

Statement for the Record

of



Veterans for Common Sense

by

Anthony Hardie

National Chair and Director

for the

House Committee on Veterans' Affairs

for a

Hearing on Pending Legislation

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Thank you, Chairman Takano and Ranking Member Bost for this hearing regarding pending legislation. We are grateful for this opportunity to provide written testimony for the record.

Veterans for Common Sense is national veterans' organization focused on education and advocacy on behalf of veterans, military service members, and historically has helped to elevate veterans' voices in national policy discussions. Our national board of directors includes most of the leaders of the national Gulf War veterans organization formed in 1995. Our efforts resulted in the creation of critical Gulf War legislation and related measures, including the seminal Persian Gulf War Veterans Act of 1998 and the Gulf War provisions of the Veterans Programs Enhancement Act of that same year. Collectively, we helped to implement many of its provisions, to write the initial charter for the first toxic exposure VA advisory committee (the RAC-GWVI, see below for more information), to serve on that committee, to create and serve on and chair the treatment-focused Gulf War Illness Research Program steering committee (Programmatic Panel), to provide testimony integral to countless Gulf War-related Congressional hearings, and so much more.

We appreciate the opportunity to share our views, for this hearing in particular, from the perspectives of Gulf War veteran advocates and veterans affected by Gulf War toxic exposures and the resultant Gulf War Illness. We hope that our testimony today can help illuminate lessons learned from the experiences of this often-overlooked cohort. We include eight (8) such "lesson learned". We then provide commentary regarding the various bills being considered by the Committee.

In 1996, we developed a five-point plan at our first national conference of our coalescent national coalition of grassroots groups of ill Gulf War veterans and their loved ones. Our step-by-step plan included the following:

- 1) INVESTIGATION: an investigation into what happened to us Gulf War troops including to what we may have been exposed;
- 2) RESEARCH: medical research to determine the health outcomes associated with each exposure;
- 3) TREATMENT: effective treatment for the health outcomes associated with each exposure (later to be described as "evidence-based" treatment);
- 4) CLAIMS: an appropriate VA claims process to ensure that VA provided compensation for Gulf War-incurred disabilities that were long-term or permanent;
- 5) NEVER AGAIN: a pledge based on that of the Vietnam Veteran veterans who came before us – that never again should what happened to us be allowed to happen again.

In short, our plan was fairly simple to articulate: Investigation, Research, Treatment, Compensation, and Never Again. That plan was to serve as an early framework for our 1998 legislation. The 1998 legislation is described below, drawn from testimony we provided in 2016:¹

¹ House Veterans' Affairs Committee, Subcommittee on Oversight and Investigations and Subcommittee on Disability Assistance and Memorial Affairs, March 15, 2016, "Twenty-Five Years After The Persian Gulf War: An Assessment Of VA's Disability Claims Process With Respect To Gulf War Illness": <https://archives-veterans.house.gov/submission-record/aanthony-hardie-gulf-war-veteran-and-director-veterans-common-sense>

1998 PERSIAN GULF WAR VETERANS LEGISLATION

As I noted in my testimony of February 23 [2016], it took almost eight years after the war before Gulf War veteran' major legislative victory, with the enactment of the Persian Gulf War Veterans Act of 1998 (Title XVI, PL 105-277) and the Veterans Programs Enhancement Act of 1998 (PL 105-368, Title I—"Provisions Relating to Veterans of Persian Gulf War and Future Conflicts") – two landmark bills that set the framework for Gulf War veterans' healthcare, research, and disability benefits.

For those of us involved in fighting for the creation and enactment of these laws, they seemed clear and straightforward, with a comprehensive, statutorily-mandated plan that would guarantee research, treatments, appropriate benefits, and help ensure that lessons learned from our experiences would result in never again allowing what happened to us to happen to future generations of warriors.

The legislation included a long list of known Gulf War exposures. VA was to presume our exposure to all of these, and then, with the assistance of the National Academy of Sciences (NAS), evaluate each exposure for associated adverse health outcomes in humans and animals. In turn, the VA Secretary would consider the reports by the NAS's Institute of Medicine (IOM), "and all other sound medical and scientific information and analyses available," and make determinations granting presumptive conditions. There was a new guarantee of VA health care. There would also be a new national center for the study of war-related illnesses and post-deployment health issues, which would conduct and promote research regarding their etiologies, diagnosis, treatment, and prevention and promote the development of appropriate health policies, including monitoring, medical recordkeeping, risk communication, and use of new technologies. There was to be an effective methodology for treatment development and evaluation, a medical education curriculum, and outreach to Gulf War veterans. Research findings were to be thoroughly publicized. To ensure the federal government's proposed research studies, plans, and strategies stayed focused and on track, VA was to appoint a research advisory committee that included Gulf War veterans – presumably those who were ill and affected – and their representatives.

Instead, we learned that enactment of those laws was just another battle in our long war.

From the beginning, VA officials fought against implementing these laws, dragging their feet and upending their implementation.

In addition to the failures I noted in my February 23 [2016] testimony, the process for determining presumptions has failed to yield new presumptions without Congressional intervention. And, the laws aimed at providing a clear path for Gulf War veterans' compensation by VA while awaiting the development of effective treatments has been not just problematic, but with extraordinarily high denial rates, as VA's own data shows and as will be discussed below.

For Gulf War veterans, getting VA to approve a disability claim for a presumptive condition has been nearly impossible for most. And, as with all denied VA claims, the backlog of appealed claims is daunting and adds years to the process.

That leads now to a discussion of components drawn from Gulf War veterans' experience and the lessons that can be learned for advancing new legislation related to toxic exposures:

A. Access to care. Prior to our 1998 legislation, the ability of veterans was very limited for accessing VA healthcare unless they had an already-approved claim for VA compensation or pension. Of course, medical evidence was required to win a compensation claim, but without access to healthcare, it was difficult to impossible to receive needed healthcare.

The 1998 legislation provided for two years of VA healthcare for combat veterans. Later legislation expanded that period to five years. Of great importance, the TEAM Act would significantly expand that care for veterans with toxic exposures.

LESSON LEARNED: 1) Granting VA healthcare access to veterans with toxic exposures is critical.

Treatment-focused Research. However, related to accessing healthcare and as I testified before a House Veterans' Affairs Subcommittee on Health hearing in 2007, while it was certainly possible "for Gulf War veterans to be seen at VA medical facilities, however, *being seen is not the same as being treated.*"² [emphasis added]

For many Gulf War veterans suffering the adverse health effects of Gulf War toxic exposures, science and medicine did not yet have answers for why they were sick or how to treat their illness. This remains the case not only for far too many Gulf War veterans, but also for many veterans with burn pits and other toxic exposures.

Even worse, health risk communications publicized by the Department of Defense (DoD) and VA consistently minimized the association between Gulf War service and the adverse health outcomes so many of us were experiencing. Similar minimization continues even through to the present: alleging no clear links have been found associating deployment or exposures or deployment with adverse health outcomes, "more research is needed," legislation seeking to resolve these issues is "premature". This persistent denial messaging only serves to anger the already injured veteran population.

While the story is too long to tell in this statement, eventually Gulf War veterans benefitted from the creation of the Gulf War Illness Research Program (GWIRP), one of the Congressionally Directed Medical Research Programs (CDMRP) created and funded by Congress through annual Department of Defense Health Agency appropriations. For reasons that have been provided in detail in past House Veterans' Affairs Committee hearings, it was and remains of critical importance that this program remains outside of VA. A Burn Pits Exposure topic area within the

² H.HRNG 37-476, House Committee on Veterans' Affairs, Subcommittee on Health, "Gulf War Exposures", July 26, 2007: <https://www.govinfo.gov/content/pkg/CHRG-110hrg37476/html/CHRG-110hrg37476.htm>

Peer Reviewed Medical Research CDMRP (PRMRP) and other disease- and exposure-specific research programs and approved topic areas remain of equally critical importance. We are deeply grateful to Congress for continuing to support these critically important medical research programs.

Also of critical importance is streamlining the process to speed successful research treatments and diagnostic findings to clinicians treating the patients who are affected. As effective treatments for Gulf War Illness and other toxic exposures and conditions are found, processes to add evidence-based treatments to VA's formulary and clinical practice must be enhanced.

LESSON LEARNED: 2) Funding treatment-focused medical research aimed at improving health and lives – and bench-to-bedside translational efforts to speed research successes to clinical care – is critically important to ensure veterans being “seen” by VA clinicians are provided with evidence-based healthcare that in fact improves their health and lives.

B. Framework for determining new presumptive conditions.

The 1998 Gulf War legislation provided a framework for determining presumptive conditions for VA compensation claims. That framework should have provided a clear path for additional deployment- or exposure-associated conditions to be determined by the VA Secretary, based on reports from the NAS, as “presumptive”.

Through this framework, the National Academy of Sciences, Engineering, and Medicine (NASEM) has released numerous literature reviews of Gulf War research. Most of these reports include conclusions regarding the strength of association between deployment to the Gulf War or Gulf War exposures and particular health outcomes.

The five categories are:

- **Sufficient evidence of a causal relationship**, that is, the evidence is sufficient to conclude that between being deployed to the Gulf War causes a health outcome.
- **Sufficient evidence of an association**; that is, a positive association has been observed between deployment to the Gulf War and a health outcome in humans.
- **Limited/suggestive evidence of an association**; that is, some evidence of an association between deployment to the Gulf War and a health outcome in humans exists.
- **Inadequate/insufficient evidence to determine whether an association exists**; that is, available studies are of insufficient quality, validity, consistency or statistical power to permit a conclusion regarding the presence or absence of an association.
- **Limited/suggestive evidence of no association**; that is, several adequate studies are consistent in not showing an association between deployment and a health outcome.

For Gulf War veterans, the bar for determining these conditions as “presumptive” has been too high and few conditions have met this bar.

Veterans for Common Sense has compiled a complete list³ of all conditions considered by NAS in the Gulf War and Health series, comprising over 400 exposures, along with their NAS categories of association. Nearly all fall in the lower three tiers of NAS strength of association determinations.

LESSON LEARNED: 3) A presumptive condition determination framework should set the bar at the “Limited/suggestive evidence of an association” level.

C. List of exposures. The Persian Gulf War Veterans Act of 1998 provided a list of 32 potential exposures for Gulf War veterans.

(A) The following organophosphorous pesticides: (i) Chlorpyrifos. (ii) Diazinon. (iii) Dichlorvos. (iv) Malathion. (B) The following carbamate pesticides: (i) Proxpur. (ii) Carbaryl. (iii) Methomyl. (C) The carbamate pyridostigmine bromide used as nerve agent prophylaxis. (D) The following chlorinated hydrocarbons and other pesticides and repellents: (i) Lindane. (ii) Pyrethrins. (iii) Permethrins. (iv) Rodenticides (bait). (v) Repellent (DEET). (E) The following low-level nerve agents and precursor compounds at exposure levels below those which produce immediately apparent incapacitating symptoms: (i) Sarin. (ii) Tabun. (F) The following synthetic chemical compounds: (i) Mustard agents at levels below those which cause immediate blistering. (ii) Volatile organic compounds. (iii) Hydrazine. (iv) Red fuming nitric acid. (v) Solvents. (vi) Uranium. (G) The following ionizing radiation: (i) Depleted uranium. (ii) Microwave radiation. (iii) Radio frequency radiation. (H) The following environmental particulates and pollutants: (i) Hydrogen sulfide. (ii) Oil fire byproducts. (iii) Diesel heater fumes. (iv) Sand micro-particles. (I) Diseases endemic to the region (including the following): (i) Leishmaniasis. (ii) Sandfly fever. (iii) Pathogenic escherichia coli. (iv) Shigellosis.⁴

D. Concession of exposures. As directed by the law, VA contracted with the NAS for reviews of these exposures (and not limited to these exposures) and whether Gulf War veterans “may have been exposed.” In report after report in the NAS’s “Gulf War and Health” series, the NAS was unable to determine actual levels of exposure for Gulf War troops, including dose-response relationships, due in large part to flawed, inadequate, and incomplete troop location data, lost troop medical and other records, inadequate environmental sampling data, and so on.

Unfortunately for Gulf War veterans, the list of 32 exposures in the enacted legislation and resulting law⁵ did not rise to the level of an actual concession of exposures. Instead, the enacted legislation used indeterminate language: “may have been exposed”; “may have been exposed for purposes of any report under subsection...”.

The end result of the Gulf War framework has been deeply disappointing to Gulf War veterans:

³ <http://veteransforcommonsense.org/wp-content/uploads/2020/02/Conditions-Associated-with-Gulf-War-exposures-consolidated-NAS-IOM-listing.pdf>

⁴ Persian Gulf War Veterans Act of 1998 [Title XVI, P.L. 105-277, “Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999”], Sec. 1603(d) [“Initial Consideration of Specific Agents”].

⁵ Persian Gulf War Veterans Act of 1998 [Title XVI, P.L. 105-277, “Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999”], Sec. 1603(d) [“Initial Consideration of Specific Agents”].

no concessions of exposure to any of the toxic and hazardous exposures identified by Congress in law (with the exception of nine rare endemic infectious diseases, which have been of little consequence for most veterans deployed to the theatre of operations) and essentially **no new presumptive conditions resulting from that framework**.

Thus, Gulf War veterans have never received the same benefit of a concession of exposures granted to Agent Orange veterans, and as would be granted -- to a more limited extent -- by pending toxic exposures legislation. That task probably falls to Congress to determine. To date, Gulf War veteran reliance on DoD and VA to concede exposures has not succeeded despite a carefully articulated and well-intentioned framework enacted in the 1998 legislation.

LESSONS LEARNED: 4) Conceding exposures is critical, and that task probably falls to Congress to legislate.

E. Plausibility of etiology. An important method for determining the plausibility of adverse health outcomes has been the use of experimental models of exposures. These models have primarily involved the use of experimental rats and mice, though others have used cockroaches, cell lines, and machine learning.

We have provided extensive prior testimony on this critical aspect of any NAS or similar studies to determine the association between exposures (or deployment) and health outcomes.

See: “Statement for the Record of James Binns, Roberta White, Anthony Hardie, & Paul Sullivan for a September 23, 2020 Hearing of the Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, Entitled: “Toxic Exposures: Examining Airborne Hazards In The Southwest Asia Theater Of Military Operations”.

LESSON LEARNED: 5) Animal studies of toxic exposure are critical to understanding plausible health outcomes associated with toxic exposures.

F. List of Presumptive Conditions.

Gulf War legislation enacted in 1994 provided for presumptive “undiagnosed illness” (UDX) claims. However, VA’s high rates of denial of these claims led to Congress’ 1998 Gulf War legislation to develop an elegant, science-based, framework for specifying new presumptive conditions for Gulf War veterans. Unfortunately, VA’s persistent high rates of denial of these presumptive UDX claims led to legislation enacted in 2001 making “medically unexplained chronic multisymptom illnesses” (MUCMIs) presumptive.

Tragically for Gulf War veterans, VA’s high rates of denial of Gulf War veterans’ presumptive claims for “undiagnosed illness” (UDX) and “medically unexplained chronic multisymptom illnesses” (MUCMIs) persist to the present time – along with similarly high rates of denial of Burn Pits Exposure-related claims.

By contrast, Vietnam veterans with presumed exposure to Agent Orange have fared better, with a long list of presumptive conditions now approved. It is noteworthy that many of these named presumptive conditions required legislation. Indeed, one of the bills now before the Committee would name additional Agent Orange presumptive conditions that VA has failed to make presumptive despite strong evidence and favorable NAS review.

While a framework for Vietnam veterans that presumes exposure to Agent Orange has led to some favorable determinations for new presumptive conditions, Congress has been required to legislate other named presumptive conditions.

LESSON LEARNED: 6) Named presumptive conditions are critical for toxic exposure veterans. 7) A science-based presumptive determination framework is of significant value. 8) Congress is likely still going to be called upon to act when the science is clear regarding associations of health outcomes with exposures when VA fails to take appropriate action on its own.

PENDING LEGISLATION:

H.R. 1273 – Vietnam Veterans Liver Fluke Cancer Study Act:

Veterans for Common Sense is broadly supportive of efforts to identify health conditions that may be of greater prevalence or incidence among particular veteran cohorts. This legislation is regarding the rates of cholangiocarcinoma, cancer that forms in the bile ducts that connect the liver and gallbladder to the small intestines. According to the Cholangiocarcinoma Foundation, among the risk factors are exposure to dioxin found in Agent Orange or to parasitic liver *fluke* infections most commonly seen in some Asian countries.⁶

Section 2 of the bill is titled, “Study on the Prevalence of Cholangiocarcinoma in Veterans who Served in the Vietnam Theater of Operations During the Vietnam Era”. This legislation defines “covered veterans of the Vietnam Era” as “veterans who served in the Vietnam theater of operations during the Vietnam era” – in other words, Vietnam War veterans, who were most at risk for exposure to liver *flukes* and/or dioxin. This legislation seeks to determine the incidence and prevalence of this condition only in these Vietnam War veterans (where parasitic liver *fluke* infection and/or dioxin exposures are most likely to have occurred) via an epidemiological study conducted by the VA in consultation with the U.S. Centers for Disease Control and Prevention (CDC). The bill directs data from “residents of the United States” to be used as a comparison. However, it may be of added value to **include an additional comparison group: Vietnam Era veterans without Vietnam War service.**

Section 2 of the bill also directs a Report to Congress containing the results of the study and recommendations for administrative or legislative actions required to address issues identified in the study. The bill directs this report to be provided to Congress, “not later than one year after the completion of the study”. Given the poor prognosis and short lifespan of many

⁶ <https://cholangiocarcinoma.org/risk-factors/>

cholangiocarcinoma patients following diagnosis, it would seem to be of significant value to these veterans to **legislatively impose expedited benchmarks and an expedited deadline for reporting the completed study's findings to Congress.**

Finally, we would like to remind the Members of the Committee of a 2013 subcommittee hearing⁷ that featured Dr. Steven Coughlin, who had just resigned his position as senior epidemiologist in the VA Office of Public Health (OPH) “because of serious ethical concerns”, about which he provided compelling testimony.⁸ VA-OPH has since been renamed the Office of Post Deployment Health Services (PDHS). Among Dr. Coughlin’s statements in that testimony:

- *“The Office of Public Health conducts large studies of the health of American veterans. However, if the studies produce results that do not support OPH’s unwritten policy, they do not release them. This applies to data regarding adverse health consequences of environmental exposures...”* [From direct communications with Dr. Coughlin, Veterans for Common Sense understands this OPH (now PDHS) “unwritten policy” to include failing to research conditions that may be of greater incidence or prevalence among cohorts of veterans with toxic exposures, failing to publish such findings if found, minimizing such findings, deflecting physical conditions to appear as psychosomatic, and generally practicing a policy of “don’t look, don’t find.”]
- *“Speaking as a senior epidemiologist with almost 30 years of research experience, there is no reason to work night and day for years on a complex data collection effort (which cost US taxpayers millions of dollars) ... if no scientific publications are released.*
- *“My supervisor, Dr. Aaron Schneiderman, told me not to look at data regarding hospitalizations and doctors’ visits.”*
- *“Another example of important data that has never been released are the results of the Gulf War family registry mandated by Congress. These were physical examinations provided at no charge to Gulf War veterans’ family members. I have been advised that these results have been permanently lost.”*
- *“The Office of Public Health has also manipulated information regarding veterans’ health through the questions included in their surveys.”*
- *“The VA Chief of Staff (COS) directed my supervisors to send the Gulf War study scientific protocol and draft questionnaire out for additional, objective scientific peer review.... The Chief of Staff was never informed that the outside reviewer worked for a friend of Dr. Peterson”* [the OPH Chief Science Officer].
- *“My supervisors also made false statements in writing to the Chief of Staff.” “...as a result, the Chief of Staff ordered the survey to proceed without the changes.”*
- *“Last year, VA contracted with the IOM for a Congressionally-mandated study of treatments for chronic multisymptom illness in Gulf War veterans. Many Gulf War veterans were distressed that five speakers selected to brief the IOM committee presented the view that the illness may be psychiatric, although science long ago discredited that position. My understanding is that Dr. [Michael] Peterson, an OPH Chief Science Officer, identified the speakers the IOM should invite.”*

⁷ H.HRNG. 113-9, Subcommittee on Oversight and Investigations, House Committee on Veterans' Affairs, March 13, 2013, “Gulf War: What Kind of Care Are Veterans Receiving 20 Years Later?” <https://www.govinfo.gov/content/pkg/CHRG-113hhrg79944/html/CHRG-113hhrg79944.htm>

⁸ <https://archives-veterans.house.gov/witness-testimony/dr-steven-s-coughlin>

- *“I also urge you to initiate legislation to cure the epidemic of serious ethical problems in the Office of Public Health I have described to you today. In view of the pervasive pattern where these officials fail to tell the truth, even to VA leadership, VA cannot be expected to reform itself. These problems impact the balance of risks and benefits of federally funded human subjects research costing tens of millions of dollars and which fail to serve the interests of the veterans they are intended to benefit.”*

It is unclear whether the necessary personnel and policy changes have been made within this VA office to correct the longstanding, egregious, “don’t look, don’t find” issues exposed to the light of day through Dr. Coughlin’s courageous resignation and public testimony.⁹ Given this bill’s directive for VA to conduct an epidemiological study, it would seem prudent to **ensure “the epidemic of serious ethical problems in the Office of Public Health” identified by Dr. Coughlin in public testimony before members of this Committee have been fully resolved before proceeding.**

Veterans for Common Sense supports H.R. 1273, the *Vietnam Veterans Liver Fluke Cancer Study Act*, and is grateful to Rep. Slotkin, Rep. Garbarino, Rep. Suozzi, Rep. Fitzpatrick, Rep. Posey, and Rep. Neguse for introducing this legislation.

Veterans for Common Sense commends Vietnam Veterans of America and the DAV for their leadership in helping to make clear the urgent need for this study and advocating in support of this legislation.

H.R. 1355 (S. 454) — *K2 Veterans Care Act of 2021*:

Veterans for Common Sense supports this legislation conceding exposure to certain hazards and toxic exposures for covered veterans. However, we express concern that some of these, like Depleted Uranium, have previously been the subject of NAS reviews without favorable consideration and “more study is needed”-type recommendations.

Veterans for Common Sense thanks Rep. Lynch, Rep. Green of Tennessee, Rep. Ryan, Rep. Fitzpatrick, Rep. San Nicolas, Rep. Welch, Rep. Speier, Rep. Grijalva, Rep. Williams of Texas, Rep. Kelly of Mississippi, Rep. Cooper, Rep. Crenshaw, Rep. Johnson of Georgia, Rep. Omar, Rep. Norton, Rep. Radewagen, Rep. Webster of Florida, Rep. Bustos, Rep. Steube, Rep. Grothman, Rep. Rodgers of Washington, Rep. Chabot, Rep. Tiffany, Rep. Stewart, Rep. Craig, Rep. Phillips, Rep. Foxx, Rep. Posey, Rep. Keating, Rep. Budd, Rep. Bice of Oklahoma, Rep. Titus, Rep. Malliotakis, Rep. Gaetz, Rep. Katko, Rep. Massie, Rep. Gohmert, Rep. Norman, Rep. Babin, Rep. Bacon, Rep. Van Drew, Rep. Baird, Rep. Moore of Alabama, Rep. Trahan, Rep. Gosar, Rep. Murphy of North Carolina, Rep. González-Colón, Rep. Payne, Rep. Boebert, Rep. Kim of California, Rep. Moulton, Rep. Pappas, Rep. Foster, Rep. Johnson of South Dakota, Rep. Cawthorn, Rep. Stauber, Rep. Bilirakis, Rep. Meijer, Rep. McKinley, Rep. Graves of Missouri, and Rep. Young for introducing this legislation in the House, and to Senator

⁹ As an aside, the year after that HVAC-O&I hearing, Dr. Coughlin was awarded the Research Integrity Award by the International Society for Environmental Epidemiology, and the Deployment Health Researcher of the Year Award by the Sergeant Sullivan Center. Since that time, he is also the recipient of multiple research grants, including from DoD related to toxic exposure epidemiology, and has published his important results in peer-reviewed medical journals.

Blumenthal, Senator Baldwin, Senator Brown, Senator Menendez, and Senator Feinstein for their introduction of this legislation in the Senate.

H.R. 1585 (S. 565) — *Mark Takai Atomic Veterans Healthcare Parity Act of 2021:*

Veterans for Common Sense supports efforts to provide full eligibility for VA healthcare eligibility and service-connected disability compensation benefits to all Atomic Veterans.

Veterans for Common Sense also supports efforts, including by the National Association of Atomic Veterans (NAAV), to authorize, create, and award, including posthumously, an Atomic Veteran Service Medal to all Atomic Veterans.

According to the NAAV, Atomic Veterans include all of the following:

“Atomic Veterans were members of the United States Armed Forces who participated in atmospheric and underwater nuclear weapons tests from 16 July 1945 to 30 October 1962. They also include veterans who were assigned to post test duties, such as “ground zero” nuclear warfare maneuvers & exercises, removing radiation cloud samples from aircraft wing pods, working in close proximity to radiated test animals, de-contamination of aircraft and field test equipment, retrieval and transport of test instruments & devices, and a host of other duty assignments that provided an opportunity for a radiation exposure & contamination event. Also included are military personnel who were a part of the Occupation Forces assigned to Hiroshima and Nagasaki, Japan soon after the detonation of Atomic-Bombs over those respective cities, and those American prisoners of war (POW’s) who were housed in close proximity to those cities.”

“There is a second group of veterans who may have been involved in radiation exposure events. These include post test events related to nuclear weapon devices detonated underground or in shafts (after 1962) that may have provided a radiation exposure event, or those [whose] duties involved regular use of radiation producing equipment or processes, such as power plant technicians aboard nuclear powered Aircraft Carriers and Submarines, X-ray technicians, and those veterans assigned to the Enewetak Atoll radiation clean-up projects.”¹⁰

According to a 2019 *Stars and Stripes* article:

“We were experimental subjects who did not give our advised consent to be experimental subjects,” said [Atomic Veteran Linclon] Grahlf, 96, a retired sociology professor and author of the book “Voices From Ground Zero: Recollections and Feelings of Nuclear Test Veterans.”

At least 200,000 U.S. troops participated in the tests and cleanup operations during World War II and later in the Pacific Ocean, the Nevada desert, New Mexico and the Atlantic Ocean. They took the human brunt of deadly ionizing radiation that

¹⁰ NAAV website: <https://www.naav.com>

contaminated nearby lands, water and communities. Even today, the wide-ranging implications of hundreds of tests conducted from the 1940s until the 1960s and cleanup operations that followed in the late 1970s has yet to be fully understood. In all, the U.S. has conducted more than 900 such tests.

Until 1996, the atomic vets were sworn to silence, forced to keep their burdens from their families, their friends and doctors. They had limited records and medical help for their illnesses, and faced a threat of prison if they revealed the secret too soon.¹¹

It is unclear whether all Atomic Veterans who are still living know that the *Nuclear Radiation and Secrecy Agreements Act*, which bound these veterans to secrecy regarding the operations that exposed them to radiation, was repealed. S. 565 would expand Atomic Veteran-related benefits to veterans who participated in the “Cleanup of Enewetak Atoll during the period beginning on January 1, 1977, and ending on December 31, 1980”.

In keeping with the goals stated above, **Veterans for Common Sense strongly supports S. 565, the Mark Takai Atomic Veterans Healthcare Parity Act of 2021.**

Veterans for Common Sense is grateful to Rep. Meng, Rep. Beatty, Rep. Lowenthal, Rep. Fitzpatrick, Rep. Titus, Rep. San Nicolas, Rep. Kirkpatrick, Rep. Swalwell, Rep. Kahele, Rep. Moulton, Rep. Welch, Rep. McGovern, Rep. Gallagher, Rep. Speier, Rep. Thompson of California, Rep. Grijalva, Rep. Castor of Florida, Rep. Cohen, Rep. Pappas, Rep. Suozzi, Rep. Takano, Rep. Lee of California, Rep. Pallone, Rep. Smith of Washington, Rep. Kilmer, Rep. Vargas, Rep. DeGette, Rep. DelBene, Rep. Ryan, Rep. Brendan F. Boyle of Pennsylvania, Rep. Connolly, Rep. Pocan, Rep. Norton, Rep. Foster, Rep. McCollum, Rep. Garbarino, Rep. Moore of Wisconsin, Rep. Bonamici, Rep. Deutch, Rep. Torres of California, Rep. Auchincloss, Rep. Brownley, Rep. Panetta, Rep. Lieu, Rep. Pingree, Rep. Carolyn B. Maloney of New York, Rep. Price of North Carolina, Rep. Raskin, Rep. García of Illinois, Rep. Nadler, Rep. Bishop of Georgia, Rep. Burgess, Rep. Stevens, Rep. Velázquez, Rep. Schneider, Rep. Schrader, Rep. Kildee, Rep. Sherrill, Rep. Dingell, Rep. Larsen of Washington, Rep. Demings, Rep. Chu, Rep. Beyer, Rep. Lois Frankel of Florida, Rep. Rutherford, Rep. Perlmutter, Rep. Case, Rep. Lawrence, Rep. DeFazio, Rep. Zeldin, Rep. Axne, Rep. Baird, Rep. Carbajal, Rep. Peters, Rep. Rush, Rep. Cleaver, Rep. Sablan, Rep. Espaillat, Rep. Kuster, Rep. Rice of New York, Rep. Higgins of New York, Rep. Yarmuth, Rep. Quigley, Rep. Schiff, Rep. Evans, Rep. Escobar, Rep. Spanberger, Rep. Bustos, Rep. Courtney, Rep. Sires, Rep. Costa, Rep. Carson, Rep. Blunt Rochester, Rep. Garamendi, Rep. Vicente Gonzalez of Texas, Rep. Aguilar, Rep. Brown, Rep. Hastings, Rep. Lamb, Rep. Phillips, Rep. Luria, Rep. Himes, and Rep. Rodney Davis of Illinois for introducing this legislation in the House. Veterans for Common Sense is grateful to Senator Smith, Senator Tillis, Senator Leahy, Senator Hirono, Senator Klobuchar, Senator King, Senator Warren, Senator Wyden, Senator Van Hollen, Senator Coons, Senator Merkley, Senator Markey, Senator Sinema, Senator Blumenthal, Senator Collins, and Senator Baldwin for their introduction of this legislation in the Senate.

¹¹ *Stars and Stripes*, “Conspiracy of silence: Veterans exposed to atomic tests wage final fight,” by Claudia Grisales, June 16, 2019: <https://www.stripes.com/news/special-reports/conspiracy-of-silence-veterans-exposed-to-atomic-tests-wage-final-fight-1.585789>

Veterans for Common Sense commends the tireless and unwavering efforts of the National Association of Atomic Veterans, on behalf of the entire cohort of Atomic Veterans they represent, to achieve justice, healthcare, benefits, and recognition for these long-overlooked veterans. As our nation works to achieve justice for veterans with toxic exposures, it is of great importance that these Atomic Veterans are finally awarded all the measures of justice that they have long sought.

H.R. 1972 (S. 810) – *Fair Care for Vietnam Veterans Act of 2021*:

The *Fair Care for Vietnam Veterans Act* would beneficially add two additional conditions to the list of named conditions already approved as “presumptive” for Vietnam War and other veterans presumed to be exposed to Agent Orange.

A 2015 study of the Ranch Hand cohort of Vietnam veterans published in a peer-reviewed *Journal of the American Medical Association* found a 2.4-fold increased risk for Monoclonal Gammopathy of Undetermined Significance (MGUS) in Ranch Hand veterans versus comparison veterans after adjusting for age, race, and other relevant factors. The study authors concluded: “Operation Ranch Hand veterans have a significantly increased risk of MGUS, supporting an association between Agent Orange exposure and multiple myeloma.”¹² According to a press release by the National Academy of Sciences, Engineering, and Medicine (NASEM) for the release of its, “Agent Orange: Update 11 (2018)” report, “MGUS is a clinically silent condition that is a precursor to the cancer multiple myeloma, but only an estimated 1 percent of MGUS cases progress to multiple myeloma each year.”¹³

NASEM’s *Update 11 (2018)* also upgraded its conclusions regarding the strength of association between exposure to the chemicals of interest and hypertension. Previously, NASEM had rated hypertension as, “*limited/suggestive evidence of an association*”, the middle tier of its five-tier rating system for strength of association. In *Update 11 (2018)*, NASEM upgraded its rating regarding hypertension in Vietnam War veterans to, “*sufficient evidence of an association*,” the second-highest rating, based on the available published scientific evidence.

This MGUS study was published than half a decade ago and the NASEM report more than two years ago, but VA has yet to take action to make these conditions presumptive for veterans exposed to Agent Orange. It is notable that Congressional action is once again required to add these presumptive conditions via legislation, conditions which have already been found by science to be of greater prevalence in Vietnam veterans than comparison veterans.

In light of VA’s failure to act on the published scientific evidence regarding the excess

¹² Ola Landgren, Youn K Shim, Joel Michalek, Rene Costello, Debra Burton, Norma Ketchum, Katherine R Calvo, Neil Caporaso, Elizabeth Raveche, Dan Middleton, Gerald Marti, Robert F Vogt Jr, *JAMA Oncol*, “Agent Orange Exposure and Monoclonal Gammopathy of Undetermined Significance: An Operation Ranch Hand Veteran Cohort Study,” 2015 Nov;1(8):1061-8. <https://doi.org/10.1001/jamaoncol.2015.2938>.

¹³ <https://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=25137>. See: National Academies of Sciences, Engineering, and Medicine. 2018. Veterans and Agent Orange: Update 11 (2018). Washington, DC: The National Academies Press. <https://doi.org/10.17226/25137>.

prevalence of these conditions among Vietnam War veterans, **Veterans for Common Sense strongly supports S. 810, the *Fair Care for Vietnam Veterans Act of 2021*, to add hypertension and Monoclonal Gammopathy of Undetermined Significance (MGUS) as Agent Orange presumptive conditions.**

Veterans for Common Sense is sincerely grateful to Rep. Harder and Rep. Stauber for introducing the *Fair Care for Vietnam Veterans Act* in the House to add named “presumptive” conditions for VA disability compensation for Vietnam War veterans, and to Senator Tester, Senator Wyden, Senator Brown, Senator Durbin, Senator Cortez Masto, Senator Menendez, Senator Schumer, Senator Casey, Senator Leahy, Senator Manchin, Senator Blumenthal, Senator Coons, Senator Murray, Senator Klobuchar, Senator Hirono, Senator Smith, and Senator Booker for introducing this legislation in the Senate.

Veterans for Common Sense also commends Vietnam Veterans of America for its enduring leadership in ensuring that health conditions identified as greater in prevalence among Vietnam Veterans continue to be added as named presumptive conditions by whatever means necessary for the Vietnam War veterans VVA so powerfully represents.

H.R. 2127 (S. 927) – *Toxic Exposure in the American Military Act (TEAM) Act:*

Veterans for Common Sense strongly supports the expansion of access to VA healthcare that would be granted under this legislation.

Veterans for Common Sense strongly supports the provision of this legislation that would set the bar for NAS strength of association determinations at the “Limited/suggestive evidence of an association” level.

Veterans for Common Sense cautiously supports this bill’s creation of a framework for determining presumptive conditions but given the experience of Gulf War veterans with a similar enacted framework, we are understandably concerned about whether such a process will in actuality result in new, fair, and timely presumptive conditions consistently being added for veterans with those conditions.

Veterans for Common Sense strongly supports the creation of the advisory and oversight body described in this legislation. While the Research Advisory Committee for Gulf War Illnesses (RAC) created in Gulf War legislation enacted in 1998 did an excellent job in its mission, ultimately, its scope and membership were slashed by VA. Legislation to properly restore the RAC, which passed the House with unanimous consent,¹⁴ had a new structure and process for naming members that is somewhat similar to that contained in the TEAM Act.

We express concern that language in the current draft of the legislation would not allow for the appropriate and necessary consideration by the NAS of animal studies modeling toxic exposures and health outcomes in those animals. That language is as follows: “...that a positive association exists between the exposure of humans to a toxic substance and the occurrence of a

¹⁴ 113th Congress, H.R. 4261. See further in this statement for the record for more details.

disease in humans...” Such animal studies can be critical for understanding plausible health outcomes in humans, particularly in cases of toxic or hazardous exposures where there is a paucity of human health outcomes data and it would be unethical to conduct experiments exposing humans to such toxins or hazards for scientific evaluation purposes.

Veterans for Common Sense thanks Chairman Bost, Rep. Nehls, Rep. Miller-Meeks, Rep. Moore of Alabama, Del. Radewagen, Rep. Mann, Rep. Bergman, Rep. Rosendale, Rep. Cawthorn, Rep. Banks, Rep. Bilirakis, and Rep. Smith of New Jersey for leadership in introducing *the TEAM Act* in the House, and to Senator Tillis, Senator Hassan, Senator Moran, Senator Klobuchar, Senator Blackburn, Senator Baldwin, and Senator Capito for their leadership in introducing this legislation in the Senate.

Veterans for Common Sense commends the TEAM Coalition, led by the Wounded Warrior Project, for its collaborative efforts in developing the legislative proposals contained in *the TEAM Act*.

H.R. 2268 – *Keeping Our Promises Act*

Veterans for Common Sense supports H.R. 2268, the *Keeping Our Promises Act*, which would add additional “named” presumptive conditions for veterans with Agent Orange exposure.

We note that prostate cancer, AL amyloidosis, Early-onset peripheral neuropathy, and ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina) are already presumptive conditions for veterans with “exposure to certain herbicide agents” under 38 CFR 3.309(e). By adding stroke and hypertension as named presumptive conditions for these veterans, many veterans would be newly eligible for earned VA benefits and healthcare.

Veterans for Common Sense is grateful to Rep. Westerman, Rep. Thompson of California, Rep. Harshbarger, Rep. Neguse, Rep. Bergman, Rep. Pingree, Rep. Boyle, Rep. Morelle, Rep. Delgado, Rep. Omar, Rep. Cohen, Rep. Bilirakis, Rep. Walorski, Del. Radewagen, Rep. Rutherford, Rep. Griffith, Rep. Kim, Rep. Axne, Rep. Fitzpatrick, and Rep. Porter for their leadership in introducing this legislation in the House.

Veterans for Common Sense commends Vietnam Veterans of America for its enduring leadership in ensuring that health conditions identified as greater in prevalence among Vietnam Veterans continue to be added as named presumptive conditions.

H.R. 2368 – *Conceding Our Veterans' Exposure Now and Necessitating Training (COVENANT) Act*

Veterans for Common Sense supports H.R. 2368, the COVENANT Act, and is sincerely grateful to Rep. Luria for introducing this important legislation.

Veterans for Common Sense supports the presumption of airborne hazard exposures named in the COVENANT ACT.

Veterans for Common Sense supports the COVENANT Act's provisions that would add a list of named presumptive conditions for covered veterans with qualifying locations and periods of military service commencing August 1990. The COVENANT Act favorably replicates two of three lists of named exposures in the War Fighters Act, but unfavorably leaves off the addition of Agent Orange presumptive conditions, which Veterans for Common Sense supports including. The COVENANT Act favorably adds two additional respiratory conditions not named in the War Fighters Act: rhinitis, and sinusitis – both commonly reported among Gulf War and burn pits exposure veterans, the inclusion of which Veterans for Common Sense strongly supports.

Veterans for Common Sense supports the inclusion of both pre- and post-9/11 veterans in this and other toxic exposure legislation. However, the COVENANT Act does not yet include coverage for veterans with service in the airspace above or contiguous waters of covered locations (named countries of service). Learning from past lessons relative to Blue Water Navy veterans for Agent Orange/herbicide presumptive exposure, it is important to include such veterans in the initial legislation.

Veterans for Common Sense supports in concept requirements for mandatory training, reviewed by relevant veterans service organizations, for all VA-employed and -contracted health care and benefits personnel whose work involves veterans with toxic exposures.

Regarding the legislation's provisions regarding Eligibility for [health] Care, we are concerned that the provision only expands coverage for "diagnosed illness". We discuss this in greater detail elsewhere in this statement.

H.R. 2436 (S. 437) – *Veterans Burn Pits Exposure Recognition Act of 2021:*

Veterans for Common Sense supports this legislation conceding exposure to four types of airborne hazards and toxic exposures for covered veterans.

We encourage the Committee, in considering this legislation, to expand the covered veterans in this legislation to be as complete as in other current toxic exposure legislation (including airspace and contiguous waters veterans, so as not to create a new class of Blue Water Navy/Air veterans), such as the *Presumptive Benefits For War Fighters Exposed To Burn Pits And Other Toxins Act*.

We express concern regarding the inclusion of the "causal" terminology in the bill as currently drafted: "...the Secretary shall request a medical opinion as to any *causal* link between the disability and a toxic substance, chemical, or hazard set listed in subsection (c)..." [emphasis added]. We are concerned this may be interpreted by VA as parallel to the NAS causation standard of association, an impossibly high bar to meet.

Veterans for Common Sense is grateful to Representatives Slotkin and Meijer for introducing this legislation in the House, and to Senator Sullivan and Senator Manchin for their introduction of this legislation in the Senate, and to the many House Members and Senators who have cosponsored it.

Veterans for Common Sense is also deeply grateful to the Disabled American Veterans (DAV) for their leadership efforts in seeking to improve disability claims outcomes for veterans with toxic exposures.

H.R. 2371 (S. 952) – *Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act:*

In the strongest possible terms, Veterans for Common Sense supports the list of named presumptive conditions in this legislation, including respiratory conditions, cancers, and the conditions already presumptive for Agent Orange veterans.

Veterans for Common Sense also very strongly supports the comprehensiveness of covered veterans in this legislation, which includes veterans awarded various service medals for their Global War on Terrorism (GWOT) service, and extends back to August 1990 and veterans awarded the Southwest Asia Service Medal (SWASM), Armed Forces Expeditionary Medal (AFEM), and other service medals.

As we previously stated publicly, for many veterans with toxic exposures, there has been – for them – a clear timeline connecting their toxic exposures during their military deployments to the debilitating health outcomes that followed them home. Far too many veterans who were exposed to open burn pits and a veritable toxic soup have developed terrible respiratory conditions, Parkinson's and other diseases, and cancers, including the brain cancer that has taken so many of their lives. This critically important legislation will provide the missing link to help these veterans. Indeed, this is the only current, major toxic exposure legislation to actually name presumptive conditions for VA disability claims rather than lay out a bureaucratic process that relies on trusting VA to do the right thing -- the same VA that currently denies Gulf War and Burn Pits-related claims at 80 percent denial rates. In this year of the 30th anniversary of the beginning of the Gulf War (Operation Desert Storm), we are deeply grateful to Senator Gillibrand and the many powerful cosponsors for ensuring this legislation will help so many veterans who served, including Gulf War, other pre-9/11, and post-9/11 veterans alike.

Veterans for Common Sense profoundly thanks Representatives Ruiz and Fitzpatrick for introducing this legislation in the House, and Senators Gillibrand and Rubio for their leadership in introducing this legislation in the Senate.

Veterans for Common Sense wholeheartedly commends Burn Pits 360, Jon Stewart, John Feal, and the many supportive organizations involved for their efforts on this crucial legislation.

H.R. 2530 – related to conducting a study on radiation exposure relating to the cleanup of Enewetak Atoll

This legislation would direct VA to enter into an agreement with NASEM to conduct a study on the level of radiation exposure experienced by members of the Armed Forces who participated in the cleanup of Enewetak Atoll between 1977 and 1980.

While clearly well intentioned, the veterans who would benefit from this legislation are aging.

We would prefer to see legislation granting a presumption of radiation exposure to these veterans rather than embarking on years of additional study with no clear path to success for awarding these veterans with disability benefits for health conditions presumed under 38 USC 1112(c) for radiation-exposed veterans and waiving any dose assessments that may be required by VA under 38 CFR 3.311.

With those caveats, Veterans for Common Sense supports H.R. 2530, related to conducting a study on radiation exposure relating to the cleanup of Enewetak Atoll.

Veterans for Common Sense is grateful to Representatives Nehls and Luria for their introduction of this legislation intended to help veterans with likely radiation exposure during their assignments relating to the cleanup of Enewetak Atoll.

H.R. 2569 – *Veterans Agent Orange Exposure Equity Act*

Veterans for Common Sense supports H.R. 2569, the *Veterans Agent Orange Exposure Equity Act*, which would expand the presumption of herbicide exposure to veterans whose Vietnam War service was in countries in close proximity to Vietnam, including Thailand, Laos, and Cambodia.

Veterans for Common Sense thanks Rep. Cartwright, Rep. Fitzpatrick, Rep. Morelle, Rep. O'Halleran, Del. Norton, Rep. Titus, Rep. Sires, Rep. Hayes, Rep. Tlaib, Rep. Pascrell, Rep. Lawson, Rep. Carson, and Rep. Kilmer for their introduction of the *Veterans Agent Orange Exposure Equity Act*.

Veterans for Common Sense commends Vietnam Veterans of America for its work advocating for the provisions of *Veterans Agent Orange Exposure Equity Act*.

H.R. 2580 (S. 1151) – *Palomares Veterans Act*

As the *Palomares Veterans Act* notes, in 1966, the collision of a United States Air Force B-52 bomber and refueling plane in the vicinity of Palomares, Spain caused the release of four thermonuclear weapons. The *Palomares Veterans Act* would add participation in Palomares recovery activities to the statutory list of “radiation risk activities” listed at 38 USC 1112(c)(3)(B).

Importantly, this legislation would also expand eligibility for DIC benefits regardless of whether the covered death occurred before or after the enactment of this legislation.

Veterans for Common Sense supports H.R. 2580, the *Palomares Veterans Act*, and commends Rep. Hayes for her introduction of this legislation in the House, and Senator Blumenthal, Senator Warren, and Senator Feinstein for introducing this legislation in the Senate.

We note with potential concern VA's radiation dose requirements for radiation-exposed veterans under 38 CFR 3.311. If such dose requirements are not possible to obtain, or if they are insufficient for some or all veterans covered under this important legislation, it may be of importance to add a provision waiving any dose assessments that may be required by VA under 38 CFR 3.311.

H.R. 2607 – *FASTER Presumptions Act*

Veterans for Common Sense commends Rep. Trone for introducing the carefully authored *Fairly Assessing Service-related Toxic Exposure Residuals Presumptions Act* ("*FASTER Presumptions Act*").

Veterans for Common Sense strongly supports the creation of the three advisory bodies under this legislation, and the authority of the Science Review Board or Working Group (Sec. 1174) created under this bill to actually commission research within or outside VA. Veterans for Common Sense strongly supports the expeditious timeline of determinations that would be made under this legislation.

Veterans for Common Sense strongly supports the creation under this legislation of the Expert Advisory Panel on Constrictive Bronchiolitis (Sec. 1175). We advise the Committee of in-progress, federally funded medical research efforts to develop methods of diagnosis of constrictive bronchiolitis /obstructive bronchiolitis that do not require an invasive lung biopsy.¹⁵ Should such research efforts succeed, they may obviate the requirements of this legislation specifying the Advisory Panel's mandate to, "establish histologic and pathology criteria for confirming diagnoses".

For the legislation's provisions regarding Access to Health Care, we are concerned that the provision only expands coverage for "diagnosed illness". This hearkens back to much darker days when VA provided healthcare primarily only to veterans granted service-connection or pension, while still requiring sufficient medical evidence in order to grant service-connection – evidence and diagnoses that were difficult or impossible to obtain through VA without already having service-connection. This was a terrible Catch-22 and led to 1998 legislation discussed elsewhere in this statement that granted two years of VA healthcare for combat veterans, later expanded to five years, and as would be further expanded by the TEAM Act, which is more favorable to toxic exposure veterans in this regard.

¹⁵ For example, DoD GW160154, "Identifying Novel Immune and Radiographic CT Imaging Signatures of Chronic Bronchiolitis": https://cdmrp.army.mil/search.aspx?LOG_NO=GW160154

Veterans for Common Sense supports in concept the provision of this legislation mandating DoD surveillance and monitoring relative to toxic exposures, mandatory training of covered employees.

Veterans for Common Sense supports in concept the required epidemiological studies in Section 4 of this legislation, but notes advice provided elsewhere in this statement regarding VA conduct of epidemiological studies.

In considering this legislation, which would create interlocking new committees to advise VA on toxic exposure presumptive condition determinations and reviews, it may be of substantial value to recall the experience of another statutory VA advisory committee tasked with making toxic exposure research recommendations, the Research Advisory Committee on Gulf War Veterans' Illnesses (RAC-GWVI or simply "RAC"). The essence of that experience is as follows: VA officials did not like the unanimous RAC finding of "no confidence" in VA's ability to solve Gulf War Illness following VA's whitewashing of a jointly-approved RAC and National Research Advisory Committee (NRAC) consensus recommendations report, the development of which had included full VA staff participation; VA officials gutted the RAC-GWVI charter, restricting its scope; VA officials removed all the remaining RAC members, replacing them with non-experts in Gulf War Illness, the sole intended focus of the RAC; VA officials removed all the remaining Gulf War Illness-afflicted veterans on the panel, replacing them with primarily Gulf War veterans not afflicted by Gulf War Illness nor having experience nor understanding of Gulf War Illness.

Thereafter, legislation to restore the integrity of the RAC was introduced in the House and passed with unanimous consent, before being bogged down in the Senate and failing to pass prior to the end of the Congress. That legislation was similar to the current TEAM Act in important ways with regards to the appointment of its membership. Veterans for Common Sense strongly urges the Committee to consider the appointment structure of the TEAM Act.

H.R. 4261 (113th Congress), the *Gulf War Health Research Reform Act of 2014* (the long title: "To improve the research of Gulf War Illness, the Research Advisory Committee on Gulf War Veterans' Illnesses, and for other purposes"), was introduced in response to VA's actions by then-leaders of this Committee, including then-Rep. Mike Coffman, then-Chair of the Subcommittee on Oversight and Investigations; Rep. Ann Kirkpatrick, then-Ranking Members of the Subcommittee; and then-Rep. Mike Michaud, Ranking Member of the full Committee.^{16,17}

The *Gulf War Health Research Reform Act of 2014* specified the following regarding the appointment authority for the advisory committee: "(5) Membership.— "(A) The Committee shall be composed of 12 members appointed as follows: "(i) One member appointed jointly by the chairman of the congressional veterans committees, who shall serve as chairman of the Committee. "(ii) Two members appointed by the chairman of the Committee on Veterans' Affairs of the House of Representatives. "(iii) Two members appointed by the chairman of the Committee on Veterans' Affairs of the Senate. "(iv) Two members appointed by the ranking member of the Committee on Veterans' Affairs of the House of Representatives. "(v) Two

¹⁶ <https://www.congress.gov/congressional-record/2014/05/28/house-section/article/H4863-1>

¹⁷ <https://www.congress.gov/bill/113th-congress/house-bill/4261/text>

members appointed by the ranking member of the Committee on Veterans' Affairs of the Senate. “(vi) Three members appointed by the Secretary of Veterans Affairs, of whom not less than one shall be a veteran.”

Similarly, the current TEAM Act specifies the following regarding advisory commission membership appointment authority: “(d) Membership.— (1) (A) The Commission shall be composed of nine members, appointed as follows: “(i) Two members appointed by the Speaker of the House of Representatives. “(ii) Two members appointed by the minority leader of the House of Representatives. “(iii) Two members appointed by the majority leader of the Senate. “(iv) Two members appointed by the minority leader of the Senate. “(v) One member appointed by the Secretary.”

When the *Gulf War Health Research Reform Act of 2014* was passed by the House, then-Chairman of the House Committee on Veterans' Affairs Rep. Jeff Miller said, at the time of his request to suspend the rules and pass the legislation by unanimous consent, *“It has been estimated that as many as 250,000 veterans have some form of Gulf War illness. Despite millions of dollars in government funding and years of research, it is clear that more has got to be done to better understand this disease, so we can properly care for and compensate these veterans. The bill before us today reaffirms the essential role of the Research Advisory Committee on Gulf War Veterans' Illnesses and provides the committee with the independence that it needs, so that it can continue its vital work.”*

Then-HVAC-O&I Ranking Member Rep. Kirkpatrick then said, *“Congress first created the Research Advisory Committee on Gulf War Veterans' Illnesses because the research being done at the time was considered inadequate, partially due to a mistaken belief that it was a psychological condition. Through the research, we now know that Gulf War illness is a debilitating physical condition, not something that is all in your head, as many veterans were initially told.... This bill will allow the Research Advisory Committee on Gulf War Veterans' Illnesses to direct research and review research findings independent of the VA. It will restore the independent authority of the Research Advisory Committee by having the chairs and ranking members of the House and Senate Veterans' Affairs Committees appoint nine members and allowing the Secretary of Veterans Affairs to appoint three members. Additionally, the Advisory Committee will provide advice to the Secretary of Veterans Affairs and to the House and Senate Veterans' Affairs Committees on proposed research studies, research plans, or research strategies related to the health consequences of military service during the gulf war. Our Gulf War veterans suffer from real illnesses. These illnesses require real treatments that can only be found through proper, objective, evidence-based research. This Research Advisory Committee has the potential to find these treatments with the right combination of researchers directing and reviewing research.”*

Then-HVAC-O&I Chair Rep. Coffman, the bill's author, then added the following:

“H.R. 4261, the Gulf War Health Research Reform Act of 2014, which I sponsored along with Ranking Member Kirkpatrick and full committee Ranking Member Michaud, restores the independence of the Research Advisory Committee on Gulf War Veterans' Illnesses to perform the role it has historically played, as intended by Congress, to

improve the lives of ill gulf war veterans.

This bill is necessary because some career VA staff have been trying to revive the discredited 1990s fiction that nothing special happened to gulf war veterans' health and that the problems experienced by Gulf War veterans are just "what happens after every war" due to psychological stress factors.

Because there is no scientific evidence for this position, VA staffers have resorted to manipulating research studies and reports to try and revive this discredited theory. A major new VA gulf war veteran survey, for example, included the questions necessary to identify PTSD but not Gulf War illness.

Most shockingly, VA has even manipulated new research of the Institute of Medicine by limiting the terms of its contracts. VA transformed the Institute of Medicine gulf war treatments study ordered by Congress into a report based largely on psychotherapies. The Research Advisory Committee objected strongly to these actions, which threatened to mislead treatment research just as science is finally turning the corner. VA retaliated by eliminating the independence of the committee, changing its charter to remove its authority to review the effectiveness of government research programs, and replacing the members serving on the committee. The effect of these changes can already be seen. The section of the new 2014 Research Advisory Committee report that detailed VA's manipulations of research had to be removed because the committee's authority to review the effectiveness of VA's research programs had been eliminated.

The independent voice, so critical to honest research, will be all but replaced by September with those who seem to bend to VA's will. H.R. 4261 will restore the authority of the committee and provide that its membership, instead of being appointed entirely by VA, will consist of nine members appointed by the chairs and ranking members of the House Veterans' Affairs Committee, the Senate Veterans' Affairs Committee, and three members chosen by VA. This arrangement follows the longstanding model of the bipartisan Advisory Committee on Student Financial Assistance at the Department of Education.

Current law provides that the Research Advisory Committee membership may include veterans, representatives of veterans, and the general public. While there are those who seek to limit veteran members to ill veterans, excluding most veterans service organization representatives and others, the Research Advisory Committee has been well-served by having both ill and other veterans serve on the committee.

It is important to remember that the unwillingness of the VA to honestly address this illness is the reason Congress created the Research Advisory Committee in the first place. The 1997 congressional report that led to that legislation was entitled, "Gulf War Veterans' Illnesses: VA, DOD Continue to Resist Strong Evidence Linking Toxic Causes to Chronic Health Effects."

Science has made great progress since then, thanks in no small measure to the work of the Research Advisory Committee, as well as to the effective Gulf War Illness Research Program that Congress created at the Congressionally Directed Medical Research Programs. But this progress is all at risk if VA is able to again mislead science down blind alleys, directing scarce research dollars at the wrong target, as so often happened in the 1990s and 2000s."

It is critically important that these lessons in bureaucratic power to override Congressional intent

and law not be forgotten. As Congress moves to craft comprehensive toxic exposures legislation, we respectfully remind the Committee of these lessons learned but too-easily forgotten. While restorative legislation like the *Gulf War Health Research Reform Act of 2014* should not have been necessary, unfortunately, it was. Regrettably, the Senate at the time had concerns about the type of appointment authority that it specified.

For the committees created under this legislation, we strongly encourage the Committee to consider alternatives to VA-only appointment authority, similar to that in the TEAM Act and the *Gulf War Health Research Reform Act of 2014*.

We also strongly encourage the Committee to consider adding commissioning and consideration of animal studies of toxic exposure to the list of authorities granted to the Science Review Board or Working Group under section 1174. As described in more detail elsewhere in this written testimony and prior written testimony submitted to the Committee, animal studies of toxic exposure are critical for determining plausible mechanisms of action and adverse health outcomes of certain toxic exposures, particularly those for which there is a paucity of human data and it would be unethical to expose humans for the purposes of determining adverse human health outcomes. It is worth noting that VA has consistently resisted such inclusion or consideration, even while VA's Office of Research and Development has funded some excellent animal studies modeling toxic exposures.

In considering the provisions of this bill related to the Science Review Board (Sec. 1173), it is notable that there is an absence of discussion regarding criteria for determining the acceptability or non-acceptability of studies allowable for consideration for the Board's work. Historically, the VA-contracted NAS/NASEM has excluded consideration of the vast majority of relevant studies in its reviews of peer-reviewed published study results. Such reviews have generally also not included consideration of unpublished VA statistical data. It may be worth the Committee's consideration to determine whether such issues merit specification in ultimately enacted legislation.

H.R. 2742 – PFAS Registry Act

This legislation would establish a registry for eligible individuals related to PFAS exposure.

We would remind the members of the Committee of the legislative priorities of Vietnam Veterans of America provided in VVA testimony at a joint hearing of the House and Senate Committees on Veterans' Affairs earlier this year, specifically with regards to concerns related to "real" health registries – capable of being used for epidemiological research rather than serving merely as VA mailing lists. Veterans for Common Sense shares and echoes these concerns and priorities. We also note the extended incubation period for many health conditions associated with particular exposures.

Clearly this legislation is well intentioned. Additional benefits of registries could be added by the Committee to include requiring VA to provide initial and follow-up health exams; requiring VA to establish the registry created under this legislation sufficiently to enable epidemiological

study of registrants, in keeping with VVA's legislative priorities; making exposure to PFAS presumptive for veterans at known locations where PFAS exposure was at least as likely as not; and ensuring all the various best practices for registries identified in NASEM-published reports reviewing VA registries.

Veterans for Common Sense thanks Rep. Pappas, Rep. Fitzpatrick, Rep. Delgado, and Rep. Kuster for introducing the *PFAS Registry Act*.

H.R. 2825 – Fort McClellan Health Registry Act

Veterans with serious adverse health outcomes who served at Fort McClellan have long complained of the lack of attention to their justified concerns. Fort McClellan was home to chemical and biological weapons training programs. Various reviews over the years have revealed extensive chemical and radiological contamination at Fort McClellan. Additionally, the Anniston Army Depot near Fort McClellan maintained a stockpile of chemical weapons. Additionally, there was Monsanto chemical production facility in Anniston until the 1970s which may have been a source of further toxic exposure, including to PCB's.

This legislation would establish a registry for eligible individuals related to toxic exposures sustained during military service at Fort McClellan, including requiring VA to provide initial health exams. **Veterans for Common Sense supports this legislation and commends Rep. Tonko for introducing the *Fort McClellan Health Registry Act*.**

We would remind the members of the Committee of the legislative priorities of Vietnam Veterans of America provided in VVA testimony at a joint hearing of the House and Senate Committees on Veterans' Affairs earlier this year, specifically with regards to concerns related to "real" health registries – capable of being used for epidemiological research rather than serving merely as VA mailing lists. Veterans for Common Sense shares and echoes these concerns and priorities. We also note the extended incubation period for many health conditions associated with particular exposures.

Clearly this legislation is well intentioned. Additional benefits of registries could be added by the Committee to include requiring VA to provide follow-up health exams; requiring VA to establish the registry created under this legislation sufficiently to enable epidemiological study of registrants, in keeping with VVA's legislative priorities; making exposure to toxins known to have been at Fort McClellan presumptive for veterans where such exposure was at least as likely as not; and ensuring all the various best practices for registries identified in NASEM-published reports reviewing VA registries.

(S. 1039) – Improving Benefits for Gulf War Veterans Act:

While a companion to this Senate legislation has not yet been introduced in the house, we would like to provide the Committee with our written testimony about this legislation provided to the Senate Committee on Veterans' Affairs for their April 28, 2021 hearing on pending legislation

that included this bill. We encourage the House Committee on Veterans' Affairs to consider including these provisions in any legislation emanating from the Committee this year.

Veterans for Common Sense strongly supports this bills' provision to make permanent the period for filing Gulf War related claims. VA has provided multiple five-year extensions to date, and we understand is currently working on another. However, medical research has consistently shown that the health of veterans with Gulf War Illness is not improving and is likely worsening. After 30 years, there is little justification that any more study is needed as to whether Gulf War veterans are ill.

Veterans for Common Sense strongly supports the provision in this legislation that would extend eligibility to VA benefits and healthcare currently available to most Gulf War veterans to also include veterans with qualifying service in Afghanistan, Egypt, Israel, Jordan, Syria, and Turkey. Veterans for Common Sense published an analytical issue paper in 2017 which may be of interest to the Committee regarding Gulf War veterans issued the Southwest Asia Service Medal (SWASM) but not included as Gulf War veterans by VA for healthcare and benefits purposes.¹⁸ It remains unclear to us why these Gulf War veterans awarded the SWASM for their Gulf War service were not initially included by VA in 1994 as Gulf War veterans. We have long sought a remedy for these veterans and are grateful for its critically important inclusion here.

We note that as currently drafted, this legislation would not also grant coverage to veterans with service in the airspace above or the contiguous waters of these added six countries. This is the result of the technical interplay between the wording added to 38 USC 1117 by this legislation and 38 CFR 3.317, which includes the current geographic definition for covered veterans. We would be happy to work with the Committee on this issue.

Veterans for Common Sense strongly supports the reduction in threshold for eligibility provided by this bill.

Veterans for Common Sense strongly supports the bill's requirement for a single Disability Benefits Questionnaire (DBQ) for Gulf War Illness symptoms and issues. Since the 1994 enactment of legislation making "undiagnosed illnesses" (UDX) presumptive for VA compensation claims, VA's high denial rates of these claims have persisted. VA's denials of presumptive "medically unexplained chronic multisymptom illness" (MUCMI) claims remain a serious issue for the denied veterans. A 2017 GAO report and related House Veterans' Affairs Committee hearing at which we testified showed a roughly 90 percent denial rate of UDX claims and a denial rate nearly as high for MUCMI claims.¹⁹ VA is no longer publicizing benefits utilization data, including claims grant and denial rates, so there is no reason to believe there have been substantial improvements.

Given the persistent high rates of denial of GWI claims, Veterans for Common Sense has recommended the creation of a symptom-based schedule of ratings for symptoms-based disabilities like Gulf War Illness. We have suggested that it be modeled at least loosely upon the

¹⁸ <http://veteransforcommonsense.org/wp-content/uploads/2019/05/ISSUE-Resolving-Differences-in-Definitions-of-Persian-Gulf-War-Veteran-.pdf>

¹⁹ <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=106223>

current schedule of ratings for traumatic brain injury (TBI), with “buckets” of types of symptoms and a points-based system for rating disability. Such a schema could also be applied to veterans with toxic exposure-related symptoms that do not current (or do not yet) meet diagnostic criteria for existing diseases. Again, we would be happy to work with the Committee in this regard.

Veterans for Common Sense strongly supports the bill’s provisions regarding training for VA personnel. We recommend that the bill’s language be expanded to cover VBA benefits personnel in addition to the VA health care personnel currently specified in the bill.

In keeping with the goals and recommendations stated above, **Veterans for Common Sense strongly supports S. 103, the *Improving Benefits for Gulf War Veterans Act***. Veterans for Common Sense is deeply grateful to Senator Menendez for the introduction of this legislation. Veterans for Common Sense is also deeply grateful to the Veterans of Foreign Wars (VFW) for the strong support of this legislation.

CONCLUSION:

It is critically important that these lessons from relatively recent history not be forgotten. And, while Congress works to craft comprehensive toxic exposures legislation and seeks to remedy the unremedied wrongs of multiple past exposures, we respectfully remind the Committee that many of the issues afflicting Gulf War veterans have yet to be resolved despite multiple hearings by this Committee in the last decade:

- An unworkable “undiagnosed illness” presumption, with near-total VA claims denials.
- VA denials of roughly 80 percent of “medically unexplained chronic multi-symptom illness” (MUCMI) claims.
- No viable VA schedule of ratings for symptom-based conditions that do not yet match a standard medical diagnosis.
- No viable disability benefits questionnaire (DBQ) for symptom-based conditions that do not yet match a standard medical diagnosis.
- VA cessation of public reporting of VA healthcare and benefits utilization data and atrocious Freedom of Information Act (FOIA) responses, making it difficult to impossible for veterans service organizations (VSOs), Congress, and the public to identify VA progress – or lack thereof – in addressing and improving high denial rates related to toxic exposure claims.
- VA’s continued failures with the Research Advisory Committee on Gulf War Veterans’ Illnesses currently housed under VA (but not necessarily so), including failure to restore its charter and scope to the original Congressional intent as described above.
- VA’s failures in contracting with NAS/NASEM, including failure to consider animal studies of toxic exposures in determining plausibility of adverse health outcomes and strength of association with toxic exposures.
- No presumed exposures for Gulf War veterans, despite the long lists legislated by Congress that were considered by flawed NAS reviews.
- Few presumptive conditions for Gulf War veterans – none added in over a decade and essentially none of relevance added by VA for veterans with Gulf War Illness – due to

the lack of presumed exposures, the flawed VA-NAS process, and the too-high bar for strength of association.

We are highly encouraged by the momentum in both houses of Congress to enact comprehensive toxic exposures legislation. We hope that the lessons to be learned from the relatively recent past will not be forgotten, and that as many issues as possible can be related to toxic exposure can be resolved.

We remain ready to assist the Committee in these regards. Thank you again for this opportunity to provide our experience-based recommendations.