

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

ROSEBUD SIOUX TRIBE and their members; OGLALA SIOUX TRIBE and their members; LAKOTA PEOPLE'S LAW PROJECT; KIMBERLY DILLON; and HOKSILA WHITE MOUNTAIN,

Plaintiffs,

v.

Civ. No. 5:20-cv-05058-LLP

STEVE BARNETT, in his official capacity as Secretary of State for the State of South Dakota and Chairperson of the South Dakota State Board of Elections; LAURIE GILL, in her official capacity as Cabinet Secretary for the South Dakota Department of Social Services; MARCIA HULTMAN, in her official capacity as Cabinet Secretary for the South Dakota Department of Labor and Regulation; and CRAIG PRICE, in his official capacity as Cabinet Secretary for the South Dakota Department of Public Safety,

Defendants.

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

TABLE OF CONTENTS

I. THE NATIONAL VOTER REGISTRATION ACT (“NVRA”) 1

 A. Background and Definitions 1

 B. Key Terms..... 2

 C. Relevant Statutory Provisions..... 3

 i. Section 5.....3

 ii. Section 7.....3

 iii. Other Provisions.....4

 D. Designated Voter Registration Agencies 4

II. THE PARTIES..... 6

 A. Plaintiffs..... 6

 i. Rosebud Sioux Tribe.....6

 ii. Oglala Sioux Tribe.....6

 iii. Lakota People’s Law Project7

 iv. Kimberly Dillon.....8

 v. Hoksila White Mountain.....8

 B. Defendants 9

 i. Steve Barnett, South Dakota Secretary of State.....9

 ii. Laurie Gill, Cabinet Secretary of the South Dakota Department of Social Services (“DSS”)10

 iii. Marcia Hultman, Cabinet Secretary of the South Dakota Department of Labor and Regulation (“DLR”).....10

 iv. Craig Price, Cabinet Secretary of the South Dakota Department of Public Safety (“DPS”).....11

III. PLAINTIFFS’ INVESTIGATION 11

IV. SOUTH DAKOTA COUNTIES SERVING NATIVE AMERICAN COMMUNITIES.. 13

 A. Corson County 13

 B. Hughes County..... 13

 C. Oglala Lakota County 14

 D. Todd County 15

 E. Ziebach County 16

V. COUNTY ELECTION OFFICIALS 17

VI. SOUTH DAKOTA SECRETARY OF STATE (“SOS”)..... 17

 A. Section 5..... 17

 B. Section 7..... 23

 C. Training and Oversight of County Auditors 29

D. Data Reporting	32
E. Use of Agency Codes on Voter Preference and Voter Registration Forms.....	35
VII. SECTION 5 VIOLATIONS BY DPS AND SOS	37
A. Changes of Address	37
B. Applicants Lacking a South Dakota Driver’s License or Social Security Number....	39
C. Services at Driver’s Licensing Travel Offices and Issue Sites	40
D. Transmission of Voter Registration Applications to County Auditors.....	42
E. Training.....	42
F. Compliance and Oversight.....	43
VIII. SECTION 7 VIOLATIONS BY DSS	45
A. Procedures for Providing Services to Individuals Who Leave Voter Preference Question Blank.....	45
B. Agency Assistance to Individuals in Completing Voter Registration Applications...	47
C. Change of Address Requests	47
D. Procedures for Individuals Without a USPS Address.....	49
E. Lack of Voter Registration Services for Some Covered Transactions	49
F. Lack of Voter Registration Services for Some Public Assistance Programs.....	50
G. Voter Assistance at Local DSS Offices	51
H. DSS Transmission of Voter Registration Applications to County Auditors	52
I. Compliance and Oversight	55
J. Training	59
IX. SECTION 7 VIOLATIONS BY DLR.....	62
X. FAILURE TO REMEDY PAST VIOLATIONS	65
XI. LACK OF VOTER REGISTRATION SERVICES TO INDIVIDUALS WITH CONVICTION HISTORIES	65

LIST OF EXHIBITS

All exhibits are attached to the Attorney Declaration of Samantha Kelty filed concurrently with Plaintiffs' Motion for Summary Judgment and this Statement of Undisputed Material Facts.

- Exhibit 1 Excerpts of Transcript of Rule 30(b)(6) Deposition of Kea Warne (for South Dakota Secretary of State) ("Warne Deposition")
- Exhibit 2 Selected Exhibits from Warne Deposition
- Exhibit 3 Excerpts of Transcript of Rule 30(b)(6) Deposition of Bill McEntaffer (for South Dakota Department of Labor and Regulation) ("McEntaffer Deposition")
- Exhibit 4 Selected Exhibits from McEntaffer Deposition
- Exhibit 5 Transcript of video of NVRA session at October 2021 County Auditor Workshop
- Exhibit 6 Excerpts of Transcript of the Deposition of Monica Marie Nardi ("Nardi Deposition")
- Exhibit 7 Excerpts of Transcript of the Deposition of Rhonda Barker ("Barker Deposition")
- Exhibit 8A S.D. Dep't of Labor & Regulation webpages:
- Job Search Tools: Supplemental Nutrition Assistance Program (SNAP), https://dlr.sd.gov/localoffices/job_search_tools/snap.aspx (printed Feb. 9, 2022)
 - Job Search Tools, https://dlr.sd.gov/localoffices/job_search_tools/default.aspx (printed Feb. 3, 2022)
 - Job Search Tools: Temporary Assistance for Needy Families (archived on Jan. 30, 2022 on Internet Archive Wayback Machine, web.archive.org)
 - Job Search Tools: Temporary Assistance for Needy Families (TANF) (archived Aug. 27, 2020 on Internet Archive Wayback Machine, web.archive.org)
 - Job Search Tools: Temporary Assistance for Needy Families (TANF) (archived Sept. 27, 2021 on Internet Archive Wayback Machine, web.archive.org)

- Exhibit 8B County websites:
- Oglala Lakota County, SD, <https://oglalalakota.sdcounties.org/> (printed Feb. 9, 2022)
 - Fall River County, SD, Auditors & Welfare Office, <https://fallriver.sdcounties.org/auditors-welfare-office/> (printed Feb. 9, 2022)
- Exhibit 8C S.D. Dep't of Public Safety, Driver Licensing Locations, <https://dps.sd.gov/contact/locations?agency=5> (printed Feb. 9, 2022)
- Exhibit 9 Plaintiffs' June 26, 2020 letter to S. Barnett & L. Ringling
- Exhibit 10 Excerpts of Transcript of Rule 30(b)(6) Deposition of Julie Miller (for South Dakota Department of Social Services) ("Miller Deposition")
- Exhibit 11 Selected Exhibits from Miller Deposition
- Exhibit 12 Excerpts of Transcript of Rule 30(b)(6) Deposition of Jane Schrank (for South Dakota Department of Public Safety) ("Schrank Deposition")
- Exhibit 13 Selected Exhibits from Schrank Deposition
- Exhibit 14 Excerpts of Transcript of Deposition of Tammy Bertolotto ("Bertolotto Deposition")
- Exhibit 15 Excerpts of Transcript of Deposition of Jane Naylor ("Naylor Deposition")
- Exhibit 16 Excerpts of Transcript of Deposition of Barb DeSersa ("DeSersa Deposition") and Selected Exhibits
- Exhibit 17 Excerpts of Transcript of Deposition of Cindy Longbrake ("Longbrake Deposition") and Selected Exhibits
- Exhibit 18 Office of the Bennett County Auditor, Invalid or Incomplete Voter Registration Acknowledgment Notices
- Exhibit 19A Responses of Steve Barnett to Plaintiffs' Interrogatories and Requests for Admissions
- Exhibit 19B Responses of Laurie Gill to Plaintiffs' Interrogatories and Requests for Production of Documents
- Exhibit 19C Response of Craig Price to Plaintiffs' Interrogatories and Requests for Admissions
- Exhibit 20 2021 County Auditor workshop agenda

- Exhibit 21 Lyman County responses to the subpoena with number of voter registrations for DSS and DPS
- Exhibit 22 U.S. Election Assistance Comm'n, EAVS Data Brief, South Dakota (2016)
- Exhibit 23 U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2018 Comprehensive Report: A Report to Congress* (2019) (excerpts)
- Exhibit 24 U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections For Federal Office 2003-2004* (Table 2) (2005)
- Exhibit 25 Declaration of Pamela Cataldo
- Exhibit 26 Declaration of Kevin Killer
- Exhibit 27 Declaration of Scott Herman
- Exhibit 28 Declaration of Hoksila White Mountain
- Exhibit 29 Declaration of Kimberly Dillon
- Exhibit 30 Declaration of Chase Iron Eyes
- Exhibit 31 Supplemental Declaration of Kimberly Dillon

Under Rule 56.1 of the Federal Rules of Civil Procedure and Local Rule 56.1(A), Plaintiffs respectfully submit the following statement of material facts, as to which there is no genuine issue to be tried, in connection with Plaintiffs' Motion for Summary Judgment.

I. THE NATIONAL VOTER REGISTRATION ACT ("NVRA")

A. Background and Definitions

1. The National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. §§ 20501–20511, is a federal law that took effect on January 1, 1995, Pub. L. 103–31, §13, May 20, 1993, 107 Stat. 89.

2. When it passed the NVRA, Congress found that:

- (1) the right of citizens of the United States to vote is a fundamental right;
- (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and
- (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

52 U.S.C. § 20501(a).

3. In passing the NVRA, Congress intended, *inter alia*, "(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office; [and] (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b).

4. Section 5 of the NVRA, 52 U.S.C. § 20504 ("Section 5"), also known as the NVRA's "Motor Voter" provision, was intended to further Congress' objective of increasing the number of eligible citizens who register to vote by incorporating voter registration into the driver's licensing process. *See* S. Rep. No. 103-6, at 5 (1993).

5. Section 7 of the NVRA, 52 U.S.C. § 20506 (“Section 7”), was intended by Congress to ensure that voter registration “will be convenient and readily available [for] the poor . . . who do not have driver’s licenses and will not come into contact with the other princip[al] place to register under this Act” by making voter registration available at public benefits offices and other locations. H.R. Rep. No. 103-66, at 19 (1993), *reprinted in* 1993 U.S.C.C.A.N. 140, 144 (Conf. Rep.).

B. Key Terms

6. A “covered agency” is any state office or agency required to provide voter registration services under Sections 5 or 7 of the NVRA, including any “voter registration agency” as defined by the NVRA.

7. A “covered transaction” is any interaction at a covered agency during which voter registration services must be provided under the NVRA, whether conducted in person or remotely. Under Section 5, covered transactions include a driver’s license application (including any renewal application” and a change of address. 52 U.S.C. §§ 20504(a)(1), (d). Under Section 7, covered transactions include public assistance benefits applications, renewals, recertifications, and changes of address. 52 U.S.C. § 20506(a)(6).

8. “Voter registration application” means any application, form, or card, or any portion thereof, through which an individual can register to vote or update their voter registration, including the “mail voter registration form” described in 52 U.S.C. § 20508(b) or an equivalent form.

C. Relevant Statutory Provisions

i. Section 5

9. Section 5 requires state motor vehicle agencies and driver's license offices provide voter registration services in connection with driver's license applications, renewals, and change of address transactions. 52 U.S.C. § 20504.

10. Section 5 requires that "[e]ach State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application" and that "[a]n application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant." 52 U.S.C. § 20504(a).

11. Under Section 5, "[e]ach State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license." 52 U.S.C. § 20504(c)(1).

12. With respect to change of address transactions, Section 5 requires that "[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes." 52 U.S.C. § 20504(d).

ii. Section 7

13. Under Section 7, a "voter registration agency" is any agency designated by a state "for the registration of voters in elections for Federal office," which must include "all offices in the State that provide public assistance" and "all offices in the State that provide State-funded

programs primarily engaged in providing services to persons with disabilities.” 52 U.S.C. §§ 20502(5), 20506(a)(1)-(2).

14. Under Section 7, a voter registration agency that provides public assistance benefits or services must provide voter registration services in connection with each application, recertification, renewal, or change of address in connection with a public assistance benefit or service provided by the agency. 52 U.S.C. § 20506(a)(6)(A).

15. Section 7 further requires that, for each covered transaction, a voter registration agency provide a form containing the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?” (the “voter preference question”) and the other required language contained in 42 U.S.C. § 20506(a)(6)(B). The required form is referred to as a “voter preference form” and is sometimes referred to by South Dakota agencies as a “declination form.”

iii. Other Provisions

16. The NVRA requires that “[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities” under the NVRA. 52 U.S.C. § 20509.

D. Designated Voter Registration Agencies

17. South Dakota has designated as voter registration agencies those offices and locations identified by S.D. Codified Laws § 12-4-2, which states:

Voter registration shall be conducted by each county auditor and municipal finance officer. Voter registration shall be available at the secretary of state’s office and at those locations which provide driver licenses; food stamps; temporary assistance for needy families; women, infants, and children nutrition program; medicaid; military recruitment; and assistance to the disabled as provided by the Department of Human Services.

18. In South Dakota, the Department of Public Safety (“DPS”) is the State’s driver’s licensing authority. *See* S.D. Codified Laws §§ 32-12-2, 32-12-3.2, 32-12-4, 32-12-11, 32-12-17.

19. In South Dakota, “locations which provide driver licenses” include DPS offices and “issue sites” operated by local or county government offices, or by other entities, under agreements with DPS. Ex. 13 (Ex. 4 to Schrank Dep.).

20. In South Dakota, the Department of Social Services (“DSS”) is the agency responsible for determining eligibility for and administering “food stamps” (now known as Supplemental Nutrition Assistance Program, or SNAP, benefits) and Temporary Assistance for Needy Families (“TANF”) benefits, among other public assistance programs. S.D. Codified Laws § 28-1-1.

21. The South Dakota Department of Labor and Regulations (“DLR”) administers the employment and job training components of the TANF and SNAP programs, as well as a range of public assistance programs under the federal Workforce Innovation and Opportunity Act (“WIOA”). Ex. 3 (McEntaffer Dep. 33:20-34:11, 62:1-3, 78:9-19, 79:1-6, 82:3-83:7, 85:1-86:22, 87:1-21, 97:1-98:12, 101:11-21, 105:15-22, 106:1-107:22, 108:1-20, 142:12-22, 172:13-173:20, 177:1-9, 178:10-179:22); Ex. 4 (McEntaffer Dep. Exs. 11, 12, Vol. 2 Exs. 1, 2); Ex. 8A (DLR, S.D. Website, https://dlr.sd.gov/localoffices/job_search_tools/default.aspx).

22. DLR does not consider itself a public assistance agency and believes that it has no responsibilities under the NVRA. Ex. 4 (McEntaffer Dep. 30:9-15, 58:10-59:1, 148:20-22, 149:1-22, 150:1-7).

23. In South Dakota, the Women, Infants and Children (“WIC”) nutrition program is administered by the South Dakota Department of Health. Ex. 10 (Miller Dep. 208:19-209:10, 214:21-215:4); *see also* South Dakota WIC, <https://sdwic.org/>.

II. THE PARTIES

A. Plaintiffs

i. Rosebud Sioux Tribe

24. The Rosebud Sioux Tribe is a federally recognized Indian tribe that exercises powers of self-governance, self-determination, and jurisdiction over the Rosebud Indian Reservation in South Dakota. Ex. 27 (Decl. of Scott Herman ¶ 3 (“Herman Decl.”)).

25. The Rosebud Sioux Tribe is responsible for protecting the health, safety, and welfare of its approximate 35,354 enrolled members. Ex. 27 (Herman Decl. ¶ 3).

26. During the 2020 election, the Tribe provided Todd County an office space for early voting and registration, and the Tribe provides volunteers to assist with voter registration. Ex. 27 (Herman Decl. ¶¶ 15, 16).

27. 55 percent of Rosebud Reservation residents live below the poverty line and the median household income is \$24,331, and a similar percentage receive public assistance through State agencies including DSS. Ex. 27 (Herman Decl. ¶ 27).

ii. Oglala Sioux Tribe

28. The Oglala Sioux Tribe is a federally recognized Indian tribe that exercises powers of self-governance, self-determination, and jurisdiction over the Pine Ridge Reservation in South Dakota. Ex. 26 (Decl. of Kevin Killer ¶ 3 (“Killer Decl.”)).

29. The Oglala Sioux Tribe is responsible for protecting the health, safety, and welfare of its 46,822 enrolled members. (Killer Decl. ¶ 3).

30. Approximately 90 percent of Oglala Lakota Tribe members receive public assistance benefits from DSS. (Killer Decl. ¶ 21).

iii. Lakota People's Law Project

31. Plaintiff Lakota People's Law Project ("Lakota Law") is a project of the Romero Institute, a 501(c)(3) nonprofit interfaith law and policy center that works to protect the inherent sovereignty and the right to autonomous rule and self-determination of Native peoples, with a particular focus on Lakota communities of North Dakota and South Dakota. Ex. 30 (Decl. of Chase Iron Eyes ¶ 3 ("Iron Eyes Decl.")).

32. As a core part of our mission of elevating the voices of Native peoples, Lakota Law has long worked to protect voting rights and expand voter participation of Native peoples in South Dakota. Ex. 30 (Iron Eyes Decl. ¶ 4).

33. Lakota Law has five staff based in South Dakota. Of these, four work on voting rights and voter registration issues. Ex. 30 (Iron Eyes Decl. ¶ 5).

34. Lakota Law has operated on nearly every tribal nation in South Dakota and spoken with thousands of tribal citizens in the state. Ex. 30 (Iron Eyes Decl. ¶ 7).

35. Lakota Law diverted resources from its 2020 phone banking operations to focus on registering voters and updating addresses for tribal members in South Dakota. Ex. 30 (Iron Eyes Decl. ¶¶ 13-14).

36. To counteract Defendants' failure to provide voter registration services under the NVRA to tribal citizens, Lakota Law has diverted and expended staff time and resources to engage in voter registration targeted at tribal citizens, assisting voters with updating their addresses, and investigating claims by individuals receiving public assistance who believed they were registered to vote but were turned away from the polls in recent elections, and plan to continue these activities through the 2022 election if Defendants' violations are not cured. Ex. 30 (Iron Eyes Decl. ¶¶ 9-11, 16-17).

37. The time and resources Lakota Law spent on these activities was diverted from the organization's other mission-critical voter engagement work in South Dakota and other states, including reducing the time and resources the organization can spend on its get-out-the-vote efforts in South Dakota and other states. Ex. 30 (Iron Eyes Decl. ¶¶ 12-16).

iv. Kimberly Dillon

38. Kimberly Dillon is a member of the Rosebud Sioux Tribe. Ex. 29 (Decl. of Kimberly Dillon ¶ 2 ("Dillon Decl.")).

39. Ms. Dillon currently resides in Rapid City, South Dakota. Ex. 31 (Supp. Decl. of Kimberly Dillon ¶ 1 ("Dillon Supp. Decl.")).

40. Ms. Dillon was turned away from the polls in Todd County as unregistered in 2020 due to a failure of the DSS office in Mission, South Dakota to update her address. Ex. 29 (Dillon Decl. ¶¶ 8-10, 12, 15); Ex. 31 (Dillon Supp. Decl. ¶¶ 6-9).

41. She fears that, given a recent move, when she has to change her address that it will not be correctly processed again. Ex. 29 (Dillon Decl. ¶ 10); Ex. 31 (Dillon Supp. Decl. ¶ 11).

v. Hoksila White Mountain

42. Plaintiff Hoksila White Mountain is a member of the Standing Rock Sioux Tribe. Ex. 28 (Decl. of Hoksila White Mountain ¶ 1 ("White Mountain Decl.")).

43. Mr. White Mountain resides in McLaughlin, South Dakota. Ex. 28 (White Mountain Decl. ¶ 1).

44. Mr. White Mountain is a former candidate for mayor and current member of the City Council in McLaughlin. Ex. 28 (White Mountain Decl. ¶¶ 2-3).

45. Mr. White Mountain received SNAP benefits for 2 to 3 years. He conducted recertifications in the Mobridge DSS office. Mobridge is near McLaughlin in neighboring Walworth County. He was never offered an opportunity to register to vote during those transactions. Ex. 28 (White Mountain Decl. ¶ 6). He also was not offered an opportunity to register to vote when he applied for a driver's license in McIntosh on September 12, 2017; instead, when he asked to register to vote, they sent him down the hall to a separate office where he registered. Ex. 28 (White Mountain Decl. ¶ 6).

46. After finally becoming registered to vote, in 2020, Mr. White Mountain ran for mayor of McLaughlin. In February 2020, city officials rejected his initial petition to qualify for the ballot, alleging that 11 of the 28 signatures he submitted were invalid because the signatories, who included DSS clients, were not registered to vote in Corson County. Ex. 28 (White Mountain Decl. ¶ 3).

B. Defendants

i. Steve Barnett, South Dakota Secretary of State

47. Steve Barnett is the Secretary of State of the State of South Dakota ("Secretary of State" or "SOS"). Answer to Am. Compl. ¶ 68, ECF No. 47.

48. As Secretary of State, Secretary Barnett is the Chairperson of the South Dakota State Board of Elections. S.D. Codified Laws § 12-1-5; Answer to Am. Complaint ¶ 68, ECF No. 47.

49. In South Dakota, the Secretary of State serves as the State's chief state election official. Ex. 1 (Warne Dep. 22:1-4, 120:19-5); 52 U.S.C. § 20509; S.D. Codified Laws § 12-4-33).

50. As the State's chief state election official, Secretary Barnett has the duty to coordinate and enforce compliance with the NVRA by the State and its agencies. Ex. 1 (Warne Dep. 22:1-4, 120:19-5); 52 U.S.C. § 20509; S.D. Codified Laws § 12-4-33.

51. Secretary Barnett acknowledges public assistance agencies in South Dakota serve populations that are less likely to have a driver's license than average South Dakota residents and thus less likely to visit driver's license offices or use those offices' services. Ex. 1 (Warne Dep. 127:20-128:7).

ii. Laurie Gill, Cabinet Secretary of the South Dakota Department of Social Services ("DSS")

52. Laurie Gill is the Cabinet Secretary of the South Dakota Department of Social Services ("DSS"). Answer to Am. Compl. ¶ 70, ECF No. 47.

53. DSS administers the Supplemental Nutrition Assistance Program (SNAP); Temporary Assistance for Needy Families (TANF); Medical Assistance Programs, which include Medicaid, long-term care programs, and the Children's Health Insurance Program (CHIP); Child Care Assistance Programs; and the Low-Income Energy Assistance Program (LIEAP). Ex. 10 (Miller Dep 20:4-21:1, 21:16-22); Ex. 19B (Gill Resp. to Interrog. No. 1).

54. As a public assistance agency, DSS is a voter registration agency covered by Section 7 of the NVRA and is so designated by South Dakota law. 52 U.S.C. § 20506(a)(2)(A); S.D. Codified Laws § 12-4-2; Answer to Am. Compl. ¶ 70, ECF No. 47.

iii. Marcia Hultman, Cabinet Secretary of the South Dakota Department of Labor and Regulation ("DLR")

55. Marcia Hultman is the Cabinet Secretary of the South Dakota Department of Labor and Regulation ("DLR"). Answer to Am. Compl. ¶ 71, ECF No. 47; Ex. 4 (McEntaffer Dep. Ex. 4 ¶ 24).

56. DLR administers public assistance benefits and services under TANF, SNAP, and WIOA. Ex. 3 (McEntaffer Dep. 30:9-15, 33:20-34:11, 58:10-59:1, 62:1-3, 78:9-19, 79:1-6, 82:3-83:7, 85:1-86:22, 87:1-21, 97:2-98:12, 101:11-21, 105:15-22, 106:1-107:22, 108:1-20, 109:5-20, 110:1-3); Ex. 4 (McEntaffer Dep. vol. 2 Ex. 3); Ex. 3 (McEntaffer Dep. 143:6-14, 142:12-22, 148:20-22, 149:1-22, 150:1-7, 172:13-173:20, 177:1-9, 178:10-179:22); Ex. 4 (McEntaffer Dep. vol. 1 Exs. 11, 12, vol. 2 Exs. 1, 2); Ex. 8A ((DLR, S.D. Website, https://dlr.sd.gov/localoffices/job_search_tools/default.aspx).

iv. Craig Price, Cabinet Secretary of the South Dakota Department of Public Safety (“DPS”)

57. Craig Price is the Cabinet Secretary of the South Dakota Department of Public Safety (“DPS”). Ex. 12 (Schrank Dep. 29:14-15); Answer to Am. Compl. ¶ 69, ECF No. 47.

58. As Secretary of DPS, Defendant Price is responsible for ensuring that DPS provides registration opportunities required pursuant to Section 5 of the NVRA and South Dakota law. *See* 52 U.S.C. § 20504; S.D. Codified Laws § 12-4-2.

59. As South Dakota’s driver’s licensing authority, DPS is covered by Section 5 of the NVRA. NVRA, 52 U.S.C. § 20504; Answer to Am. Compl. ¶ 69, ECF No. 47.

III. PLAINTIFFS’ INVESTIGATION

60. Plaintiffs’ counsel investigated South Dakota’s compliance with Sections 5 and 7 of the NVRA by examining data submitted by South Dakota to the U.S. Election Assistance Commission; examining public assistance agencies’ forms, policies, and practices; requesting and reviewing public records related to South Dakota’s Section 7 policies and practices; and conducting a field investigation by visiting DSS offices and speaking with public assistance clients in and around tribal reservations. Am. Compl. Ex. A, ECF 44-1.

61. Plaintiffs notified Defendants of their violations of Section 5 and Section 7 of the NVRA by letter dated May 20, 2020. Am. Compl. Ex. A, ECF 44-1.

62. DSS responded to Plaintiffs' May 20, 2020, notice letter on June 5, 2020. Ex. 11 (Miller Dep. Ex. 18 (DSS_04014-016)). SOS, DPS, and DLR did not respond separately to Plaintiffs' Notice Letter prior to the filing of the Complaint in this action.

63. Plaintiffs replied to DSS's June 5, 2020, Resp. letter on June 26, 2020. In that letter, Plaintiffs took note of DSS's June 5, 2020 Resp., and explained the respects in which it was insufficient to remedy the violations identified in the May 20, 2020 notice letter. Plaintiffs' June 26, 2020 letter further explained the specifics that would be needed to avoid litigation. Ex. 9 (Pls.' June 26, 2020 Letter).

64. DSS did not respond to Plaintiffs' June 26, 2020, reply letter. Ex. 10 (Miller Dep. 255:19-256:3).

65. DSS leadership was not involved in any discussions about the requests Plaintiffs made in their June 26, 2020, reply letter on how Defendants could achieve compliance with the NVRA. Ex. 10 (Miller Dep. 258:8-258:17).

66. DSS leadership is unaware of any specific objections to the requests made by Plaintiffs in their June 26, 2020, reply letter. Ex. 10 (Miller Dep. 258:8-258:17).

67. Other than DSS, the other Defendants did not respond on their own to Plaintiffs' May 20, 2020, notice letter or June 26, 2020, reply letter at any point. Answer to Am. Compl. ¶ 7, ECF No. 47.

IV. SOUTH DAKOTA COUNTIES SERVING NATIVE AMERICAN COMMUNITIES

A. Corson County

68. Corson County is a rural county located entirely within the boundaries of the Standing Rock Indian Reservation, where the Standing Rock Sioux Tribe is located. Ex. 14 (Bertolotto Dep. 24:9-21).

69. The majority of Corson County's residents are Native American. Ex. 14 (Bertolotto Dep. 25:9-15); *see also* U.S. Census Bureau, *Corson County, South Dakota* (Race and Ethnicity section), <https://data.census.gov/cedsci/profile?g=0500000US46031>.

70. The current Corson County auditor, Tammy Bertolotto, was appointed to that position in 2013 and reelected several times since. Ex. 14 (Bertolotto Dep. 17:13-19:7).

71. The current staff in the Corson County auditor's office are Ms. Bertolotto and her deputy auditor. Ex. 14 (Bertolotto Dep. 21:22-22:8).

72. Neither Ms. Bertolotto nor her deputy are Native American. Ex. 14 (Bertolotto Dep. 23:3-5).

B. Hughes County

73. Hughes County is located in central South Dakota and is the home of the state's capital, Pierre. Ex. 15 (Naylor Dep. 19:1-7).

74. Hughes County's Native American population is 12.1 percent. *See* U.S. Census Bureau, *Quick Facts: Hughes County, South Dakota* (2021), <https://www.census.gov/quickfacts/fact/table/hughescountysouthdakota/PST045221> (Race and Hispanic Origin section).

75. The Hughes County auditor's office includes the finance officer/auditor and two deputy auditors. Ex. 15 (Naylor Dep. 16:21-17:1, 17:16-19).

76. None of the Hughes County auditor's office employees is Native American. Ex. 15 (Naylor Dep. 18:16-18).

C. Oglala Lakota County

77. Oglala Lakota County is a county in southwestern South Dakota. The county is located entirely within the Pine Ridge Indian Reservation. Many of the county's residents are members of the Oglala Lakota tribe. Ex. 8B. (Oglala Lakota Cnty., S.D. Website, <https://oglalalakota.sdcounties.org/>).

78. Pine Ridge is a city in Oglala Lakota County. Pine Ridge is on the Pine Ridge Reservation. Ex. 26 (Killer Decl. ¶¶ 5, 8).

79. Oglala Lakota County's population is 92.4% Native American. *See* U.S. Census Bureau, *Quick Facts: Oglala Lakota County, South Dakota* (2021), <https://www.census.gov/quickfacts/oglalalakotacountysouthdakota>.

80. Oglala Lakota County does not have its own county seat. Ex. 8B (Oglala Lakota Cnty., S.D. Website, <https://oglalalakota.sdcounties.org/>).

81. Because Oglala Lakota County does not have its own county seat, its administrative center is in Hot Springs in neighboring Fall River County. Ex. 8B (Oglala Lakota Cnty., S.D. Website, <https://oglalalakota.sdcounties.org/>).

82. The Fall River County auditor serves as the county auditor for Oglala Lakota County. Ex. 8B (Oglala Lakota Cnty., S.D., Auditors & Welfare Office, <https://oglalalakota.sdcounties.org/auditors-welfare-office/>; Fall River Cnty., S.D., Auditors & Welfare Office, <https://fallriver.sdcounties.org/auditors-welfare-office/>).

83. Fall River County's population is 6.8 percent Native American. U.S. Census Bureau, *Quick Facts: Fall River Cnty., S.D.* (2021), <https://www.census.gov/quickfacts/fact/table/fallrivercountysouthdakota/HSD410219>.

D. Todd County

84. Todd County is located in southern South Dakota, entirely within the Rosebud Indian Reservation. Ex. 27 (Herman Decl. ¶ 3).

85. Todd County's population is 86.8 percent Native American. U.S. Census Bureau, *Quick Facts: Todd County, S.D.* (2021), <https://www.census.gov/quickfacts/fact/table/toddcountysouthdakota/PST045221>.

86. Todd County is unincorporated and does not have its own county seat. Ex. 27 (Herman Decl. ¶¶ 3, 7); *see also* Statistical Atlas, *Overview of Todd County, South Dakota*, <https://statisticalatlas.com/county/South-Dakota/Todd-County/Overview>.

87. Because Todd County does not have its own county seat, Winner, South Dakota, in neighboring Tripp County, serves as the administrative center for Todd County. Ex. 27 (Herman Decl. ¶ 6).

88. Residents of Todd County rely on Tripp County for various services, including county auditor services, under a contract with Tripp County. Ex. 11 (Warne Dep. Ex. 4) (Contract for the Provision of Governmental Services to Todd County, December 6, 2017, ¶ 3)).

89. Barbara DeSersa is the Tripp and Todd County Auditor and has held that position since 2014. Ex. 16 (DeSersa Dep. 13:16-19).

90. The two offices have three employees: Ms. DeSersa and two Deputy Auditors. Ex. 16 (DeSersa Dep. 16:13-19). One deputy handles Tripp County and one deputy handles Todd County. Ex. 16 (DeSersa Dep. 26:15-27:2).

91. One staff member of the Tripp/Todd County auditor's office is Native American. Ex. 16 (DeSersa Dep. 17:4-6).

E. Ziebach County

92. Ziebach County is a rural county located in northwestern South Dakota. Ex. 17 (Longbrake Dep. 19:20-20:4).

93. Ziebach County is located entirely within the borders of the Cheyenne River Sioux Reservation. Ex. 17 (Longbrake Dep. 20:5-13).

94. Ziebach County has approximately 2,400 residents. U.S. Census Bureau, *Quick Facts: Ziebach Cnty., S.D.* (People section) (2021), <https://www.census.gov/quickfacts/fact/table/ziebachcountysouthdakota/PST045221>.

95. 71.1 percent of Ziebach County's residents are Native American. U.S. Census Bureau, *Quick Facts: Ziebach Cnty., S.D.* (Race and Hispanic Origin section) (2021), <https://www.census.gov/quickfacts/fact/table/ziebachcountysouthdakota/PST045221>.

96. The only major town or city in Ziebach County is Dupree, the county seat. Ex. 17 (Longbrake Dep. 21:12-17).

97. The current Ziebach County auditor, Cindy Longbrake, has served as county auditor since 1990. She joined the office in 1985 as deputy auditor. Ex. 17 (Longbrake Dep. 14:3-13).

98. There is only one DSS office in Ziebach County. The office is located in the courthouse in Dupree and is only open one day per week. Ex. 17 (Longbrake Dep. 25:10-12, 29:19-30:2).

99. Ms. Longbrake is not Native American. Ex. 17 (Longbrake Dep. 18:15-18).

V. COUNTY ELECTION OFFICIALS

100. In South Dakota, county auditors are county officials whose responsibilities include administering elections and processing voter registration applications, including those transmitted by covered agencies. S.D. Codified Laws § 12-4-2; Ex. 14 (Bertolotto Dep. 17:4-11); Ex. 15 (Naylor Dep. 16:1-8); Ex. 17 (Longbrake Dep. 13:9-14:2, 15:7-18); Ex. 16 (DeSersa Dep. 14:21:15:22); Ex. 1 (Warne Dep. 61:18-22; 70:9-15; 81:5-12).

101. County auditor offices enter all voter registration applications, including those transmitted by covered agencies, into TotalVote, the state's electronic voter registration system. Ex. 17 (Longbrake Dep. 12:13-16, 15:7-13, 15:19-16:4); Ex. 1 (Warne Dep. 70:9-15; 78:14-80:2).

102. County auditor offices have no way to confirm whether a state agency transmitted voter registration applications to that office, if there were problems with a voter registration application being transmitted from a state agency, or if an agency failed to enter or transmit a voter registration application correctly. Ex. 14 (Bertolotto Dep. 61:11-16, 63:14-17); Ex. 17 (Longbrake Dep. 76:9-13).

VI. SOUTH DAKOTA SECRETARY OF STATE ("SOS")

A. Section 5

103. SOS describes its enforcement duties under the NVRA as: (a) "provid[ing] the information for the agencies to be able to fulfill the requirements of NVRA," (b) "provid[ing] training for DPS examiners at their annual training," (c) "updat[ing] declination forms," (d) "work[ing] with DPS to update the driver's license form." Ex. 1 (Warne Dep. 21:17-22:15).

104. SOS concedes that if various agencies are not complying with their responsibilities under the NVRA, the Secretary “probably” has a responsibility to take corrective action under the NVRA. Ex. 1 (Warne Dep. 22:16-20).

105. SOS is aware of recurring problems with DPS offices processing voter registration applications since at least 2018, including entering the wrong city or county on an application, sending applications to the wrong county auditor’s office, entering an incorrect or old address for the voter, and not submitting the voter registration application at all, resulting in some individuals not being registered despite their effort to do so through a DPS office. Ex. 1 (Warne Dep. 324:2-327:3); Ex. 2 (Warne Dep. Ex. 43).

106. SOS is aware that county auditors routinely see errors in the voter registration applications submitted by DPS. Ex. 1 (Warne Dep. 82:18-83:3).

107. If a voter believes they registered to vote at a driver’s license office but do not appear on the voter rolls, county auditors may contact SOS to pull the individual’s driver’s license application or renewal form to determine whether the individual actually registered. SOS has no formal system for logging how many times it has received requests for assistance in pulling applications or curing errors on voter registration applications submitted through DPS. Ex. 1 (Warne Dep. 84:15-18, 87:15-19).

108. Although DPS sends voter registration files containing errors to county auditors on a regular basis, SOS has no knowledge of how often counties are curing those errors using SOS’s recommended procedure of contacting SOS to pull original applications. Ex. 1 (Warne Dep. 87:7-14).

109. SOS believes that DPS transmits voter registration applications to the wrong county “a few times every couple of weeks,” but SOS does not formally track how frequently

this occurs. Ex. 1 (Warne Dep. 94:12-95:2, 96:9-22, 97:5-8); Ex. 19A (Barnett Resp. to Interrog. No. 1).

110. SOS does not know how often DPS transmits voter applications to the wrong county. Ex. 1 (Warne Dep. 94:12-95:2, 96:9-22, 97:8); Ex. 19A (Barnett Resp. to Interrog. No. 1).

111. SOS does not know how often, or if, wrongly transmitted DPS applications are corrected. Ex. 1 (Warne Dep. 94:12-95:2, 96:9-22, 97:5-8); Ex. 19A (Barnett Resp. to Interrog. No. 1).

112. In June 2018, around the time of the 2018 primary election, SOS learned of eight voters whose applications through DPS were not appearing in the TotalVote system, at least six of whom had not been entered in TotalVote by the DPS examiners that processed the applications. Ex. 1 (Warne Dep. 305:10-308:14); Ex. 2 (Warne Dep. Ex. 40). SOS is currently unaware of whether those individuals were successfully registered to vote or permitted to cast a ballot in the June 2018 primary. Ex. 1 (Warne Dep. 307:22-308:19). SOS does not recall following up with, taking any corrective action against, or monitoring or auditing DPS to address these specific issues or to assess whether these problems indicated a systemic issue. Ex. 1 (Warne Dep. 311:12-312:6).

113. In 2019, SOS identified a problem with bPro, the electronic system in which DPS examiners enter voter registration data. The system was automatically populating the date field with the current date, not the date the voter completed the voter registration form. A DPS examiner needed to manually change the date for it to be correct, but SOS notified DPS that its examiners were not always making this change. Ex. 1 (Warne Dep. 330:7-332:3, 333:9-19); Ex. 2 (Warne Dep. Ex. 44).

114. SOS is unaware of whether such a change was ever implemented. Ex. 1 (Warne Dep. 333:20-335:4).

115. SOS was aware that DPS's issues with incorrect date field entry persisted until at least Spring 2020. Ex. 1 (Warne Dep. 335:10-339:10).

116. SOS has not followed up with DPS on this issue or monitored or audited whether the issue has been addressed, and has deferred entirely to DPS to correct the issue. Ex. 1 (Warne Dep. 339:11-340:9).

117. SOS is unaware of any systematic changes made by DPS to improve its processing of voter registration applications after a significant number of problems in 2018. Ex. 1 (Warne Dep. 327:22-329:1).

118. DPS is not aware of any system the Secretary of State uses to evaluate compliance at DPS. Ex. 12 (Schrank Dep. 164:4-9). Other than training, assistance with application verbiage, and reviewing registrations, the Secretary of State plays no role in DPS's NVRA compliance. Ex. 12 (Schrank Dep. 167:2-19).

119. A voter without a United States Postal Service ("USPS") mailing address may register to vote by providing either a physical address or description of where the individual is residing on the individual's voter registration application. Ex. 19A (Barnett Resp. to Interrog. No. 3); Ex. 1 (Warne Dep. 104:5-105:7).

120. The instructions on the EAC's National Voter Registration Form specifically provide a system to document the home address of applicants who live in rural areas: "Note: If you live in a rural area but do not have a street address, or if you have no address, please show where you live using the map in Box C (at the bottom of the form)." See U.S. Election

Assistance Comm'n, *Register To Vote In Your State By Using This Postcard Form and Guide*, https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf.

121. SOS has not provided training or guidance to county election officials on registering voters who do not have a USPS mailing address and need to provide a physical description of their location of residence. The manual for SOS's TotalVote system does not include any instructions on how to handle this situation. Ex. 1 (Warne Dep. 102:2-21, 104:21-105:11).

122. In training provided by SOS to DPS examiners, SOS instructs examiners that if an individual leaves the address field blank because they do not have a USPS address, the examiner should still send the application to the county auditor to process as an incomplete application. Ex. 1 (Warne Dep. 107:10-20); Ex. 19A (Barnett Resp. to Req. for Admission No. 1).

123. SOS has not instructed DPS examiners to inform an individual that they may put in a description of their location of residence on their voter registration form if they do not have a USPS address. Ex. 1 (Warne Dep. 107:21-108:3).

124. Pursuant to a South Dakota regulation, ARSD 5:02:02:21, it is SOS's policy that if a prospective voter does not have a driver's license, non-driver ID, or Social Security number, they must complete an affidavit in the county auditor's office before being permitted to register to vote. Ex. 1 (Warne Dep. 100:15-101:7).

125. SOS does not know the number of ARSD 5:02:02:21 forms (for a registrant without a driver's license, non-driver ID, or Social Security number) that were completed in each South Dakota county in any of the past five years or, of those, the number of prospective registrants who were subsequently added to the voter registration rolls. Ex. 19A (Barnett Resp. to Interrog. No. 5).

126. SOS does not track the use of ARSD 5:02:02:21 forms (for a registrant without a driver's license, non-driver ID, or social security number). Ex. 19A (Barnett Resp. to Interrog. No. 5).

127. SOS cannot currently track the number of voters who used an affidavit using the TotalVote system, since those forms cannot be uploaded into that system. To determine how many individuals used affidavits, SOS must request that information from county auditor offices or manually search its own records of communications from county auditors about those requests. Other than inquiring about that information in Resp. to a discovery request in this lawsuit, SOS does not track that information. Ex. 1 (Warne Dep. 206:16-208:10).

128. If an agency transmits a voter registration application without a driver's license or Social Security number, county auditors send a notice to the voter that their voter registration application was incomplete. Ex. 1 (Warne Dep. 101:8-102:1); Ex. 16 (DeSersa Dep. 27:21-28:3); Ex. 15 (Naylor Dep. 41:10-13). SOS has never sought or provided guidance to county election officials about whether this practice conflicts with the NVRA. Ex. 1 (Warne Dep. 101:8-102:1).

129. Before this lawsuit was filed, SOS did not provide any training to county auditors on the use of affidavits for individuals seeking to register to vote without a driver's license, non-driver ID, or Social Security number. Ex. 1 (Warne Dep. 208:15-210:7).

130. Currently, there is no way for individuals without a driver's license, non-driver ID, or Social Security number to know that they have the option to submit an affidavit if they are otherwise eligible to vote, unless an agency employee or voter registration official affirmatively provides them that information, which SOS does not require them to do. Ex. 1 (Warne Dep. 210:8-211:1); Ex. 2 (Warne Dep. Ex. 28); Ex. 22 (Off. of Bennett Cnty. Auditor, Invalid or Incomplete Voter Registration Acknowledgment Notices).

B. Section 7

131. SOS has no knowledge of, and does not actively monitor, DSS's processes and procedures for handling voter registration applications, including whether DSS offices correctly or timely transmit voter registration applications to county auditors as required by the NVRA Ex. 1 (Warne Dep. 63:20-64:2, 62:18-63:7); whether or how DSS handles change of address requests Ex. 1 (Warne Dep. 56:8-57:5); or whether or how DSS provides voter registration services during covered transactions made online or by telephone, Ex. 1 (Warne Dep. 57:16-58:11).

132. SOS is not aware of when a voter registration agency is required under the NVRA to present a client with the voter preference form. Ex. 1 (Warne Dep. 33:2-5, 33:14-34:13, 35:20-36:22).

133. SOS is unaware of DSS's process, if any, for providing voter registration application forms with voter preference forms to individual clients. Ex. 1 (Warne Dep. 47:14-48:16).

134. SOS has provided no guidance to DSS on when or how to ask the voter preference question to clients. Ex. 1 (Warne Dep. 37:1-5).

135. SOS does not record the number of incidents in which a voter who asserts that they registered to vote at DSS but did not appear on the voter registration rolls when they attempted to vote. Ex. 1 (Warne Dep. 28:11-29:19, 31:4-19).

136. Because SOS does not monitor DSS's compliance with its voter registration application transmittal obligations, the only way that SOS would become aware of problems with a local DSS office's transmittal of voter registration applications to county auditors would be if a member of the public complained on Election Day that they were not registered to vote as they had expected after submitting a registration form through DSS. Ex. 1 (Warne Dep. 64:3-64:20).

137. The U.S. Election Assistance Commission, using data reported by the South Dakota Secretary of State, identified an 84 percent decrease in voter registration applications generated from public assistance agencies in South Dakota between 2002 and 2018. *See* Ex. 24 (U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections For Federal Office 2003-2004*, at 23 (Table 2) (2005)); Ex. 22 (U.S. Election Assistance Comm'n, *EAVS Data Brief, South Dakota* (2016)); Ex. 23 (U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2018 Comprehensive Report: A Report to Congress*, at 65, 70 (2019)).

138. SOS acknowledges that this 84 percent decrease in voter registration applications generated from public assistance agencies from 2002 to 2018 represents a substantial decline. Ex. 1 (Warne Dep. 125:16-126:20); Ex. 2 (Warne Dep. Ex. 16).

139. SOS has never analyzed data it has reported to EAC. Ex. 1 (Warne Dep. 125:16-126:20); Ex. 2 (Warne Dep. Ex. 16).

140. In 2020, SOS was informed that two voter registration applications from local DSS offices in Oglala Lakota County were not transmitted to the county auditor for approximately one month after being completed. In the first, the voter signed and dated the form on April 15, 2020. The application was date-stamped as received by the local DSS office a week later on April 22, 2020, but did not arrive at the county auditor's office until nearly a month later on May 18, 2020. In the second, the voter signed and dated the form on April 17, 2020. The form was stamped received by the Pine Ridge DSS office on April 20, 2020; but the county auditor did not receive the application until May 18, 2020. Ex. 1 (Warne Dep. 273:19-278:6); Ex. 2 (Warne Dep. Ex. 36). After learning about this information from the Oglala Lakota County auditor's office, SOS did not take any action with respect to the county auditor or the local DSS

offices, and has not undertaken any monitoring or auditing of those offices since then. Ex. 1 (Warne Dep. 278:13-279:17, 282:7-18). SOS does not know what caused these transmission delays. Ex. 1 (Warne Dep. 279:18-280:6).

141. In another incident in which a voter missed a registration deadline because a satellite DSS office failed to comply with an NVRA requirement, SOS spoke with DSS about the issue but has not done any monitoring or follow-up on that office's compliance. Ex. 1 (Warne Dep. 284:13-285:22).

142. In another example, after SOS notified DSS in October 2020 of a recurring issue with a local DSS office in Oglala Lakota County not properly date-stamping voter registration applications on the date received, SOS has not done any follow-up with DSS to determine whether the issue has been resolved. Ex. 1 (Warne Dep. 293:7-294:8, 298:12-15); Ex. 2 (Warne Dep. Ex. 38).

143. The Lyman County auditor's office does not keep copies of incomplete voter registration applications from public assistance agencies, log how many incomplete applications it receives from those agencies, or note which DSS or other public assistance office transmitted an incomplete application. Ex. 21 (Lyman County Resps. to Subpoena).

144. The Ziebach County auditor's office does not log receipt of hard copy voter registration applications transmitted by public assistance agencies. Ex. 17 (Longbrake Dep. 50:7-11).

145. Beyond providing *ad hoc* guidance, SOS has not provided DSS other guidance on NVRA compliance. Ex. 10 (Miller Dep. 158:20-159:1, 215:22-4).

146. SOS has not provided training to DSS leadership or staff on how voter registration services should be provided in compliance with the NVRA. Ex. 10 (Miller Dep. 159:2-8).

147. DSS does not report any data or other information regarding its voter registration services to SOS. Ex. 10 (Miller Dep. 159:9-17).

148. SOS does not consider two agencies that provide public assistance—DLR and DOH—to be covered by the NVRA. Ex. 1 (Warne Dep. 229:4-14, 230:15-233:14).

149. SOS does not consider DLR to provide public assistance within the definition of the NVRA. Ex. 1 (Warne Dep. 229:4-14).

150. Even though WIC is a public assistance program covered by Section 7 and state law, DOH has not been designated under South Dakota law as a voter registration agency subject to Section 7. Ex. 1 (Warne Dep. 229:4-11, 231:4-7).

151. SOS believes that DOH is not obligated to provide voter registration services but may do so if it wishes. Ex. 1 (Warne Dep. 229:4-11, 230:15-233:14). DOH is not designated a voter registration agency. Ex. 1 (Warne Dep. 229:4-11, 231:4-7).

152. With respect to Section 7 of the NVRA, SOS has issued no guidance, created no manuals or other materials, and offered no training whatsoever to DSS and other public assistance agencies in the five years prior to September 2, 2021. Ex. 1 (Warne Dep. 120:19-121:5).

153. SOS has not provided any training to DSS staff on voter registration or NVRA compliance for at least the last five years. It is SOS's understanding that DSS does its own trainings. Ex. 1 (Warne Dep. 119:20-120:5).

154. SOS has not reviewed or provided advice on the content of DSS's training of its staff on voter registration or NVRA compliance. Ex. 1 (Warne Dep. 120:6-10).

155. SOS has not provided guidance to DSS on the agency's equal assistance obligations under the NVRA. Ex. 1 (Warne Dep. 60:15-61:8).

156. SOS has not provided guidance to DSS on its obligation to transmit voter registration applications in a timely manner as required by the NVRA. Ex. 1 (Warne Dep. 63:8-13).

157. SOS staff generally do not answer inquiries from agency or county auditor staff on how to implement NVRA requirements, because the SOS considers such inquiries to be requests for legal advice. Instead of answering such inquiries from agency or county auditor staff, SOS staff refer such inquiries to each agency or office's staff attorney or state's attorney. Ex. 1 (Warne Dep. 263:7-265:19, 267:5-9, 268:20-269:9); Ex. 2 (Warne Dep. Ex. 34).

158. The Secretary of State provides all agencies with pre-coded voter preference and voter registration forms, with codes corresponding to the programs and agencies listed in S.D. Admin. R. 5:02:03:18(7). Ex. 1 (Warne Dep. 42:14-18, 47:6-7; 54:7-55:2). The agencies print the pre-coded forms provided by SOS. Ex. 1 (Warne Dep. 52:13-21).

159. SOS amended the voter preference forms for voter registration agencies and voter registration forms in July 2020, after receiving Plaintiffs' notice letter. Ex. 1 (Warne Dep. 24:7-26:4).

160. Other than the July 2020 revisions, SOS has not otherwise amended the voter preference and voter registration forms in recent years. Ex. 1 (Warne Dep. 55:7-56:7).

161. Before July 2020, State agencies were using forms coded for different agencies or not coded at all. Ex. 1 (Warne Dep. 47:6-7, 54:21-55:6, 240:20-241:9). There is only one agency code for all public assistance agencies. Ex. 1 (Warne Dep. 239:16-19, 240:20-21, 241:14-17).

162. In response to Plaintiffs' notice letter, SOS worked with DSS to add language to the revised voter preference form in July 2020 to state, "If you do not check either box, you will be provided a voter registration form that you may complete at your convenience." Ex. 1 (Warne Dep. 45:6-46:11; 271:13-273:12).

163. The voter preference forms amended by SOS and provided to public assistance agencies in July 2020 contain the following language: "If you would like help filling out the voter registration form, we will help you. The decision to seek or accept help is yours. You may fill out the voter registration form in private." Ex. 2 (Warne Dep. Ex. 2; Ex. 1 (Warne Dep. 246:8-13; Ex. 18, Bennett County South Dakota Voter Registration Form)). SOS admits that this language means that an individual registering to vote must affirmatively ask for assistance to receive help completing the voter registration form. Ex. 1 (Warne Dep. 245:1-17). SOS admits that this language is inconsistent with the NVRA requirement that public assistance offices provide assistance to all individuals wishing to register to vote, with or without a request for help from the voter. Ex. 1 (Warne Dep. 245:18-246:7). (Q. "Is that consistent with your understanding of what the NVRA requires? A. No. They're supposed to provide the assistance to the person wanting to register to vote.")

164. The agency voter preference forms have not been updated or amended since July 2020. Ex. 1 (Warne Dep. 246:14-17).

165. SOS expects all public assistance agencies to use the updated voter preference forms provided by SOS to the agencies in July 2020. Ex. 1 (Warne Dep. 246:18-247:6, 269:10-

270:8). However, SOS admits that if an agency is using a different form, SOS would not know that unless the agency requested SOS's review of that form, which is not required. Ex. 1 (Warne Dep. 270:4-15).

166. SOS does not monitor whether voter registration agencies are using the voter preference form provided by SOS or whether they are using the correct version. Ex. 1 (Warne Dep. 46:11-18).

C. Training and Oversight of County Auditors

167. SOS conducts workshops for county auditors at the biennial two-day county auditor conference, which cover a variety of election-related topics. Ex. 1 (Warne Dep. 111:20-112:15).

168. Prior to 2021, SOS did not provide any training on NVRA compliance at the biennial county auditor conferences. Ex. 1 (Warne Dep. 112:16-20-113:6); Ex. 2 (Warne Dep. Ex. 12).

169. The most recent county auditor conference was held in October 2021, approximately a year after this lawsuit was filed. At the October 2021 conference, which was attended by 140 individuals including county auditors, their staff, SOS, Deputy Secretary of State, and SOS's full election team, SOS conducted a workshop on the NVRA. Although the allotted time for this workshop on the conference agenda was 30 minutes, the workshop actually lasted only four minutes and 41 seconds. Ex. 20 (Agenda for 2021 Auditor Election Workshop); Ex. 5 (Training Video Tr. 2:2-7). The workshop presenter, Kea Warne (Director of SOS's Division of Elections), informed attendees that the session was added because of this lawsuit. *Id.* There were no questions from attendees following Ms. Warne's brief presentation. *Id.* No other

session covered the NVRA. Ex. 1 (Warne Dep. 214:9-216:22, 224:20-225:19); Ex. 2 (Warne Dep. Ex. 30); Ex. 20 (Agenda for 2021 Auditor Election Workshop).

170. SOS's October 2021 NVRA workshop at the county auditor conference did not address the topic of when an agency is required to assist a voter in completing a voter registration application, or what kind of assistance should be provided. Ex. 1 (Warne Dep. 227:12-17, 228:5-10).

171. The Corson County auditor does not know what the NVRA requires in terms of voter registration, is not familiar with the term "covered transactions" as used in the NVRA, is not sure whether there are specific types of transactions that an individual may have with a government agency where voter registration must be provided under the NVRA, and is unaware of whether there are any South Dakota state laws or regulations relating to NVRA compliance. Ex. 14 (Bertolotto Dep. 28:13-20, 29:3-8, 29:9-12).

172. The recently retired Hughes County auditor, who was deposed as a representative of that office, did not know what a "covered transaction" is under the NVRA or whether specific state laws govern compliance with the NVRA. Ex. 15 (Naylor Dep. 22:16-23:8).

173. The Todd/Tripp County has attended the Auditor Election Workshop SOS provides every two years and various other webinars provided by SOS since she was elected to her position in 2014. Ex. 16 (DeSersa Dep. 13:18-19).

174. The Todd/Tripp County Auditor is not familiar with the NVRA, has never been trained on the NVRA, has no understanding of it, does not know any state or federal laws that govern compliance with the NVRA, and does not know who is responsible for the State's compliance with the NVRA. Ex. 16 (DeSersa Dep. 21:8-22:4; 31:22-32:16, 35:3-5).

175. The Todd/Tripp County auditor was not aware of, and to her knowledge had never been trained by SOS that, state regulation ARSD 5:02:02:21 requires a person without a driver license, nondriver identification number or social security number to fill out a separate statement in order to complete a voter registration application. Ex. 16 (DeSersa Dep. 87:12-89:19; 96:2-12); Ex. 16 (DeSersa Dep. Ex. 2).

176. The Ziebach County auditor is not aware of any state laws or regulations governing compliance with the NVRA. Ex. 17 (Longbrake Dep. 24:12-15).

177. None of the county auditor offices deposed by Plaintiffs track their compliance with NVRA requirements. Ex. 14 (Bertolotto Dep. 113-21-114:1); Ex. 15 (Naylor Dep. 62:4-10); Ex. 17 (Longbrake Dep. 75:18-21).

178. If a Corson County resident signs and dates a voter registration application before a voter registration deadline, but the transmittal from the state agency is postmarked after that deadline, the Corson County auditor's office will not process the application for the upcoming election but will only register the voter for future elections. Ex. 14 (Bertolotto Dep. 103:21-104:18, 108:6-109:11).

179. If the Hughes County auditor's office receives a voter registration application from a state agency after a voter registration deadline, the office will consider the date stamped on the application by the agency, if any, to be the application date, regardless of the date the voter signed the form. Ex. 15 (Naylor Dep. 54:21-55:10).

180. If a voter registration application transmitted by a state agency was not date-stamped by the agency, the Hughes County auditor's office would use the date of the postmark (if any) or, if the transmittal was not postmarked, the date received by the auditor's office as the date of the application. Ex. 15 (Naylor Dep. 55:14-17, 57:21-58:7).

181. The Todd/Tripp County Auditor does not process voter registration applications from DSS according to SDCL 12-4-6.1, which says that if it “is received by the auditor within five days following any voter registration deadline and is dated by the deadline, the card shall be considered to be effective on the date which it was signed at the agency.” Instead, the Todd/Tripp County Auditor processes DSS voter registration applications only if they are postmarked by the registration deadline. Ex. 16 (DeSersa Dep. 99:20-100:22; 104:14-21).

D. Data Reporting

182. To comply with the NVRA, SOS is obligated to report data to the federal Elections Assistance Commission (“EAC”) after every general election, including reporting the number of new voter registrations that came through each state agency covered by Sections 5 and 7 of the NVRA. Ex. 1 (Warne Dep. 122:20-123:18, 124:9-12). SOS is obligated to ensure that the data it reports to EAC is accurate. Ex. 1 (Warne Dep. 123:19-22).

183. A South Dakota administrative rule, ARSD 05:02:03:18, requires county auditors to provide voter registration data to SOS after each general election, including the number of registrations between the last two general elections and the number of duplicate registrations between the last two general elections received from:

- (a) Driver’s license offices;
- (b) Mail-in;
- (c) Public assistance agencies such as food stamps, AFDC, and WIC;
- (d) Department of Human Services;
- (e) Armed forces recruitment offices;
- (f) Municipal finance offices;
- (g) In-person registration at the auditor's office;

(h) Voter registration drives which deliver cards; and

(i) Individual voters registering through the UOCAVA system.

Ex. 1 (Warne Dep. 128:17-130:5); Ex. 2 (Warne Dep. Ex. 17).

184. SOS uses the data reported by county auditors to report NVRA compliance data to EAC. County auditors do not produce separate reports to SOS with this data; rather, SOS pulls this data from information entered by county auditors into the TotalVote system. Ex. 1 (Warne Dep. 130:6-132:1). SOS does not independently verify the accuracy of the data entered into the TotalVote system by county auditors before submitting its reports to EAC. Ex. 1 (Warne Dep. 132:2-7).

185. SOS does not review or analyze data reported to EAC for purposes of identifying trends or compliance issues in the state. Ex. 1 (Warne Dep. 135:16-136:9). SOS has never conducted an analysis of voter registration data to identify potential noncompliance with Section 7 by public assistance agencies. Ex. 1 (Warne Dep. 154:15-21).

186. Although SOS collects information in its TotalVote system on the number of voter registrations corresponding to the relevant agency code, SOS has not shared that information with any voter registration agencies. Ex. 1 (Warne Dep. 73:16-76:13).

187. Although SOS expects agencies to collect and review data as part of their NVRA compliance obligations, SOS has not encouraged or required agencies to collect and review relevant data in the last five years. Ex. 1 (Warne Dep. 163:21-164:8).

188. Beyond the data it reports to EAC, SOS does not collect or analyze any other voter registration data from agencies or other sources with respect to compliance with Sections 5 and 7 of the NVRA. Ex. 1 (Warne Dep. 160:16-161:5).

189. SOS admits that data analysis is important for effective oversight of agencies' compliance with the NVRA and that it is not possible to understand and monitor the current degree of NVRA compliance without data. Ex. 1 (Warne Dep. 162:18-163:2).

190. Although SOS collects data on the number of voter registration applications generated through state agencies, SOS does not collect or review data on the number of covered transactions that took place at the agencies over the same period. Ex. 1 (Warne Dep. 163:3-10).

191. SOS admits that, without data on the number of covered transactions (i.e., the number of opportunities clients were supposed to have to register to vote), it is impossible for SOS to understand the voter registration data and its implications for NVRA compliance. Ex. 1 (Warne Dep. 163:11-15).

192. SOS was unaware of problems with its own data reporting and with covered agencies' compliance problems until presented with that data by Plaintiffs during discovery. Ex. 1 (Warne Dep. 150:14-152:16, 157:7-160:9).

193. For example, SOS was unable to explain the substantial discrepancies between the voter registration data SOS reported to EAC, and the data SOS produced to Plaintiffs from SOS's records during discovery. Ex. 1 (Warne Dep. 141:14-144:1).

194. SOS believes the significant variation among counties in voter registration applications generated by covered transactions can be explained by counties entering applications incorrectly, using incorrect forms, or using incorrect agency codes, as well as differences in the quality of voter registration services provided at different offices. Ex. 1 (Warne Dep. 150:14-152:16).

195. SOS has no explanation for discrepancies between voter registration data produced by DPS and agency-specific voter registration data for DPS that was produced by SOS.

SOS had not compared data from those two sources prior to the September 2, 2021 Rule 30(b)(6) deposition in this case and was previously unaware of those discrepancies. Ex. 1 (Warne Dep. 157:7-160:8); Ex. 2 (Warne Dep. Ex. 26).

196. There are also discrepancies in voter registration data for DSS reported by SOS. For example, according to data provided to Plaintiffs by SOS, Ziebach County reported no voter registrations from DSS from January 2018 to December 2020. Ex. 17 (Longbrake Dep. 81:7-11 & Ex. 6); Ex. 1 (Warne Dep. 150:14-154:14). The Ziebach County auditor's office has, in fact, received voter registration applications from DSS from January 2018 to December 2020, and thus considers the data reported to Plaintiffs by SOS to be incorrect. Ex. 17 (Longbrake Dep. 81:12-82:6).

197. SOS admits offices may not be following proper procedures and may need more training. Ex. 1 (Warne Dep. 144:5-147:11); Ex. 2 (Warne Dep. Ex. 22).

198. SOS admits that compliance with Section 7 of the NVRA is not occurring universally across South Dakota and that more training is needed. Ex. 1 (Warne Dep. 154:22-155:8).

E. Use of Agency Codes on Voter Preference and Voter Registration Forms

199. SOS assigns agency codes for use on voter preference forms and voter registration forms based on the subsection letters in Section 6 of South Dakota Administrative Rule 05:02:03:18(6). Ex. 1 (Warne Dep. 54:7-19; ARSD 05:02:03:18). Code A refers to “[d]river’s license offices;” code C refers to “[p]ublic assistance agencies such as food stamps, AFDC, and WIC”); and code D refers to the Department of Human Services (which provides services for individuals with disabilities). Ex. 1 (Warne Dep. 54:20-55:3, 121:6-9, 240:12-241:9); S.D. Admin. R. 05:02:03:18).

200. SOS provides no guidance to agencies on how to use the agency-coded voter registration application forms provided by SOS, and defers to the agencies to do their own trainings on those forms. Ex. 1 (Warne Dep. 42:5-43:4).

201. Voter preference forms and voter registration forms provided by SOS to the agencies have used inconsistent and incorrect agency codes both prior to and since the revisions to those forms made in July 2020. Ex. 1 (Warne Dep. 48:22-49:21, 50:15-51:7, 54:7-55:6).

202. There is no agency-specific code for DSS, as Code C refers to any public assistance agency, and multiple state agencies in South Dakota administer public assistance programs. Ex. 1 (Warne Dep. 239:16-19). Accordingly, there is no way for SOS or a public assistance agency to distinguish between applications made through a DSS office or through a DOH office using agency-coded data in TotalVote. Ex. 1 (Warne Dep. 241:14-242:7). It is not possible for SOS to identify which agency was the source of a voter registration problem using agency-coded data alone. Ex. 1 (Warne Dep. 242:2-7).

203. SOS believes there would be value in using separate codes for each agency that administers public assistance programs but has not considered making such a change. Ex. 1 (Warne Dep. 242:8-14).

204. DSS's use of forms marked with Code D – which, under state regulation, refers to the Department of Human Services – is in error. Ex. 1 (Warne Dep. 55:1-6).

205. SOS does not know if county auditors are using the coding system correctly and has no way to know if county auditors are entering the correct codes into the TotalVote system. Ex. 1 (Warne Dep. 121:17-20, 122:2-9).

206. Voter registration forms used by DSS in 2019 contained no agency code. Ex. 1 (Warne Dep. 51:12-53:17); Ex. 2 (Warne Dep. Ex. 5)

207. DSS uses voter preference forms and voter registration forms provided by SOS. Ex. 19B (Gill Resp. to Interrog. No. 8); Ex. 10 (Miller Dep. 143:1-11); Ex. 1 (Warne Dep. 42:5-18, 44:9-45:5).

208. DSS has never received instruction from SOS on the codes used on the voter preference and voter registration forms provided by SOS to DSS. Ex. 10 (Miller Dep. 143:4-16).

209. DSS is aware that some forms provided by SOS are coded with the letter “C” and others are coded with the letter “D,” but does not know why different codes are used on different forms. Ex. 10 (Miller Dep. 144:2-9).

210. DSS has not requested information or sought guidance from SOS to clarify why different agency codes are used on the voter preference forms and voter registration forms provided by SOS to DSS. Ex. 10 (Miller Dep. 212:16-213:5, 214:2-5).

211. SOS has not provided guidance or other information to DSS on why the voter preference forms and voter registration forms provided by SOS to DSS contain different agency codes. Ex. 10 (Miller Dep. 214:6-8).

VII. SECTION 5 VIOLATIONS BY DPS AND SOS

212. DPS’s Rule 30(b)(6) representative testified that DPS is only “a little familiar” with the NVRA and that the agency “count[s] on the Secretary of State’s office for their expertise.” Ex. 12 (Schrank Dep. 24:21-25:5; 25:12-17). The representative did not know what section of the NVRA applies to DPS. Ex. 12 (Schrank Dep. 25:12-17).

A. Changes of Address

213. To change the address on the applicant’s driver’s license or non-driver ID, the applicant may apply in person at a driver exam station or county issue office; or they may apply online. In each situation the applicant has the opportunity to change the address on their voter

registration by indicating that they wish to do so on the application form. When applications are submitted in person, an examiner reviews the application with the client to ensure they indicate whether they do or do not wish to update their voter registration. Ex. 19C (Price Resp. to Interrog. No. 3).

214. When voters submit a change of address request to DPS with respect to their drivers' license record, DPS does not transmit the change of address request to the county auditor unless the voter specifically checks the box on the change of address form indicating that the voter would like to also update their voter registration. Ex. 1 (Warne Dep. 88:20-89:7, 91:13-92:16); Ex. 12 (Schrank Dep. 121:6-123:3); Ex. 14 (Bertolotto Dep. 102:6-19); Ex. 15 (Naylor Dep. 61:8-22).

215. SOS has no policy on how county auditors should handle change of address requests transmitted by DPS for voters that do not affirmatively check the box indicating they wish to update their voter registration. Ex. 1 (Warne Dep. 88:20-89:7, 91:13-92:16).

216. DPS uses a Driver License/ID Card Application form to process change of address requests by applicants that requires applicants to affirmatively check a box saying "yes" if they wish to update their existing voter registration. Ex. 13 (Schrank Dep. Ex 2 (DPS_000342-343)); Ex. 14 (Bertolotto Dep. 102:6-19); Ex. 15 (Naylor Dep. 61:18-22); Ex. 12 (Schrank Dep. 122:6-12).

217. The Driver License/ID Card Application in effect during the investigation in March 2020 as well as the Driver License/ID Card Application as amended in August 2020 both contain a separate voter registration section that requires individuals to affirmatively elect to change their address for voter registration purposes. Ex. 13 (Schrank Dep. Ex. 2 (DPS_000342-343)).

218. SOS approves revisions of the South Dakota Driver License/ID Card Application only “[i]f anything is changed having to do with voter registration.” Ex. 12 (Schrank Dep. 62:11-14).

219. All changes to the voter registration section on DPS’s driver’s license application were initiated by SOS, including those made in August 2020, after Plaintiffs’ notice letter in July 2020 and before Plaintiff filed their lawsuit in September 2020. Ex. 1 (Warne Dep. 27:10-22, 46:2-10, 247:7-248:5); Ex. 2 (Schrank Dep. Ex. 2 (DPS_000342-343)).

220. Applicants who submit a driver’s license application or ID card bearing an address different from the one at which the individual is already registered to vote must take an additional affirmative step on the application to update their voting address. Ex. 12 (Schrank 30:22-31:9). “The customer has to check the box whether they want their registration updated or not.” Ex. 12 (Schrank Dep. 121:10-11).

221. Additionally, the Driver License/I.D. Card Application fails to indicate whether a change of address for driver’s license purposes will automatically update the address for voter registration purposes unless the customer opts out. Ex. 13 (Schrank Depo. Ex 2 (DPS_000342-343)).

B. Applicants Lacking a South Dakota Driver’s License or Social Security Number

222. If an applicant does not have a social security number or driver’s license, DPS does not allow the applicant to apply to register to vote at the DPS office, but instead directs them to a county auditor’s office. Ex. 12 (Schrank Dep. 112:20-113:2; 156:7-11).

223. When DPS staff were trained by SOS in 2021 on how to provide voter registration services to customers, SOS instructed them that customers without a SD Driver’s License or an

SSN can only register to vote in the county auditor's office. Ex. 2 (Warne Dep. Ex. 31 (SoS_001787)).

C. Services at Driver's Licensing Travel Offices and Issue Sites

224. Of the 57 DPS offices throughout the State, only eight, or 14%, are on a reservation. Ex. 8C (DPS, List of Driver's Licensing Locations).

225. DPS offices in Wagner, Armour, Winner, Rosebud, Pine Ridge, Hot Springs, Martin, Sisseton – all towns on or near a reservation – are travel offices. Travel offices provide voter registration services but in a non-permanent room in a building “wherever is available in that community” “once a week, twice a month [or] once a month.” Ex. 12 (Schrank Dep. 51:21-52:18).

226. Five of the eight, or 62% of the DPS offices on reservations are travel offices. Ex. 8C (DPS, List of Driver's Licensing Locations).

227. The distance Native Americans in Todd County have to travel to register to vote is “definitely further” than it is for others. Ex. 16 (DeSersa Dep. 126:22-127:5). The Todd County building is “miles away from other parts of the [Rosebud] [R]eservation” and this distance “may be one barrier” for Native Americans to register vote. Ex. 16 (DeSersa Dep. 125:3-13).

228. DPS has outsourced its motor vehicle services to other entities, such as counties and cities. Ex. 9 (Pls.' June 26, 2020 Letter); Ex. 13 (Schrank Ex. 4); Ex. 8C (DPS, List of Driver's Licensing Locations); Ex. 19C (Price Resp. to Interrog. No. 12). Despite a Joint Powers Agreement requiring DPS “to provide...training and supervision,” DPS does not supervise or directly oversee these other entities, known as “issue sites.” Ex. 12 (Schrank Dep. 90:16-19; 91:2-5; 152:11-19; 155:3-6); Ex. 13 (Schrank Dep. Ex. 4).

229. DPS trains each city or county once when they start providing services and once when they add a new employee. Ex. 12 (Schrank Dep. 149:22-150:1). Most of the issue sites started providing services in 1996. Ex. 6 (Schrank Dep. Ex. 4). Therefore, unless a new employee was added, the last time DPS has trained most of the issue sites was in 1996. DPS does not “have information on whether voter registration has been part of that [training] at any point over the years.” Ex. 16 (DeSersa Dep. 149:22-150:6)

230. When DPS does train a county issue site, there is no set training. Ex. 12 (Schrank Dep. 154:18-21).

231. If issue sites are not properly collecting and transmitting voter registration forms, DPS has no formal mechanism of receiving notification. Ex. 12 (Schrank Dep. 153:10-20).

232. Of the eight DPS offices on reservations in the State, three of them, or 40%, are county issue sites. Ex. 8C (DPS, List of Driver Licensing Locations).

233. DPS does not have an office and instead has outsourced its motor vehicle services and voter registration to issue sites in Corson, Dewey, Jackson, Lyman, Mellette, and Ziebach – all counties on or near a reservation. Ex. 8C (DPS, List of Driver Licensing Locations, <https://dps.sd.gov/contact/locations>); Ex. 11 (Miller Dep. Ex. 18 (DSS_04014-016)); Ex. 8C (DPS, List of Driver Licensing Locations, <https://dps.sd.gov/contact/locations>).

234. For example, in Corson and Ziebach counties, driver’s licensing services are provided by the county treasurer’s office. Ex. 14 (Bertolotto Dep. 34:13-21, 36:6-17); Ex. 17 (Longbrake Dep. 26:17-27:16). During Plaintiffs’ investigation, the Dupree office clerk said they do not provide any voter registration services and that they direct clients who wish to register to vote to the county auditor’s office. Ex. 25 (Cataldo Decl. ¶ 13(b)).

235. Unlike most DPS offices, field offices do not consistently use the state's TotalVote portal to submit voter registration applications to election officials. For example, in Corson County, the auditor's office experienced issues with voter registration applications made at the treasurer's office not being transmitted correctly through the state's TotalVote electronic portal. Ex. 14 (Bertolotto Dep. 36:18-37:10). Because of these problems, the auditor asked the county treasurer to hand-deliver hard-copy voter registration applications for the auditor to enter manually into the system. Ex. 14 (Bertolotto Dep. 34:13-36:5, 38:7-21, 55:5-19, 56:19-57:4). The treasurer's office does not date-stamp completed voter registration applications upon receipt. Ex. 14 (Bertolotto Dep. 57:10-12).

236. The Corson County auditor's office does not know whether the county treasurer's office submits voter registration applications to the state in addition to the hard-copy applications it delivers to the auditor's office. Ex. 14 (Bertolotto Dep. 126:2-12).

D. Transmission of Voter Registration Applications to County Auditors

237. DPS frequently sends voter registration applications to the wrong county. Ex. 1 (Warne Dep. 94:12-95:2, 96:9-97:8); Ex. 19A (Barnett Resp. to Interrog. No. 1).

238. Sometimes voter registration applications transmitted to the Hughes County auditor's office by DPS through the State's TotalVote system are incomplete. Ex. 15 (Naylor Dep. 24:19-21, 33:22-34:10).

E. Training

239. DPS itself provides no training to staff on voter registration obligations. Ex. 12 (Schrank Dep. 28:14).

240. Any training of DPS staff on voter registration policies and procedures is conducted by the Secretary of State's office. Ex. 12 (Schrank Dep. 28:17-19). The only training

SOS provides the DPS examiners “specific to voter registration” is during the Annual Driver Licensing Staff Training. Ex. 12 (Schrack Dep. 139:19-140:2).

241. SOS decides when to provide voter registration training to DPS employees and what length of time to devote to the training. Ex. 12 (Schrack Dep. 138:6-12; 143:2-20).

242. SOS has conducted a voter registration training of DPS examiners at some, but not all, of that agency’s annual trainings since 2015. SOS conducted no voter registration trainings in 2018 and 2020. Other than those sporadic trainings, SOS does not conduct any trainings for DPS staff. Ex. 1 (Warne Dep. 26:5-27:7, 119:16-19).

243. From 2015 through the present, SOS has provided a cumulative total of only three hours of voter registration training during the annual Drivers’ Licensing Staff Trainings. Ex. 13 (Schrack Dep. Exs. 7 (SoS_000638), 9, 10, 11 (SoS_000153), 12).

244. Between 2015 and 2019, the time allotted to SOS’s voter registration training at the annual DPS examiner training was cut by two-thirds—from 90 minutes in 2015, to 60 minutes in 2017, to 30 minutes in 2019, although the more recent sessions may have run longer than the 30 minutes allotted on the agenda. Ex. 1 (Warne Dep. 116:20-117:16); Ex.12 (Schrack Dep. 142:18:143-1). This means that an entire hour’s worth of content was eliminated from the training between 2015 to 2019. Ex. 12 (Schrack Dep. 144:8-11).

245. SOS did not present any training on voter registration duties during the Annual Driver Licensing Staff Training from May 3, 2019 until October 8, 2021. Ex. 13 (Schrack Dep. Exs. 7 (SoS_000638), 9, 10, 11 (SoS_000153), 12); Ex. 1 (Warne Dep. 118:8-12).

F. Compliance and Oversight

246. The Director of DPS Driver Licensing Program is the highest-level employee whose job deals with voter registration, and only about 2 or 3 percent of her job deals with voter

registration. Ex. 12 (Schrank Dep. 17:21-18:6). She is responsible for ensuring NVRA compliance “in conjunction with the Secretary of State’s office.” Ex. 12 (Schrank Dep. 27:3-6).

247. DPS does not track its own NVRA compliance. Ex. 12 (Schrank Dep. 164:1-6).

248. DPS expects SOS to notify it of errors are made in processing voter registrations from DPS or other NVRA compliance issues. Ex. 12 (Schrank Dep. 164:1-6; 165:9-166:2).

249. DPS reports the number of voter registration applications its office processes to SOS monthly but does not conduct any analysis of that data. Ex. 12 (Schrank Dep. 170:12-171:2).

250. Other than providing training to DPS employees, SOS does not provide guidance to DPS on NVRA compliance. Ex. 12 (Schrank Dep. 169:20-170:2).

251. SOS does not track how often county auditors manually assign a voter to a different county after receiving the voter’s information from DPS. Ex. 19A (Barnett Resp. to Interrog. No. 1).

252. SOS has no formal recordkeeping process for tracking the number of times a county auditor has requested that SOS pull an original DPS voter registration file, or the results of such searches. Ex. 19A (Barnett Resp. to Interrog. No. 2).

253. Although DPS, upon “the advice and recommendations of the Secretary of State’s Office” “to ensure compliance with the National Voter Registration Act,” revised its Driver’s License Application, Ex. 12 (Schrank Dep. Ex. 20 (DPS_001753); Ex. 19C (Price Resp. to Interrog. No. 7), DPS does not know how such a change ensures compliance with the NVRA, Ex. 12 (Schrank Dep. 172:3-5, 232:12-15).

254. Even as amended, the Driver's License Application still fails to indicate that a change of address for driver's license purposes will automatically update the address for voter registration purposes unless the customer opts out. Ex. 13 (Schrank Dep. Ex. 15).

VIII. SECTION 7 VIOLATIONS BY DSS

A. Procedures for Providing Services to Individuals Who Leave Voter Preference Question Blank

255. Prior to receiving Plaintiffs' May 20, 2020, notice letter, DSS had no policy on what a DSS employee should do if a customer left the voter preference question blank during an application, renewal, or recertification transaction. Ex. 1 (Warne Dep. 37:11-38:17); Ex. 10 (Miller Dep. 37:9-13); Ex. 6 (Nardi Dep. 38:14-19); Ex.7 (Barker Dep. 31:21-32:4). Further, Plaintiffs interviewed DSS clients who answered "yes" to the voter preference question while applying for benefits at DSS offices in Pine Ridge and Rapid City, but who were not offered voter registration forms or assistance. Ex. 25 (Cataldo Dec. ¶¶ 8(j), (k)).

256. Follow DSS's receipt of Plaintiffs' May 20, 2020, notice letter, DSS began to require that benefits specialists ask customers who leave the voter preference question blank if they would like to register to vote at that time and to provide a blank voter registration application to any person who declines to answer. Ex. 10 (Miller Dep. 35:22-37:16); Ex. 11, (Miller Dep. Ex. 18 (DSS_04014-016)).

257. DSS's current policy of providing a blank voter registration application to clients who leave the voter preference question blank or decline to answer that question was implemented in July 2020 following DSS's receipt of Plaintiffs' May 20, 2020, notice letter. Ex. 10 (Miller Dep. 47:11-49:12, 198:16-199:9); Ex. 11 (Miller Dep. Ex. 18 (DSS_04014-016)).

258. After adopting the policy of providing a blank voter registration application to any client who leaves the voter preference question blank or declines to answer that question, DSS

did not contact or make any other effort to offer voter registration services to clients who had left the voter preference question blank prior to the policy change. Ex. 10 (Miller Dep. 49:16-50:1).

259. In September 2020, DSS amended two benefits forms, Form EA-240 (titled “Application for Long Term Care or Related Medical Assistance for Office Use”) and Form EA-240D (entitled “Application for Medical Assistance for Workers With Disabilities”) to update the voter preference question to indicate that the agency would provide a blank voter registration form to any individual who left the voter preference question blank. Ex. 10 (Miller Dep. 135:5-7, 136:6-9; Ex. 11 (Miller Dep. Ex. 11 (DSS_001144-81)).

260. In September 2020, DSS added the voter preference question for the first time to the following benefits forms: Form EA-240R (DSS’s long-term care review form); Form EA-240S (DSS’s long-term care review form for simplified cases); Form EA-243 (DSS’s Chronic Renal Disease Program application); and Form EA-270 (DSS’s Medicare Savings Program application). Ex. 10 (Miller Dep. 135:8-12, 135:10-15).

261. In September 2020, DSS began including a voter preference form and voter registration application with the Child Care Assistance, Children and Families Medical Assistance, and Low Income Energy Assistance Program (“LIEAP”) applications. Ex. 10 (Miller Dep. 135:13-136:1). In June 2021, DSS added the voter preference question to the Child Care Assistance application form rather than attaching it as a separate document. Ex. 10 (Miller Dep. 135:17-136:1-5, 136:16-137:2).

262. In November 2020, DSS amended Form DSS-EA-301, its public assistance application form, to update the language on the voter preference question to indicate that the agency would provide a blank voter registration form to any individual who left the voter preference question blank. Ex. 10 (Miller Dep. 134:22-135:4).

B. Agency Assistance to Individuals in Completing Voter Registration Applications

263. DSS's system for providing voter registration services requires hundreds of benefits specialists to make individual choices to distribute voter registration applications and then follow through on those choices. Ex. 10 (Miller Dep. 130:22-131:6).

264. For applications, recertifications, and renewals for DSS programs covered by the NVRA, it is up to individual benefits specialists to determine whether to send a voter registration application to a client. Ex. 10 (Miller Dep. 86:18-87:3).

265. DSS benefits specialists do not follow a specific script regarding voter registration when conducting in-person or telephonic interviews with applicants for SNAP or TANF benefits. Ex. 10 (Miller Dep. 56:2-6); Ex. 19B (Gill Resp. to Interrog. No. 9).

266. DSS supervisors have no way to independently verify whether a benefits specialist mailed or caused a voter registration application to be mailed to a client who engaged in a remote transaction. Ex. 10 (Miller Dep. 87:16-88:11).

267. Prior to this lawsuit, some DSS offices, including those in Pine Ridge and Hot Springs, did not use a voter preference form at all. Ex. 7 (Barker Dep. 49:1-18).

C. Change of Address Requests

268. A DSS customer may report a change of address to DSS in a variety of ways. They may call the office, report the change in writing by postal mail or email, send a text message to their benefits specialist, visit a DSS office in person, report the new address when completing a renewal or six-month report form, or use the change report form available with the DSS online application. Ex. 19B (Gill Resp. to Interrog. No. 3); Ex. 10 (Miller Dep. 78:14-18).

269. If a DSS client calls to report a change of address by telephone, anyone in the DSS office may take that information from the client. Ex. 10 (Miller Dep. 80:20-81:3).

270. SNAP, TANF, and Medical Assistance (children and families) recipients who change their address with DSS are not presented with the voter preference question at any point in the address change process, regardless of whether the request is made in-person or remotely. Ex. 10 (Miller Dep. 82:1-4). Instead, those recipients are mailed a voter registration application from DSS's central office in Pierre with instructions to complete it and return it either to a county auditor's office or to DSS. The mailing does not indicate whether the individual may seek or obtain help from DSS in completing the voter registration application. Ex. 19B (Gill Resp. to Interrog. No. 3); Ex. 10 (Miller Dep. 81:10-22).

271. Similarly, if DSS receives returned mail with a forwarding address from USPS for a SNAP, TANF, or Medical Assistance recipient, DSS will change the recipient's address in the agency's system and automatically send the same form letter from DSS's central office in Pierre with a voter registration application to the recipient. Ex. 10 (Miller Dep. 84:18-85:6).

272. In contrast, when Long Term Care Medical Assistance, LIEAP, and Child Care Assistance beneficiaries report a change of address to DSS by telephone, a DSS benefits specialist is supposed to pose the voter preference question to the beneficiary and mail a voter registration application to any beneficiary who answers "yes" to the voter preference question. In providing these services, DSS policy manuals and DSS trainings instruct benefits specialists to pose the voter preference question. Policy manuals and trainings, however, do not provide any type of script. Ex. 10 (Miller Dep. 82:4-83:14); Ex. 19B (Gill Resp. to Interrog. No. 3).

273. DSS has not instructed DSS staff to ask the voter preference question to clients who call to report a change of address by telephone. Ex. 10 (Miller Dep. 81:7-9).

274. Multiple local DSS offices do not pose the voter preference question to individuals who call the office to report a change of address, including the Hot Springs, Pine Ridge, and Rapid City offices. Ex. 7 (Barker Dep. 56:2-57:5); Ex. 6 (Nardi Dep. 58:12-20).

275. DSS does not record or track data regarding the number of change of address requests made by the agency's clients. Ex. 19B (Gill Resp. to Request for Production No. 1).

D. Procedures for Individuals Without a USPS Address

276. For individuals who do not have a USPS address, DSS asserts that the agency's standard operating procedure is for staff to instruct clients to provide a description of their location of residence on forms, including voter registration applications. Ex. 10 (Miller Dep. 63:18-65:4). Local DSS offices, however, are unaware of this policy or of any protocol to follow for clients who do not have a USPS address. Ex. 7 (Barker Dep. 46:9-13).

E. Lack of Voter Registration Services for Some Covered Transactions

277. For Medical Assistance programs administered by DSS, the agency follows an administrative renewal process when it has sufficient information to determine a client's continued eligibility. In such cases, DSS sends a renewal confirmation without seeking additional information from the client. Ex. 10 (Miller Dep. 72:18-73:16); Ex. 19B (Gill Resp. to Interrog. No. 1).

278. When an administrative renewal is completed, DSS does not require a client to complete a renewal application form. Ex. 10 (Miller Dep. 73:7-16).

279. DSS considers an administrative renewal a renewal of Medical Assistance benefits. Ex. 10 (Miller Dep. 74:2-4).

280. It is DSS policy that renewals of benefits are covered transactions under the NVRA. Ex. 10 (Miller Dep. 74:5-8).

281. DSS does not provide voter registration services in connection with administrative renewals of Medical Assistance. Ex. 10 (Miller Dep. 73:20-74:1).

282. DSS requires some SNAP and TANF recipients to complete a six-month report form to determine whether any changes in the previous six months have affected a recipient's eligibility for benefits. Ex. 10 (Miller Dep. 75:17-76:10).

283. For those SNAP and TANF recipients whom DSS requires to complete a six-month report form, completion of that form is required to maintain eligibility for benefits. Ex. 10 (Miller Dep. 76:15-18).

284. Based on information provided by a SNAP or TANF recipient in a six-month report form, the recipient's eligibility could be revoked. Ex. 10 (Miller Dep. 76:11-14).

285. Because the six-month report form is not a full redetermination of benefits, DSS does not consider it a recertification or renewal of benefits. Ex. 10 (Miller Dep. 76:19-78:5).

286. DSS does not provide voter registration services as part of the six-month report process for SNAP and TANF recipients required to complete the six-month report form. Ex. 10 (Miller Dep. 78:6-8).

F. Lack of Voter Registration Services for Some Public Assistance Programs

287. Prior to July 2020, DSS considered the following programs that it administers to be subject to the NVRA: SNAP; TANF; Medical Assistance programs (including a variety of Medicaid programs, long-term care programs, CHIP, the disabled children program, and the Medicare Savings program). Ex. 10 (Miller Dep. 20:4-21:1, 21:416-22).

288. Prior to July 2020, DSS did not consider LIEAP and Child Care Assistance to be public assistance programs subject to the NVRA and did not offer voter registration services to clients of those programs. Ex. 10 (Miller Dep. 22:18-23:6, 202:18-203:9). DSS began treating

LIEAP and Child Care Assistance as public assistance programs covered under the NVRA in July 2020. Ex. 10 (Miller Dep. 206:2-5).

289. After beginning to offer voter registration services with the LIEAP and Child Care Assistance programs in 2020, DSS did not contact or take other action to serve clients of those programs who should have received voter registration services in the past but had not. Ex. 10 (Miller Dep. 27:6-10).

290. DSS updated the online application for the Child Care Assistance program on October 30, 2020 to include the voter preference questions; before that date, DSS did not provide voter registration services to online applicants for that program. Ex. 10 (Miller Dep. 69:5-70:2).

G. Voter Assistance at Local DSS Offices

291. In the Rapid City, Pine Ridge, and Hot Springs DSS offices, the Benefits Specialists and supervisors do not affirmatively offer clients assistance in completing voter registration applications, and instead wait for a client to request help before providing assistance. Ex. 6 (Nardi Dep. 27:16-28:12, 29:2-11, 35:15-22); Ex. 7 (Barker Dep. 26:15-27:14).

292. The DSS offices in Pine Ridge and Hot Springs do not routinely assist clients who engage in remote applications via mail ensure their voter registration is complete before mailing it to the county auditor. Ex. 7 (Barker Dep. 24:20-26:21; 28:15-29:6; 44:22-45:9; 45:18-46:3; 62:1-15).

293. Prior to April 2021, DSS did not provide formal guidance to benefits specialists regarding whether and when to contact customers with unsigned or incomplete voter registration applications. Ex. 10 (Miller Dep. 63:8-11). DSS added the instruction to benefits specialists to reach out to customers with incomplete or unsigned applications in its April 2021 training. Ex. 10 (Miller Dep. 61:5-63:7).

294. Prior to April 2021, whether a DSS staff member reached out to a customer with an unsigned or incomplete voter registration form could have varied by staff person and office. Ex. 10 (Miller Dep. 63:12-17).

H. DSS Transmission of Voter Registration Applications to County Auditors

295. Local DSS offices routinely transmit incomplete or incorrectly completed voter registration applications to county auditor offices. Ex. 14 (Bertolotto Dep. 32:9-33:2; Ex. 7 (Barker Dep. 25:3-26:4, 28:22-29:6, 83:22-84:7); Ex. 15 (Naylor Dep. 23:22-24:6; Ex. 16 (DeSersa Dep. 56:7-9; 69:11-14; 69:22-70:5); Ex. 10 (Miller Dep. 60:12-16, 94:10-19); Ex. 6 (Nardi Dep. 47:15-48:13, 48:19-22).

296. For example, approximately 25 to 50 percent of all voter registration forms transmitted by the Pine Ridge and Hot Springs DSS offices are incomplete or inaccurate when they are mailed to the county auditors' offices. Ex. 7 (Barker Dep. 83:22-84:7).

297. The Corson County auditor's office has also experienced ongoing issues with DSS's local offices transmitting voter registration applications that were not filled out correctly. Ex. 14 (Bertolotto Dep. 31:17-32:5). Within the last decade, the majority of voter registration applications transmitted to the Corson County auditor's office by the local DSS offices were incomplete or filled out incorrectly. Ex. 14 (Bertolotto Dep. 17:13-19:7, 32:9-33:2). Although the number of incomplete or incorrectly completed applications received by the Corson County auditor's office from local DSS offices has declined over time, the auditor's office continues to receive such applications. Ex. 14 (Bertolotto Dep. 32:9-20).

298. Sometimes voter registration applications transmitted to the Hughes County auditor's office by DSS are incomplete or not date-stamped. Ex. 15 (Naylor Dep. 23:22-24:6).

299. The voter registration applications from the DSS office in Mission in Todd County “aren’t always filled out.” Ex. 16 (DeSersa Dep. 22:19-21). Approximately sixty percent of the time, voter registration applications from the Mission DSS office are missing one or more of the essential pieces of information and cannot be processed. Ex. 16 (DeSersa Dep. 23:6-16; 58:2-21).

300. The Todd County Auditor attributes the incomplete voter registration forms to lack of assistance to DSS clients. Ex. 16 (DeSersa Dep. 56:7-9; 69:11-14; 69:22-70:5). The Todd County Auditor has, to no avail, attempted to resolve the problems with the Mission DSS office. Ex. 16 (DeSersa Dep. 60:3-61:5).

301. When voter registration forms cannot be processed, the Todd County Auditor attempts to reach the voter by mail and phone to obtain a full and accurate application. Ex. 16 (DeSersa Dep. 24:9-25:6). These subsequent attempts are successful only about twenty-five to forty percent of the time. Ex. 16 (DeSersa Dep. 25:7-10; 85:16-21). “If it’s incomplete, unfortunately, the voter is unable to vote.” Ex. 16 (DeSersa Dep. 78:16-17).

302. In Todd County, Native American residents typically register to vote through DSS. Ex. 16 (DeSersa Dep. 128:3-6).

303. Most incomplete applications received by the Todd County Auditor from DSS are from Native Americans. Ex. 16 (DeSersa Dep. 67:1-16).

304. One reason why so many voter registration applications transmitted by DSS offices to county auditor offices are incomplete or incorrectly completed is the DSS offices’ practice of submitting mailed-in voter registration applications immediately and in the form received from the applicant, with or without an effort to contact the voter to correct any mistakes.

Ex. 7 (Barker Dep. 24:20-26:4, 28:15-29:6, 44:22-45:9, 45:18-46:3, 62:3-63:9, 83:22-84:7); Ex. 6 (Nardi Dep. 47:15-48:13, 48:16-22).

305. The Hot Springs and Pine Ridge DSS offices submit mailed-in voter registration applications to the county auditor immediately in the form they were received. Ex. 7 (Barker Dep. 24:20-25:21, 44:22-45:9, 45:18-46:3).

306. For mailed-in voter registration applications, Hot Springs and Pine Ridge DSS employees sometimes, but do not always, contact individuals whose voter registration applications were incomplete. Ex. 7 (Barker Dep. 25:3-26:4).

307. A large share of voter registration applications mailed to the Hot Springs and Pine Ridge DSS offices are incomplete or not completed correctly. Ex. 7 (Barker Dep. 28:15-21). A representative of those offices estimates that 25 to 50 percent of voter registration applications are not filled out completely, or are filled out incorrectly. Ex. 7 (Barker Dep. 83:22-84:7).

308. The Hot Springs and Pine Ridge DSS offices do not typically call individuals with incomplete voter registration applications prior to transmitting those applications to the county auditor. Ex. 7 (Barker Dep. 28:22-29:6).

309. The Hot Springs and Pine Ridge DSS offices have received complaints from the county auditor's office that voter registration applications transmitted by DSS are not complete. Ex. 7 (Barker Dep. 62:3-16).

310. Although the Hot Springs and Pine Ridge DSS offices have been asked by the county auditor's office to ensure that voter registration applications are thoroughly completed, the DSS offices have not changed their practice of transmitting completed voter registration applications immediately regardless of completeness. Ex. 7 (Barker Dep. 62:12-63:9).

311. As another example, the Rapid City DSS currently office sends incomplete voter registration applications to the county auditor and then notifies the client by telephone, email, or mail that the application was complete. Ex. 6 (Nardi Dep. 47:15-48:13, 48:19-22). The Rapid City DSS office does not track how often its employees reach out to clients about incomplete voter registration applications. Ex. 6 (Nardi Dep. 48:16-18).

312. Prior to Plaintiffs' notice letter, DSS only required local offices to transmit voter registration applications to county auditors once weekly. Ex. 10 (Miller Dep. 50:2-21); Ex. 11 (Miller Dep. Ex. 11, Defendants' June 5, 2020 letter, DSS_40114-16).

I. Compliance and Oversight

313. DSS does not track data on the voter registration services provided by its offices. DSS has never requested voter registration data collected by SOS through the TotalVote system from SOS, nor has SOS ever shared that information with DSS. Accordingly, DSS has no data about its own voter registration performance with which it could evaluate its own performance and NVRA compliance. Ex. 1 (Warne Dep. 73:16-76:15); Ex. 19B (Gill Resp. to Req. for Prod. No. 2).

314. DSS does not record or track whether covered transactions are conducted in-person or by telephone. Ex. 19B (Gill Resps. to Req. for Prod. Nos. 1, 12).

315. DSS supervisors are responsible for reviewing cases to ensure that a benefits specialist followed the correct voter registration procedures during covered transactions. Ex. 10 (Miller Dep. 41:4-21).

316. DSS's requirement that supervisors train their existing staff on voter registration requirements was not an express agency policy until DSS's July 29, 2020, supervisor training on voter registration issues and NVRA compliance. Ex. 10 (Miller Dep. 42:11-43:4).

317. DSS's requirement that supervisors' case reviews include reviewing benefits specialists' compliance with voter registration requirements was not an express agency policy until the July 29, 2020, supervisor training on voter registration issues and NVRA compliance. Ex. 10 (Miller Dep. 42:11-43:4).

318. DSS supervisors' responsibilities to ensure compliance with voter registration procedures is not and has not been explicitly stated in supervisors' job descriptions. Ex. 10 (Miller Dep. 43:3-11).

319. DSS's system for transmitting voter registration applications to county auditors depends on hundreds of benefits specialists or clerical workers collecting and delivering those applications in a timely manner. Ex. 10 (Miller Dep. 132:3-9).

320. Data regarding the number of voter registration applications received by DSS and transmitted to SOS or county election officials is not available in any format as DSS does not track this information. Ex. 19B (Gill Resp. to Req. for Prod. No. 2).

321. DSS does not track, record, or log forms or records related to the transmittal or delivery of voter registration applications to SOS, DSS, or county auditors. Ex. 19B (Gill Resp. to Req. for Prod. No. 14 & Gill Resp. to Interrog. No. 6).

322. DSS offices do not use cover sheets when mailing completed voter registration applications to county auditors. Ex. 19B (Gill Resp. to Interrog. No. 6).

323. The case narrative, adopted in 2021, that a benefits specialist puts into a client's file does not indicate whether the benefits specialist transmitted the client's voter registration application to a county auditor. Ex. 10 (Miller Dep. 93:8-13, 109:1-6).

324. DSS local office supervisors have no way to verify whether a benefits specialist or clerical worker transmitted a completed voter registration application to a county auditor. Ex.

10 (Miller Dep. 131:20-132:2; 132:10-14); Ex. 6 (Nardi Dep. 62:5-12); Ex. 7 (Barker Dep. 59:9-12, 61:6-10).

325. DSS staff do not know whether county auditors have received voter registration applications transmitted by a DSS office. Ex. 10 (Miller Dep. 93:14-20).

326. DSS leadership cannot verify whether local DSS offices are following the agency's standard procedure of transmitting voter registration applications to county auditors in a timely manner unless they personally observe the procedures being followed. (Miller Dep. 91:18-92:9).

327. DSS's central office has never conducted on-site observations of voter registration procedures at DSS local offices. Ex. 10 (Miller Dep. 92:14-17).

328. Other than DSS's July 29, 2020, changes to its policies regarding blank voter preference questions and frequency of transmission of voter registration applications to county auditors, DSS is unaware of any other changes to the agency's voter registration procedures since the NVRA went into effect in 1995. Ex. 10 (Miller Dep. 52:19-54:22; 71:9-72:3); Ex. 19B (Gill Resp. to Interrog. No. 1).

329. DSS reviews local offices' compliance with DSS policies and procedures through several mechanisms, including quality control reviews by DSS's quality control unit and management evaluations of local offices conducted on a three-year cycle, with each local office undergoing an evaluation once every three years. Ex. 10 (Miller Dep. 120:20-122:13, 122:14-125:17, 218:11-219:5, 225:13-226:22, 227:1-9).

330. Before January 2021, the quality control reviews and management evaluations of local offices did not contain any specific questions related to voter registration. Ex. 10 (Miller Dep. 122:14-125:17, 218:11-219:5, 225:13-226:22).

331. Since adding voter registration questions to the local office management evaluations, DSS has not tabulate or summarize the results of the voter registration questions. Ex. 10 (Miller Dep. 232:15-18).

332. DSS does not specifically factor NVRA compliance into DSS staff performance evaluations. Ex. 10 (Miller Dep. 133:20-22).

333. DSS has never requested or received data on voter registration applications generated at DSS from SOS. Ex. 10 (Miller Dep. 129:8-12).

334. DSS did not analyze or evaluate its compliance with the NVRA in the five years preceding the agency's receipt of Plaintiffs' May 20, 2020 notice letter. Ex. 10 (Miller Dep. 129:21-130:6).

335. DSS does not consider data on the agency's provision of voter registration services helpful in assessing its compliance with the NVRA. Ex. 10 (Miller Dep. 132:15-133:3).

336. DSS bases its assessment that its voter registration services improved between 2020 and 2021 on the fact that it has provided better training and undertaken case reviews to ensure that the training has taken effect. Ex. 10 (Miller Dep. 133:4-16).

337. The number of voter registration applications generated at DSS has declined over the last 20 years. Ex. 10 (Miller Dep. 146:12-16); Ex. 11 (Miller Dep. Ex. 10).

338. DSS was not aware of the decline in voter registration applications generated at DSS over the last 20 years before Plaintiffs' May 20, 2020, notice letter. Ex. 10 (Miller Dep. 146:22-6).

339. The number of DSS clients has not declined over the last 20 years at a rate similar to the decline in voter registration applications generated at DSS. Ex. 10 (Miller Dep. 147:7-13).

340. DSS does not know why the number of voter registration applications from DSS have declined over the last 20 years. Ex. 10 (Miller Dep. 147:13-18).

341. DSS does not know why voter registration rates by covered transaction vary widely between counties in South Dakota. Ex. 10 (Miller Dep. 154:21-155:7).

342. DSS has never analyzed geographical or temporal variations in voter registrations. Ex. 10 (Miller Dep. 157:10-15).

343. DSS considers SOS's role in DSS's provision of voter registration services and NVRA compliance to be limited to providing the agency forms to use and providing *ad hoc* guidance when specific problems arise regarding specific offices or forms. Ex. 10 (Miller Dep. 157:16-19).

J. Training

344. Prior to July 2020, DSS never provided training on voter registration procedures and NVRA compliance to any of the agency's employees. Ex. 10 (Miller Dep. 99:7-15, 103:9-15); Ex. 19B (Gill Resp. to Interrog. No. 5); Ex. 6 (Nardi Dep. 21:22-11). Nor had DSS ever provided written guidance or instruction to local office supervisors on how to train their employees on voter registration and the NVRA. Ex. 10 (Miller Dep. 104:9-105:4).

345. On July 29, 2020, for the first time since the NVRA took effect in 1995, DSS conducted an initial training on voter registration services and NVRA compliance with the agency's Economic Assistance Regional Managers and Supervisors. Ex. 19B (Gill Resp. to Interrog. No. 5).

346. The benefits specialist supervisor for DSS's Hot Springs and Pine Ridge offices, a 26-year employee of DSS, first learned about what the NVRA requires in July 2020. Ex. 7 (Barker Dep. 51:7-21).

347. DSS is following a “train the trainer” model in which local DSS office supervisors who receive training on voter registration and NVRA compliance are then responsible for training their own staffs at least once annually. Ex. 10 (Miller Dep. 99:16-100:18). DSS instructed the supervisors who received the initial training on voter registration services and NVRA compliance on July 29, 2020, to present that same training to their staffs, including Economic Assistant Benefits Specialists, Child Care Assistance Caseworkers, LIEAP workers, and all clerical staff who assist with these programs. Ex. 19B (Gill Resp. to Interrog. No. 5). Local DSS offices did not offer such training to existing staff until after the July 29, 2020, training. Ex. 19B (Gill Resp. to Interrog. No. 5).

348. DSS does not require employment specialists to receive voter registration training. Ex. 10 (Miller Dep. 234:7-17).

349. Following Plaintiffs May 20, 2021 Notice Letter, DSS leadership created a PowerPoint presentation on the NVRA for the first time in July 29, 2020, and subsequently revised that presentation on April 15, 2021. Ex. 10 (Miller Dep. 239:13-240:6); Ex. 11 (Miller Dep. Ex. 17).

350. DSS’s voter registration training presentation does not differentiate between in-person and telephonic interactions with respect to employees’ obligation to provide customers with voter registration applications. Ex. 10 (Miller Dep. 107:2-10, 239:13-240:6); Ex. 11 (Miller Dep. Ex. 17).

351. DSS’s voter registration training does not explain to staff how to send a voter registration form to clients following telephonic transactions. Ex. 10 (Miller Dep. 108:5-9).

352. The July 29, 2020, training contains a slide stating, “If requested, you may help an individual complete the voter registration application.” The April 15, 2021, training similarly

states, “If requested, DSS may help an individual complete the voter registration application.”

Ex. 10 (Miller Dep. 109:7-110:4); Ex. 11 (Miller Dep. Exs. 2, 17).

353. DSS admits that a DSS employee could reasonably interpret the training language that, “[i]f requested, [you or DSS] may help an individual complete the voter registration application” to mean that the employee must wait for a client to ask for assistance before offering help in completing an application. Ex. 10 (Miller Dep. 111:2-8).

354. Although DSS benefits specialists, supervisors, regional managers, clerical staff, and other employees involved in determining benefits eligibility have used a computerized data entry system called Access for many years, DSS’s training guide for the Access system did not include any information on voter registration before September 2020. Ex. 10 (Miller Dep. 113:2-17, 116:12-16); Ex. 11 (Miller Dep. Ex. 5).

355. Prior to July 2020, employees in at least some local DSS offices, including those in Hot Springs, Pine Ridge, and Rapid City, were not regularly trained on voter registration issues. Ex. 7 (Barker Dep. 71:4-7, 73:8-22); Ex. 6 (Nardi Dep. 21:12-15; 67:9-17; 71:5-7; 73-7-12).

356. In the Hot Springs and Pine Ridge DSS offices, employee trainings on voter registration conducted since July 2020 typically last only 10-15 minutes. Ex. 7 (Barker Dep. 70:6-7, 71:8-14, 73:2-11).

357. Although DSS admits that employment specialists and DSS local office employees from other divisions may be the first person to interact with an individual seeking to apply for, renew, or recertify benefits, DSS does not train those individuals on the NVRA or voter registration. Ex. 10 (Miller Dep. 237:13-238:6); Ex. 7 (Barker Dep. 39:7-17, 40:17-41:7, 53:5-8).

358. For example, in October 2019, an individual staffing the front desk of the DSS office in Hot Springs told an applicant to visit the county auditor's office for voter registration. Ex. 7 (Barker Dep. 29:7-17); Ex. 25 (Cataldo Dec. ¶ 8(a)). After learning of this incident, DSS did not provide any training regarding voter registration responsibilities to ensure that it did not happen again. Ex. 7 (Barker Dep. 40:17-41:7; 53:5-8). No effort was made to identify the client who should have received voter registration services but did not. Ex. 7 (Barker Dep. 83:1-5).

359. At least some local DSS offices are unaware of any protocol to follow for clients who do not have a driver's license, nondriver identification card, or social security number, or that ARSD 5:02:03:21 provides that such individuals to complete an affidavit of eligibility to register to vote. Ex. 7 (Barker Dep. 46:14-17; 53:9-16); Ex. 6 (Nardi Dep. 51:19-22).

IX. SECTION 7 VIOLATIONS BY DLR

360. DLR receives applications for, determines eligibility for, and provides a wide range of services under the federally funded Workforce Innovation and Opportunity Act, many of which are similar to TANF or SNAP benefits. These services include by way of illustration and not limitation, cash benefits and benefits for tuition, childcare, housing, work attire, and cost of veteran training. Ex. 3 (McEntaffer Dep. 62:1-3, 82:3-83:7, 87:3-21, 97:2-98:12, 106:1-19, 108:1-20, 109:5-20, 110:1-3, 143:6-14, 172:13-173:20, 177:1-9); Ex. 4 (McEntaffer Dep. vol. 2 Ex. 3).

361. No voter registration assistance is given in connection with the application (including renewals) for, or changes of address made in connection with, DLR's assistance and services under the WIOA. Ex. 3 (McEntaffer Dep. 62:1-7, 82:3-83:11, 87:22-88:5, 104:4-105:5, 170:13-172: 2, 178:1-179:22, 180:3-14).

362. Before and since the filing of this lawsuit, including at the time DLR's 30(b)(6) representative was deposed by Plaintiffs, DLR published on its website and admitted that it administered the TANF program with DSS. Ex. 4 (McEntaffer Dep. Ex. 11); Answer to Compl. ¶ 24, ECF No. 25 (admitting to Compl. ¶ 27); Ex. 3 (McEntaffer Dep. 42:9-43:7; 49:5-16).

Specifically, until at least September 27, 2021, DLR stated the following on its website:

The South Dakota Temporary Assistance for Needy Families (TANF) program is a public assistance program for families with serious financial needs. The Department of Labor and Regulation administers this program together with the Department of Social Services.

...

If you would like to know more about TANF, you have two easy options. If you live in a non-reservation community, contact your local job service office and ask to visit with a TANF employment specialist. If you live in a community within one of South Dakota's reservations, contact your local Department of Social Services office and ask to talk to a TANF benefits specialist.

(Ex. 8A (DLR, S.D. Website, https://dlr.sd.gov/localoffices/job_search_tools/default.aspx)).

363. Since the Rule 30(b)(6) deposition of a DLR representative, DSS has dropped the language quoted in paragraph one from that page on its website and denied in its Amended Answer that it "co-administers" TANF with DSS. (Ex. 8A (DLR, S.D. Website, https://dlr.sd.gov/localoffices/job_search_tools/default.aspx); Answer to Am. Compl. ¶ 71, ECF No. 47). Nevertheless, DLR still states that it partners with DSS to provide TANF benefits and that individuals may inquire about TANF benefits at DLR offices, writing:

The South Dakota Temporary Assistance for Needy Families (TANF) program is a public assistance program for families with serious financial needs. The Department of Social Services administers this economic assistance program and partners with the Department of Labor and Regulation to provide support to families on their journey to self-sufficiency.

...

If you would like to know more about TANF, contact your Job Service [DLR] office or local DSS office.

[Exhibit 8A (DLR, S.D. Website, https://dlr.sd.gov/localoffices/job_search_tools/default.aspx)]

364. DLR is, in fact, involved in the administration of TANF benefits in South Dakota. Individuals may complete form DSS-EA-201, titled “Application For Temporary Assistance for Needy Families (TANF),” to initiate the process for receiving TANF benefits, and regularly do so. Ex. 3 (McEntaffer Dep. 16:9-22, 17:1-12, 60:1-14); Ex. 4 (McEntaffer Dep. Ex. 9). Filling out Form DSS-EA-201 initiates the TANF application process. Ex. 4 (McEntaffer Dep. 59:13-20, 60:1-13). The date an individual completes this form at a DLR office is considered the individual’s application date, even though they must complete their application at DSS. Ex. 10 (Miller Dep. 162:3-22). DLR does not present individuals who complete DSS-EA-201 the voter preference question and does not offer or provide any assistance with voter registration to those individuals. Ex. 3 (McEntaffer Dep. 17:13-20; 58:3-4).

365. Although DLR administers or participates in the administration of various public assistance programs, DLR staff has never received training on the NVRA. Ex. 3 (McEntaffer Dep. 110:4-9, 114:4-21).

366. DLR has never considered itself subject to the NVRA or attempted to comply with the NVRA’s requirements. Ex. 3 (McEntaffer Dep. 30:9-15, 58:10-59:1).

367. Although SOS created a DLR-specific voter preference form and voter registration form following Plaintiffs’ May 20, 2020 notice letter, DLR is not aware of those forms and have not used them. Ex. 3 (McEntaffer Dep. 56:10-22, 57:1-22; 58:1-4); Ex. 4 (McEntaffer Dep. Ex. 8).

X. FAILURE TO REMEDY PAST VIOLATIONS

368. DLR has never considered itself subject to the NVRA or attempted to comply with the NVRA's requirements. Ex. 3 (McEntaffer Dep. 30:9-15, 58:10-59:1).

369. SOS updated voter preference forms, driver's license voter registration forms, TotalVote manual, and Driver License Examiners Training PowerPoint following Plaintiffs' May 20, 2020 notice letter to Defendants. Ex. 19A (Barnett Resp. to Interrog. No. 8).

370. Defendants have made no effort to identify clients who were improperly denied the opportunity to register to vote, or those whose voter registration applications were not correctly processed, after making voluntary changes beginning in July 2020. Ex. 12 (Schrank Dep. 172:14-173:1); Ex. 7 (Barker Dep. 83:1-10).

XI. LACK OF VOTER REGISTRATION SERVICES TO INDIVIDUALS WITH CONVICTION HISTORIES

371. Applicants with conviction histories are eligible to vote in South Dakota upon completion of their sentences, including probation, parole, and restitution. S.D. Codified Laws § 12-4-18.

372. Plaintiffs' investigation revealed a DSS client in Rapid City who incorrectly believed he could not vote due to a felony conviction. He was under the impression he could not register to vote despite having completed his sentence. No one at the office informed him that this was the case and he remained unregistered. In addition, at the Martin DSS office, the investigators interviewed a DSS client who had completed her sentence and was eligible to vote when she applied for SNAP, TANF, and Medicaid. The DSS case worker who assisted this client with her application skipped the voter preference question when reviewing the benefits application form because this client had once been convicted of a felony, even though she was now eligible to vote under South Dakota law. Ex. 25 (Cataldo Decl. ¶ 8(e)-(f)).

373. Investigation revealed a DSS client who incorrectly believed he could not vote due to a felony conviction. He was under the impression he could not register to vote despite having completed his sentence. No one at the office informed him that this was the case and he remained unregistered. In addition, at the Martin DSS office, a DSS client who had completed her sentence and was eligible to vote when she applied for SNAP, TANF, and Medicaid. The DSS case worker who assisted this client with her application skipped the voter preference question when reviewing the benefits application form because this client had once been convicted of a felony, even though she was now eligible to vote under South Dakota law. Ex. 25 (Cataldo Decl. ¶ 8(e)-(f)).

DATED: February 9, 2022

Respectfully submitted,

/s/ Terry Pechota

Terry Pechota
PECHOTA LAW OFFICE
1617 Sheridan Lake Road
Rapid City, SD 57702
Telephone: (506) 341-4400
tpechota@1868treaty.com

Jacqueline DeLeon*
Kim Gottschalk*
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
(303) 447-8760
jdeleon@narf.org
jeronimo@narf.org

Samantha Kelty*
NATIVE AMERICAN RIGHTS FUND
1514 P St., NW, Suite D
Washington, D.C. 20005
(202) 785-4166
kelty@narf.org

Brenda Wright*
DEMOS
80 Broad Street, 4th Floor
New York, NY 10004
(212) 633-1405
bwright@demos.org

Joseph J. Wardenski*
WARDENSKI P.C.
195 Plymouth Street, Suite 510
Brooklyn, NY 11201
(347) 913-3311
joe@wardenskilaw.com

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I electronically filed and served on all counsel of record the foregoing Plaintiffs' Statement of Undisputed Material Facts.

/s/ Terry Pechota
Terry Pechota

RETRIEVED FROM DEMOCRACYDOCKET.COM