LEGISLATIVE HEARING ON H.R. 23, H.R. 601, H.R. 2188, H.R. 2963, H.R. 4843, H.R. 5037, AND H.R. 5038

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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Legislative hearing on H.R. 23, H.R. 601, H.R. 2188, H.R. 2963, H.R. 4843, H.R. 5037, and H.R. 5038

Thursday, April 6, 2006

U.S. House of Representatives,
Subcommittee on Disability Assistance and Memorial Affairs,
Committee on Veterans' Affairs,
Washington, D.C.

The Subcommittee met, pursuant to call, at 1:00 p.m., in 334 Cannon House Office Building, Hon. Jeff Miller [Chairman of the Subcommittee] presiding.

Present: Representatives Buyer, Miller, Berkley, Moran, Udall, Bradley, and Brown-Waite of Florida.

Mr. Miller. If I could get everybody to take their seats, please. Thank you very much. This hearing will come to order. I want to welcome all of you to our first legislative hearing of this year. We do have a full plate on the agenda and so I am going to highlight each bill briefly for you before recognizing Ms. Berkley, if she is able to arrive in time because unfortunately she is over at an International Relations Committee hearing as well.

H.R. 23, the Belated Thank You to the Merchant Mariners of World War II Act of 2005, would direct the Secretary of Veterans Affairs to pay a monthly, tax-free benefit of $1,000 to certain honorably discharged veterans of the U.S. Merchant Marine or to their survivors.

H.R. 601, the Native American Veterans Cemetery Act, would authorize the Secretary of Veterans Affairs to make grants to tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries on trust lands.

H.R. 2188 would authorize the placement of memorial markers in a Department of Veterans Affairs national cemetery for the purpose of commemorating servicemembers or other persons whose remains are interred in an American Battle Monuments Commission cemetery.

H.R. 2963, the Dr. James Allen Disabled Veterans Equity Act, would allow certain veterans who receive disability compensation of at least ten percent for impairment of vision in one eye to be eligible

to receive such compensation for impairment of vision in the other eye that is deemed not related to their military service.

H.R. 4843, the Veterans' Compensation Cost-of-Living Adjustment Act of 2006, would increase effective December 1, 2006, the rates of disability compensation and dependency and indemnity compensation.

H.R. 5037, the Respect for America's Fallen Heroes Act, would prohibit demonstrations within 500 feet of a national cemetery and Arlington National Cemetery during a funeral service. Violation of the prohibition would be punishable by up to a year imprisonment under title 18 of the United States Code.

And finally, last on the agenda would be H.R. 5038, the Veterans Memorial Markers Act of 2006. This bill provides government markers for veterans who died between November 1, 1990 and September 10, 2001, and who are interred in a private cemetery. It would extend through December 31, 2007 the current authorization for government markers for veterans interred in a marked grave at a private cemetery. It would also authorize the placement in a national cemetery of a memorial marker for dependent children who would otherwise be eligible for burial but whose remains are unavailable.

Ms. Berkley is not with us at this time. Mr Udall, do you have a statement for the record?

MR. UDALL. No. Ms. Berkley is trying to make it. And we would just put her statement in the record, Chairman Miller.

MR. MILLER. Very good. I would like to recognize Congressman Moran for an opening statement.

MR. MORAN. Mr. Chairman, thank you very much. I appreciate the opportunity to be here on all these issues. I particularly wanted to point out the legislation introduced by the gentleman from Michigan, Mr. Rogers and Chairman Buyer, the respect for America's Fallen Heroes Act. This is an issue that we have encountered in Kansas many times. And I am interested in hearing the testimony and the story of your legislation.

And I would also like to point out, Mr. Chairman, that as a response to the protests that are occurring at funerals across the country, a group of military retirees and veterans have created beginning in Mulvane, Kansas the Patriot Guard. And these are motorcyclists, motorcycle riders who have traveled the country at the request of families of fallen soldiers to provide a shield or a buffer between the protesters and the family and those who are attending the services.

And I have introduced a resolution commending the Patriot Guard and would welcome Mr. Rogers' and others support of that resolution. We hope to have that legislation on the House floor in the near future, again, just recognizing a group of Americans who have responded to what in many circumstances have become a very difficult circumstance. I have been to funerals in Kansas in which the protests have

occurred and which the Patriot Guard has been there. And it is a wonderful sight to see the hundreds, if not thousands, of motorcycles, flags flying, and see their response of revving their motors to drown out the sound of the protesters really in tribute to soldiers and their families.

So I commend you for your efforts in trying to correct a situation we face in our State --

MR. BUYER. Would you yield?

MR. MORAN. -- and states across the country. And I happily yield to the gentleman from Indiana.

MR. BUYER. I want to thank you for bringing up the Patriot Guard, the riders. I also want to thank Mr. Miller, Mr. Rogers, and Mr. Reyes. You know someone could also interpret whether these, under the law, whether those riders could also be considered demonstrators. And so we wanted to make sure that the law is drafted in a manner whereby these individuals who come to the defense of the family could not be subject to penalty under the legislation.

So I just wanted to point out they have been very thoughtful in the drafting of the legislation. I yield back to the gentleman.

MR. MORAN. Thank you. I appreciate you pointing that out. I was aware of that and pleased with that. And, again, the Patriot Guard only arrive at the request of the families of these soldiers. And I am honored to have with us today two of my constituents, Loren and Lynette Stenzel from Ness City, Kansas, who are members of the Patriot Guard. And I recognize them and hundreds and really thousands of other Kansans and Americans who have responded to this circumstance. And I yield back the balance of my time.

MR. MILLER. Thank you very much, Mr. Moran. Your continued presence and work on this Committee is greatly appreciated. I do want to recognize, for those in the audience who may not recognize him, the Chairman of the full Committee, who is going to be with us this afternoon, Chairman Steve Buyer. I take it from nodding your head a minute ago you do not have an opening statement. But I think you will be participating in some of the questioning that will take place a little later on.

What we will do is we will give Ms. Berkley an opportunity, when she gets here, to have her statement either entered into the record or give her a chance to give it.

Testifying first are the chief sponsors of many of the bills that we have on the agenda today; they are sitting at the front table. I would like to take a minute and recognize everybody that is up there and then we will begin testimony. Mr. Rogers has led the bipartisan effort to restrict demonstrations at national cemeteries and introduced H.R. 5037 on March 29th. He represents the 8th congressional district in Michigan.

Mr. Chabot of the First Congressional District in Ohio will be testi-

fying on H.R. 5037. He is the Chairman of the Subcommittee on the Constitution at the Judiciary Committee. He and his staff have been invaluable to Mr. Rogers and the Veterans' Committee in helping to draft this piece of legislation. We thank you.

We also thank Mr. Silvestre Reyes, a member of this Committee. He represents the Sixteenth Congressional District in Texas and is a chief sponsor of H.R. 5037.

Mr. Filner, a member of this Committee for 13 years, represents the Fifty-First Congressional District in California, and will be testifying on H.R. 23.

Ms. Baldwin will be testifying on H.R. 2963, and she represents the Second Congressional District in the State of Wisconsin.

Mr. Langevin, good to see you here. Representing the Second Congressional District in Rhode Island, he will be testifying on his bill, H.R. 2188.

And, finally, Mr. Udall, who is also a member of this Committee representing the Third Congressional District in New Mexico, and a member of the Subcommittee is going to be testifying on H.R. 601.

Mr. Rogers we will begin with you, please. And Mr. Udall, if you do not mind, we will wrap up this panel with your testimony. All of your full statements will be printed in the record of the hearing. And we will hold our questions until each of you has testified. So, Mr. Rogers, the floor is yours.

STATEMENT OF HON. MIKE ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

MR. ROGERS. Thank you very much, Chairman Miller. I appreciate this opportunity. And let me thank you and Chairman Buyer and your staffs for the endless time and questions and talent and energy that you have dedicated to get this bill, and get this bill right. Mr. Chabot has helped us certainly from his judiciary perspective. And Silvestre Reyes has been a real champion in this effort and been very, very helpful. Silvestre, who has been a friend in Congress, and we do not always agree, but we came together on this. And thank you for your effort.

I think it has led in this bipartisan way to get here today on something that I think is incredibly important. And that is really the dignity of the individuals who are grieving for their loved ones for a fallen soldier, Marine, airman, woman or sailor, who has given their life in the defense of the United States of America and really what that means.

And this bill, Mr. Chairman, protects the First Amendment. But it also protects the family. And really what this is America's chance to put our arms around these families and tell them we love them, we appreciate it, we certainly appreciate their sacrifice. And we will al-

low you the dignity and peace to lay to rest your loved one and have a celebration of their life and their sacrifice for their country.

I happened to witness that personally in a town called Flushing, Michigan. At a very small town, where Sergeant Joshua Youmans was going to his final resting place. And to see the vile hatred, the taunting, the jeering, of these families goes beyond the pale of any sense of decency I have ever seen. And when you look at what the family is going through to get to that part of their life; and certainly the grief and all of the emotions they are going to have to deal with, the one thing they should not have to deal with in this country are people trying to steal their ability for a peaceful service and ceremony. And they accomplished exactly that when they showed up that day.

And here was in contrast this young-20's mother of a very young baby, who Sergeant Youmans got to hold one time in his arms when he died just a few days later, give the eulogy for her husband in a room packed with National Guard soldiers, friends and family, mourners, supporters, great Americans and patriots. The courage that she showed in the pulpit that day talking about her soul mate, her loved one, her husband, the pride that she was going to instill in their young child and what their father had done and the service he had given to his country.

And to juxtapose that courage, Mr. Chairman, with what was happening outside, the jeers, and the taunting, and the songs that are not fit for public consumption, it did not take long to come to the conclusion that we have to do better by these families in America. And we can do better by these families in America. And I think this bill represents that.

You know, just since we started this, just in my office alone, and I know other members here got e-mails in support, we have over 25,000 e-mails of support just since we started talking about this. That is just in my office, Mr. Chairman. That does not count all the other members. And the comments are very touching and very powerful and very strong in support of these families, of these military members who have given their lives, and what we need to do to give them their dignity back at these services.

And, for the record, I brought about, I do not know, there is about 5,000 here, I think, in paper form. We stopped printing them off and said I do not think the Chairman might appreciate 25,000 individual sheets. So we have gone ahead and put it on a CD, sir. And without objection, I would like to submit that to the Committee on behalf of lots of Americans from Brighton, Michigan to Iraq to every state in the union celebrating what you are going to do here today.

Mr. Miller. And without objection, it is submitted to the Committee, but not for the printed record.

Mr. Rogers. Thank you, Mr. Chairman. Believe me take some

time and read just a few of these and you will be moved to tears before it is over. And I just wanted to read a couple that we had pulled out, including one, sir, where I know you escorted the body back of this fine patriotic American. And it was his mother, also, wrote in support of this. And I am just going to read these two if I may, sir, for the record.

And I quote, "Over the last six months my unit has taken over 30 casualties in some of the most vicious areas south of Baghdad. The thought of their families having to face protesters after their memorials insights a rage I have never known before. These 'protesters' mock all that we have accomplished here. The lives that have been forever changed and the lives that have been lost, using our most valued doctrines of faith and freedom as their defense. I can not thank you enough for your dedication to this effort. I can only hope that the colleagues in Congress will join in this battle." End quote. Sergeant Ashley A. Voss, Baghdad, Iraq.

Just a second one, if I may, Mr. Chairman. And I quote, "Thank you for creating and seeking to help grieving families of our American Heros. My husband and I support this act 100 percent. Our son, Sergeant Trevor Blumberg, was killed in action in Iraq on September 14, 2003. We know the pain and horror in losing a heroic son; no less to have to face cruel, inhumane people who cannot dignify your time of grief. Please continue to place these families in America's hearts and America's minds. Nothing less is deserved. Ms. Janet M. Blumberg, a proud parent of an American hero."

Mr. Chairman, I do not know if we can say much more then that of those families who have given so much and really are pleading with us to please do something to allow them to have their dignity at this -- you know, it is probably the most trying moment of their lives. Let us show them that we appreciate this sacrifice. That we will stand with them and we will proudly acknowledge their sacrifice for the defense of the United States of America.

I will go ahead and submit a written statement, if I may, Mr. Chairman. And I would yield back the balance of my time.

Mr. Miller. Your statement will be entered in the record, without objection.

[The statement of Michael Rogers appears on p. 44]

Mr. Miller. Mr. Chabot.

STATEMENT OF HON. STEVE CHABOT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chabot. Thank you much, Mr. Chairman and members of the Committee. I am very pleased to be an original cosponsor of H.R. 5037, the Respect for America's Fallen Heroes Act, and to have helped

author the bill along with Chairman Buyer and Chairman Miller and Representative Rogers and many others that have been involved in this. As the Chairman of the House Subcommittee on the Constitution, my testimony today will focus on how the bill is fully consistent with the Constitution while fully protecting the respect and dignity of funerals held on and near national cemeteries.

We are all painfully aware of the recent trend of demonstrations and protests occurring near military funerals on national cemeteries. Such demonstrations are not compatible with the respect due to our nation's fallen heroes, and they should not be permitted under our nation's laws. That is why I am here today.

The first provision of H.R. 5037 prohibits demonstrations on national cemetery grounds, unless such demonstrations are approved by the cemetery director. This provision, in my opinion, is clearly constitutional under judicial precedents, most recently Griffin v. Secretary of Veterans' Affairs. In that case, the Federal Circuit Court of Appeals, just a few years ago, upheld as constitutional an existing federal regulation providing that "any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited" on Veterans' Affairs property. The first precedent -- excuse me. The first provision of H.R. 5037 simply codifies that principle in statute.

The second provision of H.R. 5037 prohibits any demonstration within 500 feet of national cemeteries, within 60 minutes before or after a memorial service is held there, if the demonstration includes "any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony." This exact language has been upheld as constitutional by the Supreme Court in the case of Grayned v. City of Rockford.

The Supreme Court, upholding this language in the Grayned case, specifically cited and relied on Webster's definition of diversion which is "the act or an instance of diverting as the mind or attention from some activity." Consequently, under this language, any demonstration that includes anyone whose conduct so much as tends to turn the heads of those participating in a funeral ceremony can be prohibited.

At the same time, this language does not unconstitutionally draw distinctions regarding what demonstrations are allowed, and are not allowed, based on the content of the speech. The Supreme Court, again in the Grayned case, upheld this precise language as constitutional because the language "contains no broad invitation to subjective or discriminatory enforcement." Also, as the court stated in the Griffin case, "Because the judgments necessary to ensure that cemeteries remain sacred to the honor and memory of those interred or memorialized there may defy objective description and may vary

with individual circumstances, the discretion vested in VA administrators is reasonable in light of the characteristic nature and function of national cemeteries."

Judicial precedents also make clear that H.R. 5037 is constitutional because it is a reasonable time, place, and manner restriction. As the Supreme Court in the Grayned case stated, "Reasonable time, place and manner regulations may be necessary to further significant governmental interests, and are permitted."

The 500 foot, 60 minutes before and after prohibition of any diversionary protest in H.R. 5037 is clearly a reasonable time, place and manner regulation that furthers the significant governmental interest of protecting the sanctity of national cemeteries. The significance of this governmental interest is clear in existing federal law. Congress, by express statutory command, has long provided that national cemeteries shall be considered national shrines as a tribute to our gallant dead.

Section 2(b) of the bill defines the term demonstration to include picketing, speeches, the use of sound amplification equipment, the display of placards, the distribution of leaflets, and similar conduct, unless they are an official part of the funeral ceremony. This definition is sufficiently clear in my view and will not be struck down on the grounds that it is unconstitutionally vague. Indeed, the Supreme Court has upheld laws using terms like demonstration, standing alone, without any definition whatsoever.

In conclusion, let me say that all supporters of H.R. 5037 are asking is that the families and friends of our nation's fallen heroes be given a few hours of peace within which to honor their loved ones' ultimate sacrifice. A few hours to pay respect to a selfless life devoted to protecting others. That is not unconstitutional. That is not even an imposition. That is the least we can do for those who have fought and given their life to uphold the Constitution.

I urge all my colleagues to join me in supporting this bill, which will give the families of those who have died the comfort of knowing that they will be able to pray in peace and thank the fallen on and near the sacred ground where they will rest forever so that we can live free today. I yield back the balance of my time.

MR. MILLER. Thank you very much, Mr. Chabot. Mr. Reyes.

[The statement of Steve Chabot appears on p. 46]

STATEMENT OF HON. SILVESTRE REYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

MR. REYES. Thank you, Mr. Chairman. I appreciate the opportunity to speak on H.R. 5037, Respect for America's Fallen Heroes Act. I have a statement for the record that, if you would enter it.

MR. MILLER. Without objection.

Mr. Reyes. And I will try to just summarize some of the major points. Before I get into my comments I want to thank you, Mr. Chairman. As you mentioned, I am a proud member of this Committee. Have been since I have been in Congress. This is my tenth year. And I first heard about this issue and I can remember the day because we were taking testimony when Chairman Buyer made mention of this on the issue of the IT System for the Department of Veterans' Affairs. And, frankly, when I was hearing our Chairman talk about this, I was sitting there incredulous that -- I was saying to myself this cannot be right. I mean this information just does not register either as a parent, as a grandparent, or as an American. It cannot be possible that there are those among us in this country that would use their First Amendment guarantees to prey on grieving families like this.

But, sure enough, as we looked into it, it was everything that our Chairman said was facts. In fact, I think the Chairman announced that day that he was going to a funeral and be there to help the parents of the soldier.

Ironically enough, six days ago, Mr. Chairman, we in our community suffered our 22nd casualty. Sergeant Israel DeVora of Clint, Texas in my District was killed in Baghdad on April 1st. This is what I think is most important in this legislation. And I appreciate my colleagues articulating what the legislation says. But, the important point to remember for us is that when people are at their most vulnerable, and certainly those who have lost a loved one are, I can remember when one of my brothers was killed by a hit and run driver many, many years ago, seeing my mom cry. My mom passed away two years ago, and up until her death for some 35 years, she cried for my brother, Eduardo.

So losing a son or a daughter is a tremendous blow to a parent. Having people exploit that for political purposes or for whatever purposes they may try to justify these actions is, for me, a most despicable, lowest form of preying that there is on the vulnerabilities and the misfortune of others.

I can tell you, Mr. Chairman, and I want to thank my good friend and colleague, Mike Rogers, because as he said sometimes we do not agree on the politics of everything here. But I can tell you that there has not been a single member of Congress that I have approached to cosponsor this legislation that has turned me down. I think that speaks volumes about the outrage that we all share on this particular issue.

So I am proud to be here this afternoon to lend my support. And I am proud to be the lead Democrat on this legislation because while there may be other pieces of legislation that affect more people that we pass here in Congress, this legislation speaks to those that have made, in their own way, their own ultimate sacrifice on behalf of our freedoms. And ironically enough, guarantee that these misguided

individuals can take those freedoms to an extreme that most of us find so despicable and distasteful. And so with that, Mr. Chairman, I appreciate the opportunity to be here and share those comments. And I yield back my time.

[The statement of Silvestre Reyes appears on p. 52]

MR. MILLER. Thank you for your service, Mr. Reyes. Mr. Chairman do you have questions that you would like to pose?

MR. BUYER. Were you going to go with the entire panel first?

MR. MILLER. I would like to go between these individuals.

MR. BUYER. I would, but I would yield to all the members without objection.

MR. MILLER. I would like to recognize you as the Chairman.

MR. BUYER. All right. One question I have, it is unfortunate that Mr. Chabot has left. It deals with the issue on proportionality with regard to the sentencing. Let me just turn to you, Mr. Rogers, because you are a former FBI agent. You have devoted a lot of your life to title 18 and the enforcement of the federal code. So with regard to making this a Class A misdemeanor, you have looked at the issue of proportionality. If you could testify to that issue, please.

MR. ROGERS. Sure. One of the reasons that we establish sentencing, and the difference between class A misdemeanors and felonies, and other distinctions in the law when it comes to punishment for conviction, is hopefully for deterrence. And you hope that the sentence at some point reaches the level of deterrence for that particular crime. Trafficking of liquor across interstate lines is a class A misdemeanor. And fraudulent farm bonds is a class A misdemeanor. Because it has a year in prison, up to a year in prison, which is a significant loss of freedom. And equally as important is the $100,000 fine that can go with it. That can be pretty devastating. And sometimes the financial part of it can be as devastating as the time in jail.

And in this case when we looked at what this means and what this crime ought to hold in relation to other crimes on the book, class A misdemeanor, a year in jail and a $100,000 fine, we felt fit the needs and the proportionality to cause a deterrence for people violating the law.

MR. BUYER. A Class B misdemeanor would be what?

MR. ROGERS. It could be --

MR. BUYER. Six months, $10,000.

MR. ROGERS. Six months to $1,000. There are some three --

MR. BUYER. $10,000 fine?

MR. ROGERS. -- month conditions under a class B misdemeanors and likely would not, quite frankly, in a federal system would be very difficult to find a class B misdemeanor where you would actually do jail time or get the maximum fine. So this would at least leave the judge with, obviously when you argue the severity of what this does

to the family, to give that year in jail.

MR. BUYER. So these are individuals prosecuted by the U.S. Attorney's office into U.S. Magistrate's court or referred to U.S. District Court if they choose.

MR. ROGERS. That is correct.

MR. BUYER. On the -- the other question I have is when Chairman Chabot testified with regard to time, place, and manner restrictions to further a significant government interest. I would like to ask the two lead cosponsors, in your belief, what would be the significant government interest?

MR. ROGERS. Well, two things. First, I think the most obvious is how we treat the fallen soldiers who have defended the United States of America. Our government interest is to provide that buffer of peace, decency, dignity, and respect. They have the right to bury their loved ones in peace and dignity.

And the interest in this is saying we believe that that bubble ought to exist. And we do it in other places in the law. We believe that bubble ought to exist for this very -- special is probably the wrong word, Mr. Chairman. But this unique event in someone's life that they have to go through this, God forbid, and bury a loved one who is a military fallen hero.

We also protect that significant government interest in the First Amendment by laying down a framework of place, time, and manner. An hour before. If you want to circle the cemetery an hour before at a 500 foot distance and spew your hate and discontent, you can do that under the United States Constitution, and we preserved that right in this bill.

But you cannot do it in a manner that does not allow these families that peace and that dignity. And I think that is a compelling government interest.

MR. BUYER. Mr. Reyes.

MR. REYES. I also think that a compelling government interest in this speaks to the fact that there are -- the conduct of these people is so reprehensible that there are hundreds of thousands of Americans that are outraged, including veterans organizations. And they are looking for us to show some leadership and to show an effort to protect those families. Because in the minds and eyes of our veterans community, it could be their families sitting there were circumstances different.

So like my colleague, Mr. Rogers, we have gotten hundreds and hundreds of e-mails and letters. I have been contacted in my district by not just veterans groups, but by individuals and non-veterans that are outraged that this is going on and that the possibility that they may have to take some action locally, as I just mentioned our 22nd casualty on April 1st. And so they look to us to be able to take some action to provide that protection for the families.

MR. BUYER. Thank you. Chairman Miller and Mr. Reyes and Mr. Chabot, I think that you have narrowly tailored your legislation to further the significant government interests in setting the standards of decency with regard to our federal lands. The federal government owns those lands. And so you have not been -- you are not overreaching with regard to veterans state cemeteries and I want to applaud your actions to encourage states to act and set those standards. I yield back my time.

MR. MILLER. Thank you very much, Mr. Chairman. We appreciate your leadership and guidance at the full Committee level. Mr. Udall, do you have any questions? Mr. Moran.

MR. MORAN. No, Mr. Chairman.

MR. MILLER. Mr. Bradley.

MR. BRADLEY. I would just thank the sponsors of the legislation and in particular salute you for your bipartisan approach on this very important issue. And I look forward to being a cosponsor of this bill, Mr. Rogers, this afternoon, please.

MR. ROGERS. Sure. I appreciate it. Thank you.

MR. BRADLEY. Thank you. So it is on the record, it will be done.

MR. MILLER. Ms. Brown-Waite.

MS. BROWN-WAITE OF FLORIDA. Thank you, Mr. Chairman. I have a veterans cemetery in my area and I think any one of us who have attended a service either back at a veterans cemetery or here at Arlington know the absolute need for it to be a moment for the family. And a moment for every American to thank those who gave the ultimate sacrifice. I commend you for this bill and I am going to contact the members of the state legislature and ask them to implement the same kind of rules. They are still in session right now and I think that it is a logical follow through. And I thank you for your leadership on this. And I have already said I would cosponsor.

MR. ROGERS. Thank you. If I may respond as well. And one of the reasons that we called for the states to do this is because there has been so much work by so many on the counsel and the Committee and others, the members, Mr. Chabot and Mr. Reyes and Mr. Buyer and Mr. Miller, on the constitutionality of this. To encourage the states to pass something that looks a lot like this will stand the test. We have noticed some states have over reached a little bit. They are going to be taken to court. And our worry is they will be struck down. If they follow what we have done here and take advantage of all of the effort that has been put into this bill, we will have a 50 state -- all 50 states will have legislation that protects these families at the funeral homes, national cemeteries, at other cemeteries as well. And I encourage you to do that and thank you very much. And I think that is an important part of this bill we did not get a chance to talk about today.

MR. MILLER. Thank you very much. We will move to the next bill by

Mr. Filner, who is next up. You are recognized. And if I could, also, while we are moving to Mr. Filner, make note that a member of our Subcommittee is not with us today. Mr. Evans, as everybody knows, has made an announcement that he will be leaving Congress after the end of his term. I would ask that each of our members keep him in our thoughts and in our prayers as he goes through a very difficult time in his life. His service is to be commended not only to this nation, but to this Congress and this Committee. Mr. Filner.

STATEMENT OF HON. BOB FILNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

MR. FILNER. Thank you, Mr. Chairman. Thank you for those words for Mr. Evans. And thank you for giving us the opportunity to talk about our respective bills. Mine is H.R. 23, the "Belated Thank You to the Merchant Mariners of World War II Act." Mr. Chairman, you have Democrats and Republicans here at the table. These are all bipartisan bills, and I appreciate the spirit in which you allow us to participate with you. I certainly, as a member of this Committee, will pledge that we will try to continue that spirit of bipartisanship that you have exemplified here today.

The story of the World War II United States Merchant Marines is a story of patriotism, of youthful exuberance, of dedication to duty, of pride in a job well done, of bravery in the midst of battle, and sadly, of a nation who forgot these heroes for over 40 years after the war's end.

World War II Merchant Mariners suffered the highest casualty rate of any of the branches of service while they delivered troops, tanks, food, airplanes, fuel and other needed supplies to every theater of the war. Troops were trained and supplies, ammunition, and equipment were manufactured in the U.S. and used overseas. The Merchant Mariners were the necessary link between the two. Without them, we would not have been able to win the war. It is as simple as that.

The Merchant Mariners took part in every invasion, from Normandy to Okinawa, often becoming sitting ducks for enemy submarines, mines, bombers, and kamikaze pilots. Fighting was particularly fierce in the Atlantic, where German submarines and U-boats prowled the ocean, destroying Merchant Marine ships in an attempt to isolate Great Britain.

Compared to the large numbers of men and women serving in World War II, the numbers of the Merchant Marines were small, but their chance of dying during service was extremely high. Estimates range up to 1,500 for the number of ships that enemy forces sank; 9,300 Mariners lost their lives; 600 were POWs; 11,000 were injured.

Yet an injustice was inflicted on this group of World War II veterans. All volunteers, once approximately 230,000 strong, the number

of those currently living is estimated to be approximately 10,000.

This group of brave men was denied their rights under the GI Bill of Rights that Congress passed in 1945. All those who served in the Army, Navy, Marine Corps, Air Force, or Coast Guard were recipients of benefits under the GI Bill. Only the United States Merchant Marine was not included.

The Merchant Marines became the forgotten service. For four decades no effort was made to recognize their contribution. The fact that these seamen had borne arms during wartime in the defense of their country seemed not to matter.

After years of fighting the system and a court battle, some World War II Mariners finally received a watered down bill of rights in 1988. But some portions of that GI Bill have never been made available to veterans of the Merchant Marine.

What did this mean in practical terms? First and probably most important, it meant no GI Bill educational benefits. Instead of studying to become a lawyer, a teacher, a doctor, or a number of other life-long professions that require a higher education, many Merchant Mariners had to rely on their high school education to get them a job. Lost opportunities, lost careers, lost wages were the results for the Merchant Mariners.

No low interest home loans were available to Merchant Marines. No lifetime compensation for related war injuries and disabilities, no use of VA hospitals, no priority for local, state, or federal jobs, no social security credit for wartime service.

I know many of us, Mr. Chairman, have been able to achieve and become members of the middle class because of the GI Bill. I had my first home when my father got back from World War II, and it was a dream come true for a family that had lived with relatives for most of their lives.

I would say there is overwhelming support now in the Congress for this bill. At last count this morning, a bipartisan list of 248 Members of Congress had endorsed it. There is support from coast to coast, from the City of Los Angeles, California to the City of New Bedford, Massachusetts, who have passed resolutions in support of H.R. 23. Senator Ben Nelson of Nebraska has introduced the companion bill in the Senate. A letter from Transportation Secretary Norman Mineta expressed gratitude for the service that these Mariners gave during World War II. And I just received a letter this morning from a group of labor unions, the International Organization of Masters, Mates, and Pilots, the Marine Engineers' Beneficial Association, the American Maritime Officers, and the Seafarers International Union of North America, who have also endorsed this bill. I would like to put that letter in the record, Mr. Chairman.

MR. MILLER. Without objection.

[The attachment appears on p. 63]

MR. FILNER. While it is impossible for us to make up for over 40 years of unpaid benefits, I propose that this bill will acknowledge the service of the Veterans of the Merchant Marines and offer compensation for years and years of lost benefits.

H.R. 23 will pay eligible veteran a monthly benefit of $1,000 and that payment would also go to their surviving spouses. Their average age is now 82. Many have outlived their savings. A monthly benefit to compensate for the loss of nearly a lifetime of ineligibility for the GI Bill would be of comfort and would provide some measure of security for veterans of the Merchant Marines.

In the words of General of the Army and former President, Dwight D. Eisenhower, "When final victory is ours, there is no organization that will share its credit more deservedly than the Merchant Marine." Franklin Roosevelt said, "The Mariners have written one of its most brilliant chapters of the war. They have delivered the goods when and where needed in every theater of operations and across every ocean in the biggest, the most difficult, and most dangerous job ever undertaken." And Douglas McArthur said about the liberation of the Philippines, "With us they have shared the heaviest enemy fire. On these islands I have ordered them off their ships and into fox holes when their ships became untenable targets of attack. At our side they have suffered in bloodshed and death. They have contributed tremendously to our success. I hold no branch in higher esteem than the Merchant Marine service."

So, Mr. Chairman, again, I thank you for allowing us to bring this bill for hearing today. As everyone on the platform has cosponsored the bill, it is time to finally fix the injustices endured by our nation's Merchant Marines. Thank you, sir.

[The statement of Bob Filner appears on p. 54]

MR. MILLER. Thank you for your testimony. Mr. Moran, do you have any questions?

MR. MORAN. Mr. Chairman, I have no questions. I just commend the gentleman from California, Mr. Filner. He has been an advocate for veterans of all services, all branches, for a long time. And this is just one or more of his many efforts in regard to making certain that no one is left out in the recognition to the service to our country. And I too am pleased to be a sponsor of this legislation. I thank Mr. Filner for his efforts.

MR. MILLER. Mr. Udall.

MR. UDALL. Thank you.

MR. MILLER. Mr. Bradley.

MR. BRADLEY. Ditto Mr. Moran's comments. Thank you, Mr. Filner.

MR. FILNER. Thank you, sir.

MR. MILLER. Ms. Brown-Waite.

MS. BROWN-WAITE OF FLORIDA. Whenever I am meeting with veterans throughout my district inevitably this issue comes up.

And we still thankfully do have a lot of veterans left who did serve in the Merchant Marine. Certainly it is time to recognize their service and their great contribution. And as you said, every member up here is on the bill. And I think it is time we move it. Thank you, Mr. Chairman.

MR. MILLER. Thank you very much. I would also like to ask Mr. Filner, with your acknowledgment, if we could have any veterans who were Merchant Marines and are here today, if you would please stand.

MR. FILNER. Thank you, Mr. Chairman.

MR. MILLER. Thank you for your service.

MR. FILNER. They are going to be testifying at a later panel.

MR. MILLER. Very good. Just asking for you all to stand.

MR. MILLER. They listen to you. We do not. Thank you very much, Mr. Filner. Ms. Baldwin, you are next testifying on H.R. 2963.

STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

MS. BALDWIN. Thank you, Mr. Chairman. Mr. Chairman, members of the Subcommittee, I really appreciate this opportunity to address the Subcommittee on H.R. 2963, the Dr. James Allen Disabled Veterans Equity Act. The bill that I introduced along with my co-author, Congressman Boozman, last year. This bill addresses an inequity in the paired organ statute that has resulted in the denial of appropriate disability compensation to blinded veterans.

This Committee and this Congress have rightly recognized that certain human organs or limbs are designed to work in pairs; hands, legs, kidneys, lungs, ears, and of course, eyes. In the instance of eyes, blindness in one eye profoundly affects depth perception, even if sight is fully retained in the other eye. The paired organ statute was written to assist those veterans who experience a service connected loss of a paired organ or limb. This statute recognizes the interdependency of paired organs and endeavors to treat the combined disability created by a non-service connected loss, injury, or degeneration of the remaining paired organ or limb as though it were the result of a service connected disability. In general, the paired organ statute accomplishes this task, with the exception of its treatment of loss of sight.

I want to begin by telling you the story of Dr. James Allen, after whom this legislation is named. Dr. Allen is a Professor of Ophthalmology at the University of Wisconsin Medical School in my district. And he as worked at the Veterans' Affairs Hospital for 33 years and treated numerous eye patients, including veterans who are blind. One such example is Mr. Donald May. Don is a World War II veteran

who lost his right eye in a hand grenade explosion. A few years ago Mr. May became legally blind in the non-service connected left eye. He applied to the Department of Veterans' Affairs for help and was denied further benefits. He was told that the current law in regard to paired organs did not apply to him even though he was legally blind in his service connected right eye.

After Dr. Allen brought the plight of his patients to my attention, I began to research why these veterans were being denied the benefits that I felt they deserved, benefits that I believe Congress intended to grant them. Through my work with the Blinded Veterans Association, we discovered that while the current paired organ statute covers blindness, in practice few, if any, veterans have been able to qualify for compensation under its provisions.

In theory the statute provides that when a veteran who is service connected for blindness in one eye could qualify for additional disability compensation if they became blind in the remaining eye for non-service connected reasons. However, the statute does not define the term blindness, nor is any provision made for impairment of vision in the non-connected eye short of blindness.

Rather than using the visual acuity of 20 over 200, as the definition of legal blindness that has been adopted by the way in all 50 states and by the Social Security Administration and the World Health Organization, the Department of Veterans' Affairs uses an obscure and much more restrictive 5 over 200 acuity for blindness, which is in rough layman's terms, the equivalent of having an eye with light perception only, no ability to perceive shapes, et cetera. As a result, few, if any, blinded veterans are able to qualify for additional compensation under the paired organ statute.

Consequently, I began to explore various options to address this inequity in current law. H.R. 2963 allows veterans who receive veterans disability compensation for impairment of vision in one eye at the rate of at least ten percent to be eligible to receive additional disability compensation for impairment of vision in the eye that is not service connected.

This change in law would affect only a small percentage, estimated to be roughly five percent of the some 13,100 veterans who are service connected for loss of vision in one eye. Yet such a change would send a powerful signal to our nation's blinded veterans that the hardships they face are not forgotten.

Once again I would like to thank the Chairman and Ranking Member and Subcommittee for the opportunity to appear on behalf of the Dr. James Allen Disabled Veterans Equity Act. It is certainly a modest but important step in restoring fair treatment to those blinded due to their service to our country and to further our commitment to them. Their sacrifices and service to this nation should be matched by our desire to improve quality of life for them and for their families.

And I look forward to working with you to advance this legislation. Thank you, again, Mr. Chairman.

[The statement of Tammy Baldwin appears on p. 65]

MR. MILLER. Thank you very much. Questions from the Subcommittee. Mr. Udall.

MR. UDALL. No question.

MR. MILLER. Mr. Moran.

MR. MORAN. Nothing other than to indicate to Ms. Baldwin my appreciation for her bringing this interest -- this issue to my attention. I had not thought about this particular topic and appreciate being made aware. And I thank you for coming before our Subcommittee.

MR. MILLER. Mr. Bradley.

MR. BRADLEY. I am just echoing the words of Mr. Moran. Thank you for your advocacy and I am pleased to be a cosponsor.

MR. MILLER. Ms. Baldwin, I understand that the Subcommittee staff is currently working with you looking at the numbers as it relates to the expense of the bill. And I would expect that we would have an opportunity to re-enter dialogue after we hear back for CBO. So, thank you for bringing this bill forward this afternoon.

MS. BALDWIN. Thank you.

MR. MILLER. Mr. Langevin, with H.R. 2188.

STATEMENT OF HON. JAMES R. LANGEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

MR. LANGEVIN. Thank you, Mr. Chairman and Members of the Committee. And before I begin, I would just like to take a moment to add my voice of support to, in particular Mr. Filner's bill. Both my grandfather, John Barrett, and his brother, my great-uncle after whom I was named, Jim Barrett, served in the Merchant Marines during World War II. They have both since long passed away, as well as their spouses. So my family, of course, there is no surviving member that would benefit financially from this in an effort for full disclosure. But it is the right thing to do to honor our Merchant Marines and the sacrifice that they gave during World War II.

But, Mr. Chairman and Ranking Member Berkley, who is also a sponsor of 2188, and distinguished Members of this Subcommittee, I want to thank you for having this important hearing today on all of these bills, and especially for the opportunity to discuss H.R. 2188, a bill that would authorize memorial markers in a national cemetery to commemorate service members buried in American Battle Monuments Commission cemetery.

As Members of Congress we all have the great opportunity to hear stories of duty and honor from our constituents. I had such a chance right after Memorial Day in 2004, when I received a letter from Hen-

ry Stad, a resident of Rhode Island and a U.S. Airforce veteran of World War II. Mr. Stad asked that I sponsor a bill that would allow family members of servicemembers that were killed in action and buried overseas to be able to request a burial plaque to be set in a family burial plot in the United States. I was happy to look into this request from a man who gave so much for our country.

Mr. Chairman, as you know, the United States currently has 24 permanent overseas burial grounds that are the final resting place for nearly 125,000 of the brave men and women who died serving our country. These sites are the responsibility of the American Battle Monuments Commission and are a wonderful tribute to those who sacrificed for our nation. However, the Department of Veterans' Affairs maintains that because these graves can be visited, there is no need to provide families at home with a memorial marker for their deceased loved ones buried there.

Now as a result, I introduced a bill that will help families memorialize those who died in service to our country and are buried in cemeteries overseas. According to the Department of Veterans' Affairs, those servicemembers whose remains are classified as "unavailable for burial" are eligible for government provided memorial markers or headstones. While this classification includes those whose remains have not been recovered, or who are buried at sea, there is one glaring exception to this definition. Those who died fighting for freedom abroad and were laid to rest there.

Now families are proud of these courageous men and women who answered the call to protect our country and then paid the ultimate sacrifice. Unfortunately for many families, a trip abroad to visit their loved ones final resting place is not possible due to finances or old age. A memorial marker is the way to keep the memory of their loved ones alive, while also teaching younger generations about sacrifice. We should not deny the families of these courageous men and women the ability to obtain memorial markers when we already do it for so many others.

To correct this my legislation will add overseas burials to the VA's "unavailable for burial" classification and finally let these men and women be memorialized by their families here at home.

Mr. Chairman, in closing, I urge you to help memorialize those that accepted the call to protect our country. Thank you, again, for this opportunity and I look forward to working with you in serving our veterans. Thank you.

[The statement of James R. Langevin appears on p. 68]

Mr. Miller. Thank you very much. Mr. Udall, questions? Mr. Moran? Mr. Bradley? Thank you for your testimony and bringing this forward. And the last panelist is up here with us on the Subcommittee. Mr. Udall, you are recognized to talk about your bill, H.R. 601.

STATEMENT OF HON. TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

MR. UDALL. Thank you, Mr. Chairman. And I very much appreciate the testimony of my colleagues, Tammy Baldwin, Bob Filner, and James Langevin.

Mr. Chairman, I would like to thank you for considering my legislation today, H.R. 601, the Native American Veterans Cemetery Act of 2005, and would like to personally thank Chairman Miller for inviting me to testify today.

Providing the men and women of the U.S. Armed Services with a final resting place is one of the missions of the Department of Veterans' Affairs through the National Cemetery Administration. NCA maintains 122 national cemeteries, including two in my home state of New Mexico, one in Santa Fe and one in Fort Bayard. NCA also provides grants to states for the construction of state cemeteries with ongoing responsibility for the maintenance of the cemetery.

However, one group lacks the opportunity to be buried close to home in a veterans cemetery. Historically, Native Americans have the highest record of service in the armed forces per capita of any ethnic group. And New Mexico ranks fifth in the nation in Native American veterans with a population of 9,800 veterans. Yet under existing law, tribal governments are ineligible to apply for a state cemetery grant. Thus, honorable soldiers are unable to receive the dignity of burial in a veterans cemetery located on their home land.

My legislation would change that. Under H.R. 601, tribal governments would be put on the same footing as states, consistent with tribal sovereignty by allowing them to apply for grants to establish, expand, or improve tribal veterans cemeteries.

H.R. 601 enjoys broad support. A bipartisan group of 46 members of the House are cosponsors, six of whom are members of the House Veterans' Affairs Committee. I would specifically like to thank the Ranking Member of this Subcommittee, Congresswoman Shelley Berkley for her support, as well as Congressman Tom Cole of Oklahoma for his strong and early support. State legislatures in both Arizona and New Mexico have passed resolutions in favor of allowing tribal governments to apply for national veterans cemeteries. The Navajo Nation, the largest federally recognized tribe is a strong supporter, as is the National American Indian Veterans Organization.

Furthermore, both former Department of Veterans' Affairs Secretary Anthony Principi and current Secretary Jim Nicholson have expressed strong support stating that H.R. 601 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands. I have included with my testimony several letters of support and would like to ask unanimous consent that these letters be made part of the record.

MR. MILLER. Without objection. So ordered.

[The attachment appears on p. 72]

MR. UDALL. Mr. Chairman and Members of this Subcommittee, this bill would give no special treatment and make no special arrangements for tribal governments. It would allow tribal governments the same opportunities as state governments, and by extension would grant Native American veterans the opportunity to be laid to rest close to home. This bipartisan legislation is strongly and widely supported, and I hope for your sincere consideration. At this time I would be happy to take any questions also.

[The statement of Tom Udall appears on p. 69]

MR. MILLER. Questions. Mr. Moran.

MR. MORAN. No, sir.

MR. MILLER. Mr. Bradley.

MR. BRADLEY. Thank you very much, Mr. Udall.

MR. UDALL. Thank you.

MR. MILLER: I understand how busy everybody's schedule is, and I appreciate the panelists being here to testify on their legislation that impacts the lives of our servicemembers, veterans, and their survivors. On behalf of the Subcommittee let me do say thank you again. We look forward to working with all of you. Thank you. And with that we will move to the second panel. If I could ask the second panel, which is VA and Arlington Cemetery, I believe, to come forward please. Mr. Bill Tuerk is the Under Secretary for Memorial Affairs at the National Cemetery Administration. Good to see you, sir. He is accompanied by Jack McCoy, the Associate Deputy Under Secretary for Policy and Program Management at the Veterans Benefits Administration. And rounding out this panel is Mr. Jack Metzler, the Superintendent of Arlington National Cemetery.

And I would say to any member of this Subcommittee if you have not availed yourself to a tour with Mr. Metzler at Arlington Cemetery you should do so. I do not know of any person that is more knowledgeable about a cemetery and a national shrine as he is. I want to personally thank you for giving me the opportunity to learn so much more about Arlington National Cemetery. I understand your testimony last week was quite helpful to the Subcommittee. I apologize, I was not here, as I was out of Washington back in the district attending a funeral at Barrancas National Cemetery in my congressional district. So with that, Mr. Tuerk, you may begin.

STATEMENT OF WILLIAM F. TUERK, UNDER SECRETARY FOR MEMORIAL AFFAIRS, NATIONAL CEMETERY ADMINISTRATION; ACCOMPANIED BY JACK McCOY, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION

MR. TUERK. Thank you, Mr. Chairman. Mr. Chairman, Mr. Bradley, Mr. Udall, friends on the staff. I thank you for the opportunity to testify today on a number of legislative items of great interest to veterans.

As you noted, Mr. Chairman, I am accompanied by Mr. Jack McCoy, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration. I am also honored to share the panel with my friend of many years, Mr. Jack Metzler, Superintendent of Arlington National Cemetery.

With the Committee's permission, Mr. Chairman, I will offer a summary statement this afternoon and request that my written testimony be submitted for the record.

MR. MILLER. Without objection.

MR. TUERK. If I may, Mr. Chairman, I will proceed by discussing each of the bills listed on the hearing agenda in the order in which they appear. The first bill, H.R. 23, the proposed Belated Thank You to Merchant Mariners of World War II Act of 2005, would require the Department of Veterans Affairs to pay certain Merchant Mariners who served during World War II the sum of $1,000 per month. It would, in addition, require VA to make the same payment to the surviving spouses of eligible Merchant Mariners after these Mariners' deaths.

VA opposes enactment of this bill for several reasons. First, the Secretary of Defense has certified that Merchant Mariner ocean-going service during World War II was active military service for VA benefit purposes. Thus, World War II Merchant Mariners are already eligible for the range of benefits offered to all World War II veterans. This bill would provide concurrent eligibility for an additional VA benefit, a cash payment for Merchant Mariners, not made available to other veterans.

It would also provide for a payment to Merchant Mariners, even those who have not incurred a contemporary service-connected disability, that is greater than the payment received by World War II veterans who suffered a disability, and have recieved a service-connected disability rating of 60 percent.

In our view, such preferential treatment to be afforded to Merchant Mariners would not be fair. Fairness would dictate equity, something that World War II Merchant Mariners already have achieved. Further, VA believes the Social Security Administration should be consulted on its views with respect to this legislation and the interer

agency coordination that it would require.

H.R. 601, the proposed Native American Veterans Cemetery Act of 2005, would authorize the Secretary of Veterans Affairs to make grants to Native American tribal organizations to assist them in establishing, expanding, or improving veterans cemeteries on trust lands in the same manner as such grants are made to States for these purposes. H.R. 601 would thus create another means of accommodating the burial needs of Native American veterans who wish to be buried on tribal lands. We strongly support enactment of this bill, as we have in years past.

H.R. 2188 would make servicemembers and others interred at American Battle Monuments Commission cemeteries eligible for placement of an additional memorial marker in a stateside cemetery.

The Department of Veterans Affairs does not support enactment of this bill. The fallen warriors who are interred in ABMC cemeteries have been provided an honorable place of repose by the United States government. To provide a second marker for those whose remains are already interred in a federal cemetery would significantly alter the purpose of the memorial marker benefit. By statute, memorial markers have been issued solely to honor those who cannot be interred either here or abroad, because their remains are not available for burial due to non-recovery from the battlefield, burial at sea, donation to science, or for other reasons.

In short, we believe the honor of an "In Memory Of" headstone should be reserved for those who are not, and who cannot be, memorialized at a conventional gravesite. Those buried in ABMC facilities are already so memorialized.

H.R. 2963, the proposed Dr. James Allen Disabled Veterans Equity Act, would improve compensation benefits for veterans in certain cases of vision impairment involving both eyes. This legislation, which is consistent with prior Congressional action pertaining to special consideration for hearing loss, would treat vision impairment in both eyes similarly to hearing loss in both ears. VA supports enactment of H.R. 2963, subject to offsetting savings.

H.R. 4843, the proposed Veterans Compensation Cost of Living Adjustment Act of 2006, would authorize a COLA adjustment effective with payments received in January 2007 to the rates of disability compensation, dependency and indemnity compensation, and other VBA administered cash benefit payments. We believe a COLA is necessary and appropriate to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. We therefore support enactment of this legislation.

H.R. 5037, the proposed Respect for America's Fallen Heroes Act, would prohibit non-approved demonstrations at cemeteries under the control of VA's National Cemetery Administration and at Arlington

National Cemetery. We fully support the policy objectives of this bill although, as I explain in my prepared statement, we are concerned that the text of this bill, as currently drafted, might inadvertently, we think, narrow the ban already in effect on demonstrations in national cemeteries under VA regulations. I look forward to working with Congress to avoid this result, particularly if it is an unintended result, and to ensure that the dignity and sanctity of our national cemeteries are fully maintained.

The final bill on the agenda, H.R. 5038, the proposed Veterans Memorial Marker Act of 2006, would change the applicability date of VA's current authority to provide a government headstone or marker for the private grave of a veteran, regardless of whether the grave has already been marked at private expense.

Under current law this authority extends only to veterans whose deaths occurred on or after September 11, 2001. A provision of the bill would authorize VA to furnish such markers for the graves of veterans who died on or after November 1, 1990. We support enactment of this provision of the bill.

In addition, this bill would extend VA's authority to furnish the second marker benefit through December 31, 2007. We support extension of this authority. Indeed, we would recommend that the legal authority for this benefit be made permanent.

Additionally with respect to H.R. 5038, we support a series of relatively minor statutory revisions, as outlined in my written statement, to accommodate the practical needs of veterans' families in obtaining government-furnished headstones and markers. We request that the Committee consider adding these provisions to H.R. 5038 prior to, or at, its markup of this legislation. NCA's technical experts will be made available to the Committee's staff to explain in depth our proposed additions to this bill.

Mr. Chairman, that concludes my statement. I appreciate the opportunity to have appeared before you to explain the administration's views on these important legislative matters. And I would be pleased to entertain any questions you or the other members of the Subcommittee may have. Thank you.

[The statement of William F. Tuerk appears on p. 77]

MR. MILLER. Thank you, sir. The Chair would now recognize Mr. Metzler.

STATEMENT OF JOHN C. METZLER, JR., SUPERINTENDENT, ARLINGTON NATIONAL CEMETERY

MR. METZLER. Good afternoon, Mr. Chairman, Members of the Subcommittee. Thank you for the opportunity to testify before the Subcommittee to present the Department of the Army's views on H.R.

5037, that would impact Arlington National Cemetery if enacted into law. I am testifying today on behalf of the Secretary of the Army, who is responsible for the operation and maintenance of Arlington National Cemetery.

Arlington is our nation's premier military cemetery. It is an honor for me to represent this national cemetery. And on behalf of the Department of the Army I want to express our appreciation for the support that Congress has provided over the years.

In fiscal year 2005 there were over 6,500 funerals at Arlington National Cemetery. In addition, we conducted 3,200 ceremonies. H.R. 5037 would prohibit certain demonstrations at national cemeteries under the control of the National Cemetery Administration and Arlington National Cemetery, to include picketing, oration before assembled crowds, displaying of placards, or distributing of certain forms or written materials on cemetery property. This bill would also prohibit demonstrations within 500 feet of a national cemetery one hour before and through one hour after a memorial, a funeral, or a ceremony.

The Army fully supports this concept to this proposed legislation as it pertains to Arlington Cemetery, because it would help protect the sanctity of the cemetery and the dignity of the funerals and ceremonies that are held upon this hallowed grounds.

Demonstrations at Arlington National Cemetery have been part of the history of the cemetery since at least the Vietnam War. Because of our urban location within the heart of our nation's capital, Arlington frequently becomes a rallying point for groups wishing to express their opposing views and opinions, particularly regarding our nation's military policies.

For this reason, certain conduct with the cemetery grounds is currently prohibited under Title 32 of the Federal Code of Regulations. This prohibition also occurs for memorial services and other ceremonies when our nation comes together at Arlington to remember the deeds and sacrifices of the brave men and women who served honorably in our armed forces.

This newly proposed law would help strengthen the sanctity and preserve the dignity of Arlington Cemetery. Mr. Chairman, this concludes my statement. I would be more than pleased to respond to any of your questions.

[The statement of John C. Metzler, Jr. appears on p. 96]

MR. BRADLEY. [Presiding] Thank you both, gentlemen. Let me start out by just saying that Mr. Tuerk, because VA's testimony was not received until the end of the day yesterday, Chairman Miller and other members of the Subcommittee will be submitting questions for the record. So let me just ask a couple of questions.

You expressed some concerns in your testimony about H.R. 5037.

That it would be less restrictive than current VA regulations that limit demonstrations on VA property. While VA regulations regulate within the grounds of a VA national cemetery, what affect do they have on demonstrations near, but not on, VA property?

MR. TUERK. Our regulations, Mr. Chairman, only extend to the limits of our national cemetery property. They do not extend beyond those limits 500 yards or otherwise. When I say that our regulations are broader, I am not talking in terms of the scope of the geographic coverage. I am talking about the scope of activities that we have claimed the authority to regulate and which the courts have affirmed that we in fact do have the authority to regulate.

MR. BRADLEY. Second question. When you exercise this authority to maintain decorum and not have demonstrations on the property, how do you go about informing people that may or may not know that these restrictions are in place?

MR. TUERK. Mr. Chairman, to be honest with you, I do not know. I can certainly follow up on how we proactively get this information out. Otherwise, I am prepared to say now that if someone approaches us, and of course no one is going to come onto our property without approaching us for some sort of permission, at that point we would advise them of first, our proper role in regulating conduct within the cemetery to maintain dignity and decorum; and secondly review with them the sort of activities that they have in mind; and lastly, inform them at that point of our views with respect to those activities.

MR. BRADLEY. So if someone were to gain access, for instance, to Arlington and did not appear that this was part of a protest and then unfurled banners and, you know, started a protest and they were unaware of the restrictions, what would -- how would you deal with that kind of a situation?

MR. TUERK. I will only speak for national cemeteries.

MR. BRADLEY. Yes.

MR. TUERK. I won't speak for Arlington. But, if protestors were to appear at our cemetery and start a demonstration without our permission, we would inform them, irrespective of the subject matter of their demonstration, that it is not allowed without permission. Then we would ask them to vacate the premises. If they did not vacate the premises, we would call the proper authorities to compel them to vacate the premises.

MR. BRADLEY. So if you gave them the opportunity to vacate the premises, then no further action would be taken?

MR. TUERK. I think that is the way we operate now. Yes, sir.

MR. BRADLEY. All right. Good. Thank you.

MR. TUERK. I think that is a fair assessment.

MR. BRADLEY. Generally that would be how you would handle it?

MR. TUERK. As a general proposition, yes.

MR. BRADLEY. Let me move to you, Mr. Metzler, and ask you the

same questions about informing the public and if somebody legitimately did not know that there were restrictions during a funeral from demonstrating, how would you handle that?

MR. METZLER. We would inform these individuals, either myself or one of my representatives would go up to them and ask them politely, but firmly, that they needed to stop during this funeral service. And at the same time we would call the United States Park Police, who is our law enforcement authority for Arlington Cemetery. And if the individuals left quietly that would end the matter. If not, we would invoke the Park Police to ensure that they left quietly.

MR. BRADLEY. So in other words, as you said, if people left and came back and demonstrated when it was appropriate to do so, then that would be the end of the issue?

MR. METZLER. Well, under the current Federal Code of Regulations, we do not allow picketing in the cemetery, protester demonstrations at all.

MR. BRADLEY. At all. Okay.

MR. METZLER. At all, anytime. I think the difference in this new proposed legislation, which is strengthening, at least for Arlington Cemetery, is that there is a restriction now of 500 feet to the boundary of the cemetery, which is a tremendous benefit to us since we do not actually own the property outside the --

MR. BRADLEY. Right. I mean, there is a bike path, there is a road, there is the bridge. I mean all of those I actually like to, myself, run out there once in a while. It is a beautiful run down the Mall and up to the Iwo Jima Memorial and along that bike path. So, under Mr. Rogers' proposed legislation, then you would, in fact, have authority to ensure that within that scope of area around the cemetery during those times that you have the authority to regulate.

Mr. Metzler. That is right. It would push them further away from the entrance of the cemetery. Oftentimes they use the area right in front of the cemetery, again which is not Arlington's property, to start a demonstration to march into Washington. This, again, would be ended under this new proposed legislation.

Mr. Bradley. Thank you. I am sure that the staff and members of the Subcommittee, and the sponsors of the legislation, especially H.R. 5037, look forward to working with you to make sure that we technically get the language right to make sure that there are no unintended consequences. And that the genuine thoughts of Mr. Rogers and the other sponsors that testified here today are what gets enacted into law. We look forward to working with you. Mr. Udall?

MR. UDALL. Thank you, Mr. Chairman. These questions are for Mr. Tuerk and Mr. McCoy, if he is able to answer them. Your testimony objects to H.R. 23 because of the size of the benefit. Would VA support a lesser monetary benefit for the Merchant Mariners, such as the $200 per month provided to pensioners of the earlier wars who did

not receive educational and housing benefits?

MR. TUERK. I think, Mr. Udall, the basis for our objection to this legislation is not necessarily the quantum of the payment that would be made, but the fact that the payment would be made to this class of veterans and not be made available to other classes of veterans, and to these survivors and not to other survivors. I think it is that principle, more than the $1,000 versus the $200 amount that you suggest here, that is the basis of our objection. Beyond that, I will defer to Mr. McCoy, who has more expertise on this matter, since it is a VBA matter.

MR. MCCOY. I would agree with that statement and just add the fact that there are Merchant Mariners now that receive benefits who would be getting an additional payment on top of whatever benefit they might be receiving now.

MR. UDALL. Could you please explain the VA's rationale for considering blindness for paired organs at a visual acuity of 5 to 200, rather than the level of 20 to 200, used by the Social Security Administration and other government agencies to determine legal blindness?

MR. MCCOY. No, sir. I can only explain it at this moment to the extent that is what our rating schedule calls for. I apologize, but I cannot answer your question in more detail. I would be glad to get that to you.

[As indicated above, Mr. McCoy submitted the following detailed response to Mr. Udall's question for the record: "The current Rating Schedule and its predecessors used by the Department of Veterans Affairs to evaluate visual impairment and to define blindness as visual acuity of 5/200 have used the same standard since 1924. A review of the history of the various changes to the rating schedule with respect to visual acuity reveals that this standard has not been challenged by anyone or any entity since originally set out by VA. VA proposed revisions to the schedule for eye disabilities and solicited comments in 1999. While there were numerous comments on other aspects of the schedule, no individual or organization raised a concern about the standard for blindness."]

MR. UDALL. That would be fine. Thank you. If you would submit that, that would be great. The Administration's budget did not include a COLA applicable to the additional $250 per month paid to surviving DIC, Dependency Indemnity Compensation beneficiaries with children for the first two years of eligibility. Does VA believe that it is appropriate for the value of this benefit to erode with the passage of time?

MR. TUERK. I am not prepared to speak for the administration on that question. Since we did not propose a COLA to that benefit, I think I am not free to state specifically that we support it or that we should have proposed it. I think, however, that the Administration

would not take the point of view that any benefit currently recieved by veterans should be eroded over time.

[Mr. Tuerk provided this additional response following the hearing to Mr. Udall's question: "Question 2: Why does the COLA bill not include a request to increase the $250 allowance for dependent children? Aren't you concerned that the allowance will be "devalued by inflation?"

Response: We agree that the additional $250 benefit due surviving spouses with minor children during the first two years of entitlement or until the last minor child reaches age 18, whichever comes first, is an important benefit intended to address transition issues for survivors. As survivors may be entitled to additional benefits for dependents, the transitional benefit is similar to other special or one-time payments such as automobile allowances and burial benefits. Traditionally, Congress has reserved to itself the decision to raise these benefits."]

MR. UDALL. And would you -- could you take a position then if you do not think there should be erosion, then we should somehow deal with it, shouldn't we?

MR. TUERK. Well, I cannot take a position here and now. But I certainly could follow up with a position on behalf of not only myself, but more significantly, on behalf of the administration.

MR. UDALL. That would be just fine. Thank you. Mr. Metzler, does Arlington have space which would be unsuitable for burial gravesites, but might be suitable for placement of a marker of a veteran buried in an ABMC cemetery?

MR. METZLER. We have limited space at this time for memorial sections, as we refer to them. We are down to under about 300 spaces left in the cemetery. This proposed legislation, as I read it, did not seem to affect Arlington Cemetery. It seemed to affect the Veterans' Administration national cemeteries. If it does eventually affect Arlington, it would concern me because the numbers are so great.

Typically in a year's time we only receive about 20 to 30 requests for memorial markers. And they are mainly World War II veterans whose remains have not been recovered and the families have just now found out about the benefit of putting a memorial marker up in lieu of not having their loved one recognized at all.

If this legislation gets enacted then there is a potential of 125,000 new requests for not only Arlington, but for national cemeteries across the spectrum. This could have an impact on our availability of space for the other veterans in the future.

MR. UDALL. Mr. Tuerk, could you answer that for the VA national cemeteries, that same question?

MR. TUERK. I think we are not in the position that Mr. Metzler is with respect to Arlington. We have 122 cemeteries, some of which

have no space available, some of which have several hundreds of acres available yet that have not been developed. So our position, unlike Arlington's, is -- or at least less premised on the unavailability of space to provide this benefit then the rationale that we expressed in both our prepared statement and my oral statement.

MR. UDALL. In your testimony you indicate that the number of requests for a headstone or marker for an already marked grave are nominal. Veterans buried in ABMC cemeteries were generally single and have been dead for over 50 years. In almost all cases, the parents of the deceased veteran would also be deceased. On what basis do you expect the request for a marker or a headstone for a veteran buried in a ABMC cemetery would be more than nominal?

MR. TUERK. Well, I think there are next of kin, perhaps, of many of those interred or other family members. I do not think that we necessarily assume that all would request this. I think our statement is premised on the outlying potential cost that this would generate.

MR. UDALL. Thank you, all three of you. Thank you very much. And I do not have any further questions, Mr. Chairman.

MR. TUERK. Thank you.

MR. UDALL. Thank you.

MR. BRADLEY. I would like to close this panel and thank you very much for your testimony. And as I said, Mr. Miller and other members of the Subcommittee may well have questions for the record and we will get them to you. And thank you again.

MR. TUERK. I understand, Mr. Chairman. I thank you.

MR. BRADLEY. If you will be seated. Is Mr. Filner a Merchant Mariner?

MR. FILNER. No, sir.

MR. BRADLEY. Good afternoon, gentlemen. Congressman Filner, I assume you are here for purposes of an introduction?

MR. FILNER. If I may?

MR. BRADLEY. Absolutely.

MR. FILNER. All of us have had the experience, especially those of us who have the privilege of serving on the Veterans' Committee, of meeting members of the greatest generation. The stories they tell, the courage they exhibited, the patriotism they have, it is an inspiration to all of us. One of the people I have had the privilege of meeting is Ian Allison, who is going to be testifying on H.R. 23. He is the Chairman of the Just Compensation Committee, which has been working on behalf of the Merchant Mariners. He has a life that is filled with adventure, and I just love to be with him. So I wanted to be here next to him today and share in his attempt to convince everybody of the virtue of H.R. 23.

MR. BRADLEY. Thank you very much, Mr. Filner. Let me just briefly introduce everybody. Mr. Ian Allison is the Co-Chair of the Just Compensation Committee of the U.S. Merchant Marine Combat Veteran.

Mr. David Greineder is the Deputy Legislative Director at AMVETS. Mr. Thomas Zampieri is the Director of Government Relations at the Blinded Veterans Association. Mr. Quentin Kinderman is the Deputy Director of the Veterans of Foreign Wars National Legislative Service. I would like to just remind all of you if you could do your utmost to keep your remarks to the five minute limit. Your full statement, obviously, will be part of the permanent record and will be printed as a result of the hearing. Mr. Allison, please.

STATEMENT OF IAN ALLISON, CO-Chairman, JUST COMPENSATION COMMITTEE OF THE U.S. MERCHANT MARINE COMBAT VETERAN

Mr. Allison. Chairman Bradley, and other Members of this Subcommittee, esteemed Members I should say, my name is Ian Allison. I strongly encourage the passage of H.R. 23. I represent 6,300 Merchant Marine veterans of World War II, who are seeking the recognition and their benefits under the 1944 GI Bill of Rights. This group is a non-profit, unincorporated committee of veterans registered with the Internal Revenue Service as a Just Compensation Committee.

The committee has asked me to appear today before this Subcommittee to represent their interests. The statements made here today have been supplied to me by various members of our committee for your enlightenment. I am requesting that the statements of Stanley Wilner, (POW), Bruce Felknor, Perry Adams, and Burt Young be introduced into the record. These written statements have been delivered to the Subcommittee and I ask you again to be sure they are introduced into the record.

[The attachments appear following Mr. Allison's written statement]

Mr. Allison. Passage of H.R. 23 would be the final chapter of what has been a ragged response by the government to men who placed their lives in danger as they served their country. There might be some members in Congress who are not historically informed in what happened to some 230,000 seamen, both black and white, from the end of World War II to the present. And perhaps I can help present this issue. The Merchant Mariners of World War II were the only service that was not segregated. We had black and white both serving on the same ship.

It has been said that when one dies, so dies one's influence and power. And so it was that when President Franklin Roosevelt died, his directions to his advisors that the Merchant Seamen of World War II should be accorded benefits like veterans of other services also died. The influence of dissenting Members and some of the animosities left over after the war from competing services and civilian

service groups prevented benefits being given to the Merchant Seamen. Many service people who might have dug ditches in Louisiana and never stepped outside of the United States got the full GI Bill, GI loans, and much more. But those who sailed the Murmansk Run, were sunk in burning oil, or frigid waters of the North Atlantic got nothing. In fact, their pay, which has been reviewed countless times, stopped the moment they went into the water.

It was not until Senator Barry Goldwater in 1977 made the effort to recognize the women pilots with veteran recognition did the same bill, Public Law 95-202 permit Merchant Seamen to apply for veteran recognition. Thus began the constant misinformation and countless examples of hatred for the Merchant Seamen's efforts to secure veterans recognition. There was a growing lack of concern for Congress to do what was right, recognize the Merchant Marine veterans of World War II.

The first stage of recognition efforts by the seamen came after a bitter court battle between the Maritime Trades and the Pentagon. A federal court judge, in 1986, ruled against the Pentagon, stating that the Merchant Seamen have been discriminated against. He wrote in his finding that the Navy and certain veterans groups bitterly opposed any recognition. While the court recognized the majority of Merchant Seamen as qualified, these men only received a tombstone, a flag, and a discharge and limited medical attention. Those who went to sea after August 15, 1945 to December 31, 1946, the official end of the war, received nothing. They became the denied seamen. The Defense Department went to war against this group.

This started phase two of official Congressional denial. It took ten years of effort on the part of the Merchant Mariners Fairness Committee, through five sessions of Congress, until finally H.R. 1126 with Representative Lane Evans as sponsor and 337 of his fellow members as cosponsors, to recognize the denied seamen with veterans discharge. A discharge that they had to pay $30 to buy and to pay for their own medals, and received only a tombstone, a flag and a piece of paper. Nothing else as a benefit. We are most fortunate many of the cosponsors of H.R. 1126 are still members of the House of Representatives, members of the Veterans' Committee, and members of this Subcommittee.

They do not have the knowledge of how slanderous misinformation was continually sent to House members by various military liaison stating that Merchant Seamen were unqualified to be veterans as they went on strike during the war. The story by Walter Winchell about Merchant Seamen refusing to unload munitions and cargo at Guadalcanal on a Sunday was repudiated and the reporter was in disgrace. No ship was ever delayed in the war because of labor problems. It is so hard to counter lies, especially when many Members had no direct knowledge of the history of the war. Today we call it

"bad-mouthing" your opposition.

Of the 230,000 men in the Merchant Marine in 1945, probably less than 10,000 are still alive. The youngest who joined the service in 1945 are now 78 to 79 years old, many in poor health. The majority of the men in their mid-80's, as myself, I am 86, dedicating 100 percent of my time to see the record set straight by passage of H.R. 23. There is still a time for a grateful nation to say thank you to a thinning rank of men.

We are now at stage three. Sixty years is a long time for any service person to wait for proper recognition. Sixty years is a long time to spend trying to correct history written to denigrate what we thought was service to our country. They say America is strong because of the will of the people and their concern for each other. Passage of H.R. 23 will go a long way in proving this to be so. Please recommend that H.R. 23 be passed and let's clean up the record. These blemishes should not be part of our country's record. Thank you very much.

[The statement of Ian Allison appears on p. 99]

MR. BRADLEY. Thank you very much, sir. Next, Mr. Greineder.

STATEMENT OF DAVID GREINEDER, DEPUTY LEGISLATIVE DIRECTOR, AMVETS

MR. GREINEDER. Thank you. Mr. Chairman, Members of the Subcommittee, AMVETS is pleased to present our views on the legislation before the Subcommittee. And we are honored to join our fellow veterans service organizations and veterans on the panel.

Regarding H.R. 23, this bill would provide $1,000 monthly payment to the Merchant Marines of World War II. If implemented, this legislation would cost $120 million for the first year, and $20 million in subsequent years. AMVETS has no official position on the bill at this time, but I will say that we believe this bill will be extremely costly to VA. AMVETS certainly recognizes the sacrifices of the Merchant Marines during World War II and we are proud of their accomplishments, but we would ask that you seriously take a look at how this bill would affect VA.

H.R. 601 would allow Native American Tribes to apply for state cemetery grants from VA. AMVETS believes cemeteries on tribal lands would be an appropriate memorial and a reminder of the sacrifices made by Native American men and women.

H.R. 2188 would allow memorial markers to be placed in a national cemetery to commemorate service members whose remains are interred in American Battle Monuments Cemetery. AMVETS share the profound pride, admiration, and gratefulness associated with the spirit of this legislation. We support the bill. But we do ask that appropriate steps be taken to ensure that the land used for these mark-

ers are not better intended for gravesites.

H.R. 2963 would allow veterans who have a complete loss of sight in one eye due to a service connected injury to receive increased disability compensation if they lose sight in the other eye. AMVETS recognizes the need and importance of this legislation. We support the bill.

H.R. 4843 would provide a cost of living adjustment to veterans benefits effective December 1, 2006. AMVETS supports our nation's commitment to care for the men and women who have served in our military service. This legislation will increase current rates of disability compensation to help meet rising costs. We support the bill.

H.R. 5038 would allow veterans and their families to apply and receive VA's official grave marker for an additional year. AMVETS trusts that the Committee can locate the funds necessary to incorporate these veterans and family members with an official recognition. AMVETS supports the bill.

H.R. 5037 would restrict protests in national cemeteries during military funeral honors. AMVETS whole heartedly supports this legislation. We believe it is only appropriate that grieving families be allowed to bury their loved ones in peace. AMVETS is troubled, and quite frankly offended, that more than 100 military funerals in the last nine months have been interrupted by aggressive war protests. Families burying their husbands, wives, sons, or daughters should not be subject to this kind of display. AMVETS believes this bill is very timely and hope it receives swift passage in the House floor. And Mr. Chairman, AMVETS wrote a letter of endorsement for this bill and I would ask that it be included in the record.

[The attachment appears on p.]

MR. GREINEDER. In closing, Mr. Chairman, AMVETS looks forward to working with you and others in Congress to ensure the earned benefits of all American veterans are strengthened and improved. This concludes my testimony. Thank you again for allowing us to present our views.

[The statement of David Greineder appears on p. 104]

MR. BRADLEY. Dr. Zampieri.

STATEMENT OF THOMAS ZAMPIERI, DIRECTOR OF GOVERNMENT RELATIONS, BLINDED VETERANS ASSOCIATION

MR. ZAMPIERI. Mr. Chairman and Members of the Committee, on behalf of the Blinded Veterans Association we appreciate the opportunity to testify here today on H.R. 2963. I will try to make this very brief. I would like to have the full testimony entered into the record.

There are basically four points here of interest that we would like

to stress. One is that BVA would like to remind the Committee that this is not a new benefit or a new entitlement. We are just trying to fix the paired organ statute, which historically has been on the books since 1962. That is a real long time to have something on the books with an error in it of omission. And what we are concerned about and we want to stress is, there has been, according to VHA records 13,109 veterans who are service connected as of today for the anatomical loss of an eye or blindness due to an injury or illness while they are in the service and they searched the records to find out seven different ways if there was any other missing people out there. And this is the number that they kept coming up with.

I go out to Walter Reed frequently to visit with every blinded soldier who has come back from Iraq since last June. And I have talked with the Chief of Ophthalmology out there. And to put a new face on this, there are currently 90 soldiers who have come back from Iraq who have anatomically lost an eye due to an IED explosion or to a gunshot wound. Two of those soldiers are sitting out there today. And the concerned mother of one of those soldiers talked to me yesterday. And she said, "Her son is doing well recovering form other injuries, but he lays awake at night worrying what will happen to me if I lose my vision in my other eye?"

Under the current paired organ statute, which does not define legal blindness, if an individual who is service connected for loss of vision in one eye puts in a claim for service connection under the paired organ statute, the VA refers to Section 1160, paragraph (l), which defines legal blindness in a measurement form of 5/200 in order to meet VA service connection compensation standards.

Currently legal blindness is defined in all 50 states by the Social Security Administration, by the World Health Organization, is defined as 20/200 or less, or 20 degrees of central field of vision or less. Basically, in researching this and actually working with CBO, and I am going to cite their own figures, according to the Journal of American Medical Association Archives of Ophthalmology, and this is in the CBO report, "The prevalence of age-related macular degeneration or other diseases that would cause an individual in the U.S. population between the ages of 40 and 65 to lose their vision is 1.4 percent. The figure rises to just five percent of the population between the ages of 65 to 80 years of age, and then does not increase until after age 80 to about 15 percent of the population."

Therefore, if this paired organ statute is fixed concerning the 13,109 veterans who have lost vision in one eye, you can expect probably 600 claims. I talked to a VBA claims reviewer who had 19 years of experience. And he knows of five cases in the last six years. So we are not opening up the flood gates as long as we look at this from the standpoint of those individuals who served and lost an eye in service of their country.

I will leave it on this note that why should a veteran who served in the military and lost an eye and almost probably lost his life in service to his country have to meet a higher standard of blindness than a Social Security recipient. Mr. Chairman, I appreciate the opportunity for Blinded Veterans Association to testify today. And we are completely in support of H.R. 5037. Thank you.

[The statement of Thomas Zampieri appears on p. 112]

MR. BRADLEY. Thank you very much. Mr. Kinderman.

STATEMENT OF QUENTIN KINDERMAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE VETERANS OF FOREIGN WARS

MR. KINDERMAN. Thank you, Mr. Bradley. Mr. Chairman, Members of the Subcommittee, thank you for inviting us to testify here today. On behalf of the 2.4 million men and women of the Veterans of Foreign Wars of the United States, we appreciate the opportunity to present our views on legislation included in today's hearing. Our views follow.

Regarding H.R. 23, Belated Thank You to the Merchant Mariners of World War II Act of 2005, the bill seeks to expand the current dates of service for World War II Merchant Mariners, who are recognized as veterans, and pay a $1,000 monthly benefit to those World War II Merchant Mariners, or to their surviving spouses. The VFW recognizes the heroic service of Merchant Mariners during World War II. Their sacrifices and heroic efforts were instrumental in winning the Second World War.

We cannot, however, support this legislation to pay a monthly benefit which would be in addition to any current veterans benefits that would otherwise be payable. We believe this payment would be disproportionate in terms of recognition or benefits to what other veterans who have gone in harm's way in service to our country currently receive.

With regard to their service as Merchant Mariners, and the proposal that they should be recognized for this Merchant Marine service by a special benefit, in addition to being recognized as veterans, or for a period extending beyond the currently recognized World War II dates, the VFW has not taken a position on this matter.

H.R. 601, titled "Native American Veterans' Cemetery Act of 2005," would allow tribal organizations to apply for grants to establish and maintain veteran cemeteries on tribal lands. We fully support H.R. 601. We believe this is a logical extension of the veteran cemetery grant program. This legislation will address the needs of Native American veterans and their families which are not fully met by the national and state veteran cemeteries.

H.R. 2188, titled "Authorization of Memorial Markers for the Remains Interred in American Battle Monuments," proposes allowing memorial markers to be placed in national cemeteries for remains interred in cemeteries administered by the American Battle Monuments Commission. The bill provides recognition on American hallowed ground to the many servicemembers who made the ultimate sacrifice to preserve our freedom, and never returned home. We fully support this bill. And I might say, as probably anyone would who has been to Normandy Beach and seen the memorial cemeteries there, that these are sacrifices that I think should remain in the consciousness of the American people. And I think making these markers convenient here so people can see the sacrifices made by the greatest generation is a good thing.

H.R. 2963 is titled "Dr. James Allen Veterans Equity Act." The bill addresses the payment of service connected compensation for service connected loss of vision in one eye in the event vision is impaired in the other eye. I doubt I could explain that anywhere near as well as Tom just has. We fully support this legislation.

H.R. 4843, titled "Veterans Compensation Cost of Living Adjustments Act of 2006," seeks to adjust compensation rates to reflect the rising cost of living. We appreciate the Committee's commitment to maintaining the integrity of the buying power of the veterans' compensation program by providing periodic cost of living increases, COLAs. We fully support this goal.

However, we note that this bill, once again, contains a provision for rounding down any fraction of a dollar in the COLA calculation. This works against the spirit of the bill. Over time, and when combined with other adjustments made to meet budgetary goals, this has cause erosion of the compensation benefit and significant problems for America's veterans. We believe it might be the underlying cause of some policy problems that have been recognized by the Committee.

H.R. 5037 is titled "Respect for America's Fallen Heroes Act." This legislation restricts demonstrations at or near national cemeteries during funerals and requires approval by cemetery authorities for other demonstrations. The intent is to prevent hateful and offensive speech during a very difficult time for a veteran or servicemember's family. We strongly support this legislation, including provision that urge state and local governments to enact legislation to protect funeral homes, religious services, and memorial services from this dangerous and damaging use of free speech.

And finally, H.R. 5038, entitled "Providing Government Markers for Dependent Children," we fully support this bill as well. Thank you for the opportunity to present the views of the Veterans of Foreign Wars.

[The statement of Quentin Kinderman appears on p. 118]

MR. BRADLEY. Thank you all to the panel. Ms. Berkley, you indicated you had a markup that you had to go back to. So I will yield first to you for questions.

MS. BERKLEY. Thank you, Mr. Chairman. Actually, I had a hearing at the International Relations Committee, which precluded me from coming and listening to the entire hearing. But I am awfully glad I came for this panel and was able to get away.

I want to thank all of you for your eloquent remarks. I am supportive of all of the pieces of legislation that have been discussed today and a cosponsor of most of them. But I particularly want to thank all of you for your continued service to our country. Not only did you serve in our nation's wars, but you continue to serve the veterans of this country by your work through your VSOs and this Congresswoman wants to tell you how much I appreciate that.

And, Mr. Chairman, if I may, I would like to submit my written testimony -- my written opening remarks for the record, since I am sure that everybody has sat through a lot of testimony. And I do not want to burden anyone further. So thank you very much for the opportunity.

[The statement of Shelley Berkley appears on p. 43]

MR. BRADLEY. Mr. Udall.

MR. UDALL. I do not have any questions, but I also just want to tell the panel I think you have given excellent testimony here today and very much appreciate it. Thank you.

MR. BRADLEY. In that case, I have a couple of quick questions. Mr. Filner, since you are still here, can I impose on you to ask you a question?

MR. FILNER. Please.

MR. BRADLEY. Thank you. As you know, I am a cosponsor of H.R. 23. Numerous others, and I would say that by virtue of the fact that I agree with you on the -- what you are trying to accomplish with regard to the Merchant Marine, I believe is appropriate. But you heard the testimony from some of the other witnesses today. Other groups have had -- other civilian groups -- have had veterans' status conferred on them in accordance with Public Law 95-202. Could you just testify as to why you think it is appropriate to single out Merchant Marines for this special monthly benefit and respond perhaps to some of the critiques from other panelists have talked?

MR. FILNER. I thank you, Mr. Chairman. You know, I want to defer to Mr. Allison on some of the more emotional kinds of arguments. Let me say, that I heard about the amount of money. We are talking about $120 million that goes down to, unfortunately, zero in a relatively short time. $120 million is 0.2 percent of the VA budget, of the existing VA budget, not 2 percent, 0.2 percent.

There are myths about who deserves what at what time. Remember that this is a benefit for just the remaining years of life, not for a lifetime. As Ian was telling me, the few that do get benefits for disability were denied the GI bill benefits. We are just saying, "here is nominal sum, a belated thank you." We can never make up for the loss of benefits. We cannot afford not to do this. It is a moral imperative of our nation. Most Mariners thought they were fighting for the nation as part of our armed forces in World War II. I would like Ian, if he may, to comment on your initial issue about why this group.

MR. ALLISON. Can you repeat that question? I am a little hard of hearing.

MR. BRADLEY. Well, thank you, sir. I indicated to Congressman Filner that while I agree with him about the appropriateness of this bill and singling out members of the Merchant Marine for this special benefit, there are those who do not agree with that policy change. And so -- and the gentleman, Mr. Kinderman from the VFW testified in essence to that before. So I was in essence trying to give yourself and Congressman Filner a chance to respond to that. Why you think it is appropriate for singling out members of the Merchant Marine for this stipend at this point in time?

MR. ALLISON. I appreciate that question. And I like that expression "singling out". I think that was the problem. Back in 1944 we were singled out and were dropped from the benefits that everybody else got. I do not -- 14 million veterans were allowed the GI Bill of Rights in 1944. And we were singled out. We did not get those benefits. And we did not -- there are a dozen of things in the testimony that were given by my fellow veterans of what they -- experiences they had trying to get into college, trying to get jobs, trying to make a living after the war when they weren't veterans. And it was quite flagrant to these people.

It is dollars and cents. We were denied the college education. I only went to the 12th grade in school. I hustled and I did pretty good after. But that right of a college education was worth a lot of money. And the DOT and some of the Department of Labor said it was worth anywhere from $150,000 to $300,000, in 1945 dollars or '44 dollars. In today it would be a million dollars that we were denied. And I think most people who are denied a million dollars would like to try to get some of it back, especially when the get 80/85 years old.

MR. BRADLEY. Well, just for the record, I want to make sure you know I agree with you and I was just giving you a chance to respond to that.

MR. ALLISON. Thank you very much, sir.

MR. BRADLEY. Mr. Kinderman, do you -- I am going to give you a chance to respond also.

MR. KINDERMAN. Thank you, Mr. Bradley. It is very difficult to sit here and oppose a popular bill, especially when in fact I am a Mer-

chant Mariner. I hold a Merchant Mariner's license, but obviously not World War II.

I think Mr. Filner said it. He said "Who deserves what and at what time?" This is, as you pointed out, not a unique group. There are other groups who for various reasons have not received veterans benefits at the time when they needed them either through the controversy or the amount of time it took to make a deliberation on eligibility.

World War II Merchant Mariners took a long time. You talk to Vietnam veterans exposed to agent orange who suffered from cancer, they will tell you it took a long time to get justice too. And there seems to be a tradition of when you make the decision you move forward, you do not look back. So we would have concerns that if we do this monthly benefit without any constraints on eligibility other than you were there, you served, and you are alive today, or your spouse is alive, it would certainly open up the possibilities that you would deal with many, many more groups.

I am old enough to remember that when I first came into this business that the World War I veterans, they would always have a bill, H.R. 1918, for a service pension. And there was always great support for that, but it never came about. So I know this is a very difficult situation for you.

Mr. Bradley. Thank you very much. I have no further questions. If Mr. Udall or Ms. Berkley have no further questions, I would like to thank the panel and thank all three of the panels this afternoon. And state that, without objection, statements by the following individuals and organizations will be entered into the record: David Forte, Cleveland Marshall College of Law at Cleveland State University; Lino Graglia, University of Texas Law School; John Fee, Brigham Young University; the Disabled American Veterans; The American Legion; the Paralyzed Veterans of America; and the Vietnam Veterans of America.

[The statements appear on p. 121, p. 130, p. 131, p. 135, p. 136, and p. 149]

Mr. Bradley. I appreciate everyone's attendance this afternoon. This Committee has a long tradition of bipartisanship, which I think you have seen on display here this afternoon. On behalf of the other members and Mr. Miller, we all look forward to working with you to ensure a productive year. And once again we thank you for your participation this afternoon. And with that and with nothing further before this Subcommittee, I will adjourn the hearing and thank you.

[Whereupon, at 3:00 p.m., the Subcommittee was adjourned.]

APPENDIX

Chairman Jeff Miller
Opening Statement
Legislative hearing on H.R. 23, H.R. 601, H.R. 2188, H.R. 2963, H.R. 4843, H.R. 5037, and H.R. 5038

April 6, 2006

Good afternoon. The hearing will come to order.

Welcome to our first legislative hearing of the year. We have a full plate so I will highlight each bill briefly before turning to our ranking member, Mrs. Berkley.

H.R. 23, the Belated Thank You to the Merchant Mariners of World War II Act of 2005, would direct the Secretary of Veterans Affairs to pay a monthly, tax-free benefit of $1,000 to certain honorably discharged veterans of the U.S. Merchant Marine who served between December 7, 1941 and December 31, 1946, or to their survivors.

H.R. 601, the Native American Veterans Cemetery Act, would authorize the Secretary of Veterans Affairs to make grants to tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries on trust lands.

H.R. 2188 would authorize the placement of memorial markers in a Department of Veterans Affairs national cemetery for the purpose of commemorating servicemembers or other persons whose remains are interred in an American Battle Monuments Commission cemetery.

H.R. 2963, the Dr. James Allen Disabled Veterans Equity Act, would allow certain veterans who receive disability compensation of at least 10 percent for impairment of vision in one eye to be eligible to receive such compensation for impairment of vision in the other eye that is deemed not related to military service.

H.R. 4843, the Veterans' Compensation Cost-of-Living Adjustment Act of 2006, would increase effective December 1, 2006, the rates of disability compensation and dependency and indemnity compensation.

H.R. 5037, the Respect for America's Fallen Heroes Act, would prohibit demonstrations within 500 feet of a national cemetery and Arlington National Cemetery during a funeral service. Violation of the prohibition would be punishable by up to a year imprisonment under title 18, United States Code.

Finally, H.R. 5038, the Veterans' Memorial Markers Act of 2006, would provide government markers for veterans who died between November 1, 1990 and September 10, 2001 and who are interred in a private cemetery; would extend through December 31, 2007, the current authorization for government markers for veterans interred in a marked grave at a private cemetery; and would authorize the placement in a national cemetery of a memorial marker for dependent children who would be eligible for burial but whose remains are unavailable.

At this time I'd like to welcome the Ranking Member, Mrs. Berkley, for any remarks she wishes to make.

CLOSING

Without objection, the following statements will be submitted for the record the following individuals or organizations:

David Forte, Cleveland-Marshall College of Law at Cleveland State University; Lino Graglia, University of Texas School of Law; John Fee, Brigham Young University; the Disabled American Veterans; The American Legion; the Paralyzed Veterans of America; and the Vietnam Veterans of America.

I appreciate your attendance this afternoon. This committee has a long tradition of bipartisanship, and I look forward to working with each of you to ensure a productive year.

With nothing further before the subcommittee, this hearing is adjourned.

Statement of Ranking Member Shelley Berkley
Subcommittee on Disability Assistance and Memorial Affairs
Legislative Hearing
April 6, 2006

Thank you, Chairman Miller, for holding this hearing to consider a number of bills to improve benefits and services for our nation's veterans.

With men and women actively engaged in combat in Iraq and Afghanistan, we have a responsibility to assure that their service is recognized. The bills we are considering today would recognize our promise to veterans.

I am aware that several of the bills we are considering are likely to result in mandatory spending for which we do not have offsetting savings. Under the current budget rules, we will not be able to pass bills with mandatory spending without cutting benefits to other veterans and their families. I believe that benefits for those who have worn the uniform should be treated as a continuing cost of war. If we can afford tax cuts for wealthy Americans, we should be able to pay for veterans benefits.

I join the Chairman as an original cosponsor of H.R. 2963 to improve benefits for blinded veterans, H.R. 4843 to provide a cost of living increase to our service-connected disabled veterans and their survivors and H.R. 5038 to extend eligibility for a second gravestone or marker.

Thank you to everyone for being here, and I look forward to hearing the testimony.

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Testimony Before the House Disability Assistance and Memorial Affairs Subcommittee
Legislative Hearing on Pending Bills, Including H.R. 5037
The Respect for America's Fallen Heroes Act
Congressman Mike Rogers (MI)
April 6, 2006

Chairman Miller, Ranking Member Berkley, thank you for convening this important hearing. The issue I will discuss today is the importance of respect for America's fallen heroes.

American military men and women, who give their lives in service to the nation, deserve to be buried peacefully and with dignity. America needs a chance to put its collective arms around these families and say, "you have the right to grieve peaceably and to bury your loved ones with dignity and respect."

I have introduced legislation along with Chairman Steve Buyer, Congressman Silvestre Reyes and Chairman Jeff Miller to shelter grieving families from demonstrators trying to disrupt funeral services.

The legislation, the Respect for America's Fallen Heroes Act, currently has 55 cosponsors and is supported by the American Legion - Department of Michigan, American Veterans (AMVETS), the Disabled American Veterans, the Fleet Reserve Association, Gold Star Wives of America, the Jewish War Veterans of the USA, the Military Order of the Purple Heart, the Military Order of the Purple Heart - Department of Michigan, the Veterans of Foreign Wars, the Veterans of Foreign Wars - Department of Michigan, the Vietnam Veterans of America and We Care America.

This common-sense measure would prevent disruption of military funerals at national cemeteries beginning an hour before and continuing until an hour after the service, and keep protestors at least 500 feet away from mourners during any demonstration. It also includes a sense of Congress that all fifty states should adopt similar legislation affecting all military funeral and burial sites. The restrictions contained in the legislation mirror identical, in fact word for word, language which has been approved by the U.S. Supreme Court to eliminate any doubt concerning the Constitutionality of H.R. 5037.

Since first announcing this legislation, my office has received more than 25,000 comments from concerned Americans from all over the nation and even the world. From Baghdad, Iraq to my hometown of Brighton, Michigan, we have heard from families who have lost a loved one in

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combat, we have heard from veterans, we have heard from the Patriot Guard Riders, we have heard from students, parents, grandparents and concerned citizens. And we have heard from those who are serving in harm's way as we speak. Please allow me to share two of the more moving messages:

"Over the last six months my unit has taken over 30 casualties in some of the most vicious areas south of Baghdad. The thought of their families having to face protesters after their memorials insights a rage I have never known before. These "protestors" mock all that we have accomplished here, the lives that have been forever changed, and the lives that have been lost, using our most valued doctrines of faith and freedom as their defense. I can not thank you enough for your dedication to this effort. I can only hope that your colleagues will join you in this battle."

Sergeant Ashley A. Voss
Baghdad, Iraq

"Thank you for creating and seeking to help grieving families of our American heroes. My husband and I support your act 100%. Our son Sergeant Trevor Blumberg was killed in action in Iraq on September 14, 2003. We know the pain and horror in losing a heroic son; no less than to have to face cruel, inhumane people who cannot dignify your time of grief." Please continue to place these families in America's hearts and minds. Nothing less is deserved."

Mrs. Janet M. Blumberg
A Proud Parent of an American Hero

Mr. Chairman, America has a responsibility to ensure that the families of our fallen heroes can grieve in peace and with dignity. It is a matter of ensuring both a sense of decency and civility. I appreciate you and Ranking Member Berkley convening this important hearing and I would be happy to entertain any questions that you may have.

Statement of Steve Chabot
Subcommittee Chairman on the Constitution
on H.R. 5037, the "Respect for America's Fallen Heroes Act"
Committee on Veterans' Affairs
April 6, 2006

Mr. Chairman and Members of the Committee, I am very pleased to be an original cosponsor of H.R. 5037, the Respect for America's Fallen Heroes Act, and to have helped author the bill along with Chairman Buyer, Chairman Miller, and Representative Rogers. As the Chairman of the House Subcommittee on the Constitution, my testimony today will focus on how the bill is fully consistent with the Constitution while fully protecting the respect and dignity of funerals held on and near national cemeteries.

We are all painfully aware of the recent trend of demonstrations and protests occurring near military funerals on national cemeteries. Such demonstrations are not compatible with the respect due to our Nation's fallen heroes, and they should not be consistent with our

Nation's laws. That is why I am here today.

The first provision of H.R. 5037 prohibits demonstrations on national cemetery grounds, unless such demonstrations are approved by the cemetery director. This provision is clearly constitutional under judicial precedents, most recently *Griffin v. Secretary of Veterans Affairs*. In that case, the Federal Circuit Court of Appeals, just a few years ago, upheld as constitutional an existing federal regulation providing that "any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited" on Veterans Affairs property. The first provision of H.R. 5037 simply codifies that principle in statute.

The second provision of H.R. 5037 prohibits any demonstration within 500 feet of national cemeteries, within 60 minutes before and after a memorial service is held there, if the demonstration includes – quote – "any individual willfully making or assisting in the making of

any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony." This exact language has been upheld as constitutional by the Supreme Court in the case of *Grayned v. City of Rockford.*

The Supreme Court, upholding this language in the *Grayned* case, specifically cited and relied on Webster's definition of "diversion," which is – quote – "the act or an instance of diverting (as the mind or attention) from some activity ..." Consequently, under this language, any demonstration that includes anyone whose conduct so much as tends to turn the heads of those participating in a funeral ceremony can be prohibited.

At the same time, this language does not unconstitutionally draw distinctions regarding what demonstrations are allowed, and are not allowed, based on the content of the speech. The Supreme Court, again in the *Grayned* case, upheld this precise language as constitutional

because the language – quote – "contains no broad invitation to subjective or discriminatory enforcement ..." Also, as the court stated in the *Griffin* case, "Because the judgments necessary to ensure that cemeteries remain sacred to the honor and memory of those interred or memorialized there may defy objective description and may vary with individual circumstances, ... the discretion vested in VA administrators ... is reasonable in light of the characteristic nature and function of national cemeteries."

Judicial precedents also make clear that H.R. 5037 is constitutional because it is a reasonable "time, place, and manner" restriction. As the Supreme Court in the *Grayned* case stated – quote – "reasonable time, place and manner regulations may be necessary to further significant governmental interests, and are permitted." The 500-foot, 60 minutes-before-and-after prohibition of any "diversionary" protest in H.R. 5037 is clearly a reasonable time, place, and manner regulation that furthers the significant governmental interest of protecting the sanctity of

national cemeteries. The significance of this governmental interest is clear in existing federal law: Congress, by express statutory command, has long provided that national cemeteries – quote – "shall be considered national shrines as a tribute to our gallant dead."

Section 2(b) of the bill defines the term "demonstration" to include picketing, speeches, the use of sound amplification equipment, the display of placards, the distribution of leaflets, and similar conduct, unless they are an official part of the funeral ceremony. This definition is sufficiently clear and will not be struck down on the grounds that it is unconstitutionally vague. Indeed, the Supreme Court has upheld laws using terms like "demonstration" standing alone, without any definition whatsoever.

In conclusion, let me say that all supporters of H.R. 5037 are asking is that the families and friends of our Nation's fallen heroes be given a few hours of peace within which to honor their loved ones'

greatest sacrifice. Two hours to pay respect to a selfless life devoted to protecting others. That is not unconstitutional. That is not even an imposition. That is the least we can do for those who fight to uphold the Constitution.

That is the least we can do for those who stand between us and our enemies. That is the least we can do for those who volunteer and serve and sacrifice, and take the risk of losing everything in this world so we don't have to.

I urge all my colleagues to join me in supporting this bill, which will give the families of those who died for us the comfort of knowing they will be able to pray in peace and thank the fallen on and near the sacred ground where they will rest forever so we can live free today.

Thank you.

TESTIMONY OF REP. SILVESTRE REYES (TX-16)
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
APRIL 6, 2006

Good afternoon. I would like to thank Chairman Jeff Miller and Ranking Member Shelley Berkley for holding this hearing and for allowing me to testify on H.R. 5037, the Respect for America's Fallen Heroes Act. I would also like to express my appreciation to Rep. Mike Rogers for his leadership on this important matter.

Members of the Subcommittee, I know all of us agree that United States military men and women who give their lives serving their country deserve to be buried with respect and dignity. The families of these courageous men and women also deserve funerals that allow them to say goodbye to their loved ones and mourn their loss in peace. However, organized protests have recently occurred throughout the United States at the funerals of soldiers killed while serving in our current military operations. Some protestors have even used signs that read "Thank God for IED's" and "Thank God for Dead Soldiers."

As a Vietnam veteran, a member of the House Veterans' Affairs Committee and the House Armed Services Committee, and simply as a human being, I knew I had to do my part to end these senseless protests. Over 100 such protests have been held, and whatever the reason for the protest, it is despicable to heckle families whose loved ones have died – under violent and stressful conditions – during the families' time of pain and mourning.

That is why I joined with my colleague Rep. Rogers and other members of the House Veterans' Affairs Committee to introduce legislation in the House of Representatives to ensure that the families of those who have died serving our nation can hold dignified funerals for their loved ones. I am proud to serve as the lead Democratic co-sponsor of H.R. 5037. The bill is narrowly tailored to protect military families from these verbal attacks, while also protecting our freedom of speech.

The Respect for America's Fallen Heroes Act would:

- Prohibit all demonstrations 60 minutes prior to and after funerals taking place at Department of Veterans Affairs' national cemeteries or the Department of Army's Arlington National Cemetery (the only areas over which the federal government maintains jurisdiction);

- Impose a 500-foot restriction on demonstrations at national cemeteries and Arlington National Cemetery;

- Allow for a civil infraction for violations, including monetary fines and/or jail time of six months to a year, as consistent with the authority granted to the Secretary of Veterans Affairs under current regulation; and

- Express the sense of Congress that all states should enact similar restrictions for state and private cemeteries, as well as funeral homes.

It is sad that such legislation is needed, but these protestors have been malicious and hateful to these families, who are bearing the brunt of this war. This bill is necessary to protect their peace and dignity during their time of great loss and personal tragedy.

I would also like to make my colleagues aware that we have recently heard that these protestors are planning to stage similar demonstrations at Walter Reed Army Medical Center and other facilities where seriously injured soldiers are being treated. That should give you an idea just how contemptible the protesters are, as if more evidence was needed.

H.R. 5037 has the support of several Veterans Service Organizations, including the Vietnam Veterans of America, American Veterans (AMVETS), Disabled American Veterans, Fleet Reserve Association, Jewish War Veterans of the USA, Military Order of the Purple Heart, and Veterans of Foreign Wars.

Again, I thank the Subcommittee for holding this hearing today and strongly urge you to move the bill forward so that it can be considered by the full House as soon as possible.

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STATEMENT OF CONGRESSMAN BOB FILNER

before the

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

April 6, 2006

JUSTICE AND EQUITY FOR THE UNITED STATES MERCHANT MARINES

MR. FILNER: Mr. Chairman, I would like to thank you for this hearing on the "Belated Thank You to the Merchant Marines of World War II Act" – H.R. 23.

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The story of the World War II United States Merchant Marines is a story of patriotism, of youthful exuberance, of dedication to duty, of pride in a job well done, of bravery in the midst of battle, and sadly, of a nation who forgot these heroes for over 40 years after the war's end.

World War II Merchant Mariners suffered the highest casualty rate of any of the branches of service while they delivered troops, tanks, food, airplanes, fuel and other needed supplies to every theater of the war. Troops were trained and supplies, ammunition, and equipment were manufactured in the U.S. and used overseas – and the Merchant Mariners were the necessary link between the two. Without them, we would not have been able to win the war. It is as simple as that.

The Merchant Mariners took part in every invasion from Normandy to Okinawa, often becoming sitting ducks for enemy submarines, mines, bombers and kamikaze pilots. Fighting was particularly fierce in the Atlantic, where German submarines and U-boats prowled the ocean, destroying Merchant Marine ships in an attempt to isolate Great Britain.

Compared to the large number of men and women serving in World War II, the numbers of the Merchant Marines were small, but their chance of dying during service was extremely high. Estimates range up to 1500 for the number of ships that enemy forces sank. 9300 Mariners lost their lives, 600 were prisoners of war, and 11,000 were injured.

Yet, an injustice was inflicted on this group of World War II veterans. All volunteers, once approximately 230,000 strong (estimates range from 215,000 to 285,000), the number of those currently living is estimated to be approximately 10,000.

This group of brave men was denied their rights under the G.I. Bill of Rights that Congress enacted in 1945. All those who served in the Army, Navy, Marine Corps, Air Force or Coast Guard were recipients of benefits under the G.I. Bill. Only the United States Merchant Marine was not included.

The Merchant Marine became the forgotten service. For four decades, no effort was made to recognize their contribution. The fact that Merchant Seamen had borne

arms during wartime in the defense of their country seemed not to matter.

After years of fighting the system and a court battle, some World War II Mariners finally received a "watered down bill of rights" in 1988. But some portions of the G.I. Bill have never been made available to veterans of the Merchant Marine.

What did this mean in practical terms? First and probably most important, it meant no GI Bill educational benefits. Instead of studying to become a lawyer, a teacher, a doctor, or a number of other life-long professions that require a higher education, many Merchant Mariners had to rely on their high school education to get them a job. Lost

opportunities, lost careers, lost wages were the results for the Merchant Marines.

No low interest home loans were available to Merchant Mariners. No lifetime compensation for related war injuries and disabilities, no use of VA hospitals, no priority for local, state, and federal jobs, no Social Security credit for wartime service (a disparity that H.R. 23 addresses).

There is overwhelming support for this bill. At last count, a bi-partisan list of 248 Members of Congress has endorsed this bill. There is support from coast to coast – from the City of Los Angeles, California to the City of New Bedford, Massachusetts who have passed resolutions in support of H.R. 23. Senator Ben Nelson of Nebraska has introduced a

companion bill in the Senate, S. 1272. I have received a letter from Transportation Secretary Norman Mineta expressing gratitude for the sacrifice Merchant Mariners gave during World War II in defense of our country.

While it is impossible to make up for over 40 years of unpaid benefits, I propose that this bill will acknowledge the service of the veterans of the Merchant Marine and offer compensation for years and years of lost benefits.

H.R. 23 will pay each eligible veteran a monthly benefit of $1000, and that payment would also go to their surviving spouses. Their average age is 82. Many have outlived their savings. A monthly benefit to compensate for the loss of nearly a lifetime of ineligibility for the GI Bill would be of

comfort and would provide some measure of security for veterans of the Merchant Marines.

In the words of General of the Army Dwight D. Eisenhower, Allied Expeditionary Forces in Europe, "When final victory is ours, there is no organization that will share its credit more deservedly than the Merchant Marine." And in the words of President Franklin D. Roosevelt, "The (Mariners) have written one of its most brilliant chapters. They have delivered the goods when and where needed in every theater of operations and across every ocean in the biggest, the most difficult and most dangerous job ever taken."

I urge my colleagues to join me in supporting this legislation. We can fix the injustices endured by our nation's Merchant Marines by passing H.R. 23 as quickly as possible!

April 4, 2006

The Honorable Jeff Miller, Chairman
Subcommittee on Disability Assistance and Memorial Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We are writing on behalf of the undersigned American maritime labor organizations to express our strong support for HR 23, the "Belated Thank You to the Merchant Mariners of World War II Act of 2005" and to urge your Subcommittee to favorably report this legislation. The organizations we represent have the privilege of including among our retired and active seagoing members individuals who served our country with honor and distinction during World War II, and their descendents. These World War II merchant mariners are truly representative of the "Greatest Generation", and we are extremely proud of them and the example they have set for all merchant mariners who continue to respond to our Nation's call whenever and wherever they are needed.

General Colin Powell, following the Persian Gulf War, said that: "Since I became Chairman of the Joint Chiefs of Staff, I have come to appreciate first-hand why our Merchant Marine has long been called our Nation's fourth arm of defense. The American seafarer provides an essential service to the well-being of our Nation as was demonstrated so clearly during Operation Desert Shield and Desert Storm . . . ."

When Congressman Bob Filner introduced HR 23, he stated that he did so "to correct an injustice that has been inflicted upon a group of World War II veterans, the World War II United States merchant mariners." We sincerely thank Congressman Filner for his initiative in working to address this injustice by sponsoring legislation to provide long-overdue recognition and benefits to World War II merchant mariners. We are grateful to you, Mr. Chairman, for cosponsoring HR 23 and to this Subcommittee's Ranking Member, Congresswoman Shelley Berkley, and the other members of this Subcommittee, all of who have added their names to the bipartisan list of 247 cosponsors of HR 23.

There is not, nor should there be, any debate as to the invaluable service given by American merchant mariners during World War II. In fact, World War II merchant mariners suffered the highest casualty rate of any of the branches of the Armed Forces, other than the United States Marine Corps, as they delivered troops, tanks, food, fuel and other needed equipment and material to every theater of World War II. Enemy forces sank more than 800 merchant vessels between 1941 and 1944 alone.

As General of the Army, Allied Expeditionary Forces in Europe, Dwight David Eisenhower stated, "When final victory is ours there is no organization that will share its credit more deservedly than the Merchant Marine." Fleet Admiral Chester W. Nimitz, Commander-in-Chief, Pacific Theater, said that "The Merchant Marine . . .. has repeatedly proved its right to be considered as an integral part of our fighting team."

General of the Army Douglas MacArthur, speaking of the merchant seamen who supported the liberation of the Philippines, stated that "With us they have shared the heaviest enemy fire. On these Islands I have ordered them off their ships and into foxholes when their ships became untenable targets of attack. At our side they have suffered in bloodshed and death . . . .They have contributed tremendously to our success. I hold no branch in higher esteem than the Merchant Marine Service."

Finally, President Franklin Roosevelt eloquently and accurately summed up the contributions of America's World War II merchant mariners, telling the country and the world that they "have written one of its most brilliant chapters. They have delivered the goods when and where needed in every theater of operations and across every ocean in the biggest, the most difficult and most dangerous job ever taken."

Yet despite this record of exemplary, indispensable service to the war effort, American merchant mariners were not given the formal recognition and benefits granted other services by the Congress through the G.I. Bill of Rights in 1945. In fact, no legislation to recognize the contributions made by World War II merchant mariners was enacted until Congress extended limited veterans' status to these gallant American citizens in 1988.

We believe, as Congressman Filner has stated, that it is time to correct this injustice. We believe our country has an obligation to the remaining World War II merchant mariners, and to the descendents of those who died during the War and since, to fully acknowledge their service and to give them the measure of benefit called for in HR 23. We ask you and your Subcommittee, Mr. Chairman, to take the first step in righting this wrong and to favorably report HR 23 to the Committee on Veterans' Affairs.

We again thank you and the Members of your Subcommittee for the support you have shown for the World War II merchant mariners. We ask that our statement be included in the Subcommittee's hearing record on HR 23 and we stand ready to provide whatever additional information you may need.

Sincerely,

Timothy A. Brown, President, International Organization of Masters, Mates & Pilots
Ron Davis, President, Marine Engineers' Beneficial Association
Michael McKay, President, American Maritime Officers
Michael Sacco, President, Seafarers International Union of North America

cc: The Honorable Shelley Berkley, Ranking

TAMMY BALDWIN
2ND DISTRICT, WISCONSIN

Website: tammybaldwin.house.gov

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Opening Statement of Representative Tammy Baldwin (D-WI)
Before the House Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
Legislative Hearing on
H.R. 2963, Dr. James Allen Disabled Veterans Equity Act
April 6, 2006

Thank you, Mr. Chairman, Ranking Member Berkley and Members of the Subcommittee for including as a part of this hearing, H.R. 2963, the Dr. James Allen Disabled Veterans Equity Act that I introduced, along with my co-author Congressman Boozman last year. I appreciate the Committee for providing me with the opportunity to testify about an inequity in the current paired organ statute [Section 1160 of title 38, United States Code] that has resulted in the denial of appropriate disability compensation to blinded veterans. I would like to thank the Chairman and Ranking Member for your leadership on this very important issue.

This Committee and this Congress have rightly recognized that some human organs or limbs are designed to work in pairs: legs, hands, kidneys, lungs, ears, and of course eyes. In the instance of eyes, blindness in one eye profoundly affects depth perception, even if sight is fully retained in the other eye. The paired organ statute was written to assist those veterans who experience a service-connected loss of a paired organ or limb. This statute recognizes the interdependency of paired organs and endeavors to treat the combined disability created by a non-service-connected loss, injury or degeneration of the remaining paired organ or limb as though it were the result of a service-connected disability. In general, the paired organ statute accomplishes this task, with the exception of its treatment of loss of sight.

I want to begin by sharing with you the story of Dr. James Allen, after whom this legislation is named. Dr. Allen is a Professor of Ophthalmology at the University of Wisconsin School of Medicine in my district. He has worked at the Veterans Affairs Hospital for thirty-three years and treated numerous eye patients, including veterans who are blind. One such example is Mr. Donald May. Don is a World War II veteran who lost his right eye in a hand grenade explosion. A few years ago Mr. May became legally blind in the non-service-connected left eye. He applied to the Department of Veterans Affairs for help and was denied further benefits. He was told that the current law in regard to paired organs did not apply to him, even though he was legally blind in his service-connected right eye.

After Dr. Allen brought the plight of his patients to my attention, I began to research why these veterans were being denied the benefits I felt they deserved, benefits that I believe Congress intended to grant to them. Through my work with the Blinded Veterans Association (BVA), we

discovered that while the current paired organ statute covers "blindness," in practice few, if any, veteran has been able to qualify for such compensation.

In theory, the statute provides that a veteran who is service-connected for blindness in one eye could qualify for additional disability compensation if they became blind in the remaining eye for non service-connected reasons. However, the statute does not define the term "blindness" nor is any provision made for impairment of vision (in the non-service-connected eye) short of blindness.

Rather than using visual acuity of 20/200, or loss of field of vision to 20 degrees, as the definition of "legal blindness" that has been adopted by all 50 states and the Social Security Administration, the Department of Veterans Affairs uses a much more restrictive 5/200 rating for legal blindness, which is, in rough layman's language, the equivalent to having an eye with light perception only. As a result, few, if any, blinded veterans are able to qualify for additional compensation under the paired organ statute.

Consequently, I began to explore various options to address this inequity in current law. During the 108th Congress, I introduced Dr. James Allen Disabled Veterans Equity Act, which I re-introduced last June as H.R. 2963. My legislation is modeled after a provision in the Veterans Benefit Act of 2002 intended to correct a similar problem with the paired organ statute that had denied additional disability compensation to veterans based on hearing loss. H.R. 2963 would allow veterans who receive veteran's disability compensation for impairment of vision in one eye at a rate of at least 10 percent to be eligible to receive additional disability compensation for impairment of vision in the eye that is not service-connected.

This change in the law would only affect a small percentage, estimated to be roughly five percent, of the 13,109 veterans who are service-connected for loss of vision in one eye. Yet, such a change would send a powerful signal to our nation's blinded veterans that the hardships they have faced are not forgotten. Indeed, our nation's blinded veterans face significant challenges in the labor market. The National Institute on Disability and Rehabilitation Research found that for individuals with visual impairments, to the extent that they are unable to read letters, the employment rate is only 30.8 percent, compared to 82.1 percent for those without disabilities. Overall, the employment rate of persons with disabilities has decreased from 26 percent in 1996 to 19.5 percent in 2003. Given this dire employment trend, and the unique socioeconomic characteristics of our veterans, it is even more urgent for Congress to correct this one last inequity in current paired organ statute and address the life-altering impact of blindness on our veterans.

H.R. 2963 currently enjoys broad bi-partisan support, including the co-sponsorship of the Chair and Ranking Member of this Subcommittee. I would like to thank you for all of your help in advancing this legislation. I would also like to thank other members of this Subcommittee: Congressman Evans, Congressman Bradley, Congressman Udall, and Congresswoman Brown-Waite, for also co-sponsoring and supporting this bill. I am grateful that nearly 80 of my colleagues have signed on as co-sponsors of this legislation, and I want to especially thank members of this Subcommittee for your critical support of this small, but crucial, piece of legislation.

Once again, I would like to thank the Chairman and Ranking Member for the opportunity to appear before the Subcommittee on behalf of the Dr. James Allen Disabled Veterans Equity Act. It is a modest but important step in restoring fair treatment to those blinded due to their service to our country and to further our commitment to them. Their sacrifices and service to this nation should be matched by our desire to improve the quality of life for them and their families. I look forward to working with everyone on the Subcommittee, and those in the VA, so that together we can advance this legislation.

JAMES R. LANGEVIN
2D DISTRICT, RHODE ISLAND

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Statement of Congressman James Langevin on H.R. 2188
Before the Subcommittee on Disability Assistance and Memorial Affairs
Committee on Veterans' Affairs
U.S. House of Representatives
April 6, 2006

Chairman Miller, Ranking Member Berkley and distinguished Members of the Subcommittee, thank you for having this important hearing today, and especially for the opportunity to discuss H.R. 2188, a bill that would authorize memorial markers in a national cemetery to commemorate servicemembers buried in an American Battle Monuments Commission cemetery.

As Members of Congress, we all have the great opportunity to hear stories of duty and honor from our constituents. I had such a chance right after Memorial Day in 2004 when I received a letter from Henry Stad, a resident of Rhode Island and a U.S. Air Force Veteran of World War II. Mr. Stad asked that I sponsor a bill that would allow family members of servicemembers that were killed in action and buried overseas to be able to request a burial plaque to be set in a family burial plot in the United States. I was happy to look into this request from a man who gave so much to his country.

Mr. Chairman, as you know, the United States currently has 24 permanent overseas burial grounds that are the final resting place for nearly 125,000 of the brave men and women who died serving our country. These sites are the responsibility of the American Battle Monuments Commission and are a wonderful tribute to those who sacrificed for our nation. However, the Department of Veterans Affairs maintains that because these graves can be visited, there is no need to provide families at home with a memorial marker for their deceased loved ones buried there.

As a result, I introduced a bill that will help families memorialize those who died in service to our country and are buried in cemeteries overseas. According to the Department of Veterans Affairs, those servicemembers whose remains are classified as "unavailable for burial" are eligible for government-provided memorial markers or headstones. While this classification includes those whose remains have not been recovered or who were buried at sea, there is one glaring exception to this definition – those who died fighting for freedom abroad and were laid to rest there.

Families are proud of these courageous men and women who answered the call to protect our country and then paid the ultimate price. Unfortunately, for many families, a trip abroad to visit their loved ones is not possible due to finances or old age. A memorial marker is a way to keep the memory of their loved one alive, while also teaching younger generations about sacrifice. We should not deny the families of these courageous men and women the ability to obtain memorial markers when we already do it for so many others. To correct this, my legislation will add overseas burials to the VA's "unavailable for burial" classification and finally let these men and women be memorialized by their families here at home.

Mr. Chairman, in closing, I urge you to help memorialize those that accepted the call to protect our country. Thank you again for this opportunity, and I look forward to working with you in serving our veterans.

PRINTED ON RECYCLED PAPER

Opening Statement before the House Veterans Affairs Subcommittee on Disability Assistance and Memorial Affairs

by

U.S. Representative Tom Udall of New Mexico

on

H.R. 601, the Native American Veterans Cemetery Act of 2005

April 6, 2006

Mr. Chairman, members of the Subcommittee:

I would like to thank you for considering my legislation, H.R. 601, the Native American Veterans Cemetery Act of 2005, and would like to personally thank Chairman Miller for inviting me to testify.

Providing the men and women of the U.S. Armed Services with a final resting place is one of the missions of the Department of Veterans Affairs through the National Cemetery Administration (NCA). NCA maintains 122 national cemeteries including two in my home state of New Mexico, one in Santa Fe and one in Fort Bayard. NCA also provides grants to states for the construction of state cemeteries with ongoing responsibility for the maintenance of the cemetery.

However, one group lacks the opportunity to be buried close to home in a veterans cemetery. Historically, Native Americans have the highest record of service in the armed forces per capita of any ethic group, and New Mexico ranks fifth in the nation in Native American veterans with a population of 9,800 veterans. Yet, under existing law, tribal governments are ineligible to apply for a state cemetery grant. Thus, honorable soldiers are unable to receive the dignity of burial in a veterans cemetery located on their home land.

My legislation would change that. Under H.R. 601, tribal governments would be put on the same footing as states – consistent with tribal sovereignty – by allowing them to apply for grants to establish, expand or improve tribal veterans cemeteries.

H.R. 601 enjoys broad support. A bipartisan group of forty-six members of the House are cosponsors, five of whom are members of House Veterans Affairs Committee. I would specifically like to thank the ranking member of this subcommittee,

Congresswoman Shelley Berkley, for her support, as well as Congressman Tom Cole of Oklahoma for his strong and early support. State legislatures in both Arizona and New Mexico have passed resolutions in favor of allowing tribal governments to apply for national veterans cemeteries. The Navajo Nation, the largest federally recognized tribe, is a strong supporter, as is the National American Indian Veterans (NAIV) organization. Furthermore, both former Department of Veterans Affairs Secretary Anthony Principi and current Secretary Jim Nicholson have expressed strong support, stating that "H.R. 601 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands." I have included with my testimony several letters of support, and would like to ask unanimous consent that these letters be made part of the record.

Mr. Chairman and members of this subcommittee, this bill would give no special treatment and make no special arrangements for tribal governments. It would allow tribal governments the same opportunities as state governments, and by extension would grant Native American veterans the opportunity to be laid to rest close to home. This bipartisan legislation is strongly and widely supported, and I hope for your sincere consideration. At this time, I will be happy to take any questions.

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

July 29, 2004

The Honorable Tom Udall
Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Udall:

We are pleased to present our views on H.R. 2983, 108th Congress, a bill, "[t]o amend title 38, United States Code, to provide for eligibility of Indian tribal organizations for grants for the establishment of veterans cemeteries on trust lands." This bill would authorize the Secretary of Veterans Affairs to make grants to tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries in the same manner and under the same conditions as grants to states are made under 38 U.S.C. § 2408.

The cemetery-grants program has proven to be an effective way of making the option of veterans-cemetery burials available in locations not conveniently served by our national cemeteries. H.R. 2983 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands, and we strongly support its enactment.

While we are unsure of the number of grant applications that may be prompted by the bill's enactment, we do not assume its passage would result in the appropriation of additional funds for the cemetery-grants program. Hence, we estimate its enactment would be budget neutral.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

Anthony J. Principi

Anthony J. Principi

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

November 21, 2005

The Honorable Tom Udall
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Udall:

We are pleased to present our views on H.R. 601, 109th Congress, the Native American Veterans Cemetery Act, a bill "[t]o amend title 38, United States Code, to provide for the eligibility of Indian tribal organizations for grants for the establishment of veterans cemeteries on trust lands." This bill would authorize the Secretary of Veterans Affairs to make grants to tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries in the same manner and under the same conditions as grants to states are made under 38 U.S.C. § 2408.

The cemetery-grants program has proven to be an effective way of making the option of veterans' cemetery burial available in locations not conveniently served by our national cemeteries. H.R. 601 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands, and we strongly support its enactment.

While we are unsure of the number of grant applications that may be prompted by the bill's enactment, we do not assume its passage would result in the appropriation of additional funds for the cemetery grants program. Hence, we estimate its enactment would be budget neutral.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

R. James Nicholson

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DISTRICT 2

COMMITTEES:
COUNTIES, MUNICIPALITIES AND MILITARY AFFAIRS, RANKING MEMBER
APPROPRIATIONS (P)

Arizona House of Representatives
Phoenix, Arizona 85007

October 28, 2005

Honorable Thomas Udall
Member, Committee on Veterans' Affairs
1414 Longworth House Office Building
Washington, D.C. 20515

Re: Native American Veterans Cemetery Act of 2005

Congressman Udall,

Thank you for your efforts in introducing H.R. 601, the Native American Veterans Cemetery Act of 2005. You also introduced the bill H.R. 2983, the Native American Veterans Cemetery Act of 2003 (Act). As you know, The Native American Veterans Cemetery Act makes all Native American Tribes eligible to apply for state cemetery grants. Although the federal State Cemetery Grants Program, (SCGP) exists pursuant to 38 U.S.C. Section 2408 since 1978 for the benefit of all U.S Armed Forces service members and veterans, Indian Tribes of the U.S. are ineligible to apply for program funding to establish, expand or improve a veterans' cemetery on their reservations because eligibility requirements are limited to states only. This Act would allow Tribes to be equal with state governments by allowing them to apply for grants to establish, expand or improve tribal veterans' cemeteries. Moreover, if a Native American tribe were awarded a state cemetery grant, the cemetery would be open to all veterans.

Historically, Native Americans have the highest record of service per capita of any ethnic group. The Navajo nation alone boasts more than 16,000 veterans of the United States armed forces, and Navajo soldiers have served their nation since the treaty of 1868. The Navajo Veteran's Administration has identified a site for new cemetery in Chinle, Arizona that will be open to all the veterans residing in Northern Arizona.

As you are aware, when this act was first introduced in the session of 2003, the Secretary of Veterans Affairs Anthony Principi stated that he strongly supported the bill's enactment. The bill is also supported by the Navajo Nation, the largest federally recognized Tribe, as well as National American Indian Veterans, Inc (NAIV). In addition to a resolution adopted by the Navajo Nation Council, the New Mexico and Arizona state legislatures have both passed memorials urging Congress to adopt this important measure.

The purpose of this letter is to assure you of the continuing support of the members of the Arizona Legislature and the Navajo Nation for H.R. 601, the Native American Veterans Cemetery act 2005. With our nation at war in Iraq and Afghanistan, the need for veterans' cemeteries has not diminished. Certainly, the contribution of Native Americans in serving their nation warrants the same recognition as other veterans. We urge you to continue your fine work and assure passage the Native American Veterans Cemetery Act.

Sincerely,

Albert Tom
Arizona State Representative
District 2

JOE SHIRLEY, JR.
President

FRANK J. DAYISH, JR.
Vice President

SHARON CLAHCHISCHILLIAGE
Executive Director
WASHINGTON OFFICE

NAVAJO NATION WASHINGTON OFFICE

April 5, 2006

The Honorable Tom Udall
House of Representatives
1414 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Udall:

On behalf of the Navajo Nation, I am writing to thank you for the introduction of H.R. 601, the "Native American Veterans Cemetery Act of 2005." Currently, the Navajo Nation's only Veteran's cemetery is full and the Navajo Nation is without access to grant funding to establish and maintain a Veterans cemetery. Navajo Veterans who wished to be laid to rest with military honors among fellow Native American warriors must be laid to rest far from the aboriginal homeland they fought to protect. H.R 601 will allow Native American Veterans to be buried near their families and in there homeland.

Another important issue for Navajo veterans is access to improved Veterans health care. Currently, the Navajo Nation and the Veterans Health Administration are discussing the proposed placement of a VA health clinic within the Navajo Nation. Congressman Rick Renzi (R-AZ) has assured the Navajo Nation that a VA health clinic will eventually be located in the Navajo Nation.

The Navajo Nation respectfully requests Congressman Udall's continued support on these two important measures. Furthermore, the Navajo Nation Washington Office will continue to work to see additional support for H.R. 601 among Congress and the National American Indian Veterans Service Organization, Inc.

Again, thank you for introducing H.R. 601 and the Navajo Nation looks to your leadership for H.R. 601's movement. If there are questions, please feel free to contact me at the Navajo Nation Washington Office at (202) 775-0393.

Sincerely,

Sharon Clahchischilliage

Sharon Clahchischilliage

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DONALD "Don" E. LOUDNER – NATIONAL COMMANDER (605) 996-1881

March 29, 2006

The Honorable Tom Udall
United States House of Representatives
1414 Longworth House Office Building
Washington, DC 20515

Dear Representative Udall:

National American Indian Veterans, Inc., is writing to express our support of your bill, H.R. 601, "Native American Veterans Cemetery Act of 2005." The Act will authorize the Secretary of Veterans Affairs to make grants available to tribal organizations for establishing, expanding, or improving veterans cemeteries on trust land owned by or held in trust for tribal organizations. The Act has been referred to the U.S. House of Representatives Committee on Veterans Affairs Subcommittee on Benefits.

Today, American Indian Veterans cemeteries in Indian Country are either non-existent or are filled to capacity. As a result, our deceased brothers and sisters in arms are laid to rest in State Veterans Cemeteries, or other cemeteries, far from their homelands and without the identifying honor of distinguished service in defense of our great nation.

During his second inaugural address, President Abraham Lincoln spoke to the mission of the U.S. Department of Veterans Affairs, ... "care for him who shall have borne the battle and his widow and orphan." On a population per capita basis, no one has borne the battle more than American Indian Veterans along with their widows and orphans. American Indian Veterans have served in the defense of the United States in all of its military conflicts throughout the 20th and 21st centuries.

Your efforts regarding H.R. 601, "Native American Veterans Cemetery Act of 2005," are very much appreciated for its passage will honor American Indian Veterans by establishing veterans cemeteries in Indian Country.

Donald E. Loudner

STATEMENT OF

WILLIAM F. TUERK

UNDER SECRETARY FOR MEMORIAL AFFAIRS

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

HOUSE COMMITTEE ON VETERANS' AFFAIRS

APRIL 6, 2006

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on a number of legislative items of great interest to veterans.

H.R. 23

Chapter 112 of title 46, United States Code, currently provides for the payment of burial benefits for, and for the interment in national cemeteries of, certain former members of the United States Merchant Marine Service (Merchant Mariners) pursuant to chapters 23 and 24 of title 38, United States Code. Section 2 of H.R. 23, the "Belated Thank You to the Merchant Mariners of World War II Act of 2005," would amend chapter 112 to require the Department of Veterans Affairs (VA) to pay to certain Merchant Mariners the sum of $1,000 per

month. This new benefit would be available to otherwise qualified Merchant Mariners who served between December 7, 1941, and December 31, 1946, and who received honorable-service certificates. Additionally, the surviving spouse of an eligible Merchant Mariner would be eligible to receive the same monthly payment.

We oppose enactment of section 2 of this bill for several reasons. First, to the extent that H.R. 23 is intended to offer belated compensation to Merchant Mariners for their service during World War II, many Merchant Mariners and their survivors are already eligible for veterans' benefits based on such service. Pursuant to Public Law 95-202, § 401 (1977), as amended, the Secretary of Defense has certified Merchant Mariner service in the oceangoing service between December 7, 1941, and August 15, 1945, as active military service for VA benefit purposes. This bill appears to contemplate concurrent eligibility with benefits Merchant Mariners may already be receiving from VA—a special privilege that is not available to other veterans. Further, to the extent that Merchant Mariners may be distinguished from other veterans due to the belated recognition of their service, there are myriad other groups, listed at 38 C.F.R. § 3.7(x), that could claim to have been similarly disadvantaged.

Second, the universal nature of the benefit for individuals with qualifying service and the amount of the benefit that would be payable are difficult to reconcile with the benefits VA currently pays to other veterans. H.R. 23 would

create what is essentially a service pension for a particular class of individuals based on no eligibility requirement other than a valid certificate of qualifying service from the Secretary of Transportation. Further, this bill would authorize the payment of a greater benefit to a Merchant Mariner, simply based on qualifying service, than a veteran currently receives for a service-connected disability rated as 60-percent disabling. Because the same amount would be paid to surviving spouses under this proposal, there would be a similar disparity in favor of this benefit vis-à-vis the basic rate of dependency and indemnity compensation for surviving spouses. *See* 38 U.S.C. § 1311(a)(1).

Finally, although there can be no doubt that Merchant Mariners were exposed to many of the same rigors and risks of service as those confronted by members of the Navy and the Coast Guard during World War II, Merchant Mariners were not subject to the military justice system, were paid substantially higher monthly salaries than were members of the uniformed services, and were ultimately free to choose the voyages they undertook. These factors make the proposed award of a $1,000 monthly gratuity to Merchant Mariners particularly unjustified in relation to benefits available to veterans of the armed forces proper.

VA estimates that enactment of section 2 of H.R. 23 would result in a total additional benefit cost of approximately $369.4 million during FY 2007, approximately $1.43 billion over the 5-year period FY 2007 through FY 2011, and $2.02 billion over the 10-year period FY 2007 through FY 2016. VA also

estimates additional administrative costs associated with the need for more employees to process claims for the new monetary benefit would be $1.6 million during the first fiscal year, $6.3 million over five years and $9.8 million over ten years.

Section 3 of H.R. 23 would amend the Social Security Act to include merchant marine service in the definition of World War II active duty military service for purposes of granting Social Security wage credits for the World War II period—thus potentially increasing Social Security benefits for individuals with merchant marine service or for their survivors. The Social Security Administration (SSA) has advised us that this provision would provide a duplication of Social Security coverage for certain persons described in the bill whose maritime service earnings during the World War II period were covered under Social Security. (Social Security wage credits were granted for active military service during World War II because such service was not covered under Social Security.)

In addition, section 3 of the bill would require SSA to recompute the Social Security benefits of all affected beneficiaries. Because SSA has no way of identifying these beneficiaries and would have to rely on those affected by the legislation to contact SSA, the bill would generate numerous requests for SSA to review current benefit payments. However, because the bill would apply only to service during the World War II period and the vast majority of current Social

Security benefit payments are computed only using earnings after 1950, the likelihood that the bill would provide any current benefit increase for those with World War II maritime service, or their survivors, is very small. Thus, this change could raise expectations for increases in Social Security benefits that would not be realized. SSA would need to expend significant resources to administer a provision that would have little overall effect on benefit payments.

SSA should be consulted regarding its views on this bill and any coordination between the agencies that this bill would require.

H.R. 601

H.R. 601, the "Native American Veterans Cemetery Act of 2005," would authorize the Secretary of Veterans Affairs to make grants to Native American tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries on trust lands in the same manner and under the same conditions as grants to states are made under 38 U.S.C. § 2408. We strongly support enactment of this bill.

The cemetery grants program has proven to be an effective way of making the option of veterans cemetery burial available in locations not conveniently served by our national cemeteries. H.R. 601 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands.

While we are unsure of the number of grant applications that may be prompted by the bill's enactment, we do not assume its passage would result in the appropriation of additional funds for the cemetery grants program. Hence, we estimate its enactment would be budget neutral.

H.R. 2188

H.R. 2188 would make "servicemembers and others interred" at an American Battle Monuments Commission (ABMC) cemetery eligible for placement of an additional memorial marker in a stateside cemetery. We do not support enactment of this bill.

Currently, VA may furnish a memorial marker only for eligible individuals whose remains are unavailable because they: have not been recovered or identified; were buried at sea, whether by the individual's own choice or otherwise; were donated to science; or were cremated and the ashes were scattered without interment of any portion of the ashes.

To ensure family wishes were honored, Public Law 80-368 provided families the opportunity of repatriating the remains of servicemembers from overseas to United States soil. Since the law expired on December 31, 1951, ABMC has accommodated the families of servicemembers interred overseas with fee-free passports for travel to the site, photographs of headstones or

Tablets of the Missing on which the name of the deceased is inscribed, an Honor Roll Certificate for Korean War casualties who are interred overseas, and by arranging for placement of gravesite floral decorations and photographs.

ABMC estimates 124,917 U.S. war dead are interred in 24 permanent ABMC cemeteries on foreign soil. Although the bill's purpose statement and sectional title refer to placement of a memorial marker in a national cemetery, as written, H.R. 2188 would require VA to furnish upon request a memorial marker for placement in a national, state, or private cemetery for all veterans buried in an ABMC cemetery. Based on the average cost of $100 for furnishing a VA marker, the estimated cost of providing this expanded benefit for the 124,917 U.S. war dead could be $12,491,700. VA has no data for calculating how many families of those interred in an ABMC cemetery would request placement of a memorial marker in a national cemetery. For those who select placement of the memorial marker in a national cemetery, VA would incur the cost of the marker plus installation costs.

Providing a second marker in a national cemetery for those whose remains are available and already commemorated in an ABMC cemetery significantly alters the purpose of a memorial marker, which is to honor those whose remains are unavailable.

Veterans interred in ABMC cemeteries have been honored and memorialized by the U.S. government. Current national cemetery planning has not provided for the up to 124,917 memorial gravesites that this bill would authorize, and enactment of this provision could result in the loss of useable space to memorialize an eligible veteran who seeks to be memorialized in a U.S. national cemetery.

Providing both a Federally-administered gravesite with perpetual care overseas and a memorial marker for placement in the United States would deviate from long-standing policy of recognizing equally all military service. Expanding eligibility for a memorial marker to those whose remains are already commemorated in ABMC cemeteries appears to place a higher value on their military service than that of other servicemembers who are allowed only one Government-furnished marker to recognize their service to the Nation.

ABMC should be consulted regarding its views on this bill and the coordination between the agencies that this bill would require.

H.R. 2963

H.R. 2963, the "Dr. James Allen Disabled Veterans Equity Act," would improve compensation benefits for veterans in certain cases of impairment of vision involving both eyes. This bill would authorize VA to compensate for a non-service-connected impairment of vision in one eye and a service-connected

impairment of vision in the other eye that is compensable to a degree of 10 percent or more as if the combination of disabilities were the result of service-connected disability. VA supports enactment of this bill subject to offsetting savings.

If a veteran has service-connected blindness in one eye and non-service-connected blindness in the other eye, current law requires VA to assign the applicable rate of compensation as if the combination of disabilities were the result of service-connected disability. This bill would provide that, instead of the requirement that a veteran be blind in both the service-connected eye and the non-service-connected eye to receive a compensable rating based on the combination of disabilities, the veteran would now be eligible for consideration of the combined disability rating if there is impairment of vision compensable to a degree of 10 percent or more in the service-connected eye and impairment of vision in the non-service-connected eye.

This legislation is consistent with prior congressional action pertaining to special consideration for hearing loss in both ears. In 2002, Congress amended 38 U.S.C. § 1160(a)(3) to require VA to consider a veteran's deafness in a non-service-connected ear as if it were service connected when the veteran has deafness in the service-connected ear compensable to a degree of 10 percent or more. The statute previously provided that VA could consider a veteran's non-service-connected hearing loss in one ear as if it were service connected when

the veteran had a service-connected hearing loss in the other ear, but only if the veteran had a total hearing loss in both ears. This proposed legislation would treat vision impairment in both eyes similarly to hearing loss in both ears. VA therefore supports H.R. 2963.

We estimate that enactment of this bill would result in costs of $19.6 million during FY 2007, $110.8 million over the 5-year period FY 2007 through FY 2011, and $257.7 million over the 10-year period FY 2007 through 2016. There are no administrative costs associated with this bill.

H.R. 4843

H.R. 4843, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2006," would authorize a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency and indemnity compensation (DIC). This bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 2006. Consistent with the President's FY 2007 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 2.6 percent. We believe this COLA is necessary and appropriate to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this bill would cost $590.3 million during FY 2007, $3.7 billion over the 5-year period FY 2007 through FY 2011, and $8.2 billion over the 10-year period FY 2007 through FY 2016. However, the cost is already assumed in the budget baseline, and, therefore, enactment of this provision would not result in any additional cost.

H.R. 5037

Section 2 of H.R. 5037, the "Respect for America's Fallen Heroes Act," would prohibit non-approved demonstrations at cemeteries under the control of VA's National Cemetery Administration and at Arlington National Cemetery. It would list various activities that would constitute a demonstration for purposes of the prohibition. Section 3 of this bill would state the possible penalties for violation of the prohibition. Section 4 of this bill would suggest to States that they enact legislation to restrict demonstrations near any funeral, burial, funeral procession, or viewing. We fully support the intentions and purposes of this bill. However, we would suggest that Congress consider amending the proposed legislation to provide that the term "demonstration" include "any other conduct or activity that constitutes a demonstration as determined by the Secretary of Veterans Affairs in regulations," or language to that effect.

VA's regulations already prohibit any "demonstration," which includes oration and display of placards or flags within the grounds of a VA national

cemetery, except as authorized by the head of the facility, and the distribution of handbills or display of placards on cemetery grounds, except as authorized. As written, this bill generally would be less restrictive than our current regulations in that the regulations provide a broader definition of "demonstration." Also, this bill may be perceived as superseding our more restrictive regulations. We believe an amendment to the bill is necessary to maintain the full protections provided by VA's current regulations in preserving the sanctity of our national shrines. We would be pleased to work with the Subcommittee in drafting appropriate language to ensure the continued efficacy of VA's current regulations in this area.

H.R. 5038

Section 2(b) of H.R. 5038, the "Veterans' Memorial Marker Act of 2006," would change the applicability date of VA's current authority to provide a Government headstone or marker for the private cemetery grave of a veteran regardless of whether the grave has been marked at private expense. Under current law, this authority extends only to veterans whose deaths occurred on or after September 11, 2001. This provision of the bill would authorize VA to furnish such markers for the graves of veterans who died on or after November 1, 1990. We support enactment of this provision of the bill.

Under current law, if a veteran died before September 11, 2001, VA is authorized to furnish a Government headstone or marker only if the veteran's grave is unmarked. Although this law has allowed VA to begin to meet the needs

of families who view the Government-furnished marker as a means of honoring and publicly recognizing a veteran's military service, VA is now in the difficult position of having to deny a benefit based solely on when a veteran died.

Moreover, the law has never precluded the addition of a privately purchased headstone to a grave after placement of a Government-furnished marker, resulting in double marking. However, when a private marker had been placed in the first instance, a Government marker may not be provided if the veteran died before September 11, 2001. We believe this creates an arbitrary distinction disadvantaging families who promptly obtain a private marker.

From October 18, 1979, until November 1, 1990, with the enactment of the Omnibus Budget and Reconciliation Act of 1990, VA paid a headstone or marker allowance to those families who purchased a private headstone or marker in lieu of a Government headstone or marker. Those families all had the opportunity to benefit from the VA-marker program. This provision of the bill would benefit families of those veterans who died between November 1, 1990, and September 11, 2001. The extension of the authority to cover deaths since November 1, 1990, will assist VA in providing uniform benefits to veterans, regardless of the date of their death, and will meet public expectations for honoring veterans and their service to the Nation.

We estimate that enactment of this provision of the bill would cost $113,000 during FY 2007, $286,000 over the 5-year period FY 2007 through FY 2011, and $286,000 over the 10-year period FY 2007 through 2016. VA pays for headstones and markers with funds from the Compensation and Pension appropriation account.

VA's authority to provide a Government headstone or marker for the graves of eligible veterans buried in private cemeteries, regardless of whether the grave is already marked with a privately purchased marker, will expire on December 31, 2006. Section 2(a) of this bill would extend VA's authority to furnish the second marker benefit by one year. We support enactment of this provision of the bill. We would also recommend that VA be provided permanent authority to furnish the second marker benefit.

Although the headstone and marker benefit was originally intended to ensure that no veteran's grave remains unmarked, it has evolved into one that recognizes in death the service and sacrifices of those who served our Nation. Since the headstone and marker program's transfer to VA from the Department of the Army in 1973, VA has furnished more than 8.7 million headstones and markers.

The expanded second headstone or marker benefit has not resulted in a significant increase in demand for headstones and markers or appreciable costs

for the headstone and marker program. Based on actual data from FY 2005, it is estimated that about 5,000 headstones or markers would be provided in 2007 at an average cost of $100 per marker as a result of the one-year reauthorization. The fiscal and administrative costs to provide this benefit to families are nominal. The percentage of eligible veterans receiving a Government-furnished marker at private cemeteries has remained fairly constant in the years prior to and during the expanded authority for this benefit.

We would also like to suggest a revision to the statutory language in 38 U.S.C. § 2306, to accommodate the practical needs of a veteran's family in obtaining a Government-furnished marker. VA promulgated 38 C.F.R. § 38.631 to notify the public of the second-marker-benefit authority and to advise how VA would administer the benefit. The regulation states that VA will furnish its full product line of Government markers, which includes all available types of headstones and markers, in fulfilling requests for a "marker" as described in section 2306(d)(1). This clarification ensures that no otherwise eligible veteran is denied a second headstone or marker due to limitations of the size and type of headstone or marker that the grave can accommodate and that families are able to select the headstone or marker type preferred for the previously-marked grave of their loved one in the same manner as for an unmarked grave. Furthermore, the VA regulation clarified that, in cases where it was not feasible to place the marker "on the grave" as stated in section 2306(d)(1), a Government-furnished marker would be provided for those graves without adequate space for a second

marker if the individual making the request certified on the application that the marker will be placed "as close to the grave as possible within the grounds of the private cemetery." Additionally, the regulation notified the public that VA would deliver a marker to the cemetery where the grave is located or, if necessary, "to a receiving agent for delivery to the cemetery" to accommodate the needs of the veteran's family. We recommend that Congress ratify VA's authority in this regard by incorporating into the statute the regulatory language in section 38.631 that discusses delivery, placement, and types of Government markers.

Moreover, in order to eliminate ambiguity regarding the reference to "marker" in the statute, we recommend that Congress revise section 2306 to clarify that the Government is authorized to furnish a "headstone or marker," as opposed to only a Government "marker," for privately-marked graves of eligible veterans interred in private cemeteries.

Section 3 of this bill would authorize VA to provide an appropriate memorial headstone or marker to honor the memory of a deceased eligible dependent child of a veteran, when the child's remains are unavailable for burial. This authority would permit the placement of a memorial headstone or marker for such an individual in a national or state veterans' cemetery. The bill would define the term "eligible dependent child" as a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution, or a child who became permanently physically or mentally disabled

and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a course of instruction at an approved educational institution.

VA currently may provide a memorial headstone or marker for the purpose of commemorating a veteran whose remains are unavailable for burial, for placement in a national, state, local, or private cemetery. Section 401 of Public Law 105-368, the "Veterans Programs Enhancement Act of 1998," expanded eligibility for memorial headstones or markers to include the spouse or surviving spouse of a veteran, where the memorial headstone or marker is to be placed in a national or state veterans' cemetery.

Under current law, VA may not honor the request for a memorial headstone or marker from a veteran who wishes to memorialize his or her dependent child in a VA national cemetery or state veterans' cemetery, when the child's remains are unavailable for burial. Such a child would be eligible for burial in a national or state veterans' cemetery were his or her remains available. If the spouse and a child of a veteran die at the same time and in the same manner, and the remains of neither is available, it would, in our view, be inequitable to provide a memorial headstone or marker to commemorate the spouse, but not the child. Section 3 of the draft bill would make eligibility for memorial headstones and markers for dependent children parallel to eligibility of such persons for burial in a national cemetery under 38 U.S.C. § 2402(5). We also

note that, although the remarried spouse of a veteran is eligible to be buried in a national cemetery, this bill would not authorize VA to furnish a memorial marker for the remarried spouse of a veteran when the remains are unavailable. In order to provide consistency in eligibility requirements for burial and headstone and marker benefits, we recommend that Congress authorize VA to furnish a memorial marker for the remarried spouse of a veteran when the remains are unavailable.

Also, section 3 of the bill would authorize VA to add a memorial inscription to a veteran's headstone or marker or memorial headstone or marker, if feasible, rather than furnishing a separate headstone or marker for the veteran's dependent child. Such authorization is already provided with respect to a veteran's surviving spouse.

The cost for these additional benefits would be nominal. We do not anticipate receiving many requests for memorial headstones or markers for children. In 2002, VA received two requests for memorial headstones or markers from veterans who wanted to memorialize their children in a VA national cemetery. In 2003, VA received one request. The average cost of a memorial headstone or marker, including transportation, is currently $92. Memorial headstones or markers are paid for out of the Compensation and Pension appropriation account.

That concludes my statement, Mr. Chairman. I would be happy now to entertain any questions you or the other members of the Subcommittee may have.

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

MR. JOHN CHARLES METZLER, JR.

SUPERINTENDENT OF ARLINGTON NATIONAL CEMETERY

BEFORE

THE SUBCOMMITTEE ON DISABILITY AND MEMORIAL AFFAIRS

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

ON

LEGISLATIVE PROPOSALS

April 6, 2006

COMPLETE STATEMENT

OF

MR. JOHN CHARLES METZLER, JR.
SUPERINTENDENT OF ARLINGTON NATIONAL CEMETERY

BEFORE

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UNITED STATES HOUSE OF REPRESENTATIVES

ON

LEGISLATIVE PROPOSALS

Mr. Chairman and distinguished members of the Subcommittee:

INTRODUCTION

Thank you for the opportunity to testify before this subcommittee to present the Department of the Army's views on H.R. 5037 that would impact Arlington National Cemetery, if enacted into law. I am testifying on behalf of the Secretary of the Army, who is responsible for operating and maintaining Arlington and Soldiers' and Airmen's Home National Cemeteries, as well as making necessary capital improvements to ensure their long-term viability.

Arlington National Cemetery is the Nation's premier military cemetery. It is an honor to represent this cemetery and the Soldiers' and Airmen's Home National Cemetery. On behalf of these two cemeteries and the Department of the Army, I appreciate the support Congress has provided over the years.

In FY 2005, there were 4,005 interments and 2,563 inurnments at Arlington National Cemetery.

H.R. 5037

H.R. 5037 would prohibit certain demonstrations at national cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, to include picketing, oration before an assembled crowd, displaying placards and distributing certain forms of written material, on cemetery property. The bill would also prohibit, within 500 feet of a cemetery one hour before through one hour after a funeral or memorial service or ceremony, demonstrations that include any individual willfully making or assisting in the

making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony. Additionally, H.R. 5037 would allow whoever violates this prohibition to be fined, imprisoned for not more than one year, or both. The Army supports the concept of this legislative proposal, as it pertains to Arlington National Cemetery, because it will help to protect the sanctity of the cemetery and the ceremonies held upon its hallowed grounds.

Demonstrations at Arlington National Cemetery have been a part of the history of the Cemetery since at least the Vietnam War. Because of our urban location in the heart of our Nation's Capital, Arlington National Cemetery frequently becomes a rallying point for groups wishing to express their opposing views and opinions particularly regarding our Nation's military policies. For this reason, certain conduct within the Cemetery grounds is prohibited under Title 32 of the Code of Federal Regulations, section 553.22(f). The purpose of this regulation is to ensure that proper standards of decorum and decency are maintained at all times within the Cemetery grounds. Arlington National Cemetery imposes this prohibition, together with other visitors' rules, to prevent disruptive behavior that could violate the sanctity and dignity of our daily mission -- to bury our military dead. This prohibition also covers memorial services and other ceremonies when our Nation comes together at Arlington National Cemetery to remember the deeds and sacrifices of the brave men and women who served honorably in our Armed Forces.

The regulatory prohibition mentioned earlier and visitors' rules for Arlington National Cemetery have, in my opinion, adequately addressed potential demonstrations and disruptive behavior in the past. Nonetheless, the Army endorses any proposed change, within constitutional limits, that would further enhance the Cemetery's ability to ensure that all funerals, memorial services and other ceremonies performed at Arlington are dignified and not violated by protests, demonstrations, or acts of civil disobedience.

Mr. Chairman, this concludes my testimony. I will be pleased to respond to questions from the Subcommittee.

STATEMENT

Of

IAN T. ALLISON
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On

HR23

Belated Thank You to the Merchant Mariners of World War II Act of 2005

House Committee on Veteran's Affairs

Subcommittee on Disability Assistance and Memorial Affairs

April 6, 2006

Mr. Chairman:

My name is Ian T. Allison and I strongly encourage the passage of HR23, the Belated Thank You to the Merchant Mariners of World War II Act of 2005. I represent 6,300 or more Merchant Marine Veterans of World War II who are seeking their recognition and benefits under the 1944 G. I. Bill of Rights. This group is a non-profit unincorporated committee of Veterans registered with the Internal Revenue Service as the Just Compensation Committee. The J. C. C. has asked me to appear today before this Sub-committee to represent their interests. The statements made here today have been supplied to me by various members of our committee for your enlightenment. I am requesting that the statements of Stanley Willner, Bruce Felknor, Perry Adams and Burt Young be introduced into the records.

Passage of HR23 would be the final chapter of what has been a ragged response by the government to men who placed their lives in danger as they served their country. There might be some Members in Congress who are not historically informed in what happened to some 230,000 seamen, both black and white, from the end of World War II to the present and perhaps I can help present the issue. The Merchant Mariners of World War II was the only service that was <u>not segregated.</u>

It has been said that when one dies, so dies one's influence and power. An so it was that when President Franklin Roosevelt died, his directions to his advisors that the Merchant Seamen of World War II should be accorded benefits like veterans of other services also died. The influence of dissenting Members and some of the animosities left over after the war from competing services and civilian service groups prevented benefits

being given to Merchant Seamen. Many service people who might have dug ditches in Louisiana and never stepped outside the United States got the full GI Bill, GI loans, and much more; but those who sailed the Murmansk Run, were sunk in burning oil, or frigid waters of the North Atlantic, got nothing. In fact, their pay, which has been reviewed countless times, stopped the moment they went into the water.

It was not until Senator Barry Goldwater in 1977 made the effort to recognize the women pilots with Veteran recognition did the same bill, PL 95-202, permit Merchant Seamen to apply for Veteran recognition. Thus began the constant misinformation and countless examples of hatred for the Merchant Seamen's efforts to secure Veterans recognition. There was a growing lack of concern for Congress to do what was right, recognize the Merchant Marine Veterans of World War II.

The first stage of recognition efforts by the seamen came after a bitter court battle between the Maritime Trades Unions and the Pentagon. A Federal Court Judge, In 1986, ruled against the Pentagon, stating that the Merchant Seamen had been discriminated against. He wrote in his finding that the Navy and certain Veteran's groups bitterly opposed any recognition. While the Federal Court recognized the majority of Merchant Seamen as qualified, these men only received a tombstone, a flag a discharge and limited medical attention. Those who went to sea after August 15, 1945 to December 31, 1946, the official end of the war, received nothing. They became the Denied Seamen. The Defense Department went to war against this group.

This started phase two of official Congressional denial. It took ten years of effort on the part of the Merchant Mariners Fairness Committee, through 5 sessions of Congress, until finally HR1126 with Rep. Lane Evans as sponsor and 337 of his fellow

members as Co-sponsors, to recognize the Denied Seamen with a veteran's discharge. A discharge that they had to pay $30.00 to buy, had to pay for their medals, and received only a tombstone, a flag and a piece of paper. Nothing else as a benefit. We are most fortunate that many of the Co-sponsors of HR1126 are still members of the House of Representatives, members of the Veteran's Committee and members of this Sub-committee.

They do not have knowledge of how slanderous misinformation was continually sent to House members by various military liaison stating that Merchant Seamen were unqualified to be Veterans as they went on strike during the war. The story by Walter Winchell about Merchant Seamen refusing to unload munitions and cargo at Guadalcanal on a Sunday was repudiated and the reporter was in disgrace. No ship was ever delayed in the war because of any labor problems. It is so hard to counter lies, especially when many Members had no direct knowledge of the history of the war. Today we call it "bad-mouthing" your opposition.

Of the 230,000 men in the Merchant Marine in 1945, probably less that 10,000 are still alive. The youngest who joined the service in 1945 are now 78-79 years old, many in poor health. The majority are men in their mid-80s, as myself. I am 86 dedicating 100% of my time to see the record set right by passage of HR23. There is still time for a grateful nation to say Thank You to a thinning rank of men.

We are now at stage three. Sixty years is a long time for any service person to wait for proper recognition. Sixty years is a long time to spend trying to correct history written to denigrate what we thought was service to our country.

They say America is strong because of the will of the people and their concern for each other. Passage of HR23 will go a long way in proving this to be so.

Please recommend that HR23 be passed and let's clean up the record. These blemishes should not be part of our country's record.

Respectfully,

IAN T. ALLISON

SERVING
WITH
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STATEMENT OF

DAVID G. GREINEDER
AMVETS DEPUTY NATIONAL LEGISLATIVE DIRECTOR

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 23, THE BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2005;
H.R. 601, NATIVE AMERICAN VETERANS CEMETERY ACT OF 2005;
H.R. 2188, A BILL TO AUTHORIZE THE PLACEMENT OF MEMORIAL MARKERS IN A NATIONAL CEMETERY FOR THE PURPOSE OF COMMEMORATING SERVICE MEMBERS WHOSE REMAINS ARE INTERRED IN AN AMERICAN BATTLE MONUMENTS VOMMISSION CEMETERY;
H.R. 2963, DR. JAMES ALLEN DISABLED VETERANS EQUITY ACT;
H.R. 4843, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2006;
H.R. 5038, VETERANS' MEMORIAL MARKER ACT OF 2006; AND
H.R. 5037, RESPECT FOR AMERICA'S FALLEN HEROES ACT.

THURSDAY, APRIL 6, 2006

Chairman Miller, Ranking Member Berkley, and members of the Subcommittee:

AMVETS is pleased to present our views on the legislation before the Subcommittee: H.R. 23, the Belated Thank You to the Merchant Mariners of World War II Act of 2005; H.R. 601, Native American Veterans Cemetery Act of 2005; H.R. 2188, a bill to authorize the placement of memorial markers in a national cemetery for the purpose of commemorating service members whose remains are interred in an American Battle Monuments Commission Cemetery; H.R. 2963, Dr. James Allen Disabled Veterans Equity Act; H.R. 4843, Veterans' Compensation Cost-of-Living Adjustment Act of 2006; H.R. 5038, Veterans' Memorial Marker Act of 2006; and H.R. 5037, Respect for America's Fallen Heroes Act.

AMVETS applauds this Subcommittee and its effort to identify, examine and pursue legislative initiatives for veterans to obtain the services and benefits they richly deserve. We are honored to join our fellow veterans service organizations represented here today, and look forward to working with you on these matters.

H.R. 23, the Belated Thank You to the Merchant Mariners of World War II Act of 2005

H.R. 23, introduced by Rep. Bob Filner, would provide a $1,000 monthly payment, tax free, to the 10,000 surviving Merchant Mariners of World War II, or their widows. If implemented, this legislation would cost $120 million for the first year, and approximately $20 million in subsequent years. The bill would automatically sunset with the death of the last mariner's spouse.

The Merchant Mariner's were a small, but critical component to the Allies efforts in World War II. They transported troops, ammunition, food, gas, and other supplies that were necessary to win the war. It is estimated that as many as 800 merchant marine ships were sunk by enemy forces.

AMVETS certainly recognizes the sacrifices that these brave men made in service to the nation during World War II. While we understand the motive and intentions for this legislation, we do have some concerns about how it seeks to resolve the issue. AMVETS believes this bill would be extremely costly to VA. The high cost associated with H.R. 23 could impair VA's ability to provide the benefits it already manages. Furthermore, Congress would need to find millions of dollars in offsets VBA cannot afford. Again, we are proud of the accomplishments and service of the Merchant Marines in WWII, but we believe that the recommendations contained in this legislation could negatively impact VA's budget.

H.R. 601, Native American Veterans Cemetery Act of 2005

H.R. 601, introduced by Rep. Tom Udall, would authorize the Secretary of Veterans Affairs to make grants to any tribal organization for establishing, expanding, or improving veterans' cemeteries on trust lands. Essentially, it would allow tribes to apply for state cemetery grants from VA. Under current federal law, only States are able to apply for the grants.

As the veterans service organization responsible for the cemeteries portion of *The Independent Budget*, AMVETS works very closely with the National Cemetery Administration (NCA) and fully supports the State Cemeteries Grant Program. The program assists States in providing gravesites for veterans in areas where VA's national cemeteries cannot fully satisfy their burial needs. In the western United States, where many Native Americans live today, the large land areas and spread out population makes it difficult to meet the "170,000 veterans within 75 miles" national veterans cemetery requirement.

AMVETS believes cemeteries on tribal lands would be an appropriate memorial and reminder of the sacrifices made by Native American men and women.

H.R. 2188, a bill to authorize the placement of memorial markers in a national cemetery for the purpose of commemorating service members whose remains are interred in an American Battle Monuments Commission Cemetery

H.R. 2188, introduced by Rep. Jim Langevin, would allow memorial markers to be placed in a national cemetery to commemorate service members who remains are interred in an American Battle Monuments Commission Cemetery. AMVETS shares the profound pride, admiration, and gratefulness associated with the spirit of this legislation. We are concerned, however, that the placement of markers in national cemeteries might be positioned on a plot of land more suitable for gravesites. At a time when burial space is severely limited, there must, of necessity, be some restrictions to ensure continued burial at national cemeteries.

AMVETS would not object to this legislative request. We do ask, however, that appropriate steps be taken to ensure that the lands used for these markers are not better intended for gravesites.

H.R. 2963, Dr. James Allen Disabled Veterans Equity Act

H.R. 2963, introduced by Rep. Tammy Baldwin, would allow veterans who have a complete loss of sight in one eye due to a service-connected injury to receive increased disability compensation if they lose sight in the other eye, regardless of whether that loss of sight is service-connected.

AMVETS supports the bill. It will greatly improve the benefits for older veterans who have lost their vision due, in large part, from their military service. We recognize the need and importance of this legislation.

H.R. 4843, Veterans' Compensation Cost-of-Living Adjustment Act of 2006

H.R. 4843, introduced by the distinguished Subcommittee Chairman, would provide a cost-of-living adjustment to veterans' benefits effective December 1, 2006. This legislation would affect the more

than 2.9 million service-connected veterans and survivors receiving VA benefits. We are pleased that Rep. Berkley, full Committee Chairman Buyer and Ranking Member Evans are all original cosponsors of the bill.

The House and Senate annually review the service-connected disability compensation and DIC programs to ensure such benefits provide reasonable and adequate compensation for disabled veterans and their families. Based on this review, Congress acts annually to provide a cost-of-living adjustment (COLA) in compensation and DIC benefits. Congress has provided annual increases in these rates for every fiscal year since 1976.

AMVETS supports our nation's commitment to care for the men and women who have served in our military service. This legislation will increase current rates of disability compensation and help meet rising costs. We support the bill.

H.R. 5038, Veterans' Memorial Marker Act of 2006

H.R. 5038, introduced by Chairman Miller, would extend, by one year, the ability of veterans and their families to receive VA's official grave marker if the veteran had passed away during the period between November 1, 1990, and September 11, 2001. AMVETS trusts that the House Veterans' Affairs Committee can locate the funds necessary to incorporate these veterans and family members with an official recognition. AMVETS supports the bill.

H.R. 5037, Respect for America's Fallen Heroes Act

H.R. 5037, introduced by Rep. Mike Rogers, would restrict protests at national cemeteries during military funeral honors. AMVETS wholeheartedly supports this legislation. We believe it is only appropriate that grieving families be allowed to bury their loved ones in peace.

AMVETS is troubled, and quite frankly, offended, that more than 100 military funerals in the last nine months have been interrupted by aggressive war protests. This disrespectful display is the last thing mourners need to see at a funeral service. Families burying their husbands, wives, sons or daughters should not be subject to threats and intimidation. AMVETS believes this bill is very timely and hopes it receives swift passage on the House floor.

In closing Mr. Chairman, AMVETS looks forward to working with you and others in Congress to ensure the earned benefits of all of America's veterans are strengthened and improved. As we find ourselves in times that threaten our very freedom, our nation must never forget those who ensure our freedom endures.

This concludes my testimony. Thank you again for the opportunity to present our views, and I would be happy to answer any question you might have.

David G. Greineder
AMVETS Deputy National Legislative Director

David Greineder joined AMVETS (American Veterans) on May 10, 2004. As the Deputy National Legislative Director (currently serving as Acting National Legislative Director), he is the primary individual responsible for promoting AMVETS legislative, national security, and foreign affairs goals before the administration and the Congress of the United States.

Prior to assuming his current position, David worked nearly five years on Capitol Hill as a legislative staff aide in the offices of Pennsylvania Reps. George W. Gekas and Timothy F. Murphy. He was a key policy advisor for a wide range of issues, including veterans' affairs, and helped manage federal appropriations efforts in both congressional offices.

David completed undergraduate work at Millersville University of Pennsylvania, where he was an assistant of data collection for the Keystone Poll.

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SERVING
WITH
PRIDE

April 6, 2006

The Honorable Jeff Miller, Chairman
Subcommittee on Disability Assistance and Memorial Affairs
House Veterans' Affairs Committee
Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Miller:

Neither AMVETS nor I have received any federal grants or contracts, during this year or in the last two years, from any agency or program relevant to the April 6, 2006 Subcommittee hearing on veterans cemeteries, benefits, and related matters.

Sincerely,

David G. Greineder
Deputy National Legislative Director

AMVETS

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BLINDED VETERANS ASSOCIATION

TESTIMONY
PRESENTED BY

THOMAS ZAMPIERI Ph.D.
DIRECTOR,
GOVERNMENT RELATIONS

BEFORE THE
HOUSE VETERANS AFFAIRS COMMITTEE

APRIL 6, 2006

The Blinded Veterans Association (BVA) is the only congressionally chartered Veterans Service Organization exclusively dedicated to serving the needs of our nation's blinded veterans and their families. Mr. Chairman and members of the House Veterans Affairs Committee, on behalf of BVA, we thank you for this opportunity to present BVA's legislative views on "Dr. James Allen Disabled Veterans Equity Act of 2005" (H.R. 2963). We should ensure that change occurs through legislative action when benefits for disabled, service-connected veterans are no longer adequately caring for those who have experienced catastrophic loss. BVA expresses deep appreciation to Representative Tammy Baldwin for introducing this critical legislation.

Since the end of World War II, when a small group of blinded veterans formed BVA, the organization has grown to include blinded veterans from several wars and conflicts. Just last week on March 28, BVA celebrated its 61st anniversary of continuous service to America's blinded veterans. At various military medical treatment facilities today, service members from Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) are recovering from injuries that include the loss of their vision in defending our nation. It is vital that all VA services focus on making a positive difference in the quality of life for the men and women who have sacrificed so much for our freedom.

BVA would like this Committee to know that the Walter Reed Army Medical Center medical staff alone has treated approximately 140 soldiers with either blindness or other significant visual injuries. Thirty of these soldiers have attended one of the ten VA Blind Rehabilitation Centers while several others are in the process of referral for admission. According to Veterans Benefits Administration (VBA) data, 78 service members are already service connected for blindness in one eye. Many others who have lost an eye as a result of OIF or OEF injuries have not yet applied for their medical discharge. One of the greatest fears of the service members who have suffered the loss of vision in one eye is the possibility that they could, in the future, become legally blind in their remaining eye. Family members of these men and women rightly share this fear.

BVA requests that this Committee conduct a mark-up of this important legislation, H.R. 2963, "The Dr. James Allen Disabled Veterans Equity Act." At present, the bill has 72 bipartisan co-sponsors. In 2002, Congress passed and the President signed P.L. 107-330, which included a provision (Section 103) to correct a similar deficiency in the *Paired Organ* law for hearing loss. As it now stands, veterans who are service connected for loss of vision in one eye due to injury or illness incurred on active duty are sometimes denied additional disability compensation if they become legally blind in the remaining nonservice-connected eye. This occurs because the U.S.C. Title 38 Paired Organ statute on vision did not define the legally accepted definition of blindness. The Social Security Administration and every state law for motor vehicle licenses define legal blindness as visual acuity of 20/200 or less, or loss of field of vision to 20 degrees or less. Such is the accepted World Health Organization's definition of legally blindness in both eyes.

VA frequently refers to VBA Regulation 1160(l) to determine if the loss of vision is 5/200 (or 20/800) in the nonservice-connected eye to determine blindness. Therefore, any veteran who is currently 30 percent service connected for blindness in one eye and later loses sight in the nonservice-connected eye for any reason must meet the 5/200 standard applied since no legal definition of blindness was included in the Title 38 Paired Organ statute. BVA

recommends a change in the Title 38 Code that would define the legal blindness standard to be consistent with Social Security Disability Income (SSDI) and all 50 state laws: "Blindness is 20/200 or less, or 20 degrees or less of central field of vision." This change in the Paired Organ statute would affect an estimated 5 percent (a very small percentage) of the 13,109 veterans who are service connected for blindness and loss of vision in one eye. BVA would argue that veterans with blindness in one eye who subsequently develop blindness in their nonservice-connected eyes should not be denied the benefits that other paired organ veterans have been provided. Why should a veteran have to meet a higher standard of legal blindness than a social security disability applicant in order to receive benefits?

VA records reveal that veterans receiving disability compensation are, on average, 57 years of age. According to information from the National Institutes of Health and a report on vision loss prepared by researchers at the University of Washington, the most common causes of impairment of vision in persons over the age 40 are age-related maculopathy, cataracts, and glaucoma. In the **Journal of the American Medical Association**, Archives of Ophthalmology, Vol. 122, an April 2004 article entitled "Prevalence of Age-Related Macular Degeneration in the United States" reports that only 1.47 percent of the U.S. population age 40-65 have macular degeneration. The figure rises to just 5 percent for in the age range 65-80. For the population exceeding age 80, the articles states, the percentage rises to 15 percent. Passage of H.R. 2963, therefore, would affect less than 5 percent of the now 13,109 (according to VBA records) service-connected veterans, age 40-80, who are blind in one eye. BVA feels strongly that this relatively small number of soldiers, airmen, sailors, and marines who have developed blindness with a service-connected disability while on active duty should all be rated and treated equitably.

The issue of employability also enters into BVA's great concern over the denial of Paired Organ claims being denied for veterans who are legally blind. Over the years, the ability of the disabled to enter the workforce has decreased substantially. National surveys show little evidence that substantial progress was made in employment rates of the functionally disabled in the decade following passage of the Americans with Disabilities Act. In fact, several research articles and other sources indicate that the trend has worsened. The following points, extracted from federal government sources and university research relating to the problems of America's disabled population, focus specifically on the issue of employment.

- The Census Bureau 2000 Survey found that only 60.1 percent of disabled men with one disability between ages 21-64 were employed. When reviewing the data on those with a severe disability (defined as affecting daily functioning skills), however, the rate of employment was only 32 percent.
- The Survey of Income and Program Participation (SIPP) found that the 30 percent of working age (18 to 64) adults with disabilities in 1994 lived at or below the federal poverty level.
- The Census Bureau 2000 Survey found that 18.8 percent of the disabled population ages 16-64 were at the poverty level compared to 9.5 percent of the general population.
- Thirteen percent of SSDI veterans age 65 and older with a disability live at or below the poverty level.
- Some 10.6 million persons, or 22 percent of the 48 million Americans who will receive Social Security benefits this year, depend on that one check for their entire monthly

income, which averages $909 per month. This means that the average yearly income for SSDI beneficiaries is $11,460, well below the government poverty level.

- The Equal Employment Opportunity Commission's Annual Federal Workforce Report 2004 found that the average General Schedule grade level for people with disabilities was 8.4, nearly two grades below the government-wide average of 9.9 for permanent or temporary employees.
- The Cornell University Disability Statistics Research Center tracked U.S. civilian, non-institutionalized men and women age 18-64. The Center estimated that those employed in the workforce in 2004 was 19.3 percent compared to 24.5 percent in 2000. In 1997 the rate was 25.5 percent, reflecting a clear decrease in the workforce for those disabled.
- The University of California analysis and research of The Employment Experience of Persons with Limitations in Physical Functioning, published in 1999, had several findings. Even after adjusting for age and gender differences, persons reporting functional limitations are less than half as likely to be in the labor force as those with no functional limitations, with adjusted labor force participation rates of 32.4 and 71.2 percent, respectively. Part-time employment is also more common among persons with several functional limitations. Among individuals with functional limitations who have experienced a job loss, nearly three-quarters reported that this loss created a major problem in their lives. Less than half of those with no limitations reported that the loss created a major problem.
- Literature reviews on employment among persons with disabilities reveal that the disabled have a lower participation rate in the labor force. They also have higher unemployment rates and higher rates of part-time employment than do individuals without disabilities (Yelin, 1997; Bennefield & McNeil, 1989). These findings are consistent across numerous national surveys, including the Current Population Survey (CPS), the Survey of Income and Program Participation (SIPP), and the National Health Interview Survey (NHIS) (Trupin & Armstrong, 1998; Trupin, Sebesta, Yelin, & LaPlante, 1997). For purposes of the surveys, disabilities are measured by work capacity, activity limitation, or functional limitation (McNeil, 1993).
- The National Health Interview Survey (NHIS), conducted by the National Center for Health Statistics (NCHS) and reported in a March 2003 article, revealed that working age individuals with visual impairments had employment rates and mean household incomes than those with non-visual impairments. The employment rate of 54 percent among the severely visually impaired age 18-54, reported in 1994-95, was also revealed in the article.
- A study by Hendricks, Schiro-Geist, and Broadbent (1997) examined the link between disability and employment outcomes for those who had the opportunity to pursue both a university education and rehabilitation services at the University of Illinois from 1948 to 1993. When regression analysis was applied, the salary gap between disabled and non-disabled workers with a college degree was 8.3 percent. While these and other studies have found that the disabled in the workforce with higher education and rehabilitation earn more than the disabled without this level of education, the income levels and earning capacity are still lower in all comparisons to the non-disabled throughout the American working age population.

When it comes to employment, BVA would argue that the rather alarming snapshot of data presented above is adequate proof that veterans blinded in one eye are at risk. For the small percentage of veterans who might eventually apply for an increase in service connection under the Paired Organ statute in the event of the catastrophic consequence of going blind in the second eye, it is vital that such veterans receive the additional benefits that a change in the statute would bring to them.

On different but related notes, BVA fully supports the "Respect for America's Fallen Heroes Act of 2006" (H.R. 5037). Before the Committee today, we wish to commend Chairman Buyer, Representative Rogers, Representative Miller, and Representative Reyes for sponsoring this legislation. During the time of the loss of a service member who has offered the ultimate sacrifice for our nation's freedom, his/her family, friends, and military brothers and sisters should never be subjected to nearby demonstrations, protests, or disruptions of these services. I have personally spoken with family members who are attempting to deal with their enormous loss. To be subjected to influences that compound their pain at national cemeteries and private funerals is unconscionable. BVA also supports the "Veterans Memorial Marker Act of 2006" (H.R. 5038), providing for markers or memorial headstones for deceased dependent children of veterans buried in private cemeteries.

Mr. Chairman, thank you for this opportunity to present BVA's legislative views on H.R. 2963. We again thank Representative Baldwin also for introducing this important legislation. We stress that the legislation applies only to veterans who are service connected for blindness in one eye. Veterans who served and defended this country deserve the full benefits of a law that compensates Paired Organ loss. If you have any questions, I would be pleased to answer them.

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

Blinded Veterans Association

The Blinded Veterans Association (BVA) does not currently receive any money from a federal contract or grant. During the past two years, BVA has not entered into any federal contracts or grants for any federal services or governmental programs.

BVA is a 501c(3) congressionally chartered, nonprofit membership organization.

THOMAS ZAMPIERI BIOGRAPHY

Thomas Zampieri is a graduate of the Hahnemann Univeristy Physician Assistant Program (June 1978). He obtained a Bachelor of Science degree from State University of New York and graduated with a Masters Degree in Political Science from the University of St. Thomas in Houston, Texas, in May 2003. Mr. Zampieri recently completed his Political Science Ph.D. dissertation and was awarded his degree by Lacrosse University. He is employed as the National Director of Government Relations for the Blinded Veterans Association, a congressionally chartered Veterans Service Organization founded in 1945.

Mr. Zampieri served on active duty as a Medic in the U.S. Army from 1972 to 1975. Upon competing Physician Assistant training, he served from September 1978 to August 2000 as an Army National Guard Physician Assistant, retiring as a Major. During this time, he was involved in several military medical training programs and schools, successfully completing the Army Flight Surgeon Aeromedical Course at Fort Rucker in 1989 and the U.S. Army Medical Department's Advanced Officer Course at Fort Sam Houston, Texas, in 1992.

VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATEMENT OF
QUENTIN KINDERMAN, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

***H.R. 23**, BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2005*
***H.R. 601**, NATIVE AMERICAN VETERANS CEMETERY ACT OF 2005*
***H.R. 2188**, AUTHORIZATION OF MEMORIAL MARKERS FOR THE REMAINS INTERRED IN AMERICAN BATTLE MONUMENTS*
***H.R. 2963**, DR. JAMES ALLEN DISABLED VETERANS EQUITY ACT*
***H.R. 4843**, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2006*
***H.R. 5037**, RESPECT FOR AMERICA'S FALLEN HEROES ACT*
***H.R. 5038**, PROVIDING GOVERNMENT MARKERS FOR DEPENDENT CHILDREN*

WASHINGTON, D.C. APRIL 6, 2005

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.4 million men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I appreciate the opportunity to present our views on legislation included in today's hearing. Our views on H.R. 23: "Belated Thank You to the Merchant Mariners of World War II," H.R. 601: "Native American Veterans Cemetery Act of 2005," H.R. 2188: Authorization of memorial markers for the remains interred in American battle monuments, H.R. 2963: "Dr. James Allen Disabled Veterans Equity Act," H.R. 4843, "Veterans' Compensation Cost-of-Living Adjustment Act of 2006," H.R. 5037: "Respect for America's Fallen Heroes Act," and H.R. 5038: providing government markers for dependent children, are as follows.

H.R. 23 is titled "Belated Thank You to the Merchant Mariners of World War II Act of 2005." This bill seeks to expand the current dates of service for WWII Merchant Mariners who are recognized as veterans, and to pay a $1000.00 monthly benefit to these WW II Merchant Mariners or to their surviving spouses. The VFW recognizes the heroic service of

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Merchant Mariners during WWII. Their sacrifices and heroic efforts were instrumental in winning the Second World War. We cannot, however, support this legislation to pay a monthly benefit, which would be in addition to any current veterans' benefit that would be otherwise payable. However, we believe that this payment would be disproportionate, in terms of recognition and benefits, to what other veterans who have gone in harm's way in service to the country currently receive. With regard to their service as Merchant Mariners, and the proposal that they should be recognized for this Merchant Marine service in addition to being recognized as veterans, or for a period extending beyond the currently recognized dates of WWII, the VFW has not taken a position on this matter.

H.R. 601 is titled "Native American Veterans Cemetery Act of 2005." This bill would allow tribal organizations to apply for grants to establish and maintain veterans' cemeteries on tribal lands. We fully support H.R. 601. We believe that this is a logical extension of the veterans' cemetery grant program. This legislation will address the needs of Native American veterans and their families, which are not fully met by the National and State veterans' cemeteries.

H.R. 2188 is titled "Authorization of Memorial Markers for the Remains Interred in American Battle Monuments". This bill proposes a change in language to title 38, section 2306; thus allowing memorial markers to be placed in national cemeteries for remains interred in cemeteries administered by the American Battle Monuments Commission. This bill provides recognition on American hallowed ground to the many service members who made the ultimate sacrifice to preserve our freedom, and never returned home. We fully support this bill.

H.R. 2963 is titled "Dr. James Allen Disabled Veterans Equity Act." This bill addresses the payment of service-connected compensation for service-connected loss of vision in one eye, in the event that vision is impaired in the other eye due to not service-related causes. This modification of the paired organ rule makes the evaluation of vision more consistent with other evaluations, like the loss of hearing evaluation. It considers partial loss of function, rather than just the complete loss of function. This is a more equitable outcome in cases where sight deteriorates in the other eye after service. We fully support this legislation.

H.R. 4843 is titled "Veterans' Compensation Cost-of-Living Adjustment Act of 2006." This act seeks to adjust compensation rates to reflect the rising cost-of-living. We appreciate the Committee's commitment to maintaining the integrity of the buying power of the veterans' compensation program by providing periodic cost-of-living increases (COLA). We fully support this goal. However, we note that this bill once again contains a provision for rounding down any fraction of a dollar in the COLA calculation. This works against the spirit of this bill. Over time, and when combined with other adjustments made to meet budgetary goals, this has caused erosion of the rates of compensation, and significant problems for America's veterans. It is the underlying cause of some policy problems recognized by the Committee. Accordingly, we support this action to adjust the buying power of this program, which is of critical importance to America's veterans who have sacrificed life and limb for our country, but we urge you to refrain from this process of rounding down the last dollar.

Quentin Kinderman, Deputy Director
National Legislative Service
Veterans of Foreign Wars of the United States

Quentin Kinderman was appointed to the position of Deputy Director, VFW National Legislative Service in April 2005. Before this Appointment, he served in a number of veterans' affairs positions, to include several years as a professional staff member/investigator for the Senate Veterans' Affairs Committee, and a career in disability policy formulation and congressional relations at the VA.

Mr. Kinderman served in the United States Army during the Vietnam War, including 13 months with the 25th Infantry Division in and near Cu Chi, Vietnam. Prior to his military service he graduated from Lehigh University in Bethlehem, Pennsylvania.

Mr. Kinderman also holds a Merchant Marine Masters license, 50 tons, inland waters, and has spent several years restoring sailboats and writing for boating magazines. Active sailors, his wife and he reside near Annapolis, Maryland. Quent is a member of VFW Post 2979.

-vfw-

The Veterans of Foreign Wars is not in receipt of any Federal grants or contracts.

4/05

Testimony of David F. Forte, Professor of Law, Cleveland-Marshall College of Law, Cleveland State University, in support of H.R. 5037
before the House Committee on Veterans Affairs, Subcommittee on Disability Assistance and Memorial Affairs, Jeff Miller, Chairman
April 18, 2006

I. Introduction

H.R. 5037, entitled the "Respect for America's Fallen Heroes Act," seeks to limit "certain demonstrations" in cemeteries under the control of the National Cemetery Administration or on the property of Arlington National Cemetery. The bill defines what constitutes a demonstration disruptive of the memorial services or funerals being held in or within 500 feet of such cemeteries, but allows an exception for demonstrations on cemetery grounds if "approved by the cemetery superintendent." There are thus two constitutional issues to be confronted: 1) Does the ban on "certain" demonstrations meet the requirements of First Amendment law as laid down in Supreme Court precedents, and 2) Is the discretion lodged in the cemetery superintendent to permit exceptions fall within an acceptable constitutional range? I conclude that the answer to both questions is in the affirmative and that the bill is well within constitutional limits.

II. The Ban on Demonstrations

Demonstrations are a form of expressive conduct. In all governmental restrictions on expressive conduct, Supreme Court jurisprudence requires application of the *O'Brien* test, *United States v. O'Brien*, 391 U.S. 367 (1968) or of the "time, place, and manner" test. *Cox v. New Hampshire*, 312 U.S. 569 (1941). The Court has declared that both tests have similar standards. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984).

Under the *O'Brien* test, "a governmental regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." 391 U.S. at 376. Under the "time, place, and manner" test, government regulations of expressive conduct are valid "provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open alternative channels for communication of the information." *Clark*, 468 U.S. at 293.

It is clear from the text of H.R. 5037 that the purpose of the bill is to assure the dignity of funerals or memorial services held in honor of our fallen dead by preventing demonstrations that are disruptive of those ceremonies. To that end, the bill delineates what kind of demonstrations shall be prohibited, *viz*, a demonstration within five hundred feet of a cemetery in which a funeral or memorial service is to be held if the demonstration takes place within a time period from 60 minutes before until 60 minutes after the funeral or memorial service. Furthermore, the bill requires that only those demonstrations in which a "noise or diversion" is willfully made and "that disturbs or tends to disturb the peace or good order of the funeral service or memorial service or ceremony" shall be prohibited.

Maintaining cemeteries for veterans is clearly within the constitutional power of government. It is also clear that, under 38 U.S.C. sect. 2403, the purpose of maintaining

cemeteries "as a tribute to our gallant dead" is an important or substantial governmental interest. It is similarly evident from the text of the bill that its purpose is to prevent conduct that is intentionally disruptive of a funeral or memorial service without reference to the content of the expressive conduct. The text does not ban accidental noises present in our modern society near to many cemeteries, such as traffic or the sounds of children playing. Nor does it ban only demonstrations with a particular kind of message. A demonstration connected with a labor dispute that is disruptive of a funeral is as violative of the law as would be an anti-war demonstration or a "support our troops" march. Finally, "the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance" of the interest of maintaining the dignity of a funeral for our fallen dead. Demonstrations 60 minutes before or 60 minutes after the ceremony are permitted. Even during the period in which a ceremony is being held, a demonstration beyond 500 feet of the cemetery is permitted. This is no blanket ban at all.

The fact that H.R. 5037 prohibits disruptive demonstrations on grounds that are not part of a national cemetery finds support in Supreme Court precedent. The case of *Grayned v. City of Rockford*, 408 U.S. 104 (1972) is directly on point. In *Grayned*, the Supreme Court upheld an antinoise ordinance, which read: "No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making on any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof." 408 U.S. at 107-08. It is axiomatic in our legal tradition that the state may take reasonable steps to abate a nuisance that may emanate from private property. What H.R. 5037 does is to abate a nuisance that would disturb the good order of a federally mandated activity in our

national cemeteries, namely, to provide memorial services and ceremonies that are "a tribute to our gallant dead."

It should be noted that in *Grayned*, the Supreme Court held that the antinoise ordinance was good against claims of overbreadth or vagueness. H.R. 5037's prohibition on "willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony" tracks the language approved by the Court in *Grayned.*

Furthermore, the language of H.R. 5037 finds support in the case of *Boos v. Barry*, 485 U.S. 312 (1988). In the case, the Supreme Court reviewed a District of Columbia law that made it unlawful to display any sign that brought a foreign government into "public odium" or "public disrepute" within 500 feet of an embassy, and which banned "congregating" within 500 feet of an embassy. The Court struck down the ban on displaying a sign critical of a foreign government, but upheld the ban on congregating if, as construed by the lower courts, the congregation was "directed at a foreign embassy." H.R. 5037 bans only those demonstrations within 500 feet of a cemetery that are intentionally disruptive of ceremonies or funerals within national cemeteries. The disruptive requirement does not need judicial construction. It is made in the terms of the statute and is fully supported by the decision in *Boos v. Barry.*

Under H.R. 5037, a person who displays "any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony," and such a display causes a "diversion that disturbs or tends to disturb the good order of the funeral

or memorial service" is subject to the law. This prohibition is closely akin to the focused picketing ordinance upheld by the Supreme Court in *Frisby v. Schultz*, 484 U.S. 474 (1988). That ordinance banned picketing "before and about" any residence. Although in most public areas, people may picket and expostulate even though others may object to the message, in certain areas the functioning of the forum takes precedence, provided there are alternative ways the protestor may express his message. Schools are one forum whose functioning may not be disturbed or diverted. *Grayned.* The home is another place. Justice O'Connor noted that the picketers could still march through the neighborhood to express their opposition to abortion and abortionists. They simply could not disrupt the "tranquility" of a doctor's home. 484 U.S. at 484. Similarly, in H.R. 5037, the bill seeks to protect the tranquility and dignity of a memorial service. It allows the picketer or demonstrator to display whatever kind of sign or device he wishes one hour before or one hour after the ceremony, or at any time if more than 500 feet distant from the cemetery, even if it offends those who may be traveling to the ceremony.

If, however, a person displays "any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony," and the display occurs within a cemetery, there is no requirement in the bill that it be part of a disruptive demonstration. But in that case, the display does not take place in a traditional public forum, such as a public sidewalk, but rather within a non-public forum dedicated to honoring our veterans. In that situation, the ban is a reasonable, and thereby a valid, restriction in a non-public forum designed to preserve the appropriate functioning of the

forum, *i.e.*, a national cemetery. I discuss the law applying to non-public forums in Part III below.

Thus, under either the *O'Brien* test or under the time, place and manner test, the statute is drawn to be within Constitutional standards.

Nonetheless, I find one phrase in the bill puzzling. Under section (b)(2), a demonstration is defined as "Any oration, speech, use of sound amplification equipment or device, or similar conduct *before an assembled group of people* that is not part of a funeral or memorial service or ceremony." (emphasis added) It would see that a single individual with a bullhorn who disrupts a ceremony might not be covered under this section. Thus, I do not see the use of the phrase "before an assembled group of people." In any event, with such a phrase, the restriction on expressive conduct is even less than would be permitted to be under the Constitution.

III. The discretion of the cemetery superintendent.

It is a central canon of our First Amendment jurisprudence that permission to engage in expressive conduct cannot be left to the unbridled discretion of a governmental official. *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750 (1988). Such a discretion carries with it the dangers of prior restraint, vagueness, overbreadth, and content and viewpoint discrimination. Section (a)(1) of H.R. 5037 prohibits demonstrations in cemeteries under the control of the National Cemetery Administration or in Arlington National Cemetery "unless the demonstration has been approved by the cemetery superintendent." Nonetheless, I do not believe that this section permits

unbridled discretion in the cemetery superintendent. Rather, I think that his discretion is well-cabined within and defined by the administrative function the law places upon the cemetery superintendent.

A case directly on point is *Griffin v. Secretary of Veterans Affairs*, 288 F.3d 1309 (Fed. Cir. 2002). Some veterans were not permitted under federal regulations from placing a Confederate flag at a national cemetery. Placing a flag was interpreted as a forbidden demonstration under 38 C.F.R., sect. 1.218(a)(14). Subsection (i) declares in part, "[A]ny service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited." Petitioners asserted that the section gave unconstitutional discretion to the administrator of the facility.

In *Griffin*, the Federal Circuit Court pointed out that cemeteries are non-public forums the regulations of which are subject only to a reasonable basis test. However, although the government may limit the content of expression in non-public forums, it may not engage in viewpoint discrimination. The question was whether the discretion given by the law to the cemetery's administrator brought with it the danger of viewpoint discrimination. After all, a Confederate flag carries a different viewpoint from the Stars and Stripes.

The Federal Circuit found that the Supreme Court had applied the viewpoint discrimination doctrine only in traditional public forums or in designated public forums. 288 F.3d at 1321. The court zeroed in on the relevant variable in this kind of case: "We are obliged to examine the nature of the forum because the restrictions in nonpublic fora may be reasonable if they are aimed at preserving the property for the purpose to which it is dedicated." 288 F.3d at 1323. Finding that there was sufficient Supreme Court support,

citing *United States v. Kokinda*, 497 U.S. 720 (1990), the Federal Circuit upheld the discretion lodged in the cemetery's administrator "when such discretion is necessary to preserve the function and character of the forum." 288 F.3d at 1323.

The purpose of many non-public forums is normative and preserving the function of that forum may entail restricting opposing normative viewpoints. Schools, for example, are nonpublic forums charged with developing students' character for participation as well-informed and well-developed citizens in our system of representative government. To that end, schools may insist that students observe rules of respect and avoid hateful or immoral language. A student with an opposite viewpoint who fails to observe the rules of respect and makes his point with crude language is not protected by the First Amendment. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1968). Accordingly, the superintendent of a national cemetery is charged with maintaining the cemetery and its activities "as a tribute to our gallant dead." Under H.R. 5037 he is granted reasonable discretion to assure that all activities within the cemetery accord with its lawfully stated purpose. He may permit ceremonies or demonstrations or signs or programs that accord with such purpose and forbid those that do not. In doing so, the restriction imposed is "reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." 288 F.3d at 1321, citing, *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985).

IV. Conclusion

H.R. 5037 is a well-crafted bill that seeks to maintain the decorum necessary to honor our veterans and those who have died for our freedoms and who now rest in national

cemeteries. I find that the bill's careful limitations on disruptive demonstrations and the limited discretion it gives to cemetery superintendents to be well with constitutional limits.

April 6, 2006

Jeff Miller
U.S. House of Representatives
Committee on Veterans' Affairs
335 Cannon House Office Bldg.
Washington, D.C. 20515

Testimony in support of H.R. 5037

Testimony in favor of a proposed measure neccessarly ordinarily consists of an explanation of the benefit to be obtained and a response to possible objections. Testimony in favor of H.R. 5037 must therefore be brief and limited. The benefit to be obtained, a peaceful and dignified graveside funeral service, is self-explanatory and evident, and it is difficult to conceive of a reasonable objection. Little can be less controversial or subject to objection than that the family and friends of a person who died in the military service of his or her country should be entitled to honor their lost relative or friend in a respectful service uninterrupted by any sort of interfering demonstration. Surely the least we owe our fallen soldiers and their family and friends is effective action by Congress to prevent such interference.

I have no doubt that Congress can and should provide the protection H.R. 5037 intends. I recommend, however, that the provision authorizing the cemetery superintendent to approve demonstrations be deleted or that content-neutral grounds for approval or disapproval be stated in order to remove the otherwise likely vulnerability of the law to challenge on First Amendment grounds.

Respectfully submitted,

Lino A. Graglia
A. Dalton Cross Professor of Law

STATEMENT OF
BRIAN LAWRENCE
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 6, 2006

Mr. Chairman and Members of the Subcommittee:

On behalf of the 1.3 million members of the Disabled American Veterans (DAV), I am pleased to provide for the record, our comments on the following bills and draft bills:

H.R. 23, the Belated Thank You to the Merchant Mariners of World War II Act of 2005, would amend title 46, United States Code, and title II of the Social Security Act to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II. In accordance with its Constitution and Bylaws, the DAV legislative focus is on benefits and services for service-connected disabled veterans, their dependents, and survivors. As such, the DAV has no resolution or position pertaining to this bill; however, we are concerned about the adverse impact this legislation could have on the funding of current veterans' programs.

H.R. 601, the Native American Veterans Cemetery Act of 2005, would amend title 38, United States Code, to provide for the eligibility of Indian tribal organizations for grants for the establishment of veterans' cemeteries on trust lands. Because the issues addressed within this legislation are not specific to its legislative focus, the DAV has no resolutions pertaining to this bill. However, because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

H.R. 2188, would amend title 38, United States Code, to authorize the placement in a national cemetery of memorial markers for the purpose of commemorating servicemembers or other persons whose remains are interred in an American Battle Monuments Commission cemetery. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

H.R. 2963, the Dr. James Allen Disabled Veterans Equity Act, would amend title 38, United States Code to improve compensation benefits for veterans in certain cases of impairment of vision involving both eyes. Under current law, a veteran who has suffered blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of non-service-connected disability, which was not the result of the veteran's own willful misconduct, he or she is entitled to Department of Veterans Affairs (VA) disability compensation as if the combination of disabilities were the result of service-connected disability. H.R. 2963 would

expand such eligibility to include veterans with service-connected blindness in one eye and non-service-connected disabilities rated 10 percent or higher in the other eye. The DAV fully supports this bill.

H.R. 4843, the Veterans' Compensation Cost-of-Living Adjustment Act of 2006, would increase, effective as of December 1, 2006, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. Within the cost-of-living adjustment (COLA) measure is a provision that "each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount." The DAV supports the overall intent of this bill. To maintain the value of veterans' benefits, they must be adjusted to keep pace with the rise in the cost of living. However, rounding down the adjusted rates to the next lower dollar amount will gradually erode the value of benefits over time and thus benefits will not keep pace with the rise in the cost of living. Rounding down veterans' cost-of-living adjustments unfairly targets veterans for convenient cost savings for the government. Additionally, the DAV supports legislation that would provide for automatic annual adjustments, based on increases in the cost of living, for specially adapted housing and auto grants to assist eligible disabled veterans and servicemembers. These grants must be adjusted annually if they are to keep pace with the rise in the cost of living and remain meaningful benefits.

H.R. 5038, would amend title 38 to expand and extend the application of VA benefit for government markers for marked graves of veterans buried in private cemeteries and to provide government markers or memorial headstones for deceased dependent children of veterans whose remains are unavailable for burial. While the DAV has no resolution on this issue, the bill would accomplish a beneficial purpose, and we certainly have no objection to its passage.

H.R. 5037, the Respect for America's Fallen Heroes Act, would prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery. The DAV supports and appreciates the purpose of this legislation to preserve the dignity of those who have paid the ultimate sacrifice and for their families.

We appreciate the Subcommittee's interest in ensuring the effectiveness of programs for disabled veterans, and we appreciate the opportunity to present DAV's views.

BIOGRAPHICAL INFORMATION

BRIAN E. LAWRENCE
Assistant National Legislative Director
Disabled American Veterans

Brian E. Lawrence, a service-connected disabled veteran of the Persian Gulf War, was appointed Assistant National Legislative Director of the million-member-plus Disabled American Veterans (DAV) in August 2002. He is employed at DAV National Service and Legislative Headquarters in Washington, D.C.

As a member of the DAV legislative team, Mr. Lawrence works to support and advance the federal legislative goals and policies of the DAV to assist disabled veterans and their families, as well as guarding current veteran's benefits and services from legislative erosion.

Mr. Lawrence joined the DAV professional National Service Officer (NSO) staff as an NSO Trainee at the DAV NSO Training Academy in Denver, Colorado in March 1995. He graduated as a member of Academy Class II in July 1995 and was assigned as an NSO to the DAV National Service Office in Salt Lake City, Utah, where he was promoted to Supervisor in July 1996. He was transferred to the National Service Office in St. Petersburg, Fla. in September 1997. He served there, as Assistant Supervisor, until his current appointment.

A native of Muscatine, Iowa, Mr. Lawrence enlisted in the U.S. Navy in 1984. After training as a U.S. Navy Diver, his assignments included Special Boat Unit XIII, Coronado, Calif.; and Explosive Ordnance Disposal, Mobile Unit 9, San Francisco. He fractured his right leg, during a parachute landing at Ft. Benning, Ga., in 1991 and was honorably discharged in 1992 at the rank of Petty Officer 2nd Class.

Mr. Lawrence earned his Bachelor of Science degree at Southern Illinois University and his Master of Business Administration degree from Florida Metropolitan University.

A life member of DAV Chapter 1, Washington, D.C., Mr. Lawrence and his wife, Linda, reside in Millersville, MD.

08/05

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Disabled American Veterans (DAV) does not currently receive any money from any federal grant or contract.

During fiscal year (FY) 1995, DAV received $55,252.56 from Court of Veterans Appeals appropriated funds provided to the Legal Service Corporation for services provided by DAV to the Veterans Consortium Pro Bono Program. In FY 1996, DAV received $8,448.12 for services provided to the Consortium. Since June 1996, DAV has provided its services to the Consortium at no cost to the Consortium.

STATEMENT OF
PETER GAYTAN, DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION

TO THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 23, BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2005; H.R. 601, NATIVE AMERICAN VETERANS CEMETERY ACT OF 2005; H.R. 2188; H.R. 2963, DR. JAMES ALLEN DISABLED VETERANS EQUITY ACT; H.R. 4843, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2006; H.R. 5037, RESPECT FOR FALLEN HEROES ACT; AND A DRAFT BILL

APRIL 6, 2006

STATEMENT OF
PETER S. GAYTAN, DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
TO THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 23, BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2005; H.R. 601, NATIVE AMERICAN VETERANS CEMETERY ACT OF 2005; H.R. 2188; H.R. 2963, DR. JAMES ALLEN DISABLED VETERANS EQUITY ACT; H.R. 4843, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2006; H.R. 5037, RESPECT FOR FALLEN HEROES ACT; AND A DRAFT BILL

APRIL 6, 2006

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to submit The American Legion's views on the issues being considered by the Subcommittee today. The American Legion commends the Subcommittee for holding a hearing to discuss these important and timely issues.

H.R. 23: "Belated Thank You to the Merchant Mariners of World War II Act of 2005"

H.R. 23 seeks to amend title 48, United States Code, and title II of the Social Security Act to provide benefits to certain individuals who served in the United States Merchant Marine (including the Army Transport service and the Naval Transport Service) during WWII. A monthly benefit of $1000 will be granted to all Merchant Marines or their surviving spouses who, received a certificate of honorable service, served between December 7, 1941 and December 31, and, who also served as a crewmember of a vessel that was operated by the War Shipping Administration or the Office of Defense Transportation, operated in waters other than inland waters, the Great Lakes and other lakes, bays, and harbors of the United States, was under contract or charter to or property of the Government of the United States, serving the Armed Forces, and was licensed or otherwise documented for service as a crew member of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.

The American Legion has no official position on this legislation at this time, but its National Executive Committee will be considering this issue in its May meetings.

H.R. 601: "Native American Cemetery Act of 2005"

The Native American Cemetery Act of 2005 intends to amend title 38, United States Code, to provide for the eligibility of Native American tribal organizations for grants for the establishment, expansion, or improving of veterans' cemeteries on trust lands.

In August 2002, The American Legion enacted Resolution No. 144: The American Legion Policy On The National Cemetery Administration. The resolution supports the establishment of additional national and state veterans' cemeteries wherever a need for them is apparent. The American Legion also supported P.L. 108-109, the National Cemetery Expansion Act of 2003 authorizing VA to establish new national cemeteries.

Every passing generation of veterans has earned the thanks of a grateful nation and burial in a veterans' cemetery is the final salute to this nation's heroes. The American Legion will continue to work with Congress to ensure that it is providing the appropriate honor and recognition to "*him who shall have borne the battle and for his widow and his orphan.*" With young American service members continuing to answer the nation's call to arms in every corner of the globe, we must now, more than ever, work together to honor the sacrifices of these veterans. The American Legion supports the Native American Cemetery Act of 2005.

H.R. 2188: "To authorize the placement in a national cemetery of memorial markers for the purpose of commemorating servicemembers or other persons whose remains are interred in an American Battle Monuments Commission Cemetery"

H.R. 2188 seeks to amend title 38, United States Code, to authorize the placement in a national cemetery of memorial markers for the purpose of commemorating service members of other persons whose remains are interred in an American Battle Monuments Commission Cemetery.

The American Legion supports the recognition of all veterans, especially those who have made the ultimate sacrifice during their service to this country. The American Legion supports H.R. 2188.

H.R. 2963: "Dr. James Allen Disabled Veterans Equity Act"

The Dr. James Allen Disabled Veterans Equity Act seeks to improve compensation benefits for veterans in certain cases of impairment of vision involving both eyes. The bill will strike the word "blindness" from section 1160(a)(1) of title 38, United States Code and replace it with "an impairment in vision" and also strike "an blindness" and replace it with "an impairment of vision".

The American Legion supports this legislation, as it is consistent with provisions of the Veterans' Benefits Act of 2002 (PL 107-330), which instituted similar changes for hearing loss evaluations.

H.R. 4843: "Veterans' Compensation Cost of Living Adjustment Act of 2006"

H.R. 4843 will increase the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain service-connected disabled veterans, and for other purposes, effective as of December 1, 2006.

The American Legion supports this annual cost-of –living adjustment in compensation benefits, including for dependency and indemnity (DIC) recipients. It is imperative that Congress consider annually the economic needs of disabled veterans and their survivors and providean appropriate cost-of-living adjustment in their benefits.

H.R. 5037: "Respect for Fallen Heroes Act".

H.R. 5037 will amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, and for other purposes. The Respect for America's Fallen Heroes Act would:

1. Ban all demonstrations 60 minutes prior to and after funerals taking place at Department of Veterans Affairs' national cemeteries or the Department of Army's Arlington National Cemetery (the only areas over which the Federal government maintains jurisdiction).

2. Impose a 500-foot restriction on demonstrations at national cemeteries and Arlington National Cemetery.

3. Allow for a civil infraction for violations, including monetary fines and/or jail time of six months to a year, as consistent with the authority granted to the Secretary of Veterans Affairs under current regulation.

4. Express the will of Congress that all states should enact similar bans for state and private cemeteries, as well as funeral homes.

The American Legion applauds the original cosponsors of this important bill and fully supports efforts to protect the mourning relatives of service members interred in National Cemeteries and at Arlington National Cemetery. It is important that Federal lawmakers, as well as state legislators, recognize the need to enact restrictions that will serve to protect the sanctity of military funerals for those members of the U.S. military who have paid the ultimate sacrifice in the defense of freedom.

H.R. ---: "A draft bill reauthorizing the placement of government markers in private cemeteries"

The draft bill reauthorizing the placement of government markers in private cemeteries seeks to amend title 38, United States Code, to extend and expand the application of the Department of Veterans Affairs benefit for government markers for marked graves of veterans buried in private

cemeteries and to provide government markers or memorial headstones for deceased dependent children of veterans whose remains are unavailable for burial.

The American Legion supports this bill reauthorizing the placement of government markers in private cemeteries. Bestowing honor and recognition of these fallen heroes and their families, wherever they may lie, should be a national priority.

Mr. Chairman and Members of the Subcommittee, this concludes my testimony. I appreciate the opportunity to present The American Legion's views on these important and timely topics.

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006-2847 ★
(202) 861-2700 ★

April 6, 2006

Honorable Jeff Miller, Chairman
Subcommittee on Disability Assistance
And Memorial Affairs
Committee on Veterans' Affairs
337 Cannon House Office Building
Washington, DC 20515

Dear Chairman Miller:

The American Legion has not received any federal grants or contracts, during this year or in the last two years, from any agency or program relevant to the subject of the April 6th hearing, concerning HR. 23, Belated Thank You to the Merchant Mariners of World War II Act of 2005; H.R. 601, Native American Veterans Cemetery Act of 2005; H.R. 2188; H.R. 2963, Dr. James Allen Disabled Veterans Equity Act; H.R. 4843, Veterans' Compensation Cost-of-Living Adjustment Act of 2006; H.R. 5037, Respect for Fallen Heroes Act; and a Draft Bill.

Sincerely,

Peter Gaytan, Director
Veterans Affairs and Rehabilitation Commission

BIOGRAPHY
PETER S. GAYTAN
DIRECTOR
VETERANS AFFAIRS AND REHABILITATION DIVISION

Mr. Peter S. Gaytan began serving as Director of the Veterans' Affairs and Rehabilitation Division in September 2004. Prior to serving as Director, he served as Principal Deputy Director of the Veterans Affairs and Rehabilitation Division and Deputy Director of the Legislative Division.

He attended Wesley College in Dover, Delaware where he earned a B.A. in Political Science. He is also a graduate of the Defense Information School, Fort Meade Maryland, and earned an Associate of Science Degree in Public Affairs from the Community College of the Air Force.

In 1991, he entered the United States Air Force. After completing initial training at Lackland Air Force Base, Texas, and Keesler AFB, Mississippi, he served as Military Protocol Liaison with the 436th Airlift Wing at Dover AFB, Delaware. While serving with the 436th Airlift Wing he worked with military, diplomatic, and congressional leaders. He coordinated all protocol requirements for NATO visits, repatriation ceremonies for the U.S. Army Rangers killed in Somalia and the memorial ceremony for Commerce Secretary Ron Brown and the passengers of the T-43A that crashed in Bosnia. While on active duty, he also served as Honor Guard Training Flight NCOIC where he provided final honors for more than 200 military funerals. He also served six years with the 512th Airlift Wing, U.S. Air Force Reserve as a Public Affairs Specialist.

During his military service, Gaytan received the Air Force Commendation Medal, Air Force Achievement Medal, Good Conduct Medal, and the Air Force Outstanding Unit Ribbon.

Originally from Norfolk, VA he and his wife, Kimberly currently reside in Washington, D.C.

STATEMENT FOR THE RECORD OF

PARALYZED VETERANS OF AMERICA

BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS,

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND

MEMORIAL AFFAIRS

CONCERNING

H.R. 23, THE "BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2005;"

H.R. 601, THE "NATIVE AMERICAN VETERANS CEMETERY ACT OF 2005;"

H.R. 2188;

H.R. 2963, THE "DR. JAMES ALLEN DISABLED VETERANS EQUITY ACT;"

H.R. 4843, THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2005;" AND

PROPOSED LEGISLATION

APRIL 6, 2006

Chartered by the Congress of the United States

801 Eighteenth Street, NW ★ Washington, DC 20006-3517
phone:(202) 872-1300 ★ tdd:(202) 416-7622 ★ fax:(202) 785-4452 ★ www.pva.org

Chairman Miller, Ranking Member Berkley, members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit a statement for the record on H.R. 23, the "Belated Thank You To the Merchant Mariners of World War II Act of 2005;" H.R. 601, the "Native American Veterans Cemetery Act of 2005;" H.R. 2188; H.R. 2963, the "Dr. James Allen Disabled Veterans Equity Act;" H.R. 4843, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2005;" and the proposed legislation. We appreciate the opportunity to offer our views and suggestions on the various programs and benefits being addressed in the hearing.

H.R 23, the "Belated Thank You to the Merchant Mariners of World War II Act"

Although we recognize the sacrifices that these brave men made in service to the nation during World War II and we support the intent of this legislation, we have some concerns with the proposals it makes. The importance of their sacrifices cannot be overstated. While suffering extremely high casualty rates during the war, they delivered troops, tanks, food, airplanes, fuel and other needed supplies to every theater of the war.

However, PVA believes that this bill would be very costly to the Department of Veterans Affairs (VA). We believe that the money needed to provide this new monthly benefit would reduce the ability of the VA to continue to provide the wide-ranging scope of benefits that it already manages.

We also do not understand how the amount to be provided as a monthly benefit was determined. As it stands, if this legislation was enacted, a merchant marine veteran would

be entitled to a payment equal to veterans who have a 70 percent compensable service-connected disability. Furthermore, the surviving spouses of these veterans would be entitled to a benefit nearly equal to the amount provided to the surviving spouses of veterans with service-connected disabilities. Although we do not dispute the idea that these veterans should receive some type of benefit, we do not believe that the recommendations of this legislation are equitable with similar programs. We are not certain that this legislation maintains the priority that the VA follows for providing compensation benefits.

H.R. 601, the "Native American Veterans Cemetery Act of 2005

PVA supports H.R. 601 which would allow Indian tribal organizations to apply for federal grants to establish national veterans' cemeteries on trust lands. This legislation would essentially provide for the same eligibility to Indian tribal organizations for these grants that states currently have when they wish to construct a new national cemetery.

H.R. 2188

This proposed legislation would authorize the placement in a national cemetery in this country of memorial markers to commemorate servicemembers or other persons interred in an American Battle Monuments Commission cemetery overseas. Many brave men and women are buried in cemeteries that were established overseas following World War I and II. Unfortunately, many of their family members are unable to visit their loved ones because of the geographic challenges. By permitting memorials in national cemeteries here at home, these families will now have the satisfaction of being able to visit their loved

ones without having to travel half way around the world. PVA fully supports this legislation.

H.R. 2963, the "Dr. James Allen Disabled Veterans Equity Act"

PVA fully supports H.R.2963, the "Dr. James Allen Disabled Veterans Equity Act." This legislation would improve compensation benefits for veterans who experience a change in vision impairment over the course of their life.

PVA members share a unique relationship with blinded veterans. Much like PVA members, blinded veterans live with a catastrophic disability every day. Blinded veterans rely on the extensive benefits and specialized services provided by the VA just as spinal cord injured veterans rely on the same benefits and services. This important legislation would allow a veteran who currently experiences visual impairment in one eye to receive an increase in compensation benefits if he or she experiences impairment in the other eye. Current law does not afford veterans this opportunity if they experience impairment in both eyes, despite the now catastrophic nature of the condition.

This legislation would also ensure that the servicemen and women returning from Iraq and Afghanistan who have sustained eye injuries will receive the benefits and services that they will need for the rest of their lives.

In discussion with representatives from Blinded Veterans of America (BVA), we were informed that there are problems with the language of the bill as written. However, they

informed us that they are working very closely with Congresswoman Tammy Baldwin to ensure that the necessary changes are made.

H.R. 4843, the "Veterans' Compensation Cost-of-Living Adjustment Act"

PVA supports H.R. 4843, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2005." This bill would increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for certain disabled veterans. As we have done in the past, we oppose again this year the provision rounding down the cost-of-living adjustment to the nearest whole dollar. Continuing to round down these benefits year after year only serves to erode the value of them. Furthermore, this provision forces veterans to bear some of the burden of cost-savings for the federal government.

Government Markers for Veterans Buried in Private Cemeteries

P.L. 107-330 authorized the VA to provide private government markers to veterans who have marked graves in private cemeteries. This legislation was meant to provide for recognition of those men and women who have served this nation with honor. However, P.L. 107-330 only provided this benefit retroactively to veterans who died after September 11, 2001. It excludes veterans who died between November 1, 1990 and September 11, 2001. Prior to enactment of P.L. 107-330, the VA estimated that it denied more than 20,000 headstones or markers to these veterans. This legislation would correct this serious inequity. All veterans should be afforded the same recognition of their service following their death. PVA fully supports this proposed legislation.

The "Respect for America's Fallen Heroes Act"

PVA finds it shameful that the United States Congress is forced to consider legislation that addresses this problem. We have seen the many reports of individuals and organizations that have taken advantage of funeral and memorial services for servicemembers killed overseas to push their agendas and sell their propaganda. We find it unconscionable that anyone would be capable of such actions.

There is perhaps no more sacred ground than the national cemeteries which serve as the final resting place for so many brave young men and women. The importance of these places should not be tarnished. With that in mind, PVA supports the proposed legislation that would prohibit certain demonstrations at cemeteries managed by the National Cemetery Administration and at Arlington National Cemetery.

PVA would like to thank you for the opportunity to submit this written statement. We appreciate the efforts of the subcommittee to address these important benefits. We look forward to working with you to ensure that meaningful benefits improvements are enacted.

We would be happy to answer any questions that you might have. Thank you.

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 2006

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $252,000 (estimated).

Fiscal Year 2005

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $245,350.

Paralyzed Veterans of America Outdoor Recreation Heritage Fund – Department of Defense –
$1,000,000.

Fiscal Year 2004

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $228,000.

Vietnam Veterans of America

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A Not-For-Profit Veterans Service Organization Chartered by the United States Congress

STATEMENT FOR THE RECORD

OF

VIETNAM VETERANS OF AMERICA

SUBMITTED BY

Sharon Hodge
Associate Director of Government Relations

BEFORE THE

THE HOUSE VETERANS' AFFAIRS SUBCOMMITTEE
on
DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

REGARDING

H.R. 23, H.R. 601, H.R. 2188, H.R.2963, H.R. 5037 and H.R. 5038

APRIL 6, 2006

Mr. Chairman, and members of the subcommittee, on behalf of Vietnam Veterans of America (VVA), I thank you and your distinguished colleagues for the opportunity to offer our statement for the record on these important pieces of legislation.

H.R.23 - The Belated Thank You for the Merchant Mariners of World War II Act of 2005

Merchant Mariners remained in war zones long after the fighting troops came home to enjoy the benefits of the GI Bill. They suffered many casualties: 54 ships struck mines after V-E or V-J Day. Although they are honored on countless memorials across the country, including the World War II Memorial in Washington, DC, sadly, in some places, they are deemed "civilians" and relegated to the back of the monument. Merchant Mariners still seek full, official recognition for their heroism and vital role in making World War II victory possible.

VVA fully supports H.R 23, which provides monthly compensation to WWII Merchant Mariners or their widows in lieu of benefits not received after World War II and gives Social Security credit for time served in the Merchant Marine.

H.R. 601 – Native American Veteran Cemetery Act of 2005

American Indians have served in every war fought by the United States of America. During World War I approximately 12,000 served with the American Expeditionary Force and many distinguished themselves in the fighting in France. In World War II, more than 44,000 fought against the Axis forces in both European and Pacific theaters of war. These Americans compiled a distinguished record of courage and sacrifice. More than 42,000 American Indians fought in Vietnam. American Indian contributions in United States military combat continued in the 1980s and 1990s as they saw duty in Grenada, Panama, Somalia, and the Persian Gulf.

Native Americans continue to play a major role in the armed services with nearly 11,000 on active duty today.

VVA believes it is time that Native American veterans who served our country so honorably are allowed to pursue a decent, dignified resting place on their tribal lands and fully supports H.R.601.

H.R. 2188 – To authorize the placement in a national cemetery of memorial markers for the purpose of commemorating servicemembers or persons whose remains are interred in an ABMC cemetery.

The American Battle Monuments Commission commemorative mission is reflected in 24 overseas military cemeteries which serve as resting places for almost 125,000 American war dead: 30,921 from World War I, 93,246 from World War II, and 750 from the Mexican War. Additionally, 6,033 American veterans and others are interred in the Mexico City and Corozal American cemeteries.

The Department of Veterans Affairs National Cemetery Administration maintains 122 national cemeteries in 39 states (and Puerto Rico) as well as 33 soldiers' lots and monument sites. As written H.R. 2188 is very vague and is not fiscally sound. VVA believes the subcommittee needs to take a closer look as to whether NCA and state cemeteries have available space to fulfill the needs addressed by this legislation.

Therefore, VVA does not support the bill as written.

H.R. 2963, Dr. Allen Disabled Veterans Equity Act

VVA fully supports the bill as written

H.R. 4843, Veterans COLA Adjustment Act of 2006

H.R. 4843 would increase the current levels of disability compensation, additional compensation for dependents, the VA clothing allowance, and the various rates of Dependency and Indemnity Compensation (DIC) for disabled veterans and their families. The percentage of increase would be equivalent to the percentage of the cost of living adjustment (COLA) for Social Security beneficiaries, and would become effective as of December 1, 2006. VVA fully supports this provision. These COLA increases are absolutely necessary to ensure that veterans and their dependents receive meaningful benefits, and to prevent them from falling through inflationary cracks.

VVA also urges you to consider language in this legislation that would include COLA increases for children receiving $250 DIC compensation. DIC payment is not affected by COLA increases.

H.R. 5037, "Respect for America's Fallen Heroes Act"

VVA fully endorses the a bill which would ban demonstrations for an hour before and an hour after funerals taking place at our national cemeteries (including Arlington National Cemetery), and would impose a 500-foot restriction on demonstrations at national cemeteries, and would allow a civil infraction for violations. The bill would also express the "sense of Congress" that all states should enact similar legislation for state and private cemeteries, and for funeral homes.

The bill also affirms that that there are certain places, special places, that should be off-limits to politicking and demonstrating

H.R. 5038, Veterans Memorial Act of 2006

VVA supports reauthorization of this program through 2010 and supports the provision in the bill that would provide markers or memorial headstones for deceased dependent children of veterans whose remains are unavailable for burial.

Mr. Chairman, again all of us at VVA thank you for this opportunity to present our statement for the record on these improvements in vital veterans benefit.

Vietnam Veterans of America

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SHARON HODGE

Sharon Hodge currently serves as Associate Director of Government Relations. She develops legislative and regulatory strategies at the national level and advises the Director on issues concerning veterans' advocacy programs, legislative issues and strategies based on Convention resolutions, National board directives, and policy decisions.

Ms. Hodge was awarded a 2005 Certificate of Appreciation from National President, Vietnam Veterans of America; a 2005 Certificate of Appreciation from Associates of Vietnam Veterans of America; a 2000 Certificate of Appreciation from the Washington, DC, VAMC Winterhaven; a 2000 Certificate of Appreciation from Associates of Vietnam Veterans of America; a 1999 Certificate of Appreciation from the VVA Nebraska State Council; the 1998 The Chapel of Four Chaplains Legion of Honor Award; and the 1997 Government Affairs Special Recognition Award, from Vietnam Veterans of America.

Ms. Hodge works tirelessly as an advocate on behalf of our nation's veterans. Among her many accomplishments, she established a grassroots online advocacy network and effectively recruited more than 500 legislative coordinators, and she organized a grassroots advocacy campaign in 2000 for enactment of the Homeless Veterans Comprehensive Assistance Act. P.L. 107-95.

She has two children and currently resides in Silver Spring, Maryland.

Questions for the Record
Honorable Jeff Miller, Chairman
Subcommittee on Disability Assistance and Memorial Affairs

April 6, 2006

Legislative Hearing on HR. 23, HR. 601,
HR. 2188, HR. 2963, HR. 4843, HR. 5037, and H.R. 5038

Question 1: One of the Department's reasons for opposing H.R. 23 is that other groups that have had veterans' status conferred upon them pursuant to Public Law 95-202 could also claim they have been disadvantaged and request a similar monetary benefit. Please provide a list of all the groups that have been granted veterans' status, the date such status was conferred, and the estimated number of veterans in these groups.

Response: Under Public Law 95-202, § 401, the Secretary of Defense has certified the following individuals and groups as having active military service. The effective date of each group is identified at the end of each segment.

(1) American Merchant Marine in oceangoing service, during the Period of Armed Conflict, December 7, 1941, to August 15, 1945. Recognized effective January 19, 1988.

(2) The approximately 50 Chamorro and Carolinian former native policemen who received military training in the Donnal area of central Saipan and were placed under the command of Lt. Casino of the 6th Provisional Military Police Battalion to accompany United States Marines on active, combat-patrol activity from August 19, 1945, to September 2, 1945. Recognized effective September 30, 1999.

(3) Civilian Crewmen of the United States Coast and Geodetic Survey (USCGS) vessels, who performed their service in areas of immediate military hazard while conducting cooperative operations with and for the U.S. Armed Forces within a time frame of December 7, 1941, to August 15, 1945. Qualifying USCGS vessels specified by the Secretary of Defense, or his or her designee, are the Derickson, Explorer, Gilbert, Hilgard, E. Lester Jones, Lydonia, Patton, Surveyor, Wainwright, Westdahl, Oceanographer, Hydrographer, and Pathfinder. Recognized effective April 8, 1991.

(4) Civilian employees of Pacific Naval Air Bases who actively participated in Defense of Wake Island during World War II. Recognized effective January 22, 1981.

(5) Civilian Navy Identification Friend or Foe (IFF) Technicians, who served in the Combat Areas of the Pacific during World War II (December 7, 1941, to August 15, 1945). Recognized effective August 2, 1988.

(6) Civilian personnel assigned to the Secret Intelligence Element of the Office of Strategic Services (OSS). Recognized effective December 27, 1982.

(7) Engineer Field Clerks (WWI). Recognized effective August 31, 1979.

(8) Guam Combat Patrol. Recognized effective May 10, 1983.

(9) Honorably discharged members of the American Volunteer Group (Flying Tigers), who served during the Period December 7, 1941, to July 18, 1942. Recognized effective May 3, 1991.

(10) Honorably discharged members of the American Volunteer Guard, Eritrea Service Command, who served during the Period June 21, 1942, to March 31, 1943. Recognized effective June 29, 1992.

(11) Male Civilian Ferry Pilots. Recognized effective July 17, 1981.

(12) The Operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps from December 7, 1941, through August 15, 1945. Recognized effective August 27, 1999.

(13) Quartermaster Corps Female Clerical Employees serving with the AEF (American Expeditionary Forces) in World War I. Recognized effective January 22, 1981.

(14) Quartermaster Corps Keswick Crew on Corregidor (WWII). Recognized effective February 7, 1984.

(15) Reconstruction Aides and Dietitians in World War I. Recognized effective July 6, 1981.

(16) Signal Corps Female Telephone Operators Unit of World War I. Recognized effective May 15, 1979.

(17) Three scouts/guides, Miguel Tenorio, Penedicto Taisacan, and Cristino Dela Cruz, who assisted the U.S. Marines in the offensive operations against the Japanese on the Northern Mariana Islands from June 19, 1944, through September 2, 1945. Recognized effective September 30, 1999.

(18) U.S. civilian employees of American Airlines, who served overseas as a result of American Airlines' contract with the Air Transport Command during the Period December 14, 1941, through August 14, 1945. Recognized effective October 5, 1990.

(19) U.S. civilian female employees of the U.S. Army Nurse Corps while serving in the defense of Bataan and Corregidor during the Period January 2, 1942, to February 3, 1945. Recognized effective December 13, 1993.

(20) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, who served overseas in the North Atlantic or under the jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a result of a contract with the ATC during the Period February 26, 1942, through August 14, 1945. Recognized effective June 2, 1997.

(21) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division), who served overseas as a result of a contract with the Air Transport Command during the Period December 14, 1941, through August 14, 1945. Recognized effective June 29, 1992.

(22) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, who served overseas as a result of Northeast Airlines' Contract with the Air Transport Command during the Period December 7, 1941, through August 14, 1945. Recognized effective June 2, 1997.

(23) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, who served overseas as a result of Northwest Airline's contract with the Air Transport Command during the Period December 14, 1941, through August 14, 1945. Recognized effective December 13, 1993.

(24) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and Its Subsidiaries and Affiliates, who served overseas as a result of Pan American's Contract with the Air Transport Command and Naval Air Transport Service during the Period December 14, 1941, through August 14, 1945. Recognized effective July 16, 1992.

(25) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., who served overseas as a result of TWA's contract with the Air Transport Command during the Period December 14, 1941, through August 14, 1945. The "Flight Crew" includes pursers. Recognized effective May 13, 1992.

(26) U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), who served overseas as a result of UAL's contract with the Air Transport Command during the Period December 14, 1941, through August 14, 1945. Recognized effective May 13, 1992.

(27) U.S. civilian volunteers, who actively participated in the Defense of Bataan. Recognized effective February 7, 1984.

(28) U.S. civilians of the American Field Service (AFS), who served overseas operationally in World War I during the Period August 31, 1917, to January 1, 1918. Recognized effective August 30, 1990.

(29) U.S. civilians of the American Field Service (AFS), who served overseas under U.S. Armies and U.S. Army Groups in World War II during the Period December 7, 1941, through May 8, 1945. Recognized effective August 30, 1990.

(30) U.S. Merchant Seamen who served on blockships in support of Operation Mulberry. Recognized effective October 18, 1985.

(31) Wake Island Defenders from Guam. Recognized effective April 7, 1982.

(32) Women's Air Forces Service Pilots (WASP). Recognized effective February 1, 1978.

(33) Women's Army Auxiliary Corps (WAAC). Recognized effective March 18, 1980.

We do not have data on the number of veterans in these groups based on the recognition of their service under Pub. L. 95-202.

Question 2: In your written testimony you indicate that: "H.R. 23 would create what is essentially a service pension for a particular class of individuals based on no eligibility requirement other than a valid certificate of qualifying service from the Secretary of Transportation." Since World War II has VA provided monetary benefits to any class of individuals based on eligibility requirements that were not linked to a service-connected disability or financial need?

Response: VA provides monetary benefits to four specific classes of individuals that are not based on service connection or financial need.

- Veterans who have been disabled by faulty VA medical treatment or examination or by VA training and rehabilitation services are eligible under 38 U.S.C. § 1151 for compensation as if their disabilities were service connected.

- Surviving spouses and children of veterans who have died because of faulty VA medical treatment or examination or because of VA training and rehabilitation services are eligible under 38 U.S.C. § 1151 for dependency and indemnity compensation as if the veterans' deaths were service connected.

- Persons who have been awarded the Congressional Medal of Honor are eligible under 38 U.S.C. §§ 1560, 1561, and 1562 to receive a special pension.

- Certain veterans' children who are born with spina bifida or certain birth defects are eligible under 38 U.S.C. Chapter 18 for special allowances.

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