

**STATEMENT OF  
PAUL J. HUTTER  
GENERAL COUNSEL  
DEPARTMENT OF VETERANS AFFAIRS  
BEFORE THE  
COMMITTEE ON RULES AND ADMINISTRATION  
U.S. SENATE**

**SEPTEMBER 15, 2008**

Chairman Feinstein, Ranking Senator Bennett, Members of the Committee, thank you for this opportunity to discuss Senate Bill 3308, the "Veterans Voter Support Act", and in the process clarify VA's policy and practices regarding our efforts to assist veterans to register to vote, obtain absentee ballots and actually vote. We are aware that our May 5, 2008 Directive did not clearly express Secretary Peake's intent; accordingly, we amended the policy on September 8, 2008, to clarify the following:

- The Department of Veterans Affairs (VA) is absolutely dedicated to encouraging and assisting veterans to register and vote.
- Our patients' rights regulation, 38 CFR 17.33, guarantees patients in the VA medical system the ability to effectively exercise their right to register and vote
- VA will primarily focus on assisting residents of our community living centers, domiciliaries, and patients with limited access to other voter registration and information resources.
- We welcome voting registration assistance from state and local election officers as well as those nonpartisan groups with an expertise in voter registration
- All assistance must be coordinated with the facility to avoid disruptions and ensure compliance with our requirements to avoid partisan activity on our campuses.

2.

In addition, as I will explain in detail later in my testimony, VA has reached out to state and local election officials to gather the best material with which to educate and prepare veterans to vote. Accordingly, VA does not support S. 3308 because we have implemented many of its provisions, and strongly disagrees with the provisions that would designate our facilities as voter registration sites under the National Voter Registration Act (NVRA).

To put this discussion in context, it is important to understand the history and genesis of the May and September Directives. In April 2004, Steven Preminger, Chairman of the Santa Clara County Democratic Central Committee, and two others visited VA's Menlo Park, California Medical Center, intending to register voters. VA denied this group access because they represented a partisan organization. Mr. Preminger filed suit in Federal District Court in California and in the Federal Circuit Court of Appeals, complaining in the California court that VA unlawfully applied its prohibition against partisan groups and in the Federal Circuit that the regulatory prohibition was unlawful. Both courts upheld VA's proscription of partisan activity on its premises; later, the 9<sup>th</sup> Circuit Court of Appeals upheld the California decision. Importantly, all three courts determined that VA facilities are nonpublic fora, and that VA's restriction on partisan activities by visitors is reasonable and viewpoint neutral. In other words, VA facilities are not the equivalent of public sidewalks or the courthouse steps, and reasonable and viewpoint neutral restrictions on speech are lawful. In addition, all three courts agreed, in the words of the Federal Circuit, that "[t]he VA must be able to maintain a place of healing and rehabilitation for the veterans for which it provides services." However, in a Notice of Intended Decision, the California District Court also advised that VA reexamine its policy on voter registration. VA did so, and issued the May 5, 2008 Directive.

3.

The May Directive tasked the VA Voluntary Services Program Managers in each Medical Center with informing all inpatients or residents of the opportunity to receive voting information and assistance. In executing this policy, Volunteer Service Program Managers proactively reached out to the Secretaries of State, requesting information and materials that veterans would find useful. Each inpatient veteran received voter registration materials upon admission, and, consistent with the voting registration deadlines in each State, received updated voter registration materials and assistance. In addition, Volunteer Services personnel displayed posters concerning voter registration in medical centers and provided advice and assistance to outpatients.

Since VA began tracking the implementation of the policy in July, over 45,000 veterans who have been admitted to our facilities received voting information; 350 inpatients requested and received assistance after receiving the material; we have assisted 64 outpatients; and VA has recruited 173 volunteers to provide additional voting assistance.

While the May 5 voting assistance directive was effective in ensuring our assistance to veterans in their voting activities, it raised concerns because it prohibited voter registration drives due to concerns about the Hatch Act and disruptions to facility operations. The wording of the Directive also caused misconceptions due to its lack of clarity.

- The policy did not prohibit non-partisan groups from assisting Volunteer Services Program Managers to execute their responsibilities to educate veterans about voting.
- The policy ensured, through coordination by Voluntary Services Program Managers, that voter registration activity fit the individual needs of medical centers (some have many resident veterans; some have very few). It also

4.

ensured that VA provided veterans voter registration and voting assistance in a nonpartisan manner and with minimal disruptions to facility operations.

- The policy avoided possible employee violations of the Hatch Act in that they did not have to determine whether an outside group participating in a voter registration drive was partisan or not. The Office of Special Counsel, the Executive Branch Agency with jurisdiction of the Hatch Act, has advised that a federal employee who allows partisan activity on federal premises violates the Hatch Act.

After extensive discussions with Veterans Service Organizations, members of Congress, the National Association of Secretaries of State (NASS), and our constituent veterans, we realized that the May Directive did not clearly reflect the agency's commitment to voter assistance or the extensive energy VA is dedicating to this important activity. Accordingly, on September 8, VA published the new policy that clarifies our proactive efforts to assist veterans in their voting activities. The new directive clearly outlines the roles of the facility, VA Voluntary Services, nonpartisan groups and election officials in providing voter assistance to veterans. As outlined earlier in my testimony, the policy continues to focus on residents of our community-living centers and domiciliaries, and patients with limited access to other voter registration and information resources; however, voting information is available to all veterans. Our Volunteer Service Program Managers will ensure that every inpatient or resident receives guidance concerning registration and absentee voting. Further, assistance from nonpartisan groups and state/local election officials is explicitly welcomed.

With this background, I now turn to VA's opposition of S. 3308. S. 3308 would permit States to designate the VA as a voter registration agency and allow election officials as well as nonpartisan groups unprecedented access to facilities to provide voter registration information and assistance to the general voting public. VA cannot support this legislation because it would detract from VA's

5.

ability to fulfill its current statutory missions, disrupt the care and services currently provided in our facilities, and invade the privacy of those veterans seeking care. Further, the goals of this legislation are being achieved through the agency's current policy and initiatives.

Designation as a voter registration agency under the National Voter Registration Act (NVRA) of 1993 (42 USC 1973gg-5) would establish the agency as a voter registration location for the entire eligible voting population in a State. Pursuant to the NVRA, voter registration agencies provide, among other things, assistance with voter registration documents and the transmittal of those documents.

S. 3380 goes further and would also require that a VA facility designated as a voter registration agency provide information, applications, and ballots for absentee voting as well as assistance completing these documents and ensuring their proper delivery. Much of the eligible voting population in a given area would have no connection to veterans receiving VA health care and benefits. Their sole purpose for accessing VA would be for voter registration and voting assistance. The department opposes using resources that have been designated by Congress for the provision of medical services to veterans in this manner as such activities clearly detract from VA's ability to fulfill its current missions by diverting resources from the very population the department was established to serve.

Authorizing States to designate VA as a voter registration agency would be another departure from the NVRA, which permits federal agencies to decide whether to take on this responsibility, and would limit the Department's control over the manner in which VA facilities are used. In addition, Section 6 of this bill would give election officials unlimited access to any and all VA facilities to provide voting information to veterans. Such extensive access could have serious implications for patient privacy in hospitals and other treatment centers. If passed, this bill would also provide election officials 'reasonable access' to

6.

provide voter registration services to any individual, regardless of whether they are a veteran. This would establish a competing use for VA facility space beyond the needs of the veterans who rely on that facility for its primary mission.

Also of concern is that the bill would not distinguish between the various types of VA facilities which provide a myriad of treatments designed for veterans and their unique circumstances. Many facilities are simply not appropriate locations for voter registration activities. For example, we endeavor to make our National Cemeteries places of quiet refuge, contemplation, and dignity. Even non-partisan voter registration activities are inconsistent with that atmosphere and purpose. Similarly, Vet Centers are generally very small facilities that provide readjustment and outreach services to veterans who served in combat zones, including family support services. Providing voter registration activities, particularly those that invite in the broader community, would be highly disruptive to the services offered, which are often of a very sensitive and personal nature. The additional traffic brought to the Vet Centers may also adversely impact the treatment of individual veterans and may discourage others from seeking services. These same concerns also apply to VA psychiatric facilities. Other facilities, including Community-Based Outpatient Clinics (CBOCs), offices in small buildings and those that share space with other Federal agencies or businesses, may lack adequate space for the proposed activities.

S. 3308 would also require that the Secretary of Veterans Affairs give nonpartisan organizations a 'meaningful opportunity' to provide voter registration information and assistance at VA facilities. This legislation would not provide VA any discretion over the number or type of nonpartisan organizations that would be permitted to provide these services. Our concern is that VA would have to accommodate every nonpartisan request even if the demand and need from those veterans who use the facility for its actual purpose is dwarfed by the general population who might discover that the local VA is the most convenient

7.

place for this information and service. Such accommodation would disrupt the services offered in the facility and detract from VA's ability to fulfill the overall mission of caring for veterans. By contrast, VA's new policy focuses on the patient population we serve and provides facilities some discretion over the assistance offered by outside groups.

Beyond the agency's specific concerns about S. 3308, VA believes the legislation would unnecessarily duplicate policies already in place. As I have discussed, the new Directive tasks VA's Voluntary Service (VAVS) with providing voting information to our patients and assistance to those patients who request it. Patients are notified of the opportunity for voting assistance when they are admitted to the facility. In addition, information on voting and voter assistance is posted throughout the facility and patients will be periodically reminded of this service, particularly as important voter registration deadlines approach. The policy further ensures that inpatients and residents are granted authorized absence for such periods of time as are necessary to register and to vote and, if needed, assistance to do so. If patients are unable to leave the facility, assistance is provided for registering and for voting by absentee ballot. The Directive gives medical centers the flexibility and discretion necessary to provide voting assistance in the manner and method that best meets the needs and interests of all patients. To ensure that all these initiatives are fully implemented, VA is actively tracking voter assistance efforts through the VAVS offices. This information is available through VA's Office of Congressional and Legislative Affairs, rendering the reporting requirement of this bill unnecessary.

VA must be able to maintain a place of healing and rehabilitation for veterans seeking services in our hospitals, CBOCs, Vet Centers and offices. In order to provide such an environment, VA must have discretion to determine when and

8.

how outside organizations will access and utilize VA facilities and interact with VA patients. This bill would limit that discretion. Further, it would divert budgetary and human resources from VA's critical mission of administering health-care and other benefit programs for veterans and their families. Conversely, VA's new Directive and the other initiatives described in my testimony assist all veterans to register and vote when they seek care and services from VA's complex, modern healthcare system. For these reasons, VA opposes this legislation.

Thank you again for this opportunity to testify and clarify the Department's views and actions concerning the important requirement to assist veterans with voting. I look forward to answering your questions.



## PAUL J. HUTTER



Paul Hutter serves as General Counsel, Department of Veterans Affairs (VA). The Office of General Counsel (OGC) provides legal advice and representation to the Department concerning all aspects of its program and management responsibilities. The General Counsel supervises 700 employees in the Washington, DC and field locations across the United States.

Previously, Mr. Hutter served as VA's Acting Assistant Secretary for Policy and Planning, and the Executive-in-Charge of the Office of Human Resources and Administration, where he provided interim leadership while the incumbents completed the confirmation process.

Before his assignment to Policy and Planning, Mr. Hutter served as the Assistant General Counsel for Management and Operations. As such, he supervised OGC's 22 Regional Offices, all corollary field operations and the Law Library, Information Systems Division, Budget and Statistics Division, Human Resources Division, Legislative Information Division, and the National Training Director.

Mr. Hutter is a retired Colonel in the U.S. Army Reserves, where he served as an Infantry Officer and Judge Advocate for 30 years. During 2004, Mr. Hutter served on a Department of Defense team to transition the interim government in Iraq (the Coalition Provisional Authority) to a U.S. Embassy. Previous to that detail, Mr. Hutter was called to active duty to assist with the development of a military commission process to support the Global War on Terrorism.

Mr. Hutter was the Deputy Assistant Regional Counsel prior to his current assignment at VA, and before that served as the Assistant Regional Counsel in the Baltimore-Washington, DC Office of Regional Counsel. There, Mr. Hutter developed extensive experience representing VA in Equal Employment Opportunity, Merit System Protection Board and other hearings and trials before administrative and judicial tribunals.

Mr. Hutter joined VA in 1992 as an appellate attorney and, later served as a staff attorney in the Washington Area Office of the Baltimore Regional Counsel. Prior to joining VA, Mr. Hutter was a civil litigator in private practice in Honolulu, Hawaii, where he represented management in a wide variety of subject areas, including securities fraud, employment law and insurance defense.

Mr. Hutter attended the University of Santa Clara Law School, and has a Masters Degree in Business Administration from Pepperdine University. Mr. Hutter received an LL.M. at The Judge Advocate General's School in 1987, and is admitted to practice in California, Hawaii, and Virginia. He is a member of the bar of the Court of Appeals for Veterans Claims and the United States Supreme Court. Mr. Hutter and his wife, Mary, reside in Virginia. Two of their three sons are Naval aviators; their eldest son is a chef in San Diego, California.