

HEARING ON PENDING BENEFITS LEGISLATION

- - -

WEDNESDAY, APRIL 29, 2009

United States Senate,  
Committee on Veterans' Affairs,  
Washington, D.C.

The Committee met, pursuant to notice, at 9:32 a.m., in Room 562, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Sanders, Burris, Begich, Burr, Isakson, and Wicker.

OPENING STATEMENT OF CHAIRMAN AKAKA

Chairman Akaka. The United States Senate Committee of Veterans Affairs will come to order.

Aloha, good morning, and welcome to today's hearing.

Like the Health Legislative hearing last week, we have an ambitious agenda today that reflects the work and commitment of many members of this Committee on both sides of the aisle. The bills we are reviewing today reflect a bipartisan effort on this Committee to help VA adapt to the needs of veterans and their families.

The legislation before us focuses on providing assistance to veterans disabled while serving their country and assisting servicemembers as they transition from military to civilian life. Both are areas in which this

Committee has worked and will continue to work at as we develop another strong package of veterans' benefits legislation.

Before we begin I want to speak briefly about the items on the agenda that I have introduced. As veterans and their families all across this nation struggle to stretch their dollars, the passage of S.407, the Veterans' Compensation Cost-of-Living Adjustment Act of 2009, is critical. Among other benefits, it would increase the rates of compensation for veterans with service-connected disabilities, and it would increase the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

Many of the three million-plus recipients of these benefits depend upon the tax-free payments, not only to provide for their own basic needs but for the needs of their families. Without an annual COLA increase, these veterans and their families would see the value of their hard-earned benefits slowly diminish. We would be delinquent if we did not ensure that those who sacrificed so much for this country receive the benefits and services they have earned.

S.514, the Veterans Rehabilitation and Training Improvements Act of 2009, would ensure that veterans in VA's vocational rehabilitation program receive a subsistence allowance equal to the E-5's housing stipend. And if a veteran completes VA's Vocational Rehabilitation Program,

the bill also authorizes VA to reimburse that veteran for rehabilitation-related expenses, like childcare. Furthermore, the bill removes a cap on VA's independent living services.

S.718, the Veterans' Insurance and Benefits Enhancement Act of 2009, is comprehensive--a comprehensive bill that would provide important benefits to veterans both young and old. This legislation would increase Veterans' Mortgage Life Insurance coverage, and supplemental Service-Disabled Veterans' Insurance for disabled veterans. It would also establish a new insurance program for service-connected veterans.

In addition, this legislation would expand eligibility for retroactive benefits from Traumatic Injury Protection coverage under the Servicemembers' Group Life Insurance program. Importantly, this bill would also increase certain benefits that have not been updated for many years for veterans and their survivors.

Lastly, I have introduced legislation S.919 that would ease the burden placed on combat veterans to provide information on an event that caused a particular disability. This legislation would require VA to issue regulations that would specify events that are characteristic of particular combat zones and for which a veteran's testimony concerning exposure to those events should be conceded.

I am eager for an open discussion on these meaningful pieces of legislation. I thank you all for joining us this morning, and I look forward to hearing from all the witnesses.

At this time, I would like to call on Senator Wicker for any statements that you wish to make.

OPENING STATEMENT OF SENATOR WICKER

Senator Wicker. Thank you very much, Mr. Chairman.

We have two very distinguished panels to hear from today, and I therefore will waive an opening statement so that we can get right to the testimony. Thank you, sir.

Chairman Akaka. Thank you very much, Senator.

I want to welcome our principal witness from VA, Brad Mayes, who is a Director of the Compensation and Pension Service for VBA. He is accompanied by Richard Hipolit, Assistant General Counsel and Tom Lastowka, the Director of VA's Regional Office and Insurance Center. I had the pleasure of visiting several months ago, and I thank you both for being here. VA's full testimony will appear in the record.

Mr. Mayes, will you please begin with your testimony?

STATEMENT OF BRADLEY G. MAYES, DIRECTOR,  
COMPENSATION AND PENSION SERVICE, VETERANS  
BENEFITS ADMINISTRATION; ACCOMPANIED BY RICHARD  
HIPOLIT, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF  
VETERANS AFFAIRS AND THOMAS M. LASTOWKA, DIRECTOR,  
VA REGIONAL OFFICE AND INSURANCE CENTER, VETERANS  
BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS  
AFFAIRS

Mr. Mayes. Mr. Chairman, thank you for having us here today.

Before I get started I was hoping you would permit me to go a little bit beyond the standard five minutes given the number of bills that we have to talk about today and the complexity and the importance of those bills.

Chairman Akaka. Mr. Mayes, you may continue with your testimony.

Mr. Mayes. Thank you, Mr. Chairman, Senator Wicker.

I am pleased to be here today to provide the Department of Veterans Affairs' views on pending benefits legislation. I will not be able to address a few of the bills on today's agenda because we did not have time to coordinate the Administration's position and develop cost estimates, but we will provide that information in writing for the record.

Further, the Administration defers to the Departments of Labor and Defense regarding a position on S.263 and S.475

since those departments are primarily affected by this proposed legislation.

Regarding S.347, VA does not support enactment of this bill because VA already has the authority to adjust the schedule of payments under the Traumatic Servicemembers' Group Life Insurance program as needed. Furthermore, VA previously considered as part of its "Year-One Review" of the TSGLI program whether the payment for a qualifying loss of a dominant hand should be higher than the payment for a qualifying loss of a non-dominant hand.

And VA concluded that a distinction was not necessary since the purpose of the TSGLI program is primarily to provide short-term financial assistance to servicemembers and their families because the families often suffer financial hardship to be with the injured members during their treatment and recovery periods. VA's compensation program, not TSGLI, is designed to compensate for the long-term affects of injuries incurred in service, and the compensation program does pay a greater benefit for loss of dominant hand.

S.407, the Veterans' Compensation Cost-of-Living Adjustment Act of 2009 would, as you said, Mr. Chairman, direct the Secretary of Veterans' Affairs to increase administratively the rates of disability compensation for veterans with service-connected disabilities, including

additional amounts authorized for dependents and the clothing allowance, DIC, and it would be effective December 1, 2009. VA supports a cost-of-living adjustment of this nature.

S.514, the Veterans' Rehabilitation and Training Improvements Act of 2009, would provide for an increase in the amount of subsistence allowance payable to veterans participating in voc rehab programs under Chapter 31 of Title 38 United States Code, allow reimbursement of certain costs to those veterans, and remove the limitation on the number of veterans who may be provided programs of independent living.

We support, in principle, efforts to facilitate successful completion of voc rehab programs under Chapter 31. However, recent changes to VA education benefits, including the new Post-9/11 GI Bill may affect Chapter 31 participation and completion rates. The Department is evaluating the impact of this new benefit package and the implications for the Vocational Rehabilitation and Employment Program to include the need to adjust the subsistence allowance. For this reason, VA is unable to support increased subsistence rates at this time; however, VA does not object to the removal of the limitation on the number of veterans who may enter programs of independent living subject to the availability of offsets for additional

costs associated with that expansion.

S.663, the Belated Thank You to the Merchant Mariners of World War II Act of 2009, would establish in the General Fund of the Treasury a Merchant Mariner Equity Compensation Fund from which VA would pay \$1,000 per month to eligible members of the Oceangoing Merchant Marine who had service between December 7, 1941 and December 31, 1946.

There can be no doubt that merchant mariners were exposed to many of the same rigors and risks of service as those confronted by members of the Navy and the Coast Guard during World War II. However, the universal nature of the benefit that S.663 would provide for individuals with qualifying service, and the amount of the benefit that would be payable or difficult to reconcile with the benefits VA currently pays to other veterans, as well as members of the Oceangoing Merchant Marine Service during World War II, S.663 would create what is essentially a service pension for a particular class of individuals.

The bill would authorize the inequitable payment of a greater benefit to a Merchant Mariner simply based on qualifying service than a veteran currently receives for a service-connected disability rated at 60 percent disabling. Accordingly, the bill would provide to Merchant Mariners significant preferential treatment not provided to other veterans



S.691 and S.746 would require VA to establish national cemeteries in El Paso County, Colorado and in the Sarpy County, Nebraska region, respectively. VA does not support the proposed legislation because the criteria VA has adopted and Congress has endorsed for determining the need for new national cemeteries requires that there be at least 170,000 veterans not currently served by a burial option in a national or state veterans' cemetery residing within 75 miles of the proposed site. And based on these criteria, the need for a new national cemetery is not demonstrated in these locations.

Regarding S.718, the Veterans' Insurance and Benefits Enhancement Act of 2009, Section 101, would create a new life insurance program that would provide up to \$50,000 of coverage to veterans who are less than 65 years old and have a service-connected disability. VA supports Section 101 subject to Congress' enactment of legislation offsetting the increased costs associated with this provision because it would meet service-disabled veterans' needs by providing more adequate amounts of life insurance than currently available under the SDVI program. However, VA does not support paying for administrative costs from premiums because the Administration believes that the cost of entitlement should be separate and distinct from the cost of administering those entitlements.

Section 102 would increase the maximum amount of supplemental SDVI from 20,000 to 30,000. VA supports Section 102 provided offset source of funding. VA defers to the Department of Defense on the merits of Section 103 because DOD would bear the costs associated with this enactment.

Veterans Mortgage Life Insurance is available to eligible individuals age 69 or younger with severe service-connected disabilities who receive a specially-adapted housing grant. Currently, the maximum amount of VMLI provided is lesser of 90,000 or the amount of the loan outstanding on the housing unit. Section 104 would increase the 90,000 limitation to 150,000, and then 200,000 after January 1, 2012. Subject to legislation offsetting the increased costs, VA supports Section 104.

Section 105 would correct a previous inequity in the law and provide that all insurable spouses of servicemembers, whether those members are disabled or not, would have the same time period in which to convert their TSGLI coverage to a privately obtained policy consistent with the other conversion time periods specified in the statute. However, Section 105 would specify that a dependent's coverage would terminate within a specified period after the member separated or was released from the uniformed services. This phrase would not include Ready

Reservists who are separated or released from an assignment rather than from the Uniformed Services. And VA supports this provision, and there are no associated costs.

Section 201 of the bill would require the VA to increase the monthly payment of temporary DIC that is payable for one or more dependent children under the age of 18 years. VA supports enactment of this provision, the benefit costs of which would be insignificant.

VA supports enactment of Section 202 because it would accomplish the same purpose for which VA proposed legislation to the last Congress. In 2001, Congress made wartime veterans age 65 years or older eligible for pension without regard to the permanent and total disability requirement. In 2006, the Court of Appeals for Veterans' Claims held that veterans age 65 or older are also eligible for the higher rate of pension authorized for veterans who are permanently housebound without regard to the permanent and total disability requirement. Although the Court's holding is arguably a plausible interpretation of the literal terms of the statute, we believe it is inconsistent with Congress' intent because it results in inconsistent and illogical treatment of veterans' claims and subverts the primary purpose of authorizing the higher rate of pension.

Believing that Congress did not intend such an inequitable result, we proposed legislation to overturn the

Court's interpretation, and we support enactment of this section for those reasons. And we estimate cost savings of \$3.2 million the first year and \$175.5 million over 10 years.

Regarding Section 203, I would like to state for the record that my written testimony, Mr. Chairman, cited findings in a 2001 program evaluation of benefits for survivors of veterans with service-connected disabilities as the basis for the Administration's opposition to increases to the monthly rates of DIC for surviving spouses and parents. And while the study did form the basis for the Administration's opposition to rate increases as stipulated at Section 203(a) for surviving spouses who were entitled to DIC at the housebound or aid and attendance rate, it didn't adequately address the needs of surviving parents.

A subsequent program evaluation of the parents' DIC program in 2004, which I did not reference in my written testimony, recommended an increase in the parents' DIC rate. As such, I would ask that you provide me the opportunity to look more closely at this benefit to determine if, in fact, cost of living adjustments have already been made similar to those proposed in this section of the bill, and whether further adjustment is necessary.

Sir, I want to get this right. VA did not have sufficient time to prepare benefit cost estimates for this

provision. With the Committee's permission, we will provide a cost estimate for the record.

Section 204(a) of the bill increases the maximum monthly pension amounts from 90 to 100 for spouseless and childless veterans, and we do not object to these increases.

Sections 301 and 302 would require VA to make supplemental payments in addition to currently required statutory payments for funeral and burial-related expenses--but if, and only if, funds are specifically appropriated in advance for that purpose. VA has not supported similar legislation in the past because funding a single benefit from multiple sources can create numerous complications in administration and represents an unsound budgeting practice.

Section 401(a) would add to the list of disabilities that qualify a compensation-receiving veteran or active duty servicemember for assistance in obtaining an automobile or other conveyance or adaptive equipment an additional disability--a severe burn injury, as determined pursuant to VA regulations. Section 401(b) would make various stylistic changes to Section 3901.

Regarding Section 402, we plan to review the scope of our existing authority to determine if there are circumstances under which severe burn victims are not adequately covered by the automobile and specially adaptive

equipment grants.

And finally, S.820, the Veterans Mobility Enhancement Act of 2009 would increase from \$11,000 to \$22,500 the maximum amount of assistance VA is authorized to provide an eligible person to obtain an automobile or other conveyance. It would also require VA to increase that amount, effective October 1 of each year to an amount equal to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to establish the method for determining that average retail cost.

We understand the importance of providing sufficient resources for vehicles or adaptive equipment to servicemembers and veterans who rely on them, but we cannot support this bill at this time. In order to best support the goals of the program, we do need some time to review the appropriate amount to provide for this benefit.

Regarding S.842, the final bill that I have comments in my oral statement for, Section 1 of the bill concerning mortgages and mortgage foreclosures relates to the Servicemembers Civil Relief Act, a law primarily affecting active duty service personnel. Accordingly, VA defers to the views of DoD with regard to that section. And Section 2 would authorize VA to purchase a VA-guaranteed home loan from the mortgage holder, if the loan is modified by a bankruptcy judge under the authority of 11 U.S.C. § 1322(b).

VA cannot support any additional repurchasing authority until the budgetary impacts of such authority on existing and future cohorts of loans can be reviewed.

Mr. Chairman, thank you for your indulgence with my long oral statement. This concludes my statement, and I would be pleased to answer any questions you or the other members of this Committee may have.

[The prepared statement of Mr. Mayes follows:]

Uncorrected Copy

Chairman Akaka. Thank you very much, Mr. Mayes, for your testimony.

I am going to call on Senator Burr, a Ranking Member, for his opening statement, after which I'll come forward with questions to you.

OPENING STATEMENT OF SENATOR BURR

Senator Burr. Mr. Chairman--I thank the Chairman and I would ask unanimous consent that my statement be part of the record. And my apologies to our witnesses today but D.C. traffic is somewhat unpredictable, especially when it rains and trying to get into the city this morning after I was dumb enough to leave the city this morning was a big mistake. I thank you.

/ COMMITTEE INSERT

Uncorrected Copy



Chairman Akaka. Without objection, your statement will be placed in the record.

Mr. Mayes, your testimony argues that a review of the Compensation Program may have implications for the future of the vocational rehabilitation programs. When will you be in a position to fully evaluate the adequacy of the living allowance given to voc rehab participants?

Mr. Mayes. Mr. Chairman, there are a couple of things at play regarding changes to the subsistence allowance for the vocational rehabilitation benefit. One, of course, is the Econ System study that the Department initiated last year. We are looking--that study--Economic Systems, Inc., as part of that study, is looking at the compensation program. They looked at transition assistance, and as you know, the Veterans Benefits Improvement Act of 2008 required us to report the Secretary's finding to Congress. And that report is due to Congress in May.

So part of that review was to look at the transition benefits available to veterans. But I think more importantly are the implications of the changes to the education benefit with respect to the Chapter 33 benefit that we are in the process of executing right now. Because the amount or the rate of payment to veterans who will be participating in that program is going to be significantly more in many cases than what they are getting under the

Chapter 30 program, we are trying to understand if veterans would indeed switch over from the Chapter 31 program to the Chapter 33 program. And if that is the case, then the number of veterans availing themselves of the 31 program would be reduced. And it might change our position somewhat with respect to what we can do with the subsistence allowance.

Chairman Akaka. Thank you.

Mr. Mayes, you mentioned that VA's 2004 evaluation found that 79 percent of parents whose children died in service to our country have incomes at or below the poverty line. From my vantage point I find it insulting that these low income parents receive a meager \$5.00 per month under the current program. Will you please provide for the record revised views of this section that takes into account the 2004 evaluation?

Mr. Mayes. Yes, Mr. Chairman. Absolutely.

We need to go back and review not just the 2001 study but the 2004 study and make sure that we are talking very closely with staff from your Committee to make sure we understand the intent and that we are consistent with our program objectives. We will do that, sir.

Chairman Akaka. Mr. Mayes, VA recognizes the need to provide sufficient resources for vehicles and adaptive equipment for veterans who rely on them. We also have wide

recognition from everyone involved in this issue that the current benefit is inadequate, yet your testimony suggests that even more time is needed to determine what an appropriate amount would be.

My question to you is how much time do you think VA needs to determine an appropriate amount for the benefit?

Mr. Mayes. Mr. Chairman, I think one of the values of these hearings is it forces us to dig and to take a look very closely at what we are doing. And we've done that. I've asked my policy staff to take a close look at the automobile allowance.

I really have two questions from a policy point of view. Should the allowance compensate fully for the purchase of an automobile or subsidize the purchase of an automobile? And the second policy question is what's a reasonable amount for the purchase of an automobile? And prior to this hearing we didn't have time to reach a conclusion on that, which is why I was not able to support the bill as drafted at this time.

We are looking at that--I am asking for that in a matter of weeks so that we can form a firm position either with respect to a legislative proposal or working with the Committee staff so that we can reach some consensus on what that should be. So I think within--I would like to give myself a little bit of wiggle room--within four or five

weeks we will be ready to talk more about that.

Chairman Akaka. Mr. Mayes, I want to clarify something from VA's written testimony. Is it correct to say that VA recognizes the need for a veterans' cemetery in Colorado but in a different location than the one stated in the proposed legislation?

Mr. Mayes. I am going to refer that question to Mr. Hipolit on my right.

Mr. Hipolit. Yes. I believe our testimony recognizes that the Fort Logan Cemetery will essentially be full by about 2019 and that there will be--at that later date that there will be a need in Colorado for an additional cemetery after Fort Logan closes. So we are just beginning the planning stages now, I believe, for looking forward to that period to see where an appropriate location might be. I think we've stated that something closer to the Denver area is probably going to be what the recommendation would be on that. We are just starting the planning stages right now because that's a little ways down the road.

Chairman Akaka. Thank you. Now I'd like to call on Senator Wicker for your questions.

Senator Wicker. Thank you very much.

Mr. Mayes, I really just have one question, and that's concerning language that was included in the Housing and Economic Recovery Act last year.

As I understand it, S.842 has been introduced by Senator Carey. It would amend the Servicemen's Civil Relief Act real property protection provision by eliminating the nine-month sunset that was included in the Housing Recovery Act. I understand you have reservations about this, as do I, but has the department used it at all during the time that it has been in effect? I understand--and correct me if I am wrong--that it would give the VA the authority, if it is a VA-backed loan, to pay the lender the balance of the mortgage. Am I correct on that? And has this provision been used at all? Give me your thoughts on that concept.

Mr. Mayes. Senator, I am going to be very direct. That's outside my area of expertise. That's a question that I would like to take for the record and make sure that we provide you with a very thorough, accurate response. It is my understanding, as it is yours, that, in fact, we could make the lender whole based on those provisions. But I'd like to take that for the record.

Senator Wicker. I am perfectly satisfied with that and look forward--I wonder how long that might take.

Mr. Mayes. I think we can do that in short-order.

Mr. Hipolit. I think we are kind of providing things for the record by--May 14 I think is our target.

Senator Wicker. Okay. Well, that will be here before we know it. So, thank you very much. And I don't have any

other questions, Mr. Chairman.

Chairman Akaka. Thank you very much, Senator Wicker. Let me call on Senator Burris for his questions.

Senator Burris. Mr. Chairman, I--thank you, Mr. Chairman, Ranking Member Burr.

I'd like to naturally extend my warm welcome to our guests who are here. I am looking at all this legislation and just wondering where do you start. It is like the kid in the candy store in terms of which ones you want to pick in. But I am excited about the agenda. I am a cosponsor on quite a few of these legislations, especially with the Veterans' Cost-of-Living Adjustment Act of 2009 and the Veterans' Rehabilitation and Training Improvement Act of 2009. We must make sure that that we can get passed. Of course, I support many of these other items. I hope we can utilize the expertise gathered here today to gain some consensus on this agenda.

In terms of questions, Mr. Mayes, I want to know about Senate Bill 347. And do you believe that this bill could lower from their current level of the TSGLI payments for the loss of a non-dominant hand? Do you have any comments on that?

Mr. Mayes. Senator, I will refer that question to Mr. Lastowka, who heads our insurance program.

Chairman Akaka. Mr. Lastowka, please.

Mr. Lastowka. Senator, we believe that the legislation is not necessary. We believe the current law provides that the Secretary could already--does already have the authority to set a different level of payment for the dominant hand. We considered that question during the "Year-One TSGLI Review" which we promised the Committee that we would take, and we have forwarded that review. And in our discussions with medical and rehabilitation people, and comparing it to the purpose of TSGLI to give immediate financial relief, we felt that it was not appropriate to pay more for the dominant hand than the less dominant hand due to some difficulty medically of determining the difference due to some implications of what it might mean for other traumatic injuries having an effect on a dominant side of the body. We believe the payment is adequate, and we believe for ongoing disability, the Compensation Program which does recognize the disability is sufficient.

Senator Burris. Sir, I am left-handed. And if something were to happen to my left hand there would be a tremendous impact on me trying to learn to use my right hand.

Mr. Lastowka. I understand that, Senator.

Senator Burris. I hope that there's enough leeway in the Secretary's discretion to be able to make a difference. But I know how the bureaucracy works and that won't even get

up to the Secretary. That will be laid down in some bureaucratic desk somewhere, and that poor veteran who lost his left hand or left arm--I am sorry, left hand--will then be going around not one year, not two years, but three years trying to show that he's now trying to adjust to his right hand. And he probably wouldn't get any type of a response to it. So I hope that you all will take another look at that bill.

Mr. Lastowka. We are constantly looking at the question. For the two years, the three years, and in fact, for the lifetime of the veteran, there would be a higher payment under the VA Compensation Program which is seeking to compensate for the loss of a dominant hand, as opposed to the TSGLI program that is attempting to take care of the immediate family needs of a severely disabled servicemember, sir. But we will constantly look at it, sir.

Senator Burr. Thank you very much.

If there's a second round, Mr. Chairman, I'll probably have some questions for the second panel if my schedule allows me to be here. But thank you very much, Mr. Chairman.

Chairman Akaka. Thank you, Senator Burr.

And now I'd like to call on our Ranking Member, Senator Burr, and provide him with as much time as he needs.

Senator Burr. Thank you, Mr. Chairman. You're



generous, and aloha.

I want to stay on the same theme that Senator Burriss was on. We've now had several commissions over 50 years talking about the need to reform our disability compensation. What is the Administration's position on reforming the disability compensation?

Mr. Mayes. Senator, I am the Director of the Compensation and Pension Program, and I've been doing this job almost three years. I thought I knew what we were doing until I got here.

I think that in the statute the Disability Compensation Program is clear in that we are supposed to make up the earnings gap that exists for a servicemember who is injured or suffers a disease while they are on active duty. And I like to think of it--as I've looked at this closely and reviewed what the VDBC said and the Institute of Medicine said, and Dole-Shalala said--as I've looked at these studies, I equate the Disability Comp Program to a Workman's Compensation Program in the civilian sector, only a very, very special program with very special features. Once you're in, you're in for life. If your disability gets worse over your lifetime, then all you do is come and tell us. If it is substantiated, we pay you more money. If down the road you discover you have another disability that you believe is related to that service, there's no prohibition

from claiming that and we will adjudicate that claim.

So I think, as I am looking at it, and as the VDBC looked at it and CNA looked at the data, generally they found that it is making up the earnings gap. There are some areas where we need some improvement. Neuropsychiatric disorders was cited by CNA, especially in the lower evaluation categories. But I think it is making up the earnings gap, which is the statutory intent of the program--the Disability Comp Program.

Senator Burr. And with all due respect, I didn't ask you to evaluate the current program and whether it met the statutory requirements of filling in the earnings gap. I am getting at the heart of what I think Senator Burriss was asking. If he's left-handed, he loses his left hand, there's not just the gap of compensation. There is a quality of life issue because he's got to learn to comb his hair with his right hand. He's got to learn to do everything with his right hand, not just make money.

And I think every Commission that's come back said a quality of life payment should be something that should be considered in the future, especially when we are in a conflict like we are now where the loss of limb is probably the more typical injury to a servicemember and, you know, it shocks me to look back over the 50 years and see the similarities of every Commission that came out and the

incredible predictability of the bureaucracy in Washington to say, well, you know what? It doesn't need to change. It is 50 years old and it really doesn't need to change.

I was just as quite as frank with the last Administration as I will be with this one, and I'll do it as long as the Administration fights. And granted, I realize this is a very delicate balance that we've got to reach to try to design a compensation system that lives up to the expectations of the next generation of warrior, but also in some way takes care of the past generations that have become very comfortable with a system that says if you think you've gotten worse, then come in and we will increase your disability payment because the disability has gotten worse. Though, I think under today's standards if we look at some of the items that we consider disabilities under our current system that have been paid since it was created, they are not disabilities today. They do not in any way impact one's earning capacity. There is no earnings gap but we pay them.

I am the first one to say that you can't go back and take it away, but we can be smart enough and bold enough to say it is got to be different in the future. That when a servicemember loses an arm, the compensation package that's been in place for 50 years does not sufficiently cover that. Without a quality of life component to it, you just cannot look at that servicemember and say we've tried to make you

whole.

So let me just ask real quick as it relates to severe traumatic brain injuries and the need to get access to aid and attendance benefits if they need them. The Disability Commission said, and I quote this, "The primary focus is on physical impairments and locomotion. Very little emphasis is placed on cognitive or psychological impairments and the needs of those conditions for supervision and management as well as aid and attendance."

First of all, who qualifies for the higher levels of aid and attendance benefits today?

Mr. Mayes. I am going to refer that question to Mr. Hipolit. Before I do, though, I would like to say we did make a dramatic change to the regulation dealing with traumatic brain injury. I think that was published last year, and we recognized that we've got to more adequately compensate for cognitive impairment. That regulation has facets that address cognitive impairment and also allow for the payment of aid and attendance at the L-rate for traumatic brain injury.

But specific to your question, the higher level of aid and attendance I'll defer to Mr. Hipolit.

Senator Burr. Thank you.

Mr. Hipolit. Yes, as Mr. Mayes mentioned, there's two levels of aid and attendance we pay. There's the L-rate,

which is the standard rate. And also that can be paid to some other people at some of the other levels in Section 1114. Then, the higher level is paid under section R-2. That's for a person who is in need of a higher level of care. That's basically for somebody who needs services in their home of a medical nature and they would need to have somebody come in to, you know, give them injections or other types of services.

So it is essentially somebody who has one of these severe--this particular severe disability to qualify you for the R-category. And then in that category if you need these health-type services in your home, those would be the persons who would qualify for the higher level.

Senator Burr. Mr. Hipolit, would you agree with the Disability Commission that aid and attendance benefits currently do not focus on those individuals with cognitive impairments?

Mr. Hipolit. I think under the general aid and attendance benefit it is a more general category but for the higher level of care it doesn't focus on the cognitive disability. That's more focused on some other types of disabilities.

Senator Burr. So VA would be aware of veterans who appear to need those benefits but do not currently qualify?

Mr. Hipolit. We are exploring the possibility that may

be we need to modify the regulations to allow the higher level of aid and attendance for veterans suffering from traumatic brain injury severe cognitive impairment. The regulation that we published though specifically cites the possibility that we can pay aid and attendance at the L-rate. It directs our decision makers to consider aid and attendance at the L-rate when they are evaluating cognitive impairment under that particular diagnostic code--diagnostic code 8045 in our schedule.

The real question is that higher level. And the barrier to achieving that higher level of aid and attendance are the qualifying criteria--the losses or loss of use to be in the zone to be able to be awarded the higher level at the R-rate. And that's what we are exploring from a policy point of view.

Senator Burr. And please understand for all three of you I have deep respect for what you do. This is not an issue that popped up yesterday. As a matter of fact, we've got now seven years of experience in the current conflicts where the tragedy, if there is one, is that we've had traumatic brain injuries come back every week and yet we still have a system that's talking about reviewing what we need to provide from the standpoint of the benefit package.

You know, I've got a soldier from North Carolina that was discharged from the military in Germany because they

were convinced he would not live for the trip across the ocean. Much to his strong will he did. The worst mistake we could have made was to discharge him versus to keep him in the system. And I can tell you, today he does not qualify for the higher rate. And he needs everything that you've described. The care of his wife--if she wasn't there, for goodness sakes, I don't know what would transpire. But he does not qualify for the higher rate. And where was a soldier that was going to die. That's how severe his injury was.

I've got a number of questions that I am going to submit in writing because they deal with legislation that I am in the process of putting together. But let me just plead with you. There's a human face behind every one of these issues. And I realize we may not be capable of doing disability reform comprehensively. Gosh knows--Mr. Chairman knows I have tried to push it. And there's great reluctance up here to do it. It doesn't change my opinion of the great need for us to accomplish that. We need to sort this out. It is way too complicated, way too difficult, and it does not reimburse the individuals adequately that really deserve and need the reimbursement.

Now, I am not saying that people get something that they don't deserve, but I think to ignore the fact that today's warrior has different expectations at their quality

of life and what they can accomplish post the loss of a limb is to stick our head in the sand and say, you know what? Over time they will become just like everybody else--happy to get a check. And I am here to tell you that when we eliminate the opportunity to continue life as is for them we've made a huge mistake. We have made a long-term strategic blunder if we do that.

So, I would ask you as you work on these things--and I know they are complicated and I know they take time--understand there is a sense of urgency to do it. The only mistake that we can possibly make is to do nothing and to accept the status quo as the benefit package that today's generation of warriors is going to receive for the rest of their life. And they'll be here 50 years talking about 100 years worth of studies into a disability compensation package that needed to be reformed, and they'll point to us as ones that let it pass under our watch. And I will assure you that will not be a thing that we will wear proudly.

Thank you, Mr. Chairman.

Chairman Akaka. Thank you very much Senator Burr. I hope you had enough time for your questions and your comments.

Let me finish off with any further questions from Senator Burris?

Senator Burris. No, Mr. Chairman. I am okay. I have



to head to the other committee.

Chairman Akaka. Thank you very much.

Senator Burris. Thank you, Mr. Chairman.

Chairman Akaka. Senator Begich, do you have any questions or statements?

Senator Begich. I am good right now.

Chairman Akaka. Thank you very much.

I want to thank the first panel and I want to thank my Ranking Member for his profound statement to the panel and especially the VA. We have so much to do, and you know that. And I am glad you are devoted and that we will continue to try to work together and to get the responses that we need from you to improve the system.

Again, I want to thank you all for coming and spending the time with us. And I look forward to working with you in the years to come. Thank you very much, first panel.

I would like to welcome the second panel. First, I welcome Robert Jackson, who is the Assistant Director of National Legislative Service for the Veterans of Foreign Wars. Mr. Jackson. Next, we have Ray Kelley, who is the Legislative Director of AMVETS. I also welcome our Chuck Mason, a Legislative Attorney from CRS, and Mr. Ian DePlanque, who is the Assistant Director for the Claims Service of Veterans Affairs and Rehabilitation Commission at the American Legion. And finally, Rebecca Poynter, who is

the director of Military Spouse Business Organization, is also here with us today.

Mr. Jackson, we will please begin with your testimony.

Uncorrected Copy

STATEMENT OF ROBERT JACKSON, ASSISTANT DIRECTOR,  
NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN  
WARS OF THE UNITED STATES

Mr. Jackson. Thank you, Mr. Chairman, Ranking Member Burr, members of the Committee.

Thank you for the opportunity to provide testimony on pending Veterans' Benefits Legislation. The 1.8 million men and women of the Veterans of Foreign Wars of the United States do appreciate the voice you give them at these important hearings.

Due to the number of bills on the agenda, I am going to focus on one bill, the Veterans' Rehabilitation and Training portion. And I request my written testimony be entered into the official record.

While the VFW supports the intent of Senate Bill 514, the Veterans' Rehabilitation and Training Improvement Act, we believe more can and should be done to address the core issues facing the Vocational Rehabilitation and Employment Service, or VR&E. Specifically, this legislation would require the amount of monthly subsistence allowance paid to a veteran participating in a VA rehabilitation program to be equal to the national average of the basic allowance of for housing paid to a member of the Armed Forces at Pay grade E-5. The legislation would also provide reimbursement for costs incurred during participation if a veteran

successfully completes the program.

We believe that while this is a very important step, a disparity would still exist between Chapter 31 and Chapter 33 Subsistence Allowance Benefits. In utilizing a national average, many veterans may still choose not to use the Chapter 31 benefit because they may receive a higher stipend with Chapter 33. This would particularly be true in areas with a high cost of living. That is why the VFW would prefer to see Chapter 31's benefit paid at the same rate as a veteran receiving Chapter 33. Additionally, we support providing reimbursement for costs incurred by veterans as a result of participation, however, these costs need to be paid while a veteran is enrolled when assistance is most needed, not following their successful completion.

We also support the legislation's proposed repeal of the per-fiscal-year limit on the number of veterans who may participate in the VA Independent Living Services and Assistance program.

In past testimony, the VFW has cited several other changes that need to be made to ensure the VR&E program is the best transitional and rehabilitative program in VA's arsenal.

First, the VFW would like to see the delimiting date removed from VR&E. Currently, the delimiting date is set at 12 years after separation from the military, or 12 years

following the date a servicemember learns of their rating for a service-connected disability. This fails to take into account the fact that many service-related injuries will not hinder the veteran to the point of needing help or rehabilitation until many years following the injury.

Eliminating the delimiting date would allow veterans to access the VR&E program on a needs basis for the entirety of their employable lives. Veterans would still have to be approved for VR&E as having an employment handicap resulting from their service-connected disability and would still be subject to total cap of services. However, dropping the arbitrary delimiting date would ensure rehabilitation for veterans should their service-connected disability progress over time.

Secondly, for many veterans with dependents, the VR&E educational track provides insufficient support. Veterans with dependents are often those with the most pressing needs to secure meaningful long-term employment. Many seriously disabled veterans are unable to pursue all of their career options or goals due to the limited resources provided to disabled veterans with spouses and children. Unfortunately, these heroes utilize VR&E's employment track at a rate higher than disabled veterans without dependents. The VFW believes this is likely because immediate employment, while possibly not the best long-term rehabilitation outlook for

the veteran, provides higher financial stability in the short-term to the veteran and the family who otherwise may not be able to afford the costs associated with the veteran's long-term educational rehabilitation.

The VFW would like to see VR&E institute a program to help veterans with dependents while they receive training rehabilitation and education. This could be achieved by establishing a sufficient allowance to assist with the cost-of-living and in some cases by providing childcare vouchers or stipends as childcare is a substantial expense for many of these veterans.

And finally, the VR&E needs to reduce time from enrollment to start of services. Currently, it can take up to several months for a veteran to begin a program of training in VR&E. This occurs primarily because VR&E is required to validate that an entitlement is present. In a recent conversation with VR&E's central office, the VFW learned that it is extraordinarily rare that a veteran's entitlement is not found for the VR&E program. If a veteran has proven eligibility for VR&E, the VFW believes entitlement should be assumed, thereby minimizing veterans' time in gaining access to VR&E programs.

Mr. Chairman, thank you once again for inviting us to testify. This concludes my statement and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Jackson follows:]

Uncorrected Copy

Chairman Akaka. Thank you very much, Mr. Jackson.  
Now we will hear from Mr. Kelley.

Uncorrected Copy



STATEMENT OF RAYMOND C. KELLEY, NATIONAL  
LEGISLATIVE DIRECTOR, AMVETS

Mr. Kelley. Chairman Akaka, Ranking Member Burr, members of the Committee, thank you for inviting AMVETS to present our views regarding pending Veterans' Benefits Legislation.

For the sake of time I will only comment on legislation or provisions within legislation in which AMVETS has concerns.

AMVETS supports the intent of S.315, but we recommend the VA be required to provide a more detailed outline of their outreach plan. AMVETS believes that only providing budget justification materials when submitting their fiscal year budget request to Congress is not sufficient. A more detailed outreach plan must be provided to ensure appropriate funding levels.

AMVETS wholly supports the Veterans' Compensation Cost-of-Living Adjustment Act of 2009. However, AMVETS strongly opposes rounding down of disability compensation and DIC. Currently, there are approximately 27,000 veterans who do not have reasonable access to national or state cemeteries using Colorado Springs as a center of the 75-mile radius. This falls well below the current VA formula of 170,000 veterans within a 75-mile radius and the independent budget's recommendation to reduce veteran threshold to

110,000 veterans within the same 75-mile radius.

Of the 29 counties that are listed in S.691, only 12 have all or some part of the county within the radius threshold. AMVETS realizes that Fort Logan will be closing no later than 2019, and a new cemetery will need to be built in its place. Replacing the cemetery in the southern portion of the state will reduce accessibility for the higher populated northern portion of the state.

AMVETS does not support S.691, but recommends the NCA begin looking for a suitable cemetery location along the I-25 corridor south of Denver, but far enough north that veterans who live as far south as Pueblo and as far north as Fort Collins and Greeley could be served as well. For veterans who live in regions that will not be served by either the Fort Logan or a newly established cemetery, AMVETS suggests the state work with NCA State Grants Programs to satisfy the burial needs of veterans who live in Colorado.

There are three sections within S.728 that AMVETS would like to discuss. AMVETS supports Section 201 of the legislation, however, rounding down to the nearest whole dollar should be eliminated. In Sections 301 and 302, AMVETS supports the supplemental benefits for veterans' funeral and burial expense and plot allowance. This provision meets the request of past independent budgets

through supplemental appropriate funds. AMVETS requests the supplemental payments be made permanent and match the request of the 2010 independent budget.

S.746 describes the Sarpy County region as an area that includes 82 counties in three states. But using NCA formula, only 27 of the counties will fall within the 75-mile radius. AMVETS agrees with the intent of the legislation because it falls within the independent budget's recommendation of 110,000 veterans' population threshold. However, including 55 counties that fall outside the threshold model will leave veterans in these areas unserved by the state or national cemetery. AMVETS suggests the states involve assess the need outside the threshold radius, and if needed apply for grants through the NCA's State Grants Program.

AMVETS supports the clarification of characteristics of the Combat Service Act of 2009. AMVETS also agrees that defining combat zone to ensure that all servicemembers who are in the feeder of operation have a more lenient burden of proof for service connectivity is important. AMVETS believes there is a definition that is between the too strict engaged in combat with the enemy and a combat zone being defined by the Internal Revenue Code. Defining combat zone as a theater of operation as agreed on by the two Secretaries involved will include all servicemembers who

should be granted a lesser burden of proof without jeopardizing the integrity of the provision.

Mr. Chairman, thank you again for providing AMVETS the opportunity to testify before the Committee today, and I'll be happy to answer any questions you may have.

[The prepared statement of Mr. Kelley follows:]

Uncorrected Copy

Chairman Akaka. Thank you very much, Mr. Kelley.  
Now we will hear from Mr. Mason.

Uncorrected Copy

STATEMENT OF R. CHUCK MASON, LEGISLATIVE ATTORNEY,  
CONGRESSIONAL RESEARCH SERVICE

Mr. Mason. Mr. Chairman, Ranking Member Burr, and Distinguished Members of the Committee. I'd like to thank you for inviting me to testify today.

While the Congressional Research Service takes no position on pending legislation, you requested comment on Senate 475, the Military Spouses Residency Relief Act. If enacted, the bill would amend three sections of the Servicemembers' Civil Relief Act that could arguably reduce confusion related to residency and taxation issues that often arise as a result of frequent duty station transfers for military families.

Congress has long recognized the need for protective legislation for servicemembers whose service to the national compromises their ability to meet obligations and protect their legal interests. During the Civil War, Congress enacted an absolute moratorium on civil actions brought against soldiers and sailors. During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918, which did not create a moratorium on legal actions but instead directed trial courts to apply principles of equity to determine the appropriate action to take whenever a servicemember's rights were involved in a controversy. During World War II, Congress essentially reenacted the

expired 1918 statute as the Soldiers' and Sailors' Civil Relief Act of 1940, and then amended it substantially in 1942. One of the 1942 amendments was the creation of the prohibition on multiple state taxation of the property and income of a servicemember. In 2003, Congress enacted the Servicemembers' Civil Relief Act as a modernization and restatement of the Soldiers' and Sailors' Civil Relief Act and its protections.

In 1953, the United States Supreme Court in *Dameron v. Brodhead* held that the act to be constitutional under Congress' power to raise and support armies and to declare war. The *Dameron* case involved a challenge to the 1942 amendment regarding multiple state taxation. In upholding the statute, the Court stated that the purpose of the act is to provide for, strength, and expedite the national defense by protecting servicemembers, enabling them to devote their energy to the defense needs of the nation. If enacted, S.475 would extend rights under three sections of the Act to include the servicemember's spouse.

Currently, under S.508, a servicemember receives an exemption from residency and minimum age requirements related to various land rights, including the right to access and use public lands and to maintain mining claims, mineral permits, and leases. A spouse of a servicemember does not receive the same rights. However, under the

proposed bill, spouses would receive the residency requirement exception enjoyed by the servicemember.

Section 511 of the Act prevents multiple state taxation on the property and income of military personnel serving within a tax jurisdiction by reason of military service. The Act provides that servicemembers neither lose or acquire a state of domicile or residence for taxation purposes when they serve at a duty station outside their home state in compliance with military orders. However, a servicemember who conducts other nonservice-related business may be taxed by the duty station jurisdiction for the resulting income. And while this section does not protect the income of a spouse or other military dependent from taxation in the duty station jurisdiction, the jurisdiction cannot include the military compensation earned by the nonresident servicemembers to compute the tax liability imposed on the nonmilitary income earned by the servicemember or his or her spouse.

Under the proposed bill, a new subsection addressing the income of military spouses would be created. The spouse of a servicemember would neither lose nor acquire a state of domicile or residence for taxation purposes when he or she accompanies a spouse to a duty station outside the home state in compliance with military orders. Any income earned by the spouse while in that jurisdiction pursuant to the



orders would not be subject to the tax jurisdiction outside of their home state.

Finally, under Section 705 of the Act, military personnel are not deemed to have changed their state residence or domicile for the purpose of voting for any federal, state, or local office solely because of their absence from their respective state in compliance with military orders. Under the proposed bill, the spouse of a servicemember would receive the same protection afforded the servicemember. It would not change his or her state residence or domicile for the purpose of voting solely because of the absence in accompanying their spouse on their orders.

In reviewing the proposed legislation, several issues may arise:

First, the language addressing residence for tax purposes of spouses of servicemembers may create a disparity in treatment between the servicemember and his or her spouse. As proposed, any income earned by a spouse while accompanying a servicemember would not be subject to taxation in the jurisdiction of military service. However, a servicemember would earn additional income be it through a business endeavor or part-time job. The servicemember's additional income would still be subject to taxation in the duty station jurisdiction.

Also, the constitutionality of the proposed language also appears to raise a question of first impression. While it is well settled that the SCRA is constitutional under Congress' authority to raise and support the armies and to declare war, it is unclear if that power also encompasses the ability to exempt any individual not actually in the Armed Forces from taxation in the jurisdiction where his or her spouse is stationed. Any inquiry on the constitutionality question would likely hinge on whether exempting the spouse from taxation serves to assist the servicemember to devote their entire energy to the defense needs of the nation.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions you or other members of the Committee may have.

[The prepared statement of Mr. Mason follows:]

Uncorrected Copy

Chairman Akaka. Thank you very much, Mr. Mason, for your testimony.

Now we will hear from Mr. DePlanque.

Uncorrected Copy

STATEMENT OF IAN DePLANQUE, ASSISTANT DIRECTOR,  
VETERANS AFFAIRS AND REHABILITATION COMMISSION,  
THE AMERICAN LEGION

Mr. DePlanque. Good morning, Mr. Chairman, Ranking Member Burr, and Members of the Committee.

On behalf of the American Legion, I would like to thank you for providing the opportunity to offer testimony regarding the broad variety of pending legislation here in the Senate.

You've already received our written testimony which details the specifics of the American Legion positions on the full list of legislation, and in the interest of brevity I'll offer additional comment on only a few points which require clarification.

To begin with, we recently received two pieces of draft legislation from Ranking Member Burr subsequent to the preparation of our written statement. While we would like additional time to further review in detail, initial review of them we are generally supportive of them as they appear to be an expansion and an enhancement of the benefits offered to veterans, particularly amputee veterans and transitioning veterans who must choose between the Medical Board's decision and a VA compensation offer.

Regarding the prosthesis issue and something that was brought up earlier by Senator Burr, I would ask in terms

of forming a vision, if everyone in the room was to be told you have a choice--you can keep one hand--I believe everyone would be able to make a determination relatively simply as to which hand they would prefer to keep. I would also ask the gentlemen present to consider if tomorrow morning you got up and were asked to shave with your non-dominant hand, you would recognize this might be more of an obstacle than your normal morning rituals of shaving with your dominant hand.

As Ranking Member Burr pointed out, we need to continue to examine the rating schedule. We need to continue to examine the compensation that we offer our veterans for the disabilities that they suffer. And we need to sometimes recognize that outside the earning potential the effects on the quality of life need to be considered for the veterans who suffer from these disabilities.

As we are also discussing our understanding of the changing times in addressing our disability compensation system, I would add that the current piece of legislation--the clarification of the characteristics of Combat Service Act of 2009 addresses the Section 1154 of Title 38, which refers to the confirmation of incidence in combat. In 1941, when Congress first brought this forward, they recognized that it was very difficult to keep records in combat and therefore, we have been more willing to accept

the word of honor of a servicemember that as long as the actions were consistent with the hardships and conditions of combat--as long as the action described was consistent with that--we would accept the word that the incident occurred. Which consist of only one part of the three-part process involved in service connection of an injury.

We are recognizing that there is a changing face of the modern battlefield. Much has changed in the last 70 years. Many of the incidents that were intended to be recognized as experiences of combat are not as easily proved that combat took place. In Afghanistan, a soldier could witness a child crossing a mine field and detonating a mine. As this did not happen to an American servicemember, this may not be documented. In Saigon, a soldier could witness a monk self-emulating on the street. This also may not be documented or as easily documented, but we all recognize that these are actions that are consistent with the daily occurrences in a combat zone.

All servicemembers need to be treated with the same hand. It is far easier under the current regulations for combat arms soldiers to prove the existence of combat, yet we all know that it is not just combat arms soldiers, and sailors, and airmen, and marines, who were facing the existence of these activities of combat situations. It is all soldiers, and we believe that it is time that that be

recognized in a combat zone.

I would like to thank you for offering us this opportunity, and I would be happy to answer any questions the Chairman or Members of the Committee have.

[The prepared statement of Mr. DePlanque follows:]

Uncorrected Copy

Chairman Akaka. Thank you very much, Mr. DePlanque.  
And now we will hear from Ms. Poynter.

Uncorrected Copy



STATEMENT OF REBECCA NOAH POYNTER, DIRECTOR,  
MILITARY SPOUSE BUSINESS ORGANIZATION

Ms. Poynter. Mr. Chairman, thank you for the opportunity to be here today and testify in support of the Military Spouses Residency Relief Act. I am here to speak on behalf of all military spouses who support this Act and to ask the Committee for its recognition and fair treatment of military spouses.

My name is Rebecca Poynter. I am a proud Army wife. My husband is a former Apache pilot warrant officer in the 82nd Airborne and is currently a major in the Army Medical Service Corps. I am here with my close friend, proud Navy spouse, Joanna Williamson. Joanna's husband is a former marine and now serves as a Navy Lieutenant Commander.

Just as is the case for thousands of military families, in less than 45 days, Joanna's family will make their sixth military move in eight years as they relocate from Virginia to California. Her husband will immediately deploy to Afghanistan. Likewise, my husband and I will move from Maryland to Oklahoma. Both of us--both Joanna and I--support our husbands' careers and we are dedicated to the United States Armed Forces.

The military spouses gathered here today represent the thousands of us across the country who support the Residency Relief Act. Our coalition includes veteran and active duty

organizations: MOAA, AUSA, NMFA, the Air Force Association, and the Air Force Sergeants Association.

Throughout our nation's history, the Federal government has recognized that military service carries with it multiple relocations, and as a result, profound complications. In 1940, the Soldiers' and Sailors' Relief Act was enacted to protect servicemembers in those civil matters which are impacted by state residency. Under the protection of the SCRA, military members are allowed to declare a single home state that is a permanent state of residency while on active duty and for the duration of their service. The spouse who is not covered under this law is equally subject to the Federal relocation orders, yet is not similarly protected. Spouses must change their state residency with each move and it is the military spouses who face the unique challenges of constant relocations.

In our voluntary military, 54 percent of servicemembers are married. There are approximately 750,000 active duty spouses, 92 percent of whom are women.

An important point for your consideration is that this Act allows for a single choice by providing to the military spouse the option of aligning with their servicemember spouse in sharing the same home state.

With the Military Spouses' Residency Relief Act, Congress has the opportunity to significantly improve the

quality of life issues of voting, personal property ownership, and employment and education access. These are currently complicated, suppressed, and deterred by military moves.

Military spouses are disenfranchised from voting; oftentimes not arriving to a new state in time to vote in primaries, and they do not have ample opportunity to get to know the federal, state, or local candidates. It is confusing when one state allows a military spouse to vote via absentee ballot, yet the state where the spouse is physically located does not. Where is she supposed to vote? Furthermore, military spouses who have purchased property or homes have a vested interest in that state. The ability to vote locally is in the best interest of not only the voter, but of the candidate and political system, as well.

In regard to personal property, a serious matter, current and often conflicting state laws create financial and administrative burdens resulting in the suppression of assets for military spouses. While an active duty servicemember may title, register, and maintain a car in their home state, their spouse may not. With each move, if a spouse chooses to keep his or her tenancy on property, they are required to pay hundreds of dollars each time they relocate. Spouses are forced to put all property in the name of the servicemember. The relocation process ends up

suppressing the ability of all military spouses to own personal property, which in itself has a number of negative, long-lasting effects, including the ability to maintain solid credit histories.

Regarding employment, DoD acknowledges military spouses as major contributors to their families' financial well-being. Approximately 50 percent of spouses work. Military spouses are underemployed. We make \$3.00 an hour less than our civilian counterpart. The Department of Defense says it is our frequent relocations that are the cause and states the primary challenge to military spouses is sustaining a career.

We are deeply encouraged by the Department of Defense outreach and funding of portable career training through the Military Spouse Career Advancement Initiative. However, in pursuing portable careers, the complication of multiple state residency causes tax confusion, educational costs, and administrative burdens which negatively impact the quality of life for military families.

Please allow me to briefly share one story from a spouse who supports this bill. In this particular case, a female military spouse had resided in multiple states and she suffered professional damage as those three states fought over her residency. The tax issue almost cost her a security clearance, as well as her job.

Regarding education, spouses report being deterred from educational opportunities. For example, an unemployed spouse did not pursue an online masters program because after a military move, out-of-state tuition was simply too costly.

For those seeking education, retaining, maintaining a portable profession, all growing and positive trends with military spouses, a single home state can help the spouse spend less time clarifying residency and more time earning an income or completing an education.

With multiple military moves and without a consistent home state, the financial burdens of personal property, impediments to voting, deterrence to employment and education, will continue to fall squarely on the shoulders of us, the military spouse.

Mr. Chairman and members of this committee, military spouses are a federal population. We are moved along with our servicemembers on federal orders. Military spouses do not have a choice as to where or when they are relocated, or how often. Therefore, it is incumbent upon our federal representatives in Congress to protect military spouses as they have already done so with military members.

Thank you, Mr. Chairman. This concludes my testimony.  
[The prepared statement of Ms. Poynter follows:]

Chairman Akaka. Thank you very much, Ms. Poynter.  
My question is for all of the VSOs. There are a total of 16 bills on our agenda today. And my question to you is what three bills--what three bills are most important to your organizations. Mr. Jackson?

Mr. Jackson. Mr. Chairman, I think our testimony focused on your Veterans Rehabilitation and Training Improvements. That was the most important thing that we wanted to comment on, but there are so many really good bills on this agenda.

Senator Sanders' bill enhancing the Automobile Assistance Allowance is good. Senator Burr's bill, Military Spouses Residency Relief Act. Senator Ensign's bill on the qualifying loss of a dominant hand. All of them are extremely important. We just chose to focus on your bill, specifically.

Senator Akaka. Thank you. Thank you very much.

Mr. Kelley.

Mr. Kelley. I am certainly glad I got a chance to go second so I could review real quick. Our top three would be S.728, S.263, and Mr. Sanders' Automobile Compensation Bill.

Senator Akaka. Thank you very much.

Mr. DePlanque.

Mr. DePlanque. Thank you, Mr. Chairman.

It is difficult to rank them in a particular order. I

know as the American Legion we tend to consider each bill separately and independently of any of the other bills. I would note that we have addressed a particular amount of attention to attempting to update aspects of the system to recognize the quality of life issues, and it appears that there are a number of pieces of legislation that are attempting to do that.

I would also note that both in the Senate and House we have paid particular attention lately to the clarifications of Sections 1154 of Title 38 as something that's reflective of perhaps changes in the modern battlefield.

Chairman Akaka. Thank you.

Mr. Mason, I want to thank you very much for your helpful testimony and for the background and historical perspective you have shared with us on SCRA. Since you have raised the issue of the legality of S.475, would the Library of Congress be able to offer a more detailed analysis of this issue for the record?

Mr. Mason. Yes, sir. I'll be working with one of our constitutional law experts and we will put a written product together for the record analyzing the different issues that might be in place, sir.

Chairman Akaka. All right. Thank you very much. We appreciate that.

Ms. Poynter, your testimony argues that the ability to

vote locally is in the best interest of not only the voter but of the candidate and political system, as well. Can you explain how the protection of residency for the purposes of voting, which would permit an individual to vote in a state where he or she once lived--how this protects the ability to vote locally?

Ms. Poynter. In this example, a former servicemember--it was a two-career, married couple, and the letter is in your packet. This particular couple had purchased property and she was no longer an active duty servicemember. She was stunned at the lack of benefits and protection, shall we say rather than benefits, that went with being simply a military spouse as she had been accustomed to the protection under the SSCRA.

And in her example, which is in your packet, she and her husband had purchased property and had a home that they considered their ultimate home. He could keep that state residency as an active duty servicemember; she was stripped of it. And she indicated that that discouraged her from her community affiliation and her relationship with what will be their retirement home and is the community that they identify with and want to stay protected.

So in that very specific example that was a very poignant situation to her.

Chairman Akaka. Thank you very much.



Senator Burr, your questions.

Senator Burr. Thank you, Mr. Chairman.

Mr. Mason, I am not a lawyer and I am sure your interpretation that you gave is probably legally accurate, but let me ask you a couple of questions.

Currently, spouses of servicemembers already under SCRA protection--they extend to those spouses latitude when entering into contracts like phone, utility, leases relative to the frequency of moves. Hadn't the Government already acknowledged through doing that and through providing that benefit that a spouse is absolutely vital to the servicemembers' ability to serve, therefore, raising an Army?

Mr. Mason. Sir, that is completely valid and we have been discussing that within our office while reviewing this. There are many aspects of the Servicemember Civil Relief Act that do incorporate the spouse and allow for them to have the protections such as NB housing and the ability to not evict somebody from a house if they fall behind on payments; the ability to break a lease on an apartment if the family gets transferred.

Those all are current in the law. We, at this point, based on my research, are unaware that they have been legally challenged. The aspect that we are looking at here--talking specifically about taxation going back to the

Dameron case from 1953--it was a 7-2 decision where the Supreme Court held that the Government has the ability to do it, but all of the language was specific to the servicemember, sir.

So the question--we are not saying that it is unconstitutional; we are raising the prospect that there could be a legal challenge based on the language, sir.

Senator Burr. Dameron was a challenge to the servicemember or the spouse's salary?

Mr. Mason. No, sir, the servicemember--in 1942 is when Congress enacted the prohibition on double taxation. The servicemember in question filed a lawsuit because he had to pay roughly \$21.00 in taxes to the City of Denver, and he felt that he, under the protections of the SSCRA at the time, should not have to pay taxation. So, they challenged that provision. That is when the Supreme Court came down and said that the SSCRA or the SCRA now, sir, is a constitutional action on behalf of Congress through its power to raise and support the armies. All the language, because it was specific to a servicemember, listed the fact of the servicemember being in this position and having to serve. There wasn't a discussion on family members or a spouse at that point.

Senator Burr. You're exactly right. There wasn't a discussion in that case.

Mr. Mason. No, sir.

Senator Burr. The fact that the protection does extend to spouses for the purposes of entering into contracts and the ability to break a contract, one would believe that a spouse de facto--because the Government has interpreted it that way would, if Congress wanted--have the same provisions, same rights, as a servicemember.

Mr. Mason. Yes, sir. Except there are provisions of the SCRA that specifically have been found that the spouse does not involve--enjoy the protection on a single--one example would be the 6 percent cap on prior debts. If it is a debt that is solely entered by the spouse, they are not entitled to the 6 percent reduction.

Senator Burr. So the intent of those that wrote this protection was that as long as all the property, personal and real, is in the servicemember's name, it falls under this protection; but if any of it is in the spouse's name, we are not going to include it.

Mr. Mason. Based at the time that it was established, sir, and enacted, yes. And that was probably based on the--

Senator Burr. But to accept that is to accept that there was an intent on the part of members of Congress that wrote this to force the property in a family of a servicemember to all be listed in the servicemember's name. I don't buy for a minute that that was their intent of the

legislation. I think that if you look historically at this, the movement of servicemembers when this was written was not with the frequency that we move servicemembers today. And though the letter of the law does not evolve with time, the interpretation of law, I think, has to evolve with time. And I think that's one of the reasons that the interpretation today is that the contractual provisions now extend to spouses where they may not have had to extend at the time of the creation of the legislation.

By the same factor, I would think that when this was originally written, the likelihood was that the spouse did not work outside the home. Therefore, spouses' salary was not a consideration in the construction of the protection. If one were to construct the protection today, it would take into account the frequency of moves, the likelihood of contractual obligations that would have to be broken to meet the duty of a servicemember. The realities of practically every spouse who works.

And I would say for the purposes of this legislation, the intent is to try to live up to what Secretary of the Army, Pete Geren said. And I want to quote him. "The strength of this Army depends on the strength of the soldiers and the strength of their families. We owe our families a quality of life equal to the quality of their service."

If you believe that provisions do evolve with time and conditions, then one would look at this and say for us to fulfill what the Secretary of the Army and I think most of us would agree is the quality of life of families. Why would we continue to extend the burden that disenfranchises in some cases spouses from their right to vote; their ability to claim a permanent residency; their ability to plan so that children's tuitions might be determined based upon that permanent residency and not based upon the lottery of where the Department of Defense happens to place them at any give point in time?

I think the one thing that became apparent to me as I began to research this is that it is tough enough on the children of family members as they grow up in different locations. It is even tougher when you realize that they really are nowhere long enough to consider that anywhere is home. And typically, when you ask somebody that grew up in a military family where they are from they refer to "I am a military family," which means I don't have a home.

And I think the fact is that we are trying to create a place that families can call home. And it may be not a place that they revisit until the retirement of the servicemember and the spouse, but my hope is that through this small act, which I think is appropriate for us to do and I hope every bit constitutional, that more and more

servicemembers and their spouse will have an opportunity to retire in that place versus what I think Secretary Geren has expressed--that in the absence of us recognizing that family quality of life is important, the servicemember and the spouse may no longer be together at retirement if, in fact, we don't address the quality of life of that family.

Mr. Mason, I appreciate it. Thank you, Mr. Chairman.

Chairman Akaka. Thank you very much, Senator Burr.

Senator Sanders, for your comments and questions.

Senator Sanders. First, let me thank all of our panelists for being here and thanks for your testimony.

Mr. Chairman, I just wanted to briefly discuss with the panelists two pieces of legislation that I am actively involved in.

Number one is an effort to increase the benefit for those soldiers who have lost their legs or their arms and to make sure that when they come home they will have an automobile that they can get around with. When we talk about the quality of life for our veterans, if somebody is immobile and forced to stay at home and can't get around their community, that is certainly a diminution of their quality of life.

Historically, in 1946, the VA did the right thing and they said for those people coming home from World War II, we are going to pay 80 percent of the cost of a new vehicle.

And what has happened, Mr. Chairman, as you know, over the years the price of automobiles has gone up substantially that the benefit today is about 40 percent--half of what it was originally intended to be.

So what our bill does is raise in dollars the benefit from \$11,000--if you want to buy a decent new car today, \$11,000 does not go terribly far--to \$22,500. And that again gets us back to the original intent. I think it will give a lot of mobility to a lot of people who deserve that mobility--lost limbs in service to their country.

And I want to thank in terms of that legislation the American Legion, the VFW, and AMVETS. In addition, I want to thank the Paralyzed Veterans of America and the DAV for their support of this legislation which was included as a recommendation in this and previous years' independent budgets. So this legislation has allowed us--we've heard about it today and I want to thank all of those who are supporting it for that support.

The other piece of legislation that I wanted to spend a moment on, Mr. Chairman, is one that I am working with Senator Feingold on. And that deals with outreach. We have discussed outreach quite a bit on this committee, and the bottom-line here is that no matter what the VA does in providing services to our veterans--and we all hope that those services are as strong and good as they can be--they

don't mean anything if somebody is not accessing the VA system.

Now, a veteran may come home and for all the right reasons say, look, I choose not to participate in VA programs. That's fine. But what has concerned me for many years is that a lot of veterans do not know what they are entitled to. They could reject it, but if they don't know what they are entitled to, that's simply not fair.

And I think I am not telling any stories out of class here to suggest that for some years the truth is that the VA did not want veterans to know what they were entitled to because you save money. Right? If you don't know what the benefit is, I don't have to service you. I don't have to spend money. That's wrong. That is really wrong. Every veteran should know what he or she is entitled to.

In Vermont, a couple of years ago, we started a strong outreach program, which has been quite successful not only in bringing those returning vets from Iraq and Afghanistan who may have PTSD or TBI into the system--and when you're dealing with people with PTSD that's a special problem. They may not even be aware of their problems; they may be embarrassed about their problems. So you've got to do an outreach effort.

And what our legislation--the bill that I am cosponsoring with Senator Feingold does is it puts within



the VA budget funds to reach out to service organizations and other organizations to help with outreach. Now, the VA may say, well, we are doing a great job on it. They are doing better today than they were some years ago, but they are still not doing good enough. And sometimes community organizations know the veterans in certain rural areas or urban areas better than the VA might. That's the simple truth.

And I would remind the VA--not that we are ever going to go back so long as we are sitting up here--but in 2003, not so long ago--some of you may remember that the VA actually put out a memo forbidding VA medical directors from conducting outreach. Do you know that? That was not so long ago. 2003. Do not do outreach. Do not tell veterans what they are entitled to.

I was in the House at that time and active in getting that memo rescinded, but that was where they were back then. We don't ever want to be there again. So I think the VA is doing a better job with outreach. We want to support that effort, but sometimes the service organizations with the grant program, other organizations in Vermont and many states you have state government having agencies that work with veterans. They may need some help. But the bottom-line is to let every veteran in America know what he or she is entitled to. If they choose not to participate in

the program, that's their decision, but they should know.

So that's what that is about. And Mr. Chairman, we look forward to proceeding on that legislation.

I would now be delighted if any member of the panel would like to comment on either of those pieces of legislation.

Mr. Kelley. Ray Kelley from AMVETS on your legislation S.315. I couldn't agree more.

I returned from Iraq a little over two years ago, and as recently as last week I received a phone call from one of the 12 people I deployed with asking where do I go? Who do I see? What do I qualify for? This is very important.

Senator Sanders. Thanks, Mr. Kelley. Mr. DePlanque?

Mr. DePlanque. Thank you, Senator. Ian DePlanque from the American Legion.

I would agree with you on the outreach and how essential it is. I will also say on behalf of the VA we deal with many facets of the VA and many sections of the VA. And in our interactions with them recently they have been very encouraging in asking us to help with the outreach because they recognize that the Veterans Service Organizations, being grassroots, are very well distributed in the communities so that is indicative of the fact that they are trying to get the outreach out there. I think anything that supports getting veterans to know what they

are entitled to, what is available to them, is essential.

Senator Sanders. Thank you very much. I absolutely agree with that.

You know, and that's, I think, especially true in a rural state like mine where you have people who might be coming home who are way up there in a rural area, who local folks--the local VA guy, local American Legion commander--may know something and have that ability to communicate it is important.

Any other thoughts? Okay. Well, thank you all very much. Thank you, Mr. Chairman.

Chairman Akaka. Thank you very much, Senator Sanders.

Again, I want to thank our witnesses for appearing today. Your responses will be very helpful to us. For the information of all, the Committee's markup is scheduled for May 21, and it is my hope that at that time we will move on the number of bills that have been presented today.

I want the witness to know that your full statements will be entered into the record. For the Administration witnesses, I ask that views not submitted here today on a number of bills be submitted to the Committee no later than one week prior to the markup by May 14.

And, again, I want to say thank you and to look forward to continuing to work with you. This hearing is adjourned.

[Whereupon, at 11:13 a.m., the Committee was

adjourned.]

Uncorrected Copy