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*FERES DOCTRINE—A Policy in Need of Reform?*

Testimony of Richard  
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Before the House Committee on Armed Services  
Subcommittee on Military Personnel

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Chairwoman Speier, Ranking Member Kelly, and Members of the Subcommittee:

I am grateful for your support Chairwoman Speier and thank you for the opportunity to appear before you today and the Subcommittee to present my story. I very much appreciate being invited to testify about the *Feres* Doctrine. This is the first time I have testified before Congress and I wish it could have been under a different set of circumstances. Nonetheless, I am here to share my story of how this antiquated doctrine has affected my, and my family's lives, in an effort to convince members of Congress why they must act and enact legislation that will prevent any further injustices, that result all too frequently from the *Feres* Doctrine.

I feel this is a very important issue to the Military community that requires Congressional intervention to address and fix how this mistaken doctrine is used to strip hundreds of service members, like myself, and their families, of the same rights that the rest of the citizens of our Country have when it comes to medical malpractice.

By way of introduction, I am a Marine, and currently serving as Green Beret with the Army Special Forces, stationed at Fort Bragg, NC. I've devoted my entire career to the military, with this June marking my seventeenth (17<sup>th</sup>) year of service. I first enlisted into the United States Marine Corps in 2001 and served as a machine gunner and scout sniper for four years. During my 2004 tour to the Al Anbar Providence Ramadi, Iraq, I was critically wounded in action by heavy insurgent sniper fire. Following my recovery I was honorably discharged from the Marine Corps in 2005.

In 2006 I enlisted into the United States Army and served four months as an Infantryman with the 101<sup>st</sup> Airborne Division at Fort Campbell, Kentucky before attending the Special Forces Assessment and Selection (SFAS). After my completion of SFAS, I was selected to attend the Special Forces Qualification Course and was subsequently awarded the Green Beret and Military Occupational Specialty of 18B Special Forces Weapons Sergeant.

By 2008, I was assigned to the 10th SFG (A) in Fort Carson, Colorado and later assigned to the 1<sup>st</sup> Special Warfare Training Group (A) at Fort Bragg North Carolina in 2015. I have been on multiple deployments throughout special operations central command, special operations command Africa, and special operations command Europe areas of responsibility in support of national interests during the global war on terrorism. I have held numerous positions throughout my military career including: Infantry rifleman, infantry team leader 101AB, Special Forces senior weapons sergeant on a maritime operational detachment alpha, cell leader in a reinforced Special Forces company, and Special Forces senior sniper instructor and program of instruction writer.

I was selected by the Army Special Forces Group to attend Special Forces Under Water School/ Combat Dive Qualification Course (CDQC). Because of my previous gunshot wound, I was required to have CT imaging done on my lungs as part of the required dive school physical examination on January 27, 2017, at the Womack Army Medical Center in Fort Bragg. A civilian physician reviewed my CT scan and cleared me for dive school. It wasn't until six months later that I found out that the Womack doctor failed to identify an abnormally (over 1.5 cm) large tumor located in the right upper lobe of my lung.

While, attending Dive School around the end of March 2017, I was experiencing difficulty breathing and by April 2017 I began noticing signs of his health declining rapidly. I was wheezing and

was having difficulty breathing anytime I would lay flat on my back. I had also began coughing up a bit of blood around this time. I'm not one to complain but I started to express my concerns to my wife Megan and some of the guys at work. Finally, the symptoms got the best of me, and by May 15, 2017, I was taken to the ER at Womack Hospital from the SWCS Clinic by ambulance where I was brought in on a gurney and placed in the waiting room after I described my difficulty breathing and chest pain. I was on the verge of passing out, when I had my vitals taken in preparation to be seen in the ER. I explained my symptoms to the nurse and was told it was highly unlikely that anything could be wrong with me due to my age. The nurse basically disregarded all of my symptoms when she asked why I was there to be seen. The ER doctor then completed an x-ray and didn't find anything but thought my symptoms were associated with walking pneumonia. It wasn't until about a month or two later that I found out that prior to me being discharged, another ER doctor had done a retrospective reread of the original CT scan completed for my physical on January 27, 2017, and noted that a mass about 2.8 x 2.2 cm was present on right upper lung at the time of the CT Scan and that a follow up should be scheduled for me. However, I was never informed of this until a few months later, and no follow up was ever scheduled for me.

After leaving the ER I knew something wasn't right so I called the pulmonary clinic on based and begged to be seen, but I was told that they could not get me in and there was nothing that they could do for me. They advised me that I needed to continue to go the ER until my appointment date because I as a new patient, I was not given a priority to be seen. On May 22, 2017, I was again having problems breathing at work and called my wife to discuss that I thought something was wrong. I called the WOMACK Pulmonary clinic and begged to be seen; but unfortunately I was met with the same response as the first time. So, I called my wife to notify her that I was being driven to the ER, because my Chain of Command came to my aid and didn't want to have me waiting in the waiting room again in my current condition. Upon arrival to the ER, I was practically unconscious, barely coherent, slouched over and unable to keep my upright. My wife woke me by pounding her fist on my chest and had to assist me into a wheel chair to bring me into triage where I was put in a room right away. After running some tests, they sent me home with prednisone. Around the first of June I began coughing up significantly more blood than I had previously and each day it got worse with more sizeable amounts of blood being coughed up continuously each day. On June 15, 2017, my wife made me go to the ER again to be seen due to the blood I had been coughing up.

It wasn't until I was finally allowed to go off base to see a specialist on June 27, 2017, that a biopsy was done which revealed I had cancer. I can remember waking up to my wife and then learning that the reason I had been feeling like I was dying, was because I had lung cancer. This life-changing news, that could have been addressed nearly six months earlier while the cancer was still contained to my lung. On October 23, 2017, I had a lobectomy, where they were able to remove a part of my right upper lobe. Around Christmas 2017, I began to cough more and my health seemed to be declining due to being unable to eat and drink liquids without being in tremendous amounts of pain. I also noticed that I was rapidly losing weight due to my inability to consume any food or liquid. By the beginning of January 2018, I had to go to the ER where he was seen right away after exhibiting symptoms of difficulty breathing.

At this time, I was beginning to notice that the left side of my neck had begun to swell rapidly and very largely, almost comparable to the size of a fist placed under my skin running from my jaw line to my collar bone. This was overall a physically painful time due to the cancer spreading throughout my body. The medical center found a mass on my spleen, not sure what it was they sent me down for an ultrasound where they determined that it could be a cyst or a tumor, only at PET

would tell. I then completed a PET scan on January 16<sup>th</sup>, which revealed the cancer had spread to my lymph nodes in my neck on the left side of my body, my spleen, liver, ilium crest (butt bones), spine and right hip joint. Beginning on January 22, 2018, I was diagnosed with stage IV lung cancer.

The failure of the military doctor's gross negligence/failure to detect and treat my cancer when it was first noted on the CT scan done on me in January 2017 is the mistake that allowed the aggressive tumor to double in size and rob me and my family of my life, without any recourse due to a 1950's Supreme Court case that created the Feres Doctrine. Because of all that has taken place, I no longer am able to complete the Warrant Officer course which I was to start in July 2017 after being selected. Now instead because of the medical malpractice I have had to endure countless CT scans, MRI's, PET scans, radiation, chemo, spleen biopsy, lung biopsy as well as surgery to remove my upper right lobe, I have had countless other procedures and no end in sight of what's to come.

Lastly, I want to say that this does affect me obviously, but my children are the true victims. They now will grow up without a father. Someone that will teach them how to drive, walk them down the isle when they get married. They seek counseling and special treatment at school. One of the biggest things they try and understand is how this happened.

This doctrine has effectively barred hundreds of service members and their families any chance of recourse for receiving negligent medical care that is given by a government provider when the service member is on active duty, regardless of whether the injury was the result of combat service, or deployment. The doctrine has been utilized by the branches of military to shield negligent medical care given by military providers. This is medical care in which there is no element of "military judgment" at play. In truth, the only difference between a military provider and a civilian provider is the military provider wore fatigues to work that day and his or her patients do not (as a practical matter) have a choice about accepting their services.

The reasoning underlying the Feres doctrine is that military service members are routinely injured in the course of duty when following the orders or directions of their superiors. Some examples are when medical care is rendered in a combats situation or when emergency care is needed in a training environment in which a service member is unexpectedly injured, and military providers need to make a split-second call in enormously stressful conditions. It is understandable why Feres would apply in those circumstances and why service members' should not be able to sue a military provider for treating someone in triage situations arising in combat or training. These situations present a tough choice in a tough situation and the Supreme Court did not want to compromise the ability of military providers in those situations to make fast (and potentially lifesaving) decisions about care at the sacrifice of following the appropriate standard of care.

In the end, it is essential to the underlying fairness of our country to overturn the Feres Doctrine. The Feres Doctrine is a judicially created atrocity which should not be allowed to continue. As multiple Supreme Court Justices have stated, this is a mistaken doctrine, and is something Congress can easily fix and should fix.

There is no reason for the disparity in rights between our active duty military and the rest of our country's citizens. We deserve equal protections under the law.

I would like to thank my wife Megan and my two beautiful daughters Carly and Addison for their constant unconditional love and support. It is for them and my fellow brothers and sisters in arms that will go on to serve our Country as honorably as I have that I am waging this civil battle so that those future victims of military medical malpractice injustice will be compensated fairly and hopefully able to live to see their own children grow up, the love and joy of which that I will not be able to share in with my own beautiful children.

I also want to thank my Attorneys Ms. Natalie Khawam, and Mr. Daniel Maharaj who are sitting beside me, for taking my case when no other attorneys would take it on due to the Feres Doctrine. Natalie and the Whistleblower Law Firm have been a driving force through this important fight for justice, and I would not have been sitting here today in front of you if it was not for her countless hours of dedication to my family and countless other active duty men and women.

I would be happy to answer any questions you may have.