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March 9, 2009

The Hon. Charles Schumer
The Hon. Bob Bennett
Committee on Rules and Administration
SR-305
Washington DC 20515
attn.: Adam Ambrogi, Esq.

Dear Chairman Schumer and Senator Bennett:

I represent Steven Preminger and residents¹ of the Menlo Park VA nursing home in litigation that seeks to ensure that wounded warriors retain their voting rights after they take up residence in VA facilities. My clients also believe that the VA should also offer its 4 million outpatient beneficiaries the opportunity to complete voter registration forms when they apply for benefits.

With the stroke of a pen, Secretary Eric K. Shinseki of the Department of Veterans Affairs (VA) can help every wounded warrior register to vote. Last year, Barack Obama reminded the nation of the importance of protecting this fundamental right.

[Leading this country] starts with protecting the fundamental rights of our troops. They have fought across the world so that others have the right to vote, but here at home, the Bush Administration has refused to help wounded warriors register. There is nothing patriotic about denying wounded troops the ability to vote. It's time for the VA to do the right thing. It's time to reverse this shameful decision.

The "shameful" and "unpatriotic" decision was the action of the prior Secretary, during the 2004 and 2008 campaigns, to ban all² voter registration on its campuses – which include homeless shelters and nursing homes where wounded warriors live. In response to advocacy by you, former Chairman Feinstein, President Obama, and other leaders, the House passed H.R. 6625, the Veterans Voting Rights Act, which you co-sponsored as S. 3308. The Senate was unable to vote on this measure before the 110th Congress adjourned. As a result, over five million veterans – who fought for the right to vote – remain unregistered and ineligible to participate in our democracy.

¹ The Santa Clara County (California) Democratic Central Committee became a formal party to the litigation not to advocate for partisan voter registration, but to represent its members (and members of other political parties) who move to local VA campuses had some opportunity to preserve their membership in the party of their choice and their right to vote in primary and general elections. Residents of the Menlo Park CA nursing home asked the Committee to act as their legal representative in order to protect their anonymity.

² Late in the campaign, the VA modified its absolute ban to require each local facility head to publish guidelines for cooperation with "nonpartisan" organizations. Not one of the 1400 facility heads published anything, and some campuses continue to exclude 501(c)(3).

In lieu of further legislation specific to veterans this year, we ask that the Rules Committee and its members act in their oversight role to encourage the new leadership at the VA to implement President Obama's commitment to our nation's veterans. With his pen stroke, Secretary Shinseki can designate on a nationwide basis the VA a "voter registration agency" under Section 7 of the National Voter Registration Act, 42 U.S.C. 1973gg-5, and Section 1 of Executive Order No. 12926.³ This will ensure that each wounded warrior living on a VA campus – and every one of the VA's four million outpatient beneficiaries -- will receive an offer of assistance in keeping their voter registration current whenever they apply for benefits.

My clients understand that this Committee may consider increasing federal responsibility for voter registration under several developing proposals for "universal" voter registration. Until and unless such reforms become law, two federal agencies – the Social Security Administration and the VA – can play an enormous role under existing statutes to help their beneficiaries keep their addresses updated in voter registration files. Each of these agencies corresponds regularly with poor, elderly, and disabled citizens, many of whom do not register automobiles and are therefore excluded from the normal mechanisms of "motor voter" that guarantee that all drivers have an opportunity to keep their voter registrations current. Giving these underrepresented groups an opportunity to register that is at least equal to that enjoyed by automobile drivers.

In contrast to the Social Security, the VA has a large resident population in homeless shelters and nursing homes in practically every state. In most cases, wounded warriors automatically lose the right to vote when they accept residential benefits on one of these campuses. Depending on the jurisdiction and individual circumstances, their change of residence normally invalidates any previous registration – or makes the veteran subject to federally mandated "purges" when notices sent to a former address get returned as undeliverable.

VA homeless and hospitalized residents generally do not drive cars or receive state health or welfare benefits that would entitle them to "motor voter" assistance. They do not frequent shopping centers or other public venues where they would encounter partisan and nonpartisan voter registration workers. They are seldom listed in telephone directories or subject to direct mail. Unless the VA helps these veterans register, they will be completely isolated from the political life of their communities.

The VA has a special obligation to acutely wounded warriors who are repatriated from Iraq or Afghanistan to the VA's four national polytrauma centers (one of which is in Santa Clara County). These citizens have the right to assume citizenship in the state of California – or in another state to which they intend to return. The decision

³ The Executive Order requires the VA to accept a designation made by the highest election official of a state. The protection of veterans voting rights by a federal agency should not depend upon the calculations of a state official. Moreover, the former Secretary violated Section 1 by declining designations by the Secretaries of State of California and Connecticut, claiming that voter registration was a "partisan diversion."

may have consequences for their educational benefits or tax liabilities. While they were overseas (or when they were in Army care at Walter Reed), these soldiers had access to voting officers who had the resources of the Federal Voting Assistance Program (FVAP), administered by the Secretary of Defense under UOCAVA, 42 USC 1973ff. Now that these returning heroes are being directly repatriated into the custody of the VA, they deserve access to voter registration help for whatever jurisdiction they select as their voting domicile. Neither the League of Women Voters nor local political parties are equipped to provide this legal advice and logistical assistance. By contrast, the VA can coordinate with FVAP at minimal cost and maximal efficiency.

CONCLUSION

The former Secretary claimed that voter registration was a "partisan diversion" from the various missions of the VA. The right to vote is central to our respect for the dignity of every wounded warrior. These men and women have unique insights into the challenges our democracy faces drawn from the direct experience in defending us. We owe it to them – and to ourselves – to offer them the opportunity to register to vote when they apply for VA benefits or move to a VA residence. We ask that you and the other members of this Committee – without regard to political party – join together to ask Secretary Shinseki to reverse the former Secretary's shameful decision and enfranchise America's wounded warriors.

Sincerely,

A handwritten signature in black ink that reads "Scott J. Rafferty". The signature is written in a cursive, flowing style.

Scott J. Rafferty
Attorney for Steven Preminger
and SCCDCC