

NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.



Prepared Statement

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Before the

Committee on Veterans' Affairs

United States Senate

Senate Bill 1754, Veterans Court of Appeals Support Act of 2015

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On behalf of the National Organization of Veterans' Advocates, Inc. (NOVA), I would like to thank Chairman Isakson and Ranking Member Blumenthal for the opportunity to provide written testimony for the record during a legislative hearing of the Senate Committee on Veterans' Affairs on October 6, 2015.

The National Organization of Veterans' Advocates, Inc. (NOVA) is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents more than 500 attorneys and agents assisting tens of thousands of our nation's military veterans, their widows, and their families to obtain benefits from the Department of Veterans Affairs (VA). NOVA members represent veterans before all levels of the VA's disability claims process. In 2000, the United States Court of Appeals for Veterans Claims recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award. NOVA currently operates a full-time office in Washington, D.C.

Our written testimony will address Senate Bill 1754, the "Veterans Court of Appeals Support Act of 2015."

VETERANS COURT OF APPEALS SUPPORT ACT OF 2015

NOVA supports S. 1754, the "Veterans Court of Appeals Support Act of 2015," which makes permanent the temporary increase in the number of judges presiding over the U.S. Court of Appeals for Veterans Claims ("Veterans Court").

In 1988, Congress enacted the Veterans Judicial Review Act of 1988 (VJRA). The VJRA created an Article I court to provide judicial oversight to a veterans' benefits adjudication process that had existed in "splendid isolation" from our legal system. *Brown v. Gardner*, 513 U.S. 115, 122 (1994) (quoting H.R. REP. NO. 100-963, pt. 1, at 10 (1988), as reprinted in 1988 U.S.C.C.A.N. 5782). Veterans and their dependents have exercised their right to judicial appeal in growing numbers since the inception of the Veterans Court.

To assist the Veterans Court, Congress provided for the recall of retired judges in 1999. The chief judge is authorized to recall a retired judge when "substantial service is expected to be performed." 38 U.S.C. § 7257(b)(1). As one commentator noted, by 2007, the Veterans Court was frequently recalling retired judges. Michael P. Allen, *The United States Court of Appeals for Veterans Claims at Twenty: A Proposal for a Legislative Commission to Consider Its Future*, 58 CATH.U.L.REV. 361, 371 n.54 (2009). Review of Miscellaneous Orders issued by the Veterans Court since 2007 indicates it often continues to exercise this authority to meet its needs. See Miscellaneous Orders 2008 – 2015, United States Court of Appeals for Veterans Claims (*available at* https://www.uscourts.cavc.gov/miscellaneous_orders.php).

In 2009, Congress further provided for assistance with a temporary increase in the complement of judges serving on the Veterans Court from seven to nine. Veterans Benefits Improvements Act of 2008, Pub. L. No. 110-389, § 601, 122 Stat. 4145, 4176-77 (amending 38 U.S.C. § 7253). This authority expired on January 1, 2013, and without further action, there will be no ability to appoint additional judges when the next two terms expire.

There is ample support for making the temporary increase permanent. In an effort to reduce the much-publicized claims backlog, the VA has processed record numbers of claims in the past few years. According to the VA, their overall claims inventory was reduced from 883,930 to 366,648 during the period between July 13, 2012 and September 26, 2015. In addition, the VA reports their “claims backlog,” i.e., the subset of the claims inventory representing claims “awaiting a rating decision for more than 125 days since receipt,” was reduced from 611,073 to 75,444 between March 25, 2013 and September 26, 2015. See Veterans Benefits Administration Status Reports (available at http://benefits.va.gov/REPORTS/detailed_claims_data.asp; last reviewed October 2, 2015). This action is resulting in an increasing numbers of appeals to the Board of Veterans’ Appeals (Board) and, in turn, to the Veterans Court.

Specifically, from FY 2010 through FY 2013, the Board dispatched an average of 45,981 decisions per year. U.S. Department of Veterans Affairs, *Board of Veterans’ Appeals Annual Report (Fiscal Year 2014)* 28 (July 2015) (available at http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2014AR.pdf); *Board of Veterans’ Appeals Annual Report (Fiscal Year 2013)* 25 (available at http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2013AR.pdf). In FY 2014, the number of decisions dispatched jumped to 55,532. *Board of Veterans’ Appeals Annual Report (Fiscal Year 2014)* at 28. In its most recent Annual Report, the Board estimated it would physically receive 74,072 cases for consideration and potentially issue 57,600 decisions in FY 2015. *Id.* at 21; 28. The number of decisions dispatched is expected to keep rising, particularly as the Board has significantly increased the number of staff attorneys in its employ and is authorized to expand the number of Board members from 64 to 78.

In turn, the Veterans Court received an average of 3,988 appeals and petitions between FY 2010 and FY 2013. United States Court of Appeals for Veterans Claims, *Annual Reports (Fiscal Year 2010 – 2013)*(available at <http://www.uscourts.cavc.gov/report.php>). In FY 2014, the number of appeals and petitions rose to 4,057. United States Court of Appeals for Veterans Claims, *Annual Report (Fiscal Year 2014)*(available at <http://www.uscourts.cavc.gov/documents/FY2014AnnualReport06MAR15FINAL.pdf>). If the Board’s projections are any indication, the demand on the Veterans Court is likely to grow at an accelerated rate.

Veterans who seek redress before the Veterans Court have endured many years of agency processing and review while waiting for the compensation earned through their service and sacrifice. These long delays should not be increased due to judicial backlogs related to an understaffed Veterans Court. The Veterans Court should be equipped to handle the anticipated influx of cases with a suitable number of qualified judges. Passage of the Veterans Court of Appeals Support Act of 2015 is one essential way to tackle the avalanche of appeals just on the horizon. Anything less would be an injustice.

For more information:

NOVA staff would be happy to assist you with any further inquiries you may have regarding our views on this important legislation. For questions regarding this testimony or if you would like to request additional information, please feel free to contact NOVA Executive Director David Hobson by calling our D.C. office at (202) 587-5708 or by emailing David directly at dhobson@vetadvocates.org.