STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
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Mr. Chairman and Members of the Veterans' Affairs Committee:

On behalf of the more than 1.3 million members of the Disabled American Veterans (DAV), I am honored to appear before you today to discuss the state of veterans' affairs for the current fiscal year and the upcoming fiscal year.

Chairman Buyer, as you know, DAV was troubled by your decision last year to end the opportunity for the veterans and military service organizations to present testimony before joint hearings of the House and Senate Veterans' Affairs Committees. These hearings have been a long-standing tradition enabling the DAV and others the occasion to provide the authorizers of veterans' programs with our legislative agenda and concerns. These hearings provided DAV members with the opportunity to observe first hand their elected officials respond to issues critical to them and other disabled veterans. Hundreds of DAV members made the annual pilgrimage to our nation's capital to witness this event. Additionally, these hearings provided members of this Committee and the Senate Veterans' Affairs Committee with the chance to address the numerous constituents who were present from their states. It also provided each National Commander the opportunity to present the organization's agenda in front of his or her peers.

Earlier this year, DAV requested the opportunity to present our national agenda to a joint session of the House and Senate Veterans' Affairs Committees. It is our sincere desire that you will reconsider your decision to discontinue this important event. Personally, I would be honored and privileged to appear before a joint hearing of the House and Senate Veterans' Affairs Committees and my peers, my fellow members of the DAV, to present DAV's legislative agenda in February 2007.

Mr. Chairman, as you can see from my attached biographical information, I am a native of Indiana. After my medical retirement from the Marine Corps in August 1968 due to severe wounds received during a combat tour of duty in the Republic of Vietnam, I received both my undergraduate and doctor of jurisprudence degrees from Indiana University in 1973 and 1982, respectively.

Since joining the DAV in 1975, I have been active in supporting the DAV's mission of building better lives for our nation's disabled veterans and their families. Since my retirement from the legal profession, the achievement of the DAV's mission has been a full-time job for me.

My fellow disabled veterans have placed their confidence in me, as their National Commander, to carry their message to these hallowed halls and to the American public, and I will not let them down.

From one Hoosier to another, I thank you again for this opportunity to testify before you and your Committee, and again request the opportunity to appear before a joint hearing in February 2007.

As the current fiscal year quickly draws to a close, we continue to hear from VA officials around the country that they are experiencing health care funding shortfalls in fiscal year 2006. They are unable, or unwilling, to hire needed medical staff or fill current vacancies. Much of their unwillingness stems from the uncertainty involved in the current budget process. VA, just days away from the beginning of the new fiscal year, still does not have an appropriations bill.

For years, DAV has argued that the current budget process fails to serve veterans, the VA, or American taxpayers. It is impossible for VA to properly plan for an upcoming fiscal year, when so much uncertainty surrounds the passage of their appropriations bill and the level of funding VA will receive. For years, DAV has fought to remove the uncertainty surrounding the current budget process and to ensure, not only a proper level of funding, but that increased funding be available to VA on the first day of each fiscal year.

Chairman Buyer, while we are aware of your lack of support for changing VA's health care funding stream from a discretionary to a mandatory program, on behalf of the DAV, I call upon you to join the veterans' community in an open and frank discussion of the current VA health care appropriations process and how that process might be improved to better serve our nation's sick and disabled veterans.

Although the proposed FY 2007 appropriations for VA come closer to meeting the needs of VA than prior budget proposals, we are still concerned that additional funding is needed in both the veterans' health care administration and veterans' benefits administration. *The Independent Budget* (*IB*) recommends the following levels of funding for VA programs:

- Veterans Medical Service $26.0 billion
- Medical Care Total $32.4 billion
- Medical and Prosthetic Research $460 million
- General Operating Expenses (GOE) $1.8 billion
- National Cemetery Administration (NCA) $214 million
- Major Construction $1.4 billion
- Minor Construction $505 million
- Total Discretionary Funding $38.5 billion

These figures do not increase collections. The *IB* also opposed increased co-payments and annual enrollment fees for certain veterans. We appreciate the fact that this Committee also did not support the increased fees.

Currently, Congress is looking at funding VA at the following levels:

- Veterans Medical Services $25.4 billion
- Medical Care Total $32.3 billion
- Medical and Prosthetic Research $412 million
- GOE $1.47-1.48 billion
- NCA $160.7 million
- Major Construction $284-399 million
- Minor Construction $198-210 million
- Total Discretionary Funding $36.5 billion

Again, although the funding levels for fiscal year 2007 come close to meeting the funding levels recommended by DAV and the other coauthors of the *IB*—about $2 billion less—we are concerned that the combination of the FY 2006 shortfalls and the reports we are hearing that the FY 2008 budget will again be miserly, will adversely impact the ability of VA to meet the health care and benefit needs of our nation's veterans over the next several years.

I will now turn my attention to an issue of great importance to the DAV and those veterans and other claimants who will be pursuing compensation benefits from the VA.

Recently, the Senate passed S. 2694, which would amend existing law to permit attorneys and agents to charge claimants for services rendered in the preparation, presentation, and prosecution of claims. It would authorize the Secretary of Veterans Affairs to collect registration fees, set limitations for fees charged to claimants, prescribe standards of conduct, and expand grounds for suspension or expulsion from further practice for attorneys and agents providing such services. There are also two bills introduced in the House that would allow attorneys to charge a veteran a fee to represent them in proceedings before the agency of original jurisdiction: H.R. 4914, introduced by Congressman Lane Evans, and H.R. 5549, introduced by Congressman Jeff Miller.

The change sought by these measures—allowing attorneys to charge a fee to represent a veteran or other claimant before the agency of original jurisdiction—would not be in the best interests of veterans for several reasons, and would be detrimental to the administrative process at the VA. The principal reason for DAV's opposition is based in the public policy underlying the prohibition against charging veterans for claims assistance. Veterans and their dependents or survivors should not have to resort to hiring and paying lawyers to obtain benefits to which they are rightfully entitled. Veterans and other beneficiaries should be able to file claims for benefits and receive fair decisions from the VA without the necessity to hire and pay a large portion of their benefits to attorneys. Congress designed the current administrative claims process to be non-adversarial and veteran-friendly. Unlike litigation in our court system, where the parties must discover and produce their own evidence and affirmatively demonstrate, by a preponderance of the evidence, that they are entitled to the relief sought, Congress obligated VA to assist the claimant in obtaining potential evidence and placed the duty upon VA to consider all relevant law and avenues of entitlement.

Veterans' benefits are more than a matter of mere relief provided out of generosity by a grateful nation. Because veterans have made special sacrifices, have subjected themselves to extraordinary risks, and have borne unusual burdens for the benefit of the nation as a whole, they have earned special rights and special treatment. Veterans, who have served and fought for our country and our cherished freedoms, should never have to fight our government to get the benefits a grateful nation has provided as a reward for their sacrifices and service. It is intended that these benefits be provided with a minimum of difficulty for the veteran claiming them. Veterans are accorded a privileged status and are due more personal assistance from VA than claimants receive when seeking benefits from other federal forces. Again, it is important to remain mindful that veterans obtain their benefits through an informal, non-adversarial, and benevolent claims process, not a litigation process. The paramount distinction between the VA process and litigation reflects a calculated congressional intent and design to permit veterans to receive all the benefits they are rightfully due without any necessity to hire and pay a lawyer.

Disability compensation and other benefits for veterans and their families should go to the intended beneficiaries for the purpose of the necessities of life and to meet other needs, not to lawyers. That is the very reason the system was designed to work without lawyers and the wisdom behind the law that has so long prohibited lawyers from charging veterans for filing and prosecuting claims. By passing one of these measures to allow lawyers to charge veterans for claims assistance, this Congress would abandon the commitment to a system that delivers benefits to veterans without necessity to pay lawyers. This Congress would be admitting that it is unable to perform its oversight role to ensure that the VA's claims processing system works as intended.

This Congress, more specifically, the House and Senate Veterans' Affairs Committees, will be sending the wrong message to our brave young men and women serving in harm's way in our War on Terror. The message you would send to these men and women if you pass this legislation, is that it may be necessary to hire and pay a lawyer to obtain your rightful benefits from the government you served to protect.

Under the Senate bill, S. 2694, and H.R. 5549, a veteran, missing a limb due to combat in Iraq, might mistakenly believe that he or she needs to hire an attorney to obtain disability compensation for their loss. Most individuals are unaware of the fact that the VA was designed to be an informal, non-adversarial, and pro-veteran claims process, not a litigation process. Most of those individuals would, therefore, believe that an attorney would be better qualified to represent them in the litigation process. However, empirical data from the Board of Veterans' Appeals demonstrates that attorneys, who handpick their cases, have a slightly lower average allowance rate than veterans service organizations. Unlike lawyers, most VSOs handle all request for appellate representation.

DAV believes that it is bad public policy to allow veterans to pay a fee to obtain their earned benefits. Furthermore, it demeans the service of our brave young men and women who defend our cherished freedoms to convince them that it is necessary to pay a lawyer to represent them to obtain the benefits to which they are rightfully entitled.

The argument that veterans should be afforded a choice to be represented by a lawyer in claims for veterans' benefits ignores the intent of Congress that the VA's mission is to provide all entitled veterans claimants with all benefits allowable under the law, and that the VA claims process should remain open, helpful, informal, and pro-veteran.

To allege that this legislation is simply about affording a choice to a veteran erroneously implies that the VA system should operate like the civil litigation and criminal justice systems, where two parties must convince an impartial third party that one of them should prevail. Again, I cannot emphasize enough, that the VA claims process is not, I repeat, *is not*, a litigation process. As an attorney, I know first hand how lawyers are trained and how they think and react in the legal arena. Believe me when I say this is not what we want for the VA claims process.

The DAV believes enactment of these bills will have far reaching detrimental effects that will far outweigh the emotional gratification of having the right to choose representation by a lawyer. The Court recognized the probable adverse effects in *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305 (1985):

> There can be little doubt that invalidation of the fee limitation would seriously frustrate the oft-repeated congressional purpose for enacting it. Attorneys would be freely employable by claimants to veterans' benefits, and the claimant would as a result end up paying part of the award, or its equivalent, to an attorney. But this would not be the only consequence of striking down the fee limitation that would be deleterious to the congressional plan.
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> A necessary concomitant of Congress' desire that a veteran not need a representative to assist him in making his claim was that the system should be as informal and nonadversarial as possible. . . . The regular introduction of lawyers into the proceedings would be quite unlikely to further this goal. Describing the prospective impact of lawyers in probation revocation proceedings, we said in *Gagnon v. Scarpelli*, 411 U.S. 778, 787-788, 93 S.Ct. 1756, 1762, 36 L.E.d.2d 656 (1973):
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> > "The introduction of counsel into a revocation proceeding will alter significantly the nature of the proceeding. If counsel is provided for the probationer or parolee, the State in turn will normally provide its own counsel; lawyers, by training and disposition, are advocates and bound by professional duty to present all available evidence and arguments in support of their clients' positions and to contest with vigor all adverse evidence and views. The role of the hearing body itself . . . may become more akin to that of a judge at a trial, and less attuned to the rehabilitative needs of the individual. . . . Certainly, the decisionmaking process will be prolonged, and the financial cost to the State--for appointed counsel, . . . a longer record, and the possibility of judicial review—will not be insubstantial."

We similarly noted in *Wolff v. McDonnell*, 418 U.S. 539, 570, 94 S.Ct. 2963, 2981, 41 L.Ed.2d 935 (1974), that the use of counsel in prison disciplinary proceedings would "inevitably give the proceedings a more adversary cast. . . ." Knowledgeable and thoughtful observers have made the same point in other language:

> "To be sure, counsel can often perform useful functions even in welfare cases or other instances of mass justice; they may bring out facts ignored by or unknown to the authorities, or help to work out satisfactory compromises. But this is only one side of the coin. Under our adversary system the role of counsel is not to make sure the truth is ascertained but to advance his client's cause by any ethical means. Within the limits of professional propriety, causing delay and sowing confusion not only are his right but may be his duty. The appearance of counsel for the citizen is likely to lead the government to provide one—or at least to cause the government's representative to act like one. The result may be to turn what might have been a short conference leading to an amicable result into a protracted controversy.
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> "These problems concerning counsel and confrontation inevitably bring up the question whether we would not do better to abandon the adversary system in certain areas of mass justice. . . . While such an experiment would be a sharp break with our tradition of adversary process, that tradition, which has come under serious general challenge from a thoughtful and distinguished judge, was not formulated for a situation in which many thousands of hearings must be provided each month." Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267, 1287-1290 (1975).

Thus, even apart from the frustration of Congress' principal goal of wanting the veteran to get the entirety of the award, the destruction of the fee limitation would bid fair to complicate a proceeding which Congress wished to keep as simple as possible. It is scarcely open to doubt that if claimants were permitted to retain compensated attorneys the day might come when it could be said that an attorney might indeed be necessary to present a claim properly in a system rendered more adversary and more complex by the very presence of lawyer representation. It is only a small step beyond that to the situation in which the claimant who has a factually simple and obviously deserving claim may nonetheless feel impelled to retain an attorney simply because so many other claimants retain attorneys. And this additional complexity will undoubtedly engender greater administrative costs, with the end result being that less Government money reaches its intended beneficiaries. 473 U.S. at 323-26.

For these reasons, DAV believes enactment of these bills will profoundly change the administrative claims process to the detriment of veterans and other claimants. We believe there is a potential for wide-ranging unintended consequences that will be beneficial for neither claimants nor the Government. Beyond the cost to veterans, added administrative costs for VA are likely to be substantial, without commensurate added advantages or benefits for either.

The DAV does not stand alone in its opposition to these bills. This legislation is also opposed by the VA, Veterans of Foreign Wars of the United States, and AMVETS.

We call upon the members of this Committee to oppose the enactment of legislation that would remove the restriction on lawyers charging veterans a fee to prepare, present, and prosecute claims for veterans' benefits.

Before I close, I would like to recommend that this Committee consider improvement to certain VA programs designed to benefit our nation's disabled veterans. The members of the DAV approved long-standing resolutions at our most recent National Convention, held in Chicago, Illinois, August 12-15, 2006, and we call upon you to:

- Support additional increases in grants for automobiles or other conveyances available to certain disabled veterans and provide for automatic annual adjustments based on the increase in the cost of living. When this program was originally created in 1946, the law set the allowance at an amount sufficient to pay the full cost of a lower-priced new automobile. With subsequent cost-of-living increases, Congress sought to provide 85 percent of the average cost of a new automobile, and later 80 percent. Because of a lack of regular adjustments to keep pace with increased costs, the value of the automobile allowance has substantially eroded through the years. Currently, the $11,000 automobile allowance represents only about a third of the average cost of automobiles in the year 2005.
- Increase the face value of Service Disabled Veterans' Insurance (SDVI). The current $10,000 maximum for life insurance for veterans was first established in 1917, when most annual salaries were considerably less than $10,000. The maximum protection available under SDVI should be increased to at least $50,000 to provide adequately for the needs of our survivors.
- Authorize VA to revise its premium schedule for SDVI to reflect current mortality tables. Premium rates are still based on mortality tables from 1941, thereby costing disabled veterans more for government life insurance than is available on the commercial market.
- Provide an additional increase in the specially adapted housing grant and automatic annual adjustments based on increases in the cost of living.

Mr. Chairman, this completes my testimony. Thank you for allowing me the opportunity to appear before you today on behalf of the Disabled American Veterans to share our views on the state of veterans' affairs.