
PRESENT:

MARTIN R. CASTRO, Chairman
ROBERTA ACHTENBERG, Commissioner
TODD GAZIANO, Commissioner
DAVID KLDNEY, Commissioner
MICHAEL YAKI, Commissioner

JENNIFER CRON HEPLER, Office of the General Counsel
STAFF PRESENT:
PAMELA DUNSTON, Chief, ASCD
BARBARA DELAVIEZ
LILLIAN DUNLAP
YASMIN ELHADY
ALFREDA GREENE
ELOISE PLATER
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTEN
ALEC DEULL
TIM FAY
JOHN MARTIN
MARLENE SALLO
ALISON SOMIN
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I. INTRODUCTORY REMARKS BY CHAIRMAN

CHAIRMAN CASTRO: Welcome, everyone. I've got to get used to the new system. This is a temporary solution. We will have a formal solution to our microphone challenges, but I want to thank Pam Dunston for getting us some microphones that work. I appreciate that.

This meeting is coming to order. I'm Chair Marty Castro of the U.S. Commission on Civil Rights. I want to welcome you all to our briefing on the topic of "Increasing Compliance with Section 7 of the National Voter Registration Act," known as the NVRA. It is currently 9:35 a.m. on April 19th.

The purpose of this briefing is to focus our examination on the state of Section 7 compliance, and the efforts by both the Department of Justice and in public interest groups to ensure compliance with that section. I know that some Commissioners had wanted to amend our concept paper to include a parallel examination of Section 8 enforcement. However, when our topic was approved last year, after a discussion to expand that focus, we ultimately voted to only look at Section 7. I know that
Commissioner Kladney had previously encouraged us to present a written proposal to amend this briefing, but to my knowledge no such written proposal was ever drafted or brought forth for a vote of the Commission, so we are going to stick to the focus of the concept paper which was Section 7.

That said, today's briefing has three distinguished speakers who are going to provide us with a diverse array of viewpoints on this topic. During the briefing, each panelist will have 10 minutes to speak. After all the panelists have made their presentations, Commissioners will then have an opportunity to ask questions. I know that we have a few of our conservative colleagues who are absent for illness and otherwise, so I will allow Commissioner Gaziano not to be overly picked on in terms of the balance of questions. So I will try to do my best --

COMMISSIONER GAZIANO: Four times.

CHAIRMAN CASTRO: Some of your Commissioners don't always ask a lot of questions.

COMMISSIONER YAKI: Mr. Chair, I would just like to say for the record that when it was a 6-2 majority of them versus me, during questioning time I was not given extra time. In fact, there were often many meetings when it was 6 to 1 of me and I
waited my turn through the procession to ensure that order was kept. I did not demand nor ask for additional time simply because there is only one of me because I felt I alone could handle it.

CHAIRMAN CASTRO: That's good. Well, I am now chairman and I'm willing to give you a few extra questions to make up for what happened last time as well.

So our panelists, now that we're done with our comedy routine up here, you're going to notice that there's a system of warning lights. Just like traffic lights when we're trying to drive in the street, green means go. Yellow does not mean speed up.

COMMISSIONER YAKI: It means keep on going up to finish.

CHAIRMAN CASTRO: And red means you need to stop. We will try to enforce those as best we can to allow Commissioners to engage in questions. Unfinished thoughts or additional comments can always be integrated into your questioning and responses with the Commissioners.

Also, as my Commissioners know, we'll try to keep the questions concise to move this along. And again, I know some questions do require multiple
parts and I will try to indulge those as best I can
to keep us on schedule. So with those bits of
housekeeping out of the way, I'd like to introduce
our panelists.

Our first panelist is Gary O. Bartlett, Executive Director with the North Carolina State Board of Elections. Our second panelist is Jason Torchinsky, partner at Holtzman Vogel, PLLC. And our third panelist is Lisa Danetz, senior counsel with Dēmos.

I will now ask each of the panelists to swear or affirm that the information that you're about to provide us is true and correct to the best of your knowledge and belief. Is that true?

(THE PANELISTS WERE SWORN.)

Thank you. Mr. Bartlett, you have the floor. Please proceed.

II. PANEL DISCUSSION - STATE GOVERNMENT OFFICIALS AND LITIGATORS

MR. BARTLETT: Thank you. I would like to provide a little bit of information of what we have experienced in North Carolina. The National Voter Registration Act was implemented about the time that I became Executive Director. At that point in time, the biggest fear that the election officials
had was the do-it-yourself voter registration form, but in all honesty, the do-it-yourself form has worked well through the years. As it relates to public assistance agency employees, they were worried about their new role.

So what we did in 1995 was that we had a teleconference with over 2,000 participants, both employees of public agencies and election officials, where we had a panel give presentations and we had questions that were phoned in. We also had before that event materials and frequently-asked questions that were sent to everyone so that everyone had a little bit of information to be briefed on before they got there.

The end result by the end of the first year, I believe we were something like tenth in the nation as far as registrants. We thought that we were on a great path. We were certainly one of the first, if not the first in the South to be compliant. And then I went on to other things, thought it was on the auto pilot during the period. We had changes of personnel at the State Board of Elections. In the public assistance agencies, there were changes in employment there. And we just failed to keep up with what was going on. And then I got a call from Jo-
Anne Chasnow, Project Vote. She said, Gary, there's a group of advocates that would like to talk to you before they send a letter with intent to sue. And I said, well, let's talk to them. And got the phone call. I asked them to give me the ability to fix it before they would send such a letter and told them in plain English that if they want me to have -- give me the ability to make it work. They trusted me enough that we never got the letter. And we think that we have had a good, solid program from 2006 to present.

About the time that all this was taking place, my father had a stroke and I was able, while I was caring for him in the hospital, to sit down and put together a plan. I came up with about an 11-point plan, presented it to those who were intending to sue, and they added two or three things. We implemented it. It has worked very well.

The foundation of that plan is that we needed to ensure that there was communication, not only at the state level, but county level. There were also monthly progress calls from the advocates to ensure that they felt comfortable with us being on track.

We also did some media education and had some articles written about the importance of the
program. We did workshops and trained the trainer. We had dedicated staff at the state level working this issue and we also reached out to our County Boards of Elections and asked that there be an Elections Public Assistance Coordinator within those offices that had multiple employees.

We also asked in the county government offices in some areas -- all these agencies are housed near or in the same building and we would get a coordinator there. And then we would get an email system so that it could be communicated and we would also go to some of their conferences and assist and answer any questions that they may have. And we also did some random checks. This was not for gotcha. It was sort of like a wellness check. How can we make it better? What are some of your needs? And of course, most would say that first the newness was a problem. Second, this is an added responsibility which I did not get paid for, nor do I have budget resources that I can use. But we got through most of that and the biggest problem that we had was basically two thirds it was not a problem. It was the law. They were going to follow the law and do the best they can. There was another third where half will do it sometimes, but the other half didn't
do it at all because of philosophical differences. But we were able to use county attorneys to impress upon them that there was a need for them to comply with the law.

And we tried to work it as a partnership. I think the continuous communication is very important. We have done something that was one of the first, I think, in the United States. I might be -- I'm not quite sure if we're the first, but we were able to get pre-cleared by U.S. Justice an electronic declination system which goes to the county Boards of Elections. That has helped tremendously with the paperwork and is very popular.

We need to go a step further in North Carolina. Eventually, when the political climate will allow it, it will have online voter registration for these public agencies so that they can be more automated.

One of the complexities about making sure that we get everything right is that each agency that we deal with have different levels of resources and talent. And some are a paper system and to give you an example, in North Carolina, the Employment Security Commission was the state-designated choice. They had a fully automated system and they had to go
back and be a paper system just for voter registration.

And one thing that I would like to call to your attention, North Carolina is currently in the process of passing a photo voter registration bill. And in that bill, they are going to designate a new state agency for NVRA and that is senior citizens at the county level. This is not a mandate, but any senior citizen center that wants to be a part of this program is welcome to do so.

I do thank you for the opportunity to share a few things. Certainly since 2006 we have had over 258,537 registrants. At least they have the opportunity to participate in the franchise of voting and to me, I think that the more we can have eligible voters participating in the process the healthier our country will be. Thank you.

CHAIRMAN CASTRO: Thank you, Mr. Bartlett.

Mr. Torchinsky, you're next. Thank you.

MR. TORCHINSKY: Thank you to the Commission and the Commissioners for holding a hearing on enforcement of Section 7 of the NVRA. I'm an attorney in private practice and I want to make clear the views I express here today are mine and not
those of my firm or any of my firm's clients. I'm here in my personal capacity and not as a representative of anybody else.

My overall view on the NVRA is that it is an important and positive piece of legislation, but the legislation needs to be viewed and enforced as a whole package adopted by Congress. The legislative scheme or the legislative negotiations that led to the passage of the NVRA was carefully agreed upon after negotiation in Congress within the legislative branch and I feel like when particularly federal agencies pick and choose which portions of the statute they want to enforce or refrain from enforcing they are not sort of respecting the will of Congress when it passed the legislation in the first place. So I feel like particularly at DOJ, and the Inspector General's Report covered this, choosing bits and pieces of which federal civil rights laws you want to enforce based on policy preferences rather than more even-handed enforcement of the law is not the right way to go.

I do want to comment briefly on North Carolina. My experience both from when I was within the government and now outside the government is that state employees generally want to do everything they
can in order to comply with federal laws. And I think compliance works best when it's done cooperatively and not necessarily in the litigation mode. I have both from within the government and outside the government seen that state government agencies tend to sort of take the tortoise approach when faced with litigation where they kind of shut down and they go into defensive mode and I'm not always sure that that's the best way to get cooperation from government officials.

But I want to address a few points in turn. First, I want to take issue with what appears to be the current enforcement priorities of the Department of Justice which ignores parts of the NVRA that are just as important as Section 7. I want to take issue with reported gotcha methods of enforcement being engaged in by Voting Section staff and I believe that some of the scope of discovery being pursued in these cases threatens some of the privacy rights of individuals, although earlier this month the portion of my testimony that I was going to -- where I was going to discuss the government seeking some personally-identifiable information in Louisiana was actually withdrawn in front of the District Court. So it was in my prepared testimony,
but my testimony, to be honest, was prepared before
the government withdrew those document discovery
requests. So I'm going to temper my comments on that
point of it.

With respect to the uneven enforcement
of the NVRA, I want to turn to the Inspector General
Report and comment on it a little bit. Getting
people who are eligible to vote, but are not
registered on the voter rolls, is very important.
It's also important to remember that states have to
comply with the list maintenance requirements of
Section 8 of the NVRA. And it is enforcement of this
provision in combination with the Public Assistance
Agency registration requirements that enabled
Congress to pass the NVRA on the bipartisan basis
that it did.

As the recent Inspector General's Report
noted, there were essentially no enforcement actions
under the list maintenance provisions of the NVRA
during its first 10 years of existence. And while
some cases were brought between '04 and '08, it
appears the Justice Department has taken no further
actions to encourage any kind of meaningful
compliance with these requirements since then. In
fact, the last Section 8 action of the current
administration was dismissal of the enforcement action against the State of Missouri which began way back in 2005.

I also want to comment on the Inspector General's Report, the comment allegedly made by a senior official in the Civil Rights Division in the fall of 2009 that the NVRA was not going to care about -- or that DOJ was not going to care about enforcement of Section 8 of the NVRA. Seems to me that it's apparent from lack of publicly-reported notice letters or information requests from states or settlements or lawsuits in this area that the current administration simply is not taking actions to enforce Section 8.

CHAIRMAN CASTRO: Mr. Torchinsky, if I could just say you've got about six minutes left. The real focus is Section 7, if you can talk some more about that. If you do talk about Section 8, obviously, you have a right to do that, but it's not really the topic of the concept paper so it may not make it into the final report. So please, proceed.

COMMISSIONER GAZIANO: I'll be able to connect it, I think. Thanks.

MR. TORCHINSKY: And I'm -- to be honest, frankly, in preparation for this hearing, I'm
not even sure that I saw the concept paper that you're referring to, so I have difficulty responding to that.

I want to turn next to my second point then and sort of criticize the Division's enforcement techniques in the area. It appears from the Court filings in the Louisiana case and from media reports the Voting Section was using undercover investigators to essentially troll through Public Assistance Offices looking for evidence of noncompliance of Section 7. When you think about Louisiana, this is a state where 85 percent of eligible voters are registered from across the state, and yet the plaintiff that was brought forward by the private litigants is an individual who was registered to vote in 2008 and essentially the claim was hey, in these couple of times where he showed up at the Public Assistance Office in person, he wasn't offered an additional opportunity to register again when he was already registered.

The Rhode Island consent decree, apparently negotiated between the state and the Voting Section, also seemed to have gone kind of way beyond the requirements of the NVRA.

In Louisiana, my criticism of that
lawsuit is I feel like both the private litigants and
the Justice Department were really going after
technical violations that could have been resolved
sort of more readily without the need for continuing
and ongoing litigation, sparing the taxpayers of the
United States and the taxpayers of Louisiana the
expense and burden of the trial process that they
went through. And I also think that it's pretty
clear that a lot of the changes that DOJ was asking
for or that the private litigants were asking for
could have been resolved through discussion and
negotiation rather than turning to litigation.

With respect to Rhode Island, the notion
that the state is now required to fund, particularly
at a time of struggling state and local government
budgets, specially-trained Site Coordinators at every
Public Assistance Office and maintain detailed
records of every declination that go beyond the
minimum requirements of the statute, it really seems
to go well beyond what's needed to ensure enforcement
of the statute.

And finally, again, I'm going to temper
my criticism of the discovery in Louisiana because
the Justice Department has since backed off some of
those requests, but I think that in these cases where
litigants, whether they be DOJ or whether they be the private litigants seeking personally-identifiable information from government agencies, is really not necessary at all for enforcement of the NVRA and I have a real criticism of that. Any time that information is released anywhere or stored anywhere, it raises the possibility or the probability that that information could be used in ways that it's not supposed to be used.

So I think that courts in these cases need to be very, very careful to limit discovery to what's actually needed to prove the claims that are being advanced in the cases, and that discovery that goes beyond what's required to sort of minimally prove your case is something that I think the Courts should stay away from. And I think frankly, the Justice Department and private litigants should stay away from asking for it.

In summary, I believe the full, fair, and even-handed enforcement of the NVRA is a good, positive measure for the electorate at large. However, I've got some serious concerns where the Justice Department and private litigants seem to favor enforcement of only a portion of the Act, to essentially the near exclusion of other provisions of
the Act. I also believe that, like many other civil rights concerns, the issues being [litigated] by private plaintiffs and the Justice Department in some of the more recent cases could have been settled in a way more cooperative manner like what happened in North Carolina. And I also criticize both private litigants and DOJ that enter into -- and states that agree to enter into these settlements, settlement agreements that go beyond the requirements of the statute. I think that's not the way the policy is supposed to be made. Congress sets the policy. Everybody should follow the policy that was made.

And again, just focusing back on the information that's being sought during some of these cases, I think it really needs to be carefully limited. These agencies have so much personally-identifiable information about public assistance recipients and other voters that I think that information needs to be carefully controlled to prevent larger issues.

And again, thank you for the opportunity to present this testimony today. And I look forward to taking some questions.

CHAIRMAN CASTRO: Thank you, Mr. Torchinsky.
Ms. Danetz, let me just say I know that your family is currently on lockdown in Boston and we know it's difficult for you to be here and I also wanted to say our thoughts and prayers are with all the people in Boston and the surrounding areas, given what's happened in the last few days. So we really appreciate your participation today and hope for the best and the outcomes of everything.

MS. DANETZ: Thank you. It's been a bit of a surreal morning.

So thank you, Chair Castro and other Commissioners, for inviting me to participate in today's panel. As you already know, I'm Lisa Danetz, Senior Counsel with Dēmos. Dēmos is a nonpartisan public policy organization that seeks an America where everybody has an equal say in our democracy and an equal chance in our economy. For the last, I don't know, seven or eight years, I have worked extensively on issues related to Section 7 of the NVRA, both in terms of compliance work and policy, and in both cooperative efforts as with North Carolina and as part of litigation.

So as this Commission is no doubt aware, one of the express purposes of the NVRA was to increase the number of registered voters.
And you can move to the next slide, please.

It includes within its findings that discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for federal office. And Section 7 is one part of the attempt to address that problem.

Next slide, please.

Unfortunately, the possibilities under Section 7 were not maintained over the first 10 years of its implementation. Although in the first years that were reported, 2.6 million individuals submitted voter registration applications at Public Assistance Offices, in the first 10 years, that declined to 540,000. You can see the 80 percent decline on the graph.

Next slide, please.

And so since that time, since 2006, and as you can see from this chart, we and our partners have been somewhat busy focusing on the compliance issue. And you know, this chart shows the different states where we’ve been working and you know, the approach we have taken as we have found compliance issues has really differed depending on the reception.
we received from each state. So for instance, when
we first spoke to Mr. Bartlett in North Carolina and
it was clear that he was serious about fixing issues
there -- and I'll also say he was quite serious about
what would happen if we sent a notice letter --

(Laughter.)

We worked cooperatively. And you can
see from this list that there are states all over the
country where we work cooperatively with states that
are serious about fixing problems. In other states,
we don't have that luxury. Sometimes the threat of
litigation, or actual litigation, crystallizes
priorities, I like to think. We've completed
litigation in six states and we or our partners have
pending litigation in three others.

Next slide, please.

So what kind of problems do we see?
What kind of compliance problems? And I've listed
more in my written testimony, but I would say an
overview is that we see local offices that don't
provide voter registration opportunities at the time
they're supposed to. We see offices that don't have
voter registration applications on site. We
encounter lots of staff who are completely unaware of
the obligation to provide voter registration
services. And we find state agencies that don't have systems in place to ensure implementation. There's no staff training. There's no oversight. There's no mechanism in place to ensure that voter registration policies are being followed.

Next slide, please.

So I would say that, in terms of the litigation we've conducted, in the lawsuits that have been concluded, we've had favorable decisions in all of them and we've achieved settlements, favorable settlements in all of them. The settlement agreements largely mirror the elements that I submitted in my written testimony as to what produces an effective institutionalized compliance plan. They include strong monitoring, reporting, training, and oversight provisions.

Next slide, please.

So what's happened since 2006? You can see that in contrast to the earlier graph of the first 10 years, there's been a turnaround in the trendline and it will be interesting to see what comes out in the upcoming EAC Report which will be released at the end of June.

Next slide, thank you.

In the last EAC Report, if you look at...
the top 10 performing states, seven of the 10 are states where there was some kind of compliance intervention. So there were lawsuits by either private litigants or the Justice Department in Ohio, Tennessee, Missouri. I think that's it on that list, Ohio, Tennessee and Missouri. And then cooperative work occurred in North Carolina, Colorado, and Virginia. Illinois also had an intervention, I think.

Next slide, please.

Just to show you some of the state trendlines, I mean this is from data that we get reported to us as a result of our cooperative work and our settlements. In Ohio, in the almost three and a half years the settlement agreement has been in effect, the state has averaged close to 15,000 voter registration applications submitted per month at Public Assistance Offices. That's compared to 1,775 prior to the intervention. You can see the trendline.

Next slide.

The same is true in Missouri.

Next slide.

North Carolina. And you can see here, the arrow points to the approximate date of when we
contacted Mr. Bartlett, and that state has kept its numbers at about five and a half times the level pre-intervention in the seven years since.

Next slide, please.

This is Mississippi. I don't have the same kind of graph because this work is too recent, but Mississippi instituted new procedures a little less than two years ago. We have monthly data and this shows the increase in monthly voter registration submissions.

Next slide.

Just to be fair, I included graphs for the Justice Department settlements, too. I can't speak at length about what has happened in those cases, but if you could just scroll through the next few, you'll see that -- the next few slides, you'll see the same trendlines. You have Arizona, Illinois, and again, Rhode Island. And I took the Rhode Island numbers from a press report. There's no -- I'm not aware of a particular data source for this information.

Next slide.

So overall, I would say the intervention impact in terms of the work done by Dēmos and its partners has led to close to two million additional
low-income citizens who have applied to register to vote at Public Assistance Offices or through Public Assistance Offices. And that's on top of what you would have expected otherwise, based on the states' numbers.

In my remaining time, I would simply note that there's a large voter registration gap in this country based on income. It's 19 to 20 percentage points. So our low-income citizens are registered at about, I think it's around, 65 percent while our more affluent citizens are registered at about 85 percent. That difference in registration translates into a difference in participation which ultimately impacts our democratic decision making. And I think Section 7 and adequate enforcement of Section 7 is an important element to try to close that gap.

Thank you so much.

CHAIRMAN CASTRO: Thank you, Ms. Danetz.

Commissioner Kladney, would you like to have the first questioning since this is your concept paper?

COMMISSIONER Kladney: Thank you, Mr. Chairman.

CHAIRMAN CASTRO: You're welcome.
COMMISSIONER Kladney: Mr. Bartlett, thank you for your participation here today. I'm interested in when you said you made unannounced, random, in-person checks of your agencies, how was that accomplished?

MR. BARTLETT: What we would do is that, whenever there was a State Elections employee going through a county, we would go and visit wherever the public agencies were, to: number one, see if they had voter registration applications, and number two, did they have our little poster that we sent everyone hanging up, if they had any questions, and how could we be helpful. This was not a check to see how bad you were doing, but it was sort of like a wellness check. It worked out very well. We still do it, but it's not as much as we once did because our numbers have been consistent.

COMMISSIONER Kladney: And your training, I think you said you had people in every office that were trained in Section 7. I forget the name of the person. Was that significantly difficult to achieve?

MR. BARTLETT: What we have done is trained the trainer at the state level. Every agency we have met with, we have offered to do training, we
have done videos. In fact, for mental health, we
have a mental health video that we've used. But we -
- the training is not enough and it's got to be
continuous because of the turnover.

The biggest -- if I had to state the
biggest success is continuous communication. We have
an email system set up so that any time that someone
needs something or asks a question, they go to
Veronica Degraffenreid in our office. And because we
have got that infrastructure set up at our level, it
is not the burden that it would be for another state
that was trying to get there.

COMMISSIONER KLADNEY: Thank you. Mr.
Torchinsky, I was wondering, your comments about --
am I being too loud? The microphone works really
well compared to our old ones.

I was interested in your comments about
Rhode Island and about the fact that the consent
decree was negotiated with the state and it was over
the top is I think -- if I can say that. That was
your thoughts.

MR. TORCHINSKY: Yes.

COMMISSIONER KLADNEY: They were
represented in the case, right?

MR. TORCHINSKY: Yes.
COMMISSIONER KLADNEY: And the consent decree had to be approved by the Judge?

MR. TORCHINSKY: Yes.

COMMISSIONER KLADNEY: And they could have litigated if they wanted?

MR. TORCHINSKY: Correct.

COMMISSIONER KLADNEY: And they chose not to?

MR. TORCHINSKY: Correct.

COMMISSIONER KLADNEY: So it wasn't like they were a victim.

MR. TORCHINSKY: I feel like -- and particularly in civil rights cases in general, and particularly in the voting section, I think from the perspective of the state government it is a lot cheaper and a lot less expensive to just do whatever, say yes to whatever DOJ asks than to go fight with them. I represented a jurisdiction in a bailout where DOJ asked for monitoring requirements that were beyond the requirements of the minimal requirements contained in the statute for post-bailout activity. We talked about whether it made sense to go argue with DOJ over it and frankly it was a whole lot easier and a lot cheaper to just say okay, fine, whatever you ask for because we want the bigger thing
which in this case for Rhode Island was the settlement of a lawsuit and in my client's case was the bailout itself.

In a lot of these cases, it's just easier to comply with whatever DOJ wants than to fight with them about it from a cost benefit perspective when you're representing a public agency or a government. And I think that's probably what happened in Rhode Island. It was a whole lot less expensive overall to agree to something that's beyond the requirements of the statute than it was to fight with DOJ over something that they were asking for in the course of a settlement.

COMMISSIONER KLADNEY: And the great thing is, though, about America is that's up to the client. They have the freedom to accept it or reject it.

MR. TORCHINSKY: They do. But again, in the civil rights area, particularly when you're representing public agencies, there's a cost benefit analysis that you have to do that essentially drives your decision making when DOJ is there demanding something that goes beyond what the statute requires.

COMMISSIONER KLADNEY: I have another question -- when you were talking about -- my
impression from your comments was that generally
negotiations are not entered into prior to
litigation. That was the impression that I got. Is
that correct? My impression, is that correct?

MR. TORCHINSKY: You know, I think it's
difficult to generalize, but I think, often I think
there are public relations advantages to jumping
straight to the lawsuit that I think are often
overlooked by DOJ and by private litigants. And I
think negotiation and cooperation with state and
local governments is a whole lot better way to get
overall compliance with civil rights laws than
jumping straight into sort of litigation or
adversarial kinds of proceedings.

COMMISSIONER KLADNEY: I actually agree
that conversation is a good thing and I know -- I
think it's Dēmos that's litigating in my state. And
I know they had numerous meetings with the Secretary
of State, the Governor's Office, and things like that
to try and negotiate. So my experience is that they
do try to negotiate prior to litigation because it is
costly, is it not?

MR. TORCHINSKY: It is very costly.

COMMISSIONER KLADNEY: So it also saves
them money and time as well as the state's money and
time, is that correct?

MR. TORCHINSKY: I think in these cases, negotiated outcome is often way better than a litigated outcome.

COMMISSIONER KLADNEY: Thank you.

CHAIRMAN CASTRO: The chair recognizes Commissioner Gaziano.

COMMISSIONER GAZIANO: I'll have to try to remember to keep my finger on this button. But thank you all for your very good testimony. One of the great benefits of serving on the Commission is being forced to try to learn something and ending up at least learning a fair amount, whether that's, you know, that significant or not. And you've certainly helped.

I do -- although respecting the focus of this hearing on Section 7, I am going to try to ask a Section 7-based question that does touch upon Mr. Torchinsky's observation about the non-enforcement of Section 8, assuming that we only really cared about Section 7 or we cared about both. But I think we can't ignore the 800-pound gorilla that is in the OIG Report that confirms the evidence that this Commission received in its New Black Panther investigation, that the Voting Section and other
deputies, the Deputy Assistant Attorney General essentially sent very strong signals that the Division did not want to enforce Section 8. Later, they --

COMMISSIONER KLASNEY: Mr. Chairman, excuse me, Commissioner Gaziano. Regarding trying to bring up a discussion about Section 8, and I respect your attempt to do so, when we talked about this concept paper you and I had a discussion on the record, and in that discussion I said I was more than willing to amend my paper if you would make a proposal, because I didn't know much about Section 8 at the time and I actually still don't and I'm not prepared today to discuss it. I think it would be unfair to get into that in light of the fact that I had asked for a proposal, never received a proposal, and now we're going to be talking about it? I would ask the Chairman to --

COMMISSIONER GAZIANO: I would respect the -- I didn't interrupt your questioning. Let me -- give me a little latitude to connect the two, please. But I also didn't understand the colloquy exactly as you did. But I'm willing to respect that the focus of this hearing is on Section 7. I just don't think you can ignore the impact of Section 8,
non-enforcement on Section 7. So let me finish.

The explanation that Julie Fernandes, the Deputy Assistant Attorney General, gave for non-enforcement was that it was more important to enforce Section 7, limited resources, yadda, yadda, even though the Voting Section had been expanded greatly and that liberal groups were really demanding enforcement of Section 7.

So here's my hypothetical and I'll ask it particularly to Mr. Torchinsky and Ms. Danetz. Assuming we're only focusing on Section 7 now, where in some future administration would it be proper, you think, for the Civil Rights Division to signal to all its staff to institute a policy of dismissing Section 7 cases and announcing to the staff that right wingers really wanted Section 8 compliance and that, you know, they needed to concentrate on that. And therefore all Section 7 enforcement would cease, and to disseminate that broadly to the states and the public. Do you all think that would be an appropriate enforcement position for the Division to take?

MR. TORCHINSKY: I do not. I think that -- like I said at the beginning of my testimony, I think the NVRA was a carefully negotiated compromise...
that contained both the Public Assistance Agency registration requirements as well as the Section 8 list maintenance requirements. And I think that states overall have really fallen down on Section 8 compliance and obviously the Justice Department -- well, let me stick to the hypothetical.

Hypothetically, I think that would be a very bad decision for any Justice Department no matter which party is in control of the Justice Department to essentially say we're only going to enforce one particular provision of one particular Civil Rights Act to the exclusion of other provisions of that same Act. I think that's a mistake.

COMMISSIONER GAZIANO: Let's just take my Section 7 hypothetical which is we're just not going to enforce Section 7, not saying anything else. We're not -- do you think that would be proper for the administration, Ms. Danetz?

MS. DANETZ: I can't really speak about how the Justice Department operates because I've never worked there. I will say that it is the perspective of Dēmos as well as many of our allies that regardless of the impression, Section 7 enforcement has not been particularly active. There have been helpful things that the Justice Department
has done, but it is not our view that they have been particularly active on Section 7 enforcement. I don't know how else to respond to your question.

COMMISSIONER GAZIANO: I think it's a fairly straight-forward question. Do you think it would be proper for the Division to publicly announce that it was --

CHAIRMAN CASTRO: She answered your question, Commissioner.

COMMISSIONER GAZIANO: Respectfully, I don't think she did. She says she doesn't think they have done very much. The question is do you think it would be proper and helpful for the Division to announce that it was dismissing Section 7 lawsuits and it would not enforce Section 7? Would that be helpful for the National Voter Registration Act enforcement overall?

MS. DANETZ: I think I did answer that by indicating since I have not worked in the Justice Department and am not familiar with the way DOJ policy works. I don't feel like I have the competency to respond to that question.

CHAIRMAN CASTRO: She's answered your question, Commissioner.

COMMISSIONER GAZIANO: I'll hopefully
have another opportunity to ask the witnesses another question.

MR. TORCHINSKY: Can I just add one other --

COMMISSIONER GAZIANO: Sure, go ahead.

MR. TORCHINSKY: I want to add in the context of assessing Section 7, and this goes to my testimony, to Ms. Danetz' testimony, and directly to Commissioner Gaziano's question, I think when you're looking at the trendlines that were up in the slide show, both from '95 forward and through some recent years, I think it's really important to look at Section 7 in the context of the overall economy and sort of public use of public assistance. I think there's a -- I point particularly to a 2008 Heritage study which showed, look, 1996 was the enactment of welfare reform.

The economy was booming in the late '90s. The number of people seeking -- new applicants to public assistance programs was going down over that time period. And then subsequently in 2008, we obviously had the economic collapse and obviously everybody is familiar with the news stories about the number of people that are now seeking participation in various public assistance programs having gone up
dramatically in the last five years. And I just think that when you're presented with charts like what Dēmos has presented here, to use that -- to look at that chart and say oh, well, the filing of their complaint or their initial contact is the causation for those changes and numbers I think is important for this Commission to consider when you're looking at that which is you can't look at those numbers in a vacuum. You have to look at these numbers in overall context about what's going on with the economy and public assistance or participation levels or the levels of people seeking to participate in public assistance programs in general.

So I just do want to criticize those charts and say yes, they may make particular points and they may show a particular change in numbers, but just saying hey, this is when we contacted the state, doesn't really say much about the overall economy or give any context to, hey, Dēmos contacted them or DOJ contacted them here and look, numbers have gone up. I think that needs to be in the context of what's going on overall in the economy, not just at Voter Assistance Offices with respect to voter registration.

COMMISSIONER KLADNEY: I don't
understand what you mean by context. I mean are you just saying that normally it would go up and those numbers would be the same regardless?

COMMISSIONER GAZIANO: If you don't mind, I'll provide context in another question. He can answer, but I was going to raise some of those questions myself.

CHAIRMAN CASTRO: At this point, I'm going to give the floor to Commissioner Yaki and we'll come back to the other debate.

COMMISSIONER YAKI: Yes. Thank you very much. First, to Ms. Danetz, I also want to add my heartfelt thoughts on behalf of myself for the people in Boston and for all of America. There are actually people from the Bay Area who were injured in that race. It's truly an international event and had international repercussions.

The question that Commissioner Gaziano was attempting to give to you, I think was a little misleading and let me try and take another -- take a different way of looking at it. By your very presence here, in fact, by the presence of everyone here, it is not simply up to the Justice Department to deal with enforcement of Section 7, correct?

MS. DANETZ: No, there is a private
right of action as well.

COMMISSIONER YAKI: So -- and the fact that this private right of action is taken by groups such as yourselves and by groups representing other organizations -- means that there are opportunities for enforcement of this aside from the Justice Department, correct?

MS. DANETZ: Yes.

COMMISSIONER YAKI: I just wanted to clarify that because I wasn't quite sure what the statement by my fellow Commissioner was leading to other than trying to give an impression that this was -- that there was going to be no enforcement of Section 7 or Section 8 or what have you by the Justice Department.

And by the way, taking a very small quote of an overall report which pretty much refuted the idea that there were political decision making going on and a lot of the alleged allegations made by the majority of this Commission of which I was not a part of in the New Black Panther report.

So having put that to bed, let's get to the actual briefing itself.

Mr. Bartlett, one of the little offhand comments that you made intrigued me and I just wanted
to ask if you could elucidate on it a little bit more. You talked about that when you were going through this process that you encountered philosophical differences. What were those philosophical differences if you can spell it out a little bit more?

MR. BARTLETT: The philosophical differences is that they thought that the government should not be taking the role of trying to get people to register through these public assistance agencies because they would think that they would have to participate in voter registration in order to get services in return. They thought that it was an economic burden on their employees. I had at least three different members of different County Commissions say that we're not going to do it. And I tried to impress upon them that it was the law, both state and federal, and that it should be done. And in two of those three counties, the County Attorney helped mediate the impasse. In one county, basically the Commissioner said no way. And I wrote a letter to the Department of Justice. They made one phone call and that was the end of that impasse.

So what we have tried to do is work together as partners and do what our responsibilities
call for.

COMMISSIONER YAKI: Are these county officials you're talking about, are they appointed or elected?

MR. BARTLETT: Well, the County Commission are elected.

COMMISSIONER YAKI: And I was going to ask following up on that because that's what I was trying to get at from Ms. Danetz, have you found a difference in enforcement of 7, Section 7 at the local level depending on whether officials are appointed or elected or just career civil servants, have you seen any difference in treatment of the implementation of Section 7?

MS. DANETZ: I don't think that we've done that kind of analysis. I will say that I have certainly worked with both appointed and elected officials, and elected officials of both major parties, and have worked successfully with officials from both parties, have had impasses with officials from both parties. We have a lawsuit against my home state of Massachusetts right now.

So I couldn't tell you about a difference between elected and appointed because generally we're dealing with both.
MR. TORCHINSKY: May I just comment on that briefly? I think I'm actually the only person in the panel that actually has worked in the Civil Rights Division. And I think that like Mr. Bartlett said, I think when you run into local officials, whether they be elected or appointed who just flat tell you that they just don't agree with the federal law, that's one of the -- having been in the Civil Rights Division for a little while, there are some -- most of the cases that the Civil Rights Division does, how you act in those cases wouldn't vary based on who's sitting in the White House.

And I think when you run into local officials that flat tell you that they're not going to comply with the federal law because they don't agree with it, I think that's one of the situations where I have seen the Justice Department act pretty swiftly to communicate to those local officials that their personal view on the statute is really not relevant to what the statute actually says and requires of them.

I have seen this not just in the voting context, but in other civil rights enforcement areas, too, where you run into local officials who say the Federal Government has no business here and the
Justice Department has pretty universally said well, yes, the statute says we do. I do want to say that about local officials that I've run into.

CHAIRMAN CASTRO: Thank you. The Chair recognizes Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman.

Ms. Danetz, this question now has two parts because I'd like you to address the assertion by Mr. Torchinsky that the upward trajectory is equally as explainable by the increase in applications for public assistance as it is for the implementation of good policy in terms of monitoring training and oversight which is what appears to be necessary if we are going to guarantee Section 7 compliance.

MS. DANETZ: A few things. The first is that in the data that we received directly from the states, we also have the data about essentially the case load data. So when we make those graphs on that data, the trendline line is in the same direction. I didn't prepare those for these slides because quite frankly that would have taken my data analysts a very, very long time to put in that kind of data, but if you do look at it by monthly covered transactions
(applications, renewals, and changes of address), you get the same trendline.

I would also say that in the first 10 years, '95 -'96 to 2005 - 2006, the SNAP case load, that's the food stamps case load, was significantly higher in 2005-2006 than it was in '95-'96. So you can't explain the downward trend by the booming economy. There was a Heritage Foundation report, I think it was in 2008 by Douglas Mulholland, I think was his name, something like that.

COMMISSIONER GAZIANO: David Muhlhausen.

MS. DANETZ: That was then refuted by a later paper by Alvarez and Nagler in terms of methodology. I can't speak at much greater depth about that, but I would say those would be the responses.

COMMISSIONER ACHTENBERG: I have my second part. Thank you very much.

So monitoring training, oversight, consistency, expressing concern from the top and throughout the bureaucracy, is what it takes to achieve consistent compliance with Section 7. Is that a fair summary of what needs to happen if a state is going to become compliant?

MS. DANETZ: Yes. And I would add
essentially integrating the voter registration procedures within existing agency processes so that it's seamless and not an add-on. It's part of what people do.

COMMISSIONER ACHTENBERG: Are you aware of any states that at one time had good processes for monitoring training, oversight, and integration, and subsequently removed those processes or ceased to undertake those processes? Are there any states that had a good system and then for whatever reason no longer have a good system?

MS. DANETZ: I think I would have to think about that. There's nothing that comes to mind directly. I will say that Michigan used to be a leader and it revised some of its benefits processes and voter registration applications plunged. And so then we had to go and pay them a visit and we've been helping them to improve their processes again.

COMMISSIONER ACHTENBERG: Do you have any opinion about what that is attributable to?

MS. DANETZ: I think that when officials are making decisions there are a couple of -- this is speculative, but --

COMMISSIONER ACHTENBERG: I'm just asking for your opinion.
MS. DANETZ: Okay, I think that processes naturally change in various respects. Sometimes it's because of budget. Sometimes it's because of technological advance. And if voter registration is not part of the high-level thinking about how to modify processes, it can get neglected and omitted. I mean I'm sure there are also places where there is a desire to maybe de-emphasize voter registration. I'm not entirely sure, but I think my sense is that overall it falls off the radar screen because people are not paying attention.

COMMISSIONER ACHTENBERG: Thank you.

CHAIRMAN CASTRO: I have a couple of questions.

Mr. Bartlett, in your initial testimony, you said, you referenced possibly going at some point to online voter registration when the political climate will allow it. Could you elaborate on what that means?

MR. BARTLETT: I have met with Democrat and Republican legislators beginning in 2006 to possibly do online voter registration in North Carolina and it has developed into a bill, but never considered by a committee.

CHAIRMAN CASTRO: So what is the
political -- is it that the Democrats and Republicans
don't want to have online voter registration, is that
what you're saying?

MR. BARTLETT: I don't think that it is
as much as don't want it. I think it's more of
everything that centers around the issue of voter
fraud or potential fraud that scares them into trying
something new or somebody trying to crash a database.
I think it is those types of things that captured
their attention.

CHAIRMAN CASTRO: Mr. Danetz, I know you
weren't handling the Illinois litigation, it was
Justice Department, but could you tell us a little
bit about the situation there and how it's improved,
if you know?

MS. DANETZ: So I can tell you that at
the end of the Bush administration, the Voting
Section entered into two memoranda of agreement with
different states, like pre-litigation settlements,
one of which was in Illinois. The term of that
agreement was two years and Illinois' numbers really
increased quite drastically. I can tell you that we
know less now because, after the expiration of the
settlement agreement, Illinois stopped doing some of
the procedures that were in the settlement agreement.
It no longer does the same kind of reporting, so we can't really assess where the state is now. And I'll be interested, as I said, to see the EAC numbers that come out.

CHAIRMAN CASTRO: Do you know why they stopped?

MS. DANETZ: I think because the settlement agreements expired.

CHAIRMAN CASTRO: Yes.

MS. DANETZ: I mean that's when they stopped doing it. I don't really know. I don't have firsthand knowledge of it.

CHAIRMAN CASTRO: Thank you. Commissioner Gaziano?

COMMISSIONER GAZIANO: Thank you and I will try to introduce into our record four sort of studies in the series that two of the witnesses have talked about, but just to finish off my concluding thought that I didn't get out from the last panel because of some of the cross talk, any time there is a political incentive created for the next administration not to enforce Section 7, I think that's bad for Section 7. I think it's bad for the NVRA. And you know, I think we can deal with the public record and make our own Commissioner
conclusions.

But as for the studies, I really -- this was the most interesting part of my kind of study prep for this. There was the original Dēmos study and if I remember January-February 2008, I'd ask the Chairman if we could accept into the record of this briefing these four documents.

CHAIRMAN CASTRO: I'll take it under advisement.

COMMISSIONER GAZIANO: Under advisement?

CHAIRMAN CASTRO: I'll look at them more closely.

COMMISSIONER GAZIANO: Normally, we enter it in the record. Then there was the June 11 Heritage Foundation study and for the public record that's my day job. So it was published by my very respected colleague, David Muhlhausen. And he was the lead author and Patrick Tyrrell.

MS. DANETZ: Sorry I butchered his name.

COMMISSIONER GAZIANO: No, no, that's fine. Then there was the response by Dēmos and its authors, Alvarez and Nagler. And then there was a further reply and I think that's how social sciences is best done with this sort of back and forth and that is -- the title of that one is November 17,
2009, "Welfare Reform and Public Assistance Voter Registrations and Reply to the Critics."

And here's what I'd like to -- both you and Mr. Torchinsky to evaluate. Obviously, NVRA was passed in 1993. We have the 2.6 million people in Public Assistance Offices registering. Then we have, and I think the original Dēmos study just notes the decline in absolute numbers, and with anecdotal evidence suggests one of the possible reasons. In my mind, that's not a social science study. That's the suggestion for the need for a study. That's not a regression analysis.

So my colleague at the Heritage Foundation then tried to look at the factors to test the Dēmos theory and others. And of course what he found since the Dēmos study really looked at the decline from '95-'96 on, he found a very significant correlation with the decrease in public assistance after President Clinton signed the historic welfare reform -- his and your study then ends in 2008. There was a very helpful exchange between the authors of the Dēmos study. And Mr. Muhlhausen acknowledged at least one of the critiques as a limitation, not a critique of his study, but just an unavailability of data. And I have no doubt that
that's where the real regression analysis is and I have no doubt, by the way, that the Bush administration's enforcement of Section 7 and Dēmos' participation with the Bush administration's enforcement of Section 7 may have contributed. I also think that the disastrous economic policies of the Bush administration and causing the mortgage meltdown and the further disastrous economic policies of this administration might have contributed. But there's one other factor that none of the studies could study, as I understand it.

And I know, Mr. Torchinsky, you have looked at least some of these. And that is when talking to Mr. Muhlhausen at the Heritage Foundation, he said that he couldn't test, or at least based on his recollection, he couldn't test how many people in the welfare offices in the period with the sharpest decline were repeat people. So they registered first when they first went on public assistance. There may be a period where they fell off public assistance. They came back on public assistance, but since they had already registered to vote it was without personally-identifiable information, very hard to test. So you would expect, by the way, the effect of the NVRA to be somewhat declining. Now the fact that
it went up in '95-'96 might be that it was swamped by the horrible economic consequences of two administrations or could be your great litigation efforts, the great Bush administration litigation efforts, but without further regression analysis it seems hard for me to draw much of a comparison.

What do you two think about that kind of explanation? Let me begin with Mr. Torchinsky since I know you did study the real study.

MR. TORCHINSKY: I think one of the issues there and you're right, if there are a pool of people who are recipients of public assistance and every year you're registering a certain number of them, unless there are an equal number of people entering into new eligibility, the number of people that you would register mainly every year wouldn't necessarily go down. I mean it's kind of a logical thing. If the pool has 80 gallons in it and you keep taking gallons out of the pool because you're registering people and you're not refilling the pool of eligible people, the number of registrations would necessarily go down.

I do think it's difficult to study that without access to the personally-identifiable information which I also have criticism of people
trying to go out and obtain. But I think that also sort of ties into the whole notion of the Section 8 enforcement issues which is, one of the issues that Dēmos and -- Ms. Danetz uses the phrase -- "its allies" have criticized states that have gone on and tried to do Section 8 compliance and do list maintenance programs, has been the difficulty of tracking all this personally-identifiable information and making sure you're tracking the right person. So I think there would be some difficulties in these studies to see if you've got repeat people coming into the system. The same problems that you have in Section 8 enforcement with ensuring that you're actually removing the right people, you'd have the same tracking problem on the other side about tracking the people that are entering into the registration system and making sure you're not having repeat people.

MS. DANETZ: So I have a number of thoughts about what you've asked and I will say that I was not able to really review the papers because I couldn't find that Heritage paper on line and quite frankly I wasn't aware of the 2009 reply.

COMMISSIONER GAZIANO: I'll report them to the authorities.
COMMISSIONER YAKI: You need the secret Heritage code key.

MS. DANETZ: I keep trying to look.

COMMISSIONER YAKI: Hidden somewhere in a basement.

MS. DANETZ: I think there are a couple of thoughts that I have. The first is that my recollection of the 2008 study was that it looked only at TANF because that was the subject of welfare reform. And the universe of public assistance recipients engaging in applications, renewals, and changes of address is significantly broader so you also have SNAP and Medicaid, both of which are much greater programs and neither of which would have gone down as a result of welfare reform in the mid-'90s.

The second thing I would say is that if you look at Ohio which is where at least we have the most data because we've had the settlement agreements since about Thanksgiving of 2009, we have seen stable numbers over time. It may vary depending on the time and the election cycle, but if that theory were true that you might have a large number when people first come in and then it tapers off because it's the same people. We're not seeing that in our state data that...
comes in.

The third thing I would say is that the low-income population is highly mobile and so even if somebody has come into the system and is still receiving benefits, they need to change their voter registration at the time they change their address. That's a time that voter registration is supposed to be provided at the public assistance agency. So I think that would tend to undercut that theory. I think the last thing is that I don't know that there's any sense that it's always the same people coming in over and over again. So I think all of those things would be where I would want to look about why that theory might not be accurate.

COMMISSIONER GAZIANO: Well, thank you very much and that's another reason I'd like the actual scholars who have written these reports to have them -- Mr. Muhlhausen did look at several public assistance programs, but I don't know exactly which ones and I think the important was his panel regression analysis did find certain things statistically significant, certain things like SNAP not statistically significant and that's what I think we should be asking other scholars to examine and try to tease out these questions that both of us are
going back and forth on.

CHAIRMAN CASTRO: We're going to go now
to Commissioner Kladney, followed by Commissioner
Yaki, and then Commissioner Achtenberg, and I presume
Commissioner Gaziano, you're going to want to
question after that?

COMMISSIONER GAZIANO: Possibly.

CHAIRMAN CASTRO: I'll write it down.

COMMISSIONER KLASTNEY: Thank you, Mr.
Chairman.

Mr. Bartlett, the parties have been
asking questions back and forth about numbers and the
recession and things like that. What I noticed in
this one graph was in North Carolina the settlement
was reached in 2006, is that correct?

MR. BARTLETT: Correct.

COMMISSIONER KLASTNEY: And by 2008, you
had increased registration 700 percent. They went
from like 12,000 to 80,000. Is that correct?

MR. BARTLETT: Correct.

COMMISSIONER KLASTNEY: 2008 was when the
recession started, whether you know it or not. I'm
just making a statement.

(Laughter.)

Thank you. Mr. Torchinsky, and I thank
myself for getting that right, you state on page three of your statement about Louisiana and you say that based on apparent extensive investigation carried out by the Department of Justice in Louisiana it seems many of the changes the Department sought could have been resolved through discussion, negotiation, rather than litigation. So there was no discussion and negotiation, is that correct?

MR. TORCHINSKY: I don't represent the State of Louisiana and I don't represent the Justice Department, so I can't necessarily comment on it, but it didn't appear from any of the press reports that I reviewed that such intensive discussions had actually happened for litigation.

COMMISSIONER KLADNEY: So that's kind of speculative.

MR. TORCHINSKY: It is somewhat speculative, but based on the press reports, I didn't see anything about negotiations.

COMMISSIONER KLADNEY: When you say that most of the changes or a lot of the changes could have been made by discussion, could have been resolved through discussion, negotiation, which ones couldn't, do you think from the press reports?

MR. TORCHINSKY: I'm not sure
specifically.

COMMISSIONER KLADNEY: Pardon?

MR. TORCHINSKY: I'm not sure specifically.

COMMISSIONER KLADNEY: Okay, so there still could have been litigation even if the technical violations had been resolved?

MR. TORCHINSKY: It's possible, yes.

COMMISSIONER KLADNEY: Okay. And Ms. Danetz, I need this for my own edification. Mr. Torchinsky could probably answer this. Although in the Public Assistance Offices Section 7 is applicable, is that also like unemployment offices and mental health offices and things like that?

MS. DANETZ: So the agencies that are covered vary by state. So the statute spells out certain mandatory agencies, so any office in the state that provides public assistance must be designated a voter registration agency. And any office, I don't know that I can get the language exactly right, but basically any state-funded -- basically, disability office.

MR. TORCHINSKY: I've got the statute. It's in 42 U.S.C. 1973 GG-5. It's sub A, sub 2, sub capital B, all offices in the state that provide
state-funded programs primarily engaged in providing assistance and providing services to persons with disabilities.

MS. DANETZ: Thank you.

COMMISSIONER KLADNEY: I was just wondering because in my state, just for instance, Child Protective Services is a county program, but that wouldn't be covered. Is that correct?

MS. DANETZ: No, but if I could just finish the answer. I stumbled because I always like to have the statutory language exactly right. So in addition, every state has what are called discretionary voter registration agencies. Every state has to designate some, at least one, if not more, agency as a voter registration agency that is not one of the two mandatory. So for instance, in North Carolina, what is essentially the Unemployment Office is a voter registration agency, but that is not true in all states.

MR. TORCHINSKY: If you continue on in the statute it says "Voter registration agencies designated under paragraph A may include" and it says "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 sub B" which is the disability offices.

COMMISSIONER KLANDNEY: They only have to pick one.

MS. DANETZ: Some states pick more, but yes, there must be more than just the mandatory agencies. I would say that as far as Child Protective Services, I don't know offhand what are the discretionary agencies in Nevada, but it's my experience that that is not designated in most states.

MR. TORCHINSKY: If you think about it in that particular, in the case of that particular agency, their clients really are kids under 18 who aren't generally eligible to register to vote anyway.

COMMISSIONER KLANDNEY: And all the parents are taken the kids away from.

(Laughter.)

MR. TORCHINSKY: It's not a fun way to deal with, but most of the -- the people that they're providing services directly to are the kids who are not eligible to register because of their age.

CHAIRMAN CASTRO: The Chair recognizes
Commissioner Yaki.

COMMISSIONER YAKI: This is for Mr. Bartlett. Whenever I see you I want to ask another question about barbecuing in North Carolina, but I resist.

In your experience -- and I want to get away from the regression analyses and theories and studies -- but in your own experience in what you have done in North Carolina, do you believe that the effort that you have done as a result of the NVRA has resulted in increases in registration of people who might otherwise not have registered to vote?

MR. BARTLETT: I believe so.

CHAIRMAN CASTRO: The Chair recognizes Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: This is for Ms. Danetz. What was the number of cases that have been litigated in the -- you put a chart up on the wall and there were maybe a dozen cases that had been concluded successfully through the Courts?

MS. DANETZ: So there are six litigations that have concluded. There are three that are pending. And there are about 11 states where we have either worked cooperatively or are working cooperatively.
COMMISSIONER ACHTENBERG: And how many settlement agreements have been reached that have been court-supervised, essentially?

MS. DANETZ: All six of the concluded litigations.

COMMISSIONER ACHTENBERG: And presumably there was -- and those were all concluded with -- would you say favorably from your point of view?

MS. DANETZ: Absolutely. Each of those settlement agreements included descriptions of systems that needed to be put in place to ensure ongoing compliance and we get regular data reporting from each of those states.

COMMISSIONER ACHTENBERG: And I'm assuming that there has to be asserted some factual basis upon which that kind of court-supervised agreement is based?

MS. DANETZ: Our groups have generally not settled the cases with consent decrees, which would require that kind of factual foundation. Instead, what we have done is that in our settlement agreements the Court has continuing jurisdiction to enforce the terms of the settlement so that if there's a breach of the settlement agreement we can go back to the Court. And you know, in general,
states don't like to admit in a Court document the  
factual foundation that you're suggesting. And our  
goal is to get them to an effective institutionalized  
compliance plan. So if we can do that in this type  
of settlement agreement, that's what we do.

COMMISSIONER ACHTENBERG: I guess the  
point of the questions is that Judges wouldn't  
typically involve themselves in issues that actually  
are non-issues. By that I mean, isn't it typically  
the case that there is a problem there that you are  
attempting to solve?

MS. DANETZ: Absolutely, otherwise we  
wouldn't have brought the litigation. And I would  
say, I would say that although I'm reluctant to go  
down this path, that you know, we have been awarded  
attorney's fees which is the signal of prevailing  
party status. And so that suggests that a Court  
recognizes the problem.

COMMISSIONER ACHTENBERG: Thank you very  
much. Now please, Mr. Torchinsky.

MR. TORCHINSKY: One of the questions  
about your -- your question about whether there's  
factual basis for litigation, that's actually one of  
the issues pending on appeal in the Louisiana matter  
in front of the 5th Circuit now, because the state is
essentially asserting that the plaintiff was already registered to vote and therefore wasn't harmed by the fact that he wasn't offered in these other three times that he showed up in the Voters Assistance Offices and wasn't offered the forms, that he wasn't, in fact, harmed. And then the other plaintiff is the state NAACP organization which apparently, according to, at least according to the court filings in the 5th Circuit, has never itself conducted any voter registration drive and therefore wasn't actually harmed by the alleged NVRA violations.

And there's also, in Louisiana, there's also pending on appeal the technical question of the notice letter that is required to be brought -- required to be sent before you can invoke the private right of action provisions of the NVRA was, at least according to the state, never sent. And it was apparently an issue never really addressed by the District Court Judge. So the factual basis for the Louisiana lawsuit is actually pending on appeal in the 5th Circuit right now.

COMMISSIONER KLADNEY: The first two that you mention there really are standing issues, are they not?

MR. TORCHINSKY: They are standing
issues.

COMMISSIONER Kladney: They're not factual issues. I mean they're factual issues in the sense of standing.

MR. Torchinsky: Yes.

COMMISSIONER Kladney: But not in the sense of the case, the direct case.

MR. Torchinsky: Well, I mean essentially what Louisiana is saying hey look, this guy wasn't harmed. He's not the proper plaintiff --

COMMISSIONER Achtenberg: These are technical issues that they're testing the propriety.

MR. Torchinsky: And also the sort of procedural, the alleged procedural defect of the lack of the notice letter before the private litigation was actually filed.

Chairman Castro: Commissioner Gaziano, you have the floor.

COMMISSIONER Gaziano: Thank you, by the way, for that last response. I'm glad you got that on the record. I did want to return to your, I think, second point, Mr. Torchinsky, on the settlements that go beyond what the state is agreeing to pursue things that go beyond what the statutes require. It seems to me there are three
possibilities whenever that occurs. One is that the
record is pretty clear, because you know, in
litigation you can make a remedy go, as you know from
a Justice Department attorney, somewhat beyond what
the statute requires if there's a strong finding of
illegal conduct. So one possibility is the record is
really clear and the state is agreeing to a sort of
remedy.

A second is that if bureaucrats are
going around the normal political and economic
considerations in their own jurisdiction and seeking
to sort of impose on their state their own sort of
pet bureaucratic interest.

And a third is even more worrisome and
that's that sort of collusive suit where there might
be even a partisan reason and not just a bureaucratic
reason to do so. What are your thoughts? The first
seems okay to me. The later two, without
particularly a litigation record if that's a
possibility, seem much more problematic.

MR. TORCHINSKY: I think looking at
civil rights cases over the number of years I've been
looking at civil rights cases, I think I've seen what
both sides would point to examples of all three of
the possibilities that you throw out there. In the
really egregious behavior category, I have, particularly when I was in Civil Rights Division, saw some absolutely egregious behavior by state and local officials where, in order to make sure that they did actually fall into compliance, we imposed some pretty onerous provisions on some of these jurisdictions, often through settlement whether it was an education case, whether it was a housing discrimination case, whether it was a police department case, and the very rare circumstance, voting case. You do see absolute examples of that.

I mean one of the -- I'll just give an example that's totally outside the voting context, but there was a settlement with the State of Mississippi over its juvenile facilities when I was at the Justice Department in the Civil Rights Division. And the conditions under which these juveniles were being held were just -- deplorable would probably be putting it lightly. And we imposed some pretty strict conditions on the State of Mississippi. I think that case is certainly justified and I've seen it in the voting contexts and I've seen it in other civil rights areas.

The pet interest issue, I had seen. It's sort of like bureaucracies never stop growing.
I have seen what I believe to be cases of that. The collusive suits, I think while it's a threat, I don't know that I have seen as many sort of examples where I could point to that in the civil rights enforcement context. But I think those are all serious considerations when you're looking at civil rights suits and settlements of them and trying to figure out what interests led to particular provisions and settlement agreements.

CHAIRMAN CASTRO: Do any Commissioners have additional questions? Commissioner Yaki, go ahead.

COMMISSIONER YAKI: I was sitting here trying to figure out exactly where we just went afield in terms of this hearing, but I'm going to ask the same question I asked Commissioner Bartlett and Mr. Torchinsky and Ms. Danetz. Do you believe and just simply answer yes or no, seriously. I don't want caveats. Do you believe that Section 7 has assisted the right to vote for people in this country?

MR. TORCHINSKY: I believe the NVRA has done that. Yes, I do believe the NVRA has benefitted the right to vote.

MS. DANETZ: Yes.
COMMISSIONER YAKI: Okay.

COMMISSIONER KLANDNEY: Mr. Torchinsky, I have just one question myself and it's not yes or no. When it comes to -- in your statement you talked about the problems with keeping all the paperwork and things like that and Mr. Bartlett seemed to think that he is starting to conquer that with technology. Do you believe that can occur as well, because I noticed in the paperwork that they're required to keep in Rhode Island, it's just a check box form with a signature and obviously somebody has to tally it and send it in somewhere. But if this technology thing would come along, would your objections kind of wane from those problems?

MR. TORCHINSKY: Technology can be helpful in tracking and gathering data, obviously, but technology also comes with both an acquisition cost and a training cost in order to implement it properly. So while technology can be beneficial, it's only beneficial if it is both cost-effective and well-implemented.

CHAIRMAN CASTRO: Any additional questions from Commissioners?

COMMISSIONER ACHTENBERG: Actually, I have one question.
CHAIRMAN CASTRO: Commissioner Achtenberg and then Commissioner Yaki.

COMMISSIONER ACHTENBERG: Ms. Danetz, how many lawsuits have your organization brought in Section 7?

MS. DANETZ: We were involved -- we have brought eight of them. We are not involved in the private Louisiana lawsuit. But we have been co-counsel in the remaining eight. The six that are completed and the other two that are pending.

COMMISSIONER ACHTENBERG: And in the six that have been completed, have you prevailed?

MS. DANETZ: Yes. There are favorable settlement agreements in all of them and in all of them the Court has retained enforcement jurisdiction over the settlement agreement.

COMMISSIONER ACHTENBERG: So presumably there was something wrong and now something is being put in its place to correct the things that were wrong. Is that correct?

MS. DANETZ: Yes, absolutely.

COMMISSIONER ACHTENBERG: Thank you very much.

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Just a quick
question to follow up. Ms. Danetz, I know you haven't been involved in the litigation, but do you have any information on the actual status right now of the Louisiana litigation?

MS. DANETZ: Yes, thank you. So I would say first of all that the agencies themselves are not appealing. There was a -- the District Court had a trial. The private litigants prevailed below. There are multiple defendants, essentially the agencies and the Secretary of State. The agencies are not appealing the judgment and are, I believe, implementing the various corrective provisions. The Secretary has appealed and I think all three agencies have certified compliance. But beyond that I don't know much more. The briefing, I don't think has occurred yet.

COMMISSIONER YAKI: Thank you.

CHAIRMAN CASTRO: Any additional questions?

COMMISSIONER GAZIANO: Just state for the record that I think we invited the state's response, but because it's in litigation, they reconsidered and probably on advice of counsel decided to decline, which disappoints me a little bit because, like Mr. Torchinsky, I was quite bothered by
the reach of the discovery request and to the personal identifiable information.

COMMISSIONER KLADNEY: But that was dropped.

MS. DANETZ: That was in the Justice Department case, not in the private case, so I could be wrong.

COMMISSIONER GAZIANO: True, but I still would have liked an opportunity to talk about that request and how Louisiana successfully repulsed that outrageous demand.

CHAIRMAN CASTRO: Any additional questions?

COMMISSIONER YAKI: Strike the word repulsed.

CHAIRMAN CASTRO: If not, this brings us to the end of our program. I'd like to take the opportunity to thank all of our panelists. I appreciate, we all appreciate your participation and the information that you shared with us is tremendously helpful. I also want to personally thank the Office of General Counsel of the Commission in putting this together, especially Yasmin Elhady whose real efforts in the last couple of months to bring this briefing together have made it a success.
I also want to thank all of our staff in advance for the efforts that they're going to put into putting this information into a briefing report for our consideration at the Commission.

Lastly, the record for this briefing report is going to remain open for 30 days. If panelists or members of the public would like to submit materials or comments they can mail them to the U.S. Commission on Civil Rights, Office of the General Counsel, 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20425. Or I would recommend, just given the nature of the mail flow to our offices because of security reasons, that you email them to publiccomments@usccr.gov.

And also I will review and take under advisement your request of those reports, Commissioner Gaziano. If they are related to Section 7, the topic, then of course, we will include them, but I do want to have the opportunity to ensure that they are germane.

III. ADJOURN MEETING

CHAIRMAN CASTRO: It is now 11:06. This briefing of the U.S. Commission on Civil Rights is now adjourned.

Commissioners, we will start the meeting
at 11:15, so you have a little bit of time. Thank you.

(Whereupon, at 11:06 a.m., the briefing was concluded.)