STATEMENT OF

WILLIAM F. TUERK

UNDER SECRETARY FOR MEMORIAL AFFAIRS

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

HOUSE COMMITTEE ON VETERANS' AFFAIRS

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on a number of legislative items of great interest to veterans.

H.R. 23

Chapter 112 of title 46, United States Code, currently provides for the payment of burial benefits for, and for the interment in national cemeteries of, certain former members of the United States Merchant Marine Service (Merchant Mariners) pursuant to chapters 23 and 24 of title 38, United States Code. Section 2 of H.R. 23, the "Belated Thank You to the Merchant Mariners of World War II Act of 2005," would amend chapter 112 to require the Department of Veterans Affairs (VA) to pay to certain Merchant Mariners the sum of $1,000 per

month. This new benefit would be available to otherwise qualified Merchant Mariners who served between December 7, 1941, and December 31, 1946, and who received honorable-service certificates. Additionally, the surviving spouse of an eligible Merchant Mariner would be eligible to receive the same monthly payment.

We oppose enactment of section 2 of this bill for several reasons. First, to the extent that H.R. 23 is intended to offer belated compensation to Merchant Mariners for their service during World War II, many Merchant Mariners and their survivors are already eligible for veterans' benefits based on such service. Pursuant to Public Law 95-202, § 401 (1977), as amended, the Secretary of Defense has certified Merchant Mariner service in the oceangoing service between December 7, 1941, and August 15, 1945, as active military service for VA benefit purposes. This bill appears to contemplate concurrent eligibility with benefits Merchant Mariners may already be receiving from VA—a special privilege that is not available to other veterans. Further, to the extent that Merchant Mariners may be distinguished from other veterans due to the belated recognition of their service, there are myriad other groups, listed at 38 C.F.R. § 3.7(x), that could claim to have been similarly disadvantaged.

Second, the universal nature of the benefit for individuals with qualifying service and the amount of the benefit that would be payable are difficult to reconcile with the benefits VA currently pays to other veterans. H.R. 23 would

create what is essentially a service pension for a particular class of individuals based on no eligibility requirement other than a valid certificate of qualifying service from the Secretary of Transportation. Further, this bill would authorize the 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 as 60-percent disabling. Because the same amount would be paid to surviving spouses under this proposal, there would be a similar disparity in favor of this benefit vis-à-vis the basic rate of dependency and indemnity compensation for surviving spouses. *See* 38 U.S.C. § 1311(a)(1).

Finally, although 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, Merchant Mariners were not subject to the military justice system, were paid substantially higher monthly salaries than were members of the uniformed services, and were ultimately free to choose the voyages they undertook. These factors make the proposed award of a $1,000 monthly gratuity to Merchant Mariners particularly unjustified in relation to benefits available to veterans of the armed forces proper.

VA estimates that enactment of section 2 of H.R. 23 would result in a total additional benefit cost of approximately $369.4 million during FY 2007, approximately $1.43 billion over the 5-year period FY 2007 through FY 2011, and $2.02 billion over the 10-year period FY 2007 through FY 2016. VA also

estimates additional administrative costs associated with the need for more employees to process claims for the new monetary benefit would be $1.6 million during the first fiscal year, $6.3 million over five years and $9.8 million over ten years.

Section 3 of H.R. 23 would amend the Social Security Act to include merchant marine service in the definition of World War II active duty military service for purposes of granting Social Security wage credits for the World War II period—thus potentially increasing Social Security benefits for individuals with merchant marine service or for their survivors. The Social Security Administration (SSA) has advised us that this provision would provide a duplication of Social Security coverage for certain persons described in the bill whose maritime service earnings during the World War II period were covered under Social Security. (Social Security wage credits were granted for active military service during World War II because such service was not covered under Social Security.)

In addition, section 3 of the bill would require SSA to recompute the Social Security benefits of all affected beneficiaries. Because SSA has no way of identifying these beneficiaries and would have to rely on those affected by the legislation to contact SSA, the bill would generate numerous requests for SSA to review current benefit payments. However, because the bill would apply only to service during the World War II period and the vast majority of current Social

Security benefit payments are computed only using earnings after 1950, the likelihood that the bill would provide any current benefit increase for those with World War II maritime service, or their survivors, is very small. Thus, this change could raise expectations for increases in Social Security benefits that would not be realized. SSA would need to expend significant resources to administer a provision that would have little overall effect on benefit payments.

SSA should be consulted regarding its views on this bill and any coordination between the agencies that this bill would require.

H.R. 601

H.R. 601, the "Native American Veterans Cemetery Act of 2005," would authorize the Secretary of Veterans Affairs to make grants to Native American tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries on trust lands in the same manner and under the same conditions as grants to states are made under 38 U.S.C. § 2408. We strongly support enactment of this bill.

The cemetery grants program has proven to be an effective way of making the option of veterans cemetery burial available in locations not conveniently served by our national cemeteries. H.R. 601 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands.

While we are unsure of the number of grant applications that may be prompted by the bill’s enactment, we do not assume its passage would result in the appropriation of additional funds for the cemetery grants program. Hence, we estimate its enactment would be budget neutral.

H.R. 2188

H.R. 2188 would make “servicemembers and others interred” at an American Battle Monuments Commission (ABMC) cemetery eligible for placement of an additional memorial marker in a stateside cemetery. We do not support enactment of this bill.

Currently, VA may furnish a memorial marker only for eligible individuals whose remains are unavailable because they: have not been recovered or identified; were buried at sea, whether by the individual's own choice or otherwise; were donated to science; or were cremated and the ashes were scattered without interment of any portion of the ashes.

To ensure family wishes were honored, Public Law 80-368 provided families the opportunity of repatriating the remains of servicemembers from overseas to United States soil. Since the law expired on December 31, 1951, ABMC has accommodated the families of servicemembers interred overseas with fee-free passports for travel to the site, photographs of headstones or

Tablets of the Missing on which the name of the deceased is inscribed, an Honor Roll Certificate for Korean War casualties who are interred overseas, and by arranging for placement of gravesite floral decorations and photographs.

ABMC estimates 124,917 U.S. war dead are interred in 24 permanent ABMC cemeteries on foreign soil. Although the bill's purpose statement and sectional title refer to placement of a memorial marker in a national cemetery, as written, H.R. 2188 would require VA to furnish upon request a memorial marker for placement in a national, state, or private cemetery for all veterans buried in an ABMC cemetery. Based on the average cost of $100 for furnishing a VA marker, the estimated cost of providing this expanded benefit for the 124,917 U.S. war dead could be $12,491,700. VA has no data for calculating how many families of those interred in an ABMC cemetery would request placement of a memorial marker in a national cemetery. For those who select placement of the memorial marker in a national cemetery, VA would incur the cost of the marker plus installation costs.

Providing a second marker in a national cemetery for those whose remains are available and already commemorated in an ABMC cemetery significantly alters the purpose of a memorial marker, which is to honor those whose remains are unavailable.

Veterans interred in ABMC cemeteries have been honored and memorialized by the U.S. government. Current national cemetery planning has not provided for the up to 124,917 memorial gravesites that this bill would authorize, and enactment of this provision could result in the loss of useable space to memorialize an eligible veteran who seeks to be memorialized in a U.S. national cemetery.

Providing both a Federally-administered gravesite with perpetual care overseas and a memorial marker for placement in the United States would deviate from long-standing policy of recognizing equally all military service. Expanding eligibility for a memorial marker to those whose remains are already commemorated in ABMC cemeteries appears to place a higher value on their military service than that of other servicemembers who are allowed only one Government-furnished marker to recognize their service to the Nation.

ABMC should be consulted regarding its views on this bill and the coordination between the agencies that this bill would require.

H.R. 2963

H.R. 2963, the "Dr. James Allen Disabled Veterans Equity Act," would improve compensation benefits for veterans in certain cases of impairment of vision involving both eyes. This bill would authorize VA to compensate for a non-service-connected impairment of vision in one eye and a service-connected

impairment of vision in the other eye that is compensable to a degree of 10 percent or more as if the combination of disabilities were the result of service-connected disability. VA supports enactment of this bill subject to offsetting savings.

If a veteran has service-connected blindness in one eye and non-service-connected blindness in the other eye, current law requires VA to assign the applicable rate of compensation as if the combination of disabilities were the result of service-connected disability. This bill would provide that, instead of the requirement that a veteran be blind in both the service-connected eye and the non-service-connected eye to receive a compensable rating based on the combination of disabilities, the veteran would now be eligible for consideration of the combined disability rating if there is impairment of vision compensable to a degree of 10 percent or more in the service-connected eye and impairment of vision in the non-service-connected eye.

This legislation is consistent with prior congressional action pertaining to special consideration for hearing loss in both ears. In 2002, Congress amended 38 U.S.C. § 1160(a)(3) to require VA to consider a veteran's deafness in a non-service-connected ear as if it were service connected when the veteran has deafness in the service-connected ear compensable to a degree of 10 percent or more. The statute previously provided that VA could consider a veteran's non-service-connected hearing loss in one ear as if it were service connected when

the veteran had a service-connected hearing loss in the other ear, but only if the veteran had a total hearing loss in both ears. This proposed legislation would treat vision impairment in both eyes similarly to hearing loss in both ears. VA therefore supports H.R. 2963.

We estimate that enactment of this bill would result in costs of $19.6 million during FY 2007, $110.8 million over the 5-year period FY 2007 through FY 2011, and $257.7 million over the 10-year period FY 2007 through 2016. There are no administrative costs associated with this bill.

H.R. 4843

H.R. 4843, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2006," would authorize a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency and indemnity compensation (DIC). This bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 2006. Consistent with the President's FY 2007 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 2.6 percent. We believe this COLA is necessary and appropriate to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this bill would cost $590.3 million during FY 2007, $3.7 billion over the 5-year period FY 2007 through FY 2011, and $8.2 billion over the 10-year period FY 2007 through FY 2016. However, the cost is already assumed in the budget baseline, and, therefore, enactment of this provision would not result in any additional cost.

H.R. 5037

Section 2 of H.R. 5037, the "Respect for America's Fallen Heroes Act," would prohibit non-approved demonstrations at cemeteries under the control of VA's National Cemetery Administration and at Arlington National Cemetery. It would list various activities that would constitute a demonstration for purposes of the prohibition. Section 3 of this bill would state the possible penalties for violation of the prohibition. Section 4 of this bill would suggest to States that they enact legislation to restrict demonstrations near any funeral, burial, funeral procession, or viewing. We fully support the intentions and purposes of this bill. However, we would suggest that Congress consider amending the proposed legislation to provide that the term "demonstration" include "any other conduct or activity that constitutes a demonstration as determined by the Secretary of Veterans Affairs in regulations," or language to that effect.

VA's regulations already prohibit any "demonstration," which includes oration and display of placards or flags within the grounds of a VA national

cemetery, except as authorized by the head of the facility, and the distribution of handbills or display of placards on cemetery grounds, except as authorized. As written, this bill generally would be less restrictive than our current regulations in that the regulations provide a broader definition of "demonstration." Also, this bill may be perceived as superseding our more restrictive regulations. We believe an amendment to the bill is necessary to maintain the full protections provided by VA's current regulations in preserving the sanctity of our national shrines. We would be pleased to work with the Subcommittee in drafting appropriate language to ensure the continued efficacy of VA's current regulations in this area.

H.R. 5038

Section 2(b) of H.R. 5038, the "Veterans' Memorial Marker Act of 2006," would change the applicability date of VA's current authority to provide a Government headstone or marker for the private cemetery grave of a veteran regardless of whether the grave has been marked at private expense. Under current law, this authority extends only to veterans whose deaths occurred on or after September 11, 2001. This provision of the bill would authorize VA to furnish such markers for the graves of veterans who died on or after November 1, 1990. We support enactment of this provision of the bill.

Under current law, if a veteran died before September 11, 2001, VA is authorized to furnish a Government headstone or marker only if the veteran's grave is unmarked. Although this law has allowed VA to begin to meet the needs

of families who view the Government-furnished marker as a means of honoring and publicly recognizing a veteran’s military service, VA is now in the difficult position of having to deny a benefit based solely on when a veteran died.

Moreover, the law has never precluded the addition of a privately purchased headstone to a grave after placement of a Government-furnished marker, resulting in double marking. However, when a private marker had been placed in the first instance, a Government marker may not be provided if the veteran died before September 11, 2001. We believe this creates an arbitrary distinction disadvantaging families who promptly obtain a private marker.

From October 18, 1979, until November 1, 1990, with the enactment of the Omnibus Budget and Reconciliation Act of 1990, VA paid a headstone or marker allowance to those families who purchased a private headstone or marker in lieu of a Government headstone or marker. Those families all had the opportunity to benefit from the VA-marker program. This provision of the bill would benefit families of those veterans who died between November 1, 1990, and September 11, 2001. The extension of the authority to cover deaths since November 1, 1990, will assist VA in providing uniform benefits to veterans, regardless of the date of their death, and will meet public expectations for honoring veterans and their service to the Nation.

We estimate that enactment of this provision of the bill would cost $113,000 during FY 2007, $286,000 over the 5-year period FY 2007 through FY 2011, and $286,000 over the 10-year period FY 2007 through 2016. VA pays for headstones and markers with funds from the Compensation and Pension appropriation account.

VA's authority to provide a Government headstone or marker for the graves of eligible veterans buried in private cemeteries, regardless of whether the grave is already marked with a privately purchased marker, will expire on December 31, 2006. Section 2(a) of this bill would extend VA's authority to furnish the second marker benefit by one year. We support enactment of this provision of the bill. We would also recommend that VA be provided permanent authority to furnish the second marker benefit.

Although the headstone and marker benefit was originally intended to ensure that no veteran's grave remains unmarked, it has evolved into one that recognizes in death the service and sacrifices of those who served our Nation. Since the headstone and marker program's transfer to VA from the Department of the Army in 1973, VA has furnished more than 8.7 million headstones and markers.

The expanded second headstone or marker benefit has not resulted in a significant increase in demand for headstones and markers or appreciable costs

for the headstone and marker program. Based on actual data from FY 2005, it is estimated that about 5,000 headstones or markers would be provided in 2007 at an average cost of $100 per marker as a result of the one-year reauthorization. The fiscal and administrative costs to provide this benefit to families are nominal. The percentage of eligible veterans receiving a Government-furnished marker at private cemeteries has remained fairly constant in the years prior to and during the expanded authority for this benefit.

We would also like to suggest a revision to the statutory language in 38 U.S.C. § 2306, to accommodate the practical needs of a veteran's family in obtaining a Government-furnished marker. VA promulgated 38 C.F.R. § 38.631 to notify the public of the second-marker-benefit authority and to advise how VA would administer the benefit. The regulation states that VA will furnish its full product line of Government markers, which includes all available types of headstones and markers, in fulfilling requests for a "marker" as described in section 2306(d)(1). This clarification ensures that no otherwise eligible veteran is denied a second headstone or marker due to limitations of the size and type of headstone or marker that the grave can accommodate and that families are able to select the headstone or marker type preferred for the previously-marked grave of their loved one in the same manner as for an unmarked grave. Furthermore, the VA regulation clarified that, in cases where it was not feasible to place the marker "on the grave" as stated in section 2306(d)(1), a Government-furnished marker would be provided for those graves without adequate space for a second

marker if the individual making the request certified on the application that the marker will be placed "as close to the grave as possible within the grounds of the private cemetery." Additionally, the regulation notified the public that VA would deliver a marker to the cemetery where the grave is located or, if necessary, "to a receiving agent for delivery to the cemetery" to accommodate the needs of the veteran's family. We recommend that Congress ratify VA's authority in this regard by incorporating into the statute the regulatory language in section 38.631 that discusses delivery, placement, and types of Government markers.

Moreover, in order to eliminate ambiguity regarding the reference to "marker" in the statute, we recommend that Congress revise section 2306 to clarify that the Government is authorized to furnish a "headstone or marker," as opposed to only a Government "marker," for privately-marked graves of eligible veterans interred in private cemeteries.

Section 3 of this bill would authorize VA to provide an appropriate memorial headstone or marker to honor the memory of a deceased eligible dependent child of a veteran, when the child's remains are unavailable for burial. This authority would permit the placement of a memorial headstone or marker for such an individual in a national or state veterans' cemetery. The bill would define the term "eligible dependent child" as a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution, or a child who became permanently physically or mentally disabled

and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a course of instruction at an approved educational institution.

VA currently may provide a memorial headstone or marker for the purpose of commemorating a veteran whose remains are unavailable for burial, for placement in a national, state, local, or private cemetery. Section 401 of Public Law 105-368, the "Veterans Programs Enhancement Act of 1998," expanded eligibility for memorial headstones or markers to include the spouse or surviving spouse of a veteran, where the memorial headstone or marker is to be placed in a national or state veterans' cemetery.

Under current law, VA may not honor the request for a memorial headstone or marker from a veteran who wishes to memorialize his or her dependent child in a VA national cemetery or state veterans' cemetery, when the child's remains are unavailable for burial. Such a child would be eligible for burial in a national or state veterans' cemetery were his or her remains available. If the spouse and a child of a veteran die at the same time and in the same manner, and the remains of neither is available, it would, in our view, be inequitable to provide a memorial headstone or marker to commemorate the spouse, but not the child. Section 3 of the draft bill would make eligibility for memorial headstones and markers for dependent children parallel to eligibility of such persons for burial in a national cemetery under 38 U.S.C. § 2402(5). We also

note that, although the remarried spouse of a veteran is eligible to be buried in a national cemetery, this bill would not authorize VA to furnish a memorial marker for the remarried spouse of a veteran when the remains are unavailable. In order to provide consistency in eligibility requirements for burial and headstone and marker benefits, we recommend that Congress authorize VA to furnish a memorial marker for the remarried spouse of a veteran when the remains are unavailable.

Also, section 3 of the bill would authorize VA to add a memorial inscription to a veteran’s headstone or marker or memorial headstone or marker, if feasible, rather than furnishing a separate headstone or marker for the veteran’s dependent child. Such authorization is already provided with respect to a veteran’s surviving spouse.

The cost for these additional benefits would be nominal. We do not anticipate receiving many requests for memorial headstones or markers for children. In 2002, VA received two requests for memorial headstones or markers from veterans who wanted to memorialize their children in a VA national cemetery. In 2003, VA received one request. The average cost of a memorial headstone or marker, including transportation, is currently $92. Memorial headstones or markers are paid for out of the Compensation and Pension appropriation account.

That concludes my statement, Mr. Chairman. I would be happy now to entertain any questions you or the other members of the Subcommittee may have.