

September 11, 2008

Senator Dianne Feinstein, Chair
Committee on Rules and Administration
United States Senate
305 Russell Building
Washington, DC 20510

Re: Support for S. 3308, the “Veterans Voting Support Act”

Dear Senator Feinstein:

We write to thank you for your leadership and continuing commitment to protecting veterans’ voting rights. In large part because of your leadership on this issue, the Department of Veterans Affairs (“VA”) recently issued a directive that modified its misguided policy barring voter registration activity in VA facilities. This is an important step in the right direction, but we are concerned that the VA’s new directive is only a partial fix — not a complete one. Accordingly, we urge you to continue your efforts in support of S. 3308, the Veterans Voting Support Act. Passage of this important legislation will address many of the problems that remain unresolved under the VA’s directive, and will ensure that the veterans who have fought in defense of the right to vote will not be hindered in their attempts to exercise that right.

We are concerned that the VA’s recent directive will not be sufficient to protect the voting rights of the men and women served by the VA. Among our concerns are the following:

First, the directive imposes no affirmative obligation on VA facilities and agencies to register veterans,¹ as would S. 3308, which would permit states to designate VA facilities as voter registration agencies under section 7 of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-5 (the “NVRA”). Such a designation is important to ensure that all veterans served by VA facilities have sufficient access to voter registration materials. Indeed, although the NVRA requires that states designate state-funded facilities serving disabled citizens and citizens seeking other government benefits as voter registration agencies, the VA’s directive stops short of

¹ The directive requires only that each VA facility must adopt “a written published policy on voter assistance” and that information on registering and voting must be posted throughout VA facilities; it does not obligate VA facilities to actively register voters. Thus, the directive provides for a lower level of service than that provided at voter registration agencies under the NVRA.

permitting VA facilities to be so designated. It is impossible to justify making it harder for disabled veterans to register than it is for disabled citizens in analogous state-funded facilities, but this appears to be the inevitable result of the VA's directive.

Second, the VA's directive appears to make voter registration services available only to patients residing in VA facilities, and not to veterans availing themselves of VA services on an out-patient basis or otherwise obtaining services from the VA. Thus, the directive states that the VA policy is "to assist residents of our community living centers, domiciliaries, and patients with limited access to other voter registration and information resources." This differential treatment cannot be justified, and outpatients served by VA facilities should be permitted to avail themselves of voter registration services on the same basis as in-patients.

Third, under the VA's directive it is unclear whether and to what extent outside groups will actually be permitted to conduct voter registration activities. The directive provides that "[a]ny request by an outside organization to facilitate voter registration on VA property is [to be] forwarded to local Regional Counsel for review," and although the directive calls on facility directors to establish "[c]riteria for evaluating the time, place, and manner of voter registration and voter assistance activities," the absence of any substantive guidelines for evaluating requests creates a risk that the directive's apparent purpose — opening VA facilities to state and local election officials and non-partisan voter registration groups — may be severely undermined by the requirement that the efforts of these groups must be "coordinated with the facility."

Finally, we are concerned that the VA's directive will not guarantee prompt services sufficient to guarantee veterans are able to register and vote this November. The directive imposes no proactive duties on the VA; rather, it only suggests the VA will not unduly interfere with others' efforts to register veterans. And because the directive evidently vests each facility director with discretion (a) to determine whether groups attempting to register veterans are appropriately "non-partisan"; and (b) to dictate the time, place and manner of voter registration activities, the directive does not go sufficiently far to ensure that veterans will receive any meaningful assistance in this election cycle.

For all the foregoing reasons, we continue to urge the prompt passage of S. 3308. We also urge you to conduct immediate hearings on the VA's new policy, so that representatives of the VA may give on-the-record testimony regarding the concerns we have raised.

Many thanks again for your leadership on this important issue.

Sincerely,

The American Association for People with Disabilities
Brennan Center for Justice at NYU School of Law
Common Cause
Demos: A Network for Ideas & Action
The League of Women Voters