

**STATEMENT FOR THE RECORD OF  
THE HONORABLE LAWRENCE B. HAGEL, CHIEF JUDGE  
U.S. COURT OF APPEALS FOR VETERANS CLAIMS**

**FOR SUBMISSION TO THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON VETERANS' AFFAIRS**

**JUNE 27, 2016**

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

Thank you for the invitation to submit a statement of the Court's views on legislation pending before the Committee, in particular H.R. 5083 (the VA Appeals Modernization Act). The Court's comments will be brief.

Although changes to VA's appeals processing will eventually impact the Court, the pending legislation does not amend the statutory provisions governing the Court's function. For this reason, the Court will not speculate as to consequences of changes that pertain only to the agency or comment on provisions that may ultimately come before the Court in a case. We do, however, offer the following thoughts on the implementation plans for broad changes to the VA claims processing system, and on the need to ensure that claimants are aware of their right to appeal to a court of law and that the exercise of that right is not disincentivized.

**Implementation:** H.R. 5083 does not address how the proposed legislative changes would be implemented. It is, however, the manner in which the pending legislation is implemented that will have the most profound immediate effect on the Court because appeals to the Court generally stem from those claims that have already received agency appellate review. In testimony last month to the Senate Committee on Veterans' Affairs, VA Deputy Secretary Gibson said that VA anticipated prospective application, meaning that any statutory changes would apply only to new claims filed with VA after the date of enactment. In recent testimony before this Committee, Secretary Gibson said that VA is working with various stakeholders and discussing different implementation ideas that may envelop pending appeals into the proposed system. Any implementation plan for sweeping legislative change to the VA claims processing system will certainly have its challenges, and we offer no comment on what those may be. We

are, however, attempting to anticipate the impact on the Court and best estimate and prepare for the workload that may result from these changes should they become law.

Generally speaking, appeals filed at the Court come from veterans who are dissatisfied with a decision of the Board of Veterans' Appeals (Board). VA Deputy Secretary Gibson recently testified that more than 450,000 appeals are pending before VA. The Board decided more than 55,000 decisions in fiscal year 2015, and has pledged to further increase its number of annual decisions. For fiscal year 2017 VA requested additional funding to increase staffing to further grow the number of decisions the Board renders annually. Faced with this data, the Court projects a steady—if not increased—number of appeals over the next several years resulting in the continued need for nine judges.

The Court has a permanent authorization for seven judges, but effective in 2009, received temporary authorization to expand to nine judges. We reached that full complement in December 2012 and were fortunate to operate with nine judges for almost three years until the retirement of one of our colleagues ten months ago, reducing the active-judge count to eight. With nine-judge staffing the Court was able to conduct effective, efficient, and expeditious judicial review, and your support in providing the resources to handle our heavy caseload is very much appreciated. Under current law, the Court will be authorized to continue to operate with eight judges until the next retirement. At that time, the authorized number of active judges reverts to seven. The reality, however, is that two judges' terms expire within days of each other in December 2016. At that time, the Court will be reduced to six active judges. Faced with the strong likelihood that VA will maintain, if not increase, the number of decisions the Board renders this coming year and for the next several years, the Court maintains that the need for nine full-time judges continues to exist. Thus, we ask for the Committee's support in renewing the authorization of nine judges on the Court.

**Advisement and Exercise of Appellate Rights:** In reviewing H.R. 5083 the Court is also mindful of ensuring that veterans and their families remain aware of their right to judicial review and have a fair opportunity to exercise that right. Under current law, the system for filing and pursuing a claim for VA benefits is somewhat linear, in the sense that there is basically one path for pursuing a claim from a VA regional office, to the Board of Veterans' Appeals, to the Court. At the current time, accompanying each Board decision is a standard notice of appellate rights, informing claimants of their

options, to include the right to appeal to the Court should they not be satisfied with the benefits accorded to them by VA. Under the proposed legislation, following an agency denial a veteran would have the opportunity to repeatedly pursue a claim within the first-level agency review, and indeed there may be incentive for veterans to do so because that path would preserve the earliest effective date possible for any grant of benefits. That structure could potentially result in a veteran never securing a Board decision that could be appealed to the Court, never being informed of the Court's existence, and never receiving appellate rights and the opportunity to exercise such rights. The Court states no opinion on whether or not the proposed changes are "good for" individual veterans or the overall system. We do, however, want to ensure that veterans remain aware of the full array of options available to them in pursuing a claim and that no option be disincentivized. Thus, we believe that it is critical that any changes to the process not unintentionally obfuscate veterans' understanding of their right to judicial review. Many people fought long and hard to secure impartial review of adverse VA decisions by a federal court that by definition is independent of VA. It is our firm belief that veterans and their survivors must continue to know about and understand that right, and they must have fair access to the Court, as well as the ability and means by which to pursue that judicial review.

In closing, on behalf of the Court, I express my appreciation for your past and continued support and for the opportunity to provide this statement. Thank you.