

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

**FOR SUBMISSION TO THE
UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS**

OCTOBER 6, 2015

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to comment on S. 1754, a bill that would amend 38 U.S.C. § 7253(a), to make permanent the authorization for an increase in the number of judges on the U.S. Court of Appeals for Veterans Claims (Court), from seven to nine. Succinctly stated, the Court supports this legislation and urges its passage.

The decision by Congress several years ago to expand the Court temporarily to nine judges came in response to a significant increase in the Court's caseload, and a perception that the rise was not simply a spike but in fact a trend. Effective December 31, 2009, authorization permitted the Court to grow to nine active judges, and we reached that full complement in December 2012. We were fortunate to operate with nine judges for almost three years until the retirement of one of our colleagues one month ago. With full staffing the Court has been able to conduct effective, efficient, and expeditious judicial review. Your support in providing the resources to handle our heavy caseload is very much appreciated.

Under current law we will operate with eight judges until the next retirement, and then we revert to seven judges, our current permanent authorization. The reality is that two judges' terms expire within days of each other in December 2016, so absent legislation the Court will dip to six judges at that time. With the unpredictability of the judicial nomination and appointment process, and another retirement likely in 2017, there is a very real possibility that the Court will shrink to five judges just two years from now. Passage of S. 1754 would permit a judicial appointment now to bring us back up to nine judges, and would prevent the Court from dropping to a critically low number of judges in the near future.

Since its creation in 1988, the Court has become one of the Nation's busiest federal courts based on the numbers of appeals filed and decided per judge. Up until about ten years ago the Court

received roughly 2,200 appeals annually. That number began to rise significantly starting in FY 2005, reaching over 4,700 appeals filed in FY 2009. Since that time, annual appeals filed have not fallen below 3,500 and although we are still tabulating FY 2015 numbers, we estimate that over 4,400 appeals were filed. This is double the number of appeals filed annually during the Court's first 15 years from 1989 to 2004.

For cases decided, the Court terminated in the neighborhood of 4,400 appeals in FY 2015. That is in addition to acting on nearly 3,000 applications for attorney fees, hundreds of petitions for extraordinary relief, and thousands of procedural motions. We continue to be one of the busiest national courts, but we are efficiently handling this formidable caseload. Generally speaking, appeals filed at the Court come from veterans who are dissatisfied with a decision of the Board of Veterans' Appeals (Board). Much emphasis and financial support has been placed toward increasing the numbers of personnel at the Department of Veterans Affairs, and toward improving claims processing times. Up from 41,910 decisions in FY 2013, the Board issued 55,532 decisions in FY 2014, and the Board estimates that it will decide at least the same number in FY 2015. Although it is difficult to predict with certainty what our caseload will be in the future, it seems likely, considering the number of claims filed annually with VA and the increased productivity by the Board, that the number of appeals filed at the Court will also rise further and stay high.

Over the past several years the Court has striven to create efficiencies in how we conduct judicial review of veterans' appeals. We have adopted an electronic case filing and management system. We are constantly improving our pre-briefing mediation program to resolve cases earlier in the process, to hone the issues on appeal, and to stretch our judicial resources to the greatest extent possible. We have an active bar, and we engage frequently with our practitioners to discuss ways to further improve our process. Everyone involved in judicial review of veterans' appeals shares a common goal of wanting to honor our veterans and provide full, fair, and prompt decisions on their appeals. Authorization for nine active judges would be a significant factor in furthering that goal.

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.