Senate Committee on Veterans' Affairs

Legislative Hearing on Pending Legislation

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Statement for the Record of Bart Stichman, Co-Founder and Special Counsel for the National Veterans Legal Services Program (NVLSP)

Introduction

My name is Bart Stichman, and I am the co-founder of National Veterans Legal Services Program (NVLSP) and currently serve as NVLSP's Special Counsel. Established in 1981, NVLSP is an independent, nonprofit veterans service organization that is dedicated to ensuring that our government lives up to its obligations to provide our 18 million veterans and active service members the VA and military department benefits they have earned due to their military service to our country. At NVLSP, we have a uniform code: to serve those who have served us.

NVLSP would like to thank Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Senate Committee on Veterans' Affairs for the opportunity to present our views regarding the pending legislation before the Committee.

NVLSP firmly supports the Veterans Appeals Efficiency Act of 2025, S.1992, which contains several concrete, practical reforms that would meaningfully improve the adjudication of benefit claims and appeals process of the Department of Veterans Affairs (VA) and the U.S. Court of Appeals for Veterans Claims (CAVC).

This bill proposes simple solutions to the infamous "hamster wheel" of never-ending claims that traps veterans in endless procedural loops, delaying relief and compounding frustration for veterans and their families. It does not attempt to reinvent the system; it simply clarifies the authority and judicial tools Congress has already provided to VA and the CAVC. These existing tools, when used responsibly, can break the hamster wheel cycle, streamline adjudication, and restore fairness and efficiency to a system designed to serve veterans, not exhaust them.

The reforms in this bill provide three critical clarifications to the veterans' benefits adjudication process: two at the CAVC and one at the Board of Veterans' Appeals (BVA). First, the Veterans Appeals Efficiency Act would restore the supplemental jurisdiction the CAVC had in cases in which a party denied benefits by the BVA seeks certification of their appeal to the CAVC as a class action on behalf of those with claims pending before the VA.[1] Second, the bill

[1] The CAVC's rules provide for certification of a class where: (1) the class is so numerous that consolidating individual actions is impracticable; (2) there are questions of law or fact common to the class; (3) the legal issue or issues being raised by representative parties are typical of the legal issues that could be raised by the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) the VA has acted or failed to act on grounds that apply generally to the class. Vet. App. R. 23.

would clarify the Court's existing authority to issue limited remands without returning a veteran's claim to the hamster wheel of agency review. Finally, the bill would codify the authority of the BVA to aggregate claims in appropriate cases, a tool seventy other federal agencies possess and utilize to streamline agency adjudication.[2] NVLSP supports these common-sense clarifications of existing tools and authorities in the veterans' claims system, with limited amendments to the bill noted below.

NVLSP also strongly supports three additional pieces of legislation before the Committee today: the OATH Act, S.1665, the Molly Loomis Bill, S.2061, and the Get Justice-Involved Veterans BACK HOME Act, S.____. These bills provide critical safeguards to ensure veterans receive the benefits they have earned and make forward-looking investments in the health and wellbeing of their descendants.

S.1992, The Veterans Appeals Efficiency Act

i. CAVC Aggregation

NVLSP enthusiastically supports the reform set out in section 2(e) of the Veterans Appeals Efficiency Act, which restores the CAVC's supplemental jurisdiction over claims "for which the agency of original jurisdiction has issued a nonfinal decision and the claimant has filed a notice of disagreement," including those where the claimant has filed a supplemental claim within one year of a BVA decision.[3]

The U.S. Court of Appeals for the Federal Circuit and the CAVC have long held the CAVC has authority to aggregate claims through the mechanism of a class action.[4] Congress vested the CAVC with broad equitable powers to ensure the efficient and consistent application of its rulings, including bringing together similarly situated veterans facing common legal or factual issues.[5] The CAVC has exercised this authority responsibly, and tens of thousands of veterans have already benefited from class-wide remedies that ensure uniform outcomes. For example, in a class action lawsuit challenging VA's policy to deny veterans the right to BVA appeal of an adverse VA decision made under the Family Caregiver Program, NVLSP and its co-counsel persuaded the Federal Circuit to affirm the CAVC's class action order requiring VA to send notice to more than 400,000 veterans of their right to appeal to the BVA their adverse determinations under the Family Caregiver Program.[6] Similarly, the CAVC certified two class actions on behalf of two different sets of more than 10,000 veterans whose BVA appeals had

[2] Michael Sant'Ambrogio & Adam S. Zimmerman, *Inside the Agency Class Action*, 126 Yale L.J. 1634, 1658-59 (2017).
[3] S.1992, § 2(e)
[4] *Monk v. Shulkin*, 855 F.3d 1312, 1318-22 (Fed. Cir. 2017) (holding that the CAVC has authority to adjudicate class actions "under the All Writs Act, other statutory authority, and the [CAVC's] inherent powers").
[5] 38 U.S.C. § 7264 grants the CAVC broad authority to conduct its proceedings "in accordance with such rules of practice and procedure as the Court prescribes."
[6] *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), *aff'd*, 93 F.4th 1361 (Fed. Cir. 2024).

been unreasonably delayed, and in each case, the CAVC ordered the VA to transfer the appeals of each certified class member to the BVA by a date certain.[7]

The barrier to meaningful collective resolution today is not that the CAVC lacks authority; it is that a recent Federal Circuit decision unnecessarily constricts who may count toward a prerequisite that every request for class certification must satisfy: the requirement that there be "numerous" putative class members, which generally means that there must be at least 40 putative class members.[8] The supplemental jurisdiction reform of the Appeals Efficiency Act addresses this structural problem.

In *Skaar v. McDonough*, 48 F.4th 1323 (Fed. Cir. 2022), the Federal Circuit held that only veterans whose claims have received a final BVA decision may be included when assessing numerosity for class certification. This rule announced in *Skaar* bars the large majority of veterans with pending claims at the BVA or regional office from being included in the class and counting towards the numerosity requirement. *Skaar* held that veterans raising the same issue may count towards numerosity only if the BVA had already decided their appeal and the case was within the 120-day window to appeal a BVA decision. The adoption in *Skaar* of such a narrow period to count as a putative class member makes it extremely difficult to satisfy numerosity in most class contexts.

Five of the twelve Federal Circuit judges dissented from the denial in *Skaar* of rehearing *en banc*, emphasizing the severe consequences of excluding veterans at earlier stages of the VA adjudicatory process.[9] Judge Dyk, writing for the dissenters, described the VA system as "inefficient and subject to substantial delays" and noted that aggregation at the CAVC "promised to help ameliorate these problems… enabling veterans in a single case to secure a ruling that would help resolve dozens if not hundreds of similar claims."[10] The problem is not whether the CAVC has the authority to certify class actions—it does. The problem is that *Skaar* defines the class universe of eligible claimants so narrowly that veterans cannot meet the numerosity threshold needed to certify one.

The *Skaar* approach is sharply out of step with how Article III courts handle class actions against the federal government in other benefits systems. In Social Security litigation, for instance, courts routinely certify classes that include claimants at different adjudicative stages. For instance, the Supreme Court in *Califano v. Yamasaki*, 442 U.S. 682 (1979) upheld a

[7] *Gladney-Chase v. Collins*, 38 Vet. App. 216, 219-222 (2025); *Godsey v. Wilkie*, 31 Vet. App. 207, 220-225 (2019).
[8] *See Skaar v. Wilkie*, 32 Vet. App. 156, 190-91 (2019) (*en banc*) (finding that "[n]umerosity need not be proven exactly," and "'[c]ourts generally find that the numerosity factor is satisfied if the class comprises 40 or more members and will find that it has not been satisfied when the class comprises 21 or fewer.'" (*citing Celano v. Marriott Int'l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007))), *vacated on other grounds sub nom*. *Skaar v. McDonough*, 48 F.4th 1323 (Fed. Cir. 2022).
[9] *Skaar v. McDonough*, 57 F.4th 1015, 1016 (Fed. Cir. 2023) (Dyk, J., dissenting from denial of rehearing *en banc*).
[10] *Id*. at 1016-17.

nationwide class of beneficiaries challenging recoupment procedures, including individuals whose administrative claims had not yet reached final review. Such cases illustrate that, when a systemic legal issue drives inconsistent or delayed outcomes, courts do not artificially limit numerosity to a tiny fraction of fully appealed claims; they include those who are affected across the full administrative spectrum to ensure efficiency and fairness.

S.1992 does not expand the CAVC's powers beyond what they were pre-*Skaar*. Instead, it restores the Court's previously exercised authority to certify classes consistent with how Article III courts manage complex benefits disputes. Veterans with a final BVA decision, veterans with pending claims still before the BVA, and veterans whose remanded claims are being reprocessed at regional offices would all be recognized as part of the same class when they confront a shared legal or factual question. Reinstating workable numerosity will allow the Court to treat like veterans alike, prevent repetitive litigation across thousands of similar claims, ensure equity and uniformity across decisions, and meaningfully hold the VA accountable.

ii. Two Proposed Amendments to S.1992, Section 2(e), CAVC Aggregation

NVLSP proposes two important amendments to Section 2(e) of the Veterans Appeals Efficiency Act to ensure the bill fulfills its purpose of delivering efficient and fair adjudication for veterans.

First, language referencing "a request for a writ [of mandamus]" should be removed from Section 2(e). Currently, the bill defines "covered proceedings" over which S.1992's amendments to 38 U.S.C. § 7252 would apply to include both appeals and petitions for a writ of mandamus. But the injustice created by *Skaar* only has an impact on the CAVC's ability to aggregate cases in which the individual seeking class certification has appealed a BVA decision to the CAVC. *Skaar* did not involve, nor did it regulate, the numerosity requirement in cases in which the individual seeking class certification filed a writ of mandamus with the CAVC. The Court's authority to aggregate in writ of mandamus cases does not need to be, and should not be, addressed by Congress; it presently functions reasonably well.[11] The CAVC's writ authority derives from the All Writs Act, 28 U.S.C. § 1651(a), enacted in the First Judiciary Act of 1789 and made available to the CAVC as with other federal courts. By making the reforms in S.1992 applicable to class actions initiated by a writ of mandamus, the current language of S.1992 risks an inequitable result–narrowing the CAVC's robust existing authority to aggregate in appropriate writ cases and thus inadvertently undermining the broader purpose of this bill: to grant additional tools to veterans, the CAVC, and the BVA to manage their large dockets, reduce backlogs, and improve fairness and uniformity of decisions.

[11]*See, e.g.*, *Gladney-Chase v. Collins*, No. 24-4472, 2025 WL 1335465, at *6 (Vet. App. Apr. 24, 2025) (granting joint motion to certify class seeking mandamus relief in connection with failure of the BVA to timely docket appeals from Veterans Health Administration).

Second, references to opt-out procedures should be removed from section 2(e). The CAVC's existing rules for aggregate litigation do not contemplate a mechanism for veterans who fit within the class definition to opt out of the class, and for good reason: introducing statutory opt-out language makes no sense in a system that is different from the multi-forum environments where opt-outs are typically used. Most class actions that do not involve VA benefits are filed in one of the ninety-four U.S. district courts that exist in the U.S. states and territories. The decisions of these district courts are appealable to one of the eleven regional courts of appeals, plus the Federal Circuit. In some U.S. district court class actions, class members have a right to opt out of the class in order to preserve the individual's right to litigate his or her case in a different jurisdiction. For example, a putative class member who resides in Massachusetts may have the right in a national class action filed with a U.S. district court in Arizona to opt out of the Arizona district court class action in order to preserve his or her right to file and litigate the same legal issue before a local U.S. district court in Massachusetts whose decisions are appealable to the U.S. Court of Appeals for the First Circuit, rather than U.S. Court of Appeals for the Ninth Circuit, which hears appeals from the U.S. district court in Arizona.

But the opt-out mechanism makes no sense at the CAVC, because the CAVC is a national court for cases adjudicated by the VA, and the Federal Circuit has exclusive jurisdiction to hear all appeals filed from decisions of the CAVC. The language of S.1992 referring to a "claimant who has not opted out of an opportunity to be a member of a class" has no legal mooring, and a true opt-out mechanism is incompatible with the veterans' benefits system. The CAVC's rules have no provision authorizing VA claimants to opt out of a proposed class, and the CAVC has never offered a VA claimant such an opportunity. And even if a VA claimant were hypothetically allowed to opt out, there is no forum other than the CAVC and Federal Circuit to which such an opt-out could take their case. In other words, a veteran who hypothetically opted out would be forced to litigate their case before the exact same tribunals that would decide the class action with class members who did not opt out. Thus, the CAVC's class action ruling would continue to bind the agency and govern the disposition of any hypothetical opt-out veteran's claim.

iii. CAVC Limited Remands

NVLSP also supports the limited remand reform in section 2(e) of the Veterans Appeals Efficiency Act, which clarifies the CAVC's authority to issue limited remands to the BVA. Currently, when the CAVC encounters a procedural or substantive defect that requires agency action on one issue in an appeal involving multiple issues, the Court typically issues a full remand, sending the entire case back to the BVA for correction of one error without addressing any of the other issues. This piecemeal approach adds years to the adjudication process and results in substantial delays for veterans. Although the Court possesses the ability to issue limited remands while retaining jurisdiction over the rest of the case, it rarely does so because its

authority is not well-defined, and current precedent confines its use to exceptional circumstances.[12]

The Veterans Appeals Efficiency Act provides a targeted solution by codifying the Court's authority to order limited remands and instructing the CAVC to develop guidelines governing their use, including the authority to require the BVA to act within a specified timeframe, so that the case may expeditiously return to the Court for a final CAVC decision that disposes of the entire appeal after taking the results of the limited remand into account. By directing the Court to articulate transparent standards for when and how limited remands may be issued, this bill will enable all participants in the system, including the Court, veterans, and their representatives, to understand when limited remands are available, the proper process for requesting limited remands, and how they should operate. This reform turns an underused mechanism into a practical, accessible means of reducing delay and expediting relief.

iv. BVA Aggregation

In addition to its important reforms to the CAVC's supplemental jurisdiction and limited remand authority, NVLSP supports section 2(d)(1) of the Veterans Appeals Efficiency Act, which aims to reduce the backlog of veterans' benefits appeals by confirming the BVA's authority to aggregate appeals. This would relieve the burden on veterans, who currently must individually present arguments and submit evidence to the BVA on the same issues the BVA is considering in other cases. Many veterans do not have the resources to hire the counsel or experts necessary to argue or submit critical evidence on complex medical or legal issues central to their benefits determination. Where appropriate, aggregation would allow a veteran with such access to present a case on behalf of all similarly affected veterans.

While more than seventy other federal agencies have a class action, joinder, or consolidation practice that facilitates aggregation of administrative appeals, the BVA is an outlier in insisting that it lacks power ever to group together appeals raising the same question of law or fact for efficient adjudication.[13] But like other federal agencies, the BVA does have broad authority to prescribe rules to manage its docket of appeals.[14] Exercising this authority through agency aggregation will increase the efficiency of the appeals process, improve access for

[12] *See Skaar v. Wilkie*, 32 Vet. App. 156, 201 (2019). 28 U.S.C. § 2106 provides that federal courts "may remand the cause and direct entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances"; *accord* 38 U.S.C. § 7252(a) (authorizing the CAVC to "remand [a] matter, as appropriate"). It is settled that the BVA is required to comply with CAVC remand orders. *Stegall v. West*, 11 Vet App. 268 (1998).
[13] Sant'Ambrogio & Zimmerman, *Inside the Agency Class Action*, 126 Yale L.J. at 1658–59.
[14] *See* 38 U.S.C. § 501(a) (2021) (providing that the Secretary has "authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department," including the manner and form of adjudication).

veterans who do not have the resources to argue the complex medical and legal issues central to their benefits determinations, and increase fairness by standardizing the BVA's findings.

According to the American Conference of the United States (ACUS), agencies that fail to aggregate claims "risk wasting resources in repetitive adjudication, reaching inconsistent outcomes for the same kinds of claims, and denying individuals access to the affordable representation that aggregate procedures promise."[15] This risk is already a reality at the BVA, where veterans face an average wait of 506 days on direct review, 713 on the evidence submission docket, and 927 on the hearing docket.[16] Consistent with the recommendations of ACUS, the BVA's organic statute, and the typical practice of federal agencies, Section 2(d)(1) of the Veterans Appeals Efficiency Act confirms that the BVA has authority to aggregate like claims in appropriate circumstances.

v. Conclusion

In sum, NVLSP urges the Committee to enact the Veterans Appeals Efficiency Act, particularly the reforms to codify the CAVC's authority to aggregate like claims and issue limited remands, as well as the BVA's authority to aggregate claims. Together, these measures will materially reduce the appeals backlog while advancing uniformity and consistency of decisions, fairness to veterans and families, and more equitable access to benefits they've been promised. There is no reason veterans seeking judicial review of benefits decisions should be denied access to the same procedural tools available to civilians challenging federal agency actions. Veterans deserve a fair and efficient judicial process, and this bill offers common-sense reforms that will help deliver it.

S.1665, OATH Act of 2025

NVLSP also supports the OATH Act of 2025. This bill will help to ensure that veterans who participated in secrecy oath programs receive the full benefits they earned. The bill requires VA to identify and notify impacted veterans, including those who served in the program at Edgewood Arsenal, where around 7,000 soldiers were used as test subjects in experiments to evaluate the impact of chemical warfare agents.[17] When these veterans left service, they were unable to seek VA disability benefits for injuries related to the program without violating their secrecy oaths. Although the Department of Defense lifted those oaths in 2006, existing veterans'

[15] *See* Administrative Conference Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication* (2016), https://www.acus.gov/sites/default/files/documents/aggregate-agency-adjudication-final-recommendation_1.pdf.
[16] *See* Department of Veterans Affairs, *Veteran choices for type of Board appeal influences wait times: Appeal wait times* (2025), https://department.va.gov/board-of-veterans-appeals/decision-wait-times/veteran-choices-for-type-of-board-appeal-influences-wait-times/.
[17] U.S. Department of Veterans Affairs, "Edgewood/ Aberdeen Experiments," https://www.publichealth.va.gov/exposures/edgewood-aberdeen/index.asp.

benefits law allowed compensation only from the date of their post-2006 disability application, not from the earlier date of their discharge from military service, leaving them without decades of earned benefits. The bill remedies this injustice by setting the effective date for these disability awards at the time of the veteran's discharge or release, rather than the date they were finally permitted to apply. These changes restore fairness, correct decades-old oversights, and narrow the gap between entitlement and actual delivery of benefits for a segment of veterans who have long been overlooked due to the confidentiality of their service.

S.2061, Molly R. Loomis Research for Descendants of Toxic Exposed Veterans Act of 2025

NVLSP also strongly supports the Molly Loomis bill, which directs the Interagency Working Group on Toxic Exposure to launch targeted research on the diagnosis and treatment of health conditions affecting descendants of veterans who were exposed to toxic substances during their service. This research is essential to understanding the multigenerational health impacts borne by families whose loved ones served. By mandating research, requiring public disclosure of findings, and establishing firm reporting deadlines, the bill promotes transparency, scientific accountability, and long-overdue attention to families who are too often overlooked.

S. ____, The Get Justice-Involved Veterans BACK HOME Act

Finally, NVLSP strongly supports the Get Justice Involved Veterans BACK HOME Act. This bill focuses on the needs of incarcerated veterans. Among the most important sections of the bill is section 4, which provides for automatic resumption of the payment of compensation and Disability and Indemnity Compensation (DIC) to persons incarcerated for conviction of a felony after the period of incarceration ends. Although these veterans and survivors are not entitled during their incarceration to the full VA compensation they earned due to their or their family member's military service, their entitlement to such compensation should resume immediately after their incarceration ends. It is NVLSP's understanding that VA is sometimes unaware of the fact that the veteran or survivor has been released from incarceration or of that individual's post-incarceration address, and the veteran or survivor does not immediately inform the VA of this fact and his or her new address so that VA compensation payments can resume. Speedy resumption of these payments is often critical to the ability of the individual to successfully transition to life after incarceration. This bill would help reduce lag times between release from incarceration and resumption of payment of VA compensation.