

**Voter Registration for Wounded Warriors:
S.3308, the Veterans Voter Support Act**

**Testimony before the
Committee on Rules and Administration
United States Senate**

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Thank you, Chairwoman Feinstein, Ranking Member Bennett, and members of the Committee on Rules and Administration, for inviting me to testify at today's hearing on "Voter Registration for Wounded Warriors: S.3308, the Veterans Voter Support Act."¹ I originally prepared this written testimony for the hearing that was to be held on September 10, 2008 and it therefore does not include any discussion of Directive 2008-053, recently issued by the Veterans Health Administration. I will address Directive 2008-053 in my oral testimony.

Introduction: Dēmos' Work on this Issue

Currently, I serve as Senior Counsel at Dēmos: A Network for Ideas and Action. Dēmos is a non-partisan public policy center, founded in 2000, whose work has focused on expanding democratic participation and lowering the barriers that exist to that participation. Since 2004, Dēmos has worked to secure compliance with Section 7 of the National Voter Registration Act (NVRA), a provision of the law requiring voter registration services to be provided at designated governmental agencies. In the past four years, Dēmos has conducted extensive research on compliance with Section 7 of the NVRA including statistical analysis and field investigations, published three reports on the NVRA, worked with public assistance and election officials in states across the country to improve their compliance with the NVRA, and served as counsel in two recent cases challenging Ohio's and Missouri's failure to implement the law.

In my time at Dēmos, I have worked extensively on efforts to ensure better compliance with and implementation of the NVRA's requirements in Section 7. I have advised state election and human services officials in numerous states about compliance, brought litigation to ensure compliance, and spoken at conferences and written about the issue. As part of these efforts, to ensure easy and fair access to voter registration by veterans, I have been working in conjunction with partners at the League of Women Voters, Common Cause, and the American Association of People with Disabilities to urge the Department of Veterans Affairs to change its positions about designation of VA

¹ I would like to acknowledge the assistance of Scott Novakowski and Allegra Chapman, Dēmos' Senior Policy Analyst and Counsel respectively, in preparing this testimony.

facilities as voter registration agencies under Section 7 of the NVRA and its policy on nonpartisan voter registration drives.

Registering Veterans at VA Facilities

Our nation's veterans, who have risked their lives in defense of the nation, deserve every chance to exercise the most cherished and fundamental right of citizenship -- the right to register and vote in this and future elections. There are many veterans who reside for extended periods at VA facilities and some, especially those who are disabled, face significant obstacles to traveling off-campus for voter registration.² They may live in VA nursing homes, or emergency housing, or rehabilitative care centers, or some other type of facility, and it is imperative that meaningful voter registration services be made available. Whether we as a nation are willing to provide easy access to the right to vote to these veterans, and whether we are willing to spend the small amount of resources necessary to secure that right, show our priorities as a nation.

Data collected by the U.S. Census indicate that a significant number of veterans remain unregistered to vote. In fact, over 5.3 million veterans (23.2% of all veterans) were not registered to vote in 2006.³ There are also significant gaps in registration rates between more highly educated and affluent veterans and those with lower education and lower income, indicating the need for greater voter registration outreach among such veteran populations. In 2006, only 70 percent of veterans with a high school diploma or less were registered to vote compared to 83 percent of those with a Bachelor's degree and 88 percent of those with an advanced degree.⁴ Similarly, only 73 percent of veterans in households with incomes below \$25,000 were registered to vote compared to 85 percent of veterans in households making \$100,000 or more a year.⁵

As a major service provider to our country's veterans, the VA is uniquely suited to reach out to unregistered veterans. The Department of Veterans Affairs is one of the largest departments in the Cabinet and has an \$80 billion budget. In fiscal year 2007, 7.8 million individuals were enrolled in the VA's health care system and as of June 2008, 2.9 million veterans were receiving VA Disability Compensation.⁶ Providing voter registration services and other means of voter registration at veterans' facilities simply makes sense.

² In 2006, 773,600 veterans obtain treatment at inpatient VA facilities. *See* <http://www1.va.gov/opa/fact/vafacts.asp> (last viewed September 6, 2008).

³ Source: U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2006, Table 15b, available at <http://www.census.gov/population/www/socdemo/voting/cps2006.html>.

⁴ *Id.*

⁵ Source: U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2006, analysis by Demos.

⁶ *See* <http://www1.va.gov/vetdata> (VA Stats At A Glance) (last viewed September 7, 2008).

VA Facilities As Designated Voter Registration Agencies

As a legal matter, the statutory language of the National Voter Registration Act indicates that Congress, in enacting the NVRA, contemplated that federal offices would participate as voter registration agencies. Federal offices are mentioned both in Congress's Findings and its Purposes: "The Congress finds that-- . . . (2) it is the duty of the *Federal*, State, and local governments to promote the exercise of th[e] right [to vote]" and "The purposes of this subchapter are-- . . . (2) to make it possible for *Federal*, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office."⁷ More to the point, however, Section 7(a)(3)(B)(ii) lists federal offices as those that a state may designate as a voter registration agency (with the agreement of such federal offices).⁸ The law further directs that all federal departments "shall, to the greatest extent practicable, cooperate with the states in carrying out [agency-based voter registration]."⁹ Executive Order 12926, signed in 1994, similarly directs federal departments to agree to any request to be designated as a voter registration agency, provided that such a designation is consistent with the department's legal authority and availability of funds.¹⁰

VA facilities are well situated to provide effective and efficient voter registration services and are fully appropriate for designation under the NVRA. The purpose of the NVRA was to make voter registration broadly accessible by ensuring that people could register to vote not just at city hall or the county clerk's office, but at a variety of government agencies where citizens go for a broad range of services. Our nation's experience with the NVRA shows that millions of citizens each year take advantage of the opportunity to register to vote at motor vehicle bureaus, public assistance agencies, offices serving persons with disabilities, and other agencies already designated under the NVRA.¹¹ Facilities and programs run by the Department of Veterans' Affairs can and should play an equally vital role in providing ready access to voter registration for the men and women who have served their country in conflicts around the world. Indeed, many of the mechanisms by which voter registration services have been integrated into public assistance and other NVRA-designated programs may be imported easily into VA programs.

Indeed, many state public assistance agencies, which are mandatory NVRA agencies, have recognized that providing voter registration opportunities is an important complement to their overall missions. As an example, the Michigan Department of Human Services, which provides benefits to 17.7% of the state's population (about 1 in 6

⁷ See 42 U.S.C. § 1973gg(a)(2) & (b)(2).

⁸ See 42 U.S.C. § 1973gg-5(a)(3)(B)(ii).

⁹ See 42 U.S.C. § 1973gg-5(b).

¹⁰ See Exec. Order No. 12,926, 59 Fed. Reg. 47,227 (Sept. 12, 1994).

¹¹ See U.S. Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006," at 1, 10 (June 30, 2007), available at http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file (last viewed September 7, 2008).

residents),¹² views its mission as fostering self-sufficiency by assisting families to be safe, stable, and self-supporting. In furtherance of that mission, Michigan DHS “believe[s] it is essential that families are empowered to act toward their own best interests and be active participants in decisions that affect their lives – with one of the most important activities being to cast a vote.”¹³ Just as voter registration is consistent with public assistance agencies’ goal of promoting self-sufficiency and helping clients become productive members of their communities, it is also consistent with the VA’s mission and vision “To care for him who shall have borne the battle and for his widow and orphan” by “provid[ing] veterans the world-class benefits and services they have earned.”¹⁴

The day-to-day procedures used by certain VA programs also are similar to those used in public assistance programs, and could easily be adapted to include voter registration services. For example, the Veterans Health Administration’s Application for Health Benefits (Form 10-10EZ) requests much of the same information as a typical application for Medicaid. Also like a public assistance program, those receiving benefits must notify the agencies of any changes of address, a key point in the process to offer voter registration since even a previously registered voter would need to update her address with election officials. Furthermore, VA staff is available to answer questions and provide assistance in completion of agency forms. While the Application for Health Benefits may be completed and submitted online, applicants are informed in writing of their enrollment status and their “enrollment priority group assignment.” As is the case with public assistance transactions initiated from outside the office, such follow-up mailings are an opportunity to provide the applicant with a voter registration form. This practice is common in several states that allow public assistance clients to engage with the agency off-site.

Moreover, the nation’s armed forces recruitment centers already have 13 years of experience operating as mandatory voter registration agencies under the NVRA, further underscoring the appropriateness of providing voter registration by VA facilities. Under the NVRA, armed forces recruitment centers offer voter registration to all prospective enlistees in the military, and all recruiting personnel have been trained to provide voter

¹² See Michigan Department of Human Services, Information Packet at 5 (April 2008), available at http://www.michigan.gov/documents/dhs/DHS-Pub-0790-April2008_232816_7.pdf (last viewed September 7, 2008).

¹³ Testimony of Catherine Truss, MSW, Civic Engagement Project Manager, Michigan Department of Human Services, at 1-2, “National Voter Registration Act, Section 7: The Challenges that Public Assistance Agencies Face,” before the Subcommittee on Elections of the Committee on House Administration (April 1, 2008), available at http://cha.house.gov/UserFiles/93_testimony.pdf (last viewed September 7, 2008).

¹⁴ See http://www.va.gov/about_va/mission.asp (last viewed September 5, 2008). Indeed, like public assistance offices, the VA reaches out to less fortunate veterans through various homeless assistance programs designed “to help homeless veterans live as self-sufficiently and independently as possible.” For example, the Department’s Health Care for Homeless Veterans Program (HCHV) provides physical and psychiatric health exams, supported housing programs, Drop-In Centers, and case management services while the Domiciliary Care for Homeless Veterans Program (DCHV) provides medical care and rehabilitation services in a residential setting. Readjustment Counseling Centers conduct community outreach and provide individual, group, and family counseling. See <http://www1.va.gov/homeless/> (last viewed September 7, 2008).

registration services and assistance. Section 2 of Executive Order 12926 directs the Secretary of Defense “to work with the appropriate State elections authorities in each State to develop procedures for persons to apply to register to vote at Armed Forces recruitment offices. . . .”¹⁵ It does not appear that there have been any reports that the inclusion of voter registration and related services has detracted from or affected the military’s ability to defend the nation nor of its ability to recruit new soldiers. Just as Armed Forces Recruiting Centers provide voter registration to prospective enlistees on their way into the military, the Department of Veterans Affairs –which has responsibility for former military personnel-- should provide voter registration to those who have completed their service. A key component in becoming integrated back into a community is, of course, taking part in community affairs through registering and voting.

Current Voter Registration Policies

Although the current administration has had many opportunities to establish a sound policy for meaningful veterans’ access to voter registration, it inexplicably has obstructed such access over at least the last four years. The issue first came to the Administration’s attention no later than 2004, when Steve Preminger, a California labor organizer, sued the Department of Veterans Affairs for refusal to allow his voter registration drive at the Menlo Park, California VA campus. According to Mr. Preminger, out of 100 citizens at a nursing home, only one had voted in the prior election and most residents had been purged from voting rolls because they were not warned to change their voter registration address when they moved to the VA. Moreover, according to Mr. Preminger, the campus homeless shelter previously had an active voter registration program that no longer functioned. Nevertheless, the current Administration fought that litigation for four years without ever creating a policy that would facilitate nonpartisan voter registration drives at VA facilities.

After winning the *Preminger* lawsuit, with the United States Court of Appeals for the Federal Circuit holding that there had been no First Amendment violation,¹⁶ the Administration continued its resistance to voter registration of veterans under the VA’s care. My understanding from this Committee’s website is that, after the *Preminger* opinion, Senators Feinstein and Kerry wrote a letter to Secretary Peake to find ways to ensure that all veterans have access to voter registration materials and identify the policies they have in place to support voter registration. I further understand the correspondence primarily regarded designation of VA facilities as voter registration agencies. Following this correspondence between the senators and the VA, the Veterans Health Administration (VHA) issued its first policy directive on voter registration, VHA Directive 2008-23, on April 25, 2008. That policy required all VA facilities to develop

¹⁵ See Exec. Order No. 12,926, 59 Fed. Reg. 47,227 (Sept. 12, 1994).

¹⁶ See *Preminger v. Secretary of Veterans Affairs*, 517 F.3d 1299 (Fed. Cir. 2008) (holding regulation at issue did not facially violate First Amendment); see also *Preminger v. Peake*, --- F.3d ---, 2008 WL 3168617 (9th Cir. 2008)(holding regulation at issue, as applied to plaintiffs, did not violate First Amendment).

comprehensive voter registration plans to assist veterans in voting, required the VA to publicly post voter registration information for veteran inpatients, and required that VA facilities provide absentee voter applications if patients cannot leave the facility.

In addition, on May 1, 2008, Secretary of State Debra Bowen sent Secretary Peake a letter requesting that the VA agree to be designated as a voter registration agency in California.

Unfortunately, two and a half weeks after the VHA issued its first policy directive regarding voter registration, it issued Directive 2008-25, the policy that is now in effect. Directive 2008-25 rescinded Directive 2008-23 and announced a broad prohibition against any third-party voter registration drives.

Such a broad prohibition of voter registration drives is problematic because it greatly impedes voter registration, especially in light of the current Administration's refusal to allow veterans' facilities themselves to provide voter registration as designated agencies under the NVRA (see below at 8). Nonpartisan organizations have proved instrumental in increasing the numbers of Americans registered to vote, in particular through conducting registration drives across the country. Indeed, these "sleeping giants" of the democratic process" are described as having "credibility, trust, and access to potential voters who are often disengaged from the electoral process."¹⁷

Most recently, in 2004, larger nonpartisan organizations assisted Americans in completing up to 10 million registrations – representing 3% of the country's population.¹⁸ Indeed, over twenty percent (20%) of total new registrants that year resulted from the efforts of not-for-profit organizations.¹⁹ Significantly, and of relevance to the Department's mission, elderly and disabled Americans may stand to benefit most from these organizations' registration efforts.²⁰ Because this group generally has the hardest time with mobility, nonprofit organizations' registration drives may be the only means by which to afford the elderly and disabled, including veterans, with the chance to vote.

We understand that the Department of Veterans Affairs has expressed concern that registration drives, even if conducted by nonpartisan groups, might disrupt the agency's business. Nonpartisan nonprofit organizations with the longest histories, such as the League of Women Voters (LWV), the American Legion, and the Veterans of Foreign Wars, have registered millions of voters by professional and courteous means. For example, the LWV has helped register citizens to vote nationwide since its inception

¹⁷ See OMBWatch, "How Nonprofits Helped America Vote: 2006," at 9 (*quoting* the Minnesota Participation Project, at <http://www.mncn.org/mpp/doc/dosanddnts.pdf>), available at www.ombwatch.org/npadv/PDF/nphelpedamericavote2006.pdf (last viewed September 7, 2008) (hereafter "OMBWatch").

¹⁸ *Id.* at 9.

¹⁹ See http://www.brennancenter.org/content/resource/policy_brief_on_restrictions_on_voter_registration_drives/ (last viewed September 7, 2008).

²⁰ *Id.*; see also OMBWatch at 9-10.

in 1920.²¹ These strictly nonpartisan efforts have made an important contribution to civic engagement and participation in this country.

Other organizations that have engaged in registration drives by nonpartisan methods include the American Legion and the Veterans of Foreign Wars. The American Legion considers voter registration to be one aspect of its “get out the vote” program, which began in 1920 and had continued through more than 20 Presidential elections.²² In its 18-page instructional “get out the vote” manual, the Legion reminds its members to not only remain nonpartisan during their registration work but also to be courteous and professional, to provide citizens with “friendly” reminders to vote, and to “thank them” for their time.²³ Such well-managed activities, surely, should not impede the work of the Department or disturb the Veterans whom it serves.

Other than the broad prohibition of voter registration drives, two aspects of the “Action” section of Directive 2008-25 bear discussion because they make the policy facially confusing by nevertheless appearing to allow voter registration drives under certain circumstances. First, the policy indicates that officially certified volunteers may provide voter registration assistance, but reading the fine print shows that assistance is limited only to veterans who specifically request such assistance and that the volunteers may not affirmatively offer voter registration as part of their interactions with patients.²⁴

I know from my own work that this policy has inhibited voter registration assistance at VA facilities. In mid-August of this year, a colleague forwarded an inquiry from a veteran who wanted to organize a group of veterans to conduct non-partisan voter registration at a VA facility. After receiving Directive 2008-025 and information about VA Form 10-0462, he let me know that he felt it would be futile to request approval to try to register veterans at VA facilities.

The Action section of Directive 2008-025 also indicates that requests by outside organizations “to facilitate voter registration on VA property [should be] forwarded to local Regional Counsel for review.” Because there is no further detail in the policy, it is unclear from the policy itself under what circumstances voter registration assistance is permissible or how this aspect of Directive 2008-025 is implemented. In fact, this past June – about a month past the time it prohibited all voter registration drives-- the VA stated in its Ninth Circuit *Preminger* brief that it

²¹ See Complaint for Declaratory and Injunctive Relief at ¶16, *League of Women Voters v. Browning*, Civ. No. 08-21243 (S.D.Fl. April 28, 2008), available at http://brennan.3cdn.net/36788da9e3a3131b58_xkm6y7jtz.pdf (last viewed September 7, 2008).

²² See American Legion, “Vote America ’08: Guide to Promoting the ‘Get Out the Vote’ Program,” at 3-4, 5-6, 8, 12, 17 available at www.legion.org/documents/legion/pdf/voteamerica.pdf (last viewed September 7, 2008).

²³ See *id.* at 1,3- 6, 8-10.

²⁴ Directive 2008-025 includes language about personnel “providing any information or assistance to VA patients *who seek to register to vote or vote*” (emphasis added) and requires such personnel to sign VA Form 10-0462, which directs that such persons “MAY NOT . . . direct persons to any voter registration being conducted by a non-governmental entity” or “encourage or discourage participation in politics, through activities such as voting. . . .”

prefers having recognized, non-partisan organizations like the League of Women Voters *conduct voter registration drives* rather than individuals affiliated with a political party (even those who claim to be nonpartisan) because of the risk that those affiliated with a political party might conduct the voter registration drive in a partisan manner.²⁵

As such, Directive 2008-025 is less a national policy than a grant of pure discretion exercised on a facility by facility basis. It does not appear that the VA requires any reporting or record-keeping to ascertain how the policy is functioning.

In any event, after issuing the policy banning voter registration drives, and after limiting the extent to which officially certified volunteers may encourage voter registration, the current administration put the final nail in the coffin of easy access to voter registration for the veterans under its care. On May 19, 2008, the VA signaled its unwillingness to provide voter registration services itself when it rejected California's request regarding VA designation as a voter registration agency under Section 7 of the NVRA. Since that time, the chief elections officials of Connecticut, Vermont, North Carolina, and Arkansas have made similar requests. I do not know whether the VA has responded to those requests or whether they remain pending.

S.3308 Contains Prudent Policy Decisions

S.3308 contains prudent policy responding to the above issues because it ensures that some form of affirmative voter registration assistance will be available to veterans at VA facilities. It makes sense to make VA facilities voter registration agencies since, as already detailed, many VA facilities are similar in their function, procedures, and population served as existing mandatory voter registration agencies; S.3308 therefore ensures that the VA must agree to designation of its facilities as voter registration agencies. Moreover, S.3308 eliminates the facility-by-facility nature of Directive 2008-025, and replaces it with a coherent national policy on voter registration assistance by nonpartisan organizations. These two items, combined with the guaranteed "reasonable access" to state election officials for voter registration, thus ensure easy access to voter registration for veterans in the VA's care.

Moreover, the costs that result from designating VA facilities as voter registration agencies are unlikely to be excessive. Voter registration applications are relatively simple forms, and it is not a complex matter to provide them through veterans' facilities. Indeed, in many states in which VA facilities will be designated as voter registration agencies, much of the additional "cost" is likely to be incurred by state election officials. The state elections officials are likely to do the necessary training at VA facilities

²⁵ Defendant-Appellee's Brief, at 11-12, *Preminger v. Peake*, No. 08-15714 (9th Cir. June 2, 2008) (emphasis added).

regarding the provision of voter registration services, and they are also likely to provide voter registration forms to voter registration agencies as well. There is no evidence that the cost of providing voter registration at military recruitment offices has been oppressive. More importantly, to deny veterans ready access to voter registration at veterans' facilities is simply unworthy of a nation that honors the service its sons and daughters have provided.

Conclusion

Whether we have the will to ensure easy access to voter registration services by our veterans, and whether we will spend some relatively small amount securing this access, shows how we, as a nation, value the fundamental right to vote as well as the service our veterans have rendered the nation. I urge you to support S.3308.