

**IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**LOUISIANA STATE CONFERENCE OF
THE NAACP, ROY FERRAND, and
LUTHER SCOTT, JR., for themselves and all
other persons similarly situated,**

**CIVIL ACTION NO. 2-11-00926
JTM-JCW SECTION H**

Plaintiffs,

v.

**TOM SCHEDLER in his official capacity as the
Louisiana Secretary of State, RUTH
JOHNSON, in her official capacity as Secretary
of the Louisiana Department of Children &
Family Services, and BRUCE D.
GREENSTEIN, in his official capacity as
Secretary of the Louisiana Department of
Health & Hospitals,**

Defendants.

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW BY
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

PROPOSED FINDINGS OF FACT

A. GENERAL

1. DCFS administers the Supplemental Nutritional Assistance Program (“SNAP” which includes Disaster Supplemental Nutritional Assistance Program (“DSNAP”) and the Louisiana Combined Application Project (“LaCAP”), the Child Care Assistance Program (“CCAP”), the Kinship Care Subsidy Program (“KSCP”), and the Family Independence Temporary Assistance Program (“FITAP”).
2. Since the enactment of the NVRA, DCFS has enacted, in good faith, to policies and forms that assist in complying with the NVRA.
3. Since the filing of the suit, DCFS has made a good faith effort to ensure compliance with the NVRA through its training, policies, forms, instructions, and assistance to its applicants.
4. DCFS believe the NVRA to apply to in-person transactions only until this Court’s ruling in 2011; however, the Department offered voter registration services in both its in person and remote transactions for consistency of services prior to this Court’s ruling.

B. LUTHER SCOTT, JR. STANDING

1. Luther Scott, Jr. is a client of the Department of Children and Family Services and was a client at the time suit was filed. [Doc. 1, p. 5.]
2. Luther Scott, Jr. was offered the opportunity to register to vote during each application for public assistance benefits. [Doc. 296-2, pp. 10-13.]
3. Luther Scott, Jr. was a registered voter at the time he applied for public assistance benefits. [Doc. 296-2, p. 9.]
4. Luther Scott, Jr. lacks Article III standing because he has not suffered an “injury in fact.” [*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).]
5. Luther Scott, Jr. was asked if he would like to register to vote by Shawn Banks during his September 1, 209 public assistance application. [Doc. 297-6 Declaration of Shawn Banks.]
6. The Department of Children and Family Services conduct did not “aggrieve” Luther Scott, Jr. nor caused him injury, which would be redressed by the relief sought. [*Ford v. Nylcare Health Plans of the Gulf Coast, Inc.* 301 F.3d 329, 333 (5th Cir. 2002).]
7. Luther Scott, Jr. declined to register to vote when he made application for public assistance benefits on September 1, 2009 by not indicating in the declination form that he desired to register to vote. [Doc. 297, p. 10; *see also* Doc. 297-6 Declaration of Shawn Banks.]
8. Luther Scott, Jr. declined to register to vote when he made application for public assistance benefits on December 19, 2011 by checking the “NO” box on the declination form. [Doc. 297, p. 10; Doc. 296-2, p. 15; *see also* Doc. 297-7 Declaration of Yolanda Ash.]
9. When an applicant checks the “NO” box on the declination form, that applicant has declined to register to vote. [Doc. 297.]
10. The act of checking the NO” box constitutes a declination in writing. [Doc. 297.]
11. When an applicant chooses not to check either the “YES” or “NO” box, the applicant has affirmatively declined to register to vote. [Doc. 297.]

C. LOUISIANA STATE CONFERENCE OF THE NAACP STANDING

12. The *Louisiana State Conference of the NAACP* does “not allege that any of its individual members have suffered an injury to the (Department of Children and Family Services’) actions”. [2011WL 3268700, p. 4.]
13. The *Louisiana State Conference of the NAACP* is an unincorporated association, not a corporation registered with the Louisiana Secretary of State’s Office. [Deposition of Ernest Johnson.]
14. The *Louisiana State Conference of the NAACP* does not have associational or organizational standing to satisfy the injury requirement of *Lujan*. [*Acorn v. Fowler*, 178 F.2d 350, 357 (5th Cir. 1999).]
15. The *Louisiana State Conference of the NAACP* does not have individual members but is comprised of “local units”, geographically defined, which can either be an adult branch, college chapter or youth council. [Second Deposition of Ernest Johnson, pp. 27-32.]
16. The *Louisiana State Conference of the NAACP* has never conducted voter registration at a Department of Children and Family Services office. [Second Deposition of Ernest Johnson p. 94-96.]
17. The *Louisiana State Conference of the NAACP* has not expended any monetary or human resources in registering the Department of Children and Family Services’ clients. [Second Deposition of Ernest Johnson pp. 90-91.]
18. The *Louisiana State Conference of the NAACP* does not have any records to support their claim that they expended monetary or human resources on registering the Department of Children and Family Services’ clients. [Doc. 297; see also Second Deposition of Ernest Johnson pp. 93-94.]
19. Reverend Edward “Chip” Taylor, III was an independent contractor with the NAACP National Voter Fund when he conducted voter registration drives. [Second Deposition of Edward Taylor pp. 47-48.]
20. Reverend Edward “Chips” Taylor, III is not the Director of Voter Registration with the State Conference of the NAACP but instead is the Membership Chairman and Religious Affairs Chairman. [Doc. 297; see also Deposition of Edward Taylor pp. 17-18.]

D. DCFS COMPLIANCE

POLICY

1. DCFS Policy C-200/210 requires staff to inform all applicants/recipients of CCAP, FITAP, SNAP (including LaCAP), and/or KCSP of the availability of voter registration services and eligibility requirements at application and redetermination interviews. [DCFS Policy C-200/210, 3/2012]
2. DCFS Policy C-200/210 provides that it is not “necessary” that staff contact applicants due for redetermination in the CCAP, LaCAP, and certain SNAP redeterminations about voter registrations unless the client indicates on the continued application that assist they need assistance with voter registration.
3. DCFS Policy C-200/210 provides that when a recipient reports an address or name change, in a local office, that the staff asked the client “Do you want your change of address/name to be used for voter registration purposes?”
4. DCFS Policy C-200/210 provides that if a client informs staff in a local office that they would like to change their name or address for voter registration purpose, staff is to provide the Mail Voter Registration Application (form LR-1M for the client to complete and provide the client a voter registration declaration form OFS 1VR to the client.
5. DCFS Policy C-200/210 provides that if a client says “no” that they would not like to change their name/or address for voter registration purposes when reporting a name or address change, in the local office, staff is to provide the client with a voter registration declaration form OFS 1VR to complete.
6. DCFS Policy C-200/210 provides that if a client reports an address change via telephone to the agency’s Customer Service Center, the agent is to send an email to the parish office to notify them of the new address and the worker must provide a form OFS 1VR Voter Registration Declaration Statement- Change of Address/Name form to the client.
7. DCFS Policy C-200/210 provides that DCFS *staff accept completed voter registration application forms and mail the original forms* daily to the Registrar of Voters in the parish where the applicant resides.
8. DCFS Policy C-200/210 provides that *staff assure that information relating to a declination to register to vote in connection with an application made a registering agency is not used for any purpose other than over registration.*
9. DCFS Policy C-200/210 provides that *staff are to provide the same level of assistance in completing voter registration applications as is provided with regard to the completion of agency forms.*

FORMS

10. DCFS Form OFS 1VR was issued after the filing of this Complaint and it is a Voter Registration Declaration Statement- Change of Address/Name form used by the Department. [OFS 1 VR, 5/2011]
11. DCFS 4APP application for assistance is used to apply for SNAP, KSCP, FITAP, and CCAP programs. [OFS 4APP, Rev. 12/2010]
12. DCFS 4MR is an application for continued assistance and is used to recertify clients for SNAP, KSCP, FITAP, and CCAP programs. [OFS 4MR, Rev. 02/2010]
13. The DCFS 4APP application for assistance and the DCFS 4MR both contain a voter preference form within the application. [OFS 4APP, Rev. 12/2010 and 4MR, Rev. 02/2010]
14. Staff must provide the DSNAP DIS 12 voter declaration statement to the applicant when they are provided the DSNAP DIS 1 application for disaster assistance. [OFS DIS 12, Rev. 06/2011]
15. The CCAP 1 application for Child Care Assistance contains a voter preference form within the application. [OFS CCAP 1, Rev. 6/2011]
16. The CCAP 10 Child Care Assistance- Report of Changes forms contains a voter preference form within the application. [OFS CCAP 10, Rev. 3/2012]
17. The LaCAP 1A Enrollment Form contains a voter preference form within the application. [OFS LaCAP 1A, Rev. 5/2011]
18. The LaCAP 1R Re-enrollment Form contains a voter preference form within the application. [OFS LaCAP 1R, Rev. 5/2011]
19. DCFS offers voter registration through its online applications for KSCP, FITAP, CCAP, and SNAP in the Common Access Front End (“CAFÉ”).

TRAINING

20. DCFS provides NVRA training for its staff who are required to implement the NVRA. [DCFS Executive Bulletin E-2400/2451-00 Voter Registration Annual Training, Effective March 24, 2011]
21. DCFS staff receives NVRA training through employee orientations, web-based training, staff meetings, and provision of guidance in manuals, policies, and memorandum via the DCFS intranet policy management system prior to the filing of this Complaint. [DCFS Orientation Manual FITAP; SNAP Orientation Manual; DCFS Executive Bulletin E-2400/2451-00; Deposition Yolanda Ash]

22. To ensure the agency fulfills its voter registration responsibilities, the DCFS Training and Development Unit-ES commenced additional training efforts geared toward NVRA in March 2011. [DCFS Executive Bulletin E-2400/2451-00 Voter Registration Annual Training, Effective 3/2011]
23. DCFS staff received NVRA refresher training post-filing of this Complaint in April 2011. [DCFS Operations Memorandum 11-04, 5/2011.]
24. Certain DCFS staff received voter registration training from the Secretary of State's Office on April 19, 2011.
25. As NVRA materials are updated, staff receives guidance regarding these materials from supervising staff and through the intranet policy management system. [Deposition Yolanda Ash]

SCOPE OF THE NATIONAL VOTER REGISTRATION ACT OF 1993

1. Section 1973gg-2 of the National Voter Registration Act (NVRA) provides, in pertinent part, as follows:
 - (a) In general

Except as provided in subsection (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office –

 - (1) By application made simultaneously with an application for a motor vehicle driver's license pursuant to section 1973gg-3 of this title;
 - (2) By mail application pursuant to section 1973gg-4 of this title; and
 - (3) By application in person –
 - (A) At the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and
 - (B) At a Federal, State, or nongovernmental office designated under section 1973gg-5 of the title.
2. DCFS administers public assistance programs and as such, its Offices of Economic Stability operate the KSCP, FITAP, SNAP, and CCAP programs and are thus designated voter registration agencies pursuant to Section 1973gg-5 of the NVRA. [DCFS Executive Bulletin E-2400/2451-00]
3. This Court issued a decision on May 3, 2012 holding that the NVRA requires, among other things, that voter registration agencies designated under 42 U.S.C. Sec. 1973gg-5 must provide the voter registrations services described in 42 U.S.C. Sec. 1973gg-5(a)(4-

6) to public assistance applicants who apply in person and via remote transactions in mail, telephone, and online. [Doc. 212]

PROPOSED CONCLUSIONS OF LAW

1. Standing under the NVRA is limited to the United States Attorney General and the “aggrieved persons” whose voting rights have been denied or impaired. [*Krislow v. Rednour*, 946 F. Supp. 563, 566 (N.D. Ill. 1996), cited favorably in *ACORN v. Fowler*, 179 F.3d 350, 366 (5th Cir. 1999).]
2. Luther Scott, Jr. must show evidentiary support that Defendant Sonnier’s conduct “aggrieved” or caused him injury, which would be redressed by the relief sought in this complaint. [*Ford v. Nylcare Health Plans of the Gulf Coast, Inc.* 301 F.3d 329, 333 (5th Cir. 2002)]
3. The *Louisiana State Conference of the NAACP* has no standing with respect to Defendant Sonnier or DCFS. [42 U.S.C. 1973gg-9; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); *ACORN v. Fowler*, 178 F.3d 350, 360 (5 Cir. 1999)]
4. The failure to establish standing deprives the federal courts of jurisdiction to hear the suit. [*Ford*, at p. 332, citing *Rivera v. Wyeth-Ayerst Labs.*, 283 F. 3d 215, 319 (5th Cir. 2002)]
5. DCFS was not in full compliance with the mandates of the NVRA as interpreted by the ruling issued by the court in this case. [Case 2:11-cv-00926-JTM-JCW, Doc. 212, *Order and Reasons* by Honorable Jane Triche Milazzo denying Defendants’ Motion for Partial Summary Judgment]
6. The NVRA requires that a public assistance agency (a) provide voter “preference forms,” or voter “declaration forms,” asking clients at each covered transaction whether they would like to register to vote; (b) distribute voter registration application forms; and (c) provide clients with the same degree of assistance with regard to completion of the voter registration application forms. [42 U.S.C. § 1973gg-5(a)(6)]
7. An applicant for benefits at a public assistance office declines the opportunity to register “in writing” under 42 U.S.C. 1973gg-5(a)(6)(A) by signing the voter declaration declination form. [42 U.S.C. 1973gg-5]
8. The NVRA provides that “IF YOU DO NOT CHECK EITHER BOS, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.” [42 U.S.C. 1973gg-5(a)(6)(B)(iii)]

9. An applicant declines to apply to register to vote when he or she fails to check the box “yes” or “no” on a voter declination form. [42 U.S.C. 1973gg-5(a)(6)(B)(iii)]

STATEMENT ON INJUNCTIVE RELIEF

Pursuant to the Court’s pre-trial conference directive, but without waiving its defenses or objections to any claims asserted by Plaintiffs or to the Court’s ruling(s) in this case, the Secretary of the Department of Children and Family Services, respectfully offers the following language for inclusion in any judgment or order rendered by this Honorable Court:

The Secretary of the Department is directed to maintain in force and effect his/her policies, procedures and directives, as revised, relative to the implementation of the National Voter Registration Act with respect to all qualifying programs under his/her administration. As to any program for which the Secretary has not achieved substantial compliance with the provisions of the Act, the Secretary is directed to implement such policies, procedures and directives as to each such program no later than _____, 2013 and certify such compliance to the court.

The Court finds, as a matter of law, that the Secretary of the Department of Children and Family Services is in substantial compliance, or is making extensive good faith efforts to comply with the National Voter Registration Act as to the programs under her respective administration. Accordingly, the Court will not require monitoring or further reporting, or exercise continuing jurisdiction over this case.

Respectfully Submitted:

/s/ Eboni M. Townsend

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was sent electronically or via U.S. First Class Mail, postage prepaid, to the following:

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Baton Rouge, Louisiana, this 5th day of October, 2012.

/s/ Eboni M. Townsend

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