Medicaid applications and did not pay the Medicaid payments.²⁵⁸ 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."²⁵⁹ PHAs review applications for HUD programs, determine the eligibility of applicants, and assist applicants by providing information on program policies.²⁶⁰ 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

²⁵⁸ *Disabled in Action v. Hammons*, 202 F.3d 110, 123 (2d Cir. 2000).

²⁵⁹ *Id.*

²⁶⁰ Philadelphia Housing Authority, Rules and Responsibilities, <http://www.pha.phila.gov/housing/housing-choice-voucher/rules-and-responsibilities.aspx>

explicitly states that "it is the duty of the Federal, State, and local governments to promote the exercise" of citizens' fundamental right to vote.²⁶¹ Many courts have held that the "primary emphasis" of the NVRA is to "maximize" the opportunities for "every citizen" to register to vote.²⁶² 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.²⁶³ 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."²⁶⁴ Congress' main concern was that Section 7 should be effective, not that it should be limited.

The only evidence in the legislative history that could be interpreted as narrowing the scope of Section 7 was the Committees statement that "[b]y public assistance agencies, we intend to include those State agencies...that administer...the food

²⁶¹ 52 U.S.C.S. § 20501(a) (LexisNexis, Lexis Advance through Public Law 117-161, approved July 29, 2022)

²⁶² *United States v. Louisiana*, 196 F. Supp. 3d 612, 626-27 (M.D. La. 2016) (holding that "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.")

²⁶³ See H.R. CONF. REP. 103-66 at 19.

²⁶⁴ H.R. CONF. REP. 103-66 at 19.

stamp, [M]edicaid, the Women, Infants and Children (WIC), and the Aid to Families With Dependent Children (AFDC) programs.”²⁶⁵ Many States appear to view this list as exclusive,²⁶⁶ refusing to include any additional State agencies under Section 7.²⁶⁷

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.²⁶⁸ Further, the Report states that Section 7 was intended “to include” these agencies, not to limit Section 7 to that list of agencies.²⁶⁹ If Congress had intended Section 7 agencies to be strictly limited to an enumerated list, “it presumably would have said so” in the statute.²⁷⁰ This is especially true considering that the NVRA contains a definitions section that does not define public assistance.²⁷¹ This section could easily have provided an enumerated list if Congress had wanted to limit Section 7 with a narrow definition.²⁷²

In fact, the list of agencies in the committee report is

²⁶⁵ *Id.*

²⁶⁶ *See, e.g.,* Ga. State Conference of the NAACP v. Kemp, 841 F. Supp. 2d 1320, 1324 (N.D. Ga. 2012).

²⁶⁷ *See, e.g.,* United States v. New York, 700 F. Supp. 2d 186 (N.D.N.Y. 2010); Harkless v. Brunner, 545 F.3d 445 (6th Cir. 2008); Disabled in Action v. Hammons, 202 F.3d 110 (2nd Cir. 2000).

²⁶⁸ H.R. CONF. REP. 103-66 at 19.

²⁶⁹ *Id.*

²⁷⁰ Valdez v. Squier, 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”).

²⁷¹ 52 USC § 20502 (2018).

²⁷² *Id.*

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 subsidies for purchases of basic human needs.²⁷³ 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.²⁷⁴ 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.²⁷⁵ To effectuate these purposes, the NVRA establishes procedures to “increase the number of eligible citizens who register to vote.”²⁷⁶ Therefore, if designating PHAs voter registration agencies would increase the number of citizens who are registered to vote, doing so would further the goals that NVRA set out to accomplish.

B. Providing Voter Registration Services at PHAs Would

²⁷³ Compare 42 USC § 1786 (2018). establishing WIC with 7 USC § 2013 (2018) Establishing SNAP and 42 USC. 1247f (2018) establishing the HUD rental assistance programs.

²⁷⁴ See, e.g., *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320 (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.”).

²⁷⁵ *United States v. Louisiana*, 196 F. Supp. 3d 612, 626 (M.D. La. 2016).

²⁷⁶ 52 USC § 20501(b) (2018).

Effectuate the Purposes of the NVRA

Designating Public Housing Authorities as voter registration agencies would be an effective means of increasing voter registration.²⁷⁷ PHAs predominantly provide services to low-income families and racial minorities.²⁷⁸ These groups are less likely to be registered to vote,²⁷⁹ more likely to change address often (which necessitates updating voter registration),²⁸⁰ and less likely to register to vote at a Department of Motor Vehicles.²⁸¹ Further, there are over 3,300 PHAs nationwide,²⁸² providing services to almost 5 million households.²⁸³

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.²⁸⁴ For example, when the Philadelphia

²⁷⁷ Williamson, Cataldo, and Write, *supra*, note 4 at 19.

²⁷⁸ Resident Characteristics Report,
<https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>

²⁷⁹ Fabina & Scherer, *supra*, note 12 at 9.

²⁸⁰ *Id.*

²⁸¹ Williamson, Cataldo, and Write, *supra*, note 4 at 7.

²⁸² Hud's Public Housing Program,
https://www.hud.gov/topics/rental_assistance/phprog (last visited 8-1-2022)

²⁸³ A Snapshot of HUD-Assisted Households,
<https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061118.html#:~:text=Today%2C%20HUD%20assists%20nearly%205,the%20provision%20of%20public%20housing.>

²⁸⁴ 52 USC § 20506(a) (6) (A) (2018).

Housing Authority opened its housing voucher waitlist in January 2023, they received over 37,000 applications for just 10,000 waitlist spots.²⁸⁵ 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 that got accepted to the wait list.²⁸⁶ 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 PHA 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.

V. Conclusion

In 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.²⁸⁷ To correct the issue, Congress included Section 7 to

²⁸⁵ Layla A Jones, *Nearly 37,000 people applied for PHA housing vouchers. Only 10,000 will get on the waiting list this round*, The Philadelphia Inquirer (Feb. 10, 2023), <https://www.inquirer.com/politics/philadelphia/philadelphia-housing-authority-pha-voucher-lottery-20230210.html>.

²⁸⁶ See 52 USC § 20506(a)(6)(A) (2018).

²⁸⁷ See H.R. Conf. Rep. 103-66 at 19.

maximize the number of citizens registering to vote.²⁸⁸

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. 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.

The Department of Justice has a statutory cause of action to sue States for failure to comply with the NVRA.²⁸⁹ The DOJ also has a duty under the NVRA to promote voting rights by enforcing the provisions of the NVRA.²⁹⁰ Because designating PHAs as VRAs would be an effective means of furthering the purposes of the NVRA, the DOJ has a legal duty to enforce State compliance with this requirement. Private individual and voting rights organizations also have a statutory right to sue states that are out of compliance with the NVRA. Either federal or private 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.

²⁸⁸ United States v. Louisiana, 196 F. Supp. 3d 612, 670 (M.D. La. 2016)

²⁸⁹ 52 USC § 20510(a) (2018) (“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” the NVRA).

²⁹⁰ 52 USC § 20501(a) (2018) (“[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.”).