

**STATEMENT FOR THE RECORD 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 VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS**

MARCH 29, 2023

CHAIRMAN LUTTRELL, RANKING MEMBER PAPPAS, AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

Thank you for the invitation to submit a statement of the Court's views on legislation pending before the Committee. The Court's comments address H.R. 1329, a bill that would amend 38 U.S.C. § 7253(a) to increase by 2 (from 7 to 9) the number of permanent judges on the United States Court of Appeals for Veterans Claims. The Court wholeheartedly supports this legislation.

The Court currently has 9 active judges – the 7 permanent appointments authorized under subsection 7253(a), and 2 additional judges appointed under the temporary expansion authority of subsection 7253(i). Case trends/predictions and VA staffing growth show that, to continue to provide veterans, their family members, and their survivors with timely judicial review, the Court needs the legislative change proposed in H.R. 1329 – increasing *permanent* authorizations from 7 to 9 active judges while maintaining the authority to *temporarily* expand by an additional 2 judges. As a result, the Court would have the much-needed authority to temporarily expand from 9 to 11 active judges.

In the Consolidated Appropriations Act, 2023,¹ Congress recognized that the growth in claims processing projected by VA would require expansion of the Court to 11 judges, and our FY 2023 appropriation gave us the requested necessary funding for that number of judges. Passage of H.R. 1329 would provide the Court with an authorization that would match our FY 2023 appropriation and would hopefully lead to the expeditious appointment of judicial candidates to fill the 2 new judgeships.

By way of background, the Court, as an independent judicial body, has exclusive jurisdiction to review appeals from decisions of VA's Board of Veterans' Appeals (Board). Caseload trends over the

¹ Pub. L. No. 117-328, 136 Stat. 4459, 4971 (Dec. 29, 2022).

years have shown that for every 10,000 Board decisions, the Court generally receives between 800 and 1,000 appeals. In FY 2012, when the temporary authorization for 9 judges was fairly new, the Board issued 44,300 final decisions and the Court received 3,649 appeals.² By comparison, in FY 2020, the Board issued 102,663 final decisions and the Court received an all-time high 8,954 appeals.³ Although the number of Board decisions has dipped slightly over the past 2 years, all indicators point to sustained growth in the anticipated number of Board decisions. The Board has received a significant influx of full-time employee positions and resources with a goal of increasing its capacity to decide cases, and the Board Chairman expects to produce more decisions in FY 2023 than in any prior year.⁴ Similarly, the VA General Counsel law group responsible for representing the VA Secretary in every case appealed from the Board to the Court is anticipating a growing workload, and VA has requested additional funding and staffing for that law group to keep up with an anticipated surge in appeals.⁵

These indicators suggest that the Court will receive an unprecedented number of appeals in the near future. That, combined with the expected swell of toxic exposure cases stemming from the PACT Act,⁶ and the complexity in our cases due to class-actions, make it clear that we need the authorization provided by H.R. 1329 now if we are to sustain our ability to provide full and prompt judicial review to veterans, their families, and their survivors.

For the above reasons, the Court strongly supports passage of H.R. 1329. Thank you for the opportunity to provide this statement, and on behalf of the Court, thank you for your past and continued support.

² 2012 U.S. DEP'T. OF VETERANS AFFS., BD. OF VETERANS APPEALS REP. CHAIRMAN at 22, https://www.bva.va.gov/Chairman_Annual_Rpts.asp (last updated Dec. 15, 2021); 2012 U.S. CT. OF APPEALS FOR VETERANS CLAIMS ANN. REP. at 1, <http://www.uscourts.cavc.gov/documents/FY2012AnnualReport.pdf>.

³ 2020 U.S. DEP'T. OF VETERANS AFFS., BD. OF VETERANS APPEALS REP. CHAIRMAN at 40 https://www.bva.va.gov/Chairman_Annual_Rpts.asp; 2020 U.S. CT. OF APPEALS FOR VETERANS CLAIMS ANN. REP. at 1, <http://www.uscourts.cavc.gov/documents/FY2020AnnualReport.pdf>.

⁴ U.S. DEP'T OF VETERANS AFFS., FY 2024 Budget Submission at 268, 272 (2023), <https://www.va.gov/budget/docs/summary/fy2024-va-budget-volume-iii-burial-and-benefits-programs-and-departmental-administration.pdf>.

⁵ *Id.* at 308, 330.

⁶ HONORING OUR PACT ACT OF 2022, Pub. L. No. 117-678, 136 Stat. 1759, 1782; <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/>.