

STATEMENT OF
THE HONORABLE MARGARET BARTLEY, CHIEF JUDGE
U.S. COURT OF APPEALS FOR VETERANS CLAIMS

FOR SUBMISSION TO THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON MILITARY CONSTRUCTION, VETERANS AFFAIRS,
AND RELATED AGENCIES

MAY 5, 2021

CHAIRWOMAN WASSERMAN SCHULTZ, RANKING MEMBER CARTER, AND
DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear before you via videoconference, present testimony on the fiscal year (FY) 2022 budget request of the United States Court of Appeals for Veterans Claims, and share a brief overview of the Court and its mission, caseload, and operations.

I. Budget Request

The Court's FY 2022 budget request totals \$41,700,000. This request is comprised of two parts – the Court's necessary expenses of \$38,314,896, and a request by the Veterans Consortium Pro Bono Program (Pro Bono Program) of \$3,385,104. Since FY 1997, the Pro Bono Program's budget request has been provided to Congress as an appendix to the Court's budget request, although the Court functions merely as a pass-through for this funding. Thus, I offer no comment on the Pro Bono Program's portion of our budget request.

As to the Court's necessary expenses, our FY 2022 request of \$38,314,896 reflects an increase of \$4,502,000 over the FY 2021 authority. This growth is spread over three categories – an increase of \$695,000 in personnel compensation and benefits, an increase of \$1,007,000 in operating expenses, and an increase of \$2,800,000 in necessary contributions to the Judges Retirement Fund.

Specifically, for FY 2022, the Court requests \$22,697,000 for Personnel Compensation and Benefits. The Court's personnel and benefits appropriation covers salary, health benefits, insurance, employee matching contributions to the Thrift Savings Plan, and routine promotions and cost-of-living adjustments for all Court employees. The FY 2022 request covers funding for 139 full time employees (FTEs), to include continued funding for nine active judges and their chambers, and a request for two new FTEs in FY 2022. Although the Court has permanent authorization for seven judges, in 2009, in light of the growth in the Court's caseload, Congress temporarily authorized an increase to nine active judgeships pursuant to 38 U.S.C. § 7253(h) and (i). That expansion is currently authorized through calendar year 2025. With the current and continued surge in appeals, the Court is fortunate at present to be fully staffed with nine judges.

The two new positions requested for FY 2022 are one staff attorney for the Court's Central Legal Staff (CLS), and one docket clerk for the Court's Public Office. These positions are necessitated by the increased number of appeals being filed at the Court. Appeals filed have doubled since FY 2017 and since then we have incrementally added 11 FTEs across the Court and converted some positions to support more efficient processing of our cases. CLS staff attorneys conduct pre-briefing conferences with the parties, prepare orders and memoranda, and analyze case trends. Through their efforts, more than half of the Court's appeals reached a joint resolution in FY 2020, and as the number of filings at the Court increases, so too does the number of conferences. An additional staff attorney is necessary for CLS to sustain its workload. The other FTE request is for a docket clerk, whose duties include opening cases, closing cases, and making all docket entries. The increased volume of our docketing requirements necessitates increased support. In addition to the current docket clerk FTE request, and in light of the growing shift away

from paper mail to electronic submissions, we are converting an existing mail clerk position to a docket clerk, further increasing our docket clerk capability.

For FY 2022, the Court requests \$8,318,000 for all other operation expenses ("Other Objects"), an increase of \$1,007,000 from FY 2021. These funds are used to satisfy the Court's daily operational needs, and to cover such expenses as rent, communication and utility expenses, contract services, equipment, furniture, supplies, subscriptions, travel and transportation, and printing expenses. Funding in this category also allows the Court to maintain essential service agreements and support enhanced IT initiatives aimed at stability, accessibility, and security. Additionally, the Court's judicial conference is scheduled for FY 2022, and funding in this category will support potential virtual access for participants as well as other necessary conference expenditures. The increase in Other Objects for FY 2022 is primarily due to the expiration of a FY 2021 one-time new lease credit of \$1,000,000 from the General Services Administration, attributable to renewal of our commercial office lease.

For FY 2022, the Court requests \$7,300,000 to be used for the statutorily required contribution to the Court of Appeals for Veterans Claims Retirement Fund (Judges Retirement Fund). This request reflects an increase of \$2,800,000 over the FY 2021 amount. Per title 38 U.S. Code, section 7298, the Chief Judge of the Court is charged with securing an "annual estimate of the expenditures and appropriations necessary for the maintenance and operation of the fund." The Court contracts with an actuary to provide guidance on compliance with obligations related to maintaining the Judges Retirement Fund, and the FY 2022 budget estimate is based on that actuarial estimate. Two calculations that the actuary performs in making her estimate are primarily responsible for the request increase. First, and most significant, reduced gains are expected on the

Retirement Fund's investments, which are statutorily restricted to government securities, because of projected low interest rates and returns on those investments. Second the actuary updated her projection of the Court's obligation in light of the ages and expiration of terms of service of the active and retired judges and eligible survivors, including the Court's two new judges appointed in 2020. Per the actuary's most recent calculations, the Court will need to deposit \$7,300,000 into the Judges Retirement Fund in FY 2022 to eliminate any unfunded liability per 38 U.S.C. § 7298.

II. The Court's Caseload and Operations

In 1988, Congress established the Veterans Court as a national appellate court to provide independent judicial review of final Department of Veterans Affairs (VA) decisions as to veterans benefits. For many years prior to 1988, the veterans' benefits process operated without veterans having the right to independent judicial review of final VA decisions on their claims.

Since its creation, the Court has been one of the busiest federal appellate courts based on the number of appeals filed and decided per judge. From FY 1999 through FY 2004, when the Court had seven judges, approximately 200 cases per month were filed at the Court, or roughly 2,400 appeals annually. The caseload steadily grew and by FY 2008 we were averaging 376 cases filed per month. In response to that increase, in December 2009 the Court's active judge authorization was temporarily increased to nine judges, and that expansion has been continually reauthorized. In FY 2018, the appeals filed at the Court surged dramatically and we saw 6,802 appeals filed in FY 2018, up from 4,040 the year before. In Fiscal Year 2020 the Court saw the highest number of appeals ever filed – 8954 appeals, for an average of just shy of 750 appeals per month.

Historically our caseload rises with the Board of Veterans' Appeals (Board) decisional output, which has doubled over the last five years and led to the increase in our appeals numbers. We are also keenly watching for any impact on our Court of the Veterans Appeals Improvement and Modernization Act of 2017 (AMA). We believe that the need for nine judgeships is permanent. In fact, there is a very real possibility that nine judges may not be sufficient if our growth trend continues. But with the additional FTEs requested for FY 2022 plus the position that was converted, and building on the additional FTEs we have added or converted over the past several years, we feel we will be adequately positioned to meet anticipated demands.

In FY 2020 the Court resolved 8,430 appeals – another all-time record. We appreciate having the means and personnel to operate at full judicial strength with nine active judges and fully staffed chambers. Their collective effort, with the assistance of our Senior Judges, and the sustained high percentage of cases resolved through the pre-briefing mediation conferences, are allowing us to keep pace with our sustained high caseload. The Court, as an independent judicial body above VA, has avoided backlogs such as those that have plagued VA.

I took over as Chief Judge in December 2019, and just three months later the Court faced the restrictions imposed by the COVID-19 pandemic. I feel incredibly fortunate that the Court's prior leadership, with the support of our Congressional Committees, made continuity of operations procedures a priority over the past several years. We had systems, equipment, and security in place to enable us to seamlessly pivot to remote work. Other than a handful of employees responsible for necessary onsite work such as paper mail processing and maintaining facility and IT systems, our work force transitioned to remote operations in March 2020. We are able to securely docket and work on cases electronically and we successfully continue to process cases, receiving and

deciding record numbers of appeals this past year, as noted. Following initial cancellation of a few oral arguments last spring, we rescheduled and transitioned to telephonic and then video oral arguments. We continue in this vein at the current time. We also modified some procedures to promote a greater number of electronic filings from unrepresented parties. The overall feedback from practitioners and constituents has been positive.

Also worth noting is that the Court continues to gain experience in hearing class actions. After tremendous practitioner and staff input, the Court adopted class action rules in 2020, and in FY 2020 we received four additional requests for class certification and we certified two classes. An outside Special Master is providing service in one ongoing class action matter.

III. Conclusion

In closing, on behalf of the judges and staff of the Court, thank you for your past and ongoing support of our mission to provide full, fair, and prompt judicial review of veterans benefits decisions, and for ensuring that we have necessary resources. And thank you for the opportunity to provide this testimony today.