Military-Veterans Advocacy

Written Testimony/Statement for the Record in Support of Legislative Priorities:

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Introduction

Distinguished Chairmen Jerry Moran and Mike Bost and Ranking Members Blumenthal, Mark Takano, and other members of the Committee, thank you for the opportunity to present the views of Military-Veterans Advocacy® (MVA™) on our legislative priorities.

We also recognize that fiscal and political realities, which, as applied, harm our nation's veterans. The Pay As You Go Act of 2010 (Title I of Pub. L. 111-139) (PAYGO) requires costing by the Congressional Budget Office and the identification of offsets, colloquially known as "Payor's." Historically this fiscal process has delayed or blocked important veterans legislation.

MVA™ believes that veterans benefits should be exempted from the requirements of PAYGO. Veterans benefits are a legitimate cost of war. Overseas Contingency Operations (OCO OPS) are not subject to PAYGO. An Armored Cavalry Regiment is not required to mothball two Abrams and three Bradleys' to offset the cost of sending the unit overseas. Nor is a fleet required to inactivate ships or aircraft to offset the cost of the deployment. Yet when injured and/or disabled veterans return, the law requires any increase in benefits to be offset.

The ineffectiveness of PAYGO is demonstrated by the increase in the debt from $14.8 trillion in 2011 to over $36 trillion today. Often programs are enacted with budgetary illusions akin to "smoke and mirrors" that have no effect on the actual deficit. Unfortunately, this legerdemain does not seem to be utilized for veterans legislation. While budgetary neutrality is beyond the scope of this testimony, I mention it to underline the feeling of many veterans that they are used as cannon fodder and then discarded - except on Memorial Day, Veterans Day and the Fourth of July. Veterans service benefits everyone and veterans must pay their fair share.

About Military-Veterans Advocacy®

Military-Veterans Advocacy Inc.® (MVA™) is a tax-exempt IRC 50l[c][3] organization based in Slidell, Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation, and education, MVA™ seeks to obtain benefits for those who are serving or have served in the military. In support of this, MVA™ provides support for various legislation at the State and Federal levels as well as engaging in targeted litigation to assist those who have served. We currently have over 2300 proud Members and over 21,000 followers on our social media accounts. In 2023, our volunteer board of directors donated almost 10,00-0 hours in support of veterans. MVA™ analyzes and supports/opposes legislation, assists Congressional staffs with the drafting of legislation and initiates rule making requests to the Department of Veterans Affairs. MVA™ also files suits under the Administrative Procedures Act to obtain judicial review of veterans' legislation and regulations as well as *amicus curiae* briefs in the Courts of Appeal and the Supreme Court of the United States. MVA™ is also certified as a Continuing Legal Education provider by the

State of Louisiana to train attorneys in veterans' law and we do so throughout the nation.

MVA™ is a member of the TEAMS Coalition, the Foundation for Veterans Outreach Programs and other working groups. MVA™ works closely with Veterans Service Organizations including the United States Submarine Veterans, Inc, the National Association of Atomic Veterans, Veterans Warriors, and other groups working to secure benefits for veterans.

Military-Veterans Advocacy® Executive Director
Commander John B. Wells USN (Ret.)

MVA™'s Chairman, Commander John B. Wells, USN (Retired) has long been viewed as the technical expert on herbicide exposure. A 22-year veteran of the Navy, Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea. He possessed a mechanical engineering subspecialty, was qualified as a Navigator and for command at sea and served as the Chief Engineer on several Navy ships.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veteran's law. He is counsel on several pending cases concerning herbicide and other toxic exposures. Commander Wells was the attorney on the *Procopio v. Wilkie* 913 F. 3d 1371 (Fed. Cir. 2019) case that extended the presumption of herbicide exposure to the territorial sea of the Republic of Vietnam, which laid the groundwork for the Blue Water Navy Vietnam Veterans Act. He strongly supported, both in Congress and the courts, the extension of the herbicide presumption and to cover veterans in Thailand, Guam, American Samoa, and Johnston Island. He also initiated successful judicial review of the Appeals Modernization Act with a favorable outcome. *MVA v. Secretary of Veterans Affairs*, 7 F.4th (Fed. Cor. 2021). Since 2010 he has visited virtually every Congressional and Senatorial office to discuss the importance of enacting veterans' benefits legislation. With the onset of covid, Commander Wells has conducted virtual briefings for new Members of Congress and their staffs..

HR 1336 & S 2737 - Hyperbaric Oxygen Treatment for Traumatic Brain Injury

Enactment of HR 1336 and S 2737 is the primary goal of MVA's legislative agenda for the 119th Congress. Veterans suicide is an escalating problem. Although the number of suicides dropped slightly in the last report, the suicide rate actually increased. Post Traumatic Stress and Traumatic Brain Injuries remain the most frequent common denominator for suicide, It is tie to reverse this trend.

MVA™ has long supported the use of Hyperbaric Oxygen Treatment to treat Traumatic Brain Injury. There is an increasing body of evidence that show HBOT is an effective treatment for TBI and other neurological injuries. https://pubmed.ncbi.nlm.nih.gov/33050752/. HR 1336 & S 2737 will direct the Secretary of

Veterans Affairs to establish a pilot program to furnish hyperbaric oxygen therapy (HBOT) to a veteran who has a traumatic brain injury (TBI) and there are positive indications associated with this treatment. Our interviews with members who served in combat or in Special Operations also point to an affirmative correlation between HBOT and TBI. We believe that HBOT could potentially allow for a more successful treatment pathway for these invisible wounds.

The VA continues to be enamored with opioids for treatment of PTS/TBI. The result has not been pretty. One of our former board members was mistreated by opioids that led to his violent and fatal attack on one of his children. Another former board member was prescribed 120 Vicodin a month by the VA. An MVA™ employee was overtreated with opioids and changes from an effective to an ineffective worker incapable of performing her duties.

Current VA and Congressional opposition seems to center on a belief that more study is required. Unfortunately, the VA has a habit of filibuster by studies. This is not acceptable And since the bills only require pilot programs, what better way is there to study the results of the treatment?

Appellate Reform

MVA™ was one of the few veterans groups to oppose the Appeals Modernization Act. The AMA has been less than successful. The VA appellate system remains archaic and does not conform with the procedures used by other federal adjudication systems such as the Merit Systems Protection Board, Social Security or the Equal Employment Opportunity Commission. Special rules limit the ability of the veteran to pursue a substantive appeal or to obtain judicial review in the Court of Appeals for the Veterans Claims. Jurisdictional statues limit the ability of the Court and its supervisory court to review factual errors. Additionally, the intermediate level review authority, the Board of Veterans Appeals, is hampered by unqualified decision makers, disjointed scheduling and excessive remands. The backlog at the Board, currently about 200,000 is unconscionable. MVA estimates, based on the current backlog, that thousands of veterans will die awaiting adjudication.

Scheduling remains a serious problem.. In FY 2024 8% of hearings had to be rescheduled. 21% were cancelled (sometimes due to the veterans death) and 3% were no show. Bottom line: Only 65.7% of hearings were held as scheduled.

In 2024 71.3% of the cases appealed from the Board to the Court of Appeals for Veterans Claims were partially or totally remanded. Only 4.7% of the appeals were affirmed in whole *See* FY 2024 report to Congress. Board members are never disciplined for excessive remands.

MVA™'s attorneys practice before the Board throughout the year. The lack of qualified Board members acting as adjudicators results in hearings that are clown shows. For example, a Board member found that the statement of a helicopter pilot confirming that he flew one of his squadron mates to Da Nang was discounted because the deck log did not show the veteran left the ship. Yet the guiding Navy directive for the preparation of deck logs only

requires the Commanding Officer and embarked VIPs be logged when they leave or return to the ship. The Board also denied benefits because the ship locator log did not show the helicopter in the Blue Water Navy zone. The Ship Locator tool does not track aircraft. When remands are returned to the Board, additional evidence considered by the Regional Office is not provided to the veteran or his/her representative This is a violation of due process as outlined in *Greene v. McElroy*, 360 U.S. 474 (1959).

Remands add years to the claim/appeal and increase the backlog. Incompetence is rampant on the Board and it cannot be tolerated. Accordingly, we request the Congress to adopt some or all of the following proposals.:

- Require the board members to be qualified as Administrative Law Judges.
- Require a scheduling conference and scheduling order.
- Provide for the review and sanction of board members who have more than 30% of their decisions remanded for reasons within the control of the board member.
- Provide for a discovery process to streamline the preparation of the appeal.
- Revise § 7261(a)(4) of Title 38 to change the standard of review for factual findings from "clearly erroneous" to "abuse of discretion."
- Revise § 7261(d) of Title 38 to allow a de novo trial on the record, similar to the provisions in federal district courts and the Court of Federal Claims.
- Revise § 502 of Title 38 to vest jurisdiction in the Court of Appeals for Veterans Claims instead of the Court of Appeals for the Federal Circuit.
- Strike § 7292 and add the Court of Appeals for Veterans Claims to the general Jurisdictional statute of the Court of Appeals for the Federal Circuit.
- Modifies 38 U.S.C. § 7332[b][2] to allow the VA to release the record to the Court of Appeals for Veterans Claims & the veteran's representative when a notice of appeal is filed.

Return the Blue Water line to the theater of combat as existed prior to 2002.

The Blue Water Navy Vietnam Veterans Act, Pub. L. 116-23 granted presumptive herbicide exposure status to US service members who served in a geographic area which closely parallels the territorial sea.

Section 2(d) of the Act grants the presumption of herbicide exposure to service members who performed in an area 12-nautical miles seaward of a line drawn between certain geographic points off the coast of the Republic of Vietnam. Prior to 2002, the VA by regulation and policy, recognized the presumption of exposure in the entire area of the South China Sea covered by Executive Orders No. 11,216, (Designation of Vietnam and Waters Adjacent Thereto as a Combat Zone for the Purposes of Section 112 of the Internal Revenue Code of 1954, 30 Fed. Reg. 5817 (1965) and Exec. Order No. 11,231, Establishing the Vietnam Service Medal, 30 Fed. Reg. 8665 (1965).

In early 2002, the VA implemented a General Counsel Opinion that held veterans qualifying for the presumption of the herbicide exposure must have touched land or the internal rivers of the Republic of Vietnam. The Court of Appeals for the Federal Circuit held

in a case brought by Military-Veterans Advocacy called *Procopio v. Wilkie*, 913 F.3d 1371 that the herbicide presumption must be extended to include the bays harbor and territorial sea of Vietnam. Ships, especially aircraft carriers, outside the line are not covered.

Unfortunately, Agent Orange within the river discharge could be found several hundred kilometers from the mouth of the river within a couple of weeks. This contaminated seawater would be ingested into the distillation intake. Additionally, planes and helicopters would fly through clouds of Agent Orange. The Carrier Onboard Delivery planes would deliver, personnel, supplies, perishables, equipment and mail that was staged in and around Da Nang or other Vietnamese airfields. Cross-contamination would soon occur throughout the ship.

MVA™ is seeking legislation to amend 38 U.S.C. § 1116A(d) to substitute the coordinates delineated in Executive Order 11,216 and 11,231.

According to the Congressional Research Service, 174-thousand of 229-thousand Navy personnel who deployed to Southeast Asia were within the territorial limits of South Vietnam. This leaves approximately 55-thousand Navy personnel outside of the territorial sea, mostly on Carriers. Military-Veterans Advocacy® estimates that 20-25-thousand personnel are covered under the PACT Act due to port calls in Guam, American Samoa and Thailand. Accordingly we estimate about 30-35-thousand personnel will be covered by this extension at a cost of approximately $600 million over ten years in mandatory spending.

Guard/Plus/Choice Act

The passage of the PACT Act gave rise to unqualified, untrained and/or uncertified entities, commonly known as claims sharks. These so-called consultants charged veterans thousands of dollars with no guarantee of success. These companies concentrated on initial claims which have historically been available only for pro bono representation. Consultants have tried to create a loophole to allow them to charge veterans when attorneys and claims agents cannot.

Individual States such as New Jersey and Louisiana, fed up with continued Congressional partisan bickering, have *enacted* legislation to regulate these claims sharks. New Jersey has enacted a version of the GUARD Act that prohibits these claims sharks from practicing within the State. The law was sustained by the District Court however the 3rd Circuit remanded to address First Amendment concerns, *Veterans Guardian VA Claim Consulting LLC v. Platkin*, 133 F.4th 213 (3d Cir. 2025). Louisiana enacted a law based on the PLUS Act. MVA brought suit against the State successfully claiming that the law was unconstitutional based on federal preemption and First Amendment concerns. *Mil.-Veterans Advoc., Inc. v. Landry,* No. CV 24-00446-BAJ-RLB, 2026 WL 324017, at *1 (M.D. La. Feb. 6, 2026). The State has indicated that they may appeal this decision to the 5th Circuit.

Other States have looked at this situation and are considering legislation We do not need a

patchwork quilt of laws, especially since veterans claims cross Sate boundaries. Congress should act. We support Cong Pappas' GUARD Act and Cong. Bergman's Choice Act (with reservations). We hope that Congress will move forward to regulate this important matter.

HR 2149 - Earlier effective date for Guam (Aug 15, 1958).

Section 403(d)(5) of the PACT Act grants the presumption of herbicide exposure to service members who performed service on Guam beginning on January 9, 1962, and ending on July 31, 1980. Evidence compiled by Military-Veterans Advocacy® shows that the spraying on Guam commenced on August 15, 1958. See, Area Public Works Office *Guam Soils Conservation Series No. 2, Herbicides*, August 15 1958 which can be found 1958 Herbicides Navy (1).pdf (militaryveteransadvocacy.org)

MVA™ asks for a technical correction to modify the commencement date of herbicide exposure on Guam until August 15, 1958. MVA™ estimates that only a few dependents would be eligible for DIC at negligible cost. We believe all affected veterans are dead.

Panama Canal Zone

Last Congress Congresswoman Marie Salazar introduced HR 2447 to grant presumptive herbicide exposure status to veterans who served in or near the Panama Canal Zone (PCZ) between January 1, 1958 and December 31, 1999, or when the last military personnel departed from their official duty in the Panama Canal Zone. The bill will enable eligible veterans to receive benefits if they suffer from any of the diseases the VA has linked to herbicide exposure.

The U.S. Census Bureau Commodities by Country show 2,4-D & 2,4,5-T shipped, stored and used in Panama from 1958 until at least December 1977. This chemical, produced and shipped from 1958-1964, was code named "Agent Purple" with a higher dioxin content (30-50 PPM TCDD), whereas shipments from 1965-1977 were to have a lower dioxin content closer to 0.5 code named "Agent Orange."

As outlined in the DOD Herbicide Manual, TM 5-629, these herbicides were used routinely as needed on base. 2,4-D & 2,4,5-T was used to kill poison ivy, poison oak and sumac where troops were deployed. See page 34, 3-7. Silvex was used on golf courses, parade fields and gun ranges. See page 41, 3-6. As well as many other persistent pesticides harmful to man as listed in this Tri-service manual to be used on every base as needed. Silvex also contains 2,4,5-T and the by-product Dioxin (TCDD).

The bill allows for presumptive coverage similar to the coverage for those who served in Vietnam, along the Korean DMZ and on the base perimeters in Thailand. Unfortunately,

proving exposure is nearly impossible due to a lack of record keeping and the inability to know the precise location of spraying. What records exist corroborate the presence of herbicide in the PCZ during the 1950's, 1960's and 1970's.

The Panama Canal Zone was not included in the PACT Act.

Documents supporting the MVA™ position are available online on our website at: https://www.militaryveteransadvocacy.org/vets-of-panama.html

Okinawa

Between January 9, 1962 (and possibly earlier) the herbicide Agent Orange was shipped to, stored upon and used on United States military installations on Okinawa. Agent Orange Barrels were actually discovered on Marine Corps Air Station Futenma in August of 1981 and at a soccer pitch in Okinawa City (previously part of Kadena Air Force Base) in June of 2013.

The VA conditionally approved a rule making request filed by Military-Veterans Advocacy but its preliminary rule indicated that coverage would not include Okinawa absent a confirmation from the Department of Defense that the herbicide was used on that island, . The extensive rule making request is shown on our web site athttps://www.militaryveteransadvocacy.org/uploads/3/4/1/0/3410338/va_approval_of_mva_rulemaking_request.pdf. Evidence in the request included a form DD 250, clearly showing that 2,4,5-T was shipped to Okinawa in July of 1966. It further includes excerpts from Jon Mitchell's excellent analysis, *Poisoning the Pacific*. This book provides documentary and photographic evidence of the presence of herbicide on Okinawa during the Cold War. It also contains the later excavations of Agent Orange herbicide at MCAS Futenma and Kadena Air Force Base.

The investigation of the former Kadena discovery is memorialized in a survey by the Okinawa Defense Bureau, entitled *Former Kadena Airfield (2 5) Soi; Investigation Survey (Part 2)* which is also included in the rule making request along with a news article in *Stars and Stripes,* confirms toxic levels of 2,4,5-T, 2,4-D and its by-product 2,3,7,8-TCDD (dioxin).

Additionally, MVA™ holds sworn affidavits from a Marine who sprayed the herbicide and from an Air Force NCO who inventoried 25,000 barrels of Agent Orange at Kadena Air Force Base.

MVA™ proposes legislation to provide a presumption of herbicide exposure to those veterans who between January 9, 1962 and May 7, 1975, individually or in a unit that, as determined by the Department of Defense, operated on Okinawa or within the territorial sea of that island. To cover more recent excavations, for purposes of service on Marine Corps Air Station Futenma, the presumption is extended until the discovery of barrels of herbicide in August of 1981. For purposes of service on Kadena Air Force Base, the presumption is

extended until the discovery of herbicide on the soccer pitch in Okinawa City (previously part of Kadena AFB) in June of 2013.

The VA is empowered under 38 U.S.C. § 501 to issue regulations that are not encumbered by PAYGO requirements. They have successfully issued regulations to cover portions of Korea, portions of Thailand, and the C-123 aircraft, among others. Under the provisions of the Administrative Procedures Act, an entity such as MVA™ can request the Secretary to issue regulations. Should the Secretary decline to do so, or should the regulations be inadequate, judicial review is available.

There is no timeline required for Secretarial action.

Currently, MVA™ has several outstanding rule making requests. Unfortunately, current law does not provide a timeline for an agency response.

Request legislation to include the following timeline:

- Response/decision to approve/disapprove rule making or comments on preliminary rules due to requester 270 days after receipt.
- Provision for one extension of response date with notice to requester 180 days after original due date.
- Publication of Notice of Proposed Rulemaking 180 days from response.
- Receive comments on Proposed Rule 60 days after publication.
- Publish Final Rule 180 days after comments

Codification of this timeline will prevent the VA from merely ignoring rule making requests or delegating them to a "pending" status with no action. MVA™ strongly recommends that this timeline be made applicable to all pending Rulemakings.

Military Dependents Exposed to Toxic Exposure

The PACT Act has added several new areas of presumptions for toxic exposure. More areas such as Panama and Okinawa may be added. In some of these areas, dependents accompanied veterans to the toxic area.

Military dependents accompanied their veteran spouses to many areas throughout the globe. In areas where toxic exposure has been confirmed, the veteran receives a presumption of exposure resulting in compensation and medical care. The accompanying dependents drank the same water and breathed the same air as their military sponsor. Currently there is no provision for medical assistance for those dependents who have developed illnesses due to toxic exposure.

In a report on illnesses among the civilian population of Guam, Dr. Luis Szyfres, M.D., M.P.H. compared cancer rates among civilians on Guam with the continental United States.

He found Nasopharyngeal cancer 1,999 % higher in Guam than in Continental US, Cervical Cancer 65 % higher in Guam than in Continental US, Uterine Cancer 55 % higher in Guam than in Continental US, Liver Cancer 41 % higher in Guam than in Continental US. his included Amiotrophic Lateral Sclerosis 10,000 % higher than the rest of the world and Parkinson-Dementia Complex.25-50 fold higher than in the rest of the world, Diabetes 150 % higher in Guam than in Continental US, Ischemic Heart Disease 15 % higher in Guam than in Continental US, Kidney Failure, 12 % higher in Guam than in Continental US. *See* https://www.militaryveteransadvocacy.org/uploads/3/4/1/0/3410338/guam_report.pdf.

MVA™ is seeking legislation to amend Subchapter II of chapter 11 of title 38, United States Code, by adding at the end the following new section: "A family member of a veteran described in section 1110, 1116, 1117, 1118, 1119 and 1120 or any other pertinent Section of chapter 11 of this title, who accompanied a military sponsor for at least thirty days in a location determined by Congress or the Secretary, to any area to have been the site of a presumption of herbicide or other toxic exposure contaminant, during the period described in such section, or who was in utero during such period while the mother of such family member resided at such location, shall be eligible for hospital care, medical services, and nursing home care furnished by the Secretary pursuant to Chapter 17 for any covered condition, or any covered disability that is associated with a condition associated with toxic exposure during such period."

This is similar to the provisions of the Janey Ensminger Act passed in 2011. We are looking for medical coverage only for those non-military personnel exposed to toxic chemicals.

HR 1947 - Stellate Ganglion Treatment for PTSD at VA

This would require the VA to use the Stellate Ganglion Boc for treatment of Post Traumatic Stress. This treatment calls for the injection of a block into the stellate ganglions that control the fight or flight response. It has a dramatic effect on those PTS folks who are about to fly into a rage. The effect has often been described as similar to flipping a light switch. This treatment is used by the Department of Defense.

Pay Our Coast Guard

There is a need to address gaps in financial security for U.S. Coast Guard personnel during government shutdowns. This bill ensures that members of the Coast Guard, as well as associated support services like NOAA and the Public Health Service Commissioned Corps, receive uninterrupted pay in the event of a government shutdown. The legislation parallels protections already afforded to the Department of Defense, aiming to provide parity for the Coast Guard, which operates under the Department of Homeland Security rather than the DoD.

Conclusion

On behalf of our membership, we would like to extend our thanks to the Chairmen, Ranking Members, and remaining Committee members for the opportunity to discuss our legislative priorities.

Respectfully Submitted,

John B. Wells
Commander USN (retired)
Chairman