

**LEGISLATIVE HEARING ON: H.R. 3216, H.R. 4150,  
H.R. 4764, H.R. 5047, H.R. 5083, H.R. 5162, H.R.  
5166, H.R. 5392, H.R. 5407, H.R. 5416, H.R.  
5420, AND H.R. 5428**

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**HEARING**

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

THURSDAY, JUNE 23, 2016

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**Thursday, June 23, 2016**

COMMITTEE ON VETERANS' AFFAIRS,  
U. S. HOUSE OF REPRESENTATIVES,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:30 a.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [Chairman of the Committee] presiding.

Present: Representatives Miller, Lamborn, Bilirakis, Benishek, Huelskamp, Coffman, Wenstrup, Abraham, Zeldin, Costello, Radewagen, Brown, Titus, Ruiz, O'Rourke, and McNerney.

**OPENING STATEMENT OF JEFF MILLER, CHAIRMAN**

The CHAIRMAN. The Committee will come to order. Good morning. It seems like I just saw a few of you a couple of hours ago, but it is great to see you again. Thanks for joining us for today's legislative hearing. Before we begin discussing the many bills on our agenda this morning, I want to touch on one important issue regarding our ongoing efforts to instill a culture of accountability across the Department of Veterans Affairs.

Last week with no notice to me or anyone else on this Committee, Secretary McDonald unilaterally decided to no longer use the expedited removal authority that Congress provided in the Veterans Access Choice and Accountability Act. I think this action was improper and is a prime example of the cavalier attitude that VA has towards holding employees accountable for their actions. To be clear I completely disagree with the administration's actions to singlehandedly abandon a sweeping bipartisan bill that the President eagerly signed just two years ago. However, in the coming days, I will introduce a measure to address the appointments clause issue that's been laid out by the Department of Justice, and ensure that VA has every necessary tool to hold leaders, managers, and other employees to account.

Turning to the matter at hand this morning, today we are going to consider 12 measures pending before our Committee. These bills are bipartisan in nature and cover a wide range of health, benefits, burial, and education issues that face America's veterans and their families. The bills also have minimal to no cost. And until the Members of this Committee can agree on acceptable offsets going forward so that our legislation complies with congressional budget

rules, the scope of legislation that we will review and mark up will be necessarily limited absent some emergency. I look forward to receiving any constructive recommendations regarding offsets within the Committee's jurisdiction that we may once again advance on a bipartisan basis.

Many of the bills' sponsors are here with us today to discuss their proposals, and I thank them for their work. There are two bills in particular that I want to highlight, beginning with a bill that I introduced, H.R. 5420. It would authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial that is located just outside of Paris. The ABMC is a Federal agency that is responsible for managing overseas monuments and cemeteries from World War I and World War II. The Lafayette Squadron included 269 American volunteers who flew combat missions with French units before the U.S. entered World War I. After the United States entered the war on April 6, 1917, most of the Escadrille pilots joined the U.S. Air Service and helped train American Pilots. In total, 68 members of the Escadrille lost their lives in air combat over France, and 49 of these brave Americans are entombed in the Escadrille Memorial.

The Lafayette Escadrille Memorial Foundation has managed the memorial since its dedication in 1928. However, the foundation does not have adequate funds to continue its work. With the agreement of the French government, the foundation has requested that the ABMC assume responsibility for the memorial's operation and maintenance, and it is my understanding that the ABMC will not require additional funds to preserve the memorial. It is entirely appropriate that our government assume the solemn responsibility of ensuring that the sacrifice of those who lost their lives in the service of our Nation during World War I will never be forgotten.

I also want to discuss H.R. 5083, the VA Appeals Modernization Act of 2016 which is sponsored by Congresswoman Titus, the Ranking Member of the Subcommittee on Disability Assistance and Memorial Affairs. Veterans have the right to expect that their claims for benefits will be decided correctly, consistently, and in a reasonable amount of time. However, if a veteran decides to appeal a decision, the appeals process must be thorough, swift, and fair. Unfortunately VA's current broken appeals process is not meeting any of those standards. As of July 1st of 2015, there were 375,000 appeals pending in VA, including at the Board of Veterans Appeals. However, as of June 1st, 2016 there were almost 457,000 appeals pending, an increase of 82,000 pending appeals in a little more than a year. Even worse, the 2015 Board of Veterans Appeals annual report projects that the number of appeals certified to the Board will increase from 88,183 this year to 359,807 in fiscal year 2017, which would be a 400 percent increase from one year to the next.

This appeals backlog explosion has occurred even though during the last four fiscal years Congress has appropriated a total of \$8 billion for the Veterans Benefit Administration, \$200 million more than the President's request of \$7.8 billion. Obviously Congress must act, and the sooner the better.

H.R. 5083 is the result of several days of an intense negotiation among the VA, the veterans service organizations, and other veteran advocates. Everyone involved deserves a great amount of cred-

it for their efforts to tackle the current appeals process. However, I do have some questions about how H.R. 5083 would improve the current system. For example the bill would allow veterans to keep an appeal active indefinitely, as long as the veteran submits new and relevant evidence once a year. So it is hard to imagine how the appeals backlog can be reduced without inserting finality into the process. I am also troubled that VA has not yet provided a concrete plan or a detailed cost estimate for addressing the current appeals backlog while implementing the changes that would be required by H.R. 5083, and I hope that we will get some answers today.

With that, I yield to the Ranking Member Ms. Brown for her opening statement.

**OPENING STATEMENT OF CORRINE BROWN, RANKING MEMBER**

Ms. BROWN. Thank you, Mr. Chairman. And let me first of all thank you for agendaing these 12 bills today.

Today I am here in support of H.R. 5407, the Homeless Veterans with Children Reintegration Act, which is very near and dear to my heart.

As everyone on this Committee knows, eliminating veteran homelessness has been a top goal here, as well as the Departments of Veterans Affairs, Labor, and Housing and Urban Development.

Tremendous progress has been made, but the truth is homeless veterans still struggle in many communities, my district included.

Despite the efforts of many committed community members and local officials, I frequently see and talk with homeless veterans on the streets when I am home.

To be clear, there are men and women veterans with children who are homeless. But all too often, those conversations are with women veterans with children. In fact, women with children are the fastest growing segment of the general homeless population.

Their stories break my heart. Unless these veterans find safe housing for their children and connect with health care, transportation, and child care, they will struggle to find employment and maintain custody of their children.

There is nothing I want to do more as a Member of Congress than to find ways to help homeless veterans with families.

That's is why this bill I am advocating for today directs the Secretary of Labor to put homeless veterans with dependent children at the top of the list to receive services through the Homeless Veterans Reintegration Program. (HVRP) program provides grants to local workforce boards, nonprofits, and community and faith-based organizations to help homeless veterans find work.

In my district, I have seen the success of this program through the work of the Sulzbacher Center, and there are two others, in fact, Five Star and also Clara White. Clara White, I visited that center with the Secretary, and Five Star I visited with you, Mr. Chairman. We know that they are great programs. In fact, with the help of the grants from this program, several centers in Florida are providing employment and training services to homeless veterans so that they can find substantial employment.

By making veterans with children the priority to receive this temporary housing and the wrap around services necessary to sup-

port a single working parent with children, it is my hope that vulnerable families will stabilize, move on to permanent housing and employment, and one by one never be forced to spend another night in an unsafe environment.

My bill would also require DOL to study access to shelters, safety, and other relevant services for homeless veterans with dependent children. This information would help us understand the problems to identify opportunities to resolve issues facing homeless veterans with children. I appreciate the statement for the record submitted by the DOL Assistant Secretary Mike Michaud, and I am happy to work with him going forward to make improvements to the bill. And I also want to mention, he also attended these centers with me.

I urge my colleagues to support H.R. 5407, the Homeless Veterans with Children Reintegration Act, and look forward to the testimony of the witnesses here today.

Thank you, Mr. Chairman, and I yield back the balance of my time.

The CHAIRMAN. Thank you very much, Ms. Brown. It is my honor to be joined this morning by several of our colleagues who have sponsored measures on today's agenda. The Members testifying on our first panel are the Honorable Doug Lamborn, Committee Member from Colorado; the Honorable Dina Titus, Committee Member from Nevada; the Honorable Raul Ruiz, Committee Member from California; the Honorable Beto O'Rourke, Committee Member from Texas; the Honorable Ron DeSantis from Florida; the Honorable Ted Yoho from Florida; the Honorable Jody Hice from Georgia; the Honorable Dan Newhouse from Washington; and the Honorable David Young from Iowa. I want to thank you all, of you, for being here this morning. And I will recognize Ms. Titus for five minutes.

#### **OPENING STATEMENT OF HONORABLE DINA TITUS**

Ms. TITUS. Well thank you very much, Mr. Chairman. And thank you for including H.R. 5083, the Veterans Appeals Modernization Act of 2016, on the agenda today. I appreciate your highlighting it and you point out some of the things I am going to mention in my comments as well, about the need for an appeals reform. So thank you very much.

When I became a Member of this Committee and the Ranking Member of the Disability Assistance and Memorial Affairs Subcommittee back in 2013, much of the focus of the VA was on the disability claims backlog. It had ballooned at that time causing some veterans to wait almost two years just for their initial claims decision. But thanks to the hard work of the employees of the VA, in addition to more resources given by Congress, this backlog has been greatly reduced. Veterans now are waiting just over 130 days for their initial claim decision. At the peak of the crisis more than 600,000 claims were in the backlog and now it is under 75,000 claims. I am pleased to say that improvements are also reflected in the Reno Office, which serves my district, and it was the fifth worst in the country at the time.

As we focused our efforts on tackling this backlog, I pointed out repeatedly that I was concerned about the possibility of a growing number of appeals. At first, as the VA handled more initial claims,



the appeal rate remained fairly consistent, between ten and 12 percent. However, as the VA squeezed on this end of the balloon, air began to flow to the other end.

I would repeat some of the figures that you gave earlier because they are just so compelling they need to be said again. As a result of that effort the appeals backlog grew from 67,412 in 2005, to 326,000 in December of 2012, to more than 460,000 as of this week which is an increase of 175 percent. Now these claims were spread out across the various lanes of processing but the end result was the same for veterans. The average appeal today takes two and a half years to complete, and appeals that go all the way to complete take close to 2,000 days to process. Both of these figures are on the increase. So if we miss this historic opportunity to reform this outdated and overcomplicated appeals system, the wait for our Nation's heroes is just going to continue to grow. It has been estimated that by 2027, we will be telling our veteran constituents that they will likely have to wait a decade for their appeal to be resolved, and to the Members of this Committee, and everybody, we know that is just unacceptable.

Now it is important to keep in mind that the appeals system was first developed in 1933 and last updated in the late 1980s, so true reform is long overdue. Accordingly, this has become a top priority for the VA, for veterans service groups, and it should be for our Committee as well. As Deputy Secretary Gibson notes in his written statement, "addressing the claims appeals process is a top priority of the VA. H.R. 5083, the VA Appeals Modernization Act, would provide much needed comprehensive reform for the VA appeals process, and the VA fully supports the bill."

Over the past few months the VA, as you said Mr. Chairman, has been working closely with experts from the VSOs and veteran advocates to fix this broken system and replace it with a more streamlined process designed to provide quicker outcomes for veterans, while also, and this is important, preserving their due process rights. The new system refocuses the Board of Veterans Appeals so it can once again function as a true appellate body.

The legislation creates three lanes veterans can choose from to appeal their claim. The first is a high level de novo review for veterans who want to have a fresh set of eyes review their cases. The second is a lane for veterans who wish to add evidence to their claim. And the third is for veterans who choose to have a full review done either by the Board with new evidence or as an expedited review without new supporting documents. Veterans will be able to choose their own lane depending on the specifics of their individual case, and as part of the system, the VA will provide more detail to veterans when their initial claim is delivered. I believe this enhanced claim decision process will better help veterans decide which way they want to appeal and which lane to choose.

So I am very appreciate of all the veterans organizations, the DAV, The American Legion, Veterans of Foreign Wars, Iraq and Afghanistan Veterans, AMVETS, Paralyzed Veterans, and others, and I look forward to hearing from them. If you want a more detailed description of the three lanes, this is on the Web site. You can look at this chart. And I would refer you to something we

handed all the veterans, called Myths and Facts about the new proposal. And I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Dr. Ruiz, you are recognized for five minutes. Wake up.

#### **OPENING STATEMENT OF HONORABLE RAUL RUIZ**

Mr. RUIZ. I am awake, my friend. I am awake. Mr. Chairman and Ranking Member Brown, thank you for including this bipartisan legislation that I introduced alongside Dr. Wenstrup in today's hearing. Congressman Wenstrup, I appreciate your willingness to work with me on this issue. I look forward to our friendly wager, and you having to sponsor an ice cream social after your team's loss tonight.

I would also like to thank the veterans service organizations and the VA for supporting this language in past round tables and Subcommittee hearings. H.R. 4150, the VA Emergency Medical Staffing Recruitment and Retention Act, will provide emergency department staff employed by the VA the same flexibility offered to physicians in the private sector. As an emergency physician, I know firsthand the unique demands a busy emergency department can make on the medical staff that work there. Emergency departments are open 24 hours a day, seven days a week. Unlike many Federal offices, emergency departments and hospitals do not close on holidays or weekends. For the upcoming holidays, such as Independence Day, Memorial Day, Labor Day, Veterans Day, hospitals continue to be open and their staff are hard at work.

In the private sector, physicians are allowed to take advantage of flexible schedules. The schedulers are allowed to determine when an eight-hour or a 12-hour or maybe even a 24-hour shift is most beneficial to the department and its patients. Emergency department and hospital staff employed by the VA are currently denied this flexibility due to rigid guidelines developed by the Office of Personnel Management for application to all Federal employees. The difference between the policy expert employed by HHS and the physician in an ER is obvious. The need for his legislation is obvious.

Applying a biweekly 80-hour requirement to this profession does not make sense. Sometimes physicians work 12-hour shifts, sometimes 24-hour shifts, four to five days a week, sometimes six, seven days. And oftentimes, emergency physicians stay for hours after their shift to finalize their care for their patients. This results in physicians choosing to avoid working for the VA. Less physicians within the VA medical system means lower quality care and longer wait times for our veterans.

As the VA and the Nation continue to experience a physician shortage, we must ensure that the VA can compete to recruit the brightest and the best physicians. This legislation would allow the Secretary of the VA the authority to permit flexibility when scheduling physicians and physician assistants, flexibility that matches the work needs of emergency physicians and other critical staff is of the utmost importance.

The problem is obvious. The solution is simple. And I came to Congress to offer pragmatic solutions to pressing problems. This is an easy win-win solution. Again I would like to thank the VA and

VSOs for their support of this legislation, and I look forward to continuing to work with my colleagues on the Committee to ensure this legislation is effective. I look forward to a timely mark up of this legislation. Thank you very much. I yield back my time.

The CHAIRMAN. Thank you very much, doctor. Mr. O'Rourke, you are recognized. Wait, let me get my—

Mr. O'ROURKE. Are you going to livestream this?

The CHAIRMAN. Yeah.

#### **OPENING STATEMENT OF HONORABLE BETO O'ROURKE**

Mr. O'ROURKE. Thank you, Mr. Chairman. Let me begin by thanking Dr. Benishek, without whose help this bill would not be possible. What it does is remove a privacy requirement that is unique to the VA that effectively prohibits the effective sharing of patient medical records between the VA and community providers through the Choice program.

So we know that we have a doctor or a provide shortage of about 43,000 within the VA. It is more critical than ever that we leverage community providers who want to take care of veterans in our communities. But The Sequoia Project, which is the nonprofit agency that HHS has charged with shepherding the Federal government's e-health exchange initiative, states that this bill would fix the number one impediment in their efforts to effectively share veterans' records. The group states that only three percent of veterans have currently opted in, which is the current requirement, and that it would take 60 years to get 100 percent of eligible veterans opted in based on current rates. Currently, four Federal agencies, 50 percent of U.S. hospitals, and 100 million patients participate in the exchange. So the VA is a little bit unique in how it requires an opt-in to share records. We are going to bring the VA in line with much of the rest of the country and do so following the best practices and ensuring that this is effective.

The VA asked for this authority. This was part of a VA legislative package that was proposed by VHA under Secretary Dr. Shulkin, and it is critically important to ensuring continuity of care. We want to make sure that if a veteran is seen at the VA initially and then later seen in the community, that that veteran's patient record and medical information follows. And that is going to be really important for a number of reasons, including ensuring that we have continuity in prescribing care. We want to make sure that the doctor in the community knows what that veteran has been prescribed at the VA. So it could reduce overprescribing or errors in prescribing.

There are some understandable privacy concerns whenever we are dealing with confidential patient information. I look forward to hearing those from some of the VSOs who have raised them. But I am confident that we can address those in today's hearing. I am confident that this is the only way we are going to make Choice effectively. If we are really serious about connecting veterans with doctors and providers in the community, we have got to be able to effectively share their patient information. And again, this brings us in line with the best practices in modern medicine throughout the country.

So with that, Mr. Chairman, I will yield back and look forward to discussing this with the Assistant Secretary and the VSOs who are present.

The CHAIRMAN. Thank you very much. Mr. Lamborn, you are recognized for five minutes.

Mr. LAMBORN. Excuse me for one second. I just got in from doing a media call.

The CHAIRMAN. Okay. Let me, get your breath. Mr. DeSantis, you are recognized.

#### **OPENING STATEMENT OF HONORABLE RON DESANTIS**

Mr. DESANTIS. Well thank you, Mr. Chairman, and Members of the Committee. It is great to be here. I am discussing a great bill, H.R. 4764, the PAWS Act, Puppies Assisting Wounded Servicemembers. And what it seeks to do is harness the use of specially trained service dogs to treat veterans who are suffering from Post-Traumatic Stress.

And I first became interested in the issue of Post-Traumatic Stress just when I was serving in Iraq back in 2007 and I noticed the number of people who were over there, particularly Marines and soldiers, who had done multiple deployments. You had guys in their mid-twenties who had been in Iraq more than they had been in the United States since they had got out of boot camp. And the idea of PTS became something that more and more people were taking seriously, a lot of efforts out there. But that takes a toll, when you are doing those types of deployments.

And then, it just so happened when I got elected to Congress, I have an organization in my district called Canines for Warriors. And what they do is, they pair veterans with specially trained service dogs. They have a campus that has now expanded. It is a great facility. They have a great track record of reducing dependence on opioids, reducing the suicide rate, and really getting veterans back on their feet. And so, I thought that this was a great organization. It was something that I was very supportive of just personally. But then I met a veteran, a former Marine named Cole Lyle, who came to Congress telling his story about his battles with Post-Traumatic Stress and how he really was in the dumps after going to the VA, being given counseling, prescribed a bunch of different medications, and he was really looking for answers. And it just so happened that his family had enough money to get him a service dog. And he quit the drugs cold turkey, really turned his life around, and is doing a great job right now. And so this is a Marine who had served in Afghanistan under very difficult circumstances, comes back to the United States, has these problems, and really the service dog has been a boon for him. And he is one of the leaders in arguing for this legislation.

Now this Congress had the VA conduct a study about whether service dogs could be a part of treating PTS back in 2010. The study was supposed to be done in 2013. It has been riddled with all types of problems, and so we do not have any results yet. They say 2018, but I think if history is a guide, it likely will not happen by then. And so that has been a major failure on the part of the VA. And so our bill, the PAWS Act, takes these veterans, particularly the ones that have severe Post-Traumatic Stress, and author-

izes a small amount of funding so that the VA can pair them with specially trained service dogs. So they would be going to organizations who do this for a living, like Canines for Warriors, pairing the veteran. We earmark about \$27,000 per dog, but the good thing is, as these organizations become more robust, they are actually able to train them for less now. And so that is exciting because I think that that is going to be good bang for the buck.

And we are seeing, in addition to the anecdotal evidence, a lot of, or some initial scientific evidence, about people who have these symptoms, who get a specially trained service dog that understands the symptoms, that can help the veteran deal with certain situations. We see a decline in opioid use. We see a decline in suicide. And I think that is obviously good for the veteran. It is also good for taxpayers if the veteran does not need to be on drugs.

This has strong support from key veterans groups, like the VFW and The American Legion. It also has very strong bipartisan support, which I am very proud to say, and bring before the Committee. So we have a situation in our country where 22 veterans commit suicide everyday. That is something that I know everyone in this room is concerned about, and we want to do everything we can to reduce that or eliminate that. The PAWS Act, I think, is one way, one tool, where we can strike at this problem. I believe that if we pass this bill and get it up and running, I think it will save lives. Part of it is from the study I have done and how we have done the bill, but part of it is also practical. I have actually had veterans come up to me who have PTS, who were paired with service dogs, tell me if they did not get the service dog when they did, they probably would have committed suicide. So that is very powerful testimony, and I am great to be able to talk about the bill. And Mr. Chairman, I thank you for giving me the opportunity. I yield back.

The CHAIRMAN. Thank you very much, Mr. DeSantis. A very timely piece of legislation. I would also tell you that we had a viewing in here yesterday of a film produced by a gentleman from Mr. Coffman's district called Acronym, in which it talked about the dramatic effects of canine therapies with PTSD. If you have not seen it, I would be glad to get you a copy of it. It is excellent.

Dr. Yoho, you are recognized for five minutes.

#### **OPENING STATEMENT OF HONORABLE TED YOHO**

Mr. YOHO. Thank you, Mr. Chairman, and Ranking Member Brown, and all of the distinguished Committee Members. I want to take a moment to thank you all for allowing us to come in and testify on behalf of the veterans and their families nationwide who stand to benefit from the enactment of H.R. 5166. The acronym is WINGMAN. It stands for Working to Integrate Networks Guaranteeing Members Access Now Act. It is a mouthful.

Over the past two years, my office has urged the Department of Veterans Affairs to work with Members of Congress to grant certified constituent advocates read only access to the Veterans Benefit Management System. Three letters were sent to the Veterans Affairs Secretary Bob McDonald by a bipartisan group of Members of Congress asking for the VA to act on its own and provide this access, but to no avail. Over 102 Members of Congress have signed,

bipartisan Members of Congress have signed one or more letters, including Members of this Committee. And the request was endorsed by the Veterans of Foreign Wars.

During this time, a July 10th, 2015 story broke out reporting that the Los Angeles Veterans Affairs Regional Office was shredding documents needing to process claims, further adding the necessity of the VA to grant read only access to e-claims. During this time thousands of veterans and their families remained in limbo awaiting resolution on their claims, some who had already been waiting for years. Veterans and their families should have to wait no longer for the VA and this institution to act. And it is unconscionable that a single man or woman who has answered the call to serve our Nation, protect our freedoms, and potentially sacrifice their lives, should have to wait to receive the care and benefits they have already earned.

Unfortunately, the sentiment and sometimes the reality for many of our veterans is, the system is designed to have their back that leaves them questioning whether or not the country cares at all about what happens after they fulfill their contract. The narrative or perception is that they become statistics or numbers on a page that can wait until it is convenient for the bureaucrats in Washington to act. I requested a report regarding wait times to hear back from the VA for my constituent advocates who work hundreds of cases of veterans. And I want to interject that about 54 percent of our time is spent on veterans cases and in our district, we border not far from yours, Mr. Chairman, we are home to about 122,000 veterans in our district. The average time it takes to receive a response from the VA is six months, and in one case, it took over a year, a year for the VA to respond to a congressional office inquiry about a veteran's claim. And I just find this unacceptable. And you can understand why the veterans come in and they are aggravated.

With read only access, certified staff need only make a single request for the VA after obtaining the constituent's privacy release form. The mechanism we would recommend the VA use to permit certified staff for access would be similar to that currently used by the claims agents from 21-22A. This process would limit access solely to the veterans who have requested the congressional office act on their behalf, as well as limit access for cases specific to each congressional person's district. WINGMAN also ensures the integrity of the VSO remains intact through the non-recognition clause of the bill. This means that congressional advocates will continue refer first time claimants to the service officers and claims agents, and only take on veterans' cases after all other resources have been exhausted, which is the current process followed.

Additionally, the cost to implement WINGMAN is assumed by whichever congressional office is requesting access. I recognize not every office wants this or needs this access as they have significantly smaller veteran populations in their district. District 3, like I said, is home to over 122,000 veterans. However, for offices that do want access, they will use their MRAs to cover the cost to train and certify their staff. This is an opportunity for Congress to literally put their money where their mouth is and alleviate some of the barriers preventing veterans from receiving the consideration they deserve in a timely fashion. I would also like to stress that

this bill does not grant access to files constituent advocates do not already have permission to possess, and it simply removes the VA as a middle man and allows advocate access to records more quickly.

My Republican co-lead on this bill, Rodney Davis of Illinois, knows all too well the pitfalls of maintaining the status quo and not making this critical change. As a district staffer for 16 years he experienced firsthand the difficulties of navigating through the VA and has personal testimony on this. There are over 132 Members on this bipartisan bill and I ask for your support of H.R. 5166. Thank you.

[THE PREPARED STATEMENT OF TED YOHO APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, doctor. Another timely piece of information, something that I have been hoping would happen for quite some time. And I hope the VA can help us move that along. Representative Hice, you are recognized for five minutes.

#### **OPENING STATEMENT OF HONORABLE JODY HICE**

Mr. HICE. Chairman Miller, thank you so much, and Ranking Member Brown. I appreciate you holding this hearing and allowing me to come and testify on my bill, H.R. 5047, the Protecting Veterans' Educational Choice Act.

Right now, today, there are nearly one million student veterans who are using their Post-11 G.I. Bill benefits to pursue additional education. They are in the process of transitioning from military life to civilian life, and part of that transition includes education. That number, nearly a million, is expected to grow over the next several years and despite the benefit that we provide them, which is the most generous education benefit that our Nation has ever offered, still we have many veterans today who are taking out loans for their education, and my bill addresses the reason why and helps to alleviate this problem.

In many cases, bottom line, veterans do not realize, or they have in some instances deliberately been misled by college recruiters, that credits from one school do not always transfer to another school. And that becomes a problem when a veteran uses up their G.I. benefits in this school hoping to transfer to another, and then they find out that they are unable to do so and much of their benefits have been used up at that point. So the issue has to do with articulation agreements between one school and another. Often for for-profit or nonprofit schools, the articulation agreements differ. And so to prevent this situation—by the way, many of these veterans who are attempting to go to school are the first generation college students for their families. But my bill, the Protecting Veterans' Educational Choice Act, basically requires the Department of Veterans Affairs to include information about articulation agreements to the veterans ahead of time so that they know beforehand what the articulation agreements are so that they do not use up their G.I. benefits up front only to find out that they cannot transfer.

So what the bill will do is require the Department of Veterans Affairs to include information about articulation agreements as

well as information about educational counseling services provided by the VA to every veteran on the front end rather than on the back end. In addition, the bill would require VA counselors to provide educational or vocational counseling to inform veterans about these various agreements between schools, particularly when they are trying to transfer.

So the bottom line, Mr. Chairman, the goal of this bill is not to dictate what school a veteran chooses to go to. That is totally up to them. All we are trying to do is protect them from, on the back end of their educational experience, finding out that they are out of money and that their credits do not transfer. We are trying to give them the information up front so that they are able to make the best choice for their career as they are transitioning from the military into civilian life. And I believe it is incumbent upon Congress to ensure to the best of our ability that the benefits and opportunities that we afford them, that they have earned, that they are able to use it in the wisest way they deem for their families. So Mr. Chairman, I look forward to working with you and all my colleagues here on the Committee to help our veterans. And I appreciate the bipartisan support on this bill, and would really encourage support from each of you to help our veterans in this role. Thank you very much, and I yield back.

[THE PREPARED STATEMENT OF JODY HICE APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, Mr. Hice. Congressman Newhouse, you are recognized for five minutes.

#### **OPENING STATEMENT OF HONORABLE DAN NEWHOUSE**

Mr. NEWHOUSE. Good morning. Thank you, Chairman Miller, Ranking Member Brown, and Members of the Committee for inviting me to testify before you today on H.R. 3216, the Veterans Emergency Treatment Act.

I believe one of the most important functions of our Federal government is to support and sustain those who have been willing to sacrifice all they have to defend our Nation. Whenever our government fails to meet this responsibility I believe swift action must be taken.

As everyone on this Committee is well aware, we have heard far too many distressing stories in recent years of the Department of Veterans Affairs failing to provide our veterans with the care they deserve. This legislation seeks to address one of these problems. In short, H.R. 3216 would ensure that every enrolled veteran who arrives at an emergency department of a VA medical facility, and indicates an emergency condition exists is assessed, and treated in an effort to prevent further injury or death. It would accomplish this by applying the statutory requirements of the Emergency Treatment and Labor Act, or EMTALA, to emergency care furnished by the VA to enrolled veterans.

EMTALA grants every individual a right to emergency care. While a 2007 Veterans Health Administration directive indicates that the VA complies with the intent of EMTALA requirements, VA hospitals are non-participating hospitals and therefore are not obligated to fulfill EMTALA requirements. It has become abun-



dantly clear that the VA is not fulfilling the EMTALA directive. All too frequently the policy is to turn down those who access the emergency room.

My attention was first drawn to this issue because of the experience of one of my constituents. In February of 2015 64-year-old Army veteran Donald Siefken from Kennewick, Washington arrived at the Seattle VA Hospital emergency room in severe pain and had a broken foot that had swollen to the size of a football. No longer able to walk, he requested emergency room staff assist him in traveling the ten feet from his car to the emergency room. Hospital personnel promptly hung up on him after instructing him that he would need to call 911 to assist him at his own expense. He was eventually assisted into the emergency room by a Seattle fire captain and three firefighters.

Another notable incident related occurred in New Mexico in 2014 when a veteran collapsed in the cafeteria of a VA facility and ultimately died when the VA refused to transport him the 500 yards across the campus to the emergency room. It is actually the Veterans Health Administration's stated policy that all transfers in and out of VA facilities of patients in the emergency department or urgent care units are accomplished in a manner that ensures maximum patient safety and is compliance with the transfer provisions of EMTALA and its implementing regulations. Unfortunately, however, this policy is not always followed and occasionally locally designed transfer policies at VA facilities serve to undermine efforts to provide emergency care to veterans in these critical moments.

Additionally in some of these incidents, there was clear confusion on the part of the VA facilities about their own transfer policies. This is why Congress must act.

I am grateful for the support that this legislation has received from leading veterans organizations, including The American Legion, Disabled American Veterans, as well as the Veterans of Foreign Wars. And I look forward to working with these organizations to make adjustments as needed that the legislation may need to ensure veterans receive improved medical services during emergency medical situations.

Thank you again, Mr. Chairman, for holding this hearing today. I look forward to answering any questions you may have. And I ask unanimous consent to submit for the record a response from the VA to my letter of June, 2015, as well as a letter of support from the Retired Enlisted Association on my legislation.

The CHAIRMAN. Without objection, so ordered.

Mr. NEWHOUSE. Thank you.

The CHAIRMAN. Thank you very much, Mr. Newhouse. Congressman Young, you are recognized for five minutes.

#### **OPENING STATEMENT OF HONORABLE DAVID YOUNG**

Mr. YOUNG. Thank you, Chairman Miller, Ranking Member Brown, and Members of this distinguished Committee. My colleagues, thank you for the invitation to testify on my bill, H.R. 5392, the No Veterans Crisis Line Call Should Go Unanswered Act. I greatly appreciate this opportunity to appear before you this morning.

I want to share with you all here a story. In April, an Iowa veteran called the VA veterans crisis line, the confidential, toll-free hotline providing 24-hour support for veterans seeking crisis assistance. This veteran was having a rough day and he needed help. As the veteran sought the help he desperately needed, the phone kept ringing, and ringing, and ringing. He tried again, and again, but the only answer was all circuits are busy, try your call later. This hotline designed to provide essential support for veterans and their families and friends had let him down. This heartbreaking story is tragically true. It is not unique. And thankfully, this veteran was able to contact a friend who got him the help he was seeking.

In 2014, a number of complaints about missed or unanswered calls, unresponsive staff, as well as inappropriate and delayed responses to veterans to crisis prompted the VA Office of Inspector General to conduct an investigation into the veterans crisis line. The investigation found gaps in the quality assurance process, and provided a number of recommendations to address the quality, responsiveness, and performance of the veterans crisis line, and the mental health care provided to our veterans.

Now despite promises by the VA to implement changes to address problems facing veterans who use the crisis line, these problems, unfortunately, they are still happening. Mr. Chairman, they happen to the constituents in the district I am privileged to represent, and they happen in other districts as well, and are without a doubt continuing to happen today.

Veterans deserve more. They deserve quality, effective mental health care. A veteran in need cannot wait for help, and any incident where a veteran has trouble with the veterans crisis line is simply unacceptable.

Now the story I shared of the Iowa veteran's experience that Saturday evening has troubled me. His experience is why I am here before you today, working to introduce a bill that ensures we follow through on the promises our country has made to our veterans. This bill requires the VA to create and implement documented plans to improve responsiveness and performance of the crisis line, an important step to ensure our veterans have unimpeded access to the mental health resources that they need.

The unacceptable fact is while these quality standards should already be in place, they are simply not. My bill does not duplicate existing standards or slow care for veterans. Instead, it puts in place requirements aligning with the recommendations made by the OIG, the Office of the Inspector General, and other government accountability organizations to improve the veterans crisis line. My bill requires the VA to develop and implement a quality assurance program, and process to address responsiveness and performance of the veterans crisis line and backup call centers, and a timeline of when objectives will be reached. It also directs the VA to create a plan to ensure any communication to the veterans crisis line or backup call center is answered in a timely manner by a live person and document the improvements they make providing those plans to Congress within 180 days of the enactment of this bill.

Mr. Chairman and Ranking Member, my colleagues, this bill would help the VA deliver quality mental health care to veterans in need, Iowa veterans, and all veterans, have faced enormous

pressures, sacrificed personal and professional gains, and experienced dangerous conditions in service to our Nation, and many are returning home with Post-Traumatic Stress Disorder and other unique needs which require counseling and mental health support. And we should thank them for their service and we do, but we need to make sure that we provide that promise to them. This is why I introduced this bill, to honor and thank our veterans, and let them know America supports them. Our veterans answer our Nation's call and we shouldn't leave them waiting on the line.

I appreciate and I thank the Committee for working with me on this bill, and for your attention on this important issue. I look forward to continuing to work with you to provide our veterans with the best care possible. I thank the chair, the Ranking Member, my colleagues, and I yield back.

[THE PREPARED STATEMENT OF DAVID YOUNG APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, Mr. Young. Our final Members testifying today on a piece of legislation is Mr. Lamborn from Colorado. You are recognized for five minutes.

#### **OPENING STATEMENT OF HONORABLE DOUG LAMBORN**

Mr. LAMBORN. Thank you, Mr. Chairman, and I will be brief. I ask Members to support H.R. 5416, which would help the families of deceased veterans who received care through the Choice program.

Currently, the family of a deceased veteran who passes away in a non-VA hospital that is under contract is given a burial allowance of \$747. However, if the veteran dies while receiving health care at a non-VA facility under the Choice program the family is only provided a \$300 burial allowance. Mr. Chairman, it is not right that families are penalized if a veteran uses the Choice program. Veterans should be able to participate in the Choice program without having to worry about the financial impact on their loved ones.

My bill, H.R. 5416, would correct this inequity and allow families of veterans in the Choice program to qualify for the \$747 burial allowance. This would make things fair and equitable. I ask the Committee to consider it favorably, and I yield back.

[THE PREPARED STATEMENT OF DOUG LAMBORN APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, Mr. Lamborn. I appreciate your brevity this morning, and I would ask Members if you have any questions of any of the legislative sponsors?

Ms. BROWN. I think I have one.

The CHAIRMAN. Ms. Brown?

Ms. BROWN. Is it Mr. Rice? Hice. Mr. Hice, my question is, it is very interesting, is this just Veterans Affairs? Or is this Veterans and the Department of Education, who really know more about accreditation and other things?

Mr. HICE. Of course we would work together with both, but this is directly with the VA and trying to help. And again, all we are doing is providing information to the veterans, which obviously

comes under the VA, to make sure that they get the information that they need.

Ms. BROWN. Well I guess my question is, does the VA have that information as far as whether or not a program is accredited?

Mr. HICE. Yes, in that regard we are working with other departments, of education and so forth, to gather all of the accurate information that is needed. And all of the schools already are under law, required to place their articulation information on their Web sites, but some of those schools it is not easily found. And so this would just help, take that information that already is available and put it in a very easily available manner for the veterans.

Ms. BROWN. Thank you. You know, many schools have a transfer policy, you may be taking a class at the community college and maybe the university does not take it. So I would be interested in talking more about it as we move forward with the bill. Thank you.

Mr. HICE. Well, thank you. And we would be interested in talking as well. And again, the choice of a school is irrelevant to us. They can go wherever they want to. We just want to make sure they have the appropriate information.

The CHAIRMAN. Dr. Ruiz? And we do have a very large second panel. So you are—no, no, you can go ahead.

Mr. RUIZ. Absolutely. I will be quick. Congressman Newhouse, your bill, my understanding is that all emergency departments are, need to function under EMTALA. Your bill, is it, what is the difference with the current law that we have now? There are some emergency departments who have difficulty complying with EMTALA, both public, private, and within the VA. So does this help with the implementation of EMTALA?

Mr. NEWHOUSE. The, thank you for your question. The Veterans Administration facilities are directed to comply with the intent of EMTALA but they are not legally required to fulfill those obligations. And so this would clear up any question there might be on the part of employees or administrators of those facilities. So it just makes it, brings them under the same requirements as every other medical facility in the country.

Mr. RUIZ. Thank you. I yield back my time.

The CHAIRMAN. Ms. Brown?

Ms. BROWN. I will be quick. I do have one question for Mr. Yoho. I think your bill is, I will probably cosponsor it, I don't know for sure. Can you give me some information on how much it would cost the office, because I have a large veteran population, and, you say \$100,000, we can discuss more about the cost later. How much would it cost each Member? It is a good bill but to pay for it out of our office account I find very interesting.

Mr. YOHO. The certification costs would be minimal. We would be certified through the VA, the Department of Veterans Affairs. I do not have an exact cost but the estimate was under \$1,000. So it is something that, again, we are already doing this work. We have already got a privacy form. The veterans come to us as a last resort. And it goes back to customer service for our veterans and expediting that.

Ms. BROWN. But we, you know, they have up here, they train our staff in casework. Would this be a part of that training?

Mr. YOHO. Right. We could, you know, tie it in with that. We would work that out with the Veterans Administration.

Ms. BROWN. Well thank you very much.

Mr. YOHO. Yes, ma'am.

The CHAIRMAN. Thank you very much, Members. Thank you to the first panel. We appreciate your testimony today. And as you depart, we would ask the second panel if they would come on up to the table.

Thank you very much, Members, and welcome to the second panel. If you would, before we begin, I was remiss, I should have done this at the beginning of the hearing today. Our colleague Tim Walz lost his brother in a tragic camping accident on Sunday. His brother was killed in a freak accident during a storm while he was camping with his son. The son was seriously injured. Tim is not with us today, and I would just like to pause for a moment of silence for Tim in honor of his brother and his family.

[Moment of silence.]

The CHAIRMAN. Thank you very much, and thank you to the second panel for joining us today. And joining us Honorable Sloan Gibson, Deputy Secretary for the Department of Veterans Affairs. He is accompanied today in the first row by Laura Eskenazi, the Executive in Charge and Vice Chairman of the Board of Veterans Appeals; David McLenachen, the Deputy Under Secretary for Disability Assistance for the Veterans Benefits Administration; and Dr. Maureen McCarthy, the Assistant Deputy Under Secretary for Health, Patient Care Services for the Veterans Health Administration. Also with us on the second panel this morning is Mr. Raymond Kelley, the Director of National Legislative Service for the Veterans of Foreign Wars of the United States; Paul Varela, the Assistant National Legislative Director for the Disabled American Veterans; Carl Blake, the Associate Executive Director for Government Relations for Paralyzed Veterans of America; Lou Celli, the Director of the National Veterans Affairs and Rehabilitation Division for The American Legion; and Mr. Rick Weidman, the Executive Director for Policy and Government Affairs of Vietnam Veterans of America. Again, thank you all for being here today. Thank you to the Deputy Secretary for agreeing to appear in a second panel so that we could kind of compress everything today. But Mr. Secretary, you are recognized now for your opening statement. My script says five, but I think I actually scripted you for a little bit longer. So you are recognized.

#### **OPENING STATEMENT OF HONORABLE SLOAN GIBSON**

Mr. GIBSON. Okay, thank you very much, Mr. Chairman. And a very special thank you for including appeals in this hearing. And Congresswoman Titus, thank you very much for your sponsorship of the appeals legislation.

We are pleased to be here to share our views and very grateful for the opportunity. You have already introduced the others that are with me. I also want to acknowledge our partners from the veterans service organizations, as well as state and county veterans groups, and the myriad of other veterans stakeholders. They all did some very heavy lifting, and spent many hours helping us craft the appeals modernization draft legislation.

While my written statement covers the broad and extensive range of bills on the docket today, I will reserve most of my remarks for reform of the appeals process. Let me start by making three quick points. First, a reminder that while we support many of the bills on the agenda today, we also know how important it is to veterans now, and in the future that the bills' requirements are resources for successful implementation.

Second, I would like to thank the Committee for inclusion of H.R. 4150, which will yield dividends for VA health care by allowing implementation of more flexible work schedules for doctors, and make us more competitive with the private sector.

And lastly, let me touch just briefly on H.R. 5166, also known as the WINGMAN Act. We believe that veterans should be in control of who has access to their private information. We are concerned that under this bill, that may or may not be the case, and we would approach this in a different way by continuing the work that we have already got underway to make the veteran's entire case file, claims file, available to the veterans through e-benefits so that the veteran would be in a position to be able to share that with whomever the veteran wished to do.

Moving on to appeals, H.R. 5083, the VA Appeals Modernization Act of 2016, will help veterans immensely by modernizing a process that is now failing them.

Appeals reform, as noted earlier, is a top priority to VA, and we fully support this legislation. It is critical to remember that the cost associated with implementing this new legislation is essentially zero. The additional funds that we hope Congress will provide year by year to reduce the inventory in the current system is separate and distinct from the legislation to modernize the process.

Current appeals process leaves veterans frustrated and waiting far too long. It is conceived, as noted earlier, over 80 years ago, a collection of process that have accumulated over time, unlike any other appeals process in government. Layers of additions to the process have made it a complicated, opaque, unpredictable, and less veteran-friendly. It makes adversaries out of veterans, and VA and it is ridiculously slow; average processing time for all appeals is about three years. For appeals that make their way to the Board of Veterans' Appeals, the average is five years.

Many appeals are much older than that. Last year, the Board was still adjudicating an appeal that originated 25 years ago, which has been decided 27 times. It is not right for veterans and it is not right for taxpayers, and it is only going to get worse, unless we find a way forward. We now have over 450,000 appeals pending. Without major reform, average wait times will grow from the current three to five years, to something on the order of ten years of veterans waiting for a decision.

In the meantime, we are working within existing restraints and resources to try to respond to the problem. We are upgrading our technology around appeals, applying lessons learned from VBA's modernization and transformation of the claims process, adopted a standard notice of disagreement form to initiate appeals. In VBA, we have added 300 additional staff, just focused on appeals work over the last year, and in 2016, we allocated \$10 million in overtime, just for appeals work; we had previously been having some

of our appeals staff working overtime on disability claims. Now when an appeals staffer is working overtime, they are working exclusively on appeals.

Output by the Board of Veterans' Appeals has risen 33 percent since 2013. We are actually processing appeals at the highest rate since 1988, which was before a number of changes in the appeals process that occurred at that time. Despite our best efforts, veterans keep waiting longer for appeals decisions, and without reform enabled by legislative action, the wait will grow much longer.

Problems rooted in our antiquated, complex and inefficient appeal process, which makes it impossible to keep up with a growing workload. Between an aging veteran population and some younger veterans returning home with higher levels of disability, it is no surprise that we are seeing record numbers of disability claims with more medical issues per claim.

Looking back from 2010 to 2015, VBA completed more than a million claims annually. 2015, they completed a record number of 1.4 million claims, but more claims decided means more appeals. As was noted earlier, the ratio has remained about the same. The rate of appeal has remained about the same, and the result is that we have, Chairman, as you noted, a 35 percent increase in total appeals pending, just in the last three years.

The current appeal process is failing veterans. The status quo is not an option. The solution is fundamental reform, and without that, we are going to have veterans waiting much, much longer for their appeals decision.

We strongly support this legislation which has brought VA, veterans service organizations, and other stakeholders together in support of this bill. Time to act is now.

I know I am giving short shrift to many other bills on the agenda, many of which VA supports or proposes some modification to in order to better serve veterans, but I felt like it was a priority to address this critical need of our veterans, fixing the broken appeals system.

Thank you, and we look forward to answering your questions.

[THE PREPARED STATEMENT OF SLOAN GIBSON APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much. You did do that in five minutes.

Mr. Kelley, you are recognized for five minutes.

#### **STATEMENT OF RAYMOND KELLEY**

Mr. KELLEY. Mr. Chairman, on behalf of the 1.7 million members of the Veterans of Foreign Wars and our Auxiliaries, thank you for the opportunity to testify today. The VFW is supportive of the majority of the bills that are under consideration, but I am going to limit my remarks to just three of them.

H.R. 5047: The VFW supports the intent of this legislation. However, we do not believe VA can provide specific articulation agreements to veterans, due to the fact that the Department of Education does not track these types of agreements between individual institutions.

The VFW does agree with section 1, paragraph B of this legislation, which would require the Secretary of Veterans Affairs to include information regarding counseling services and articulation agreements with the certificate of eligibility for education benefits.

H.R. 5166: The VFW does not support this legislation at this time. While we agree that there should be more efficient ways for congressional constituents' service staff to assist veterans, there are current controls in place to limit access to veterans' records, and those controls must be preserved under any expansion of access. The VFW listed our concerns in our written testimony.

H.R. 5083: The VFW has actively participated in a series of meetings with VA and other VSOs in an attempt to identify opportunities for improvement to the current appeals process. While the VFW is supportive of the legislation, there are several areas that have not been fully addressed. Solutions to these areas must be found.

These areas include duty to assist. We have two concerns about limiting duty to assist at BVA. First, it is unclear what, if any, action is required if a claimant submits new evidence during the appeals process. It is likely that additional development is required, however, the proposal does not address how that will be accomplished.

Second, we are concerned that if there is limited duty to assist requirements of the Board, veterans who submit new evidence to the Board would not know to take that evidence back to the middle lane because the Board would not require further development; instruction from the Board to the veteran must be made clear.

Docket flexibility: Currently, the Board is limited to only one docket. Under this proposal, VBA would have to maintain at least two dockets in order to be efficient to work cases. The VFW suggests a total of five dockets during the transition—two dockets during the resolution of the current backlog, and then three additional dockets for the new proposal.

New evidence: It is our belief that eliminating the new material standard would reduce non-substantive appeals by allowing regional offices to make a merit decision on the evidence of record. The VFW proposes that the only requirement to obtain reconsideration of a claim should be submission of new evidence.

Higher-level review: The VFW believes that the decision review officer position must be retained, as opposed to allowing a higher grade to conduct the review, as proposed under this legislation. Further, the VFW believes that the difference of opinion reviewer should be able to remand claims for additional development based on evidence received during a difference of opinion review.

Claims in different lanes at the same time: Another unresolved issue is whether claimants may have the same issue in more than one lane simultaneously. It is for this reason, we urge Congress to address the submission of evidence during an appeal, and to which entity it should be submitted. The VFW suggests that if the Board cannot order a remand to properly develop evidence submitted during an appeal, then a claimant should have the right to submit that evidence in the center lane while the appeal is pending at the Board.



Reports: We recommend a requirement that VA collect data, analyze it, and report that information to Congress and to the public.

The Court of Appeals for Veterans Claims: To ensure that veterans are not discouraged from appealing to the Court, we urge Congress to amend this proposal to allow claimants to submit evidence within one year of a Court decision.

This legislation, even if approved with VFW's recommendation, is only one-third of the solution. A comprehensive plan by VA to address the current backlog of pending appeals, and an allocation of sufficient resources by Congress to allow VA to execute that plan, must be fully developed.

Thank you again for the opportunity to testify today, and I look forward to any questions you or the Committee may have.

[THE PREPARED STATEMENT OF RAYMOND KELLEY APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, Mr. Kelley.

Mr. Varela, thank you. You are recognized for five minutes.

#### STATEMENT OF PAUL VARELA

Mr. VARELA. Chairman Miller, Ranking Member Brown, and Members of this Committee, good morning. Thank you for inviting DAV to testify at this legislative hearing, and to present our views on the bills under consideration.

All bills under consideration are important today. I will focus my oral remarks on H.R. 5083, VA Appeals Modernization Act of 2016, and direct the Committee to our written testimony for DAV's position on the remaining bills.

Mr. Chairman, H.R. 5083 comes as a result of collaboration between VBA, the Board of Veterans' Appeals, or Board, and the 11 major stakeholder organizations, including DAV, that assists veterans each and every day with their claims and appeals.

For the past four months, this workgroup has been meeting intensively with the goal of developing a new structure for processing claims and appeals. DAV and other VSO stakeholders continue to work with the Board and the VBA to resolve and clarify some unresolved issues to further improve the proposed new framework. While we support the H.R. 5083, some issues need to be further explored to ensure veterans do not suffer any negative unintended consequences.

Furthermore, changes to any part of H.R. 5083 could affect our ultimate support of the bill, therefore, we urge this Committee and VA to continue working alongside DAV and other stakeholders in a transparent and collaborative manner. In change to the current process must protect the due process rights of veterans. As VSOs, we understand the current system, its benefits, and its weaknesses. Core tenets of any new system must ensure to protect effective dates and due process rights for veterans; they earned it, and they deserve it. Veterans must also be allowed opportunities to introduce new evidence without having to endure a long and arduous formal appeals process to the Board.

Three options to redress VBA decisions are contemplated within the new framework; first, readjudication; second, a higher-level re-

view; and finally, a formal appeal to the Board. One of these three options must be elected within one year of a decision.

We are pleased that H.R. 5083 contains one additional change that we have suggested, and VA agreed to include, which is language to clarify that all higher-level reviews would be done as de novo reviews, without the veteran having to affirmatively elect this review option. This provision must be maintained in any legislation—within any legislation moving forward.

H.R. 5083 would also amend existing statute to change the new and material evidence standard to a new and relevant evidence standard, as it relates to readjudication and supplemental claims. We understand VA's intent as it pertains to adjudication of unrelated evidence, however, this revised standard would not prevent submission of truly unrelated or irrelevant evidence; instead, creating a new and untested standard could result in additional appeals on procedure before the substance of the claim is adjudicated.

Veterans must be made aware of new notification provisions and the redesigned claims, and appeals process being proposed. We recommend legislation include a requirement that VA create, in conjunction with stakeholders, an online tutorial and utilize other Web or social media tools to enhance veterans' understanding of how claims decisions are made, and how to choose the best options available in the new framework.

Some questions remain unresolved, such as how the introduction of new evidence would be treated by VBA and the Board, and how duty to assist requirements will apply; how will the Board handle new evidence received outside the limited evidentiary filing periods; how will new employees be trained under both, the old and new systems, so that there is efficient administration of these two parallel systems; how will the Court view the existence of two different standards for critical matters such as the duty to assist?

We are pleased that VA has developed a plan to run the new framework, while simultaneously addressing the almost 450,000 pending appeals, however, this will require additional resources. Unless VA requests and Congress provides adequate resources to meet VBA and Board staffing, infrastructure, and IT requirements, success would be unlikely. We are encouraged to CVA's proposal for greater resources to make this new claims and appeals system successful.

We implore Congress to seriously consider appropriate funding levels as H.R. 5083 moves forward. There is some work that still needs to be done and clarifications that need to be addressed, but we remain committed to partnering with Congress, VA, and other stakeholders to resolve these issues. Mr. Chairman and Members of this Committee, thank you for the opportunity to testify today, and I look forward to your questions.

[THE PREPARED STATEMENT OF PAUL VARELA APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, Mr. Varela.  
Mr. Blake, you are recognized for five minutes.

**STATEMENT OF CARL BLAKE**

Mr. BLAKE. Chairman Miller, Ranking Member Brown, Members of the Committee, on behalf of Paralyzed Veterans of America, I would like to thank you for the opportunity to testify today. There is no question that many of these bills will have a significant impact on delivery of care, and also the benefits, through the appeals process. You have our written statement and many of the recommendations related to some of these bills, so I will limit my comments to only a couple of the bills under consideration.

Obviously, the hot topic of the day is H.R. 5083, the appeals modernization bill. I will say up front that PVA supports the framework as outlined by H.R. 5083. I think that this bill goes a long ways towards addressing many of the concerns that were raised throughout the process that we were part of, along with our colleagues here at the table, and with the VA. I would actually like to applaud the VA for the effort that they put forth to work through this appeals modernization process.

In my time here, this is probably the first time I have ever actually seen it work this way in this extensive, a process with all issues being considered and proper consideration being given to addressing those concerns, so that when the legislation was brought forward by Ms. Titus, it properly reflected the concerns that we raised. We appreciate the fact that this bill takes into account our concerns, and we hope that it will be considered and moved forward.

I think the other big issue that has been raised in previous testimony to the Senate, and it has come up in our discussions is, what to do about the legacy appeals, the backlog, whatever you want to call it. I think that that problem cannot be overlooked. We would hate to see the mishandling of the current legacy appeals undermine all the work that has been put into this appeals modernization process.

We appreciate the fact that the VA has already begun the process of meeting with us, with the organizations here at the table to try to come up with a workable solution to the legacy appeals problem. I would say that a lot of progress has been made. We are still not there. There are a couple of options that are floating around right now that are being considered. I would say that one of them would allow for sort of an off-ramp process into the new appeals modernization framework. I think on its face, that probably sounds like a good thing, but I think just shifting a significant portion of those legacy appeals into that system doesn't change the fact that those are still existing appeals, and could create a backlog that might undermine this new system before it ever gets started.

So we appreciate the time that has been invested into it. We look forward to continuing the work. We realize that this is an absolutely critical problem that must be addressed because, as the deputy secretary said, you know, it will be unacceptable that a decade from now, some of these appeals could be ten years on average and that there could be up to two million appeals if this process continues as it is in the backlog; that would be totally unacceptable.

With regards to H.R. 4764, the PAWS Act, we clearly understand and support the intent of the legislation. We recognize the benefit that service animals provide. I think there is still some debate over

how that fits into the issue of veterans with severe mental illness, in the case of this bill, severe PTSD, but I think there has been a lot of work that suggests that this is a useful and important tool for veterans as they go through the rehabilitation process.

A couple of the concerns that I would raise with that bill are, one, as with many other pieces of legislation that have been considered in the halls of Congress over the last several years, we don't like the inequity created by the post-9-1-1 versus pre-9-1-1 connection that is in the bill. The fact is, there are many veterans of previous eras that could benefit from these provisions, just as much as the post-9-1-1 era, and we would hate to see those folks be left out in the cold by this legislation.

Secondly, I think the bill overlooks how service animals are currently provided through VA. It is my understanding that the VA has no direct cost in procuring a service animal that is trained and provided to a veteran. They make the determination a veteran is deemed eligible. These individuals typically are referred to non-profit entities that basically manage the service animal empire, we will call it, and those individuals or those entities, then, provide the service animals for veterans.

I think the intent of the bill is good. I would hate to see the construct of the bill upend the process that seems to work in the vein of trying to get veterans who have a severe mental illness or PTSD access to these same service animals. So I think some of those considerations need to be given before this bill is just advanced as it is constructed.

Lastly, I would like to thank Mr. O'Rourke for his work on H.R. 5162. We support the intent. I think there is still a little more work that needs to be done. But his office has been great in reaching out to us and expressed a great deal of interest in trying to work through whatever details need to be hashed-out to make sure that the bill does exactly what he intends, and that veterans are best served by that legislation.

So with that, Mr. Chairman, I would like to thank you for the opportunity to testify. I would be happy to answer any questions that you may have.

[THE PREPARED STATEMENT OF CARL BLAKE APPEARS IN THE APPENDIX]

The CHAIRMAN. Thanks.

Mr. Celli, you are recognized for five minutes.

#### STATEMENT OF LOUIS CELLI

Mr. CELLI. As we wind down this legislative session, The American Legion is eager to see this Congress address legislative reforms that will help tune-up VA offerings, and the restorative services we maintain for our community of defenders that have earned our respect, our loyalty, and our admiration.

Chairman Miller, Ranking Member Brown, distinguished Members of this extremely important Committee, on behalf of National Commander Dale Barnett and The American Legion, we thank you for the opportunity to testify regarding The American Legion's position on the pending and draft legislation. Before I begin, I would just like to take a minute to pause and recognize Chairman Miller

on behalf of The American Legion, as this might very well be the last opportunity we will have the privilege of presenting formal testimony to this Committee while under the Chairman's leadership. Chairman Miller, The American Legion salutes you and your service and your dedication to the veterans of this Nation. It has been an honor and a pleasure working with you and your team, and we will always remember our time together with respect, admiration. Thank you for your service, sir.

Of the 12 bills being discussed today, The American Legion would like to highlight two as a complete discussion of each of these bills is contained in our previously submitted testimony, a copy of which I am sure you all have. H.R. 5083, the Appeals Modernization Act of 2016, is an important step toward the exact type of good stewardship this Committee has ensured is a hallmark of your work. Streamlining a complicated and legally burdensome process while preserving and actually increasing the rights of claimants and doing so in a manner that will ultimately save taxpayer dollars, is a rare and noble accomplishment.

H.R. 5083 represents a combined effort between your staff, the Department of Veterans Affairs, and the veterans service organizations who serve our veterans every day. We are proud of the work we have done here and the product that we have produced. In addition, we have developed an intelligent and comprehensive plan for addressing the existing inventory of appeals that is logical, reasonable, and continues to serve veterans' best interests.

You have already heard much about the mechanical details of this plan, so I won't belabor them, but what I will say is that it was extremely gratifying to have all of the stakeholders in the room at one time acting as good stewards for veterans, the process, and the Nation. The American Legion strongly urges this Committee and the Full House of Representatives to pass this measure together with the Senate, and to get this bill signed into law before we run out of time, in this administration.

The next bill that I want to address is the WINGMAN Act. While The American Legion appreciates the tireless support congressional liaisons provide at the district and national level, VA disability claims and appeals management is a complicated and technical process. Merely having access to view a claimant's record would in no way enable the moderately trained viewer of the record to offer the type of comprehensive and legally supported advice that these claimants are looking for.

A simple request of: "I just want to know what is happening with my claim because it has been a year since I have heard anything", is actually a much more complicated discussion than: I see your claim is at the X, Y, Z regional office, but I don't see what is happening to it now.

Highly trained service officers, who have years of experience, often have difficulty tracking down the exact status as on specific claims, and because many, if not most, are co-located in the regional offices, have vastly more resources at their disposal to assist the veteran or their family member. Further, each record accessed is authorized by a power of attorney. If The American Legion is representing a claimant and the claimant contacts their representative's office seeking a status, and that staff member changes the

power of attorney, The American Legion will no longer represent that veteran; the congressional representative will.

When veteran claimants call congressional offices, the best thing that that office can do is recommend that the claimant secure an accredited representative to assist them with the process. And if they already have, the congressional representative is always welcome to call the accredited rep to help the claimant understand his or her status.

If congressional leaders would like accredited representatives in their office to process constituent claims, The American Legion would be happy to facilitate such a program once your office secures the appropriate funding.

With that, The American Legion opposes the WINGMAN Act, and would be happy to answer any questions you may have.

[THE PREPARED STATEMENT OF LOUIS J. CELLI APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, Mr. Celli.  
Mr. Weidman, you are recognized for five minutes.

#### STATEMENT OF RICK WEIDMAN

Mr. WEIDMAN. Good morning, Mr. Chairman. VVA would like to associate their—ourselves with the remarks of the Legion in regard to your leadership of this Committee, which has been strong, not always uncontroversial, but always zeroing in on what is good for the veteran, and we applaud and absolute you, as well, sir.

I am going to comment just on a couple of bills. The first is Mr. Hice's bill, H.R. 5047. We applaud this bill and would like to see it moved to enactment fairly quickly, what is missing is something that specifically says that VA has the authority to enforce this act, and what measures can be taken, in regard to reducing or eliminating G.I. Bill payments to said institution until they articulate all of the things in the bill that are basic that should be shared up front. And so we would be happy to work with you and Mr. Hice in order to do that.

The second piece that I wanted to comment on—we wanted to comment on is Ms. Brown's bill, H.R. 5407. We strongly favor this to zero in on the families that are homeless, particularly single parents. But a concomitant thing we encourage you to put in this bill, a section that ups the authority of the Homeless Veterans' Reintegration Program. HVRP is the most cost-effective, cost-efficient program the Department of Labor has, and can prove it, because it is all based on payments.

This is the first time that we have ever gotten up to the fully authorized—this year—the fully authorized request from the president for 50 million. We would suggest that the cap be raised to at least 75 million, if indeed, not 100 million for this program. The reason is, it works. I mean, what part of veterans, homeless, getting a job and getting off the street don't people understand? And, particularly, if it is a single parent that involves a child.

The last bill I would like to—we would like to comment on here, and a lot of these are extremely important, although very targeted bills and we favor most of them, the Appeals Modernization Act. We also participated and applaud Deputy Secretary Sloan Gibson

for participating and convening this authority. It is never been done before, of us talking directly of all the folks who had a stake, from National Veterans Legal Service Program to NOVA, to the big six, to you name it was represented, all the way down to the county veteran service officers.

So, it was intense sessions, more time than any of us, I think, had ever directed in such a short time to trying to look at policy together. The recognition that has—that we have to move together is key.

What didn't happen at those meetings, even though Vietnam Veterans of America, we regularly raised it, is, we have to have something that sets precedent in veterans' claims. It is, in the end, a set of legal laws, of statutes. And the American jurisprudence system could not operate without setting precedent and having lower courts follow the precedent, one. Two, you are not going to be able to really automate this into an automated system if you don't have precedent that is set. Because once you have precedent on a certain kind of claim, then you can write the rules, change the rules, and automate it, and nobody needs to touch it ever again. You still would have all the rights to appeal if you disagreed with that, but, frankly, we believe that most veterans—or a significant number of veterans anyway—appeal, because nobody explains to them why their initial claim was turned down, but this would eliminate that drag. For the taxpayers to continue to spend more money, we think is crazy—to have more bodies—and many of those individual adjudications are going to be wrong.

We believe that there is about 15 to 20 claims that are basically the same, and each one being adjudicated for the 10,000 times to 100,000 times each makes no sense. It should be automated rules and it is not that difficult. I talked extensively with Bud Bucum, who is a BVA leader, and Bud was the operations person for H. Ross Perot when EDS, electronic data systems, went into existence. He certainly worked writing rules-based adjudication of claims on a much larger scale than VA, so, I want to bring him in if you have a chance before this Congress goes out, Mr. Chairman.

Last but not least, we don't oppose many of the things that have been suggested here, with the exception of, if you are going to let a veteran through all the other permutations, keep the original date of claim, then the things that go to the CVAC should also be able to retain, if they mandate it back, that original filing date. And so it is a disincentive vote, then, for anybody to ever take it to the Court of Veterans Appeals. And we would like to see that modified in this. But lastly, and most importantly, we have got to have precedent or we're never going to get out of this big hamster wheel.

Thank you, Mr. Chairman.

[THE PREPARED STATEMENT OF RICK WEIDMAN APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, Mr. Weidman. I appreciate it.

Members, I have two quick questions I want to ask Deputy Secretary Gibson before the clock starts. The first one is about the notice last week that Secretary McDonald was not going to use expe-

dited removal authority from the Choice Act. I don't think that is appropriate, but that was not my decision, obviously. There is a pending legal case on the issue. DOJ has only said they won't defend a small portion of that.

And so I guess the Members would probably want an update on what the secretary's plan is moving forward withholding senior VA leaders accountable.

Mr. GIBSON. Yes, sir. Great question.

First of all, that was my decision—I own it—not Bob's. We should have done a better job of communicating it. Bad on us. Bad on me.

Secondly, as we looked at the situation, recognizing that the Justice Department would not be defending that particular provision of the Choice Act, we work hard to build a case that we believe will withstand appeal. The concern that we had was, regardless of how hard we worked, and all the evidence that we compiled to support a removal or a removal from the senior executive service, that if we made that, put that forth under the expedited authority of the Choice Act, that we were giving the senior executive a, basically, a roadmap for having our decision overturned.

So the idea is reverting back to the old authority. When you gave us the authority—and I made the decision, every single senior executive action that we took to the department that involved either removal or removal of the senior executive service, we used the expedited authority for that. Not one single time did we go back to the old authority.

So we feel like we have to do that in this interim period of time so that the decisions that we make can actually stick and not be overturned on this legal technicality. And my hope would be that Congress would approve the Veterans First Act, which basically addresses this issue both, for by transitioning medical center directors and network directors, to Title 38, changing the appeal right and process for other senior executives, and then for rank and file members of the staff, being able to appeal to the full MSPB.

The CHAIRMAN. The other issue, I think that we need to have a little clarity on is some comments that Dr. Shulkin made yesterday in front of the Senate as it related to some IT provisions and retiring VistA, possibly, in favor of a modern, commercial platform. Can you elaborate a little bit on what is going on and how long before the Department gets an official notification?

Mr. GIBSON. Sure. First of all, it would appear as though we are batting zero on our timely communication on issues. Apologies. And I say that only—am very serious about it, even though I make it with a little levity.

I think the timing of the hearing and the subject of the hearing, and the witnesses of the hearing really put us in a position where we really needed to go ahead and raise the issue in that particular forum. What we have done is, really, at this stage, only look from a planning standpoint. As you know very well, the plan all along has been to continue to invest in VistA evolution.

As we have brought in a new information and technology—a new chief information officer from the private sector; a new under secretary from health, from the private sector; a new principal deputy under secretary for health, who came to us from DoD, and actually



participated in the work that was done that resulted in the Cerner contract at DoD. What we have done is taken a look forward and concluded that we believe, based on everything we know, and the way the electronic health care market exists today, that the right long-term solution for us is a solution with a commercial off-the-shelf application.

That happens also to be the recommendation that we expect to be coming out of the Commission on Care. We are at the absolute earliest stage. I would say that, you know, that is what we sensed the direction is. We need to come sit down with you, and with the staff, and with other Members of the Committee and discuss our sense of all of that in much more fulsome detail, because ultimately, whatever direction we go in will be dependent upon the Congress' willingness to authorize and appropriate the funds required in order to be able to move ahead.

The CHAIRMAN. Thank you very much for the update. We look forward to further discussion—

Mr. GIBSON. Yes, sir.

The CHAIRMAN [continued]. —and with that, I will waive my question time and move to Ms. Brown.

Mr. GIBSON. Thank you, sir.

Ms. BROWN. And I will be expedited, quick. First of all, let me thank you all for your comments and your testimony.

Just a quick comment. Mr. Weidman, I am very interested in working with you to make my bill as—our bill as doing the things that we want to do, so we can do away with families that are homeless on the street, because that is just not acceptable. And I feel that the agencies need to work closer together, whether it is the Department of Labor, Agriculture, whoever—whatever services, wraparound services, we need to work together to make sure that they get what they need—we need to do it. So thank you very much.

On the issue about the dogs being on transportation, there is really a shortage of dogs. I mean we use them for security. We use them for veterans. We use them for a lot of different things, so we need to look at that as we move forward.

The Federal prison system actually do the initial training of the dogs—I have seen it, and they do an excellent job—and then there is a program that once they leave there, they go down to Orlando and stay with whoever's training them for a year, and then they are placed in different organizations. So, it is amazing that there is really a shortage of these dogs.

So, as we move forward—I don't know why everybody is looking at me kind of blank—but the dogs—I am a person that in the past, I have not been a dog lover, but now I am a dog lover, and I see how wonderful they respond to veterans, but they also—we use them for security. We use them for so many things.

So, thank you very much, and as we move forward, we need to take a look at it, and I yield back the balance of my time.

The CHAIRMAN. Thank you very much, Ms. Brown.

Dr. Benishek, you are recognized.

Mr. BENISHEK. Thank you, Mr. Chairman.

Well, good morning or good afternoon, I guess, it is now. Mr. Gibson, I have got a few questions for you, unfortunately, I guess.

Mr. GIBSON. I'm sure they are great questions.

Mr. BENISHEK. Well, you know, I have been concerned about this mental health crisis line thing—

Mr. GIBSON. Yes.

Mr. BENISHEK [continued]. —and my pet peeve about not being able to reach the crisis line at a VA medical center via, you know, a one-digit thing. And I am a proud co-sponsor of Mr. Young's legislation to have quality control standards for a mental health crisis.

And in conversations with you, I think there was some concern over the fact that we weren't converting to a single-digit number because you didn't have enough people to answer that call. Well, that would be still be the same as if you had to dial a ten-digit number. Where are we? I mean, apparently, you don't believe that Mr. Young's bill makes any sense, but there is still a problem in the VA, and why not, why doesn't this make any sense?

Mr. GIBSON. Thank you for the question.

What we have begun rolling out—we started, actually, in the middle of May—it is called Option 7. And by, I believe it is the beginning of the second week of August, every single medical center in the country, the first item on the IVR when the veteran calls in will be: If you are in crisis, press 7. And the call will go immediately and directly to the Veterans Crisis Line.

Mr. BENISHEK. So, by August 2nd?

Mr. GIBSON. By the second week of August—

Mr. BENISHEK. Second week of August.

Mr. GIBSON [continued]. —you will have that implemented. What we are doing right now—

Mr. BENISHEK. At every VA in the country, you are saying?

Mr. GIBSON. Yes, every single one. And I recall your conversation at breakfast about that. And as we looked at that, we took that into account as we were doing our planning.

As we—we have been investing in technology and staff and facilities—

Mr. BENISHEK. Well, that answers my question, directly, and, you know, I look forward to making a few calls the second week of August.

Mr. GIBSON. You know, I would be glad to give you a list of facilities that we have already converted and you can start calling now.

Mr. BENISHEK. Well, last time, it was 14—only 14 the last time I asked.

Mr. GIBSON. Fifty-five is the last count that I got.

Mr. BENISHEK. All right. Well, that is an improvement. Thank you for that.

Mr. GIBSON. Yes, sir.

Mr. BENISHEK. What is the reason that the burial benefits to veterans differs between people going to one hospital versus another?

Mr. GIBSON. I have no earthly idea. We support the change in the legislation and, in fact, what we have asked for in TA is allow us to pay the maximum amount, because \$747 didn't go very far to pay burial expenses.

If we are able to pay the maximum amount routinely, then what that does is, it let's us expedite the process. Rather than having the veteran submitting invoices and all that sort of thing, just let us pay the maximum amount, \$747, and we get it done.

Mr. BENISHEK. Well, I am just—go to another bill, this WINGMAN bill, there were some concerns about this. And, you know, we spend a lot of time in our office investigating and trying to help veterans with a variety of issues related to their claims and all that. And our staff, you know, has to—I mean the veteran has to sign off in order to give our staff permission to even learn about the file—

Mr. GIBSON. Right.

Mr. BENISHEK [continued]. —and I—you know, we want that. But I think the staff just wants to have—and I think, communicate with veterans services officers all the time trying to find out what the problem is with these claims. And I think it is just a matter of the time.

We want to be able to have access to the accurate information and try to improve the time that we can solve these problems faster. And I don't think—what is the concern amongst the—is there a problem? I guess some people raised the question as to there is a problem—this is a problem.

So why is it a problem, since the caseworker from my office has to get this information eventually anyway in order to be effective. So—I don't know—Mr. Gibson, please answer shortly so it will give the other guys a chance to voice their concerns.

Mr. GIBSON. One of the issues is, even if you grant that access, if a claim has been brokered, you may not know where that claim went. So you don't know where it is in the process. So there is a lot of behind-the-scenes things that won't be solved immediately with that.

Also, on the back end of that, if a VFW service officer looks at a claim that they are not supposed to look at, they lose their certification. They lose their job.

If your employee looks at it, they just lose their certification. There is no real incentive not to violate and get curious, and see who they are going to look at, and whose cases they may open up and just look through. So, those are the types of concerns; we need to make sure there is a back end to protect veterans' privacies. For us, it is being fired. That is not necessarily the case with the congressional office.

Mr. BENISHEK. Does anyone else have a comment?

Mr. BLAKE. Dr. Benishek, if I understand the bill, right, it would essentially give a congressional staff Member an access point so they can look into a claims file and then see it. They could look into the system and see where it is at.

And a veteran, on average, would call and say, I would like to know what the status of my claim is, what is going on with my claims? And if an individual looks at it out of context, they can't tell that veteran what they really want to know. And being able to see the claim in space, doesn't tell the veteran anything. It doesn't tell them where it actually is in the process, what is being considered, what evidence issues there may be. It doesn't fully contemplate—

Mr. BENISHEK. Well, no, I—you know, I think the veterans service officers, you know, are critical in this process, and that the people that I employ probably have no idea as to the details, although I think they may not be happy if I said that, but—because they are

very interested in adjudicating and helping, you know, these veterans get service. And have a legislative liaison person that we can reach out to, to facilitate this is helpful, I think.

Mr. CELLI. All right. Well, I know you are out of time, but I can tell you that I know The American Legion and I suspect my colleagues also would be more than happy to come in and sit down with your staff and try to work something out that works for everyone—

Mr. BENISHEK. All right.

Mr. CELLI [continued]. —something we would all be able to get behind.

Mr. BENISHEK. All right. Thanks.

Sorry, Mr. Chairman.

The CHAIRMAN. That is quite all right.

Ms. Titus?

Ms. TITUS. Well, thank you, Mr. Chairman. I would like to thank all the witnesses for all their help in putting together the appeals bill. I don't know if you all can see this or not, but this is the current appeals process; it looks like some kind of Rube Goldberg scheme.

But, anyway, this is a historic moment, so I appreciate your suggestions and comments, but let us not move forward with this. This is a time we have got to do it, and if we don't do it now, the situation is just going to get worse.

Mr. Gibson, thank you, especially, for being here too. I have talked to the CBO, the Congressional Budget Office, to try to get a score on the bill, and so far they have told us that it is going to be kind of negligible; the only cost would be to do training some of the employees on the new process.

Could you—I understand you have done some budget analysis too. Can you tell us what you found about cost?

Mr. GIBSON. That parallels the analysis that we have done and all the conversations that have been had, all the information that we have furnished to the CBO, we continue to believe that the modernization of the appeals process has a negligible cost.

Ms. TITUS. And related to that, I know that we have seen the figure that by 2027 it will take ten years to do an appeal, and under the new system, I think the goal is under one year. Can you tell us what the cost would be to get to that goal if we keep the old system instead of going to the new system?

Mr. GIBSON. Well, you know, what we have modeled there is an additional \$2.6 billion on top of the three and a half billion that we would expect to spend in ordinary course of business adjudicating appeals over the coming ten-year period of time. That actually doesn't quite get you to the one-year standard; it gets you to about a two-year standard, but it is a very, very expensive way to try to solve a fundamental problem.

And, frankly, it still leaves us with a process that is hard to understand, it is not simple, it is not an opaque process, and so it doesn't meet all the needs of our veterans.

Ms. TITUS. So, from rather insignificant costs with the new system to 2.6 billion additional dollars with the old system—

Mr. GIBSON. Yes, ma'am.

Ms. TITUS [continued]. —besides, then you still have the old system, that would be the difference?

Mr. GIBSON. Yes, ma'am.

Ms. TITUS. We came at this through a very collaborative effort. The VSOs were very much involved, and at the table; we have heard that repeatedly. But would you kind of describe for us, the system, where we came up with this new framework?

Mr. GIBSON. Well, I would—you know, I would start by saying the fact that there were no fisticuffs over the previous four months as we were going through this process, is one of the really great positive signs. As a couple of my colleagues here have mentioned, this is not something that we have really done before.

The plea was: The process is broken, we are failing veterans, the time to fix it is now. And the approach was: Let's put it all on the table.

I would salute all of these organizations and the others that were mentioned. And I am reminded of my conversation with Bob Wallace from VFW after the Senate hearing on this topic, where he was observing to me that we have got to get to a point here in Washington where "compromise" isn't a dirty word. You know, we all came into this process, all with sort of preconceived notions about what we wanted, but what we tried to do was focus on a system that is fair, that is relatively simple, that is transparent, and delivers a timely result. I mean, those were sort of the guiding principles that I think we would all say we tried to manage toward.

And I don't know that—I am certain that what we have isn't perfect. I am certain that we don't have complete and unanimity about this, but if we hold this opportunity hostage for perfection or total unanimity, we are never going to get anything done. I think the time to act is right now.

And I am grateful to all of our partners for the work that they did to help us get to where we are. And I would say that we have committed to this group, and I will do it here again publicly, to continue to work on the legacy appeals and the current inventory of appeals; likewise, we are putting everything on the table there to try to figure out the best way forward.

Ms. TITUS. Well, thank you, and thank all of you for being such a part of this.

One last quick question. We heard about the due process. We want to protect the due process. Do you all feel confident that the due process of the veteran is protected under this new system?

A nod or—would be fine. I guess they can't get a nod on the record, but if anybody doesn't to speak up.

Mr. KELLEY. If we ensure that the duty to assist is solved in this, that at some point, the veteran is aware of what to do with new evidence that is not going to be seen by the Board or by the Court, that they know what to do with that, so their effective date is protected and that piece of information does have that due process of being seen and adjudicated.

Ms. TITUS. Thank you.

Mr. WEIDMAN. If this bill moves forward, VVA strenuously objects to changing new and substantive, to new and relevant. VA gets to decide what is relevant, as opposed to the veteran decide

what is—what needs to be going on the record. So they don't even have to put it on the record if they don't want to consider it.

And as we move towards a veteran-centric system, much of our problem with this is, it is not a veteran-centric system, number one, and number two, as I mentioned before, the whole lack of precedence means you can't automate like you should be able to, because the rules aren't there. I mean, legally, it is not going to hold up.

So, the question of due process is some—in some ways it diminishes, and we have a problem with that.

Ms. TITUS. Okay. Thank you, Mr. Chairman.

I yield back.

The CHAIRMAN. Dr. Abraham?

Mr. ABRAHAM. A couple quick questions for Mr. Gibson. In view of what you and Dr. Miller—I mean, Mr. Miller, just talked about with Dr. Shulkin on the IT system—

Mr. GIBSON. Yes, sir?

Mr. ABRAHAM [continued]. —in reference to 5083, what is it going to take as far as time and cost to spool this up and get it uploaded to the VA's IT system as it stands today and looking into the future?

Mr. GIBSON. You are talking about the modernized appeals process?

Mr. ABRAHAM. That is right.

Mr. GIBSON. Okay. We estimate that it is about an 18-month timeline. We would be doing several things in parallel; system changes to—in VBMS, training for staff, increased hiring of staff, as well as a rule-making process, because—

Mr. ABRAHAM. And that is with the current software or are you anticipating new software?

Mr. GIBSON. I think there would be some necessary—I am going to look back here to make sure I am not saying something stupid; all right, thanks—I am not. Or they say I am—I am not sure which that was.

I think the changes from a programming standpoint, I don't believe are that consequential. You know, there are some changes that go into the system that have to do with communicating our decision, because a lot of that process has been automated. And we have committed to a much more fulsome process in terms of communicating a decision to a veteran on the front-end in easy-to-understand language, so that they can actually understand what we are talking about doing.

So, I think all of that taken together is about an 18-month process, but I don't think the costs associated with that are nominal costs; these are not significant costs.

Mr. ABRAHAM. And just one final question. Mr. Blake alluded to it; 5083 really doesn't, I don't think, addresses the current backlog.

Mr. GIBSON. That is correct.

Mr. ABRAHAM. What are you guys going to do about that, or how are you going to address that?

Mr. GIBSON. Well, as several have mentioned here, we are working together to figure that out. We are looking at some process changes. We are also looking at different alternatives about some

interim surge, and we intend to ask Congress in 2018 and 2019 for additional resources to be able to accomplish that.

Mr. ABRAHAM. What—

Mr. GIBSON [continued]. Well, what we have modeled previously was an aggregate over a five-year period of time of an additional \$700 million over a—spread over a five-year period of time. Now, we are looking at variations on that to determine the timing and the adequacy of that, and, again, we are doing it in concert with our partners here.

If we did something like the off-ramp alternative, that probably would change it, I would like to think in a positive way, because it basically expedites the work for the veteran.

Mr. ABRAHAM. Thank you, Mr. Chairman.

I yield back.

The CHAIRMAN. Thank you very much.

Ms. Radewagen?

Ms. RADEWAGEN. Thank you, Mr. Chairman. I want to thank the panel for appearing today and thank you for your service to the Nation. I just have one question.

Mr. Secretary, in your testimony, you refer to an appeal—the Board is still adjudicating an appeal that originated 25 years ago—

Mr. GIBSON. Yes, ma'am.

Ms. RADEWAGEN [continued]. —even though the appeal had previously been decided by VA more than 27 times, you said.

Mr. GIBSON. Yes, ma'am.

Ms. RADEWAGEN. How would enacting H.R. 5083 address the issue of endless appeals and ensure that all veterans receive accurate and timely decisions? And how would this proposal reduce the appeals backlog when veterans are allowed to retain their effective date by submitting new and relevant evidence once a year?

Mr. GIBSON. Yes, ma'am. First of all, as you can see here, part of what the collaborative work has been is to preserve the rights and opportunities of veterans to pursue their claim in a fulsome manner, and that has—we have worked collaboratively to try to get there.

In the course of accomplishing that, what happens is, there is still the possibility that a veteran, like our veteran of 25 years, who has been—whose claim has been decided 27 times—incidentally, that veteran is receiving 100 percent compensation, 100 percent service-disabled—that they would continue to submit additional evidence to continue to pursue the claim.

The huge majority of veterans don't want to do that. There are going to be some relatively small number, that I have no doubt, will do that. The vast majority of veterans, when they actually get into an appeal, often times will say, even once they have gotten their decision, even if it didn't go their way, they say, well, I just wanted somebody to hear—to be heard. I wanted to understand or I wanted to see what was in the claim.

We were talking earlier about the access to the claims file. Darn it, veterans ought to see what is in their claims file. I mentioned that in the opening statement and I have been pushing now, for over a year, to get that done. And as we are migrating eBenefits over into Vets.gov, the plan is to do that. We hope by the end of this year to be able to provide a veteran access to their claim file

through eBenefits. We may not be able to do quite all of it in December—some of that may spill over into 2017—but that is the objective there. Because they should see; that is part of creating this kind of transparent process.

And then when you look at the lanes that we have created, the ability for a veteran at the point of a decision to say, first of all, he understands better why all or a portion of his claim wasn't approved in the first place, because we provide a more elaborate discussion, then the veteran can make an informed decision: Oh, I realize now there is a vital piece of evidence missing in my claim.

So the veteran can supplement—can submit a supplemental claim—not into the three-year appeal process—but right back into the 125-day claim process and be able to get a decision or, alternatively, the veteran wants to pursue the issue to the Board.

And so it is giving the veteran those kinds of choices, fair, simple, transparent, and timely. That is what the huge, huge majority of veterans want. They don't want a process that turns over and over, but I have no doubt that there will be some very small number of veterans who choose to do that.

Ms. RADEWAGEN. Thank you.

I yield back, Mr. Chairman.

The CHAIRMAN. Thank you very much. Members, thank you. To the panel, thank you for being with us.

I have a couple of questions that I will send in to you for the record. One is, you know, can reform, be it appeals reform or any other type of reform, be achieved without accountability? So I will give you some time to think about that for a response.

And number two, for all the VSOs here, if Ms. Titus' appeals reform bill were to advance as it is in its current state, would you support or oppose it? So that question will be coming to you.

And I know there will be a plethora of questions for the record that Members will have because, obviously, the appeals reform bill is very complicated, and we need to kind of dig into the weeds a little bit. But thank you all for being here today.

I would ask unanimous consent that all Members would have five legislative days, with which to revise and extend their remarks or add extraneous material.

Without objection, so ordered. This hearing is now adjourned.

[Whereupon, at 12:28 p.m., the Committee was adjourned.]



## A P P E N D I X

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### Prepared Statement of Representative Ted S. Yoho, DVM

#### H.R. 5166 - WINGMAN

Good Morning Mr. Chairman, Ranking Member, and distinguished committee members. I want to take a moment to thank you all for allowing me to testify on behalf of the veterans and their families nationwide who stand to benefit from the enactment of H.R. 5166, Working to Integrate Networks Guaranteeing Member Access Now Act - more commonly referred to as, the WINGMAN Act.

Over the past two years, my office has urged the Department of Veterans Affairs (VA) to work with Members of Congress to grant certified constituent advocates' read-only access to the Veterans Benefits Management System (VBMS). Three letters were sent to Veterans Affairs Secretary Bob McDonald by a bipartisan group of Members of Congress asking for the VA to act on its own and provide this access but to no avail. Over one-hundred and two Members signed one or more of the letters, including Members of this Committee, and the request was endorsed by Veterans of Foreign Wars.

During this time, a July 10, 2015 story broke reporting that the Los Angeles Veterans Affairs Regional Office was shredding documents needed to process claims, further adding to the necessity of the VA to grant read-only access to e-Claims. During this time, thousands of veterans and their families remained in limbo awaiting resolution on their claim - some who had already been waiting for years. Veterans and their families should have to wait no longer for the VA and this institution to act.

It is unconscionable that a single man or woman who has answered the call to serve our nation, protect our freedoms, and potentially sacrifice their life should have to wait to receive the care and benefits they have more than earned. Unfortunately, the reality for many of our veterans is that the system designed to have their back leaves them questioning whether or not the country cares at all what happens after they fulfill their contract. They become statistics, numbers on a page that can wait until it is convenient for bureaucrats in Washington to act.

I requested a report regarding wait-times to hear back from the VA from my constituent advocates who work hundreds of cases for veterans; the average time it takes to receive a response from the VA is six months and in one case, it took a year. A year for the VA to respond to a Congressional office inquiring about a veteran's claim; this is unacceptable.

With read-only access, certified staff need only make a single request from the VA, after obtaining the constituent's privacy release form. The mechanism we would recommend the VA use to permit certified staffers access would be similar to that currently used by claims agents - form 21-22A. This process would limit access solely to veterans who have requested the congressional office act on their behalf, as well as limit access for cases germane to each Congressperson's district.

WINGMAN also ensures the integrity of VSOs remains intact through a non-recognition clause. This means that congressional advocates will continue to refer a first-time claimant to service officers and claims agents and only take on the veterans' case after all other resources have been exhausted; which is the current process followed.

Additionally, the cost to implement WINGMAN is assumed by whichever Congressional office is requesting access. I recognize not every office wants nor needs this access as they may have a significantly smaller veteran population in their District. However, for offices that do want this access, they will be required to use their MRA to cover the cost to train and certify their staff. This is an opportunity for Congress to literally put their money where their mouth is and alleviate some of the barriers preventing veterans from receiving the consideration they deserve in a timely fashion.

I would also like to stress that this bill does not grant access to files constituent advocates do not already have permission to possess. It simply removes the VA as middle-man and allows advocates to access the records more quickly.

My Republican co-lead on this bill, Representative Davis, knows all too well the pitfalls of maintaining the status quo and not making this critical change. As a district staffer for sixteen years, he experienced first-hand the difficulties of navigating the VA in order to help veterans. Often when veterans would visit him pleading for help, it was as a last resort and because they had nowhere else to turn. I agree with him when he emphasizes that, as a Member of Congress, helping veteran constituents is one of the most important duties we have the honor of being able to fulfill.

There are over one-hundred and thirty Members cosponsoring the House bill, four have cosponsored the Senate version sponsored by Senator Cassidy, and AMVETS has endorsed this reasonable request. I thank the committee for their consideration of WINGMAN and hope we can work together to see this initiative through.

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### **Prepared Statement of Congressman Jody Hice**

I would like to thank Chairman Miller and Ranking Member Brown for holding this hearing today and inviting me to testify on behalf of my bill, H.R. 5047, the "Protecting Veterans Educational Choice Act of 2016."

Mr. Chairman, there are nearly one million student veterans using their Post-9/11 GI Bill benefits to pursue their educations, and that number is only expected to grow over the next several years. Despite this benefit - which is the most generous educational benefit our nation has ever offered - many veterans still end up having to take out student loans to cover the full cost of their education.

In many cases, this is due to situations where veterans don't realize - or have been deliberately misled by college recruiters - that credits earned at one institution will not transfer to another school until they are already in the process of transferring to a new school after they have already expended a significant portion of their Post-9/11 GI Bill benefits.

The ability to transfer credits from one institution to another is governed by sets of credit transfer agreements between schools known as articulation agreements. If two institutions do not have an articulation agreement in place, there is no guarantee that a school will accept any of the credits earned at the other institution.

To prevent situations where veterans - many of whom are first-generation college students - are surprised by this aspect of higher education, I introduced H.R. 5047, the "Protecting Veterans' Educational Choice Act of 2016." My legislation would require the Department of Veterans Affairs to include information about articulation agreements, as well as information about educational counseling services provided by the VA, to every veteran actively seeking to use their Post-9/11 GI Bill benefits.

In addition, H.R. 5047 would require VA counselors who provide educational or vocational counseling to inform veterans about the various agreements that exist between schools that govern the transfer of credits. While schools are required by the Higher Education Act to provide on their websites - in an easily accessible manner - the policies of the institution related to transfer of credit from other institutions, these policies are not necessarily well-advertised. I am happy to work with the Committee to clarify the language so that providing veterans with this information will not be administratively burdensome for the VA counselors.

My overall goal with this legislation is to ensure that no veteran feels as though he or she has misused their benefits because of a lack of information at the start of the process. Ultimately, decisions regarding how and where to use these benefits are rightfully left to those who served our country. However, it is incumbent upon Congress to ensure that our veterans are as informed as possible about the benefits and opportunities that they have earned. I strongly believe that this legislation will go a long ways to help accomplish this.

Mr. Chairman, I look forward to working with you and all of my colleagues on the Committee on ways to improve this bipartisan bill and move it towards a mark-up.

I yield back.

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### **Prepared Statement of Representative David Young (IA-03)**

Chairman Miller, Ranking Member Brown, and Members of this distinguished Committee.

Thank you for the invitation to testify on my bill, H.R.5392, the No Veterans Crisis Line Call Should Go Unanswered Act. I greatly appreciate this opportunity to appear before you this morning.

In April, an Iowa veteran called the VA Veterans Crisis Line - the confidential, toll free hotline providing 24 hour support for veterans seeking crisis assistance. This veteran was having a rough day and he needed help. As the veteran sought the help he desperately needed, the phone kept ringing, and ringing, and ringing. He tried again, but the only answer was "all circuits are busy - try your call later." This hotline, designed to provide essential support for veterans and their families and friends, let him down.

This heartbreaking story is tragically true, but it is not unique. And, thankfully this veteran was able to contact a friend who got him the help he was seeking.

In 2014, a number of complaints about missed or unanswered calls, unresponsive staff, as well as inappropriate and delayed responses to veterans in crisis prompted the VA Office of the Inspector General to conduct an investigation into the Veterans Crisis Line. The investigation found 'gaps in the quality assurance process,' and provided a number of recommendations to address the quality, responsiveness, and performance of the Veterans Crisis Line and the mental health care provided to our veterans.

Despite promises by the VA to implement changes to address problems facing veterans who use this Crisis Line these problems are still happening, Mr. Chairman - they happened to constituents in the District I'm privileged to represent and they are without a doubt continuing to happen today.

Veterans deserve more - they deserve quality, effective mental health care. A veteran in need cannot wait for help and any incident where a veteran has trouble with the Veterans Crisis Line is simply unacceptable.

The Iowa veteran's experience that Saturday evening has troubled me. His experience is why I am here before you today - working to introduce a bill that ensures we follow through on the promises our country has made to our veterans.

My bill, the No Veterans Crisis Line Call Should Go Unanswered Act, H.R. 5392, requires the VA to create and implement documented plans to improve responsiveness and performance of the crisis line, an important step to ensure our veterans have unimpeded access to the mental health resources they need.

The unacceptable fact is - while these quality standards should already be in place, they are not. My bill does not duplicate existing standards or slow care for veterans. Instead, it puts in place requirements aligning with recommendations made by the OIG and other government accountability organizations to improve the Veterans Crisis Line.

My bill requires the VA to develop and implement a quality assurance process to address responsiveness and performance of the Veterans Crisis Line and backup call centers, and a timeline of when objectives will be reached. It also directs the VA to create a plan to ensure any communication to the Veterans Crisis Line or backup call center is answered in a timely manner, by a live person, and document the improvements they make, providing those plans to Congress within 180 days of the enactment of this bill.

Mr. Chairman, my bill would help the VA deliver quality mental health care to veterans in need - Iowa veterans and all veterans have faced enormous pressures, sacrificed personal and professional gains, and experienced dangerous conditions in service to our nation. And, many are returning home with post-traumatic stress disorder and other unique needs which require counseling and mental health supports. And we should thank them for their service. This is why I introduced this bill - to honor and thank our veterans and let them know America supports them. Our veterans answer our nation's call, and we shouldn't leave them waiting on the line.

I appreciate and I thank the Committee for working with me on this bill and for your attention to this important issue - I look forward to continue working with you to provide our veterans with the best care possible.

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#### **Prepared Statement of Rep. Doug Lamborn**

Thank you, Mr. Chairman,

I ask Members to support H.R. 5416, which would help the families of deceased veterans who received care through the Choice program. .

Currently, the family of a deceased veteran who passed away in a non-VA hospital that is under contract, is given a burial allowance of \$747. However, if the veteran dies while receiving healthcare at a non-VA facility under the Choice program, the family is only provided a \$300 burial allowance.

Mr. Chairman, it is not fair that families are penalized if a veteran uses the Choice program. Veterans should be able to participate in the Choice program without having to worry about the financial impact on their loved ones. My bill, H.R. 5416, would correct this inequity and allow families of veterans in the Choice program to qualify for a \$747 burial allowance.

I urge my colleagues to support this bill and yield back.

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### **Prepared Statement of The Honorable Sloan Gibson**

Good morning, Chairman Miller, Ranking Member Brown, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA programs and services. Joining me today are Laura Eskenazi, Executive in Charge and Vice Chairman of the Board of Veterans Appeals (the Board); David McLenachen, Deputy Under Secretary for Disability Assistance for the Veterans Benefits Administration, and Dr. Maureen McCarthy, Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration (VHA).

Thank you for the opportunity to come before you today to discuss a slate of bills that includes two of the Department's legislative priorities, along with additional pieces of legislation. Our pressing needs are items that we have outlined in letters to the committee, in previous testimony, and in countless meetings with the committee and members staffs, which support the MyVA Transformation. Some of these critical needs are addressed in bills you are considering in today's hearing, but we'd like to work with you on the particular language to ensure that, as enacted, the language will have the desired effect of helping the Department best serve Veterans. VA will provide views shortly on H.R. 5162, the Vet Connect Act of 2016.

I believe it is critical for Veterans that we all work together and gain consensus on a way forward for these pieces of legislation that will provide VA with the tools necessary to deliver care and benefits at the level expected by Congress, the American public, and deserved by Veterans.

#### **Modernizing the VA Appeals System**

Addressing the claims appeals process is a top priority of VA. H.R. 5083, the VA Appeals Modernization Act of 2016 would provide much-needed comprehensive reform for the VA appeals process. It would replace the current, lengthy, complex, confusing VA appeals process with a new appeals framework that makes sense for Veterans, their advocates, VA, and stakeholders. VA fully supports this bill.

The current VA appeals process, which is set in law, is broken and is providing Veterans a frustrating experience. Appeals have no defined endpoint and require continuous evidence gathering and re-adjudication. The system is complex, inefficient, ineffective, confusing, and splits jurisdiction of appeals processing between the Board of Veterans' Appeals (Board) and the Veterans Benefits Administration (VBA). Veterans wait much too long for final resolution of an appeal. We face an important decision about the future of appeals for Veterans, taxpayers, and other stakeholders.

Within the current legal framework, the average processing time for all appeals resolved in Fiscal Year (FY) 2015 was 3 years. For those appeals that reach the Board, on average, Veterans are waiting at least 5 years for an appeals decision, with thousands of Veterans waiting much longer. As Secretary McDonald noted in his February 23, 2016 testimony, in 2015, the Board was still processing an appeal that originated 25 years ago, even though the appeal had previously been decided by VA over 27 times. VA continues to face an overwhelming increase in its appeals workload. Looking back over FY 2010 through FY 2015, VBA completed more than 1 million claims annually, with nearly 1.4 million claims completed in FY 2015 alone. This reflects a record level of production. As VA has increased claims decision output over the past 5 years, appeals volume has grown proportionately. Since 1996, the appeal rate has averaged 11 to 12 percent of all claims decisions. The dramatic increase in the volume of appeals is directly proportional to the dramatic increase in claims decisions being produced, as the rate of appeal has held steady over decades. Between FY 2012 and FY 2015, the number of pending appeals climbed by 35 percent to more than 450,000 today. VA projects that, by the end of 2027, under the current process, without significant legislative reform, Veterans will be waiting on average 10 years for a final decision on their appeal.

Comprehensive legislative reform is required to modernize the VA appeals process and provide Veterans a decision on their appeal that is timely, transparent, and fair. This bill would provide that necessary reform. The status quo is not acceptable

for Veterans or for taxpayers. Without legislative change, providing Veterans with timely answers on their appeals could require billions of dollars in net new funding over the next decade. By contrast, with legislation and a short-term increase in funding to address the current pending workload, VA could resolve the pending inventory, provide most Veterans with an appeals decision within 1 year of filing, and greatly improve the efficiency of the Appeals process for years to come. We believe this can be done for net additional costs over 10 years in the millions of dollars, not the billions required by the status quo, saving money in the long-term compared to where we are headed without reform. If we fail to act now, the magnitude of the problem will continue to compound.

A wide spectrum of stakeholder groups have been meeting with VA to reconfigure the VA appeals process into something that provides a timely, transparent, and fair resolution of appeals for Veterans and makes sense for Veterans, their advocates, stakeholders, VA, and taxpayers. We believe the engagement of those organizations that participated ultimately led to a stronger proposal, as we were able to incorporate their feedback and experience having helped Veterans through this complex process. The result of these meetings was a new appeals framework, virtually identical to H.R. 5083, which would provide Veterans with timely, fair, and quality decisions. VA is grateful to the stakeholders for their contributions of time, energy, and expertise in this effort.

The essential feature of this newly shaped design would be to step away from an appeals process that tries to do many unrelated things inside a single process and replace that with differentiated lanes, which give Veterans clear options after receiving an initial decision on a claim. For a claim decision originating in VBA, for example, one lane would be for review of the same evidence by a higher-level claims adjudicator in VBA; one lane would be for submitting new and relevant evidence with a supplemental claim to VBA; and one lane would be the appeals lane for seeking review by a Veterans Law Judge at the Board. In this last lane, intermediate and duplicative steps currently required by statute to receive Board review, such as the Statement of the Case and the Substantive Appeal, would be eliminated. Furthermore, hearing and non-hearing options at the Board would be handled on separate dockets so these distinctly different types of work can be better managed. As a result of this new design, the agency of original jurisdiction (AOJ), such as VBA, would be the claims adjudication agency within VA, and the Board would be the appeals agency.

This new design would contain a mechanism to correct any duty to assist errors by the AOJ. If the higher-level claims adjudicator or Board discovers an error in the duty to assist that occurred before the AOJ decision being reviewed, the claim would be returned to the AOJ for correction unless the claim could be granted in full. However, the Secretary's duty to assist would not apply to the lane in which a Veteran requests higher-level review by the AOJ or review on appeal to the Board. The duty to assist would, however, continue to apply whenever the Veteran initiated a new claim or supplemental claim.

This disentanglement of process would be enabled by one crucial innovation. In order to make sure that no lane becomes a trap for any Veteran who misunderstands the process or experiences changed circumstances, a Veteran who is not fully satisfied with the result of any lane would have 1 year to seek further review while preserving an effective date for benefits based upon the original filing date of the claim. For example, a Veteran could go straight from an initial AOJ decision on a claim to an appeal to the Board. If the Board decision was not favorable, but it helped the Veteran understand what evidence was needed to support the claim, then the Veteran would have 1 year to submit new and relevant evidence to the AOJ in a supplemental claim without fearing an effective-date penalty for choosing to go to the Board first.

To fully enable this process and provide the appeals experience that Veterans deserve, VBA, which receives the vast majority of appeals, would modify its claims decisions notices to ensure they are clearer and more detailed. This information would allow Veterans and their representatives to make informed choices about whether to file a supplemental claim with the AOJ, seek a higher-level review of the initial decision within the AOJ, or appeal to the Board.

H.R. 5083 would not only improve the experience of Veterans and deliver more timely results, but it would also improve quality. By having a higher-level review lane within the VBA claims process and a non-hearing option lane at the Board, both reviewing only the record considered by the initial claims adjudicator, the output of those reviews would provide a feedback mechanism for targeted training and improved quality in VBA.

Though some may view this reform effort as too accelerated, we would like to reiterate that the topic of "fixing the appeals problem" has been debated and studied

by experts in the field for many, many years. H.R. 5083 would be a solution to the problem. The time to act is now. The legislation itself is cost neutral. We are excited to be part of this work and to have the potential to lay down a path for future Veterans' appeals that is simple, timely, transparent, and fair. We owe it to our country to put in place a modernized framework for Veterans' appeals which we believe will serve Veterans, taxpayers, and the nation well for years to come.

#### **Improving Recruitment and Retention and Improving Health Care Management**

VA has proposed a number of measures to improve its ability to recruit and retain medical professionals. We appreciate your consideration today of H.R. 4150, the Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act, which is based on one of those proposals. The bill allows VA to arrange flexible physician and physician assistant work schedules to allow for the staffing and full implementation of a hospitalist physician system and to accommodate the unusual work schedule requirements for Emergency Medicine (EM) Physicians.

VA supports this measure but would like to discuss two technical aspects of this bill with the Committee. There are differences in personnel authorities and overtime compensation between physicians and physicians' assistants which would present complications in implementation of the bill. We therefore propose the bill be limited to physicians. We also suggest amending language that limits total hours of employment for covered employees to 2,080 hours in a calendar year. We suggest a technical amendment to ensure the bill will cover full-time employees.

If the bill were revised as recommended above, we believe it would result in no additional cost to the Department.

#### **Other Veteran Health Care Measures**

It is important to ensure that Veterans are given the fullest possible access to emergency care, and especially that there are not barriers to ensuring that patients who seek emergency treatment at VA are stabilized and treated. The Emergency Medical Treatment and Labor Act (EMTALA) is a federal law that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay. H.R. 3216, the Veterans Emergency Treatment Act would apply provisions similar to what is in (EMTALA) at 42 U.S.C. § 1395dd to enrolled Veterans requesting examination or treatment at a hospital emergency department of a VA medical facility (including when a request is made on the Veteran's behalf).

VA generally supports the intent of the legislation, but does not believe it is necessary. VA currently practices under the spirit of EMTALA. Additionally, VA Emergency Departments are currently practicing under EMTALA guidance.

We do note, as a technical matter, that H.R. 3216 would only cover enrolled Veterans, and not persons who are ineligible for VA health care but who require emergency treatment (such as humanitarian cases). There are also technical complications under the bill as currently written with respect to payment for care by non-VA facilities. We would be glad to discuss these issues with the Committee.

We do not believe this bill would result in any additional costs to the Department.

H.R. 4764, the Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016, would require VA to carry out a 5 year pilot program under which VA would provide service dogs to eligible Veterans. This would be done in addition to other types of treatment provided for posttraumatic stress disorder (PTSD) and would be prohibited from replacing an established treatment modality.

While VA certainly understands the intent of this legislation, we do not support the bill. VA's Office of Research and Development (ORD) is currently conducting a legislatively mandated study to learn if service dogs are an efficacious intervention in the treatment of Veterans with PTSD. We anticipate that our ongoing legislatively mandated study will be completed before any new legislative authority could be enacted and implemented. We strongly recommend that Congress await the results of this study, which will address the overarching question of whether service dogs are an efficacious intervention for Veterans with PTSD.

There are a number of complications and possible unintended consequences that could result from enactment of H.R. 4764. This bill raises questions of equity or even discrimination if one population of Veterans receives a benefit that others do not. There are distinctions between emotional support or companion animals and service dogs. This is an important consideration, as we have been in recent contact with Assistance Dogs International and learned that they do not certify programs that provide emotional support animals.

VA has not developed a cost estimate for this bill, but we note that the \$10 million offset from the VA Human Resources and Administration account would impede

significantly our ability to hire and retain personnel necessary to fulfill VA's mission of service to Veterans. We would be glad to facilitate meetings with clinical and research specialists to explain VA's concerns in more detail.

There is no more critical mission for VA than to respond to Veterans who are in crisis. H.R. 5392 No Veterans Crisis Line Call Should Go Unanswered Act would direct the Secretary to develop a quality assurance document to use in carrying out the Veterans Crisis Line (VCL). VA would also be required to develop a plan to ensure that each telephone call, text message, or other communication to the VCL is answered in a timely manner by a person and consistent with guidance from the American Association of Suicidology. ([www.suicidology.org](http://www.suicidology.org)).

VA appreciates the interest of the Congress to ensure our ability to respond to Veterans most in need is second to none. VA supports the intent of this bill, but we do not believe it is necessary because our current efforts fully meet the goals of this bill. The VCL has developed a formal quality assurance program and implementation plan that includes call monitoring, complaint and compliment tracking, end-of-call satisfaction measurement, and a formal coaching plan. The quality management plan includes a comprehensive database for tracking, trending, and reporting on quality improvement data from issue identification to actions and resolution for both VCL's primary call center and back-up call centers. Data will be used to inform training initiatives through a continuous quality improvement cycle that includes data collection, analysis and feedback, standard work review/updates, training, and implementation. The quality assurance program will track staff adherence to standard workflow processes and provide feedback for every monitored call. These data will be trended and incorporated into both New Employee and Remedial Training for responders.

VCL has also created a multidisciplinary Clinical Advisory Board consisting of key stakeholders from the VCL, VHA Member Services, VA's National Suicide Prevention Program, the Defense Suicide Prevention Office, the Center of Excellence for Suicide Prevention, the Substance Abuse and Mental Health Service Administration, VHA's Office of Public Health, and VA's Mental Illness Research, Education & Clinical Centers to share best clinical practices.

This bill would not result in any additional costs.

#### **VA Benefits Measures**

It is critical that Veterans and Servicemembers considering or using VA education benefits have reliable information about schools. H.R. 5047, the Protecting Veterans' Educational Choice Act of 2016, would require VA counselors who provide educational or vocational counseling services to also provide information about articulation agreements of each institution of higher learning (IHL) in which the Veteran is interested. An articulation agreement is an agreement used in transfers between schools that specify the acceptability of courses towards meeting degree, certificate, or program requirements. H.R. 5047 would require VA to provide detailed information on educational assistance, including information on requesting education counseling services and articulation agreements to each Veteran who receives a certification of eligibility.

VA supports the intent of H.R. 5047, as it outlines robust existing practices and services currently provided by counselors during the educational and vocational counseling process, as well as important information provided by VA when a certificate of eligibility is issued.

There are no mandatory costs for this proposed legislation as it does not change direct benefits to beneficiaries. There are no discretionary costs as its requirements are already met by existing practices.

H.R. 5166, the Working to Integrate Networks Guaranteeing Member Access Now Act (WINGMAN) Act would require VA to provide "accredited," permanent congressional staffers designated by a Member of Congress with remote, read-only access to VBA's electronic records of Veterans they represent, regardless of whether the Veteran whose record is accessed has consented to the disclosure of information. The bill also clearly states that the provision of access to the congressional staffer is not for purposes of representing Veterans in the preparation, presentation, and prosecution of claims for Veterans' benefits.

VA understands the interest of Members in Congress in having current casework information for their Veteran constituents. VA, however, opposes this bill because it raise significant privacy concerns, and because it creates confusion with the function of VA's accreditation program in ensuring that Veterans have access to competent and qualified claims representation.

The bill would actually provide congressional staff who assist constituents of a Member of Congress with greater access to VA records than is provided to a VA employee. Under the Privacy Act, Federal employees generally may access private

records only when necessary to perform their duties. This bill would impose no similar restriction on access by congressional staff. Congressional staff would have unrestricted access to the medical records of Veterans and other VA claimants.

Regarding how the bill conflates the concepts of access to claims records and representation of claimants, accreditation by VA as attorneys, claims agents, and Veterans Service Organization representatives is not done for purposes of providing electronic access to VBA's electronic records system. Rather, the purpose of VA's accreditation and oversight of representatives, agents, and attorneys, and other individuals is to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for Veterans' benefits. The laws governing accreditation do not address the issue of access to claimants' records, which are governed separately by other laws. Making congressional employees' access to claimant records a function of VA's accreditation program would unnecessarily complicate the operation of that program. Further, referring to congressional staff as "accredited" can only create confusion about whether staffers are accredited by VA for purposes of claims representation and what their role is in the claims process.

Additionally, there are serious technological obstacles to implementing this bill. The bill would impose on VA a substantial burden to accommodate the contemplated access, necessitating changes to VA through its current systems. We are unable to provide an accurate cost-estimate at this time, although costs associated with changes to VA information systems would be substantial.

VA is always ready to discuss with the Committee other ways VA can improve a Member of Congress' ability to effectively work with VA to resolve casework issues on behalf of their constituents.

H.R. 5416, the Expanded Burial Benefits for Veterans Participating in the Veterans Choice Program would expand VA's monetary burial benefits to cover Veterans who die while hospitalized by VA or a non-VA health care provider by expanding the categories of non-VA facilities in current law. The bill would expand the facilities covered to include a non-VA facility where the Veteran was receiving care under Veterans Choice (specifically under Section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113-146)).

VA already pays the burial allowance for Veterans who die while receiving care at a non-VA facility when under VA contract. The Veterans Choice program is a similar program whereby Veterans can receive care from community providers. VA believes this is a logical extension of current law to account the supports this proposed expansion of burial benefits.

VA also recommends changing the bill to simply pay the maximum benefit instead of the actual cost of the burial and funeral. Under current practice, VA generally pays the maximum benefit because the current average cost of a Veteran's burial and funeral exceeds by far the \$700 maximum burial benefit. This change would greatly help VA automate and speed the payment of the benefit to the Veteran's family. VA would be glad to work with the Committee to refine the bill's language.

We must note that VA support for this bill is contingent on Congress providing the necessary resources for carrying it out. Because of the relatively short notice for this hearing, VA has not yet developed an estimate of the benefit costs associated with this bill.

#### **Other bills**

H.R. 5407, the Homeless Veterans Reintegration Programs for Homeless Veterans with Dependent Children would require the Secretary of Labor to prioritize the provision of services to homeless Veterans with dependent children, as well as submit reports and evaluations to the Congress.

Because this bill concerns responsibilities and programs under the Department of Labor, VA defers to the views of that agency on H.R. 5407.

H.R. 5420 a bill to authorize the American Battle Monuments Commission to Acquire, Operate, and Maintain the Lafayette Escadrille Memorial would authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.

Because this bill concerns responsibilities under the purview of the American Battle Monuments Commission, VA defers to the views of that agency on H.R. 5420.

H.R. 5428, the Military Residency Choice Act, would amend the Servicemembers Civil Relief Act regarding various tax and residency matters. Because this bill concerns responsibilities under the purview of the Department of Defense, the Internal Revenue Service, the Department of Justice, and others, VA defers to the views of those agencies on H.R. 5428.

#### **Closing**



Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or other members may have.

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**Prepared Statement of Raymond C Kelley**

WITH RESPECT TO

PENDING LEGISLATION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, thank you for the opportunity to provide our remarks on today's pending legislation.

**H.R. 3216, VET Act**

The VFW supports this legislation, which would apply the Emergency Treatment and Labor Act to emergency care furnished by Department of Veterans Affairs (VA) emergency rooms.

Last year, several instances of wrongdoing came to light where VA health care professionals refused to go beyond what their position descriptions require them to do and instead chose to deny veterans access to the care they needed. This includes a 64-year old veteran from Kennewick, Washington who drove to the Seattle VA medical center with a broken foot and needed assistance traveling the remaining 10 feet to the emergency room entrance. Instead of assisting the veteran, a medical center employee instructed him to call 911.

VA later issued a mea-culpa for the incident and VA Under Secretary for Health Dr. David Shulkin has instructed all Veterans Health Administration employees to ensure these instances are not allowed to occur again. While Dr. Shulkin is working to eliminate these errors, the VFW believes this legislation would ensure VA has the authority to do so.

**H.R. 4150, Department of Veterans Affairs Emergency Staffing Recruitment and Retention**

The VFW supports this legislation, which would grant VA medical facility staff the ability to have flexible working hours that best suit the demand for delivering health care to the veterans they serve. In response to last year's access crisis, VA has made a full-fledged effort to increase access for veterans who rely on the VA health care system for their health care needs. Yet, it continues to face numerous challenges in meeting the growing demand on its health care system.

One of those challenges is the statutory 80-hour biweekly pay period limitation for title 38 employees. While most health care providers work a traditional 40-hour work week, hospitalist and emergency room physicians often work irregular schedules to accommodate the need for continuity and efficient hospital care. The VFW supports efforts to eliminate this access barrier and improve VA's ability to recruit and retain high-quality hospitalist and emergency room physicians.

**H.R. 4764, Puppies Assisting Wounded Servicemembers Act of 2016**

This legislation would establish a pilot program to provide service dogs to veterans suffering from severe post-traumatic stress disorder (PTSD). The VFW supports this legislation, but urges the Committee to allow veterans of all eras to participate in the program, not just those who served after September 11, 2001. PTSD does not discriminate by service era, and all veterans deserve parity in the treatment for this disorder.

With such a high ratio of veterans who have defended our nation being diagnosed with PTSD, VA must provide veterans mental health care options that work best for them. Recent studies show service dogs provide positive health care outcomes in veterans with PTSD. Such studies illustrate a reduction in symptoms from the PTSD Checklist, lowered effects of anxiety and depression disorders, as well as a reduced need for psychopharmaceutical prescriptions. Veterans who have service dogs also experience an increased participation in social settings, as well as overall satisfaction with life. The VFW supports continued efforts to evaluate the efficacy of using service dogs to treat PTSD and other mental health conditions.

The VFW also strongly supports the continuance of care this legislation requires to maintain eligibility of canine health insurance. Continuance of care is crucial to successfully overcoming any illness, whether it is physical or mental. With VA only

maintaining coverage of the service dogs if the veteran continues to see their physician or mental health care provider at least once a quarter, this legislation would ensure more consistent and open communication between the medical provider and veteran.

#### **H.R. 5047 Protecting Veterans Educational Choice Act of 2016**

The VFW supports the intent of this legislation, however, we do not believe VA can provide articulation agreements based on the fact that the Department of Education does not track these types of agreements for individual institutions. Because VA would not have reasonable access to this information, it would not be able to fulfill this requirement. The VFW does agree that VA should be required to explain what an articulation agreement is and how the veteran may obtain information about such agreements, and that is why we support Section 1, paragraph (b) of this legislation.

There are reports suggesting some veterans are not receiving a satisfactory education when using their G.I. Bill benefits and other tuition assistance programs. This is because student veterans are bombarded with overwhelming amounts of educational information with little or no training on how to make an informed decision. We believe this issue stems from veterans being unaware of free pre-enrollment counseling services offered by VA. Section 1, paragraph (b) of this legislation would assist in diminishing this problem. By requiring the Secretary of Veterans Affairs to include information with the certificate of eligibility for education benefits on how to request information for counseling services and articulation agreements, we better equip college-bound veterans to make responsible education choices.

#### **H.R. 5083, VA Appeals Modernization Act of 2016**

The VFW has actively participated in a series of meetings with other Veterans Service Organization (VSO) representatives and officials of VA in an attempt to identify opportunities for improvement to the current appeals process. We have worked in good faith to craft an alternative process which might provide speedier decisions without reducing rights and protections currently enjoyed by veterans. While the VFW is supportive of the direction this legislation is taking the appeals process, there are several areas that have not been fully addressed. Solutions to these areas must be found to ensure VA can be as efficient as possible and that veterans' rights are protected under the new system.

#### **Duty to Assist**

The duty to assist claimants is well established by both regulation and case law. If a claimant at any point in the process identifies new evidence which is not of record, VA is obligated to assist the claimant in obtaining it. While we all want to see all the evidence submitted at the start of a claim, we understand that is not always possible. Newly discovered service or medical records may point to other evidence which must be obtained. New medical evidence may point to the need for an additional examination.

We have two concerns about limiting the duty to assist at the Board of Veterans Appeals (BVA). First, it is unclear what, if any, action is required if a claimant submits new evidence during the appeal process, either in documentary form or during a hearing. It is likely that additional development may be required. However, this proposal does not address how that is to be accomplished. Should the BVA remand the appeal to the Veterans Benefit Administration (VBA) for development? Should the appeal be dismissed so the evidence can be developed? Or will the BVA make a decision based on the evidence in front of it, assuming that if the appeal is denied the newly submitted evidence will revert to VBA for additional development and decision? This last alternative suggests a legal problem: if the BVA receives evidence which in the center lane would trigger the duty to assist, and if the BVA makes a decision on that evidence without ordering additional development, would the veteran be precluded from bringing the claim back to the center lane for development because the issue was decided on that evidence?

Second, we are concerned that with a limited duty to assist requirement at the BVA, appeals may not be remanded because the BVA decides that the failures are "harmless error" and would not affect the outcome of the appeal. While we agree that there is danger in overdeveloping a record, there is also truth in the old adage, "you don't know what you don't know."

#### **Docket Flexibility**

Currently the BVA is limited to only one docket. Under this proposal, BVA would have to maintain at least two dockets in order to have the flexibility to more efficiently work its cases. At the very least, the BVA would need a separate docket for

the fast, no hearing/evidence lane so that those appeals are decided as rapidly as possible. In addition, BVA would need at least a second docket for those appeals requiring hearings. Finally, to achieve the greatest efficiencies, the BVA should have a separate docket for appeals wherein the claimant submitted additional evidence but did not request a hearing.

While it may seem a bit extreme, we suggest a total of five dockets during transition. We believe the BVA needs the flexibility to use two dockets during the resolution of its current backlog: one docket for those wherein hearings are requested and a second docket for those appeals without hearings. It needs three additional dockets under this proposal: one docket for the fast appeals lane; one docket for the hearing lane and one docket where evidence is submitted but no hearing is requested.

### **New Evidence**

Under current law, a claimant must submit new and material evidence in order to reopen a claim after a final disallowance. We have long believed that this creates an unnecessary burden on both VA and veterans. In practical terms, VA is required to make a decision as to whether evidence is both new and material. A Veterans Law Judge recently estimated that between 10–20 percent of the appeals he reviews each year are on the issue of whether evidence is new and material.

It is our belief that eliminating the new and material standard would reduce non-substantive appeals by allowing regional office staff to make a merits decision on the evidence of record. With merits decisions, veterans have a better understanding of why the evidence they submitted was not adequate, and any appeal is on the substance of the decision, not on whether the evidence was new or material.

During our discussions with VA on an improved appeals process, we have argued that while a new and relevant evidence standard is potentially lower than the current new and material evidence requirement, it still imposes a bar to merits decisions, creating unnecessary work for regional office staff and unnecessary appeals to the BVA.

The VFW proposes that the only requirement to obtain reconsideration of a claim should be the submission of new evidence.

### **Higher Level Review**

Under 38 CFR 3.2600, claimants may elect a review by a Decision Review Officer (DRO).

This individual has the authority to conduct a de novo review of the evidence, order additional development as needed, and make a decision. No deference is given to the prior decision.

Under this proposal, a difference of opinion review is provided. The reviewer need not be a DRO but can be anyone of a higher grade detailed to make the review. It is likely that this reviewer will not receive separate training and will have this assignment as an adjunct duty.

The VFW believes that while retention of a difference of opinion review is potentially beneficial to claimants, this change in authority will ensure that less well qualified individuals will conduct these reviews, decreasing quality and increasing the number of claimants denied, thereby increasing appeals.

Further, VA intends to make these reviews based solely on the evidence of record and preclude the authority to order additional development except for duty to assist errors. This presents the same problems for a claimant at a difference of opinion review as it does for evidence submitted at a BVA hearing described above. Any evidence submitted during a difference of opinion hearing would not be subject to the duty to assist. Once a decision is made, how might a claimant receive assistance by VA as required by the current duty to assist provisions of the law? This problem is not resolved by the language of this proposal. The VFW believes that the difference of opinion reviewers should be able to remand a claim for additional development based on evidence received during the difference of opinion review.

### **Claims in Different Lanes at the Same Time**

One of the unresolved issues is whether claimants may have the same issue in more than one lane simultaneously. Under the proposed appeals process, it appears that the following scenario is not precluded:

A veteran files an appeal in the BVA fast lane (no evidence, no hearing). Several months later, and before the BVA issues a decision, the veteran obtains new evidence which is pertinent to the claim. Since the veteran is precluded from submitting it to the BVA, he/she must submit it to the claims lane for consideration and adjudication. Depending on the nature of the evidence and the relative efficiency of

the regional office staff, it is possible that the veteran could receive a favorable decision at the regional office prior to the issuance of the BVA decision.

It is for this reason that we urge Congress to address the permissibility of submitting evidence during the pendency of an appeal and to which entity it should be submitted. The VFW suggests that if the BVA cannot order a remand to properly develop evidence submitted during an appeal, then claimants should have the right to submit that evidence to the center lane while an appeal pends at the BVA.

### **Reports**

The only way to know whether a process is working is by collecting and studying the data generated by it. Noticeably absent from the proposed legislation is any requirement that VA collect data, analyze it and report to Congress and the public. At a minimum, Congress and the veteran community might want to know the following on a regular recurring basis:

- Current backlog
  - The total number of appeals pending
  - The subtotals of pending appeals at each stage of processing
  - The average days pending at each processing stage
  - What actions were taken during the reporting period to process and resolve pending appeals in each processing stage
  - The oldest pending appeals at each stage and what action VA has taken to process them.
- Similar questions could be asked of VA concerning the new claims and appeal process
  - How many claims are pending in each lane
  - Average timeliness for processing claims and supplemental claims, by regional office
  - Average timeliness for processing claims in the difference of opinion lane, by regional office
  - Average days pending of appeals in the fast lane at the BVA
  - Average days pending of appeals in the hearing lane at the BVA
  - Average days pending of appeals in the evidence only lane at the BVA
  - Total number of IMO requests made by the BVA
  - Total number of IMO requests approved by the Compensation Service
- And, of course,
  - Appeals granted, remanded and denied under the current appeals process
  - Appeals granted, remanded and denied under the proposed appeals process.

### **Court of Appeals for Veterans Claims**

Veterans could be adversely effected by these changes because they will be discouraged from seeking review by the Court of Appeals for Veterans Claims (CAVC). As this proposal is currently written, the only finality to the process occurs when one of three things happens:

1. The veteran becomes satisfied with a decision and stops seeking additional benefits;
2. The veteran fails to submit new (or new and relevant) evidence within the one year period following a VA decision; or
3. The veteran seeks review by the CAVC and is denied.

Under this proposal, the only possible time a veteran might seek review by the CAVC of a decision is when he/she has completely exhausted every possible piece of new evidence and has absolutely nothing left to submit to VA. One could argue that this is good for veterans and the BVA since it ensures that only those claimants who have no more evidence to submit go to the CAVC. Fewer appeals mean fewer remands.

It also means fewer precedent decisions instructing VA that their practices do not conform to regulations and their regulations do not conform to the law. The CAVC has provided a significant and useful function throughout its nearly 30 years of existence—it has told VA when it was doing things wrong.

This bill is intended to create a new claims and appeals process. VA must write regulations which fill in the gaps and provide additional guidance to both VA employees and veterans. Without judicial review, there exists no entity which can review VA's actions and determine whether they follow the law.

This proposal is designed to significantly reduce the impact of the CAVC on claims processing with VA by discouraging veterans from appealing to the Court.

To ensure that veterans are not discouraged from appealing to the CAVC, we urge Congress to amend this proposal to allow claimants to submit new evidence within one year of a CAVC decision.

This legislation, even if approved with VFW's recommendations, is only one third of the solution. There are two elements missing from this proposal:

- A comprehensive plan by VA to competently and efficiently address the current backlog of pending appeals; and,
- An allocation of sufficient resources by Congress to allow VA to execute its plan.

#### **Plan to Reduce Current Backlog**

VA must have a plan in place to process to completion the 450,000 pending appeals. It must be part of the proposed legislation for two reasons:

VA will need additional latitude to process its current backlog of appeals. Changes to claims and appeals processing which VA may wish to consider include:

a. Allow the BVA greater flexibility in managing its workload. Specifically, the BVA should be able to maintain a second docket to allow faster processing of non-hearing appeals.

b. There are many cases pending BVA review which have additional evidence submitted while the issue was on appeal but not considered by VBA. In order to facilitate efficiencies, VA should be allowed to screen and assign those appeals to regional office staff for the purpose of determining whether the benefit may be granted. We suggest that with the greater number of Rating Veterans Service Representatives available to review those appeals, many could be granted without further appellate review. In the case where a full grant of benefits is not possible, the case can be returned to the BVA for further consideration without loss of place in the docket.

c. In the alternative, VA could create a cadre of DRO's who are tasked with pre-screening and deciding cases on appeal. They would have the authority to grant any benefit allowed under the law. They could also identify deficiencies in the record and order a remand. This alternative would free up VLJ's and their staff attorneys to more efficiently process other appeals pending before the BVA.

#### **Staffing**

The other fundamental fact which must be acknowledged is that despite substantial increases in VA staffing over the past decade, VA remains unable to adequately process all its work.

VA has received funding to perform only some of the functions assigned to it. If Congress expects VA to fulfill all of its tasks in a timely manner, it must provide the personnel to do so. Without appropriate levels of staffing, VA will continue to fail and veterans will continue to wait for decisions on their claims.

Today, VA has sufficient personnel to process claims to completion in a reasonable time. It has sufficient staff to process appeals expeditiously. However, it does not have sufficient staff to do both functions simultaneously.

The resolution of this backlog requires Congress to adequately staff both VBA and BVA to process the work it has before it.

VA has been working on a plan for maintaining its current claims workload while attacking legacy appeals. Over the past several weeks, VA, at the suggestion of the VFW, reviewed and modified its FTE requirements to attach the legacy workload. While the new projections are more realistic, it remains to be seen whether VA's estimate is sufficient to complete this project by 2022. However, we do know this: allocation of fewer resources by Congress will guarantee that some, perhaps many appellants will wait until 2025 or longer to receive a decision by BVA.

#### **Recommendations:**

Our recommendations for amending this proposal are summarized below:

1. Require VA to devise a detailed and comprehensive plan for processing its current work while also processing its current appeals workload. This plan should include an estimate of total staffing required and a projected completion date based on receipt of that additional staff.

2. Congress should provide the additional staffing as required. Failure to do so will ensure that appeals will continue to increase. Congress must properly resource VA to ensure the backlog of appeals is resolved quickly and efficiently.

3. Congress should provide BVA with the flexibility to establish an additional docket to process its current workload.

4. Once a new claims and appeal process becomes effective, provide the BVA with the flexibility to establish up to three additional dockets to handle appeals.

5. Congress should allow VA eighteen months or longer to publish and finalize regulations necessary to implement this proposal.

6. BVA should be required to remand to the center lane for additional development any evidence submitted during the difference of opinion or appeal process which triggers the duty to assist.

7. If Congress limits the duty to assist as shown in the current version of this bill, it should allow the submission of new evidence in the center claims lane while cases are pending in either the difference of opinion or appeals lane.

8. The DRO position should be retained.

9. Congress should eliminate the new and material evidence requirement found in 38 USC 5108 and require only new evidence in order to reopen a claim.

10. Evidence required to file a supplemental claim should be new evidence and not new and relevant evidence.

11. Congress should require VA to provide the reports outlined earlier in this testimony and any other reports it deems appropriate.

12. Considering the critical role of the CAVC in the oversight of VA's rules making and claims processing, we encourage Congress to provide claimants with the opportunity to submit new evidence within one year of a CAVC decision.

#### **H.R. 5162, Vet Connect Act of 2016**

This legislation would lift the restriction on VA's ability to share the health care records of certain veterans without written consent from such veterans.

To protect veterans diagnosed with drug abuse, alcoholism, the human immunodeficiency virus, and sickle cell anemia from discrimination based on their health conditions, Congress requires VA to receive written consent from such veterans before sharing their health information with non-Department health care professionals. However, legislation that has been enacted since this restriction was created now protects veterans from discrimination based on their health conditions. That is why the VFW supports efforts to streamline VA's ability to share veterans' health care information with non-Department health care professionals who provide care to such veterans through VA's community care programs.

Proper sharing or exchange of veterans' medical records is imperative if VA is to properly coordinate care for veterans who receive non-VA care through the Choice Program or other community care programs. While we understand patient privacy concerns that have been raised in the past, VA must be authorized to make all health information available to community providers who deliver care to our nation's veterans.

#### **H.R. 5166, the Working to Integrate Networks Guaranteeing Members Access Now Act**

The VFW does not support this legislation at this time. While we agree there should be a more efficient way for congressional constituent services staff to assist veterans, there are current controls in place to limit access to veterans' records, and those controls must be preserved under any expansion of access.

The VFW would insist that a release must still be signed before any access to records can be granted. There must be a limitation on access to only veterans who are constituents of the member of Congress. When a Power of Attorney (POA) is held by an individual or organization, that POA must be notified of the request. Any "accredited" congressional employee must be viewed as an "agent" regardless of that employee's status with a State Bar Association. This will ensure the employee's certification includes passing a certification test. Currently, VA provides background checks at no cost to Veterans Service Organizations. If this will also be the case with accredited employees, funding must be provided. If the intent is for congressional offices to reimburse VA for the cost of such background checks, it must be explicitly defined in legislation.

Under current law, there are level-sensitive restrictions on most VA employees, preventing them from viewing certain files without expressed consent. These restrictions must extend to these accredited employees as well. Lastly, VA must have a tracking system to ensure these employees are only assisting their congressional constituents. Additionally, there must be a consequence for congressional staff found to have abused any aspect of their authority.

#### **H.R. 5392, No Veterans Crisis Line Call Should Go Unanswered Act**

The VFW supports this legislation which would require VA to develop a quality assurance plan to ensure the Veterans Crisis Line operates according to industry standards.

The VFW was disturbed to learn that many vulnerable veterans who took the important first step towards addressing suicidal thoughts by calling the Veteran Crisis Lines (VCL) were sent to voicemail. According to VA, these phone lines are expected to be answered 24/7 to ensure veterans, service members and their families are able to seek assistance whenever they need it.

In 2015, the VA Office of Inspector General (OIG) reported that the VCL received nearly 1,600 phone calls per day; however, the daily average of answered phone calls was only 1,400. The VFW is glad to see that VA has made a number of improvements to the call center in Canandaigua, NY to address the issues highlighted in the OIG's report. VA now provides VCL employees with additional training and employee wellness programs to ensure they are ready and able to assist veterans contemplating suicide, significantly reduced reliance on backup call centers and redesigned call center layout for maximum efficiency. While VA's progress is commendable, the VFW supports continued efforts to ensure veterans who turn to VA during their time of need receive the care and service they need.

**H.R. 5407, Amends title 38, United States Code, to direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans reintegration programs.**

No veteran deserves to live on the streets of the nation they defended, and their children most certainly should not be forced to either.

That is why the VFW supports this legislation, which would prioritize homeless veterans with dependent children for reintegration programs. This legislation would also require a more thorough analysis of data collected on those using these programs so gaps in access can be identified and addressed.

The VFW conducted a survey of women veterans. In this survey of 1,922 female veterans, 78 reported being homeless. Of these women, 70 percent of respondents specified that they have children, and that having children significantly impacted their ability to receive health care, due to the lack of access to affordable child care. Only 10 percent of women who are not homeless said their children impact their ability to utilize VA benefits, yet 32 percent of women who are homeless said it has an impact. Without child care they struggle to make their VA appointments.

By requiring more extensive reporting and analysis of data regarding homeless veterans who use reintegration programs will allow VA and Congress to more thoroughly understand the obstacles, barriers and needs these veterans face. This pilot program will make it easier to properly treat and prevent veteran homelessness in the future.

**H.R. 5416, A bill to amend title 38, U.S.C., to expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Choice Program.**

Under current law, VA will assist in paying funeral and burial cost of certain veterans. One of these provisions requires VA to assist in paying funeral expenses when a veteran dies in a VA facility. This includes veterans who are receiving care under section 1703 of title 38, U.S.C. However, current law does not allow for VA to provide this benefit if a veterans dies while under the care of the Choice Act.

This bill will allow VA to extend this benefit to veterans who receive care under the Choice Act. The VFW fully supports this bill.

**H.R. 5420, A bill to authorize the American Battle Monuments Commission to acquire, operate and maintain the Lafayette Excadrille Memorial in Marne-la-Coquette, France.**

The Lafayette Excadrille Memorial was built to memorialize U.S. pilots who flew combat missions with the French military prior to U.S. entry into WWI. Over the years, the memorial fell into a state of disrepair. A foundation was formed to restore the memorial. At that time the American Battle Monuments Commission (ABMC) provided \$2.1 million to the project.

To ensure the memorial receives the care and recognition it deserves, the VFW supports this bill, which calls for the monument to be put under the care of the ABMC.

**Military Residency Choice Act**

The VFW supports this legislation that would provide military spouses the option of choosing the same residency status as their spouse.

Spouses of our service members are faced with the difficulty of constantly moving to meet the demands of their spouse's military service. Protecting spouses of our military from losing residency in their home-of-record, while also allowing them to

elect to have the same residency as their partner will greatly ease some of the stressors military families face. It will also make it easier for them to file taxes and vote.

**Draft Legislation to improve the recruitment of physicians in the Department of Veterans Affairs**

The VFW supports this draft legislation, which would authorize VA to recruit medical professionals before completing their residency programs.

With more than 120,000 medical trainees receiving their clinical training in VA medical facilities every year, VA is the largest provider of education and training for health care professionals in the country. Unfortunately, VA is currently prohibited from recruiting medical professionals receiving training in its medical facilities until they complete their residency. By that time VA is competing with private sector health care systems that are able to hire new health care professionals sooner and pay them more.

The VFW strongly believes that VA must have the tools to quickly recruit a high performing health care workforce. This includes providing VA the proper authority to recruit health care providers before they complete their residency programs. This legislation would rightfully authorize VA to offer health care providers undergoing the final stages of their training a conditional offer to ensure they can consider VA as a viable option after completing their training.

Mr. Chairman, this concludes my testimony, and I look forward to any questions you or the Committee may have.

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 2016, 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.

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**Prepared Statement of Paul R. Varela**

Mr. Chairman and Members of the Committee:

Thank you for inviting the DAV (Disabled American Veterans) to testify at this legislative hearing of the House Veterans' Affairs Committee. As you know, DAV is a non-profit veterans service organization comprised of 1.3 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

DAV is pleased to be here today to present our views on the bills under consideration by the Committee.

**H.R. 3216, Veterans Emergency Treatment Act**

This measure seeks to apply the statutory requirements of the Emergency Treatment and Labor Act (EMTALA) to emergency care furnished by the VA to enrolled veterans who arrive at the emergency department of a VA medical facility and indicate an emergency condition exists.

Specifically, the bill would require a VA health care facility to conduct a medical examination of an enrolled veteran to determine if an emergency medical condition exists; if such condition exists, the VA facility must either stabilize the patient or comply with the statutory requirements of a proper transfer; and if an emergency medical condition exists and has not been stabilized, the facility may not transfer the patient unless the patient, after being made aware of the risks, makes a transfer request in writing or a physician certifies that the medical benefits of a transfer outweigh the risks.

DAV previously testified in February 2016 before the Subcommittee on Health urging consideration be given to use the Emergency Medical Treatment and Labor Act and we thank the sponsor for its introduction and the Committee for its consideration.

Because of the high prevalence of mental and behavioral challenges in the veteran patient population, we ask the Committee consider strengthening this bill to include behavioral conditions in defining "emergency medical condition," so that the definition of an emergency condition for VA purposes would be "a medical or behavioral condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably



be expected to result in.” Furthermore, we recommend the Committee consider conforming title 38, United States Code, section 1725(f)(1) to these new requirements should this bill become law.

With the recommended modifications above, DAV would strongly support this legislation based on DAV resolutions 103 (enhance VA mental health programs), 104 (enhance medical services for women veterans) and 125 (integrate emergency care as part of VA’s medical benefits package).

**H.R. 4150, Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act**

This bill would authorize VA to arrange flexible physician and physician assistant work schedules to be more or less than 80 hours in a biweekly pay period if the total of such employees’ hours of employment in a calendar year do not exceed 2,080 hours per individual.

The 80-hour work week limit required by federal law is adversely affecting VA’s ability to hire emergency medicine physicians and hospitalists. There are no private sector health care systems that have this kind of 80-hour week requirement.

Emergency medicine physicians and hospitalists specialize in the care of patients in the hospital, often working irregular work schedules to accommodate the need for continuity of efficient hospital care. This change would accommodate the unusual work schedule requirements for emergency medicine physicians and align VA practices with the private sector, facilitating the recruitment, retention of emergency physicians and hospitalist physicians at VA medical centers.

DAV has received no resolution on this specific issue but would not oppose the bill’s favorable consideration due to its beneficial nature.

**H.R. 4764, Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016**

This bill if enacted would create a five-year pilot program to pair eligible veterans suffering from the most severe levels of post-traumatic stress with service dogs, including the provision of VA-funded veterinary insurance. Veterans participating in this program would need to complete evidence-based treatment but remain significantly symptomatic as evidenced by their Global Assessment of Functioning score. Veterans enrolled in the program would be referred to an accredited dog assistance organization to be paired with a service dog. Training for the dog would be paid by VA not to exceed \$27,000 per dog. Participating veterans must see a VA primary care or mental health care provider at least quarterly. At the conclusion of the five-year program, the Government Accountability Office would be required to conduct a study to evaluate the effectiveness of the program and impact on health outcomes.

DAV recognizes that trained service animals can play an important role in maintaining functionality and promoting veterans’ recovery, maximum independence and improve their quality of life. We also recognize service dogs can be instrumental in improving symptoms associated with post-deployment mental health problems, including PTSD. We recognize this pilot program could be of benefit to veterans suffering from post-deployment mental health struggles, including PTSD, and are supportive of non-traditional therapies and expanded treatment options for veterans.

DAV resolution 221, adopted at our most recent convention, calls for VA to complete its plan to conduct thorough research and expansion of ongoing model programs to determine the most efficacious use of guide and service dogs in defined populations, in particular veterans with mental health conditions, and to broadly publish the results of that research. We are pleased to offer our support of the intent his bill; however, we are concerned with the \$10 million offset for fiscal years 2017–2022 from VA’s department of Human Resources.

It is important to be mindful of the difficulties facing VA as it seeks to fill vacancies throughout the health care system. Human Resources must have the resources it needs to attract, train, and hire health care professionals on all levels. We are concerned that funds from VA Human Resources to support this pilot program could impede necessary modernization of this department diminish the effectiveness of these programs.

**H.R. 5047, Protecting Veterans’ Educational Choice Act of 2016 (Hice)**

This bill would direct the Secretary of Veterans Affairs and the Secretary of Labor to provide information to veterans and members of the Armed Forces about articulation agreements between institutions of higher learning.

There are currently nearly one million student veterans using their Post-9/11 GI Bill benefits to pursue their educations, and that number is only expected to increase over the next several years. Despite this generous benefit, many veterans

still end up having to take out student loans to cover the full cost of their education. In many cases, this is due to situations where veterans are unaware that credits earned at one institution of higher learning will not transfer to another school until after they are in the transfer process and have already expended a significant portion of their Post-9/11 GI Bill benefits.

This bill would require the VA to include information about the educational services available to all veterans seeking to use their Post-9/11 GI Bill benefits. In addition, H.R. 5047 would also require VA counselors who provide educational or vocational counseling to inform the veterans about the various agreements that exist between schools that govern the transfer of credits.

This information concerning articulation agreements could serve those seeking higher education by removing unnecessary time spent on void classes. Knowledge of articulation agreements would alleviate potential delays pursuing courses that do not transfer.

DAV has received no resolution from our members concerning this bill, but we would not oppose its passage.

### **H.R. 5083, VA Appeals Modernization Act of 2016 (Titus)**

Mr. Chairman, H.R. 5083, the VA Appeals Modernization Act of 2016 comes as a result of a collaborative effort among VBA, the Board and 11 major stakeholder organizations-including DAV-that assist veterans with their appeals. For the past three months, this workgroup has been meeting intensively with the goal of developing a new structure and system for appealing claims decisions. However, this recent effort actually builds on that of a very similar workgroup involving VSOs, VBA, and the Board that began meeting over two years ago. That workgroup spent over six months examining the cause of and possible solutions to the rising backlog of appeals. At that time, the claims backlog was finally beginning to drop after years of transformation efforts.

The signature achievement of that first VSO-Department of Veterans Affairs (VA) workgroup was the development of and widespread support for the “fully developed appeals” (FDA) proposal. Under the FDA proposal, veterans could have their appeals routed directly to the Board by agreeing to eliminate several processing steps at the regional office level, forego hearings, and take greater responsibility for developing evidence necessary to properly consider their appeals. The FDA was modeled on a similar claims initiative - the “fully developed claims” (FDC) program - which has contributed to dramatic improvement in claims processing times at VBA.

As a result of that VSO-VA collaboration, legislation was drafted and introduced by Rep. O'Rourke and Chairman Miller in the House and approved as part of H.R. 677. Senate legislation was also introduced by Senators Sullivan, Casey, Heller and Tester (S. 2473) and has been approved by the Senate Veterans' Affairs Committee as part of the Veterans First Act omnibus bill. We want to thank everyone involved for your efforts in advancing FDA legislation.

As you are aware, the FDA's premise of eliminating certain appeals processing steps at VBA while providing a quicker route for appeals to the Board has essentially been incorporated into this comprehensive appeals reform bill. Though not as far-reaching as this proposed legislation, the FDA pilot program could reduce the time some veterans wait for their appeals decisions by up to 1,000 days, while lowering the workload on both VBA and the Board.

Building on the work of the earlier VSO-VA workgroup, and particularly its FDA proposal, VA convened the latest workgroup in March of this year to examine whether agreement could be reached on more comprehensive and systemic change. Over a very compressed but intensive couple of months, that included a number of closed-door, all-day sessions, the workgroup was able to reach general consensus on principles, provisions and ultimately the legislation before us. DAV and most of the other stakeholders support moving forward with this appeals reform legislation, notwithstanding some remaining issues yet to be addressed.

We believe that if all stakeholders continue working together - in a good faith partnership with full transparency - we have a good chance of resolving the remaining issues and achieving an historic reform this year. However, as we have long said, the most important principle for reforming the claims process was getting the decision right the first time; we must also ensure that this appeals reform legislation is done right the first time. Further changes to any part of H.R. 5083 could affect our ultimate support for the bill; therefore, we urge this Committee and VA to continue working with DAV and other stakeholders in a transparent and collaborative manner.

With that in mind, while the latest workgroup was initially focused on ways to improve the Board's ability and capacity to process appeals, from the outset we real-

ized that appeal reforms could not be fully successful unless we simultaneously looked at improving the front end of the process, beginning with claims' decisions. One of the issues that development of the FDA proposal exposed was the importance of strengthening decision notification letters provided by VBA in order to improve decisions about appeals options. A clear and complete explanation of why a claim was denied is key to veterans making sound choices about if and how to appeal an adverse decision. Therefore, a fundamental feature of the new appeals process must also ensure that claims' decision notification letters are adequate to properly inform the veteran.

The workgroup agreed that decision notification letters must be clear, easy to understand and easy to navigate. The notice letter must convey not only VA's rationale for reaching its determination, but also the options available to claimants after receipt of the decision. H.R. 5083 would require that in addition to an explanation for how the veteran can have the decision reviewed or appealed, all decision notification letters must contain the following information to help them in determining whether, when, where and how to appeal an adverse decision:

- (1) A list of the issues adjudicated;
- (2) A summary of the evidence considered;
- (3) A summary of applicable laws and regulations;
- (4) Identification of findings favorable to the claimant;
- (5) Identification of elements that were not satisfied leading to the denial;
- (6) An explanation of how to obtain or access evidence used in making the decision; and
- (7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation for the benefit sought.

DAV recommends that in order to better inform veterans about this new notification provision and the redesigned claims and appeals process being proposed, the legislation should include a requirement that VA create an online tutorial and utilize other web or social media tools to enhance veterans' understanding of how claims decisions are made and how to choose the best options available in the redesigned appeals system.

### **The Current Appeals System**

In order to evaluate the new appeals framework proposed in H.R. 5083, it must be compared to the existing system. Currently, if a veteran is not satisfied with their claims decision, they may appeal the decision by completing a Notice of Disagreement (NOD) form which provides them two options: a de novo review or a traditional appeal to the Board of Veterans Appeals. The de novo option takes place locally within the VARO, and is performed by a Decision Review Officer. The de novo process allows the introduction of new evidence and a hearing, requires VBA to fulfill its "duty to assist" throughout the process, and provides a full de novo review of the claim. If benefits are granted in the de novo process, the effective date for the award would be the date of the claim, if the facts found support entitlement from that effective date.

The second NOD option is to formally appeal to the Board. When a veteran chooses this option, the VARO must prepare a Statement of Case (SOC) for the veteran and then the veteran must complete the VA Form 9 specifying the issues they are appealing and the reasons supporting their appeal. If new evidence is submitted after the NOD requiring development, a Supplemental Statement of Case (SSOC) may also be issued. A veteran who elected a de novo review but who was not awarded the full benefits sought may also continue their appeal to the Board as described above. As part of the Board process, appellants have the opportunity to request a hearing and introduce new evidence at any time. Throughout its consideration of an appeal, the Board is required to comply with VA's "duty to assist" and performs a de novo review of all the evidence submitted, before and after the date of the NOD filing.

If the Board does not grant the full benefit sought, the veteran's primary recourse would then be to appeal to the Court of Appeals for Veterans Claims ("Court"), which can take many more years before final disposition. Alternatively, the veteran at any time could file a new claim with new evidence, which could be processed under the FDC program in less than 125 days, however the effective date for this claim would be the new filing date, potentially requiring the veteran to forfeit months or years of entitlement to earned benefits.

In many cases the Board will remand the claim back to VBA for either procedural errors (i.e. - "duty to assist" errors) or for the development of new or existing evidence needed to make a final determination. More than half of all pending appeals will be remanded at least once under the current system, lengthening the time vet-

erans wait for final resolution of their appeals and contributing to the growing backlog of pending appeals.

The current system allows veterans unlimited opportunities to submit new evidence to support their appeals, requires that VA fulfill its “duty to assist” to veterans by securing and developing all potential evidence but requires that the formal appeal be maintained in order to protect the effective date of the original claim. While these features help ensure that veterans rights are protected, they have evolved into a system that incentivizes many veterans to file and maintain formal appeals because there is no other option available to protect their earliest effective dates, which could affect thousands of dollars in earned benefits.

### **A New Framework for Veterans’ Claims and Appeals**

Understanding the benefits and weaknesses of the current system, the workgroup developed a new framework that could protect the due process rights of veterans while creating multiple options to receive favorable decisions more quickly. A critical factor was developing a system that would allow veterans to protect their earliest effective dates while allowing them opportunities to introduce new evidence, without having to be locked into the long and arduous formal appeals process at the Board.

In general, the framework embodied in H.R. 5083 would have three main options for veterans who disagree with their claims decision and want to challenge VBA’s determination. Veterans must elect one of these three options within one year of the claims decision.

First, there will be an option for readjudication and supplemental claims when there is new evidence submitted or a hearing requested. Second, there will be an option for a local, higher-level review of the original claims decision based on the same evidence at the time of the decision. Third, there will be an option to pursue a formal appeal to the Board - with or without new evidence or a hearing.

The central dynamic of this new system is that a veteran who receives an unfavorable decision from one of these three main options may then pursue one of the other two appeals options. As long as the veteran continuously pursues a new appeals option within one year of the last decision, they would be able to preserve their earliest effective date, if the facts so warrant. Each of these options, or “lanes” as some call them, have different advantages that allow veterans to elect what they and their representatives believe will provide the quickest and most accurate decision on their appeal.

For the first option - readjudication and supplemental claims - veterans would be able to request a hearing and submit new evidence that would be considered in the first instance at the VARO. VA’s full “duty to assist” would apply during readjudication, to include development of both public and private evidence. The readjudication would be a de novo review of all the evidence submitted both prior to and subsequent to the claims decisions until the readjudication decision was issued. If the veteran was not satisfied with the new decision, they could then elect one of the other two options to continue pursuing their appeal.

For the second option - the higher-level review - the veteran could choose to have the review done at the same local VARO that made the claim decision, or at another VARO, which would be facilitated by VBA’s electronic claims files and the National Work Queue’s ability to instantly distribute work to any VARO. The veteran would not have the option to introduce any new evidence nor have a hearing with the higher-level reviewer, although VBA has indicated it will allow veterans’ representatives to have informal conferences with the reviewer in order for them to point out errors of fact or law. The review and decision would be de novo and a simple difference of opinion by the higher-level reviewer would be enough to overturn the original decision. If the veteran was not satisfied with the new decision, they could then elect one of the other two options to pursue resolution of their issue.

For this higher-level review, the duty to assist would not apply since it is limited to the evidence of record used to make the original claims decision. If a duty to assist error is discovered that occurred prior to the original decision, unless the claim can be granted in full, the claim would be sent back to the VARO to correct any errors and readjudicate the claim. If the veteran was not satisfied with that new decision, they would still have all three options to resolve their issue.

Mr. Chairman, we are pleased that H.R. 5083 contains one additional change that we have suggested and VA has agreed to include, but that is not in the Senate companion draft. H.R. 5083 has language to clarify that all higher-level reviews would be done as de novo reviews, without the veteran having to affirmatively elect a de novo review option. We strongly recommend this provision be maintained in any legislation moving forward.

These first two options take place inside VAROs and cover much of the work that is done in the current de novo process, although it would be separated into two dif-

ferent lanes: one with and one without new evidence and hearings. VA has also proposed eliminating the position of Decision Review Officers and reassigning these personnel to functions that are appropriate to their level of experience and expertise, such as higher-level reviewers.

For the third option - Board review - there would be two separate dockets for veterans to choose from: an "expedited review" that allows no hearings and no new evidence to be introduced; and a more traditional appeal that allows both new evidence and hearings. Both of these Board lanes would have no duty to assist obligation to develop any evidence submitted. For both of these dockets, the appeal would be routed directly to the Board and there would no longer be SOCs, SSOCs or Form 9s completed by VBA or the veteran.

The workgroup established a goal of having "expedited review" appeals resolved within one year, but there was no similar goal for the more traditional appeals docket. While eliminating introduction of evidence and hearings would naturally make the Board's review quicker, it is important that sufficient resources be allocated to the traditional appeal lane at the Board to ensure a sense of equity between the two dockets. We would recommend that language be added to H.R. 5083 to ensure the Board does not inequitably allocate resources to the "expedited review" lane.

For the traditional Board appeal lane, veterans could choose either a video conference hearing or an in-person hearing at the Board's Washington, DC offices; there would no longer be travel hearing options offered to veterans. New evidence would be allowed but limited to specific timeframes: if a hearing is elected, new evidence could be submitted at the hearing or for 90 days following the hearing; if no hearing is elected, new evidence could be submitted with the filing of the NOD or for 90 days thereafter. If the veteran was not satisfied with the Board's decision, they could elect one of the other two VBA lane options, and if filed within one year of the Board's decision, they would continue to preserve their earliest effective date. The new framework would impose no limits on the number of times a veteran could choose one of these three options, and as long as they properly elected a new one within a year of the prior decision, they would continue to protect their earliest effective date.

If the Board discovers that a "duty to assist" error was made prior to the original claim decision, unless the claim can be granted in full, the Board would remand the case back to VBA for them to correct the errors and readjudicate the claim. Again, if the veteran was not satisfied with the new VBA claim decision, they could choose from one of the three options available to them, and as long as they properly make the election within one year of the decision, they would continue to preserve their earliest effective date.

One additional option becomes available after a Board decision: the appellant would also have the opportunity to file a Notice of Appeal to the Court of Appeals for Veterans Claims ("Court") within 120 days of the Board's decision, which is the current practice today. Decisions of the Court would be final.

H.R. 5083 would also amend existing statute to change the "new and material evidence" standard to a "new and relevant evidence" standard, as it relates to readjudication and supplemental claims. Under current law, a claim can only be reopened if "new" and "material" evidence is presented, which was designed to prevent unnecessary work reviewing immaterial evidence that would not affect the outcome of a claim. However, in practice this standard has often had the opposite effect, requiring VBA to make a "new and material" determination, which can then be appealed to the Board, often requiring a hearing, and adding years of delay before getting to the core issue of whether the evidence would actually change the claim decision.

This provision would replace the term "material" with the term "relevant," and add a definition of "relevant evidence" as "evidence that tends to prove or disprove a matter in issue." While we understand the intention of VBA in trying to deter submission of unrelated evidence, we believe that this revised standard would not be any more effective in preventing submission of truly unrelated and irrelevant evidence. Instead, creating a new and untested standard could result in additional appeals on procedure before the substance was adjudicated, and then it, too, could be appealed.

For this reason, DAV and others involved in the first appeals workgroup had discussed revising this standard by amending section 5108 of title 38, United States Code, to require VBA to review all evidence submitted in order to directly address the substance of the issue rather than be required to first clear a procedural hurdle. The workgroup considered changing section 5108 to read as follows:

**§ 5108 Evidence presented for disallowed claims**

If evidence is presented with respect to a claim which has been disallowed that adds to or changes the facts as previously found by the Secretary, the Secretary shall develop or adjudicate the claim as appropriate.

For truly unrelated evidence, the determination that such evidence does not “add to or change the facts” underlying the claim decision should not require any more time than a determination of whether such evidence is new or material. Thus, we recommend the Committee consider incorporating this alternative approach as an amendment to the bill.

H.R. 5083 also includes an amendment to section 5104A to require that any finding made during the claims or appeals process that is favorable to the claimant would be binding on all subsequent adjudicators within the Department, unless clear and convincing evidence is shown to the contrary to rebut such favorable finding. In the new structure in which appeals can move back and forth from the Board to VBA, veterans must be reassured that favorable findings cannot be easily overturned by a different adjudicator or reviewer during this process. Thus, we strongly support this section.

Overall the new framework embodied in H.R. 5083 could provide veterans with multiple options and paths to resolve their issues more quickly, while preserving their earliest effective dates to receive their full entitlement to benefits. The structure would allow veterans quicker “closed record” reviews at both VBA and the Board, but if they become aware that additional evidence was needed to satisfy their claim, they would retain the right to next seek introduction of new evidence or a hearing at either VBA or the Board. If implemented and administered as envisioned by the workgroup, this new appeals system could be more flexible and responsive to the unique circumstances of each veteran’s claim and appeal, leading to better outcomes for many veterans.

#### **Remaining Issues and Questions Related to Appeals Reform Legislation**

Over the past several weeks, DAV and other VSO stakeholders have continued to work with the Board and VBA to resolve and clarify a number of issues, further improving the proposed new appeals structure. While we believe H.R. 5083 should be moved forward in the legislative process, there are still some critical issues that need to be further explored to ensure that there are no unintended negative consequences for veterans.

One of the most critical questions is how the introduction of new evidence will be treated by VBA and the Board, and how “duty to assist” requirements will apply. For the higher-level review, no new evidence is allowed; however, there is an informal opportunity for the veteran’s representative to conference with the reviewer to point out errors. If during this conference, the representative identifies evidence not yet submitted as part of their discussion, how will the higher-level reviewer acknowledge or treat this information? Will they refer the claim back to the readjudication option as a supplemental claim, indicating there is evidence that needs to be developed? Will they inform the representative or the veteran directly that if there is new evidence that may affect the decision, the veteran should file a supplemental claim for readjudication to present that evidence directly or through a hearing?

Similarly, there are questions that need to be answered about how the Board will handle new evidence introduced outside the limited opportunities allowed at and 90 days after the filing of an NOD or a Board hearing. What happens if a veteran elects the Board option with a hearing and submits new evidence to the Board prior to the hearing date: will the Board hold the evidence until the hearing and then consider it, or will the Board return or ignore the evidence?

In addition, since there is no “duty to assist” requirement after the NOD filing, what if evidence properly submitted indicates that additional evidence exists which could affect the decision: will the Board ignore that evidence or inform the veteran that there was additional evidence that could have changed the decision but that it was not sought nor considered? Will or should the Board remand the appeal back to the VBA for readjudication to allow for full development of all evidence? In order to protect the veteran’s due process rights, we would recommend that these uncertainties be resolved before final legislation is enacted into law, preferably through clear and unambiguous statutory language.

There are also two critical operational concerns that will effect whether the new appeals structure can be properly implemented as envisioned. First, the Board and VBA must develop and implement a realistic plan to address the almost 450,000 appeals currently pending, most of which are still within VBA’s jurisdiction. Until these pending appeals are properly resolved, no new appeals structure or system can expect to be successful. While we have been in discussion with VBA and the Board about how best to address these legacy appeals, we have yet to agree on for-

mal plans to deal with its current backlog of appeals. We need Congress to perform aggressive oversight of this process to ensure a proper outcome.

Furthermore, since appeals that are filed today can take years to be completed, some will last more than a decade, how will VBA and the Board operate two different appeals systems simultaneously, each with separate rules for treating evidence and the “duty to assist?” How will new employees be trained under both the old and new systems so that there is efficient administration of these two parallel appeals systems? How will the Court view the existence of two different standards for critical matters such as the “duty to assist” veterans? We would recommend that these questions be thoroughly considered by the Committee and discussed with VSOs to avoid future problems.

Finally, as mentioned above, the most critical factor in the rise of the current backlog of pending appeals was the lack of sufficient resources to meet the workload. Similarly, unless VBA and the Board request and are provided adequate resources to meet staffing, infrastructure and IT requirements, no new appeals reform will be successful in the long run. As VBA’s productivity continues to increase, the volume of processed claims will also continue to rise, which has historically been steady at a rate of 10–11 percent of claims decisions. In addition, the new claims and appeals framework will likely increase the number of supplemental claims filed significantly. We are encouraged that VA has indicated a need for greater resources for both VBA and the Board in order to make this new appeals system successful; however, too often in the past funding for new initiatives has waned over time. We would urge the Committee to seriously consider proper funding levels are appropriated as this legislation moves forward.

Mr. Chairman, H.R. 5083 represents a true collaboration between VA, VSOs and other key stakeholders in the appeals process. Building on the work first begun two years ago, tremendous progress has been made this year culminating in this appeals reform legislation. There are still a number of improvements and clarifications that must be made to H.R. 5083 but we remain committed to working with Congress, VA and other stakeholders to resolve them as soon as feasible. Working together, we are hopeful that the Senate and House will enact comprehensive appeals reform legislation before the end of this year to provide veterans with quicker favorable outcomes, while fully protecting their due process rights.

#### **H.R. 5162, Vet Connect Act of 2016 (O’Rourke)**

Currently, title 38, United States Code, section 7332(b)(2) prohibits VA from providing or sharing patient information relating to drug abuse, alcoholism or alcohol abuse, infection with HIV or sickle cell anemia (7332-protected information) with public or private health care providers, including with Indian Health Service (IHS) health care providers, providing care to the shared patient under normal treatment situations without the prior signed, written consent of the patient.

Clearly current law places the restriction on this protected information because discussing, diagnosing, and treating drug abuse, alcoholism or alcohol abuse, infection with HIV or sickle cell anemia are sensitive, private issues between a patient and his or her provider. This privacy has been deemed particularly important because any breach of privacy may result in stigmatization or discrimination against such patients. Veteran patients who are concerned that their health information will not be held private or secure may be discouraged from seeking treatment for these conditions and may be dissuaded from pursuing or adhering to recommended treatment regimens.

Despite these concerns, this measure would include a provision for the disclosure of VA records of this protected information to a health care provider in order to treat or provide care to a shared patient. It is purported this restriction poses potential barriers to the coordination and quality of care provided to veterans who are shared patients with other public or private health care providers. In DAV’s judgement, a potential barrier is not a compelling interest to overcome a patient’s right to privacy.

As this Committee is aware, the protection of information under section 7332 is not immune to all circumstances. In medical emergencies VA is allowed to disclose such protected information” to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and who requires immediate medical supervision. The medical emergencies exception only extends to medical personnel for the purpose of treating a condition that poses a certain type of medical threat or emergency; it does not extend to treatment of a patient in non-emergent situations.

It has been asserted that public and private health care providers are often unable to obtain a signed, written consent from prior to patient presenting for a care

appointment, resulting in a delay in treatment to the patient. In some cases the public or private health care provider is not able to obtain a signed, written consent due to a patient's lack of competency.

Veteran patients who are legally incompetent have the same right to privacy enjoyed by veterans who are competent. To this end, the medical community has been clear in that the patient deemed to lack capacity to make reasoned medical decisions, a surrogate selected by the patient would need to be enlisted to make decisions on the patient's behalf.

DAV understands and supports increased use and appropriate sharing of health data; however veteran patients also want to be assured of the privacy and security provided for protected information. We urge the committee and the sponsor of this legislation strike a more balanced policy between the competing aims of sharing data and protecting privacy. We recommend such broad language be amended to affect only shared patients and only for the purpose of completing a treatment plan to which the veteran patient has agreed.

#### **H.R. 5166, the Working to Integrate Networks Guaranteeing Member Access Now Act**

This bill would provide certain permanent Congressional employees with read-only remote access to the electronic Veterans Benefits Administration (VBA) claims records of veterans who are constituents of Members. These employees would be prohibited from modifying any data, processing, preparing or prosecuting of claims.

These designated Congressional staff members could utilize this system to provide their constituents with information relevant to the processing of their claims or appeals. Designated staff members would require certification by the VA in order to access this system in the same manner currently required for agents or attorneys under title 38, United States Code. Any costs associated with gaining access to these VA systems would be incurred by the particular Member of Congress whose staff accessed these records.

DAV has no resolution relative to this issue, but would not oppose passage of the legislation.

#### **H.R. 5392, No Veterans Crisis Line Call Should Go Unanswered Act**

If enacted, this bill would seek to improve the responsiveness and performance within the Department of Veterans Affairs (VA) Veterans Crisis Line, and its backup centers, by directing the Secretary to establish a quality assurance process. Upon enactment of this bill the Secretary would have 180 days to submit to Congress a quality assurance process that outlines performance indicators and objectives to improve the responsiveness in calls, texts, or other communications received by the Veterans Crisis Line and backup call centers. Under this bill, the crisis line and backup call centers would periodically be tested and any noted deficiencies corrected.

DAV acknowledges the importance of ensuring that a call from a veteran in crisis does not go unanswered, and we acknowledge the crisis line as a successful component in VA's suicide prevention efforts. However, only one month ago, DAV testified before this Committee that despite the measurable success with answered calls, dispatched emergency services and referrals to care, service problems were identified earlier this year in a VA Inspector General report. Specifically, complaints included some calls going unanswered, lack of immediate assistance, delayed arrival of emergency services, and difficulty using the call line during a crisis. We understand these deficiencies have been corrected, but continued evaluation and program improvement is needed. For these reasons, we are pleased that an outside evaluation of the VA's mental health system is now underway, as mandated by the Clay Hunt SAV Act, to be completed by the end of fiscal year 2017. Going forward, these evaluations will be continued on an annual basis.

VA has also taken steps to address the increase in demand for the crisis line by increasing the number of responders to a total of 310 full time employee equivalents. On May 12, 2016, VA provided testimony stating that, since January 1, 2016, 29 administrative personnel have been brought on to augment specific areas such as analytics, knowledge management, quality assurance, and training. While the crisis line is a very important element to VA's suicide prevention efforts, the area of crisis management needs more focus. When a veteran is experiencing a mental health crisis and is asking for help, ready access to a mental health specialist and/or specialized program is crucial. Other areas of VA focus should include negative perceptions and concerns veterans may have about VA care, and continuing challenges in scheduling appointments. VA should utilize its peer specialists to follow



up with veterans waiting for care. According to VA, peer-to-peer interactions have been extremely helpful to patients and treating clinicians.

**H.R. 5407, to direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans reintegration programs**

If enacted, this bill would modify title 38, United States Code to prioritize the provision of services to veterans who are homeless with dependent children in carrying out homeless veterans' reintegration programs. This bill also includes a Congressional reporting requirement, not only to identify any gaps in services, safety and shelter provided to homeless veterans with dependents, but also to provide recommendations for improvements of discovered deficiencies.

DAV has not received a specific resolution that calls for prioritization of services to homeless veterans with dependent children; however, DAV Resolution 118 calls for the improvement of the coordination of services of federal, state and local agencies, and improved comprehensive housing and child care services, which allow our support of the intent of this bill. Also, DAV's report, *Women Veterans: The Long Journey Home*, identifies the need for VA to work with community partners as it seeks to strengthen homeless veterans programs and in its efforts to prevent veterans homelessness.

**H.R. 5416, to expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Choice Program of the Department of Veterans Affairs**

This bill would add new eligibility criteria for VA burial allowance for veterans who die while receiving hospital or medical care under section 101 of the Veterans Choice and Accountability Act of 2014 (Choice).

Current law provides that when a veteran's death occurs in a non-VA facility that has been authorized to provide hospital services, a death will be treated as if it occurred in a VA facility for the purpose of a burial or plot allowance. However, veterans receiving care and services at non-VA facilities, under the Choice program are not currently authorized this plot allowance.

This bill would bring parity between those veterans already covered under law for non-VA care and those authorized for hospital and medical care services under the Choice program.

DAV has not received a resolution regarding this issue, but would not object to enactment of this legislation.

**H.R. 5420, to authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marnes-la-Coquette, France**

This measure would allow the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial, located outside Paris, France in Marnes-la-Coquette—a memorial that pays tribute to and is a final resting place for America's first combat aviators.

DAV has received no resolution, and takes no position on this bill.

**Draft Bill, Military Residency Choice Act**

This measure would amend the Servicemembers Civil Relief Act to authorize spouses of service members to elect to use the same residence as the service members. This would ease tax preparation for spouses who would accompany their service members on military duty assignments.

Under the 2003 Servicemembers Civil Relief Act, "a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." This allowed the service member to establish a state of residency during their career. Regardless of duty station, they maintain the same state for tax and voting purposes as their state of residency.

Many service members choose a state early in their career and maintain that same state throughout their career. In 2009, the Military Spouse Residency Relief Act (MSRRA) was signed into law. The MSRRA amends the Servicemember Civil Relief Act to include the same privileges to a military service member's spouse, provided that the service member and the spouse choose residency in the same state for tax purposes.

DAV has received no resolution, and takes no position on this bill. This concludes my testimony, Mr. Chairman. DAV would be pleased to respond to any questions from you or the Committee Members concerning our views on these bills.

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### **Prepared Statement of Carl Blake**

Chairman Miller, Ranking Member Brown, and members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to present our views on the broad array of pending legislation impacting the Department of Veterans Affairs (VA) that is before you today. No group of veterans understand the full scope of care provided by the VA better than PVA's members-veterans who have incurred a spinal cord injury or disease. Most PVA members depend on VA for 100 percent of their care. They are the most vulnerable when access to health care, and other challenges, impact quality of care. These important bills will help ensure that veterans receive timely, quality health care and benefits services.

#### **H.R. 3216, the "Veterans Emergency Treatment Act"**

PVA supports H.R. 3216, the "Veterans Emergency Treatment Act." This legislation would clarify how VA provides care to veterans who present at the hospital for treatment of a medical emergency. VA must provide a medical screening examination to determine if an emergency medical condition exists to any veteran who presents to a VA Emergency Department seeking care. If an emergency medical condition exists, the VA must provide appropriate care to treat the veteran, or if the facility is unable to provide the care, transfer the veteran to a facility that is able to properly care for the veteran. The bill clarifies that the stipulations of the Emergency Treatment and Labor Act (EMTLA) be required of VA as well. While most VA facilities do unofficially adhere to the EMTLA practices, this bill would ensure it throughout the Department. Further, it offers veterans an actionable recourse if denied treatment from a facility.

#### **H.R. 4150, the "Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act."**

PVA supports H.R. 4150, the "Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act." This legislation would allow for flexibility and irregular shifts among physicians that is required to meet the needs of patients receiving emergency care. The Veterans Health Administration requires that full-time employees work 80 hours per biweekly pay period. Yet the average emergency physician works 12 hour shifts, making it difficult to have an equal number of shifts for each week. This legislation would allow for full-time status to be determined as more or less than 80 hours biweekly as long as the total hours of employment do not exceed 2,080 hours in a calendar year. At a time when recruitment of providers has never been more urgent or more difficult, such flexibility can only serve as an attractive quality to prospective providers.

#### **H.R. 4764, the "Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016."**

PVA understands the intent of H.R. 4764, the "Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016," and we support the provision of service animals to veterans who need them. If enacted, this legislation would direct the VA to carry out a pilot program to provide service dogs to certain veterans with severe post-traumatic stress disorder (PTSD). PVA believes service animals are a successful form of therapy for veterans battling PTSD and other mental health conditions. Veterans with service dogs report improved emotional regulation, sleep patterns, and a sense of personal safety. They also experience reduced levels of anxiety and social isolation.

However, this bill as written does not appropriately reflect the fact that the VA currently does not provide service animals to any veteran directly. Service animals are provided to veterans by organizations responsible for the training and provision of service animals, not the VA. The VA currently bares no direct cost when it comes to providing service animals. As it is, we are not aware of a demonstrated need for VA to be the procurer of service animals. Additionally, this bill would have the VA provide service dogs only to veterans with PTSD, excluding veterans with other mental health conditions and physical disabilities who would also benefit.

Currently, VA provides veterinary health insurance and other ancillary benefits to service animals used for veterans with physical disabilities. While this bill would make PTSD service dogs eligible for existing benefits, (something VA currently has the authority to do) it goes a step beyond by charging VA with procuring a trained, capable dog. We are concerned that creating a new process to place service dogs with veterans with PTSD confuses the process among veterans with other needs. Lastly, this bill restricts eligibility for the program to post-9/11 veterans. While PVA understands the cost concerns involved in such a program, we do not believe they justify the unequal access to mental health care.

#### **H.R. 5047, the “Protecting Veterans’ Educational Choice Act of 2016”**

The “Protecting Veterans’ Educational Choice Act” requires Department of Veterans Affairs counselors who provide educational or vocational counseling to inform veterans about the articulation agreements of the schools they are interested in attending. In addition, the Secretary would be required to provide information about educational assistance to veterans, including how to request counseling and articulation agreements, when issuing a veteran’s certificate of eligibility for education assistance. Making veterans aware of counseling and transfer options is important to helping veterans with disabilities better understand the opportunities available to them and will allow them to make informed decisions. PVA supports this legislation.

#### **H.R. 5083, the “VA Appeals Modernization Act of 2016”**

PVA has a highly trained force of over 70 service officers who spend two years in specialized training under supervision to develop veterans’ claims for both our member and non-member clients. We maintain a national Appeals Office staffed by attorneys and legal interns who represent clients at the Board of Veterans’ Appeals (Board). We also have attorneys who practice before the Board and before the Court of Appeals for Veterans Claims which enables continuity of representation throughout subsequent appellate court review.

In March 2016, VBA, the Board and major veterans service organizations (VSO’s) partnered to form a working group with the goal of reforming the appeals process. The number of pending appeals has surpassed 440,000. If the process goes unaddressed, VA projects that the appeals inventory will climb to over two million over the course of the next decade. Experienced Veteran Law Judges (VLJ) who adjudicate appeals are a commodity and form a critical component of the system. This attribute limits VA’s ability to scale its resources to the extent necessary to deal with such an inventory. Ten years from now, if the system remains unchanged, veterans will expect to wait six years for a decision. We believe reform is necessary, and we support this legislation moving forward.

PVA is encouraged by VA’s ambitious efforts to achieve reform. The haste with which it desires to move, though, invites caution from those who recognize that overhauling such a complex process will produce unintended consequences. While we have a responsibility to serve the veteran community and tackle problems, we also have the responsibility to ensure that in doing so we do not leave veterans worse off. VA has recognized that VSO’s have specific concerns and has worked with us to find solutions that move us forward without diluting veterans’ rights in the process.

As we promote and seek public support for change, it is easy to use statements such as, “there are veterans who are currently rated at 100 percent who are still pursuing appeals,” to illustrate the problems that pervade the system. PVA will be the first to point out, though, that a veteran rated at 100 percent under 38 U.S.C. § 1114(j) might also be incapacitated to the point that he or she requires 24 hour caregiver assistance. A 100 percent service-connected disability rating does not contemplate the cost of this care, and veterans may seek special monthly compensation (SMC) to the tune of thousands of dollars needed to address their individual needs. Few people would disagree that pursuing these added disability benefits are vital to a veteran’s ability to survive and maintain some level of quality of life. Without clarification, such statements lead people to believe that veterans are the problem.

This is why PVA believes it is so important to ensure that VSO’s remain as involved in the follow-on development process and implementation as they are now if this plan is to succeed. This is a procedural overhaul, and VSO’s are the bulwark that prevents procedural change from diluting the substantive rights of veterans. Notwithstanding the strong collaboration between VA and the various stakeholders over the last few months, many important questions remain unanswered at this stage in the development process.

*The Framework*

There is no shortage of news articles and academic pieces that attempt to illustrate for readers the level of complexity and redundancy in the current appeals process. It is a unique system that has added layer after layer of substantive and procedural rights for veterans over the years. The most notable aspect differentiating it from other U.S. court systems is the ability for a claimant to inject new evidence at almost any phase. While this non-adversarial process offers veterans the unique ability to continuously supplement their claim with new evidence and seek a new decision, it prevents VA from accurately identifying faulty links in the process, whether it be individual raters or certain aspects of the process itself.

As the working group came together and began considering ways to address the appeals inventory, it became clear that a long-term fix would require looking beyond appeals and taking a holistic view of the entire claims process. The work product in front of us today proposes a system with three distinct lanes that a claimant may enter following an initial claims decision—the local higher-level review lane, the new evidence lane, and the Board review lane. The work horse in this system is the new evidence lane. The other two serve distinct purposes focused on correcting errors.

When a claimant receives a decision and determines that an obvious error or oversight has occurred, the local higher-level review lane, also known as the difference of opinion lane, offers a fast-track ability to have a more experienced rater review the alleged mistake. Review within this lane is limited to the evidence in the record at the time of the original decision. It is designed for speed and to allow veterans with simple resolutions to avoid languishing on appeal.

If a claimant learns that a specific piece of evidence is obtainable and would help him or her succeed on their claim, the new evidence lane offers the option to resubmit the claim with new evidence for consideration. VA indicates that its goal is a 125-day turn around on decisions within this lane. Another important aspect is that the statutory duty to assist applies only to activity within this lane.

The third lane offers an appeal to the Board. Within this lane there are two tracks with separate dockets. One track permits the addition of new evidence and option for a Board hearing. The other track permits a faster resolution by the Board for those not seeking to supplement the record. A claimant within this track will not be permitted to submit new evidence, but they will have an opportunity to provide a written argument to accompany the appeal.

If the claimant receives an unfavorable opinion at the Board, he or she may either revert to the new evidence lane within one year or file a notice of appeal with the Court of Appeals for Veterans Claims (CAVC) within 120 days. Unfavorable decisions at the Court would be final, and the claimant would no longer have the benefit of the original effective date associated with that claim.

One of the most beneficial aspects of this new plan is the protection of the effective date. Choosing one lane over the other does not limit the ability to later choose a different lane. The decision to enter any of the lanes must be made within one year of receiving the previous decision. Doing so preserves the effective date relating back to the date of the original claim. Another major issue with the claims process that is addressed in this plan is improved decision notices. A thorough understanding of why a claimant received an adverse decision leads to educated decisions with regard to subsequent lane choices or discontinuing the claim altogether.

#### *PVA's Concerns*

PVA is concerned with the dissolution of the Board's authority to procure an independent medical examination or opinion (IME) under 38 U.S.C. § 7109. VA originally proposed to dissolve this authority in order to maintain consistent application of the concept of having all development of evidence take place at the Agency of Original Jurisdiction (AOJ) level in the New or Supplemental Evidence Lane. Throughout extended discussions and negotiations on this topic, PVA has worked with the Board to find an alternative authority supported by certain administrative processes which would collectively preserve the function of § 7109. While we believe the outright removal of § 7109 is a choice of form over substance which disproportionately affects our members, we think certain provisions in this bill might preserve the core attributes of § 7109 to an acceptable level.

An IME is a tool used by the Board on a case-by-case basis when it "is warranted by the medical complexity or controversy involved in an appeal case." § 7109(a). The veteran may petition the Board to request an IME, but the decision to do so remains in the discretion of the Board. The Board sua sponte may also request an IME. VA's standard for granting such a request is quite stringent. 38 C.F.R. 3.328(c) states, "approval shall be granted only upon a determination . . . that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion." The number granted each year usually amounts to

no more than 100 with approximately 50% being requested by the Board itself. Experienced Board personnel thoroughly consider the issues which provoke the need for an outside opinion. Complicating the process further, the CAVC has carefully attempted to set parameters for the proposed questions to be answered by experts. A question presented to a medical expert may neither be too vague, nor too specific and leading. A question too vague renders the opinion faulty for failing to address the specific issue, while a question too specific tends to lead the fact finder to a pre-disposed result.

By simply striking § 7109 in its entirety, the current bill proposes to delegate the procurement of an IME to the AOJ under preexisting authority found in 38 U.S.C. § 5109. This is problematic because, by its nature, an IME tends to address the most complex medical scenarios. Removing this tool from the purview of the Board would undermine the reality that properly presenting questions to the participating expert is best left to the judge seeking to resolve the medical controversy or question. VA's recommendation implicitly suggests that AOJ staff members are equipped with the requisite level of experience to carry out this delicate exercise. Even more worrisome is that in the current claims processing system, IME's are almost exclusively requested at the Board level, despite the AOJ's existing authority to procure one. This begs the question of how many rating officers have the experience and expertise to even identify the need for an IME, let alone to draft a nuanced question that would comport with veterans' law jurisprudence.

Dissolving § 7109 would have the additional effect of abolishing the centralized office of outside medical opinions. This small staff has played a vital role in facilitating IME's and maintaining their effectiveness by developing relationships with doctors who are experts on particular subjects and willing to do this tedious task for almost no money. This office not only expedites the receipt of opinions, but it also ensures a high level of quality. Now this concentrated effort conducted by a group of people thoroughly versed in the IME process will simply disintegrate in favor of IME's being requested, maybe, by a savvy rating officer who has the wherewithal to recognize the need. Even in such a fortuitous circumstance, the rating officer will be left to fend for itself in finding a qualified and willing expert to conduct the task-something this office would have done for them.

We recognize that the bill attempts to mitigate against the damage of losing § 7109 by supplementing § 5109(d) and § 5103B(c)(2), but this proposal still discards a properly functioning organ of the Board in favor of more Bureaucracy. IME's generally have a fast turn-around at the Board, and the weight of the opinion is often significant enough to bring finality to a claim. It is possible that VA could preserve the function of the office of outside medical opinions in some fashion, perhaps consolidating it under VBA's authority. The Board has considered our suggestions and alternative proposals in this regard. VA's senior leadership has committed to us that it will take the necessary steps to preserve the best practices and resources of this office. PVA highly recommends that if this Committee is entertaining striking § 7109, it should obligate VA to explain how it plans to mitigate against the loss of this office and the Committee should conduct oversight during implementation. Similarly, the decreased efficiency with having the process conducted at the AOJ level is also concerning. Instead of the VLJ requesting an IME and receiving the opinion, now a second person must review the claim - the rating officer who received the file on remand. If a veteran wishes to appeal this re-adjudication, we have asked for and received VA's commitment to reroute the appeal by default, with exceptions, back to the same VLJ who remanded the case to avoid yet another person from having to review a claim with enough medical complexity to warrant the IME.

Under the proposed plan the Board would limit remands to errors related to VBA's duty to assist under 38 U.S.C. § 5103A. There are, however, circumstances where the AOJ received two separate examinations and honored the duty to assist, but an IME is needed to resolve conflicting opinions. The current language in the bill does not provide the Board the ability to remand a case with an order to procure an IME to resolve the conflict in evidence. Of course, we would also note that such a situation could easily be resolved if VA would better adhere to its own reasonable doubt provision when adjudicating claims. We still see too many VA decisions where this veteran-friendly rule is not properly applied. More often it appears VA raters exercise arbitrary prerogative to avoid ruling in favor of the claimant, adding obstacles to a claimant's path without adequate justification. While due diligence in gathering evidence is absolutely necessary, too often it seems that VA is working to avoid a fair and legally acceptable ruling favorable for the veteran. Both the failure to accept and tendency to devalue non-VA medical evidence are symptoms of this attitude.

We also recommend an additional jurisdictional safeguard for the Board. In 38 U.S.C. § 7104, it would be helpful to include language that addresses situations

where the Board finds that an appeal presents extraordinary circumstances. The Board, in its sole discretion, should be able to retain jurisdiction over a remand of that appeal.

A second concern that must be noted is the fact that the problem that brought us to the table in the first place is not addressed in this plan—the current bloated appeals inventory. We are only now in the beginning phases of working with VA to address this part of the equation. It is extremely difficult to place an effective date on this legislation in the absence of a plan to address the inventory. This legislation is a way to prevent the inventory from growing, it is not the answer to reducing the current inventory. Blurring this distinction should be avoided. The question of how this plan should be implemented in light of the current situation deserves serious scrutiny that can only be applied by further collaboration between VA and the stakeholders involved in this process thus far.

The plan presented here today is predicated on an expectation that decisions in the middle lane will be adjudicated within an average time of one hundred and twenty-five days. As a result of the Fully Developed Claims process and other efforts that included a surge in resources and mandatory overtime, VBA is currently doing well in achieving this average wait time for initial claims. And while that is encouraging for the plan we are contemplating here, the present state of affairs could be misleading, and we have not had the opportunity to consider the impact on that wait time if the new system were implemented and suddenly altered the current workflow. Also left unaddressed is the resource requirement that might balloon if the plan runs parallel to the current system until all pending claims are phased out and resolved. Adequate resources will be essential to weather the growing pains as this new system is laid in. Leaving these kinds of questions unanswered and moving forward invites the possibility of trading one mangled system for another.

Some stakeholders have expressed concern over the replacement of the “new and material” evidence standard with “new and relevant.” PVA believes this is an acceptable standard for veterans to meet. It is true that the number of appeals in the system currently disputing a decision that evidence submitted was not deemed “material” may be as high as 20 percent. The concern is that changing “material” to “relevant” will simply exchange one appealable issue for another. A clever idea was put forward to have VA simply deny the claim if it found that the new evidence submitted was not relevant. This would prevent a veteran from appealing the relevance determination, and thereby significantly reduce the number of forthcoming appeals. However, this discounts two things. The first is that “relevant” is a significantly lower legal threshold than “material.” Most determinations will actually lead to the admission of the evidence, and, therefore, fewer appeals. The second is that it might have the counter-intuitive effect of creating a bigger slow-down as raters are forced to issue full decision notices when they deny a claim instead of simply finding that the evidence was not relevant.

PVA was a supporter early on of judicial review, and we believe the availability of that review has improved the appeals process for veterans. We are concerned that this proposal could limit a veteran’s access to court review, and would be happy to work with the committee on creating assurances that this path remains an open and effective means to correct error in individual cases as well as to correct agency misinterpretations of the law.

We also have concerns about whether some language as drafted will reflect the promises made in those long meetings. For example, it is our understanding that reform will not impact the availability of the duty to assist but it will only be enforced on remand to the AOJ, yet as proposed, the language on this issue is confusing. We suggest a clearer approach, so that veterans have the assurance they are not losing any existing protections in this reform.

Finally, this is not simply a VA problem. As stated earlier, PVA has many service representatives and spends a great deal of time, funds, and effort on ensuring they accomplish their duties at a high level of effectiveness. However, it is important that veterans and their representatives also share responsibility when appeals arrive at the Board without merit. A disability claim that is denied by VBA should not automatically become an appeal simply based on the claimant’s disagreement with the decision. When a claimant either files an appeal on his own behalf, or compels an accredited representative to do so with no legal basis for appealing, that appeal clogs the system and draws resources away from legitimate appeals. Since 2012, PVA has taken steps to reduce frivolous appeals by having claimants sign a “Notice Concerning Limits on PVA Representation Before the Board of Veterans’ Appeals” at the time they execute the Form 21–22 Power of Attorney (POA) form. PVA clients are notified at the time we accept POA that we do not guarantee we will appeal every adverse decision and reserve the right to refuse to advance any frivolous appeal, in keeping with VA regulations.

**H.R. 5162, the “Vet Connect Act of 2016”**

PVA understands the intent of H.R. 5162, the “Vet Connect Act of 2016,” to authorize the Secretary to disclose to non-department health care providers certain medical records of the veterans who are in their care. However, we question whether there exists a demonstrated need that this legislation seeks to address. VA currently has the means to share patient records with the consent of the patient or in the case of a medical emergency. To relax the protections to share records with any non-Department entity exposes veterans’ personal information when it is not medically necessary.

**H.R. 5392, the “No Veterans Crisis Line Should Go Unanswered Act”**

PVA generally supports H.R. 5392, the “No Veterans Crisis Line Should Go Unanswered Act.” The legislation requires the VA to develop and implement a quality assurance process to address responsiveness and performance of the Veterans Crisis Line and backup call centers, that they be answered by a live person and improvements documented throughout. It requires there be quantifiable timeframes for objectives and that they be consistent with guidance issued by the Office of Management and Budget. We find it hard to believe that the VA does not currently have in place a quality assurance process, particularly for such a critical access tool.

**H.R. 5407**

H.R. 5407 requires the Department of Labor to prioritize the provision of services to homeless veterans with dependent children through the Homeless Veterans’ Reintegration Program (HVRP). The legislation also sets out a new reporting requirement for the Secretary to submit an analysis of any gaps homeless veterans with dependent children have in accessing shelter, safety, or services. Although the provision of these types of services does not impact many of PVA’s members, PVA generally supports this legislation.

**H.R. 5416**

PVA supports H.R. 5416, to amend title 38, United States Code, to expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Choice Program. Veterans who pass away while in receipt of care from VA through a contracted hospital, nursing home, adult day health care, are entitled to burial benefits. This bill would make eligible those receiving care under the Choice Program. This is clearly a matter of equity. If a veteran has to rely upon the Choice Program rather than other similar contracted facilities they should be entitled to equal benefits.

**H.R. 5420**

PVA has no official position on this proposed bill.

**Draft Bill, “Military Residency Choice Act”**

PVA supports the draft bill, the “Military Residency Choice Act.” In 2009, Congress passed the Military Spouse Residency Relief Act (MSRRA) to alleviate some of the numerous inconveniences that military spouses endure each time their service member is uprooted due to military orders. Service members have long been able to maintain their home state of residency, regardless of where military orders take them. The MSRRA extended this benefit to military spouses by allowing them to also maintain one state of domicile for purposes of residency, voting and taxation. However, the benefit only applies if he or she shares the same residency as the service member. If the service member wishes to retain his or her original domicile and not the domicile in which he or she met and married their spouse, then the spouse cannot use the MSRRA. The spouse must change residency each time the service member receives orders for a permanent change of station. The Military Residency Choice Act remedies this limitation by allowing the spouse to elect the service member’s state of residency.

Changing residency every time the Department of Defense moves a family is a significant inconvenience to the men and women that stand by our service members. There are times when a family may have to move twice, and sometimes three times in a year. If the spouse has a business, even one operated out of the home, the complicated tax preparations during such a year can be daunting. These kinds of obstacles discourage spouses from working and voting. Our military families sacrifice a life of stability, and they deserve any convenience we can offer them.

**H.R. 5166, the "WINGMAN Act"**

PVA supports the goal of ensuring veterans receive timely information regarding the status of their claims. We appreciate that this bill ensures that Congressional employees granted access to such a program undergo the same training and certification program that VA currently uses to certify VSO representatives and attorneys representing claimants. This legislation, however, allows access to a claimant's information regardless of whether the covered employees are acting under a power of attorney. Claims files contain the most private information about that particular veteran and, often times, information of other individuals consulted during the claim's development. PVA believes that in the interest of maintaining strict protection of such private information, this legislation should be limited to those who hold a power of attorney. Other logistical issues may also arise in the form of the added administrative burden on VA of managing the certification process and tracking users. Certainly we do not want to see resources that should be applied to adjudicating claims shifted to facilitating Congressional involvement unless it produces a significant increase in productivity.

Mr. Chairman, we would like to thank you again for the opportunity to testify on these important measures. It is imperative that we remain focused on providing the necessary benefits and health care services that veterans and their families rely upon. We would be happy to answer any questions that you may have.

**Information Required by Rule XI 2(g)(4) of the House of Representatives**

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

***Fiscal Year 2016***

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events - Grant to support rehabilitation sports activities - \$200,000.

***Fiscal Year 2015***

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events - Grant to support rehabilitation sports activities - \$425,000.

***Fiscal Year 2014***

No federal grants or contracts received.

***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 Louis J. Celli, Jr.**

Chairman Miller, Ranking Member Brown, and distinguished members of the committee, on behalf of National Commander Dale Barnett and The American Legion; the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving every man and woman who has worn the uniform for this country; we thank you for the opportunity to testify regarding The American Legion's position on the pending and draft legislation.

**H. R. 3216: Veterans Emergency Treatment Act or the VET Act**

*To amend title 38, United States Code, to clarify the emergency hospital care furnished by the Secretary of Veterans Affairs to certain veterans.*

The VET Act would require that every enrolled veteran is afforded the highest level of emergency care at every health care facility that is capable of providing emergency care services under VA jurisdiction.

In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening ex-



amination (MSE) when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor, regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with EMCs. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.

H.R. 3216 would apply the statutory requirements of the EMTALA to emergency care furnished by the VA to enrolled veterans who arrive at the emergency department of a VA medical facility by indicating an emergency condition exists. This bill would also enhance VA's existing legislative authorities to allow VA to ensure veterans are provided with appropriate medical screening examinations.

The American Legion believes anytime a veteran reports to an emergency department at a VA or non-VA medical facility, the veteran should receive a thorough examination to include all appropriate ancillary tests to assist the treating clinician to properly diagnose the problem.

The American Legion supports any legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including timely access to quality VA health care.<sup>1</sup>

**The American Legion supports H.R. 3216.**

**H. R. 4150: Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act**

*To amend title 38, United States Code, to allow the Secretary of Veterans Affairs to modify the hours of employment of physicians and physician assistants employed on a full-time basis by the Department of Veterans Affairs.*

The Veterans Affairs Medical Staffing Recruitment and Retention Act would give the Veterans Health Administration (VHA) the ability to address the unbalanced work schedules that are often associated with providing emergency room health care. Since 2003, The American Legion through the "System Worth Saving Program" has been actively tracking staffing shortages at VA medical centers across the country. The American Legion's 2014 System Worth Saving report entitled "Past, Present, and Future of VA Health Care" found that several VA medical centers continue to struggle to fill critical positions across many disciplines within the healthcare system.

The American Legion believes the Veterans Health Administration must continue to develop and implement staffing models for critically needed occupations.<sup>2</sup>

**The American Legion supports H.R. 4150.**

**H. R. 4764: Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016**

*To direct the Secretary of Veterans Affairs to carry out a pilot program to provide service dogs to certain veterans with severe post-traumatic stress disorder.*

Since 1991, the United States has been at war and as a result thousands of men and women have returned home with mental and physical injuries. The PAWS Act of 2016 would expand access to service dogs for veterans suffering from Post-Traumatic Stress Disorder (PTSD) which is one of the "signature wounds" of the wars in Iraq and Afghanistan.

H.R. 4764 would create a five-year pilot \$10 million program that pairs veterans who served on active duty in the Armed Forces on or after September 11, 2001 and for veterans who have been diagnosed with PTSD rated at a severity level of three or four on the Clinician-Administered PTSD Scale (CAPS-5) for Diagnostic and Statistical Manual of Mental Disorders (DSM-5) with a service dog. Eligible veterans must have also completed an evidence-based treatment program and remain significantly symptomatic by clinical standards.

This legislation is important to veterans because it allows the use of service dogs to assist in the therapy plan for injured veterans returning home from war with traumatic brain injury (TBI) and posttraumatic stress disorder (PTSD). Service dogs can act as an effective complementary therapy treatment component, especially for those veterans who suffer on a daily basis from the physical and psychological wounds of war.

<sup>1</sup>American Legion Resolution No. 23 (May 2016): Support for Veteran Quality of Life

<sup>2</sup>American Legion Resolution No. 101 (Sept. 2015): Department of Veterans Affairs Recruitment and Retention

The American Legion urges Congress to provide oversight and funding to the VA for innovative, evidence-based complementary and alternative medicine (CAM) in treating various illnesses and disabilities.<sup>3</sup>

**The American Legion supports H.R. 4764.**

**H. R. 5047: Protecting Veterans' Educational Choice Act of 2016**

*To direct the Secretary of Veterans Affairs and the Secretary of Labor to provide information to veterans and members of the Armed Forces about articulation agreements between institutions of higher learning, and for other purposes.*

H.R. 5047 would provide student-veterans with information on which institutions of higher learning could potentially give them credit for completed courses if they choose to transfer from their college/university. This legislation adds to the necessary information that empowers student-veterans in making the best decisions in what college/university they choose to attend for the ultimate goal of obtaining their college degree and finding gainful employment.

The American Legion seeks and supports any legislative or administrative proposal that improves, but not limited to, the GI Bill, Department of Defense Tuition Assistance (TA), Higher Education Title IV funding (i.e. Pell Grants, Student Loans, etc.) and education benefits so servicemembers, veterans, and their families can maximize its usage.<sup>4</sup>

**The American Legion supports H.R. 5047.**

**H.R. 5083: VA Appeals Modernization Act of 2016**

*To amend title 38, United States Code, to improve the appeals process of the Department of Veterans Affairs.*

More than 1.4 million claims for veterans' disability were processed last year, and the Veterans Benefits Administration (VBA) is on track to surpass even that number this year. At a ten to twelve percentage rate of appeal, the workload at the Board of Veterans Appeals (BVA) will likely never disappear.

With an appeals inventory at roughly half a million pending claims, the Department of Veterans Affairs (VA) asked stakeholders to gather in several high intensity day-long working meetings to help come up with a system that would recommend solutions to help VBA and the Court of Appeals for Veterans Claims (CAVC) better process and manage this existing workload.

The American Legion currently holds power of attorney on more than three quarters of a million veteran claimants. We spend more than two million dollars a year on veteran claims and appeals processing and assistance. Our success rate at the BVA hovers at around 80 percent, either outright grants of benefits or remands to properly process a claim that VA had failed to properly process at the lower level of the Regional Office.

When VA invited stakeholders to the table to discuss appeals modernization, The American Legion knew that appeals modernization was not about appeals alone, that the recommendations required to streamline appeals needed to take place much earlier in the process, at the point of the initial adjudication. With that, one of the first things the group looked at was the VBA decision notice. Refining the initial decision notice is not as easy as it sounds and several of the Veterans Service Organizations (VSOs) worked with VA for months in 2014 to try and improve these letters, with frustrations over lack of clarity still remaining. Getting VBA to agree to improve the quality of the letter was a landmark accomplishment that got the process off to a good start.

After the initial VA commitment to improve the decision letter, the stakeholders listened to what they perceived as barriers to improved appeals processing, which supported another of the primary American Legion concerns, the lack of a centralized training process. The BVA has complained that the appeal case file that is finally presented to a veterans law judge looks nothing like the claim that was adjudicated at the Regional Office (RO) level in almost all cases, due to the allowance of additional evidence during the appeals process. Therefore VBA claims they have no way to determine how, or if ROs are misinterpreting the law or making mistakes.

<sup>3</sup>American Legion Resolution No. 99 (Sept. 2015): Complementary and Alternative Medicine

<sup>4</sup>American Legion Resolution No. 312 (August 2014): Ensuring the Quality of Servicemember and Veteran Student's Education at Institutions of Higher Learning

BVA further argued that if there were a process within the appeals system that allowed law judges to review disputed decisions that were adjudicated at the regional offices, based only on the same information that the regional office had at the time the claim was originally decided, then BVA would be able to provide a “feedback loop” they could use to help train and educate ROs, and additionally help identify regional offices where the decisions uniformly fail to address specific legal issues.

It was with these two foundational underpinnings that the big six VSOs, in addition to state and county service officers, veteran advocate attorneys, and other interested groups worked with senior VA officials from VBA and BVA to design the framework of the legislation being discussed here today.

The guiding principle leading all of our discussion was ensuring that we preserved all of the veteran’s due process rights while ensuring that they did not lose any of the claim’s effective date, which we were able to do successfully.

When we started the design process, we had to suspend dealing with the current caseload of appeals while we designed the new model and treated the two sets of cases as independent of each other. Now that we have designed a more streamlined and effective model for future claims, all stakeholders will still need to determine how to deal with the existing inventory of appealed claims.

The design of the proposed appeals process allows for multiple options for claimants, as well as options for additional claim development, the option to have the decision reviewed by another adjudicator (difference of opinion) and the chance to take your case straight to the board to have a law judge review the decision and make a ruling on your claim.

The proposed bill provides veterans additional options while maintaining the effective dates of original claims. Veterans can elect to have an original decision reviewed at the ROs through a Difference of Opinion Review (DOOR) which is similar to the function of what the Decision Review Officers (DROs) do now. A DOOR provides an opportunity for a claimant to discuss concerns regarding the original adjudication of a particular issue, or the entire claim, prior to appealing to BVA. Additionally, the administrative actions remove the need for a Notice of Disagreement (NOD), a process that currently takes 403.6 days, according to the April 25, 2016, Monday Morning Workload Report.

Beyond improvements in administrative functions, the proposed bill will enable claimants to select a process other than the standard multi-year backlog if they want to have an appeal addressed more expeditiously, and if they believe they have already provided all relevant and supporting evidence. Similar to the Fully Developed Claims (FDC) program, veterans will be able to elect to have their appeals reviewed more expeditiously by attesting that all information is included within the claim, VA records, or submitted with VA Form 9 indicating the intent to have their claims immediately forwarded to BVA for review.

Veterans indicating that they may need additional evidence or time, could elect to have their claim reviewed in the current BVA format allowing additional evidence to be entered into the record. For veterans requiring additional evidence, such as lay statements from friends and families or a private medical examination rebutting VA medical examinations, this is a viable alternative to allow the time and opportunity to provide further development necessary to substantiate the claim for benefits.

Throughout this entire process, veterans will be able to maintain their effective date of the original claim. Recognizing that an increased burden is being placed upon veterans, VA will permit veterans to maintain their effective dates, even if BVA denies the claim. If an appeal is denied by BVA, the veteran can submit new and minimally relevant evidence to reopen the claim at the RO while holding that effective date that may have been established long before the second filing for benefit.

Just as we did when we worked in partnership with VA to roll out the Fully Developed Claims process, The American Legion is willing to put in the necessary work to ensure this program is successful. We recognize the increased burden it can place on veterans; we also recognize that our approximately 3,000 accredited representatives have the tools to ensure success for the veterans and claimants we represent. Throughout the year, we will continue to work with our representatives, our members, and most importantly, our veterans to understand the changes in law, and how they will be able to succeed with these changes.

Reforming a process as complex as the disability claims system is not simple, and not every aspect of appeals reform is able to be legislated, some parts are more nuanced and require the attention of all stakeholders. The American Legion is committed to providing constant feedback as we move forward with appeals moderniza-

tion. We believe that the architects of this proposal have acted in good faith, and we support their efforts to modernize the appeals process for the good of veterans.

**The American Legion supports H.R. 5083.**

**H. R. 5162: Vet Connect Act of 2016**

*To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to disclose to non-Department of Veterans Affairs health care providers certain medical records of veterans who receive health care from such providers.*

With over 43,000 unfilled positions within VA, the Veterans Healthcare Administration (VHA) is relying on an increase of community healthcare providers to supplement care for veterans. By VHA referring care to health care providers out in the community, sharing of a veteran medical record continues to be a barrier which creates delays in care. By not having access to a veterans' medical records, physicians will not be able to get the full medical history of the veteran they are treating.

H.R. 5162 would decrease the bureaucratic red tape at VA by allowing non-VA doctors who are involved in the veterans' care easier access to their medical records so doctors and veterans can make better health care decisions.

The American Legion requires that VA provide non-VA to VA providers with full access to VA's Computer Patient Record System (CPRS) to ensure the contracted community provider can review the patient's full history; allow the community provider to meet all of the quality of care screening and measures tracked in CPRS; and speed up receipt and documentation from the non-VA provider encounter to ensure it is added to the veterans' medical record.<sup>5</sup>

**The American Legion supports H.R. 5162.**

**H. R. 5166: Working to Integrate Networks Guaranteeing Member Access Now Act or the "WINGMAN Act"**

*To amend title 38, United States Code, to provide certain employees of Members of Congress and certain employees of State or local governmental agencies with access to case-tracking information of the Department of Veterans Affairs.*

H.R. 5166 would grant access to the Department of Veterans Affairs (VA) Veterans Benefits Management System (VBMS) for the purpose of assisting constituents. According to the bill, Members could select an employee, and at a cost to the employee or member, would receive the necessary training to gain accreditation to legally review veterans' records within VBMS. The American Legion has over 3,000 accredited representatives located throughout the nation. These professionals receive regular professional training to ensure they have the most current understanding of the impact of changes in statutes, regulations, and case law. It is simply not a matter of receiving initial training and meeting the requirement of being accredited; like many professions, it requires on-going, thorough training. Additionally, veterans are repeatedly advised of their opportunity to elect to have a Veterans Service Organization (VSO) represent them in their quest to receive VA disability benefits without a cost to the veteran. The American Legion does not have a resolution to support the enactment of this bill; however, we urge Congress to consider the long-term ramifications of supporting legislation that only requires their own employees to have the minimal level of understanding in veterans' law assisting their constituents. To ensure their constituents receive the assistance they deserve, we highly recommend that a VSO advocate on their veterans' behalf.

**The American Legion opposes H.R. 5166.**

**H. R. 5392: No Veterans Crisis Line Call Should Go Unanswered Act**

*To direct the Secretary of Veterans Affairs to improve the Veterans Crisis Line.*

The Veterans Crisis Line (VCL) through a confidential toll-free hotline, online chat, or text connects veterans, families and friends who are in crisis with qualified, compassionate Department of Veterans Affairs responders.

H.R. 5392 would take measures to ensure that when a veteran calls the VCL or backup call center that their call gets answered in a timely fashion and is in accordance with the guidelines established by the American Association of Suicidology. This bill would also improve the responsiveness and performance within the VA by ensuring that suicide prevention and crisis resources are available to all veterans.

<sup>5</sup>Resolution No. 46: (Oct 2012): Department of Veterans Affairs (VA) Non-VA Care Programs

The American Legion calls upon the VA to directly connect the call of a distraught veteran to the Veterans Crisis Line.<sup>6</sup>

**The American Legion supports H.R. 5392.**

**H. R. 5407**

*To amend title 38, United States Code, to direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans reintegration programs, and for other purposes.*

H.R. 5407 would rightly prioritize homeless veterans with dependents within the Department of Labor. Please note - the Homeless Veterans Reintegration Program (HVRP) within the Department of Labor's Veterans Employment and Training Service (DOL-VETS) is the only nationwide program focused on assisting homeless veterans to reintegrate into the workforce. Women veterans are far more likely to be single parents than men; consequently, this legislation would provide vital resources for the fastest growing cohort within the homeless veteran population.

In addition, this bill would provide gap analysis regarding access to shelter, safety and other relevant services for homeless veterans with dependent children. This kind of information gives federal/state agencies, community service providers and other stakeholders an idea of the immense problem and the ability to figure out 'best practices' in the fight to combat veteran homelessness, particularly those homeless individuals with children.

Furthermore, The American Legion continues to place special priority on the issue of veteran homelessness. With veterans making up approximately 11 percent of our nation's total adult homeless population, there is plenty of reason to give the cause special attention. Along with various community partners, The American Legion remains committed to seeing VA's goal of ending veteran homelessness come to fruition. Our goal is to ensure that every community across America has programs and services in place to get homeless veterans in housing (along with necessary healthcare/treatment), while connecting those at-risk veterans with the local services and resources they need. Lastly, HVRP is a highly successful grant program that needs to be fully funded at \$50 million. Currently, HVRP is funded at \$38 million.

The American Legion continues to support the efforts of public and private sector agencies and organizations with resources necessary to aid homeless veterans and their families.<sup>7</sup>

**The American Legion supports H.R. 5407.**

**H.R. 5416**

*To amend title 38, United States Code, to expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Choice Program of the Department of Veterans Affairs, and for other purposes*

VA burial allowances are partial reimbursements of an eligible veteran's burial and funeral expenses. When the cause of death is not service related, the reimbursements are generally described as two payments: a burial and funeral allowance, and a plot or interment allowance.

Currently, under existing law, the family of a veteran in the Choice Program who passes away in a non-VA hospital receives a \$300 burial allowance. The family of a veteran who passes away in a non-VA under a VA contract receives a \$747 burial allowance. H.R. 5416 would set the burial allowance for veterans who die in a non-VA Health Care facility under the Choice program as the same as if the veteran dies in a VA or contracted medical facility.

The American Legion urges Congress and the VA to enact legislation and programs within the VA that will enhance, promote, restore, or preserve benefits for veterans and their dependents.<sup>8</sup>

**The American Legion supports H.R. 5416.**

**H.R. 5420**

*To authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.*

<sup>6</sup>American Legion Resolution No. 27 (May 2015): Veterans Crisis Line

<sup>7</sup>American Legion Resolution No. 306 (August 2014): Support Funding for Homeless Veterans

<sup>8</sup>American Legion Resolution No. 23: (May 2016): Support for Veteran Quality of Life

The Lafayette Escadrille Memorial is dedicated to the memory of the American pilots who volunteered to assist the Allied Army in 1914. The central platform is crowned with a triumphal arch and flanked with porticos leading to the underground crypt. The “art deco” style highlights the pilots’ sacrifice and the Franco-American friendship.

There are statues of La Fayette and Washington facing one another and, on the ground, a mosaic of the famous Sioux warrior’s head, the squadron’s ensign. The crypt holds the ashes of 66 American pilots. It is decorated with 13 stained glass windows depicting the great aerial combats of the war. The monument was inaugurated on American Independence Day, July 4, 1928.

H.R. 5420 would authorize the American Battle Monuments Commission (ABMC), which was established by the Congress in 1923, as the guardian of America’s overseas commemorative cemeteries and memorials and honors the service, achievements and sacrifices of the United States Armed Forces by overseeing the operations of the memorial which has been erected to honor those who gave the ultimate sacrifice for their country.

The American Legion urges Congress to appropriate adequate funding and human resources to the American Battle Monuments Commission in order to properly maintain and preserve the final resting place of America’s war dead located on foreign soil.<sup>9</sup>

**The American Legion supports H.R. 5420.**

#### **Draft Bill: Military Residency Choice Act**

*To amend the Servicemembers Civil Relief Act to authorize spouses of servicemembers to elect to use the same residences as the servicemembers.*

**The American Legion does not have a position on the Military Residency Choice Act.**

#### **Conclusion**

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion’s Legislative Division at (202) 861-2700 or wgoldstein@legion.org.

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#### **Prepared Statement of Rick Weidman**

Good morning, Chairman Miller, Ranking Member Brown, and other distinguished members of this very vital committee. Vietnam Veterans of America (VVA) is pleased to have the opportunity to present our views today regarding pending legislation before you.

**Draft - The Military Residency Choice Act**, introduced by Congressman Randy Forbes (VA-4), amends the Servicemembers Civil Relief Act to authorize the spouse of a servicemember to elect to use the same residence as the servicemember for purposes of taxation “regardless of the date on which the marriage of the spouse and the servicemember occurred.”

The rationale behind this amendment to this act is logical and eminently fair, and VVA endorses the introduction, and enactment, of this bill.

**H.R. 3216 - The Veterans Emergency Treatment Act**, or VET Act, introduced by Congressman Dan Newhouse (WA-4), attempts to “clarify hospital care furnished by the VA to certain veterans” in emergency settings.

It strikes us that although this act attempts to spell out basic procedures that are already practiced in any ER by trained clinicians, and although it may be considered by some to be prescriptive to the point of micromanaging medical practice, its provisions are sound. Hence, VVA supports enactment of the VET Act.

**H.R.4150 - The Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act**, introduced by Congressman Raul Ruiz (CA-36). This bill will allow the Secretary of Veterans Affairs to modify the hours of employment for physicians and physician assistants “to be more than or less than 80

<sup>9</sup>American Legion Resolution No. 50 (August 2014): Support for the American Battle Monuments Commission

hours in a biweekly pay period if the total hours of employment for such employee in a calendar year does not exceed 2,080 hours.”

Because of the nature of the work that they do, clinicians need flexibility in their daily and weekly work schedules, and ought not be restricted to any set number of hours they may work in a given time period. Of course, no clinician should work to the point of exhaustion on a regular basis, to the detriment of the patients they treat.

VVA supports enactment of this common-sense legislation.

**H.R.4764 - Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016**, introduced by Congressman Ron DeSantis (FL-6), directs the VA, through the Office of Patient Centered Care and Cultural Transformation, to carry out a five-year pilot program to provide service dogs, and veterinary health insurance, to eligible veterans suffering from severe Post-traumatic Stress Disorder. Importantly, the provision of a service dog “shall not replace established treatment modalities.”

The PAWS Act requires that, to be eligible, a veteran shall “have been treated and have completed an established evidence-based treatment and remain significantly symptomatic,” and “have not experienced satisfactory improvement” after having been treated with these evidence-based therapies. Not only does this bill place a limitation on the expenditure of funds “for the procurement and training” of a canine in this pilot program, the Comptroller General of the United States is required to submit to Congress a report evaluating the effectiveness of the program.

VVA supports, with certain reservations, enactment of the PAWS Act. While it is well past time to hold clinical trials to validate the results of canine therapies, if relevant metrics can show that veterans suffering from PTSD can be helped by having a canine companion, such a pilot project will be well worth whatever costs the VA will incur in funding it. Nevertheless, Congress should see proof of the efficacy and effectiveness of these therapies.

**H.R.5047 - Protecting Veterans’ Educational Choice Act of 2016**, introduced by Congressman Jody Hice (GA-10), would direct the Secretaries of Veterans Affairs and Labor “to provide information to veterans and members of the Armed Forces about articulation agreements between institutions of higher learning.”

As we have been both dismayed and angered by the fabrications made to veterans and active duty troops by too many alleged institutions of higher learning in a greedy grab for federal education dollars, any attempt by agencies of government to inform and counsel students about the articulation agreements of any institution of higher learning in which they may be interested is most welcome.

As such, VVA endorses enactment of H.R. 5047.

**H.R.5083 - VA Appeals Modernization Act of 2016**, introduced by Congresswoman Dina Titus (NV-1), is an attempt to improve the appeals process of the Department of Veterans Affairs. We are opposed to enactment of this legislation; and let us explain, in detail, why.

#### **OUR POSITION**

VVA has been an active participant in the workgroup convened by the VA Deputy Secretary to find common ground on solutions to the VA appeals process. While the appeals process is in need of reform, VVA’s position is that veterans ought not to be required to forgo their due process rights in order for VA to process their claims and appeals more quickly. VVA’s greatest concerns are that this bill does not address the issue of a virtually total lack of precedent that has long plagued the claims and appeals process. Precedent is the crux of the issue. Ultimately, this is a system of laws, and without precedent, the American system of jurisprudence could not operate. With precedent, most of the claims can be automated, freeing staff for other work. In addition, we believe if this legislation becomes black-letter law, the role of the Court of Appeals for Veterans Claims (CAVC) will be significantly diminished to the detriment of veterans.

#### **STATEMENT**

##### **I.H.R. 5083, VA APPEALS MODERNIZATION ACT OF 2016, IN ITS CURRENT FORM, DOES NOT ADDRESS THE LACK OF PRECEDENCE THAT HAS LONG PLAGUED THE VA CLAIMS AND APPEALS PROCESS**

From its inception, the veterans claims and appeal process has lacked precedence, the legal principle by which judges are obligated to respect the precedent established by prior decisions. The never-ending churning of cases between the RO, BVA, and the CAVC, nicknamed, “The Hamster Wheel” by veterans and their advocates, has led to excessive wait times for too many veterans seeking final resolution of their appeals. The lack precedence at the BVA is the fundamental design flaw to

the adjudication of veterans' claims, as prescribed under Title 38. Regrettably, the legislation proposed by VA today does not address the precedence issue.

VVA offers three solutions to addressing the precedence issue:

**a) Increase the Number of VA OGC Precedent Opinions**

In the early 1990s, after the CAVC's inception, the VA OGC issued approximately 80–100 precedent opinions per year. Today, VA OGC issues less than three opinions per year. Clearly, precedent opinions are no longer a priority at VA OGC, and this needs to change. Veterans Service Organizations ought to be allowed to petition VA OGC to issue precedent opinions. If VA OGC declines to do so, then VA OGC need be required to issue a written denial that can be appealed to the CAVC.

**b) Possibly Allow the BVA to Issue 3–Judge Panel Precedent Opinions**

Currently, the BVA is authorized 78 Veteran Law Judges (VLJs), but it lacks an effective precedence mechanism. BVA decisions are non-precedential and are not binding on future RO or BVA decisions. Consequently, the BVA is plagued by inconsistent decision-making by these VLJs. In order to improve the consistency of RO and BVA decisions, VVA recommends that VA and this committee look into the feasibility of BVA selectively issuing three-judge panel decisions to bind all future BVA decisions with the same legal issues and fact patterns, so that other veterans with these same legal issues do not have to fight the same battle repeatedly. If effectively implemented, this solution should reduce the number of appeals over time to the BVA.

**c) Some believe that any precedential should only result from 3-judge panel of the CAVC.**

The reasoning here is that the CAVC judges are both more qualified, and would therefore be the proper venue for such arguments. The CAVC can meet in panels now, but they do not have to do so. That should change, because the VA cannot follow the lead of the Social Security Administration to automate most of their processes if there are not clear precedents and settled law.

If one were a cynic, one could reasonably conclude that the VA is doing handstands and circus tricks to avoid having precedent set that then, of course, would be subject to judicial review.

**VA Must Adopt a Social Security Administration-type of rules- based system**

During the recent appeals summit, it was mentioned that the Social Security Administration (SSA) uses a rules-based system to improve the consistency of SSA decisions. This is clearly the direction that the VA must move, and move quickly.

Until the precedence issue is adequately resolved, the churning of cases will not end, continuing to waste scarce agency resources and harming veterans. VVA strongly recommends the proposed legislation be amended to mandate an effective precedence-setting mechanism in the veteran claims and appeals process. Otherwise, under the proposed framework as it is currently written, the "Hamster Wheel" remains, albeit with fewer cases at the CAVC.

**II. H.R. 5083, VA APPEALS MODERNIZATION ACT, IN ITS CURRENT FORM, HARMS VETERANS BY DISINCENTIVIZING THEM FROM APPEALING TO THE CAVC, THEREBY MAKING THE CAVC IRRELEVANT**

VVA has been a long-standing and staunch advocate for judicial review of veterans' appeals, having championed the passage of the Veterans' Judicial Review Act (Pub. L. No. 100–687), which established the United States Court of Veterans Appeals (now the Court of Appeals for Veterans Claims). VVA strongly believes that veterans have the right to judicial review of their claims for benefits under Title 38, and we have significant concerns that the legislative framework proposed by the VA will undermine the CAVC by disincentivizing veterans from appealing to the CAVC. Although, technically, the current framework does allow veterans to appeal to the CAVC, in practice, it will make the CAVC irrelevant.

Today, the CAVC receives approximately 4,000 appeals per year, about 50 percent of which are remanded back to BVA via a Joint Motion for Remand (JMR). The rest of the appeals go to briefing and are decided by the court. Currently, the VA loses 70–75 percent of its cases at the CAVC. Under the proposed legislation, very few veterans will elect to appeal to the CAVC after a Board of Veterans Appeals decision, because they would risk losing the effective date of their claim if they lose at the CAVC. Instead, it is much safer for them to keep the protections provided by this proposed legislation by filing a "supplemental" claim at the Regional Office (known as the ROJ in the legislation) and skip the appeal at the CAVC. VVA be-



believes this will drastically reduce the number of cases appealed to the CAVC, with the consequence of reducing the pool of cases for the CAVC to choose from in order to render a three-judge panel merit decision. This drastic reduction of cases going to the CAVC will harm veterans by reducing the number of binding cases on the VA.

VVA suggests that the proposed legislation be amended by giving post-CAVC cases the same effective-date protection as post-ROJ and post-BVA decisions, thereby removing the disincentive to pursue judicial review.

In addition, veterans must be given adequate notice about all their options for appeal under this new framework, including their ability to continue to appeal to the CAVC. This notice should be explained not just when a final BVA decision is issued, but also earlier in the process, when a rating decision is issued by the RO. VVA is concerned that the VA may not provide adequate notice to veterans regarding their appeals option to the CAVC.

### **III H.R. 5083, VA APPEALS MODERNIZATION ACT, IN ITS CURRENT FORM, HARMS VETERANS BY ELIMINATING DECISION REVIEW OFFICERS (DROs) AND REPLACING THEM WITH "DIFFERENCE OF OPINION REVIEWS" (DOORS) WITH NO QUALIFICATION STANDARDS**

It is in everyone's best interest to have appeals decided at the lowest level possible in the appeals process, which is at the RO. The Decision Review Officer (DRO) is the backbone of the VA appeals process at the lowest level. DROs are GS-13s and come from the ranks of the most senior raters at VBA. The effectiveness of DRO reviews can vary from RO to RO, but generally, veterans represented by VVA have enjoyed successful outcomes by using the DRO process. Veterans benefit from this partnership. Unfortunately, this proposed legislation threatens this successful relationship.

This is classic "old VA" of taking something that is working and is good for veterans and proceeds to try to break it. VVA had hoped that we were moving beyond that old destructive mindset toward real problem solving, in a way that puts the "veteran experience" at the center of all that is done.

Under the proposed legislation, the VA will eliminate the DRO position altogether and replace the DRO function with the Difference of Opinion Reviews (DOORs). Although senior VBA officials have stated VA will retain all existing DRO staff as senior raters, they have also indicated, in order to have a larger pool of staff to conduct DOORs, they will have to use less experienced raters from lower pay scales to perform this function.

VVA has concerns that the only requirement identified by the VA is that the rater conducting the DOOR must be one GS pay grade higher than the rater who issues the ROJ decision. The Duty to Assist (DTA) under current statute is no longer required once the rating decision is issued by the RO. VVA is concerned this will lead to less qualified decision-makers (GS-9s to GS-12s) making DRO-type decisions. DROs, especially experienced ones, have standing and political power at ROs to overturn decisions. Reassigning this work to lower grade and less experienced raters, especially without the DTA mandated under current law, may lead to the rubber-stamping of rating decisions. These may occur more frequently if the DOOR rater and the rater who issued the rating decision being reviewed are at the same RO.

The VA has not explained how much work credit will be assigned for DOORs by VBA's Work Credit System. Will DOORs be a primary or adjunct duty for raters? Will raters be given sufficient work credit for DOORs? If not, then DOORs will be undermined by the Work Credit System as raters will likely avoid them - or at

least minimize the time spent on conducting a DOOR - as their primary job depends on making their rating production quota. What good is a DOOR if the rater is not provided sufficient work credit to properly review the entire record to ensure all evidence was properly weighed, and considered? VBA needs to ensure DOOR function is not undermined by the Work Credit System.

VVA is also concerned about VA's lack of detail regarding training of staff who will conduct DOORs. Will raters be given sufficient training to confidently review and overturn another rater's decision? VVA strongly believes raters, as well as all VA staff involved in the process of adjudicating veterans claims and appeals - from clerks all the way up to RO Directors and VLJs - ought to undergo recurring proficiency training.

Without adequate work credit and training provided to raters performing the DOOR function, this feature of the legislation will not achieve the desired goal of an effective, second-level review at the RO.

**III. H.R. 5083, VA APPEALS MODERNIZATION ACT, IN ITS CURRENT FORM, HARMS VETERANS IF THE BVA IS ALLOWED TO UNDER-RESOURCE THE HEARING LANE DOCKET UNDER THIS NEW FRAMEWORK**

Under the current legislation proposed by VA, there will be two dockets created at the BVA, one for expedited appeals (no new evidence added, and no hearings) and the other, in which the claimant can add evidence and request a hearing. Depending on how BVA is allowed to allocate resources, VVA has concerns the “hearing lane” will be under-resourced, thereby punishing those veterans who choose a hearing. Any final framework must ensure the hearing lane has adequate resources.

**IV H.R. 5083, VA APPEALS MODERNIZATION ACT OF 2016, IN ITS CURRENT FORM, HARMS VETERANS BY CLOSING OF THE RECORD BEFORE A BVA DECISION IS ISSUED**

For claims being appealed to the Board of Veterans’ Appeals, VA’s new plan allows new evidence to be submitted for only 90 days following the submission of the Notice of Disagreement and 90 days after the BVA hearing. There is no reason for the VA to restrict the submission of evidence in appealed cases, however, especially when the plan states that evidence submitted after the issuance of a Rating Decision cannot trigger VA’s Duty to Assist.

This is especially important given VA’s history of backlogs. Although VA hopes BVA decisions will be issued less than a year after the filing of a Notice of Disagreement, under the proposed legislation, it is not outside the realm of possibility that BVA decisions end up being decided two to three years after the Notice of Disagreement is filed. If that is the case, not allowing a veteran to submit evidence during that entire period completely defeats the idea that this system should revolve around what is best for veterans, as opposed to what makes life easier for VA administrators.

It is certainly worth noting that the overwhelming majority of evidence that comes in after the original claim is evidence that has been withheld or lost or just not provided in a timely manner by one entity or another of government. Had the VA and the federal government performed proper Duty to Assist in the first place, then the evidence would have been available at the start of the process.

Therefore, in our opinion, the record should be open until BVA issues a decision.

**IV.H.R. 5083, VA APPEALS MODERNIZATION ACT, IN ITS CURRENT FORM, HARMS VETERANS BY CREATING A NEW “RELEVANT” EVIDENCE STANDARD**

VA proposes to throw out entire area of case law on “new and material” evidence by implanting a “new and relevant” evidence standard. In order to prevent the need for additional litigation to define what “relevant” evidence is, the words “and relevant” should be removed from the 38 U.S.C.A § 5108, and a supplemental claim should be deemed sufficient when any “new” evidence is submitted.

The VA has argued that VA resources would be wasted by allowing veterans to reopen a denied claim with nothing more than a “picture of a horse.” This argument is without merit, however, as such, a submission requires adjudication by the VA either way, and it is hard to imagine that it would take VA too long to deny a claim on the merits when the only evidence added since the last denial is a picture of one or another end of a horse.

If the VA adjudicated the merits of every supplemental claim for which “new” evidence was submitted, it would make the system vastly more efficient, as it would get rid of the entire class of appeals resulting from preliminary determinations finding new evidence not sufficiently “relevant” to reopen a claim, much as “new and material evidence” appeals clog the system now.

Under the proposed legislation, VA’s “relevant evidence” definition is evidence “that tends to prove or disprove a matter in issue.” This language is so general as to be meaningless, and will certainly lead to the need for litigation to further define it. Why did VA make this definition so vague? VVA has significant concern that the VA is intending to make this definition more restrictive than what was promised to stakeholders during negotiations.

**V. H.R. 5083, VA APPEALS MODERNIZATION ACT, IN ITS CURRENT FORM, HARMS VETERANS BY RASING THE STANDARD FOR WHAT IS ALLEGED ON THE NOTICE OF DISAGREEMENT**

Under 7105(b) (4), BVA can “dismiss” an appeal if the Notice of Disagreement does not allege specific errors of law or fact. This is yet another preliminary determination by VA that takes just as much time as a decision on the merits, and there-

fore serves only to complicate the appeals system. It is also unclear what a veteran's rights are after a claim is "dismissed" by BVA.

More importantly, the requirement that a veteran would be forced to provide "specific allegations of error of fact or law" when submitting a Notice of Disagreement is a much higher standard than veterans currently face. There is no good reason for the VA to require sophisticated legal reasoning for a veteran to be able to express disagreement with the denial of his/her claim. Most veterans are not lawyers or medical experts. The fact that veterans would also be forced to make irrevocable decisions about issues like hearings and the submission of evidence to BVA at the time they file a Notice of Disagreement is far too much to put on them. This change appears to be yet another scheme to allow VA to easily dismiss appeals.

**VI H.R. 5083, VA APPEALS MODERNIZATION ACT, IN ITS CURRENT FORM, HARMS VETERANS BY BEING DEPENDENT ON INCREASED FUNDING FOR VBA THAT WAS EITHER NOT ASKED FOR BY VA, OR ASKED FOR AND DENIED BY OMB**

Senior VA leadership proposed this legislation, but under the assumption, VBA will receive adequate funding from the Congress to adequately staff up the ROs to meet the added demands that will be created by these legislative changes. The same VA senior leadership has the responsibility to request adequate funding from Congress to ensure they have the adequate resources to carry out VA's mission. It is unclear if VA senior leadership, knowing they were going to initiate the biggest and most radical change to the veterans' appeals process since the creation of the Veterans Court nearly 30 years ago, requested sufficient resources for VBA to carry out these additional responsibilities. If not, why? On the other hand, if they did, but their request was denied by OMB, then why is the administration at OMB setting the VA up for failure?

The success of this new appeals framework is dependent on VBA receiving adequate funding. Without adequate resources allocated to VBA, this proposed appeals framework is doomed for failure from the start. Is VA leadership planning to make Congress the scapegoat if these needed appropriations are denied?

**CONCLUSION**

VVA supports modernizing the VA appeals process, so long as veterans' due process rights are not abridged, and the root causes are adequately addressed. This proposed legislation is inadequate for the reasons stated above. As VVA has stated before, veterans' rights in the VA claims and appeals processes should not be abridged, curtailed, or eliminated under the guise of "administrative efficiency."

Most importantly, this whole effort begs the crucial question of how best to establish precedent. Without precedent, the chaos and "churn" will continue. Ninety percent of claims break out in 15 to 20 basically the same claim that VA is adjudicating by hand without precedent ten thousand to fifty thousand times each. Moreover, of course, many of them will be wrong. The VA would have you believe that veterans will appeal, appeal, appeal for no reason. The truth is that the majority of those who are denied justice just go away, and suffer in silence. That makes the life at the RO easier, but the point here is justice for each veteran - no more, no less.

General Omar Bradley had it right when he was head of the VA and said, "We are here to solve the veterans' problems, not our own."

Now if we had precedent on those above 15 to 20 basically the same claims, then it can be automated, and we stop wasting resources on that which can be best done by machine, and concentrate that staff power on the 9 or 10 percent which do not fall into the above-referenced categories, and on really doing "duty to assist" so that veterans might secure the information they need to advance their claim.

**H.R. 5162 - The Vet Connect Act of 2016**, introduced by Congressman Beto O'Rourke (TX-16), would authorize the Secretary of Veterans Affairs to disclose to non-VA health care providers certain medical records of veterans who receive health care from such providers.

This is a no-brainer: obviously, what Rep. O'Rourke's bill calls for should be the case, as long as it conforms to HIPAA regulations. In addition, VVA supports swift enactment of H.R. 5162.

**H.R. 5392 - No Veterans Crisis Line Call Should Go Unanswered Act**, introduced by Congressman David Young (IA-3), would direct the Secretary of Veterans Affairs to improve the Veterans Crisis Line.

Inasmuch as the provisions of this bill are straightforward and entirely logical, it has the support of VVA.

**H.R. 5407** - Introduced by Congresswoman Corrine Brown (FL-5), this bill would direct the Secretary of Labor to prioritize the provision of services to homeless vet-

erans with dependent children in carrying out homeless veterans reintegration programs.

By now, it should come as no surprise to anyone that women veterans have become the fastest-growing segment of the homeless population. According to the Department of Defense, in 2010 more than 30,000 single mothers have deployed to Iraq and Afghanistan; and as of 2006, more than 40 percent of active duty women are in fact mothers. For any veteran, male or female, with dependent children, being identified as homeless creates a threat and fear that local youth protective services might assess their situation as dangerous and remove their children.

Homeless women veterans also face substantial barriers to employment. In FY 2010, according to the VA, 77 percent of homeless female veterans were unemployed. One of the key factors for this larger percentage is likely the lack of accessible and affordable childcare. In fact, according to the recent FY 2010 CHALENG report, the VA and community providers ranked childcare as the highest unmet need of homeless veterans from FY2008- 2010. Additionally, many of the skills that women veterans learn during their military service may not translate back to the civilian workforce or may be skills for a predominately-male field.

VVA strongly supports enactment of H.R. 5407. We also request that funding for the program be continued through FY2018.

**H.R. 5416** - Introduced by Congressman Doug Lamborn (CO-5), this bill would expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Access, Choice, and Accountability Act of 2014.

VVA endorses this legislation inasmuch as its purpose is both logical and obvious.

**H.R. 5420** - Introduced by Chairman Jeff Miller (FL-1), this bill would authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.

Monuments and memorials to our men and women in uniform speak to their service and their sacrifices and, in many cases, to their last true measure of devotion. If the commission sees a need to take responsibility for this memorial, subject "to the consent of the Government of France," VVA stands with the commission, and with the enactment of this bill.

On behalf of VVA's members and our families, we thank you for the opportunity to speak to these issues to you today. In addition, we thank you as well for all that you do for our nation's veterans. I will be glad to answer any questions that you might care to pose to me.

## VIETNAM VETERANS OF AMERICA

### Funding Statement

June 23, 2016

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For further information, contact:

Executive Director for Policy and Government Affairs  
Vietnam Veterans of America  
(301) 585-4000, extension 127

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### Statements For The Record

#### AMERICAN BATTLE MONUMENTS COMMISSION

#### WRITTEN STATEMENT OF MAX CLELAND, SECRETARY

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to offer written testimony on behalf of H.R. 5420, which authorizes the American Battle Monuments Commission to acquire, operate and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France, a

suburb of Paris. We submitted this legislative proposal with the concurrence of the Administration, following review by the Department of Defense, the Department of Veterans Affairs, and other interested agencies.

The Lafayette Squadron was created on 16 April 1916, one year prior to U.S. entry into World War I. Forty-two fliers composed the original Escadrille (thirty-eight Americans and four French officers in command). As the number of American volunteers grew, Americans flew for several French units known collectively as the Lafayette Flying Corps, in which 269 fliers served in total. Out of the 269 total American volunteers, 68 died in the air war over France. Some of the best known fliers were Kiffin Rockwell, Norman Prince, Raoul Lufbery and Eugene Jacques Bullard, the only African-American fighter pilot in World War I. When the United States entered the war in 1917, most of the Escadrille pilots joined the U.S. Air Service, teaching air combat tactics to those who followed them to France. The Lafayette Escadrille ceased to exist on February 18, 1918 and the U.S. 103rd Pursuit Squadron took on its symbols and traditions.

The memorial to these air combat pioneers was constructed in the 1926–28 period and inaugurated on July 4, 1928. The Lafayette Escadrille Memorial is a private memorial about five miles west of Paris. It honors these 269 American volunteers who flew for French and United States units during the Great War. But it is more than a memorial; it is a burial ground. A crypt beneath the memorial contains 68 sarcophagi, one for each of the 68 Americans of the Lafayette Escadrille who died in the skies over France; 49 Americans and two French officers rest there in honor today. Seventeen sarcophagi have remained empty because either the remains could not be found or were transferred.

ABMC has a history of involvement with the Lafayette Escadrille Memorial, approving the Foundation's construction plans in 1924, a predicate for any administrative agency of the U.S. Government, such as the State Department, to assist the founders. ABMC also managed the maintenance of the memorial for the Foundation from 1971 to 1983, using Foundation funds under the authority of our Monument Maintenance Program. The Foundation ended this arrangement in 1983 and over the years the original trust fund established to maintain the memorial dwindled and the memorial fell into a state of disrepair. As a World War I Centennial initiative, ABMC and the French Ministry of Defense partnered with the Foundation to complete a \$1.7M restoration project, using funds provided by the Foundation, by private donors in the United States, and by the French government. The memorial was rededicated on a beautiful spring day in Paris, on the occasion of the Centennial Anniversary of the Escadrille's establishment on April 20, 1916. It again stands as a beautiful tribute to service and sacrifice, but the Foundation is no longer able to maintain the memorial to a standard commensurate to the American sacrifice it honors.

It is time to bring the memorial and the pioneering airmen buried beneath it under the perpetual care of the U.S. Government. There are several compelling reasons to do so.

1. The vision for the Lafayette Escadrille Memorial was to have the American pilots resting together in a memorial that allowed the spirit of their enlistment to live on. This spirit reflects the historical cooperation between the United States and France. Just as France came to the aid of the United States during our revolution, the United States came to France's aid in two world wars. The memorial has become an important part of the U.S. Ambassador's Memorial Day commemorations and in other ceremonies within the American community, such as the high school graduation of the American School of Paris.

2. Since American participation in World War I began unofficially with volunteers in units such as the Lafayette Escadrille, the memorial could serve as a point-of-entry for ABMC's World War I interpretation efforts. Its location near Paris facilitates that purpose.

3. The U.S. Air Force considers the Lafayette Escadrille to be an important part of its tactical origins. The Air Force ties its history to the American men who flew with that unit and later joined the U.S. Air Service. The American pilots of the Lafayette Escadrille were combat veterans, whose wartime experiences were extremely valuable to the newly-arrived American units and the development of combat tactics within the Air Service. The Marine Corps considers Belleau Wood, which is part of the Aisne-Marne American Cemetery, to be an important part of its heritage. The continued support of the Marine Corps and its active participation at Memorial Day ceremonies is a highlight for Aisne-Marne and ABMC. The Lafayette Escadrille Memorial will serve a similar purpose for the Air Force.

4. Most importantly it's the right thing to do. The Foundation passed a resolution approving transfer to ABMC of full legal title to the memorial site, including the

land, memorial, crypt and caretaker's cottage, by gift or in exchange for symbolic consideration. We have assurances that the French government is prepared to incorporate the Memorial into the bilateral treaty granting the U.S. perpetual use of French lands, at no cost or taxation, for the commemorative cemeteries and memorials that ABMC maintains in France. Representatives of the French Ministries of Defense and Interior sit on the LEM Foundation Board and voted to approve the Foundation resolution.

With the concurrence of the Foundation and the Government of France, it is appropriate that ABMC, on behalf of the American people, assume responsibility for preserving and protecting in perpetuity this memorial tribute and final resting place for pioneering combat Airmen who gave their lives in one of the most pivotal wars of the twentieth century. ABMC will incur no costs to acquire or transfer the memorial. The Commission will operate and maintain the memorial within existing appropriations.

Mr. Chairman, the American Battle Monuments Commission appreciates very much the Committee's support of our sacred mission. We believe it is time for the Lafayette Escadrille Memorial to become an important and significant addition to that mission, so that, in the words of General John J. Pershing, Commander of the World War I American Expeditionary Forces and our first Chairman, "Time Will Not Dim the Glory of Their Deeds."

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## AMVETS

### AMY WEBB, AMVETS LEGISLATIVE POLICY ADVISOR

Chairman Miller, Ranking Member Brown, and distinguished Members of the Committee,

Since 1944, AMVETS (American Veterans) has been one of the largest congressionally-chartered veterans' service organizations in the United States and includes members from each branch of the military, including the National Guard, Reserves, and Merchant Marine. We provide support for the active military and all veterans in procuring their earned entitlements, and appreciate the opportunity to present our views on the twelve bills being considered today.

### **H.R. 3216 - Veterans Emergency Treatment (VET) Act**

If enacted, the VET Act would ensure that, regardless of their service connection, veterans enrolled in the Department of Veterans Affairs (VA) health care system could request a medical examination or treatment at VA emergency departments to determine if a medical emergency existed. In the case of a medical emergency their condition would be stabilized and they would have the option to be transferred to another VA or non-VA medical facility.

Veterans with a medical emergency could only be transferred to another facility if they were medically stabilized, unless the veteran makes a written transfer request after being made aware of the risks; or if a physician, or qualified medical professional if a physician is not present, certifies that the medical benefits of a transfer outweigh the risks to the veteran and, in the case of labor, to the unborn child.

The receiving facility must have available space and qualified personnel to provide appropriate medical treatment to the veteran or unborn child, and agree to accept the veteran as a patient. The transferring facility would be required to send the receiving facility all medical records available related to the veteran's medical condition, and the transfer must be handled by qualified personnel and transportation equipment, including the use of life support if appropriate.

If a VA employee refuses to authorize the transfer of an enrolled veteran with a non-stabilized emergency medical condition, or reports a violation this Act, the VA may not take adverse action against them. Additionally, no medical facility may delay medical care or treatment of an enrolled veteran in order to inquire about their insurance status or payment method.

AMVETS supports this bill, which is in line with our founding principles of expediting and assisting the rehabilitation and care of veterans, including access to care. The VET Act would ensure that any enrolled veteran, including women veterans who may be in labor, receive the emergency medical treatment that they and their unborn child need. This is also in line with our National Resolution on women veterans' health care, which states in part that VA should continue to work to imple-

ment an equitable health care delivery model for women and ensure they have access to timely and appropriate health care.

**H.R. 4150 - Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act**

This measure would allow Department of Veterans Affairs (VA) physicians and physician assistants to modify their hours of full-time employment to be more or less than 80 hours in a biweekly pay period, as long as the employee works no more than 2,080 hours per calendar year.

AMVETS supports this measure in the effort to assist VA in its improvement of recruitment, hiring, and retention policies to help ensure the timely delivery of high quality health care to all enrolled veterans.

**H.R. 4764 - Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016**

This bill directs the Department of Veterans Affairs (VA), through the Office of Patient Centered Care and Cultural Transformation, to carry out a five-year pilot program providing service dogs and veterinary health insurance to selected post-9/11 veterans who have been diagnosed with, and continue to suffer from, severe post-traumatic stress disorder (PTSD).

The provision of a service dog would not replace established treatment modalities for PTSD, and veterans considered for selection would rank at levels three and four on the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5). According to the scale, level three indicates a severe or markedly elevated problem 50 to 60 percent of the time, where it is difficult and at times overwhelming to manage symptoms. Level four indicates extreme or incapacitating symptoms, where PTSD is pervasive, unmanageable, and overwhelming.

Eligible veterans must have completed an established evidence-based treatment for PTSD without suitable improvement and remain significantly symptomatic. Once selected for participation in the pilot, veterans must see a VA primary care physician or mental health care provider at least quarterly in order to continue receiving VA provided veterinary health insurance.

VA would enter into contracts for obtaining and training service dogs with providers that are Assistance Dogs International (ADI) or comparably certified, that on average provide one-on-one training with each service dog for a minimum of 30 hours over at least 90 days. The organization would also provide an in-house residential facility where the veteran and service dog would stay for at least ten days in order to receive a minimum of 30 hours of training as a team. All service animals would be required to receive a wellness verification from a licensed veterinarian and pass the American Kennel Club Canine Good Citizen test prior to permanent placement with a veteran. The training organization would provide follow-up support services for the life of the service dog.

The cost for the procurement and training of any canine would not exceed \$27,000, which is within the industry standard for a well-trained service dog.

Within six months of the pilot program's completion, the United States Comptroller General would submit a report to Congress evaluating the effectiveness of the program in helping veterans with severe PTSD live more normally. Relevant metrics would include reduction in scores under the PTSD checklist (PCL); improvement in psychosocial function; therapeutic compliance; and reducing dependence on prescription narcotics and psychotropic medication. Recommendations with respect to the continuation or expansion of the program would also be included.

While the VA does not compensate veterans for the care of service dogs that assist veterans with PTSD as they do for some physical conditions, they remain in the midst of a \$12-million-dollar study to measure the cost and mental health benefits of pairing well-trained service dogs with veterans diagnosed with PTSD. The study also aims to compare service dogs and emotional support dogs in how they assist veterans with PTSD. Unfortunately, the study has been beset by many setbacks, including improper pairing of poorly trained dogs with veterans, and for being slow in acquiring and pairing dogs with veterans. After undergoing a pause and reorganization, the VA study picked back up in 2015 and is set to be complete in 2018.

AMVETS sees the importance of well-trained and well-paired service dogs, and the impact this relationship has on individuals and veterans with physical and emotional illnesses or wounds. Service dogs are able to perform specific tasks to assist with the symptoms of PTSD such as learning commands to help secure space, turn on lights, sweep a room prior to a veteran entering and bark if anyone is present, to wake them up during a nightmare, remind them to take medication, and pick up on stress cues and offer calming support.

The AMVETS Ladies Auxiliary has worked with ADI accredited “Paws with a Cause” as its National Community Service program for nearly thirty years in a consistent effort to help veterans with visible and invisible wounds obtain a service dog to enhance their daily functioning. Through this partnership, AMVETS has seen firsthand the marked benefits to a veteran’s quality of life when paired with a well-trained service dog.

The intent of this bill is in line with our National Resolution on VA mental health care that strongly recommends Congress appropriate more dedicated funding for mental health care and related programs and services. While AMVETS supports passage of the PAWS Act, it is with the stipulation that great care, consult, and oversight occur when awarding a contract to an organization that trains the service dogs; in choosing veterans who are able to manage the continued care and training the dog will require; in closely following those who are part of the pilot program; and in setting expectations for how quickly the veteran can obtain a dog. Fully trained service dogs are quite rarely immediately available, but once paired with a receptive and willing owner, the benefits can be extraordinarily rewarding. AMVETS looks forward to providing any assistance needed to properly choose organizations that provide trained animals that can effectively support veterans with PTSD.

#### **H.R. 5047 - Protecting Veterans’ Educational Choice Act of 2016**

This act instructs Department of Veterans Affairs (VA) educational and vocational counselors who provide services to eligible veterans to share information about the formal agreements or partnerships between two or more Colleges and Universities in which the veteran is interested, and the transfer policies for a specific academic program or degree.

When the VA Secretary provides veterans a certification of eligibility for VA educational assistance, this bill would ensure that detailed information on such educational assistance, requesting education counseling services, and on articulation agreements is made available.

In the interest of ensuring that all benefits available to veterans are fully explained, AMVETS supports passage of this legislation.

#### **H.R. 5083 - VA Appeals Modernization Act of 2016**

This Act seeks to, among other things:

- modernize and remedy a number of issues within the current Department of Veterans Affairs (VA) appeals processing system by creating three distinct ‘lanes’ to address specific needs of veterans;
- improve Veterans Benefits Administration (VBA) decision notices; and
- provide effective date protection.

Large numbers of VA disability appeal cases are sent back for review - sometimes multiple times - and these cases must be addressed before any new cases can be opened. This cumbersome process often leads to veterans waiting years for a final decision on their case.

AMVETS supports this Act, which is in line with our National Resolution addressing the claims and appeals backlog which calls for improving the timeliness of all disability claims and appeals, and believes that remedies need to be put in place so the more than 440,000 veterans currently in the appeals process are granted a swift solution. We look forward to assisting in its passage.

#### **H.R. 5162 - Vet Connect Act of 2016**

This measure would allow the Department of Veterans Affairs (VA) to disclose certain medical records of veterans to non-VA entities which provide hospital care or medical treatment to veterans.

In light of VA’s consolidated community care plan that was devised to address VA’s sharp increase in demand for care, AMVETS believes it is vital that non-VA providers treating veterans for a myriad of conditions have access to medical records in order to properly advise on treatment and provide suitable medical care. AMVETS supports passage of this bill.



**H.R. 5166 - Working to Integrate Networks Guaranteeing Member Access Now (WINGMAN) Act**

WINGMAN seeks to streamline the benefit claims procedure between the Department of Veterans Affairs (VA) and Congressional constituent advocates who process claims on behalf of veterans and their families.

Under WINGMAN, an accredited, permanent Congressional employee would have access to electronic Veterans Benefits Administration (VBA) records in a read-only fashion in order to review the status of a pending claim, medical records, compensation and pension records, rating decisions, statement of the case, supplementary statement of the case, notice of disagreement, and Form-9 files. This eliminates the time-consuming step of using the VA as a middle-man to receive files the Congressional employee already has permission to possess.

AMVETS supports this bill, which is in line with our National Resolution addressing the claims and appeals backlog which calls for improving the timeliness of all disability claims and appeals, and agrees that it is unacceptable for weeks or months pass before advocates are able to receive files they requested to help veterans.

**H.R. 5392 - No Veterans Crisis Line Call Should Go Unanswered Act**

This measure would direct the Secretary of Veterans Affairs to develop a Veterans Crisis Line (VCL) quality assurance document which would outline measurable performance indicators and objectives to improve its responsiveness and care of veterans in crisis, including all backup call centers. This Act would also outline quantifiable timeframes to meet objectives in tracking the progress of the quality assurance document, and be consistent with guidance issued by the Office of Management and Budget.

The Secretary would be instructed to create a plan to ensure that every telephone call, text message, or other form of communication received by the VCL and its backup call centers is answered by a person in a timely manner consistent with the guidance established by the American Association of Suicidology. Periodic testing of the VCL and its backup centers would be conducted during each fiscal year to identify and quickly correct any issues or gaps in care.

Within 180 days of enactment, the Secretary would submit a report to the House and Senate Committees on Veterans' Affairs containing the developed quality assurance document and plan.

AMVETS supports this bill, and notes that the February 11, 2016 Department of Veterans Affairs Office of Inspector General (OIG) healthcare inspection report 14-03540-123 which investigated the caller response of the Veterans Crisis Line made seven recommendations to the VHA Office of Mental Health Operations Executive Director. Among those recommendations were to ensure that issues regarding response hold times are addressed, that a formal quality assurance process be established, and to collect, analyze, track and trend data on an ongoing basis in order to address gaps or call issues in a timely manner.

Once a veteran, or their loved one, reaches the point of asking for help, the system designed to assist them during a life threatening crisis must fully function and stand ready at all times to intervene. Not one call or text should be missed. AMVETS look forward to swift passage of this important legislation.

**H.R. 5407 - To amend title 38, United States Code, to direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans reintegration programs, and for other purposes.**

This bill would direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans' reintegration programs. The bill would also require additional reporting to include an evaluation of services, inclusion of an analysis of any gaps in access to shelter, safety, and services for homeless veterans with dependent children, and recommendations for improving any gaps.

The Homeless Veterans' Reintegration Program (HVRP) provides services to assist reintegrating homeless veterans into meaningful employment. Services include job placement, training, career counseling, and resume preparation. Supportive services such as clothing, provision of or referral to temporary, transitional, and permanent housing, referral to medical and substance abuse treatment, and transportation assistance are also provided to meet the needs of these veterans.

AMVETS supports this measure based on our National Resolution addressing ending veteran homelessness. We remain a strong partner in this goal and recognize

that homeless veterans, or veterans at-risk of becoming homeless, many times present with dependent children as they seek assistance. Current provisions often do not meet their needs and we support remedies to address this deficiency.

**H.R. 5416 - To amend title 38, United States Code, to expand burial benefits for veterans who die while receiving hospital care or medical services under the Veterans Choice Program of the Department of Veterans Affairs, and for other purposes.**

This measure would expand Department of Veterans Affairs (VA) burial benefits for veterans who die while receiving hospital care or medical services to include those receiving care under VA's Veterans Choice Program.

As the Department of Veterans Affairs (VA) moves forward with its plan to consolidate community care, VA continues to examine how the Veterans Choice Program interacts with other VA health programs, including the delivery of direct care. Based on our National Resolution addressing burial benefits, AMVETS support passage of this bill and the intent to update title 38 to reflect that veterans may be receiving VA health care in a non-VA facility at the time of their passing and should receive a burial benefit.

**H.R. 5420 - To authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.**

This bill would authorize the American Battle Monuments Commission to acquire, operate, and maintain the Lafayette Escadrille Memorial in Marne-la-Coquette, France.

The Commission would carry out its duties pursuant to an agreement with the Lafayette Escadrille Memorial Foundation and would be subject to the consent of the Government of France. Additionally, the Commission could only employ the personnel needed to carry out this Act.

AMVETS has no position on this bill.

**H.R. 5428 - Military Residency Choice Act**

This Act would amend the Servicemembers Civil Relief Act by adding that the spouse of a servicemember may elect to use the same residence as the servicemember for purposes of taxation regardless of the date of the date of their marriage. This would apply to any state or local income tax filed for the taxable year beginning with the year that includes the date of enactment.

The Servicemembers Civil Relief Act would be further amended by adding that a person who is absent from a state because they are accompanying their spouse in compliance with military or naval orders shall not, solely by reason of that absence, lose residence in that state without regard to whether or not they intend to return; or have it assumed that they have acquired residence in another state. The spouse of a servicemember may elect to use the same residence as the servicemember regardless of the date of their marriage for purposes of voting.

AMVETS is not opposed to the passage of this Act and supports the intention of lessening confusion regarding residency relevant to state and local taxation and voting issues for the spouses of servicemembers.

Mr. Chairman and members of the Committee, this concludes my testimony and would be happy to answer any questions the Committee may have.

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**COURT OF APPEALS FOR VETERANS CLAIMS**

THE HONORABLE LAWRENCE B. HAGEL, CHIEF JUDGE

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

Thank you for the invitation to submit a statement of the Court's views on legislation pending before the Committee, in particular H.R. 5083 (the VA Appeals Modernization Act). The Court's comments will be brief.

Although changes to VA's appeals processing will eventually impact the Court, the pending legislation does not amend the statutory provisions governing the Court's function. For this reason, the Court will not speculate as to consequences of changes that pertain only to the agency or comment on provisions that may ultimately come before the Court in a case. We do, however, offer the following thoughts on the implementation plans for broad changes to the VA claims processing system, and on

the need to ensure that claimants are aware of their right to appeal to a court of law and that the exercise of that right is not disincentivized.

**Implementation:** H.R. 5083 does not address how the proposed legislative changes would be implemented. It is, however, the manner in which the pending legislation is implemented that will have the most profound immediate effect on the Court because appeals to the Court generally stem from those claims that have already received agency appellate review. In testimony last month to the Senate Committee on Veterans' Affairs, VA Deputy Secretary Gibson said that VA anticipated prospective application, meaning that any statutory changes would apply only to new claims filed with VA after the date of enactment. In recent testimony before this Committee, Secretary Gibson said that VA is working with various stakeholders and discussing different implementation ideas that may envelop pending appeals into the proposed system. Any implementation plan for sweeping legislative change to the VA claims processing system will certainly have its challenges, and we offer no comment on what those may be. We are, however, attempting to anticipate the impact on the Court and best estimate and prepare for the workload that may result from these changes should they become law.

Generally speaking, appeals filed at the Court come from veterans who are dissatisfied with a decision of the Board of Veterans' Appeals (Board). VA Deputy Secretary Gibson recently testified that more than 450,000 appeals are pending before VA. The Board decided more than 55,000 decisions in fiscal year 2015, and has pledged to further increase its number of annual decisions. For fiscal year 2017 VA requested additional funding to increase staffing to further grow the number of decisions the Board renders annually. Faced with this data, the Court projects a steady but not increased number of appeals over the next several years resulting in the continued need for nine judges.

The Court has a permanent authorization for seven judges, but effective in 2009, received temporary authorization to expand to nine judges. We reached that full complement in December 2012 and were fortunate to operate with nine judges for almost three years until the retirement of one of our colleagues ten months ago, reducing the active-judge count to eight. With nine-judge staffing the Court was able to conduct effective, efficient, and expeditious judicial review, and your support in providing the resources to handle our heavy caseload is very much appreciated. Under current law, the Court will be authorized to continue to operate with eight judges until the next retirement. At that time, the authorized number of active judges reverts to seven. The reality, however, is that two judges' terms expire within days of each other in December 2016. At that time, the Court will be reduced to six active judges. Faced with the strong likelihood that VA will maintain, if not increase, the number of decisions the Board renders this coming year and for the next several years, the Court maintains that the need for nine full-time judges continues to exist. Thus, we ask for the Committee's support in renewing the authorization of nine judges on the Court.

**Advisement and Exercise of Appellate Rights:** In reviewing H.R. 5083 the Court is also mindful of ensuring that veterans and their families remain aware of their right to judicial review and have a fair opportunity to exercise that right. Under current law, the system for filing and pursuing a claim for VA benefits is somewhat linear, in the sense that there is basically one path for pursuing a claim from a VA regional office, to the Board of Veterans' Appeals, to the Court. At the current time, accompanying each Board decision is a standard notice of appellate rights, informing claimants of their options, to include the right to appeal to the Court should they not be satisfied with the benefits accorded to them by VA. Under the proposed legislation, following an agency denial a veteran would have the opportunity to repeatedly pursue a claim within the first-level agency review, and indeed there may be incentive for veterans to do so because that path would preserve the earliest effective date possible for any grant of benefits. That structure could potentially result in a veteran never securing a Board decision that could be appealed to the Court, never being informed of the Court's existence, and never receiving appellate rights and the opportunity to exercise such rights. The Court states no opinion on whether or not the proposed changes are "good for" individual veterans or the overall system. We do, however, want to ensure that veterans remain aware of the full array of options available to them in pursuing a claim and that no option be disincentivized. Thus, we believe that it is critical that any changes to the process not unintentionally obfuscate veterans' understanding of their right to judicial review. Many people fought long and hard to secure impartial review of adverse VA decisions by a federal court that by definition is independent of VA. It is our firm belief that veterans and their survivors must continue to know about and understand that right, and they must have fair access to the Court, as well as the ability and means by which to pursue that judicial review.

In closing, on behalf of the Court, I express my appreciation for your past and continued support and for the opportunity to provide this statement. Thank you.

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## IAVA

### SUMMARY OF IAVA TESTIMONY

IAVA is optimistic that the *VA Appeals Modernization Act (H.R. 5083)* could greatly improve the appeals process and provide veterans with options at both VBA and BVA. It would enable veterans to choose the most appropriate venue based on their individual circumstances. However, VBA and BVA must first address the 440,000 appeals now pending for any new appeals system to be successful. Oversight by Congress will be necessary to ensure these legacy appeals are properly resolved. To reach comprehensive appeals reform H.R. 5083 is the perfect place to start.

IAVA supports the goals of the *Puppies Assisting Wounded Servicemembers (PAWS) Act (H.R. 4764)* and sees it as a good first step. We encourage VA and HVAC to work toward establishing a pilot program that will lead to a lasting VA effort to accommodate and expand the treatment options involving service dogs. To improve the bill, IAVA recommends allowing veterans to receive the service dog as complementary therapy rather than requiring them to go through therapy first, and requiring veterans to go through a more rigorous mental health treatment plan. The standard in the bill for organizations providing the service dogs is too broad and we recommend defining a gold standard that these dogs must meet. Also, IAVA would like to know how funding H.R. 4764 with \$10 million from the VA's Office of Human Resources would impact agency personnel operations. Due to widespread appeal and benefit to veterans, the VA should invest in further research and outreach to clarify and expand the use of service dogs.

IAVA supports the *Protecting Veterans' Educational Choice Act (H.R. 5047)*. There has been concern that some schools are misrepresenting articulation agreements and leaving veterans with unusable credits and wasted GI Bill benefits and it is important that the VA educational counseling services provide information that can best inform veterans of the long term implications and credit transferability of certain programs. Ensuring bad actors are identified and veterans are informed about the school will strengthen the GI Bill's ability to invest in the success of veterans.

IAVA supports the *Lafayette Escadrille Memorial in Marne-la-Coquette, France (H.R. 5420)*. The memorial comes after the passing of all American veterans of WWI, and this should also be a lesson in not waiting too long to provide a place for veterans and their families to honor and reflect on their service. An overwhelming 82 percent of IAVA members support the creation of a memorial to the service and sacrifices of post-9/11 veterans on the National Mall and are ready to galvanize all Americans in support.

While IAVA applauds the intent of the *No Veterans Crisis Line Should Go Unanswered Act (H.R. 5392)*, we need to better understand existing quality control standards at the VA's crisis call centers and how such standards are enforced and monitored before requiring potentially conflicting or duplicative quality control standards. More concerning is the decision to move the Veterans Crisis Line from under the directorship of the VA Suicide Prevention Office to VA Member Services. This move was made at the start of the year and since then, we have had no indication as to the impact of this reorganization. While Member Services oversees all of the call centers at VA, the VCL is the only call center with a clinical component and removing clinical oversight may have dire consequences. While there is no question that the operational component of the VCL needs improvement, IAVA is concerned that the VA has overcorrected in this management shift. We ask Congress to query this matter further and urge the VA to consider shifting management back to the Suicide Prevention Office with consultation on operations from Member Services or some other appropriate entity.

## IAVA

BY ELIZABETH WELKE, J.D, DIRECTOR (ACTING), POLITICAL AND INTERGOVERNMENTAL AFFAIRS

Chairman Miller, Ranking Member Brown and Members of the Committee, on behalf of Iraq and Afghanistan Veterans of America (IAVA) and our more than 425,000 members, thank you for the opportunity to share our views on pending leg-

islation, including the “VA Appeals Modernization Act” (H.R. 5083), the Puppies Assisting Wounded Servicemembers (PAWS) Act” (H.R. 4764), and the Protecting Veterans’ Educational Choice Act (H.R. 5047), Authorizing the Lafayette Escadrille Memorial in Marne-la-Coquette, France (H.R. 5420), and the No Veterans Crisis Line Call Should Go Unanswered Act (H.R. 5392)

**VA Appeals Modernization Act of 2016 (H.R. 5083)**

Over the past few months, IAVA has worked collaboratively and intensely with the Board of Veterans Appeals (BVA), the Veterans Benefit Administration (VBA) and other key stakeholders in order to develop a new appeals process framework. The ideal process would provide quicker, more accurate decisions for veterans and family members seeking benefits based on their military service, and provide more options to resolve appeals quickly, while fully protecting veterans’ rights in the claims and appeals process.

IAVA is optimistic that the VA Appeals Modernization Act of 2016 (H.R. 5083) could greatly improve the appeals process and provide veterans with a number of options at both VBA and BVA. It would enable veterans to choose the most appropriate venue based on their individual circumstances. However, one critical issue must be fully addressed to make this new system successful is that the VBA and BVA must address the 440,000 current appeals that are pending. Pending appeals must be resolved for any new appeals system to be successful.

Oversight by Congress will be necessary to ensure these legacy appeals are properly handled and resolved. IAVA applauds the VA, partner VSOs and this Committee for pushing forward an attempt to modernize an appeals system that has become laden by bureaucracy and is not at all beneficial to veterans. By continuing to collaborate, it is possible to reach comprehensive appeals reform this year, and H.R. 5083 is the perfect place to start.

**Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016 (H.R. 4764)**

The demand for service dogs, trained to assist disabled veterans with daily tasks, is on the rise as veterans are seeking a more comprehensive approach to care. In IAVA’s Member Survey, nearly 20 percent of respondents indicated they are using animal-assisted therapies, which includes, but is not limited to, service dogs as part of their care regimen. IAVA members continue to rely on service dogs and find them to be an essential part of their recovery. The VA currently has a research program underway to further examine the potential benefits of psychological service dogs for veterans which was mandated by Congress in 2010. However, the research has been plagued by delays, and the new estimated completion date is some time in 2018. While IAVA is a huge proponent of research, we also recognize the need for more immediate action.

IAVA applauds former U.S. Marine Corps Corporal and Afghanistan veteran Cole Lyle, a major proponent of the PAWS Act, for his efforts to underscore this problem and the importance of finding a solution. With his service dog Kaya, who helps him overcome the struggles of PTSD, Lyle has been tirelessly walking the halls of Congress to make the case for expanding the available treatment options for post-9/11 veterans carrying the invisible burden of post-traumatic stress.

We would like to also thank Congressman DeSantis and his staff for their energy and dedication to improving the lives of veterans like Cole Lyle through legislation proposing a five-year pilot program under which the VA shall provide service dogs and veterinary health insurance to post-9/11 veterans with PTSD.

IAVA strongly supports the goals of this legislation and see it as a good first step. We encourage the VA and this Committee to work with Mr. Lyle and Congressman DeSantis toward establishing a workable pilot program that will lead to a lasting VA effort to accommodate and expand the treatment options involving service dogs.

However, IAVA is concerned by the provision included in this legislation that limits providing service dogs only to veterans who have gone through therapy and with no improvement. If the funding is available, IAVA would prefer that qualified veterans receive the service dog as complementary therapy. We also feel the program would be more beneficial if the participating veterans were required to go through a more rigorous mental health treatment plan that would incorporate evidence-based treatments with a qualified provider. This would allow the pilot to better determine the role of the service dog in assisting recovery, a question yet unanswered by research and that is extremely important to understanding the contribution of service dogs in the context of a larger treatment program.

We commend this legislation for setting a standard for organizations providing service dogs, despite our concerns the standards have been set too broad. IAVA recognizes a need for a rigorous standard for service dogs as there are a number of service dog organizations advertising their services to the military and veteran com-

munities. Some of these organizations do a fantastic job of training high quality assistance animals, but others do not. Anecdotally, we have heard from veterans their experiences receiving less than qualified dogs and the negative impact it had on their family and their health. We encourage Congress and the Obama Administration, working with experts in the mental health and service dog communities, to better define a gold standard these dogs must meet and consider a certification process that can remove some of the uncertainty.

IAVA is also concerned about the impacts of funding the measure with \$10 million from the VA's Office of Human Resources and Administration. With the enormous personnel challenges the VA currently faces, we would like to know from the VA exactly how personnel operations would be impacted with this proposed readjustment. As this is the second iteration of a funding source for the bill, any final provision must not subtract funds from existing earned critical veterans services or benefits, like the Post-9/11 GI Bill.

As this bill to improve service dog legislation moves forward IAVA would like to know from the VA how many veterans under agency care with PTSD rated at a severity level of three or four would be eligible to benefit under this bill, and how the agency is evaluating the difference between service and emotional support dogs.

Due to their widespread appeal and apparent benefit to veterans, the VA should invest in further research and outreach to clarify and expand the use of service dogs.

#### **Protecting Veterans' Educational Choice Act (H.R. 5047)**

Over one million veterans have gone to school under the Post-9/11 GI Bill. As a critical readjustment benefit, the Post-9/11 GI Bill not only helps veterans transition back home, but invests in veterans who go on to build and strengthen the US economy. Though a widely successful benefit, the Post-9/11 GI Bill has been exploited by some schools to prey on veterans while providing a subpar education with credits that cannot be transferred to other schools.

This proposed legislation would require education counseling to include information about articulation agreements, which would aim to help better educate veterans about the realities of transferring credits from one program to another. Articulation agreements are agreements between institutions that identify which credits from one specific program can be transferred to another institution.

We have heard that some schools are misrepresenting articulation agreements and leaving veterans with unusable credits and wasted GI Bill benefits. With the wealth of advertising directed towards veterans and school options available to student veterans, it is important that the VA educational counseling services provide information that will best inform veterans of the long term implications and credit transferability of certain programs. Requiring educational counseling to include articulation agreement information for schools being considered by a student veteran will aid in informed decision making by veterans looking to use their GI Bill benefits.

Defending the Post-9/11 GI Bill is a top priority for IAVA and its members, and because of this, IAVA supports the Protecting Veterans' Educational Choice Act. In addition to defending the GI Bill from cuts to this earned benefit, it is also important to defend it from fraud and abuse. Ensuring bad actors are identified and veterans are informed about the realities of the school will only strengthen the GI Bill's ability to advance the success of veterans.

#### **Authorizing the Lafayette Escadrille Memorial in Marne-la-Coquette, France (H.R. 5420)**

As we approach the centennial of America's involvement in World War I (WWI), it is important for us as a nation to honor the sacrifices of the men and women sent to Europe for the "Great War". With over 100,000 Americans killed and over 200,000 wounded, the impact of WWI should be honored and memorialized. This memorial in particular will honor a truly courageous group of Americans who were willing to support the French effort in WWI as pilots prior to the U.S. entering the war.

IAVA honors the service and sacrifice of the veterans who came before us, and therefore supports H.R. 5420. The formal recognition of this memorial comes after the passing of all American veterans of WWI, but with this memorial, we can continue to honor their memory.

This should also be a lesson in not waiting too long to provide a place for veterans and their families to honor and reflect on the service of our nation's veterans.

Only 22 percent of IAVA members who responded to our Member Survey felt that the American public understands the sacrifice of Iraq and Afghanistan veterans and their families. This number is far too low, and this perception must change. Service

members and veterans need to feel supported by the American public, and it's up to the American public to deliver on this.

More than 6,000 service members have given their lives for this country in Iraq and Afghanistan. The nation must first honor these men and women by supporting their families who are left behind. Furthermore, the time has come for our nation to honor the sacrifice of our fallen post-9/11 troops with a memorial on the National Mall. A monument will give families and veterans a place to gather and mourn, giving the nation an enduring reminder of the heroism of our military and the sacrifices made.

The new generation of veterans shouldn't wait years to see a memorial in their honor, as those who served in Vietnam and World War II were forced to do. An overwhelming 82 percent of IAVA members support the creation of a memorial and are ready to galvanize all Americans in support.

**No Veterans Crisis Line Call Should Go Unanswered Act (H.R. 5392)**

While IAVA applauds the intent of the No Veterans Crisis Line Should Go Unanswered Act, and strongly agrees no crisis call should go unanswered, we would like suggest the need to better understand existing quality control standards at the VA's crisis call centers as they currently stand. We would also like to understand how such standards are enforced and monitored before introducing potentially conflicting or duplicative quality control standards.

Since there are existing quality standards already in place for VA crisis line call centers, we believe there should be questions answered before layering additional requirements on the VA. Are these standards being enforced? Are they being met? Do these standards apply to contracted call centers, as well? Are the existing standards strict enough to ensure no veteran's call goes unanswered?

There is no question that more work is needed to ensure access to quality mental health care and suicide prevention measures at the VA and within local communities, but we must try to prevent conflicting and duplicative requirements, when possible, to prevent further confusion and bureaucratic red tape slowing down access to care.

More concerning is the decision to move the Veterans Crisis Line from under the directorship of the VA Suicide Prevention Office to VA Member Services. Since this change was made at the start of 2016, we have seen no indication of the impact of this reorganization. Our concern is that, while Member Services oversees all of the call centers at VA, the VCL is the only call center with a clinical component and we worry that removing clinical oversight will have dire consequences. While there is no question that the operational component of the VCL needs improvement, IAVA is concerned that the VA has overcorrected in this management shift. We ask Congress to investigate this matter further, and urge the VA to consider shifting management back to the Suicide Prevention Office with consultation on operations from Member Services or another appropriate entity.

In closing, IAVA would again like to thank this Committee for its leadership and continued commitment to our veterans. We reaffirm our commitment to working with Congress, VA and our VSO partners to ensure veterans have access to the highest quality care available and that our country fulfills its sacred obligation to care for those who have borne the battle.

STATEMENT ON RECEIPT OF GRANTS OR CONTRACT FUNDS

Neither Ms. Welke, nor the organization she represents, Iraq and Afghanistan Veterans of America, have received federal grant or contract funds relevant to the subject matter of this testimony during the current or past two fiscal years.

**MOAA**

CHAIRMAN MILLER, RANKING MEMBER BROWN, and Members of the Committee, the Military Officers Association of America (MOAA) is pleased to present its views on veterans' health care and benefits legislation under consideration by the Committee today, June 23, 2016.

MOAA does not receive any grants or contracts from the federal government.

**EXECUTIVE SUMMARY**

On behalf of our 390,000 members, MOAA thanks the Committee for its steadfast commitment to the health and well-being of our servicemembers, veterans and their

families, and for considering the very important provisions in this legislation related to the Department of Veterans Affairs (VA) health care and benefits programs.

MOAA is grateful for the broad range of legislation offered today and greatly appreciate the hard work and efforts of this Committee to reform and modernize VA systems to meet essential needs.

The following provides MOAA's position and recommendations on the following bills:

- H.R. 3216, Veterans Emergency Treatment Act
- H.R. 4150, VA Emergency Medical Staffing Recruitment and Retention Act
- H.R. 4764, Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016
- H.R. 5162, Vet Connect Act of 2016
- H.R. 5392, No Veterans Crisis Line Call Should Go Unanswered Act
- H.R. 5083, VA Appeals Modernization Act of 2016
- H.R. 5047, Protecting Veterans' Educational Choice Act of 2016

#### PENDING LEGISLATION

**H.R. 3216, Veterans Emergency Treatment Act.** The bill would clarify emergency care services furnished by the VA Health Administration (VHA) to include examination and treatment for emergency medical conditions, including female veterans in labor.

MOAA supports the intent of the measure to improve emergency care and services so veterans can more readily access this essential care when and where needed, whether in a VA or non-VA medical facility.

Emergency care policies and processes continue to be a great source of frustration to not only VA employees administering the program, but also to veterans who, more often than not, get stuck with medical bills because of policy ambiguity or because they do not meet eligibility requirements. MOAA is pleased to see clarifying language in the bill further defining the term 'emergency medical condition,' as well as additional safeguards to ensure immediate care and priority is given when the health of the veteran or unborn child is in serious jeopardy.

While such clarifying language is helpful and will improve veterans' access to emergency care services on the front end, the bill does not address the necessary back end or administrative barriers currently plaguing the system. MOAA also urges the Committee to require VA to establish uniform policies and procedures for simplifying and determining access, eligibility, and payment for emergency medical care and services which are transparent and simple for VA employees, veterans and their families, and non-VA providers to understand.

**H.R. 4150, Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act.** This measure seeks to allow the Secretary to modify the hours of employment of physicians and physician assistants employed on a full-time basis in VHA. As such, the Secretary of VA may require a physician or physician assistant to work more than or less than 80 hours in a biweekly pay period as long as the total hours of employment do not exceed 2,080 in a calendar year.

MOAA is pleased to support H.R. 4150 and thanks Representative Raul Ruiz (D-CA) for sponsoring the bill. Flexibility in managing this segment of the medical workforce has been a top priority for the Secretary and a central element of his MyVA plan to improve access to health care. We urge immediate passage of this critical piece of legislation.

**H.R. 4764, Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016.** VA research on Iraq and Afghanistan veterans indicates somewhere between 10% and 18% of deployed troops are likely to have PTSD once they return home. These veterans are also at risk for developing other mental health problems.

The PAWS Act would direct the VA to carry out a pilot program to provide service dogs to veterans diagnosed with severe post-traumatic stress disorder (PTSD).

Clinically there is not sufficient research to determine if dogs help in treating veterans with PTSD, though VA uses guide and service dogs through their rehabilitation and prosthetic services program.

MOAA supports the intent of the bill but recommends funding for the pilot not be offset with appropriated funds from the VA's Office of Human Resources and Administration, as currently specified in the bill. Rather, we would recommend the pilot be incorporated within existing medical programs using dogs to establish evidence-based therapies which are supported by research, and adequately funded and resourced to support such medical studies.



**H.R. 5162, Vet Connect Act of 2016.** This bill would give VA the authority to provide medical record information of veterans to non-VA providers in certain instances.

MOAA recommends passage of the bill. Such authority is an important step in further integrating VA and non-VA health systems to achieve better patient health outcomes. VA requires non-VA providers to submit medical information on care provided to veterans through VHA's Care in the Community Programs. The same requirement should apply to VA so community providers have the necessary information to effectively and safely treat the veterans they serve.

**H.R. 5392, No Veterans Crisis Line Call Should Go Unanswered Act.** MOAA strongly supports this legislation which would improve the Veterans Crisis Line by establishing quality assurance requirements to measure system performance.

The VA Office of the Inspector General (IG) initiated an investigation into the Veterans Crisis Line in 2015 after receiving complaints from callers that they were placed on hold, didn't receive immediate help, or their calls went to voicemail. The investigation revealed a significant number of staffing, telephone and technology system problems. VA has indicated all IG recommendations to fix existing problems will be implemented by September 30, 2016.

This legislation codifies many of the IG recommendations, such as: establishing a quality assurance process and back up call centers; delineating clearly defined measurable performance indicators and objectives; and establishing quantifiable timelines for meeting designated objectives.

**H.R. 5083, VA Appeals Modernization Act of 2016.** MOAA's position on this bill remains the same as noted in our Statement for the Record for a House Committee on Veterans' Affairs Hearing on May 24, 2016.

In summary:

*"MOAA agrees the current number of appeals pending a decision by VA is wholly unacceptable for veterans and thanks Representative Dina Titus (D-NV) for her leadership in this area.*

*"MOAA does not support the changes to 38 USC 5103A(d) that would severely limit VA's duty to assist, but recommends approval of the changes that would still improve the veteran experience and reduce the number of appeals - namely, the changes to 38 USC 5103A(e) regarding notices of decisions and the addition of 38 USC 5104A to make favorable factual findings binding upon VA. Additionally, MOAA encourages Congress to add a provision to allow veterans with existing appeals to opt into the new claims system."*

**H.R. 5047, Protecting Veterans' Educational Choice Act of 2016.** MOAA supports this legislation. This bill is a sensible measure ensuring veterans are fully informed prior to making educational choices. Articulation agreements contain important information about which institutions students will be able to transfer educational credits to.

A recent review of settlements reached between educational institutions and state attorneys general revealed that almost 25% of them included false or misleading statements about credit transfers.

MOAA notes that educational institutions participating in military Tuition Assistance Programs are already required to provide this information to potential students. This information should also be provided to veterans, which this bill accomplishes. It is a low-cost (and potentially no-cost) method of assisting veterans in making the best possible decisions for their futures.

MOAA thanks the Committee for considering this important legislation on behalf of our veterans and their families.

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**Military-Veterans Advocacy, Inc.**

June 28, 2016

Honorable Jeff Miller, Chairman  
House Committee on Veterans' Affairs  
336 Cannon House Office Building  
1 Washington, D.C. 20515

Re:Hearing on VA Appellate "reform" proposals

Dear Mr. Chairman:

Thank you for your inquiry of June 23, 2016. We appreciate the opportunity to provide this response.

Question 1: Can reform - be it appeals reform or any reform - be successful without accountability?

Response: Accountability is the key to any reform. For this reason, Military-Veterans Advocacy (MVA) proposed that the Committee adopt concrete provisions to ensure that the Board members at the Board of Veterans Appeals be reviewed for possible disciplinary action in the event that their controllable remand rate is excessive. To ensure quality, MVA further strongly recommends that the Board members be qualified as Administrative Law Judges. The discovery provisions recommended by MVA will also ensure accountability by providing the veteran's advocate essential information to formulate a coherent record which can be used on appeal. MVA contends that the proposed HR 5083 will actually reduce accountability.

Limitations to the duty to assist and the premature requirement that the veteran include a request for hearing at the notice of disagreement stage will provide the VA an opportunity to "steam roll" the veteran with little opportunity for redress.

Question 2: If H.R. 5083 advances as drafted, would your organization support or oppose

Response: MVA would use our significant social networking apparatus, e-mail and telephone networks, press releases and media appearances to vigorously oppose HR 5083 as written. This opposition would become one of our organization's highest priorities and MVA would also conduct office visits with Members of Congress or their staffs to share our position.

Thank you again for the opportunity to respond.  
Sincerely,  
John B. Wells  
Commander USN (Retired)

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## NOVA

### Executive Summary

In response to VA's 2017 budget proposal, the National Organization of Veterans' Advocates, Inc. (NOVA) has participated in ongoing discussions with VA officials and stakeholders to consider ways to reform the appeals process. VA has put forth a legislative proposal intended to improve a process that currently has over 455,000 pending appeals and thousands of claimants waiting for a hearing. While NOVA supports certain features of the proposal, there are features that need additional scrutiny and revision.

Specifically, NOVA endorses statutorily-mandated notice provisions, extension of effective date relief after a final Board of Veterans' Appeals (BVA) decision, elimination of redundant procedural steps, use of binding favorable findings, and allowing veterans the choice to retain an attorney after an adverse rating decision.

To maintain the veteran-friendly system contemplated by Congress, however, additional revisions are needed. NOVA proposes specific ideas and language within to address the following concerns:

(1)VA's proposal unfairly limits effective date relief after judicial review as well as the veteran's ability to submit a supplemental claim while a case is pending before the United States Court of Appeals for Veterans Claims.

(2)Proper docket management is essential to ensure veterans receive equal treatment.

(3)Veterans with pending appeals must not be denied a fair resolution.

(4)Section 7105 unnecessarily burdens veterans with restrictive language.

(5)The veteran should have the ability to submit evidence until BVA issues a decision.

(6)The "new and relevant" standard merely replaces "relevant" for "material" and does not reduce the adjudication burden on VA.

(7)The de novo standard for BVA review should be clarified.

In addition to these concerns, NOVA notes the proposal fails to consider reform to the critical process of obtaining an adequate examination and opinion, which is a major cause of remands and readjudications. Without substantive reform to this process, it is unlikely procedural reform alone can solve systemic problems.

Chairman Miller, Ranking Member Brown, and members of the Committee, the National Organization of Veterans' Advocates (NOVA) would like to thank you for the opportunity to offer our views on current legislation pending before the committee at today's hearing. Our statement will focus on H.R. 5083, the VA Appeals Modernization Act of 2016.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents more than 500 attorneys and agents assisting tens of thousands of our nation's military veterans, their widows, and their families seeking to obtain their earned benefits from VA, and works to develop and encourage high standards of service and representation for all persons seeking VA benefits. NOVA members represent veterans before all levels of the VA's disability claims process. In 2000, the United States Court of Appeals for Veterans Claims recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award. NOVA operates a full-time office in Washington, DC.

### **Background**

VA currently reports there are over 455,000 appeals in the entire system, and estimates the number of appeals will rise to two million over the next decade without reform. In addition, there are more than 60,000 pending hearing requests. Since BVA currently only has the capacity to hold approximately 11,000 hearings per year, a veteran can wait several years to have a hearing.

To address this problem, VA proposed a "simplified appeals process" in its 2017 budget for BVA. The process proposed by VA included several concepts contrary to the veteran-friendly system created by Congress, such as closing the record and denying veterans the due process right to be heard before BVA. Department of Veterans Affairs, Congressional Submission, FY 2017, Vol. III at BVA 280-83 (February 9, 2017). VA presented this proposal as a "straw man" designed to draw stakeholders into discussions on reforming the appeals process.

As a result, numerous organizations, including NOVA, participated in a three-day summit with VA officials and continue to participate in ongoing meetings to discuss appeals reform. Deputy Secretary Sloan Gibson charged the group with developing an appeals process that is timely, fair, easy to understand, transparent, and preserves veterans' rights.

One issue raised by NOVA and other stakeholders is the need for all accredited representatives to have complete access to clients' electronic files. This issue has been a NOVA priority since the advent of the Veterans Benefits Management System (VBMS). On April 13, 2016, VA issued a memorandum instructing regional office personnel to process attorneys and agents for the background checks required for access. While we appreciate VA's response and look forward to implementation, NOVA maintains full access must be achieved for any reform to be successful and VA must commit to ongoing improvements to existing electronic systems that are critical to meaningful representation.

NOVA appreciates the opportunity to have a seat at this table and participate in the dialogue. However, as set forth in more detail below, while NOVA supports the concept of improving the appeals process for veterans and endorses several features of H.R. 5083, there remains areas of serious concern that require additional congressional scrutiny.

### **Legislative Provisions NOVA Supports**

#### **Requirements for detailed notice of the decision are included in the statute.**

The declining quality of VA rating decisions and notice has been cited by stakeholders numerous times over the years as the primary problem in the claims process. Efforts by VA to improve notice have been unsuccessful. The participants in VA's appeals summit agreed that detailed notice of the rating decision is critical to making an informed decision regarding further review. Proper notice allows a veteran to understand the reasons for the underlying rating decision and enables an advocate to provide a veteran with the best possible advice on the evidence needed to prove a claim.

The proposed language to amend 38 U.S.C. § 5104 is an important first step in reform, but only if properly implemented by VA. VA's proposed process hinges heavily on a change VA has always had the authority to make, but has been unsuccessful to date in doing so. VA will need to commit to extensive training of its regional office employees to provide adequate notice and well-written decisions. Without it, the new process could result in another backlog at the local level.

**Effective date protection is extended to BVA decisions.**

H.R. 5083 removes many procedural and due process protections for veterans. To a degree, the removal of these protections is offset by the primary benefit conferred to veterans: the ability to preserve the effective date of a claim denied in a BVA decision by filing a “supplemental claim” within a year of that denial (with no limit to the number of times the veteran can avail himself of this option).

The legislation calls for the same process following a rating decision, but it does not meaningfully expand a veteran’s rights beyond what is already permitted under 38 C.F.R. § 3.156(b). NOVA supports this regulatory provision being included in the statute. Furthermore, NOVA recommends the provisions of 38 C.F.R. § 3.156(c) also be codified in the statute as an important protection for the effective dates of claims for veterans who find additional service records after an original claim.

Allowing a veteran to file a supplemental claim following a BVA denial is a positive development, and we believe it must remain part of any reform package considered. It is not without a downside however. As mentioned below, without expansion to denials by the United States Court of Appeals for Veterans Claims, this proposal as written would likely dilute the court’s oversight function.

**H.R. 5083 eliminates redundant procedural steps.**

NOVA has historically supported the amendment of 38 U.S.C. § 7105 to eliminate the redundant requirements of a statement of the case (SOC) and substantive appeal. See, e.g., *Veterans’ Dilemma: Navigating the Appeals System for Veterans Claims: Hearing Before the Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans’ Affairs, 114th Cong., 1st Sess. 37, 112 (2015)*(statement of Kenneth M. Carpenter, Esq., Founding Member, National Organization of Veterans’ Advocates). NOVA maintains that, as a result of judicial review, the need for an SOC and affirming substantive appeal no longer exists.

As the number of claims has risen, in turn resulting in more appeals, these procedures have become the source of growing delays. For example, VA reported in 2015 an average of 405 days passed between filing of the notice of disagreement (NOD) and VA’s issuance of the SOC. Furthermore, the average days from the time of the substantive appeal to BVA certification was 630 days. Department of Veterans Affairs (VA) Appeals Data Requested by House Committee on Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs (January 2015). NOVA maintains that any minimal value in these procedural steps is far outweighed by the delays, which serve to age the evidence in the veteran’s file and drive the need for additional development through remand.

Under VA’s proposal, once the veteran determines he or she wishes to appeal to BVA, the NOD will serve as the only requirement to initiate an appeal. Furthermore, the notice elements statutorily required in this provision, if executed properly, improve upon the current notice and SOC. Elimination of post-NOD procedure will not only allow the veteran to get an appeal to BVA faster, it should free up VA personnel to decide and rate claims faster at the agency of original jurisdiction.

**A veteran is assured favorable findings made by VA will continue throughout the life of a claim/appeal.**

Newly created section 5104A mandates that any favorable findings made on behalf of a veteran are binding on all subsequent adjudicators within VA, absent clear and convincing evidence to the contrary. This provision not only protects a veteran during the adjudication process, it saves VA time because there will be no need to reconsider resolved elements of a claim in subsequent decisions.

**A veteran retains the right to engage an attorney.**

Under existing 38 U.S.C. § 5904, a veteran may enter into a fee agreement with an attorney or agent at the time the NOD is filed. H.R. 5083 proposes to change that language to allow a veteran to exercise this right at the time the initial rating decision is issued. Since VA is now providing more than one adjudicatory choice to a veteran after the initial decision, it makes sense that a veteran should have the freedom and personal choice to engage an attorney at that time to obtain counsel on the best option to choose.

### Legislative Provisions of Concern to NOVA

#### H.R. 5083 limits effective date relief after judicial review.

It is inconsistent to limit effective date relief solely to decisions of the agency of original jurisdiction and BVA. Specifically, under H.R. 5083, a veteran who is dissatisfied with any rating decision has one year to seek higher level review, submit new evidence in the form of a supplemental claim, or file an appeal to BVA, while preserving the effective date of the first claim. The proposal also allows for the same one-year period after a BVA decision to submit new evidence in the form of a supplemental claim. However, there is no such allowance for the same one-year period after a final decision of the United States Court of Appeals for Veterans Claims.

NOVA believes this limitation will result in far fewer veterans exercising their hard-fought right of judicial review, because it is rare that a conscientious advocate would risk the loss of an effective date by appealing to the court when the effective date could be preserved with the submission of “new and relevant” evidence.

NOVA therefore recommends section (a)(2)(E) be added to 38 U.S.C. § 5110: “(E) a supplemental claim under section 5108 of this title within one year of any final decision issued by the United States Court of Appeals for Veterans Claims.”

Furthermore, VA has taken the position during its appeals summit meetings that a veteran could not simultaneously seek review of a BVA denial before the United States Court of Appeals for Veterans Claims and exercise his or her right to submit new evidence before VA within a year of that decision to preserve the original effective date. Under the current appeals structure, a veteran may seek judicial review and file a reopened claim as contemplated under the current version of section 5108.

By foreclosing the opportunity to pursue both avenues of relief, VA is forcing a veteran to choose between seeking review of legal error in BVA’s decision or filing a supplemental claim in the hope of preserving the original effective date. Such a result is not only contrary to the veteran-friendly scheme designed by Congress, it potentially prevents the court from correcting prejudicial legal errors, e.g., statutory violations or misinterpretations of law.

To remedy this situation, Congress should add the following language to 38 U.S.C. § 5108:

After a decision of the Board of Veterans’ Appeals that disallows a claim, nothing in this title shall be construed to limit the right to pursue at the same time both (i) an appeal of such Board decision to the United States Court of Appeals for Veterans Claims under chapter 72 of this title and (ii) a supplemental claim under this section seeking readjudication of the claim disallowed by such Board decision.

Furthermore, under 38 U.S.C. § 5110, subsection (a)(3) should be redesignated as subsection (a)(4) and the following subsection (a)(3) be added:

(3) For purposes of subsection (a)(2), a claim is continuously pursued by filing a supplemental claim under section 5108 of this title within one year of a decision of the Board of Veterans’ Appeals without regard to either (i) the filing under chapter 72 of this title of a notice of appeal of such Board decision or (ii) the final decision of the Court of Appeals for Veterans Claims under chapter 72 of this title.

#### Proper docket management is essential to ensure veterans receive equal treatment.

H.R. 5083 creates one docket at BVA for cases in which a veteran requests a hearing or submits evidence following an NOD and another docket for cases in which nothing is added to the record after the NOD. We disagree with the creation of two dockets, as there is simply no good reason to treat these cases differently. We have seen from VA’s past treatment of claims not defined as part of “the backlog” that, whatever VA’s current intent may be, if a law creates an incentive for one kind of case to be adjudicated over another type of case, that is what will occur. Veterans who request a hearing or submit evidence should not be punished with a longer wait. We therefore recommend that there be only one docket at BVA, and that all cases before BVA be worked in docket order.

At the very least, if two dockets are created, a formula needs to be developed for docket management and included in section 7107. A formula is necessary to ensure every case is in a measurable “lane,” so data can be collected and accountability achieved. VA should be required to provide stated goals for timely adjudication of both dockets as well as a formula. In the alternative, there should be language to require VA to create such a formula within a reasonable period after enactment to ensure dockets are maintained fairly.

Furthermore, if two dockets are created, VA should allow a veteran who chooses to submit “evidence only” to join the “non-hearing” docket. Given that this evidence will not trigger any duty to assist obligation for BVA, there is no reason BVA cannot consider these appeals in the “non-hearing” lane. Under this scenario, NOVA recommends 38 U.S.C. § 7107(a) be amended to read as follows:

(a) DOCKETS - IN GENERAL. - The Board shall maintain two separate dockets. A non-hearing docket shall be maintained for cases in which (1) no Board hearing is requested and no evidence is submitted or (2) no Board hearing is requested and evidence is submitted. A separate and distinct hearing option docket shall be maintained for cases in which a Board hearing is requested. Except as provided in subsection (b), each case before the Board will be decided in regular order according to its respective place on the Board’s non-hearing docket or hearing docket.

**H.R. 5083 does not contain a plan for how “legacy appeals” will be fairly handled.**

Although stakeholders and VA flagged the issue of how the pending inventory will be addressed if extensive appeals reform is passed as an area of concern needing resolution, this issue has not been adequately considered to date. Given that the 455,000 pending appeals are in various stages of the appeals process and greatly affect the resources required by VA, this issue must be resolved. Veterans who have already been waiting for many years must not be denied a fair resolution to their pending appeals while newer appeals are being handled faster in a simplified system. Docket management will be critical to resolution of legacy appeals.

There may be logical points where a veteran with a legacy appeal may wish to choose to enter the new system. For example, veterans who have recently filed an NOD and receive an SOC (which is essentially a new decision) may conclude it makes more sense to voluntarily shift to the new system by submitting a supplemental claim in the “middle lane” at the regional office. However, it is critical that any decisions regarding a shift from the old system to a new system be by choice, and veterans not be forced into the new system for VA’s convenience.

In addition, it is critical VA receive the appropriate level of resources, both at VBA and BVA, to simultaneously resolve legacy appeals and implement a new system.

**Section 7105 as rewritten unnecessarily burdens veterans.**

NOVA maintains section 7105 as rewritten is too restrictive. The United States Court of Appeals for the Federal Circuit recently upheld VA’s standard forms regulations, to include 38 C.F.R. § 20.201. Veterans Justice Group, LLC, et al. v. Secretary of Veterans Affairs, No. 2015–7021 (April 7, 2016). Under 38 C.F.R. § 20.201(a)(4), a veteran is required to specify those determinations with which he disagrees or “clearly indicate” his intent to appeal all issues.

By contrast, newly drafted section 7105(b)(2) requires the claimant to set forth “specific allegations of error of fact or law.” This standard places a higher burden on the claimant as a predicate for a valid NOD. While NOVA understands VA intends for the NOD to be the sole vehicle to initiate an appeal, requiring veterans to provide “specific allegations of error of fact or law” is not veteran-friendly and is particularly detrimental to pro se veterans. Because the current standard NOD form does not require the level of specificity contained in this provision, NOVA recommends the veteran only be required to specify the determinations with which he disagrees in the NOD.

NOVA also recommends that section 7105(b)(3) be amended to allow a veteran to decide to submit evidence or request a BVA hearing up until the date a decision is actually issued by BVA. Section 7105(d) should either be stricken in its entirety or revised to read as follows: “The Board of Veterans’ Appeals will not deny any appeal which fails to allege error of fact or law in the decision being appealed without providing the claimant with notice and an opportunity to cure the defect.”

**The veteran should have the ability to submit evidence until BVA issues a decision.**

Section 7113(b)(2)(A)(ii) as written provides for evidence to be submitted at BVA “within 90 days following receipt of the notice of disagreement.” This provision is too restrictive; if the case is waiting to be reviewed by BVA, it is more veteran-friendly (and does not unduly burden BVA) for that period to be open until the decision is made. Therefore, NOVA recommends 38 U.S.C. § 7113(b)(2)(A)(ii) be amended to read as follows: “Evidence submitted by the appellant and his or her rep-

representative, if any, within 90 days following receipt of the notice of disagreement or until the Board issues a decision.”

**VA should only require “new” evidence for supplemental claims.**

During the course of the appeals summit meetings, there was general agreement that the standard of “new and material” should be eliminated. VA has inserted the term “relevant” to replace “material.”

Although VA officials have repeatedly stated that the “relevant” evidence standard would be much easier to meet than the “material” standard, NOVA maintains merely trading “relevant” for “material” will not significantly reduce the adjudication burden on VA. Removing “relevant” allows VA to adjudicate the merits every time and eliminates the need to make a threshold determination. Therefore, NOVA recommends the words “and relevant” be deleted from 38 U.S.C. § 5108 and the definition of “relevant” found at 38 U.S.C. § 101(35) be stricken.

**It needs to be clear BVA’s review is de novo.**

While BVA views itself as an appellate body, its function has always been to provide de novo review of the agency of original jurisdiction’s decisions. It must continue to conduct de novo review, find facts, apply relevant law, and issue new decisions. Therefore, NOVA recommends the term “de novo” be added to sections 5103B(c)(2), 7105(a), and 7105(b)(2) of title 38 to clarify this point.

**Additional Concerns**

**The current proposal ignores fundamental flaws in the system.**

The proposed framework deals largely with the process of filing claims and appealing adverse decisions. Successful execution of VA’s proposed process hinges on its ability to consistently meet its goals of adjudicating and issuing decisions in the 125-day window identified in its “middle lane” and deciding appeals within the one-year period before BVA. As demonstrated with the prior backlog of original claims and scheduling of medical appointments, VA often struggles to meet its own internal goals to the detriment of veterans.

Furthermore, while focusing solely on process, the proposal is devoid of reform to the foundational underpinning of the claims adjudication and appeals process, i.e., the need for an adequate medical examination and opinion. At the January 2013 hearing addressing the appeals process, BVA acknowledged the problem: “The adequacy of medical examinations and opinions, such as those with incomplete findings or supporting rationale for an opinion, has remained one of the most frequent reasons for remand.” *Why Are Veterans Waiting Years on Appeal?: A Review of the Post-Decision Process for Appealed Veterans’ Disability Benefits Claims: Hearing Before the Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans’ Affairs, 113th Congress, 1st Sess. 23 (2013)* (prepared statement of Laura H. Eskenaki, Executive in Charge, Board of Veterans’ Appeals). Two years later, the Subcommittee on Disability Assistance and Memorial Affairs requested appeals data from VA, to include the top five remand reasons for the six fiscal years between 2009–2014. While not particularly detailed, in five of the six years, “nexus opinion” was listed as a top five reason. Department of Veterans Affairs (VA) Appeals Data Requested by House Committee on Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs (January 2015). Other consistently reported reasons included “incomplete/inadequate findings,” “current findings (medical examination/opinion),” and “no VA examination conducted.” *Id.*

While VA often cites the veteran’s submission of evidence as triggering the need for additional development, the reality is VA has consistently demonstrated difficulty fulfilling its fundamental obligation to provide veterans with adequate medical examinations and opinions in the first instance. Without substantive reform to this process, to include consideration of a greater role for private and treating physician evidence, it is unlikely procedural reform alone can solve systemic problems.

**Conclusion**

NOVA shares VA’s concern that veterans wait too long for a final and fair decision on appeal. NOVA welcomes the opportunity to work with VA and this Committee to ensure a fair and comprehensive reform of the system. NOVA further recommends adoption of the revisions outlined in our testimony. Thank you for allowing us to present our views on this legislation.

*For more information:*

NOVA staff would be happy to assist you with any further inquiries you may have regarding our views on this important legislation. 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.

## NATIONAL VETERANS LEGAL SERVICES PROGRAM

### EXECUTIVE SUMMARY

The VA Appeals Modernization Act of 2016, H.R. 5083, provides a far-reaching restructuring of the VA administrative appeals process. It contains many positive features that are likely to decrease appeal times while providing claimants with various options for pursuing their appeals. As with any substantial change to a complex system, there will clearly be effects that we cannot now predict. But given that the current appeals process is not functioning well, we have ultimately concluded that the proposed legislation - even without being able to predict all of its effects - is a necessary step, with two important caveats.

First, an amendment to the proposed legislation is needed to avoid the litigation and disruption of the appeals process that will be generated by the way VA officials are interpreting the proposed legislation. According to VA officials, including Secretary McDonald, after a Board of Veterans' Appeals decision disallowing a claim, the veteran would be required under the proposed legislation to make a choice between (i) appealing to the Court of Appeals for Veterans Claims and (ii) filing a supplemental claim with the regional office, in order to preserve the date of filing the initial claim as the potential effective date. Before this legislation is passed, Congress should amend the proposal to prevent VA's interpretation, since the choice VA wishes to impose on veterans is contrary to the interests of justice and the pro-claimant process that Congress long ago created.

Second, amendments are necessary to provide (a) an effective date for the streamlined appeals process set forth in H.R. 5083 and (b) guidelines for how VA will integrate the new appeals process contained in the bill with the inventory of more than 450,000 currently pending VA appeals. We urge Congress to appropriate a significant amount of additional money on a temporary basis for VA to use exclusively to tackle the backlog of currently pending appeals. We also recommend that before further action is taken on this bill, the VA should propose—and veterans organizations and other stakeholders be given an opportunity to comment on—both VA's proposed effective date for H.R. 5083 and provisions containing the formula VA will use to allocate its adjudication resources (i) between appeals on the hearing docket and appeals on the non-hearing docket created by H.R. 5083 and (ii) between appeals that are pending on the proposed effective date and appeals docketed after that effective date.

Mr. Chairman and Members of the Committee:

Thank you for inviting both of our organizations to submit written testimony concerning H.R. 5083, the VA Appeals Modernization Act of 2016, an important legislative effort to reform the veterans claims and appeals process in the United States Department of Veterans Affairs (VA).

The National Veterans Legal Services Program (NVLSP) is a nonprofit veterans service organization founded in 1980 that has been providing free legal representation to veterans and assisting advocates for veterans for the last 36 years. NVLSP has represented veterans and their survivors at no cost on claims for veterans benefits before the VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other federal courts. As a result of NVLSP's representation, the VA has paid more than \$4.6 billion in retroactive disability compensation to hundreds of thousands of veterans and their survivors.

NVLSP publishes numerous advocacy materials, recruits and trains volunteer attorneys, trains service officers from such veterans service organizations as The American Legion, the Military Order of the Purple Heart and the Military Officers Association of America in veterans benefits law, and conducts local outreach and quality reviews of the VA regional offices on behalf of The American Legion. NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, which has, since 1992, recruited and trained volunteer lawyers to represent veterans who have appealed a Board of Veterans' Appeals decision to the CAVC without a representative. In addition to its activities with the Pro Bono Program, NVLSP has trained thousands of veterans service officers and lawyers in veterans benefits law, and has written educational publications that thousands of



veterans advocates regularly use as practice tools to assist them in their representation of VA claimants.

Stetson University is a private liberal arts education located in Florida. As part of its College of Law, Stetson University established the Veterans Law Institute (VLI) in 2012. The VLI is committed to serving the needs of veterans in Florida and across the nation. It does so through various means including engaging in public policy debates, arranging for pro bono legal services for veterans, and operating a clinic in which Stetson Law students represent veterans concerning claims for benefits before the Department of Veterans Affairs and the federal courts. Professor Allen is a member of the faculty at the College of Law and also serves as the College of Law's Associate Dean for Academic Affairs. He is the Director of the VLI and speaks and writes frequently about veterans' benefits matters.

### **H.R. 5083**

Over the last several months, NVLSP has participated with a workgroup of veterans service organizations convened by the VA to find common ground on a set of reforms to address the serious dysfunctions that exist in the current VA appeals process. The text of H.R. 5083 is the same as the text of the draft bill that VA has developed during this discussion.

We believe H.R. 5083 is a welcome attempt to address the serious problems veterans and their dependents face in processing appeals in the VA. We are generally favorable to the bill, with several important caveats discussed below. To be clear, we believe the problems we have identified below can be addressed now. If they are, we support this bill as an innovative means of addressing the systemic delays claimants face in the dealing with their VA appeals.

Before we address the merits of the H.R. 5083 in more detail, we begin with a general point that is important to remember. The proposed structuring of the administrative appeals process envisioned under the bill is far-reaching. As with any change to a complex system, there will clearly be effects that we cannot now predict. We have considered this reality quite seriously. If the system were functioning generally well, a concern with unintended consequences might be sufficient to oppose such a comprehensive change in the system. But we are not dealing with a well-functioning system. Given that state of affairs, we have ultimately concluded that the proposed legislation - even without being able to predict all of its effects - is a necessary step. We support it with the changes we discuss below.

#### **I. POSITIVE FEATURES OF THE PROPOSED LEGISLATION**

We briefly highlight the significant positive features of the changes envisioned under H.R. 5083. Taken together, we believe these features of H.R. 5083 will decrease appeal times while providing claimants with various options for pursuing their appeals. The most significant positive features in the proposed legislation are:

- H.R. 5083 provides for enhanced “notice letters” to veterans and other claimants concerning the denial of their claims. Enhanced notice is critically important to veterans as they make determinations about how to proceed when they are dissatisfied with a VA decision.
- H.R. 5083 also eliminates the requirements under current law concerning the preparation of a Statement of the Case (SOC), the veteran’s corresponding need to complete an additional step to perfect an appeal to the Board (i.e., VA Form 9) and VA’s subsequent need to certify the appeal by completing VA Form 8. While there may have been a time at which the SOC served a useful function in this system, the enhanced “notice letters” required by the proposal eliminate the need for an SOC. Thus, the SOC process serves only to delay the processing of claims.
- H.R. 5083 lowers the standard necessary for re-opening a claim under Section 5108. The current standard of “new and material evidence” is replaced with “new and relevant evidence.” While we address below two concerns - one involving supplemental claims and one involving the wording of the new lower standard—the lowering of the standard is critically important. In addition, and as we discuss in more detail below, the revised Section 5108 will allow veterans to obtain earlier effective dates in many circumstances than they would be able to do under the current version of this provision.
- H.R. 5083 allows veterans a meaningful choice when they appeal to the Board of Veterans’ Appeals (Board). A veteran may elect to forgo the submission of new evidence and a hearing in cases in which he or she determines such an approach is best. This would provide for more expeditious treatment of such appeals. On the other hand, a veteran can elect to proceed on a track in which

the submission of new evidence and a hearing is allowed. This dual-track approach recognizes the reality that not all appeals are alike.

- H.R. 5083 allows a claimant to seek the assistance of a lawyer for pay after an initial denial but before the filing of a Notice of Disagreement (NOD). This is a change from current law in which a lawyer may not charge a fee before the filing of an NOD. While seemingly a small change, we believe this is significant because the structure of the proposed new system provides claimants with myriad ways in which to proceed. Advice to such claimants will be critical and the proposed change allows more options for that advice.
- We believe H.R. 5083 also reduces the means by which the VA can “develop to deny.” NVLSP has reviewed many regional office and BVA cases in which the existing record before the VA supports the award of benefits, but instead of deciding the claim based on the existing record, VA has delayed making a decision on the claim by taking steps to develop additional evidence for the apparent purpose of denying the claim. Certain aspects of the current proposal - for example, the restriction on the application of the duty to assist at the Board - will likely reduce such actions.

**II. PROBLEM ONE: The Need to Clarify the Right to Both Appeal to the CAVC and File a Supplemental Claim Simultaneously to Protect the Claimant’s Effective Date**

NVLSP’s support of the critically important positive changes to the administrative appeals process contained in H.R. 5083 comes with several critical caveats. The first caveat is contained in this part of our testimony.

Currently, after a Board decision that disallows a claim, the claimant may file both (i) an appeal with the Court of Appeals for Veterans Claims (CAVC) under Chapter 72 and (ii) a claim with the Agency of Original Jurisdiction (AOJ) under Section 5108 to “reopen the claim” disallowed by the Board “and review the former disposition of the claim,” when the claimant submits “new and material evidence.” In other words, the claimant does not have to choose between appealing to the CAVC and filing a claim with the AOJ to reopen under Section 5108. The claimant may freely take both actions.

H.R. 5083 renames a Section 5108 claim as a “supplemental claim” and lowers the threshold requirement to obtain readjudication of the previously disallowed claim by substituting the language “new and relevant evidence” for “new and material evidence.” In addition, no language in H.R. 5083 indicates an intent to change existing law allowing a claimant, after a Board decision that disallows the claim, to file simultaneously both a timely appeal with the CAVC and a Section 5108 claim with the AOJ.

Nonetheless, VA officials have repeatedly represented to the veterans service organizations that if H.R. 5083 is enacted as currently worded, the options available to a claimant will change. According to these VA officials, including Secretary McDonald, after a Board decision disallowing a claim, the claimant would now be required by law to make a choice between appealing to the CAVC and filing a supplemental claim with the RO in order to preserve the date of filing the initial claim as the potential effective date if the claim disallowed by the Board is ultimately granted. As background, after a Board decision disallowing a claim, the claimant may file under the proposed bill a Section 5108 supplemental claim within one year of the Board decision disallowing the claim. If that supplemental claim were ultimately granted, the proposed bill’s amendment to Section 5110 would enable the claimant to be assigned the date of filing the initial claim, rather than the date of filing the supplemental claim, as the effective date of the award, as long as the other Section 5110 criterion for assignment of that early effective date is satisfied.

We strongly support this part of H.R. 5083. Nonetheless, VA officials have repeatedly represented that under H.R. 5083, if a claimant, after a Board decision disallowing a claim, were to file a timely appeal of the Board decision with the CAVC and lose on appeal, the claimant would incur the following penalty: the claimant could not lawfully be assigned the date of filing the initial claim as the effective date even if the claimant filed a Section 5108 supplemental claim within one year of the Board decision and the VA granted the supplemental claim.

If H.R. 5083 is enacted without a change in language to clarify this matter, and VA continues to insist that a claimant must choose between an appeal to the CAVC and a supplemental claim under Section 5108 in order to preserve the date of filing the initial claim as the potential effective date, this matter will inevitably have to be resolved by the federal courts. Final judicial resolution would likely take years. To be clear, we believe the VA’s currently articulated approach is not consistent with H.R. 5083. But we also realize that it is difficult to predict how courts will resolve legal disputes. No matter how this legal dispute is ultimately resolved, during

the years this litigation is pending in court, there would likely be a significant disruption to the VA claims adjudication process and further delays experienced by VA claimants.

Congress should clarify this matter before passing H.R. 5083 to avoid litigation and a disruption to the claims adjudication process. We suggest adding the following clarifying language. First, add the following to the end of line 25 on page 6 of amended Section 5108:

After a decision of the Board of Veterans' Appeals that disallows a claim, nothing in this title shall be construed to limit the right to pursue at the same time both (i) an appeal of such Board decision to the United States Court of Appeals for Veterans Claims under chapter 72 of this title, and (ii) a supplemental claim under this section seeking readjudication of the claim disallowed by such Board decision.

Second, on line 19 of page 8, redesignate subsection (a)(3) as subsection (a)(4) and add a new subsection (a)(3) containing the following language:

(3) For purposes of subsection (a)(2), a claim is continuously pursued by filing a supplemental claim under section 5108 of this title within one year of a decision of the Board of Veterans' Appeals without regard to either (i) the filing under chapter 72 of this title of a notice of appeal of such Board decision or (ii) the final decision of the Court of Appeals for Veterans Claims under chapter 72 of this title.

It is contrary to the interests of justice and the pro-claimant process that Congress has created to require claimants to make a choice between filing an appeal with the CAVC and filing a supplemental claim with the RO within one year of the Board decision in order to preserve the date of filing the initial claim as the potential effective date. Each of these two options serves an entirely different purpose. Claimants appeal to the CAVC to correct a prejudicial legal error that they believe the Board made in disallowing the claim, such as a misinterpretation of the law or a violation of the statutory duty to assist by failing to provide the claimant with an adequate medical examination or medical opinion. Claimants file a Section 5108 claim for an entirely different reason. They file a Section 5108 claim in an effort to add positive evidence to the record so that the weight of the positive evidence is equal to or greater than the weight of the negative evidence of record, in an attempt to convince VA that the claim should be granted even under VA's existing view of its legal requirements.

What VA seeks is to force veterans whose claims are disallowed by the Board to make an unfair choice between two options. According to VA's interpretation of H.R. 5083, each choice alone has a potentially fatal consequence. If the veteran chooses the option of appealing to the CAVC, the veteran cannot add evidence to the record and is essentially limited to arguing that the Court should vacate and remand the Board's decision due to legal error. A fatal consequence occurs if the Court upholds the Board's interpretation of law (as it does in approximately 30% of all appeals). The veteran's right to the date of filing of the initial claim as the potential effective date is lost forever. While the veteran may be able to file a Section 5108 supplemental claim with new and relevant evidence despite the Court defeat, VA's position is that success on that supplemental claim cannot validly lead to an award of benefits retroactive to the date of filing the initial claim that was disallowed by the Board.

On the other hand, if the veteran gives up the right to appeal to the CAVC to challenge the Board's interpretation of the law by choosing the other option—filing a Section 5108 supplemental claim within a year of the Board decision—the veteran enjoys the benefit of being able to add new positive evidence to the record. But the VA's view of what the law requires will most likely be the same as the Board's view of the law when it disallowed the initial claim. Thus, the veteran must shoulder the burden of attempting to convince VA that it should award benefits under an unfavorable view of the law with which the veteran disagrees. Thus, the chance of success is obviously lower than it would be if VA was required to adjudicate the supplemental claim under the veteran's more favorable view of what the law requires.

To be clear then, under the VA's proposed approach, a veteran would need to decide between preserving his or her effective date by filing a supplemental claim or potentially correcting a legal error in the Board's decision through the judicial process. A veteran should not be put in such a position. The interests of justice and maintenance of the pro-veteran claims process that Congress has nurtured for decades should lead Congress to clarify H.R. 5083 by adding language that makes it plain that after a Board decision disallowing a claim, the veteran has the right to protect the date of filing the initial claim as the effective date by both filing an appeal with the CAVC to correct a prejudicial legal error made by the Board and filing a Section 5108 supplemental claim in an effort to convince VA that the newly added evidence shifts the weight of the evidence so that VA awards benefits even under its unfavorable view of its legal requirements.

### **III. PROBLEM TWO: H.R. 5083 Needs to be Amended to Provide An Effective Date and for Handling the Inventory of Pending Appeals**

H.R. 5083 lacks an effective date. In addition, it does not address how VA should integrate the streamlined appeals process contained in the draft bill with the inventory of more than 450,000 currently pending VA appeals. H.R. 5083 needs to be amended to address both of these issues.

During the ongoing discussions between the VA and the veterans service organizations and other stakeholders regarding the reforms contained in H.R. 5083, the VA recently staked out a position on both of these two important issues. Under the VA's proposal, it appears that the VA would ultimately issue decisions on many new appeals filed after the effective date of the draft bill before it issues decisions on many of the 450,000 currently pending appeals. Indeed, it appears to us that under VA's recent proposal, many of the currently pending appeals would be decided by VA years after many new appeals are decided by the VA. NVLSP and the VLI object to such an unfair system.

We have three suggestions regarding the effective date and the need to address the existing inventory of pending appeals. First, we urge Congress to appropriate a significant amount of additional money on a temporary basis for VA to use exclusively to tackle the backlog of currently pending appeals.

Second, the VA should propose in advance both an effective date for H.R. 5083 and provisions that address the following two issues regarding VA allocation of its resources under H.R. 5083:

(1) The formula that VA will use to allocate its resources between adjudicating appeals on the non-hearing option Board docket versus adjudicating appeals on the hearing option Board docket under H.R. 5083's amendment to Section 7107 of Title 38. It is important to address this issue to ensure that BVA decisions on hearing docket cases are not unduly delayed in comparison to cases on the non-hearing option docket due to over allocation of BVA resources to deciding appeals on the non-hearing docket. Transparency in this matter is very important.

(2) Before H.R. 5083 is passed, it should be amended to provide the formula VA will use to allocate its resources between adjudicating appeals pending at the VA prior to the proposed effective date of the draft bill and appeals docketed after that effective date. It is important to address this issue to prevent the unfairness to veterans with appeals already pending when the bill goes into effect. It would be fundamentally unfair if these appellants have to wait many years longer to receive a BVA decision than do veterans who file appeals after the draft bill goes into effect because the VA assigned most of its resources to deciding appeals filed after the draft bill goes into effect.

Third, after VA submits its proposal on these matters, veterans service organizations and other stakeholders should be given an opportunity to provide Congress with their views on the VA proposal.

### **Conclusion**

Thank you for this opportunity to present our views, and we would be pleased to respond to any questions that Members of the Committee may have.

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**PAWS****Statement of Cole T. Lyle before the House Committee on Veterans Affairs**

Chairman Miller, Ranking Member Brown, distinguished Representatives of the committee, thank you all for the opportunity to submit testimony. I request that my statement be accepted for the record.

“To care for him who shall have borne the battle and for his widow, and his orphan”. One-hundred forty-one years ago during his 2nd inaugural address, President Lincoln gave us a profound and concise statement which would later become the Veterans Affairs’ motto. The spirit which drove Lincoln then is the same spirit that drove us to this chamber, pursuing discourse on how best to care for him who shall have borne the battle.

The Veterans Affairs Committee and its members meet among the spirits of those who have sacrificed for their nation. The altar of liberty, upon which these spirits lie, is being overshadowed by the dark cloud of suicides, which grows larger every day we as a nation and congress are not proactive. On this day, the committee meets not to live in past associations or treatments. Here and now we must admit, should we be worthy of those spirits which have borne the battle, we must find new fields for action. The P.A.W.S. Act, HR 4764, is that field.

I spent six years in the Marine Corps, deploying to Helmand Province, Afghanistan for most of 2011. Upon return to the states I took the post-deployment health assessment, which indicated a need to seek assistance for post-traumatic stress. I was prescribed medication and directed to use a local Veteran’s Center for appropriate counseling. After roughly two years pursuing those avenues of treatment, the symptoms were not subsiding, and were in fact exacerbated. Nightmares were more frequent; anxiety attacks and mood swings were more frequent. I wanted to stop, but I did not find that inspiration until a few friends I served with committed suicide as a result of the same cycle of prescribed drug usage. A friend and former Marine who was utilizing a service dog told me how well it was working for him. The only problem? The VA didn’t, and still does not, provide service dogs specifically trained to combat symptoms of PTS. Upon further research, I found most of the non-profit community providing free service dogs to veterans and filling the void left by the VA, had wait times over a year and oftentimes more. Not feeling comfortable waiting that amount of time, I obtained my service dog Kaya and had her subsequently trained through an Assistance Dogs International-accredited trainer. All told: roughly \$10,000, some of which I had to borrow. Many veterans do not have those financial resources, and thus the status quo of treatment for PTS has given us twenty-two veterans a day committing suicide. That statistic was procured from a study by the VA itself which only used 21 states to ascertain that number. Because of the limitations in the study, the number, tragically, is likely much higher.

Kaya worked wonders for me within weeks. She was specifically trained to recognize when I have a nightmare and jumps into bed, waking me up. Kaya recognizes anxiety attacks at the outset and intervenes at the attack’s early stages, preventing the anger or depression from snowballing. I’ve remarked many times, that Kaya has also provided a sense of purpose that pills or therapy will never do. Many days I would lie in bed, in a fog of depression with no reason to get up or be productive. Kaya forced me to take her outside; to exercise her. This small amount of responsibility and purpose was something that gave me the confidence in which to expand my personal goals, bit by bit, until I got to where I am today. Such was the effectiveness of this treatment, I wondered why this option was not provided by the VA. Answers to my inquiries were less than satisfactory, to put it mildly.

“There is no better way to overcome a trickle of doubt than with a flood of naked truth”. The excuses we are given by the VA as to why we have not pursued this option have centered around the lack of empirical data about its efficacy. One doesn’t have to read an academic study to understand the therapeutic and healing effects untrained dogs can have, but a trained service dog that combats specific symptoms are exponentially more capable to be so. Moreover, we do actually have studies. These studies have been conducted by our friends at K9’s for Warriors, and by the Human Animal Bond Research Institute in conjunction with the MAYO Clinic and Purdue University. We have the overwhelming amount of anecdotal evidence by veterans themselves. Even so, if we use a hypothetical with service dogs adding little or no benefits to countering PTS, there is absolutely no negative associated with them, and certainly not to the extent which we have seen with opioids.

George Washington once stated that, “When we assumed the Soldier, we did not lay aside the Citizen.”. Having already obtained Kaya and being on a solid path to complete recovery, it would have been easy to continue life without giving this issue a second thought. But in youth, my heart was touched with the fire of service, and

the Marine Corps taught me to scorn few things outside of indifference. I could not, in good conscience, leave this issue alone if I had the power to act. Since May of 2015 I've devoted copious amounts of time and \$10,000 of my own money advocating for the P.A.W.S. Act.

I've learned that my story is not an uncommon one. The war against PTS has been a long war; it's been a tough war. Heavily involving myself with many veteran-transition organizations like 1st CivDiv Warriors Foundation in Houston, TX, or GoRuck that operates nationwide, and subsequently setting up my own Puppies Assisting Wounded Servicemembers Foundation, I've been exposed regularly to the both the personal and aggregate concerns voiced within the community. Our nations veterans have found in one another a bond, that exists only among brothers who have seen death and suffering together. This bond has proved to be the impetus for the stories I hear, and the messages I receive via social media from veterans and their families whom I've never met. They encourage me to continue my efforts. More sobering, I receive calls and emails from the family members of veterans I knew personally that lost their personal battles to PTS pleading, in fact begging me, to use what voice I have in Congress to relay this message: service dogs will save lives.

I'm not here for myself. I have only tried to be the voice in which my brothers and sisters can channel their desire for change, and the one and only success which is mine to command is to bring a mighty heart in this advocacy. With the current epidemic of veteran suicides, it's unconscionable to keep the status quo and wait any longer to institute this change the entire veteran community knows is a viable solution to reduce the epidemic of veteran suicides.

Thank you again for the opportunity to submit testimony.

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#### U.S. DEPARTMENT OF LABOR

Chairman Miller, Ranking Member Brown, and other Members of the Committee, thank you for the opportunity to provide the views of the Department of Labor (DOL) on pending legislation aimed at helping veterans succeed in the civilian workforce.

DOL looks forward to working with the Committee to ensure that the men and women who serve this country have the employment support, assistance and opportunities they deserve to succeed in the civilian workforce.

While this hearing is focused on numerous bills pending before the Committee, I will limit my statement to H.R. 5407, legislation that has a direct impact on the programs administered by DOL, and H.R. 5047, the "Protecting Veterans' Educational Choice Act of 2016," which includes an implementation responsibility for the Secretary of Labor. DOL respectfully defers to the Department of Veterans Affairs (VA), Department of Education, Department of Defense, Department of Justice, Department of Homeland Security and Department of Interior on the other bills to be considered by the Committee today.

#### **H.R. 5407 - A bill to amend title 38, United States Code, to direct the Secretary of Labor to prioritize the provision of services to homeless veterans with dependent children in carrying out homeless veterans reintegration programs, and for other purposes.**

DOL is committed to the Administration's goal of ending homelessness among veterans. Our Homeless Veterans' Reintegration Program (HVRP) addresses unemployment among one of the most vulnerable veteran populations, those who are homeless. The Veterans' Employment and Training Service (VETS) administers the HVRP to provide job training, counseling, and placement services to homeless veterans so that they can be reintegrated into the labor force. The HVRP is the only nationwide federal program focusing exclusively on helping homeless veterans to reintegrate into the workforce.

In the last full program year, VETS' HVRP grantees placed 69% of the veterans they served into employment. The President's Fiscal Year (FY) 2017 Budget includes a nearly \$12 million increase for HVRP and related programs, from \$38.1M to \$50M. If Congress increases the HVRP appropriation to \$50 million, VETS estimates the number of homeless veterans served could increase from about 17,000 to approximately 22,000.

Beginning in Program Year 2016 (July 1, 2016), VETS is requiring all grantees serving homeless veterans to enroll participants in the public workforce system through the local American Job Center (AJC) while they are receiving services through VETS' homeless veterans' program grantees. The expectation is to create

a sustainable partnership in which participants' full range of employment needs are met. The heart of the public workforce system is the AJC, the access point for employers to find qualified workers and the access point for veterans to acquire the employment and related services they need to find meaningful employment.

H.R. 5407 would require DOL to prioritize homeless veterans with dependent children for HVRP services. The bill also would impose new biennial reporting requirements on DOL. Specifically, in addition to the HVRP information currently required to be provided to the Congress, H.R. 5407 would require DOL to analyze and report on "any gaps in access to shelter, safety, and services for homeless veterans with dependent children," as well as recommendations for improving any such gaps.

We absolutely agree that we must be doing everything we can to support homeless veterans with dependent children, and we take very seriously any concerns that homeless veterans with dependent children may not be receiving the services they deserve. DOL would welcome the opportunity to discuss H.R. 5407 further with the Committee and work together to jointly identify any gaps in service that this legislation is meant to address. Of importance, an Impact Evaluation of the HVRP is scheduled to begin in 2016 that will further help inform our efforts. The purpose of the evaluation is three-fold: To document the types of services and support offered by the grantees; to identify potentially promising practices or models; and to conduct a statistical analysis of administrative data collected by the grantees and other data on job placement and other outcomes of interest.

Regarding the additional reporting requirements established under section 1(b) of the bill, VETS' mission is to prepare America's veterans, Service members and their spouses for meaningful careers, provide them with employment resources and expertise, protect their employment rights and promote their employment opportunities. As this Committee is aware, VETS administers the HVRP to provide employment and training services to homeless veterans. We would welcome the opportunity to discuss further with the Committee along with our VA and Department of Housing and Urban Development colleagues how best to appropriately measure gaps in shelter access for homeless veterans with dependent children, or their safety, or to make recommendations on how best to address such gaps. There are a number of Federal, state and local entities that provide services in this area and the Department may not solely be the best entity to do this reporting. Additionally, any new reporting requirements will mean increased costs for the Department and the bill does not authorize any additional funding for the collection and evaluation of this additional data.

#### **H.R. 5047, the "Protecting Veterans' Educational Choice Act of 2016"**

H.R. 5047 would "direct the Secretary of Veterans Affairs and the Secretary of Labor to provide information to veterans and members of the Armed Forces about articulation agreements between institutions of higher learning." The bill is intended to assist veterans in making informed decisions regarding the use of their Post-9/11 GI Bill benefits. To that end, the bill would require VA counselors who provide educational or vocational counseling services to give eligible veterans who seek such counseling information about articulation agreements, governing the transfer of credits, which are in place between schools in which the veteran is interested.

DOL is proud to have a record of closely coordinating with our interagency partners, most notably on the Transition Assistance Program. DOL also works closely with VA on vocational rehabilitation programs through a Memorandum of Understanding.

Like VA, DOL supports the intent of this bill. However, we are concerned that DOL's responsibilities under H.R. 5047 are unclear. Although the Secretary of Labor is mentioned in the bill titles, the substantive provisions only address VA's responsibilities. Consequently, it is difficult for DOL to analyze what implementation issues, if any, may exist. If the intent of the bill is to require DOL to assist VA in establishing a comprehensive database of articulation agreements, we have concerns about the cost of this endeavor. Nonetheless, should H.R. 5047 become law, we will work with VA, as directed, to help ensure that veterans have the information they need to make educational decisions that will put them on a path toward meaningful civilian employment.

I thank the Committee for your commitment to our nation's veterans and for the opportunity to submit this statement for the record.

**Questions And Answers For The Record**

**FROM NOVA**

The Honorable Jeff Miller  
 Chairman  
 U.S. House of Representatives  
 Committee on Veterans' Affairs  
 335 Cannon House Office Building  
 Washington, DC 20515

July 1, 2016

**RE: Response to Hearing Questions dated June 23, 2016**

Dear Chairman Miller:

The National Organization of Veterans' Advocates, Inc. (NOVA) thanks you for the opportunity to answer the questions posed in your June 23, 2016 letter following the legislative hearing that included consideration of H.R. 5083.

1. Can reform -be it appeals reform or any reform -be successful without

The appeals reform being proposed in H.R. 5083 cannot be successful without VA being held accountable. Neither the current appeals system nor the currently- proposed system contains provisions to address accountability on the part of VA. While a veteran has set deadlines within which to complete each step of an appeal, VA has no such comparable deadlines, much less consequences or sanctions for unreasonable delays.

As demonstrated with the prior backlog of original claims and scheduling of medical appointments, VA often struggles to meet its own internal goals to the detriment of veterans. By setting expectations and failing to meet them, VA causes unnecessary distress and anxiety in the veterans it is committed to serve. The success of the proposed reform hinges on the ability of VA to process claims accurately within the stated goal of 125 days and the ability of the Board of Veterans' Appeals (BVA) to process non-hearing appeals within one year.

Congress should require case processing timeline goals for those who chose to submit evidence or request a hearing. Furthermore, there needs to be accurate and transparent data gathered to measure whether VA delivers on its promises, with meaningful consequences when it fails to meet the accuracy and timeline standards.

Similarly, to ensure all veterans are treated fairly, there must be transparency in how any case docket is being managed and how legacy appeals are resolved. Without such measures, the process cannot be timely, fair, easy to understand, transparent, and preserve veterans' rights - VA's stated goals in addressing reform. For example, without clear docket standards, VA could work cases in its preferred lanes while other veterans wait, and subsequently produce data to support a predetermined outcome.

2. If H.R. 5083 advances as drafted, would your organization support or oppose it as is?

NOVA would oppose H.R. 5083 as written. NOVA detailed its concerns with the bill in its June 23, 2016 statement. We maintain changes are necessary to ensure adequate preservation of veterans' legal rights. As noted, among other things, the bill could adversely affect the veteran's right of appeal to the United States Court of Appeals for Veterans Claims (CAVC), does not provide sufficient detail regarding docket management, and does not address the resolution of pending appeals. Recognizing the legislative process does not guarantee favorable resolution of all stakeholders' concerns, NOVA maintains there are still too many unresolved issues that prevent our organization from unequivocally supporting the bill as currently written.

Furthermore, VA overstates the level of stakeholder consensus. This overstatement was apparent in the oral and written testimony presented to this Committee at the June 23, 2016 hearing.

Numerous stakeholders noted multiple areas of concern, clearly indicating less than full consensus with VA's plan. In addition, while VA included a wider range of stakeholders in the "appeals summit" meetings, to include NOVA, it limited participation to the "Big 6" group of VSOs in at least three follow-up meetings as it considered the critical issues of staffing and fair resolution of existing appeals. Given that attorneys and agents now represent nearly 15 percent of appeals before BVA (according to BVA's 2015 Annual Report) and provide the majority of representation before the CAVC, exclusion of the legal organization stakeholders is short



sighted and ultimately mutes the voice of veterans who choose this form of representation.

Thank you for your consideration of our responses. Should you require additional information, please do not hesitate to contact me at 202.587.5708 or drauber@vetadvocates.org.

Sincerely,

Diane Boyd Rauber  
Executive Director

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#### FROM MOAA

##### **1. Can reform - be it appeals reform or any reform - be successful without accountability?**

No, MOAA does not believe reform can be successful without at least some type of accountability.

Absent some manner of demonstrating acceptable outcomes have been achieved by a government agency, reform bills offer little chance of success. Absence of accountability undermines the confidence of the American public in the ability of elected officials to govern effectively.

Accountability should be outcome-determinative. That is, accountability mechanisms should be based on achieving the desired outcome rather than on the steps taken to reach that outcome.

##### **2. If H.R. 5083 advances as drafted, would your organization support or oppose it as is?**

If no other reform option is to be considered, MOAA would support H.R. 5083, albeit with reservation. There are other reform options that would improve the VA disability claims process, and MOAA urges Congress not to limit the scope to merely this one option presented by the Department of Veterans Affairs.

As drafted, the legislation fundamentally alters the veteran-friendly nature of the VA claims system, makes a vast majority of the process adversarial (requiring veterans to seek legal representation), and significantly burdens veterans. MOAA does not believe shifting responsibility to veterans and away from the government is a move in the right direction. Veterans have already fulfilled their end of the bargain to the government, and this is the time for the government to fulfill its reciprocal commitment to the veteran.

H.R. 5083 seriously abridges the rights of veterans in favor of greater administrative efficiencies at the Department of Veterans Affairs. MOAA supports elimination of useless procedural steps in the VA claims process, which this legislation accomplishes. However, we do not believe it is right to force the veteran to litigate against the Department of Veterans Affairs as a matter of course.

Eliminating the redundancy of requiring a veteran to file both a Notice of Disagreement and Appeal to the Board of Veterans' Appeals makes sense. Eliminating the Statement of the Case in favor of a subsequent rating decision makes sense. Eliminating the government's duty to assist a veteran beyond the initial ratings decision does not make sense, because veterans are almost always unable to identify and articulate all evidence and sources of information in an initial disability claim.

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#### FROM THE AMERICAN LEGION

Responses from The American Legion to Questions For the Record based on the testimony for the June 23rd 2016 Committee on Veterans' Affairs Legislative Hearing: Dated 6/23/2016

##### **1. Can reform - be it appeals reform or any reform - be successful without accountability?**

The American Legion thanks the Committee for this question, and the answer goes much deeper than reform. The essence of the word reform is new, and the accountability enforcement needed by VA is anything but new.

The American Legion stands firm by our position that VA has a responsibility to veterans, to taxpayers, and the employees of the Department of Veterans Affairs to

maintain strong accountability for employee actions and constant oversight of work ethic, all while being an expert steward of the taxpayer's money.

Every employee deserves to be treated impartially and fair, they also deserve to be rewarded and recognized when performing above standard. On the other hand, substandard performance, poor judgment, toxic attitudes, and bad behavior require swift action and appropriate consequences. Criminal behavior should always be reported to the legal authorities, and any criminal activity participated in, or conducted by an active employee of VA while being paid to care for or serve veterans, should be met with immediate dismissal.

The American Legion believes that the Secretary, and his or her authorized representative should have the authority to make those decisions, as needed, with the Secretary being the ultimate arbitrator of any disagreement of opinion or appeal.

Neither reform, nor successful daily operations of a well-functioning Department of Veterans Affairs can be absent sufficient accountability and the authority to carry it out.

The American Legion supports any reform measure that will give the Secretary the authority to hire or remove any employee they see fit, without having to have his or her decision questioned by any third party arbitrator. VA employees should have access and are welcomed to all of the remedies available to any other employee for situations where they have been genuinely wronged. Those options include, but are not limited to The Department of Labor, and the civil court systems.

An argument we commonly hear involves political retribution firings. The likelihood of a political firing is so remote, that it is not worth upending the entire system to protect against. Also, if an employee is a political hire, they exist in an environment where they can be terminated for the same political reasons. If not a political hire, then they would enjoy the same protections every other American worker enjoys, as stated above.

2.If H.R. 5083 advances as drafted, would your organization support or oppose it as is?

The American Legion would SUPPORT H.R. 5083 as-is.

