SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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ORDER

SENIOR AND DISABILITY ACTION ET AL VS. ALEX PADILLA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SENIOR AND DISABILITY ACTION; ALICE CHIU; and AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA,

Plaintiffs/Petitioners,

v.

ALEX PADILLA, in his official capacity as Secretary of State of the State of California,

Defendant/Respondent.

No. CPF-18-516265

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR PEREMPTORY WRIT OF MANDATE

Petitioners Senior and Disability Action, Alice Chiu, and American Civil Liberties Union of Northern California (collectively "Petitioners") seek a peremptory writ of mandate to compel Respondent Secretary of State Alex Padilla (the Secretary) to designate certain offices as Voter Registration Agencies (VRAs) under the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. §§ 20501-20511. For the reasons stated below, Petitioners' motion for a writ of mandate is **GRANTED IN PART AND DENIED IN PART.**

This Court hereby orders the Secretary, within 30 days of the date of this order, to issue a new NVRA Declaration that adds the following designations: (1) county offices that administer General Assistance/General Relief Programs; (2) offices that administer California Student Aid Commission Financial Aid Programs; and (3) all private entities under contract to provide services or assistance on behalf of a Voter Registration Agency. Petitioners' motion to compel the Secretary to designate additional offices as VRAs is denied.

I. BACKGROUND

A. Relevant Background of NVRA

The NVRA was enacted in 1993 to "establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal Office." (52 U.S.C. § 20501(b)(1).) It sought to accomplish this goal by requiring the States to provide three different systems for registering to vote in federal elections: "The States must provide a system for voter registration by mail, a system for voter registration at various state offices (including those that provide 'public assistance' and those that provide services to people with disabilities), and . . . a system for voter registration on a driver's license application." (*Young v. Fordice* (1997) 520 U.S. 273, 275 [citations omitted].) This lawsuit concerns the second of those categories, the requirement that States provide agency-based voter registration.

Section 7 of the NVRA provides that "[e]ach State shall designate agencies for the registration of voters in elections for Federal office." (52 U.S.C. § 20506(a)(1).) The Act distinguishes between two categories of voter registration agencies (VRAs). In the first category (or "tier," as the Secretary refers to it), each State "shall designate" as voter registration agencies

(1) "all offices in the State that provide public assistance" and (2) "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities." (*Id.* § 20506(a)(2)(A),(B).) In addition to VRAs designated under this provision, "each State shall designate other offices within the State as voter registration agencies." (*Id.* § 20506(a)(3)(A).) Unlike the explicit provision in section 20506(a)(2) specifying the offices that "shall" be designated as VRAs, this "second-tier" provision provides a non-exclusive list of agencies that "may" be so designated:

> Voter registration agencies designated under subparagraph (a) may include—
>
> (i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and
>
> (ii) Federal and nongovernmental offices, with the agreement of such offices.

(*Id.* § 20506(a)(3)(B).) Because states have a mandatory duty to designate public assistance offices and disability offices as Voter Registration Agencies under subparagraph (2), the first-tier agencies are often referred to as "mandatory Voter Registration Agencies." (See, e.g., *Disabled in Action of Metro. New York v. Hammons* (2d Cir. 2000) 202 F.3d 110, 119; *United States v. New York* (N.D.N.Y. 2010) 700 F. Supp. 2d 186, 201–202.) In contrast, the "other" offices designated by States under subparagraph (3) are referred to as "discretionary" VRAs.

Each Voter Registration Agency must make available certain voter registration services, including (1) distribution of mail voter registration application forms; (2) assistance to applicants in completing these forms, unless the applicants refuse such assistance; and (3) acceptance of completed voter registration application forms for transmittal to the appropriate State election official. (52 U.S.C. § 20506(a)(4)(A).) Voter Registration Agencies that provide services to persons with disabilities in their homes must provide these voter registration services at the person's home. (*Id.* § 20506(a)(4)(B).)

California Elections Code Section 2402(a) provides that "[t]he Secretary of State is the chief state elections official responsible for coordination of the state's responsibilities under the federal National Voter Registration Act of 1993 (52 U.S.C. Sec. 20501 et seq.)." Accordingly, the Secretary is the state official responsible for ensuring that all offices that qualify as Voter Registration Agencies under either of the definitions set forth above are so designated. (See 52 U.S.C. § 20509; see also Petitioners' Request for Judicial Notice ("RJN"), Exh. 1 (County Clerk/Registrar of Voters (CC/ROV) Memorandum #18192, dated August 10, 2018).)[1]

B. Background of this Litigation

Since 2015, Petitioners have been engaging in a dialogue with the Secretary regarding his designations of VRAs under the NVRA. Over the course of the last few years, these discussions have led to the designation of additional offices as VRAs. According to Petitioners, however, these discussions stalemated around late 2017.

On June 20, 2018, Petitioners sent the Secretary a demand letter setting forth a request to designate eleven additional offices (ten public offices and VRA contractors), including all of the offices named in this suit. (Secretary's Request for Judicial Notice ("RRJN"), Exh. 7.) In its July 20, 2018 response, the Secretary's office committed to designating three of the offices identified in Petitioners' letter by August 10, 2018, and further indicated that it was considering whether to designate two others. (*Id.* at Exh. 8.) The Secretary made no representations, however, as to the remaining six designations described in Petitioners' demand letter. Petitioners then sent a reply to the Secretary, noting that there were six designations (five public offices plus the VRA contractors) that the response letter did not address. (*Id.* at Exh. 9.) Petitioners stated their intention to pursue litigation as to these unaddressed offices and also stated that, if the Secretary was "willing at any point to designate those [unaddressed] offices," Petitioners were "happy to modify or revisit our litigation position." (*Id.*)

Petitioners filed this lawsuit on July 24, 2018. On September 25, 2018, The Secretary filed an answer to Petitioners' Complaint and Petition. In December 2018, the parties entered

[1] The Court grants both parties' requests for judicial notice, which are largely unopposed.

into a joint stipulation setting a briefing schedule on Petitioners' motion, culminating in a February 20, 2019 hearing date.

II. Petitioners Have Appropriately Sought A Writ of Mandate.

A writ of mandate is an appropriate form of relief to compel the performance of a ministerial duty. (Code Civ. Proc. § 1085(a).) "A ministerial duty is one that is required to be performed in a prescribed manner under the mandate of legal authority without the exercise of discretion or judgment." (*Cape Concord Homeowners Ass'n v. City of Escondido*, 7 Cal. App. 5th 180, 189 (2017).) Thus, "[w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion." (*Id.*) "Mandamus has long been recognized as the appropriate means by which to challenge a government official's *refusal to implement a duly enacted legislative measure*." (*Id.* [emphasis added].)

The Secretary conceded at oral argument that state mandamus relief is available to compel him to perform a ministerial duty arising under federal law. He contends, however, that mandamus is not available to compel him to designate the offices listed in the Petition because such designation requires the exercise of discretion. The Court is unpersuaded. The text and statutory framework of the NVRA conclusively establish that Section 20506(a)(2) imposes on the Secretary a clear, present, and ministerial duty. Beginning with the plain language of the statute, "[t]he word 'shall' indicates a mandatory or ministerial duty." (*Lazan v. County of Riverside* (2006) 140 Cal. App. 4th 453, 460.). This is confirmed by the NVRA's statutory framework, which establishes two different categories or tiers of designations, one mandatory and one discretionary. Petitioners seek enforcement of subsection (a)(2), the mandatory designation provision, rather than subsection (a)(3)(B), which allows states to determine which additional offices should be designated as voter registration agencies. If a given state office falls within one of the mandatory statutory definitions, the Secretary has a ministerial duty to designate it as a VRA. (See *Young v. Fordice*, 520 U.S. at 275 ["The States *must* provide . . . a system for voter registration at various state offices (including those that provide 'public assistance' and those that provide services to people with disabilities)." (emphasis added)]; see generally *Disabled in*

Action, 202 F.3d at 119-120.) This statutory framework "makes it clear that the Legislature 'intended to foreclose . . . [the] exercise of discretion'" with regard to the mandatory designations listed in subsection (a)(2). (See *State Dep't of State Hosps. v. Superior Court* (2015) 61 Cal.4th 339, 350.) The mere fact that the Secretary may be required to exercise some degree of discretion in determining how to *implement* a designation, once made—for example, by devising appropriate training programs or by determining how best to adapt offices' application processes to accommodate the various requirements imposed by the NVRA—does not affect that conclusion.

III. The 90-day Notice Provision of the NVRA Does Not Mandate Dismissal.

The NVRA creates a private right of action that allows citizens aggrieved by an NVRA violation to file a lawsuit in federal court. (52 U.S.C. § 20510(b).) That provision contains a notice provision, which states in pertinent part,

> (1) A person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved.
>
> (2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.
>
> (3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(*Id.* § 20510(b).) Congress structured this notice requirement in such a way that "notice would provide states in violation of the Act an opportunity to attempt compliance before facing litigation." (*ACORN v. Miller* (6th Cir. 1997) 129 F.3d 833, 838.) It is undisputed that Petitioners did not wait 90 days after sending their demand letter before filing this suit.

Petitioners argue that the notice provision does not apply because they did not file suit in federal court, but instead sought a peremptory writ of mandate in state court. The Secretary, for his part, contends that this case should be dismissed because Petitioners failed to comply with the NVRA's notice provision. The Court disagrees with both parties' positions on this issue.

The Court cannot agree that the NVRA's notice provision applies only if a person files

suit in federal court under the private right of action created by the NVRA, and is inapplicable if suit instead is filed in state court. California Code of Civil Procedure section 1085 does not provide an independent basis for jurisdiction, but rather gives a person with a beneficial interest the right to compel performance of a clear ministerial duty, typically one imposed by statute. Here, section 7 of the NVRA is the sole source of the ministerial duty Petitioners seek to enforce by way of a petition for writ of administrative mandate. When Congress created that duty, it expressly conditioned an aggrieved party's right to file suit to compel performance of that duty on giving the State an opportunity to cure the alleged violation. That Petitioners chose a state forum does not relieve them from complying with an express statutory prerequisite to suit.[2]

While the Court finds that the notice provision applies regardless of the forum in which suit is filed, the Court cannot agree that it has no option but to dismiss this action because of Petitioners' failure to provide the Secretary with 90 days' notice before filing suit. Courts have rejected arguments that the NVRA's notice provision should be read narrowly or restrictively, particularly where it is clear that formal compliance with its terms would be futile. In *ACORN v. Miller* (6th Cir. 1997) 129 F.3d 833, for example, the Sixth Circuit found although certain plaintiffs had failed to comply with the notice provision, "[r]equiring these plaintiffs to give actual notice would have been unnecessary with regard to the purpose of the notice requirement." (*Id.* at 838.) The Court found that under the circumstances, where the State "had already made clear its refusal to comply with the Act," such a requirement "amounts to requiring performance of futile acts." (*Id.* at 838;[3] accord, *Georgia State Conference of N.A.A.C.P. v. Kemp*, 841

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[2] Petitioners rely on the holding in *Doe v. Albany Unified Sch. Dist.*, 190 Cal. App. 4th 668 (2010) that "[t]he fact that a particular statute may not create an explicit private right of action does not mean it cannot be the basis of a petition for writ of mandate to compel compliance." (*Id.* at 682.) But that case does not address the situation presented here, where Congress *did* create a private right of action, but Petitioners chose to pursue it in state court rather than in federal court.

[3] In a case in which the district court had found that all defendants were in substantial compliance with the NVRA, the Fifth Circuit held that a plaintiff's failure to provide notice was "fatal" to his suit and disagreed with *Miller*. (*Scott v. Schedler* (5th Cir. 2014) 771 F.3d 831, 836.) However, the court also found that *Miller* was distinguishable because it "involved a state that refused to comply with the NVRA." (*Id.*) The instant case is closer to *Miller* than *Scott*.

F.Supp.2d at 1335 [declining to require plaintiff to engage in "futile act" of compliance with notice requirement where defendants had made their position clear "[i]n their opposition to this suit."]; see also *Nat'l Council of La Raza v. Cegavske*, (9th Cir. 2015) 800 F.3d 1032, 1042-1044.)[4]

Here, likewise, it would be futile at this point to require Petitioners to comply with the notice provision. Petitioners explicitly asked the Secretary to designate two of the six offices at issue in this case far more than 90 days before filing suit. (See Secretary's RJN, Exh. 2.) Further, the Secretary received the demand letter identifying all six of the offices that are the subject of this dispute on June 20, 2018. The Secretary's responsive pleading in this case was not filed until September 24, 2018, more than 90 days after that, and the hearing on the merits was not held until February 20, 2019. In his opposition to Petitioners' motion, the Secretary continues to take the position that he has no mandatory duty to designate any of the disputed offices as VRAs. The Secretary has had ample time to designate additional offices prior to any ruling by this Court. Moreover, were the Court to dismiss this lawsuit on the grounds that the Petition was prematurely filed, Petitioners could simply turn around and file the same suit the very next day. That result would not serve any legitimate purpose, and indeed would disserve judicial economy and the prompt resolution of this lawsuit, which is fully briefed and raises important issues bearing on the State's implementation of its voter registration responsibilities under the NVRA.[5]

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[4] Federal and state courts interpreting an analogous prefiling notice and exhaustion requirement in the Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* (PAGA), have similarly concluded that the provision is not jurisdictional. (See *Garnett v. ADT, LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1127 ("Although Labor Code section 2699.3(a) provides that 'a civil action by an aggrieved employee . . . alleging a violation of any provision listed in Section 2699.5 shall commence only after' exhausting pre-filing notice and exhaustion requirements, . . . a plaintiff's failure to provide notice to the [Labor and Workforce Development Agency] prior to commencing suit need not be fatal to the plaintiff's PAGA claim if the plaintiff subsequently satisfies the notice and exhaustion requirements and amends the complaint accordingly."]; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 383 n. 18.)

[5] The Secretary also argues briefly that this action is not ripe. The Court disagrees. "The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions." (*Pacific Legal Foundation v. California Coastal Comm'n* (1982) 33 Cal.3d 158, 170.) The Petition in this case does not present a general, abstract dispute, such as a facial challenge to regulations and policies; rather, it calls upon the Court to decide a concrete

IV. Petitioners Have Not Failed To Name Indispensable Parties.

The Secretary raises one additional procedural objection. The Secretary argues, relying on Code of Civil Procedure section 389(a)(2), that the entities that Petitioners seek to have designated are indispensable parties. That objection is readily dismissed.

The Secretary is the State's chief elections official and is charged with coordination of the State's responsibilities under the NVRA, including the duty under section 20506 to designate VRAs. (52 U.S.C. § 20509; Cal. Elec. Code § 2402(a).) His presence is all that is necessary for the Court to afford complete relief. It follows that there is no reason for Petitioners to name as parties the state agencies and contractors they seek to compel the Secretary to designate as VRAs.

Federal courts have rejected arguments identical to the Secretary's position here. In *U.S. v. New York* (E.D.N.Y. 2003) 255 F.Supp.2d 73, for example, two defendant state agencies that administered their services through district offices run by local municipal governments contended that the plaintiffs, who were challenging the State's voter registration system, should have brought suit against the district offices, not against the state agencies. (*Id.* at 78.) The court rejected the argument, observing that "the burdens that would be imposed upon the Attorney General and those persons seeking enforcement of the NVRA through the private right of action conferred by Congress . . . would be palpable if they had to resort to litigation against multiple local agencies in lieu of holding State VRAs fully accountable for compliance with the NVRA." (*Id.* at 81.) Similarly, in *U.S. v. New York* (N.D.N.Y. 2010) 700 F.Supp.2d 186, a district court rejected the state's argument that it could not be ordered to designate disabled students services offices at community colleges as VRAs because the colleges "have not been parties to the litigation, have not had the opportunity to defend their own interests and have not been heard in connection with the issues raised herein." (*Id.* at 204.) The court observed that under the NVRA, "the community colleges do not have their own interests. . . . The community colleges are no different than clerks offices, licensing offices, Department of Social Services Offices and other state and local government offices that have been required to implement the NVRA without ever

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controversy as to whether the Secretary has a mandatory duty to designate certain specific agencies as VRAs.

having been a party to a lawsuit or had the opportunity to voice an objection." (*Id.*)[6]

V. Public Assistance Offices.

I turn now to the merits of each of Petitioner's proposed designations. In their Complaint and Motion, Petitioners seek to designate three offices under the "public assistance" prong of the NVRA's mandatory designation provision, which requires the state to designate "all offices in the State that provide public assistance." (52 U.S.C. § 20506(a)(2)(A).)

The term "public assistance" is not separately defined within the NVRA. However, its meaning is apparent from the purpose of the Act, the Act's legislative history, applicable authority, and the usual and ordinary meaning of the term.

"Section 7 of the NVRA is part of a comprehensive statute designed to facilitate voter registration. The section seeks to increase registration of 'the poor and persons with disabilities who do not have driver's licenses and will not come into contact with the other princip[al] place to register under this Act[, motor vehicle agencies].'" (*National Council of La Raza v. Cegavske* (9th Cir. 2015) 800 F.3d 1032, 1035, quoting H.R. Rep. No. 103-66, at 19 (1993), reprinted in 1993 U.S.C.C.A.N. 140, 144.) Thus, by its terms, Section 7's reference to "all offices in the state that provide public assistance" refers to offices that provide public assistance to the needy. That conclusion is supported by reported case authority involving the NVRA, which has held that public assistance in this context refers to such programs as Medicaid, family assistance, food stamps, and home relief. (See, e.g., *Disabled in Action*, 202 F.3d at 116, 118 [Medicaid]; *U.S. v. New York* (E.D.N.Y. 2003) 255 F.Supp.2d 73, 76-77 [NVRA mandates designation of New York Office of Temporary and Disability Assistance, New York's principal agency for administering programs that provide public assistance to needy persons, including family assistance, home relief, food stamps, and Medicaid].)[7]

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[6] Indeed, it is doubtful whether those offices would even be proper parties to this action. (See *U.S. v. Louisiana* (M.D. La. 2011) 2011 WL 6012992, at *5-*6 [dismissing NVRA claims against state department of health, state department of hospitals and children and family services, and their secretaries, where the NVRA imposes a duty to designate voter registration agencies only on the State itself, through its designated state chief election official].)

[7] Additional support may be found in dictionary definitions and other sources. The Merriam–Webster Online Dictionary defines "public assistance" as "government aid to needy, aged, or

The Secretary takes the position that the term "public assistance," as used in the NVRA, extends only to four specific *federal* public assistance programs referred to in the NVRA's legislative history, and does not apply to state- or county-funded public assistance programs. To support this interpretation, the Secretary relies on the following language from the House Conference Report: "[b]y public assistance agencies, we intend to include those State agencies in each State that administer or provide service under the food stamp, Medicaid, and the Women, Infants, and Children (WIC) and the Aid to Families With Dependent Children (AFDC) programs." (See Opp. at 16 [citing H.R. Conf. Rep. No. 103-66, 103rd Cong., 1st Sess. (April 28, 1993), p. 19].) However, the quoted language does not support the Secretary's position, as it merely indicates a clear intent to *include* the specified programs, not to *limit* the definition of public assistance to these four programs. Moreover, where statutory language is clear and unambiguous, there is no need to resort to extrinsic indicia of the intent of Congress. The plain language of Section 20506 makes clear Congress's intent to mandate designation of "*all* offices in the State that provide public assistance," with the exception of those "second-tier" agencies listed in subsection 20506(a)(3)(B). (See *National Coalition for Students with Disabilities Educ. v. Allen* (4th Cir. 1997) 152 F.3d 283, 292 ["This is an inappropriate use of legislative history. . . . [T]he NVRA's legislative history is irrelevant unless it proves that this [plain] meaning of the statutory term violates congressional intent."]; *Georgia State Conference of N.A.A.C.P. v. Kemp* (N.D. Ga. 2012) 841 F.Supp.2d 1320, 1329-1331 [provision of section 7 requiring VRAs to distribute voter registration and voter preference forms with "each" application for public assistance is "unambiguous" and applies whether clients apply in person or remotely (by telephone or online)].)

The Secretary also points to the contrast between subsection 20506(a)(2)(A)'s reference

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disabled persons and to dependent children." (See *Public Assistance*, Merriam–Webster's Online Dictionary, https://www.merriam-webster.com/dictionary/public%20assistance.) This definition is consistent with how "public assistance" is ordinarily used and defined by the federal government. (See, e.g., "Public Assistance," United States Census Bureau (Oct. 3, 2017), https://www.census.gov/topics/income-poverty/public-assistance/about.html ["Public assistance refers to assistance programs that provide either cash assistance or in-kind benefits to individuals and families from any governmental entity."].)

to "public assistance" and subsection 20506(a)(2)(B)'s reference to "state-funded" disability services as further support for its argument, but this contrast only underscores that Congress knew how to use limiting language when that was its intent. Had Congress wished to limit subsection 20506(a)(2)(A) to federally funded programs, it easily could have done so. Its decision not to use "federally funded" as a modifier in subsection 20506(a)(2)(A), when it used "state-funded" in 20506(a)(2)(B), supports the conclusion that it did not intend to limit "public assistance" as the Secretary suggests. (See *League of Women Voters of Missouri v. Ashcroft* (W.D. Mo. 2018) 336 F.Supp.3d 998, 1004 ["If Congress intended to limit Section 5(d) [of the NVRA] only to residential address changes, that limiting language would appear in the statute."].)

1. County General Assistance/General Relief Offices.

County offices throughout California administer General Assistance/General Relief Programs to residents in need of public assistance. (See Welf. & Inst. Code §17000 ["Every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."]; *id.* § 17001 ["The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county"].

Section 7's mandate to designate "all offices in the State that provide public assistance" includes local government offices. (See *Disabled in Action,* 202 F.3d at 120 [holding that "offices of local government . . . that provide public assistance . . . must be designated as mandatory VRAs"].)[8] The residents who qualify for aid from these county-level offices fall squarely within the indigent population targeted by the NVRA. (See *Nat'l Council of La Raza v.*

[8] The exceptions are those local government offices that are specifically listed in Section 20506(a)(3)(B): "public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, [and] unemployment compensation offices . . . ." That is because offices that Congress contemplated "may" be designated as discretionary VRAs logically cannot also be mandatory VRAs. (See *Disabled in Action*, 202 F.3d at 119-120.)

Cegavske, 800 F.3d at 1035.)

The Secretary asserts that "many recipients" of general assistance "will likely have an opportunity to interface with some other VRA." (Opp. at 17.) But even if this is correct, it has no legal significance. The NVRA requires states to designate multiple offices as VRAs, with the result that many Californians may have the opportunity to avail themselves of voter registration assistance through more than one office. It is certainly possible, for example, that some recipients of General Assistance/General Relief programs might also receive CalFresh or In-Home Supportive Services, offices that have already been designated as VRAs. It is also possible that recipients of one or more of these public assistance programs also visit their DMV. (See 52 U.S.C. § 20504.) This in no way affects or excuses the Secretary's obligation to designate as VRAs *all* of the offices required by the NVRA. To the contrary, it is entirely consistent with the explicit purpose of the NVRA to increase the number of registered voters. (*Id.* § 20501(b)(1), (2).) For these reasons, the Secretary has a mandatory duty to designate county welfare offices as VRAs.

2. California Student Aid Commission Offices.

The California Student Aid Commission ("CSAC") administers five college financial aid programs: the Cal Grant Program, Cal. Educ. Code § 69430 *et seq.*; the California Chafee Grant for Foster Youth, Cal. Educ. Code § 69519; the Middle Class Scholarship, Cal. Educ. Code §§ 70020-70023; the California National Guard Education Assistance Award Program, Cal. Educ. Code §§ 69999.10-69999.30; and the Law Enforcement Personnel Dependents Grant Program, Cal. Labor Code § 4709. All five are need-based programs that qualify students for postsecondary financial aid based on a student's Free Application for Federal Student Aid (FAFSA), a federal form that is submitted to Federal Student Aid, an office of the U.S. Department of Education.[9]

[9] The California National Guard Education Assistance Program is part of the California Military Department GI Bill, Educ. Code §§ 69999.10-69999.28. Although the eligibility criteria for awards under the program do not explicitly list financial need (*id.* § 69999.16.(b)), applicants are required to submit the FAFSA (*id.* § 69999.16(b)(1)(G)), and the amounts of the awards are tied to the maximum amount of Cal Grants available at colleges and universities. (*Id.* § 69999.18(b).)

The Secretary argues that CSAC offices fall outside the NVRA's mandatory designation provision for several reasons. The Court has already rejected the Secretary's contentions that the only public assistance agencies subject to mandatory designation are those listed in the Conference Report, and that he need not designate agencies whose clients may have driver's licenses or come into contact with other VRAs. The Secretary also contends that because CSAC offices rely on the FAFSA to determine a student's eligibility or need for financial assistance, they are "federal offices" subject only to the NVRA's discretionary designation provision. (See Opp. at 18.) However, FAFSA is nothing more than a form that is used to transmit financial information to a decision-making body that evaluates the information. (See *FAFSA: Apply for Aid*, Federal Student Aid, http://studentaid.ed.gov/sa/fafsa.) While it is true that the "NVRA's mandatory agency-based registration system does not include federal and non-governmental offices," (*Disabled in Action*, 202 F.3d at 120), that CSAC offices use the FAFSA form as part of the application process for their various scholarship programs does not render them "federal offices," any more than private universities are transformed into "federal offices" when they require students to submit FAFSA forms to determine eligibility for university-sponsored financial aid.

The Secretary also asserts that CSAC offices provide assistance "to many students who do not come from low-income environments." (Opp. at 19.) But the NVRA does not establish an income threshold below which public assistance recipients must fall in order to trigger the statute's requirements. Instead, the states or counties themselves determine what income level qualifies a beneficiary to receive "public assistance"; the NVRA simply requires that the offices that provide that assistance must also provide voter registration services. These offices, as well, must be designated as VRAs.

3. California Department of Education Offices.

The parties agree that the California Department of Education (DOE) provides funding for five school nutrition programs: the National School Lunch Program; the School Breakfast Program; the Summer Food Service Program; the Special Milk Program for Children; and the

State Meal Program. These programs subsidize the cost of meals and milk for school children. However, Petitioners have not shown that the DOE offices themselves "provide public assistance" directly to students, nor that any student (or parent) files applications for assistance with those offices. Rather, the California Education Code explicitly imposes on public school districts the obligations to distribute applications, determine student eligibility, and provide the meals. The Department's obligations in relation to these programs, in contrast, are far more limited and indirect.

Thus, Education Code section 49550(a) provides, "each school district or county superintendent of schools maintaining any kindergarten or any of grades 1 to 12, inclusive, shall provide for each needy pupil one nutritionally adequate free or reduced-price meal during each schoolday . . . ." In order to comply with that obligation, the school district or county office of education "may use funds made available through any federal or state program the purpose of which includes the provision of meals to a pupil, including the federal School Breakfast Program, the federal National School Lunch Program, the federal Summer Food Service Program, the federal Seamless Summer Option, or the state meal program, or may do so at the expense of the school district or county office of education." (Educ. Code § 49550(b).) School districts are also charged with making available to pupils applications for free or reduced-price meals. (*Id.* § 49557(a)(1).) Significantly, in making those applications available, the school districts and county superintendents are "encouraged to include information that parents may use to request information concerning the Medi-Cal program . . . and the Healthy Families Program . . . . ." (*Id.* § 49557.1; see also *id.* § 49557.2 [listing information that may be incorporated into School Lunch Program application packet or notification or eligibility for School Lunch Program regarding child's possible qualification for free or reduced-cost health coverage under Medi-Cal]; *id.* § 49557.3 [school districts or county offices of education may share information with local agencies that determine CalFresh program eligibility] .) The responsibility for compliance with these provisions is placed squarely on school districts and county superintendents of schools. (*Id.* § 49556.)

The DOE's obligations, in contrast, are only "to provide information and limited financial assistance to encourage program startup and expansion into all qualified schools . . . ." (*Id.* § 49550.3(b).) Such limited financial assistance is to include "financial assistance to schools in the state, in which 20 percent or more of the school enrollment consists of children who have applied and qualified for free and reduced-price meal," as well as grants of up to $15,000 per school "for nonrecurring expenses incurred in iniating or expanding a school breakfast program" or a federal summer meals program. (*Id.* §49550.3(b)(2),(c).)

Thus, the DOE only provides *funding* for school lunch programs, but the services themselves are provided by public schools. The statutory scheme imposes squarely on public schools the obligation to provide the subsidized meals, to determine pupils' eligibility for those meals, and to make applications for those meals available to pupils. Further, it authorizes schools to coordinate those applications with applications for coverage under Medi-Cal, the Healthy Families Program, and CalFresh programs. Under this statutory scheme, it is the school districts, not the DOE, that are charged with "provid[ing] public assistance." As a practical matter, moreover, it is the school districts, not the DOE, that would be in a position to provide voter registration assistance through their existing application procedures. However, public schools are not eligible for designation under section 20506(a)(2)(A). The NVRA explicitly refers to "public schools" as one type of office that may only be designated under the *discretionary* designation procedures. (52 U.S.C. § 20506(a)(3)(B)(i); *Disabled in Action*, 202 F.3d at 120 ["We thus conclude that public schools cannot be mandatory VRAs . . . ."].)[10] It follows that the Secretary may not be compelled to designate the DOE offices as VRAs.

VI. State Offices Providing Services to Persons With Disabilities.

The NVRA also provides "[e]ach state shall designate as voter registration agencies . . .

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[10] Petitioners argue, citing *United States v. New York*, 255 F.Supp.2d 73, 78 (E.D. N.Y. 2003), that the DOE has delegated the rendering of its services to school districts. As the statutory provisions discussed in text make clear, however, the Education Code places the obligation to provide the services in question squarely on school districts, not on the Department of Education. The Department cannot "delegate" a responsibility that was never committed to it in the first place.

all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities." (52 U.S.C. § 20506(a)(2).) Petitioners seek to compel the Secretary of State to designate two additional offices as VRAs under this category.

1. Local Education Agency Special Education Offices

The federal Individuals With Disabilities Education Act ("IDEA") defines a Local Education Agency (LEA) as a "public board of education or other public authority legally constituted . . . to perform a service function for, public elementary or secondary schools." (20 U.S.C. § 1401(19)(A).) State law similarly defines a LEA as "a school district, a county office of education, a nonprofit charter school . . . or a special education local plan area." (Educ. Code § 56026.3.) The IDEA and state law require LEAs to assess all children with disabilities who may be in need of special education (20 U.S.C. § 1414(a)(1), (a)(3); Educ. Code § 56301, subd. (a)) and, if a child qualifies for services, to develop an Individualized Education Plan defining the services that the school will provide. (20 U.S.C. § 1414(d); Educ. Code § 56321.)

LEAs thus are public school districts or county offices of education that perform service functions for public schools. They are not eligible for designation because they are, by definition, public schools, or offices within public schools. As discussed, section 20506(a)(3)(B)(i) explicitly refers to "public schools" as one type of office that may be designated *only* under the NVRA's *discretionary* designation procedures. (*Disabled in Action,* 202 F.3d at 120 n.10 ["[e]ven in those cases where a public school is involved with the Medicaid application process, Congress, by explicitly including public schools in the discretionary category, appears to have exempted them from mandatory designation"].)[11] It follows that the Secretary has no duty to designate LEA special education offices as VRAs.

[11] Contrary to Petitioners' assertion, LEAs are not analogous to student disability services offices at public colleges and universities, which the Secretary has already designated. (Pets' Reply Brief, pp. 21-22.) The Court construes "public schools" in section 20506(a)(3)(B)(i) to mean local public schools, not public colleges. For that reason, Petitioners' reliance on cases involving college disability services offices is misplaced. (E.g., *National Coalition for Students with Disabilities Educ. v. Allen* (4th Cir. 1997) 152 F.3d 283, 288 [holding that states are required to designate as VRAs those state-funded offices that provide services to disabled students at public colleges].)

2. Area Agencies on Aging

There are 33 Area Agencies on Aging (AAA) in California created under the federal Older Americans Act of 1965 (OAA), 42 U.S.C. § 3001 *et seq*. The OAA provides federal grants to states that must be matched with state funds to support state programs that assist the elderly. (42 U.S.C. § 3021 *et seq.*; see *id.* § 3029(a).) To participate in the program, the OAA requires a state's department of aging to divide the state into planning and service areas (referred to as PSAs), develop a formula for distribution of federal funds to them, and prepare and submit a state plan to the federal agency administering the program. (*Id.* § 3025(a)(1)(A),(E), (a)(2)(C).) The state Department of Aging allocates funds to an AAA to provide services to older individuals residing within a specific PSA. (22 Cal. Code Reg. § 7140.) An AAA can be an office or agency of a local government, a combination of local government agencies, or a "nonprofit private agency." (42 U.S.C. § 3025(c)(3),(4); Welf. & Inst. Code § 9006 [AAA means "a private nonprofit or public agency designated by the [Department of Aging] that, among other things, "through contractual arrangements, provides a broad array of social and nutritional services."]; 22 Cal. Code Reg. § 7105 [same].) An AAA may award federal and state funds by grant or contract to community services provider agencies and organizations to implement the area's programs, including "[h]ome delivered meals services." (45 C.F.R. §§ 1321.1(b), 1321.53, 1321.63(a)(3).) Funds may also be awarded to for-profit entities providing home-delivered meals. (22 Cal. Code Reg. § 7634.5(a)-(b).)

The Petition alleges that the AAAs administer the Elderly Nutrition Program providing meals to older persons who are primarily disabled at congregant meal sites or at home. (Pet. ¶¶ 49-50; see 22 Cal. Code Reg. §§ 7630-7638.13.) In their opening and reply briefs, petitioners did not address meal services at congregant sites, and contended only that the program's "home-delivered meals" service was required to be designated. (Pets' Op. Br. at 14-15; Pets' Reply Br. at 22.)

The statutory scheme implementing the OAA establishes that the AAAs do not provide home meal services and have no contact with the public with respect to these services. The AAAs' programs are provided by community services provider agencies and organizations. The

AAAs only develop the area plan and receive and distribute funding to these agencies and organizations to subsidize the services in the area plan. Because they do not interact with the public with respect to providing home meal services, they fall outside the mandatory designation requirement. Further, some of California's AAAs are private non-profit entities, or in one case, a university foundation. (See Pets' RJN, Exh. 11, pp. 71-79, Appendix B [identifying California's AAAs by type of entity].) The community services provider agencies and organizations under contract or grant with an AAA (such as Catholic Charities and Meals on Wheels) can be nongovernmental nonprofit or for-profit organizations, and government agencies. (*Id.* at p. 9.)

Petitioners have not met their burden to show that all AAAs or their community service provider agencies and organizations providing home-delivered meal services must be designated within the meaning of section 20506(a)(2)(B).[12] Just as the California Department of Education supplies funding for school lunch programs but does not itself provide the programs, the AAAs do not themselves "provide" State-funded programs primarily engaged in providing services to persons with disabilities. Further, AAAs may enter into contracts for services with governmental agencies, and nongovernmental nonprofit and for-profit entities. Unless they are contractors to designated VRAs (see Part VII, *infra*), nongovernmental entities may only be designated under the NVRA's discretionary designation provision, and then only "with the agreement of such offices." (52 U.S.C. § 20506(a)(3)(B)(ii); see *Disabled in Action*, 202 F.3d at 120 ["Put simply, the NVRA's mandatory agency-based registration system does not include federal and nongovernmental offices."]; *United States v. New York*, 3 F.Supp.2d at 311, 314 [holding that the state was not required to designate approximately 1,600 public and private hospitals, nursing homes, clinics, and other community-based organizations that process Medicaid applications as public assistance agencies because "the NVRA draws a careful distinction between mandatory sites, which include offices that provide public assistance, and discretionary sites, which 'may'

[12] Petitioners contend that designating California's AAAs would be "consistent with" the designations of 12 other states that have designated "aging services offices" as VRAs. (Pets Memo. at 15.) For 11 of the 12 states, Petitioners have not established whether the designations were made under the mandatory or discretionary provisions of the NVRA, and many states designated offices that are not AAAs.

include 'nongovernmental offices, with the agreement of such offices'"] (emphasis in original).)

VII. Contractors with VRAs.

Finally, Petitioners seek to include within the Secretary's NVRA Declaration an express designation for "private entit[ies] under contract with designated voter registration agenc[ies] to provide services or assistance on behalf of the designated voter registration agency." This tracks California's statutory language implementing the NVRA, and the Secretary raised no objection to this designation in its opposition brief.

The NVRA's mandates are not limited to "public offices." Instead, the statute makes clear that "*all* offices" that "provide public assistance" or that "provide State-funded programs primarily engaged in providing services to persons with disabilities" "shall" be designated as Voter Registration Agencies. (52 U.S.C. § 20506.) The California Elections Code explicitly defines "[v]oter registration agency" to include "[a] private entity under contract with a designated voter registration agency to provide services or assistance on behalf of the designated voter registration agency." (Elec. Code § 2401(b)(2).)

Accordingly, to fully comply with the requirements of both the NVRA and the California Elections Code, the Secretary must include among the designations in his NVRA Declaration all "private entities under contract with a designated voter registration agency to provide services or assistance on behalf of the designated voter registration agency." Indeed, in the guidance that he issued in 2017 as to how the NVRA should be implemented, the Secretary expressly recognized that this designation is required: "In California, if a private or nonprofit entity provides public assistance or services to people with disabilities under a contract with one of the government agencies listed above, that private or nonprofit entity is also subject to the NVRA." (See RJN, Exh. 9 at 4.)

VIII. CONCLUSION

For the foregoing reasons, the Court grants Petitioners' motion in part, and hereby issues a peremptory writ of mandate directing the Secretary to designate the following offices as Voter Registration Agencies: (1) county offices that administer General Assistance/General Relief Programs; (2) offices that administer California Student Aid Commission Financial Aid Programs; and (3) all private entities under contract to provide services or assistance on behalf of a Voter Registration Agency. In all other respects, Petitioners' motion is denied.

IT IS SO ORDERED.

Dated: March 29, 2019

HON. ETHAN P. SCHULMAN

CPF-18-516265 SENIOR AND DISABILITY ACTION ET AL VS. ALEX PADILLA

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on March 29, 2019 I served the foregoing ORDER GRANTING IN PART AND DENYING IN PART MOTIONFOR PEREMPTORY WIRT OF MANDATE on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: March 29, 2019

By: WILLIAM TRUPEK

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