LEGISLATIVE HEARING ON H.R. 3123, H.R. 3627, H.R. 3833, H.R. 3834, H.R. 3835, H.R. 3854, H.R. 3983, H.R. 3951, H.R. 659, H.R. 2055, H.R. 2701, AND H.R. 2721

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

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TUESDAY, JUNE 24, 2025

SUBCOMMITTEE ON DISABILITY ASSISTANCE & MEMORIAL AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:15 p.m., in room 360, Cannon House Office Building, Hon. Morgan Luttrell (chairman of the subcommittee) presiding.

Present: Representatives Luttrell, Self, and McGarvey.

Also present: Representative Bost, Brownley, Hayes, Barrett, Kennedy, Stefanik, and Edwards.

OPENING STATEMENT OF MORGAN LUTTRELL, CHAIRMAN

Mr. LUTTRELL. The subcommittee will come to order. Good afternoon, everyone. How is everybody today? Very colorful. I enjoy the yellow and the blues. It livens the place up a little bit.

We are here to discuss 12 bills that would benefit veterans and their survivors. These bills would ensure that veterans, their caregivers, and their survivors all receive fast, accurate, and fair decisions on their claims for U.S. Department of Veterans Affairs (VA) benefits, build on the Veterans Appeals Improvement and Modernization Act of 2017 by further streamlining and modernizing the VA appeals process, provide employees from across VA the technology, training and resources they need to efficiently process and decide VA claims and appeals, ensure that rural veterans can receive disability compensation exams where they are, expand survivors benefits and ensure that fallen service members and veterans are properly commemorated, and require VA to obtain and track necessary information concerning disabled veterans who have died by suicide.

I am proud to have one of my bills on the—on the—on today's agenda. H.R. 3983, the Veterans Claims Quality Improvement Act of 2025, would ensure that veterans and their families receive accurate and fair decisions on their claims and appeals for VA benefits. The VA Board of Veterans Appeals (BVA) has reported to Congress quality rates of roughly 95 percent. However, the subcommittee has learned that these ratings are quite possibly flawed. We have heard that the way the Board calculates quality does not fully ac-

count for the legal errors identified by the U.S. Court of Veterans Appeals. In fact, the Court reported in 2024 that 83 percent of Board appeals were returned to the Board because of legal errors. Many of these mistakes the Board continues to make over and over again, and for too long, the Board has been passing the book to the Court, leaving the veterans waiting longer for a decision on their claim. This bill would change that and would require the Board to carry out a robust training and tracking program using the proper data measurements so Board judges and attorneys can learn from their mistakes.

When the Veterans Benefits Administration (VBA) at VA denies a benefit's claim, that veteran has the option to appeal to the Board. We have heard that the Board often sends veterans' cases back to the VBA instead of deciding on the claim. In fact, the Board reported it sent back nearly 50 percent of all the appeals it received in 2024. This is unnecessary and remains—in our-and remains a waste of time and resources. They can add—this can add months or even years to the wait times for a veteran to receive a final decision on their claim. Again, this is unacceptable. It is the responsibility of the Board judges to ensure that all remands are correct, fair, and timely.

Under the current law, performance reviews on Board judges are only required every 3 years. This bill would change that, requiring Board judges to undergo annual performances—annual performance reviews. This bill would also hold VBA claims processors accountable for avoidable deferrals of veterans' claims. It would ensure that when a VBA claims processor mistakenly requests additional evidence for a veteran's claims, all claims processors who may have made the same mistake on that case are notified, not just the last one to work on the claim itself. It provides an opportunity for the claims processors to correctly address claims going forward and do—and become better at their jobs. The VA has a hard job nonetheless, but veterans deserve a claims and appeals process that puts them first. This bill helps make sure that we have an adaptable VA that learns from its mistakes to better serve our veterans.

Chairman Bost, Chairman of the VA Committee, and I have both gone through the disability claims process ourselves, and it is a top priority for us to ensure that the process works for every veteran caregiver and survivor. I look forward to working with Chairman Bost, Ranking Member McGarvey, and other members of this subcommittee on this important proposal today. I look forward to hearing from witnesses who have joined us today and how we can improve these bills.

I now yield to the Ranking Member for his opening remarks.

OPENING STATEMENT OF MORGAN MCGARVEY, RANKING MEMBER

Mr. MCGARVEY. Thank you very much, Mr. Chairman, and thank you all for being here today. We got a packed agenda with votes coming up soon, so I want to—I want to be brief.

First of all, Mr. Chairman, thank you for your willingness to continue to work—work on this committee in a mission-focused manner, a bipartisan way that looks out and cares for our veterans. We

have got a lot of good bipartisan bills here today, and you have always been willing to work through some of the issues we may encounter in creating not just well-intentioned but also well-functioning legislation as we move forward.

I am happy to see Ms. Brownley's bill, the Veterans Law Judge Experience Act of 2025, on the agenda today. This is a great bill. Dovetails with one of the efforts I have worked on with the Board of Veterans Appeals Attorney Retention Backlog Reduction Act because it further emphasizes the need to hire and retain the best and most qualified attorneys and judges on the Board. This helps our veterans. This helps our veterans who are already having trouble getting through the system. I look forward to hearing more about legislation that seeks to find ways to make the Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims (CAVC) work more efficiently for our veterans, for their families, for their caregivers, and for their survivors. This is about how do we help our veterans.

That said, there are quite a few concerns with some of the agenda items related to appeals that I hope my colleagues in the majority will work with us to address prior to moving these bills further through the process.

Mr. Chairman, one of the bills we will discuss today, the Caring for Survivors Act of 2025, is a long overdue act to improve compensation for survivors—for the survivor's community, and I strongly support it. The rate of dependency and indemnity compensation for surviving spouses and dependents was set in 1993. Just to date myself here, that is when I was in the seventh grade. I think that we can do a little better in updating what is due to our veterans, their spouses, and their families. They put on the uniform to sacrifice everything for us. We have got to do right by them.

Needless to say, the world is a little different today than it was in 1993. Despite what decisions were made back then, we know today that, right now, that survivors of our Nation's brave men and women deserve more than we are giving them. Let us do that. It is long over due to justice compensation for people who have already paid dearly for this country. It is time to stop making them stretch their dollars as they continue to sacrifice and stretch themselves to their emotional limits.

While I acknowledge that every expansion of benefits does come with a cost on it. There is a difference between spending and investment. We have to continue to invest in the people who are willing to put on a uniform so that we have people who are willing to put on that uniform that they know that the promise that we make to them in exchange for their service will continue to be honored after they take the uniform off.

Again, I thank you, Mr. Chairman, for this hearing. I thank the experts and advocates for being here today. I look forward to coming up with practical, workable solutions for those we hold most dear here in this Commission.

Mr. LUTTRELL. Thank you, Mr. McGarvey. Chairman Bost, sir, you are now recognized for your opening statement.

OPENING STATEMENT OF MIKE BOST, CHAIRMAN, FULL COMMITTEE

Mr. BOST. Thank you, Chairman, and I want to thank you and the ranking member for holding this hearing today. I am proud to have introduced two bills on the agenda today.

One of my top priorities is continuing to streamline the VA's appeal process. That is why we must continue to build on what was accomplished through the—my bill, the Veterans Appeals Improvement and Modernization Act of 2017. My new bill, H.R. 3835, the Veterans Appeals Efficiency Act, would provide tried and true legal tools to the VA Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims to effectively—effectively decline—decide—effectively decide veterans claims that are on appeal.

Even with the massive investment Congress has made in the Board, some veterans still are waiting up to 5 years for the Board to decide their claim. The Board still has 200,000 appeals pending and receives over 65,000 appeals a year. Currently, the Board is only able to address roughly 120,000 appeals each year. At this rate, there is no way the Board can eliminate its backlog. Simply giving millions more in tax dollars to the Board to hire more staff is not the answer. We must authorize new tools and processes for the Board to modernize whether they want to or not. The Board already has the authority to decide appeals in whatever order it needs for the good cause, and the veterans waiting years for a decision is certainly a good cause to use this authority.

For decades, other Federal agencies have used legal tools, like aggregation, to decide a large number of similar claims at the same time. My bill would require the Board aggregate veterans' appeals according to the best legal practices. It is time for the Board to catch up with the rest of the government and use aggregation to provide the veterans with faster decisions on their benefit claims. Even the court recognizes the importance of this tool and began aggregation veterans' appeals in a process known as class actions. My bill would improve the process for class actions by allowing the court to certify class actions that include veterans waiting for a Board decision on their appeal class, closing this legal loophole, and ensuring timely discussions for the decisions for the veterans.

My bill would also codify the court's authority to issue limited remains—limited remands, which allows the court to order the Board to fix specific mistakes it made in a veteran's appeal without requiring the Board to issue a whole new decision. Each of these charges would make the VA—each of these changes would make the VA appeals process work better and faster. We owe it to our taxpayers to come up with new, efficient solutions instead of hiring more bureaucrats to continue a slow status quo. I would like to thank Ranking Member Takano as well as Representative Valadao, Bilirakis, Bacon, James, and Lawler for co-leading this important bill with me.

My second bill, H.R. 3834, the Protecting Veterans Claim Option Act, would ensure that no appeal option becomes a trap for veterans. The Appeals Modernization Act (AMA) gave veterans more choices for how veterans can pursue VA benefit claims, but there are improvements to be made. My bill would close a loophole in the law that prevents some veterans from ever receiving a final Board

decision. Under current law, when the Board decides that a veteran did not submit new and relevant evidence, the Board refuses to make any decision on whether the veteran can receive VA benefits. The veteran's pursuit for VA benefits essentially disappears.

My bill would ensure that the supplemental claim option is not a dead-end trap for veterans trying to navigate the VA appeals process. It would require the Board to make a decision on the merits of the veteran's claim, regardless whether their supplemental claim contained new and relevant evidence.

My bill would close another loophole in the appeals process by allowing veterans to submit additional evidence after the court sends their case back to the Board. During the appeals process, veterans often learn that the evidence that they need to support their claim and find it later after they have filed. Veterans deserve fast and final decisions on their VA benefit claims, not a hamster wheel that forces them to wait months or even years just to get denied all over again. My bill would ensure that the process would work—not work for, not against—the veterans and their families.

I look forward to discussions of both these bills in the future, and I yield back.

Mr. LUTTRELL. Thank you, Mr. Chairman.

Ms. Brownley, you are recognized—oh. Point of order. I will be—each member will be held to 3 minutes for their openings or for their remarks. We have got a long list. In accordance with committee rules, I ask unanimous consent that Representatives Brownley, Hayes, Barrett, and Mr. Kennedy be permitted to participate in today's subcommittee hearings.

Without objection. So ordered.

Representative Brownley, you are now recognized for 3 minutes to speak on your bill.

STATEMENT OF JULIA BROWNLEY

Ms. BROWNLEY. Thank you, Chairman Luttrell and Ranking Member McGarvey, for giving me this opportunity to speak on my bill, H.R. 659, the Veterans Law Judge Experience Act, which would give hiring preference to veteran law judges that have 3 or more years of veterans' law experience.

Throughout my tenure on the Veteran Affairs Committee, I have seen how veterans can end up waiting years before their claims for veteran benefits are decided. In some extreme cases, veterans have even died while waiting for their claims decision, while others spend their time unable to work and struggle to make ends meet. These circumstances make it clear that a prompter VA decision on a claim would change a veteran's life.

VA's Fiscal Year 2024 annual report, the Board of Veterans Appeals had 200,000—over 200,000 pending appeals. The VA cannot afford to hire judges with a lack of experience practicing veterans' law. Veterans need judges who can hit the ground running and get the—get them decisions in a timely manner. Not only would my bill decrease the backlog of veterans benefit claims, it would also improve the accuracy of cases and incentivize those with experience to stay in the field.

I was disappointed to see VA as opposing my bill. It is perplexing to me that VA would not want to hire experienced judges in the

field of law they would—that they would be actually practicing. I have also heard from employees with the Veterans Board of Appeals who strongly disagree with the VA's official position. These employees informed me of how many of the veterans were law judges. VA hires have no experience in veterans law. These judges then must undergo lengthy training periods and handle a reduced caseload while they become acclimated to the ins and outs of the law. This practice of hiring judges without veteran law experience clearly further delays veterans from receiving their well-earned benefits. Judges should be able to immediately start digging into the claims backlog to get veterans their benefits as quickly as possible.

I am firmly committed to working with my colleagues on the committee to get my legislation signed into law. I thank you for the time, and I yield back.

Mr. LUTTRELL. Thank you, Ms. Brownley. Mr. Barrett, sir, votes will be called in around a minute. Will you be returning or would you like to go?

Mr. BARRETT. I will be returning. I can yield to another member, if you would like, before votes if that would be better for you, Mr. Chair.

Mr. LUTTRELL. Is there any other member that is going to—will not be returning after votes because of other committee assignments? I am happy to yield their 3 minutes currently. Mr. Kennedy? Anybody? Okay.

Mr. Barrett, go ahead for your 3 minutes. Then after 3 minutes, I will give us out so we can go vote, and then we will return.

STATEMENT OF THE TOM BARRETT

Mr. BARRETT. Thank you, Mr. Chairman. Appreciate it. Thank you for allowing me to speak today. Ranking Member McGarvey, thank you as well for your willingness to take up this bill today.

I appreciate the committee's consideration of my bill, H.R. 3833, the Veterans' Caregiver Appeals Modernization Act. This legislation makes some critical and long overdue reforms and improvements to the Department of Veteran Affairs Program of Comprehensive Assistance for Family Caregivers (PCAFC). This program is set up and designed to ensure that the Nation's most injured veterans, those that suffer the most serious injuries, who choose to receive their care at home rather than in a hospital, not subjecting their loved ones to significant financial hardships and burdens.

Unfortunately, the VA, which handles—the VHA, the Veterans Health Administration, which handles this program, does not have a unified system available for applications. As a result, the records and documents that are scattered across multiple platforms and on various different systems, the VA staff that manage that see different things throughout the process, and there is not a unified way of managing that. Oftentimes, claims are delayed or lost or otherwise not actioned for quite some time.

We are going to hear today from a caregiver about the personal effect that had on her and her family's life. It leads to delays, confusion, unjust denials, particularly during appeals, which can take years to resolve. This bill eliminates that bureaucratic roadblock

that stands in the way between family caregivers and the VA. We are going to streamline and improve the VA's caregiver program application process for veterans and caregivers so they will finally be able to receive timely and accurate decisions. We will also ensure that family members who put their careers on hold to care full-time for their loved ones receive the past-due financial support they have earned. A glaring oversight is when a veteran dies while these applications are pending and are not able to receive any type of back allotted benefits.

I am excited to hear testimony today, and I want to thank the witnesses for attending this hearing. Mr. Chairman, again, thank you so much for taking this bill up for consideration today. With that, I will yield back.

Mr. LUTTRELL. Thank you, Mr. Barrett.

A vote has been called in the House. The subcommittee will stand in recess subject to the call of the chair. I expect to reconvene 10 minutes after the start of the last vote.

Ladies and gentlemen, we have to adjourn to the House floor to have votes. I would like to promise you a timely return, however, comma, period, end of discussion, if you want to kick it down the road like that, we will wait for the House for the first vote. Usually goes a little long. I would like to say we are going to be in and out in 15 minutes but that would be me lying to you, so I will not do that. It is 1:30. I think it would be comfortable if you were to come back in around 2 o'clock. 2:05 might be a good time.

[Recess]

Mr. LUTTRELL. Mr. Kennedy, sir, you are now recognized for 3 minutes.

STATEMENT OF TIMOTHY KENNEDY

Mr. KENNEDY. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member McGarvey, members of the subcommittee, thank you for the opportunity to speak in support of my bill, H.R. 2721, the Honoring Our Heroes Act.

This legislation is rooted in the lived experiences of military families from my district and across the country who only came to fully understand the depth of their loved ones' service and sacrifice years or even decades after they had passed. Families who were told by the government that their loved ones were ineligible for the same final honors afforded to other veterans.

Under current Federal law, the Department of Veterans Affairs will only provide a headstone or marker for veterans who died on or after November 1st, 1990. Before 1990, veterans were allowed to receive a government-issued headstone regardless of when they passed. This change was not enacted out of principle but as a cost-saving measure to get legislation passed. Our veterans should never have been reduced to a line item. Their courage was not conditional, their service did not come with a time limit, and neither did their grief of the loved ones that they left.

I have worked closely with families impacted by this arbitrary policy. I have heard their stories, shared their frustrations, and felt their heartbreak. They are only seeking dignity and recognition for their loved ones' honorable service. I have made every effort to help them navigate the VA's bureaucracy, requesting exemptions, filing

appeals, only to be repeatedly met with denials and red tape. The Honoring Our Heroes Act seeks to change that.

My bill will create a 2-year pilot program to allow families of veterans who passed before November 1, 1990, to apply for a headstone or burial marker through the VA. This simple, compassionate change would mean everything to the families who have already waited too long for their loved ones to be recognized with the honor that they have earned.

My bill has earned strong support from some of our most trusted veteran service organizations, including the Veterans of Foreign Wars of the United States (VFW), Gold Star Mothers, Tragedy Assistance Program for Survivors (TAPS), Vietnam Veterans of America, Disabled American Veterans, American Legion, including the Jesse Clipper Post 430 and Bennett Wells Post number 1780, the Military Order of the Purple Heart, including Buffalo Chapter 187, Janetta R. Cole's AMVETS Post 24, the Veterans One Stop Center of Western New York, and the African American Veterans Arts and Culture Corporation.

This legislation is about doing right by our history and ensuring that those who wore the uniform are afforded the honor that they have earned. The uniform these brave men and women wore did not change with the date, and their sacrifice did not diminish over time.

I respectfully urge the subcommittee to support H.R. 2721 and help ensure that no veteran's legacy is forgotten. Thank you for your consideration, and I yield back.

Mr. LUTTRELL. Thank you, Mr. Kennedy.

In accordance with committee rules, I ask unanimous consent that Representative Stefanik be permitted to participate in today's subcommittee hearing.

Representative Stefanik, you are now recognized for 3 minutes.

STATEMENT OF ELISE STEFANIK

Ms. STEFANIK. Thank you, Chairman Luttrell, and thank you for convening today's hearing on my bill, the Ernest Peltz Accrued Veterans Benefits Act.

First, I want to thank this committee for your tireless work in advocating for our Nation's veterans and ensuring their voices are heard in Congress. I also want to thank Representative Ro Khanna for co-leading this bipartisan legislation. It is an honor to speak before the Disability Assistance and Memorial Affairs Subcommittee to discuss my bill that corrects a moral wrong and seeks to improve the payment of pension benefits for those who selflessly served our great country.

I proudly represent New York's 21st congressional District, which is home to Fort Drum and the 10th Mountain Division, the Army's most deployed division since 9/11. Our district also has the largest veterans' population in all of New York State. As Members of Congress, it is our duty to recognize the sacrifices our military families make for our freedoms and develop solutions to ease the burdens placed on them. I look forward to continuing working with this committee to ensure our vets and their families are confronted with fewer hurdles when accessing their hard-earned benefits.

My bill, H.R. 3123, the Ernest Peltz Accrued Veterans Benefits Act, improves the process by which our vets receive their accrued pension benefits. With one of the largest military communities in New York State, I have had the privilege of meeting with countless veterans and hearing firsthand the issues they face every day. Mr. Peltz was a U.S. Navy vet who bravely served in World War II. During the final chapter of his life, he lived in an assisted facility in Queensbury, New York, to be close to his son Charles. His health began to rapidly decline, and the Warren County Veterans Service offices assisted Ernest with his application for accrued pension benefits for which he was approved.

I personally spoke with senior VA officials, yet due to a processing error at the VA, the funds were not deposited until 7 days following his death. This erroneous delay prompted the VA to then claw back the earned funds and abandon the Peltz family with unanticipated expenses while mourning the loss of Ernest. The Peltz family was penalized for the VA's mistakes. This is unacceptable. A family mourning the loss of a beloved veteran should not have to deal with red tape and bureaucratic mistakes.

My bill ensures another family never has to go through something like this again. It eliminates the burden on the surviving family by ensuring that the veteran is entitled to receive their preapproved pension benefits within the month the death occurs. When a service member serves their family, serves alongside them. Together, we have the opportunity to pass this common sense, bipartisan bill to ensure our veterans and their families are never forgotten again.

Thank you for the opportunity to Chairman Luttrell today. I also want to particularly thank Ernest's son, Charles Peltz, who is a friend. I saw him last week. Thank you for your years of commitment to helping us pass this bill. I yield back.

Mr. LUTTRELL. Thank you, Ms. Stefanik.

It is our practice we will forego a round of questioning for each member. Any questions may be submitted for the record.

A vote has been called in the House. The subcommittee will stand in recess, subject to the call of the chair. I expect to reconvene 10 minutes after the start of the vote.

[Recess]

Mr. LUTTRELL. The committee will come to order.

Representative Hayes, you are now recognized for 3 minutes to speak on your bill.

STATEMENT OF JAHANA HAYES

Ms. HAYES. Thank you, Mr. Chairman. I appreciate the Veterans' Affairs Committee for inviting me back to discuss my legislation, the Caring for Survivors Act. I had the opportunity to come before the committee last Congress to discuss the importance of the bill, and I am here again today to share the broad support the bill continues to gain and the need to sign it into law.

While I do not sit on this subcommittee, I deeply care about our veterans and have worked tirelessly on behalf of the men and women and the families who have served our country since I joined Congress. My bill, the Caring for Survivors Act, is a continuation of that dedication to our veterans. This legislation would expand

benefits for survivors of servicemembers and veterans who have given their lives in service to the United States.

When a servicemember dies in the line of duty or a veteran dies from service-related injuries or illnesses, their surviving family members receive a monthly benefit known as Dependency and Indemnity Compensation, or DIC. Unfortunately, the DIC rate has been minimally adjusted since the VA established the benefit in 1993 and is lower than the rate of other Federal survivor programs such as the Federal Employees Retirement System. Specifically, DIC beneficiaries currently receive 43 percent of the rate given to a totally disabled veteran, which is significantly lower than the 55 percent of the insurance annuity that beneficiaries of Federal civilian employees are eligible to receive.

Additionally, current DIC rules drastically reduce the benefits for surviving members if the veteran was disabled for less than 10 years before passing away. This 10-year provision is more stringent than other Federal survivor programs and disadvantages survivors who have put their lives on hold to care for a disabled veteran. The Caring for Survivors Act addresses these issues through two reforms to DIC benefits.

First, the bill raises DIC to 55 percent of the rate given to a totally disabled veteran, increasing DIC to a level consistent with other Federal survivor programs. As a result of this change, survivors will receive an approximate increase of more than $450 per month.

Second, my bill reduces the 10-year disability rule to 5 years to broaden eligibility and expedite DIC benefits for veterans who have sacrificed to care for disabled veterans. Taken together, these two provisions modernize survivor benefits to ensure families receive the financial help they deserve.

I appreciate the support of the Veterans Service Organization (VSO) community for the legislation and I also want to recognize the surviving spouses and other family members nationwide and in this committee room for their ongoing advocacy to implement essential changes to survivor benefits.

Finally, I want to thank my Republican colleague, Representative Fitzpatrick, for leading this legislation with me in the House, as well as Ranking Member Blumenthal and Senator Boozman for their support of the legislation in the Senate.

Supporting veterans and surviving family members is an intentional choice that we can all make. I encourage my colleagues to support my bipartisan legislation and advance it through this subcommittee and vote for passage on the House floor.

Thank you. I yield back.

Mr. LUTTRELL. Thank you, Mrs. Hayes.

I now invite the second panel to the table.

Ms. Guleff, you are left—I mean, you are right and Mr. Wishnie, you are in the middle. My fault. I should have thrown that at you. You guys ready? All right.

Welcome, everyone, and thank you to those who traveled here to share your experiences with today. Our second panel, Mrs. Julie Guleff. "Ju-liff"? "Who-liff," Okay. Ms. Julie Guleff, surviving spouse of Stephen Guleff, Vietnam veteran; Professor Michael Wishnie, William O. Douglas, Clinical Professor of Law and direc-

tor of the Yale Law School, Veterans Legal Service Clinic; and Ms. Candace Wheeler, senior director, Government and Legislative Affairs for the Tragedy Assistance Program for Survivors.

I ask all the witnesses to please stand and raise your right hand.

[Witnesses sworn.]

Mr. LUTTRELL. Thank you. Let the record reflect that all witnesses answered in the affirmative.

Mrs. Guleff, you are now recognized for 5 minutes to present your testimony.

STATEMENT OF JULIE GULEFF

Ms. GULEFF. Members of the subcommittee, thank you for the opportunity to testify today. My name is Julie Guleff. I am the surviving spouse of 100 percent disabled Vietnam veteran Stephen Guleff. I come here today to speak in support of H.R. 3833, the Veterans Caregivers Appeals Modernization Act of 2025. To understand my strong support for this bill, I need to explain our story.

Steve and I first met in 2004, and eventually we were married. I was still working three jobs to provide for my children and my mother, but was ready to reactivate my nursing license and continue my career. However, recognizing his growing needs, I put my life on hold to be a caregiver to Steve. With the titles of caregiver, nurse, and wife, my personal goals and career vanished. I had three jobs, but none of them came with a salary.

With the increasing out-of-pocket medical expenses, our debt grew daily. Steve's health needs were clear. He could not drive. He could not go anywhere by himself, eat, or manage his own affairs. The (PTSD) was unmanageable and often frightening. In 2017, Steve's issues compounded once again. On top of everything else, we are now fighting prostate cancer.

In 2018, we moved and Steve was able to get a VA-backed mortgage to buy a house. The downside was that by this time I did not have the credit to be added to the mortgage. Due to my caregiving responsibilities, I had not worked since 2010, had significant debt, and definitely could not leave Steve to go to work.

In late 2019, we learned the prostate cancer had progressed to Stage 4 Plus. Steve completed 55 consecutive days of radiation, which caused severe side effects. He was now bedridden, completely incontinent, unable to stand, walk, or attend to personal hygiene needs. Moreover, the radiation had furthered his dementia, requiring more oversight. Then COVID hit.

On October 1, 2020, we were excited to learn that the PCAFC program opened to Vietnam veterans. I immediately applied to get some financial relief as I thought my husband was more than qualified. I wheeled him into the bathroom, had to take him into the shower with me or wash him on a chair and brush his teeth and managed all his medications. I had to hire someone to stay with him if I had to leave the house for any reason, such as grocery shopping.

Due to the pandemic, our home visit and interview was done virtually. It must be noted that these virtual evaluations were not necessarily an accurate representation of our reality as it is hard to see through a camera all of the medical equipment and the piles of pill bottles. My husband went to great lengths to not let people

see him in his debilitated state. I spent endless hours on the phone, writing letters, emailing, faxing, hand-delivering, and correcting errors with the medical documentation.

The first denial came in early 2021 with the reason given that veteran does not need 6 months of continuous care. That was inconceivable to both my husband and me. We had already been through years of continuous care, home health, physical/occupational therapy, home modifications, and countless pieces of medical equipment.

We were heartened in March 2022 when, recognizing flaws in the system, the VA announced it was pausing dismissals from the program while the agency reviewed the eligibility criteria. Today, over 3 years later, caregivers are still waiting for the new regulations to address the problems.

In August 2022, we went bankrupt. Our finances had all been spent. We were buried in medical debt. We appealed the PCAFC decision multiple times. To be clear, if it had been approved, it would not have solved all our problems, but it absolutely would have helped.

Steve passed away on October 6th of 2022. Days after his death, I received a call from our mortgage holder asking me when I would be vacating our home. The company made it clear that they could not hold a mortgage for a deceased veteran. After years of sacrifice of career, credit, savings, and personal health, I was now widowed, homeless, alone, destitute, and heartbroken. Sadly, I am not alone.

Our PCAFC case was still open at the time of my husband's death even after 2 years of fighting for a favorable decision. The overwhelming challenge of gathering and adding documents to the veteran's medical record is impossible in its current form. I struggled for years to connect the dots between providers in both the VA and outside to make sure records were up to date, inclusive, and complete. CNN records sometimes never made it to Steve's file—excuse me, Community Care Network (CCN) records sometimes never made it to Steve's file for use in treatment plans and certainly not for PCAFC eligibility.

In the wake of losing Steve, I was so frustrated with the denials for PCAFC, I made it my mission to follow through with our quest. In 2023, I filed our case before the Board of Veterans Appeals. Ultimately, I went before a judge in December 2024. By the time I was done, he was in tears.

Unfortunately, in March 2025, almost 5 full years after we applied, we were denied again with the following conclusion of law: due to the death of the veteran, the appeal for eligibility of PCAFC benefits must be denied as a matter of law. The Board also noted it was only able to consider evidence of record at the time of the agency of original adjudication decision. After all our challenges, COVID interfering with appropriate care, evaluations, flawed regulations, changing staff, and the lack of appropriate record sharing, we were ultimately denied because the VA simply outlasted my husband.

The VA is an enormous system and will always have challenges due to its sheer size, much less added complications like COVID. The Board process is a way of rectifying those problems. If the process ends when the veteran dies, those left behind are left to

deal with the consequences. Please pass H.R. 3833 so that others will not suffer the same fate as me.

Thank you. I look forward to your questions.

[THE PREPARED STATEMENT OF JULIE GULEFF APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you for your testimony, Mrs. Guleff.

Professor Wishnie, you are now recognized for 5 minutes to present your opening testimony.

STATEMENT OF MICHAEL WISHNIE

Mr. WISHNIE. Mr. Chair, Mr. Ranking Member, members of the subcommittee, thank you for the opportunity to testify today. My remarks reflect my own views and not those of Yale or of any of my clients.

I speak today in support of the Veterans Appeals Efficiency Act, H.R. 3835, which contains practical reforms that would meaningfully improve the adjudication of VA claims and ensure that veterans have access to some of the "tried and true" tools, as Chairman Bost put it, that civilians have when they seek review of government decisions in Federal court. I will focus on just two points.

First, the act would codify and expand the jurisdiction of the Veterans Court to aggregate claims that raise the same question of law or fact. Other Federal courts employ aggregation to manage mass adjudications in agency contexts. In the Veterans Court as well, aggregation can foster more consistent, equitable, and fair application of judicial rulings while also reducing the strategic mooting of cases by VA. There is no reason that veterans should be denied recourse to the same tools that civilians challenging government decisions have with other Federal agencies.

The Veterans Court has some authority to aggregate claims and it has deployed this power judiciously. Already, tens of thousands of veterans have benefited. Many veterans cannot afford to hire the legal counsel or medical or technical experts necessary to argue complex medical or legal questions. Aggregation allows all similarly affected veterans to join together and to benefit from one well-presented case.

Aggregation also advances judicial economy because it is more efficient to decide a question once than hundreds of times over and over. Aggregation promotes uniformity in decisions, avoiding the inconsistency of single judge opinions on the same question as we often have at the Veterans Court today.

Now, when civilians challenge agency actions in Federal Court, they can gather together cases that have reached the court and that raise the same question, along with those that are still pending down at the agency level. However, in a case called Skaar, the Federal Circuit recently held that the Veterans Court unusually is limited and can aggregate only those claims that have reached the court or are within the 120-day appeal window. Claims of other veterans raising the exact same issue that are languishing at the Board or stuck before Regional Offices (RO) must be excluded. This is unusual in Federal Courts. Because few veterans with the same issue fall within that same 120-day appeals window at the same time, the Skaar decision effectively ends aggregation for veterans at the court.

Recognizing the harsh consequences of this decision, five judges of the Federal Circuit objected. Judge Dyk explained for the dissenters that aggregation, quote, "promised to help ameliorate VA delays to some significant extent, enabling veterans in a single case to secure a ruling that would help resolve dozens, if not hundreds, of similar claims," end quote. The Skaar decision denies veterans the ability to both "compel correction of systemic error and to ensure that like veterans are treated alike." This bill fixes those problems.

Now, the Board's written testimony raises various criticisms which I do not think are well-founded and which I would be glad to address during questioning. Importantly, even when the Veterans Court decides a single common question, the VA still makes the ultimate benefits determination for each veteran on an individual basis based on that veteran's facts and circumstances. Briefly, there are two amendments I hope the committee will consider to this provision.

First, I agree with the court in its written statement that H.R. 3835 should not narrow the court's authority in writ cases. I do not believe this was the intent of the drafters. I have shared proposed amendments with staff to address this.

Second, I hope the bill might avoid mention of opt-out procedures. The sensible structure of the bill is to incorporate the rules prescribed by the Veterans Court itself. The rules of that court do not explicitly address opt-outs. Removing mention of opt-outs from the bill would continue to leave it to the court to adopt such procedures either generally or in a particular case.

The second and final point I wanted to make about the bill is to emphasize that it would also codify the authority of the Board to aggregate claims. Now I am moving from the court to the Board. Seventy other Federal agencies use aggregation in mass adjudication settings, but the Board is an outlier. It has held repeatedly that it lacks authority ever to aggregate claims together and decide once instead of hundreds or thousands of times, even when the appeals involve the same question of law or fact. According to the Administrative Conference of the United States, a result of the Board's failure to aggregate is that, quote, "Agencies risk wasting resources in repetitive adjudication, reaching inconsistent outcomes for the same kinds of claims, and denying individuals access to the affordable representation that aggregation procedures promise," end quote. The bill would remedy that, too.

Oddly, the Board says it does not want this tool. It wishes to remain disempowered unlike 70 other agencies ever to aggregate claims. It cites concerns about the manner in which it itself might exercise this power if it had it. The bill does not dictate these details. It provides the tool and leaves it to the Board to properly administer it. There is no reason to deprive veterans of a tool that civilians may invoke before 70 other agencies.

In conclusion, I urge the committee to approve H.R. 3835. Thank you.

[THE PREPARED STATEMENT OF MICHAEL WISHNIE APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, sir.

Ms. Wheeler, you are now recognized for 5 minutes.

STATEMENT OF CANDACE WHEELER

Ms. WHEELER. Chairman Luttrell, Ranking Member McGarvey, and distinguished Committee members, the Tragedy Assistance Program for Survivors appreciates the opportunity to testify on behalf of more than 120,000 surviving families we are honored to serve.

TAPS remains committed to strengthening dependency and indemnity compensation for surviving families. DIC has only been increased by Cost-of-Living Adjustment (COLA) since 1993. TAPS is grateful to Representatives Hayes and Fitzpatrick and 55 original cosponsors for reintroducing the Caring for Survivors Act, which will raise DIC by 454 a month, providing parity with other Federal survivor benefits, and financial stability for surviving families. In the words of Amanda Pitzer, surviving spouse of Chief Petty Officer Larry Pitzer, Jr., "Losing my husband changed every aspect of my life emotionally, mentally, and financially. While DIC provides some support, the reality is that it simply is not enough to keep surviving families financially secure. The gap between what is provided and what is actually needed forces many of us into impossible situations, choosing between paying bills, securing our futures, or being present for our children. If the Caring for Survivors Act is passed, it would be life-changing."

TAPS appreciates Representatives Edwards and Morrison introducing the Justice for Americans Veterans and Survivors Act to ensure VA collects cause of death data for deceased veterans. While the VA currently supports 506,000 surviving spouses, VA does not know what percentage are suicide, illness, combat, or training accident losses. This data is critical to ensure VA and other organizations provide necessary care and programs for survivors as well as research into suicide prevention, toxic exposures, and illnesses that have led to the tragic deaths of many of our Nation's veterans.

The lack of data also negatively impacts Congressional Budget Office (CBO) scoring of survivor legislation, like the Love Lives On Act and Caring for Survivors Act, adding to the cost of these bills and making it difficult to find funding. We urge swift passage of this important legislation.

TAP strongly supports the Fallen Servicemembers Religious Heritage Restoration Act, which ensures every American servicemember who fought and died for our country has their beliefs and heritage properly honored. Many veterans from earlier generations also may lie in unmarked graves. The Honoring Our Heroes Act sponsored by Congressman Kennedy seeks to correct this oversight by ensuring that every veteran, regardless of when they passed, is honored with the dignity and recognition they have earned.

TAPS also appreciates the Modernizing All Veterans and Survivors Claims Processing Act, which expands the use of automation tools across VA to improve efficiency, accuracy, and communication within the claims process. This legislation codifies the work being done by VA and ensures veterans and survivor claims advancements are protected in perpetuity.

TAP strongly supports the Veterans Claims Quality Improvement Act to streamline the benefits claims process for our veterans and their families. We thank you, Chairman Luttrell, for your leadership on this important bill.

TAPS also appreciates Chairman Bost introducing the Veterans Appeals Efficiency Act to help streamline the VA claims and appeals process, making it more expedient, transparent, and easier to track for veterans and their families.

TAPS also supports the Ernest Peltz Accrued Veterans Benefits Act to ensure eligible survivors receive their veteran's unpaid pension. Last year alone, nearly 9,000 newly bereaved survivors connected to TAPS for care and services, the most in our 30-year history. Thirty-seven percent were grieving the death of a military loved one to illness, and many were caregivers to their veterans before their passing, which is why TAP strongly supports the Veterans Caregiver Appeals Modernization Act, which improves the VA's Caregiver Support Program by making the application and appeals process more accessible and efficient, and ensures much needed financial support for survivors.

On behalf of our surviving families, TAPS appreciates the opportunity to testify and I look forward to your questions. Thank you.

[THE PREPARED STATEMENT OF CANDACE WHEELER APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Ms. Wheeler.

The written statement of our witnesses today will be entered into the hearing record. We will now move to questioning.

Mr. McGarvey.

Mr. MCGARVEY. Thank you, Mr. Chairman. We will get right into it.

Ms. Wheeler, you addressed this a bit in your testimony, but I was hoping you could tell us more about why TAPS feels that the Congressional Budget Office estimates are too high for the Caring for Survivors Act. Is there any additional light you can shed on that?

Mr. LUTTRELL. Ms. Wheeler, I am sorry, Is your microphone on? Thanks.

Ms. WHEELER. It is now, yes.

Mr. LUTTRELL. Yes, ma'am. Thank you.

Ms. WHEELER. Thank you for the question. When the The Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act was passed, the VA had initially predicted that there could be up to 382,000 survivors that might have benefits under the PACT Act. We have seen a record number of 37,000 apply for benefits, which still is wonderful news for surviving families, but it certainly is a big delta from what the original estimate might have been.

What we have heard since then is that actually what has happened is that they were looking at all of the amounts of survivors within their data base that could have possibly had benefits due to the PACT Act, and it was not related to cause or manner of death. One of the pieces of legislation we have all been talking about here today would actually fix that problem by helping VA to actually code by cause of death. This impacts legislation like the Caring for Survivors Act because we believe the Congressional Budget Office is actually scoring it based on a much larger number than what actually is. Thank you for the question, sir.

Mr. MCGARVEY. No, thank you for that. I mean, I think it is important we know those numbers. We have to have a data-driven

approach to this while we are doing our best to take care of our veterans.

I also want people to understand here that we are talking about a modest increase in the base rate for dependents in care in this bill. It is less than $500 a month for a survivor. What does that additional money mean for survivors and dependents?

Ms. WHEELER. It means paying their bills. It means having a little breathing room to be able to even attend to children that are grieving as well, to take care of themselves, to just breathe a bit easier. It would really go a long way for our families and is overdue.

Mr. MCGARVEY. Ms. Guleff, I appreciate your testimony so much. I appreciate your service. We know when anyone in a family serves, the whole family serves. We thank you for that. We thank you for your courage in coming here today. Could you tell us a little bit about what that additional money would mean for families?

Turn your microphone on. Thank you very much.

Ms. GULEFF. Thank you. That amount of money would make a big change, a huge change. In my case, I was left homeless in a very short time after my husband died with nothing, destitute and no income. $500 was a big deal. That would have done a whole lot for me in particular and I am sure for everyone else involved.

My caregiving experience lasted so long that my life was virtually nonexistent. It was the caregiver experience. No income in savings, no 401(k)'s, no additional input into the household income other than my husband's disability check. When that was gone, everything was removed with it.

I would also like to add that not only was I a nurse by education and had planned to do that as a career, I was also—I went into the admin side and was a biller and coder. Working with the numbers and, you know, gathering all of the stuff they needed was something that I was very used to.

To answer your question, $500 a month would be a very big deal to someone like me. Quite honestly, it is an even bigger deal if you have others at home.

Mr. MCGARVEY. And so many families. Thank you.

While we are on the subject of DIC is there—we are talking about these things. There are quite a few bills here that address appeals both at the BVA and the CAVC level. Professor Wishnie, rather than asking about any specific one of them in the time we have remaining, I am more interested in how they would operate in concert with one another. If you have analyzed these as a total package, how do you think they would work from an ecosystem-wide perspective?

Mr. WISHNIE. Thank you for the question. I think each bill makes important adjustments and contributions to, hopefully, make the overall system work better. My own review of the bills for today suggests that they are not in conflict and so it is not necessary to do one bill or the other. They come at the problem—they come at different parts of the problem. This—no one bill today is the AMA that is trying to do an entire makeover. Each bill contributes, I think, meaningfully to a more efficient system for families, for veterans, for all of us.

Mr. MCGARVEY. Thank you so much. I am out of time. I appreciate all of your testimony.

Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. McGarvey.

Mr. Self, sir, recognized for 5 minutes.

Mr. SELF. Thank you, Mr. Chairman. I have got some questions that are basically explanatory or clarification.

Professor Wishnie, on H.R. 3835, the Appeals Efficiency Act, you covered some of this in your testimony, so this will be covering it, hopefully, in a little more detail just so that we understand. Would 3835 give veterans the ability to opt out as part of a class action by either the court or the Board?

Mr. WISHNIE. The bill right now speaks of opt-outs at the court. The court's own rules currently do not address opt-outs. That is managed on a case-by-case basis. At the court, the classes that they have certified so far, there has not been a request to opt out, there has not been opt-out provisions. This is because these are the equivalent of injunctive cases. In Federal Court, under the rules operable there, opt-outs are rare in injunctive cases.

The Board, I think that the legislation, I hope, will leave to the Board the responsibility to decide how to operationalize the power and it will not micromanage that. If the Board were to determine a set of opt-out rules function best, I think that is the best first step. Let the Board figure out in application, just as 70 other agencies have done, how to manage that question.

Mr. SELF. Okay. Can you tell us why a veteran might not want to be part of a class action?

Mr. WISHNIE. I do not think there are a lot of good reasons, honestly. Some veterans might prefer for their individual case to continue moving through the agency process at the RO or the Board rather than wait for a decision that is class-wide, even though that decision might benefit them. If they go through by themselves, they run the risk of a single judge saying, no, I do not see it that way. Nevertheless, they might prefer to have that option and that swifter decision. I could see why they might say, I do not want my claim to wait at all. Let us go forward.

Mr. SELF. Then can you talk to us about the advantages of being in a class action?

Mr. WISHNIE. Some of the things that I mentioned. Many veterans, of course, do not have access to medical or scientific experts. Maybe I will just give a quick example.

In the Skaar case itself, which I mentioned, that case arose from a group of about 1,400 airmen who responded to a plutonium leak in 1966 when we accidentally nuked a village in Spain. The bombs did not detonate. We dropped bombs by mistake and 1,400 airmen went out to clean up the plutonium that spilled out of two bombs. Eventually, the Air Force developed a formula to calculate how much radiation each airman was exposed to. That same formula was applied to all of those airmen, who then later applied to the VA when they experienced radiation-related diseases.

Well, it turns out that that formula is deeply flawed. Even the VA's own review concluded it was not a good formula, not an adequate formula, but they stuck to it. When Mr. Skaar came forward, he was able to marshal nuclear physicists who could analyze that

formula, explain its shortcomings, propose a more accurate formula that would better calculate the radiation for each veteran, and then apply that one formula to all veterans. The benefit to a veteran, not every veteran can identify and persuade a nuclear physicist to take up their case and testify, as happened in that case, as an expert. In that example, all 1,400 of those airmen benefited from the expertise of a Princeton nuclear physicist, and the court credited it as a result.

Mr. SELF. Okay. I have less than a minute. I have got one more question for you. Thank you for that.

You covered the writs, but would you just explain a little bit more about including writs as a covered proceeding for purposes of supplemental jurisdiction, how that could result in unintended limitations, if it does? Could you just quickly go over that?

Mr. WISHNIE. Sure, briefly. Currently, the court has authority under the All Writs Act, an ancient common law power codified by the First Congress in the First Judiciary Act of 1789, to use writs in aid of jurisdiction in a narrow set of circumstances. Most cases at the court, well over 90 percent, are appeals, not writs. The court has done some aggregation in the writ context, and that is working fine, I think.

The Federal Circuit in Skaar was addressed to appeals, and the court there said that the Veterans Court cannot aggregate appeals because it lacks supplemental jurisdiction. That is not an issue for writs cases. It is only an issue for appeals. The Federal Circuit said, you lack supplemental jurisdiction, therefore, you cannot aggregate claims. This bill would grant supplemental jurisdiction, and as I suggested, I think it should limit itself to appeals, granting supplemental jurisdiction to appeals, and leave writs alone. They are working fine. There is not a problem.

Mr. SELF. Thank you for that clarification. I yield back.

Mr. LUTTRELL. Thank you, Mr. Self.

Ms. Guleff, do you currently reside in Florida still?

Ms. GULEFF. Excuse me?

Mr. LUTTRELL. Are you still living in Florida?

Ms. GULEFF. No, I am currently living in Texas.

Mr. LUTTRELL. Well, that is a great State. Welcome.

Ms. GULEFF. Thank you.

Mr. LUTTRELL. We are happy to have you.

Ms. GULEFF. Thank you.

Mr. LUTTRELL. I totally lost my train of thought. I am sorry. I had to bring it back up a little bit. Yes.

If you do not mind, during this period with your husband——

Ms. GULEFF. Yes.

Mr. LUTTRELL [continuing]. you were currently residing in Florida, correct?

Ms. GULEFF. That is correct.

Mr. LUTTRELL. Were you engaging with one specific VA and one specific VA only or were you actually—did you travel? I would like to—if there is anything I would like to do is pick apart the VA. Okay?

Ms. GULEFF. Go ahead.

Mr. LUTTRELL. There is a large problem set. I need to know how we can kind of dive into this because your story is—and I have read your testimony twice. Were you dealing with one specific VA?

Ms. GULEFF. For the vast majority of the time we were in West Palm Beach. Then in 2018, and bearing in mind he died in 2022, we moved further north to Volusia County, so we were in. Within the Orlando system there. It was two, but 99 percent of his——

Mr. LUTTRELL. When you made the move, I am just going to—correct me if I am wrong on this, but everything—did everything almost have to start over because you went to a different VA or was there a good information communication flow between the two?

Ms. GULEFF. My husband did not want to start over because it is my understanding and it is been my experience that when you move from one VA, each VA seems to be its own universe, and he did not want to start from scratch. He requested, and I fulfilled that request, we drive over 200 miles each way from Daytona Beach to West Palm Beach to see his——

Mr. LUTTRELL. Oh, so you stayed at the same VA.

Ms. GULEFF. We did, yes.

Mr. LUTTRELL. Okay. Do we have the list of individuals that you talked to, name-wise, specifically? I would like to unpack this in a way to kind of—almost to the granular level to see why this happened.

Ms. GULEFF. Okay.

Mr. LUTTRELL. It was over a 5-year period. After you met with one of the appeals court—you met with one of the Board members or you met with a judge that you said.

Ms. GULEFF. That was just in December 2024. Before that, all of our appeals process had been back and forth on paper, so to speak.

Mr. LUTTRELL. What was the judge's response to you, because then a few months later to a year later, you got the results that said you have been declined?

Ms. GULEFF. Yes.

Mr. LUTTRELL. Can you tell me exactly what the judge's engagement with you was?

Ms. GULEFF. When I got to the judge, the very first thing he asked me was, how did you get to me, because he, in his experience, had never had a survivor or someone get to his level. It was usually done through a much different process. Again, I do not know much about that. Shortly in the hour before I met—I saw him, it was done virtually, I had to go to the Houston VA, who told me that my husband did not exist. No such record of him. He does not exist at all. No, sorry, you are in the wrong place.

I said, well, maybe since I have all the powers of attorney, maybe you can check my name because I was a point of contact for the VA for many, many years. Nope, you do not exist either. There was——

Mr. LUTTRELL. Was this the Houston VA? I am assuming you are talking about DeBakey.

Ms. GULEFF. Yes.

Mr. LUTTRELL. Okay.

Ms. GULEFF. They refused to let me in. I said, well, I have a hearing with a judge and you are going to let me in because when the screen opens, I expect to be there. There was quite a bit of back

and forth and I had to be escorted by the Houston Police to get me in front of that judge. When the judge did see me, he wanted to know where my representation was and I had to tell him I do not have any. I built this case by myself. He ran through all the list of the potentials, who this group, that group. I am refused, denied.

Mr. LUTTRELL. How did we end up in Houston after leaving West Palm Beach and Orlando?

Ms. GULEFF. Shortly after my husband died, our mortgage holder, it was a VA mortgage, called and asked when I would be vacating my home because my name was not on the mortgage. I may have been on the deed, but I was not on the mortgage. Since I had not had a working job with an income since 2010 because I was caring for my husband, I was not qualified for a mortgage or a credit of any kind. The mortgage holder asked me when I would be vacating or if I would be buying my house back from them.

Mr. LUTTRELL. When you got to Houston——

Ms. GULEFF. Right.

Mr. LUTTRELL [continuing]. which, again, it is very challenging for VA facilities to communicate with each other. That is no secret.

Ms. GULEFF. Very difficult.

Mr. LUTTRELL. West Palm Beach would not communicate with Houston DeBakey that says, hey, yes, we have—absolutely know who this person is?

Ms. GULEFF. Correct.

Mr. LUTTRELL. They did do that or they did not?

Ms. GULEFF. They did not.

Mr. LUTTRELL. Did you ask them to do that?

Ms. GULEFF. Oh, yes. Unfortunately, I had to get a little bit strong with the people in Houston.

Mr. LUTTRELL. Oh, did you get in trouble in the VA?

Ms. GULEFF. On more than one occasion. No is not always the correct answer. On this particular occasion——

Mr. LUTTRELL. I understand what you are saying, but that probably did not come out right, but.

Ms. GULEFF. I had luggage——

Mr. LUTTRELL. Yes, ma'am.

Ms. GULEFF [continuing]. with all of the paperwork and documentation that I was supposed to be there on that day. After a lengthy conversation with more than a few people, including the Houston Police Department, they granted me access to the room where the screen was, where the judge was going to hear my case.

Mr. LUTTRELL. Okay. The judge's responses to you, as this sounds absolute, you are good to go. Then——

Ms. GULEFF. He was, yes, he was shocked that I had no representation. He was wondering how this could even happen. After he asked me my questions, I spoke to him at length. There was more than a few Kleenex passed around the room on that day, but he asked for hundreds of pages of documents. I said, I will give you everything you want, all of the documents, all of the evidence, everything on this case. It is about 180 pages, the short version. He asked for all of it.

I mailed it, I emailed it, I digitized it, and I got it to him. As I told the judge, I said, when someone gets a stack that big on their desk, most of the time, it is unmanageable to look through all of

that stuff. He assured me that he would look at it and that others would look at it. It is my understanding that that did not happen and he was not allowed to read my evidence that he asked for based on the rule of law that once my husband was gone, so was the case.

Mr. LUTTRELL. Okay.

Mr. Edwards, in accordance with committee rules, I ask unanimous consent that Representative Edwards be permitted to participate in today's subcommittee hearing.

Mr. Edwards, you are recognized for 5 minutes, sir.

STATEMENT OF CHUCK EDWARDS

Mr. EDWARDS. Thank you very much, Mr. Chairman and Committee members, Ranking Member, and all of you. I appreciate being waived on and allowed to speak today.

As the proud representative of North Carolina's 11th District, a district home to over 50,000 veterans, including many who served in the 82d Airborne and across the armed services at Fort Bragg, I introduced this bill because we are failing our Nation's veterans in one of the most critical ways imaginable. We are not fully accounting for the true cost of the mental health crisis in their ranks. For years, we have heard the number: 22 veteran suicides per day. Emerging data from groups like America's Warriors Partnership suggests that number may be closer to 40, or nearly 15,000 veterans every year. That is simply a tragedy, and it is a failure of policy, data, and accountability. Our veterans deserve better.

We cannot begin to address the veterans' mental health crisis without first having accurate data that helps us fully understand the scope, severity, and the nuances of the crisis. My bill, the Justice for American Veterans and Survivors Act, will finally ensure that we collect and report accurate comprehensive information about how and why our veterans are dying. This includes tracking suicides more precisely, identifying when overdose or self-harm is involved, and clarifying the role of service-connected injuries and mental health conditions, a tragedy that many spouses have to endure after their servicemember's death.

Currently, the Department of Veterans Affairs relies heavily on county level reporting, which misses nearly one in five veterans. Families are left without closure. Survivors are often denied the benefits and support that they deserve. Policymakers, us, are left trying to fight the crisis blindfolded. This bill changes that. It brings transparency, it brings accuracy, and, most importantly, it brings justice to the men and women who served and to the families that they leave behind.

In Western North Carolina, we feel this crisis personally. My team and I have sat with families who have lost a loved one to suicide. We have met with veterans who are still fighting daily battles that we cannot see. This bill is about making sure that their stories are counted, their struggles are acknowledged, and their families are supported.

I am grateful for the strong bipartisan and community support that this bill has received from organizations like the Veterans of Foreign Wars, Military Officers Association of America, Paralyzed Veterans of America, and Tragedy Assistance Program for Sur-

vivors, and for members on both sides of the aisle who agree that this crisis demands action. Passing this legislation is not a courtesy to our veterans. It is a commitment. A commitment to the truth, to accountable, and to the sacred promise that we make to all who serve that when you come home, we will continue to stand by you. This legislative hearing is just the first step toward fulfilling that commitment.

Thank you again for the opportunity to speak and I urge this subcommittee to move swiftly in advancing this legislation.

Mr. Chair, I yield.

Mr. LUTTRELL. Thank you, Mr. Edwards. Thank you for the testimony from the panel. You are now excused.

Will the third panel please be seated?

Dr. Richardson, are you ready? You look ready. You like stay ready so you do not have to get ready? Okay, good. All right. Is everyone ready?

Thank you the witnesses for joining us today. From the Department of Veterans Affairs and the U.S. Court of Appeals for Veterans Claims, the lead witness for VA is Mr. Evan Deichert, acting deputy Vice Chairman and veteran law judge at the Board of Veterans Appeals. Mr. Deichert is accompanied by Mr. Kevin Friel, executive director of Pensions and Fiduciary Services at the Veterans Benefits Administration; Mr. James Smith, II, deputy executive director of policy and procedures for Compensation Services; Dr.—do you prefer Colonel? Okay. Colonel Colleen Richardson, executive director for the Caregiver Support Program at the Veterans Health Administration. I have to ask, military guy.

Well, you are sitting in the wrong spot. Let us do one of these. What? Yours says Colonel in front of you, is that wrong? I said Colonel. Everybody leave me alone or I will freak out. Oh, all right. Sorry, my part. Dr. Colleen Richardson, my fault, yes, ma'am. I know how to fix this problem.

Dr. Colleen Richardson, executive director for the Caregiver Support Program at the Veterans Health Administration. Welcome. Joining us from the U.S. Court of Appeals for Veterans Claims is Colonel Tiffany Wagner, Clerk of the Court for the U.S. Court of Appeals for Veterans Claims. Got it.

All witnesses please stand and raise your right hand.

[Witnesses sworn.]

Mr. LUTTRELL. Thank you, and let the record reflect that all witnesses answered in the affirmative.

Mr. Deichert, you are now recognized for 5 minutes to present the Department's testimony.

STATEMENT OF EVAN DEICHERT

Mr. DEICHERT. Good afternoon. Chairman Luttrell, Ranking Member McGarvey, and members of the Subcommittee, I appreciate the opportunity to appear before you today on behalf of the Department of Veterans Affairs to discuss how VA strives to achieve final resolution of veterans claims and appeals, to ensure access to VA health care and benefits, and to provide VA cemetery or burial benefits as well. Accompanying me today are Mr. James Smith, deputy director of policy and procedures for Compensation Service; Mr. Kevin Friel, executive director of Pension and Fidu-

ciary Service, both in the Veterans Benefits Administration; and Dr. Colleen Richardson, executive director of the Caregiver Support Program, Veterans Health Administration.

While VA's views on all the bills are detailed in my written testimony, including areas of concern and support, I would like to highlight some of the bills in my opening remarks.

First, VA supports the intent of the Justice for America's Veterans and Survivors Act, subject to the availability of appropriations, but cites concerns with the level of data tracking required by the bill. While VA recognizes the tragedy of veteran suicides and aims to identify any links to service-connected disabilities, VA already reports comprehensive mortality data annually, including leading causes of death and receipt of care and benefits. VA is concerned about the feasibility of tracking new data elements mandated by the bill, especially those not currently collected by our systems.

For instance, determining if a suicide is directly related to a service-connected disability like PTSD can be challenging without specific death certificate codes. Additionally, if the veteran did not die in a VA facility or receive VA benefits, VA may not have information necessary to cause—regarding that veteran's cause or manner of death. We would appreciate discussing the bill further with the committee to clarify the intended outcomes and consider necessary amendments to ensure we can accurately report the required elements.

VA does not support H.R. 659, the Veterans Law Judge Experience Act. This bill would require the Board Chairman to prioritize candidates with at least 3 years of experience in laws administered by the Secretary when recommending individuals for veterans law judge positions. The current selection process for veterans law judges is based on merit and fitness for the role, akin to the standards for judges on the Court of Appeals for Veterans Claims. Prioritizing specific types of experience could undermine these merit-based principles.

VA has appointed a diverse group of highly qualified judges, many of whom had no prior VA experience, but brought significant military or judicial backgrounds. This diversity has helped VA achieve record numbers, record levels of appeals adjudication, offering the best service to veterans. VA believes it is crucial to maintain the flexibility to select judges based on a wide range of qualifications, ensuring the highest standards for serving our veterans.

VA supports the Rural Veterans Improved Access to Benefits Act subject to amendment and the availability of appropriations. We appreciate the committee's efforts to improve temporary licensure requirements for contract healthcare professionals performing VA disability examinations. VA recommends removing the sunset date on these licensure requirements. This would provide greater flexibility to engage a broader range of qualified medical professionals, especially in rural areas, resulting in shorter wait times and faster examination completions for veterans.

In addition, VA recommends removing the reporting requirement to disaggregate timeliness data by healthcare professionals. VA does not have access to the specific data from our vendors' proprietary systems, and controlling factors outside our individual exam-

iner's responsibilities may skew the data. It is important to note that VA may return examinations to be reworked for reasons other than error. Additionally, VA tracks timeliness from vendor acknowledgement of examination request to completion, not by individual examiner activity.

Mr. Chairman, please understand that the concerns that we have raised in our written testimony today and that will be raised in our testimony that is oral is sincere. VA understands that the appeals process can be long and frustrating for many veterans, but I hope that the answers that we can provide to your questions will help explain why it takes so long to process an appeal or a claim and what VA is trying to do about it.

Ultimately, processing these appeals takes time because each and every case represents a veteran with a unique set of facts and circumstances. VA shares Congress' goal of continuous improvement to both our program and our customer service to veterans, their families, caregivers, and survivors. We want to express our appreciation for your continued support and we look forward to continued collaboration.

Chairman Luttrell, Ranking Member McGarvey, this concludes my statement. My colleagues and I will be happy to respond to your questions.

[THE PREPARED STATEMENT OF EVAN DEICHERT APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, sir.

Colonel Wagner, you are now recognized for 5 minutes to present the testimony of the U S. Court of Appeals for Veterans Claims.

STATEMENT OF TIFFANY WAGNER

Ms. WAGNER. Chairman Luttrell, Ranking Member McGarvey, and members of the subcommittee, thank you for the opportunity to testify. Today I am appearing on behalf of Chief Judge Michael P. Allen to offer the Court's perspective on the proposed Veterans Appeals Efficiency Act of 2025, specifically Section 2(e), which proposes to expand the Court's jurisdiction and define the Court's limited remand authority.

I had the opportunity to appear before this subcommittee regarding similar legislation in April 2024. As I noted then, the Court cannot comment on the advisability or scope of proposed changes to our jurisdiction. Such matters are squarely within the purview of Congress. Likewise, the Court does not offer advisory opinions or suggested language on legislation it may 1 day be asked to interpret. That said, we can offer general observation on the bill's language and possible implications.

First, regarding supplemental jurisdiction. The proposed language and subsections of 38 USC Section 7252 aims to broaden the Court's class action authority and allow concurrent claim processing between the Court and the VA. While this may provide new pathways for veterans, we offer a general caution that some of the language as drafted is somewhat unclear. For example, broad references to terms like "claim," "notice of disagreement," or "supplemental claim" without specific citations or context make it difficult to determine the intended application. Additionally, the inclusion of writs under supplemental jurisdiction may raise legal complexities

and could unintentionally limit the Court's existing authority under the All Writs Act.

Furthermore, the proposal to toll the deadline for appeal filings introduces a new category of jurisdictional questions which could increase the Court's caseload. Given that our Court is already handling a record volume of appeals, such growth would likely require reassessment of both resources and procedures.

Second, on the matter of limited remand authority, the bill proposes a statutory framework under 38 USC Section 7252(c), which appears intended to codify the Court's authority. The Court already possesses limited remand authority, and by defining in statute when and how limited remands may be issued, the legislation could inadvertently narrow the Court's existing discretion rather than expand it. We raise these points not to oppose the bill, but to help ensure that any changes fully reflect Congress' intent and avoid unintended constraints on judicial flexibility.

In closing, the Court remains committed to delivering full, fair, independent, and timely judicial review to veterans, their families, and survivors. We appreciate your continued efforts to improve the appeals process and thank you for including the Court in these important discussions. I am happy to answer any questions.

[THE PREPARED STATEMENT OF TIFFANY WAGNER APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Colonel. The written statement of the witnesses will be entered into the record.

Mr. McGarvey, you are recognized for 5 minutes, sir.

Mr. MCGARVEY. Thank you, Mr. Chairman. Thank you all for being here today and thank you for your testimony.

Mr. Friel, I am going to start with you and with the VA's testimony on H.R. 3854, the Modernizing All Veterans and Survivors Claims Processing Act, says that VBA, and I quote this, "is working to identify solutions in the claims process where benefit adjustments can be made using technology without human intervention." I am not against technology. Technology has a wonderful place. I think you can see that I have some pause on the VA moving toward true end-to-end automation there. There are mistakes that are made with machines and, of course, some of our veterans have some problems navigating these systems already, as we have heard from many of them. Certainly I have in Louisville, Kentucky.

I think a lot of those beneficiaries, we are talking about our veterans. Right? We are talking about the people who have served us. They want and need a human backstop to any decision that is made. More importantly, that quote makes me question whether the VA intends to replace the people who work for the VA, not just give them additional tools that are going to help our veterans get their claims processed.

Can you tell me right now that the automation in Pension Fiduciary Service will not lead to a replacement of reduction in the VBA workforce?

Mr. FRIEL. Yes, sir. Thank you for the question. We have been automating since 2014 in reality. This year we are on target to automate over 320,000 claims. We have not removed any individuals, any employees from the—have lost their job because of automation. They may have been reassigned to maybe work compensa-

tion instead of pension or fiduciary, but we have no intention right now that I know of, that I am aware of, to remove anybody because of what we are doing in automation.

To give you some—an aspect, in an automated world, we have cases where a DIC claim came in and 9 hours later, we had awarded the benefit and sent out the letter and everything else to the surviving spouse with no human interaction. That is truly, you know, talking about getting benefits out as quickly as you can, that is one of the goals we have, is to make it. The human will always be needed because of the complexity of some of the claims. Right? Some of them are much more complex than what we could do in an automated space.

Mr. MCGARVEY. The difficulty some people have in applying for the claims in the first place and might need someone helping and we are trying to get our veterans what they need. I appreciate you said "no intention to." Just to drill into it a little further, everybody at VBA is going to still be at VBA next year?

Mr. FRIEL. That is above my pay grade and I am prepared to talk to the legislation, but I am not prepared to talk to the staffing.

Mr. MCGARVEY. Again, what we are trying to do is, this committee, my sole focus, what is best for our veterans? How do we make sure that they are getting everything they are entitled to and they deserve? I want to make sure that that happens. I am not anti-technology. I think we can use technology to help our veterans to get those claims processed quickly. When there are difficulties in the process, which inevitably there are going to be difficulties even with automation, we got to have people there who are ready to help our veterans. I want to make sure that they are.

Along those same lines, have you talked to veterans? Do you guys—I mean, because I know what I hear on the ground. I know when I go to veterans events in Louisville, Kentucky, what I hear from veterans. Right? That is why I am bringing those concerns here today. Do you have any data that says the veterans and other beneficiaries are—like the automation or the algorithms that are calling the shots?

Mr. FRIEL. I can speak from what we have done in our space and I would let Mr. Smith talk about what happens in the compensation space. We have received great feedback from VSOs and organizations like TAPS in any area we can. We actually have, based on a law passed by Congress, the ability to pay a surviving spouse based on evidence of record at the time of a veteran's death. We automate those claims, so we will pay a month of death payment, burial payment and if the veteran meets requirement for 1318, we will pay DIC payment without an application. That is just based on, you know, the surviving letting us know that the veteran's passed away and we validate the information and it happens.

We have gotten great feedback from VSOs, you know, that people get an award without even putting in an application. You know, we wish we could do that for more, but we have limited based off what data we have. Mr. Smith could probably talk more about the compensation side of this.

Mr. SMITH. For the disability compensation, the automated decision support technology leverages technology to deal with the administrative burdens of claims processing. It works on being able

to pull in those digital records from VHA. It works on going out to folks to pull in private medical records, things of that nature. It allows the claims processors to focus more on the complexity and the analysis necessary to be able to deliver quality decisions.

Mr. MCGARVEY. Thank you. I am out of time.

I will yield back, Mr. Chairman.

Mr. LUTTRELL. Thank you, Mr. McGarvey.

Mr. Self, you are recognized for 5 minutes, sir.

Mr. SELF. Thank you, Mr. Chairman.

Colonel Wagner, can you describe how aggregation has helped the Court be more consistent in the past? I understand you have concerns about the future, but in the past.

Ms. WAGNER. Yes. Thank you for your question, Representative Self.

The Court's, first of all, the Court's concerns about the current statute is not—we do not want to speak about the authority to expand our jurisdiction or narrow it or broaden it. That is within Congress' purview, so the Court does not want to speak about that. The issues we brought up about the current legislation deal with some of the language that appears ambiguous and we do not want to interpret it. We wanted to highlight that.

The Court does have an active class action process where we aggregate cases. Currently, we have received 26 requests for class certification and the Court has certified 5 of those, 10 were denied, and the rest, the 11 other, were either dismissed, reached the negotiation on their own, or are still pending. The Court has used it, as you know. What was brought up by Professor Wishnie is that the Federal Circuit has determined that our class action authority needs to be a little bit narrow and there was a case where the Federal Circuit determined that the Court went a little too far. I hope that answers your question.

Mr. SELF. Well, the consistency was what I asked about. Has it improved the consistency of the decisions?

Ms. WAGNER. Yes, I believe so.

Mr. SELF. Okay.

Ms. WAGNER. I can get back to you with some more details on that, but I think that a lot of those answers about the consistency would have to be answered by veterans who have experienced it and how it affects additional future case law.

Mr. SELF. Well, would the authority as outlined in the bill approve efficiency then? Let us talk about that. Are you willing to opine on that?

Ms. WAGNER. Yes, aggregation would increase efficiency.

Mr. SELF. I yield back, Mr. Chairman.

Mr. LUTTRELL. Dr. Richardson, I got you. If the veteran passes away while their caregiver is appealing their application to join the VA Caregiver Support Program, what happens to the appeal?

Dr. RICHARDSON. Sure. Thank you for the question, Chairman.

It depends. As long as we have the information available to us, so certain requirements are met, we have enough evidence or information, we are able to render a decision and retroactively pay——

Mr. LUTTRELL. Does that information have to live and breathe in one specific site, because from the way I understand it, if an individual moves from their location where they reside to another one,

does not seem like the information flow—it seems like the information flow is broken.

Dr. RICHARDSON. We have access to Joint Longitudinal Viewer (JLV), which allows us to access all data and all health records for any veteran in our system.

Mr. LUTTRELL. I do not know if I exactly believe that statement right there. Does the guidance and training for evaluating applications to the VA Caregiver Support Program that VHA employees receive match the guidance and training of VBA's employees receive?

Dr. RICHARDSON. Thank you for the question, Chairman. The adjudicators for VBA is different for the appeals that they file through the Caregiver Support Program. You have the Board appeals, then you have AMA and supplemental—so we have supplemental claims and higher level reviews that VHA does within the Caregiver Support Program. The level of training that we do for our appeals staff is the same training that we give all of our staff who render any type of initial decision or any type of appeal decision.

Mr. LUTTRELL. Say more.

Dr. RICHARDSON. When a veteran when a veteran and caregiver, a joint application is submitted to the Program of Comprehensive Assistance for Family Caregivers, all of those folks who make those initial decisions on those original applications get the same level of training on standardization, consistency, how to apply——

Mr. LUTTRELL. Across the VA?

Dr. RICHARDSON. Across the Caregiver Support Program. Within my program I have staff at the Veterans Integrated Service Network (VISN) called CEAT Teams, Centralized Eligibility and Appeals Teams.

Mr. LUTTRELL. How many personnel do you have under your——

Dr. RICHARDSON. Roughly about 2,200, sir.

Mr. LUTTRELL. Across the country?

Dr. RICHARDSON. Yes, sir.

Mr. LUTTRELL. They all come to the same spot or is this a virtual training now since COVID, whenever that happened?

Dr. RICHARDSON. It is a virtual training. Yes, sir.

Mr. LUTTRELL. Okay.

Dr. RICHARDSON. The folks that make those initial decisions on applications are stationed at the VISNs. Those that render decisions on appeals are stationed at the VISNs and within VA Central Office (VACO) under me, under my program office. Higher level review, supplemental claims are decided in VACO and the VHA clinical appeal process is done through the CEAT Teams.

Mr. LUTTRELL. If a veteran dies while their caregiver is pursuing an appeal, is that family caregiver eligible to receive any unpaid stipends owed at the time of the veteran's death?

Dr. RICHARDSON. Yes, they are, as long as we have information that is available to us. It would help if I just explain. When a veteran and caregiver apply to the program, there are certain steps that they must follow, certain eligibility requirements must be met. At any point along the way, if they do not meet eligibility requirements, they are denied at that step.

Mr. LUTTRELL. Is there one—let me ask you this. Forgive my interruption.

Dr. RICHARDSON. Sure.

Mr. LUTTRELL. Out of the laundry list of checks in the boxes that you have to have, if they miss one, they are done?

Dr. RICHARDSON. They are denied at that point in the process, yes. Just because a veteran passes away does not mean that we do not give retroactive benefits. It is only if we do not have that information available to us to render that decision. For example, Mr. Chairman, if a veteran and caregiver are denied because it is deemed that the veteran does not need in-person personal care services, it does not make clinical sense to have the caregiver go through training. It does not make sense to do the caregiver assessment, the veteran assessment, go into the home on that particular application. They are denied at that point in the process.

Mr. LUTTRELL. I would be willing to bet every caregiver that is living in a home with a veteran in need will disagree with what you just said.

Dr. RICHARDSON. We—if they do not meet program requirements for PCAFC, we enroll them in PGCSS, our Program for General Caregiver Support Services. We continue to help them as a caregiver in the journey of that particular veteran and his or her needs. That is why we have the two programs, sir.

Mr. LUTTRELL. What is the win? You can give me a range here?

Dr. RICHARDSON. Sure.

Mr. LUTTRELL. I will give you some latitude. What is the window of confirmed or denied when a caregiver reaches out to the VA for this kind of support?

Dr. RICHARDSON. Today, we render decisions. Probably 9,000 applications come in a month. About 30 percent of those are approved for the program. 30 to 33 percent.

Mr. LUTTRELL. What is the turnaround time?

Dr. RICHARDSON. 86 percent of applications are adjudicated or, excuse me——

Mr. LUTTRELL. No, no, I am sorry. Window, like, if I—if I give it to him today.

Dr. RICHARDSON. Yep.

Mr. LUTTRELL. He is going to give him a response tomorrow.

Mr. RICHARDSON. 86 percent are done in under 90 days.

Mr. LUTTRELL. 90 days?

Dr. RICHARDSON. Yes, sir.

Mr. LUTTRELL. When we have the 4 or 5 years, that is an anomaly?

Dr. RICHARDSON. Those are for applications. When we are talking appeals, different discussions. So, VHA——

Mr. LUTTRELL. Okay.

Dr. RICHARDSON [continuing]. clinical applications.

Mr. LUTTRELL. Let us walk back to application real quick.

Dr. RICHARDSON. Yes, sure.

Mr. LUTTRELL. How long does an application normally take?

Dr. RICHARDSON. 86 percent under 90 days.

Mr. LUTTRELL. 90 days?

Dr. RICHARDSON. Yes, sir.

Mr. LUTTRELL. Okay, so 3 months. Then, if it has to go into appeals, does it get lost in the metaverse?

Dr. RICHARDSON. It does not. Understand that the VHA clinical appeals, roughly, you have two levels of VHA clinical appeals. Most of those decisions are done in under 45 days, level one and level two. Now, you come over to the AMA side, which we had to implement back in 2021. We had to notify 450,000 veterans of their new rights to appeals as a result of a court case that happened in April of that year. We mailed out those notifications in November 2021 with no staff on Board. By late summer of 2024, we finally had permanent staff on Board. Today, we adjudicate more decisions—more appeals that come in our door than we receive. In a very, very short timeframe, our team has turned around the number of appeals coming in our door than what we have originally received, if that makes sense. We started behind the power curve with appeals, AMA appeals.

Mr. LUTTRELL. Do not answer this question that I am fixing to ask you, but why? Why is this process so weighted and so challenging for our veterans and caregivers? We had a young lady sitting. She is sitting in the chair just to the left of you. Just hearing her, reading her testimony and—and hearing her in here today, it seems extremely burdensome. Now I know the VA has to protect itself, and a lot of times, that is why—that is how this is created. Have we gone too far, too fast, and got out ahead of the veterans where they cannot keep up? Do not answer that question.

Mr. Deichert, the Board of—the Board reports quality rates of roughly 95 percent, but the court reported last year that 83—83 percent of Board appeals were returned to the Board because of legal errors. What accounts for the discrepancy between these two numbers?

Mr. DEICHERT. Thank you for the question, Chairman Luttrell. When we had the Court of Appeals for Veterans Claims Conference in September, I made the point that I am about to make to you, and that is that a case is fundamentally different when it comes before the Court of Appeals for Veterans Claims than it often is when it is before the Board of Veterans Appeals.

Mr. LUTTRELL. We are talking about the same veteran.

Mr. DEICHERT. Yes, sir. Because——

Mr. LUTTRELL. Okay, let us make believe I am not an attorney, but I have one sitting here and he is listening.

Mr. DEICHERT. Absolutely. What—what oftentimes happens is Mr. McGarvey, Esquire, is not generally there with you at the Board level, so that is not impugning anything that any of our VSOs do. Veterans most often get attorneys when they get to the court level in terms of providing them representation. That attorney is able to go deeper into the file. They have an incentive to ensure that they are looking at every individual thing that could be there. That case is different when it is presented by an attorney before the Court of Appeals for Veterans Claims than it may have been as it came up through the Board of Veterans Appeals and even VBA before.

Mr. LUTTRELL. Is that an extra step that does not need to exist for 10 percent delta between those two numbers?

Mr. DEICHERT. In terms of the representation at each stage?

Mr. LUTTRELL. Correct. Right.

Mr. DEICHERT. We certainly welcome additional attorney representation before the Board of Veterans Appeals. Those numbers happen——

Mr. LUTTRELL. Do veterans know that? Is that something that we populate?

Mr. DEICHERT. I think it is getting out there, to be honest, because the number of—the number of appeals that we have that have veteran representation by attorneys at the Board is increasing year over year. I can tell you, sir, that as a person who adjudicates those, those also look fundamentally different than if they come directly from the American Legion or state veterans service organization. You are packaging everything. Lawyers are packaging everything in the way that another lawyer knows how to look at it. They are able to say on page 424 of this record, you can find this information. They are able to say this based on this regulation, this is the action that you should take.

Mr. LUTTRELL. Ms. Hayes, I am sorry, ma'am. I apologize. I went long. Thank you. I recognize,—Ms. Hayes, you are recognized for 5 minutes.

Ms. HAYES. Thank you for allowing me to be here. I am not sure if the witnesses heard my opening statement earlier, but my bill, the Caring for Survivors Act, would modernize survivor benefits to ensure families receive the financial help they deserve.

I recognize the cost concerns of implementing this legislation. However, the cost is likely lower than the current reported estimate, which is based on outdated data from the PACT Act, which was passed in 2022. VA data shows that of the 382,000 survivors originally estimated to be eligible for benefits in the PACT Act, less than 10 percent have submitted claims nearly 3 years after the bill has been passed. Accordingly, the number of survivors that will apply for benefits under the Caring for Survivors Act is also likely far less than the number of eligible individuals included in the current cost estimates. Having a better estimate of the number of survivors who will likely apply for benefits will allow for a more accurate cost estimate of my bill.

Mr. Deichert, my question is, does the VA know how many survivors are likely to apply for DIC benefits under the Caring for Survivors Act? Is it fair to assume that we may see the same 10 percent rate of survivors that have submitted PACT Act claims compared to the original estimates on the number of eligible individuals? Would that also apply to this bill?

Mr. DEICHERT. Representative Hayes, with respect, I am going to defer to Mr. Friel on this.

Ms. HAYES. Okay.

Mr. FRIEL. Ma'am, thank you for the question. As it relates to the PACT Act, we—we identified—we did not have the causes of death, so we identified all beneficiaries where DIC had been denied. We sent out over 300,000 letters as required by the law. We were expecting a higher rate of return, but it did not come in that high. Today, we are seeing, you know, an increase year over year in our population within the DIC program.

The issue with determining the cost of it, the first part, is, you know, we agree, and with the bill, we supported pending appropria-

tions, that, you know, the increase of the date DIC rate to 55 percent at 100 percent rate.

The second part of it is a lot more complicated. You know, it says to treat 10—to treat 5 years as it—as it relates to 10. Our interpretation of that means that we would be 50 percent of the DIC rate if they were at 5 years at 100 percent. We do not know what congressional intent is. If it is 5 and a half years, what is that number, right? That is part of the clarity we need.

The other part of that is any of those survivors that we would grant DIC to say on the reduced DIC 1318 rate would then have to be adjudicated for DIC because it would be a higher rate. We would have to still do the research and get the information to see if they are, in fact, eligible for the full DIC rate. Then, we also would need clarity on what the intent is for the other parts of the benefit. If at 5 years we are going to give 50 percent for DIC, what if there is a child? Does that mean it is 55 percent, or 50 percent, of the child rate, or is it that they get to the 100 percent of the child rate? There is a lot of things there. We would be more than happy to sit down with your staff and work through some of the issues we have and being able to develop a costing for that.

Ms. HAYES. Is it possible? I mean, I really want this legislation to see the light of day because it is so important. I guess just saying it would cost too much, or we do not have the information, just does not feel like an appropriate answer to me. I would propose that we say, under this scenario, this is what would happen. Under this scenario, this is what would happen. You know, these are the number of people who are eligible. If 50 percent applied, this would be the number. If 10 percent applied, this would be the number. I believe that ultimately, having the best data that reflects the likelihood of participation in the program will give us, as Members of Congress, the information that we need to at least explore options here. I mean, like I said, this is—I am back again trying to push this legislation because the families, the survivors, the children, they need it. I mean, it is long overdue. If we do not have the data, I feel like we have the facilities to. We have the information. All we need to do is pull it together and disaggregate it.

Mr. FRIEL. I think we could give you information for the first part, right? The 100 percent, 55 percent of the 100. It is the second piece that is really difficult because they maybe come in and say, okay, you are 50 percent today, but, oh, by the way, when we adjudicate the claim now, you are entitled to——

Ms. HAYES. We are the United States of America. there is nothing beyond our capacity.

Mr. FRIEL. I did not say it was beyond our capacity. I just said we wait. For our purposes, we need clarification of the intent of that section. Then we could—we could sit down with our budgeting people and kind of get a better scenario of what it looks like and how that would play out.

Ms. HAYES. Well, I would love to continue to work with you to try to get as much good data as we can to make the best possible case. Thank you again for allowing me to join this committee, and I yield back.

Mr. LUTTRELL. Thank you, Ms. Hayes. Mr. McGarvey, sir.

Mr. MCGARVEY. Thank you, Mr. Chairman, for letting me ask just a few more questions. I want to start kind of back where we were when I was asking questions last time. We were talking about some of what is happening at VBA and doing what is going on.

Mr. Deichert, I want to start with you. What we were talking about some of the things that are happening with automation and whether our veterans are fully getting taken care of. This leads me to something that might be related or might not be related, but I want to ask about it. There is a May 27th bulletin from the Chief Human Capital Officer extending the probationary period of all Board of Veterans Appeals employees hired after March 2024 for an additional year.

Let us talk about what this means in plain English. If you are on a probationary period, you are there for a year, and then after a year, you are no longer on your probationary period. If in March 2024, you were hired, or in April 2024, you were hired, you are out of your probationary year. Then May 27th, a bulletin is issued saying, no, you are still in probationary year. Was BVA consulted prior to this decision, and if so, what was their feedback?

Mr. DEICHERT. Thank you for the question, Ranking Member McGarvey. I cannot say whether the Board was consulted with regards to this particular memo. It is something I am certainly happy to take back for the record, but I am not aware at this time of whether we were consulted.

Mr. MCGARVEY. Okay. I would love to know if you were consulted and if there was feedback. Please get back to us on that. It is also my understanding that this applies to all probationary employees at the Board, irrespective of their actual performance during the preceding year. Is that correct?

Mr. DEICHERT. I am going to have to claim a little ignorance, and if you will permit me to tell you why. I had knee surgery 3 weeks ago, and there is been a lot of movement in this. I know that I have missed some of the emails explaining exactly how this is going to play out and exactly what we are going to do with it. Between recovering from that and preparing for this, I do not have the specific information that I can give you at this time, but it is, again, something that I am happy to get back with you on, sir.

Mr. MCGARVEY. Can anybody answer that question? Nobody can answer that question. Okay.

Mr. DEICHERT. One thing I can say, Representative McGarvey, even under that Office of the Chief of the Chief Human Capital Officer (OCHCO) memo, I know that they did have a carve-out for those who would have a veterans preference. If you had a veteran's preference, your probationary year stayed at 1 year.

Mr. MCGARVEY. Okay. The purpose of a probationary period is to make sure that employees are learning and that they are progressing well enough to be granted full employment. There are people who have worked there who are finished with their probationary year to our understanding that now are back in a probationary year. Is it BVA's position that absolutely none of the employees that were hired during the last year passed that muster?

Mr. DEICHERT. We will follow whatever guidance we are given by VA's OCHCO, but that does not mean that anybody who is at that point has not passed muster. We evaluate our attorneys, especially

our new attorneys, on a consistent basis throughout their probationary year. If that becomes 2 probationary years, then we evaluate them consistently through that entire time.

Mr. MCGARVEY. Yes. Again, it is we talk about these things in such technical terms. Let us really phrase what is happening here. There are people who signed up and they knew they would get a probationary period for a year. They served that probationary period for a year. Now, they are back under a probationary period for another year. Why under a probationary period, especially if they are doing a good enough job? One of the things that happens when you are under a probationary period is you can—you are easier to fire. You do not have the same civil service protections that someone who—who is no longer in a probationary period has. I just got to ask bluntly, is BVA planning, or does it intend to plan a significant reduction in force at the Board of Veterans Appeals?

Mr. DEICHERT. In terms of anything that may be coming down from VA on high, I cannot answer that. I do not know what the overall plans are. What I can say as it comes to the Board specifically, we hired staff, we hired attorneys because we needed them to do the adjudications to deliver answers to veterans. We invest a lot of time, a lot of money into training them, into getting them up to speed. It would not be my intention if anybody is doing well enough to be retained to do anything other than with them than to retain them.

Mr. MCGARVEY. Look, I appreciate that. I believe you. I hope your knee is feeling better. The answer is still not satisfactory, right? What you are telling me is you cannot tell me whether that is happening or not. What I do think we all agree on is veterans need the best possible care. They need the best people working on their claims. It is helpful when they have attorneys working on their claims. We are now making it easier to fire people who should be there no matter what. Let us just be honest about it. That makes it harder to recruit—to retain. It hurts morale. It hurts the people who are working there. Who does that ultimately hurt? Our veterans. That is who it ultimately hurts. That is why we are concerned about this. That is why I want you to get back to us with those answers because we do not want to hurt our veterans.

Mr. Chairman, you have been very kind, I yield back.

Mr. LUTTRELL. Whose role is it in the appeals process to ensure that the Board's decisions are or remands are correct, fair and timely, person wise?

Mr. DEICHERT. I am sorry, Chairman Luttrell, could you?

Mr. LUTTRELL. Whose role is it in the appeals process to ensure that the Board decisions or remands are correct, fair and timely?

Mr. DEICHERT. There is no one individual entity that would say——

Mr. LUTTRELL. Entity or person?

Mr. DEICHERT. Neither.

Mr. LUTTRELL. Seems like a problem.

Mr. DEICHERT. What specifically, sir, would you be envisioning that in terms of——

Mr. LUTTRELL. I do not know. That is why I am asking you.

Mr. DEICHERT. Well, I mean, veterans law judges will issue a decision, will issue a remand based on——

Mr. LUTTRELL. Whose role is it in the appeals process to ensure that the Board's decisions or remands are correct, fair and timely?

Mr. DEICHERT. It is the individual veterans law judges role to ensure that all of those.

Mr. LUTTRELL. That person?

Mr. DEICHERT. Yes, sir.

Mr. LUTTRELL. Specifically?

Mr. DEICHERT. Yes, sir.

Mr. LUTTRELL. Okay. Are we sure?

Mr. DEICHERT. Certainly, we have a quality review process. They select a statistically significant number of cases to review to determine whether there are any number of three errors out of——

Mr. LUTTRELL. What is the N value of that evaluation?

Mr. DEICHERT. I believe it is 5 percent, but do not——

Mr. LUTTRELL. Of how many?

Mr. DEICHERT. Out of all of the total number of decisions that are dispatched.

Mr. LUTTRELL. What is that annually?

Mr. DEICHERT. This year we are on track for 118,000. Well, we are always told not to do math in public, but we will go the 5 percent. Yes. Look at about 6,000 cases that the Board's Office of Assessment Improvement will look at this year.

Mr. LUTTRELL. Is that a high enough number, just out of curiosity? 5 percent out of 180,000. I mean, you would think you would be pushing over 20 just to get a good——

Mr. DEICHERT. Well, so——

Mr. LUTTRELL [continuing]. margin of error.

Mr. DEICHERT. Any person that you would have in the Office of Assessment Improvement looking over those numbers is also a person who is no longer drafting cases or a judge who is no longer signing them.

Mr. LUTTRELL. How many people are doing that?

Mr. DEICHERT. I do not know, sir. I can get back to you.

Mr. LUTTRELL. Rough guesstimation.

Mr. DEICHERT. We now have——

Mr. LUTTRELL. A couple hundred?

Mr. DEICHERT. What is that?

Mr. LUTTRELL. Couple hundred?

Mr. DEICHERT. Six people.

Mr. LUTTRELL. Six people?

Mr. DEICHERT. Yes, sir.

Mr. LUTTRELL. Six people. Do not make me—I am not going laugh. I am not going laugh. That seems like a problem, right? That seems like a problem.

Mr. DEICHERT. It is certainly——

Mr. LUTTRELL. You do not have to answer that question. I am not going to put you on the spot, sir. All right, thank you.

Thank you to all the witnesses for testifying today about these important proposals. Ranking Member McGarvey, would you like to make a closing statement?

I look forward to working through these issues with the department and my colleagues on this—on this subcommittee. The bills discussed today will provide important improvements for veterans, caregivers and survivors navigating the VA claims and appeals

process. I ask unanimous consent that the statements for the record we have received be entered into the record.

Hearing no objection, so ordered.

Ask unanimous consent that all members have 5 legislative days to revise and extend their remarks and include extraneous material.

Hearing no objection, so ordered.

I thank the members and the witnesses for their attendance and participation today. This hearing is adjourned.

[Whereupon, at 3 p.m., the subcommittee was adjourned.]

A P P E N D I X

PREPARED STATEMENTS OF WITNESSES

Prepared Statement of Julie Guleff

Chairman Luttrell, Ranking Member McGarvey, Members of the Subcommittee, thank you for the opportunity to testify today.

My name is Julie Guleff, and I am the spouse, former caregiver, and now survivor of 100 percent service-connected disabled Vietnam Veteran, Stephen Guleff. I come here today to speak in support of H.R. 3833, the *Veterans' Caregivers Appeals Modernization* Act of 2025. This legislation would:

- Allow former veteran caregivers who are now survivors to receive back pay for the care that was provided to the veteran prior to his/her passing if their caregiver application is approved on appeal.
- Require VA to ensure that all documents and medical records related to any application for eligibility in VHA Program of Comprehensive Assistance for Family Caregivers (PCAFC) is uploaded to a single electronic system accessible by all VHA and VA Board of Veterans' Appeals employees who make decisions on such applications.

To understand my strong support for this bill, I need to explain our story. I first met Steve in 2004 after I moved to Florida to care for my mother, following my veteran father's passing. I had been navigating my father's care with the VA healthcare system from a distance since 1999, so when I met Steve, I already had some experience in how it worked. Shortly after we met, I learned he was a struggling Vietnam veteran. We quickly became friends, and I offered my assistance in navigating the VA, as he was largely unfamiliar and very cautious about trusting the system.

It wasn't too long before Steve was getting the help he needed and beginning to allow and embrace those practitioners he was fortunate to encounter. As I helped him learn to trust, find his way around, find "guys like him," and take advantage of all the services available, he began showing progress in all areas of his life. It was then that things took a turn. Between the PTSD diagnosis and treatment, additional physical and mental health issues uncovered, and the growing impact of Agent Orange exposure, he started to crumble before my eyes. I steadfastly stood with him and helped him face all of those challenges while reminding him he was not alone in this struggle. I would not give up when things got difficult.

Fast forward 5 YEARS. Steve was finally sticking with his services and programs at the West Palm Beach VA Medical Center. I was still working 3 jobs to provide for my children and mother but was ready to reactivate my nursing license to continue my career I had planned for most of my life. However, as our relationship had transformed from best friends to something more and recognizing his growing needs, I put my life on hold for a greater purpose as "caregiver" to Steve.

As time progressed, so did Steve's challenges. He remained active in his treatments at the VA, worked tirelessly with his doctors, but his health progressively got worse. The medication list was now pages long, and I carried these pages with me everywhere to present to each provider.

We had only been married a year, but now my role changed again. I was full time caregiver, nurse, and wife. With those titles my personal goals and career vanished. I had 3 jobs, but none of them came with a salary. Because I couldn't work due to my caregiving responsibilities, we were 100 percent dependent on Steve's disability payments. With the increasing out-of-pocket medical expenses, such as non-formulary prescriptions, durable medical equipment that was too difficult to get through the VA process, and needed safety modifications to our home, our debt grew daily.

Steve's health needs were clear and documented. He couldn't drive, go anywhere by himself, eat, self-sustain, or manage his own affairs to any degree. The PTSD was unmanageable and often frightening. The outbursts (often brought on by his failing health that angered him), nightmares, and "night patrols" on high alert,

which meant barricading doors and windows to keep him in and "others" out, required 24 hour a day vigilance. It was overwhelming to say the least and beyond exhausting.

In 2017, Steve's issues compounded once again. His health was becoming increasingly unstable and difficult. As a nurse, I read EVERY report, note, and bloodwork result, and diligently researched EVERYTHING looking for answers or possible treatments. It was then that I saw his PSA bloodwork and noted a big change. On top of everything else, we were now fighting prostate cancer.

In 2018, we moved to Daytona Beach and were very fortunate for Steve to be able to get a VA-backed mortgage to buy a house. The downside was that, by this time, I did not have the credit to be added to the mortgage. Due to my caregiving responsibilities, I hadn't worked since 2010, had significant debt, and definitely could not leave Steve to go to work.

It was in late 2019, after the VA's approach of "watch and wait," that we learned the prostate cancer had progressed to STAGE 4 PLUS. Steve completed 55 consecutive days of radiation, which caused severe side effects. The radiation left Steve with even more challenging healthcare needs. He was now bedridden, completely incontinent, and unable to stand, walk, or attend to personal hygiene needs. Moreover, the radiation furthered his dementia, requiring more oversight. And then the COVID–19 pandemic hit, and the isolation of COVID lockdown made it all even more overwhelming for both of us.

On October 1, 2020, we were excited to learn that the PCAFC program opened to Vietnam Era Veterans. I immediately applied to get some financial relief as, according to the regulations, I thought my husband was more than qualified. His records reflected and documented him as housebound, bedridden, unable to complete any activities of daily living other than barely holding his own fork. I wheeled him to the bathroom and physically held him while he attended to that; had to enter the shower with him and wash him on a chair as he could not do that unaided; brushed his teeth; and managed all medications. He was unsafe if left alone for even a moment. If unwatched, he would find and take medication, try to get outside and wander off, and, if he found the car keys, he would attempt to get to the car and drive. He had significant dementia and often was unable to think or act coherently. He was a danger to himself and others and required constant monitoring. I had to hire someone to stay with him if I had to leave the house for any reason, such as grocery shopping. Our first PCAFC application was submitted by November 2020. Months passed, and we completed all necessary paperwork and documentation.

Due to the pandemic, our home visit and interview were done virtually. It must be noted that these virtual evaluations were not necessarily an accurate representation of our reality, as it's hard to see through a phone camera all of the medical equipment and the piles of pill bottles I had to hide from my husband. It really would have been more accurate if an actual person had been there. My husband lived with fear, shame, and guilt of his situation and went to great lengths to not let people see him in his debilitated state. He always wanted to make people like him and always put his best face forward for the brief time they spoke to him. He could be quite convincing and charming, but his medical and mental health records told a different story. Those records show a broken and terminally ill man living in fear, shame guilt, and suffering. The suicidal ideations were frequent and long lasting. Keeping him safe was my top priority and all-consuming.

I received the notes and records from the virtual evaluations while we waited for a decision. There were glaring differences noted as to what was actually happening. The PCAFC coordinators seemed to change weekly, making continuity of care and sharing of information difficult. We were handed off to patient advocates and social workers, and each contact was a different person.

I spent endless hours on the phone, writing letters, emailing, faxing, hand delivering documents, and correcting errors with PCAFC documentation for what appeared to be a clear case for approval. The first denial came in early 2021, with the reason given that the "Veteran does not need 6 months of continuous care," a requirement under PCAFC. That was inconceivable to both my husband and me. We had already been through YEARS of continuous care—home health, physical and occupational therapy, retrofitting of portions of our house to accommodate his disabilities, and countless pieces of medical equipment all over the house. The more time that passed, his needs grew. We were heartened in March 2022 when, recognizing flaws in the system, the VA announced that it was pausing dismissals from the program while the agency reviewed the eligibility criteria. Today, over 3 years later, caregivers are still waiting for the new regulations to address the problems.

By the end of 2021, Steve's diagnosis was terminal. The cancer had metastasized. He was in pain and always searching for relief. Life was getting impossible. He would remain in bed for days at a time. He was so angry and frustrated, and he

was having tremendous trouble thinking, communicating, and understanding what was happening to him. He often refused to eat and was getting weaker by the day. Keeping him safe, clean, and fed was becoming more and more difficult. Yet I persevered. I could see where this was going and was working in the background to prepare for the end.

In August 2022, we went bankrupt. Our finances had all been spent, and we were buried in medical debt. We appealed the PCAFC decision multiple times. To be clear, if it had been approved, it wouldn't have solved all our problems, but it absolutely would have helped.

Steve passed away on October 6, 2022. Days after his death, I received a call from our mortgage holder asking me when I would be vacating our home. The company made it clear that it could not hold a mortgage for a deceased veteran. As I was not credit qualified and had no income, no employment, and 12 years of history with no "job," there was no possible way to keep my home. I had no choice but to sell it quickly and take what I could get before they took it. In a matter of moments, it was clear I would become homeless. After years of sacrifice of career, credit, savings, and personal health, I was now widowed, alone, destitute, and heartbroken. Sadly, I am not alone; my situation is only one of many.

Our PCAFC case was still open at the time of my husband's death, even after 2 years of fighting for a favorable decision. The overwhelming challenge of gathering and adding documents to the veteran's medical record for both the Veterans Health Administration and for review of the Board of Veterans Appeals is impossible in its antiquated current form. I struggled for years to connect the dots between providers both in the VA and outside to make sure records were up to date, inclusive, and complete. I often went from provider to provider, office to office, doctor to doctor to demand printed and digitalized copies of each and every note, treatment, and diagnosis. I would then hand carry them into the VA to be added to Steve's records, only to be told, "These must all be scanned by a live person into the record. We don't have the manpower—just hold on to it until we ask for it." I physically carried copies of everything with me to every appointment to beg for someone to add pertinent information to Steve's records. Community care was even more of a challenge; outside records sometimes never made it into Steve's file for use in treatment plans and certainly not for PCAFC eligibility.

Despite my best effort of hand carrying records and calling, writing, and emailing requests to update records, it RARELY, if ever, happened. This failure of an antiquated recordkeeping system left huge gaps in care and treatment.

In a time where it is easy to instantly transmit documents digitally, it is hard to believe that the VA is as far behind as it is. I acknowledge changing an entire system to update technology is a huge challenge, but I also believe it is long overdue. Had this option been available, I may have stood a chance at PCAFC approval before my husband died.

In the wake of losing Steve, I was so frustrated with the denials for PCAFC that I made it my mission to follow through with our quest. In 2023, I filed our case before the Board of Veterans Appeals, and, while I knew it was a long shot, I was determined to stand strong. I built my case with the mountains of evidence and records I had from my husband's decades with VA direct and community care and, ultimately, I went before a judge to plead our case in December 2024. I spoke to him for over an hour. He asked numerous questions and, by the time I was done, he was in tears at all of the pain and anguish we had been through .

Unfortunately, in March 2025, almost 5 full years after we first applied, we were denied again, with the following Conclusion of Law:

> *"Due to the death of the veteran, the appeal for eligibility of PCAFC benefits must be denied as a matter of law."*

The Board also noted that it was only able to consider "evidence of record at the time of the agency of original jurisdiction (AOJ) decision...". After all our challenges—COVID interfering with appropriate care and evaluations, flawed regulations, changing staff, and the lack of appropriate records sharing, we were ultimately denied because the VA simply outlasted my husband.

The caregiver experience is a challenging and difficult one, and it is impossible to explain unless you have lived it. It is a job that no one chooses to have but is often necessary to ensure the best possible outcome for the veteran.

Caregivers take on this challenge out of love for the person who has served and suffered. It is not a singular act. It requires that one give of themselves endlessly, most often at great sacrifice to self. A fellow caregiver once told me one of the most poignant things I have ever heard. "A Veteran does not heal in a vacuum." A truer statement has never been spoken. It takes all of us—— doctors, nurses, and caregivers—to be a part of the healing process. How can we do less than care for them?

Taking care of these veterans and helping them achieve the best quality of life they can have, however, also requires supporting those caring for them—, whether they be doctors, nurses, or family members.

I THANK YOU ALL for inviting me here today to listen to my story. I tell it not for personal gain, as it is likely too late for me, but for those who are still caregivers and those yet to be. While PCAFC would not have solved my issues or changed the outcome, it most certainly would have helped and made it more tolerable.

Thank you for your time today, and I look forward to your questions.

Prepared Statement of Michael Wishnie

Introduction

My name is Michael J. Wishnie. I am the William O. Douglas Clinical Professor of Law at Yale Law School, where I serve as director of the Veterans Legal Services Clinic. I have represented the National Veterans Legal Services Program and other veterans' organizations on legislative matters, but I make this statement in my individual capacity. The views set forth below are my own and do not reflect the views of Yale Law School or my clients.[1]

I write today in support of the Veterans Appeals Efficiency Act of 2025, H.R. 3835, which contains several concrete, practical reforms that, if enacted, would meaningfully improve the adjudication of disability compensation claims and appeals. The Subcommittee's focus on the appeals backlog is welcome. The Veterans Appeals Efficiency Act wisely does not attempt a wholesale revision of the disability compensation system, but it does make important, common-sense changes that are likely to materially assist veterans and relieve the burdens and frustrations of the notorious "hamster wheel" of recycled claims and delayed relief. These improvements also ensure that veterans have access to similar judicial tools as civilians when contesting government action. The reforms in this bill make two essential changes to the adjudication process of veterans' benefits decisions to increase efficiency and efficacy.

First, the Veterans Appeals Efficiency Act would amend the statutes governing judicial review of veterans' claims at the U.S. Court of Appeals for Veterans Claims (CAVC). The bill would grant the CAVC supplemental jurisdiction over certain pending claims in cases that satisfy the court's standard for aggregation, just as civilians are already able to do in judicial review of other government actions.[2] In addition, the bill would enhance the court's authority to issue limited remands without returning a veteran's claim to the hamster wheel of agency review. I urge the Committee to adopt these twin reforms, which provide the CAVC with necessary tools that other Federal courts have used to manage mass adjudications in agency contexts. These reforms also ensure consistent and fair application of judicial rulings, reduce strategic mooting of cases by the agency, and limit the senseless repetition of unpublished single-judge opinions on the same issue of law or fact. There is no reason that veterans seeking judicial review of benefits decisions should be denied recourse to the same tools available to civilians challenging government decisions by other Federal agencies.

Second, the bill would codify into statute the authority of the Board of Veterans Appeals (BVA) to aggregate claims in appropriate cases. More than seventy other Federal agencies possess and have exercised this authority, but the BVA has repeatedly held that it is unable to decide like cases together.[3] This measure in the bill would relieve the burden on veterans to repeat arguments and evidence before the agency on the same issues time and again. Many veterans do not have the resources to hire the counsel or experts necessary to argue complex medical or legal issues central to their benefits determination. Where appropriate, aggregation would allow a veteran with such access to present a case on behalf of all similarly affected vet-

[1] My students and I represented the veterans in several of the cases mentioned in these remarks: *Monk v. Shulkin*, *Skaar v. McDonough*, *Manker v. Spencer, and Kennedy v. Esper*.

[2] The CAVC's rules provide for certification of a class where: (1) the class is so numerous that consolidating individual actions is impracticable; (2) there are questions of law or fact common to the class; (3) the legal issue or issues being raised representative parties are typical of the legal issues that could be raised by the class; (2) the representative parties will fairly and adequately protect the interests of the class; and (5) the Department of Veterans Affairs has acted or failed to act on grounds that apply generally to the class. *Vet. App.* R. 23.

[3] Michael Sant'Ambrogio & Adam S. Zimmerman, *Inside the Agency Class Action*, 126 Yale L.J. 1634, 1658–59 (2017).

erans. Additionally, many agencies use aggregation and precedential decisions to promote consistency and fairness in mass-adjudication settings.[4] Here too, there is no reason to deny veterans access to tools that civilians may invoke before other Federal agencies to manage backlogs, promote uniformity of decisions, and ensure speedy adjudications.[5]

For the reasons explained below, I support these reforms in the Veterans Appeals Efficiency Act, with limited amendments noted below.

CAVC Supplemental Jurisdiction

I enthusiastically support the reform set out in section 2(e) of the Veterans Appeals Efficiency Act, which grants the CAVC supplemental jurisdiction over claims "for which the agency of original jurisdiction has issued a nonfinal decision and the claimant has filed a notice of disagreement," including those where the claimant has filed a supplemental claim within 1 year of a Board decision.

The CAVC has the authority to aggregate claims where appropriate, a power it has exercised judiciously to ensure efficient and consistent application of its holdings and to address the Secretary's well-known practice of strategically mooting cases on which VA wishes to avoid a judicial ruling.[6] Already, tens of thousands of veterans have benefited from class-wide relief in cases before the court. However, a recent Federal Circuit decision adopted an improperly narrow construction of the CAVC's jurisdictional statute, frustrating the ability of veterans raising a common issue of law or fact to obtain a single, enforceable resolution. In *Skaar v. McDonough*, 48 F.4th 1323 (Fed. Cir. 2022), the Federal Circuit held that the CAVC can aggregate only those claims that have received final Board decisions and are appealable to the Court. The claims of other veterans whose cases are languishing at the Board or before the VA Regional Offices, held the court, must be excluded.[7] Because few veterans raising the same issue are likely to fall within the 120-day appeals window at the same time, the *Skaar* decision undermines the ability of veterans to meet the numerosity requirement of class certification.

Recognizing the severe consequences of excluding veterans with pending claims from any class, five of the 12 judges of the Federal Circuit objected to the *Skaar* decision in a dissent from denial of petition for rehearing *en banc*.[8] "For many years, the system for processing veterans' claims has been inefficient and subject to substantial delays," Judge Dyk explained for the dissenters.[9] "The class action mechanism [at the CAVC] promised to help ameliorate these problems to some significant extent, enabling veterans in a single case to secure a ruling that would help resolve dozens if not hundreds of similar claims."[10] But the court's decision in *Skaar* "will effectively eliminate class actions in the veterans context."[11]

The Federal Circuit's ruling in *Skaar* has undermined the CAVC's ability to utilize aggregation to "promot[e] efficiency, consistency, and fairness, and improv[e] access to legal and expert assistance by parties with limited resources."[12] The CAVC, and as a result veterans, are deprived of an important instrument to "compel correction of systemic error and to ensure that like veterans are treated alike."[13] The Veterans' Appeals Efficiency Act advances a narrow but urgent fix. By granting the CAVC supplemental jurisdiction, this bill will allow the court to meet numerosity requirements and certify classes that include veterans with a final Board decision, claims pending at the Board, and supplemental or remanded claims pending at re-

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[4] Id. at 1644 (2017).

[5] H.R. 3835 would also make other helpful reforms to the BVA, such as directing the Board to prescribe guidelines for advancement of a case on the Board's docket, requiring the Board to ensure compliance with its decisions on remand to the Regional Office, and providing for an assessment of the feasibility of permitting the Board to issue precedential decisions.

[6] *Monk v. Shulkin*, 855 F.3d 1312, 1320–21 (Fed. Cir. 2017) (noting that "[c]ase law is replete" with examples of strategic mooting); *id*. at 1321 ("Permitting class actions would help prevent the VA from mooting claims scheduled for precedential review" (citing amicus brief)).

[7] The Federal Circuit rejected CAVC's determination in that it had jurisdiction to aggregate claims of veterans "who do not have a final Board decision" so long as "(i) the challenged conduct is collateral to the class representative's administratively exhausted claim for benefits—i.e., the class representative has obtained a final Board decision; (ii) enforcing the exhaustion requirement would irreparably harm the class; and (iii) the purposes of exhaustion would not be served by its enforcement." *See Skaar v. Wilkie*, 32 Vet.App 156, 184–185 (2019) (*en banc*)), *vacated sub nom. Skaar v. McDonough*, 48 F.4th 1323, 1331–1332 (Fed. Cir. 2022).

[8] *Skaar v. McDonough*, 57 F.4th 1015, 1016 (Fed. Cir. 2023) (Dyk, J., dissenting from denial of rehearing *en banc*).

[9] *Id*.

[10] *Id*. at 1017.

[11] *Id*.

[12] *Monk v. Shulkin*, 855 F.3d at 1320.

[13] *Id*. at 1321.

gional offices after a Board decision. This reform will restore aggregation as a vital tool for the CAVC to address VA backlogs and hold the agency accountable to the veterans the agency is charged with serving.

1. Other Federal courts have jurisdiction to certify mixed classes.

It is well-settled that when civilians challenge Federal agency actions in court, those civilians may use aggregation as a procedural tool to treat collectively those cases that have reached the court and like cases still pending at lower levels of the agency decision-making process. The Federal Circuit's interpretation of the CAVC's authority means this tool is effectively denied to veterans.

The Veterans Appeals Efficiency Act remedies this problem by restoring the authority of CAVC to use aggregation to address recurring problems. The CAVC's lack of authority to aggregate non-final claims in a certification order is anomalous. This is a power possessed by other Federal courts that review agency actions.[14] In fact, other Federal courts hearing claims of former service members can aggregate exhausted and unexhausted claims.[15] Without adequate aggregation authority, however, the CAVC mechanism is drained of its utility. This is because veterans appealing final BVA decisions are unlikely to be able to meet the numerosity required for certification in the first instance, and because, even if a class were to be certified, the court would be constrained from simultaneously applying its decision in all claims where it applies—a core consistency and efficiency benefit of aggregation.

As practiced in other courts, aggregating claims that have reached the court and those that are still pending before the agency would maximize the benefits to veterans by promoting consistency, fairness, and efficiency for veterans; advancing access to justice by ensuring fuller legal and expert assistance; and preventing the Secretary from strategically mooting cases to evade the CAVC's correction of systemic error.[16] Such reform would bring veterans' aggregation authority to parity with that of civilians.

2. Supplemental jurisdiction would provide the CAVC a tool for efficiently resolving common issues before remanding cases for merits adjudication.

The supplemental jurisdiction provided in H.R. 3835 would usefully permit the CAVC to aggregate non-final claims for the narrow purpose of resolving a common issue of fact or law. Each veteran's ultimate benefits determination, however, would still be made on an individual basis, according to their individual circumstances and record, by VA.

The proposed bill would not interrupt the court's discretion in determining which claims are worthy of aggregation, nor would it invite unqualified attorneys to take advantage of the aggregation mechanism.[17] Rather, extending the court's supplemental jurisdiction to enhance aggregation codifies and clarifies a functional tool to the court's toolbox, one familiar in suits challenging Federal agency conduct in many other Federal courts.

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[14] *See, e.g.*, *Califano v. Yamasaki*, 442 U.S. 682, 703–704 (1979) (holding that the inclusion of future claimants in was permissible because recipients may benefit from the injunctive relief in the subsequent treatment of their individual claims); *Newkirk v. Pierre*, No. 19-cv–4283, 2020 WL 5035930, at *12 (E.D.N.Y. Aug. 26, 2020) ("that the class includes future members . . . does not pose an obstacle to certification.") (quoting *Westchester Indep. Living Ctr., Inc. v. State Univ. of N.Y., Purchase Coll.*, 331 F.R.D. 279, 299 (S.D.N.Y. 2019)) (including future claimants in certification order because injunctive relief sought would affect future class members); *J.D. v. Azar*, 925 F.3d 1291, 1305 (D.C. Cir. 2019); *Barfield v. Cook*, No. 3:18-cv–1198, 2019 WL 3562021 (D. Conn. Aug. 6, 2019); *Tataranowicz v. Sullivan*, 959 F.2d 268, 272–73 (D.C. Cir. 1992); *Dixon v. Heckler*, 589 F. Supp. 1494, 1512 (S.D.N.Y. 1984), *aff'd*, 785 F.2d 1102 (2d Cir. 1986), cert. *granted, judgment vacated on other grounds sub nom. Bowen v. Dixon*, 482 U.S. 922 (1987) (approving aggregation of claims to include those who had not yet filed for Social Security benefits at the time of certification); *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 369 (S.D.N.Y. 2019) (explaining that a class can include non-final claims because "[t]he plaintiffs do not seek to litigate individual claims but rather a policy the agency uses to adjudicate those claims").

[15] *See, e.g., Manker v. Spencer*, 329 F.R.D. 110 (D. Conn. 2018) (certifying nationwide class of former sailors and Marines challenging procedures at the Naval Discharge Review Board); *Kennedy v. Esper*, No. 16-cv–2010, 2018 WL 6727353 (D. Conn. Dec. 21, 2018) (same, as to former soldiers challenging procedures at Army Discharge Review Board).

[16] **Monk v. Shulkin**, 855 F.3d at 1317; *Skaar v. McDonough*, 57 F.4th at 1017 (Dyk, J., dissenting from denial of reh'g *en banc*) (explaining that aggregation can "help ameliorate" backlog problems "to some significant extent" and "improve access to legal and expert assistance by parties with limited resources" (internal quotations omitted)).

[17] Rule 23(f) of the CAVC's Rules of Practice and Procedure requires the court to assess the competence of attorneys before entering a certification order and appointing counsel. Vet. App. R. 23(f).

3. Broad aggregation that includes non-final claims would advance equity, judicial economy, and uniformity in the appeals process.

An aggregation authority more akin to that available to other Federal courts adjudicating claims of civilians against Federal agencies would advance equity, judicial economy, and uniformity. The Supreme Court has explained that the potential benefits of aggregation include "provid[ing]the most secure, fair, and efficient means of compensating" claimants.[18]

First, aggregation advances equity interests. Many veterans file their claims *pro se* or with the assistance of Veterans Services Organizations, but certain claims involving complex medical or legal issues or challenging VA systemic practices and procedures will benefit from legal representation.[19] Securing counsel to assist in benefits adjudication can be crucial both for the outcome of the case and for the veteran's dignity throughout the process.[20] Through aggregation, veterans without lawyers receive the benefit of legal representation from class counsel. Beyond this, aggregation also distributes other resources throughout a class. For example, veterans who have a complicated medical claim are able to utilize expert testimony that may otherwise be inaccessible. Additionally, claimants whose damages are too small to hold agencies accountable or to justify the costs of legal counsel are also benefited by aggregation.[21]

Second, aggregation advances judicial economy. Aggregation results in financial savings, for the simple reason that it costs less to adjudicate a claim once than to adjudicate hundreds or thousands of individual claims raising the same issue of law or fact. Aggregating non-final claims raising the same issue of law or fact (as prevalent here, where veterans serving together often experience similar events or circumstances in service) allows courts to avoid repetitive adjudication and its accompanying costs to the agency and to veterans.

Third, aggregation helps to advance uniformity in decision-making. Currently, most CAVC decisions are non-precedential and issued by single judges—just like the decisions of the Board. This can lead to inconsistent outcomes for similar claims.[22]

4. Proposed Amendments to Section 2(e): CAVC Aggregation

To enhance the efficacy of the Veterans Appeals Efficiency Act, I propose two amendments to Section 2(e) regarding the CAVC's aggregation authority.

First, section 2(e) should omit language on writs. Currently, the bill defines "covered proceedings" over which the CAVC has jurisdiction to include both appeals and petitions for a writ. While *Skaar* frustrated the CAVC's ability to aggregate appeals, it did not impact the court's authority to aggregate in writ cases, which presently function reasonably well.[23] The CAVC's writ authority derives from the All Writs Act, 28 U.S.C. § 1651(a), enacted in the First Judiciary Act of 1789 and made available to the CAVC as with other Federal courts. By applying the reforms aimed at appeals to writs, the current language of H.R. 3835 risks narrowing the CAVC's authority to aggregate in appropriate writ cases. I do not believe this is the intention of the bill, but reducing CAVC's writ authority would inadvertently undermine the broader purpose of H.R. 3835: to grant additional tools to veterans, the CAVC, and the BVA to manage their large dockets, reduce backlogs, and improve fairness and uniformity of decisions. This change can be accomplished by eliminating lines 1–2 on page 11 and amending page 10, lines 21–24 to read "(B) For purposes of subparagraph (A), a covered proceeding means an appeal over which the Court has jurisdiction pursuant to section 7266 of this title."

Second, section 2(e) should omit mention of opt-out procedures. CAVC's rules for class actions do not specifically address opt-out procedures, which are rare in injunc-

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[18] *Amchem Products Inc. v. Windsor*, 521 U.S. 591, 628–29 (1997).

[19] *See* James D. Ridgway, *Why So Many Remands?: A Comparative Analysis of Appellate Review by the United States Court of Appeals for Veterans Claims*, 1 Vet. L. Rev. 113 (2009).

[20] Ctr. for Innovation, *Veteran Appeals Experience: Listening to the Voices of Veterans and Their Journey in the Appeals System*, U.S. Dep't of Veterans Affs. 5 (Jan. 2016), https://perma.cc/6HFN-KSVV (finding that veterans often feel alone in a complex legal process that they do not understand, and having an advocate in the process makes them feel acknowledged and understood).

[21] Adam S. Zimmerman, *The Class Appeal*, 89 U. Chi. L. Rev. 1419, 1441 (2022).

[22] James D. Ridgway, Barton F. Stichman & Rory E. Riley, *"Not Reasonably Debatable": The Problems with Single-Judge Decisions by the Court of Appeals for Veterans Claims*, 27 Stan. L. & Pol'y Rev. 1, 25–26 (2016) (concluding that "outcomes in some individual appeals [. . .] would result in a different outcome had the appeal been adjudicated instead by one or more of the other judges.").

[23] See, e.g., Gladney-Chase v. Collins, No. 24–4472, 2025 WL 1335465, at *6 (Vet. App. Apr. 24, 2025) (granting joint motion to certify class seeking mandamus relief in connection with failure of the BVA to timely docket appeals from Veterans Health Administration).

tive-relief classes like those that arise in that Court. The references to opt-out procedures thus potentially introduce confusion into the statutory scheme. The basic structure of H.R. 3835 is to incorporate "the rules prescribed by the Court," § 2(e)(2) (adding new 38 U.S.C. § 7252(b)(1)(A)), and that approach makes sense as to opt-outs as well. Removing the references to opt-out procedures from H.R. 3835 would not preclude the Court from adopting such procedures in the future, in its rules for all class actions or in a particular case.

Limited Remands at the CAVC

I also support the reform described in section 2(e) of the Veterans Appeals Efficiency Act, which clarifies the CAVC's authority to issue limited remands to the Board.

The limited remand—briefly returning a case to the agency for a specific purpose—ensures that the CAVC can resolve a procedural or substantive deficiency via a determination from the BVA without losing jurisdiction over the case. The CAVC has recognized its authority to issue limited remands, but only in exceptional cases.[24] Therefore, it rarely exercises this power and instead chooses to order full remands, resulting in years of delay for the veteran.[25] The Veterans Appeals Efficiency Act addresses this problem by codifying the Court's current authority to issue limited remands and directing the Court to establish guidelines for their use, including the authority to direct the Board to act within a prescribed period.

One must not lose sight of the veterans and their families who are stuck in the hamster wheel of appeals. While awaiting a decision, disabilities persist, and hardships can intensify. Some veterans do not survive these trials of bureaucracy. Presently, veterans can expect to wait nearly 4 years for the BVA to decide their appeal.[26] When the veteran finally reaches the CAVC, their claim may have already been subjected to numerous remands. This cyclical process is a devastating reality for veterans. Therefore, it is paramount that the CAVC have tools that allow it to resolve errors expeditiously, efficiently, and with finality. The inability to issue a limited remand to resolve outstanding errors inevitably leads to further remands, further delays, and further pain for veterans and their families.

BVA Aggregation

In addition to its important reforms to the CAVC's supplemental jurisdiction and limited remand authority, the Veterans Appeals Efficiency Act would also help reduce the backlog of veterans' benefits appeals by implementing a key improvement at the BVA. Section 2(d)(1) contains a provision which aims to reduce the backlog of veterans' benefits appeals by confirming the BVA's authority to aggregate appeals.

While more than seventy other Federal agencies have a class action, joinder, or consolidation practice that facilitates aggregation of administrative appeals, the BVA is an outlier in insisting that it lacks power ever to group together appeals raising the same question of law or fact for efficient adjudication.[27] Like other Federal agencies, the Board has broad authority to prescribe rules to manage its docket of appeals[28]; unlike other agencies, the Board has repeatedly held that its organic statute does *not* authorize aggregation.[29]

According to the American Conference of the United States (ACUS), the result of this failure to aggregate is that "agencies risk wasting resources in repetitive adjudication, reaching inconsistent outcomes for the same kinds of claims, and denying

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[24] *Cleary v. Brown*, 8 Vet. App. 305, 308 (1995) ("Nowhere has Congress given this Court either the authority or the responsibility to supervise or oversee the ongoing adjudication process which results in a BVA decision.").

[25] *See Skaar v. Wilkie*, 31 Vet. App. 16, 18 (2019) (*en banc*) (ordering "a limited remand for the Board to provide a supplemental statement of reasons or bases addressing the appellant's expressly raised argument in the first instance"); *id.* (noting two prior instances of limited remands).

[26] The BVA currently reports the average wait time to be 1,091days. *See* Board of Veterans' Appeals Decision Wait Times, https://department.va.gov/board-of-veterans-appeals/wp—content/uploads/sites/19/2025/04/2024__bva2024ar.pdf. A 2023 Freedom of Information Act disclosure revealed "data indicating that the average appeal before BVA has been waiting for an average of 43 months—1308 days." *See* https://tinyurl.com/4e6snp5e.

[27] Sant'Ambrogio & Zimmerman, *Inside the Agency Class Action*, 126 Yale L.J. at 1658–59.

[28] *See* 38 U.S.C. § 501(a) (2021) (providing that the Secretary has "authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department," including the manner and form of adjudication).

[29] *See* Ruling on Motion to Aggregate, Robert C. Scharnberger, Deputy Vice Chairman, Board of Veterans' Appeals, No. C XX XXX 522 (Feb. 13, 2024) (concluding Board lacks legal authority ever to aggregate claims); Letter from Anthony C. Scirè, Jr., Chief Counsel, Board of Veterans' Appeals, to Edward Feeley, No. XX XXX 167 (Oct. 6, 2021) (same).

individuals access to the affordable representation that aggregate procedures promise."[30] This risk is already a reality at the BVA, where veterans wait years for a decision on their appeal. Consistent with the recommendations of ACUS and with the Board's organic statute, Section 2(d)(1) of the Veterans Appeals Efficiency Act wisely confirms that the BVA has authority to aggregate like claims in appropriate circumstances.

In conclusion, I urge the Committee to enact the Veterans Appeals Efficiency Act, particularly the reforms to codify the CAVC's authority to aggregate like claims and issue limited remands, as well as the BVA's authority to aggregate claims. Together, these measures will materially reduce the appeals backlog while advancing uniformity and consistency of decisions, fairness to veterans and families, and more equitable access to justice.

[30] *See* Administrative Conference Recommendation 2016–2, *Aggregation of Similar Claims in Agency Adjudication* (2016), https://www.acus.gov/sites/default/files/documents/aggregate-agency-adjudication-final-recommendation__1.pdf.

Prepared Statement of Candace Wheeler

STATEMENT OF
TRAGEDY ASSISTANCE PROGRAM FOR SURVIVORS (TAPS)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE

PRESENTED BY
CANDACE WHEELER
SENIOR DIRECTOR, GOVERNMENT AND LEGISLATIVE AFFAIRS

JUNE 24, 2025

The Tragedy Assistance Program for Survivors (TAPS) is the national provider of comfort, care, and resources to all those grieving the death of a military or veteran loved one. TAPS was founded in 1994 as a 501(c)(3) nonprofit organization to provide 24/7 care to all military survivors, regardless of a service member's duty status at the time of death, a survivor's relationship to the deceased service member, or the circumstances or geography of a service member's death.

TAPS provides comprehensive support through services and programs that include peer-based emotional support, casework, assistance with education benefits, and community-based grief and trauma resources, all delivered at no cost to military survivors. TAPS offers additional programs, including, but not limited to, the following: the 24/7 National Military Survivor Helpline; national, regional, and community programs to facilitate a healthy grief journey for survivors of all ages; and information and resources provided through the TAPS Institute for Hope and Healing. TAPS extends a significant service to military survivors by facilitating meaningful connections to peer survivors with shared loss experiences.

In 1994, Bonnie Carroll founded TAPS after the death of her husband, Brigadier General Tom Carroll, who was killed along with seven other soldiers in 1992 when their Army National Guard plane crashed in the mountains of Alaska. Since its founding, TAPS has provided care and support to more than 120,000 bereaved military survivors.

In 2024 alone, 8,911 newly bereaved military and veteran survivors connected to TAPS for care and services, the most in our 30-year history. This is an average of 24 new survivors coming to TAPS each and every day. Of the survivors seeking our care in 2024, 37 percent were grieving the death of a military loved one to illness, including as a result of exposure to toxins; 29 percent were grieving the death of a military loved one to suicide; and only 3 percent were grieving the death of a military loved one to hostile action.

As the leading nonprofit organization offering military grief support, TAPS builds a community of survivors helping survivors heal. TAPS provides connections to a network of peer-based emotional support and critical casework assistance, empowering survivors to grow with their grief. Engaging with TAPS programs and services has inspired many survivors to care for other more newly bereaved survivors by working and volunteering for TAPS.

Chairman Luttrell and Ranking Member McGarvey, and distinguished members of the House Committee on Veterans' Affairs, Disability and Memorial Affairs Subcommittee, the Tragedy Assistance Program for Survivors (TAPS) is grateful for the opportunity to provide a statement for the record on issues of importance to the 120,000-plus surviving family members of all ages, representing all services, and with losses from all causes who we have been honored to serve.

The mission of TAPS is to provide comfort, care, and resources for all those grieving the death of a military loved one, regardless of the manner or location of death, the duty status at the time of death, the survivor's relationship to the deceased, or the survivor's phase in their grief journey. Part of that commitment includes advocating for improvements in programs and services provided by the U.S. federal government — the Department of Defense (DoD), Department of Veterans Affairs (VA), Department of Education (DoED), Department of Labor (DOL), and Department of Health and Human Services (HHS) — and state and local governments.

TAPS and the VA have mutually benefited from a long-standing, collaborative working relationship. In 2014, TAPS and the VA entered into a Memorandum of Agreement that formalized their partnership with the goal of providing earlier and expedited access to crucial survivor services. In 2023, TAPS and the VA renewed and expanded their formal partnership to better serve our survivor community. TAPS works with military and veteran survivors to identify, refer, and apply for resources available within the VA, including education, burial, benefits and entitlements, grief counseling, and survivor assistance.

TAPS also works collaboratively with the VA and DOD Survivors Forum, which serves as a clearinghouse for information on government and private-sector programs and policies affecting surviving families. Through its quarterly meetings, TAPS shares information on its programs and services as well as fulfills any referrals to support all those grieving the death of a military or veteran loved one.

TAPS President and Founder Bonnie Carroll served on the Department of Veterans Affairs Federal Advisory Committee on *Veterans' Families, Caregivers, and Survivors,* where she chaired the Subcommittee on Survivors. The committee advises the Secretary of the VA on matters related to veterans' families, caregivers, and survivors across all generations, relationships, and veteran statuses. Ms. Carroll is also a distinguished recipient of the Presidential Medal of Freedom, the nation's highest civilian honor.

CARING FOR SURVIVORS ACT OF 2025 (H.R. 2055)

TAPS Strongly Supports

TAPS remains committed to improving Dependency and Indemnity Compensation (DIC) and providing equity with other federal benefits. DIC is a tax-free benefit paid to eligible surviving spouses, dependent children, or dependent parents of service members who die in the line of duty or veterans whose death resulted from a service-related injury or illness. More than 506,000 surviving spouses receive DIC from the Department of Veterans Affairs (VA).

The current monthly DIC base rate for eligible surviving spouses is $1,653.07 (Dec. 1, 2024)[1] and has only increased due to cost-of-living adjustments (COLA) since 1993. TAPS is working with Congress to raise DIC from 43 percent to 55 percent ($2,107.22) of the compensation rate paid to a 100 percent disabled veteran, in parity with other federal survivor programs; ensure the DIC base rate is increased equally; and protect added monthly amounts, like the child stipend, eight-year provision, and Aid and Attendance.

TAPS is also working to reduce the time frame a veteran needs to be rated totally disabled from 10 to five years to assist families who have become caregivers for their disabled veteran, and to allow more survivors to become eligible for DIC benefits.

TAPS and the survivor community have supported strengthening DIC for many years, especially for military survivors whose only recompense is DIC. We are grateful to Representatives Jahana Hayes (D-CT-5) and co-lead Brian Fitzpatrick (R-PA-1), and 55 original co-sponsors for reintroducing the ***Caring for Survivors Act of 2025*** **(H.R. 2055),** which will increase DIC by $454 a month.

Passing this important bipartisan and bicameral legislation in the 119th Congress is a top priority for The Military Coalition (TMC) Survivor Committee, which TAPS co-chairs. TMC consists of 35 veteran service organizations representing more than 5.5 million members of the uniformed services — active, reserve, retired, survivors, veterans, and their families.

TAPS appreciates the VA's position on the ***Caring for Survivors Act of 2025***, "VA supports the bill, subject to amendment and the availability of appropriations," submitted for the record before the Senate Veterans Affairs Committee on March 11, 2025.[2]

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[1] https://www.va.gov/family-and-caregiver-benefits/survivor-compensation/dependency-indemnity-compensation/survivor-rates/

[2] https://www.veterans.senate.gov/services/files/CCE1F4F4-01CD-4364-9B72-28F9253987A1

TAPS respectfully asks the Congressional Budget Office (CBO) to rescore the ***Caring for Survivors Act*** based on new data since the passing of the PACT Act. The VA estimated that there were potentially 382,000 survivors who may be eligible for PACT Act-related benefits, but this number includes all manners of death, including those who died of natural causes, old age, by suicide, or in car accidents, not just those filing claims related to toxic exposure. To date, nearly 37,000 survivors have submitted claims for PACT Act-related benefits, almost 31,000 have been completed, and close to 15,000 claims have been approved.[3] These benefits, to include DIC, are life-changing for surviving families, and TAPS is proud of the instrumental role we played in passing this historic bipartisan legislation. However, based on nearly three years of data since the PACT Act became law on Aug.10, 2022, the number of survivors now eligible for DIC is far less than the VA's original estimate. This should be factored into any CBO scoring of bills related to DIC, to include the ***Caring for Survivors Act of 2025.***

The following statements from survivors demonstrate that stringent limitations on DIC payments have negative financial and widespread impacts on housing, employment, transportation, food security, and medical and mental health care for surviving veteran and military families:

Amanda Lee Pitzer, Surviving Spouse of CPO Larry Pitzer Jr. of North Carolina, U.S. Navy

"Losing my husband changed every aspect of my life — emotionally, mentally, and financially. As a widow and a mother, my greatest concern has always been ensuring stability for my family.

"While Dependency and Indemnity Compensation (DIC) provides some support, the reality is that at only 43 percent of a 100 percent disability rating, it simply isn't enough to keep surviving families financially secure. The gap between what is provided and what is actually needed forces many of us into impossible situations, choosing between paying bills, securing our futures, or being present for our children. For me, that meant returning to school to earn my doctorate and taking on five part-time jobs just to bridge the gap. Despite my education and qualifications, I am still years behind my peers in both earnings and retirement savings, with no access to employer-sponsored benefits, like retirement accounts.

"Like so many other survivors, I am constantly running on empty — physically, emotionally, and financially — just trying to stay afloat. If the ***Caring for Survivors Act*** *is passed, it would be life-changing.*

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[3] https://department.va.gov/pactdata/wp-content/uploads/sites/18/2025/05/VA-PACT-Act-Dashboard-Issue49_052325.pdf

"Raising DIC to 55 percent, bringing it in line with other federal survivor benefits, would provide much-needed financial relief to families like mine. It would mean that widows and widowers wouldn't have to overextend themselves with multiple jobs just to make ends meet. Instead, they could focus on building sustainable careers, securing their financial futures, and — most importantly — being present for their children.

"This increase would acknowledge that the sacrifices made by our fallen service members do not end with their passing. Their families continue to bear the weight of their loss, and they deserve support that reflects the true cost of that sacrifice.

"Passing the ***Caring for Survivors Act*** *wouldn't just correct an unfair disparity, it would send a powerful message that our nation truly honors and supports the families of its fallen heroes. For so many of us, this is not just about numbers on a page, it is about survival, stability, and the ability to rebuild a future with dignity and hope."*

Heather Welker, Surviving Spouse of SSG Mark Welker of Missouri, Missouri National Guard

"My husband loved this country and gave it 21 years of his life. During those years, he would always tell me, 'It's for our future.' So his career was first priority, which took time away from family. It was supposed to make retirement years easier for us, or so we thought.

"In October of 2022, he was diagnosed with cancer, and the tumor was in a location that had no possibility of surgery because of organs and arteries. It also denied him the ability to continue working, so he was granted disability. I soon had to leave my employment of 18 years to be his caregiver. Fast forward to March 5, 2024, that morning, my husband died from his service-connected cancer. We were robbed of our golden years together.

"I have not been able to find employment comparable to what I had before, plus the loss of any income he provided through disability. The increase in DIC to 55 percent of the single disability rate would allow breathing room. I would not be looking for a second job at the age of 54."

Lynn Tennant, Surviving Spouse of SSG Adrian Tennant of New York, U.S. Army

"Adrian, a 20-year retired Army veteran, lost his life after a very brief and hard 34-day battle with acute lymphoblastic leukemia (ALL) T-Cell. He left behind me, his wife of 18 years, and two young children, ages 13 and 9 at the time. Adrian had only been retired from the Army for seven years. He never truly got to enjoy his retirement, as he enrolled

in college to pursue a career in information technology. I gave up my career to let him follow his goals and raise our children.

"His loss has put a great financial burden on me to raise our two children. I was awarded DIC finally after five years, which I am thankful for, but between that, Social Security benefits, and my job, it still isn't enough in these tough economic times. I am heading back to school to further my career in education, but the loss of his income and retirement pay has made things very difficult."

Elly Gibbons, Surviving Spouse of CMSgt John Gibbons of Arkansas, U.S. Air Force

"My husband served for 38 years and died due to Agent Orange exposure. Upon his death, my income decreased by 70 percent. His Social Security was affected by the Windfall Elimination Provision (WEP), so I cannot draw from his Social Security.

"I fought for seven years to help rectify the SBP/DIC offset, which was finally rectified due to grassroots efforts by those affected by the incomprehensible wrong. Now we continue a fight to address the ***Caring for Survivors Act****, which would finally increase DIC to the appropriate level of 55 percent in parity with ALL other federal survivors' benefits. The increase in income would have a tremendous positive impact on so many survivors of those who have served our nation, our patriots. Thank you."*

Harry McNally, Surviving Spouse of SGT Shanna Golden of Virginia, U.S. Army

"Increasing the amount of DIC to levels identical to other federal survivor benefits should have been done decades ago. As it stands, the implication is that the death of a veteran or service member is worth less than the death of other federal employees."

Katie Hubbard, Surviving Spouse of CSM James Hubbard Jr. of Kansas, U.S. Army

"Due to his status at the time of my husband's death, the only financial benefit we are eligible for is DIC. CSM James W. Hubbard Jr. died May 21, 2009, while in treatment for leukemia caused by the burn pits in Iraq.

"Having your income cut by more than 60 percent while trying to navigate funeral costs, bills that aren't stopping, and unexpected ambulance and ER charges nearly took me out too. My mental health was not conducive to returning to the workplace quickly after being his caregiver and dealing with the unexpected loss, yet I had to figure out something to make up the income or lose our home, too. My future, my best friend, and my normal were gone.

*"While a 12 percent increase doesn't seem like much, any widow living paycheck to paycheck can tell you it is. The military is a federal entity, yet its survivors are treated less than. Passing the **Caring for Survivors Act** would show military widows that their spouse and they are cared for and not forgotten."*

Janet Albaugh, Surviving Spouse of SP5 Rick Albaugh of South Carolina, U.S. Army

"There needs to be a change in the way DIC is allowed. It's not the fault of the veteran that they couldn't live until the 10-year rule! My husband did two tours in Vietnam, and he was sprayed with Agent Orange. He had everything wrong with his respiratory system known to man. It's just not fair that we don't get any help because our veteran died too soon! Believe me, ALL widows would rather have our husbands still here with us. It's a real hardship to try and hang on to what we fought so hard to build.

*"Is it really fair that we not only lose our husbands, but we lose everything else too? They fought for our country and did ALL they were asked to do. Please pass the **Caring for Survivors Act**. It would help all of us widows who have already lost so very much!"*

VETERANS LAW JUDGE EXPERIENCE ACT (H.R. 659)

TAPS Supports

TAPS appreciates Congresswoman Julia Brownley (D-CA-26) and the late Congressman Raúl Grijalva (D-AZ-7) for reintroducing the ***Veterans Law Judge Experience Act*** **(H.R. 659),** which prioritizes hiring judges with at least three years of experience in veterans' law to serve as members of the Board of Veterans' Appeals.

Having judges with specialized expertise can lead to more efficient case handling, improve the accuracy and consistency of decisions, and help retain experienced and high-performing professionals. Given the ongoing backlog TAPS is seeing with claims and appeals, we believe this bill will accelerate the appeals process, significantly reduce the claims backlog, and improve decision outcomes for our veterans and their survivors.

FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT (H.R. 2701)

TAPS Strongly Supports

TAPS strongly supports the ***Fallen Servicemembers Religious Heritage Restoration Act*** **(H.R. 2701)**. This critical legislation would establish a 10-year program within the American Battle Monuments Commission (ABMC) to identify and conduct research on

service members who are incorrectly memorialized in military cemeteries abroad. It would also empower the ABMC to locate and engage surviving families to facilitate the correction of grave markers to properly reflect the service member's religious heritage.

TAPS greatly appreciates Representatives Debbie Wasserman Schultz (D-FL-25), Max Miller (R-OH-7), Daniel Goldman (D-NY-10), Lois Frankel (D-FL-22), Bradley Scott Schneider (D-IL-10), Laura Friedman (D-CA-30), and Josh Gottheimer (D-NJ-5) for their commitment to recognizing and honoring the personal faith of those who gave their lives in service to our nation. It is a sacred obligation to ensure that every American service member who fought and died for our country has their beliefs and heritage properly honored — wherever they are laid to rest.

TAPS urges the subcommittee to advance the ***Fallen Servicemembers Religious Heritage Restoration Act*** and calls on the full House to pass this important legislation without delay.

HONORING OUR HEROES ACT (H.R. 2721)

TAPS Supports

TAPS thanks Representative Timothy Kennedy (D-NY-26) for introducing the ***Honoring Our Heroes Act of 2025*** **(H.R. 2721)**, which would establish a two-year pilot program under the Department of Veterans Affairs (VA) to provide headstones or burial markers for eligible veterans who died before Nov. 1, 1990, and may have been previously ineligible under existing memorial programs.

This legislation aims to address gaps in veteran memorial coverage, especially for older veterans, by allowing family members, descendants, or representatives to request memorial markers to honor the veteran's service.

Many veterans from earlier generations — particularly those who served in World War I, World War II, Korea, or Vietnam — may lie in unmarked graves or without federal recognition of their service. This bill provides a chance to correct that oversight and ensure that every veteran, regardless of when they passed, is honored with the dignity and recognition they have earned and deserve.

ERNEST PELTZ ACCRUED VETERANS BENEFITS ACT (H.R. 3123)

TAPS Strongly Supports

TAPS appreciates Representatives Elise Stefanik (R-NY-21) and Ro Khanna (D-CA-17) for introducing the ***Ernest Peltz Accrued Veterans Benefits Act*** **(H.R. 3123),** which

would guarantee that veterans' pensions already awarded — but not paid before death — are delivered to the appropriate survivors, ensuring veterans' families receive the benefits they have earned.

If a veteran is granted a pension before passing away — but dies before receiving payment — the Department of Veterans Affairs (VA) must pay the unpaid pension to the first eligible individual in the following order: the veteran's spouse, children (shared equally), dependent parents (shared equally), and estate, if none of the above apply. To receive the unpaid pension, an application must be filed within one year of the veteran's death. If no claim is made during that period, the payment defaults to the estate.

This legislation corrects a common gap in benefits delivery, where families of deceased veterans miss out on rightful pension payments simply due to administrative timing or lack of awareness. It ensures that veterans' benefits serve their intended purpose — even if the veteran passes before funds are received.

VETERANS' CAREGIVER APPEALS MODERNIZATION ACT OF 2025 (H.R. 3833)

TAPS Strongly Supports

TAPS strongly supports the ***Veterans' Caregiver Appeals Modernization Act of 2025*** **(H.R. 3833)**, which seeks to improve the VA's caregiver support program by making the application and appeals processes more accessible, efficient, and fair for veterans and their family caregivers.

TAPS thanks Congressman Tom Barrett (R-MI-07), Chairman of the House Veterans' Affairs Subcommittee on Technology Modernization, for introducing this important legislation, which would direct the VA to develop a centralized digital platform for reviewing caregiver applications and appeals. This system will allow VA staff and Board of Veterans' Appeals personnel to access all related documents and communications in one place — helping streamline decision-making and reduce delays.

Many veterans rely heavily on family caregivers, and those caregivers, many of whom become survivors, deserve a fair, transparent system for accessing the benefits and support they've earned. This legislation directly responds to widespread concerns about inconsistent decisions, delays in appeals, and the impact of a veteran's death on pending survivor benefits.

If a veteran dies while an appeal is pending, the caregiver's eligibility to receive unpaid monthly stipends will still be honored — based on documentation available at the time of the veteran's death. This ensures caregivers who become survivors are not unfairly penalized due to delays in the VA process.

In 2024 alone, nearly 9.000 newly bereaved military and veteran survivors connected to TAPS for care and services, the most in our 30-year history. This is an average of 24 new survivors coming to TAPS each and every day. Of the survivors seeking our care in 2024, 37 percent were grieving the death of a military loved one to illness, and many were caregivers to their veterans before their passing.

This important legislation will positively impact the lives of our nation's veterans, their caregivers, and survivors, and we urge its swift passage.

MODERNIZING ALL VETERANS AND SURVIVORS CLAIMS PROCESSING ACT (H.R. 3854)

TAPS Strongly Supports

TAPS appreciates Representative David Valadao (R-CA-22) for reintroducing the ***Modernizing All Veterans and Survivors Claims Processing Act,*** which would direct the Department of Veterans Affairs (VA) to report on efforts to expand the use of automation tools to process veterans' and survivors' claims.

The VA's Disability Compensation Service has access to more automation tools than the Pension and Fiduciary Service, which has proven to help lower processing times for veteran claimants. Expanding access to automation tools for other VA subdivisions will help decrease processing times and enhance accuracy.

TAPS has long advocated for expanding the use of automation tools across the VA to ensure veteran and survivor claims are processed in a more expedient manner. We are pleased that this important legislation prioritizes deploying these tools to the Pension and Fiduciary Service, Education Service, Veterans Benefits Administration (VBA), Debt Management Center, and the Board of Veterans' Appeals.

The use of automation tools will help improve efficiency, accuracy, and communication within the VA claims process by automatically retrieving service and health records for veterans and survivors. These tools will also help compile and evaluate evidence for claims, provide automated decision support to assist VA staff, and enable automated data-sharing across federal agencies.

TAPS appreciates the VA announcing major survivor benefits reforms in May 2025, which include working to identify areas where automation can be used to make the DIC claims process easier for survivors to navigate. According to the VA, the "VA now automates more than 1,000 DIC claims payments or adjustments per day and is in the process of ongoing enhancements to increase automation that will expedite survivors' claims and improve their experience. VA will also be identifying additional areas where

automation can be used to make all benefits delivery processes easier to navigate for eligible surviving dependents."[4]

This is a critical step forward to enhancing support for surviving families, and TAPS is grateful to the VA. We await the VA's opinion on this bill, but believe it would help codify the work already being done by the VA and ensure advancements in the survivor claims process are protected in perpetuity.

PROTECTING VETERANS CLAIM OPTIONS ACT (DRAFT)

TAPS Supports

TAPS appreciates House Committee on Veterans' Affairs Chairman Mike Bost (R-IL-12) for introducing the ***Protecting Veterans Claims Options Act*** to ensure fairness and flexibility in the appeals process for veterans by clarifying the rules governing the Board of Veterans' Appeals (BVA).

This important legislation would ensure that when veterans file a supplemental claim, the BVA cannot deny the case solely because no new evidence was submitted. This protects veterans' rights to have their claims reviewed on the merits, even when additional evidence isn't available right away.

If a claim is remanded back to the Board from the Court of Appeals for Veterans Claims, veterans and their representatives have 90 days to submit new evidence. The BVA is required to consider that new evidence directly, which improves veterans' ability to strengthen their claims without unnecessary delays.

This legislation will help ensure that veterans are not unfairly denied benefits over procedural technicalities, have the opportunity to submit evidence after a court remand, and receive a more thorough and just review of their appeals by the BVA.

JUSTICE FOR AMERICA'S VETERANS AND SURVIVORS ACT OF 2025 (H.R. 3627)

TAPS Strongly Supports

TAPS is grateful to Representatives Chuck Edwards (R-NC-11) and Kelly Morrison (D-MN-03) for introducing the ***Justice for America's Veterans and Survivors Act of 2025*** to ensure that the Department of Veterans Affairs (VA) collects cause-of-death data for deceased veterans.

[4] https://news.va.gov/press-room/va-announces-major-survivor-benefits-reforms/

While the VA does a fantastic job of tracking major data categories for surviving families, the one major piece of information that the VA does not currently track is the "cause of death" of the veteran. While the VA currently supports 506,000 surviving spouses, it cannot tell you what percentage are suicide, illness, combat-related, or training accident-related deaths. This information would be crucial to ensure that VA and other organizations are providing the necessary care and programs those families need.

During a meeting with the VA last year, we were informed that because the VA does not track cause of death, the potential 382,000 PACT Act-impacted survivors includes all manners of death, including those who died of natural causes, age-related conditions, by suicide, or in car accidents, not just those filing claims related to toxic exposure. This helps to explain why, after extensive outreach by the VA and organizations like TAPS, to date, just under 37,000 survivors have applied for PACT-related benefits. Unfortunately, the potential survivor numbers have also informed the Congressional Budget Office's (CBO) scoring of current survivor legislation, ***Love Lives On Act*** and ***Caring for Survivors Act***, almost doubling the cost and creating exorbitant scores, making it difficult to find funding.

This type of data is critical to tailoring programming for surviving families as well as research into suicide prevention, toxic exposures, and illnesses that have led to the tragic deaths of many veterans. The Department of Defense (DoD) has been doing this for many years, so it is logical to presume the VA can and should do the same.

This important bipartisan legislation, spearheaded by TAPS, will empower lawmakers, advocates, and service organizations with clearer insight into veteran mortality trends — especially related to suicide and service-connected disabilities.

By enhancing data collection and analysis, the ***Justice for America's Veterans and Survivors Act of 2025*** will help support life-saving efforts to prevent veteran suicide, target critical mental health resources, and shape more effective veteran support policies. TAPS is committed to working with Congress to pass this important legislation within the 119th Congress.

RURAL VETERANS' IMPROVED ACCESS TO BENEFITS ACT OF 2025 (DRAFT)

TAPS Supports

TAPS thanks Representative Juan Ciscomani (R-AZ-6) for reintroducing the ***Rural Veterans' Improved Access to Benefits Act of 2025***, which expands and streamlines the process by which contract health care professionals can perform medical disability exams for the Department of Veterans Affairs (VA). While this bill primarily codifies current VA policy, formalizing it is important to ensure that future administrations also contract physicians to assist with disability exams.

This important legislation addresses the challenges many veterans face in accessing timely evaluations necessary for their benefits, especially veterans who live in rural areas. It allows qualified health care professionals with a valid, unrestricted license — regardless of their state — to conduct VA medical disability exams, as long as they're not barred from practicing anywhere in the U.S.

TAPS believes this bill will help reduce wait times and improve benefit access for veterans — especially those in rural or underserved communities — by increasing the availability of qualified medical examiners. It reflects a commitment to ensuring all veterans receive the care and evaluations they've earned, without being limited by outdated licensing barriers.

VETERANS APPEALS EFFICIENCY ACT OF 2025 (H.R. 3835)

TAPS Strongly Supports

TAPS greatly appreciates House Committee on Veterans' Affairs Chairman Mike Bost (R-IL-12) for introducing the ***Veterans Appeals Efficiency Act of 2025*** **(H.R. 3835)**, which aims to improve how the Department of Veterans Affairs (VA) handles benefits claims and appeals — making the process faster, more transparent, and easier to track for veterans and their families.

In 2017, Congress passed the ***VA Accountability and Whistleblower Protection Act*** in response to the nationwide VA access crisis that negatively impacted veterans' care. This critical law gave "VA leaders the ability to break through bureaucratic obstacles to discipline or fire poor-performing employees, providing VA employees a healthier workplace, and increasing veterans' trust in the VA."[5]

This important legislation expands on the 2017 law by directing the VA to report on how long remanded claims are pending, how many cases have been expedited, and how many appeals have been dismissed — including those due to a veteran's death or suicide. The VA would also be required to define what qualifies a veteran's appeal for faster review and track the progress and delays of claims to help ensure fair and timely consideration.

The ***Veterans Appeals Efficiency Act of 2025*** would also grant the Court of Appeals for Veterans Claims expanded authority to send cases back for focused review and oversee class actions involving similar claims — empowering veterans to resolve shared legal challenges together.

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[5] https://www.veterans.senate.gov/2025/1/chairmen-moran-bost-lead-colleagues-in-introducing-legislation-to-restore-accountability-at-va

VETERANS CLAIMS QUALITY IMPROVEMENT ACT OF 2025 (DRAFT)

TAPS Strongly Supports

TAPS greatly appreciates Chairman Morgan Luttrell (R-TX-8) for reintroducing the ***Veterans Claims Quality Improvement Act of 2025*** to improve the accuracy and accountability of VA decisions on veterans' benefits claims, with a special focus on reducing unnecessary delays and remands.

This important legislation requires VA staff who make avoidable errors that delay claims processing to be notified of their mistakes, promoting accountability and better outcomes for veterans. The VA would also be required to review and report on past legal opinions that may have led to inconsistent decisions, especially on cases appealed to the U.S. Court of Appeals for Veterans Claims.

The bill further requires the VA to create a formal program to track errors, trends, and remands by the Board of Veterans' Appeals (BVA) and report these findings to Congress. By evaluating the performance of individual board members, the aim is to catch and fix mistakes early. Board members and staff will be required to undergo enhanced, data-informed training to ensure accurate, timely claims adjudication. When claims are sent back for further review, the VA will be required to explain why and identify whether it failed to meet its duty to assist or notify veterans properly.

TAPS strongly supports the ***Veterans Claims Quality Improvement Act of 2025*** to streamline and strengthen the benefits claims process for our nation’s veterans and their families.

CONCLUSION

TAPS thanks the leadership of the House Committee on Veterans’ Affairs, Disability and Memorial Affairs Subcommittee, distinguished members, and professional staff for convening this important hearing to address key veteran and survivor legislation. TAPS is honored to testify on behalf of the thousands of surviving families we serve.

Prepared Statement of Evan Deichert

STATEMENT OF
MR. EVAN DEICHERT
ACTING DEPUTY VICE CHAIRMAN
VETERANS LAW JUDGE
BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
ON
LEGISLATION

June 24, 2025

Good afternoon, Chairman Luttrell, Ranking Member McGarvey, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss pending legislation and several bills that would affect VA programs and services. Accompanying me today are Mr. Kevin Friel, Executive Director, Pension & Fiduciary Service, Veterans Benefits Administration (VBA), Mr. James W. Smith II, Deputy Executive Director, Policy and Procedures, Compensation Service, VBA, and Dr. Colleen Richardson, Executive Director, Caregiver Support Program, Veterans Health Administration (VHA).

H.R. XXX Justice for America's Veterans and Survivors Act of 2025

This bill would create a new 38 U.S.C. § 534, requiring VA to submit an annual report to Congress containing data and information on causes of death among Veterans.

Subject to the availability of appropriations, VA supports the bill's intent but cites concerns with the level of detail of data tracking required by the bill. VA recognizes the tragedy of Veteran suicides and acknowledges the intent to identify any connections between the deaths of Veterans and their service-connected disabilities. VA already reports mortality data for all Veterans as part of the annual suicide prevention report. The most recent report, released in December 2024 (2024 national Veteran Suicide Prevention Annual Report), includes information on all-cause mortality

and leading causes of death for Veterans, overall and by receipt of VHA care, and information regarding receipt of VBA benefits, including compensation for service-connected disabilities, for Veterans, and for Veteran suicide decedents.

VA has concerns with the level of detail of data tracking mandated by the bill, including elements not currently tracked by VA systems, and whether the added effort and expense would yield actionable results. VA does not have access to some of the specific data elements the report requests. For example, “whether such Veteran died by suicide secondary to a service-connected disability rated as total.” VA may know that a Veteran’s death was rated by the coroner or medical examiner as a suicide and that the Veteran had a posttraumatic stress disorder (PTSD) service-connected disability rated as total, however we may not be able to ascertain whether the suicide was directly related to PTSD concerns, particularly if the contributed cause of death codes on the death certificate (record axis codes) did not indicate PTSD as a contributing cause.

Additionally, VA notes that if a Veteran died in a non-VA facility, was not in receipt of VA benefits, or a claim for VA survivor benefits had not been submitted, VA may not have access to information which provides a Veteran’s cause or manner of death.

If enacted, funding for extensive updates to current systems and processes would be needed to collect required information about each Veteran's primary and possible secondary causes of death, and manner of death. “Cause of death” is not defined, but we understand it to mean the underlying medical condition, disease, or injury that led to death, as contrasted with the manner of death, which refers to how that cause of death came about, such as natural, accidental, suicide, homicide, or undetermined. VA does not have a cost estimate at this time.

VA would appreciate the opportunity to discuss this bill with the Committee and better understand the intended outcomes and to determine what, if any, amendments would be needed to ensure that the required elements in the bill can be reported.

H.R. XXX Veterans Appeals Efficiency Act of 2025

Overall, VA supports the intent of this bill, subject to amendments and the availability of appropriations. Because the bill contains several independent subparts, VA provides a specific position on each subpart below. This bill would institute significant procedural changes at the Board of Veterans' Appeals (Board) and expand the jurisdiction of the U.S. Court of Appeals for Veterans Claims (CAVC). Without modification, we anticipate that the bill would add significant delays to appeal processing timelines and lead to an exponential growth in the appeal inventory, reversing current progress to reduce decision wait times. In sum, this bill as drafted would create substantial budgetary resource burdens on VA and adversely affect Veterans with pending appeals. VA does not have a cost estimate at this time.

Section 2(a) would amend 38 U.S.C. § 5109B to require the Secretary to provide Congress with annual reports on the average length of time that a claim, or issue within a claim, is pending with the Secretary following a remand from the Board; the number of cases advanced on the Board's docket; and the number of appeals dismissed by the Board.

Section 2(b) would require the Secretary to prescribe guidelines for advancement of a case on the Board's dockets.

Section 2(c) would add new section 38 U.S.C. § 5109C to require the Secretary to track data, and submit to Congress an annual report, regarding whether each claim for a particular benefit is: continuously pursued, filed in the national Work Queue but not assigned for adjudication, afforded expeditious treatment by VBA, remanded by the Board, or pending a Board hearing. The Secretary would also be required to track instances where a VBA adjudicator does not comply with remand instructions of the Board, supplemental claims filed within continuous pursuit after a finally adjudicated

decision, and "first notices" submitted to the Secretary of death of individuals in receipt of VA benefits.

Section 2(d)(1) would expand the authority of the Board to aggregate claims that contain common issues of law or fact. The Secretary would be required to submit a report to Congress, every 5 years, on the aggregation of claims.

Section 2(d)(2) would require the Secretary to ensure substantial compliance with Board remands, except where the Board has determined that evidence added to the record after a remand is sufficient to resolve the underlying issues or where the remand decision was unnecessary, in which case the agency of original jurisdiction may "waive" the compliance requirement.

Section 2(e) would expand the jurisdiction of the CAVC to certify classes with respect to claimants who are awaiting a Board decision, or who have received a Board decision and filed a supplemental claim within 1 year. This section would also allow the CAVC to remand questions of law or fact to the Board, while maintaining jurisdiction under a stay of judicial proceedings, where the Board has failed to (a) address an issue raised by the clamant (or the record) or (a) provide adequate reasons or bases.

Section 2(a)

VA cites concerns with this section, and subject to the availability of appropriations. VA cites concerns with the portion of section 2(a) requiring a report on the average length of administrative adjudication following Board remands. As an initial matter, VA cites concerns with the phrase "or issue within a claim" as a criterion for reporting. The Appeals Modernization Act (AMA), P.L. 115-55, does not contain a definition of "issue," so that term should be clarified in the statute as having the meaning set forth by VA in 38 C.F.R. 3.151(c), which treats disability compensation for each individual disability as a separate issue. Assuming that is the definition envisioned, VA does not currently have the technical capacity to reliably track timeliness at the issue level. Particularly in the case of legacy appeals, multiple appealed issues may be aggregated into a single Board decision, which, if tracked under current capabilities as

one claim, could unintentionally skew the average timelines required under this bill. Achieving the technical capability to implement the bill would require expenditure of substantial program and information technology resources, and therefore require appropriations. VA does not have a cost estimate at this time.

VA proposes that, if this provision moves forward, the bill disaggregate the reporting requirement into the average for legacy claim remands and for remands under AMA because once all legacy remands are completed, the need for reporting on the legacy system remands will diminish.

VA cites concern with the portion of section 2(a) that would require reporting on the number of cases advanced on the docket (AOD) to be disaggregated by the reason provided in the request. While VA can report the number of cases granted AOD after a decision is rendered, disaggregated by reason (i.e., age, financial distress, serious illness, other), current systems do not track motion denial reasons.

VA cites concern with the portion of section 2(a) that would require reporting on the number of Board dismissals, disaggregated by dismissals due to the claimant's death, and whether the death was a suicide. First, while VA currently can report the number of dismissals due to death, Board systems do not track cause of death. Second, this raises substantial privacy concerns, including the risk of exposing personal information, compromising confidentiality laws, and retraumatizing surviving families. The agency is currently notified by the Social Security Administration (SSA) once a claimant has passed away. A death certificate may not always be of record to determine that the appeal should be dismissed, and the record may contain incomplete evidence to establish that a Veteran passed away by suicide. Therefore, VA cautions that any reporting on this specific data point may not be accurate or beneficial given the limited nature of available information and the privacy concerns noted above. Moreover, VA cautions that this requested data point may create an unintended perceived correlation between a pending appeal and Veteran suicide.

Section 2(b)

VA does not support this provision, which would require the Board to prescribe guidelines for AOD, including the type of evidence required to support the motion. VA views this provision as a duplicative and unnecessary requirement. The criteria for advancement on the docket—e.g., advanced age (defined as 75 years or older), serious illness, and severe financial hardship -- are already contained in statue and regulations. The Board applies the relevant statutes and regulations to guide its determinations on motions for AOD to ensure that those appellants most in need of an expedited decision receive priority processing. Cases with AOD status comprised approximately 21% of the Board's fiscal year (FY) 2024 caseload.

Section 2(c)

This section would require VA to substantially modify its systems to track and report numerous aspects of claims processing. As expressed below, some proposed tracking requirements would impose a heavy and, in our view, unnecessary burden on the Board.

VA cites concern with the portion of section (2)(c)(1) that would require VA to track claims, and issues within claims, that are continuously pursued. As an initial matter, we incorporate our suggestion above (in our views on section 2(a)) regarding the definition of issue. Additionally, the Board has no ability to track this information within its current case management systems, partly due to a lack of consistency in how claims are identified, and efforts to do so would require significant information technology development and testing resources to achieve changes in business processes and necessary system integration across VA. This would create a heavy and unnecessary resource burden on the Board.

VA opposes the portion of section 2(c)(1) that would require VA tracking and reporting on instances in which a VBA adjudicator does not comply with instructions in a Board remand decision. Complying with this requirement for AMA appeals would require an entirely new structure and review program covering all post-remand the

Agency of Original Jurisdiction (AOJ) decisions, which would require considerable additional personnel resources and information technology development costs. This increased resource burden would divert already scarce personnel and financial resources away from the Board's focus on deciding pending appeals as swiftly and fairly as possible. Tracking compliance with Board remands also would require increased system integration to track remands and would require significant VA technological development and testing to successfully accomplish.

Even with system modification, tracking noncompliance with Board remands presents practical problems with obtaining accurate data. First, compliance with a Board remand is a subjective measure that might not be consistently captured by individual Veterans Law Judges for several reasons, and this would lead to inconsistent data of questionable reliability for potential intervention strategies. Second, if the AOJ grants the claim in full without conducting the development directed by the Board, it is unclear if this would trigger reporting requirements under a failure to comply even though the claim has been resolved in the Veteran's favor. Third, for AMA claims, unless the post-remand AOJ decision is appealed to the Board within 1 year, there is no system in place, and no practical system we can envision, to determine whether the AOJ has complied with the Board's remand. Under the AMA, claims are not automatically returned to the Board following a post-remand AOJ decision. Thus, the Board does not review those claims for compliance with remand instructions. Legacy claim remands are, of course, a diminishing percentage of all Board remands.

To the extent this provision relies on the duties imposed on the Board in subsection 2(d) with respect to remand compliance, please see our views expressed below on that subsection.

Should the Committee nevertheless decide to move forward with this provision, VA requests that the statutory language clarify whether the term "remand" encompasses both legacy remands and AMA remands.

VA cites concern with the portion of section 2(c)(1) that would require VA to track and maintain information specifically for supplemental claims, including disaggregation between those filed within a year of the last VA decision (within continuous pursuit) and those filed outside of that period.

VA's Veterans Benefits Management System application is not designed to track the date of prior decisions for each issue in any given supplemental claim. While the required supplemental claims form asks the claimant to identify the specific issues and the date of the VA decision notice, this data is not recorded in VA systems and is used only by claims processors who are responsible for reviewing all claim submissions and evidence of record to determine if the claimant has maintained continuous pursuit. Therefore, VA expresses concern with the current technological capabilities of the agency to comply with the statutory requirements for these reports given that VA's current systems do not capture this data. Appropriations would be necessary, but VA does not have a cost estimate at this time.

Section 2(d)

VA does not support this provision. Section 2(d)(1) of the bill would provide the Chairman of the Board the authority to aggregate certain claims. Attempting to aggregate different Veterans' appeals would substantially alter the Board's case processes and would upend docket order rules in unfair ways for many Veterans with pending appeals.

First, this section would create a statutory conflict with 38 U.S.C. § 7107(a)(4), which requires the Board to decide each case before the Board "in regular order according to its respective place on the docket." Additional statutory language would be needed to address this tension and make clear how the Board can aggregate appeals without violating the docket order requirement. Similarly, statutory guidance would need to be provided on the timing applicable to a Veteran's right to a hearing and right to determine the scope of the evidentiary record in their case. *See* 38 U.S.C. §§ 7105(b)(3), 7107(c), 7113. It is unclear who would get the opportunity for a hearing

before the decision on the common question, and what the evidentiary record would be for such a decision. Even with statutory rules explicitly addressing these disconnects, the aggregation of appeals with different evidence windows would add further confusion to the AMA system at a time when Veterans and representatives are still becoming familiar with the nuances of the AMA.

Second, the aggregation of different Veterans' appeals would be a sharp departure from the Board's longstanding role in evaluating the particular and unique facts and circumstances for each appeal that is filed at the Board. A claim for benefits is first adjudicated by the AOJ. If an adverse decision by the AOJ is appealed to the Board, the Board will review the claim de novo and decide all questions of law and fact necessary to adjudicate the claim for benefits. Aggregation would apply a legal or factual conclusion to an entire class of claimants—but without appropriate consideration of the specific and unique facts of each case. If the goal of this bill is efficiency, the Board is at its most efficient when it is resolving individual cases based on the particular facts at issue. This has been its task for decades. In contrast, in addition to the agency's general authority to promulgate regulations interpreting statutory provisions, it is the VA Office of General Counsel (OGC) and the CAVC that are tasked with issuing precedential opinions for common questions of law or fact. *See* 38 U.S.C. §§ 7104(c), 7261. To be clear, it would only delay appeal resolution if cases that are ready for adjudication are (1) paused by the Chairman in order to provide appropriate due process for aggregation, then (2) joined with other cases for a decision on the common question, and then (3) placed back in the queue for another decision on the particular facts of the individual case. This is because, even after aggregation, each appeal would have to be adjudicated on its own factual basis and would require independent analysis. The evidence of record for each individual case is still unique and would have to be evaluated individually. Therefore, aggregating appeals would not speed up the process for any Veteran. In addition, aggregation would require a significant amount of attorney and/or Board resources to determine what metrics would be applied in choosing cases for aggregation and on-going review of the Board's entire, transitory, pending inventory of approximately 206,000 cases to identify a common class of Veterans.

There are also significant technological resource concerns, as the Board's case-processing system (Caseflow) is not currently designed to docket, process, or otherwise track aggregated appeals. Aggregation would require the Board to completely revise its case management systems, to include integration with other VA systems, to allow this entirely new method of moving cases ahead of others. It would require both a complete overhaul of the Board's docketing system and would also require other potential changes for unforeseen consequences.

If Congress is nevertheless interested in granting the Board this authority, VA recommends adding the words "in the discretion of the Chairman" to the proposed new sentence of section 7104, such that "the Chairman may, in the sole discretion of the Chairman, aggregate such appeals. . . ." This would reinforce a principle that the word "may" already suggests that aggregation would be solely in the discretion of the Chairman.

Section 2(d)(2) would require the Secretary, "acting through a member of the Board," to ensure substantial compliance with any Board decision to remand a claim. The AOJ would be permitted to waive this requirement if a Board member determines that evidence added to the evidentiary record after the date of the Board remand decision is sufficient to resolve the underlying issues or such a decision was unnecessary. Respectfully, VA does not understand how this section would work—namely, how the AOJ would waive the requirement based on a determination of a Board member who has no jurisdiction over, or involvement with, the claim at that point.

To the extent that this provision contemplates active oversight by a Veterans Law Judge of AOJ claims processing following a remand, such requirement would be grossly inefficient and resource intensive with little quantifiable benefit, given that the current system affords claimants who receive an AOJ decision on remand the right to appeal to the Board to correct any perceived AOJ error, including non-compliance with the Board's remand instructions. If the Board were required to review every claim it

remands for AOJ compliance, as well as adjudicate AOJ requests for waivers, the Board estimates that the resource drain would effectively cut Board annual adjudications by at least half. Approximately 57,000 appeals adjudicated during fiscal year (FY) 2023 included at least one issue remanded by the Board. Using that data as a benchmark, the provision would require at least 57,000 additional Veterans Law Judge reviews and opinions to be rendered per year, consuming scarce judicial resources. This would lead to an exponential growth in pending appeals and impose additional delays on all cases. Overall, this would make the VA appeals system markedly less efficient, contrary to the purpose of the AMA, and would be harmful to Veterans, particularly those who have already waited a long time for resolution of their appeals.

To the extent the intention of this provision is to ensure substantial compliance with Board remands, that duty is already part of binding caselaw. *Stegall v. West*, 11 Vet. App. 268, 271 (1998). If Congress wishes to codify that duty, it could simply state in the bill that "a remand by the Board imposes upon the Secretary a duty to ensure substantial compliance with the terms of the remand, absent a grant of the remanded issue."

Section 2(e)

VA does not support this section. Section 2(e) of the bill would revise 38 U.S.C. § 7252 to expand the jurisdiction of the CAVC. This expansion would not promote efficient claim resolution, would create confusion for and potentially prejudice Veterans, and is unnecessary.

This section would grant the CAVC jurisdiction over a claim currently being processed by VA, if it satisfies a class definition certified by the CAVC. This would create confusion for Veterans as to which entity has jurisdiction over their claim, not to mention delay if VA pauses claim processing to await the CAVC's decision. Veterans who have filed a notice of disagreement and expect Board review, or who have filed a supplemental claim and expect the VA regional office to review their new evidence (proposed § 7252(b)(1)(A)(ii) includes claimants who have chosen to file a supplemental

claim rather than a CAVC appeal after a Board decision), would suddenly find that the CAVC, an entity which they may have chosen to avoid, has jurisdiction over and can issue a binding decision on their case. The bill provides no due process protections for such Veterans, who could find themselves personally bound by an unfavorable decision that they did not request, in a proceeding that they may not have known about. Although the bill refers to Veterans who "have not opted out" in proposed section 7252(b)(2), it provides no protections on opt-out procedures. Even if it did, it would be very confusing for a Veteran to weigh the advantages and disadvantages of opting-out, with high stakes for that choice, since an unfavorable class ruling personally binds class members, i.e., once the CAVC has decided the issue, the Veteran is permanently foreclosed from providing alternative arguments on it.

This expansion is also unnecessary, as the CAVC already has the authority to issue precedential decisions on common questions of law or fact. Through a precedential decision, it can create a binding rule of law that VA must apply to all claims currently being processed. Precedential decisions are more advantageous for Veterans, because unfavorable precedents can be distinguished, whereas unfavorable class action rulings are personally binding for class members. Meanwhile, favorable precedents are no less advantageous, on balance, than favorable class action rulings, as VA must abide by both.

Moreover, as a matter of efficiency, it is unclear the benefit of bestowing the CAVC with direct jurisdiction over claims currently pending with VA, as the Court's jurisdiction is to review Board decisions, 38 U.S.C. § 7252(a), not to decide pending claims in the first instance, which is prohibited by 38 U.S.C. § 7261(c). Thus, the CAVC would presumably be granted supplemental jurisdiction over the claim to address a common question—but then remand it for the Board to address the case's individual facts in the first instance. If the claimant disagrees with the Board's individual fact determinations, or on legal rulings outside the scope of the class issues, the case will then return to the CAVC a second time. This process would not promote efficient claim resolution.

Finally, this expansion of CAVC jurisdiction is contrary to the very well-documented and carefully considered legislation that originally created the CAVC in 1988, especially the debate about the appropriate jurisdictional scope of the court to review only "final" decisions by the Board. While the Senate had passed Veterans' judicial review bills in five previous sessions, the House did not pass such a bill until a compromise emerged (the Veterans' Judicial Review Act) that limited the nature of the court that would be created: an appellate court that would be authorized to review questions of law and fact arising from a final agency action (a Board decision), but would not have jurisdiction over claims still proceeding through the "unique and desirable" administrative system, would not "have arrogated [ ] power" to "run the VA's claims system, and decide its cases for it," and could be singularly focused on Board decisions to avoid the "burden[ ]" and "delay" attendant with district court-like jurisdiction. S. Rep. No. 100-418 (1988); H.R. Rep. No. 100-963 (1988); 134 Cong. Rec. H9253 (October 3, 1988); 134 Cong. Rec. H10333 (October 19, 1988).

Section 2(e) would further provide that class members may submit a supplemental claim, notice of disagreement (NOD), or request for higher-level review (HLR), during the period between the filing of the motion for class action and 60 days after the later of the CAVC's final decision "with respect to such claim" or "with respect to such motion for class action." At the outset, it is unclear what "claim" is being referred to in the language "with respect to such claim." More importantly, however, the intent of this subsection is unclear. If the intent is to broaden the timeframe for these claimants to submit their supplemental claims, NODs, and requests for HLR, VA recommends replacing the "may submit" language here with "shall not be prohibited from submitting" language. Even with that replacement, however, this subsection would create confusing timelines, as VA processors evaluating whether a supplemental claim, NOD, or request for HLR is timely might have to review all recent motions for class action at the CAVC, determine whether the claimant was within the class definition, and determine the date of the CAVC's final decision on the motion and the claim, all to determine timeliness. Such a task does not promote efficiency.

Moreover, on the issue of agency timelines, some Veterans may think they satisfy the class definition, that the CAVC has supplemental jurisdiction over their claim, and that they need not meet ordinary agency timelines, but—if they are wrong—their claim is final and there is no recourse. Again, the potential for confusion with supplemental jurisdiction outweighs any speculative potential benefits.

Section 2(e) would next permit tolling when a claim is decided by the Board during the period the CAVC is reviewing a motion for class action. If the Committee moves forward with this section, VA recommends replacing the word "if" with "until" to clarify the length of the tolling and inserting a comma between the terms "review" and "the deadline."

Finally, section 2(e) would authorize the CAVC to issue limited remands to the Board, while retaining jurisdiction, for purposes of addressing a relevant issue or providing adequate reasons or bases. This authority would disrupt Board efficiency and could also create a perpetual loop between the Board and the CAVC if the court continues to determine that the Board's reasons and bases are inadequate. This could have a similar effect as the remand loop between the Board and the AOJ experienced in the legacy process that the AMA was intended to cure. In addition, the Board would need to build new functionality in its Caseflow digital management system to accommodate this type of remand, which would require significant resources.

We also note that the section is unclear as to what would happen if the limited remand results in a conclusion by the Board that there was a duty to assist error that needs to be corrected by the AOJ. It is unclear whether the Board could remand the case to correct that error, or whether the court would still have jurisdiction. The statute should directly address this eventuality.

If Congress is nevertheless interested in exploring this authority, VA recommends making this authority part of a six-month pilot program to test its efficiency. VA also recommends that Congress require the CAVC to give the Board at least 180

days to issue its supplementary decision, to account for other Veterans' appeals that have been waiting. Finally, VA recommends that Congress preclude entitlement to Equal Access to Justice Act (EAJA) fees on the basis of the CAVC ordering a limited remand, so as to prevent potential manipulation. At present, only about 20% of the average of 8-9,000 appeals filed with the CAVC each year are reviewed by the court's judges. The remaining 80% are set aside and remanded to the Board for further adjudication by order of the Clerk pursuant to agreement of the parties. This generates approximately $45-50 million in EAJA fees per year, regardless of the fact that most remands ultimately do not lead to a changed result for the Veteran. If EAJA is not precluded from this limited remand authority, a similar trend is likely to appear.

Section 2(f)

VA does not support this section. Section 2(f) of the bill would require the Board Chairman to carry out a study to identify questions of law or fact the Board commonly considers for which precedential guidance would assist the Board in issuing final decisions on such appeals. To the extent that the provision is intended to increase consistency across Board decisions, this is a burdensome and unnecessary means. The CAVC issues dozens of precedential opinions per year on commonly arising questions of law. In addition, the Board already has the authority to request an opinion from VA's OGC when it identifies a legal issue that warrants precedential guidance. And questions of fact are generally case-specific and not appropriate for precedential guidance.

Section 2(g)

VA cites concerns with this section. Section 2(g) would require VA to enter into an agreement with a Federally funded research and development center (FFRDC) to assess modifying the authority of the Board to issue precedential decisions with respect to questions of law or fact. The complexity and scope of this proposal would require significant resources to enter into that contractual agreement—probably several million dollars, at a minimum, or require resource trade-offs within the current Board budget. That does not account for the acquisition and legal resources needed to

execute and monitor performance of the agreement. Because such a study would evaluate a potentially substantial change to the Board's adjudication of appeals, the time and personnel resources involved with those participating would be extensive. The evaluation and full consideration of various options would be a large and complex undertaking, especially given the Board's historic role of issuing nonprecedential decisions.

The section also requires VA to begin developing policies and procedures to implement the FFRDC recommendations no later than 90 days after receipt of the FFRDC assessment, and to complete such development 6 months thereafter. But the policies or procedures to implement recommendations could be significant and complex and would have to go through multiple levels of internal review, as well as potentially notice and comment rulemaking, to carefully debate and consider the revision and overhaul of various regulations, processes, and procedures. Thus, it would take significantly longer than 90 days and 6 months to begin developing and to complete the necessary policies and procedures required under this proposal.

VA also cites concerns with the assignment of authority to FFRDCs without clear statutory guidance on their role as determining authorities within VA. While an independent assessment of the feasibility of Board precedential decisions and the consolidation of appeals could yield valuable insights, the requirement for strict implementation of the findings appears to unduly restrict the Secretary's decision-making authority for final implementation, under which the Secretary considers the overarching needs of the agency.

H.R. 659 Veterans Law Judge Experience Act of 2025

Section 2 would amend 38 U.S.C. § 7101A to require the Board Chairman to give priority consideration to individuals with 3 or more years of legal professional experience in areas that pertain to the laws administered by the Secretary when recommending individuals to the Secretary to serve as members of the Board.

VA does not support this bill. While it is unclear how or why the Chairman would be required to give "priority" to individuals with at least three years of experience in laws administered by the Secretary, it is important to note the professional experience and standards for the President to approve a Board Veterans Law Judge appointment are currently the same as those for the President to consider when nominating a judge for CAVC, responsible for reviewing Veterans Law Judge decisions for potential legal error. See 38 U.S.C. §7253(b). Like the CAVC judges, Veterans Law Judge appointments are recommended by the Chairman, and subsequently appointed by the Secretary subject to the approval of the President. Ideal candidates should be selected "solely on the grounds of fitness to perform the duties of the office" rather than any specific or arbitrary type of specialized experience.

VA is concerned that if the intent of the draft legislation is to give "priority" or preference to current or former VA attorneys, such a requirement would appear to violate commonly accepted merit systems principles under 5 U.S.C. §§ 2301-02. These principles have been considered with previous appointments of Veterans Law Judges to recruit qualified individuals from all segments of society and to not "discriminate for or against any employee or applicant." Though not required or recommended for Veterans Law Judge appointments, it is important to note Veterans preference is one statutory preference that is generally allowable under merit systems principles. That preference is one that is uniquely useful as Veterans filing VA appeals generally might expect Board judges to understand their unique circumstances of service and how that relates to their claims.

In addition, recent Veterans Law Judge recruitments and appointments during the past 4 years illustrate the importance of how merit systems principles and practices have strengthened the Board's cadre of more than 125 judges. Of the 50 Veterans Law Judges appointed by the Secretary and approved by the President during the past years, 30 of these judges had no prior experience with VA. However, all 30 of those Presidentially approved appointees had more than 7 years of either military/combat

zone service or prior judicial experience, and most of them had decades of such experience. Most had been appointed as judges for multiple agencies at the Federal and State levels. Of the remaining 97 Veterans Law Judge appointees currently serving, 95 of them had previously served as VA employees for more than 3 years, but only 4 had prior military experience or previously held judicial appointments prior to assuming their Veterans Law Judge duties.

This diverse set of experiences has proven valuable to the Veterans we serve. During the past three years, the Board has set successively increasing records for the number of appeals adjudicated each year—by far the highest level of output during the Board's 92-year history. While having such priority consideration might appear to be useful, maintaining VA discretion with respect to experience and qualifications for Veterans Law Judges will ensure VA continues to serve the Nation's Veterans in the best manner possible.

H.R. 2055 Caring for Survivors Act of 2025

The proposed legislation would amend title 38 of the United States Code, to improve and expand eligibly for dependency and indemnity compensation (DIC) paid to certain survivors of certain Veterans, and for other purposes.

Section 2(a) would increase the DIC rate in 38 U.S.C. § 1311(a)(1) from $1,154 to an amount equal to 55% of the monthly 100% Disability Compensation rate in effect under 38 U.S.C. § 1114(j). This would adjust the current DIC rate of $1,653.07 effective December 1, 2024, to $2,224.70 (55% of $4,044.91 which is the 100% disability compensation rate in effect as of December 1, 2024).

Section 2(b)(1) would make the amendments made by subsection (a) effective for any payment made that are 6 months after the date of enactment. Section 2(b)(2) would require VA, for months beginning after the date that is 6 months after the date of enactment, to pay dependents and survivors income security benefits under 38 U.S.C. §

1311 to an individual eligible predicated on the death of a Veteran before January 1, 1993, in a monthly amount that is the greater of the following:

- The amount determined under § 1311(a)(3), as in effect on the day before the date of enactment.
- The amount determined under § 1311(a)(1), as amended by section (a) of this bill.

Section 3 would amend 38 U.S.C. § 1318(b)(1) to reduce, from 10 years to 5 years, the period in which a Veteran must have been rated totally disabled due to service-connected disability in order for a survivor to qualify for DIC benefits. It would further add a new subsection (a)(2) to state the following: "In any case in which the Secretary makes a payment under paragraph (1) of this subsection by reason of subsection (b)(1) and the period of continuous rating immediately preceding death is less than 10 years, the amount payable under paragraph (1) of this subsection shall be an amount that bears the same relationship to the amount otherwise payable under such paragraph as the duration of such period bears to 10 years."

VA supports the intent of this bill but cites concerns and subject to the availability of appropriations.

Under 38 U.S.C. § 1311(a)(1), DIC is paid to a surviving spouse at the monthly rate of $1,154, which is increased in accordance with any increase of benefit amounts payable under title II of the Social Security Act pursuant to section 1311(f)(4). The current rate paid under section 1311(a), effective December 1, 2024, is $1,653.07. DIC is also paid to a surviving spouse, and to a child of a deceased Veteran, if the Veteran's death was not the result of their own willful misconduct and they were continuously rated totally disabling for specific periods of time prior to their death as outlined in 38 U.S.C. § 1318(a) and (b).

VA notes that Public Law 118-130 requires VA to increase the rate paid under section 1114 in addition to the rates paid under section 1311. VA views section 2(a) of this bill as allowing for the use of the current rate paid, as of December 1, 2024, under section 1114(j) of $4,044.91 in calculating the benefit provided under proposed section 1311(a)(1), as well as any future increases to section 1114(j).

VA further notes that section 2(b)(2) would require VA to pay the greater of the benefit under proposed section 1311(a)(1) and "[section 1311(a)(3)], as in effect on the day before the date of the enactment of this Act." VA infers that the intent of this provision is to use the rates under section 1311(a)(3) at that fixed point in time, even if those statutory rates are later changed. However, the statutory language is somewhat ambiguous because the rates payable under section 1311(a)(3) may change even if the text of that provision remains unchanged. Congress routinely enacts annual cost-of-living adjustments (COLA) increasing DIC rates, including the section 1311(a)(3) rates. *See*, *e.g.*, Public Law 118-130. VA believes the intent of the bill is to use the rate that would have been payable on the day before the date of enactment under section 1311(a)(2) and any COLAs in effect on that date. However, the bill language as drafted would also be susceptible to the interpretation that the rate should be increased by any subsequent COLAs because such rate would still be predicated on section 1311(a)(3) "as in effect on the day before the date of enactment of this Act." This ambiguity could be removed by adding language at the end of section 2(b)(2)(A)(i) of the bill saying, "including any applicable statutory cost-of-living increases in effect on that day."

Due to the extensive information technology system updates required to implement this bill and the enhanced ability to conduct oversight on said implementation, VA recommends that section 2(b)(1) be amended with an effective date of one year after date of enactment.

Regarding section 3 of the bill, VA views proposed section 1318(a)(2) as supporting the families of Veterans who die with a total disability rating that existed for

more than 5 years, but less than 10 years immediately preceding death. For individuals who qualify for DIC under proposed section 1318(b)(1) due to a Veteran's disability continuously rated totally disabling for a period of more than 5 years but less than 10 years immediately preceding death, VA views the proposed statute as more generous than existing law in that VA may provide DIC benefits to such individuals. However, VA views the proposed language of subsection 3(1)(B) as incorporating an unclear and potentially overly complex application for survivor beneficiaries, the agency, and external partners. The proposed language of 1318(a)(2) creates a relationship between a 10-year rating requirement for full benefit entitlement and a 5-year rating requirement for baseline entitlement per amendments to subsection (b)(1). The apparent effect would allow for DIC benefits to be granted based on a shortened duration of time that a Veteran must be continuously rated totally disabled, but then disallow full benefit entitlement through the utilization of an unclear payment structure.

Specifically, the benefit provided by VA to the families of Veterans with more than 5 years, but less than 10 years of disability rated as totally disabling under the proposed statute (proposed beneficiaries) would "bear[] the same relationship" to the full benefit amount as the length of totally disabling rating "bears to 10 years." Using a Veteran with exactly 5 years of total disability rating as an example, exactly 5 years is half of 10 years, meaning a DIC benefit based on exactly 5 years of total disability rating would have exactly the same relationship to half of the benefit paid based on 10 years of total disability.

However, it is unclear how precisely VA should calculate the relationship. Using a Veteran with 5 years and 6 months of total disability rating as an example, VA would like to clarify if Congress's intent is for VA to provide 55% of the benefits it would provide based on 10 years of total disability. Or is the intent for VA to round up to 60%? If the Veteran has 5 years and 7 months, VA would like to clarify if the intent is to provide 55.8% of full DIC benefits. Or should VA round up to 56%? The issue of precision and rounding could be challenged based on additional days. VA requests that Congress provide clear standards to avoid potential confusion and litigation.

VA does not currently reduce DIC benefits in any scenario along the lines it would be required to under the proposed language. This novel requirement would be operationally difficult and would appear to preclude automation, until extensive system updates cold be implemented to account for the required calculations. VA currently is able to automate, and therefore expedite, provision of DIC benefits pursuant to section 1318 because VA knows exactly how long a Veteran has received a total disability rating. The bill would require VA personnel to research and adjudicate to determine whether the family of a Veteran with more than 5, but less than 10 years of total disability would be eligible for the greater benefit paid under section 1311 for a service-connected cause of death, then determine how much to reduce the benefit if only section 1318 DIC were available.

This calculation is further complicated by the incremental structure of section 1311 used to calculate DIC benefits, which allows VA to supplement the base rate when a number of different conditions are met. VA would be unsure if the application of "bears the same relationship to" language would apply to solely the underlying DIC benefit rate, or if VA is meant to extend such application of benefit reduction to any additional supplemental allowance. For example, section 1311(a)(2) allows VA to pay an additional $246 per month of DIC if the deceased Veteran received a total disability for 8 years before death and was married to the surviving spouse for those 8 years. Sections 1311(a)(2) and 1318(b)(1) currently operate separately and apply separate standards, and not all proposed beneficiaries would qualify for DIC benefits under section 1311(a)(2). Section 1311(a)(2) is not the only potential supplement to which VA would have to apply the reduction. *See, e.g.*, 38 U.S.C. § 1311(b) (allowing VA to provide an increase of $286 per month per child under 18 years old).

VA views the potential application of the proposed language for subsection 1318(a)(2) as being inconsistent with the benefit's current intent and program integrity. As such, VA recommends removal of section 3(1) of the bill to allow the proposed amendments under section 3(2) to achieve the primary intent of DIC expansion. The effect of the proposed amendments under section 3(2) of the bill, on their own, would

result in clearer and more consistent program application. Removing the novel adjudication calculations and solely retaining the amendment to section 1318(b)(1) is sufficient to fulfill the intended purpose of expanding DIC benefits to survivors of Veterans with a totally disabling disability rating by shortening the duration of time required for the disability to have been continuously rated. It would also maintain allowing VA to quickly implement the expansion while retaining the existing automation that allows the families of deceased Veterans to receive DIC benefits as quickly and accurately as possible.

The bill as written does not contain an effective date for section 3. VA would likely interpret any new benefit eligibility created by this section to be effective based on the date of enactment of the bill, but not authorize retroactive payments. This outcome is complicated by the timeline for applying to receive DIC benefits. Under 38 U.S.C. § 5110(d), an application received more than a year after death cannot result in VA providing benefits retroactive to the date of death, but the applicant would qualify for DIC benefits from the date of application forward. VA recommends the bill be amended to add an explicit effective date.

VA notes that although a formal cost analysis has not been completed, that this bill is anticipated to come with a substantial cost to VA.

H.R. 2701 Fallen Servicemembers Religious Heritage Restoration Act

This bill would direct the American Battle Monuments Commission (ABMC) to establish a "Fallen Servicemembers Religious Heritage Restoration Program." Under this program, the ABMC would contract with a nonprofit organization to contact survivors and descendants of deceased Jewish members of the Armed Forces who are buried in United States military cemeteries outside the U.S. under markers that indicate that such members were not Jewish.

VA defers to ABMC on this bill.

Because VA has no authority over ABMC, we respectfully defer to that organization for views on this bill.

H.R. 2721 Honoring Our Heroes Act of 2025

This bill would direct the Secretary to establish and carry out a 2-year pilot program to furnish a headstone or burial marker to Veterans who died on or before November 1, 1990.

Subject to the availability of appropriations, VA supports the assumed intent of this bill to allow VA to provide a government headstone or marker for Veterans who died before November 1, 1990, when their grave is marked with a private marker. VA would like the opportunity to work with the Subcommittee to clarify the bill's language to prevent unintended consequences, and notes that the bill would incur costs. VA does not have a cost estimate at this time.

VA already furnishes headstones or markers for the unmarked graves of Veterans who died on or before November 1, 1990, and for the marked or unmarked graves of Veterans who died after November 1, 1990.

VA cites concerns with the lack of an explicit requirement in the proposed bill that a headstone or marker be used at the Veteran's gravesite or in a designated memorial area in a cemetery. Such a requirement currently exists in 38 U.S.C. § 2306(a), (b), and (d). Under the proposed bill, VA would be required to provide a headstone or marker regardless of where an applicant intends to place it, e.g., on a mantle, home garden, patio, display décor, side of the road, etc., and not necessarily for placement at the Veteran's gravesite. Installation of a VA headstone or marker outside of marking a Veteran's gravesite or other designated memorial area inside a cemetery would not fulfill the purpose of the headstone and marker program, which has existed under VA

since June 18, 1973. Additionally, this bill would create an inequity among Veterans, as Veterans who died after November 1, 1990, would not receive this same benefit.

VA cannot provide a cost estimate for this bill because the number of Veterans who would be eligible would include those from the Revolutionary War to those who died on or before November 1, 1990. An estimated 41 million Veterans have served in the United States military from the Revolutionary War to present. The national Cemetery Administration has furnished nearly 16 million headstones and markers since 1973, and the US Army furnished nearly 1.3 million headstones and markers prior to 1973. VA does not have an estimate of the total number of Veterans who died prior to November 1, 1990, but it likely exceeds the total combined number of Government-furnished headstones and markers ever provided by NCA and the Army.

H.R. XXX Veterans Claims Quality Improvement Act of 2025

Section 2(a) would require VA, within 1 year, to develop policies, procedures, and technological capabilities to ensure that each VBA employee that commits an avoidable deferral with respect to a claim in the national Work Queue is notified.

Section 2(b) would require VA, within 1 year, to complete a study, in consultation with VA's OGC, to "identify issues about which an opinion from VA's OGC would foster consistency in the decisions of the Secretary with respect to claims for benefits" and submit a report to Congress.

Section 3 would amend 38 U.S.C. §7101 to require the Board to develop policies and procedures to measure the quality of Board decisions; maintain data on errors in Board decisions and errors in decisions remanded or returned to the Board from the CAVC; maintain data regarding individual Board judges who issue a decision that is subsequently vacated by CAVC; and ensure that Board remands are necessary. In addition, the Board would be required to notify employees responsible for drafting decisions when a claim has been remanded and provide the employee with a copy of

the relevant CAVC order, including a copy of any joint motion for remand (JMR), and provide incentives for the employee to review such relevant orders, and ensure that any identified errors are corrected before the Board issues the final decision.

Because this bill contains multiple sections, **VA's position on each section of this bill is indicated below. Overall, VA supports this bill, if amended, and subject to the availability of appropriations.**

Section 2(a)

VA supports this provision, subject to amendment. VA recommends striking the provision requiring VA to notify employees of all avoidable deferrals and replacing it with a requirement to improve claims processors' first touch to minimize deferrals. VBA is working with the VA Office of Information and Technology (OIT) on technical solutions to improve the claims processor information at the point of action (i.e., Smart Claim Check and other artificial intelligence (AI) solutions), which we believe will be a better investment in quality improvement and efficiency. AI solutions provide enhancements focused on automation that guide the user through the next steps in claim development, rather than sending the claim to the previously assigned user. This will reduce the instances of claims needing to be re-reviewed and achieve value in all claims processing scenarios, rather than the specific case of re-review, which is backtracking in the claims process.

VA already compiles the information contemplated in the bill, and claims processors are made aware of the nature of their deferrals in the Workforce and Time Reporting System. VA interprets the language of Section 2(a) to require that deferral data is captured down to the individual claim processor level, and notes that we currently have processes in place which align with VA's interpretation of the intent.

Additionally, VA developed a reporting dashboard called the Deferral, Error and Transaction Dashboard which provides users with a detailed breakdown of deferral reasons and identifies the employees responsible for specific deferrals. While VA

appreciates the bill's goal to mandate provisions for tracking and reducing or eliminating avoidable deferrals, these measures may be redundant with the current efforts already in place.

Section 2(b)

VA does not support this provision, which would require a study and report on OGC opinions**.** The scope of this section of the proposed Bill and its purpose are vague and ill-defined. The provision does not specify whether its reference to OGC opinions encompasses only precedential OGC opinions. Without further clarification VA interprets this phrase to reference formal OGC opinions referenced as binding on the Board in 38 U.S.C. § 7104(c) and designated as precedential under 38 C.F.R. §§ 2.6(e)(8) and 14.507(b). It is also unclear what is contemplated with respect to "consistency" of claims decisions, because decisions often reach different outcomes based on a small variation of fact and may only superficially appear to be inconsistent.

With respect to inclusion in the study of issues before the CAVC in which OGC "has had inconsistent opinions in matter involving substantially similar questions of law or fact," the bill suffers from the same ill-defined target. We are unsure exactly what perceived problem this seeks to address. To the extent the target is VA's position in similar cases or questions before the CAVC, VA positions on similar cases, or questions presented for resolution, can be justifiably different based on small differences in facts or procedural history, such that a different position in similar cases may not indicate an inconsistency. Therefore, an attempt to identify the inconsistencies described in the provision would be resource-intensive and lack any guarantee of a productive result.

We note that questions of law regarding benefits-related decisions are typically covered in VA regulations, precedential judicial decisions, and other published policies that are reviewed by OGC for legal consistency. The Board and other VA components are specifically bound by those authorities. The CAVC issues dozens of precedential opinions per year on commonly arising questions of law.

Where those authorities are inconclusive, the Board already has the authority to request a precedential opinion from VA's OGC when it identifies a legal issue that warrants precedential guidance. We further note that OGC precedential opinions are not always the appropriate or ideal vehicle for addressing a given situation. Where the law affords policy discretion, one appropriate solution is generally a regulation, promulgated through notice and comment, that binds the Board.

On balance, VA does not believe the study called for in the bill would be an effective use of limited VA resources.

Section 3(a)

VA does not support this provision, which would require a new quality assurance program at the Board**.** This provision is duplicative and unnecessary, as the Board already maintains a quality review program, which is conducted by the Board's Office of Assessment and Improvement (OAI). The quality review program and the quality assurance rate are included in the Board's Congressionally mandated annual reports. The Board's quality review program reviews Board decisions prior to issuance to identify clear and unmistakable errors; customer service errors; and process protection errors. It is important to note that a small fraction of errors identified by OAI result in a different outcome for the appellant. The Board already works to ensure that identified errors are corrected prior to a decision being issued through issuance of a memorandum identifying the error with recommended actions to cure the error.

However, the Board notes that compliance with any identified recommendations cannot be required without overriding principles of judicial discretion governed by the Judicial Cannons of Conduct applicable to all Federal judicial officials. Because the Board's quality assurance program has been in place for decades, has evolved over time as the law and caseloads have changed, and is robustly documented with statistics and procedural manuals that are publicly available and published (including in CMRs), it is unclear how this legislation might disrupt or potentially limit these longstanding efforts. For example, the entire program was recently reviewed by the Government

Accountability Office (GAO) over the course of about 18 months and further refinements are being made to the program as a result of that review and November 29, 2024, GAO report.

This section would also require that every remand issued by the Board be evaluated by a quality reviewer prior to its issuance to determine the necessity of the remand. Oversight of that nature is impractical because of the volume of decisions issued by the Board. Such a program would require that a significant portion of the Board's attorney personnel be devoted to duplicating the time and effort already expended by the drafting attorney and signing Veterans Law Judge in the review of a claims file prior to making the decision to remand. This would impede the Board's ability to adjudicate appeals at current volume levels, negating any potential advantage to Veterans that might be gained by preventing a likely small number of remands deemed to be unnecessary. Moreover, such a program would infringe on the ability of Veterans Law Judges to exercise their discretion in the adjudication of an appeal.

This section of the proposed Bill would also require the Board to expend additional workforce and technological resources to establish a process to inform drafting attorneys and signing Veterans Law Judges of the CAVC remand and provide a copy of the order, regardless of whether that Veterans Law Judge and attorney are adjudicating the post-CAVC appeal. This would also result in reduced production, as the Veterans Law Judge and attorney would have to spend time reviewing a CAVC decision or JMR instead of working on appeals assigned to them. When an appeal is returned from the CAVC, the drafting attorney and Veterans Law Judge assigned the post-CAVC appeal are required to review the CAVC decision or JMR, which is associated with the claims file. In addition, providing incentives to the drafting attorney to review relevant orders and joint motions from CAVC is not necessary as these orders and motions are associated with the claims file and revieing them would already be relevant and required as part of file review and appellate disposition. This would result in reduced production, as the Veterans Law Judge and attorney would have to spend time reviewing a CAVC decision or JMR instead of working on appeals assigned to them. When an appeal is

returned from the CAVC, the drafting attorney and Veterans Law Judge assigned the post-CAVC appeal are required to review the CAVC decision or JMR, which is associated with the claims file.

Section 3(b)

VA does not support this provision, which would require the Board to carry out a program to provide Veterans Law Judges training on "timely and correct adjudication of appeals," which would consider feedback from Board staff with respect to the program; data on errors of decisions maintained through the quality review program; and decisions and JMRs from the CAVC remanding an appeal back to the Board. The section would be duplicative of current efforts. The Board already maintains a robust training program implemented by its Professional Development Division (PDD). The Board's training program covers a variety of topics, such as the AMA and the PACT Act, as well as issue-based trainings such as special monthly compensation and musculoskeletal ratings. Additionally, Veterans Law Judges participate in an annual multi-day training program. The training program is designed to provide ongoing education on procedural and substantive areas of Veterans' law, to best allow Veterans Law Judges to issue sound legal decisions by applying the law to the facts of the specific appeal assigned to them.

Requiring training on the "correct adjudication of appeals" implies that there is a correct outcome in any given appeal before the Board. As stated above, the ultimate outcome of a particular appeal is based on the judicial discretion and judgment of the reviewing VLJ based on a review of the evidence and application of the law. Reasonable minds may differ on an outcome without one being "correct" and the other being "wrong" or "incorrect." The Board already provides training that incorporates errors identified through the Board's quality review program, as well as on appeals remanded to the Board from the CAVC. Such training is provided in Board-wide trainings, monthly digests, monthly tips, and special alerts. In recent years, the Board has delivered trainings targeting the most common errors identified in the quality review

process, as well as the precedential cases cited most often in CAVC decisions and JMRs.

The bill appears to propose a statutory mandate that would prohibit the Secretary from holding decision-drafting attorneys or other Board employees accountable in their performance reviews if they contributed in any way to deficiencies in "the timeliness and quality of [the] work" performed by the Board's Veterans Law Judges they are responsible for supporting with timely and high-quality draft decisions. In other words, it appears the bill proposes that decision-drafting attorneys cannot be held accountable for preparing untimely or poor work product for Veterans Law Judge review and final signature.

Section 3(c)(1)

VA does not object to this provision, which would require Board remand decisions to include a statement of specific reasons why a claim is remanded. VA notes, however, that this provision is unnecessary as the reasons for remand are already explained in Board remand decisions under a separate section.

Section 3(c)(2)

VA supports this provision, if amended, and subject to appropriations. This section would amend § 7104 to require VA to issue a copy of remand decisions to each VBA employee who committed the error resulting in the remand.

VA notes that not all Board remands are the result of errors by VBA claims processors. In some instances, remands may be due to the submission of new evidence by the Veteran, changes in applicable law, or other external factors. As written, the provision may unintentionally attribute all remands to employee error, which does not reflect the full range of remand causes.

To ensure the provision aligns with its intended purpose, VA would support the bill by amending new § 7104(d)(2), by inserting the phrase "based on error on the

evidence before the AOJ" after "further action." This would clarify that the requirement applies only in instances where the remand is clearly attributable to a significant, identifiable error made by a specific VBA employee.

VA further notes that implementation would require substantial modifications to information technology systems to facilitate the delivery of Board decisions to individual VBA employees across the agency, and thus would require appropriations.

Section 3(d)

This section would add new 38 U.S.C. § 7115 requiring the Board to issue an annual report identifying the reasons for each remand, disaggregated by claims with a rating decision issued before February 19, 2019, and those with a rating decision issued on or after that date.

VA does not support this provision. This position is duplicative and unnecessary as the Board already provides remand data in its annual report. In addition, the reasons for remand are fact specific to each appeal, so an attempt to aggregate may not produce meaningful data.

Section 3(e)

VA does not support this provision. This section would require the Secretary, in consultation with the Chairman of the Board and the head of VBA's Office of Administrative Review, to develop a plan to improve the quality of Board remand decisions and mitigate the number of unnecessary remands. It also would require VA to submit a report outlining the plan within 6 months of enactment.

Implementation of this section will slow the adjudication of appeals at the Board and negatively impact Veterans, because it is not clear what would satisfy the requirements of a plan to improve the quality of the Board's remands. Efforts to develop and monitor a plan to improve Board decisions would be duplicative of current efforts. Moreover, it is not within the authority of VBA or OAR to review Board decisions to

determine whether the directives included in that decision by a Veterans Law Judge were necessary to the Board's adjudication of the appeal. The Board is vested with the authority to review decisions of the Secretary and to make the final decisions on that appeal. It is, therefore, within the Board's authority to determine what development is necessary to make the final decision. Vesting VBA or OAR with the authority to review Board directives for necessity would undermine judicial discretion and permit the AOJ to review the determinations of the Board.

VA notes that VBA encompasses multiple business lines and staff offices that are involved in adjudicative processes subject to Board remands. As such, VA believes that, with respect to the development and implementation of a comprehensive plan to reduce unnecessary remands, VBA's contribution would be most appropriately led by the Under Secretary for Benefits, who has overarching authority across these functions, rather than by OAR.

H.R. XXX Rural Veterans' Improved Access to Benefits Act of 2025

This bill would expand the definition of a health care professional and extend the license portability sunset date from January 5, 2026, to January 5, 2031. This bill also includes a reporting requirement.

Section 2(a)(2) provides a definition of a health care professional as a person who is eligible for appointment to a position in the Veterans Health Administration covered by section 7402(b) who (A) has a current unrestricted license to practice; (B) is not barred from practicing the health care profession in any state; and (C) is performing authorized duties for the Department under a contract entered into under subsection (a).

Section 2(b) would extend the license portability sunset date to January 5, 2031.

Section 2(c) would strike physicians assistants, nurse practitioners, audiologists, and psychologists, and replace those terms with health care professionals.

Section 2(d) contains a reporting requirement not later than 15 months after the date of enactment.

VA supports this bill, subject to amendment and the availability of appropriations.

VA appreciates the Committee's efforts to improve the temporary licensure requirements for certain contract health care professionals who perform VA disability examinations. VA recommends an amendment to remove the sunset date on the licensure requirements. Eliminating the sunset date and broadening the definition of a health care professional would provide more flexibility to engage a wider range of qualified medical professionals. This expanded pool of professionals would lead to more timely disability examinations and allow VA to serve more Veterans by enabling contract examination vendors to send examiners to rural locations that need their expertise the most. Ultimately, this will result in shorter wait times and faster completion of examinations for Veterans.

Regarding the reporting requirement in section 2(d)(2) that requires disaggregation of timeliness data by health care professional, VA recommends removal of this requirement. Under current contracts with vendors, VA does not have access to this information because VA does not have contractual privity with the individual examiners subcontracted by VA's contract vendors. VA monitors the vendor's performance, but VA does not have access to the vendor's proprietary tracking system with individual provider information. Additionally, delays may be caused by factors outside the control of individual health care professionals. It is important to note that VA may return examinations to be reworked for reasons other than error. For example, if a claimant submits evidence after the examination has been scheduled, the examination may need to be returned to consider the new evidence.

Additionally, VA tracks timeliness for contract examination vendors from the time the vendors acknowledge receipt of the examination request to the time the vendor

completes the examination scheduling request. VA does not track when a vendor sends the examination request to the health care professional and when that examiner returns the completed Disability Benefits Questionnaire(s) to the vendor.

Modification of contracts would be required to implement this section. A costing determination is not available at this time.

H.R. XXX Modernizing All Veterans and Survivors Claims Processing Act

Section 2 would create standalone provisions requiring VA to develop and implement an automated tool to enhance efficiency in processing VA benefits claims. Subsection 2(a) would require the Secretary to submit an implementation plan to the House and Senate Committees on Veterans' Affairs containing the information specified in subsection 2(c), including the feasibility and benefits of using the automation tool to assist in processing VA claims. Under subsection 2(b) the automation tool would be developed for Compensation Service claims, and then be deployed to other VA business lines that process benefits claims. The tool would:

- Automate the retrieval of Veterans' service records or health records
- Compile evidence relevant to the determination of the claim
- Provide automated decision support relevant to the determination
- Automate information sharing between Federal agencies
- Assist in generating correspondence regarding the claim

Subsection 2(d) directs VA to prioritize the deployment of such an automation tool to the following program and staff offices:

- VBA Pension and Fiduciary Service;
- VBA's Education Service;
- VBA Program Offices as determined by the Secretary;

- VA's Debt Management Center; and
- VA's Board of Veterans' Appeals

Under subsection 2(e), VA would be required to make the tool available within 1 year of plan submission to each program office responsible for processing claims for pension or survivor benefits.

Section 3(a) would require VA to implement, within 1 year of enactment, policies, processes and technology (including in the National Work Queue) to identify and assign the following "situations" to a claims processor for action: (a) increases in the amount of dependency compensation paid to a beneficiary for a child, and (b) educational assistance paid to a Veteran's child.

Section 3(b) directs the Secretary, within 180 days, to submit a plan to ensure the proper labeling of documents uploaded to the Veterans Benefits Management System (VBMS), or any successor technology, to include documents labeled using automation technology.

VA supports the intent of the bill, subject to amendments and the availability of appropriations.

VBA appreciates Congress' support and encouragement of VA's automation efforts to maximize employee productivity and accuracy within the claims adjudication process. The automation tool described in Section 2 mirrors VBA's current automation efforts, called VA Automated Decision Support (ADS) technology. ADS is not end-to-end automation. Rather, it focuses on the administrative activities leading up to the claims decision that free claims processors for more complex and analytical duties. Based on our experience with ADS development, VA recommends the following amendments:

In subsection 2(a), VA recommends a timeline of not later than one year after the date of enactment of this Act to submit its plan. VA is currently working on a plan to identify the level of effort, timeline, and cost to expand ADS for all disability claims. VA expects to draft a plan by July 1, 2026, and will provide Congress with a copy of the document at that time.

In subsection 2(e), VA recommends a timeline of not later than the date of implementation identified in its plan to ensure the automation tool is made available to each program office responsible for processing claims for pension or survivor benefits. The plan required under subsections (a) and (c) is developed for disability compensation (Chapter 11, Title 38), specific to the laws and regulations governing that benefit and services. Subsection (e) pertains to pension and survivors' benefits (Chapters 13 and 15, Title 38). Pension and survivors' benefits have specific and distinct laws governing their administration that differ from those of disability compensation.

In subsection 3(a), VA recommends limiting the requirement to make a claims processor aware of, and address, a covered situation if a technological capability could not address the situation. Otherwise, the bill would negatively impact VA's ongoing automation efforts. As VBA evaluates automation expansion across VBA's benefit programs, it is working to identify situations in the claims process where benefit adjustments can be made using technology without human intervention.

Lastly, VA recommends a conforming amendment to the Internal Revenue Code, at 26 U.S.C. § 6103(l)(7), to require all Internal Revenue Service (IRS) officers and employees to redisclose Federal tax information (FTI) to contractors of the Department who administer (or assist in administering) a program listed in subparagraph (D)(viii). VA utilizes the IRS's FTI to validate a beneficiary's entitlement to pension benefits (monthly payments to wartime Veterans who meet certain age or disability requirements and who have income and net worth within certain limits). However, the current rule restricts access to this information to only authorized individuals and government

employees. Automation and other system technologies require specialized expertise that is often obtained through third-party vendors. For VA to automate the use of FTI for pension benefits, it is imperative that its contractors have authorized access.

Such technical capabilities would require appropriations, though VA is unable to provide a cost estimate at this time.

H.R. XXX Ernest Peltz Accrued Veterans Benefits Act

Section 2(a) would add new 38 U.S.C. § 5121B to provide a priority payment list when VA issues a decision awarding entitlement to pension to a Veteran before their death and a payment of such pension is due and unpaid when the Veteran dies. New section 5121B would also require VA, if no application for accrued benefits is filed within one year following the death of the Veteran, to pay the pension benefit to the estate of the deceased Veteran unless the estate will escheat.

Section 2(b) provides technical amendments to conform with the addition of 38 U.S.C. 5121B.

Section 2(c) provides that the bill's amendments will be effective for Veteran deaths that occur on or after the date of enactment.

VA supports the intent of this bill, but cites concerns, and subject to the availability of appropriations.

VA notes that new 38 U.S.C. § 5121B would create, with respect to Veterans granted VA pension benefits during their lifetime and owed a pension payment at the time of their death, an expanded priority payment list. Such benefits are called accrued pension benefits because they are due but unpaid at the time of death. The general rules regarding payment of accrued periodic monetary benefits are set forth in 38 U.S.C. § 5121. Whereas under current § 5121(a)(6), if there is no living spouse,

children, or dependent parents, the estate of a deceased Veteran is only entitled to the portion of accrued benefits necessary to reimburse the estate for any expenses paid by the estate related to the Veteran's last sickness and burial, the proposed provision would entitle the estate in that circumstance to the entire amount of accrued pension.

VA highlights that this amendment would provide a potentially larger payment to the Veteran's estate only for pension payments owed to the Veteran at time of death, and only where VA has actually awarded pension prior to death. The current limitation on payment of accrued benefits to a Veteran's estate would continue to apply with respect to pension payments owed to the Veteran at the time of death which have not been awarded and other types of periodic monetary payments owed to a beneficiary at time of death, creating disparate treatment. Other relevant periodic accrued benefits administered by VA include Disability Compensation, Dependency and Indemnity Compensation (DIC), and Survivors Pension.

Additionally, VA highlights concern with proposed § 5121B(b) that would require VA to pay pension benefits to the estate of the deceased Veteran, unless the estate will escheat, if no application is filed under 38 U.S.C. § 5121 within 1 year following the death of the Veteran. As a result, the bill would extend eligibility to the general estate of the Veteran without an application being filed that properly identifies the estate and/or the administrator or representative thereof, so that VA knows where to direct payment. Furthermore, VA notes that the language within proposed § 5121B(a) provides the estate an opportunity to apply for accrued benefits, resulting more favorable treatment toward one group of individuals who would be exempt from timely filing when it is required of all others. VA suggests that any expansion of potential payment of accrued benefits to a Veteran's estate extend equitably to the payment of all accrued benefits, not just pension benefits. VA would appreciate the opportunity to discuss this bill with the Committee to better understand the intended outcomes and to determine what, if any, amendments would be needed to ensure that the proposal aligns with the intent.

A cost estimate is not available at this time.

H.R. XXX Protecting Veterans Claim Options Act

This bill would amend 38 U.S.C. § 7104 to require the Board to adjudicate supplemental claims on the merits where a claimant has not submitted new and relevant evidence. It would also provide a new 90-day evidence submission window following a remand from the CAVC.

Section 2(a)

VA supports this provision, subject to amendment, and the availability of appropriations. One of the fundamental tenets of the AMA is that VA is not required to re-adjudicate a claim absent new and relevant (NAR) evidence. On the other hand, the AMA provides a general right of appeal to the Board. These principles are in tension where a claimant receives an AOJ (e.g., VBA) decision on the merits, files a supplemental claim, and then the AOJ denies re-adjudication for lack of NAR. At that point, the claimant may still want to appeal the merits denial to the Board without new evidence, but the only determination available to appeal is the question of NAR, because the merits decision has been superseded by the NAR decision. The claimant, through a choice to file a supplemental claim without evidence instead of an appeal to the Board, has lost the ability to appeal the AOJ's merits decision to the Board. This is sometimes referred to as the "supplemental claim trap." We view this bill as an attempt to address this situation.

While the AMA's expansion of claimant choice following an AOJ decision inherently carries the possibility that a claimant will make a bad choice, VA supports a legislative amendment to ameliorate the consequences in this particular situation where a claimant files a supplemental claim without NAR. Any solution, however, should be narrowly tailored to avoid reintroducing unintended inefficiency into the system.

As written, this bill may preclude the Board from denying a claim based on the lack of new and relevant evidence but does not specify whether the Board could deny a

claim on the merits where the AOJ found that no new and relevant evidence had been received and therefore did not reach the merits in the decision that was appealed to the Board. This issue arises in particular either where the Board finds that the evidence submitted to the AOJ was in fact new and relevant or where new and relevant evidence is submitted to the Board. In either case, the new evidence, and any new legal issues arising from it, have not been considered by the AOJ in the first instance.

Proposed section 2(a) also weakens the rule of finality. Currently, Board decisions are final when issued and can only be reviewed by the CAVC and higher Federal courts. Alternatively, a claimant may file a supplemental claim after a Board decision to obtain re-adjudication of the merits of an issue decided by the Board so long as new and relevant evidence is identified or submitted. However, proposed section 2(a) would create an avenue whereby claimants could circumvent the finality of Board decisions. If the new and relevant evidence requirement is removed at the Board level, claimants would be able to continuously file supplemental claims after Board decisions without having to submit any evidence, file a Board appeal of the resulting AOJ decision, and thereby obtain Board review of the merits again based on the same record previously considered by the Board. Essentially, the claimant would be able to obtain a second opinion on the prior Board decision without providing new evidence. This would increase the number of Board appeals without providing the benefit of additional evidence for the Board to review, which would in turn place a substantial burden on limited resources and add to the delay in claimant wait times.

VA supports the general approach of the bill but with further limits on the circumstances allowing claimants to avoid the supplemental claim trap when appealing to the Board. For example, the bill might limit the requirement for the Board to address the merits of an AOJ decision on the merits, even where an intervening AOJ decision denied a supplemental claim for lack of NAR, to situations where the claimant files a supplemental claim within one year of the prior VA decision on the merits. Under this approach, the risk associated with filing a supplemental claim instead of a Board appeal would be minimized because claimants could still obtain Board review on the merits, so

long as the request for Board appeal was timely received. This would ameliorate the trap, while continuing to encourage claimants with new evidence to file supplemental claims before requesting Board review, and without effectively rewriting a large portion of the comprehensive and carefully considered AMA with respect to supplemental claims.

We note that removing the new and relevant evidence requirement from the Board only will potentially incentivize Board appeal as compared to other lane options, potentially adding adjudication delay. This would be contrary to one of the purposes of the AMA, which was to provide additional paths for review and resolution at the AOJ level without necessitating an appeal to the Board.

Finally, any legislative attempt to improve the supplemental claims adjudication process should include amendments to address the difficulties posed by *Terry v. McDonough*, 37 Vet. App. 1 (2023). The Court of Appeals for Veterans Claims in *Terry* fashioned an overly broad solution to the supplemental claim trap by interpreting 38 U.S.C. § 5104C(a) to allow a claimant to file multiple administrative review (or "decision review") requests in response to the *same decision* by an AOJ, provided only one review request is pending at a time. The Court invalidated VBA's regulation providing for sequential review of AOJ decisions, such that a claimant can seek review of only the most recent VA decision. VBA has found that implementation of *Terry* adds complexity and inefficiency to the claims process, creates conflicts among the AMA's evidentiary rules, and thereby undermines the intended efficiency benefits of the AMA. *Terry* implementation imposes substantial time and cost burdens on VBA and introduces additional challenges concerning reporting requirements and tracking claims, complicating the overall claims processing workflow.

Section 2(b)

VA does not support this provision. Section 2(b) of the proposed bill would also amend 38 U.S.C. § 7113(d) to provide a new evidence submission window for cases remanded by the CAVC to the Board. This would allow the appellant and his or

her representative, if any, to submit new evidence to the Board within 90 days following such remand and require the Board to consider that evidence in the first instance. This proposed evidentiary window would frustrate current jurisdictional considerations relying on a closed appellate record for both the Board and reviewing Federal courts to consider. Approximately 6,800-7,700 remanded appeals are returned to the Board each year by the CAVC and the vast majority of those require the Board to provide additional "reasons or bases" for why the original record before the Board was insufficient to grant the relief sought. This newly proposed evidentiary window would completely upend that longstanding appellate practice in a way that would add confusion for Veterans, their representatives, and Board judges on how to adjudicate the remand in accordance with the Court's remand instructions. Worse, it would introduce conflicting procedures and requirements for the Board's review of medical evidence in the first instance. The confusion and disruption of such a substantial change not only erodes the carefully considered relevant evidence windows currently available to Veterans under the AMA, but it undoubtedly would lead to significant different and potentially inequitable processes and outcomes for Veterans and their families, caregivers, and survivors.

VA would be happy to work with the Committee to provide technical assistance on this and other technical concerns with the bill language.

H.R. XXX Veterans Caregiver Appeals Modernization Act of 2025

Section 2(a)(1) of this bill would amend 38 U.S.C. § 1720G(a)(4), which generally requires eligible Veterans and their family members to jointly submit to VA an application to participate in the Program of Comprehensive Assistance for Family Caregivers (PCAFC). The amendments would require VA to develop and implement a single digital system through which each VHA and the Board employee responsible for evaluating applications for PCFAC could access each such application and all documents received or submitted with respect to such applications.

Section 2(a)(2) would amend section 1720G(c), which currently establishes a rule of construction that decisions affecting the furnishing of assistance or support under this section are considered a medical determination and that nothing in this section can be construed to create an employment relationship between VA and caregivers or any entitlement to any assistance or support provided under this section. The amendments would add a further rule of construction stating that nothing in this section could be construed to affect, if an eligible Veteran dies during the pendency of an appeal of a VA decision affecting the furnishing of assistance or support services under this section, the eligibility of a family caregiver to receive monthly personal caregiver stipends to which the caregiver was entitled on the date of the eligible Veteran's death based on the evidence in the file on such date, and due and unpaid as of such date. Section 2(a)(2) would also add a new paragraph (3) that would require VA ensure that any VHA employee responsible for evaluating appeals of VA decisions affecting the furnishing of assistance or support services under this section be provided the same guidance and complete the same training as a higher-level adjudicator under 38 U.S.C. § 5104B.

Section 2(b)(1) would require VA to consider, when developing the required digital system that would be established by section 2(a)(1) of the bill, lessons learned from the implementation of the Veterans Benefits Management System (VBMS) to process benefits claims and whether other VHA-administered programs would improve from the development of a single digital system through which applications and documents relating to such programs may be accessed by applicable VHA employees responsible for evaluating such applications and documents.

Section 2(b)(2) would require VA, in carrying out the requirement under section 1720G(c)(5), to consider best practices developed from efforts to standardize the guidance and training available to VA employees responsible for the delivery of disability compensation to Veterans eligible for such compensation.

VA supports the intent of this bill, but cites concerns, and subject to amendments and availability of appropriations.

Section 2(a)(1) of the bill, which would require development and implementation of a single digital system specific to PCAFC applications and appeals of such applications, is unnecessary and could duplicate other efforts underway. The Caregiver Support Program (CSP) currently uses the Caregiver Record Management Application system (CARMA), which is a workflow management tool used to support PCAFC and allows for data assessment and comprehensive monitoring of PCAFC, in accordance with section 162 of the VA MISSION Act of 2018 (P.L. 115-182). CARMA includes data on applications and appeals, among other information. While Board employees generally do not seek direct access to CARMA, processes are in place that allow each VHA or Board employee responsible for evaluating PCAFC applications or appeals access to each application and all documents received or submitted with respect to each application and subsequent PCAFC eligibility determinations (e.g., stipend amount changes, revocation, discharge). Creating a new digital system specific to PCAFC would be duplicative, and while VA is unable to estimate a cost, VA expects it would be significant, as implementation of CARMA was over $100 million.

While VA does not support the development and implementation of a single digital system specific to PCAFC applications or appeals of such applications, VA notes that efforts are underway to establish a Health Benefit Management System or appropriate VHA and Board employees to access documentation regarding VHA health benefit decisions, including applications and related documents; this would not be limited to one specific VHA health care program or benefit.

In proposing amendments to section 1720G(c) in section 2(a)(2) of the bill, VA recommends Congress consider the impact of the February 27, 2024, decision of the U.S. Court of Appeals for the Federal Circuit (the court) in *Beaudette v. McDonough*, 93 F.4th 1361 (Fed. Cir. 2024), particularly with respect to the phrase “affecting the furnishing of assistance or support.” Historically, and before the Court of Appeals for Veterans Claims ruling in *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), VA interpreted that phrase in the context of § 1720G(c)(1) to mean that determinations

under § 1720G were beyond BVA's jurisdiction pursuant to 38 C.F.R. § 20.104(b) (and a predecessor regulation) and appealable only through the VHA Clinical Appeals Process. The court agreed that "medical determination" in § 1720G(c)(1) refers to VA's longstanding regulation (currently 38 C.F.R. 20.104(b)) exempting medical determinations from Board review. *Beaudette*, 93 F.4th at 1368. However, the court understood the phrase "affecting the furnishing of assistance or support" in § 1720G(c)(1) to exempt from Board review "only decisions relating to the need for or appropriateness of specific types of medical care and treatment", which it deemed "properly considered [to be] medical determinations." *Id.* Such decisions include whether a specific type of mental health service for a Primary Family Caregiver is appropriate or whether the type of respite care provided is medically and age-appropriate. *Id.* at 1369.

Pursuant to *Beaudette*, PCAFC decisions that do not affect the furnishing of support or assistance, including PCAFC eligibility decisions under § 1720G(a)(2), are within BVA's jurisdiction. Because section 1720G(c)(1) "bars judicial review of [PCAFC] decisions on the furnishing of assistance or support" (*Beaudette*, 93 F.4th at 1366), VHA continues to make the VHA Clinical Appeals Process available for individuals to appeal such PCAFC determinations.

Given this context, it is not clear if proposed section 1720G(c)(2)(B), as would be added by section 2(a)(2) of the bill, is intended to be limited to appeals of decisions that are medical determinations and beyond BVA's jurisdiction. Likewise, it is unclear if proposed section 1720G(c)(3) is intended to be limited to VHA employees who render PCAFC decisions that are not appealable to BVA (i.e., those to render medical determinations appealable through the VHA Clinical Appeals Process). It is also unclear why proposed section 1720G(c)(3) would refer to guidance and training specific to higher-level adjudicators under 38 U.S.C. § 5104B, as VHA employees also render PCAFC decisions in other contexts, such as for PCAFC applications and supplemental claims. If Congress intends for proposed section 1720G(c)(2)(B) and (c)(3) to refer to appeals of decisions that are reviewable by Board, VA recommends Congress revise

the bill language so that it is not limited to decisions “affecting the furnishing of assistance or support services” under § 1720G.

In addition to concerns about ambiguity, VA believes the proposed amendments to section 1720G(c) are unnecessary.

As it relates to training VHA employees, the provisions set forth in this bill are unnecessary and could undermine the extensive training requirements already in place and used throughout the CSP.

Individuals and teams within VHA responsible for evaluating appeals of PCAFC eligibility decisions receive initial and ongoing training relevant to their roles, including training on each PCAFC eligibility criterion, how such criteria are evaluated, and training in the consideration and weighing of evidence of record to inform the overall eligibility determination. The individuals or teams responsible for evaluating appeals of PCAFC eligibility decisions within VHA are trained clinicians, serving as experts in their field, classified and compensated accordingly, and provided with extensive and continuous training to ensure they render consistent, accurate decisions following a standard protocol.

As it relates to eligibility of a Family Caregiver for the monthly stipend payment in cases in which a Veteran passes away during an appeal, this additional language is unnecessary and could set unrealistic expectations. Individuals who wish to be designated as a Family Caregiver must submit a joint application, along with the Veteran, and participate in evaluations necessary for VA to determine eligibility of both the Veteran and caregiver. So long as all evaluations have been performed, training requirements met, and an initial home-care assessment completed, and VA has enough information to render a determination of eligibility, VA already renders such determinations, when appropriate, and issues applicable benefits to the Family Caregiver, even in cases where the Veteran has died before the PCAFC application or appeal has been decided.

However, in many cases in which the Veteran passes away during the pendency of a PCAFC application decision or appeal, the evaluations and other program requirements have not yet been completed before the Veteran's death for VA to render an eligibility determination. Although, the number of cases where a Veteran dies before the appeal is decided is small, the bill language, if enacted, could establish unrealistic expectations about caregivers' eligibility to receive monthly stipend benefits retroactively when the eligibility is not supported by the evidence in the file on the date of the Veterans death. Insofar as the draft suggests that VA could award benefits in all PCAFC appeals, notwithstanding the death of the Veteran, that is not accurate. While VA could attempt to determine eligibility based on information in the application or case file, key elements – such as identifying the personal care services required by the Veteran and assessing the caregiver's competence to provide such services at the Veteran's home – could not be done (or would not make sense to do) without the Veteran.

When evaluating eligibility for PCAFC, the evaluation process must consider multiple criteria, all of which must be met to determine eligibility and award benefits. If not all criteria are met, the evaluation process concludes, and VA denies the application for PCAFC benefits. It would be impractical and unreasonable for the applicants and VA to complete the full PCAFC evaluation process in its entirety, including the completion of caregiver training and an initial home-care assessment, when, for example, VA determines early in the evaluation process that certain criteria are not able to be satisfied, such as a Veteran not having a serious injury incurred or aggravated in the line of duty. However, this means that if an appeal is filed, and the Veteran dies before a decision is rendered on the appeal, VA may not have all of the evidence in the file that would be necessary to determine whether criteria were met prior to the Veteran's death. As a result, PCAFC benefits would not be awarded.\ As previously mentioned, when all steps of the application process have been completed and the individuals are determined eligible, VA already provides any benefits due to the surviving caregiver. Accordingly, this bill language is unnecessary.

Additionally, as a technical matter, VA notes that the term “entitled” in proposed § 1720G(c)(2)(B)(i) would be inconsistent with § 1720G(c)(2), which makes clear that nothing in § 1720G shall be construed to create any entitlement to any assistance or support provided under § 1720G. Additionally, section 2(b)(2) of the bill refers to paragraph (5) in section 1720G(c), but there would be no such paragraph (5); the reference here should be instead to paragraph (3). VA would be happy to work with the Committee to provide technical assistance on this and other technical concerns with the bill language.

We would appreciate the opportunity to discuss this bill with the Committee to better understand the concerns driving interest in this bill. The practical limitations and concerns associated with changes to the adjudication and appeals process could prove difficult to reconcile. We strongly support efforts to ensure Veterans, and their caregivers have full access to the benefits they have earned, but we want to ensure that any changes do not result in additional burdens without improved outcomes and experience.

VA does not have a cost estimate for this bill.

Conclusion

Mr. Chairman, this concludes my testimony. My colleagues and I are prepared to respond to any questions you or other Members of the Committee may have.

Prepared Statement of Tiffany Wagner

CHAIRMAN LUTTRELL, RANKING MEMBER MCGARVEY, AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

Thank you for inviting the U.S. Court of Appeals for Veterans Claims (Court) to participate in the June 24, 2025, legislative hearing of the U.S. House of Representatives, Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs (Subcommittee). I'm Tiffany Wagner, the Court's Executive Officer and Clerk of Court, and I'm pleased to appear as the designee of Chief Judge Michael P. Allen on behalf of the Court. The Subcommittee is considering several bills, but we limit our comments to the Veterans Appeals Efficiency Act of 2025, and specifically, to section 2(e) titled "Expansion of Jurisdiction of Court of Appeals for Veterans Claims," that directly impacts the Court and pertains to proposed supplemental jurisdiction and limited remand authority for the Court.

At the outset, the Court notes that we presented testimony to this Subcommittee last April 10, 2024, on a similar Veterans Appeals Efficiency bill. As we stated then, congressional modification or expansion of the Veterans Court's jurisdiction is a legislative policy determination, and respectfully, the Court cannot comment on the advisability or breadth of such. Nor can we suggest alternative language that we may be required to interpret in the context of a veteran's case. The Court speaks through its opinions in the context of concrete cases or controversies. Our testimony is thus limited to offering general observations about the potential for unintended consequences with regard to the specific language proposed in the bill.

A. Supplemental Jurisdiction

Section 7252 of title 38 of the U.S. Code establishes that the Court has "exclusive jurisdiction to review decisions of the Board." Proposed new subsections 7252(b)(1) and (2) would grant the Court "supplemental jurisdiction" over certain claims that would not otherwise meet the current jurisdictional requirements and would permit concurrent processing of claims at the agency and the Court in certain circumstances. Proposed subsection 7252(b)(3) addresses tolling of the deadline for filing appeals to the Court.

As noted above, the Court does not and may not advise on how Congress may modify the Court's jurisdiction or broaden concurrent jurisdiction at both the Court and the agency. As we said, the Court may be called on to interpret any language affecting the Court's jurisdiction and we can't issue an advisory opinion on the issue today. That said, we offer a general caution that any modifications to the Court's jurisdictional statute should be as precise as possible to avoid unintended consequences. Some of the language of proposed section 7252(b) is unclear and limits any technical advice we may offer. For example, the general reference to 38 U.S.C. § 5104C(a) and the use of the phrases "notice of disagreement," "supplemental claim," and "request for administrative review" in proposed subsections 7252(b)(1) and (2), without more specific statutory citations, obfuscates the intent of those subsections. Further, the repeated use of the word "claim" in proposed subsection 7252(b)(2) makes it unclear when the draft is referring to the class proponent's claim or the potential class member's claim over which the Court would have supplemental jurisdiction.

Additionally, the Court's appellate jurisdiction under 38 U.S.C. § 7252 is separate and distinct from its jurisdiction over writs under the All Writs Act, 28 U.S.C. § 1651. Including writs in this bill as "covered proceedings," particularly in light of subsection (b)(1)(A)(ii)'s definition of the claims over which the Court would have supplemental jurisdiction, may result in unintended limitations. Again, we are not interpreting this language. We merely are flagging a potential issue for the Subcommittee to consider. Finally, proposed subsection 7252(b)(3) creates a new subcategory of timeliness/jurisdictional disputes that the Court would be called upon to decide. This alteration to the parameters of the Court's jurisdiction, like any such alteration, could grow the Court's caseload, which in turn would require reevaluation of Court processes and resource needs at a time when our Court is already receiving record numbers of appeals.

B. Limited Remand Authority

Section 2(e)(2) of the Veterans Appeals Efficiency Act of 2025 proposes to add new 38 U.S.C § 7252(c), addressing the Court's remand authority.

Proposed new subsection 7252(c)(1) would authorize the Court to remand a matter to the Board of Veterans' Appeals "for the limited purpose of ordering the Board to address a question of law or fact" that the Court determines the Board failed to either address after it was explicitly or reasonably raised, or adequately explain the reasons or bases for the Board's decision about such question. Proposed new sub-

section 7252(c)(2) would direct the Court to issue Rules (1) addressing how and when a party could request a limited remand; (2) identifying the time period within which the Board would be required to issue a decision on a relevant question; (3) detailing when the Court could sua sponte or upon request of a party order a limited remand; and (4) directing the parties to provide notice to the Court when the Board issues a relevant decision following a limited remand. Proposed new subsection 7252(c)(3) would require the Court to retain jurisdiction over such remanded matters and to stay Court proceedings until the Board satisfies the remand instructions and issues a decision.

Proposed subsection 7252(c) could inject uncertainty into the law given that the Court already has the authority to employ limited remands. Currently, 38 U.S.C. § 7252(a) permits the Court to remand matters as appropriate. As the Court has held, that authority encompasses issuing limited remands, retaining jurisdiction, and setting out timetables within which the Board must act. By statutorily defining the circumstances in which the Court could order a limited remand, new subsection 7252(c)(1) may limit, rather than expand, the Court's current authority. Similarly, the requirements in proposed subsections 7252(c)(2) and (c)(3) may constrain when and how the parties may request, and the Court may ultimately use, this remedy. In deciding each case, the Court carefully considers the particular facts and circumstances of each veteran. A confining statutory framework may inhibit the Court's ability to employ what it deems as the most fitting remedy in a particular case. To be clear, the possibilities we have highlighted here are certainly within Congress' policy-based options. We make these points only to raise the issue to ensure that the choices made through the proposed amendments are intended.

In conclusion, the Court takes seriously its mission to afford veterans and their families and survivors full, fair, independent, and prompt judicial review of final Board decisions. The Court is open to ways to improve its functioning and appreciates the Subcommittee's continued interest and effort in this shared goal. Thank you for the opportunity to submit this statement.

Prepared Statement of Jonah Platt

TESTIMONY OF JONAH PLATT BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE IN SUPPORT OF H.R. 2701, THE *"FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT"*

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as the host of Being Jewish and someone who works every day to tell Jewish stories and elevate Jewish voices, I'm deeply proud to support H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This bill represents a necessary and long-overdue correction to a painful historical oversight: the mistaken burial of hundreds of Jewish American soldiers under Latin crosses rather than the Star of David. These men gave their lives for a country they loved, while living their lives as Jews. Honoring them accurately isn't just about symbols—it's about truth, respect, and belonging.

I haven't had the chance to attend an Operation Benjamin rededication ceremony in person, but I've followed their work closely and spoken with those who've witnessed the impact up close. The stories are powerful. The families are moved.

The message is clear: these soldiers deserve to be remembered for who they were, and the country they served owes them that.

In our current moment of rising Jew hatred and cultural amnesia, recognizing Jewish contributions to the American story matters more than ever. H.R. 2701 offers a simple but powerful way to reclaim our place in that story—and to do right by those who came before us.

I strongly urge Congress to pass this legislation and give these heroes the legacy they have earned.

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Jonah Platt
Host, Being Jewish Podcast
Los Angeles, CA
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Prepared Statement of Republican Jewish Coalition

Republican Jewish Coalition
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July 7, 2025

The Honorable Mike Bost
Chairman, House Committee on Veterans' Affairs
Washington, D.C. 20515

Dear Chairman Bost:

On behalf of the Republican Jewish Coalition, we are pleased to write in support of the Fallen Services Members Religious Heritage Restoration Act, H.R. 2701.

Jewish tradition teaches that a selfless act of kindness is the highest form of charity. The epitome of selfless kindness is to act on behalf of the deceased, who are unable to repay us.

H.R. 2701 directs the American Battle Monuments Commission establish a Fallen Services Members Religious Heritage Restoration Program, and provides funding for efforts already under way through collaboration with the nonprofit organization Operation Benjamin, to identify Jewish U.S. servicemembers buried in military cemeteries overseas under markers that incorrectly represent their religion and help their families replace the grave markers to properly reflect their religious heritage.

Preserving the memory of Jewish servicemen who made the ultimate sacrifice will express the greatest form of kindness. It will reflect the vibrant tapestry of our nation by providing an appropriate memorial to every American who fought, and was buried with his fellow servicemembers, side by side, in defense of liberty. While we can never fully repay the debt owed to our heroes, it is fitting to honor them as they honored our Country.

Thank you for your leadership on this important matter and your friendship to Jewish Americans.

Sincerely,

Senator Norm Coleman
National Chairman

Matthew Brooks
Chief Executive Officer

Prepared Statement of Disabled American Veterans

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STATEMENT OF
JOSEPH LEMAY
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
FOR THE RECORD OF THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 24, 2025

Chairman Luttrell, Ranking Member McGarvey and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of this legislative hearing. As you know, DAV is a congressionally chartered and Department of Veterans Affairs (VA) accredited veterans service organization. We provide meaningful claims support free of charge to more than 1 million veterans, family members, caregivers, and survivors. We are pleased to provide our views on the bills under consideration by the Subcommittee.

H.R. 659, the Veterans Law Judge Experience Act of 2025

H.R. 659, the Veterans Law Judge Experience Act, would direct the Chairman of the Board of Veterans' Appeals to give hiring priority to attorneys with three or more years of professional legal experience in veterans law.

According to the Board's Fiscal Year 2024 Annual Report, the Board employs 1,060 attorneys supporting 132 Veterans Law Judges. Many of these attorneys are currently in training. If more of them entered the Board with prior veterans law experience, training time could be reduced, thereby improving the Board's overall output and efficiency.

DAV supports H.R. 659, in accordance with Resolution No. 54, which calls for the hiring of additional attorneys to help address the appeals backlog.

H.R. 2055, the Caring for Survivors Act of 2025

H.R. 2055, the Caring for Survivors Act of 2025, would enhance financial support for eligible survivors of veterans who were rated totally disabled at the time of death. Specifically, the bill proposes to increase the Dependency and Indemnity Compensation (DIC) amount to 55% of the veteran's monthly compensation rate. Based on current rates, this adjustment would result in an approximate increase of $6,860 in annual benefits for surviving spouses.

In addition, the legislation would strengthen the program to provide benefits for some survivors whose spouses died before meeting DIC's 10-year eligibility requirement. Currently, survivors of veterans who die before they reach 10 years as a 100% totally disabled veteran do not qualify for any DIC benefit, even if the veteran died after being totally disabled for 9 years and 11 months. H.R. 2055 would address this gap by providing a graduated benefit to survivors of veterans who were totally disabled for at least five years equivalent to 50% of the full DIC benefit amount, increasing proportionally each additional year by 10% until reaching 100% after 10 years.

By aligning DIC benefits more closely with those provided to survivors of federal civil service retirees, this bill represents a meaningful step toward equity and modernization in veterans' survivor compensation.

DAV strongly supports H.R. 2055 in accordance with DAV Resolution No. 25, which advocates for the improvement and reform of DIC benefits, and Resolution No. 142, which calls for a reduction in the current 10-year eligibility requirement.

H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act

H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act, requires the American Battle Monuments Commission to identify and research graves incorrectly marked for American-Jewish servicemembers. The commission partners along with non-profit organizations would locate affected graves, notify descendants, and ensure corrections are made to accurately reflect religious heritage.

This legislation takes an important step in appropriately honoring fallen service members, ensuring their heritage is memorialized with accuracy and respect. While DAV does not have a formal resolution on this specific matter, we have no concerns regarding the remarking of these grave sites.

H.R. 2721, the Honoring Our Heroes Act of 2025

Under current law, the VA only provides a headstone or marker for veterans who died on or before November 1, 1990, if their grave is unmarked. For those who passed away after that date, VA will provide a government-issued headstone or marker—regardless of whether there's already a private one in place.

The Honoring Our Heroes Act aims to close this gap and ensure all veterans receive the recognition they deserve. This important legislation directs the VA to launch a pilot program to offer headstones or markers for veterans who died before November 1, 1990—even if their graves are already marked. Families would be required to apply for these honors within two years of the law's enactment.

We support H.R. 2721, in accordance with DAV Resolution No. 104, as an important step to ensure that the sacrifices of all generations of veterans are equally honored.

H.R. 3123, the Ernest Peltz Accrued Veterans Benefits Act

This legislation aims to ensure that pension benefits accrued but unpaid at the time of a veteran's death are appropriately distributed to eligible survivors or, when applicable, to the veteran's estate. Timely and fair distribution of these benefits during a family's most vulnerable period would provide critical financial support and help ease the burden of loss. By addressing this gap in the claims process, the legislation upholds the principle that earned benefits should not be delayed or forfeited due to administrative barriers or unfortunate timing.

DAV believes this legislation could be further strengthened by including a provision that directs the VA to automatically assess and, when appropriate, award survivor's pension benefits at the time accrued benefits are paid without requiring a separate application. In most cases, VA already has verified information on the veteran's household income, and assets as part of the original pension determination. Eliminating the need for survivors to submit redundant claims would reduce delays, ease burdens on grieving families, and better align with VA's ongoing efforts to modernize and streamline benefit delivery.

Although DAV does not have a specific resolution on this measure, we have no objection to its advancement and support the effort to improve the delivery of benefits to survivors.

H.R. 3627, the Justice for America's Veterans and Survivors Act of 2025

The VA's annual suicide prevention report currently lacks crucial information about whether veterans who died by suicide had service-connected disabilities. It also fails to account for other service-related causes of death. This gap in data significantly limits the VA's ability to develop targeted, evidence-based strategies to support veterans' mental health and prevent future tragedies. Research has consistently shown that veterans with service-connected mental health conditions face a higher risk of suicide.

H.R. 3627 would require the VA to provide an annual report to Congress detailing both primary and secondary causes of death among veterans, with specific attention to service-connected conditions and suicide.

The Justice for America's Veterans and Survivors Act would give the VA and Congress the tools they need to develop and implement more effective mental health initiatives and suicide prevention programs. We support this legislation, as it is consistent with DAV Resolution No. 224, which calls for program improvement in the VA's mental health services and suicide prevention efforts.

H.R. 3833, the Veterans' Caregiver Appeals Modernization Act of 2025

H.R. 3833, the Caregiver Appeals Modernization Act proposes the development and deployment of a unified, digital system—modeled after the Veterans Benefits Management System (VBMS)—specifically for managing caregiver claims and appeals. This system would incorporate capabilities for application processing, document storage, and decision tracking, and must be accessible to staff across the Veterans Health Administration (VHA) and the Board of Veterans Appeals (Board). Additionally, VA would be required to draw on lessons learned from the implementation of VBMS and provide comprehensive training for all employees involved in adjudicating caregiver-related claims and appeals.

Currently, the Caregiver Record Management Application (CARMA) serves as the VA's primary data system for administering applications and appeals under VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC). Maintained by VHA, CARMA is used by Caregiver Support Coordinators (CSCs) to track eligibility determinations, approvals, denials, and ongoing reviews of caregiver status.

Although CARMA functions adequately for initial determinations, it is not fully integrated with the Veterans Benefits Administration (VBA) and the Board. CARMA also does not provide access for accredited Veterans Service Organizations (VSO) representatives working on caregiver applications or appeals.

We support the intent of this legislation but do have concerns about whether mandating the creation of a new digital system, focused just on connecting PCAFC appeals and the Board is the best way forward. CARMA already affords access to Board employees, though it does not directly connect with the Board's digital system, Caseflow, nor does it directly interface with VBMS. It is our understanding that VHA is currently working on expanding its Health Benefits Management System (HBMS) to better integrate with other IT systems, which could potentially link CARMA to VBMS, though we are not aware of a plan do so.

At this time, we are not certain whether it would be better for VA to create a new digital system for caregiver appeals, modify CARMA to better align with other existing IT systems for appeals, integrate the functions of CARMA into VBMS, or focus on further development of the HBMS system. We recommend that VHA work directly with VBA to develop an IT modernization plan for caregiver appeals that maximizes the potential for having a single integrated and interoperable system for all health care and benefit appeals. Regardless of which IT solution is ultimately chosen, it must ensure full access for VSO representatives.

Critically, the bill would also ensure that if a veteran passes away during the appeals process, the family caregiver remains eligible to receive any unpaid stipends owed at the time of the veteran's death. DAV strongly supports this provision of the legislation, consistent with DAV Resolution No. 343, which urges comprehensive support for caregivers of severely wounded, injured, and ill veterans of all eras.

H.R. 3834, the Protecting Veteran's Claim Options Act

Under Title 38 U.S.C. § 5108, if the VA has previously denied a claim, it must reopen the claim when the claimant submits new and relevant evidence. "New" means the evidence was not previously submitted to VA decision-makers, and "relevant" means it pertains to a fact necessary to establish the claim and could help substantiate it.

This statute creates a pathway for veterans to seek another review of a denied claim—provided they can present additional evidence that is both new and relevant. However, this standard also serves as a gatekeeping mechanism: if a claimant does not submit new and relevant evidence, the VA and the Board of Veterans' Appeals (Board) may refuse to reconsider the claim and decline to evaluate its merits.

H.R. 3834, the Protecting Veteran's Claim Options Act proposes changes to two key principles regarding the Board. First, it redefines the Board's jurisdiction over Supplemental Claims by clarifying that it cannot deny an appeal solely because the appellant failed to present new and relevant evidence. This ensures that veterans' appeals will not be dismissed purely on procedural grounds when brought before the Board.

Second, this bill expands the Board's jurisdiction to consider evidence in the first instance. Currently, when a case is remanded to the Board by the Court of Appeals for Veterans Claims (Court), the Board typically limits its review to the record already considered. This proposal would allow the Board to include and evaluate new evidence submitted by the appellant or their representative within 90 days of the Court's remand, ensuring a more complete and efficient review.

Based on DAV Resolution No. 306, we support H.R. 3834, as it represents meaningful reform to the appeals process. It preserves the statutory requirement for new and relevant evidence at the initial claim level, while protecting veterans at the appellate level by ensuring the Board must consider their cases—even in the absence of such evidence. Furthermore, by granting the Board jurisdiction to consider new evidence submitted within 90 days of a Court remand, this proposal eliminates unnecessary delays and empowers the Board to issue decisions based on the full and most recent record.

H.R. 3835, the Veterans Appeals Efficiency Act of 2025

This legislation proposes targeted reforms to improve the efficiency and transparency of the VA appeals process for veterans' benefits. The proposed changes affect key components within the Board, the Veterans Benefits Administration (VBA), and the Court. The bill includes seven primary elements:

Annual Reporting Requirements

While the VA Secretary is currently required to submit an annual report, this proposal mandates that specific data be included from the Board, including:

- Average processing time for remanded claims;
- Number of motions to advance appeals on the docket—categorized by grants, denials, and justifications; and
- Number of dismissed appeals, with an explicit breakdown of dismissals resulting from the appellant's death, including cases flagged as suicides.

These requirements aim to improve oversight, foster transparency, expose inefficiencies, and highlight cases affected by veteran suicides.

Guidelines for Advancing Appeals

Although the Board is statutorily required to adjudicate cases in docket order, 38 U.S.C. § 7107 allows for cases to be expedited when appellants are seriously ill or face severe financial hardship. This proposal calls for the development of standardized criteria to determine what qualifies as acceptable evidence for advancing a case and sets clear procedures for filing such motions. The intent is to promote fairness, prevent arbitrary prioritization, and ensure consistent application.

Claims Tracking Enhancements

The legislation would require VA to utilize technology and data systems to track the following categories within the Board and VBA:

- Continuously pursued claims (e.g., timely supplemental claims post-denial);
- Unassigned claims within the National Work Queue;
- Expedited cases under VA policy;
- Remanded cases from the Board;
- Board hearing backlogs;
- Noncompliance with remand instructions—particularly concerning the duty to assist;
- Supplemental claims following final decisions; and
- Death notifications, categorized by fiduciary assignment status.

Improved tracking could strengthen root cause analysis of delays, pinpoint systemic inefficiencies, and enhance compliance monitoring.

BVA Reforms and Claim Aggregation Authority

The legislation would grant the Board Chairman authority to aggregate appeals that share common legal or factual issues. "Aggregate" encompasses processes such as joinder, consolidation, intervention, class actions, or any similar multiparty procedure.

For example, this would allow multiple claims related to per- and polyfluoroalkyl substance (PFAS) exposure to be resolved together, potentially reducing redundancy and improving consistency.

However, this proposal raises several serious concerns:

- Complex or medically intensive cases could delay the resolution of bundled claims.
- Individual nuances may be overlooked during collective review.
- Weaker claims could adversely affect the perception and outcomes of stronger claims.
- Appellants may face restrictions if they wish to withdraw or revise individual claims within a group.

Critical Concern:

There is currently no clear process for appellants or their accredited representatives to opt out of claim aggregation. No veteran should be forced into a process that may not serve their best interest. Opt-out procedures must be clearly defined and guaranteed.

Remand Compliance Authority

The Board must ensure substantial compliance with all remand instructions. If new evidence submitted after a remand resolves the issue or renders the remand unnecessary, the agency of original jurisdiction may waive the requirement to return the case—*but only* if this waiver is formally included in the Board's decision.

Expanded Jurisdiction for the Court

The legislation would also extend the Court's jurisdiction to include covered proceedings involving class certification motions, even when claims are not yet finalized—provided a Notice of Disagreement or supplemental claim has been filed.

While intended to facilitate the resolution of recurring legal issues through class actions, we have several concerns:

- Granting jurisdiction prior to final VA decisions may disrupt the administrative process and cause judicial inefficiencies.
- Managing large class actions could overburden Court resources and delay unrelated appeals.
- Jurisdictional questions and class certification before claim finality could lead to procedural confusion.
- Allowing early judicial involvement undermines the principle of exhausting administrative remedies.

It remains unclear how VBA will manage coordination with the Court during these proceedings. We question how VBA will handle the administrative management of cases under the Court's expanded jurisdiction, particularly before final agency decisions are issue.

Limited Remands

The Court would be authorized to issue "limited remands," returning specific legal or factual questions to the Board while retaining jurisdiction. The Court would establish rules covering:

- When and how parties may request a limited remand;
- Timeframes for the Board to respond to the remand;
- Conditions for the Court to initiate a remand on its own; and
- Notification requirements once the Board issues a decision on the remanded issue.

This provision intends to resolve specific issues more efficiently but introduces additional judicial complexity that must be carefully regulated.

Studies and Use of Technology

The Board would be required to conduct a study, including through artificial intelligence (AI) and other technologies, to identify frequently recurring questions of law and fact and to evaluate whether precedential decisions would reduce duplicative appeals.

Independent Review via FFRDC

Within 30 days, the VA must contract a Federally Funded Research and Development Center (FFRDC) to conduct an independent feasibility study on:

- The Board's potential to issue binding precedential decisions; and
- Appropriate rules and procedures for claim aggregation.

The FFRDC must consult with veterans service organizations (VSOs), veterans' and survivor advocacy groups, legal experts, and the Administrative Conference of the United States. However, the VA would be required to begin implementing the FFRDC's recommendations within 90 days—without input from Congress or stakeholders.

We have serious concerns with this provision as it risks bypassing Congressional oversight, effectively delegating governmental decision-making authority to the FFRDC.

Precedential Authority

Granting the Board authority to issue binding precedents presents significant risks:

- Entrenchment of flawed decisions that may take years to correct;
- Reduced flexibility to adapt to unique or evolving circumstances;
- Slow correction process, requiring higher-level judicial intervention;
- Inconsistent interpretation at regional VBA offices; and
- Risk of institutional bias toward the agency's interests.

The legislation is not clear on how many Board judges would be required to participate in a precedential decision. The Court currently requires a panel of at least three judges for precedential opinions—will similar safeguards apply and how would this affect the Board's workflow and appeals backlog?

The Veterans Appeals Efficiency Act aims to provide a comprehensive and forward-thinking vision for improving VA's appeals process; however, several provisions raise substantial concerns and unanswered questions:

- **Claim Aggregation:** Clear opt-out provisions are essential to protect appellant autonomy.
- **Expanded Jurisdiction:** Premature judicial involvement could disrupt the appeals process.
- **Precedential Authority:** The risks of entrenched precedent and lack of oversight must be addressed.
- **FFRDC Implementation:** Granting an outside entity de facto legislative authority is inappropriate and must be reconsidered.
- **Workload Impacts:** Additional responsibilities must not exacerbate existing backlogs at the Board or Court.

Given the scope of these unresolved issues, DAV cannot support the Veterans Appeals Efficiency Act in its current form.

H.R. 3854, the Modernizing All Veterans and Survivors Claims Processing Act

The Modernizing All Veterans and Survivors Claims Processing Act seeks to enhance the efficiency and accuracy of veterans' claims processing by implementing automation tools. The VA would be required to develop a comprehensive plan within 180 days to automate the retrieval of service and health records, compile relevant evidence, provide decision support, facilitate information sharing between federal agencies, and assist in generating claim-related correspondence. The plan must assess the feasibility, benefits, and necessary modifications for these tools, identify unmet requirements, and outline a deployment timeline. The legislation prioritizes deployment of these tools with highest priority given to the Pension and Fiduciary Service and the Education Service. The legislation requires that the automation tool for generating correspondence must be available to all relevant program offices within one year.

Additionally, the bill requires the National Work Queue (or its successor) to automatically flag and assign a claims processer to review certain changes to benefits for children of veterans to ensure those benefits are properly aligned with family changes. It also mandates the VA submit a plan to Congress within 180 days to ensure all documents in VBMS are accurately labeled at entry to prevent lost evidence and delays.

DAV supports this legislation in accordance with Resolution Nos. 51 and 306, which call for meaningful reforms in the claims process and the adoption of modern IT solutions to better serve veterans. In implementing this legislation, it will be crucial for VA to prioritize strong data safeguards to protect sensitive veteran information, ensuring that personal and financial details remain secure. Maintaining uninterrupted VBMS access for veterans and VSOs is equally essential, preventing delays in services that many rely on.

Furthermore, incorporating VSO consultation during the system design and rollout process will leverage frontline expertise, resulting in a more effective and user-friendly system. These additional considerations will help ensure that the bill's implementation meets the highest standards of security, accessibility, and practicality.

H.R 3951, the Rural Veterans' Improved Access to Benefits Act of 2025

The Rural Veterans Improved Access to Benefits Act expands temporary licensure eligibility for VA-contracted medical disability examiners. Under this bill, examiners must hold a current, unrestricted license with no practice restrictions, ensuring qualified professionals can provide timely and effective assessments for veterans in rural areas. The temporary licensure authority would be extended to January 5, 2031.

Additionally, the bill broadens eligibility criteria by replacing specific professions with the general term "health care professionals," allowing greater flexibility in provider selection. These changes would enable more medical examiners to conduct evaluations, ultimately reducing wait times and improving service availability for veterans who need timely assessments.

DAV supports H.R. 3951 in alignment with Resolution No. 42, which calls for ensuring veterans in rural or remote areas have sufficient access to care.

To further strengthen this legislation, DAV recommends the committee consider several additional improvements to ensure the quality of medical disability evaluations. First, the temporary licensure authority should be made permanent to provide long-term stability and prevent future disruptions in access to qualified examiners, particularly in rural areas. Second, all contracted medical disability examiners should be required to complete training equivalent to that provided to Veterans Health Administration (VHA)

providers before conducting compensation and pension (C&P) exams. This would help ensure consistency, clinical competence, and adherence to VA standards. Finally, the VA should establish accountability measures to capture examiner errors, including mechanisms to track and address repeated mistakes that could delay or unfairly impact veterans' claims.

H.R. 3983, the Veterans Claims Quality Improvement Act of 2025

This bill establishes a comprehensive, multi-pronged strategy to enhance the quality, consistency, and accountability of the VA in processing claims through the VBA and appeals through the Board.

Addressing Avoidable Deferrals

The first component in the bill aims to reduce avoidable deferrals—instances where claims are delayed due to preventable errors or oversights by VBA employees, often within the National Work Queue. These delays unnecessarily hinder claim resolution. The bill would require the VA to notify employees when they are responsible for an avoidable deferral. By increasing employee awareness of repeated deferrals, the legislation seeks to improve efficiency and promote greater accountability.

Review of Office of General Counsel (OGC) Opinions

The bill mandates a study and report on the use of binding legal opinions issued by the VA's OGC, which serve as precedent in claims and appeals adjudication. The report will examine inconsistencies in the application of OGC opinions—particularly in appeals—and must be submitted within one year.

Quality Assurance at the Board of Veterans' Appeals

Although the Board currently operates a quality assurance program through its Office of Appeals Integrity, this bill imposes new requirements to address shortcomings identified in the Government Accountability Office's (GAO) November 29, 2023 testimony before this Subcommittee. The GAO found that the Board lacked written procedures for calculating its accuracy rate, managing error data, and verifying its accuracy metrics.

The enhanced quality assurance framework will:

- Notify decision drafters of court remands;
- Provide training and incentives to encourage review of court decisions;
- Use technology, including artificial intelligence (AI), to track:
    - Frequency of decision errors;
    - Remands and reversals by the Court of Appeals for Veterans Claims;
    - Trends associated with individual Board members.

The Board's annual report would be required to include a detailed analysis of error trends, root causes of remands, and weaknesses in the adjudication process.

While we agree that the Board's quality assurance program must address the gaps identified by GAO, it is not clear how staff would be incentivized to review court decisions or why the review of court decisions is not formally incorporated into the mandatory training program described below.

Training and Performance Reviews

A critical component of the bill is a new training mandate for Board members and staff. This training will focus on timely and accurate adjudication and include feedback mechanisms, reviews of errors, and analyses of court remands. The effectiveness of the training must be evaluated using a recognized model such as the Kirkpatrick Model, with annual assessments of its impact and results.

The bill also revises performance evaluations for Veterans Law Judges (VLJs). Instead of receiving a performance review panel every three years, VLJs will now be evaluated annually, allowing for more timely identification and correction of errors. Importantly, the performance of VLJs may no longer be used as a basis for evaluating the staff who draft their decisions.

Transparency and Accountability in Remands

The final component of the bill strengthens the transparency and accountability of Board remand decisions. Each remand must clearly explain the reason(s) for the remand, including whether the VA failed to meet its duty to assist or notify under 38 U.S.C. §§ 5103 and 5103A. Additionally:

- A copy of the remand decision must be sent to the VBA employee responsible for the error to reinforce accountability.
- The Board annual report must include categorized remand reasons, distinguishing between rating decisions made before and after the February 19, 2019, implementation of the Appeals Modernization Act (AMA).
- The VBA and Board are required to jointly develop a plan to improve remand quality and reduce avoidable remands.

While we have noted some concerns—particularly regarding the incentivization and integration of court decision reviews into training—we support this robust, multi-faceted initiative to improve the quality, consistency, and accountability of the claims and appeals process. In alignment with DAV Resolution No. 306, this legislation would be a significant and thoughtful step forward in strengthening veterans' benefits and appeals adjudication.

This concludes my statement for the record.

Prepared Statement of Gold Star Spouses of America, Inc.

Chairman Luttrell, Ranking Member McGarvey, and distinguished members of the House Committee on Veterans Affairs, Subcommittee on Disability Assistance and Memorial Affairs,

On behalf of Gold Star Spouses of America, Inc., thank you for your continued leadership on behalf of our Nation's veterans, their families, and the surviving spouses who carry the weight of both love and loss. Our organization represents a diverse community of surviving military spouses who, despite overwhelming grief, continue to advocate for change and justice in honor of those we have lost.

Gold Star spouses face a unique and often overlooked set of challenges, from navigating grief and trauma to securing education, financial stability, and access to critical benefits. These challenges are compounded by outdated policies and bureaucratic barriers that fail to reflect the evolving needs of surviving families. Through partnerships with veterans service organizations (VSOs), government agencies, and policymakers, we work to ensure that the voices of surviving spouses are not just heard, but acted upon.

We are grateful to the Committee for considering several bills today that aim to improve the delivery of benefits and support to servicemembers, caregivers, and survivors. Gold Star Spouses of America is proud to express our strong support for four of these measures:

H.R. 2055: Caring for Survivors Act

One of the most urgent challenges facing military surviving spouses is the glaring disparity between the Department of Veterans Affairs (VA) Dependency and Indemnity Compensation (DIC) and survivor benefits for Federal civilian employees. Currently, DIC provides just 43 percent of the compensation that a 100 percent service-connected disabled veteran receives from the VA. Meanwhile, Federal civilian employees have the choice to designate up to 55 percent of their compensation as a death benefit for their spouse.

This inequity leaves military surviving spouses at a severe financial disadvantage, despite their loved ones making the ultimate sacrifice in service to our Nation. To correct this imbalance, DIC must be increased to 55 percent of a 100 percent disabled veteran's disability compensation, ensuring that military families receive the fair and just support they were promised. It's time for Congress to fulfill its promise to those who have given everything for our country and pass the Caring for Survivors Act.

Many service members enlist under the belief that if something happens to them, their families will be cared for. The reality is vastly different. Many service members and veterans are unaware of the staggering financial loss their families will face when they pass away. For example, an active-duty E–1 service member stationed in Norfolk, VA, earns $2,108.10 per month in base pay. With the Basic Allowance for Housing (BAH), their total monthly income is $4,262.10. Similarly, a 100 percent service-connected disabled veteran with a spouse receives $4,044.91 per month in VA compensation.

However, when that service member or veteran dies, their family's financial stability is shattered. The VA replaces their income with DIC, which currently stands at just $1,653.06 per month, a devastating drop in support that often leads to severe financial hardship for the surviving spouse and their family.

When these benefits are cut, the pain is not just emotional but financial. Surviving spouses are still paying the same rent, the same utility bills, and the same everyday costs of living, but with drastically reduced resources. Their expenses are not slashed by 59 percent, but their means of survival are. In the midst of profound loss, they are forced to navigate not only the grief of losing a loved one but also the harsh reality of economic insecurity. This is not just a policy flaw, it is a failure to uphold our promise to those who have sacrificed for this country.

The families of those who laid down their lives in service to our Nation deserve nothing less than equal benefits to those of Federal employees. It's time to honor their sacrifice with the full and fair compensation they have rightfully earned. This legislation does not grant Gold Star families a life of luxury, it simply aligns their benefits with the standard set by the Office of Personnel Management, ensuring their sacrifice is not valued less than that of civilian government employees.

Gold Star Spouses of America is grateful to Representative Jahana Hayes for her leadership in championing this bill. Now, it's time to see it cross the finish line.

Draft Bill: Justice for America's Veterans and Survivors Act

Invisible wounds can be just as fatal as physical ones. Too often, the families of veterans lost to suicide or self-inflicted harm are left without closure, and without access to the benefits they deserve, because the cause of death is misclassified or never formally recognized.

The Justice for America's Veterans and Survivors Act takes a vital step forward by requiring the VA to collect and report accurate, annual data on veteran deaths, including those involving suicide. Without this information, we cannot craft effective policy, deploy targeted prevention efforts, or support the families left behind.

We cannot afford to operate in the dark. This legislation equips policymakers, providers, and support networks with essential tools and signals a meaningful commitment to transparency and accountability. We urge the Committee to support this bill. It is not just good policy; it is a moral imperative.

H.R. 2701: Fallen Servicemembers Religious Heritage Restoration Act

We are proud to support the Fallen Servicemembers Religious Heritage Restoration Act, which upholds the dignity and faith of Jewish-American servicemembers buried overseas. By establishing a 10-year program within the American Battle Monuments Commission to identify and correct religious misrepresentations on grave markers, this bill helps right historical wrongs while honoring the individual identities of our fallen.

Accurate grave markers are not just symbolic, they are essential for the healing and remembrance of surviving families. When a headstone reflects a loved one's true faith and heritage, it provides comfort, closure, and lasting recognition. Gold Star Spouses of America thanks the many champions of this legislation for their thoughtful approach and urges swift passage.

H.R. 2721: Honoring Our Heroes Act

Many veterans, particularly from older generations, lie in unmarked graves without the headstones or markers they earned through service. The Honoring Our Heroes Act offers long-overdue recognition by allowing surviving families to request official markers through the VA, ensuring that these heroes are not forgotten.

The bill also updates public eligibility information, making it easier for families to learn about and access this benefit. These changes are more than administrative, they are acts of remembrance. They restore honor where it has long been denied. We strongly support this pilot program and its potential to bring healing to families across the country.

We thank you again for your dedication to the well-being of veterans, their families, and the survivors they leave behind. Our work is rooted in the belief that honoring the dead must go hand-in-hand with supporting the living. These bills offer tangible progress toward that goal.

As Reverend Warnock so aptly stated:

> *The men and women in our military serve our country courageously—and their spouses serve our country, too. If one of our heroes loses their life in the line of duty, we should honor our servicemember's sacrifice by ensuring their spouse can retain survivor benefits if they choose to remarry.*

We stand ready to partner with you to advance these proposals and fulfill the promises made to our military families.

Gold Star Spouses of America, Inc.

Gold Star Spouses of America is a national nonprofit organization dedicated to supporting the surviving spouses of military service members and veterans who have made the ultimate sacrifice in defense of our country. Our mission is to provide meaningful support, advocacy, education, and a sense of community for Gold Star families. Through our programs, we work to ensure that the needs of these spouses and their families are heard, addressed, and prioritized by policymakers at the Federal, State, and local levels.

GSSA is listed as an approved resource in the National Resource Directory (NRD.gov) and has been approved by the Department of Defense as a resource on Military OneSource and in the "Days Ahead" binder for all active-duty losses.

GSSA is also recognized by the Department of Veterans Affairs for volunteer opportunities within the department's Center for Development and Civic Engagement.

Prepared Statement of Debbie Wasserman Schultz

Thank you to Chairman Luttrell and Ranking Member McGarvey for adding my bill, H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act, to the agenda for today's legislative hearing and for allowing me to speak on it.

And thank you to Congressman Max Miller for joining me as the Republican co-lead and to Senate Veterans Affairs Chairman Moran and Senator Rosen for leading this effort in the Senate.

The Fallen Servicemembers Religious Heritage Restoration Act is a straightforward, bipartisan bill that ensures the United States properly honors the religion and heritage of the men and women who made the ultimate sacrifice for our Nation.

It creates a program within the American Battle Monuments Commission to identify American-Jewish servicemembers buried in U.S. military cemeteries in ABMC purview under headstones that incorrectly represent their religion and heritage.

World War II was brutal and devastating, leading to challenges of ensuring every fallen American servicemember received the honor and respect of a proper burial.

From World War II alone, it's estimated that 600 American-Jewish servicemembers killed in action remain improperly buried under Latin Crosses rather than Stars of David.

While some of these improper burials were due to clerical errors, we have heard many stories of Jewish war heroes not wanting to display their faith on their dog tags while fighting against the antisemitic and genocidal Nazi regime.

But this issue is not limited to World War II. This spring, I had the honor of participating in a ceremony at Arlington National Ceremony to properly honor two World War I fallen American Jewish servicemembers, Private David Moser and Private First Class Adolph Hanf.

Both were laid to rest for over 100 years under a headstone etched with a Latin Cross. In a moving ceremony sponsored by Private Moser's niece, the headstones of these American heroes were replaced, properly honoring their heritage after all these years.

At a moment when antisemitism is at record highs, this moment of healing was incredibly special.

I've been honored by the wide-ranging organizational support for the bill. That list includes the American Legion, Jewish Federations of North America, the Military Order of the Purple Heart, Gold Star Spouses of America, Jewish War Veterans, and Veterans of Foreign Wars.

The Non-Commissioned Officers Association, Vietnam Veterans of America, and the Tragedy Assistance Program for Survivors, or TAPS, are also in support of this bill.

As the Ranking Member of the Military Construction and Veterans Affairs Appropriations Subcommittee, which provides funding for the ABMC, I am acutely aware that the programs Congress authorizes require funding to ensure proper implementation.

In the Fiscal Year 2026 MILCON/VA Appropriations bill on the floor this week, I secured $500,000 to carry out this mission within AMBC and will fight to ensure it stays in the bill as we continue the Fiscal Year 2026 appropriations process.

Thank you again for including H.R. 2701 in today's hearing.

Prepared Statement of Iddo Goldberg

PERSONAL STATEMENT OF IDDO GOLDBERG BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE IN SUPPORT OF H.R. 2701, THE *"FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT"*

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as an Israeli and an actor who has had the privilege of portraying complex characters in stories of war, identity, and resilience, I know the power of how we remember. The stories we choose to tell—and how we choose to tell them—shape our understanding of the past and our values in the present. That's why I strongly support H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This bill corrects a quiet injustice: the burial of Jewish American soldiers under Latin crosses in overseas U.S. military cemeteries, rather than under the Star of David. These were Jewish men who served and died for their country. Their graves should reflect that truth, clearly and proudly.

Operation Benjamin's work to restore these headstones has been deeply moving and profoundly necessary. Their efforts give dignity back to those who can no longer speak for themselves. But this shouldn't fall solely on a nonprofit. It's time for our governments to step up—to ensure that these fallen heroes are honored for who they truly were.

As someone who tells stories for a living, I believe this story matters. And it must be told accurately. These headstones are more than markers—they are symbols of identity, belonging, and respect.

I urge Congress to pass H.R. 2701. In doing so, we affirm that the memory of our Jewish heroes will endure, truthfully and honorably.

—
Iddo Goldberg
Israeli Actor and Storyteller
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iddogoldberg@mac.com

Prepared Statement of Jason Greenblatt

Personal Statement of Jason D. Greenblatt in Support of H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act

June 24, 2025

Chairman Luttrell and Ranking Member McGarvey, throughout my career—as a lawyer, a senior executive at The Trump Organization, and as Special Representative for International Negotiations under President Trump—I have had the honor of advocating for justice, dignity, and truth, especially when it comes to issues impacting the Jewish people and the U.S.-Israel relationship.

That's why I'm proud to express my strong support for H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act. This important legislation addresses a profound injustice: the misidentification of Jewish American servicemen buried under Latin crosses in U.S. military cemeteries overseas, rather than the Star of David that reflects their identity and faith.

These were brave Americans—Jews—who gave their lives in defense of the freedoms we hold dear. Honoring them properly is not a matter of religious preference; it is a matter of national integrity. Operation Benjamin's work to restore their true identity in death is sacred and commendable, but it should not fall on private citizens alone. H.R. 2701 gives our government the means to

correct these errors and ensure that all who visit these cemeteries see the full diversity of the American sacrifice.

At a time of deeply troubling antisemitism in the United States and abroad, it is more important than ever to affirm the presence, contributions, and dignity of Jewish Americans—especially those who gave their lives in service to this country. Passing this bill would send a clear and meaningful message: we see you, we remember you, and we honor you for who you truly were.

I respectfully urge Congress to pass H.R. 2701 without delay.

—
Jason D. Greenblatt
Former Assistant to the President & Special Representative for International Negotiations
Teaneck, NJ
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Prepared Statement of Jewish Federations of North America

Jewish Federations of North America

June 20, 2025

Subject: Submission for the Record – H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act

Chairman Luttrell, Ranking Member McGarvey, and Members of the Subcommittee:

On behalf of the Jewish Federations of North America (JFNA), I respectfully submit this letter for the record in support of H.R. 2701, the *Fallen Servicemembers Religious Heritage Restoration Act*.

An estimated 900 American-Jewish servicemembers who gave their lives during World War I and World War II and were buried in U.S. military cemeteries overseas were mistakenly interred under Latin Crosses—markers that do not reflect their religion or heritage. While these mistakes were largely inadvertent, they obscure the identity and legacy of those who made the ultimate sacrifice for our country.

American-Jewish servicemembers served with distinction and bravery, playing a vital role in securing Allied victory. They deserve to be remembered with both dignity and accuracy. The United States has a solemn responsibility to ensure that every fallen servicemember is properly honored—not only through ceremony, but through truth.

The *Fallen Servicemembers Religious Heritage Restoration Act* directs the American Battle Monuments Commission to establish a dedicated program to identify Jewish servicemembers who were buried under grave markers that do not reflect their faith and to engage their descendants. This is a long-overdue and deeply meaningful effort to correct the historical record and ensure our fallen heroes are remembered as they lived and served.

This bipartisan legislation reflects a shared commitment to honoring the legacy of all who served. We are proud to join a broad and diverse coalition—including the Jewish War Veterans, Gold Star Spouses of America, the Military Order of the Purple Heart, and others—in supporting this important measure.

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We are grateful to Rep. Debbie Wasserman Schultz (D-FL) and Rep. Max Miller (R-OH) for their leadership, and we urge swift passage of H.R. 2701 so that we may begin the long-overdue process of properly honoring these brave Americans.

Sincerely,

Omer Oppenheim

Director, Government Relations, Jewish Federations of North America

Prepared Statement of Shabbos Kestenbaum

TESTIMONY OF SHABBOS KESTENBAUM IN SUPPORT OF H.R. 2701, THE *"FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT"* BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as a Jewish activist, a graduate of Harvard Divinity School, and someone deeply engaged in the fight against antisemitism—particularly in academic spaces—I am proud to voice my support for H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This bill seeks to correct an institutional oversight that has gone unaddressed for far too long: the mistaken burial of Jewish American servicemen under Latin crosses in overseas U.S. military cemeteries, rather than the Star of David that reflects their faith and identity. These errors, while often unintentional, constitute a form of erasure—an erasure we cannot afford to ignore, especially in a time of resurgent antisemitism.

The work of private non-profit organizations like Operation Benjamin to restore these headstones is sacred, honorable, and historically essential. These men were Jews and Americans—two identities that are too often treated as incompatible, especially in today's hostile academic and social climates. In truth, these servicemen gave their lives not in spite of their Jewishness, but as proud Jews fighting for American ideals. Their legacy must reflect that truth.

H.R. 2701 empowers our government to ensure that these soldiers are remembered as they lived. It's not just about correcting a headstone—it's about affirming that Jewish identity has always been a part of the American story.

As someone who has challenged institutions that failed to protect Jewish students and Jewish dignity, I believe this bill offers a clear opportunity for Congress to stand up for historical justice and communal memory. I urge its swift passage.

Shabbos Kestenbaum
Jewish Activist and Harvard Divinity School Graduate
Lead Plaintiff, Anti-Discrimination Lawsuit Against Harvard University

Prepared Statement of Lee Trink

PERSONAL STATEMENT OF LEE TRINK IN SUPPORT OF H.R. 2701, THE *"FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT" SUBMITTED TO* THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as an entrepreneur working at the intersection of entertainment, gaming, and digital culture, I've spent my career helping shape how people connect with stories. But no story is more important—or more deserving of accuracy—than that of a soldier who gave their life for their country. That's why I strongly support H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This bill addresses a glaring historical wrong: the burial of Jewish American service members under Latin crosses in U.S. military cemeteries overseas, rather than under the Star of David—the symbol of their faith and identity. These were proud Jews who served and died as Americans. They deserve to be remembered as both.

I'm a proud Zionist and an unapologetic advocate for Jewish identity in every space I work in—whether it's entertainment, tech, or media. And I know how vital visibility is. Restoring these headstones isn't just about symbols—it's about truth, justice, and showing future generations that Jews have always stood up for freedom and democracy.

Organizations like Operation Benjamin have led the way in correcting these errors. Now it's time for our government to follow. H.R. 2701 provides the support needed to ensure these heroes are honored with the respect and accuracy they deserve.

At a time when antisemitism is growing louder, we need to raise the volume on Jewish stories of strength, sacrifice, and service. This legislation helps do just that.

I urge Congress to pass H.R. 2701 and make this important correction to our national memory.

_____

Lee Trink
Los Angeles, CA
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Prepared Statement of Liora Rez

June 24, 2025

Personal Statement of Liora Rez in Support of H.R. 2701, the Fallen Service Members Religious Heritage Restoration Act.

As the Founder and Executive Director of StopAntisemitism, I've spent years working to expose and confront antisemitism in all its forms—online, in our communities, and in our institutions. One of the most insidious forms of antisemitism is erasure: the quiet rewriting of Jewish stories out of the broader American narrative. That's why I strongly support H.R. 2701, the Fallen Service Members Religious Heritage Restoration Act.

This bill addresses a heartbreaking historical oversight: the burial of Jewish American service members under Latin crosses instead of the Star of David in U.S. military cemeteries overseas. These were Jewish patriots who gave their lives for this country, and yet—even in death—their identity was lost or misrepresented.

Operation Benjamin has done incredible work to right these wrongs, one grave at a time. Their efforts are a testament to the power of historical truth and communal memory. But they shouldn't have to do it alone. H.R. 2701 would give the American Battle Monuments Commission the tools it needs to partner with experts and ensure these heroes are properly honored.

At a time when antisemitism is on the rise, this bill sends a powerful message: Jewish lives, stories, and contributions matter. Our government has a responsibility not only to protect its citizens but also to remember them truthfully. Passing this legislation is a small but vital step toward that goal.

I urge Congress to act with urgency and moral clarity by passing H.R. 2701.

Sincerely,

Liora Rez
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Prepared Statement of Lizzy Savetsky

TESTIMONY OF LIZZY SAVETSKY IN SUPPORT OF H.R. 2701, THE "FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT" BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as a proud native Texan, a Jewish woman, and someone who uses my platform every day to celebrate Jewish identity and defend Israel, I'm honored to voice my strong support for H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This bill seeks to correct a deeply painful error: the burial of Jewish American soldiers under Latin crosses in overseas U.S. military cemeteries, despite the fact that they lived —and died—as Jews. It's a quiet form of erasure that, left unaddressed, diminishes both their legacy and our nation's commitment to honoring all who serve with accuracy and respect.

As someone who fights antisemitism and celebrates Jewish pride publicly, I know how powerful representation is. These Jewish service members deserve to rest under the symbol of their faith—the Star of David—so that generations to come will see the true face of American sacrifice, one that includes Jews who fought and died for this country. The work of Operation Benjamin to restore these headstones is sacred. But it shouldn't

fall only to a nonprofit to fix what is ultimately the government's responsibility. H.R. 2701 ensures that our fallen Jewish heroes are finally honored in accordance with who they were.

In a moment where antisemitism is surging and Jewish visibility matters more than ever, passing this bill is not only the right thing to do—it's a powerful act of remembrance and justice.

I strongly urge Congress to pass H.R. 2701 without delay.

—

Lizzy Savetsky
Social Media Influencer & Pro-Israel Activist
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Prepared Statement of Nicole Neily

Personal Statement of Nicole Neily in Support of H.R. 2701, the *Fallen Servicemembers Religious Heritage Restoration Act*

June 24, 2025

As the founder and president of Defending Education, I work every day to ensure that students are educated—not indoctrinated—and that families have a voice in what their children learn and how they are treated. In recent years, we've seen a troubling rise in efforts to politicize education and divide students along lines of identity—including the normalization of antisemitism in the K-12 space.

That's why I'm proud to support H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act. This legislation addresses a long-standing wrong: the mistaken burial of Jewish American soldiers under Latin crosses in overseas U.S. military cemeteries. These men died for a country they loved, and their identity as Jews deserves to be recognized and honored.

Organizations like Operation Benjamin that are working to research these soldiers have shown how powerful it is to restore these headstones—not only for the families, but for the nation. Restoring the Star of David to these graves is more than a correction; it is an affirmation that Jewish Americans are an integral part of our shared history and national story.

At a time when antisemitism is growing—not only online or on college campuses but increasingly in our elementary and high schools—this bill sends a powerful message: Jewish identity matters. Jewish service matters. And Jewish lives must be remembered fully and truthfully.

Unfortunately, I am personally familiar with the importance of a soldier's grave marker reflecting his religious beliefs; my younger brother was buried at Arlington National Cemetery in 2018, and we felt privileged to be able to choose the symbol that best reflected David's faith. The soldiers, sailors, and airmen who made the ultimate

sacrifice on behalf of our country deserve the same - and as a grateful nation, this is the least we can do to thank them.

We must model for our children what it looks like to stand up for truth, dignity, and historical justice. I urge Congress to pass H.R. 2701 and ensure that these fallen Jewish heroes are remembered as they truly were.

—
Nicole Neily
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Arlington VA
Nicole.k.neily@gmail.com

Prepared Statement of National Organization of Veterans' Advocates, Inc.

Chairman Luttrell, Ranking Member McGarvey, and members of the DAMA Subcommittee, thank you for the opportunity to offer our views on pending legislation.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents over 850 accredited attorneys, agents, and other qualified members practicing across the country and assisting tens of thousands of our Nation's military veterans, survivors, family members, and caregivers seeking to obtain their earned benefits from VA. NOVA members advocate for their clients before the Department of Veterans Affairs (VA), Board of Veterans' Appeals (Board), U.S. Court of Appeals for Veterans Claims (CAVC), U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and U.S. Supreme Court. NOVA works to develop and encourage high standards of service and representation for all persons seeking VA benefits.

NOVA advocates for laws and policies that advance the rights of veterans. For example, NOVA collaborated with Veteran Service Organizations (VSOs) and other accredited representatives, VA, and Congress on appeals modernization reform. Those efforts resulted in passage of the *Veterans Appeals Improvement and Modernization Act* (AMA), P.L. 115–55, 131 Stat. 1105, which was signed into law in 2017. At the time of its passage, VA emphasized the AMA would provide claimants with more choice and control over the disability claims and appeals adjudication process by expanding their review options.

NOVA also advances important cases and files amicus briefs in others. *See, e.g., NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013) (addressing VA's failure to honor its commitment to stop applying an invalid rule); *Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019) (amicus); *NOVA v. Secretary of Veterans Affairs*, 981 F.3d 1360 (Fed. Cir. 2020) (M21–1 rule was interpretive rule of general applicability and agency action subject to judicial review); *National Organization of Veterans' Advocates, Inc., et al., v. Secretary of Veterans Affairs*, 981 F.3d 1360 (2022) (Federal Circuit invalidated knee replacement rule); *Arellano v. McDonough*, 598 U.S. 1 (2023) (amicus); *Terry v. McDonough*, 37 Vet.App. 1 (2023) (amicus); *Bufkin v. Collins*, 604 U.S.__(2025) (amicus).

A critical part of NOVA's mission is to educate advocates. NOVA currently conducts two conferences per year, each offering approximately 15 hours of continuing legal education (CLE) credit for attendees. Experts from within and outside the membership present and train on the latest developments and best practices in veterans law and policy. NOVA sustaining members must participate in at least one conference every 24 months to maintain eligibility to appear in our public-facing advocate directory. In addition to conferences, NOVA offers webinars, online support, peer-to-peer mentorship, and other guidance to its members to enhance their advocacy skills.

NOVA is happy to provide feedback on the following bills.

H.R. 659, Veterans Law Judge Experience Act of 2025

NOVA supports H.R. 659, Veterans Law Judge Experience Act of 2025, which will require the Chairman of the Board to give priority to individuals with three or more years of legal experience in relevant veterans law for positions as Veterans Law Judges. The expansion of benefits in recent years makes it more important than ever that those who are making benefits decisions on behalf of our Nation's veterans, survivors, family members, and caregivers come to their positions, whenever possible, with the requisite knowledge and experience.

H.R. 2055, Caring for Survivors Act

NOVA supports H.R. 2055, Caring for Survivors Act. This bill makes important changes that will provide better support to surviving spouses. NOVA supported similar legislation introduced in the last Congress. The current dependency and indemnity (DIC) benefit is $1653.07, which is only about 43 percent of what a 100-percent service-connected veteran receives. Benefits for survivors of Federal civil service retirees are calculated as a percentage of the retiree's benefits, up to 55 percent. H.R. 2055 would increase the DIC rate to 55 percent of what a totally disabled veteran receives and this increase ensures equity for surviving spouses.

In addition, H.R. 2055 would amend the 10-year rule. Currently, if a veteran is 100-percent service connected for 10 years before his or her death, the surviving spouse is eligible for DIC even if the death is not service connected. This bill will provide a partial DIC benefit for the surviving spouse if the veteran dies 5 years after being rated totally disabled, with full entitlement at 10 years.

H.R. 3123, Ernest Peltz Accrued Veterans Benefits Act

NOVA supports H.R. 3123, Ernest Peltz Accrued Veterans Benefits Act. NOVA supports the payment of pension due and unpaid at the time of the veteran's death, to the veteran's spouse, children, dependent parents, or estate.

H.R. 3833, Veterans' Caregiver Appeals Modernization Act of 2025

NOVA supports H.R. 3833, Veterans' Caregiver Appeals Modernization Act of 2025, with qualifications. NOVA members represent caregivers in appeals. Our members report extensive problems with appeals being properly docketed and relevant records not being promptly associated with the file, causing lengthy delays in resolution of appeals. NOVA supports efforts to improve this process.

To that end, NOVA supports improvements for VHA and Board employees to access applications and appeals. Without more details, however, we cannot unequivocally support development of a new system when existing programs such as the Veterans Benefits Management System (VBMS) and Caseflow exist. Given VA's challenges with implementing new technological programs and finite resources, it makes more sense to put resources into existing systems to improve and modernize them to support appeals for caregivers.

NOVA fully supports the ability of a family caregiver to receive monthly stipends to which he or she was entitled and were due and unpaid on the date of the death of the eligible veteran, as well as the requirement that VHA employees responsible for these appeals receive the same guidance and complete the same training as a higher-level adjudicator in VBA.

H.R. 3834, The Protecting Veterans Claims Options Act

NOVA supports H.R. 3834, The Protecting Veterans Claims Options Act. First, this legislation would counter the negative result of the recent CAVC decision in *Loyd v. Collins*,__ Vet.App.__, No. 22–5998 (May 8, 2025). Mr. Loyd filed a supplemental claim within a year of VA's denial of his left eye condition. VA denied the supplemental claim, on the basis the veteran had not submitted new and relevant evidence. The Board subsequently denied the appeal on the same basis, never reaching the underlying merits of the appeal. The CAVC affirmed the Board's decision. As noted in the dissenting opinion, however, this holding "seems likely to be the death knell for supplemental claims following AOJ decisions." Slip op. at 30–31. Furthermore, "the majority's endorsement of the Secretary's common contention that there is no prejudice to the veteran because he can always file another supplemental claim fails to appreciate the realities of VA's system. The veteran will never get the Board to review the merits of his claim, notwithstanding his timely efforts, if he cannot gather more or better evidence that the Board deems new and relevant or draw a Board member that does not make the mistakes evident here—the apparent inattention to both the additional evidence considered by the AOJ in adjudicating the supplemental claim and the AOJ's unduly miserly test for relevance." *Id*. at 31 (footnote omitted).

Under 38 U.S.C. § 7104(a), veterans are entitled to "one review on appeal to the Secretary" that "shall be made by the Board." Furthermore, the Board's decisions "shall be based on the **entire record** in the proceeding and upon consideration of **all evidence** and material of record and applicable provisions of law and regulation." 38 U.S.C. § 7104(a) (emphasis added). These are bedrock principles of the veterans benefits system and The Protecting Veterans Claims Options Act will ensure that veterans are not deprived of their right to have the Board decide the merits of their appeal based on consideration of the entire record.

Second, this bill would allow a veteran, survivor, family member, or caregiver whose case has been remanded by the CAVC to submit evidence to the Board within 90 days following a remand, which the Board would be required to consider in the first instance. This provision promotes efficiency for appellants and the system overall.

H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act

NOVA supports H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act, with qualifications. NOVA appreciates and supports VA's embrace of automation to decide claims and appeals in a more timely fashion. To be clear, however, Congress should require that existing VA automation tools be analyzed under Sec. 2(c) to ensure these tools meet the mark before they are expanded further throughout VBA. Furthermore, Congress needs to ensure VA has the funding and employees to verify that these automation tools achieve more accurate

and timely decisions for veterans, survivors, family members, and caregivers, and that adequate human oversight is exercised in every claim and appeal.

This bill also addresses a critical issue regarding correct labeling of documents. Specifically, the Secretary would be required to create a plan to ensure that documents in VBMS are correctly labeled. This problem has existed since the creation of VBMS and NOVA has long urged VA to correct it, providing feedback and offers of assistance to create accurate labels. For example, VA overuses the label "Third Party Correspondence" to describe a wide variety of documents, e.g., lay statements from veterans, briefs/argument submitted by accredited advocates, and medical opinions. Inconsistent labeling results in VA employees and examiners missing important evidence and information that is necessary to correctly decide claims and appeals. We applaud Congress's efforts to correct this long-standing problem and, should this bill become law, we urge VA to seek input from the accredited stakeholder community to advise on improvements. Furthermore, NOVA recommends an addition to Section 3(b) that would allow accredited representatives to label the documents they submit electronically to VA.

H.R. 3835, Veterans Appeals Efficiency Act

NOVA does not support H.R. 3835 in its entirety as currently drafted.

Reporting Requirements. NOVA generally supports the provisions that require the Secretary to report on the length of adjudication (Section 2(b)) and information on certain claims/notice of certain assignments (Section 2(c)). Congress, however, must ensure that VA has the necessary resources to collect and report such data so as to not interfere with the Board's primary mission as articulated at 38 C.F.R. § 20.103: "The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal."

Advancement on the Docket. NOVA supports the prescription of guidelines for advancement on the docket at the Board, primarily to ensure consistency in how such rules are applied. Presently, the Board considers 75 years to be the age for automatic advancement on the docket; however, the VA Regional Offices apply the rule at age 85. Congress should institute a set age of 75 for all claimants.

Board Aggregation/Precedential Decisions. NOVA does not support the aggregation provisions as currently written. This bill needs to provide more clarity on the role of the study prior to implementation of actual aggregation. Section 2(d)(1)(A) would amend 38 U.S.C. § 7104(a) to add the following new sentence: "If the Chairman of the Board determines that more than one appeal involves common questions of law or fact, the Chairman may aggregate such appeals to decide such questions of law or fact." That provision takes "effect on the date of the enactment of this Act" but will "apply beginning on the date on which the Secretary of Veterans Affairs completes the developments of policies and procedures required under subsection (g)(4)(A)(ii)." Subsection (g)(4)(A)(ii) provides for the development of policies and procedures to implement the recommendations in FFRDC assessment with respect to the authority of the Board. The language is confusing and the authority bestowed under Section 2(d)(1)(A) appears to put the cart before the horse.

This bill correctly identifies problems with inconsistent Board decisions that hinder efficient and accurate appeals processing. Aggregate action is a powerful tool that, used well, may address these problems. As currently drafted, however, the bill is too broad, provides too much unilateral authority to the Board Chairman, and risks introducing further systemic inefficiency.

Specifically, the only additional guidance regarding aggregation that the bill provides is at section 2(d)(3), defining "aggregate" to encompass "any practice or procedure to collect common issues, claims, or appeals by multiple parties for the purposes of resolving such issues, claims, or appeals," including "the use of joinder, consolidation, intervention, class actions, and any other multiparty proceedings." This broad language allows for the Secretary, acting through the Board Chairman, to unilaterally convene a class of unrepresented claimants and decide—without mention of any right of notice or opportunity to opt out—one or more common questions of law or fact adversely and in binding fashion across the entire class. Statutory restrictions upon VA's ability to provide information regarding a claimant or claim to third parties (intended to protect veterans' privacy) would also pose potentially substantial obstacles against providing notice to claimants whom the Board Chairman's aggregate action might adversely affect.

Furthermore, the bill, as drafted, leaves in question whether adversely affected claimants even could appeal any such action. The Federal Circuit has ruled that the CAVC has no jurisdiction to review a decision of the Board's Chairman. See *Mayer*

v. Brown, 37 F.3d 618 (1994). Based on that precedent, adverse aggregate action by the Chairman could stand absolute, immune to appeal. The bill's commission of such unilateral power and discretion to the Chairman also would be at odds with 38 U.S.C. § 7102(b), which instructs that "[a] proceeding may not be assigned to the Chairman as an individual member," subject to section 7103(a)'s provision that the Chairman may "order[] reconsideration of the decision" and then, pursuant to section 7102(b), participate among a multi-judge panel in that reconsideration.

At this time, NOVA recommends proceeding with the FFRDC assessment that will provide for a broader debate about the potential role of aggregation or other related policies at the Board, to include consideration of use of precedential decisions at the Board.

Ensuring Compliance with Board Remands. It is critically important that the Board ensure substantial compliance with a decision to remand, even though the Board does not maintain jurisdiction in the AMA system upon a remand. This language of this section, however, is confusing as to the role of the agency of original jurisdiction in this process. Specifically, under (f)(2)(B), it is unclear how a determination of "such decision was unnecessary" would be made. This section needs more clarification.

CAVC Jurisdiction. NOVA supports the expansion of the CAVC's class action jurisdiction in the amendments proposed for 38 U.S.C. § 7252(b).

NOVA does not support the amendments proposed for 38 U.S.C. § 7252(c). Existing law permits the CAVC to exercise limited remand authority, which it has done since its earliest decisions. *See, e.g., Gilbert v. Derwinski*, 1 Vet.App. 49, 59 (1990) (Court retained jurisdiction and remanded for the Board to provide adequate reasons or bases for its determinations). This language as drafted seems too rigid. For example, it should not require the CAVC to make a rule defining the amount of time to allow for every limited remand because each case is different. Any such "guidelines" can be included in the CAVC's Internal Operating Procedures, but should not be in the Rules of Practice and Procedure.

H.R. 3983, Veterans Claims Quality Improvement Act of 2025

NOVA supports H.R. 3983, Veterans Claims Quality Improvement Act of 2025, with qualifications. NOVA supports policies, procedures, and technological capabilities to inform VBA employees of avoidable deferrals, as well as a program for quality assurance in Board decisions. In addition, NOVA supports a training program for Board members on timely and correct adjudication of appeals. As previously noted, however, it is important that Congress ensure VA and the Board have the appropriate resources to carry out these functions so as to not interfere with their main mission to decide and issue decisions on the claims and appeals of veterans, survivors, family members, and caregivers.

NOVA supports further discussion and study of the role that OGC opinions could potentially have in fostering consistency in decisions on issues raised in CAVC appeals.

NOVA supports the amendment to 38 U.S.C. § 7104 that would require the Board to provide specific reasons for a remand, to include any failure of VA to comply with duty to assist and the duty to notify. Specificity as to these failures will assist the veteran in determining how to proceed on remand and allow the Board and the CAVC to more readily determine whether VA corrected the errors identified in the remand should the issue(s) return to either body in any future proceedings.

Conclusion

NOVA appreciates the opportunity to present its views to the Subcommittee. We remain committed to working with this Committee, VA, and accredited stakeholders to improve the VA disability and claims adjudication process for veterans, survivors, family members, and caregivers.

For more information:

NOVA staff would be happy to assist you with any further inquiries you may have regarding our views on this important topic. For questions regarding this testimony or if you would like to request additional information, please feel free to contact Diane Boyd Rauber by calling NOVA's office at (202) 587–5708 or by emailing Diane directly at drauber@vetadvocates.org.

Prepared Statement of John Ondrasik

TESTIMONY OF JOHN ONDRASIK IN SUPPORT OF H.R. 2701, THE *"FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT"* BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as a singer-songwriter who has spent my life telling stories—of courage, sacrifice, and the human spirit—I believe in honoring those who gave everything for this country with truth and dignity. That's why I fully support H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This bill addresses a painful historical mistake: the burial of hundreds of Jewish American soldiers under Latin crosses instead of the Star of David in U.S. military cemeteries overseas. These were Jewish heroes who died fighting for freedom, and they deserve to be remembered as who they truly were—in life and in death.

I've long been an advocate for Jewish visibility, truth, and justice—values I see reflected in the incredible work of Operation Benjamin, which has quietly and respectfully restored Jewish headstones for these fallen warriors. But this should not be the work of volunteers alone. It is time for the U.S. government to step in and ensure these men are honored with the full recognition they've earned.

In an era where antisemitism is once again on the rise, this legislation is more than a correction—it's a statement. It says that Jewish identity is not to be hidden or ignored,

but acknowledged, respected, and remembered. We can't change the past, but we can choose how we remember it.

I urge Congress to pass H.R. 2701 and ensure that every fallen soldier receives the honor they deserve—not just for the country they served, but for the identity they carried.

John Ondrasik
Singer-Songwriter, Five for Fighting
Los Angeles, CA
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Prepared Statement of Paralyzed Veterans of America

Chairman Luttrell, Ranking Member McGarvey, and members of the subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on some of the pending legislation impacting the Department of Veterans Affairs (VA) that is being considered during today's hearing. No group of veterans understand the full scope of benefits and care provided by the VA better than PVA members—veterans who have acquired a spinal cord injury or disorder (SCI/D).

H.R. 659, the Veterans Law Judge Experience Act

This legislation would prioritize the appointments of individuals with three or more years of veterans law experience to the Board of Veterans' Appeals (Board). PVA supports this legislation because it would help ensure that those who are deciding the pending appeals for veterans have the experience necessary to increase the accuracy and number of decisions coming from the Board.

H.R. 2055, the Caring for Survivors Act

Losing a spouse is never easy but knowing that financial help will be available following the death of a loved one can ease this burden. Dependency and Indemnity Compensation (DIC) is intended to protect against survivor impoverishment after the death of a service-disabled veteran. In 2025, this compensation starts at $1,653.07 per month and increases if the surviving spouse has eligible children who are under age 18. DIC benefits last the entire life of the surviving spouse except in the case of remarriage before reaching 55. For surviving children, DIC benefits last until the age of 18. If the child is still in school, these benefits might go until age 23. The DIC program was established in 1993 and has been minimally adjusted since then. In contrast, monthly benefits for survivors of Federal civil service retirees are calculated as a percentage of the civil service retiree's Federal Employees Retirement System or Civil Service Retirement System benefits, up to 55 percent. This difference presents an inequity for survivors of our Nation's heroes compared to survivors of Federal employees. DIC payments were intended to provide surviving spouses with the means to maintain some semblance of economic stability after the loss of their loved one.

PVA strongly supports the Caring for Survivors Act of 2025, which would increase the amount of DIC to an amount equal to 55 percent of the compensation received by a 100 percent service-disabled veteran with a spouse. This change would bring the benefit in line with the standard for survivors of Federal employees. The bill would also reduce the timeframe a veteran needed to be rated totally disabled from 10 to 5 years. Current law restricts the DIC benefit for survivors if the veteran was rated at 100 percent for less than 10 years before his or her death. The reforms included in the Caring for Survivors Act would allow greater numbers of survivors to benefit from this important program.

H.R. 2721, the Honoring our Heroes Act

Currently, only veterans who died on or after November 1, 1990, can be furnished a government headstone or marker for their resting place, regardless of whether the grave is already marked with a privately purchased headstone or marker. The only exception to this is if the veteran's grave is currently unmarked. PVA supports the Honoring Our Heroes Act of 2025, which would allow veterans who passed away prior to November 1, 1990, to be able to have this same benefit afforded to their final resting place. PVA believes that all families should be able to honor their veteran loved ones regardless of when they passed away.

H.R. 3123, the Ernest Peltz Accrued Veterans Benefits Act

PVA supports this legislation, which would allow the VA to award entitlement to accrued pension benefits to the surviving family members of veterans who were awarded entitlement but died before such benefit was paid. In many cases, accrued benefits can be paid to surviving family members in DIC claims so we believe that it makes sense that the VA treats Non-Service Connected (NSC) Pension claims the same. In addition, veterans who are eligible for NSC Pension benefits are at the poverty level, and these funds could be critical to helping the surviving family members.

H.R. 3833, the Veterans' Caregivers Appeals Modernization Act

The Veterans Health Administration lacks an integrated system to manage applications and appeals pertaining to its Program of Comprehensive Assistance for Family Caregivers (PCAFC). As a result, medical records and patient documents are

scattered across multiple platforms, many of which are not accessible to all VA staff involved in the process. This creates delays, confusion, and unjust denials, particularly during appeals, which can take years to resolve. Also, some of our members receive care from outside providers that could be relevant to their PCAFC application; thus, capturing this information is extremely desirable.

PVA supports this bill, which seeks to create a single system where medical records, including those from providers outside of VA, PCAFC applications, PCAFC assessments, and Centralized Eligibility and Appeals Team decisions through all levels of appeals would be kept. This would give all interested parties access to the complete information for each veteran and caregiver through a single records system. Such a move is way overdue and might be achievable by leveraging VA's existing systems versus creating or procuring a new product. The bill also clarifies deadlines to file an appeal and allows caregivers to be eligible for past-due caregiver stipends, if the caregiver application is eventually granted on appeal, including in cases where the veteran dies during the pendency of the appeal.

H.R. 3854, the Modernizing All Veterans and Survivors Claims Processing Act

This bill requires the VA to develop and submit a proposal to Congress for the use of automation to streamline the processing of claims administered by the Secretary. By automating the retrieval of service records, the information sharing between Federal agencies, the dissemination of correspondence, and the compilation of relevant evidence, VA could significantly reduce the time needed for the processing of VA claims and reduce veterans' wait times. Another provision requires VA to implement policies, processes, and leverage technological capabilities to ensure that when a veteran or school age child is awarded benefits based on the child attending school, Veterans Benefits Administration's (VBA) Compensation Service and Education Service are each automatically updated to help prevent overpayments of dependent benefits. Other language directs the VA to ensure that documents in VA's electronic claims processing system are correctly labeled when they are uploaded into that system, including when they are automatically labeled using AI technology. PVA supports this legislation and looks forward to its passage.

H.R. 3834, the Protecting Veterans Claim Options Act

Currently, when a veteran disagrees with a decision from VA, they can choose one of three options to appeal it. One of those options is the "supplemental claim," which requires the veteran to submit "new and relevant" evidence to continue their claim. However, many times the VA denies that the new evidence is relevant, in which case, the veteran is left having to try and appeal, not on the merits of his or her original claim, but on the relevance of the evidence. This creates an undue burden on the veteran and needlessly drags out a claim far longer than necessary. PVA supports the Protecting Veterans Claims Options Act, which would ensure that the Board decides on the merits of the claim, and that an appeal could not be denied due to the lack of "new and relevant" evidence with a timely filed supplemental claim.

H.R. 3627, the Justice for America's Veterans and Survivors Act of 2025

This legislation would require the VA to create an annual report on the cause of death among veterans, with particular focus on whether the individual veterans were rated as totally disabled, the primary cause of death, the secondary cause of death, and whether the veteran died by suicide secondary to a disability for which the veteran was rated as totally disabled. PVA supports the intent of this legislation and believes that the additional information to be gathered is a step in the right direction to help veterans who are at risk of dying by suicide. However, we suggest the following change to help increase the quality of information gathered. Specifically, we believe combining these new efforts with the Behavioral Health Autopsy Program (BHAP) would help the VA better understand the circumstances surrounding suicide and develop prevention strategies. BHAP was established in 2012 to enhance suicide prevention efforts by learning more about the circumstances and contexts surrounding veterans' deaths by suicide. To do this, BHAP systematically collects information for all veteran deaths by suicide reported to VA clinicians and Suicide Prevention Teams through comprehensive medical record reviews and interviews with family members who have lost loved ones to suicide. In addition, while BHAP collects the data of all veterans who were reported to have died by suicide, this legislation focuses on those who "died by suicide secondary to a service-connected disability rated as total." Combining these efforts would result in a more well-rounded picture.

H.R. 3951, the Rural Veterans' Improved Access to Benefits Act of 2025

The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (P.L. 116–315) created a pilot program that allowed VA's contracted healthcare professionals to provide medical disability examinations across State lines. This bill would make that authority permanent and expand the categories of providers who can perform cross-state disability exams. Also, it requires the VA to establish a mechanism for providers to submit evidence that a veteran brings with them to the examination to the VA, a process which is currently not in place. PVA supports expanding and permanently extending this authority and greatly appreciates the provision directing VA to consider evidence the veteran may bring with them to their disability examination appointments.

H.R. 3835, the Veterans Appeals Efficiency Act of 2025

This bill creates additional reporting and tracking requirements for VBA and the Board, such as information on Higher Level Reviews, Supplemental Claims, and Notices of Disagreement. It also requires the tracking of claims pending in the National Work Queue, not assigned to an adjudicator; cases that are remanded by the Board; Veteran Appeals Improvement and Modernization Act cases pending a hearing; and when a decision-maker did not comply with the Board's decision. We recognize the value of and support efforts to track meaningful data to improve the effectiveness and accuracy of the claims process. However, the data sought by this legislation will be meaningless until the VA first fixes their problems with obtaining medical opinions, since the lack of them are constantly creating remandable errors.

This legislation would also give the Board the authority to aggregate certain claims. While PVA does not oppose allowing the Board to aggregate appeals involving common questions of law or fact, we believe that before that can be done a feasibility study should be conducted, and the findings reviewed. Then, legislation based on those findings could be brought forth.

H.R. 3983, the Veterans Claims Quality Improvement Act of 2025

This legislation would require the VA to develop policies and procedures to provide notice to an employee of the VBA that they had committed an "avoidable deferral" during the claims adjudication process. In addition, it would also require a report on "inconsistent opinions in matters involving substantially similar questions of law or fact" that had come from the Office of General Counsel.

While we generally do not have concerns with the first two provisions, we believe that the term "avoidable deferral" needs to be defined. While VA and others have used this term to point out broader adjudicative issues, having this be a reason for punitive actions against individual employees requires a specified reason that the deferral was "avoidable" or else the legislation is meaningless.

A third provision in the bill directs the Chairman of the Board to establish a program to ensure the quality of Board decisions with a requirement to report to the Veterans' Affairs Committees annually. This section would impose many requirements related to items that are already the Board's responsibility. Instead of a new law, the Board should be held accountable for these existing requirements.

PVA would once again like to thank the subcommittee for the opportunity to submit our views on the legislation being considered today. We look forward to working with you on this legislation and would be happy to take any questions for the record.

Information Required by Rule XI 2(g) of the House of Representatives

Pursuant to Rule XI 2(g) of the House of Representatives, the following information is provided regarding Federal grants and contracts.

Fiscal Year 2025

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events——Grant to support rehabilitation sports activities—$502,000.

Fiscal Year 2023

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events——Grant to support rehabilitation sports activities—$479,000.

Fiscal Year 2022

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events——Grant to support rehabilitation sports activities—$ 437,745.

Disclosure of Foreign Payments

Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.

Prepared Statement of Quality of Life Foundation

Chairman Luttrell, Ranking Member McGarvey, and members of the subcommittee, Quality of Life Foundation (QoLF) would like to thank you for holding this hearing and allowing us to submit a statement for the record on pending legislation. We would like to offer a special thanks to Congressman Barrett for introducing H.R. 3833, Veterans' Caregivers Appeals Modernization Act, which would allow medical records from both Department of Veterans Affairs (VA) and outside providers to be stored in a single system created specifically for VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC).

QoLF's sole focus is on helping caregivers of veterans navigate PCAFC. We help caregivers of veterans apply for and appeal eligibility decisions regarding PCAFC while participating in legislative and policy advocacy around PCAFC and its collateral programs like extended care services. In our work, we found that many caregivers and veterans are denied PCAFC based on a lack of evidence in the record rather than the actual lack of need for assistance. To combat this, we run education programs for caregivers to assist them in ensuring a medical record documents the evidence of the veteran's need for assistance. Our programs are made possible by grants received from other veteran service organizations, and we do not charge the veterans and caregivers we serve.

In our education calls for initial and repeat applications, clinical appeals, higher-level reviews, and supplemental claims, we urge caregivers and veterans to collect the veterans' Community Care Records (CCN) and any additional outside medical records the veteran may have through providers under private pay or other health insurance. Previously, QoLF has testified on how difficult it is for a veteran's outside medical records to be considered by the Caregiver Eligibility and Appeals Team (CEAT) who make the determination of whether veterans and caregivers quality for PCAFC. Differing IT policies at each VA Medical Center (VAMC) restricted who could place the records in the file for PCAFC consideration. Some VAMC Caregiver Support Programs (CSP) had the authority to scan any outside records directly into a veteran's record. Other VAMC CSP teams had a special person in records responsible for uploading outside records that were sent to CSP. Still other VAMC's had a policy that the Primary Care Manager (PCM) went through the submitted outside records, determined what was relevant to be scanned in, and submitted relevant records to VA Medical Records office to be scanned. Last, some VAMC's required that veterans and caregivers simply drop the outside medical records at VA Medical Records office to be placed in the queue for scanning where they would sit until they were reached. Additionally, there did not appear to be any uniform policy as to which VA technology system the records were scanned into.

Beyond the initial PCAFC application, veterans and caregivers have multiple appeals options. There are two levels of Veteran Health Administration (VHA) clinical appeals, a VHA supplemental claim that is done using a Veteran Benefit Administration (VBA) process, a VHA higher-level review that is done using a VBA process, and an appeal to the Board. These appeals can be done in any order, and appeals focus on the last decision made in the queue of appeals for the same initial application. However, the varying method of collecting medical records ensured outside records were often missed as clinical appeals, supplemental claims, higher-level reviews, and Board appeals may not have access to whichever system the outside records were scanned into. As advocates who work on clinical appeals, supplemental claims, and higher-level reviews only for PCAFC, this meant we were constantly having veterans and caregivers get additional copies of records to send in with every level of appeal they were doing so there would not be a delay in decisions while the appropriate records were gathered.

Recently, QoLF reached out to VA Central Office (VACO) CSP leadership to ask if there had been a change for the collection of veterans' outside medical records after multiple caregivers came to us asking about mailing records to a P.O. Box in Janesville, WI, for initial or new applications. The reply we received in early June stated that all outside medical records were to be sent to the same Janesville, WI, mailbox as the 10–10 CG, the application form for PCAFC. (QoLF has supplied this

correspondence to the HVAC majority DAMA and TechMod staffers.) VACO CSP stated the reason for this change was to offer a way to ensure veterans' outside medical records were getting into a system used by the CEATs and the Board, establishing uniformity. This policy change circumvented the multiple different scanning processes that veterans and caregivers had faced at the multiple VAMCs, allowing CEATs and the Board full access to all the information submitted with the initial application.

QoLF was pleased to learn through the inquiry that, under this method, the elapsed time from opening the mail to scanning in received records is usually one to two business days. We do know that these records are now visible to the CEATs when making decisions. However, we are not sure what system these records are entered into. We know it is not the veteran's medical record, and the wording of inquiry response does not read as if the records are uploaded to the Caregiver Records Management Application (CARMA).

QoLF's inquiry unearthed further complications. According to the answers we received, records submitted for VHA clinical appeals are not sent to Janesville, WI. PCAFC clinical appeals are submitted at the veterans' local VAMC to the Patient Advocate. The Patient Advocate then scans in the appeals paperwork, including any additional outside medical records the veteran and caregiver told VA were available but VA failed to collect as part of their "duty to assist" the veteran and caregiver in developing their application. These records are then uploaded and stored, in the Patient Advocate Tracking System (PATS) because VHA clinical appeals for PCAFC are governed by different directives than the VHA appeals which run under the VBA process. Should a veteran and caregiver decide to progress to a supplemental claim, higher level review, or Board appeal, QoLF is unclear how those records would be transferred from PATS into the new system outlined in the inquiry response. We know they have to be transferred as the appeal must be based on the latest decision stemming from that original PCAFC application decision; however, QoLF did not include this in our inquiry. This information was new to us as we began writing our testimony for this hearing, and our time for inquiry had passed.

Please do not take our explanation of this new process as criticism. QoLF is thrilled that VACO CSP has taken steps to simplify getting outside records into the PCAFC application and appeal process. Inclusion of the veteran's outside medical records along with differential VAMC IT policies are two significant barriers to correct approvals in PCAFC, and we have included this in multiple congressional testimonies. However, as cited above, QoLF still has concerns about the multiple systems these records may be stored in and the fact they are not stored in the veteran's medical records, thus necessitating a second copy of the records be obtained for the veteran's doctors to use for treatment purposes.

QoLF believes H.R. 3833, Veterans' Caregivers Appeals Modernization Act, would create a single system which would keep the veteran's outside medical records, PCAFC applications, PCAFC assessments, and all CEAT decisions, through all levels of appeals. This would give all advocates, agents, Veterans Service Officers (VSO), VA staff, and the Board access to the complete application and appeals process information, as well as needed medical documentation, for each veteran and caregiver in one records system, which is long overdue.

QoLF has another concern that we ask this legislation to address. PCAFC falls under VHA as a clinical support program. As such, as advocates, we have to be recognized by VHA, something that is currently done through using Releases of Information (ROIs). Congress passed another form of VHA acknowledgment and certification for organizations that work within VHA under Section 129 of the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act. However, lately we see this clinical program being confused as a VBA programs, in both practice and paperwork.

Recently, we worked with a veteran and caregiver on an initial application to document the veteran's needs for assistance. The decision came back approved. However, the veteran's benefits service officer and organization were the one copied on the decision, even though this is not a benefit of nor decided by VBA. In fact, the application is a VHA application and has no area to designate a VSO representative. It concerns QoLF that this information is being released to a VSO, information that a veteran and caregiver may not want released. QoLF would ask that in this bill, that Congress re-affirm that PCAFC is a clinical intervention governed by VHA and that any technology and records system created to house this information be accessible to veterans, caregivers, and their accredited VHA representatives as deemed by VA under section 129 of the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Act.

To remedy the confusion being found in practice, QoLF asks that this piece of legislation offer clarification on submission of a new application while an appeal is

pending. Because PCAFC is a VHA program, QoLF has been told by VACO CSP that veterans and caregivers are allowed to submit new applications for PCAFC while appeals are pending. This submission of a new application for PCAFC does not impact the potential backpay that a caregiver and veteran dyad would receive if their appeal is granted in the future. Because we have this clarification, QoLF routinely has veterans and caregivers submit new applications for PCAFC while their supplemental claims, higher level reviews, and Board appeals languish in a usually no less than twenty-four months process. This new application is especially crucial for those veterans who are terminally ill.

Clarifying the clinical nature of this program would allow more veteran and caregivers to fully access this program. Many VSOs treat PCAFC as a benefits program and tell caregiver and veteran dyads that submitting new applications will trigger a loss of entitlement to backpay, which is not true under the VHA process. QoLF currently has two caregivers in this situation. We have now helped them to ensure records document the evidence of the veteran's needs for assistance, but, because they fear losing back pay, as told to them by VSOs who work VBA Claims, they will not file new applications. The problem with these two particular cases is that there is a high likelihood neither applicant will be approved back to the original application as the initial medical records have a lack of evidence of need for assistance. This means not only will their appeals be denied, but they will also miss out on pay and other PCAFC assistance they could be receiving if they re-applied and were approved with a better developed record of evidence of need for assistance.

QoLF is especially aware of the need to preserve the rights of caregivers whose veterans pass away during the appeals process. As it stands today, if caregivers fail to do the training and home visit for any reason, including if either the veteran or caregiver pass away during the appeal, the appeal dies because the caregiver has not completed training nor the home visit. It is the main reason that we encourage those dyads in appeal to submit a new application. If approved under the newly submitted application for PCAFC, then those caregivers are able to do the home visits and caregiver training with the approval of the new application. That means if the veteran or caregiver were to pass away during the appeal process, and the PCAFC appeal for the original application were eventually granted, then the surviving caregiver or veteran could receive the retroactive PCAFC pay because the caregiver had completed the training and home visit.

QoLF appreciates that H.R. 3833 seeks to preserve the right to back pay for any surviving veteran or caregiver whether the training or the home visit are completed prior to the claimant's death, but we would ask for clarification on the ability of caregivers and veterans to file new applications while appeals are pending.

QoLF appreciates this subcommittee's effort to create a unified system for gathering records and refining the appeals process for the VA's Program of Comprehensive Assistance for Family Caregivers. QoLF is glad to work with the Committee to make H.R. 3833, Veterans' Caregivers Appeals Modernization Act, come to fruition as it will work out many issues we encounter on a daily basis when working with our clients.

Prepared Statement of Sarah Stern

Personal Statement of Sarah Stern in Support of H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act

June 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as the founder and president of the Endowment for Middle East Truth (EMET), I have spent nearly two decades working to educate lawmakers and advocate for policies rooted in truth, justice, and security—especially when it comes to the U.S.-Israel alliance. It is from that same foundation of values that I offer my strong support for H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This bill seeks to correct a heartbreaking historical wrong: the mistaken burial of Jewish American service members under Latin crosses in U.S. military cemeteries overseas, rather than the Star of David—the symbol of their faith and identity. These brave soldiers fought and died as Americans and as Jews. They deserve to be remembered as both.

My husband, Buddy, recently attended an Operation Benjamin headstone rededication at Arlington National Cemetery. He came home deeply moved by the solemnity, the dignity, and the moral clarity of the ceremony. It was a powerful testament to the importance of honoring these servicemen in accordance with their true heritage.

Operation Benjamin has done noble and painstaking work to identify and correct these historical errors. But this mission should not rest solely on the shoulders of a nonprofit. It is our government's responsibility to ensure that every American who made the ultimate sacrifice is honored faithfully and accurately. H.R. 2701 would give the American Battle Monuments Commission the means to do just that.

At a time when antisemitism is again rearing its head—across our institutions, in our streets, and even in our schools—this bill is more than a correction of the past. It is a statement of principle: that Jewish Americans are integral to the American story, and that their identity and sacrifice will not be erased.

I urge Congress to pass this vital legislation without delay.

—

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Prepared Statement of Shirion Collective

TESTIMONY OF DANIEL LINDEN, HEAD OF OPERATIONS - SHIRION COLLECTIVE - IN SUPPORT OF H.R. 2701, THE *"FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT"* BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell, Ranking Member McGarvey and Honorable Members of the Subcommittee, there are moments in the life of a nation when the call is not to innovate, legislate, or rebuild. Instead, it is a call to remember, to restore, and to repair. The legislation before you, H.R. 2701, represents exactly that kind of moment.

I submit this testimony on behalf of the Shirion Collective, an organization dedicated to historical integrity and the preservation of collective memory. I write also for every American family whose loved one lies in rest beneath a marker that does not reflect who they were. I speak in strong and solemn support of H.R. 2701, the *Fallen Servicemembers Religious Heritage Restoration Act*, a bill that embodies both quiet justice and deep national conscience.

More than seventy-five years after the end of the Second World War, hundreds of Jewish-American servicemen remain buried in American military cemeteries under Latin crosses, rather than Stars of David. These men served with honor, fell in combat, and were buried far from home. But through no fault of their own, their final resting places conceal rather than reflect their religious identities.

Some of these errors occurred because records were incomplete or next of kin were not available. Others resulted from deliberate decisions by Jewish soldiers who removed indicators of faith in order to avoid Nazi targeting if captured. In all cases, the result was the same. The symbol under which they rest does not match the truth of who they were in life.

This is not a small discrepancy. It is a wound in the historical record and a quiet disservice to men who gave their lives in service to this country.

Today, the organization known as Operation Benjamin is working to make these stories whole again. Through meticulous archival research, family interviews, genealogical tracing, and cooperation with the American Battle Monuments Commission, they are identifying these soldiers and correcting their grave markers. Their work is careful, respectful, and historically sound. Each new Star of David placed at a gravesite is not simply a symbol of religious identity. It is a restoration of truth.

To date, more than two dozen such corrections have taken place. These ceremonies—whether in Normandy, Sicily, Florence, or Manila—are deeply moving expressions of care and national responsibility. Yet the scale of the task is vast. Estimates suggest that between 600 and 1,000 Jewish-American servicemen may still lie beneath the wrong marker. Private funding alone is not sufficient to complete this sacred work.

The bill under consideration would provide critical federal support to organizations like Operation Benjamin. It would allow for formal partnerships and sustained funding to continue identifying, documenting, and correcting these burial records with the dignity they deserve.

This is not only a Jewish issue. It is an American issue. It is about whether our country believes in accuracy, in memory, and in doing what is right, even long after the fact. It asks whether we, as a nation, are prepared to match truth with remembrance and identity with stone.

The Shirion Collective fully endorses this legislation. We believe it reflects the best of American values: fidelity to the past, reverence for sacrifice, and a willingness to correct what history has left incomplete.

In Jewish tradition, there is a prayer called El Maleh Rachamim. It asks that the souls of the departed be remembered in peace and be bound up in the bond of eternal life. This bill is a national expression of that prayer. It binds memory to truth, service to identity, and honor to accuracy. It tells the families of these soldiers that we see them. That we remember. That we care.

On behalf of our organization, and in the name of every fallen soldier whose story deserves to be told in full, I urge you to support and pass the *Fallen Servicemembers Religious Heritage Restoration Act*. Let the record show that when we were given the chance to do what was right, we answered with conviction and with care.

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Daniel Linden
Head of Operations
Shirion Collective
Miami, Florida

Prepared Statement of Adam Zimmerman

Statement for the Record of Adam S. Zimmerman
Robert Kingsley Professor of Law
University of Southern California Gould School of Law

Comments on the Veterans Appeals Efficiency Act of 2025

Subcommittee on Disability Assistance and Memorial Affairs
for the
House Committee on Veterans' Affairs
June 24, 2025

I. Introduction

My name is Adam Zimmerman. I am the Robert Kingsley Professor of Law at USC Gould School of Law, where I teach Civil Procedure, Administrative Law, Torts, and Complex Litigation. I've written extensively on the relationship between mass adjudication, class actions, and administrative agencies in essays, amicus briefs, government reports, and law reviews, including *Chicago Law Review*, *Columbia Law Review*, *Duke Law Journal*, *New York University Law Review*, *University of Pennsylvania Law Review*, *Virginia Law Review*, and the *Yale Law Journal*, among others. [1]

I have been invited by the Subcommittee on Disability Assistance and Memorial Affairs to offer my testimony on the Veterans Appeals Efficiency Act of 2025 (VAEA). It is my pleasure to do so. For over fifteen years, I have studied mass adjudication systems and courts like the U.S. Department of Veterans Affairs (VA) benefit system and the Court of Appeals for Veterans Claims (the "Veterans Court.") I'm grateful the Committee is taking the time to consider the important and common-sense reforms contained in this bill.

My testimony focuses on two parts of the VAEA: Sections 2(d) and 2(e). Both are designed around a simple aspiration: Sometimes, fairness and efficiency require that people with the same legal claims get the chance to team up, hire a lawyer, and ask that their cases be heard together.

Section 2(d) allows veterans to do just that in the Board of Veterans Appeals, an administrative tribunal at the VA that, last year, reviewed over 110,000 veteran benefit decisions.[2] Relying on expert guidance from the Administrative Conference of the United States, it authorizes the Board to simultaneously group together and resolve the same common claims brought by many veterans.

Section 2(e) also takes an important step forward, but it should be revised to fulfill these same objectives. It aims to reverse a decision by the Federal Circuit Court of Appeals, which nearly eliminated class actions in Veterans Court, the only federal court with power to review VA benefit decisions. But, in its current form, 2(e) falls short. It contains a technical provision that seems to prevent many vets, with the same claims, from obtaining relief in the same class action. These limits do not exist in other class actions against the government—including those involving similarly large government programs, like Social Security and Medicare. Section 2(e) should clarify the Veterans Court can help *all* veterans with the same claims obtain the same relief that people regularly receive in a class action.

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[1] Portions of my testimony have been previously published in essays, law review articles, and briefs, including principally the Chicago Law Review Online, the Yale Law Journal, and my amicus brief before the Federal Circuit Court of Appeals in *Monk v. Shulkin*. *See* Adam S. Zimmerman, *Exhausting Government Class Actions*, U. Chi L. Rev. Online (Oct. 2022), https://lawreview.uchicago.edu/online-archive/exhausting-government-class-actions; Michael D. Sant'Ambrogio & Adam S. Zimmerman, *Inside the Agency Class Action*, 126 Yale L. J. 1634 (2017); Amicus Brief of Administrative Law, Civil Procedure and Federal Courts Professors in Support of Appellant (November 2015), Monk v. McDonald, United States Court of Appeals for the Federal Circuit, *cited in sub nom.*, *Monk v. Shulkin*, 855 F.3d 1312, 1320 (Fed. Cir. 2017). I collect relevant portions here for the benefit of the Committee.

[2] Department of Veterans Affairs (VA) Board of Veterans' Appeals Annual Report Fiscal Year (FY) 2024, https://department.va.gov/board-of-veterans-appeals/wp-content/uploads/sites/19/2025/04/2024_bva2024ar.pdf

As I explain in more detail below, other administrative agencies—and the federal courts that review them—have long allowed groups of non-veterans to formally and informally bring the same cases and claims together. Such procedures can correct system-wide problems more efficiently and treat like cases alike. They also help people in the same boat retain lawyers and secure relief before they get mired or lost in a big bureaucratic system. Veterans deserve no less in program that promises benefits to "a special class of citizens, those who risked harm to serve and defend their country."[3]

II. Section 2(d)(1) of the Veterans Appeals Efficiency Act: Authority to Aggregate Certain Claims

Section 2(d)(1)(A) of the VAEA authorizes the Board of Veterans Appeals to "aggregate" claims when the Chairman finds that "more than one appeal involves a common question of law or fact." Based on my own review of a large variety government programs, I believe aggregate procedures like this would greatly assist the BVA. Used appropriately, aggregate procedures can reduce caseloads and promise more consistent outcomes, while improving legal access for large groups of veterans raising similar claims.

By way of background, I have spent more than a decade studying the ways that large groups of people petition administrative agencies using aggregate procedures, like ones used in federal and state courts. Aggregate procedures include both *formal techniques* to group together similar cases, like class actions, as well as *informal techniques*, like rules that assign individual cases raising the same issues to the same adjudicator, in the same venue, or on the same expedited docket.[4] The VAEA appropriately authorizes the BVA to use a wide variety of both formal and informal procedures including "joinder, consolidation, intervention, class actions, and any other multiparty proceedings."

In 2016, the Administrative Conference of the United States (ACUS)—a government body that issues guidance and policy recommendations for all federal agencies—invited me and my colleague, Dean Michael Sant'Ambrogio, to study federal agencies that aggregate claims like this. ACUS provided us with unusual access to agency policymakers, staff and adjudicators, giving us with an inside look at how administrative tribunals use mass adjudication in areas as diverse as employment discrimination, mass torts, and health care. After we issued our report, ACUS adopted new guidelines for federal agencies to use aggregate procedures in their own hearings.[5]

Since that time, federal agencies have carefully begun to experiment with them. Those that have used aggregate procedures have generally found that aggregate procedures—when used responsibly—can enhance efficiency, promote consistency, improve the quality of policymaking, and help everyday people obtain legal expertise needed to access and navigate our government institutions.

Below, I'll first explain why I think aggregation rules would benefit the VA by placing it on the same footing as other federal agencies that aggregate cases and claims. Then, I'll

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[3] *Barrett v. Principi*, 363 F.3d 1316, 1320 (Fed. Cir. 2004).

[4] This is consistent with how leading scholars describe aggregate procedure. Principles of the Law of Aggregate Litigation § 1.02 (2010)(types of aggregate proceedings); Howard M. Erichson, *Informal Aggregation: Procedural and Ethical Implications of Coordination Among Counsel in Related Lawsuits*, 50 Duke L.J. 381 (2000); Judith Resnik, *From "Cases" to "Litigation," 54 Law & Contemp. Probs.* 5, 22-38 (1991).

[5] See Aggregation of Similar Claims in Agency Adjudication, 81 Fed. Reg. 40,260 (June 21, 2016).

explain how other federal government programs have used aggregate procedures to improve efficiency, consistency, informed decisionmaking, and access to justice.

A. Section 2(d)(1)(A) Gives the VA the Same Power to Aggregate Cases as Other Administrative Agencies

Many, if not most, federal agencies have the power to group together similar cases under their own "organic statutes." Organic statutes are the laws passed by Congress that create a federal agency and that, according to the Supreme Court, generally give them the power adopt procedural rules to hear cases.[6] Congress gave the Board of Veterans Appeals that same broad statutory authority to "prescribe all rules and regulations which are necessary or appropriate" to adjudicate cases.[7] The procedural flexibility Congress generally gives administrative agencies reflects a basic feature of administrative procedure: agencies need authority to shape their own rules and, when appropriate, to adapt them to the types of cases and claims that they hear.

Consistent with that authority, agencies have long adopted class actions and other aggregate procedures. Indeed, over 70 administrative tribunals and legislative courts have adopted procedures to aggregate claims.[8] Nine have adopted class action rules of some kind.[9] Some rules loosely track Rule 23 of the Federal Rules of Civil Procedure, which is the class action rule that federal district courts use, while others are tailored to the specific types of cases and claims that the court or agency hears.

Recently, the Board of Veterans Appeals refused to hear claims brought by a group of veterans sent to decontaminate a site in Palomares, Spain, after a B-52 bomber carrying thermonuclear weapons collided with another aircraft in 1966.[10] Without a group

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[6] The Supreme Court has explained that administrative tribunals "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." *F.C.C. v. Pottsville Broad. Co.*, 309 U.S. 134, 143 (1940). For that reason, agencies may consolidate cases and decide "subordinate questions of procedure," such as "the scope of the inquiry, whether [cases] should be heard contemporaneously or successively, whether parties should be allowed to intervene in one another's proceedings, and similar questions." *Id.* at 138.

[7] *Compare* 38 U.S.C. § 501(a) *with* 29 U.S.C. § 156 (granting the National Labor Relations Board "authority … to make, amend, and rescind … such rules and regulations as may be necessary to carry out" its statutory mandate); 42 U.S.C. § 405(a) ("The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions…."); 42 U.S.C. § 2000e16(b) (empowering the EEOC to "issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities" with respect to federal employees). For example, in *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1985), the Supreme Court rejected the lower court's conclusion that the CFTC lacked the power to join counterclaims. Id. at 842. The Supreme Court based its holding, in part, on the "the sweeping authority Congress delegated to the CFTC." *Id.* at 842. In particular, the Supreme Court relied on statutory language that permits the CFTC to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary" to accomplish the purposes of the statute authorizing its existence. Id. (citing 7 U.S.C. § 12a).

[8] Michael D. Sant'Ambrogio & Adam S. Zimmerman, *Inside the Agency Class Action,* 126 Yale L.J. 1634 (2017).

[9] Id. at 1659.

[10] *Skaar v. McDonough*, No. 24-2457, 2024 WL 3771697, at *1 (Vet. App. Aug. 13, 2024)(describing the position of the Board).

proceeding, many of these veterans may never obtain consistent relief from a common VA policy or practice that they all say improperly denied them benefits.

Section 2(d)(1)(A) confirms that, just like other agencies, the BVA can hear veteran appeals together. In so doing, Section 2(d)(1)(A) ensures that the BVA will have the same tools long used by other government agencies and courts to adjudicate large numbers of similar claims.

To understand how these kinds of aggregate techniques may specifically benefit the VA, consider four things about the VA benefit system:

First, the VA benefit system is *huge*. The VA benefit system processes roughly one million benefit claims each year. Only two other mass adjudication programs in the United States currently put up those kinds of numbers—US immigration courts and our social security system, "probably the largest adjudicative agency in the western world."[11]

Second, the VA process is breathtakingly *complex*. After veterans apply for their benefits, they receive an initial administrative decision from one of 56 regional offices. Veterans who disagree with those initial decisions can then request review by a senior adjudicator or appeal to the Board of Veterans' Appeals, which in turn hears tens of thousands of claims inside the VA every year. Only when veterans have worked their way through all those hoops can they finally appeal their claims to the Veterans Court, which hears more appeals from administrative agencies than all other federal appellate courts *combined*. At each stage of the benefits process, however, claims can be bounced back to a lower level for more factual development. That means that cases go up, down, and around in a system some Veteran Court judges have called a "hamster wheel" of justice:[12] Decision. Appeal. Remand. Repeat.

Third, the VA is *backlogged*. Up until a few years ago, the average benefit claim could take between five to seven years to be resolved.[13] Congress has tried to modernize and streamline appeals. But delays at the VA haven't gone away. The current VA process can leave veterans waiting more than three years to fully resolve their claims. The BVA maintains a website devoted to explaining its systemwide delays for frustrated veterans.[14]

Fourth, the VA system operates without meaningful access to *precedential decisionmaking and lawyers*. The Veterans Court seldom issues precedential decisions. But even when it does, lawyers are rarely around to interpret and apply them consistently in the VA's own administrative proceedings. This is because of statutory caps on attorney fees, long delays, and constant remands that make individual legal representation extremely challenging. And when you have large numbers of unrepresented claims that only aggravates the problems I've mentioned above. They create more inconsistent outcomes, leading to more remands, which, in turn, cause even more delays.

Against this kind of backdrop, aggregate procedures offer an important tool to combat rising case volumes while promoting more access to justice. They are not the only

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[11] *Heckler v. Campbell*, 461 U.S. 458, 461 (1983).
[12] *Coburn v. Nicholson*, 19 Vet. App. 427 (2006)(Lance, J., dissenting).
[13] *Martin v. O'Rourke*, 891 F.3d 1338 (2018).
[14] BVA, *Decision Wait Times: Why does my appeal at the Board of Veterans' Appeals (Board) take so long, and what is the Board doing about it?,* https://department.va.gov/board-of-veterans-appeals/decision-wait-times/

tool, of course. But with rules to aggregate similar cases or claims, the BVA sits in a far better position to address frequently recurring legal or factual issues in a group proceeding that otherwise would languish in a "hamster wheel" of appeals and remands across 56 different regional offices. Just as important, aggregate procedures offer an important tool for veterans to understand their rights, pool their resources, retain attorneys and experts to assess common legal problems, and obtain consistent relief from the VA.

B. Other Government Programs Have Used Similar Tools to Increase Efficiency, Consistency, and Legal Access

Other agencies have successfully used aggregate procedures to achieve these very same goals. First, in particularly large government benefit programs like the VA, agencies have used group procedures to swiftly process large numbers of claims and address allegations of group-wide harm more efficiently than piecemeal individual adjudication. For example, the Office of Medicare Hearings and Appeals, which hears appeals from Medicare coverage determinations, successfully aggregated claims to address a 600,000 claim backlog that arose in 2016.[15] OMHA has long aggregated similar appeals brought by health care providers against the federal government.[16] Its judges identify, process, consolidate and sometimes sample large numbers of similar cases. But their efforts in 2016 were so successful that medical providers urged OMHA to expand opportunities to aggregate and resolve large numbers of claims.[17]

Another example comes from the National Vaccine Injury Compensation Program. When over 5,000 parents claimed that a vaccine additive called thimerosal caused autism in children, the Vaccine Court used a national Autism "Omnibus Proceeding" to pool all the individual claims that raised the same highly contested scientific questions.[18] In the words of one Special Master, omnibus proceedings "turned out to be a highly successful procedural device" for the Vaccine Program. They resolved cases "far more efficiently than if we had needed a full-blown trial, with multiple expert witnesses, in each case."[19]

Along similar lines, the EEOC has long used a class action procedure for resolving "pattern and practice" claims of discrimination lodged against the same federal employer, which include hearings before specialized administrative law judges.[20] The EEOC deems the process important in light of the volume of claims it processes each year, the potential for inefficient and inconsistent judgments, and the otherwise limited access to counsel.

Notably, agencies have accomplished these goals *without meaningful increases in budgets or staffing*. In fact, the opposite is true. In the thirty-three years since the EEOC issued its rule for class actions involving public employees, annual FTE staffing has either remained

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[15] *See* Michael Sant'Ambrogio & Adam Zimmerman, Aggregate Agency Adjudication, Report to the Administrative Conference of the United States (Jun. 9, 2016), at 50-59.
[16] *See In re Apogee Health Serv., Inc.*, No. 769 (Medicare Appeals Council Mar. 15, 1999); *Chaves County Home Health Servs. v. Sullivan*, 931 F.2d 914, 919-22 (D.C. Cir. 1991).
[17] Sant'Ambrogio & Zimmerman, *supra* note 1, at 61 & n.185 (describing requests for expansion).
[18] *Cedillo v. Sec'y of Health & Human Servs.*, No. 98- 916V, 2009 WL 331968, at *11 (Fed. Cl. Feb. 12, 2009), *aff'd,* 89 Fed. Cl. 158 (2009), *aff'd*, 617 F.3d 1328 (Fed. Cir. 2010).
[19] *Id.*
[20] See 29 C.F.R. § 1614.204.

even or dropped, from 2,796 employees in 1991 to 2,246 in 2024.[21] The OMHA program designated nine of their own administrative law judges to resolve thousands of appeals at a time in aggregate proceedings, while they maintained their regular workload.[22]

Aggregate procedures also help agencies resolve cases more consistently and transparently, particularly when many different people challenge the same organizational misconduct. After the collapse of the Corinthian Colleges, the Department of Education similarly adopted a group process modeled on federal court class actions for students—many of whom were veterans—seeking relief from predatory colleges that commit fraud. A formal group process, the Department later went on to say, would give "students access to consistent, clear, fair and transparent processes to seek debt relief" from the same college program during a specific timeframe.[23] The rules would also protect taxpayers, ensuring that "financially risky institutions … take responsibility for losses to the government" for federal loan discharges, while providing "due process for students and institutions."[24]

Finally, aggregate rules can expand access to legal representation, particularly for widespread problems that are often too costly to be prosecuted through individual claims and appeals.[25] They also help agencies gather information about matters within their regulatory jurisdiction. The EEOC's class action device, for example, allows the agency to pool information about employers' policies and highlights patterns that may escape detection in individual proceedings. According to the EEOC, "class actions … are an essential mechanism for attacking broad patterns" of organizational misconduct and "providing relief to victims of … systemic practices."[26] For example, after an EEOC class of disabled applicants challenged the State Department's "world-wide" availability requirement for foreign service workers—a policy that rejected candidates for promotion unless they could work without accommodation—the state department was alerted to a systematic problem in its hiring practices and corrected them.[27]

Similarly, the Vaccine Court's omnibus proceedings allow all parties alleging vaccine-related injury to benefit from the record developed in test cases qualified experts and experienced legal counsel they otherwise might not be able to afford in individual benefit

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[21] *See* U.S. Equal Employment Opportunity Commission, *EEOC Budget and Staffing History, 1980 to Present*, https://www.eeoc.gov/eeoc-budget-and-staffi ng-history-1980-present.

[22] Sant'Ambrogio & Zimmerman, *supra* note 1, at 1679.

[23] Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program, 81 Fed. Reg. 39,330 (June 16, 2016).

[24] *Id.*

[25] *See* American Law Institute, Principles of the Law of Aggregate Litig. § 1.04 (2010) (describing the central "object of aggregate proceedings" as "enabling claimants to voice their concerns and facilitating the rendition of further relief that protects the rights of affected persons"). *See also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (aggregation "may permit the plaintiffs to pool claims which would be uneconomical to litigate individually").

[26] 64 Fed. Reg. 37,644, 37,651 (July 12, 1999).

[27] *See* Press Release, U.S. Dep't of State, *Department of State Reaches Settlement Resolving Longstanding Claims of Disability Discrimination Relating to Its Worldwide Availability Requirement for Career Department of State Foreign Service Applicants* (Jan. 17, 2023), https://2021-2025.state.gov/department-of-state-reaches-settlement-resolving-longstanding-claims-of-disability-discrimination-relating-to-its-worldwide-availability-requirement-for-career-department-of-state-foreign-service-appl/

hearings.[28] In one of the Vaccine Court's first omnibus proceedings, the parties pooled their resources to produce common scientific evidence on the issue of whether a rubella vaccine caused chronic arthritis. As a result, the Vaccine Court raised the profile of an issue that, up to that time, had not been in focus for the Department of Health and Human Services as well as Congress.[29] The result did not just benefit victims, but led to systemic reforms across the agency. Shortly after the decision, the Vaccine Injury Table was administratively modified, consistent with the decision, to include chronic arthritis as an injury generally associated with the rubella vaccine.[30]

Of course, aggregate adjudication poses challenges of its own. Aggregating cases may stretch administrators' capacity to administer justice to many people, undermine the perceived "legitimacy" of a process without individual hearings, and increase the consequences of error. But many programs that I have studied took steps to address these concerns. OMHA has cautiously piloted its statistical sampling program to avoid replacing old backlogs with new ones. The NVICP has relied on panels of adjudicators to reduce concerns about having one decisionmaker decide thousands of cases. Judges at both the EEOC and the NVICP ensure that lawyers in big cases possess the skill to represent large groups and that individuals voluntarily participate in the process.

In that vein, Section (d)(1)(A) follows many of the very best ACUS practices to promote the benefits of aggregate adjudication, while minimizing potential drawbacks. First, it gives the BVA power to aggregate claims based upon a well-known and established standard—whether they raise "a common issue of law or fact"—and encourages the BVA to consider a wide variety of techniques to resolve them. This kind of procedural flexibility is important to ensure VA can tailor its proceedings to the cases it frequently must hear and resolve.[31]

Second, VAEA also follows the ACUS recommendations by calling for the study and use of precedential decisionmaking. ACUS similarly recommends that agencies consider precedential decisionmaking alongside other kinds of aggregate procedures to help adjudicators handle similar subsequent cases more expeditiously and consistently.[32] Aggregate procedures also help parties pool resources to hire lawyers, which is important so that veterans and the BVA receive help interpreting and applying precedent in future cases.

Third, the VAEA tasks the VA with creating tools to track claims, appeals, remands and the the types of cases that frequently raise common issues. As the ACUS recommendations observe, this kind of "information infrastructure" helps agencies devote

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[28] *Cedillo*, 2009 WL 331968 at *8 (noting how a select group of petitioners' counsel is charged with obtaining and presenting evidence in the omnibus proceedings).
[29] *Ahern v. Sec'y of the Dep't of Health and Human Servs.*, No. 90-1435V, 1993 WL 179430 at *3 (Fed. Cl. Spec. Mstr. Jan. 11, 1993).
[30] See 60 Fed. Reg. 7678 (1995), revised 62 Fed. Reg. 7685, 7688 (1997).
[31] Administrative Conference Recommendation 2016-2: Aggregation of Similar Claims in Agency Adjudication (June 10, 2016) (Rec. 2).
[32] *Id.* (Rec. 2 & 9).

their energies to the cases best resolved in aggregate proceedings, increases equality of outcomes, and reduces the chance of error.[33]

Fourth, the bill calls for periodic review of the use of its aggregate procedures—including the number of times the BVA chose to use them, the number of cases that were resolved through them, and the extent to which the process improved efficiency. ACUS also recommends that agencies review the results of aggregate proceedings and share their results with policymakers and personnel. This is not only important to ensure aggregate procedures work fairly and efficiently, but "so that they can determine whether … codifying the outcome [in any such cases] might be worthwhile" for future claims that raise similar issues.[34]

Finally, aggregate procedures at the BVA also help the Veterans Court, the federal court charged with reviewing the BVA's decisions. Because any decision at the BVA will affect large groups of individuals at the VA, it will be worthwhile (and much easier) for the VA to devote more time and attention to the appeal. For the same reasons, the VA's decision on appeal is likely to be more transparent than final decisions in individual adjudications, which rarely attract much public attention. And, because of the more developed and coordinated fact-finding that can take place at the VA, the Veteran's Court can review a fuller record to consider the systemic aspects of a legal issue that impacts many veterans. I discuss how the VAEA applies to the Veterans Court, below.

III. Section 2(e) of the Veterans Appeals Efficiency Act: Expansion of Jurisdiction of Court of Appeals for Veterans Claims

Section 2(e) of the Act attempts to place veterans in Veterans Court on even footing with other litigants who use class actions in federal courts. Section 2(e) would overturn a recent decision by the Federal Circuit Court of Appeals, called *Skaar v. McDonough*.[35] *Skaar* limited the number of veterans who could participate in a class action so drastically that it virtually eliminated class actions in the Veterans Court—a tool that is crucial to efficiently adjudicate the thousands of claims that court hears every year.

Section 2(e) is a well-intentioned step in the right direction, and I applaud the Committee for taking on an issue that would dramatically improve veterans' opportunities to obtain justice in the Veterans Court. The current language in the bill, however, contains a provision that will create confusion, while unnecessarily limiting classwide relief for veterans with the same legal claims. Section 2(e) should be amended to ensure veterans can participate in Veteran Court class actions like other litigants in any other class action.[36]

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[33] *Id.* (Rec. 3(a)). *See also, e.g.,* Jonah B. Gelbach, David Marcus, *Rethinking Judicial Review of High Volume Agency Adjudication*, 96 Tex. L. Rev. 1097, 1142-45 (2018)(describing data techniques to track delays in social security adjudication).

[34] *Id.* (Rec. 10). *See also id.* (Rec. 3(c)).

[35] *Skaar v. McDonough*, 48 F.4th 1323 (Fed. Cir. 2022).

[36] Large portions of this section were previously published in the Chicago Law Review Online, which specifically addressed the impact of the Federal Circuit's erroneous decision in *Skaar v. McDonough* on the future of veteran class actions and the need for legislative action to correct it. Adam S. Zimmerman, *Exhausting Government Class Actions*, U. Chi L. Rev. Online (Oct. 2022), https://lawreview.uchicago.edu/online-archive/exhausting-government-class-actions

A. Background on Class Actions in the Veterans Court and Section 2(e)

By way of background, for a long time, veterans were one of the few groups of people who could not contest the decision of a government program, which Congress established for their benefit, in a federal court.[37] That changed when Congress passed the Veterans Judicial Review Act. That law created the Veterans Court, a special federal court with exclusive power to hear challenges to veteran benefit decisions. At the time, Congress imagined that the Veterans Court would have the same tools that other federal courts had to hear claims against the federal government, including class actions.[38] But, in a short summary opinion issued only a year after it was formed, the Veterans Court held that it could not hear class actions.[39]

Without class actions, the VA avoided judicial review of cases that impacted large groups of veterans. Facing endless wait times navigating the VA's complex benefit system, many unrepresented veterans simply gave up before ever seeing the Veterans Court. And, for the rare case challenging an unlawful rule or policy that actually reached the Veterans Court, judges observed that the government would frequently pick them off, strategically—quietly resolving petitions just before their hearing dates, ignoring the systemic problems alleged, and forcing courts to dismiss them as moot.[40]

In 2017, the Federal Circuit tried to finally put an end to this. In a groundbreaking decision, *Monk v. Shulkin* confirmed the Veterans Court had power to hear class actions like federal district courts that routinely review government agencies.[41] The Federal Circuit encouraged the Veterans Court to write a formal class action rule to hear class actions more regularly, relying in part, on our amicus brief of Administrative Law, Civil Procedure, and Federal Court scholars.[42] And, after three years of meetings with government attorneys, veteran organizations, and academics, the Veterans Court created a formal rule to hear class actions for injunctive relief against the government and published it on Veterans Day, November 11, 2020. The rule was modeled after Rule 23 of the Federal Rules of Civil Procedure, which is frequently used by federal district courts to hear claims for injunctive relief against government and private institutions.

But in a poorly reasoned opinion in 2022, the Federal Circuit sharply limited future veteran class actions. In *Skaar v. McDonough*,[43] the Federal Circuit held that the only veterans who could benefit from the new formal class action rules—at least those brought outside of the All Writs Act[44]—were those veterans who had exhausted all of their internal appeals with

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[37] Limited exceptions did exist, however. *See Johnson v. Robison,* 415 U.S. 361 (1974); *Wayne State Univ. v. Cleland,* 590 F.2d 627, 628 n.1 (6th Cir. 1978) *Nehmer v. U.S. Veterans' Admin.,* 118 F.R.D. 113 (N.D. Cal. 1987).

[38] H.R. Rep. No. 100-963, pt. 1, at 41–42 (1988) (discussing potential litigation challenges to VA regulations, stating, "Again according to SSA, most challenges to regulations are class actions, involving large groups of beneficiaries or potential beneficiaries.").

[39] *Harrison v. Derwinski,* 1 Vet.App. 438 (1991).

[40] *Monk v. Shulkin*, 855 F.3d 1312, 1321 (Fed. Cir. 2017)(collecting cases and observing that "[c]ase law is replete with such examples.")

[41] 855 F.3d 1312 (Fed. Cir. 2017).

[42] *Id.* at 1319-20.

[43] 48 F.4th 1323 (Fed. Cir. 2022).

[44] The All Writs Act is an infrequently used, but very important law, that allows courts to craft novel procedures to protect their jurisdiction to decide cases, including the use of class actions. *See Monk*, 855 F.3d at 1319 (allowing the aggregation of veteran mandamus petitions under the All Writs Act); *United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2d Cir. 1974) (aggregating habeas petitions using the All Writs Act).

the VA at the time that the class was certified. All the other veterans whose claims were still pending with the VA, whose claims had been wrongfully denied and not timely appealed, or whose claims had yet to be filed, were not entitled to the same relief.

The Court reasoned that this was because statute that gave the court "jurisdiction"—which is judicial power—to review the VA's actions had to be read very narrowly. But as a practical matter, this cramped view of the class action will, in the words of Judge Dyk and four other dissenting judges on the Federal Circuit, "effectively eliminate class actions in the veterans' context."[45]

Why? I've already described the endless system of appeals and remands that make reaching the Veterans Court a game of chutes and ladders for many individual veterans. Combined steep backlogs and entrenched obstacles for vets to retain lawyers, this holding means that few veterans would ever amass the numbers necessary to form a class in Veterans Court. Left unchanged by Congress, *Skaar* would leave in place the very administrative wrongs class actions hoped to address—limited access to counsel, picked-off claims, and systemic problems—for thousands of veterans challenging the same unlawful policies at the VA.[46]

B. The Promise and Peril of Section 2(e) in its Current Form

The VAEA attempts to fix *Skaar*'s mistake by making clear that the Veterans Court indeed has "supplemental jurisdiction" to hear class actions of veterans, even when all those veterans haven't jumped through every procedural hoop to reach the Veterans' Court. But it still leaves out many veterans who, in any other federal court, would be able to benefit from classwide relief.

Section (B)(1)(A)(i) starts off the way most class actions work. It says the Veterans Court has "jurisdiction" over any veteran's claim that meets "the definition of a class contained in the request for class certification" of a properly certified class action. That's usually how injunctive relief class actions against the government works. Class actions are a form of what civil procedure scholars call "representative litigation." What that means is that, so long as the court has jurisdiction over the lead plaintiff in the case—and the complaint satisfies the strict requirements of the class action rules—the court can also provide relief to any member of the class who is adversely affected by a government policy.

While this part of the bill represents an important move forward for veterans, the very next provision of the bill quietly walks it back. It says the only veterans who can benefit from that class action are those who have "filed a notice of disagreement" and "for which the agency of original jurisdiction has issued a nonfinal decision." (B)(1)(A)(ii). This provision will generate unnecessary litigation and confusion, while limiting the effectiveness of a class action for many veterans in a way that does not appear in any other government statute.

Why confusion? This section appears to be modeled after Section 405(g) of the Social Security Act. Section 405(g) limits federal judicial review of social security decisions to people who file a claim for benefits with the agency and receive a "final" decision from

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[45] *Skaar v. McDonough*, 57 F.4th 1015, 1017 (Fed. Cir. 2023).
[46] *Monk*, 855 F.3d at 1321.

the Commissioner of Social Security.[47] On this score, one could argue this bill should allow for *more generous class actions*. This is because Section 2(e) would allow the Veterans Court to review not just "final," but "non-final" decisions at the VA. The Supreme Court has also said litigants do not have to obtain any decision from the social security when parties challenge the constitutionality of Social Security's procedures, because the agency doesn't review constitutional claims in ordinary benefit decisions.[48] It also has said that once a party files a claim with the Social Security commissioner, that person can represent a class of people "have filed" or "will file" a claim for social security.[49]

But it is unclear whether the provision will be read this way. This is because this subsection seems to explicitly narrow the Veteran Court's *class action jurisdiction*, under (A)(i) to only those who get an erroneous "decision" and appeal it. Under that reading of this statute, the only veterans who could benefit from a *class* challenge to the same systemwide problem at the VA would be those who had filed a claim, received a decision, were alerted to a problem with it, and filed an appeal at the time the class was resolved—regardless of whether their claims concerned the same constitutional, statutory, procedural, or other similar errors as many other veterans.

There is no reason for a jurisdictional statute to apply this way to an injunctive relief class action. Consider why Congress has jurisdictional requirements at all. First, jurisdictional requirements give the government a "first bite" at solving a problem. Second, they assure that parties will fully develop the claim and record for a court to review. Third, in some cases, they save judicial resources; the court only has to devote its limited capacity to claims that demand an answer from a judge—which is particularly important in a mass adjudication system, like the VA, which hears over a million claims a year.

But nothing about a jurisdictional statute requires that a court give the government ten bites—or in a case like *Skaar*, almost 1,400 bites—at the same apple. Nor should it require the same expensive record development to repeatedly disprove the same legal or factual issue, particularly given that many veterans will lack the access and resources necessary to develop that same record. Finally, reading a statute this way makes almost no sense in the context of an injunction; requiring the court to limit the scope of injunctive relief unnecessarily risks countless adjudications, over the same question, involving the same remedy. A hypothetical claimant who perfected a jurisdictional requirement the day before issuance of a classwide injunction might benefit from the judgment, while another claimant who did so the following day would not.

Most importantly, this narrow interpretation could limit the Veterans Court's power to efficiently correct the same systemwide mistakes in the VA benefit system. Imagine a case

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[47] 42 U.S. Code § 405(g)("Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party … may obtain a review of such decision by a civil action … [in federal district court].")

[48] *Matthews v. Eldrige,* 424 U.S. 319, 330 (1976) ("It is unrealistic to expect that the Secretary would consider substantial changes in the current administrative review system at the behest of a single aid recipient raising a constitutional challenge in an adjudicatory context.")

[49] *See Califano v. Yamasaki*, 442 U. S. 682, 705 (1979)(finding it was proper for the district court to have ordered relief to a subset of the class who had not yet filed waivers with the Commissioner, as long as they would do so in the future consistent with a court order). *See also* Adam S. Zimmerman, *Exhausting Government Class Actions*, supra note 1 (explaining confusion over *Califano's* holding and collecting subsequent decisions allowing class actions that provide relief to those who have or will file claims with a federal agency.)

that challenges the way the VA processes claims, before they are even decided by an administrator. Does this rule bar class actions because veterans never "received" a benefit decision?[50] Or a case that argues the VA unlawfully discouraged most veterans from applying for benefits the Veterans Court expressly said they could obtain?[51] Would only the veterans who ignored the VA and applied get to participate in the class action? Or finally, what about a case like *Skaar* itself. Many of the (now elderly) Palomares veterans, who were wrongfully discouraged from applying for radiation benefits, would not file a claim with the VA, unless they were included in a class action and notified about their rights as class members.

For these reasons, this narrow kind of jurisdictional provision would be unlike any one I have ever seen in a government benefit program. There have been hundreds of class action challenges to government benefit programs—including cases involving food stamps, disability benefits, public assistance, farm aid, supplemental security income, Medicare, Social Security, and others.[52] Even for government programs with very strict jurisdictional demands, federal courts have not had a problem certifying injunctive relief classes while making it clear that the class definition includes those who "have filed" and "will file" claims with a federal agency sufficient to satisfy the court's jurisdiction.[53] Subject-matter jurisdiction usually exists as long as one named plaintiff can establish it, the class definition is clear, and the class satisfies the procedural safeguards of Federal Rule of Civil Procedure 23.

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[50] For examples of this problem in the context of systemwide delays and computer malfunctions, *see, e.g., Godsey v. Wilkey,* 31 Vet. App. 207 (2019) (systemwide delays in processing same group of claim to Veterans Court) and Freund v. McDonough, 114 F.4th 1371 (Fed. Cir. 2024) (systemwide computer malfunction that deactivated benefit claims without notice to veterans).

[51] *See, e.g., Wolfe v. Wilke*, 32 Vet. App. 1 (2019).

[52] *See, e.g., Aiken v. Miller*, 442 F. Supp. 628, 657–58 (E.D. Cal. 1977) (certifying a class of all those "whose application for food stamps was denied, delayed, or never made" and "who have been or will be affected by" the agency rule at issue); *Lightfoot v. District of Columbia*, No. 01-cv-1484, 2004 U.S. Dist. LEXIS 22158, at *8–12 (D.D.C. Jan. 14, 2004) (certifying a class of "[a]ll persons who have received or will receive disability compensation benefits . . . and whose benefits have been terminated, suspended or reduced" or "whose benefits *will* be terminated, suspended or reduced in the future" (emphasis added)); *Barry v. Corrigan*, 79 F. Supp. 3d 712, 751 (E.D. Mich. 2015) (certifying a class of "[a]ll past, present, and future applicants for, or recipients of, benefits administered by the Michigan Department of Human Services . . . who have suffered or will suffer actual or threatened denial, termination, or reduction of public assistance benefits"); *Olenhouse v. Commodity Credit Corp.*, 136 F.R.D. 672, 681 (D. Kan. 1991) (certifying a class of farmers in an action to enforce their entitlements under federal grant-in-aid program and defining that class to include those who had not yet exhausted administrative appeals); *Alexander v. Price*, 275 F. Supp. 3d 313, 318 (D. Conn. 2017) (certifying a class of Medicare beneficiaries who "have received or will have received 'observation services'"); *Hill v. Sullivan*, 125 F.R.D. 86, 87 (S.D.N.Y. 1989) (certifying a class of "widows or widowers who have or will apply for disability benefits"); McKenzie v. Heckler, 602 F. Supp. 1150, 1160 (D. Minn. 1985) (certifying a class of "all persons residing in Minnesota whose applications for SSI and RSDI have been or will be adjudicated concurrently"); *Kendrick v. Sullivan*, 784 F. Supp. 94, 104 (S.D.N.Y. 1992) (certifying a class of "all claimants for Social Security benefits whose claims have been or will be assigned to [the Administrative Law Judge] for decision"); *Reed v. Lukehard*, 591 F. Supp. 1247, 1251 (W.D. Va. 1984) (certifying a class of "persons in Virginia whose benefits . . . haxve been, continue to be, or will be denied, reduced, or terminated"); *McDonald v. Heckler*, 612 F. Supp. 293, 299 (D. Mass. 1985) (certifying a class of "[a]ll persons residing in Massachusetts who have filed or will file applications for disability benefits"); *Newkirk v. Pierre*, No. 19-cv-4283, 2020 WL 5035930, at *12 (E.D.N.Y. Aug. 26, 2020) ("[T]hat the class includes future members . . . does not pose an obstacle to certification.").

[53] *See, e.g., Sullivan v. Zebley*, 493 U.S. 521, 527 (1990) (affirming a class of children "who are now, or who in the future will be, entitled to an administrative determination" for children's disability payments); *Scott v. Quay*, 338 F.R.D. 178, 192 (E.D.N.Y. May 25, 2021) (certifying a class comprised of "all those people . . . who have or will in the future have satisfied the exhaustion requirement imposed" by the Federal Torts Claims Act).

Accordingly, I would make clear that Section 2(e) applies to veterans who are members of the same properly certified class and "have filed or will file" those claims with the VA. Such an amendment would ensure that class actions at the Veterans Court are not just more functional and efficient. They would be consistent with the historical reasons for the modern class action.

The modern class action rule aimed to get past exhaustion requirements that limited class action relief. Federal Rule of Civil Procedure 23(b)(2), the inspiration for the Veterans Court's class action rule, was specifically revised in the 1960s to allow courts to review systemwide government misconduct, even when class members had yet to exhaust a lengthy administrative process.

The effort to revise Rule 23 coincided with efforts after *Brown v. Board of Education* to desegregate public schools. By the early 1960s, a number of southern states had jettisoned crude, explicit policies that simply required segregated schools. Instead, school boards gave children a default school assignment but allowed them to individually petition school boards to have that assignment changed. Whether a board would grant any particular child's petition ostensibly depended on a host of individual, facially nondiscriminatory factors specific to each one.

As administered, however, these processes left segregated schools almost entirely intact. Boards made default assignments by race, then systematically deployed a set of pretextual practices to reject individual petitions. When challenged in class actions, governments invoked individualized administrative rules to argue that each student had to exhaust an individualized district application process.

In a case called *Potts v. Flax*, the Fifth Circuit disagreed and affirmed the right to commence a class action: "Insofar as these statutes are advanced as prescribing statutory machinery which must first be administratively exhausted, we repeat what we have so often held. Exhaustion of internal school system administrative remedies is not required so long as racial segregation is the authoritative accepted policy."

The Federal Rules Committee responsible for drafting Rule 23 relied extensively on *Potts* to highlight the importance of using class actions to join together parties who, although ostensibly in different positions, challenged the same government policy. It included *Potts* in the Advisory Committee's note to Rule 23 as an exemplar of the Rule 23(b)(2) class action.

To this day, other federal courts have honored the Advisory Committee's intention that Rule 23 provide a powerful tool to promote legal access, judicial review, and uniform relief, even when individual plaintiffs in a class were impacted in different ways at different stages of a governmental program. Properly amended, Section (e) holds the promise that veterans seeking classwide relief before the Veterans Court would receive the same opportunity.

Prepared Statement of The American Legion

TESTIMONY
OF
KENNETH HARMAN
BENEFITS POLICY ANALYST
VETERANS' AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
LEGISLATIVE HEARING
ON
"PENDING LEGISLATION"

JUNE 24, 2025

EXECUTIVE SUMMARY

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JUNE 24, 2025

Chairman Luttrell, Ranking Member McGarvey, and distinguished members of the subcommittee, on behalf of National Commander James LaCoursiere Jr. and more than 1.5 million dues-paying members of The American Legion, we thank you for the opportunity to offer our written testimony regarding proposed legislation.

The American Legion is guided by active Legionnaires who dedicate their time and resources to serve veterans, service members, their families, and caregivers. As a resolutions-based organization, our positions are directed by more than 106 years of advocacy and resolutions that originate at the post level of our organization. Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress.

H.R. 3123: Ernest Peltz Accrued Veterans Benefits Act

To amend title 38, United States Code, to make certain improvements to laws relating to the payment of certain benefits administered by the Secretary of Veterans Affairs, and for other purposes

The death of a family member is a traumatic and disorienting life event that leaves lasting emotional and financial impacts on family members that can last for months, even years. For the families of veterans, this period is often compounded by the need to navigate complex responsibilities such as notifying life insurance providers, arranging burial services, executing wills, and navigating the Veterans Affairs' (VA) daunting benefits process to receive pending financial support. According to VA National Center for Analysis and Statistics, there are approximately 9,823,792 veterans between the ages of 60 to 85 years of age or more.[1] Of these veterans, 7,808,106 aged 65 and older live at or below the poverty threshold.[2] These figures underscore the importance of ensuring surviving spouses can receive any accrued or pending

[1] U.S. Department of Veterans Affairs, National Center for Veterans Analysis and Statistics. *Veteran Population*. Accessed June 16, 2025. https://www.va.gov/vetdata/veteran_population.asp.
[2] Statista. "Poverty Status of U.S. Veterans by Age 2022." Accessed June 16, 2025. https://www.statista.com/statistics/250310/poverty-status-of-us-veterans-by-age/.

benefits for the month of the veteran's death. For low-income families, expeditious and timely access to these benefits can ease the burden of an already difficult time.

H.R. 3123 aims to correct any potential injustices by improving the reclamation process for spouses and identified family members by safeguarding remaining entitlements and preventing VA from collecting benefits approved and owed at the time of death. The American Legion supports this effort through Resolution No. 281 which has RESOLVED that veterans medical, compensation, pension, and readjustment allowances shall not be considered mere benefits and entitlements under the law but shall be considered rights. These benefits were hard earned through the tireless dedication of our nation's veterans. Not only do these families deserve these benefits, but they also deserve the gratitude of a grateful nation.

We respectfully submit our recommendation of the following amendment(s):

Require the Secretary to maintain veterans' Power of Attorney for 90 days after death, allowing the veterans' widow or Next of Kin to utilize the benefits of an accredited service officer to represent their interests.

The American Legion supports H.R. 3123 with amendments.

H.R. 3627, Justice for America's Veterans and Survivors Act

To amend title 38, United States Code, to direct the Secretary of Veteran Affairs to submit an annual report that contains data and information on the causes of deaths among veterans, and for other purposes.

When a dependent survivor files a VA claim for Dependency and Indemnity Compensation (DIC), current regulations under 38 C.F.R. § 3.312 already stipulates for VA to examine if a veteran's cause of death was due to a primary service-connected disability or secondary contributing factors.[3] DIC may be payable when the cause of death is (a) any condition listed on the death certificate matches with one of the veteran's service-connected disabilities, (b) the cause of death is an approved presumptive disability, or (c) when requirements are met under 38 U.S.C. § 1318 for veterans rated as "total."[4]

The endeavor to produce an accurate death certificate (e.g., death due to health complications from a presumptive toxic exposure, a secondary conditions related to a service-connected disability such as fibromyalgia, or misuse of pain medications to treat a service injury) is complicated by the fact that county coroners or state medical examiners not tied to the Veterans Health Administration (VHA) system are often tasked with making the initial death determination without being trained to identify if the death was incurred by military service-connected injuries such as TBIs, PTSD, or substance misuse to manage pain. In fact, county coroners and medical examiners may not even be aware that the deceased person was a former service member.

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[3] U.S. Department of Veterans Affairs. "38 CFR § 3.312 – Cause of Death." *Electronic Code of Federal Regulations*. Accessed June 16, 2025. https://www.ecfr.gov/current/title-38/chapter-I/part-3/subject-group-ECFR3d1ed1c9d24c813/section-3.312.

[4] Ibid

The Centers for Disease Control and Prevention (CDC) has acknowledged the need for better training "to improve the quality and accuracy of death scene investigations" provided by responders of emergency medical technicians, police, medical examiners, and coroners when contributing to the compiled data used in the National Veteran Suicide Prevention Annual Report (NVDRS).[5] Furthermore, the CDC acknowledges that the investigative process to collect up to 600 data plots when determining the manner of death often requires 16 months to make.[6]

This long process to determine a service-connected death is detrimental for survivors, who are unable to readily access VA compensation and benefits upon a veteran's death. Both timely and accurate death determinations are paramount to ensure that survivors can access certain survivors' financial safety net funds and receive appropriate linkage to postventions (such as VA bereavement services). To ease this burden and ensure that dependent survivors can readily tap into necessary resources, VA must improve its data collection and cause-of-death identification process.

Rep. Edwards' proposed legislation addresses this inefficiency by mandating the Secretary of VA to better track and annually report how each veteran died, whether through natural causes or a service-connection (especially for those with a mental health condition), and whether the veteran was rated as 100% composite or "total" qualifying for survivors DIC benefits. The American Legion can support via Resolution No. 3: *Accuracy in Reporting Survivor Benefits and COVID-19*, which supports legislation requiring VA to seek independent medical opinions and veterans' military medical history that are chronic and are factors in the veterans demise when claims for survivors' benefits are compromised by medical complexities and controversies (i.e. COVID-19, pandemic disease, etc.), that may influence or alter cause of death as recorded on a veteran's death certificate.

The American Legion supports H.R. 3627 as currently written.

H.R. 3951, Rural Veterans' Improved Access to Benefits Act

To amend the Veterans' Benefits Improvements Act of 1996 and the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 to improve the temporary licensure requirements for contract health care professionals who perform medical disability examinations for the Department of Veterans Affairs, and for other purposes.

While physicians working under the federal supervision of the Department of Veterans Affairs (VA) were already allowed to work across state lines since 2016, new temporary authorities signed into public law under the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* afforded these temporary authorities to VA nurse practitioners, physician assistants, psychologists, and audiologists so that they were allowed to conduct wellness contacts and disability exams across state lines too. The Government Accountability Office (GAO)

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[5] U.S. Department of Veterans Affairs, Office of Mental Health and Suicide Prevention. *National Strategy for Preventing Veteran Suicide 2018–2028*. Washington, DC: U.S. Department of Veterans Affairs, 2018. Accessed June 16, 2025. https://www.mentalhealth.va.gov/suicide_prevention/docs/Office-of-Mental-Health-and-Suicide-Prevention-National-Strategy-for-Preventing-Veterans-Suicide.pdf.

[6] Jones, Christopher M. *Reducing Military and Veteran Suicide: Testimony Before the House Veterans' Affairs Subcommittee on Economic Opportunity*. Centers for Disease Control and Prevention, June 15, 2022. https://www.cdc.gov/washington/testimony/2022/t20220615.htm.

discovered that the optometry and dental fields were accidentally omitted and teleworking across state lines with improper authority.[7] These license portability authorities played a pivotal role during the height of COVID-19 pandemic, especially when VA suspended all in-person medical exams for disability benefits.

More importantly, the *Veterans Health Care and Benefits Improvement Act of 2020* also included a provision which granted certain types of Veterans Benefit Administration (VBA) contracted-out health care providers the authority to temporarily conduct medical exams across state lines and in states where they did not hold a medical license.

Per GAO testimony, "The temporary expansion of license portability helped expand their exam reach to rural and high-need areas and increase veterans' access to specialists and experienced examiners."[8] Additionally, GAO noted a heavier reliance on VA-contracted vendors to administer VA Compensation and Pension (C&P) medical exams. From 2017, VA had migrated its examination workload from almost a 1:1 ratio of having both VHA-employed and VBA-contracted out medical examiners conduct the disability exam to almost a 3:1 ratio by 2021 where many of the disability claims exams are shifted to VA-contracted examiners.[9]

With the influx of new types of disability claims from the monumental passage of *Honoring Our Promise to Address Comprehensive Toxics (PACT) Act*, ensuring that VA-contracted examiners have their license portability extended to continue teleworking in rural clinics and across stateliness is pivotal in addressing VBA current disability claims backlog. Upon rollout, by July 2023 VBA had 401,107 new disability claims concerning toxic exposures still pending examination review and processing.[10] As of this week, there were still 353,474 PACT Act-related disability claims with an average day for completion (ADC) of 165.8 days. Also as of this week, there were 523,719 non-Pact Act related disability claims pending with an ADC of 128 days.[11] Now is not the time to allow a statutory sunset clause to go into effect this December. Time is of the essence to extend this arrangement, as VA-contracted vendors have played an integral role in the past and will continue to do so for the foreseeable future.

Furthermore, extending license portability of authorities to address VA's claims backlog is not the sole issue; VA must provide better oversight in the accuracy of ordered medical exams. This is because a July 2022 VA Office of Inspector General (OIG) report noted VA's lack of quality assurance and oversight over VA-contracted medical examiners, where one vendor company had

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[7] U.S. Government Accountability Officer (GAO*), VA Disability Exams: Opportunities Remain to Improve Program Planning and Oversight,* GAO-23-106939 (Washington, DC, 2023), accessed May 29, 2025, https://www.congress.gov/118/meeting/house/116269/witnesses/HHRG-118-VR09-Wstate-CurdaE-20230727.pdf
[8] Ibid
[9] Ibid
[10] VSO Liaison Martin Caraway, "Q3 PACT Act Offsite slides *Planning for Success"* (presentation, 3rd Quarter *PACT Act* Offsite VSO conference in Boston, MA July 15-16, 2023).
[11] https://department.va.gov/pactdata/interactive-dashboard/, accessed on May 29, 2025.

an accuracy rating of 66%, 74%, and 71% for the years of 2018-2020.[12] This accuracy rate falls well below former VA Secretary Eric Shinseki's stated goal of adjudicating all disability veterans' claims within 125 days with a 98% accuracy rate.[13]

The American Legion supports this legislation through Resolution No. 14: *Quality Assurance for Department of Veterans Affairs (VA) Contracted Compensation and Pension (C&P) Examinations*, which urges Congress to pass legislation that will ensure the quality and timeliness of C&P examinations performed by VA contractors, and ensure that they provide veterans with professional, high-quality service.

The American Legion supports H.R. 3951 as currently written.

H.R. 3835, Veterans Appeals Efficiency Act

To amend title 38, United States Code, to improve the efficiency of adjudications and appeals of claims for benefits under laws administered by Secretary of Veteran Affairs, and for other purposes.

The Board of Veterans Appeals (BVA or "the Board") reviews appeals filed by veterans and dependents from adverse decisions. Appeals filed from decisions made before the Appeals Modernization Act (AMA) effective date of February 19, 2019, are called Legacy appeals. Here, Legacy appeals following a remand by the Court of Appeals for Veterans Claims (CAVC) are allowed to keep their original place in docket order. For both Legacy and AMA claims, current law and regulations place priority on the docket for veterans who are 75 years or older, those facing serious illness, or those under serious financial hardship.

The American Legion Service Officers (VSOs) have long noted issues with BVA being excessively stringent on the interpretation and application of 38 U.S.C. § 7107, where they believe the legal standard of "good cause" was met by the client, yet priority placement on the docket was denied. For instance, VSOs had clients who were temporarily staying with friends or family after an eviction or inability to pay rent. While these veterans are technically not homeless, their circumstances fall squarely within the intent of section 71017. Other examples of financial hardships that were denied priority placement on the docket were veterans with accrued medical debt for treatment of primary/secondary conditions that have yet to be adjudicated as service-connected, pushing veterans further and further into dire financial distress. BVA's current strict interpretation of "seriously ill or financial hardship" category has missed its mark and ignored the original reasons for allowing advancement on the docket rules. A review of current practices is overdue.

To reduce BVA's appeals backlog, this proposed legislation would require an annual progress report be delivered to Congress with the following information:

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[12] U.S. Department of Veterans Affairs Office of Inspector General (OIG), *Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions.* Report #21-01237-127 (Washington, DC, 2022), accessed May 29, 2025, *https://www.oversight.gov/sites/default/files/documents/reports/2022-06/VAOIG-21-01237-127.pdf*

[13] U.S. Department of Veterans Affairs, "Breaking the Back of the Backlog: Transformation Plan Aims for 2015 Claims Goal." https://www.vba.va.gov/transformation/

- Cases in which an adjudicator failed to comply with a relevant decision of the Board
- Cases where an Agency of Original jurisdiction (AOJ) did not satisfy the Duty to Assist (DTA) guidelines
- Number of claims filed in the National Work Queue (NWQ) still pending office assignment for adjudication
- Number of cases pending before The Board
- Number of cases afforded expeditious treatment
- Number of cases were remanded by the Court of Appeals for Veterans Claims
- Number of cases are seeking continuous pursuit

Especially for the last metric, The American Legion and other Veteran Service Organizations (VSOs) have long called for the VBA to improve its process to assign correct effective dates. VBA's current computer code uses the same End Product (EP) for Supplemental Claims reopening a decision and Supplemental Claims that are continuously pursued. As a result, VBA's computer system is not able to accurately track effective dates, resulting in individual VBA adjudicators having to manually fix the effective back date. Improved metrics on the frequency of this error may help prompt VBA to adopt technological solutions.

The American Legion welcomes the reporting of these metrics, as it would provide more transparency and pinpoint VBA's workflow bottlenecks. The American Legion notes that the Social Security Administration (SSA) established data reporting and analysis for its disability adjudication process in the previous decade, and has reported improved consistency and quality of its case reviews. Furthermore, SSA's data-informed decisions allowed training opportunities and staff feedback which resulted in improved accuracy and helped inform agencies with differences between agency and federal court interpretation of agency policies.[14] Moreover, The American Legion notes SSA's published report on the data analysis which drove conversations on how to create more effective, efficient policies at lower cost, and we believe that similar data analysis requirements for VBA's disability claims process could drive similar benefits.

Lastly, the proposed legislation would grant the Board Chairman authority to aggregate claims involving similar factual or legal issues for quicker resolution as a collective group, rather than adjudicate each similar case individually, as BVA currently does. BVA would also be authorized to request an opinion from the VA's Office of General Counsel if an appeal or group of appeals involves a question of law that would benefit from such an opinion.

We respectfully submit our recommendation of the following amendment(s):

Allowing the Board Chairman to aggregate common questions of law or fact should include a provision that when this is done, notice is provided to Congressionally chartered VSOs.

In ordinary civil litigation, when a Court certifies a class, some kind of notice is generally provided to others affected by the litigation so that they may protect their interests. Even with the best of

[14] Ray, Gerald K, and Jeffrey S Lubbers. "A Government Success Story: How Data Analysis by the Social Security Appeals Council (with a Push from the Administrative Conference of the United States) Is Transforming Social Security Disability Adjudication." The George Washington Law Review, September 2015. https://www.gwlr.org/wp-content/uploads/2015/11/83-Geo-Wash-L-Rev-1575.pdf.

intentions, it is quite possible that a group of cases aggregated by the Board will not be representative of all veterans affected by an issue, will not contain the most relevant medical or other evidence bearing on the issue, or will not consider all legal provisions bearing on the issue. Accordingly, VSOs must be provided with the basic elements of due process when the Board aggregates claims: notice and the opportunity to respond. This will ensure that the outcome of the aggregation is fully informed and as relevant as possible to meet the needs of the larger veteran benefits system.

Through Resolution No. 5: *Department of Veterans Affairs Appeals Process*, The American Legion supports any legislation that calls on VA to address all claims, to include its growing inventory of appeals in an expeditious and accurate manner. Furthermore, Resolution No. 5 resolves VA to create no program that diminishes a veteran's due process rights. The American Legion supports proposed legislation with the abovementioned recommended changes.

The American Legion supports H.R. 3835 with amendments

H.R. 3834, Protecting Veterans Claim Options Act

To amend title 38, United States Code, to clarify the jurisdiction and certain rules of evidence of the Board of Veterans' Appeals.

The passage of the Appeals Modernization Act (AMA) of 2017 was a monumental piece of legislation designed to streamline the Board of Veteran Appeals (BVA) claims appellate process to reduce the growing backlog.[15] This gave veterans more control over their claims by expanding access to three lanes in which veterans can seek adjudication of their claim. The previous appellate process consisted of just two pathways: the appealing and decision review officer (DRO) process. The change gave more control to the veteran by offering them the ability to submit supplemental claims, request a higher-level review, or appeal directly to the Board.

Since the passage of the AMA, there have been growing concerns with the rigidity of the process, specifically supplemental evidence submission and remands. Procedural technicalities such as the ever-changing requirement for "new and relevant" evidence was being used to remand or dismiss appeals without full review. A 2023 Government Accountability Office (GAO) report noted that Court of Appeals for Veterans Claims (CAVC) and Board data show that over the past three fiscal years, CAVC remanded roughly 80% of appealed Board decisions, often because CAVC found the Board's explanation of its findings to be inadequate.[16] Additionally, there was confusion and inconsistency about what evidence could be submitted, and what would be included. This process and procedural inconsistency prevented veterans from having a truly fair opportunity to have their claims fully reviewed.

The legislation seeks to add a new section which states that the Board may not deny relief solely on the basis that the appellant did not present or secure new and relevant evidence regarding a

[15] Appeals Modernization Act PUBLIC LAW 115–55—AUG. 23, 2017, PUBL055.PS
[16] VA DISABILITY BENEFITS Board of Veterans' Appeals Should Address Gaps in Its Quality Assurance Process GAO-24-106156, VA DISABILITY BENEFITS: Board of Veterans' Appeals Should Address Gaps in Its Quality Assurance Process

supplemental claim. Additionally, the bill provides the claimant the opportunity to provide evidence after a CAVC remand to the Board, preserves the veterans' place on the docket, and allows expeditious adjudication from the Board. Lastly, it prevents bureaucratic dismissal of claims and ensures a merit-based review is conducted providing veterans with due process under section 5108(a).[17]

The American Legion recognizes Congress' efforts and commitment to reducing the backlog and providing statutory recourse for veterans to obtain timely access to their earned benefits. Providing a 90-day evidentiary window following a remand from the Court of Appeals for Veterans Claims would end the remand cycle for veterans able to substantiate their claims based upon the guidance provided in a Court decision. The process of appealing to the Court frequently reveals evidence missing from the record before VA or clarifies precisely what additional facts must be proven to grant a claim. Allowing Veterans to submit this new evidence directly to the Board will reduce administrative churn and allow Veterans to access their earned benefits more efficiently. We further support this legislation through Resolution No. 5: *Department of Veterans Affairs Appeals Process.*

We respectfully submit our recommendation of the following amendment(s):

During the 90-day evidentiary window, if the veteran provides favorable, supplemental evidence post court remand that, the Board Veterans Law Judge shall consider the additional evidence and render a decision for the veteran.

The American Legion Supports H.R. 3834 with amendments.

H.R. 3833, Veterans' Caregiver Appeals Modernization Act

To amend title 38, United States Code, to make certain improvements to the program of the Department of Veterans Affairs to provide comprehensive assistance for family caregivers of eligible veterans, and for other purposes.

The American Legion supports the underlying premise of this legislation and if it is the intent of Congress to retain eligibility determinations for Program of Comprehensive Assistance for Family Caregivers (PCAFC) to remain with the Veterans Health Administration. The American Legion supports the bill.

We do, however, respectfully submit our recommendation for a significant amendment:

Transfer the adjudication of eligibility for the PCAFC from the Veterans Health Administration (VHA) to the Veterans Benefits Administration (VBA).

We do not make this proposal lightly. This is not merely an administrative shift; it provides structural correction grounded in law, logic, and fairness.

[17] 38 USC Ch. 51: CLAIMS, EFFECTIVE DATES, AND PAYMENTS 38 USC Ch. 51: CLAIMS, EFFECTIVE DATES, AND PAYMENTS

The US Court of Appeals for Veterans Claims ruled that PCAFC determinations are legal and subject to appellate rights via the Board of Veterans' Appeals. VBA currently has the technological infrastructure, statutory mission and benefit accountability to fairly and transparently adjudicate PCAFC eligibility. VHA has systemic and statutory restrictions to providing a representative access to systems needed to review evidence weighed in a PCAFC determination. VBA is in custody of key determining factors such as the service-connected disabilities and their degree of severity, which are critical to determine basic eligibility to PCAFC. Furthermore, PCAFC determinations are very similar to the adjudication of special monthly compensation based upon the need for aid and attendance, which is already performed by VBA as both require an assessment of the veteran's need for help with activities of daily living. Thus, VBA already has substantive competence in making these determinations. Moreover, unifying the adjudication of these benefits in VBA will dramatically reduce the potential for inconsistent findings between VHA and VBA regarding a veteran's need for help with activities of daily living.

VBA's Veteran Benefit Management System (VBMS) allows accredited service organizations like the American Legion full access to evidence being weighed to make an eligibility determination, supplemental claims process and allows representatives to participate meaningfully in the appeals process in alignment with 38 CFR § 14.631. VBMS currently has the technical capabilities to integrate with the Board's Caseflow software.

At the time of PCAFCs creation in 2010, VA was working other monumental Veteran Benefit packages moving through Congress simultaneously, presumptive conditions for agent orange exposed Veterans with a Nehmer review, and the Post 9-11 GI Bill. In that context, it was determined that VHA with its clinical work would implement the PCAFC. VHA should still maintain all care, respite services and caregiver support, while allowing VBA to make the initial legal determination of eligibility that aligns more closely with Title 38 programs.

The American Legion believes this is a critical program, and shifting the legal adjudications to VBA aligns with legal classification of the benefit, enhances transparency and accountability, leverages existing infrastructure, and streamlines Congressional oversight and GAO auditing of systemic shortcomings.

The American Legion supports H.R. 3833 with amendments.

H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act

To direct the Secretary of Veterans Affairs to submit a plan to expand the use of certain automation tools in the Department of Veterans Affairs, and for other purposes.

In 2022, Congress passed the PACT Act. This groundbreaking legislation expanded VA eligibility for many veterans who were exposed to toxic substances while they served. While applauded by the veteran community, including The American Legion, this also led to a large backlog in veterans claims to be processed that has lasted the past several years. As of May 2025, this backlog sits at

around 200,000 claims, leading the VA to reinstate mandatory overtime to help address the backlog.[18]

The American Legion has testified many times on the problems that the post-PACT Act claims backlog has caused for veterans and as recently as April 2025, noted that The Veterans Benefits Administration (VBA) was still not adequately prepared to absorb this surge in claims. "While the law's intent was to improve outcomes for toxic-exposed veterans, the result has been a renewed backlog and an overwhelmed workforce struggling under shifting guidance, inconsistent training, outdated development standards, and rotational leadership."[19]

This legislation seeks to address such backlog by enabling the VA to use AI automation to speed up claims processing by mandating VA to design a strategy plan on how to implement AI in claims processing, and design an AI tool to automatically generate claims letters, better track dependent benefits to reduce overpayments, and devise a plan to use AI to automatically label and store relevant claims documents.[20] It must be noted that VA testified that it was already piloting or fielding such AI capabilities two years prior to June 6, 2023.[21] This bill would codify a strategy plan for a more streamlined implementation of such promising technology.

The American Legion can support this Legislation through Resolution No. 123: *Increase the Transparency of the Veterans Benefits Administration's Claim Processing*.[22] This resolution includes a resolved clause that the Legion wants Congress to pass legislation that will bring VA claim processing to under 125 days with a 98% accuracy rate. This legislation will help achieve that goal by utilizing AI resources.

The American Legion supports H.R. 3854 as currently written.

H.R. 3983, Veterans Claims Quality Improvement Act

To amend title 38, United States Code, to improve the quality of the adjudication of claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

This proposed legislation would mandate technology and policies to ensure VBA employees who commit an avoidable error (e.g., unnecessary overdevelopment leading to avoidable decision deferrals) are notified, and the deferrals are documented for corrective training. While VA Decision Review Operation Centers (DROCs) are tasked with reviewing error trends, The

[18] Heckman, Jory. "VA Reinstates Mandatory Overtime to Address 200,000-Claim Backlog." Federal News Network, May 21, 2025. https://federalnewsnetwork.com/workforce/2025/05/va-reinstates-mandatory-overtime-to-tackle-backlog-of-200000-benefits-claims/.
[19] McClain, Brandon. "Legion Urges Reduction of Overdevelopment of VA Claims, Improvements in Timeliness, Accuracy." The American Legion, April 9, 2025. https://www.legion.org/information-center/news/veterans-benefits/2025/april/legion-urges-reduction-of-overdevelopment-of-va-claims-improvements-in-timeliness-accuracy.
[20] "Congressman Valadao Reintroduces Legislation to Improve VA Claims Processing Times | U.S. Congressman David Valadao." Congressman Valadao House of Representatives Site, June 12, 2025. https://valadao.house.gov/news/documentsingle.aspx?DocumentID=2041.
[21] https://docs.house.gov/meetings/VR/VR09/20230606/116037/HHRG-118-VR09-Wstate-TellezR-20230606.pdf
[22] "Resolution No. 123: Increase the Transparency of the Veterans Benefits Administration's Claim Processing." The American Legion, August 30, 2016. https://archive.legion.org/node/349.

American Legion, through its Regional Office Action Review (ROAR) program, has learned that Veteran Service Representatives (VSRs) and Ratings Veteran Service Representatives (RVSRs) do not consistently receive sufficient feedback on recurring errors through the current Systematic Technical Accuracy Review (STAR) quality assurance program. This leaves the employees unaware of how to improve their accuracy. The American Legion is extremely supportive of a more formalized process to standardize feedback to help prevent VSRs/RVSRs from making repeated and avoidable errors.

Likewise, proposed legislation would mandate policies to track the quality of decisions made by the Department of Veterans Affairs Board of Veterans' Appeals (BVA or the Board) in terms of error rates, decisions remanded or returned by the Court of Appeals for Veterans Claims (CAVC) for errors, and decisions that were subsequently vacated by the CAVC. This would inform any employee of the Board responsible for drafting the decision that any error identified by the Board shall be corrected before Board's issuance of a final decision. While Veterans Law Judges (VLJs) had their own internal tracking system to provide this feedback, it was discovered during a November 2023 Congressional hearing that the tracking sheet had disappeared. Therefore, BVA employees were no longer able to look up and track dispositions handed down by the CAVC, such as Joint Motion for Remand (JMR).[23]

Tracking errors is absolutely essential, as VSOs help identify BVA's failures to provide adequate reasonings for findings, or failure to ensure the duty to assist (DTA) has been fulfilled. When The American Legion VSOs investigated this matter further with VA's OIT Department, we were informed that VA has no existing tools similar to the Social Security Administration (SSA) to notify the issuing judge and staff attorneys that their decision had been overturned or remanded. VA's OIT Department informed us that no such capability has been requested by BVA.[24]

SSA's technology platform, called the Electronic Claims Analysis Tool (eCAT), supports efforts to analyze disposition outcomes, improve consistency in the adjudication processes, and better pinpoint areas where employees need retraining.[25] This would be a useful model for VBA to consider. Ensuring that employees working at all levels of VBA, from VSRs processing the claims intake and scheduling for disability medical exams to the VLJs and attorneys crafting the appeals deposition, are aware of their errors and how to correct them is crucial in decreasing future errors and clearing VBA's current claims backlog.

Additionally, this proposed legislation would alter performance review of Board judges from "not less than three years" to "not less than annually." This aligns with the performance review cycle for SSA judges, where they are measured against an "Annual Productivity Expectation" metric.[26] However, the proposed legislation stipulates "that the Secretary may not consider the timeliness

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[23] SVAC Roundtable on "Claims and the Veterans Affairs' High Remand Rate; Class Action Option" held on Thursday, Nov 21, 2024.
[24] Ibid
[25] Ray, Gerald K, and Jeffrey S Lubbers. "A Government Success Story: How Data Analysis by the Social Security Appeals Council (with a Push from the Administrative Conference of the United States) Is Transforming Social Security Disability Adjudication." The George Washington Law Review, September 2015. https://www.gwlr.org/wp-content/uploads/2015/11/83-Geo-Wash-L-Rev-1575.pdf.
[26] "Social Security Disability: Process Needed to Review Productivity Expectations for Administrative Law Judges." Government Accountability Office, June 2021. https://www.gao.gov/assets/gao-19-261.pdf.

or quality of work of any Member of the Board." The American Legion has reservations about this ambiguous language, as it is unclear exactly what metrics would be evaluated if timeliness and quality are excluded. some judges could have low production but produce high quality work, and vice versa.

Under SSA's Annual Expectations Performance metric, Administrative Law Judges (ALJ) and Administrative Appeals Judges have collectively met their 97% decisional accuracy rate goal for initial disability decisions.[27] In comparison, VA's own internal audit of BVA judges and counsel staff found that of the 3,500 cases sampled, there was a Quality Assurance (QA) rate of 95.8% accuracy for Legacy appeals and 95.5% for AMA appeals decisions.[28] The American Legion acknowledges that the legal professionals at the Board are collectively providing high quality decisions.

Lastly, proposed legislation would mandate that SECVA consult with the Board Chairman and the Office of Administrative Review of the Veterans Benefits Administration to create a plan to improve the quality of decisions of the Board to remand, and to mitigate the number of such decisions that are unnecessary under any applicable law or regulation. The American Legion recommends adding language to include other stakeholders (i.e., VSOs, veteran law firms, and other federal agencies) as there has been a lot of institutional knowledge and literature already out there recommending for a collaborative, systems approach to address the claim backlogs at other federal agencies.

For instance, a 2018 report compiled by the Administrative Conference of the United States already queried the SSA, BVA, Office of Medicare Hearings and Appeals, the Federal Trade Commission (FTC), and Occupational Safety and Health Review Commission. The Conference recommended for claims decisions to be sanitized of PIIs so that data scientists can analyze for claims trends and efficiency. Furthermore, this report found that SSA's Appeals Council already had an innovative model to adjudicate by assigning batches involving similar issues so that adjudicators would spend less time researching regulations.[29]

After the COVID-pandemic forced many federal agencies to change their hearings operations to address their disability claims backlogs, Federal agencies realized the importance of data analysis and need for an agency's correct decision-making process to avoid erroneous decisions which would add on to the caseload of the appeals courts. As a result, many agencies noted that certain agencies were already piloting sophisticated and innovative AI technologies in their case management case flow work to capture data, identify recurring problems, and inform effective fixes.[30]

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[27] Social Security Administration FYs 2023-2025 Annual Performance Report, March 11, 2024. https://www.ssa.gov/agency/performance/materials/2025/SSA_FYs2023-2025_APR.pdf.
[28] Board of Veterans Appeals Annual Report FY 2024. Accessed June 16, 2025. https://department.va.gov/board-of-veterans-appeals/wp-content/uploads/sites/19/2025/04/2024_bva2024ar.pdf.
[29] "Implementation and Use of Electronic Case Management Systems in Federal Administrative Adjudication." Administrative Conference of the United States, May 23, 2018. https://www.acus.gov/document/electronic-case-management-federal-administrative-adjudication .
[30] Ho, Daniel E, David Marcus, and Gerald K Ray. "Improving the Quality of Mass Justice." The Regulatory Review, May 24, 2022. https://www.theregreview.org/2022/05/23/ho-marcus-ray-quality-mass-justice/.

Additionally, veteran law firms, such as The American Legion's litigation partner, have long noted flaws in VA's current QA division. Specifically, veterans law firms have expressed consternation over the effectiveness of BVA's internal Quality Reviews, as their attorneys are temporarily assigned this duty. This questions an attorneys' true ability to have objectivity and candor in their QA reviews when they eventually might be reassigned under a Veterans Law Judge (VLJ) that he/she conducted a negative Quality Review report on.

We therefore respectfully submit our recommendation for an amendment:

To require other stakeholders' participation in this quality review process, as their own quality assurance protocols and success outcomes would strengthen BVA's quality efforts.

Through Resolution No. 5: *Department of Veterans Affairs Appeals Process*, The American Legion supports any legislation that calls on VA to address all claims, to include its growing inventory of appeals, in an expeditious and accurate manner.

The American Legion supports H.R. 3983 with amendments.

CONCLUSION

Chairman Luttrell, Ranking Member McGarvey, and distinguished members of the subcommittee, The American Legion thanks you for your leadership on these important issues, and for allowing us the opportunity to provide feedback on this legislation.

The American Legion looks forward to continuing this work with the Committee and to providing the feedback we receive from our membership. Questions concerning this testimony can be directed to Jake Corsi, Legislative Associate, at jcorsi@legion.org.

Prepared Statement of Vietnam Veterans of America

VIETNAM VETERANS OF AMERICA
8719 Colesville Road, Suite 100
Silver Spring, MD 20910
(301) 585-4000 vva.org
NEVER AGAIN WILL ONE GENERATION OF VETERANS ABANDON ANOTHER.

June 16, 2025

The Honorable Morgan Luttrell
Chair, Subcommittee on Disability Assistance and Memorial Affairs
House Committee on Veterans' Affairs
364 Cannon House Office Building
Washington, DC 20003

The Honorable Morgan McGarvey
Ranking Member, Subcommittee on Disability Assistance and Memorial Affairs
House Committee on Veterans' Affairs
364 Cannon House Office Building
Washington, DC 20003

Dear Representative Luttrell and McGarvey,

I am writing to express our unwavering support for the agenda and legislation scheduled for discussion on June 24th, 2025. As the Executive Director of Government Affairs for Vietnam Veterans of America (VVA), and in my capacity as a past National Commander of the Military Order of the Purple Heart, I am honored to stand in solidarity with the members of this esteemed subcommittee. The bipartisan efforts you both are committed to is refreshing and welcomed.

The legislation under consideration reflects a commitment to enhancing the lives of our veterans and their families—an endeavor that is not only commendable but essential. We recognize the sacrifices made by those who served and the ongoing challenges they face, particularly regarding disability assistance and memorial affairs. VVA is dedicated to advocating for policies that provide the necessary support and resources to ensure that veterans receive the care and recognition they deserve.

Through our memorandum of understanding with the Military Order of the Purple Heart, we are united in our efforts to address the needs of our veterans. We believe that the proposed legislation will play a pivotal role in improving the quality of life for those who have bravely served our nation. It is imperative that we continue to work together to promote initiatives that assist veterans in navigating the complexities of the benefits they have earned.

We commend the subcommittee for its dedication to these critical issues and offer our full support for the agenda items and legislation under consideration. Together, we can make meaningful progress toward a brighter future for veterans and their families.

Thank you for your leadership and commitment to serving those who have served us all.

Sincerely,

James McCormick
Executive Director Government Affairs

VIETNAM VETERANS OF AMERICA
8719 Colesville Road, Suite 100
Silver Spring, MD 20910
(301) 585-4000 vva.org
NEVER AGAIN WILL ONE GENERATION OF VETERANS ABANDON ANOTHER.

June 16, 2025

The Honorable Morgan Luttrell
Chair, Subcommittee on Disability Assistance and Memorial Affairs
House Committee on Veterans' Affairs
364 Cannon House Office Building
Washington, DC 20003

The Honorable Morgan McGarvey
Ranking Member, Subcommittee on Disability Assistance and Memorial Affairs
House Committee on Veterans' Affairs
364 Cannon House Office Building
Washington, DC 20003

Dear Representative Luttrell and McGarvey,

Below is a list of legislation we see that is being presented on June 24th, 2025, and we are pleased to offer our support for this current list of proposed legislation and stand ready to offer testimony as needed.

1. H.R. 3123, Ernest Peltz Accrued Veterans Benefits Act*Rep. Elise Stefanik
2. H.R. 3627, Justice for America's Veterans and Survivors Act of 2025*Rep. Chuck Edwards
3. H.R. 3833, Veterans' Caregiver Appeals Modernization Act*Rep. Tom Barrett
4. H.R. 3834, Protecting Veterans Claim Options Act*Chairman Mike Bost
5. H.R. 3835, Veterans Appeals Efficiency Act of 2025*Chairman Mike Bost
6. H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act*Rep. David Valadao
7. H.R. 3951, Rural Veterans' Improved Access to Benefits Act of 2025*Rep. Juan Ciscomani
8. H.R. 3983, Veterans Claims Quality Improvement Act of 2025*Rep. Morgan Luttrell

Sincerely,

James McCormick
Executive Director Government Affairs

Prepared Statement of Bethany Mandel

TESTIMONY OF BETHANY MANDEL IN SUPPORT OF H.R. 2701, THE *"FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT"* BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarveyI am honored to submit this written testimony in strong support of H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

Over the past year, I've had the privilege of participating in three military headstone rededication ceremonies in three different countries, organized by Operation Benjamin. This remarkable organization works to identify and rectify cases in which Jewish American service members were mistakenly buried under Latin crosses instead of the Star of David, despite having lived, served and died as Jews.

Through these moving ceremonies, I have witnessed firsthand the profound impact that proper recognition has on the families of the fallen, the Jewish community, and the broader American public. These are not just symbolic acts—they are acts of historical justice, restoring both individual dignity and communal memory. Hearing the stories of these brave servicemen and seeing them acknowledged by U.S. officials, local dignitaries, and media has been a powerful reminder of the deep Jewish roots within our nation's military history.

At a time of rising antisemitism, the importance of telling these stories and honoring Jewish American service members correctly cannot be overstated. Their service is a testament to the diversity and strength of the American armed forces. H.R. 2701 is not just about correcting old mistakes—it's about affirming the place of Jewish Americans in the fabric of this nation's history, and standing against erasure in any form.

I urge Congress to pass the Fallen Servicemembers Religious Heritage Restoration Act without delay. It is a long-overdue act of respect, historical accuracy, and national integrity.

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Prepared Statement of Administrative Conference of the United States

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

June 23, 2025

The Honorable Morgan Luttrell
Chairman
Subcommittee on Disability Assistance and Memorial Affairs
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20515

The Honorable Morgan McGarvey
Ranking Member
Subcommittee on Disability Assistance and Memorial Affairs
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20515

Dear Chairman Luttrell and Ranking Member McGarvey:

On behalf of the Office of the Chairman of the Administrative Conference of the United States (ACUS), I write to call the Subcommittee's attention to several ACUS recommendations that relate directly to H.R. 3835, the Veterans Appeals Efficiency Act of 2025—and especially its requirement that ACUS be consulted on a study to be commissioned by the Secretary of Veterans Affairs—in advance of the Subcommittee's legislative hearing on June 24, 2025. These recommendations may be useful to the Subcommittee as it considers the bill.

ACUS is an independent agency in the executive branch charged by statute with making recommendations to the President, federal agencies, Congress, and the Judicial Conference to improve adjudication, rulemaking, and other administrative processes (5 U.S.C. § 594). It consists of up to 101 members drawn from federal agencies, the practicing bar, scholars in the field of administrative law or government, and others specially informed by knowledge and experience with respect to federal administrative procedure. The Office of the Chairman supports the work of the membership and undertakes other activities to study and improve federal administrative processes, including providing technical assistance to Congress.

Section 2(g)(1) of H.R. 3835 requires the Secretary of Veterans Affairs to enter into an agreement with a Federally Funded Research and Development Center (FFRDC) to submit to the Secretary a "written assessment" that includes:

- "The determination of the FFRDC" as to "whether modifying the authority of the Board [of Veterans' Appeals] to permit the Board to issue precedential decisions" in cases before the Board is "feasible." § 2(g)(3)(A); see also §2(g)(1)).

- "An assessment of the authority of the Board … to aggregate, for review, more than one appeal . . . that involves common questions of law or fact . . . ." § 2(g)(3)(B).

- "The recommendations of the FFRDC with respect to the rules or principles to which the Board should adhere when aggregating appeals for review . . . ." § 2(g)(3)(C).

In preparing its assessment, the FFRDC must consult with the Chairman of ACUS. ACUS thanks H.R. 3835's sponsors—including Chairman Bost—for including ACUS's Office of the Chairman in the consultative process.

ACUS has issued two recommendations that are concerned exclusively with the general subjects—aggregation and precedential decision making—that the FFRDC must address in its assessment: Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, 81 Fed. Reg. 40260 (June 10, 2016); and Recommendation 2022-4, *Precedential Decision Making in Agency Adjudication*, 88 Fed. Reg. 2312 (Jan. 13, 2023). A third, Recommendation 2020-3, *Agency Appellate Systems* 86 Fed. Reg. 6618 (Dec. 16, 2020), also addresses precedential decision making. *See* §§ 12, 14, 15–17, 22–23.

Recommendation 2016-2 addresses the specific issues that section 2(g)(3)(C) requires the FFRDC to consider: It identifies the criteria that agencies should consider in deciding whether to aggregate cases, how they should structure an aggregation system, and procedures they should employ.

Recommendation 2016-2, may also be useful in informing the Subcommittee's consideration of section 2(d) of H.R. 3835. That section allows the Chairman of the Board of Veterans' Appeals to aggregate cases and requires the Secretary to submit to the Committee on Veterans' Affairs a report on aggregation within five years after the bill's enactment. Section 2(d) defines aggregation broadly to include "joinder, consolidation, intervention, class actions, and any other multiparty proceeding." Like H.R. 3835, Recommendation 2016-2 and its associated report identifies various procedural forms that aggregation might take.

The above-noted recommendations and summaries of them appear in the Appendix to this letter, accompanied by links to the consultants' reports that informed their development.

In addition to these recommendations, ACUS has issued or sponsored many other recommendations, research reports, and other materials on adjudication that the Subcommittee may find useful as it considers H.R. 3835. They include Recommendation 2023-7, *Improving Timeliness in Agency Adjudication*, 89 Fed. Reg. 1513 (Jan. 10, 2024). Other materials on adjudication appear on ACUS's website at https://www.acus.gov/page/adjudication.

I welcome any questions the Subcommittee may have about these or other ACUS resources on agency adjudication. I encourage your staff to contact Adam Cline, Attorney Advisor (acline@acus.gov), if we can be of assistance on this or any other matter.

Sincerely yours,

Jeremy Graboyes
Research Director

cc: The Honorable Mike Bost
The Honorable Mark Takano

Appendix

Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, 81 Fed. Reg. 40260 (June 10, 2016).

> **Summary.** This ACUS Recommendation provides guidance to agencies on the use of aggregation techniques to resolve similar claims in adjudications. It sets forth procedures for determining whether aggregation is appropriate. It also considers what kinds of aggregation techniques should be used in certain cases and offers guidance on how to structure the aggregation proceedings to promote both efficiency and fairness.
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> **Consultant Report.** Michael Sant'Ambrogio & Adam Zimmerman, Aggregate Agency Adjudication (June 9, 2016) (report to the Admin. Conf. of the U.S.).

Recommendation 2020-3, *Agency Appellate Systems* 86 Fed. Reg. 6618 (Dec. 16, 2020).

> **Summary.** This ACUS Recommendation offers agencies best practices to improve administrative review of hearing-level adjudicative decisions with respect to case selection, decision-making process and procedures, management oversight, and public disclosure and transparency. In doing so, it encourages agencies to identify the objectives of such review and structure their appellate systems to serve those objectives.
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> **Consultant Report.** Christopher J. Walker & Matthew Lee Wiener, Agency Appellate Systems (Dec. 14, 2020) (report to the Admin. Conf. of the U.S.).

Recommendation 2022-4, *Precedential Decision Making in Agency Adjudication*, 88 Fed. Reg. 2312 (Jan. 13, 2023).

> **Summary.** This ACUS Recommendation identifies best practices on the use of precedential decisions in agency adjudication. It addresses whether agencies should issue precedential decisions and, if so, according to what criteria; what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions; and how agencies should communicate precedential decisions internally and publicly. It also recommends that agencies codify their procedures for precedential decision making in their rules of practice.
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> **Consultant Report.** Christopher J. Walker, Melissa Wasserman & Matthew Lee Wiener, Precedential Decision Making in Agency Adjudication (Dec. 6, 2022) (report to the Admin. Conf. of the U.S.).

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Recommendation 2016-2

Aggregation of Similar Claims in Agency Adjudication

Adopted June 10, 2016

Federal agencies in the United States adjudicate hundreds of thousands of cases each year—more than the federal courts. Unlike federal and state courts, federal agencies have generally avoided aggregation tools that could resolve large groups of claims more efficiently. Consequently, in a wide variety of cases, agencies risk wasting resources in repetitive adjudication, reaching inconsistent outcomes for the same kinds of claims, and denying individuals access to the affordable representation that aggregate procedures promise. Now more than ever, adjudication programs, especially high volume adjudications, could benefit from innovative solutions, like aggregation.[1]

The Administrative Procedure Act (APA)[2] does not provide specifically for aggregation in the context of adjudication, though it also does not foreclose the use of aggregation procedures. Federal agencies often enjoy broad discretion, pursuant to their organic statutes, to craft procedures they deem "necessary and appropriate" to adjudicate the cases and claims that come before them.[3] This broad discretion includes the ability to aggregate common cases, both

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[1] Other related techniques that can help resolve recurring legal issues in agencies include the use of precedential decisions, declaratory orders as provided in 5 U.S.C. 554(e), and rulemaking. With respect to declaratory orders, see Recommendation 2015-3, *Declaratory Orders*, 80 Fed. Reg. 78,163 (Dec. 16, 2015), *available at* https://www.acus.gov/recommendation/declaratory-orders. The Supreme Court has recognized agency authority to use rulemaking to resolve issues that otherwise might recur and require hearings in adjudications. *See Heckler v. Campbell*, 461 U.S. 458 (1983).

[2] *See* Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 237 (1946) (codified as amended at 5 U.S.C. §§ 551–559, 701-706 and scattered sections in Title 5).

[3] Broad discretion exists both in "formal adjudication," where the agency's statute requires a "hearing on the record," triggering the APA's trial-type procedures, and in "informal adjudication," where the procedures set forth in APA §§ 554, 556 & 557 are not required, thus allowing less formal procedures (although some "informal adjudications" are nevertheless quite formal).

formally and informally. Formal aggregation involves permitting one party to represent many others in a single proceeding.[4] In informal aggregation, different claimants with very similar claims pursue a separate case with separate counsel, but the agency assigns them to the same adjudicator or to the same docket, in an effort to expedite the cases, conserve resources, and ensure consistent outcomes.[5]

Yet, even as some agencies face large backlogs, few have employed such innovative tools. There are several possible explanations for this phenomenon. The sheer number of claims in aggregate agency adjudications may raise concerns of feasibility, legitimacy, and accuracy because aggregation could (1) create diseconomies of scale by inviting even more claims that further stretch the agency's capacity to adjudicate; (2) negatively affect the perceived legitimacy of the process; and (3) increase the consequence of error.

Notwithstanding these risks, several agencies have identified contexts in which the benefits of aggregation, including producing a pool of information about recurring problems, achieving greater equality in outcomes, and securing the kind of expert assistance high volume adjudication attracts, outweigh the costs.[6] Agencies have also responded to the challenges of aggregation by (1) carefully piloting aggregation procedures to improve output while avoiding creation of new inefficiencies; (2) reducing potential allegations of bias or illegitimacy by relying on panels, rather than single adjudicators, and providing additional opportunities for parties to voluntarily participate in the process; and (3) allowing cases raising scientific or novel

[4] This recommendation does not address formal aggregation of respondents or defendants in proceedings before agencies.

[5] The American Law Institute's *Principles of the Law of Aggregation* defines proceedings that coordinate separate lawsuits in this way as "administrative aggregations," which are distinct from joinder actions (in which multiple parties are joined in the same proceeding) or representative actions (in which a party represents a class in the same proceeding). *See* AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 1.02 (2010) (describing different types of aggregate proceedings).

[6] *See* Michael Sant'Ambrogio & Adam Zimmerman, Aggregate Agency Adjudication 27–65 (June 9, 2016), *available at* https://www.acus.gov/report/aggregate-agency-adjudication-final-report (describing three examples of aggregation in adjudication).

factual questions to "mature"[7]—that is, putting off aggregation until the agency has the benefit of several opinions and conclusions from different adjudicators about how a case may be handled expeditiously.

The Administrative Conference recognizes aggregation as a useful tool to be employed in appropriate circumstances. This recommendation provides guidance and best practices to agencies as they consider whether or how to use or improve their use of aggregation.[8]

RECOMMENDATION

1. Aggregate adjudication where used should be governed by formal or informal aggregation rules of procedure consistent with the APA and due process.

Using Alternative Decisionmaking Techniques

2. Agencies should consider using a variety of techniques to resolve claims with common issues of fact or law, especially in high volume adjudication programs. In addition to the aggregate adjudication procedures discussed in paragraphs 3–10, these techniques might include the designation of individual decisions as "precedential," the use of rulemaking to resolve issues that are appropriate for generalized resolution and would otherwise recur in multiple adjudications, and the use of declaratory orders in individual cases.

Determining Whether to Use Aggregation Procedures

3. Agencies should take steps to identify whether their cases have common claims and issues that might justify adopting rules governing aggregation. Such steps could include:

[7] *Cf.* Francis E. McGovern, *An Analysis of Mass Torts for Judges*, 73 TEX. L. REV. 1821 (1995) (defining "maturity" in which both sides' litigation strategies are clear, expected outcomes reach an "equilibrium," and global resolutions or settlements may be sought).

[8] This recommendation covers both adjudications conducted by administrative law judges and adjudications conducted by non-administrative law judges.

a. Developing the information infrastructure, such as public centralized docketing, needed for agencies and parties to identify and track cases with common issues of fact or law;
b. Encouraging adjudicators and parties to identify specific cases or types of cases that are likely to involve common issues of fact or law and therefore prove to be attractive candidates for aggregation; and
c. Piloting programs to test the reliability of an approach to aggregation before implementing the program broadly.

4. Agencies should develop procedures and protocols to assign similar cases to the same adjudicator or panel of adjudicators using a number of factors, including:
   a. Whether coordination would avoid duplication in discovery;
   b. Whether it would prevent inconsistent evidentiary or other pre-hearing rulings;
   c. Whether it would conserve the resources of the parties, their representatives, and the agencies; and
   d. Where appropriate, whether the agencies can accomplish similar goals by using other tools as set forth in paragraph 2.
5. Agencies should develop procedures and protocols for adjudicators to determine whether to formally aggregate similar claims in a single proceeding with consideration of the principles and procedures in Rule 23 of the Federal Rules of Civil Procedure, including:
   a. Whether the number of cases or claims are sufficiently numerous and similar to justify aggregation;
   b. Whether an aggregate proceeding would be manageable and materially advance the resolution of the cases;
   c. Whether the benefits of collective control outweigh the benefits of individual control, including whether adequate counsel is available to represent the parties in an aggregate proceeding;
   d. Whether (or the extent to which) any existing individual adjudication has (or related adjudications have) progressed; and

e. Whether the novelty or complexity of the issues being adjudicated would benefit from the input of different adjudicators.

Structuring the Aggregate Proceeding

6. Agencies that use aggregation should ensure that the parties' and other stakeholders' interests are adequately protected and that the process is understood to be transparent and legitimate by considering the use of mechanisms such as:
    a. Permitting interested stakeholders to file amicus briefs or their equivalent;
    b. Conducting "fairness hearings," in which all interested stakeholders may express their concerns with the proposed relief to adjudicators in person or in writing;
    c. Ensuring that separate interests are adequately represented in order to avoid conflicts of interest;
    d. Permitting parties to opt out in appropriate circumstances;
    e. Permitting parties to challenge the decision to aggregate in the appeals process, including an interlocutory appeal to the agency; and
    f. Allowing oral arguments for amici or amicus briefs in agency appeals.
7. Agencies that use aggregation should develop written and publicly available policies explaining how they initiate, conduct, and terminate aggregation proceedings. The policies should also set forth the factors used to determine whether aggregation is appropriate.
8. Where feasible, agencies should consider assigning a specialized corps of experienced adjudicators who would be trained to handle aggregate proceedings, consistent with APA requirements where administrative law judges are assigned. Agencies should also consider using a panel of adjudicators from the specialized corps to address concerns with having a single adjudicator decide cases that could have a significant impact. Agencies that have few adjudicators may need to "borrow" adjudicators from other agencies for this purpose.

Using Aggregation to Enhance Control of Policymaking

9. Agencies should make all decisions in aggregate proceedings publicly available. In order to obtain the maximum benefit from aggregate proceedings, agencies should also consider designating final agency decisions as precedential if doing so will:
    a. Help other adjudicators handle subsequent cases involving similar issues more expeditiously;
    b. Provide guidance to future parties;
    c. Avoid inconsistent outcomes; or
    d. Increase transparency and openness.
10. Agencies should ensure the outcomes of aggregate adjudication are communicated to policymakers or personnel involved in rulemaking so that they can determine whether a notice-and-comment rulemaking proceeding codifying the outcome might be worthwhile. If agencies are uncertain they want to proceed with a rule, they might issue a notice of inquiry to invite interested parties to comment on whether the agencies should codify the adjudicatory decision (in whole or in part) in a new regulation.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Recommendation 2020-3

Agency Appellate Systems

Adopted December 16, 2020

In Recommendation 2016-4,[1] the Administrative Conference offered best practices for evidentiary hearings in administrative adjudications. Paragraph 26 recommended that agencies provide for "higher-level review" (or "agency appellate review") of the decisions of hearing-level adjudicators.[2] This Recommendation offers best practices for such review. The Administrative Conference intends this Recommendation to cover appellate review of decisions resulting from (1) hearings governed by the formal hearing provisions of the Administrative Procedure Act (APA) and (2) evidentiary hearings that are not governed by those provisions but are required by statute, regulation, or executive order. Agencies may also decide to apply this Recommendation to appellate review of decisions arising from other hearings, depending on their level of formality.

Appellate review of hearing-level decisions can be structured in numerous ways. Two structures are most common. In the first, litigants appeal directly to the agency head, which may be a multi-member board or commission. In the second, litigants appeal to an appellate adjudicator or group of adjudicators—often styled as a board or council—sitting below the

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[1] Admin. Conf. of the U.S., Recommendation 2016-4, *Evidentiary Hearings Not Required by the Administrative Procedure Act*, 81 Fed. Reg. 94,314 (Dec. 23, 2016).

[2] Recommendation 2016-4 addressed agency adjudications in which an evidentiary hearing, though not governed by the formal hearing provisions of the Administrative Procedure Act (APA) (5 U.S.C. §§ 554, 556–57), is required by statute, regulation, or executive order. Those adjudications, which are often as formal as APA adjudications in practice, far outnumber so-called APA adjudications. Although Recommendation 2016-4 addresses only non-APA adjudications, most of its best practices are as applicable to APA adjudications as non-APA adjudications. Some such practices, in fact, are modeled on the APA's formal hearing provisions.

agency head. The appellate decision may be the agency's final action or may be subject to further appeal within the agency (usually to the agency head).

The Administrative Conference has twice before addressed agency appellate review. In Recommendations 68-6 and 83-3, it provided guidance to agencies when establishing new, and reviewing existing, organizational structures of appellate review.[3] Both recommendations focused on the selection of "delegates"—individual adjudicators, review boards composed of multiple adjudicators, or panels composed of members of a multi-member agency—to exercise appellate review authority vested in agency heads (including boards and commissions). Recommendation 83-3 also addressed when agencies should consider providing appellate review as a matter of right and when as a matter of discretion, and, in the case of the latter, under what criteria.

With the exception of the appropriate standard for granting review, this Recommendation's focus lies elsewhere. It addresses, and offers best practices with respect to, the following subjects: first, an agency's identification of the purpose or objective served by its appellate review; second, its selection of cases for appellate review, when review is not required by statute; third, its procedures for review; fourth, its appellate decision-making processes; fifth, its management, administration, and bureaucratic oversight of its appellate system; and sixth, its public disclosure of information about its appellate system.[4]

Most importantly, this Recommendation begins by suggesting that agencies identify, and publicly disclose, the purpose(s) or objective(s) of their appellate systems. Appellate systems may have different purposes, and any given appellate system may have multiple purposes. Purposes or objectives can include the correction of errors, inter-decisional consistency of

[3] Admin. Conf. of the U.S., Recommendation 83-3, *Agency Structures for Review of Decisions of Presiding Officers Under the Administrative Procedure Act*, 48 Fed. Reg. 57,461 (Dec. 30, 1983); Admin. Conf. of the U.S., Recommendation 68-6, *Delegation of Final Decisional Authority Subject to Discretionary Review by the Agency*, 38 Fed. Reg. 19,783 (July 23, 1973). Both recommendations concerned only the review of decisions in proceedings governed by the formal hearing provisions of the APA. Their principles, though, are not so confined.

[4] Christopher J. Walker & Matthew Lee Wiener, Agency Appellate Systems (Dec. 14, 2020) (report to the Admin. Conf. of the U.S.), https://www.acus.gov/report/final-report-agency-appellate-systems.

decisions, policymaking, political accountability, management of the hearing-level adjudicative system, organizational effectiveness and systemic awareness, and the reduction of litigation in federal courts. The identification of purpose is important both because it dictates (or should dictate) how an agency administers its appellate system—including what cases it hears and under what standards of review it decides them—and provides a standard against which an agency's performance can be evaluated.

This Recommendation proceeds from the recognition that agency appellate systems vary enormously—as to their purposes or objectives, governing substantive law, size, and resources—and that what may be a best practice for one system may not always be the best practice for another. In offering the best practices that follow, moreover, the Administrative Conference recognizes that (1) an agency's procedural choices may sometimes be constrained by statute and (2) available resources and personnel policies may dictate an agency's decision as to whether and how to implement the best practices that follow. The Administrative Conference makes this Recommendation subject to these important qualifications.

RECOMMENDATION

Objectives of Appellate Review

1. Agencies should identify the objective(s) of appellate review; disclose those objectives in procedural regulations; and design rules and processes, especially for scope and standard of review, to serve them.

Procedures for Appellate Review

2. Agencies should promulgate and publish procedural regulations governing agency appellate review in the *Federal Register* and codify them in the *Code of Federal Regulations*. These regulations should cover all significant procedural matters pertaining to agency appellate review, including but not limited to the following:
    a. The objectives of the agency's appellate review system;

b. The timing and procedures for initiating review, including any available interlocutory review;
c. The standards for granting review, if review is discretionary;
d. The standards for permitting participation by interested persons and amici;
e. The standard of review;
f. The allowable and required submissions by litigants and their required form and contents;
g. The procedures and criteria for designating decisions as precedential and the legal effect of such designations;
h. The record on review and the opportunity, if any, to submit new evidence;
i. The availability of oral argument or other form of oral presentation;
j. The standards of and procedures for reconsideration and reopening, if available;
k. Any administrative or issue exhaustion requirements that must be satisfied before seeking agency appellate or judicial review, including whether agency appellate review is a mandatory prerequisite to judicial review;
l. Openness of proceedings to the public and availability of video or audio streaming or recording;
m. In the case of multi-member appellate boards, councils, and similar entities, the authority to assign decision-making authority to fewer than all members (e.g., panels); and
n. Whether seeking agency appellate review automatically stays the effectiveness of the appealed agency action until the appeal is resolved (which may be necessary for appellate review to be mandatory, see 5 U.S.C. § 704), and, if not, how a party seeking agency appellate review may request such a stay and the standards for deciding whether to grant it.

3. Agencies should include in the procedural regulations governing their appellate programs: (a) a brief statement or explanation of each program's review authority, structure, and decision-making components; and (b) for each provision based on a statutory source, an accompanying citation to that source.

4. When revising existing or adopting new appellate rules, agencies should consider the appellate rules (Rules 400–450) in the Administrative Conference's *Model Rules of Agency Adjudication* (rev. 2018).
5. When materially revising existing or adopting new appellate rules, agencies should use notice-and-comment procedures or other mechanisms for soliciting public input, notwithstanding the procedural rules exemption of 5 U.S.C. § 553(b)(A), unless the costs clearly outweigh the benefits of doing so.

Case Selection for Appellate Review

6. Based on the agency-specific objectives of appellate review, agencies should decide whether the granting of review should be mandatory or discretionary (assuming they have statutory authority to decide); if discretionary, the criteria for granting review should track the objectives of the appellate system, and they should be published in the procedural regulations.
7. Agencies should consider implementing procedures for sua sponte appellate review of non-appealed hearing-level decisions, as well as for the referral of cases or issues by hearing-level adjudicators to the appellate entity for interlocutory review.

Appellate Decision-making Processes and Decisions

8. Whenever possible, agencies should consider maintaining electronic case management systems that ensure that hearing records are easily accessible to appellate adjudicators. Such systems may include the capability for electronic filing.
9. Although the randomized assignment of cases to appellate adjudicators is typically an appropriate docketing method for an agency appellate system, agencies should consider the potential benefits of sorting and grouping appeals on the appellate docket, such as reduced case processing times and more efficient use of adjudicators', staff attorneys', and law clerks' skills and time. Criteria for sorting and grouping cases may include the size of a case's record, complexity of a case's issues, subject matter of a case, and similarity of a case's legal issues to those of other pending cases.

10. Consistent with the objectives of the agency's appellate system and in light of the costs of time and resources, agencies should consider adopting an appellate model of judicial review in which the standard of review is not de novo with respect to findings of fact and application of law to facts. For similar reasons, many agencies should consider limiting the introduction of new evidence on appeal that is not already in the administrative record from the hearing-level adjudication.
11. Taking agency resources into account, agencies should emphasize concision, readability, and plain language in their appellate decisions and explore the use of decision templates, summary dispositions, and other quality-improving measures.
12. Agencies should establish clear criteria and processes for identifying and selecting appellate decisions as precedential, especially for appellate systems with objectives of policymaking or inter-decisional consistency.
13. Agencies should assess the value of oral argument and amicus participation in their appellate system based on the agencies' identified objectives for appellate review and should establish rules governing both. Criteria that may favor oral argument and amicus participation include issues of high public interest; issues of concern beyond the parties to the case; specialized or technical matters; and a novel or substantial question of law, policy, or discretion.

Administration, Management, and Bureaucratic Oversight

14. Agency appellate systems should promptly transmit their precedential decisions to all appellate program adjudicators and, directly or through hearing-level programs, to hearing-level adjudicators (as appropriate). Appellate programs should include in their transmittals, when feasible, brief summaries of the decision.
15. Agencies should notify their adjudicators of significant federal court decisions reviewing the agencies' decisions and, when providing notice, explain the significance of those decisions to the program. As appropriate, agencies should notify adjudicators if the agency will not acquiesce in a particular decision of the federal courts of appeals.

16. Agencies in which decision making relies extensively on their own precedential decisions should consider preparing or having prepared indexes and digests—with annotations and comments, as appropriate—to identify those decisions and their significance.
17. As appropriate, agency appellate systems should communicate with agency rule-writers and other agency policymakers—and institutionalize communication mechanisms—to address whether recurring issues in their decisions should be addressed by rule rather than precedential case-by-case adjudication.
18. The Office of the Chairman of the Administrative Conference should provide for, as authorized by 5 U.S.C. § 594(2), the "interchange among administrative agencies of information potentially useful in improving" agency appellate systems. The subjects of interchange might include electronic case management systems, procedural innovations, quality-assurance reviews, and common management problems.

Public Disclosure and Transparency

19. Agencies should disclose on their websites any rules (sometimes styled as "orders"), and statutes authorizing such rules, by which an agency head has delegated review authority to appellate adjudicators.
20. Regardless of whether the Government in the Sunshine Act (5 U.S.C. § 552b) governs their appellate review system, agencies should consider announcing, livestreaming, and maintaining video recordings on their websites of appellate proceedings (including oral argument) that present significant legal and policy issues likely to be of interest to regulated parties and other members of the public. Brief explanations of the issues to be addressed by oral argument may usefully be included in website notices of oral argument.
21. Agencies should include on their websites brief and accessibly written explanations as to how their internal decision-making processes work and, as appropriate, include links to explanatory documents appropriate for public disclosure. Specific subjects that agencies should consider addressing include: the process of assigning cases to adjudicators (when fewer than all of the programs' adjudicators participate in a case), the role of staff, and the order in which cases are decided.

22. When posting decisions on their websites, agencies should distinguish between precedential and non-precedential decisions. Agencies should also include a brief explanation of the difference.
23. When posting decisions on their websites, agencies should consider including, as much as practicable, brief summaries of precedential decisions and, for precedential decisions at least, citations to court decisions reviewing them.
24. Agencies should include on their websites any digests and indexes of decisions they maintain. It may be appropriate to remove material exempt from disclosure under the Freedom of Information Act or other laws.
25. Agencies should affirmatively solicit feedback concerning the functioning of their appellate systems and provide a means for doing so on their websites.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Recommendation 2022-4

Precedential Decision Making in Agency Adjudication

Adopted December 15, 2022

It is a tenet of our system of justice that like cases be treated alike. Agencies use many different mechanisms to ensure such consistency, predictability, and uniformity when adjudicating cases, including designating some or all of their appellate decisions as precedential.[1] Agencies can also use precedential decision making to communicate how they interpret legal requirements or intend to exercise discretionary authority, as well as to increase efficiency in their adjudicative systems.[2]

An agency's decision is precedential when an agency's adjudicators must follow the decision's holding unless the precedent is distinguishable or until it is overruled. Many agencies use some form of precedential decision making. Some agencies treat all agency appellate decisions as precedential, while others treat only some appellate decisions as precedential. Additionally, some agencies highlight nonprecedential decisions that may be useful to adjudicators by labeling them "informative," "notable," or a similar term.[3] In any of these cases, precedential decisions can come from an agency head or heads, adjudicators exercising the agency's authority to review hearing-level decisions, adjudicators who review hearing-level

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[1] Other mechanisms include rulemaking, quality assurance programs, appellate review, aggregate decision making, and declaratory orders. *See, e.g.*, Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 Fed. Reg. 1722 (Jan. 12, 2022); Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, 81 Fed. Reg. 40,260 (June 21, 2016); Admin. Conf. of the U.S., Recommendation 2015-3, *Declaratory Orders*, 80 Fed. Reg. 78,161 (Dec. 16, 2015).

[2] *See* Christopher J. Walker, Melissa Wasserman & Matthew Lee Wiener, Precedential Decision Making in Agency Adjudication (Dec. 6, 2022) (report to the Admin. Conf. of the U.S.).

[3] *See id.* at 28, 37 & app. G (discussing the use of "adopted decisions" at the U.S. Citizenship and Immigration Services).

decisions but whose decisions are subject to (usually discretionary) agency-head review, or adjudicators other than the agency head who have statutory authority to issue final decisions. Rarely do hearing-level adjudicators issue precedential decisions.

This Recommendation provides best practices for agencies in considering whether and how to use precedential decisions in their adjudicative systems. It begins by recommending that agencies determine whether they issue appellate decisions that may lend themselves to use as precedent and, if they do, whether to treat all or some appellate decisions as precedential. For agencies that treat only some decisions as precedential, the Recommendation sets forth criteria for deciding which ones to treat as such, and it identifies procedures for agencies to consider using when designating decisions as precedential, such as the solicitation of public input.

For agencies that use some form of precedential decision making, this Recommendation provides best practices for identifying decisions which are precedential and making information about such decisions available internally and to the public. Some of these practices build on the Freedom of Information Act's requirement that agencies post on their websites all final orders and opinions and its general prohibition against agencies relying on, using, or citing an order or opinion as precedent against a private party if it has not been indexed and posted online.[4]

The Recommendation concludes by urging agencies to address their use of, and procedures for, precedential decision making in procedural rules published in the *Federal Register* and *Code of Federal Regulations*.

RECOMMENDATION

Use of Precedential Decision Making

1. Agencies should determine whether, and if so when, to treat their appellate decisions as precedential, meaning that an adjudicator must follow the decision's holding in subsequent cases, unless the facts of the decision are distinguishable or until the holding

[4] *See* 5 U.S.C. § 552(a)(2)(A).

is overruled. In determining whether to treat all, some, or no appellate decisions as precedential, agencies should consider:

a. The extent to which they issue decisions that would be useful as precedent and are written in a form that lends itself to use as precedent;
b. The extent to which they issue decisions that mainly concern only case-specific factual determinations or the routine application of well-established policies, rules, and interpretations to case-specific facts; and
c. The extent to which they issue such a large volume of decisions that adjudicators cannot reasonably be expected to identify those which should control future decisions.

2. Agencies that treat only some appellate decisions as precedential should consider treating a decision as precedential if it:
   a. Addresses an issue of first impression;
   b. Clarifies or explains a point of law or policy that has caused confusion among adjudicators or litigants;
   c. Emphasizes or calls attention to an especially important point of law or policy that has been overlooked or inconsistently interpreted or applied;
   d. Clarifies a point of law or policy by resolving conflicts among, or by harmonizing or integrating, disparate decisions on the same subject;
   e. Overrules, modifies, or distinguishes existing precedential decisions;
   f. Accounts for changes in law or policy, whether resulting from a new statute, federal court decision, or agency rule;
   g. Addresses an issue that the agency must address on remand from a federal court; or
   h. May otherwise serve as a necessary, significant, or useful guide for adjudicators or litigants in future cases.
3. Agencies should not prohibit parties from citing nonprecedential decisions in written or oral arguments.

4. Agencies should consider identifying nonprecedential decisions that may be useful to adjudicators by designating them "informative," "notable," or a similar term.

Processes and Procedures for Designating Precedential Decisions

5. Agencies' procedures for designating decisions as precedential should not be unduly time consuming or resource intensive.
6. Prior to designating an appellate decision as precedential, agencies should consider soliciting input from appellate adjudicators not involved in deciding the case.
7. Agencies should consider implementing procedures by which appellate adjudicators can issue precedential decisions to resolve important questions that arise during hearing-level proceedings. Options include procedures by which, on an interlocutory basis or after a hearing-level decision has been issued:
    a. Hearing-level adjudicators may certify specific questions in cases or refer entire cases for precedential decision making;
    b. Appellate adjudicators on their own motion may review specific questions in cases or entire cases for precedential decision making; and
    c. Parties may request that appellate adjudicators review specific questions in cases or entire cases for precedential decision making.
8. Agencies should consider establishing a process by which adjudicators, other agency officials, parties, and the public can request that a specific nonprecedential appellate decision be designated as precedential.
9. Agencies should consider soliciting amicus participation or public comments in cases in which they expect to designate a decision as precedential, particularly in cases of significance or high interest. That could be done, for example, by publishing a notice in the *Federal Register* and on their websites, and by directly notifying those persons likely to be especially interested in the matter. In determining whether amicus participation or public comments would be valuable in a particular case, agencies should consider the extent to which the case addresses broad policy questions whose resolution requires

consideration of general or legislative facts as opposed to adjudicative facts particular to the parties.

10. When an agency rejects or disavows the holding of a precedential decision, it should expressly overrule the decision, in whole or in part as the circumstances dictate, and explain why it is doing so.

Availability of Precedential Decisions

11. Agencies that treat only some appellate decisions as precedential should clearly identify precedential decisions as such. Such agencies should also identify those precedential decisions in digests and indexes that agencies make publicly available.
12. Agency websites, as well as any agency digests and indexes of decisions, should clearly indicate when a precedential decision has been overruled or modified.
13. Agencies should ensure that precedential decisions are effectively communicated to their adjudicators.
14. Agencies should update any manuals, bench books, or other explanatory materials to reflect developments in law or policy effected through precedential decisions.
15. Agencies should consider posting on their websites brief summaries of precedential decisions, a digest of precedential decisions, and an index, organized topically, of precedential decisions.
16. Subject to available resources, agencies should consider tracking, on their own or in coordination with commercial databases, and making available to agency officials and the public the subsequent history of precedential decisions, including whether they have been remanded, set aside, modified following remand by a federal court, or superseded by statute or other agency action, such as a rule.

Rules on Precedential Decision Making

17. As part of their rules of practice, published in the *Federal Register* and codified in the *Code of Federal Regulations*, agencies should adopt rules regarding precedential decision making. These rules should:

a. State whether all, some, or none of the agency's appellate decisions are treated as precedential;
b. Describe the criteria and process for designating decisions as precedential, if the agency considers some but not all of its decisions as precedential;
c. Specify who has authority to designate decisions as precedential, if the agency considers some but not all of its decisions as precedential;
d. Explain the legal effect of precedential decisions in subsequent cases;
e. Define any terms the agency uses to identify useful nonprecedential decisions, such as "informative" or "notable," and describe the criteria and process for designating these decisions;
f. Explain for what purposes a party may cite a nonprecedential decision, and how the agency will treat it;
g. Describe any opportunities for amicus or other public participation in precedential decision making; and
h. Explain how precedential decisions are clearly identified as precedential, how they are identified when overturned, and how they are made available to the public.

18. Agencies should use clear and consistent terminology in their rules relating to precedential decisions. Agencies that distinguish between "published" decisions and "nonpublished" or "unpublished" decisions (or some other such terminology) should identify in their rules of practice the relationship between these terms and the terms "precedential" and "nonprecedential."
19. Agencies should consider soliciting public input when they materially revise existing or adopt new procedural regulations on the subjects addressed above, unless the costs outweigh the benefits of doing so in a particular instance.

Prepared Statement of Afikim Foundation

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TESTIMONY OF RABBI RAPHAEL B. BUTLER, PRESIDENT OF THE AFIKIM FOUNDATION IN SUPPORT OF H.R. 2701, THE "*FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT*" BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, on behalf of the non-profit Afikim Foundation (www.afikimfoundation.org), I am honored to submit this written testimony in strong support of H.R. 2701, the *Fallen Servicemembers Religious Heritage Restoration Act*.

The Afikim Foundation is a non-profit organization dedicated to a number of educational endeavors designed to inspire, motivate, inform and transform young people and adults. For example, Afikim's *One Soul* exhibit on the role played by the U.S. Army in liberating the Nazi death camps at the close of World War II told an important and poignant story of liberation, hope, remembrance and resilience. I understand full well the importance of making sure future generations understand and value the many sacrifices that have been made through American history to preserve, protect and promote our democracy and our unique freedoms.

That's why I strongly endorse and support H.R. 2701. This important bill will ensure that brave Americans who gave their lives for their country are properly and appropriately honored by a grateful nation.

An estimated 900 Jewish American soldiers killed in World War I and World War II, and buried overseas in U.S. military cemeteries were, for various reasons, mistakenly buried under Latin Crosses. In the vast majority of instances, these mistakes were made inadvertently. But, the mistakes were unfortunately made and these brave soldiers were buried under the incorrect marker.

It's important to note that some 2,000,000 people a year visit the American World War I and World War II cemeteries on foreign soil. These visitors must understand and see the sacrifices that were made by ***all*** Americans to defend and preserve democracy.

Jewish American soldiers who fought and died for their country must have their heritage properly recognized and honored. Our government shares a solemn responsibility to ensure that every American soldier killed in action and buried overseas is properly and appropriately honored.

Now, more than ever, when our country is unfortunately experiencing an increase in anti-semitism, it's vital to recognize the vital contribution made by Jewish American soldiers in World War I and World War II - especially those soldiers that paid the ultimate price. The story

of these brave soldiers who gave their lives for America is a very American story. Their sacrifice and service must be properly honored and recognized. That is exactly what H.R. 2701 would do.

The American Battle Monuments Commission (ABMC) does a remarkable job in maintaining and administering the United States' military cemeteries overseas. They are committed to ensuring that every soldier buried in their cemeteries is appropriately honored. The ABMC is committed to "getting it right."

H.R. 2701 will provide the ABMC with the modest resources it needs to partner with outside experts in researching and identifying Jewish American service members buried at American military cemeteries overseas who were buried under markers incorrectly representing their religion and heritage.

This legislation is long overdue. Most importantly, it is the right thing to do. I respectfully urge its favorable consideration. Thank you.

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Prepared Statement of American Federation of Government Employees, AFL-CIO

Chairman Luttrell, Ranking Member McGarvey, and Members of the Subcommittee:

The American Federation of Government Employees, AFL–CIO (AFGE) and its National Veterans Affairs Council (NVAC) appreciate the opportunity to submit a statement for the record on today's hearing on "Pending Legislation." AFGE represents more than 750,000 Federal and District of Columbia government employees, nearly 320,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees. These include front-line providers at the Veterans Health Administration (VHA) who provide exemplary specialized medical and mental health care to veterans, the Veterans Benefits Administration (VBA) workforce responsible for the processing veterans' claims, the Board of Veterans' Appeals (Board) employees who shepherd veterans' appeals, and the National Cemetery Administration employees (NCA) who honor the memory of the Nation's fallen veterans every day.

With this firsthand and front-line perspective, we offer our observations on the following bills being considered at today's hearing:

H.R. 659, the "Veterans Law Judge Experience Act"

AFGE strongly supports Congresswoman Brownley's (D-CA) bill, the "Veterans Law Judge Experience Act." This legislation would require the Board to give priority to Veterans Law Judge (VLJ) candidates "with three or more years of legal professional experience in areas that pertain to the laws administered by the Secretary."

As AFGE Local President Doug Massey testified to the DAMA Subcommittee in November 2023, historically, VLJs were required to possess a minimum of 7 years of experience in veterans' law, acknowledging the intricate nature of the work involving complex legal statutes, evolving caselaw, and nuanced medical terminology in VA disability claims. In February 2020, the longstanding 7-year requirement was abruptly eliminated from the VLJ hiring criteria, opening the door for appointments for those without any veterans' law experience.

This led to an influx of VLJ's who were ill-prepared for the job, who were slower to approve decisions and resulted in lowered output from the Board. In addition to fewer decisions, attorneys complain that the inexperienced VLJs struggle with approving quality decisions, requiring that attorneys train the VLJs for whom they work. Similarly, many of the Board's experienced VLJs are now tasked with training their new inexperienced colleagues, which detracts from time they could devote to signing decisions. Furthermore, the hiring of inexperienced VLJs has demoralized attorneys because it has foreclosed promotion opportunities to these coveted positions. Some attorneys have indicated they plan on retiring earlier than expected.

Rep. Brownley's bill, prioritizing VLJ candidates who have 3 years' experience in veterans' law, would help reverse the Board's 2020 decision, and prioritize qualified candidates for VLJ positions, which would better serve veterans, their families, and BVA employees.

H.R. 3854, the "Modernizing All Veterans and Survivors Claims Processing Act"

AFGE opposes Congressman Valadao's (R-CA) bill, the "Modernizing All Veterans and Survivors Claims Processing Act." This bill would require the VA to produce a plan to implement an automation tool, to the "maximum extent possible" for a wide range of functions related to the preparation and production of claims.

AFGE understands the importance of utilizing technology to help with the assistance of carrying out VBA's mission reviewing claims and delivering benefits to veterans and their families. However, AFGE believes that technology should assist dedicated VBA workers, half of whom are veterans themselves, more accurately and efficiently perform their jobs. The scope of the tool proposed in this legislation is less about supporting VBA employees, and instead replacing them, without describing how VBA employees who do remain can ensure the automation tool in question is accurate.

Before VBA develops and overreliance on automation, VBA must ensure that the tool is carefully drafted, and will not, even with the best intentions, delay veterans receiving their benefits.

H.R. 3951, the "Rural Veterans' Improved Access to Benefits Act of 2025"

AFGE opposes H.R. 3951, the "Rural Veterans' Improved Access to Benefits Act of 2025." AFGE has long advocated against the continued contracting out of VA disability exams, commonly referred to as Compensation and Pension Exams, and believes that VA employees, who are experts in veterans care, are better prepared and

equipped to perform these exams for less expense, compared to less effective contractors who get paid by the exam, at a higher cost to taxpayers. This is particularly true for specialty exams with such as military sexual trauma, spinal cord issues, or traumatic brain injuries.

Despite this objection, if the committee proceeds with the consideration of this bill, it should pair it with "Medical Disability Exam Improvement Act." This bill from 118th Congress (S. 2718), contained a provision (Section 4) that would require VA to pay for all in-house disability exams from the VBA account, instead of the VHA account. Doing this would encourage VBA to reduce waste and control costs, which would in turn encourage bringing these exams in house, improving the quality of exams and reducing the cost to the VA. Veterans would be better served by bringing as many exams as possible, especially specialty exams, in-house, and this committee should not consider further expanding contract exams without also making this commonsense change.

H.R. 3983, the "Veterans Claims Quality Improvement Act of 2025"

AFGE supports the intention of H.R. 3983, the "Veterans Claims Quality Improvement Act of 2025" introduced by Chairman Luttrell (R-TX). This bill creates a multipronged approach that would attempt to address certain errors and avoidable deferrals at the Board of Veterans Appeals. AFGE particularly applauds Chairman Luttrell for the portion of the bill related to training of Veterans Law Judges and Board Attorneys, that incorporates the feedback of Board Attorneys. AFGE still has technical questions on the bill that it hopes are addressed during today's hearing and prior to a subcommittee markup.

AFGE thanks the House Veterans' Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs for the opportunity to submit a Statement for the Record for today's hearing. AFGE stands ready to work with the committee on this legislation and find solutions that will enable VA employees to better serve our Nation's veterans.

Prepared Statement of Aviva Klompas

TESTIMONY OF AVIVA KLOMPAS IN SUPPORT OF H.R. 2701, THE "FALLEN SERVICEMEMBERS RELIGIOUS HERITAGE RESTORATION ACT" BEFORE THE DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS SUBCOMMITTEE OF THE HOUSE VETERANS AFFAIRS COMMITTEE

JUNE 24, 2025

Chairman Luttrell and Ranking Member McGarvey, as an educator, writer, and the CEO of Boundless—a think tank committed to revitalizing Israel education and confronting antisemitism—I'm honored to offer my strong support for H.R. 2701, the Fallen Servicemembers Religious Heritage Restoration Act.

This legislation addresses a quiet but profound injustice: the burial of hundreds of Jewish American soldiers under Latin crosses in overseas U.S. military cemeteries, rather than under the Star of David, the symbol of their identity and faith. These errors may have been unintentional, but they are more than historical footnotes—they are omissions that distort our collective memory and deny these fallen heroes their full dignity.

Having served as a speechwriter for Israel's ambassador to the United Nations, I know the power of narrative—how we tell our stories shapes how we understand who we are. The work of Operation Benjamin to restore these headstones is a powerful act of historical restoration. H.R. 2701 ensures that this work can continue with institutional support and that the sacrifices of Jewish service members are acknowledged with the truth and respect they deserve.

At a time when Jew-hatred is once again rearing its head around the globe, it is more important than ever that we preserve and amplify the stories that reflect the long-standing Jewish contribution to American freedom and democracy. These soldiers were not just heroes—they were Jewish heroes. That matters.

I urge Congress to pass H.R. 2701 and affirm that remembrance must always reflect reality.

—

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Prepared Statement of Veterans of Foreign Wars of the United States

Chairman Luttrell, Ranking Member McGarvey, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide testimony regarding this pending legislation.

H.R. 3123, Ernest Peltz Accrued Veterans Benefits Act

The VFW supports this legislation to ensure survivors receive their Department of Veterans Affairs (VA) pension benefit for the entire month in which a veteran dies. Receiving the full month-of-death benefit payment would better equip survivors to manage the financial hardships that accompany a veteran's death. Rather than abruptly stopping these benefits mid-month, VA would maintain the accustomed income immediately following the veteran's death, providing grieving survivors the resource to settle urgent end-of-life expenses.

World War II veteran Ernest Peltz of Queensbury, New York, is the namesake of this bill. VA approved his accrued pension, which he wanted his survivors to use for his end-of-life care and funeral expenses. Due to its error, VA made the deposit 7 days after his death (during the following month) and then immediately recouped it, depriving his family of these funds to manage the imminent expenses after his death. This legislation would prevent this situation by ensuring that survivors receive a final, full pension payment during the month of the veteran's death, regardless of the date on which the veteran dies.

H.R. 3627, Justice for America's Veterans and Survivors Act of 2025

The VFW supports this legislation to direct VA to collect additional data on the causes of veterans' deaths and compile an annual report for the House and Senate Committees on Veterans' Affairs. This deliberate data collection and analysis could illuminate a variety of health-related trends to influence proactive, preventive treatment protocols such as suicide prevention interventions.

H.R. 3833, Veterans' Caregiver Appeals Modernization Act of 2025

The VFW supports this legislation to improve the application and appeals processes for the VA Program of Comprehensive Assistance for Family Members. This program allows eligible veterans to elect in-home care from a caregiver to whom VA provides a monthly stipend. Unfortunately, unlike the Veterans Benefits Administration (VBA) that houses all pertinent documents for disability claims in a single electronic folder, the Veterans Health Administration (VHA) uses multiple electronic systems that are dissimilar to the Board of Veterans' Appeals (BVA) electronic records system. BVA is the entity that has final adjudication authority on caregiver program applications. This uncoordinated and disparate process causes information gaps among reviewers. This situation then leads to unnecessary remands, slowing the entire application process and ultimately delaying or depriving caregivers from receiving this vital benefit. Appealing a denied application is similarly arduous and can take years.

This legislation would compel VA to develop and implement a single electronic application system so that every VHA and VBA employee in the application review process could access and view all application documents, thereby closing information gaps. In the case of successful appeals, caregivers could qualify for past-due caregiver stipends in instances in which the veteran died during the pendency of the appeal. Last, this legislation would require VA to provide consistent guidance and training to VHA employees who adjudicate caregiver applications. Upon implementation, the provisions in this bill would streamline VA's caregiver application process, enabling timely and accurate application decisions.

H.R. 3834, Protecting Veterans Claim Options Act

The VFW supports this legislation to require that the Board of Veterans' Appeals cannot deny the supplemental claim of a veteran solely on the basis that the appellant did not submit any new and relevant evidence. When VBA denies a claim, veterans may file one of three appeal options within 1 year of the denial. Currently, the supplemental claim option requires that veterans produce new and relevant evidence for VBA claims processors to review before a decision will be made, adding considerable time to the process. If VBA and BVA agree that the appellant added no new and relevant evidence, BVA will refuse to reconsider granting the veteran relief despite the appellant continuously pursuing the claim in a timely manner. This legislation would also elucidate that appellants may submit additional evidence to BVA in the event that the United States Court of Appeals for Veterans Claims

remands their case back to BVA. This is something the VFW has been requesting in order to stop the endless remand and appeals cycle.

H.R. 3835, Veterans Appeals Efficiency Act of 2025

The VFW supports this legislation to expand BVA authority to streamline the veteran appeals process to improve efficiency, reduce the inherent backlog of appeals at BVA, and allow appellants to receive quicker decisions. Veterans wait on average more than 2 years for an appeal decision, with some veterans waiting significantly longer when hearings are requested. BVA cannot reduce or eliminate its current appeals inventory of roughly 200,000 cases to functional zero by operating at its current rate and staff level. With an average of 65,000 new claims received each year, faster and accurate decisions are not possible without streamlining BVA policies and procedures, and significantly increasing its staff size. Furthermore, there appears to be a lack of specific guidance on when a veteran's appeal is not only eligible to advance on the docket but also when it is likely to be decided, which leads to inconsistent appeal decisions.

This proposal would also allow for the aggregation of claims, so multiple claims could be decided all at once. Since current law is unclear on whether or not BVA has the authority to aggregate claims, it presently does not use this method to streamline them. Additionally, this proposal would certify class actions that include veterans still waiting for a BVA decision. Under current law, the United States Court of Appeals for Veterans Claims (the Court) is prohibited from certifying any class that includes veterans who have not yet received a BVA decision. This prevents class actions and excludes those veterans who could benefit from joining a class action. Plaintiffs in other Federal courts can join class actions when they receive an initial unfavorable decision, but veterans who receive a VBA denial of their claim cannot. Thus, these veterans are denied the same access to class action options as other Americans.

Last, this legislation would codify the Court's authority to issue limited remands to BVA and require the Court to issue rules on how and when it would do so. In previous testimony, the VFW expressed that there has been a problem with too many unnecessary remands. In Fiscal Year 2024, the Court remanded 83 percent of appeals back to BVA because of legal errors in BVA-issued decisions. Limited remands are when the Court orders BVA to address specific issues on which it erred without requiring BVA to issue a new decision on the entire, perhaps lengthy, and multi-issue appeal. Limited remands increase efficiency by eliminating the need to review a second time those issues on which BVA did not previously err. Though the Court has the authority to issue limited remands, it does not have rules and procedures in place for when a veteran can request a limited remand and when the Court should issue one. As a result, such actions are rare.

H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act

The VFW supports the intent of this legislation to direct VA to ensure the development and subsequent dissemination of an automation tool to aid in the processing of VA claims. Processes that would be automated would include the retrieval of service records or health records, compiling of evidence, decision support, facilitating information sharing between Federal agencies, and generating correspondence related to the claim. This proposal would also promote modifying existing automation tools where possible to increase the availability, functionality, and compatibility. While the VFW supports VA exploring the continued use of automation technology to improve processes and build a more responsive, customer-focused claims process, we have questions about how to prevent overreliance on an automated decision support tool. We strongly believe that claims decisions must include verification by a human as a critical part of the process.

H.R. 3983, Veterans Claims Quality Improvement Act of 2025

The VFW supports this multi-faceted legislation to improve training and oversight for VBA claims processors and BVA staff to enhance the accuracy, efficiency, and effectiveness of claims processing. The legislation would direct BVA to establish comprehensive and mutually supportive data-driven training and quality assurance programs to improve the accurate adjudication of appeals. This is something for which the VFW has expressed a need in previous testimony.

Complementing these programs would be a revised performance evaluation system that would annually review the performance of BVA members versus the current triennial evaluation. Augmenting BVA's training and quality assurance regimen would be refined policies and procedures, and technology enhancements to reduce avoidable deferrals. This situation occurs when claims processors mistakenly think a claim needs additional evidence prior to adjudication, delaying decisions and

wasting resources. The reporting requirement would enhance oversight of these initiatives and monitor the results.

H.R. 3951, Rural Veterans' Improved Access to Benefits Act of 2025

The VFW supports this legislation to extend the license portability for contracted health care professionals to perform VA disability examinations to January 2031. The disability examination system has evolved and expanded over many years. In 1996, as part of a pilot program, VA granted temporary license portability to allow contracted physicians to assist with disability examinations. Since the fall of 2016, VA has transitioned from VA-conducted examinations in VA settings to contracted examinations in non-VA settings for nearly all disability examinations. Exceptions are examinations that VA personnel must specifically perform by law. By increasing the number of eligible providers, this legislation would accelerate the initial stage of the disability claims process, particularly for rural and tribal veterans who often have few examination options near their homes.

H.R. 659, Veterans Law Judge Experience Act of 2025

The VFW supports this legislation to require the Chairman of the Board of Veterans' Appeals to preferentially recommend individuals with three or more years of applicable legal experience to serve as members of the board. According to the Code of Federal Regulations, Chapter 38, Section 20.104, BVA has jurisdiction over a substantial number of appeals that cover a wide range including educational benefits, disability compensation claims, and a variety of other issues. Therefore, the chairman's recommendation of experienced individuals for these positions is prudent and integral to efficient and effective BVA operations.

H.R. 2055, Caring for Survivors Act of 2025

As stated in previous testimony, most recently before the Senate Committee on Veterans' Affairs on March 11, 2025, the VFW strongly supports this legislation. We have advocated for this legislation for the past several years and support its swift passage.

The rate of Dependency and Indemnity Compensation (DIC) paid to survivors of service members who died in the line of duty or veterans who died from service-related causes has only minimally increased since the benefit's inception in 1993. Currently, DIC pays 43 percent of the compensation of a 100 percent permanent and totally disabled beneficiary, while all other Federal survivor programs pay 55 percent. We strongly support this provision to increase DIC to 55 percent, on par with other Federal programs.

Second, we support paying affected survivors the greater of this increased DIC or the amount of the older, rank-dependent compensation system in effect for deaths before 1993. This provision would equalize compensation across the rank structure, substantially increasing the compensation of the survivors of all enlisted personnel and nearly all officer decedents. Differentiating compensation based on rank unfairly disadvantages certain survivors.

Third, the VFW supports reducing the time requirement of service-connected total disability for veterans whose cause of death is unrelated to a service-connected disability. The current requirement is for the veteran to have had a service-connected total disability for at least 10 years immediately preceding death. Reducing the requirement to 5 years would expand the number of eligible survivors and greatly assisting them in restarting employment and other facets of life after caring for their disabled veterans.

H.R. 2701, Fallen Servicemembers Religious Heritage Restoration Act

The VFW supports this legislation to facilitate identifying the several hundred overseas graves of American-Jewish service members mistakenly buried under a Latin cross, and to confirm the decedents' religious affiliation. This information would aid descendants applying for a replacement headstone by not having to do this painstaking research themselves.

The large number of casualties and the chaos of war directly contributed to burials with inappropriate headstones. During World War I, more than 100,000 Americans fell abroad during the country's first large-scale overseas combat deployment, and administrative errors were not uncommon. Complicating the situation during World War II, some American-Jewish service members who served in the European Theater deliberately concealed their religious affiliation to avoid torture or death if captured by the Nazis. An attractive feature of the bill is contracting with experienced nonprofit organizations rather than assigning the job to the relatively small staff of the American Battle Monuments Commission—the organization that administers, operates, and maintains these overseas cemeteries.

American-Jewish service members who fought and died for our country deserve to have their religious heritage properly recognized and honored. The VFW advocates for rectifying this long-standing error to properly commemorate our war dead.

H.R. 2721, Honoring our Heroes Act of 2025

The VFW supports this legislation to expand eligibility for veteran burial benefits by establishing a 2-year pilot program to furnish a headstone or burial marker for those who died on or before November 1, 1990. Under Public Law 101–508, enacted on November 5, 1990, VA can furnish a headstone or burial marker only for eligible veterans who died on or after November 1, 1990. This legislation would authorize VA to provide a headstone or burial marker for all eligible veterans regardless of date of death.

Chairman Luttrell and Ranking Member McGarvey, this concludes my statement. Again, thank you for the opportunity to offer comments on these issues.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any Federal grants in Fiscal Year 2025, nor has it received any Federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.