

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CELIA VALDEZ, *et al.*,

Plaintiffs,

v.

MARY HERRERA, *et al.*,

Defendants.

CIVIL ACTION NO. 1:09-cv-668 JCH/DJS

**MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Plaintiff Shawna Allers moves for partial summary judgment on her claims for Violations of Section 7 of the National Voter Registration Act of 1993. HSD's current policy regarding the distribution of voter registration applications is deficient because it fails to require HSD employees to distribute a voter registration application to all persons who appear at HSD offices to apply for public assistance benefits, recertify or renew their benefits, or submit a change of address, who do not check either the "yes" or the "no" box on HSD's voter information ("declination") form. Partial summary judgment in Plaintiff's favor on this issue is appropriate because there are no disputed issues of material fact and, as a matter of law, Plaintiff is entitled to judgment in her favor. This Motion is supported by the following Memorandum of Points and Authorities and the entire record herein.

Dated this 9th day of August, 2010.

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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**I. INTRODUCTION**

Section 7 of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-5, requires public assistance offices in New Mexico to “distribute [a voter registration application] with each application for . . . service or assistance, and with each recertification, renewal, or change of address . . . unless the applicant, in writing, declines to register to vote.” Plaintiff Shawna Allers moves for partial summary judgment that the policy adopted by the New Mexico Human Services Department (“HSD”) to implement Section 7, on its face and as a matter of law, violates this statutory directive.<sup>1</sup>

According to HSD’s description of its current practices, voter registration application forms are not, as a matter of course, distributed to New Mexico residents who apply for public assistance benefits at HSD offices, or to public assistance clients who recertify, renew, or submit a change of address at HSD offices. Instead, both new applicants and existing clients first are asked via a voter information form whether they desire to “register to vote here today.” A voter registration application then is provided under two circumstances: (1) if the applicant or client checks “yes” in response to the voter registration inquiry contained in the voter information form; or (2) if the applicant or client verbally indicates that she or he would like to register to vote. Consequently, HSD refuses to provide a registration application to benefits applicants and clients who provide no written response to the “yes/no” checkbox item asking if they want to “register to vote here today” and do not otherwise verbally respond “yes.” Put differently,

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<sup>1</sup> The other Plaintiffs in this case, Celia Valdez, Graciela Grajeda, and Jesse Rodriguez, are Plaintiffs as to the separate claim brought in this lawsuit with regard to the State of New Mexico’s compliance with the NVRA at motor vehicle offices. That claim was resolved through the July 1, 2010 settlement agreement filed with this Court. *See* Settlement Agreement Regarding Plaintiffs’ Claims Asserting Violations of Section 5 of the National Voter Registration Act [Docket No. 84-1].

HSD's position is that, for purposes of applying Section 7, the *absence* of a written response on the voter information form constitutes a statement, "in writing," that the applicant or client does not wish to register to vote. The failure to obtain a written response declining the opportunity to register to vote violates Section 7.

The plain language of Section 7 requires that all benefits applicants and clients receive a voter registration application unless they decline to register "in writing," and thus HSD must distribute voter registration applications to any and all applicants and clients who leave the "yes/no" checkbox blank. As discussed below, Congress' goal in enacting the NVRA was to significantly enhance the opportunity of individuals to register to vote and to remove existing barriers to voter registration. Congress understood that persons who, for whatever reason, intentionally or unintentionally, leave the "yes/no" checkboxes blank should be given a registration application so that they have the opportunity either to register at the agency or complete the application at home (with assistance from family members or simply when they have more time). Congress also was specifically concerned about the possibility of coercion by agency officials regarding voter registration, and therefore provided that distribution of registration forms may not be made contingent -- to any extent -- on applicants and clients verbally expressing a desire to register to vote.

Accordingly, Plaintiff moves for partial summary judgment that HSD has violated and is continuing to violate Section 7 of the NVRA by not distributing voter registration applications to persons who leave the voter information form blank (and who otherwise do not receive an application pursuant to a HSD verbal ask).<sup>2</sup> Specifically, partial summary judgment is sought

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<sup>2</sup> Plaintiff previously addressed the same issue in her July 9, 2010 "Opposition to Defendant HSD's Motion for Summary Judgment," at 17-24 [Docket No. 88], arguing that HSD's continuing failure to distribute registration applications to persons who do *not* decline, in writing, to register is one of several reasons why Defendants' Motion for Summary Judgment should be denied.

against Defendants Mary Herrera, in her capacity as the New Mexico Secretary of State, Kathryn Falls, in her capacity as Secretary of the New Mexico Human Services Department;<sup>3</sup> Fred Sandoval, in his capacity as Director of the HSD's Income Support Division; and Carolyn Ingram, in her capacity as Director of HSD's Medical Assistance Division (collectively referred to herein as "Defendants" or "HSD").<sup>4</sup> The issue raised by this Motion is one of first impression, which has not previously been addressed by any court.

## II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The State of New Mexico is subject to the requirements of the NVRA. 42 U.S.C. § 1973gg-2.

2. HSD is a New Mexico state government agency responsible for providing public assistance to qualifying residents of New Mexico. N.M. STAT. § 27-1-2(B)(8), N.M. CODE R. § 8.100.100.9-11. *See also* Compl. ¶ 24 [Docket No. 1]; Answer of Defs. HSD and TRD ¶ 24 [Docket No. 11].

3. The State of New Mexico has designated HSD as a voter registration agency. N.M. STAT. § 1-4-5.2, N.M. STAT. § 1-4-48, N.M. CODE R. § 1.10.8.2, N.M. CODE R. § 1.10.8.7, N.M. CODE R. § 1.10.8.8. *See also* Compl. ¶ 36, 56-57 [Docket No. 1]; Answer of Defs. HSD and TRD ¶ 36, 56-57 [Docket No. 11].

4. HSD's current policy is that voter registration applications shall not be attached to applications for public assistance, recertification or renewal applications, or change of address forms, and that voter registration applications shall not otherwise be automatically distributed to

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<sup>3</sup> Pamela Hyde formerly was HSD Secretary, and originally was named as a defendant in that role. Kathryn Falls is the current HSD Secretary, and accordingly was automatically substituted as a Defendant pursuant to Fed. R. Civ. P. 25(d).

<sup>4</sup> Plaintiff's Motion does not address numerous other aspects of HSD's violation of Section 7, which are more broad-ranging and require commensurately more extensive relief and factual examination of HSD's past practices, longstanding practices, and current practices. *See generally* Plaintiff's "Opposition to Defendant HSD's Motion for Summary Judgment" [Docket No. 88].

public assistance clients. Memorandum in Support of Defendant HSD's Motion for Summary Judgment at 5 [Docket No. 58].

5. HSD's current policy is to include a so-called "declination provision," i.e., a voter information form, in all applications for assistance (in both English and Spanish), recertification and renewal applications, and its change of address form. The current language of this "declination provision" or voter information form is as follows:

**If YOU are NOT registered to vote where you live now, would you like to register to vote here today?** (Please check one)  YES  NO

**IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.**

**The NATIONAL VOTER REGISTRATION ACT** provides you with the opportunity to register to vote at this location. If you would like help in filling out a voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.

**IMPORTANT: Applying to register or declining to register to vote WILL NOT AFFECT the amount of assistance that you will be provided by this agency.**

Signature

Date

**CONFIDENTIALITY:** Whether you decide to register to vote or not, your decision will remain confidential.

**IF YOU BELIEVE THAT SOMEONE HAS INTERFERED with your right to register or to decline to register to vote, or your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Office of the Secretary of State, 419 State Capital, Santa Fe, NM, 87503, (phone: 1-800-477-3632.)**

Memorandum in Support of Defendant HSD's Motion for Summary Judgment at 5 [Docket No. 58].

6. HSD's current policy is that a voter registration application is provided to public assistance clients who check "yes," and a registration application is not provided to clients who

check “no.” HSD’s current policy is that a registration application is not provided to clients who leave both boxes blank, except if such clients verbally indicate that they desire to register to vote, HSD’s current policy is that a voter registration application then is provided. Memorandum in Support of Defendant HSD’s Motion for Summary Judgment at 5-6, 14 [Doc. 58] and Def. Ex. 1-B [Docket No. 58-3].<sup>5</sup>

### III. STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Upon a *prima facie* showing that summary judgment is proper, the burden shifts to the party opposing summary judgment to show specific evidentiary facts in the form of admissible evidence that require a trial on the merits. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Parker v. Housing Auth.*, No. 92-3136, 1993 U.S. App. LEXIS 13799, at \*14-15 (10th Cir. June 9, 1993).

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<sup>5</sup> As a point of reference, and in order to place the above facts in context, Plaintiff also notes the following: Prior to HSD’s finalizing of the current policy on or about January 2010, Defendants for many years did not consistently provide voter registration forms *or* the “declination form” to all eligible benefits applicants and clients. *See* Memorandum in Support of Defendant HSD’s Motion for Summary Judgment at Def. Ex. 1-B [Docket No. 58-3] (ISD-GI 08-01, dated January 22, 2008), Def. Ex. 1-C [Docket No. 58-6] (ISD-GI 08-37, dated September 5, 2008). *See also*, Espinosa Deposition Transcript, attached hereto as Exhibit 1, at 76:8-20 (stating that she does not recall what her Region 3 offices did regarding voter registration before the January 2008 ISD-GI was issued, other than vague “discussions” and “reminders”); Fisher Deposition Transcript, attached hereto as Exhibit 2, at 7:24-8:19, 10:13-20 (stating that she does not recall if she or *any* of the five or six employees in her unit offered voter registration services to clients while she was a unit supervisor at the Las Cruces office between approximately 1994 and August of 2003.)

#### **IV. ARGUMENT**

As set forth above, Section 7 of the NVRA establishes a simple, direct, and easily-administered requirement that public assistance agencies, including the New Mexico HSD, provide voter registration applications to their clients. Specifically, Section 7 requires public assistance agencies such as HSD to: (1) provide with each application for its services, and with each recertification, renewal, or change of address form, a mail voter registration form, unless the registration form is declined “in writing;” (2) provide a voter information form with the appropriate disclosures; and (3) provide applicants assistance in completing the voter registration form, subject to certain limitations. 42 U.S.C. § 1973gg-5(a)(6). Because HSD’s current NVRA policy, on its face, fails to comply with these requirements, Plaintiff is entitled to partial summary judgment as a matter of law.

##### **A. Section 7 of the NVRA**

Section 7 provides that “[e]ach State shall designate as voter registration agencies – (A) all offices in the State that provide public assistance . . . .” 42 U.S.C. § 1973gg-5(a)(2). Section 7 goes on to specify, that overall,

At each the voter registration agency, the following services shall be made available:

- (i) Distribution of mail voter registration application forms in accordance with paragraph (6).
- (ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.
- (iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

42 U.S.C. § 1973gg-5(a)(4)(A).

Paragraph (a)(6) of Section 7 sets forth the manner in which public assistance agencies must distribute voter registration applications, and is the key paragraph at issue in this motion. The first subparagraph of paragraph (a)(6), in turn, sets forth the voter- registration-application distribution requirement:

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration *shall* – (A) *distribute with each application* for such service or assistance, and *with each recertification, renewal, or change of address form* relating to such service or assistance – (i) the mail voter registration application form . . . ; or (ii) the office’s own form if it is equivalent to th[at] form . . . unless the applicant, *in writing*, declines to register to vote;

42 U.S.C. § 1973gg-5(a)(6)(A) (emphasis added).

In addition to the voter registration application form, Section 7(a)(6)(B) of the NVRA requires public assistance agencies to provide a form that includes the question, “[i]f you are not registered to vote where you live now, would you like to apply to register to vote *here today?*”

42 U.S.C. § 1973gg-5(a)(6)(B) (emphasis added).<sup>6</sup> The voter information form must notify the applicant that the decision whether or not to register has no bearing on the amount of assistance provided by the agency, include a statement regarding the availability of assistance in completing the registration application, and include a statement regarding the client’s ability to file a complaint if he or she believes that voter registration was not properly offered. 42 U.S.C. § 1973gg-5(a)(6)(B)(ii), (iv), (v).

The voter information form also must include boxes for the applicant to indicate whether the applicant would like to register to vote or not at the public assistance agency that day, with a statement in close proximity to those boxes stating “if you do not check either box, you will be considered to have decided not to register to vote at this time.” 42 U.S.C. § 1973gg-5(a)(6)(B) (emphasis omitted). The NVRA specifically instructs public assistance agencies that an applicant’s “failure to check either box . . . constitute[s] a declination to register for *purposes of subparagraph (C).*” 42 U.S.C. § 1973gg-5(a)(6)(B)(iii) (emphasis added). Subparagraph (C) deals solely with the issue of agencies providing assistance to their clients in filling out voter registration forms, and does not address whether or not a voter registration form must be

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<sup>6</sup> HSD calls the form required by Section 7(a)(6)(B) the “declination” form, but it more accurately should be referred to as a “voter information” form and that term will be used herein.

distributed to particular clients. Subparagraph (C) specifies that public assistance agencies are to provide clients the same degree of assistance in completing a registration application as they provide with regard to clients completing the agency's own forms, subject to clients refusing such assistance (and, as indicated, subject to the omission of a client checkmark in the "yes/no" check boxes). 42 U.S.C. § 1973gg-5(a)(6)(C).

**B. HSD is Violating the Plain Language of Section 7**

Section 7 of the NVRA directs public assistance agencies to distribute voter registration applications to their clients, with the only exception being where clients decline "in writing" to register to vote. 42 U.S.C. § 1973gg-5(a)(6)(A). In violation of Section 7, HSD provides voter registration applications only to clients who check "yes" on their voter information form or who verbally respond "yes." HSD's failure to provide a voter registration application to clients who have left the voter information form blank is contrary to Section 7's plain language, the canons of statutory construction, and Section 7's legislative history.<sup>7</sup>

**1. The plain language of Section 7 and the canons of statutory construction require HSD to distribute voter registration applications to all clients who leave the voter registration inquiry checkboxes blank.**

The general rule is that courts must enforce a statute according to its plain language provided the disposition required by the text is not absurd. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) ("[W]hen the statute's language is plain, the sole function of the courts -- at least where the disposition required by the text is not absurd -- is

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<sup>7</sup> Because Section 7 does not make the provision of a voter registration application contingent upon an affirmative response (either written or verbal) from a public assistance client, HSD's practice is not rendered legal by the fact that some persons who omit a checkmark on the voter information form may later be provided with a voter registration application, after they verbally indicate their desire to register to vote. Moreover, as explained below, Congress specifically concluded that the registration opportunity should not be made dependent, to any extent, on verbal interactions between clients and public assistance caseworkers to avoid any possibility of agency coercion and to avoid any uncertainty as to whether the registration opportunity has been provided as Congress mandated.

to enforce it according to its terms.”)<sup>8</sup> In construing the plain language meaning of Section 7, its terms should be afforded their “ordinary, contemporary, common meaning” unless Congress intended those terms to have a different meaning. *See Perrin v. United States*, 444 U.S. 37, 42 (1979) (noting that “words will be interpreted as taking their ordinary, contemporary, common meaning” at the time Congress enacted the statute).<sup>9</sup>

The NVRA does not define “in writing” for purposes of Section 7, however, “in writing” nonetheless has a clear and unambiguous meaning. Black’s Law Dictionary defines “writing” as “any intentional recording of words in a visual form, whether in the form of handwriting, printing, typewriting, or any other tangible form.” *Black’s Law Dictionary* 1603 (7th ed. 1999). A blank response (i.e., the absence of writing) is not a tangible recording of intention and so, by the standard definition of this word, it cannot be “writing.” Individuals who leave the voter information form blank, therefore, do not fall within Section 7’s only exception. Accordingly, Section 7 requires HSD to provide a voter registration application to those who leave the voter information form blank.

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<sup>8</sup> *See also Robbins v. Chronister*, 402 F.3d 1047, 1049 (10th Cir. 2005) (“absent any indication that doing so would . . . yield patent absurdity, our obligation is to apply the statute as Congress wrote it”). The “first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). In fact, when the plain meaning of a statute is unambiguous, “this first canon is also the last: judicial inquiry is complete.” *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992) (citation omitted).

<sup>9</sup> *See also Biodiversity Legal Found. v. Babbitt*, 146 F.3d 1249, 1254 (10th Cir. 1998) (holding that if Congress does not explain the specific meaning of a statutory phrase or term, a court may assume Congress intended the words to be given their ordinary meaning and determine such meaning through the use of dictionaries). “When a word is not defined by statute, we normally construe it in accord with its ordinary or natural [language].” *Smith v. United States*, 508 U.S. 223, 228 (1993).

**2. Section 7(a)(6)(B)(iii) of the NVRA pertains only to in-person registration with assistance, not the distribution of registration applications.**

**a. The plain language of Section 7(a)(6)(B)(iii) requires public assistance agencies to provide voter registration applications to clients who leave the voter information form blank.**

Defendant HSD has argued that Section 7(a)(6)(B)(iii) of the NVRA, 42 U.S.C. § 1973gg-5(a)(6)(B)(iii), permits a blank voter information form to be treated as a written declination for purposes of distributing voter registration applications under subparagraph (A) of Section 7(a)(6), 42 U.S.C. § 1973gg-5(a)(6). Memo in Support of Defendant HSD's Motion for Summary Judgment at 14 [Docket No. 58]. Section 7(a)(6)(B)(iii), however, does nothing of the sort.

The meaning of Section 7(a)(6)(B)(iii) is established by its plain language. That section requires the agency to advise the client that if she or he does not make any written notation on the voter registration form, the agency will assume that she or he does not want to register to vote “*at this time.*” 42 U.S.C. § 1973gg-5(a)(6)(B)(iii) (emphasis added). The meaning of this disclaimer is specifically explained to public agencies in the text of the statute: “failure to check either box [shall be] deemed to constitute a declination to register *for purposes of subparagraph (C).*” *Id.* (emphasis added). As explained above, subparagraph C deals solely with whether and in what circumstances public assistance agencies are required to provide assistance to clients in filling out a voter registration form. 42 U.S.C. § 1973gg-5(a)(6)(B)(iii)(C).

Accordingly, HSD must treat a blank declination form as a declination to register only for purposes of the subparagraph (C) assistance requirement. Section 7 (a)(6)(B)(iii) contains no textual basis for HSD to, instead, treat a blank declination as a “writing” or a “declination” for purposes of *subparagraph (A)* of Section 7(a)(6). If Congress had wanted the omission of a client checkmark to serve as a constructive declination for purposes of the subparagraph (A) registration-application distribution requirement, Congress would have said exactly that (i.e.,

Congress would have said “failure to check either box [shall be] deemed to constitute a declination to register for purposes of subparagraph (A)”). Congress did not do that, however.<sup>10</sup>

**b. HSD’s current distribution policy renders the plain language of Section 7 superfluous.**

Furthermore, HSD’s treatment of blank responses renders superfluous Congress’ statement that “failure to check either box [shall be] deemed to constitute a declination to register for purposes of subparagraph (C).” The Supreme Court has strongly cautioned against courts adopting any statutory construction that makes any statutory provision superfluous. *See Hohn v. United States*, 524 U.S. 236, 249 (1998).<sup>11</sup> Here, if, as HSD asserts, the agency is not required to provide registration applications to individuals who leave the voter information form blank, HSD then would have no reason to consider whether or not to provide such individuals with any assistance in completing a voter registration application. Congress, in turn, would have had no reason for instructing public assistance agencies about implementing the subparagraph (C) assistance requirement where the checkboxes are left blank. Since, however, Congress did provide that instruction, it follows that, in order not to render this instruction superfluous, Congress must be understood as directing public assistance agencies to distribute a voter registration application to persons who leave the voter information forms blank.

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<sup>10</sup> The use of the qualifying phrase “at this time” in 42 U.S.C. § 1973gg-5(a)(6)(B)(iii) is fully consistent with a statutory scheme under which voter registration applications are distributed, but need not be completed at the agency on the date of the agency visit.

<sup>11</sup> *See also, United States v. Tsosie*, 376 F.3d 1210, 1217 (10th Cir. 2004) (courts are “guided by the traditional canon of statutory construction that courts should avoid statutory interpretations which render provisions superfluous”); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant”); *Oxy USA, Inc. v. Babbitt*, 268 F.3d 1001, 1006 (10th Cir. 2001) (“We must avoid, whenever possible, a statutory interpretation that would ‘render superfluous other provisions in the same enactment.’”); *N.M. Cattle Growers Ass’n v. U.S. Fish & Wildlife Serv.*, 248 F.3d 1277, 1285 (10th Cir. 2001) (“We will not construe a statute in a way that renders words or phrases meaningless, redundant, or superfluous.”).

Accordingly, Section 7(a)(6)(B)(iii) only relieves HSD from having to provide assistance to clients who do not affirmatively indicate that they wish to register “at this time” at the agency, leaving clients free to complete the provided voter registration application on their own, either at an HSD office, at home, or at some other location.

### **3. The purpose and legislative history of the NVRA support the plain language interpretation of Section 7.**

The plain-language meaning of Section 7 is supported and reinforced by Congress’ purpose in enacting the NVRA and by Section 7’s legislative history. Although it is not necessary to resort to these statutory interpretation guides to decide this case, they nonetheless further elucidate and confirm what Congress provided in Section 7.<sup>12</sup>

First, it is fully consistent with the purpose of the NVRA to find that blank checkboxes on voter information forms do not excuse public assistance agencies from distributing voter registration applications. The NVRA was designed to “increase the number of eligible citizens who register to vote in elections for Federal office.” 42 U.S.C. § 1973gg(b)(1). To that end, the NVRA includes numerous provisions aimed at simplifying the voter registration process and reducing the burdens involved in registering to vote, including requiring states to offer voter registration at motor vehicle offices (42 U.S.C. § 1973gg-3), requiring states to allow persons to register by mail (42 U.S.C. § 1973gg-4), and requiring states to designate a variety of public

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<sup>12</sup> “When the meaning of the statute is clear, it generally is unnecessary to resort to legislative history to divine congressional intent.” *Edwards v. Valdez*, 789 F.2d 1477, 1481 (10<sup>th</sup> Cir. 1986). This principle prevents courts from “qualifying the statute so as to accommodate the perceived legislative intent.” *Id.* However, this principle does not preclude a court from recognizing that canons of statutory interpretation, congressional purpose, and legislative history corroborate a statute’s plain language meaning. *See, e.g., United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241, 243 (1989) (finding that “the statute’s language is plain,” but also stating that the plain language “does not conflict with any other section of the Code, or with any important state or federal interest; nor is a contrary view suggested by the legislative history”); *Mallard v. U.S. Dist. Court for the S. Dist. Of Iowa*, 490 U.S. 296, 301-03, 306 (1989) (finding that “[t]he import of the term seems plain,” but recognizing that other sections of the statute, statutes enacted contemporaneously, and subsequent Congressional action all corroborate the plain language).

offices (including, but not limited to, public assistance agencies) as voter registration agencies (42 U.S.C. § 1973gg-5). By refusing to give a voter registration application to clients who leave the checkboxes blank, HSD is acting at odds with the NVRA's fundamental goal of reducing the burden upon individuals in registering to vote.

The legislative history of Section 7 also reinforces the plain language understanding of the statutory plan. Specifically, the legislative history informs the meaning of the portion of the voter information form which must advise the client that “[i]f you do not check either box, you will be considered to have decided not to register to vote at this time.” 42 U.S.C. § 1973gg-5(a)(6)(B)(iii). This instruction to public assistance clients appears in the statute immediately after the provision that a “failure to check either box [shall be] deemed to constitute a declination to register to vote for purposes of subparagraph (C).”

The House-Senate Conference Report finalizing the NVRA added the requirement that public assistance clients be provided a voter information form. H. R. Rep. No. 103-66, at 17 (1993). The Conference Report explains that the voter information form was added to guard against coercion of agency clients:

The [voter information form] is intended to deal with concerns raised about the inclusion of certain agencies in an agency-based registration program and the possibility of intimidation or coercion. Concern was expressed that in agencies that provide benefits, staff might suggest that registering to vote could have some bearing on the availability of services or benefits provided by that agency. In addition to the provisions in the House bill relating to coercion and intimidation, the conference substitute includes specific provisions that address that situation.

*Id.*

Thus, the voter information form was not added to Section 7 to define, clarify, or limit in any manner the responsibility of agencies to distribute voter registration forms, and utilizing the voter information form for that purpose would disregard Congress' intent. Moreover, because the simple act of providing a voter registration application is not, itself, coercive, Congress could

not have inserted this anti-coercion measure as a means to restrict the distribution of voter registration applications.<sup>13</sup>

Instead, Congress' apparent reasoning was that assistance need not be provided to an applicant who fails to check either of the voter information checkboxes because that assistance might result in the client feeling coerced. When a client has left the registration inquiry checkboxes blank, it may be that the client is uncertain or conflicted, or even reluctant to respond affirmatively for fear that the caseworker will pressure the client to register in a particular way or might retaliate against the client after the fact. Congress accordingly tailored Section 7 to balance its desire to have agencies provide assistance to those who desire assistance and need it, with the desire to also provide clients with a path to registration that would allay any concerns about coercion or intimidation and allow clients any needed "breathing room" away from the agency official. This was accomplished by requiring that assistance generally be provided, that assistance should not be provided to those who refuse it, and that assistance need not be provided to those clients who omit checking either the "yes" or "no" boxes on the voter information form – while still requiring that these latter clients be provided with a voter registration form.

Finally, because the insertion of the voter information form into Section 7 was not meant to alter the registration-application distribution requirement (and that requirement was not otherwise altered by the Conference Report), it also is helpful to look back at the separate House and Senate reports with regard to what they said concerning agency distribution of registration applications. Both reports explained that the intent was for agencies to "distribute *simultaneously* with each application for service or assistance, and with each recertification,

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<sup>13</sup> Indeed, interpreting the NVRA to allow caseworkers to not provide voter registration forms to clients who omit a checkmark could interfere with Congress' anti-coercion goal. An individual caseworker's ability to coerce clients not to register would be much simpler if all a caseworker needed to do was to simply have clients do nothing, i.e., leave the checkboxes blank. Thus, Congress required that caseworkers may decline to distribute voter registration applications only when a client provided a written declination.

renewal, or change of address, a mail voter registration application form,” and would, as well, provide “a means by which an applicant may decline in writing to register to vote. H.R. Rep. No. 103-9, at 10 (1993); S. Rep. No. 103-6 at 25 (emphasis added). This does not contemplate allowing agencies to withhold a registration application from persons who leave the voter information form blank.

**V. CONCLUSION**

For these reasons, Plaintiff is entitled to partial summary judgment that HSD’s current policy regarding the distribution of voter registration applications, on its face, violates Section 7 of the NVRA. That policy is deficient because it fails to require HSD employees to distribute a voter registration application to all persons who appear at HSD offices to apply for public assistance benefits, recertify or renew their benefits, or submit a change of address, who do not check either the “yes” or the “no” box on HSD’s voter information (“declination”) form.

DATED this 9th day of August, 2010.

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I certify that on the 9th day of August, 2010, I served the foregoing by electronic means on:

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