

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford

July 11, 2008

The Honorable Susan Bysiewicz
Secretary of the State
State Capitol
Hartford, Connecticut 06106

Dear Secretary of the State Bysiewicz:

I am writing to reaffirm my advice about Department of Veterans Affairs' (DVA) VHA Directive 2008-025 (the Directive) which is seriously confusing and misleading -- even deceptive -- in citing the federal Hatch Act as a potential constraint on voting education or registration efforts at DVA facilities. In fact, the Hatch Act presents no bar or limit on non-partisan voter registration drives conducted on DVA property or voting education on the use of Connecticut's new voting scanning machines.

In my view, this directive should be withdrawn and revised immediately by the Department of Veterans Affairs because it is flawed and unfounded in law and fatally unfair in its restraint on veterans rights.

By way of background, the DVA recently denied you access to DVA health care facilities to distribute voter registration materials to educate veterans about the significant changes in Connecticut's electoral process, including the implementation of new voting technology intended to assist disabled voters. The DVA's denial was consistent with similar restrictions on voter registration activities in DVA facilities in other states. To justify these denials, the DVA has relied upon its VHA (Veterans Health Administration) Directive 2008-025 which states "It is VHA policy to assist patients to seek to exercise their right to register and vote; however, due to Hatch Act (Title 5 United States Code U.S.C. §§ 7321-7326) requirements and to avoid disruptions to facility operations, voter registration drives are not permitted."

Under the federal Hatch Act, federal employees of the Department of Veterans Affairs and other agencies, may not be involved in the conduct of partisan "political activities" in connection with their official duties. Clearly, a non-partisan voter registration drive conducted by the Office of the Secretary of the State could not be deemed a political activity. Neither does it necessarily involve federal employees in their workplace. Even federal employees can be involved in non-partisan voter registration drives.

Political activity is defined in federal regulations as “an activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group”. 5 CFR 734.101. Plainly, the purpose and effect of your voter registration drive is to enable veterans to register and vote rather than to encourage votes for a particular political party or candidate. This drive is part of your Office’s statutory responsibility as Commissioner of Elections to promote the orderly conduct of elections and maximize participation in such elections by all eligible voters, regardless of party affiliation. See, Conn. Gen. Stat. § 9-3.

The United States Office of Special Counsel (OSC) has specifically stated that the conduct of non-partisan voter registration drives involving federal employees on duty or in their workplace does not violate the Hatch Act. United States Office of Special Counsel Advisory Opinion, 4/14/04. This opinion is instructive because the OSC made a factual determination that the particular voter registration drive at issue there was a partisan one.

In determining whether a voter registration drive is partisan and therefore prohibited on federal property, the OSC considers: “(1) the political activities of the sponsoring organization, (2) the degree that organization has become identified with the success or failure of a partisan political candidate, issue or party, e.g. whether it has endorsed a candidate; (3) the nexus, if any, between the decision to undertake a voter registration drive and the other political objectives of the sponsor; (4) whether particular groups are targeted for registration on the basis of their perceived political preference; and (5) the nature of publicity circulated to targets of the drive immediately prior to or during the drive.” United States Office of Special Counsel Advisory Opinion, 4/14/04.

In the current situation, the Office of the Secretary of the State is a non-partisan state office with statutory duties regarding the registration of voters and conduct of elections. See, e.g. Conn. Gen. Stat. § 9-20, §9-21g, §9-4a. In addition, the Secretary of the State is the “chief election official responsible for coordination of state responsibilities under the National Voter Registration Act of 1993.” Conn. Gen. Stat. § 9-23k. The voter registration and education outreach contemplated by your office is one aspect of an officially sanctioned -- indeed mandated -- overall goal of increasing voter registration and voter participation in a non-partisan manner.

In sharp contrast, the entity that was sponsoring the voter registration drive that the OSC found to be partisan was a union that routinely endorsed candidates and used voter registration drives to target individuals with the intent of influencing its candidates’ success at the polls.

The DVA directive cited by officials as a reason to constrain voting registration or education is confusing and misleading. Relying on the Hatch Act to limit such efforts is

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disingenuous and even deceptive. It may chill and discourage legitimate exercise of rights. It is unfounded legally and unjustified as policy. Its main effect is to inhibit veteran voting.

In conclusion, the Hatch Act in no way prohibits or constrains non-partisan voter registration and education drives. The effort planned by the Office of the Secretary of the State clearly is permissible, indeed commendable.

Very truly yours,



RICHARD BLUMENTHAL