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LEGISLATIVE HEARING ON H.R. 811, H.R. 1407, H.R. 1441, H.R. 1484, H.R. 1627, H.R. 1647, AND H. CON. RES. 12

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

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

ONE HUNDRED TWELFTH CONGRESS

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LEGISLATIVE HEARING ON H.R. 811, H.R. 1407, H.R. 1441, H.R. 1484, H.R. 1627, H.R. 1647, AND H. CON. RES. 12

TUESDAY, MAY 3, 2011

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

The Subcommittee met, pursuant to notice, at 8:02 a.m., in Room 340, Cannon House Office Building, Hon. Jon Runyan [Chairman of the Subcommittee] presiding.

Present: Representatives Runyan, Buerkle, Stutzman, McNerney, Barrow, and Walz.

OPENING STATEMENT OF CHAIRMAN RUNYAN

Mr. RUNYAN. Good morning. The legislative hearing on H.R. 811, H.R. 1407, H.R. 1441, H.R. 1484, H.R. 1627, and H.R. 1647, and H. Con. Res. 12 will come to order. I want to thank you all for your attendance at this hearing at such an early hour. With two other hearings in the Committee on Veterans' Affairs today we had to do some unorthodox scheduling. I know we have a few Members who will be in VA Committee hearings all day today.

While the scheduling of this hearing was not optimal, it was also not utterly unreasonable. My understanding is that most of the witnesses were able to submit their testimony on time despite the rigid timeline. Therefore, I am very disappointed with the lateness of the U.S. Department of Veterans' Affairs' (VA's) testimony. It is understandable that it can be difficult to get the testimony through the clearance process. But it is wholly unacceptable to receive testimony 15½ hours before the hearing starts. Members and staff must be given time to do our jobs and properly prepare for your testimony.

Before I recognize Ranking Member McNerney and the other Members of the Committee, I just wanted to briefly touch on three bills on today's agenda that I have introduced. H.R. 1407 is the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011." It provides a cost-of-living increase to veterans' disability compensation rates and other benefits. These increases are tied to the cost-of-living adjustments (COLAs) for Social Security benefits.

H.R. 1441 codifies regulations and policies that bar reservations for burial or interment at the Arlington National Cemetery made on or before January 1, 1962. Like many people, I was shocked

when I learned about the recent allegations that veterans had been given unofficial reservations by the former management at Arlington National Cemetery. I applaud the decision of the new management team, headed by Ms. Condon, to not honor these unofficial reservations. And this bill makes the policy crystal clear by putting it into law.

My final bill, H.R. 1647, the "Veterans' Choice in Filing Act." This bill directs the VA to establish a pilot program that would allow veterans who live in the jurisdiction of the five underperforming regional offices (ROs) to choose which regional office they would like to have their claim adjudicated. While I understand that many stakeholders here today have some questions in regard to the logistics of the bill I am sure we can all agree that it is inappropriate for veterans from one part of the country to have more accurate and timely decisions than a veteran living in another part of the country. My bill is meant to start the discussion in addressing these inequities and I look forward to hearing suggestions from our stakeholders here today on how they can work together to ensure all veterans' claims are timely and accurate. We will continue to discuss this issue at a hearing we will be having on underperforming regional offices on June 2nd.

I would like to ask all of today's witnesses to summarize your written statement within 5 minutes and without objection the written testimony will be made part of the hearing record. Before I begin with testimony I will now yield to the distinguished Ranking Member from the great State of California, Mr. McNerney.

[The prepared statement of Chairman Runyan appears on p. 35.]

OPENING STATEMENT OF HON. JERRY MCNERNEY

Mr. MCNERNEY. Thank you, Mr. Chairman. I would like to thank you for holding today's hearing. This morning we are considering seven pieces of legislation, ranging from claims processing, appeals modernization, and memorial services at VA cemeteries, and Arlington National Cemetery. However, I would be remiss if I did not mention the oddity of the 8:00 a.m. hearing this hour. You know, if you are a Californian, 8:00 is kind of early. I know you are doing this to torture me. But there have been frequent rescheduling and changes in procedure of at least five times. I hope this high level of confusion and frequency of changes can be avoided in the future, and that more consideration can be shown for our colleagues and our witnesses.

Today we consider two pieces of legislation that seek to make VA claims processing and appeals and the Board of Veterans' Appeals (BVA) appeals process more efficient and effective for our Nation's veterans. Specifically, the "Veterans Appeals Improvement Act of 2011," H.R. 1484, introduced by the Ranking Democratic Member of the full Committee, Mr. Filner; and your bill, Mr. Chairman, H.R. 1647, the "Veterans' Choice in Filing Act." The provisions of the Ranking Member's bill aim to continue the successful process which began with the enactment of Public Law 110–389 of making positive changes to the way our veterans' claims and appeals are handled by the Veterans Benefits Administration (VBA), Appeals Management Center, BVA, and the U.S. Court of Appeals for Veterans Claims (CAVC). Additionally, H.R. 1484 would establish a

commission to examine some of the overarching and longstanding judicial and administrative issues that contribute to what many stakeholders refer to as the hamster wheel. I look forward to delving into again these issue with all the stakeholders in a bipartisan manner.

I would also like to address your legislation, Mr. Chairman, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011," H.R. 1407. This bill has my full support. Many of the nearly three million veterans who receive these benefits depend on these tax free payments not only to provide for their own basic needs but those of their spouses, children, and parents as well. We would be derelict in our duty if we failed to guarantee that those who sacrificed so much for this country received benefits and services that failed to keep pace with their needs.

Finally, four of the remaining measures that we will consider today address memorial issues. H.R. 811, H.R. 1441, H.R. 1627, and H. Con. Res. 12. I look forward to hearing from our U.S. Department of Defense (DoD) witnesses as we discuss the three measures related to the placement of monuments and grave reservations at Arlington National Cemetery. I am also pleased that we will have a chance to consider Ranking Member Filner's bill, "Providing Military Honors for our Nation's Heroes," H.R. 811, which would help ensure that all of our veterans receive full burial honors that they deserve. It is critical that we honor our veterans' services and sacrifices appropriately as they are laid to rest.

During times of war, such as today, we must simultaneously ensure the proper compensation and support for our current veterans, while also creating and implementing innovative solutions that will allow us to care for those who will become veterans in our current conflicts. I think the bills under consideration today strike that balance.

Mr. Chairman, I thank my colleagues, Chairman Miller, Ranking Member Filner, Mr. Weiner, for introducing the other measures before us today. I look forward to hearing from all of our witnesses. I yield back and thank you.

[The prepared statement of Congressman McNerney appears on p. 35.]

Mr. RUNYAN. Thank you. At this time I would like to ask the first panel to come forward. Today we have with us Ms. Christina Roof, representing AMVETS; Mr. Jeffrey Hall from the Disabled American Veterans; (DAV) Mr. Shane Barker representing the Veterans of Foreign Wars (VFW); and Mr. Barton Stichman of the National Veterans Legal Service Program (NVSLP). Ms. Roof, you are now recognized for 5 minutes.

STATEMENTS OF CHRISTINA M. ROOF, NATIONAL ACTING LEGISLATIVE DIRECTOR, AMERICAN VETERANS (AMVETS); JEFFREY C. HALL, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; SHANE BARKER, SENIOR LEGISLATIVE ASSOCIATE, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; AND BARTON F. STICHMAN, JOINT EXECUTIVE DIRECTOR, NATIONAL VETERANS LEGAL SERVICE PROGRAM

STATEMENT OF CHRISTINA M. ROOF

Ms. ROOF. Thank you. Chairman Runyan, Ranking Member McNerney, and distinguished Members of the Subcommittee, on behalf of AMVETS I would like to extend our gratitude for being given the opportunity to share with you our views and recommendations on these very important pieces of legislation. The Committee has my full statement for the record. So today, in the interest of time, I will just touch upon a few bills.

First, AMVETS supports H.R. 811, the "Providing Military Honors for our Nation's Heroes Act." With the growing demand for military honors at burials today and the lack of military personnel or volunteers with the financial means to perform them, many of our Nation's fallen heroes are going without proper honors at their funerals. AMVETS finds this poignant reality unacceptable and avoidable. AMVETS believes that if funds for travel reimbursement were made available to organizations providing military honors at burial, more of this Nation's fallen soldiers would be guaranteed the proper honors they have earned through their greatest sacrifice to this country.

AMVETS also supports H.R. 1407, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011." AMVETS strongly supports this bill and urges its swift passage.

AMVETS strongly supports H.R. 1627. AMVETS believes the proposed language in H.R. 1627 will provide the necessary clarity, as well as uniform defined requisites for the placement of acceptable monuments in Arlington National Cemetery. Furthermore, AMVETS believes that mandating monuments only be erected in areas not suitable for interment will provide the opportunity for more of our Nation's fallen heroes and qualifying veterans to be laid to rest in these sacred grounds.

Finally, AMVETS supports H.R. 1441, to codify the prohibition against the reservation of gravesites at Arlington National Cemetery and for other purposes. It has been brought to the attention of AMVETS that de factor reservations of plots were still being made in direct violation to the Army's policy of prohibition of reservations established in 1962, and that there is still an unverified reservation list of about 3,200. AMVETS finds this to be objectionable and disgraceful, given the importance of what Arlington National Cemetery is tasked with. Furthermore, AMVETS believes that while H.R. 1441 stands to codify the Army's regulation, it also stands to provide accountability and transparency in the daily operations of Arlington National Cemetery. AMVETS believes that one's status in life should never determine their eligibility of interment over anyone else's. Once again, AMVETS supports H.R. 1441 and further urges Congress to have the strictest of oversight in the

implementation of Arlington's electronic tracking system, as well as the reservation review process, currently taking place.

Chairman Runyan and distinguished Members of the Subcommittee, AMVETS would again like to thank you for inviting us to share with you our opinions on these very important pieces of legislation and I stand ready to answer any questions you may have for me. Thank you.

[The prepared statement of Ms. Roof appears on p. 36.]

Mr. RUNYAN. Thank you. With that, Mr. Hall we yield you 5 minutes for your testimony.

STATEMENT OF JEFFREY C. HALL

Mr. HALL. Thank you. Chairman Runyan, Ranking Member McNerney, and Members of the Subcommittee. It is a privilege to be here today on behalf of the Disabled American Veterans to offer our views regarding pending legislation under consideration by the Subcommittee.

Mr. Chairman, as you and other Members of the Subcommittee are aware the rates of compensation for veterans with service-connected disabilities and the rates for dependents' indemnity compensation, or DIC, have not been increased during the past 2 years. Many veterans and their families rely solely on disability compensation or DIC as their only means of income. Without a cost-of-living adjustment, or COLA, especially in a difficult economy, causes many sick and disabled veterans to struggle financially or to not be able to make ends meet. With the rapidly increasing cost of basic necessities such a food, medicine, and gasoline, it is absolutely imperative for veterans and their families to receive an annual COLA. As such, DAV strongly supports the passage of H.R. 1407.

Additionally, DAV calls on Congress to end the practice of permanently rounding down COLAs to the next whole dollar amount. While this incremental reduction may seem an insignificant sum, it is anything but to those disabled veterans and their families whose only means of financial support comes from these programs. Likewise, consistent with *The Independent Budget* DAV is asking Congress to finally implement the recommendation of the IOM (Institute of Medicine), the Veterans Disability Benefits Commission (VDBC), and the Dole-Shalala Commission to enhance disability compensation by including compensation for the loss of quality of life suffered by disabled veterans who have sacrificed so much serving and defending this great Nation.

With respect to H.R. 1484, DAV strongly supports section two of the bill as this provision could be beneficial to all parties involved. Allowing a claimant to submit new or supplemental evidence directly to the Board without requiring a waiver of VA regional office consideration could alleviate time consuming interruptions and unnecessary remands, which can cause burdensome delays and waste VBA resources in the process.

Regarding section three of the bill, which would create a Veterans Judicial Review Commission, DAV testified in October 2009 on a similar commission. However, this new proposal is different in two respects. First, as you know, the VBA is deeply engaged in reforming the entire claims process to improve timeliness, accu-

racy, and consistency of their decisions. The Veterans Benefits Management System (VBMS) and the many other VBA pilot programs currently being evaluated should lead to significant changes in how VBA, the Board, and the Court receive and process claims and appeals. DAV simply questions whether the creation of yet another study commission is warranted or if it would be an appropriate use of resources.

Second, giving the Court of Appeals for Veterans Claims, or Court, class action authority advances the same concerns we previously raised during the October 2009 hearing before the Subcommittee. It remains our view that the appeals decided on an individual basis afford an appellant the best results. While class actions may benefit members of that class, further appeal action is precluded once a decision is rendered. Moreover, as reported recently in the *Washington Post*, the Court is understaffed and unable to keep pace with its pending caseload at this present time. DAV believes adding class action submissions would unnecessarily increase the burden on the Court at a time when its workload can reasonably be predicted to continue rising in the coming years as a result of a growing number of new claims filed each year. As such, DAV does not support section three of the bill at this time.

Lastly, H.R. 1647 would authorize a pilot program to allow veterans served by certain poor performing VA regional offices as designed by the Secretary the option to submit their claims for benefits at any VA regional office. DAV agrees with the intention of ending the disparities between and improving the overall performance of VA regional offices. However, during the past 2 years, the VBA has been engaged in a multitude of pilot programs directed at reforming the entire claims process. We believe creating another pilot program, one allowing claimants the ability to choose which VA regional office they want to process their claims, could interfere with VBA's ability to effectively manage their already backlogged caseload and possibly impeded the critical reform of the entire claims process. As such, DAV does not support passage of this legislation.

We would, however, be pleased to work with the Subcommittee to develop better methods in addressing the performance differences between VA regional offices centered around better training and quality control programs. With the enormous amount of new VBA employees, coaches, and managers sound training is absolutely imperative for consistency, accuracy, and producing rating decisions that are done right the first time.

In closing, with respect to H.R. 811, H.R. 1441, H.R. 1627, and H. Con. Res. 12, DAV does not currently have adopted resolutions from our membership pertaining to these particular matters. However, we do not oppose passage of these bills.

Mr. Chairman and Members of the Subcommittee, this concludes my statement and I am happy to answer any questions you may have.

[The prepared statement of Mr. Hall appears on p. 38.]

Mr. RUNYAN. Thank you, Mr. Hall. Mr. Barker, you are recognized for 5 minutes.

STATEMENT OF SHANE BARKER

Mr. BARKER. Mr. Chairman, Ranking Member McNerney, and Members of the Committee, on behalf of the 2.1 million members of the Veterans of Foreign Wars of the United States and our auxiliaries, we offer our thanks for this opportunity to present our views on today's pending legislation.

The VFW strongly supports H.R. 811, the "Providing Military Honors for our Nation's Heroes Act." This bill would offset costs for military retirees and veterans who volunteer to provide military funeral honors. At a time when many of our greatest generation are passing on and those serving in current conflicts are risking their lives for our country, this measure will help to ensure that all receive the honors they have earned.

We also support H.R. 1407, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011." Veterans and their survivors have not received COLA increases in 2 years. Meanwhile, inflation is taking a toll on their budgets. The most recent data from the Department of Labor shows a 2.1 percent increase in the consumer price index over the 2008 COLA base, and this legislation is the vehicle to ensure our veterans and survivors receive a corresponding adjustment in their payments.

The VFW strongly supports H.R. 1441, a bill that will finally prohibit in law the insider practice of allowing certain high-ranking military members and other VIPs to preselect their gravesites at Arlington National Cemetery. This practice was banned by the Army nearly 50 years ago, yet Cemetery administrators have continued to arbitrarily allow some to circumvent those rules. Burial at Arlington National Cemetery is a tremendous honor and should always depend upon honorable service, not rank.

The VFW supports H.R. 1484, the "Veterans Appeals Improvement Act of 2011." This legislation would alter current procedures of requiring new evidence submitted for a claim under appeal to be considered by a regional office before being sent to the Board of Veterans' Appeals, except in cases where the appellant waives that review. It also stipulates that the Board is required to rate all new evidence submitted after the case is sent to them unless the veteran specifically refuses to waive that consideration. This bill would allow the Board to move more quickly on appeals and would alter, but not eliminate, an appellant's right to local consideration. According to our internal data, VFW service officers waive local consideration about 90 percent of the time for veterans we represent. For this and other reasons we do not believe this procedural change would have a significant impact on appellants.

The VFW has no position on section three of the legislation, which creates a commission to review and report to Congress regarding the administrative and judicial appellate review process. We reserve the privilege to review that at a time when it would be appropriate.

We support H.R. 1627, a measure to codify procedures used at Arlington governing the placement of memorial markers. Any decisions that would affect the grounds at Arlington must be principled, fair, and based on precedent. This legislation advances these principles by taking existing procedures and making them the law of the land.

The VFW does not support H.R. 1647, the "Veterans' Choice in Filing Act of 2011," which would create a pilot program that would allow veterans at five underperforming regional offices to submit benefits claims to any VA regional office of their choice. We are concerned this pilot may only complicate VA's current process of transferring cases from backed up offices to those with excess capacity. It would also create concerns for VFW service officers and those from other veterans service organizations (VSOs). It is unclear how we or an individual veteran would know whom to contact about their claim or how effective a service officer could be regarding a claim that was sent to a distant state from across the country. However, we are hopeful that we can work with the Subcommittee to find solutions that would help expedite this process.

Finally, the VFW does support H. Con. Res. 12. The resolution states very clearly the sacrifices that have been made by chaplains by the Jewish faith on behalf of the United States. Other memorial markers are placed on Chaplains Hill in Arlington in memoriam of chaplains of other faiths. Rabbinical chaplains who have also served with dignity and honor should be similarly memorialized.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you or the Members of the Committee may have.

[The prepared statement of Mr. Barker appears on p. 41.]

Mr. RUNYAN. Thank you. Mr. Stichman, we would like to yield you 5 minutes for your testimony.

STATEMENT OF BARTON F. STICHMAN

Mr. STICHMAN. Thank you, Mr. Chairman. Thank you for the opportunity for the National Veterans Legal Service Program to present their views today. I would like to focus on one part of the short time that I have on a part of H.R. 1484 that would create a commission to study, among other things, whether the Court of Appeals for Veterans Claims should be given class action authority. You do not need a commission to conclude that legislation creating class action authority in the Veterans Court is long overdue.

We know we have an inefficient VA adjudicatory system that has had problems for years. We know that there is a hamster wheel phenomenon between the VA regional offices and the Board of Veterans' Appeals and the Court of Appeals for Veterans Claims. Class action authority will help, not totally resolve but will help alleviate those problems.

Traditionally the rights of similarly situated U.S. citizens, denied Federal Government benefits for the same reason, have been able to be resolved through the expeditious, efficient system called a class action. For decades Social Security claimants have been able to file in U.S. District Courts class actions for resolution of similarly situated cases. The VA benefits system prior to the Veterans' Judicial Review Act of 1988 had a system where U.S. District Courts could consider class actions. For example, there is a case called *Nehmer* in which a U.S. District Court in California certified a class and struck down the VA's Agent Orange compensation rules so that all Agent Orange compensation are decided in a similar fashion.

The Veterans' Judicial Review of 1988 changed all that because it changed the jurisdiction over veterans cases to the U.S. Court of Appeals for Veterans Claims without requiring a class action rule, and the Court of Appeals for the Federal Circuit, which does not have class action review authority. This causes problems for veterans and I will give you one example to illustrate it.

A number of years ago the VA issued a directive requiring the regional offices not to send veterans two types of decisions they made. One, decisions granting over $250,000 in retroactive benefits. Two, decisions granting over 8 years of retroactive benefits. Instead those decisions were to be sent to the VA Central Office for review in a secret proceeding that veterans never knew about. They did not have a right to a hearing before the Central Office, or to participate. The Central Office overturned half of those hundreds of decisions that were sent pursuant to that directive to the Central Office and the Central Office decision was substituted for the regional office grant of benefits that the veteran never got to see.

The Military Order of the Purple Heart filed a lawsuit in the Federal circuit challenging that rule. It could not file a lawsuit in the Court of Appeals for Veterans Claims because that Court has rule that organizations cannot file suit in that Court, only individual veterans. And Military Order of the Purple Heart did not know which members of that organization had been denied pursuant to this procedure because it was a secret procedure. Nobody knew whether their cases were involved.

They went to the Federal circuit, which struck down that directive. But refused to require the VA to overturn the individual decisions that were made in violation of the Court's decision. So none of the individuals have gotten relief, because that Court has no authority to grant that relief. Class action authority would end that problem. It would require, have required the VA to identify all of the people whose cases were overturned by their Central Office pursuant to the secret process that the Federal circuit struck down and require the veterans to get the benefits that were originally awarded.

Now class actions are an efficient system, tried and true in other benefit systems, for requiring an agency to decide similarly situated cases in a similar fashion without 58 regional offices, considering each one on an individual basis. And we urge the Committee without the necessity for a commission to enact such type of legislation. I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Stichman appears on p. 43.]

Mr. RUNYAN. Thank you very much. And respecting the time of one of my colleagues who wanted to come and testify I am going to recognize Mr. Weiner for 5 minutes for his testimony.

STATEMENT OF HON. ANTHONY WEINER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WEINER. Well, thank you, Mr. Chairman. I doubt I will take that. And I just wanted to tell you I am impressed by a Subcommittee that meets at 8:00 a.m. I guess your Subcommittee has

the slogan you get more done by 9:00 a.m. than most Subcommittees get done all day.

I thank you very much Mr. Chairman, Ranking Member McNerney, my colleagues for allowing me to briefly testify on House Concurrent Resolution 12, which would designate a plot of land at Arlington Cemetery to be used for a memorial honoring Jewish chaplains of our armed services. As you know, this is Jewish Heritage Month and I very much appreciate your leadership and Congressman Rooney who is the lead Republican sponsor on this bill.

Unlike many things in Congress this bill is simple, it is straightforward. Jewish chaplains have served our country for 149 years and yet they still do not have a place next to their Protestant and Catholic brothers on Chaplain Hill in Arlington Cemetery. Today all that is standing between Arlington Cemetery and a memorial is the passage of H. Con. Res. 12. And that is all there is to this resolution.

I am not the person who thought of a memorial for these Jewish chaplains. In fact, many Jewish Americans and veterans nationwide, I was surprised to learn that no memorial existed at Arlington Cemetery for Jewish chaplains. Ken Kraetzner, son of a World War II Army officer, noticed the lack of a monument for Jewish chaplains while researching the stories of the four immortal chaplains who died while giving final rites on board the USS *Dorchester* in 1943. Ken located the four men on Chaplains Hill. He noticed that Rabbi Alexander Goode was the only one of the four chaplains not distinguished by a memorial. Ken partnered with two other veterans, Rabbi Harold Robinson and Sol Moglen, to help lead a fundraising effort. In just a few months they raised over $50,000 mainly from war veterans across the Nation who wanted to do the right thing.

They used three other memorials as the model for the new monument for the 13 Jewish chaplains who lost their lives from 1943 to 1974. Thirteen, as you know, is a very significant number in the Jewish faith and it is appropriate that a memorial be for those chaplains and any that come after them.

The monument was designed, will stand 7 feet tall with a bronze plaque mounted on a granite slab listing the 13 names, as well as a Jewish proverb: "I ask not for a lighter burden, but for broader shoulders," and an inscription of the Star of David. There will also be a place at the bottom for future chaplains if, God forbid, it is needed. While planning this project Mr. Kraetzner, Rabbi Robinson, and Mr. Moglen were in touch with Arlington Cemetery. They were notified of a 2001 law that requires Congressional approval for memorials in Arlington Cemetery, and that is what brings us here. The group quickly alerted Jewish War Veterans of the United States, the Jewish Welfare Board, and the Jewish Chaplains Council, and they reached out to those of us in Congress. Senator Schumer has introduced the Senate version of this, and in less than 4 months the resolution has collected 72 bipartisan cosponsors including you, Mr. Chairman, and the Chairman of the full Committee. And it has been endorsed by 35 national Jewish organizations and 47 local Jewish War Veterans chapters.

The Jewish Federations of North America and Shelly Rood have been working to help pass the bill to recognize the achievements of these chaplains. Surviving family members of the chaplains have also been involved in the process, including David Engle, son of Rabbi Meir Engle, and Vera Silberberg, daughter of Morton Singer.

If I may, Mr. Chairman, I would like to submit with unanimous consent the letter of support from all of these groups for the record. And I am grateful that we are one step closer to erecting this monument properly honoring these chaplains. It is an excellent way, I believe, to celebrate Jewish Heritage Month.

At this point, if it would be appropriate, I would just like to read the names of the thirteen Jewish chaplains as well as their rank? Army Captain Nachman Arnoff, who passed away on May 19, 1946; Army Lieutenant Colonel Meir Engel, who passed away December 16, 1964; Army 1st Lieutenant Frank Goldenberg, deceased on May 22, 1946; Army Lieutenant Alexander D. Goode, deceased February 3, 1943; Army Lieutenant Henry Goody, deceased October 19, 1943; Major Samuel Hurwitz, deceased, December 19, 1943; Major Herman Rosen, deceased June 18, 1943; Air Force Captain Samuel Rosen, May 1, 1955; Air Force 1st Lieutenant Solomon Rosen, deceased November 2, 1948; Army Captain—these I do not have the ranks for these, actually, so these are just a member of the—Army Chaplain Morton Singer, deceased December 17, 1968; Air Force Chaplain David Sobel, deceased March 7, 1974; Army Chaplain Irving Tepper, August 13, 1944; and Army Chaplain Louis Werfel, December 24, 1944.

May we honor them with this memorial, and honor them and all the chaplains that have come before them and will serve in the future. And I thank you very much, Mr. Chairman, for the opportunity to express my support for this resolution.

[The prepared statement of Congressman Weiner appears on p. 47.]

Mr. RUNYAN. And Mr. Weiner, thank you for the early hour. I said in my opening statement that this is abnormal. We do not plan to make this a regular occurrence. So thank you again for your testimony.

Mr. WEINER. Thank you, sir.

Mr. RUNYAN. With that I am going to start the questioning as we alternate back and forth between parties in their order of arrival. I am going to start with Mr. Stichman would you talk about the class action authority? You touched on it in your testimony. But I always look at the unintended, not so much the unintended consequences, but is the process in itself going to create a backlog at another level? And that is one of my first worries.

Mr. STICHMAN. Well, with regard to unintended consequences, often when something new is created it will have unintended consequences. But class action authority is not new. It has existed for decades in other benefits systems and it existed at the VA for quite a while prior to 1988. So I do not think you have, should fear unintended adverse consequences. It will alleviate, rather than create, backlogs. It will alleviate the backlog because when somebody files a class action, the Court can take the authority to order the VA not to adjudicate similarly situated cases. Do not waste your time deciding similarly situated cases until the Court has finally resolved

the rights of the veterans who are bringing the lawsuit. So the VA can save resources. Instead of deciding all these cases while the case is going on, they can put them on hold. Then when the Court finally issues a decision, no more appeals possible, then the VA can decide all those cases in the way that the Court says it should under the law. So it will actually alleviate VA resources being expended on cases they should not have to spend time on.

Mr. RUNYAN. Thank you for that. Ms. Roof, can you share with the Members of the Subcommittee how your members currently volunteer their time at military funerals? And is the DoD meeting its mission there. I just wanted to get the background from your perspective on it.

Ms. ROOF. Just a brief overview. We have many, many members of our organization that actually travel the country and provide honors at military funerals at no cost to the family. These men and women, our members, are volunteering their time and their money. They are not asking for anything, to be reimbursed, but obviously with the influx in gas prices and so on they are being able to perform less of these funerals. Not because they do not want to, but because they do not have the means to. Does that answer your question?

Mr. RUNYAN. Yes, but as we move forward and set something up, how can the VSOs really work to ensure that fraud and abuse is not going to be existent in this? Because it has that potential to come down the road.

Ms. ROOF. Fraud and abuse of people taking advantage of this?

Mr. RUNYAN. Taking advantage of it, as it would be developed.

Ms. ROOF. You know, I do not know if I can give you any clear answer to that. I think with anything we do, and any program that we do within VA, there is always going to be that chance for fraud and abuse. I think that is why it is very important that there be strict oversight in these programs. And again, I do not want to see people not receive the honors they deserve because we are worried about fraud and abuse.

Mr. RUNYAN. Well, thank you very much. With that, I will turn it over to Ranking Member Mr. McNerney.

Mr. MCNERNEY. Thank you, Mr. Chairman. I thank the witnesses for coming here this morning. Ms. Roof, I understand there are several downsides to the Veterans Choice of Filing Act of 2011, H.R. 1647. Would you please elaborate a little on the reasons that AMVETS opposes this legislation?

Ms. ROOF. Well, we have some concerns with the current language. As I had stated in my written testimony, we are more than happy to work on addressing some of this stuff with the Committee. However, one of our main concerns is that VA has done this in the past. They have addressed disparities in production by sort of brokering work out from regional office to regional office. And what it has proven to do is to sort of flood the higher performing regional offices. And there is no improvement. Does that make sense?

Also, we have a personal concern of when it comes to residency, your service officer. Where are you going to have your claim adjudicated? And lastly again, when you are flooding these higher performing offices we have the question of is there going to be an in-

crease in budget and an increase in personnel to deal with these newer claims?

Mr. MCNERNEY. So would it be fair to say that you would prefer, or AMVETS would prefer, a comprehensive overhaul rather than an approach that looks at transferring loads from one center to another?

Ms. ROOF. I think comprehensive overhaul is what we are all working towards, absolutely. How we choose to get there I think is still kind of up in the air. But I absolutely think a comprehensive overhaul is needed.

Mr. MCNERNEY. Mr. Hall, a similar question. I believe that you and the DAV oppose that legislation. Could you explain why, please?

Mr. HALL. Initially—thank you for the question. Initially, we feel it is the wrong time. With the multitude of the pilot programs that are currently pending out there, and the goal of reforming the entire claims process, we simply believe that the timing of this is off. Now as a deeper concern, when a claim is filed, to allow the opportunity to file a claim at any VA regional office, as my colleague has testified, it is going to create an influx to a VA regional office that may not be prepared for or expectant of an increased amount of claims. Where the claims end up, you know, it is not clear with the intent of the bill how that is going to be decided. But we also have the concerns of how the claimants in these five VA regional offices that are chosen, how are they, how is the VA going to notify the claimants? All of them that are in the system within, say, a particular regional office are going to get a letter. So we have a concern about how they are going to be notified that they can opt in for this particular program.

And lastly I would just say in filing a claim for benefits, and unlike brokering, brokering of a claims file usually occurs after an examination and it is usually done to simply process the claim once all of the evidence or data is gathered. In this particular scenario if this should happen, an individual is a New York City claimant. If that is one of the offices that is chosen so a veteran that would normally be served by that regional office could file in, say, St. Petersburg, Florida, as an example. If they choose to do that the file would be transferred to St. Petersburg, Florida. Then an examination would be requested in that case. So the file would have to be transferred back because the examiner just review that file. Then the file would have to be transferred back to St. Petersburg. And so we have this, you know, a lot of things intertwine with that, with the possibility of losing, and——

Mr. MCNERNEY. Okay. I guess what you are saying is that it could add complexity, it could add layering. In your opinion would it make the situation worse with respect to the backlogs? Or better? Or have no effect on the backlog?

Mr. HALL. We believe that it would definitely adversely affect the current process with the already outrageous backlog that there is.

Mr. MCNERNEY. All right. Thank you, Mr. Hall. Mr. Barker, please elaborate a bit please on how VSOs and other volunteers are reimbursed for rendering military honors when there is no military representation?

Mr. BARKER. Currently?

Mr. MCNERNEY. Yes.

Mr. BARKER. I do not know that I am fully aware of the process by which they are currently reimbursed.

Mr. MCNERNEY. Would it be fair to say that there are cases where there is no reimbursement?

Mr. BARKER. Yes.

Mr. MCNERNEY. Okay, and how would H.R. 811 change that?

Mr. BARKER. Well, reading the legislation it is not clear what aspects of the provision of funeral honors would be reimbursed. I think that it would be advantageous to have it more elaborated in the legislation. Which it is not now, but it would be nice to see very clear provisions of what would be reimbursed and what is not, I think, getting back to the Chairman's concerns that there is potential for waste, fraud, and abuse.

Mr. MCNERNEY. Well, right now is it at the discretion of the Secretary, is that not correct?

Mr. BARKER. Correct.

Mr. MCNERNEY. Okay. All right, thank you, Mr. Chairman.

Mr. RUNYAN. Mr. Stutzman.

Mr. STUTZMAN. Thank you, Mr. Chairman. Thank you for being here today. My question goes towards Mr. Stichman. First of all, you had said in your testimony that you support waiving regional office jurisdiction. Do you feel this would just cause a shift of paperwork around from one level to the other?

Mr. STICHMAN. I think my testimony goes to the legislation that would, after a substantive appeal is filed by a veteran, and the veteran submits additional evidence, that evidence should be considered initially by the Board of Veterans' Appeals unless the veteran indicates that the veteran wants the regional office to consider it and render a new decision. It is an attempt to streamline the system which currently requires the regional office to make decision after decision, time and again, each time the veteran submits evidence which the veteran thinks is going to be considered by the Board of Veterans' Appeals because the veteran has appealed to the Board of Veterans' Appeals.

Mr. STUTZMAN. So you believe that the appeal would actually streamline the process rather than——

Mr. STICHMAN. No, this occurs after an appeal has been filed. So it is a given that there is an appeal existent. And the question is, if while the appeal is going on during the 600 days that the case is sitting at the regional office doing nothing, and the Board is not ready to hear the case, if the veteran submits new evidence at that point should the regional office reconvene, rereview the claims file all over again——

Mr. STUTZMAN. Okay.

Mr. STICHMAN [continuing]. Look at the new evidence and make a new decision while the case is on appeal to the Board? And it is intended to alleviate the problem of multiple decisionmaking at the regional office level, which has already heard the case, in favor of a single review by the Board of Veterans' Appeals.

Mr. STUTZMAN. If the average delay between a veteran filing an appeal and the case being certified to the BVA can exceed 1½ years, can you comment on how this might be improved if this legislation is enacted?

Mr. STICHMAN. How the 600-day process might improve?

Mr. STUTZMAN. Mm-hmm.

Mr. STICHMAN. I think the case would be more likely to be sent to the Board in a shorter period of time because it will not be on someone's desk at the regional office redeciding it.

Mr. STUTZMAN. Okay. And this is just in the case when there is new evidence?

Mr. STICHMAN. That the veteran submits.

Mr. STUTZMAN. To move forward? Okay.

Mr. STICHMAN. Exactly.

Mr. STUTZMAN. All right. Thank you. Thank you, Mr. Chairman. I yield back.

Mr. RUNYAN. Thank you. Mr. Walz.

Mr. WALZ. Well, thank you Mr. Chairman. And thank you for holding this hearing, moving some good bills forward, and having this open discussion and with our experts. I am very appreciative of that. Mr. Stichman I just wanted to ask you, and I have to in full disclosure think I agree with you very much on H.R. 1484, that class action is probably the way to maybe alleviate some of this and make it more accessible for veterans. But what gives you any confidence at all after the recent Supreme Court decision on AT&T that we are going to get any movement on that at all?

Mr. STICHMAN. Any movement on a bill to require, to allow class actions?

Mr. WALZ. Yeah. Well, it appears like we are in a state right now where everything is stacked against the ability to try and move anything further to expand class action availability. Or do you think that is the wrong interpretation of what the Supreme Court ruling was?

Mr. STICHMAN. I am afraid I am not familiar with the Supreme Court decision. But I cannot see how it would affect the ability of a veteran to file a class action when you have legislation that carefully discussed how one can go about doing so.

Mr. WALZ. Okay. Well, I agree with you. I just think, I appreciate that optimism. I am just afraid we have seen some resistance on that. The next question I have on H.R. 1407, which again I thank the Chairman for addressing a serious issue and bringing this forward. The issue really here, and I do not know if any of you can comment on this, the issue is how we calculate cost of living and the real core inflationary values, is it not? If we did an overall evaluation, because I think this very issue starts to resonate down with Social Security cost-of-living increases and all of the COLAs. Is the best way to do it to attack that think systemically to get us a better indicator of inflationary values where we are looking at gasoline, we are looking at food, we are looking at those thing? Or is this needed to go and to make sure until that happens that this is the way to go? The reason I ask is, I think you are bringing up some very good points about do we tackle thing with small pilot programs? Or does that bring us leverage on systemic change? So if anybody could answer on H.R. 1407 because I am in agreement with it, but is that the right way to go?

Mr. BARKER. I think from our perspective it does. One of the problems with the current system is that it takes so long to get Social Security recipients, veterans, survivors the increases that they need to reflect increases in what they are having to spend for basic

commodities. I do not know what the solution to that would be, but it does seem to be behind the curve.

Mr. WALZ. There is not a, it is, there is no true reflect of cost of living right now. Because the cost of living I would argue for all of us, if you filled up this weekend, it has gone up. I mean, there is no doubt about that. But yet it is not reflective. I am just trying to get at are we, again, are we setting ourselves up in the wrong way instead of fixing it systemically? But I am certainly supportive of it. Anyone else on that one?

And the last one I would say is again, and while I think the sentiment is exactly right on, and I think all of us the frustration we feel with benefits claims, on H.R. 1647, I too have deep concerns on that. And do not get me wrong. This is not my provincial looking out for southern Minnesota. We have a good claims system there. My fear is that if we with a pilot program in this, is that that burden will be shifted and will go to a lowest common denominator. And the high performing offices will be burdened as well as those that need to be fixed, or redone. So I share your concerns on this. I also note that the sentiment is exactly in the right place of trying to figure this thing out, trying to get it cracked. I am just not certain this is the right approach. And again, I appreciate the comments from each of you. I yield back, Mr. Chairman.

Mr. RUNYAN. Thank you. Ms. Buerkle.

Ms. BUERKLE. Thank you, Mr. Chairman. And thank you for holding this hearing, and thank you to our panelists for being here this morning. My question, I just want to follow up on H.R. 811. Is there any reimbursement taking place at this time? For any of the volunteers?

Ms. ROOF. I can only speak to what our members do. And again, this is to the best of my knowledge. I can get back to you with factual data. Is that our members that are performing these are not being reimbursed. And I am guessing you are asking by VA? Are not being reimbursed by VA at this time.

Ms. BUERKLE. Okay. And then as far as any other reimbursements, you do not know that for sure?

Ms. ROOF. Again, I do not want to tell you inaccurate information. But I would be happy to get back to you with that.

[Ms. Roof subsequently provided the following information:]

By law DoD is the only Federal agency authorized to reimburse properly trained personnel or volunteers to perform "Military Honors" at a funeral. DoD Directive 1300.15, "Military Funeral Support" of September 30, 1985, directs the Military Departments to provide "appropriate tribute within the constraints of available resources." This Directive specifies different levels of support for (1) members on active duty and Medal of Honor recipients; (2) retirees; and (3) veterans and National Guard/Reservists not on active duty. The levels of support indicate minimum requirements, but are subject to the availability of resources, both financial and what DoD considers properly trained personnel. Recent studies show that DoD neither reimburses volunteers or provides Military Honors to over 65 percent of eligible veterans and volunteers.

The National Cemetery Administration (NCA) within the Department of Veterans Affairs does not provide funeral honors or reimburse volunteers that provide Military Honors at a veterans funeral. The Department of Veterans Affairs provides an American flag to drape the casket of a deceased veteran or eligible reservist. There are also some private sector nonprofits that partially reimburse volunteers that provide military honors at eligible veterans funerals.

Ms. BUERKLE. Good. And then I just wanted to follow up on my colleague's question regarding cost-of-living increase, the basis for that, and how that would be calculated? Or how we would determine what the cost-of-living increase would be? If anyone could speak to that?

Mr. HALL. In our opinion, I guess the best way would be, as Congressman Walz had indicated, an over, you are going to have to look at everything, and deeply. Geographically, you know, location is going to have to be taken into consideration. I mean, simply put, and it is not just veterans, but veterans especially, disabled, sick and disabled veterans, how are they expected to even go to their medical appointments aside from the fact that we have a volunteer transportation program that we can get them to and from? But for those that do not, or are not able to take advantage of that, to simply pay for the gasoline to get to and from their necessary medical appointments at over $4 a gallon is astronomical. So not just gasoline, food, and things. But yes, it is going to have to take, you know, an overarching look at the entire country in that way.

Ms. BUERKLE. Does anyone else have any comments?

Ms. ROOF. If I could just add one little thing? I think this year even more important than past years is to look at a lot of the things that people do not usually look at of what has gone up. For example, this bill addresses clothing. The cost of cotton has risen 150 percent over the last year. You know? Just little things like that are going to mean a lot. You know, gas, we all know about that stuff. But there are smaller things, like the price to produce clothing that a lot of disabled veterans depend on.

Ms. BUERKLE. Thank you. Anyone else on the panel wish to comment? I think, my concern is not so much, I think the concern is that we give the veterans what they need and that the calculation of this cost-of-living increase is one that is going to really fit their needs and not just be a nominal increase. So that is my concern when we look at the calculation for that cost of living. Thank you very much. I yield back.

Mr. RUNYAN. Thank you. Mr. Barrow.

Mr. BARROW. I thank the Chair. I have no real questioning for the witnesses, but I do want to take this opportunity to share my concerns and reservations about H.R. 1647. As someone whose constituents reside in a regional office that does not enjoy a great reputation for moving matters expeditiously, I share the Chairman's concern that until we fix what is broke with this system we ought to at least provide folks an escape valve. We ought to give them a chance to go someplace where they can get their case decided a little bit quicker. But I have concerns about how that is going to work in practice.

I guess it is sort of inevitable in today's economy that the reward you get for doing a good job is you get to do even more work with less resources. That seems to be a given in the public and the private sectors. But this is kind of different. The reward that you get for doing a good job is you get to do more of the work of the folks who are doing a lousy job. And that has the unintended effect of sort of rewarding, or papering over, or obscuring the inefficiencies that are left untreated in those areas where there is systemic inefficiency. And if we are only going to allow those wheels that would

otherwise squeak the loudest to get some relief someplace else we might actually delay the implementation of real reform trying to make the underperforming systems measure up to the standards set by the best.

So I share the Chairman's concern. I think systemic inefficiencies exist throughout many areas, my area in particular. But I want us to attack the root cause and not try and add to the burdens of those folks who are already doing a great job. So with that I just want to share my support for the reservations and concerns expressed by AMVETS, the DAV, and the VFW. I think they are on the right track about how we need to go about this. And with that, I yield back.

Mr. RUNYAN. Well, thank you. But also asking that question, Mr. Hall, do you have any ideas of how we are going to get there?

Mr. HALL. With this particular matter, no I do not have any ideas, or DAV, at this particular time. But as we said, we would be happy to work with the Subcommittee and come up with some type of solution that is tangible that can possibly work with the goal or the intent of the bill as it stands.

Mr. RUNYAN. I understand my colleague's frustration, and also yours with it. But you know, it is a delicate situation and I think it really needs to be addressed because ultimately we are here fighting for our veterans and the needs that they have. And the door is open to ideas. And, this is an idea we are having and how we are trying to fix it. And I understand, as I said in previous questions, there are unintended consequences to everything that we do within the legislation here in the House. So it is, I know it is difficult. But I appreciate any and all input you guys can have, especially because of how close you are to the situation.

Mr. HALL. Mr. Chairman I would say regarding unintended consequences of this particular matter might be the demoralization of those five offices that now fully realize they are, we are the worst. That is an unintended consequence of what is trying to be a good thing to be helpful, and move things along in the process, and alleviate the backlog. However, there is no joy in being labeled as one of the bottom five.

Mr. RUNYAN. No, there is not. But I have had many, many conversations with Secretary Shinseki. And the word always comes up in our conversations, accountability. And that is ultimately at the root of what we need to do to step up and take care of our veterans. You know, I have been on many teams in my life and I do not like being the last place either. But when you have the personal pride and the accountability factor in there, human nature is very competitive. And I think to reinstate, you know, to instill that into people again is only going to help our veterans in the long run.

Mr. HALL. I fully agree with the accountability, as we have testified over and again, regarding this. So we fully agree with the accountability. I am just simply suggesting that we need to be careful with the unintended consequence of what it may do, or the impact it may have in the process.

Mr. RUNYAN. Thank you. Mr. McNerney, do you have any further questions?

Mr. MCNERNEY. No, I do not. I think everyone here sympathizes with the intent of H.R. 1647. What the best way to move forward

is, it is not clear to me. I thank the panel for their testimony on that, and I look forward to working with the Committee to finding the right solution. Thank you.

Mr. RUNYAN. Do any of the other Members have anything? Mr. Stutzman. Mr. Barrow. Ms. Buerkle. None? At this time the panel is excused, and thanks now, thanks for your testimony. I appreciate your coming out and your time.

The second panel consisting of the Honorable Bruce Kasold, Chief Judge of the U.S. Court of Appeals for Veterans Claims. Judge Kasold, welcome back to the Subcommittee. Welcome back, and I recognize you for 5 minutes.

STATEMENT OF HON. BRUCE E. KASOLD, CHIEF JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Judge KASOLD. Thank you, Mr. Chairman, Mr. McNerney, Members of the Committee. I would first like to make two comments based on what I was listening to. One is the burial at Arlington and the secret preselection of sites. I would personally agree with looking into that but I would just note that I do not think Arlington is the only DoD cemetery and you might broaden that to include all of them.

Second, with respect to the testimony on legislation that would permit the Board to review new and material evidence in the first instance, actually the Secretary did that in the past and then the Federal circuit noted that Congress had created two reviews for the veteran. The RO, the regional office, and the Board. The veteran, however, can waive the requirement to go back to the RO and it could go to the Board. Now, whether veterans are aware of that I do not know. But I just throw that out—that it was viewed that way legislatively and then the Federal circuit said that the two reviews were required. And it actually can be a benefit to a veteran. So whether they decide to waive it, whether they know they can waive it, are issues that you might consider.

I have been asked to specifically talk about two bills, H.R. 1484, the "Veterans Appeals Improvement Act," and H.R. 1647, the "Veterans' Choice in Filing Act." As I note in my written statement, I do not have a comment on the Choice in Filing Act. It is really in the purview of the Secretary.

But with regard to H.R. 1484, particularly section three, we support the establishment of a commission to study judicial review of the veterans benefit determinations. The Court was created 20 years ago to ensure fairness and consistency of VA benefits decisions by adding for the first time the right of veterans to seek judicial appellate review following the agency's processing of their claims. At that time, Congress thought it prudent to create a system where veterans could appeal agency decisions to the newly created Court where they would be provided an objective and impartial review of the processing of their claims by VA. Once a decision is rendered by the Court, the nonprevailing party, either the veteran or the VA, may file an appeal at the Court of Appeals for the Federal Circuit, and from there to the Supreme Court.

Now, with over 20 volumes of case law and developed expertise in judicial review of veterans benefits appeals, the time is right for a working group to step back and review the judicial appellate sys-

tem we have, critically examine its strengths and weaknesses, and identify measures that could benefit the overall judicial appellate review process. Although not specifically stated in H.R. 1484, I would anticipate and encourage the commission to weigh the costs and benefits of the unique two-tiered Federal appellate review system currently in place for veterans benefits decisions and consider if there is added value to having multiple layers of Federal appellate review.

With regard to the specifics of the legislation, I urge the Committee to clarify the scope of the commission's study, which is laid out in the title of section three. It is quite broad. It includes reviewing the administrative as well as the judicial veterans benefits determinations. The Court of Appeals for Veterans Claims is part of the judiciary, separate and distinct from the Department of Veterans Affairs. The judicial review that the Court takes of the claims appealed to us each year from the Board of Veterans' Appeals proceed under a wholly separate set of laws and rules than occur during the processing of the claims at VA during the administrative claims and review process. VA's regional offices process over a million claims each year and VA's Board of Veterans' Appeals decide another 60,000. In contrast to the numbers related to judicial review of those decisions are the Court's 4,000 yearly appeals, the Federal circuit's roughly 150 veterans appeals, and the handful that end at the Supreme Court. Numbers alone would require very different case processing methods.

But the administrative review process involves significantly different issues than the judicial appellate review process with different rights and responsibilities placed on the claimants and the Secretary. Thus, it is important to maintain the distinction between the judicial appellate review process, which is entirely independent of VA and where the Secretary is one of the adversarial parties, and the Department of Veterans Affairs claims adjudication process where the Secretary is required to work hand in glove with the veteran. To permit focus and timely feedback of the judicial appellate review process, the Court recommends the legislation be amended to clarify the commission's focus is to be on evaluating the judicial appellate review process by simply dropping the reference to "administrative."

Should the Committee believe it is time to study the VA administrative claims adjudication process, we would recommend a separate commission be established for that. The amount of time to review the judicial process, I think, would be much less than it would be to review the administrative process.

On behalf of the judges of the Court, I thank the Committee for its consideration and review of the proposed legislation. I am happy to answer any questions you may have at this time and ask that my written statement be submitted for the record.

[The prepared statement of Judge Kasold appears on p. 50.]

Mr. RUNYAN. Thank you, Judge Kasold. Just kind of elaborating a little bit on your testimony, what impact do you really believe that the class action authority would have on the Court's backlog?

Judge KASOLD. I am not sure. You have two issues that are really going on. One is class action authority and the other is associational standing. The Court early on made a determination

that it did not appear we had class action authority but ultimately made a determination that it was not needed. And one of the reasons was because our published cases are precedential: they are totally binding on the Secretary. So if a veteran came up through the process and raised the issue of this secret review that was testified to by the previous panel of witnesses, it could be reviewed by the Court. If it were found to be illegal, that would be binding on all the other cases and the Secretary would then take action.

With regard to the Federal circuit, we also have a two-tiered review here, which I think goes back to the need for the commission. The Federal circuit can review the legality of a regulation directly. We review it when a Board decision comes up. So with regard to the prior testimony, the reason they went to the Federal circuit, I submit, was not because they could not come to us but because they could go directly to the Federal circuit for a review of the authorization of this other review process. And the Federal circuit's decisions are also binding on the Secretary. So I was a little perplexed at Mr. Stichman's statement, and I can talk to him about it later and get clarification. But the Secretary would be bound by the Federal circuit decision, assuming that it did not get appealed to the Supreme Court, and the Secretary would have to follow that decision and would not be able to use that other process anymore.

If you came to our Court, given that we do not have associational standing—that was another case where the Court made a determination; brilliant dissent—I am joking. But anyway, it was a split decision where the majority determined that we did not have associational standing. One of the reasons stated by the majority was the individual veteran could bring the case. That case involved a stay by the Secretary, and that meant the cases could not be appealed to the Court. Under the All Writs Act a determination was made that we could review the stay action because VA was holding back the cases. The case was filed by an individual veteran so associational standing was not necessary to getting a resolution of the particular issue. So I do not think you are going to have the impact that has possibly been suggested here.

On the other hand, a commission to seriously review this and had that discussion with Mr. Stichman and others who are involved in the process, I think would be very helpful.

Mr. RUNYAN. Okay. And really unrelated to the bills before us, but in a way kind of, can you discuss your Court's vacancies and its impact? Your Court vacancies and the impact on your workload?

Judge KASOLD. Yes. Mr. Chairman, I think it is having a significant impact at this time. Judge Greene retired, which brought us down to six judges. And I think at seven we were struggling, and getting a little bit of a delay in certain areas that I had testified to that I was going to look into as Chief Judge. With the retirement of Chief Judge Greene, who by the way is recalled during the year to continue at about 25 percent in his retired status, those 250 cases that he would have decided are now being spread among the other judges who are already at a peak. So it would be helpful and beneficial to the Court if the nominations were to come.

Mr. RUNYAN. Thank you very much. And that is all I had. Mr. McNerney.

Mr. MCNERNEY. Thank you, Judge, for appearing this morning. This is kind of a muddy issue. It is going to be hard for us to sort through it, so I appreciate your insights here. How many appeals are currently pending before the CAVC today? And how does that compare with, say, 2 or 3 years ago?

Judge KASOLD. It is about 4,500. And I would say 2 or 3 years ago, it was somewhere close. But compared to 5 years ago? We are not at about double.

Mr. MCNERNEY. So it has risen, then?

Judge KASOLD. It has absolutely risen, yes, sir.

Mr. MCNERNEY. Well, what is the remand rate, then, of appeals back?

Judge KASOLD. It is still about 70 percent. We have a new process that was instituted by former Chief Judge Greene who expanded the conferencing process. Previously cases had been selectively viewed for a determination as to whether or not our central legal staff—staff attorneys—thought they might be able to get an agreement between the parties. A few years ago, the Board of Judges mandated that process for all appeals wherever there is attorney representation. At the end of the day, there is about 65–70 percent attorney representation. Of those cases, in about half, the Secretary in review agrees to a remand for the various reasons that have been cited. And that remand could be because of the Board's statement, which must be understandably by the veteran a requirement that Congress has imposed on the Board. Court interpretations have stated VA has to address the material evidence, explain to the veteran why he lost—those are all we are going to see; the ones where veterans have lost. It could be that the duty to assist was not fulfilled, or the medical examination came back but did not address a particular area and the Board did not explain why that was important. So those are reasons why it might be sent back.

So you have the Board, which is independent and makes the final decision for the Secretary. But then you have the Secretary and his counsel reviewing the Board's decision after an appeal has been made and making a judgment that a remand is appropriate for that Board to review it, and then to possibly send it back to the regional office which was discussed before. Again, I think the veteran can waive that in certain instances. But he is entitled to the two reviews.

Mr. MCNERNEY. Okay. The class action issue has been raised today. It has been raised before today. We have heard cases where a large number of veterans did not receive compensation rewards without knowing that the VA personnel services had provided an additional level of review. How do you feel about that with regard to the Improvement Act? Do you think that it is going to make the situation better with regard to backlog? With regard to cases that are adjudicated? And so on?

Judge KASOLD. Again, I am not sure. A class action you ultimately identify all of the people that are involved and proceed. My understanding is that in the case discussed earlier, the parties did go—the associational standing issue did go to the Federal circuit. The Federal circuit determined that the regulatory provisions the additional review allowed that were not consistent with statute, and overturned that. I am not sure you can get much—you cannot

get any different relief going to the Court of Appeals for Veterans Claims even if you had a class action. You still would have someone coming up to the Court. You then would have all the time and delay, et cetera, associated with the fact finding necessary to determine if all these people were appropriately in the class.

I know Mr. Stichman had concerns with the Secretary in implementing that case but I do not know the ultimate facts. But the Secretary should have stopped that process and immediately sent those decisions either back to the regional office or directly on up to the Board. Some of those cases were on appeal to our Court, I imagine, because I think I have seen one or two, and we enforced the Federal circuit and remanded back for the proper process to be taken.

Mr. MCNERNEY. So, I mean——

Judge KASOLD. The commission might be able to elaborate on that and study it, but I am not sure I am following why a class action would have been necessary or valuable.

Mr. MCNERNEY. Well, what I think I am hearing you say is that the amount of time and effort to decide if people are actually legitimate members of a class is going to make up for the savings in handling these cases en masse. Is that what you are saying?

Judge KASOLD. No. I do not think we would ever—in a class action—a legal issue as to whether or not a claim could be processed by this separate action, the review office. But we would not handle the individual case in a class action because a class action has to have commonality on the issues. The only issue that would be common in those cases is whether or not VA could conduct this separate review. So once we determined that the separate review could not be done, all the cases would go back for a final individual determination by the Board. After that, in our Court you would have to come up with an All Writs Act petition based on cases being delayed improperly, and then we might be able to grant jurisdiction. Again, you could go to the Federal circuit, as they did, and get a decision directly in the Federal circuit.

But again, in a class action we would not be rendering a decision on their individual claims because they are all going to be different. They are all going to have a different disability. They are all going to have a different rating schedule. They are all going to have a different fact basis associated with their case, whether or not it is service-connected. So the individual case would have to go back.

Mr. MCNERNEY. But I mean, that is true in general with regard to class action. So I mean what you are arguing is against class action in general, not even just related to veterans cases in my opinion.

Judge KASOLD. Well, again, the class action would have resolved, could have resolved—if we had the broad enough jurisdiction to take it—the issue as to whether or not VA could use that separate review. All I am saying is I think the veterans got a decision on that issue, and my understanding was they got it from the Federal circuit in a direct review.

If you were to do away with the Federal circuit review, you would eliminate that dual track that exists. It would all come into our Court. And I think the commission could study that entire process. That is why I think the commission does make sense.

Mr. MCNERNEY. Okay. So it could do away with the judicial review, which you are not too much in favor of?

Judge KASOLD. Oh, I am not against the judicial review. I think if you gave it to us—I was a dissent in associational standing. I do not think it is going to impact us significantly one way or the other. And to the extent I would have granted in that case the association to make the argument for the veteran, personally I do not care if the veteran makes it or the association makes it. It is going to be reviewed, and it did get reviewed. And I think the majority pointed out that you could get review in our Court on the issue of—I have shifted now, to the issue of whether or not the Secretary could stay matters at the Board. That issue got to our Court; it got reviewed. Associational standing would have permitted the associations to come in and directly raise that argument. Instead we had a veteran raise that argument and the associations came in as amicus. I do not know that it mattered, is my personal view. But jurisdictionally? Again, I thought we had jurisdiction.

As far as the class action, I do think the class action entails an awful lot of fact finding associated with that class——

Mr. MCNERNEY. Right.

Judge KASOLD. And I will submit that once we render a decision, it is binding on the Secretary. So I am not sure, again, what you gain by a class action. Once one person found out that their case was being handled by this alternate review process, there was a way to ultimately get to the Court. Whether or not we would have granted extraordinary relief I cannot say. I do not recall that we have seen that. But if it came up in a regular decision at the Board, we would have reviewed it. If we had found it illegal, the Secretary would have been bound by that unless he took it to the Federal circuit and got it overturned. He would have been bound by that process.

Mr. MCNERNEY. Okay, I have exceeded my time. So——

Judge KASOLD. Okay.

Mr. MCNERNEY [continuing]. I yield back.

Judge KASOLD. I would just like to add though, if he wanted to—let us say the Secretary wanted to appeal to the Federal circuit—he would also have to seek a stay of our order before he could stop enforcing it.

Mr. RUNYAN. Thank you. Mr. Stutzman.

Mr. STUTZMAN. Thank you, Mr. Chairman. Judge Kasold has already answered the question that I had, so I will just yield back.

Mr. RUNYAN. Okay. Ms. Buerkle.

Ms. BUERKLE. Thank you. I have no questions, Mr. Chairman.

Mr. RUNYAN. Well, obviously you answered everyone's questions in your statement. Thank you again for your testimony.

Judge KASOLD. Thank you very much. Have a nice day.

Mr. RUNYAN. You, too. The next panel, please come forward. The third panel consisting of Ms. Diana Rubens, the Associate Deputy Under Secretary for Field Operations for the Department of Veterans Affairs, who is accompanied by Mr. Dick Hipolit from the VA's Office of General Counsel and Mr. Steve Keller, Acting Chairman of the Board of Veterans' Appeals. We also have Ms. Kathryn Condon, the Executive Director of the Army's National Cemeteries Programs. Let us begin with the VA.

STATEMENTS OF DIANA M. RUBENS, ASSOCIATE DEPUTY UNDER SECRETARY FOR FIELD OPERATIONS, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RICHARD J. HIPOLIT, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND STEVEN KELLER, ACTING CHAIRMAN, BOARD OF VETERANS' APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND KATHRYN A. CONDON, EXECUTIVE DIRECTOR, ARMY NATIONAL CEMETERIES PROGRAM, OFFICE OF THE SECRETARY OF THE ARMY, DEPARTMENT OF THE ARMY, U.S. DEPARTMENT OF DEFENSE

STATEMENT OF DIANA M. RUBENS

Ms. RUBENS. Mr. Chairman, Ranking Member McNerney, Members of the Committee, thank you for the opportunity to provide the VA's views on pending legislation that would affect VA programs. As you said, I am accompanied by Acting Chairman Steve Keller and Assistant General Counsel Dick Hipolit.

I do apologize for the delay for getting the testimony to you in a timely manner. While there were only four bills, it did require coordination among various organizations within VA. We will work to meet your timeliness in the future.

H.R. 1407, the "Veterans' Compensation Cost-of-Living Adjustment Act," would mandate a cost-of-living adjustment in the rates of disability compensation and dependency and indemnity compensation payable to periods beginning on or after December 1, 2011. VA supports this bill and believes that our veterans and their dependents deserve no less.

H.R. 811, the "Providing Military Honors for Our Nation's Heroes Act" would authorize VA to reimburse a member of a veterans service organization or other organization approved by VA for transportation and other appropriate expenses incurred in connection with the voluntary provision of a funeral honors detail at a veteran's funeral in any cemetery, including a funeral honors detail requested by a funeral home.

While VA appreciates the bill's focus on supporting the provision of funeral honors, VA does not support the bill for the following reasons. The Department of Defense currently provides funeral honors details for veterans funerals. DoD is required to provide on request a funeral honors detail at the funeral of any veteran. VA and DoD have successfully partnered to provide funeral honors at VA national cemeteries and funeral honors at national cemeteries are provided by servicemembers as well as VSOs and individual volunteers on behalf of DoD. Reimbursement by VA under H.R. 811 would duplicate reimbursement by DoD, which is currently authorized by statute to reimburse persons who participate in a funeral honors detail.

Additionally, by authorizing reimbursement for expenses incurred by one category of volunteers, H.R. 811 would create an inequity between them and other VA volunteers. Volunteers who provide essential services at our VA medical centers, who assist families at committal services, or who place gravesite flags on Memorial

Day may feel their service is somehow less valued because they receive no reimbursement for their expenses.

H.R. 1647, the "Veterans' Choice in Filing Act of 2011", would require VA to carry out a 2-year pilot program under which certain veterans may submit claims to any RO. VA opposes this bill and conducting this pilot program would not benefit VA claimants by improving either the efficiency or quality of the VA claims benefits process nationwide. Of primary importance is the danger that this program would create forum shopping. The expectations about speed and outcomes created by such legislation would likely only frustrate claimants. VA's energies are best spent on a systemwide effort to improve performance at all regional offices.

Under existing statutory authority, VA distributes or brokers claims among regional offices based on performance, workload, and other factors when necessary and feasible. In fact, from 2008 through 2010 over 300,000 claims were moved among offices. VA determines whether to broker cases in or out of ROs based on various factors, including the allocation of workload and resources at those offices. If claimants were to determine where to file claims, many ROs might not be equipped to handle an unexpected workload that may result.

H.R. 1484, the "Veterans Appeals Improvement Act of 2011," seeks to improve VA's appeals process and would establish a veterans judicial review commission. In section two of the bill, focus on the process would require new evidence submitted by a claimant after filing a substantive appeal be submitted to the Board of Veterans' Appeals unless the claimant specifically requests the evidence be reviewed by a regional office before being submitted to the Board. This section two of the legislation actually has a common theme with a provision in a draft bill Secretary Shinseki submitted to Congress in May of 2010. VA would be very happy to work with the Subcommittee on any technical language in section two of H.R. 1484.

Section three of H.R. 1484 would establish the Veterans Judicial Review Commission to evaluate the administrative and judicial appellate review processes of veterans and survivors benefits determinations and recommend whether the Court of Appeals for Veterans Claims should have authority to hear class action cases. VA does not support section three. The administrative and judicial appellate review processes have been the focus of extensive studies and Congressional hearings that have resulted in a number of recommendations. While VA appreciates the aims expressed in section three, we believe the commission would duplicate the ongoing work of VA, Congress, the VSOs, and others who are now able to engage in policy discussion aimed at improving the claims process.

With regard to whether the Veterans Court should have the authority to hear class action cases, such authority would not be beneficial because the outcome of each veteran's case depends largely on very specific facts of each case. Class actions are also not necessary because under rules already in place potential members of a class receive a benefit of a precedent decision by the Veterans Court. Class action authority is unnecessary. It would largely be redundant.

This concludes my statement, Mr. Chairman. I appreciate the opportunity to share views on the proposed legislation, and I would be happy to entertain any questions you may have.

[The prepared statement of Ms. Rubens appears on p. 52.]

Mr. RUNYAN. Thank you. Mr. Hipolit, do you have a statement?

Mr. HIPOLIT. No, I do not have a prepared statement.

Mr. RUNYAN. Thank you very much. Mr. Keller.

Mr. KELLER. I, too, do not have a prepared statement.

Mr. RUNYAN. Oh, Ms. Condon.

STATEMENT OF KATHRYN A. CONDON

Ms. CONDON. Mr. Chairman, Ranking Member McNerney, and distinguished Members of the Subcommittee, thank you for the opportunity to provide the Department of the Army's views on the proposed legislation that impacts Arlington Cemetery. Those views in support of that legislation are reflected in my written statement that I would like to submit for the record.

On behalf of the cemeteries, Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery, and the Department of the Army, I would like to express our appreciation for the support that Congress has given to the cemeteries. And in particular, Mr. Chairman, I would like to thank you for the support that you have personally given to the Superintendent and I of late.

I decided to keep my opening remarks short, and I look forward to answering any questions you may have on the legislation and Arlington's views.

[The prepared statement of Ms. Condon appears on p. 57.]

Mr. RUNYAN. Thank you very much. I am going to start off with Ms. Rubens, actually. In your written testimony you stated that you are concerned that under the Choice inFiling Act the information about the performance of each RO could be driven—excuse me. You have a lot of VA health facilities. And they are rated, and it is public knowledge. And the concern is, and we talked about it a little bit with the last panel, of making it public knowledge and kind of allowing veterans to know what they are going into as part of this process. And is there any way we can try to make this process happen and just make them aware of what is going on? I understand we do not want to tag people as underperforming and all that kind of thing. But we do want to make them aware of the situations they are getting into.

Ms. RUBENS. Mr. Chairman, thank you, yes. I am very familiar, particularly I think as you are referring to the Veterans Health Administration's (VHA's) public facing information on all of the medical centers. VBA is in the process of standing up a very similar Web site that will be outward or public facing very shortly. Internally, we have access across all regional offices to that information, and share that freely with VSOs and Members of the Subcommittee and the Committees on the Hill here. But we are interested in making that available to veterans. It will have some of that same effect, although I agree with your statement in terms of it is human nature to be competitive. Our hope is that as employees realize information is being shared about the regional offices in an exterior way that we will all be much more cognizant of how

we can improve not just in each regional office but at the national level in a systemic way.

Mr. RUNYAN. Going back to being competitive, when will that Web site be up and operational?

Ms. RUBENS. Sir, I will have to get back to you. It will probably be within the next 6 to 8 weeks, at the latest. We are very close to having that information. The Web site internally is being vetted at the highest levels within VA and is nearly ready to be posted formally to the public.

[The VA subsequently provided the following information:]

> The ASPIRE Web site went live on June 30, 2011. VBA's press release to announce this is available at: http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2125.

Mr. RUNYAN. Do you have, I mean, obviously we do not want any of our veterans to be put at a disadvantage because of where they live. And we really need to work together on this. Do you have any further ideas on how we can accomplish this?

Ms. RUBENS. Yes, sir. Thank you. I will tell you that when Secretary Shinseki arrived he set some very aggressive goals with VA, and for VBA in particular. So that by 2015 no claim takes over 125 days. And we do that with a 98 percent quality level. No small undertaking by any stretch. We have been engaged in the last nearly 2 years in a process that looks at people, the process, and the technology engaged in providing veterans benefits. The goal here is to ensure that veterans across the country receive a consistent high quality service. The issue of accountability that came up earlier, I will tell you that from my standpoint it is about hiring the right people, giving them the right training, setting the expectations, and then holding them accountable. VBA has done that from front line employees, to division-level managers, to directors, from regional office to regional office.

As we implement our transformation plan, the goal will be to ensure that we get the right people in the right places. That we get the process that is as streamlined as we possibly can make it. Add the technology, the Veterans Benefits Management System that will take us to a paperless environment that will ensure 125 days at 98 percent quality is very doable by 2015.

Mr. RUNYAN. Thank you. My next question is for Ms. Condon, and your comments on H.R. 1627. You state that you believe that Congress should maintain the requirement of having a joint or concurrent resolution in order for a commemorative monument to be placed at Arlington. Since it can take Congress such a long time to move such legislation, would it be easier if we gave that authority to the Army?

Ms. CONDON. Sir, I really think that there is a benefit to having a joint and concurrent resolution by Congress so that there is oversight by all jurisdictions. And the reason why I would not want that in the Army is I really do think that that is a decision that should be made by Congress and we will comply with that.

Mr. RUNYAN. Well, my thoughts in my line of questioning are at some times up here on the Hill it can become very political, a decision like that. And I just wanted to put that out there because as you, if you would turn something, there would be specific criteria

that would have to be met in that process. And any comment to that?

Ms. CONDON. Sir, I really do think that there should be criteria, and the most important thing is that when a monument is erected at Arlington, that it does not use a space that we could bury an eligible veteran. So it would have to be placed in a space where we could not bury someone. As for criteria, I realize that it could be political. But when you look at the reason why someone would erect a monument at Arlington, it would be for their service to our Nation. So I do not know if that could be deemed as political or not.

Mr. RUNYAN. Thank you very much. And with that, Mr. McNerney.

Mr. MCNERNEY. Thank you again, Mr. Chairman. Thank you, Ms. Condon, Ms. Rubens. Ms. Condon, given the sort of sacrifices that are made by veterans, what do you think would be appropriate standards for determining when a monument should be placed in Arlington?

Ms. CONDON. Sir, I think that should be for a significant event. The resolution that is currently on the floor is for a chaplains monument for all of the Jewish chaplains that served our country because they were not on any other monument in the cemetery. I think it would have to be for a specific event that occurs, or a specific battle, etcetera. We should put a monument for the Cemetery.

Mr. MCNERNEY. Okay. What is the problem with the current set of standards then for monument placement?

Ms. CONDON. Sir, I really do not have a problem with the current set of standards. What I really am supporting is that we do have a Congressional resolution and that we do go through the Commission of Fine Arts to make sure that we have a standard that they agree with as well. So I do not have any issue right now with the standards that we are using today.

Mr. MCNERNEY. Thank you. Ms. Rubens, you indicate that the language in section two of H.R. 1484 does not provide an automatic waiver. However, you propose language that seems to put the onus on the veterans, or her or his representative, to specify what to send and who to send the information to. On the other hand, I think the onus should be on the VA. So is it your understanding that the substantive appeals process is governed by statute?

Ms. RUBENS. I am going to ask Mr. Hipolit to address that question, sir.

Mr. HIPOLIT. The problem that we see with the current system is that it requires the veteran to affirmatively waive review by the agency of original jurisdiction before the Board can consider new evidence. We think that our bill would create greater efficiency because it would allow new evidence to automatically be considered by the Board when it is submitted after the substantive appeal is filed. The veteran would still have the right to request agency of original jurisdiction review if they wanted to do that, but it would I think encourage review in the first instance by the Board when new evidence comes in while the appeal is pending. And we think that would be a substantial efficiency improvement and benefit all veterans. We do not think we can do that under our existing authority.

Mr. MCNERNEY. Okay. Well, if section two of H.R. 1484 is enacted, the VA would have to make changes in its regulations and forms consistent with the law. Is that also your understanding?

Mr. HIPOLIT. Yes. Of course, we would implement the statute; we would model our procedures and so forth to fit whatever the statutory standard is.

Mr. MCNERNEY. Okay. On the Military Honors for Our Nation's Heroes, with the understanding that providing military honors at veterans' burials and reimbursing those who participate is a DoD function, what does the VA recommend with regard to reimbursing volunteers who participate? I took it from your testimony that you feel that they should not be reimbursed at all. Is that your position?

Mr. HIPOLIT. I will take that question. Currently under title 10, U.S. Code, the Department of Defense has substantial authority to organize and reimburse funeral honors details. There is substantial authority there to provide funeral honors details for any veteran where there would be armed forces participation. To the extent that there are veterans service organization participants or other volunteers, the Defense Department currently has authority to reimburse those volunteers, to pay travel expenses, and other expenses, or to pay a daily stipend for their participation. So for those volunteers, the Defense Department currently has authority to reimburse them when they participate in a DoD organized funeral honors detail.

Mr. MCNERNEY. I have been to funerals where there was just barely a ragtag group that managed to put together whatever they could, and I found that fairly unsatisfying, including my own father-in-law. What are the rules for the DoD to reimburse? Or what are the rules? I mean, just give me a broad outline.

Ms. CONDON. Sir, even though I was here to speak for the Arlington legislation I did do my homework on that prior to coming to——

Mr. MCNERNEY. I figured you would.

Ms. CONDON [continuing]. Prior to coming here today. As you know, this falls under OSD Personnel and Readiness. But the bottom line is the rules are that there would be providing two individuals for each funeral service and also that taps would be played. If there was not a bugler, then it would be played with a very distinct recording. That is what is supposed to be provided for a veteran who requests to have honors at their ceremony.

Mr. MCNERNEY. It seems to me that someone who has served and deserves, if a VSO wants to participate, that they should be compensated to some degree. And that seems to be opposed to what Ms. Rubens is saying. And I would like to see if there is some way to get by that purpose.

Mr. HIPOLIT. To clarify, we are not saying we are opposed to reimbursement for expenses for volunteers. We are just saying there is existing DoD authority to do that. So instead of creating a new program that would overlap to a large degree with the DoD program by providing VA new authority to do this, we think that there is existing authority. And if there are problems with it how that is working, maybe the best thing to do would be to look at that to see if there needs to be some adjustments to that authority.

Mr. MCNERNEY. Well, one might be when there is no military presence. I mean, certainly there are not military personnel, active-duty personnel, at every veteran's funeral. In which case we need to have some set of guidelines for compensation. That is——

Mr. HIPOLIT. And we are not opposed to that compensation. We are just saying we should look at the existing DoD authority and see if maybe that needs to be adjusted before we create a whole new program.

Mr. MCNERNEY. I yield back.

Mr. RUNYAN. Ms. Buerkle, do you have any questions?

Ms. BUERKLE. Thank you, Mr. Chairman, and thank you to our panelists. I just want to follow up on my colleague Mr. McNerney's with regard to this whole DoD versus VA, and the funeral. Is there an instance where DoD would turn down a request if asked?

Mr. HIPOLIT. I cannot speak for DoD on that. I will defer.

Ms. CONDON. Ma'am, I would have to take that for the record and get an answer back to you if we actually denied a request. But I do know that we do have the authority to reimburse for actual expenses, travel to and from, and provide a daily stipend for those volunteers who meet the requirements. But actually denial? I will have to take that for the record and get an answer back to you.

[The DoD subsequently provided the following information:]

Yes, a request for compensation would be turned down for those units who perform funeral honors without participating with a military unit who had the primary mission of providing military funeral honors for the veteran.

The Secretary of Defense is responsible for military funeral honors as established in Public Law 106–65, the National Defense Authorization Act (NDAA) of FY 2000. The NDAA FY 2000 amended section 1491 of title 10, United States Code to require at a minimum, a two-person detail from the armed forces (other than members in a retired status) and at least one of whom shall be from the service of the deceased veteran. The funeral honors detail shall, at a minimum, perform at the funeral a ceremony that includes the folding and presentation of the flag to the veteran's family and the playing of Taps. A live bugler is preferred, but a recorded version is authorized.

To comply with the provisions of title 10, section 1491, the DoD developed existing procedures outlined in Department of Defense Instruction Number 1300.15, "Military Funeral Support" which includes expense reimbursement or support to Veterans Service Organizations (VSO) or other volunteers.

In addition to requiring a two-person detail to provide military funeral honors, the law also recognizes the valuable role that members of Veteran Service Organizations (VSO) play in honoring our veterans. Section 1491(b) authorizes members of VSOs, and other approved organizations, to participate with the Military Services in providing funeral honors. It stipulates that the Secretary of a military department may provide either transportation (or reimbursement for transportation) and expenses or a daily stipend that is designed to defray the costs for transportation and other expenses incurred by the participant in connection with participation in the funeral honors detail.

The Department of Defense initiated a program that focuses on using volunteers. This program, known as the Authorized Provider Partnership Program (or AP3), trains volunteers to assist in providing MFH as "Authorized Providers." Volunteers may provide funeral honors elements in addition to flag folding and the sounding of Taps. Volunteers can augment a DoD detail in several ways including participation as firing party members, pallbearers, honor guard members, or as buglers. It is important to note that the law stipulates that Authorized Providers can only be provided reimbursement or the stipend when they participate with the military in rendering funeral honors. VSO or other volunteer units who provide funeral honors at the direct request of funeral directors are not eligible for this sup-

port. In these cases, the military service concerned is unaware of the veterans' passing or a request for military funeral honors.

Ms. BUERKLE. Okay. Thank you very much. I want to ask Ms. Rubens regarding H.R. 1427, going back to the veterans and the cost-of-living increase, your testimony here mentions that the COLA would be the same as the COLA provided under current Social Security benefits, which currently I estimate to be an increase of 0.9 percent. Now I have heard from many Social Security recipients that the last 2 years they have not received a cost-of-living increase, and they also object to the fact that this cost-of-living increase is based on not food, and not gasoline, and not the things that we use most. So my concern would be we give this cost-of-living increase to the veterans but it really does not address their needs, and it does not address where we have seen inflation, and where we have seen the cost of living go up. So I just, if you could speak to that issue?

Ms. RUBENS. Yes, ma'am. Thank you. The cost-of-living adjustment is currently scheduled at 0.9 percent. Similar to Congressman Walz I did fill up this weekend and did feel the pinch at the pump, and recognize that it will not cover perhaps some of those things that are day to day living and we will look at. But I do not know that we have any authority to do anything other than look at the proposal on the table and support. I would say that because we have not had something in the last few years we want to make sure we are supporting the COLA. And we will look at that dollar amount and have that discussion.

Ms. BUERKLE. Thank you very much. I yield back, Mr. Chairman.

Mr. RUNYAN. Thank you. I just have one more question for Ms. Rubens. After the *Nehmer* settlement, how much brokering is actually going on at the VA?

Ms. RUBENS. Sure. Chairman Runyan, if I understand the question, this fiscal year, our, what had formerly been known as our resource centers where we had brokered claims, and I had mentioned between 2008 and 2010, because in 2011 we have been engaged in the readjudication of the *Nehmer* claims. The Secretary in October of 2009 added the three new presumptive conditions due to the exposure of Agent Orange. And that completed the regulatory period and the Congressional review act on October 30, 2010. What we are now referring to as our day one brokering centers, formerly the resource centers. And the difference is we have staffed those offices to now do both development of evidence for claims as well as rating of claims and making final decisions in our resource centers, day one brokering centers. They have actively been engaged this year in processing the 93,000 claims that we identified that would need readjudication under the provisions of the *Nehmer* decision. And so brokering has been very limited this fiscal year, to some small offices that are not engaged in working those *Nehmer* claims. And so within service centers we have provided support to challenged offices to ensure that veterans are being attended to for their claims.

Mr. RUNYAN. Thank you. Mr. McNerney, do you have any further questions?

Mr. MCNERNEY. Yes, I do actually. Thank you. Ms. Rubens, the average waiting period for an appeal filed at the BVA is almost 3

years now. How might section two of H.R. 1484 improve that situation?

Ms. RUBENS. The process that would allow us to refer new evidence once we had a substantive appeal from the veteran directly to the Board of Veterans' Appeals would make that a quicker, more streamlined effort so that the regional office or the agency of original jurisdiction would not have to first weigh in on that evidence. It would be referred to the Board, saving time. I'd also ask Mr. Keller if he had any additional comments to add to that?

Mr. KELLER. It would save time in that evidence submitted by the claimant would go directly to the Board unless the claimant wished it to go to the RO. We know at least 1,600 cases in the past year would have been affected by this. There are other cases which since we have colocated VSOs with us here in Washington, we just run it downstairs and ask them if they would wish to waive regional office consideration. That is convenient for the colocated VSOs, but other representatives are not colocated. And that creates delays. So we would experience some improvement in the timeliness of claims.

Mr. MCNERNEY. Well, it looks to me like we have about 4,800 currently pending? Forty-eight thousand, excuse me, currently pending cases. So 1,600 is the number you said per year that you felt would be improved?

Mr. KELLER. Yes. Those are claims physically at the Board. We have a total of about 30,000 claims at the Board, many of which are with the veterans service organizations. They represent the veterans.

Mr. MCNERNEY. So we still have a lot of room for improvement.

Mr. KELLER. Oh, yes we do. Absolutely.

Mr. MCNERNEY. Okay. Thank you.

Mr. RUNYAN. Ms. Buerkle, do you have any further questions?

Ms. BUERKLE. Thank you, yes. I just want to follow up, Ms. Rubens, with regards to you mentioned Secretary Shinseki has been very aggressive and by 2015 that there would be this 125 days for claim adjudication. Is that happening now? I mean, it is not just going to happen automatically in 2015. This is the common complaint you hear from veterans. It just takes so long, and there is such uncertainty. So should we expect to begin to see improvement? And if you could, elaborate a little bit on how this will take care of the backlog, and how it will improve so dramatically?

Ms. RUBENS. Certainly. VBA has been very fortunate in the last few years to have the opportunity to bring quite a few new people onto our rolls to help us process claims. From that standpoint we are working very hard to get them trained. It takes about 2 years to get to full journey-level status. The good news is we have the challenge in front of us of getting those folks trained. We are also working very hard across VA, it is not just within VBA but across VA, to address the process of the claims adjudication itself, working not only with members of the Board on the appellate piece, but also in particular our counterparts in VHA. As we have worked on this transformation plan we have also actively engaged members of the veterans service organization to participate with us, to look for things that will help us streamline the process and improve the process for veterans.

No, it will not happen overnight. I do anticipate that in fiscal year 2011 as we move beyond the readjudication of the *Nehmer* claims that we have got, we will begin to see improvements in individual regional offices and across the country for claims processing throughout the end of 2011 and 2012. That will, I think, be accelerated in 2012 in particular as we begin to implement more fully the Veterans Benefits Management System. It is a three-phased approach. Phase one started last November in Providence. We have platformed, if you will, a paperless technology, working to ensure that we have all the advantages of technology and working in a paperless environment. We will roll into phase two later this month, with phase three scheduled to begin in November of this year. With the expected full roll out of VBMS beginning at the end of fiscal year 2012. In an effort to a very all encompassing approach ensure that all veterans across the country are getting improved service as we go, working to meet those very aggressive timelines that the Secretary has set for us.

Ms. BUERKLE. And so the three pillars were technology, and what were the other two?

Ms. RUBENS. People, process, and technology. So we think it is about having the right people in the right jobs. We think it is about making sure we have the right process in place. And that technology overlaid on that will give us much improved service across the board as well. So those three things in combination.

Ms. BUERKLE. Very good. Thanks so much.

Mr. RUNYAN. Thank you. With that, Mr. McNerney, do you have any closing statement or further questions?

Mr. MCNERNEY. No, I just yield back.

Mr. RUNYAN. Well, thank you very much. I want to thank all the witnesses today for your testimony. It is always welcome and we value your input. I want to remind everyone that the Subcommittee on Disability Assistance and Memorial Affairs will hold a markup at 1:30 p.m. this Thursday in Room 334.

I would ask unanimous consent that Members have 5 legislative days to revise and extend their remarks on any of the bills we have discussed today. And if there is no further business we are adjourned.

[Whereupon, at 9:48 a.m., the Subcommittee was adjourned.]

APPENDIX

Prepared Statement of Hon. Jon Runyan, Chairman, Subcommittee on Disability Assistance and Memorial Affairs

Good morning. The legislative hearing on H.R. 811, H.R. 1407, H.R. 1441, H.R. 1484, H.R. 1627, H.R. 1647, and H. Con. Res. 12 will come to order. I want to thank you all for your attendance at this hearing at such an early hour. With two other hearings of the Veterans Committee today we had to do some unorthodox scheduling.

While the scheduling of this hearing was not optimal, it was also not utterly unreasonable. To my understanding most of the witnesses were able to submit their testimony on time despite the rigid timeline. I therefore am very disappointed with the lateness of VA's testimony. It is understandable that it can be difficult to get testimony through the clearance process; but it is wholly unacceptable to receive testimony 15½ hours before the hearing. Members and staff must be given time to do our jobs and properly prepare for your testimony.

Before I recognize Ranking Member McNerney and other Members of the Committee I wanted to just briefly touch on three bills on today's agenda that I have introduced.

H.R. 1407, the Veterans Cost of Living Adjustment Act of 2011 provides a cost-of-living increase to veterans' disability compensation rates and other benefits. This increase is tied to the cost-of-living adjustment for Social Security benefits.

H.R. 1441 codifies regulations and policies that bar reservations for burial or interment at Arlington National Cemetery, made on or after January 1, 1962.

Like many people I was shocked to learn about recent allegations that veterans had been given unofficial reservations by the former management at Arlington National Cemetery.

I applaud the decision of the new management team, headed by Ms. Condon, to not honor these unofficial reservations. This bill makes the policy crystal clear by putting it into law.

My final bill is H.R. 1647 the Veteran Choice in Filing Act. This bill directs VA to establish a pilot program that would allow veterans who live in the jurisdiction of five underperforming regional offices to choose which regional office they would like to have their claim adjudicated.

While I understand that many stakeholders here today have some questions in regard to the logistics of the bill, I am sure we can all agree that it is inequitable for veterans in one part of the country to have more accurate and timely decisions than a veteran in another part of the country.

My bill is meant to start the discussion on addressing this inequity and I look forward to hearing suggestions from our stakeholders here today on how we can work together to ensure all veterans claims are timely and accurate. We will continue to discuss this issue at a hearing we are having on underperforming regional offices on June 2nd.

I would ask all of today's witnesses to summarize your written statement within 5 minutes and without objection, each written testimony will be made part of the hearing record.

Before we begin with testimony, I now yield to the distinguished Ranking Member from the great State of California for any remarks he may have.

Prepared Statement of Hon. Jerry McNerney, Ranking Democratic Member, Subcommittee on Disability Assistance and Memorial Affairs

Thank you, Mr. Chairman.

I would like to thank you for holding today's hearing.

This morning, we are considering seven pieces of legislation ranging from the claims process, appeals modernization and memorial issues at VA cemeteries and Arlington National Cemetery.

However, I would be remiss if I did not mention the oddity of the 8:00 a.m. hearing hour and the frequent scheduling changes that preceded it—of at least five. I hope that this high level of confusion and frequency of changes can be avoided in the future—and that more consideration can be shown for our colleagues and our witnesses.

Today, we will consider two pieces of legislation that seek to make the VA claims process and the appeals process more efficient and effective for our Nation's veterans—specifically, the Veterans Appeals Improvement Act of 2011, H.R. 1484, introduced by the Ranking Democratic Member of the Full Committee, Mr. Filner, and your bill, Mr. Chairman, H.R. 1647, the Veterans' Choice in Filing Act.

The provisions of Ranking Member Filner's bill, aim to continue the successful process began with enactment of P.L. 110–389 of making positive changes to the way our veterans' claims and appeals are handled by the Veterans' Benefits Administration (VBA), Appeals Management Center (AMC), Board of Veterans' Appeals (BVA), and Court of Appeals for Veterans Claims (CAVC). Additionally, H.R. 1484 would also establish a Commission to examine some of the overarching and longstanding judicial and administrative issues that contribute to what many stakeholders refer to as the "hamster wheel." I look forward to delving again into these issues with all of the stakeholders in a bipartisan manner.

I'd also like to address your legislation, Mr. Chairman, the Veterans' Compensation Cost-of-Living Adjustment Act of 2011. H.R. 1407, has my full support. Many of the nearly 3 million veterans who receive these benefits depend upon these tax-free payments not only to provide for their own basic needs, but for those of their spouses, children and parents as well. We would be derelict in our duty if we failed to guarantee that those who sacrificed so much for this country receive benefits and services that fail to keep pace with their needs.

Finally, four of the remaining measures that we will consider today address memorial issues, H.R. 811, H.R. 1441, H.R. 1627 and H.Con.Res.12.

I look forward to hearing from our DoD witnesses as we discuss the three measures relating to the placement of monuments and grave reservations at Arlington National Cemetery. I also am pleased that we will have a chance to consider Ranking Member Filner's bill, Providing Military Honors for our Nation's Heroes Act, H.R. 811, which would help ensure that all our veterans receive the full burial honors that they deserve. It is critical that we honor our veterans' service and sacrifice appropriately as they are laid to rest.

During times of war, such as today, we must simultaneously ensure the proper compensation and support for our current veterans while also creating and implementing innovative solutions that will allow us to care for those who will become veterans of our current conflicts. I think the bills under consideration today strike that balance.

Mr. Chairman, I thank my colleagues, Chairman Miller, Ranking Democratic Member Filner, and Mr. Weiner for introducing the other measures before us today. I look forward to hearing from all of our witnesses.

Thank you and I yield back.

Prepared Statement of Christina M. Roof,
National Acting Legislative Director, American Veterans (AMVETS)

Chairman Runyan, Ranking Member McNerney and distinguished Members of the Subcommittee, on behalf of AMVETS, I would like to extend our gratitude for being given the opportunity to share with you our views and recommendations regarding H.R. 811, H.R. 1407, H.R. 1441, H.R. 1484, H.R. 1627, H.R. 1647 and H. Con Res. 12.

AMVETS feels privileged in having been a leader, since 1944, in helping to preserve the freedoms secured by America's Armed Forces. Today our organization prides itself on the continuation of this tradition, as well as our undaunted dedication to ensuring that every past and present member of the Armed Forces receives all of their due entitlements. These individuals, who have devoted their entire lives to upholding our values and freedoms, deserve nothing less.

Given the fact this testimony will be addressing several pieces of legislation, I shall be addressing each piece of legislation separately, as to make AMVETS testimony clear and concise on the individual subject matters of the bills.

AMVETS supports H.R. 811, the "Providing Military Honors for our Nation's Heroes Act." With the growing demand for Military Honors at burials today and the lack military personnel or volunteers with the financial means to perform them, many of our Nation's fallen heroes are going without proper honors at their funerals. AMVETS finds this poignant reality unacceptable and avoidable. Even with the low number of volunteers capable of performing these earned burial honors, many more could be performed if there were resources available to these selfless organizations who travel the country to ensure every veteran and soldier has a proper funeral. Moreover, if reimbursements were made available more organizations and individual volunteers could start to offer their services of providing military honors as well. Finally, AMVETS is quite clear on the State of our Nation's budget, however while we fully support fiscal responsibility we do not believe that any man or woman who has served this great Nation should be denied a proper burial in an effort to balance the budget. AMVETS again lends their strong support to H.R. 811.

AMVETS strongly supports H.R. 1407, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011." H.R. 1407 or "COLA" is critical in ensuring the areas of need regarding today's cost of living are adjusted annually. Wartime Disability Compensation, the Clothing Allowance for severely disabled veterans, Dependency and Indemnity Compensation to Surviving Spouse and Dependency and Indemnity Compensation to Children monetary values must be increased every year to sustain veterans, dependents and survivor's current quality of life. AMVETS urges the swift passage of H.R. 1407 and offers our unwavering support.

AMVETS supports H.R. 1441, to amend title 38, United States Code, to codify the prohibition against the reservation of gravesites at Arlington National Cemetery, and for other purposes.

Under title 32 U.S.C., Chapter V, section 553, subsection 553.18(a), the present policy of the Department of the Army, only one gravesite is authorized for the burial of a servicemember and eligible family members. Furthermore, 5553.18(b) states that gravesites may not be reserved. However, it has been brought to attention of AMVETS that "de facto reservations" of plots were still being made in direct violation to the Army's policy of prohibition of reservations established in 1962. According to Kathryn Condon, the executive director of the Army National Cemeteries Program, as of March 2011 there were 3,500 reservations on file, although it is unclear how many of those 3,500 are valid. AMVETS finds this to be unacceptable and disgraceful, given the importance of what Arlington National Cemetery is tasked with. Moreover, while AMVETS completely understands the esteem and honor of being interred at Arlington National Cemetery, we find it objectionable for any person to go against the Army's 1962 regulation prohibiting of burial site reservations and to reserve a site that just might be needed for someone who perishes in combat tomorrow. Furthermore, AMVETS believes H.R. 1441 stands to codify the Army's regulation and also stands to provide accountability and transparency to the process. One's status in life should not determine their eligibility of interment over anyone else's. Once again, AMVETS supports H.R. 1441 and further urges Congress to have the strictest of oversight in the implementation of the electronic tracking system at Arlington National Cemetery, as well as the reservation review process, currently taking place at Arlington National Cemetery.

AMVETS supports H.R. 1484, the "Veterans Appeals Improvement Act of 2011." AMVETS believes H.R. 1484 stands to expedite the claims process, especially in light of the recent changes to laws regarding mental health, Agent Orange and several other areas. AMVETS further believes that through the amending of title 38, section 7104 the claims process will be sped up through the avoidance of duplication of efforts and unnecessary paper shuffling. Moreover, AMVETS believes that an unpaid committee tasked with identifying the weaknesses and duplications within the Veterans Benefit Administration's claim process only stands to assist VBA in developing accurate and expedited claims processing practices, as well as identifying the causes that have led VBA to be stuck in a never ending cycle of backlogs and improperly adjudicated claims. While AMVETS applauds VA in their recent efforts to electronically streamline the claims process, unfortunately little improvement has been made and the backlog continues to grow. AMVETS believes that if the proposed "Veterans Judicial Review Commission" is held accountable to meeting all standards, guidelines and deadlines as outlined in H.R. 1484, VBA stands to gain valuable information that could lead to great improvements to the entire VA claims process. The unpaid commission will be able to focus strictly on the overall process, thus being able to identify strengths and weaknesses throughout the entire VBA claims system. AMVETS strongly believes to effectively, efficiently and correctly run any program there must be regular internal and external audits to identify the aforesaid. Therefore, AMVETS lends our support to H.R. 1484.

AMVETS strongly supports H.R. 1627, to amend title 38, United States Code, to provide for certain requirements for the placement of monuments in Arlington National Cemetery, and for other purposes. AMVETS believes the proposed language in H.R. 1627 will provide necessary clarity, as well as uniformed defined requisites for the placement of acceptable monuments in Arlington National Cemetery. Furthermore, AMVETS believes that mandating monuments only be erected in areas not suitable for interment will provide the opportunity for more of our Nation's fallen heroes and qualifying veterans to be laid to rest in these sacred grounds.

AMVETS cannot support H.R. 1647, the "Veterans' Choice in Filing Act of 2011," in its current form. While AMVETS is happy to see new ideas and "out of the box" thinking, we still have concerns on the language in H.R. 1647. So at this time, AMVETS cannot support H.R. 1647, however we are willing to work with the Committee on H.R. 1647 to see if any language could be changed, so that it addresses AMVETS current concerns.

AMVETS supports H. Con. Res. 12, expressing the sense of Congress that an appropriate site on Chaplains Hill in Arlington National Cemetery should be provided for a memorial marker to honor the memory of the Jewish chaplains who died while on active duty in the Armed Forces of the United States. Currently there are three monuments at Arlington National Cemetery for chaplains. One for those killed in World War I and one each for Roman Catholic and Protestant chaplains who died in 20th-century conflicts, including Korea and Vietnam. The three sit side-by-side in an area known as "Chaplains Hill." The 13 Jewish Chaplains died between 1943 and 1974. Though not all were killed in overseas combat, they still served this country. Given the facts that memorial meets the guidelines for erecting a monument at Arlington National Cemetery, the proper congressional steps are being followed and that it will be privately funded, AMVETS lends our support to H. Con. Res. 12.

Chairman Runyan and distinguished Members of the Subcommittee, AMVETS would again like to thank you for inviting us to share with you our opinions and recommendations on these very important pieces of legislation. This concludes my testimony and I stand ready to answer any questions you may have for me.

Prepared Statement of Jeffrey C. Hall,
Assistant National Legislative Director, Disabled American Veterans

EXECUTIVE SUMMARY

- H.R. 811—"Providing Military Honors for our Nation's Heroes Act." DAV does not oppose passage of this legislation.
- H.R. 1407—"Veterans' Compensation Cost-of-Living Adjustment Act of 2011." DAV would support passage of this legislation, while also seeking enactment of legislation for an automatic annual COLA and the discontinuance of the longstanding practice of "rounding down" of the COLA. DAV is also asking Congress to enhance VA disability compensation by including compensation for non-work disability and the loss of quality of life.
- H.R. 1441—DAV does not oppose passage of this legislation.
- H.R. 1484—"Veterans Appeals Improvement Act of 2011." DAV would support passage of section 2 of the bill; however, DAV would not support section 3 of the bill at this time, as we question whether the creation of yet another study commission is warranted or if it would be an appropriate use of VBA's resources.
- H.R. 1627—DAV does not oppose passage of this legislation.
- H.R. 1647—"Veterans Choice in Filing Act of 2011." While DAV agrees with the goal of reducing disparities between and improving the overall performance of regional offices, we do not believe the insertion of a new pilot program that could potentially interfere with VBA's ability to manage their workload would be helpful or contribute to the achieving the fundamental reform needed in this system; therefore, DAV does not support passage of this bill at this time.
- H. Con. Res. 12—DAV does not oppose passage of this legislation.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting the Disabled American Veterans (DAV) to testify at this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a nonprofit organization comprised of 1.2 million service-disabled veterans focused on building better lives for America's disabled veterans and their families.

Mr. Chairman, at the Subcommittee's request, DAV is pleased to be here today to present our views on seven (7) bills under consideration by the Subcommittee.

H.R. 811, the "Providing Military Honors for our Nation's Heroes Act" would authorize the Secretary of Veterans Affairs (VA) to reimburse a member of a veterans' service organization or other organization approved by the Secretary for transportation and other appropriate expenses incurred in connection with the voluntary provision of a funeral honors detail at the funeral of a veteran, including for times when the honors are requested by a funeral home.

This bill would allow volunteers from veterans' service organizations (VSOs) and other organizations to be reimbursed for transportation costs and other expenses, such as cleaning uniforms, incurred while providing military funeral honors. Currently, members of VSOs and other volunteers can assist the military by providing a color guard, pallbearers, a bugler or firing party, and be reimbursed for their expenses, but the law does not address ceremonies in which VSOs render honors without military representation. Approval of this bill would allow volunteers to be reimbursed even when no military person is part of the honor guard, thereby increasing the number of military funeral honor details that would be available to families. While DAV does not have an adopted resolution from our membership pertaining to this particular matter, we do not oppose passage of this legislation.

H.R. 1407, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011" would increase, effective December 1, 2011, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. For each of the past 2 years, there has been no increase in the rates for compensation and DIC because the Social Security index used to measure the cost-of-living adjustment (COLA) did not increase. However, many disabled veterans and their families who rely heavily or solely on VA disability compensation or DIC as their only means of income have struggled during these difficult times. While the economy has faltered, their personal economic circumstances have been negatively affected by rising costs of many essential items, including medicines and gasoline. As inflation becomes a greater factor, it is imperative that they receive a COLA and DAV supports this legislation.

In addition, DAV also calls on Congress to enact legislation that would make a realistic COLA automatic each year. Furthermore, we call on Congress to end the practice of "rounding down" COLA increases, which incrementally reduces the support to disabled veterans and their families. The practice of permanently "rounding down" a veteran's COLA to the next lower whole dollar amount can cause undue hardship for veterans and their survivors whose only support comes from these programs and it is time to end this practice.

Mr. Chairman, consistent with the position of *The Independent Budget* (IB), DAV would also ask that Congress consider finally implementing the recommendation made by the Institute of Medicine (IOM), the Veterans' Disability Benefits Commission (VDBC), and the Dole-Shalala Commission (President's Commission on Care for America's Returning Wounded Warriors) to enhance disability compensation by including compensation for non-work disability, or noneconomic loss, and the loss of quality of life suffered by disabled veterans. Non-work disability specifically refers to limitations on the veteran's ability to engage in usual life activities other than work, while loss of quality of life refers to the loss of physical, psychological, social, and economic well-being in one's life. Such compensation is provided by other countries who have similar comprehensive systems for compensating veterans for disabilities, including Canada and Australia, and it is time for Congress to finally address this matter of equity for the men and women who have suffered to defend this great Nation.

H.R. 1441 would codify the prohibition against reserving gravesites at Arlington National Cemetery prior to the death of an eligible veteran. Additionally, this bill would prohibit the assignment of more than one gravesite to a veteran or member of the Armed Forces eligible for interment at a national cemetery and their eligible family members. While DAV does not have an adopted resolution from our membership pertaining to this particular matter, we do not oppose passage of this legislation.

H.R. 1484, the "Veterans Appeals Improvement Act of 2011" seeks to improve the appeal process in two ways. Section 2 of the bill would allow a claimant to submit new or supplemental evidence in support of a case for which a substantive appeal has been filed, directly to the Board of Veterans' Appeals (Board) and not to the VA Regional Office of jurisdiction. This provision does, however, preserve the claimant's right to request VA Regional Office consideration of the new or supplemental evidence should they prefer that option.

Currently, when the Board receives new or supplemental evidence not previously considered by the VA Regional Office, the case must be returned to the VA Regional

Office of jurisdiction for appropriate rating or authorization activity, unless the claimant submits a waiver of VA Regional Office consideration. This current practice requires the case to be remanded or transferred back to the VA Regional Office which unnecessarily delays what is already a lengthy appellate process.

DAV strongly supports approval of this provision which would be beneficial to all parties involved. It would allow a claimant to submit new or supplemental evidence directly to the Board where the case is pending without requiring a waiver of VA Regional Office consideration, and thereby avoiding a time consuming remand process that delays final decisions to veterans and also wastes VA resources in the process.

Section 3 of H.R. 1484 would create a "Veterans Judicial Review Commission" to study the administrative and judicial elements of claims adjudication in order to make recommendations about improving the "... accuracy, fairness, transparency, predictability, timeliness and finality ..." of claims decisions. In addition, the Commission would be specifically required to make a recommendation as to whether the Court of Appeals for Veterans Claims should be given the authority to hear relevant veterans' class action lawsuits. Although DAV testified in support of a similar commission during a hearing on October 8, 2009, this new proposal is different in two respects.

First, the inclusion of a specific requirement to consider giving the Court class action authority raises concerns that DAV has expressed previously, including during the October 2009 hearing. As we said at that time, the call for the grant of authority for class action is one that we do not have a resolution on but wish to express concern as to the benefit this would provide veterans. It is our view that appeals decided on an individual basis rather than by class offer the appellant the best result for their specific case. Class actions may well benefit those who comprise that class but once decided they in fact preclude further appeal action on the issue decided. Moreover, as a recent front-page story in the *Washington Post* from April 23, 2011 indicated, the Court is currently understaffed and unable to meet its pending caseload. The addition of class action filings would certainly further burden the Court at a time when its workload can reasonably be predicted to continue rising in the coming years given the increasing number of new claims filed each year.

Second, over the past 18 months VBA has been engaged in comprehensive and historic efforts to reform the entire claims processing system in order to reduce the backlog of pending claims and dramatically increase the accuracy and consistency of decisions. Central to this transformation effort will be the new Veterans Benefits Management System (VBMS), VBA's new paperless, rules-based IT system. When fully operational, the VBMS should lead to significant changes in how VBA, including the Board, and the Court receive and process claims and appeals work. DAV questions whether the creation of yet another study commission is warranted or if it would be an appropriate use of VBA's resources. As such, DAV does not support section 3 at this time.

H.R. 1627 seeks to clarify the statute regarding the requirements for placement of markers or monuments in Arlington National Cemetery. The bill would codify specific requirements related to the type, purpose and designated areas for emplacement of monuments, as well as the authorization or approval process and sponsoring individuals or organizations required. While DAV does not have an adopted resolution from our membership pertaining to this particular matter, we do not oppose passage of this legislation.

H.R. 1647, the "Veterans' Choice in Filing Act of 2011" would authorize a 24-month pilot program to allow veterans served by certain poor performing VA regional offices the option to submit a claim for benefits at any regional office of their choice. Under the proposal, five regional offices would participate in the pilot based upon criteria to be established by the VA Secretary. Upon completion of the pilot program, the Secretary would be required to send a final report to Congress containing recommendations about the future allocation of resources amongst VA regional offices. Although this legislation contains few specifics about its purpose or implementation, it appears the bill is intended to serve as a catalyst to improve and/or reorganize poor performing VA regional offices through a sense of competition.

While DAV agrees with the goal of reducing disparities between and improving the overall performance of regional offices, for the reasons outlined below, we do not support this pilot program at this time. Over the past 2 years, VBA has been engaged in a comprehensive effort to reform its claims processing system that already includes dozens of innovative pilot programs as well as a complete redesign of the IT systems used to initiate and process benefit claims. DAV and other VSOs have been working closely with VBA in these efforts to ensure that the current claims processing system is redesigned and rebuilt in a manner that assures each claim for benefits will be processed right the first time. With VBA halfway through this

transformation cycle, we do not believe the insertion of a new pilot program that could potentially interfere with VBA's ability to manage their workload would be helpful or contribute to achieving the fundamental reform needed in this system. As such, DAV does not support this legislation.

Instead, DAV would like to work with this Subcommittee to develop better approaches to addressing performance differences between regional offices, primarily focused on better and more consistent training and quality control programs. With thousands of new employees entering the VBA workforce in the past couple of years, as well as the large number of new coaches and managers appointed to oversee them, it is imperative that VBA have continuing training programs to ensure consistency and accuracy of their work. It is equally important that as VBA continues developing and subsequently deploying the VBMS, that sufficient time and attention be paid to the inclusion of real-time quality control programs which can help to identify issues and areas that need new or better training programs. Mr. Chairman, DAV stands ready to work with you to achieve these shared goals.

Finally, H.Con.Res. 12, would express the intent of Congress to honor the memory of the Jewish chaplains who have died while on active duty in the Armed Forces of the United States with the emplacement of a memorial marker on Chaplains Hill in Arlington National Cemetery. While DAV does not have an adopted resolution from our membership pertaining to this particular matter, we do not oppose passage of this legislation.

Mr. Chairman and Members of the Subcommittee, this concludes my statement and I would be happy to answer any questions you may have.

Prepared Statement of Shane Barker, Senior Legislative Associate, National Legislative Service, Veterans of Foreign Wars of the United States

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE: On behalf of the 2.1 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, the VFW would like to thank this Committee for the opportunity to present our views on today's pending legislation.

H.R. 811, the Providing Military Honors for our Nation's Heroes Act

This bill is intended to help mitigate costs to military retirees and veterans who are taking it upon themselves to assist in providing military funeral honors for veterans. Ordinarily, this sacred task is the responsibility of our military, however, because of our ongoing commitments overseas they are often unable to meet the demand for such honors. The VFW strongly believes that all who have earned such honors should receive them in full. This commitment is the basis on which we support H.R. 811. This legislation promotes volunteer participation by providing a reimbursement for travel and incidental expenses to members of Veteran Service Organizations and other groups approved by the Secretary of Veterans Affairs. At a time when many of our greatest generation are passing on, and those serving in current conflicts are risking their lives for our country, this measure is appropriate and well-deserved.

H.R. 1407, the Veterans' Compensation Cost-of-Living Adjustment Act of 2011

The VFW supports this legislation. Veterans have not received a COLA increase in 2 years, but are still paying more at the grocery store, pharmacy, gas pump, and elsewhere. We are encouraged that recent data shows a 2.1 percent increase in the CPI–W over the 2008 COLA base, and are hopeful that veterans and survivors will see a corresponding increase in their pensions and other compensation, such as DIC, in the coming year. This legislation is the vehicle to ensure that takes place.

H.R. 1441, a Bill To Codify the Prohibition of Gravesites at Arlington National Cemetery, and For Other Purposes

This legislation is long overdue. It will finally prohibit, in law, the insider practice of allowing certain high-ranking military members and other VIPs to pre-select their gravesites. This practice was banned by Army policy in 1962—nearly 50 years ago—yet cemetery administrators continued to arbitrarily allow some to skirt the rules. Burial at Arlington National Cemetery is a tremendous honor that depends on honorable service, not rank. It is obvious that greater accountability and transparency is needed, so we appreciate language in this bill that requires a full audit and a report back to Congress.

H.R. 1484, the Veterans Appeals Improvement Act of 2011

Section 2 would make significant changes to the claims appeals process. Specifically, it would reverse the current procedure of requiring new evidence submitted for a claim under appeal to be considered by a regional office before being sent to the Board of Veterans Appeals, except in cases where the appellant waives that review. It would also stipulate that the Board is required to rate all new evidence submitted after the case is sent to them unless the veteran specifically refuses to waive their consideration.

To be sure, the procedures currently in place often make for a lengthy appeals process. When new evidence for an appeal claim is submitted, the Board puts the appeal on hold and contacts the appellant to inquire whether or not he or she wants to waive local consideration of the new evidence. That alone often tacks a few months onto the length of a claim. When appellants want a regional office to review new evidence, the appeal is remanded back to that office from the Board, and that can easily add another year onto the appeal process. In some cases, however, new evidence being reviewed locally can bring about a local grant of the benefit sought through the appeal, and can put the matter to rest more quickly. Additionally, this local review provides appellants one more opportunity to have the appeal looked at and decided in their favor.

These changes would allow the Board to move more quickly on appeals, and would alter but not eliminate an appellant's right to local consideration. Among our VFW service officers, we waive local consideration about 90 percent of the time for veterans we represent. Furthermore, most veterans who file claims unrepresented often do not know they have the ability to waive local consideration. We do not believe this procedural change would have a significant impact on appellants, and the VFW supports section 2 of the bill.

Section 3 would create a Veterans Judicial Review Commission and charge it with reviewing the administrative and judicial appellate review process, and to report to Congress recommendations for improving the process. The VFW would reserve the privilege to review the work of the Commission and respond after having a chance to read and digest any specific recommendations they would choose to make.

For these reasons, the VFW has no official position on this section of the legislation.

H.R. 1627, a Bill To Amend Title 38, United States Code, to Provide for Certain Requirements for the Placement of Monuments in Arlington National Cemetery, and For Other Purposes

The VFW supports this effort to codify procedures used at Arlington Cemetery to place memorial markers. We strongly believe that any decisions that would affect the grounds at Arlington must be principled, fair, and based on precedent. We also believe that the individual placement of memorial markers should not hinge upon the legislative process. This legislation advances these principles by taking existing procedures for placing memorial markers and making them the law of the land.

H.R. 1647, the Veterans Choice in Filing Act of 2011

The VFW does not support this legislation.

H.R. 1647 creates a 2-year pilot program under which veterans at five underperforming regional offices would be able to submit benefits claims to any VA regional office of their choice. The VFW is by no means opposed to identifying and using any appropriate means to raise poorly performing offices up to standards. In fact, we are so committed to that goal, we would rather see our collective efforts focused on a permanent solution to the complicated and systemic problems with claims processing. This pilot would merely require VA to shuffle work around—a practice, in fact, that already takes place within VBA. The VA uses the term "brokering" to describe the way in which they address disparities in production by transferring cases from backed up offices to those with "excess capacity." One of our concerns is the possibility that this pilot program could create even more brokering in response to claims being sent by veterans to the regional office of their choosing, and could lead to those underperforming offices receiving the same amount of work from across the country through the already existing brokering process.

It also creates serious headaches for VFW service offices and those from other Veteran Service Organizations—and potentially the veterans themselves. It is unclear how we or an individual veteran would know whom to contact about their claim, or how effective a service officer could be regarding a claim that was sent to a distant State from across the country.

At a time when VA is conducting dozens of other pilot programs while applying significant resources to get ahead of the curve on the backlog, we believe measures with no apparent value added should be deferred.

H. Con. Res. 12, a Resolution Expressing the Sense of Congress That an Appropriate Site on Chaplains Hill in Arlington National Cemetery Should Be Provided for a Memorial Marker To Honor the Memory of the Jewish Chaplains Who Died While on Active Duty in the Armed Forces of the United States

The VFW supports this resolution. One needs to look no further than the resolution itself to find testimony of the dedication, selflessness, and sacrifices made by chaplains of the Jewish faith on behalf of the United States. Today there stands three other memorial markers on Chaplains Hill in Arlington, two of which are in memoriam of chaplains of other faiths. It seems appropriate and fitting that a marker of similar design should be allowed to pay tribute to the many Rabbinical Chaplains who have also served with dignity and honor.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you or the Members of the Committee may have.

Prepared Statement of Barton F. Stichman,
Joint Executive Director, National Veterans Legal Services Program

EXECUTIVE SUMMARY

National Veterans Legal Services Program (NVLSP) is a nonprofit veterans service organization. NVLSP's views on the Veterans Appeals Improvement Act of 2011 (H.R. 1484) and the Veterans' Choice in Filing Act of 2011 (H.R. 1647) are informed by the widespread frustration and disappointment in the VA claims adjudication system experienced by disabled veterans.

NVLSP supports the proposed legislation that would waive Regional Office (RO) jurisdiction over new evidence submitted after a veteran has filed a substantive appeal but before the case is certified to the BVA. The average delay between a veteran filing a substantive appeal and the case being certified to the BVA can exceed 1½ years. A primary culprit of this unreasonable delay is VA's policy with respect to evidence submitted during this period: VA sends the new evidence and the claims file back to the RO for consideration and preparation of a new decision. Section 2 of the Veterans Appeals Improvement Act of 2011 would change this policy to the benefit of veterans, while preserving the ability of a veteran to request RO consideration of evidence, should he or she so desire.

NVLSP also supports the proposed legislation that would create a Veterans Judicial Review Commission. Of the appeals decided by the CAVC in 2009, it found reversible or remandable error in more than 60 percent of the BVA's decisions. The errors by the BVA include inaccurately stating or applying the facts or the law and/or failing to adequately explain its decision. The high percentage of wrongly decided cases demonstrates that improvements must be made in the BVA's accuracy, fairness, and transparency. Section 3 of the Veterans Appeals Improvement Act of 2011 would aid in achieving this goal.

NVLSP also supports giving the CAVC and Court of Appeals for the Federal Circuit (Federal Circuit) clear class action authority. The benefit of class actions is that they conserve the resources of the government and the Courts, serve as a mechanism for identifying affected individuals, and help ensure that the government treats all similarly situated individuals in the same way. That said, NVLSP maintains that a Commission—as contemplated by section 3—to explore the viability of granting class action authority is not necessary. The need is clear now.

Finally, NVSLP supports the creation of a pilot program to allow a veteran whose local RO has "below average performance" to file his or her claim in a different RO. Many VA adjudicators are inadequately trained and many ROs are improperly managed and inadequately staffed. Section 2 of the Veterans' Choice in Filing Act of 2011 would provide veterans an alternative to filing in an RO plagued by these inadequacies. That said, NVLSP maintains that section 2 should specify that a veteran who chooses a different RO will not have to travel for VA medical examinations or hearings. Section 2 also should include specific guidelines to inform the Secretary of Veterans Affairs in his selection of ROs with "below average performance," as well as a mechanism to review his selections.

NVLSP thanks you for the opportunity to express its views.

Thank you for the opportunity to present the views of the National Veterans Legal Services Program (NVLSP) on the bills entitled the "Veterans Appeals Improvement Act of 2011" (H.R. 1484) and the "Veterans' Choice in Filing Act of 2011" (H.R. 1647). As explained below, NVLSP strongly supports (1) creating a Commission to investigate methods to improve the efficiency and fairness of the appeals process, (2) giving clear class action authority to the Court of Appeals for Veterans

Claims (CAVC) and Court of Appeals for the Federal Circuit (Federal Circuit), and (3) implementing a pilot program giving veterans the option to file their claims in a better-performing VA Regional Office (RO).

NVLSP is a nonprofit veterans service organization founded in 1980. Since its founding, NVLSP has represented thousands of claimants before the Board of Veterans' Appeals (BVA) and the CAVC, as well as the Federal Circuit and other Federal Courts. NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, which recruits and trains volunteer lawyers to represent veterans who have appealed a BVA decision to the CAVC without a representative. In addition to its activities with the program, NVLSP has trained thousands of veterans service officers and lawyers in veterans benefits law, and has written educational publications that thousands of veterans advocates regularly use as practice tools to assist them in their representation of Department of Veterans Affairs (VA) claimants.

My testimony today is informed by the widespread frustration and disappointment in the VA claims adjudication system experienced by disabled veterans and their survivors. They face a number of serious challenges at both the BVA and the CAVC. We believe that the proposed Commission and pilot program, as well as giving class action authority to the CAVC and Federal Circuit, would make the process both more efficient and fairer to those who have served our country.

I. The Veterans Appeals Improvement Act of 2011

A. Section 2: Addressing Waiver of RO Jurisdiction Over Evidence Submitted After the Substantive Appeal

One of the reasons for the unreasonably long delays that occur in VA decision-making is the time it takes for VA to forward an appeal to the BVA for a decision. This interval occurs after the veteran files his or her claim, the RO issues a decision denying the claim, the veteran files a notice of disagreement with the RO decision, the RO issues a statement of the case (SOC), and the veteran files a substantive appeal. The BVA reported in its Report of the Chairman for Fiscal Year 2010 that it took an average of 609 days (1 year and 8 months) after the filing of the substantive appeal for the RO to "certify" the appeal, or forward the VA claims file to the BVA for a decision.

A primary cause for this large time lag is the legal requirements governing VA's handling of evidence submitted by the veteran after the substantive appeal but before certification to the BVA. While veterans wait for their cases to be sent to the BVA, they often decide to submit additional evidence in support of their claims. Since they have already appealed to the BVA, they often assume that this evidence will go to, and be reviewed by, the BVA. To the contrary, VA is required, upon submission of new evidence during this time period, to send the case to an RO adjudicator for review of both the new evidence and the claims file and preparation of a new decisional document, called a Supplemental Statement of the Case (SSOC). If the veteran submits still additional evidence after the SSOC, the case is again sent to an RO adjudicator for review and preparation of yet another SSOC. In some cases, VA has taken the time to prepare four or more SSOCs before the case is forwarded to the BVA for a decision.

Section 2 of the bill would change this VA requirement, to the benefit of the veteran and VA. It would mandate that any evidence submitted after a certain point in the process is forwarded directly to the BVA for review, unless the veteran or his representative specifically requests that it go to, and be reviewed by, the RO first. NVLSP strongly supports this change, as it will bring the process more in line with the expectations of veterans and will help alleviate the delay and waste of judicial resources that currently plagues the BVA appellate process.

NVLSP also notes that submission of the substantive appeal is the appropriate point in the process at which to transfer jurisdiction over new evidence to the BVA. At that point, the veteran has had the opportunity to exercise his or her right to a hearing before a Decision Review Officer and has received an SOC.

B. Section 3: Addressing Creation of a Veterans Judicial Review Commission and the Need for Class Action Authority

Another cause of the unreasonable length of time it takes for veterans to obtain relief, and the attendant frustrations of said veterans, is the high number of errors made by the BVA. The CAVC reported in its Annual Report for Fiscal Year 2009 that, of the 4,379 cases it decided, it "affirmed or dismissed in part, reversed/vacated & remanded in part" 498 cases; "reversed/vacated & remanded" 397 cases; and "remanded" 1,758 cases. This means that, of those cases that the veteran or his survivors appealed to the CAVC, the BVA decision is vacated in more than 60 percent of the cases. Most of these remands are due to administrative error by the agency

(rather than merely a post-decisional change in law). These mistakes often include an inaccurate recitation and application of the facts or law and/or an inadequate statement of the BVA's rationale for its decision. Additionally, veterans advocates have noted that a decision from one Veterans Law Judge may differ substantially from a decision by another based on similar facts. In those cases requiring remand for additional development or explanation, a subsequent appeal to the CAVC may be necessary.

Given the high percentage of BVA decisions requiring reversal or remand, the creation of a Veterans Judicial Review Commission to evaluate, and make recommendations for the improvement of, the accuracy, fairness, transparency, and predictability of the BVA review process is necessary. Therefore, NVLSP strongly supports the creation of a Commission for this purpose.

A third reason for the longstanding delays and inefficiency in the VA adjudication system derives from the fact that neither the CAVC nor the Federal Circuit has clear authority to certify a veteran's lawsuit as a class action. When Congress enacted the Veterans' Judicial Review Act (VJRA) in 1988, it inadvertently erected a significant roadblock to justice. Prior to the VJRA, U.S. District Courts of Appeal had authority to certify a lawsuit challenging a VA rule or policy as a class action on behalf of a large group of similarly situated veterans. *See, e.g., Nehmer* v. *U.S. Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989); *Giusti-Bravo* v. *U.S. Veterans Administration*, 853 F. Supp. 34 (D.P.R. 1993). If the district Court held that the challenged rule or policy was unlawful, it had the power to ensure that all similarly situated veterans benefited from the Court's decision.

The ability of a veteran or veterans organization to file a class action ended with the VJRA. In that landmark legislation, Congress transferred jurisdiction over challenges to VA rules and policies from district Courts (which operate under rules authorizing class actions) to the Federal Circuit and the newly created CAVC. In making this transfer of jurisdiction, Congress failed to clearly address the authority of the CAVC and the Federal Circuit to certify a case as a class action. As a result of this oversight, the CAVC has ruled that it does not have authority to entertain a class action (*see Lefkowitz* v. *Derwinski*, 1 Vet. App. 439 (1991)), and the Federal Circuit has indicated the same (*see Liesegang* v. *Secretary of Veterans Affairs*, 312 F.3d 1368, 1378 (Fed. Cir. 2002).

The benefit of class actions in litigation against the government is that they conserve the resources of the government and the Courts and help ensure that the government treats all similarly situated individuals in the same way. Class actions are typically used by Courts to resolve efficiently a legal issue that affects a large number of similarly situated individuals. There are literally hundreds of individual VA rules and policies that affect the entitlement to VA benefits for a large number of VA claimants. From time to time, a VA claimant will file an appeal at the CAVC or the Federal Circuit that challenges the legality of one of these rules or policies. Injustice and inefficiency result from the fact that these Courts do not have class action authority.

A pertinent example is the lawsuit filed by NVLSP and the Military Order of the Purple Heart in the Federal Circuit challenging VA directive (Fast Letter 07–19) issued on August 27, 2007. This Fast Letter instituted a new decisionmaking process for the adjudication of certain claims involving a large amount of benefits.

The Fast Letter required VA, in any case in which an RO awarded a veteran more than $250,000 in benefits or awarded 8 or more years of retroactive benefits, to withhold its award decision from the veteran and representative and to send it to Washington, D.C., for a review by the Compensation & Pension Service. No RO decisions denying a large amount of benefits were subject to the Fast Letter. The Compensation & Pension Service would then decide the claim anew. If it disagreed with the RO award of a large amount of benefits, it would order the RO to rewrite the decision to comply with the Compensation & Pension Service's view and then send the rewritten decision to the veteran and representative. The RO had to destroy or discard the initial favorable decision and the instructions of the Compensation & Pension Service that caused the denial.

On September 10, 2009, the Federal Circuit ruled that the Fast Letter procedure, "whereby certain regional office decisions are redetermined by the Compensation & Pension Service ... without the knowledge and participation of the claimant, does not comply with the extant Regulations, and that [VA's] promulgation [of the Fast Letter without public notice and comment] violated the Notice and Comment provisions of the" Administrative Procedure Act. As such, the Federal Circuit invalidated the Fast Letter. VA then ordered a halt to Compensation & Pension Service review of RO awards of a large amount of benefits. *Military Order of the Purple Heart of the USA and National Veterans Legal Services Program* v. *Secretary of Veterans Affairs*, 580 F.3d 1293 (Fed. Cir. 2009).

The problem with the judicial resolution of this case is that for 2 full years—from August 2007 to September 2009—the Compensation & Pension Service had been allowed to continue to review RO decisions awarding a large amount of benefits. In fact, over 800 large awards were reviewed, and in more than 50 percent of these cases the large award was overturned by the Compensation & Pension Service. The hundreds of veterans who were each denied hundreds of thousands of dollars in disability benefits cannot identify themselves as entitled to the benefits initially granted by the RO and validated by the Federal Circuit's decision.

If the Courts had class action authority, this injustice and inefficiency would not occur. As soon as NVLSP and the Military Order of the Purple Heart filed suit, the Court could certify the case as a class action, order the Compensation & Pension Service to halt its review until the Court could consider the legality of the Fast Letter, and order VA to keep track of the identity of each of the veterans subject to the Fast Letter. Then, if the Court determined that the Fast Letter was illegal, as the Federal Circuit did in this case, it would have authority to order VA to reinstate each of the RO decisions awarding a large amount of benefits.

Justice would thereby be served because the hundreds of veterans who were each illegally denied hundreds of thousands of dollars in benefits under the Fast Letter would actually receive these benefits. VA efficiency would be improved because the scarce resources of the Compensation & Pension Service and ROs would not have been expended in deciding whether to overturn the initial RO decisions, an activity deemed invalid by the Federal Circuit.

Moreover, class actions would be manageable in the CAVC and Federal Circuit. They are done uniformly in district Courts and are considered manageable there.

For these reasons, NVLSP strongly advocates giving the CAVC and Federal Circuit clear class action authority. That said, NVLSP does not believe that creation of a Commission to evaluate whether to give class action authority—as contemplated by section 3 of the bill—is necessary. By the terms of the bill, the Commission would not render a final report until December 31, 2012, more than 1½ years from now. However, the need for class action authority is clear now. In the interim, cases may arise that are appropriate for certification, and veterans whose rights were abridged (like those discussed above) would be denied justice.

II. The Veterans' Choice in Filing Act of 2011

A. Section 2: Addressing Creation of a Program To Give Veterans a Choice of RO in Which To File a Claim

It is clear that the quality of VA adjudications is not satisfactory and is a major contributor to the size of the backlog. In many cases, claims are improperly denied, VA adjudicators are inadequately trained, ROs are improperly managed, and ROs are inadequately staffed. Because VA Central Office management has not acted to fix these problems in any meaningful way, veterans and other claimants for VA benefits have to file unnecessary appeals, wait several years for a BVA remand, and wait for VA to obtain evidence that should have been requested during the original adjudication of the claim. These appeals clog the system and create unneeded work for VA. Of course, it would have been better for the RO to do the work correctly the first time

Given these problems that plague many ROs, NVSLP supports the creation of a pilot program for allowing a veteran whose local RO is deemed to have "below average performance" to file his or her claim in a different RO. While NVLSP agrees with the legislation, we suggest two additions to the bill.

First, section 2 should specify that a choice of non-local RO does not strip the veteran of his or her right to have any VA medical examination or hearing conducted locally. A veteran who chooses to file his or her claim in an out-of-state RO should not be required to travel for a VA medical examination or hearing. Requiring travel would be unduly prohibitive to veterans, who are frequently advanced in age and ill in health, and would have a chilling effect on their decisions to choose a different RO.

Second, section 2 should include specific guidelines to inform the Secretary of Veterans Affairs (Secretary) in his selection of ROs with "below average performance," as well as a process to review the Secretary's selections and rationale. As the bill is written, the Secretary has complete discretion to choose which five ROs are subject to the pilot program: his choice is not guided by either a stated goal for the pilot program or a recommendation of what constitutes "below average performance." The criteria for choosing which ROs qualify should include a quality component based on the RO's remand and reversal rate at the BVA, as well as the Veterans Benefits Administration's Systematic Technical Accuracy Review (STAR) report.

That completes my testimony. Again, NVLSP appreciates the opportunity to express its views on these important pieces of legislation and thanks you for your continued dedication to veterans.

Prepared Statement of Hon. Anthony D. Weiner, a Representative in Congress from the State of New York

Chairman Runyan, Ranking Member McNerney, thank you for allowing me to testify today on House Concurrent Resolution 12, which would designate a plot of land in Arlington Cemetery to be used for a memorial honoring the Jewish chaplains of our armed services.

Unlike many things in Congress, this bill is simple and straightforward.

Jewish chaplains have served our country for 149 years, yet they still do not have a place next to their Protestant and Catholic counterparts on Chaplains Hill in Arlington Cemetery.

Today, all that is standing between Arlington Cemetery and a memorial for Jewish chaplains is the passage of H. Con. Res. 12.

That is all there is to this resolution.

I am not the one who thought of creating a memorial for Jewish veterans.

In fact, like many Jewish-Americans and veterans nationwide, I was surprised to learn that no such memorial existed in Arlington Cemetery at all.

Ken Kraetzner, son of a World War II Army officer, noticed the lack of a monument for Jewish chaplains while researching the stories of the four immortal chaplains who died while giving final rites on board the USS *Dorchester* in 1943.

Ken located the four men on Chaplains Hill; he noticed that Rabbi Alexander Goode was the only one of the four chaplains not distinguished by a memorial.

Ken partnered with two other veterans, Rabbi Harold Robinson and Sol Moglen, to help lead fundraising efforts. In just a few months, they raised over $50,000.

They used the three other memorials as a model for the new monument they envisioned for the 13 Jewish chaplains that lost their lives from 1943 to 1974.

As you know, Mr. Chairman, the number thirteen is significant in Judaism. We have the 13 attributes of divine mercy on Yom Kippur, the 13 Maimonedian principles of the Jewish faith and of course, the 13 tribes of Israel.

The monument, as designed, will stand about 7 feet tall, with a bronze plaque mounted on a granite slab listing the 13 names as well as a Jewish proverb—"I ask not for a lighter burden, but for broader shoulders"—and an inscription with the Star of David. There will also be space at the bottom for future chaplains if needed.

While planning this project, Ken Kraetzer, Rabbi Harold Robinson and Sol Moglen were in touch with Arlington Cemetery; however, they were only notified of a new 2001 law that requires congressional approval for memorials in Arlington Cemetery.

The group quickly alerted the Jewish War Veterans of the United States of America, the Jewish Welfare Board Jewish Chaplains Council, and they finally reached out to me.

I was touched by the work of these great men and quickly introduced this resolution. Senator Schumer has also introduced the Senate version of this bill.

In less than 4 months, the resolution collected 72 bi-partisan cosponsors (*including Chairman Runyan and full Committee Chairman Jeff Miller*), and has been endorsed by 35 national Jewish organizations and 47 local Jewish War Veterans chapters.

The Jewish Federations of North America and Shelly Rood have been working to help pass this bill to recognize the achievements of the 13 Jewish chaplains. Surviving family members of the chaplains have also been involved in the process, including David Engle, son of Rabbi Meir Engle and Vera Silberberg, daughter of Morton Singer.

If I may, Mr. Chairman, I would like to submit the letter of support from all these groups into the record.

I am very grateful that we are one step closer to erecting this monument and properly honoring the brave Jewish chaplains that served our country.

What better way to celebrate Jewish Heritage Month.

I look forward to the passage of this resolution on the House floor.

Now, Mr. Chairman, please let me take a moment to repeat the names of the 13 chaplains honored through this resolution.

1. Nachman S. Arnoff, Army
2. Meir Engel, Army
3. Frank Goldenberg, Army

4. Alexander D. Goode, Army
5. Henry Goody, Army
6. Samuel D. Hurwitz, Army
7. Herman L. Rosen, Air Force
8. Samuel Rosen, Air Force
9. Solomon Rosen, Army
10. Morton H. Singer, Army
11. David Sobel, Air Force
12. Irving Tepper, Army
13. Louis Werfel, Army

Thank you.

March 22, 2011

Support Jewish Military Chaplains at Chaplains Hill in Arlington National Cemetery

Dear Members of Congress:

As you may know, the men and women serving in America's armed forces are supported by brave military chaplains of many faiths, who—at great personal risk and peril—provide spiritual and emotional support to soldiers defending our freedom. These heroes who are sometimes killed or injured in the line of duty deserve our Nation's utmost respect. Chaplains Hill in Arlington National Cemetery appropriately memorializes the names of 242 chaplains who perished while on active duty, but astonishingly, none of the 13 Jewish chaplains who have died while serving are honored on Chaplains Hill.

As organizations representing Jewish communities across the country, we urge you to support *H. Con. Res. 12 and S. Con. Res. 4*, which call for a memorial honoring the Jewish chaplains who perished while serving on active duty. Private funds for this memorial have already been raised, but Congress must act to designate the space.

One of the transformational moments in American life was the heroic sacrifice of the four chaplains of the USS *Dorchester*, which was transporting 900 soldiers and civilian workers to the European front when it was sunk by German torpedoes off the coast of Greenland on February 3, 1943. Each of the four chaplains on board spontaneously gave his lifejacket to another soldier, and the chaplains perished together as they prayed and sang hymns to men in lifeboats and in the icy water. The chaplains represented three faith traditions—two Protestants, a Catholic, and a Jew—and their death marked the first time the term "Protestant, Catholic and Jew" was used to describe America. Three of the four are memorialized on Chaplains Hill, but neither Rabbi Alexander Goode nor any of the other rabbis who died in other active service situations are so remembered.

Members of the Jewish faith have served our country since the days of the American Revolution, and Jewish chaplains have bravely served alongside. In total 13 Jewish chaplains have perished while on active duty in the Armed Forces of the United States. Working with the American Legion and the Jewish War Veterans, the Jewish Welfare Board Jewish Chaplains Council has raised the funds to establish this memorial. We urge you to act swiftly to pass this legislation in the House and in the Senate.

To cosponsor this legislation, please contact Naz Durakoglu in Rep. Weiner's office at x5–6616 or Naz.Durakoglu@mail.house.gov, Jessica Moore in Rep. Rooney's office at x5–5792 or Jessica.Moore@mail.house.gov, or Rachel Yemini in Sen. Schumer's office at x4–6542 or Rachel__Yemini@judiciary-dem.senate.gov.

For additional information, please contact Shelley Rood at the Jewish Federations of North America at (202) 736–5880 or Shelley.Rood@JewishFederations.org.

Thank you for your consideration.

Sincerely,

American Jewish Committee
Anti-Defamation League
Association of Jewish Aging Services
Association of Jewish Chaplains of the Armed Forces and Veterans Affairs
Association of Jewish Children & Family Agencies
B'nai B'rith International
Central Conference of American Rabbis
Foundation for Jewish Culture
International Association of Jewish Vocational Services

Jewish American Heritage Month
Jewish Communal Service Association of North America
Jewish Community Centers Association
Jewish Community Relations Council of New York
Jewish Community Relations Council of the Jewish United Fund of Metropolitan Chicago
Jewish Council for Public Affairs
Jewish Education Service of North America
Jewish Federation of Metropolitan Chicago
The Jewish Federations of North America
Jewish Institute for National Security Affairs
Jewish War Veterans
Jewish Women International
JWB–Jewish Chaplains Council
National Association of Jewish Chaplains
National Council of Jewish Women
National Council of Young Israel
National Jewish Democratic Council
Orthodox Union
Rabbinical Council of America
Reconstructionist Rabbinical Association
Religious Action Center of Reform Judaism
Republican Jewish Coalition
The Rabbinical Assembly
UJA–Federation New York
Union for Reform Judaism
United Synagogue of Conservative Judaism

Local Veterans Organizations
Jewish War Veterans of Nevada, Post 21
Jewish War Veterans of Nevada, Post 64
Jewish War Veterans of Nevada, Post 65
Jewish War Veterans of Nevada, Post 711
The Jewish War Veterans of the U.S.A. Sergeant Manny Peven Post 65

Local Jewish Organizations
American Jewish Committee New York Regional Office
Brownstein Jewish Family Service
Bureau of Jewish Education of Buffalo
Community Relations Committee of United Jewish Communities of MetroWest
Community Relations Council of the Jewish Federation of San Antonio
Congregation Beth Shalom, Wilmington, Delaware
Council of Jewish Organizations of Las Vegas
FEGS Health and Human Services System
Jewish Community Center of Staten Island
Jewish Community Relations Council of the Allied Jewish Federation of Colorado
Jewish Community Relations Council of Greater Boston
Jewish Community Relations Council of the Jewish Federation of Northern New Jersey
Jewish Community Relations Council of the Jewish Federation of Palm Beach County
Jewish Community Relations Council of Long Island
Jewish Community Relations Council of United Jewish Council of Greater Toledo
Jewish Community Relations Council of the Youngstown Area Jewish Federation
Jewish Family & Child Service of Portland
Jewish Family Service of Bergen and North Hudson
Jewish Family Service of Buffalo & Erie County, NY
Jewish Family Service of the Cincinnati Area
Jewish Family Service of Greater Danbury, CT & Putnam County, NY
Jewish Family Service of Greater New Orleans
Jewish Family Service of Los Angeles
Jewish Family Services of Northeastern New York
Jewish Federation of the Bluegrass
Jewish Federation of Las Vegas
Jewish Federation of Nashville Community Relations Committee
Jewish Federation of Northeastern New York
Jewish Social Service Agency
Joint Chaplaincy Committee of MetroWest

Knoxville Jewish Alliance
Metropolitan Council on Jewish Poverty
New Jersey State Association of Jewish Federations
New York Board of Rabbis
North Louisiana Jewish Federation
Ohio Jewish Communities
Palm Beach County Board Of Rabbis
Parker Jewish Institute for Health Care & Rehabilitation
Pennsylvania Jewish Coalition
Samuel Field YM–YWHA
Selfhelp Community Services, Inc.
Westchester Jewish Council

Prepared Statement of Hon. Bruce E. Kasold, Chief Judge, U.S. Court of Appeals for Veterans Claims

EXECUTIVE SUMMARY

- H.R. 1647 (authorizing submission of claims at any regional office) and section 2 (waiver of regional office review of new evidence) of H.R. 1484 concern operations within the purview of the Department of Veterans Affairs (VA). The Court has no special insight and no further comment on these proposals.
- The Court supports creation of a Commission, as generally proposed in section 3 of H.R. 1484, with the suggestion that subsection (b)(1) of section 3 be modified to focus the scope of the Committee's duties on evaluating the judicial appellate review process, as is the stated scope in the title of section 3. This can be accomplished by deleting the words "administrative and" from subsection (b)(1).

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Good morning. Thank you, Mr. Chairman and Members of the Committee, for asking for the views of the U.S. Court of Appeals for Veterans Claims (Court) on two recent bills introduced this year: H.R. 1484 ("Veterans Appeals Improvement Act of 2011") and H.R. 1647 ("Veterans' Choice in Filing Act of 2011"). Because H.R. 1647 (authorizing submission of claims at any regional office) and section 2 (waiver of regional office review of new evidence) of H.R. 1484 concern operations within the purview of the Department of Veterans Affairs (VA), I have no special insight to offer the Committee and leave further comment to the Secretary and Chairman of the Board who would be impacted directly by those provisions.

COMMISSION TO STUDY JUDICIAL REVIEW OF THE DETERMINATION OF VETERANS' BENEFITS

The Board of Judges of the Court fully supports the creation of a Commission to study judicial review of veterans' benefits determinations, as the title of section 3 of H.R. 1484 suggests, and to make recommendations for improvement as required by subsection (h). Indeed, the time is right for a working group to step back and review the judicial appellate review system we have, critically examine its strengths and weaknesses, and identify measures that could benefit the overall judicial appellate review process.

Although not specifically stated in H.R. 1484, I would anticipate and encourage the Commission to weigh the costs and benefits of the unique two-tiered Federal appellate review system currently in place for veterans' benefits decisions. Similar action was taken in the past with regard to the U.S. Court of Appeals for the Armed Forces, whose appeals are now final, subject to certiorari review by the Supreme Court. With two decades of experience in appellate review of veterans' benefits claims, and the resultant seasoned body of case law, it is time to consider the added value of a second layer of Federal judicial appellate review.

No doubt, continued bites at the apple, so to speak, will be sought by some, but at the end of the day, as the Supreme Court recently recognized:

> It is the Veterans Court, not the Federal Circuit, that sees sufficient case-specific raw material in veterans' cases to enable it to make empirically based, nonbinding generalizations about "natural effects." And the Veterans Court, which has exclusive jurisdiction over these cases, is likely better able than is the Federal Circuit to exercise an informed judgment as to how often veterans are harmed by which kinds of notice errors.

Shinseki v. *Sanders*, 129 S.Ct. 1696, 1707 (2009).

Indeed, I suggest it cannot be argued convincingly that a veteran, the taxpayer, or anyone is best served by waiting nearly 2 years to have a decision of the Veterans Court overturned by the Federal Circuit, only to wait approximately another 2 years to have the Federal Circuit overturned by the Supreme Court, as was the situation in the case of *Shinseki* v. *Sanders*, 129 S.Ct. 1696, 1707 (2009), or to have a veteran wait 18 months to have a decision of the Veterans Court upheld by the Federal Circuit, only to wait another 9 months to have that decision overturned by the Supreme Court, as was the situation in the recently decided case of *Henderson* v. *Shinseki*, 131 S.Ct. 1197 (Mar. 1, 2011). Because these cases involve issues of law, their impact is far reaching, often causing cases to be stayed, reconsidered, or readjudicated below. The extra step in the appellate process is unique, time consuming and costly, and worthy of examination for its continued need.

We also support Commission review of whether the Court should have the authority to hear class action or associational standing cases. As the Committee is no doubt aware, the Court early on indicated that it may not have authority to permit a class action suit, but the actual basis for denying the class action to proceed in that case was that it would be unmanageable and unnecessary. *See Lefkowitz* v. *Derwinski*, 1 Vet.App. 439 (1991) (noting that it "appear[s]" Court lacks authority to permit class action, and rejecting class action in that case as unmanageable and unnecessary), Judge Kramer concurring in result (noting that the Court has the authority to grant class action where all petitioners meet jurisdictional requirement, and agreeing that granting such status was unwise on policy grounds as stated by majority). Similarly, the Court has addressed associational standing and determined in a 4–3 decision that the Court did not have the authority to recognize such standing. *See American Legion* v. *Nicholson*, 21 Vet.App. 1 (2007), Judges Kasold, Hagel, and Schoelen dissenting. I recommend both cases to the Committee and the Commission as providing an excellent starting point for identifying and analyzing the issues raised by class action suits and associational standing litigation, which include, inter alia, whether such authority is needed or even helpful, and what effect it might have on the timely judicial review of appeals.

I do note, however, what appears to be a significant disconnect between the scope of the Commission study as laid out in the title of section 3, and the duties of the Commission as stated in subsection (b)(1) of section 3, which includes an evaluation of the "administrative" as well as the "judicial" appellate review processes. The administrative appellate review process involves significantly different issues than the judicial appellate review process, and is not only beyond the scope as designated in the title of section 3, its inclusion within the duties of the Commission very well may place so much within the Commission's purview that it would not permit the detailed focus sought on either the administrative or the judicial appellate review process, particularly not in the time provided.

Indeed, the differences between the administrative and judicial appellate review processes are huge. The administrative appellate review provided to the veteran is part and parcel of the claims adjudication process conducted by VA. The administrative appellate review includes a de novo review of the evidence, the benefit of the doubt in weighing the evidence, and the ability to submit additional evidence. It involves a symbiotic relationship between the Secretary and the veteran, with both parties working to maximize benefits for the veteran, as permitted by law. Perhaps most significantly, these administrative adjudications apply only to the case at hand and set no precedent or policy that must be used to decide future cases.

Judicial appellate review, on the other hand, takes place only after the claim has been administratively adjudicated by VA. Judicial appellate review is limited to a review of the record upon which VA made its decision. Moreover, the parties (the Secretary and party seeking benefits) are adversaries, each arguing that the decision below was either correct or wrong, and that the remedy for any error should be reversal or remand. Judicial appellate review does not permit a substitute of the Court's view for the Board's fact finding, unless such fact finding is clearly erroneous. And, whereas administrative appellate review is focused solely on the application of law as interpreted by the Secretary in the individual case under consideration, judicial appellate review permits interpretations of the law by Federal judges appointed by the President upon the advice and consent of the Senate. In contrast to adjudications by VA, the Court's interpretations of law are precedential, and binding not only in the case at hand, but in all cases decided henceforth by the Secretary and the Board.

Thus, to maintain integrity between the Department of Veterans Affairs claims adjudication process (including the administrative appellate review process) and the judicial appellate review process (which is entirely independent of VA and where the Secretary is one of the adversarial parties), and to permit focused and timely review of the judicial appellate review process, I recommend that subsection (b)(1) of sec-

tion 3 be amended by deleting the words "administrative and", thus focusing the Commission's duties on evaluation of the judicial appellate review process, consistent with the title of the section. Should the Committee believe it is time to study the VA claims, administrative adjudication process, I would recommend a separate Commission be established for such study.

On behalf of the judges of the Court, I thank the Committee for its consideration of our views on this proposed legislation.

Prepared Statement of Diana M. Rubens,
Associate Deputy Under Secretary for Field Operations,
Veterans Benefits Administration, U.S. Department of Veterans Affairs

Mr. Chairman, Ranking Member McNerney, and Members of the Subcommittee, thank you for the opportunity to provide the Department of Veterans Affairs' (VA) views on pending legislation that would affect VA programs: H.R. 811, H.R. 1407, H.R. 1484, and H.R. 1647. I am accompanied today by the Acting Chairman of the Board of Veterans' Appeals, Steven Keller, and Assistant General Counsel Richard J. Hipolit.

H.R. 811

H.R. 811, the "Providing Military Honors for our Nation's Heroes Act," would authorize VA to reimburse a member of a veterans' service organization (VSO) or other organization approved by VA for transportation and other appropriate expenses incurred in connection with the voluntary provision of a funeral honors detail at a veteran's funeral in any cemetery, including a funeral honors detail requested by a funeral home. The bill as drafted would authorize VA to reimburse expenses for honor guards who perform at veteran funeral services, but its scope is not limited to honors performed at VA national cemeteries. While VA appreciates the bill's focus on supporting the provision of funeral honors, VA does not support the bill for the following reasons.

The Department of Defense (DoD), not VA, provides funeral honors details for veterans' funerals. DoD is required by 10 U.S.C. § 1491(a) to provide, upon request, a funeral honors detail at the funeral of any veteran. VA and DoD have successfully partnered to provide funeral honors at VA national cemeteries. Funeral honors at national cemeteries are provided by servicemembers, as well as by VSOs and individual volunteers on behalf of DoD. VSOs and individual volunteers may also perform this service at State veterans cemeteries and private cemeteries. It would be anomalous for VA to reimburse individuals who provide funeral honors details on behalf of DoD.

Reimbursement by VA under H.R. 811 would duplicate reimbursement by DoD, which is currently authorized by statute to reimburse persons who participate in a funeral honors detail, other than a servicemember who is not in a retired status or an employee of the United States, with transportation and expenses or a daily stipend. These volunteers maintain their own log of volunteer hours and expenses. Because DoD is already authorized to reimburse honor guard personnel who are not otherwise being paid for their services, H.R. 811 is unnecessary.

Additionally, H.R. 811 raises significant administrative issues for VA. To comply with H.R. 811, the National Cemetery Administration (NCA) would have to add or reassign cemetery operations staff to manage and verify the time and attendance records of our volunteers and reimburse them for conducting this DoD-administered program. Also, because no funds for this purpose have been identified or included in any VA budget request, reimbursement for this unanticipated expense would most likely have to be provided from NCA's Operations and Maintenance Account, which would divert funds from the essential activities of providing burial operations and maintaining the cemeteries as national shrines.

Finally, by authorizing reimbursement for expenses incurred by one category of volunteers, H.R. 811 would create an inequity between them and other VA volunteers. Volunteers who provide essential services at our VA medical centers, assist families at committal services, place gravesite flags on Memorial Day, and perform landscaping at VA national cemeteries may feel their service is less valued because they receive no reimbursement for their expenses.

VA keeps no data on the number of military funeral honors provided at VA or other cemeteries and defers to DoD for costs associated with reimbursement under H.R. 811.

H.R. 1407

H.R. 1407, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011," would mandate a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency indemnity compensation (DIC) payable for periods beginning on or after December 1, 2011. The COLA would be the same as the COLA that will be provided under current law to Social Security benefit recipients, which is currently estimated to be an increase of 0.9 percent. (As a technical matter, we recommend the year referenced on page 3, line 11 of the bill be corrected to read "2011".) This increase is identical to that proposed in the President's Fiscal Year 2012 budget request to protect the affected benefits from the eroding effects of inflation. VA supports the bill and believes that our veterans and their dependents deserve no less. VA estimates that enactment would result in benefit costs of $329 million for fiscal year 2012.

H.R. 1484

H.R. 1484, the "Veterans Appeals Improvement Act of 2011," would amend 38 U.S.C. § 7104 to improve VA's appeals process and would establish a Veterans Judicial Review Commission to evaluate the administrative and judicial appellate review processes of veterans' and survivors' benefits determinations. As discussed below, section 2 of this legislation has a common theme with a provision in a draft bill Secretary Shinseki submitted to Congress in May 2010, and VA asks the Subcommittee to review that proposal in connection with H.R. 1484.

Section 2

Section 2 of this bill would amend 38 U.S.C. § 7104 to require that new evidence submitted by a claimant after filing a substantive appeal be submitted to the Board of Veterans' Appeals (Board), unless the claimant requests that the evidence be reviewed by a VA Regional Office (VARO) before being submitted to the Board. This new procedure would be applicable to evidence submitted on or after the date 90 days after the date of enactment.

VA fully supports the basic concept behind section 2, namely the automatic waiver of agency of original jurisdiction (AOJ) consideration of evidence submitted by a claimant following perfection of an appeal to the Board, unless the claimant or the claimant's representative expressly chooses not to waive initial consideration by the AOJ. However, as currently drafted, section 2 would fall short of providing such an automatic waiver. Specifically, as explained in more detail below, the language of section 2 is inadequate in the following ways: (1) it addresses where evidence should be submitted instead of which office should consider it; (2) it fails to account for the fact that claimants' representatives, rather than claimants themselves, often submit evidence; (3) it fails to account for offices in VA, other than VAROs, that make decisions appealable to the Board; and (4) it fails to require that, if a claimant wants an AOJ, not the Board, to initially consider evidence, the claimant or representative must make that request when submitting the evidence.

The establishment of an automatic waiver would improve the timeliness of appeals processing as a whole. With an automatic waiver provision the AOJ could, in the absence of other development requirements, transfer appeals more quickly to the Board following the receipt of a substantive appeal, spending less time responding to claimants who submit additional evidence after filing a substantive appeal.

Currently, an AOJ may not transfer an appeal to the Board until it has made a decision based on all evidence in the file, including all new evidence. If a claimant submits new evidence after filing a substantive appeal, the AOJ prepares a multipage supplemental statement of the case (SSOC), which largely reiterates content from the previously issued statement of the case. If the AOJ's prior decision is unchanged, the SSOC explains why the new evidence does not alter that decision.

After sending a claimant an SSOC, the AOJ must allow the claimant an additional 30 days to respond. If the claimant responds with more evidence, the process of review, SSOC, and 30 days to respond is repeated. This back-and-forth cycle sometimes occurs several times, and many veterans are unaware that they are delaying the Board's review of their appeal simply by submitting new evidence. Furthermore, the new evidence submitted often has no bearing on the issue on appeal. For example, if a veteran must prove that a current disability is related to service, evidence of recent treatment for the disability, without any mention of the disability's origin, is immaterial to the appeal. Nevertheless, under current law, the AOJ must review the evidence, issue a SSOC, and provide 30 days for the claimant to respond. The submission of such evidence unnecessarily prolongs the appeals process without resulting in a changed outcome.

The Board is already tasked with conducting a *de novo* review of all the evidence in the file. However, under current law, if new evidence is submitted directly to the Board without a waiver of initial consideration by the AOJ, the Board must remand the case to the AOJ to consider the new evidence in the first instance. With an automatic waiver, the Board would avoid time-consuming remands in cases when the appellants submit evidence directly to the Board without an explicit waiver of AOJ consideration, thereby getting final decisions to veterans more quickly and reducing the increased appellate workload caused by the reworking of remanded claims.

As mentioned above, the language of section 2 is inadequate to establish an effective automatic waiver. VA therefore requests that the language of section 2 be replaced with a provision of a legislative proposal the Secretary of Veterans Affairs submitted to Congress on May 26, 2010. VA's proposed language is better than that of section 2 for the following reasons.

Section 2 would require that evidence submitted by a claimant after filing a substantive appeal be submitted to the Board. Directing claimants to submit evidence directly to the Board would not clearly permit the Board to consider such evidence in the first instance. Existing law precludes the Board's initial consideration of evidence submitted in connection with a claim, unless the claimant waives the right to initial consideration by the AOJ. Under existing case law, evidence must first be considered by the AOJ in order to preserve a claimant's statutory right under 38 U.S.C. § 7104 to "one review on appeal," which the Board provides on behalf of the Secretary. Given the current statutory scheme, to be effective, a waiver provision must permit the Board to review evidence without initial review by the AOJ, rather than address where the evidence may be submitted.

VA also recommends that section 2 be expanded to apply to evidence submitted by both representatives and claimants, not just claimants. Claimants often provide evidence to their designated representatives for submission to VA. Expanding the automatic waiver provision to evidence submitted by representatives on behalf of claimants will ensure that the waiver applies to evidence submitted by representatives.

Moreover, section 2 is directed toward VAROs only. However, initial decisions appealable to the Board are also made by other VA components, including NCA, VA's Office of the General Counsel, and the Veterans Health Administration. To better account for other offices in VA that make decisions appealable to the Board, and to make the waiver provision applicable to evidence submitted in connection with decisions made by those offices, the waiver should be directed at *AOJ* review of evidence, not VARO review. The term "AOJ" includes not only ROs, but also other VA components that make decisions appealable to the Board.

Finally, VA also recommends revising section 2, to avoid inefficiencies in appeals processing, by clarifying that requests for initial AOJ review must be made concurrently with the submission of evidence. As currently drafted, section 2 would allow claimants to request AOJ review of new evidence they submit, at any time following the filing of a substantive appeal. If a claimant requested AOJ review after the case was transferred to the Board, the Board would have to return the case to the AOJ, possibly after having expended considerable resources in adjudicating the appeal. This result would be both inefficient and counter to the underlying purpose of the waiver provision.

Therefore, VA recommends that section 2 of H.R. 1484 be replaced with the following language from VA's legislative proposal:

> **AUTOMATIC WAIVER OF AGENCY OF ORIGINAL JURISDICTION REVIEW OF NEW EVIDENCE.**
>
> Section 7105 [of title 38, United States Code] is amended by adding at the end the following new subsection:
>
> "([e]) If, either at the time or after the agency of original jurisdiction receives the substantive appeal, the claimant or the claimant's representative submits evidence to either the agency of original jurisdiction or the Board of Veterans' Appeals for consideration in connection with the issue or issues with which disagreement has been expressed, such evidence will be subject to initial review by the Board of Veterans' Appeals unless the claimant or the claimant's representative, if any, requests in writing that the agency of original jurisdiction initially review such evidence. Such request for review must accompany the submission of the evidence."

This provision of the Secretary's draft bill addresses each of VA's concerns with section 2 of H.R. 1484 while accomplishing its underlying purpose.

Section 2 would have no measurable monetary costs or savings, but has the potential to expedite adjudication of appeals at both the AOJ and the Board if the draft statutory language is revised as recommended. Furthermore, amending 38 U.S.C. § 7104 with the statutory language proposed by Secretary Shinseki would result in significant labor savings. VA currently issues more than 60,000 SSOCs per year. Enactment of the Secretary's proposal would eliminate the need to prepare many of these SSOCs, allowing the Veterans Benefits Administration to focus additional resources on more timely appeals processing. This would free up considerable resources in the VAROs and the Appeals Management Center to focus on key appeal activities such as promulgation of appeal grants and certification of appeals to the Board.

This proposal would also prevent more than 1,600 remands from the Board per year for cases already before the Board in which a claimant submits additional evidence to VA but fails to waive initial AOJ consideration of that evidence. Under existing law, in such cases, the Board must remand the case to the AOJ for the issuance of a SSOC addressing the newly submitted evidence, unless the Board grants the claim in full. By eliminating these remands, the proposal would allow the Board to use this time instead to issue more final decisions. The potential benefits—better service to our veterans and improved performance of all VAROs—fully justify the enactment of this proposal as submitted to Congress on May 26, 2010.

Section 3

Section 3 of H.R. 1484 would establish the "Veterans Judicial Review Commission" (Commission) to evaluate the administrative and judicial appellate review processes of veterans' and survivors' benefits determinations and make specific recommendations and offer solutions to improve the accuracy, fairness, transparency, predictability, timeliness, and finality of such appellate review processes, including a recommendation as to whether the Court of Appeals for Veterans Claims (Veterans Court) should have the authority to hear class action or associational standing cases.

VA does not support section 3. The administrative and judicial appellate review processes have been the focus of extensive studies and Congressional hearings that have resulted in a number of recommendations. While VA appreciates the aims expressed in section 3, we believe the Commission would duplicate the ongoing work of VA, the Congress, VSOs, and others who are now able to engage in policy discussions aimed at improving the claims process.

With regard to whether the Veterans Court should have the authority to hear class action or associational standing cases, such authority would not be beneficial because the outcome of each veteran's case depends largely on the specific facts of each case. Thus, class action suits would not increase efficiency by enabling the Veterans Court to deal with a large number of claims simultaneously. Furthermore, class actions are susceptible to collateral litigation over issues such as commonality, typicality, adequacy of counsel, and notice, diverting scarce judicial resources. Collateral litigation results in a loss of efficiency with respect to the resolution of individual claims. In addition, class actions are unnecessary because, under rules already in place, potential members of a "class" receive the benefit of a precedent decision of the Veterans Court, whether it controls because of identity of facts and issues, or due to a logical extension of the earlier decision. In the interest of economy and efficiency, the Veterans Court has often exercised its already existing authority to consolidate cases and to stay cases, where there are questions of law or fact common to multiple appeals. In this context, class action authority is unnecessary because it would be largely redundant.

Section 3 would not appear to have any direct cost to VA as the Commission's expenses would not be paid out of VA's budget.

H.R. 1647

H.R. 1647, the "Veterans' Choice in Filing Act of 2011," would require VA to carry out a 2-year pilot program under which certain veterans may submit claims to any VARO. The veterans who would qualify for this privilege are those whose claims would otherwise be submitted to any one of five VAROs determined by the Secretary to be below average in performance. The bill would require VA to promptly notify each qualifying veteran of the opportunity to participate in the program.

H.R. 1647 would also require VA to report to Congress the five VAROs selected on the basis of below average performance and the rationale for selecting them. Within 90 days after the pilot program's completion, VA would be required to submit to Congress a final report on the pilot program including recommendations with respect to the allocation of resources among VAROs.

VA opposes this bill because conducting this pilot program would not benefit VA claimants by improving either the efficiency or quality of the VA benefit-claims process. Of primary importance is the danger that the program will create forum shopping. The program would permit claimants under the jurisdiction of one of the five VAROs selected to submit their claims to any VARO if they are dissatisfied or unhappy with the claim process or outcome at their "home" VARO, regardless of the reason for their dissatisfaction, so long as they would normally have to submit their claims to one of the five VAROs selected on the basis of below average performance. Information about which VARO is perceived to be best could easily be manipulated by Internet-driven rumor and opinion, rather than verified statistical information, further contributing to the notion that VA claimants should shop for the "best" VARO. The expectations about speed and outcomes created by such legislation would likely only frustrate claimants. As noted below, VA's energies are best spent on systemwide efforts to improve performance at all VAROs. VA has especially focused on VAROs that have historically been on the low end of critical performance standards.

Under the existing statutory authority, VA distributes, or brokers, claims among VAROs based upon workload and other factors when necessary and feasible. VA determines whether to broker cases in or out of VAROs based upon various factors, including the allocation of workload and resources at those offices. If VA claimants were to determine where to file claims, many VAROs might not be equipped to handle the unexpected workload that would result. VAROs could not predict changing workload demands and sufficiently hire and train employees to timely adjust to these changes.

This experimental pilot program would also interrupt VA's transformational efforts to reduce the claims backlog while achieving optimum quality. VA is undertaking numerous programs to investigate methods to improve claims-processing efficiency. In addition, VA has designated certain VAROs to have exclusive jurisdiction over specific types of claims. Examples of these types of claims are pension claims, radiation claims, and certain Agent Orange claims. This pilot would interrupt our efforts to assess the viability and success of VA's transformation efforts.

VA also opposes this bill because of its potential negative impact upon the scheduling and conducting of medical examinations, which by necessity are scheduled in the medical center closest to the veteran's home. The claims file must be sent for review by the examiner. Currently, examiners and decision makers are co-located within the medical center and VARO of jurisdiction, but in a forum-shopping program, the examination could be conducted in a location far from the decisionmaking office. The additional movement of claims files that would be necessary under this bill would be inefficient and would create some risk of losing documents or entire files.

H.R. 1647's requirement to promptly notify each qualifying veteran of the opportunity to file claims at any VARO would create an administrative challenge. After selecting the five VAROs with below average performance, VA would have to identify all of the veterans whose claims would otherwise be filed at one of those VAROs, even if they have not yet filed any claim with VA, just to notify them of their eligibility to participate in this pilot program.

Finally, VA has very strong concerns about the concept that there would be five designated VAROs whose performance is "below average." First, the nature of an average is such that there would always be some VAROs whose performance is above average and other VAROs whose performance is below average. That is inherent in the definition of an average. Furthermore, many factors may affect both the quality and production of a VARO at various times. This proposed pilot's implication to both claimants and VA employees is that the VAROs selected on the basis of below average performance are branded substandard. Creating such a high-profile negative designation would devastate employee morale and damage VA's extensive ongoing efforts to improve performance across the Veterans Benefits Administration so as to better serve veterans.

VA cannot determine potential costs associated with H.R. 1647 due to the unavailability of data.

This concludes my statement, Mr. Chairman. VA appreciates the opportunity to share our views on the proposed legislation, and we would be happy to entertain any questions you or the other Members of the Subcommittee may have.

Prepared Statement of Kathryn A. Condon,
Executive Director, Army National Cemeteries Program,
Department of the Army, U.S. Department of Defense

INTRODUCTION

Mr. Chairman, Ranking Member McNerney, and distinguished Members of the Subcommittee, thank you for the opportunity to provide the Department of the Army's views on H.R. 1441, H.R. 1627 and H. Con. Res. 12.

Arlington National Cemetery is both the most hallowed burial ground of our Nation's fallen and one of the most visited tourist sites in the Washington, DC, area. A fully operational national cemetery since May 1864, Arlington National Cemetery presently conducts an average of 27 funerals each workday—final farewells to fallen heroes from the fronts of Iraq and Afghanistan, as well as to veterans of World War II, the Korean conflict, Vietnam and the Cold War and their family members. While maintaining the honor, dignity and privacy of each graveside service, Arlington National Cemetery hosts approximately 4 million guests annually. This duality of purpose serves to bring the national shrine of Arlington National Cemetery, and the sacrifices of those buried there, closer to the American people. On behalf of the cemeteries and the Department of the Army, I would like to express our appreciation for the support that Congress has provided over the years.

H.R. 1441

H.R. 1441 would amend title 38, United States Code, to codify the prohibition against the reservation of gravesites at Arlington National Cemetery. As drafted, H.R. 1441 would prohibit more than one gravesite per eligible veteran and would also prohibit gravesite reservations prior to the time of need with an exception for written "requests" for a reserved gravesite made prior to January 1, 1962, regardless of current eligibility requirements.

Current Army regulations establish a "one-gravesite-per-family" policy. This rule has been in effect since 1961. One important element of Army policy is that the Army may allow exceptions to the "one-gravesite-per-family" policy when strict adherence to the policy is not feasible. This policy is set forth at 32 CFR § 553.18(a) and Army Regulation 290–5 § 2–5(a). H.R. 1441, as drafted, does not, but in the Department's view should, provide the Secretary of the Army with the requisite authority to make an appropriately justified exception to the "one-gravesite-per-family" policy. The Army recommends modifying H.R. 1441 accordingly.

Similarly, the Army currently prohibits reserving gravesites prior to time of need and does not honor gravesite reservations unless (1) the reservation was made in writing before the "one-gravesite-per-family" policy was established, (2) an eligible person was interred before the one-gravesite-per-family policy was established, and (3) the person holding the reservation for the adjacent gravesite is eligible for interment at Arlington National Cemetery under current Army eligibility rules. This policy is set forth at 32 CFR § 553.18 and Army Regulation 290–5 § 2–5. This exception to the prohibition on reservations is necessary because prior to the "one-gravesite-per-family" policy, individuals were not interred at depths that would accommodate two or three subsequent burials in the same gravesite like they are today.

As drafted, proposed section 2410A(b) in H.R. 1441 reflects the Army's current policy prohibiting reservations. Section 1(c)(2) of H.R. 1441, however, creates an exception to the prohibition on reservations for those who have a "written request for a reserved gravesite [that] was submitted to the Secretary of the Army before January 1, 1962." This exception would alter current Army policy by allowing reservations for those with only a reservation request rather than an approved reservation before 1962. The requirement for a valid reservation, not just a request, is necessary to implement H.R. 1441.

The Department has no objection to the reporting requirement contained in section 1(d) of H.R. 1441.

H.R. 1627

H.R. 1627 would amend section 2409 of title 38, United States Code, to provide for certain requirements for the placement of monuments in Arlington National Cemetery, and for other purposes. As drafted, H.R. 1627 codifies what is already Army policy regarding commemorative memorials at Arlington National Cemetery with one notable exception. Currently, "commemorative monuments" (monuments that commemorate an individual, group or event (in contrast to "individual memorial markers" authorized by 38 U.S.C. § 2409)) may be placed in Arlington National Cemetery only after they are authorized by a joint or concurrent resolution of Con-

gress. This policy and rule is promulgated at 32 CFR § 553.22(l). As drafted, H.R. 1627 does not address the Army's current policy requiring joint resolution by Congress before a new "commemorative monument" is authorized to be placed within Arlington National Cemetery. The Department would not oppose H.R. 1627 if amended to clearly articulate the requirement that Congress authorize, by joint or concurrent resolution, all "commemorative monuments" prior to placement in Arlington National Cemetery.

The Army does not read the proposed amendment to § 2409 to alter, or in any way affect, the placement of "individual memorial markers" for servicemembers and veterans pursuant to § 2409.

H. CON. RES. 12

H. Con. Res. 12 expresses the sense of Congress that an appropriate site on Chaplains Hill in Arlington National Cemetery should be provided for a memorial marker to honor the memory of Jewish chaplains who died while on active duty in the Armed Forces of the United States. Reliance on a Congressional resolution to authorize placement of a commemorative monument at Arlington National Cemetery is consistent with current Army policy. Although H. Con. Res. 12 grants the Secretary of the Army "exclusive authority to approve the design and site of the memorial marker," because the language does not preclude or address the Army's current policy to consult with the Commission of Fine Arts, the Army would still require the proposed commemorative monument to undergo review by the Commission.

Although the Department does not take a position on the merits of this or any other proposed commemorative monument prior to Congressional authorization, the Army stands ready to execute the intent of Congress upon passage of the concurrent resolution.

CONCLUSION

The Department, as a general proposition, supports the codification of current Army rules and policy pertaining to the operation and management of Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery. H.R. 1411 and H.R. 1627 both attempt to codify existing rules and or policy. The Department does not oppose the proposed codifications (H.R. 1411, H.R. 1627), subject to points of clarification discussed above. The Army has no objection to H. Con. Res. 12 and would be prepared to facilitate Congressional intent consistent with current policy if enacted.

Mr. Chairman, this concludes my testimony. I will gladly respond to any questions that you or the Subcommittee Members may have.

Statement of Paralyzed Veterans of America

Mr. Chairman and Members of the Subcommittee, on behalf of Paralyzed Veterans of America (PVA), we would like to thank you for the opportunity to submit a statement for the record regarding the proposed legislation. We appreciate the fact that you continue to address the broadest range of issues with the intention of improving benefits for veterans. We particularly support any focus placed on meeting the complex needs of the newest generation of veterans, even as we continue to improve services for those who have served in the past.

PVA members represent one of the segments of the veteran population that benefit most from the many ancillary benefits provided by VA. Without the provision of benefits such as Special Monthly Compensation (SMC), our members, and other severely disabled veterans, would experience a much lower quality of life and would in many cases be unable to live independently.

H.R. 811, the
"Providing Military Honors for Our Nation's Heroes Act"

PVA does not oppose H.R. 811, the "Providing Military Honors for our Nation's Heroes Act." This legislation would authorize the Secretary of Veterans Affairs (VA) to reimburse a member of a veterans' service organization or other organization approved by the Secretary for transportation expenses incurred while volunteering services during funeral honors detailed to a veteran and funeral honors requested by a funeral home.

This bill would also authorize volunteers from veterans' service organizations (VSOs) and other organizations to be reimbursed for expenses associated with travel

and uniform cleaning. Current law does not reimburse members of the VSOs for service without having military representation. This simply means that VSOs and other volunteers can assist the military by providing color guard details and be reimbursed for expenses incurred. While PVA has no resolution from our membership, we do not oppose this legislation.

H.R. 1407, the
"Veterans' Compensation Cost-of-Living Adjustment Act of 2011"

PVA supports H.R. 1407, the "Veterans' Compensation Cost-of-Living (COLA) Adjustment Act of 2011," that would increase, effective as of December 1, 2011, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. This would include increases in wartime disability compensation, additional compensation for dependents, clothing allowance, and dependency and indemnity compensation for children. This legislation also includes language specific to rounding each dollar amount increased, if not a whole dollar amount, shall be rounded to the next lower whole dollar amount.

For the past 2 years, there has been no increase in compensation or DIC rates due to the Social Security index not increasing. While our economy has been in disorder, veterans personal finances have been affected by rising costs of essential necessities to live from day-to-day maintaining a certain standard of quality of life. PVA supports enactment of this legislation so our veterans receive COLA, this year but also urges Congress to enhance language to include an automatic annual COLA, compensation for non-work disability, and the loss of quality of life.

Mr. Chairman, PVA also urges Congress to consider the position of *The Independent Budget* (IB) to implement the recommendation made by the Dole-Shalala Commission, Institute of Medicine (IOM), and the Veterans Disability Commission (VDBC) to enhance disability compensation for non-work disability and the loss of quality of life. Specifically, non-work refers to the veterans limited ability to engage in normal functions and activities other than work such as social, physical, and psychological. This issue needs to be addressed so our Nations veterans can be compensated from the impact on loss of quality of life.

H.R. 1441

PVA does not oppose H.R. 1441, legislation that would codify the prohibition against the reservation of gravesites prior to death at the Arlington National Cemetery. This bill would also prohibit multiple gravesites from being reserved for a servicemember or veteran who is eligible for interment, being one gravesite per family.

H.R. 1484, the "Veterans Appeals Improvement Act of 2011"

H.R. 1484, the "Veterans Appeals Improvement Act of 2011" seeks to improve the appeal process. Section 2 of the bill would allow a claimant to submit new evidence to support an appeal case that was previously filed, directly to the Board of Veterans' Appeals (Board) and not to the claimants VA Regional Office. This legislation does allow for the claimant to request VA Regional Office consideration of the new evidence, if the claimant prefers.

PVA strongly supports approval of this legislation, which would be very beneficial to the veteran as well as the Board. It would allow a claimant to submit new or supplemental evidence directly to the Board instead of submitting it and requiring numerous other steps at a VA Regional Office. Submitting to a VA Regional Office is very time consuming and initiates long delays in the adjudication process.

While we support section 2 of the bill, PVA does not support other sections as written. At this time we question whether the creation of another study is warranted or appropriate.

H.R. 1627

H.R. 1627, provides clarification on the requirements for placement of monuments in Arlington National Cemetery. This bill will clarify specific requirements related to the purpose and type of monument requested. In addition, the legislation outlines the requirements and authorization process in which sponsoring individuals or organizations put forth a request. While PVA does not have a position, we do not oppose this legislation.

H.R. 1647, the "Veterans Choice of Filing Act of 2011"

H.R. 1647, the "Veterans Choice of Filing Act of 2011," directs the Secretary of Veterans Affairs to carry out a pilot program under which certain veterans may submit claims for benefits under laws administered by the Secretary to any regional office of the Department of Veterans Affairs. This particular pilot program would be authorized for 24 months and would allow the veteran who is served by a poor performing VA regional office the option to submit a claim for benefits to any regional office of their choosing. In the proposal, five regional offices would take part in the program.

PVA believes this legislation has very few specifics regarding the purpose of the program and implementation. It appears the bill is intended to gauge improvements of certain poor performing VA regional offices.

While PVA does not oppose this bill, we cannot support it at this time. We have been working with numerous VSOs and VBA to comprehensively improve and streamline the claims processing system. Currently, VBA has numerous pilot programs under way as well as a redesigning measure of the IT systems used to initiate the claims process. PVA believes while good measure is being taken, there is a possibility that by inserting another pilot program may interfere with VBA's ability to manage their workload and achieve results.

PVA would like to work with the Subcommittee and other VSOs to better develop initiatives that address the current needs of our veterans while measures are being met in a performing claims processing system. It is important that VBA continues to enhance, develop, and deploy the VBMS program. The program we look forward to is one that will allow timeliness and quality to be met in one system. PVA as well as other VSOs want quality control programs to be a priority. PVA stands ready to assist in achieving these benchmarks.

H. Con. Res. 12

Finally, H. Con. Res. 12, would articulate the intent of Congress to honor the memory of the Jewish chaplains who have died while on active duty with the placement of a memorial marker on Chaplains Hill in Arlington National Cemetery. Currently, PVA does not have a position, but does not oppose this legislation.

Mr. Chairman and Members of the Subcommittee, PVA would once again like to thank you for the opportunity to provide our views on veterans' legislation. We look forward to working with you to continue to improve these benefits for our veterans.