

Military-Veterans Advocacy®

Written Testimony/Statement for the Record in Support of
Legislative Priorities:

Submitted to the Joint Session of the

United States Senate Veterans Affairs Committee

United States House Veterans Affairs Committee

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Commander John B. Wells, USN (Ret)
Chairman

Introduction

Distinguished Chairmen Jon Tester and Mark Takano and Ranking Members Jerry Moran Mike Bost and other members of the Committee, thank you for the opportunity to present views of Military-Veteran Advocacy® (MVA™) on our legislative priorities.

As a threshold matter, MVA™ strongly supports HR 3967 Honoring our Promise to Address Comprehensive Toxic Act (PACT) and S 3003 Comprehensive and Overdue Support for Troops of War Act (COST). Catchy titles aside, both bills provide a comprehensive approach to victims of toxic exposure and incorporates most but not all of MVA™ legislative priorities. We also recognize that fiscal and political realities may well prevent either bill from being enacted by Congress. The Pay As You Go Act of 2010 (Title I of Pub. L. 111-139) (PAYGO) requires costing by the Congressional Budget Office and the identification of offsets, colloquially known as “Payfors.” Cost estimates of PACT and COST are in the neighborhood of \$280 billion and few, if any, offsets have been identified.

MVA™ submits that veterans benefits should be exempted from the requirements of PAYGO. Veterans benefits are a legitimate cost of war. Overseas Contingency Operations (OCO OPS) are not subject to PAYGO. An Armored Cavalry Regiment is not required to mothball two Abrams’ and three Bradley to offset the cost of sending the unit overseas. Nor is a fleet required to inactivate ships or aircraft to offset the cost of the deployment. Yet when injured and/or disabled veterans return, the law requires any increase in benefits to be offset.

The ineffectiveness of PAYGO is demonstrated by the increase in the debt from \$14.8 trillion in 2011 to \$29.6 trillion in 2021. Often programs are enacted with budgetary illusions akin to “smoke and mirrors” that have no effect on the actual deficit. Unfortunately, this legerdemain does not seem to be utilized for veterans legislation. While budgetary neutrality is beyond the scope of this testimony, I mention it to underline the feeling of many veterans that they are used as cannon fodder and then discarded - except on Memorial Day, Veterans Day and the Fourth of July. Veterans service benefits everyone and veterans must pay their fair share. Accordingly, at the end of this testimony, I have included some proposals to pay for mandatory spending in veterans programs.

About Military-Veterans Advocacy®

Military-Veterans Advocacy Inc.® (MVA™) is a tax-exempt IRC 501[c][3] organization based in Slidell, Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation, and education, MVA™ seeks to obtain benefits for those who are serving or have served in the military. In support of this, MVA™ provides support for various legislation at the State and Federal levels as well as engaging in targeted litigation to assist those who have served. We currently have over 1600 proud

members. In 2020, our volunteer board of directors donated 9600 hours in support of veterans. MVA™ analyzes and supports/opposes legislation, assists Congressional staffs with the drafting of legislation and initiates rulemaking requests to the Department of Veterans Affairs. MVA™ also files suits under the Administrative Procedures Act to obtain judicial review of veterans' legislation and regulations as well as *amicus curiae* briefs in the Courts of Appeal and the Supreme Court of the United States. MVA™ is also certified as a Continuing Legal Education provider by the State of Louisiana to train attorneys in veterans' law.

MVA™ is composed of six sections: At-Risk Veterans, Blue Water Navy, Agent Orange Survivors of Guam, Veterans of Southeast Asia, Veterans of the Panama Canal Zone and Veterans of Okinawa. We are a member of the TEAMS Coalition and other working groups. MVA™ works closely with Veterans Service Organizations including the United States Submarine Veterans, Inc., the National Association of Atomic Veterans, the Association of the United States Navy, Veterans Warriors, and other groups working to secure benefits for veterans.

Military-Veterans Advocacy's® Chairman,
Commander John B. Wells USN (Ret.)

MVA™'s Chairman, Commander John B. Wells, USN (Retired) has long been viewed as the technical expert on herbicide exposure. A 22-year veteran of the Navy, Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea. He possessed a mechanical engineering subspecialty, was qualified as a Navigator and for command at sea and served as the Chief Engineer on several Navy ships.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veteran's law. He is counsel on several pending cases concerning herbicide and other toxic exposures. Commander Wells was the attorney on the *Procopio v. Wilkie* case that extended the presumption of herbicide exposure to the territorial sea of the Republic of Vietnam, which laid the groundwork for the Blue Water Navy Vietnam Veterans Act. He has initiated lawsuits on behalf of MVA to further extend the presumption and to cover veterans in Thailand, Guam, American Samoa, and Johnston Island. He also initiated judicial review of the Appeals Modernization Act which is pending at the Court of Appeals for the Federal Circuit. Since 2010 he has visited virtually every Congressional and Senatorial office to discuss the importance of enacting veterans' benefits legislation. With the onset of covid, Commander Wells has conducted virtual briefings for new Members of Congress and their staffs.

Phased Approach to Post-9/11 Toxic Exposure

Given the political and fiscal roadblocks discussed above, the Senate Veterans Affairs Committee has adopted a phased approach to post-9/11 toxic exposure. Although MVA™

would prefer comprehensive legislation, we too bend to the political and fiscal realities. We support the phased approach as a means to achieve the end result of providing compensation and treatment to veteran victims of military toxic exposure.

Phase 1. S 3541 the Health Care for Burn Pit Veterans.

S 3541 has been cosponsored by every member of the SVAC and passed the Senate by unanimous consent. This bill helps stop the bleeding by providing an expansion of health care eligibility for combat veterans who served after September 11, 2001. Specifically the bill:

- Expands the eligibility, from five years following discharge to ten years;
- Provides a one-year open enrollment period for any Post-9/11 combat veteran who is more than 10 years from separation;
- Establishes an outreach plan to contact veterans who did not enroll during their initial period of enhanced eligibility;
- Directs VA to incorporate a clinical screening regarding a veteran's potential exposures and symptoms commonly associated with toxic substances;
- Mandates toxic exposure-related education and training for health care and benefits personnel at VA; and
- Strengthens federal research on toxic exposures.

Although MVA™ feels that this is only a first step, it is an important first step. We look forward to its passage and to working with you on expanding its provisions.

Phase 2. Establish a new presumptive process at VA and bolstering VBA's capacity to process claims.

MVA™ notes that the VA Secretary announced on August 2, 2022 a new initiative to streamline the presumptive process. We welcome this initiative and encourage Congress to build on the VA initiative. Establishing a new, transparent process through which the VA will determine future presumptive conditions will help to restore confidence in the toxic exposure coverage process.

The VA is empowered under 38 U.S.C. § 501 to issue regulations that are not encumbered by PAYGO requirements. They have successfully issued regulations to cover portions of Korea, portions of Thailand, and the C-123 aircraft among others. Under the provisions of the Administrative Procedures Act, an entity such as MVA™ can request the Secretary to issue regulations. Should the Secretary decline to do so, or should the regulations be inadequate, judicial review is available. The problem is that there is no time line for the Secretary to act on these rulemaking requests.

Currently, MVA™ has outstanding rulemaking requests on herbicide exposure in Thailand, Okinawa and the Panama Canal Zone. Although the rulemaking requests have been approved, there is no indication that the Secretary is prepared to issue the notice of proposed regulation or for that matter, to even respond to the rulemaking request. Accordingly we ask that you include in Phase II, the following time line:

- Response/decision to approve/disapprove rulemaking due to requester 270 days after receipt.
- Provision for one time extension of response date with notice to requester 180 days after original due date.
- Publication of Notice of Proposed Rulemaking 180 days from response.
- Receive comments on Proposed Rule 60 days after publication.
- Publish Final Rule 180 days after comments

Inclusion of the time line will prevent the VA from merely ignoring rulemaking requests or delegating them to a “pending” status with no action. MVA™ strongly recommends that this time line be made applicable to all pending Rulemakings.

Phase 3 Provide long-overdue benefits to toxic exposure veterans by establishing a number of new presumptives and recognizing various populations of toxic-exposed veterans who have been ignored for far too long.

MVA™ anticipates that this phase will engender the most debate. Included will be opposition from the VA as well as a struggle to obtain offsets. Accordingly, where applicable, we have broken down this phase by existing and proposed legislation.

HR 3368.

A 2018 GAO report was unable to confirm the presence of Agent Orange on the island of Guam, although there are sworn affidavits to the effect that it was there. But as confirmed by other scientific studies, the GAO found that the chemicals 2,4,5-T and 2,4-D were present on Guam. A by-product of this chemical contained is the lethal 2,3,7,8-TCDD otherwise known as dioxin. Use of herbicides was confirmed as early as August 15, 1958 by the Navy Public Works *Guam Soils Conservation Series No. 7*. Notably dioxin was used in commercial herbicides as well as the tactical herbicides. Herbicide use continued on Guam until at least 1980. This was confirmed by the Draft Environmental Impact Statement for the Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan published in 1994. Testing by Guam EPA and the U.S. EPA in 2018 confirmed the presence of 2,4,5-T on and off-base. Testing in 2019 confirmed the presence of dioxin as well. This study found that it was probable the dioxin was a result of herbicide spraying.

Most of the discussion surrounding veteran exposure has centered on tactical herbicides. The inclusion of 2,4,5-T and 2,4-D in commercial herbicides makes this a difference without distinction. It is the exposure to 2,4,5-T, 2,4-D and their dioxin by-product, while on active duty in the armed forces, that is relevant. If military personnel were exposed to this chemical, and it appears that they were, any disease or disorder flowing from those chemical components should be service connected.

Exposure on Johnston Island is even clearer. Johnston Island consists of four small uninhabited atolls covering 1.03 square miles in the Pacific Ocean. During and after World War II, it was the site of United States military facilities. It was downwind of the fallout from several atmospheric nuclear tests. Additionally, it was a storage site for Agent Orange drums between

1972 and 1977. The herbicide was disposed at sea during the summer of 1977. However, during the storage period, corrosion caused significant leakage which seeped into the grounds. Military personnel stationed on the island were exposed to the leakage during the storage and disposal phases. The last military left the island in 2004. Since then it has been designated a wildlife refuge. A presumption of exposure to herbicide would affect only a small number of people. MVA™ estimates approximately 2000 personnel were stationed there during the storage period with decreasing numbers thereafter.

American Samoa was the site of port visits by United States conventional submarines during the Vietnam War. In 1983, the EPA recognized that “pesticides labeled as ...2,4,5-T [were] stored in open, deteriorating containers and spilled across the floor of the warehouse” on a territory-owned farm. U.S. EPA, *Superfund: Record of Decision* 3 (Dec. 1983).

Documents supporting the MVA™ position are available online on our website at: <https://www.militaryveteransadvocacy.org/aosog.html>

HR 2269/S 657.

These bills will modify the presumption of service connection for veterans who were exposed to herbicide agents while serving in the Armed Forces in Thailand during the Vietnam era. MVA™ has worked with Congressman Westerman and Senator Boozman’s office to draft HR 2269/S 657. The bill originated with MVA’s Veterans of Southeast Asia Section and is designed to overcome the extremely narrow VA regulation limiting the presumption of herbicide exposure to those veterans with duties on the perimeter.

HR 2269/S 657 extends the cut-off date for the presumption until June 30, 1976 from the arbitrary May 7, 1975 date which marked the evacuation of United States personnel from the Republic of Vietnam. Military personnel remained in Thailand for an additional fourteen months and exposure continued until at least June 30, 1976. The Comptroller General’s Report of Congress estimated that as many as 250 military personnel remained in Thailand as of July 20, 1976. See, [Withdrawal of U.S. Forces From Thailand: Ways To Improve Future Withdrawal Operations](#), November of 1977 at pg. 1. [LCD-77-446 Withdrawal of U.S. Forces from Thailand: Ways to Improve Future Withdrawal Operations \(gao.gov\)](#). See also, [New York Times](#), March 21, 1976. [THAILAND ORDERS LAST U.S. FORCES TO LEAVE BY JULY - The New York Times \(nytimes.com\)](#). Approximately 250 American troops remained to administer the Military Assistance program.

The VA’s M21-1 Manual extends “a special consideration of herbicide exposure on a factual basis” to veterans “whose duties placed them on or near the perimeters of Thailand military bases.” (M21-1 Manual § IV.ii.1.H.4.a). In particular, the Manual instructs adjudicators to concede “herbicide exposure on a direct/facts-found basis” to specific categories of veterans, including security personnel, military police, and those whose duties are “otherwise near the air base perimeter as shown by evidence of daily work duties, performance evaluation reports, or other credible evidence.” (M21-1 Manual § IV.ii.1.H.4.b). But it denies the same automatic concession to veterans whose sleeping quarters, mess and recreation halls, or other regular activities outside their regular “duties” occurred on or near the perimeter of the same bases. *Id.* (requiring specific factual review).

By limiting the presumption of service connection conceded by the VA to only those veterans with *duties* on the perimeter of the base, the Thailand Rules require VA's front-line adjudicators to make distinctions between veterans with no basis in fact. Veterans who merely ate, slept, exercised, or played near the perimeters of the Thailand military bases were exposed to herbicides no less than security forces and military police who *worked* near the same perimeter.

VA was of course correct to extend a presumption of herbicide exposure to veterans whose duties took them to the perimeter of military bases in Thailand. The Contemporary Historical Examination of Current Operations Report for Base Defense in Thailand ("CHECO Report"), prepared in 1973, documented numerous practices in use at the relevant bases in Southeast Asia during the Vietnam era. Among other security measures, the CHECO Report confirms that the military employed herbicides at the perimeters of its bases in Thailand to assist with vegetation control, improve visibility, and deny enemy forces cover and concealment. As a recent GAO report notes, many if not most of the herbicides in use in Southeast Asia, even if not formally designated as Agent Orange, "contained the form of n-butyl 2,4,5-T found in Agent Orange and thus its associated contaminant, 2,3,7,8-TCDD." *Agent Orange, Actions Needed to Improve Accuracy and Communication of Information on Testing and Storage Locations* at 11, GAO 19-24 (Nov. 2018), available at <https://www.gao.gov/assets/gao-19-24.pdf>; see also 38 CFR § 3.307(a)(6)(I) (defining "herbicide agent" to include "2,4-D; 2,4,5-T and its contaminant TCDD").

But while extending the presumption of herbicide exposure to veterans with duties on the perimeter is correct, denying that same presumption to other service members stationed on the same base, at the same time, defies logic and common sense.

Herbicides do not politely confine themselves to landing on the precise plants the military wishes to eliminate. As early as December 1971, the Army Field Manual 3-3: Tactical Employment of Herbicides ("Field Manual") acknowledged that ground-spraying methods were only partly effective in reducing wind drift. The Army Field Manual recommended a 500-meter buffer distance "to avoid damage to desirable vegetation near the target [of the spraying]." In other words, the evidence shows that surfaces within five football fields of the perimeter of Thailand bases would be contaminated with toxins whenever herbicides were deployed at the base perimeter by any available method.

One MVA™ member, Jay Cole had sleeping quarters within 60 meters of the perimeter of U-Tapao Air Force Base in Thailand. He also crossed the base perimeter, though admittedly not as part of his duties. It is not hard to see that Mr. Cole would regularly contact doorknobs, windows, and other exterior surfaces exposed to drifting herbicide droplets. And military bunks were hardly airtight. Interior surfaces, clothing, and personal possessions likely were exposed as well. All this would add up to exposure at least comparable to the security forces and military police afforded the presumption of exposure under the M21-1 Manual—consider whether one's exposure is more likely when one's desk or one's toothbrush is a few dozen yards from clouds of herbicide sprayed along the fences. But because Mr. Cole's duties on the flight line were away from the perimeter, VA did not presume exposure to herbicide, denied his claim.

As noted in the Field Manual, Agent Orange was mixed with diesel fuel in a 1:10 ratio before spraying, to help the herbicide adhere to the plants and deliver its toxic payload. But that same mixture adheres well to soil, clothing, shoes, containers, equipment, and vehicles within

the spray zone or the down-wind drift zone. As a result, the herbicide-diesel mixture would have attached itself to the personnel near the perimeter of the base, or even those merely crossing through the perimeter, and followed them to all areas of the base. The same personnel, and any vehicles crossing through the perimeter area, would have tracked soil and mud coated in the herbicide-diesel mixture into including barracks, garages, mess halls, latrines, showers, laundries, offices, and various other facilities, even deep in the interior of the base. And because many if not all these facilities were shared by a number of veterans, even those who rarely if ever visited the perimeter would have been exposed to the toxins.

Although VA promised in 2017 to account for these disparate treatments of veterans, the M21-1 corrects none of the known flaws. VA was not ignorant of the flaws in its adjudication of claims for herbicide exposure in Thailand. The VA also agreed to grant MVA's petition for rulemaking. [Microsoft Word - Thailand response letter 3.17.20.docx \(militaryveteransadvocacy.org\)](#) But no Notice of a Proposed Rule has been issued in the Federal Register. Consequently, MVA has filed suit against the Secretary under 38 U.S.C. § 502 to force the VA to conduct rulemaking. Congressional action within the scope of S 657 will help to hasten that action and ensure that veterans are provided their earned benefits.

Documents supporting the MVA™ position are available online on our website at: <https://www.militaryveteransadvocacy.org/vets-of-se-asia.html>

HR 5026.

HR 5026 would grant presumptive herbicide exposure status to veterans who served in or near the Panama Canal Zone (PCZ) between January 1, 1958 and December 31, 1999, or when the last military personnel departed from their official duty in the Panama Canal Zone. This would enable eligible veterans to receive benefits if they suffer from any of the diseases the VA has linked to herbicide exposure.

The U.S. Census Bureau Commodities by Country show 2,4-D & 2,4,5-T shipped, stored and used in Panama from 1958 until at least December 1977. This chemical, produced and shipped from 1958-1964, was code named "Agent Purple" with a higher dioxin content (30-50 PPM TCDD), whereas shipments from 1965-1977 were to have a lower dioxin content closer to 0.5 code named "Agent Orange."

As outlined in the DOD Herbicide Manual, TM 5-629, these herbicides were used routinely as needed on base. 2,4-D & 2,4,5-T was used to kill poison ivy, poison oak and sumac where troops were deployed. See page 34, 3-7. Silvex was used on golf courses, parade fields and gun ranges. See page 41, 3-6. As well as many other persistent pesticides harmful to man as listed in this Tri-service manual to be used on every base as needed. Silvex also contains 2,4,5-T and the by-product Dioxin (TCDD).

HR 5026 allows for presumptive coverage similar to the coverage for those who served in Vietnam, along the Korean DMZ and on the base perimeters in Thailand. Unfortunately, proving exposure is nearly impossible due to a lack of record keeping and the inability to know the precise location of spraying. What records exist corroborate the presence of herbicide in the PCZ during the 1950's, 1960's and 1970's.

HR 5026 is not included in the PACT/COST bills.

Documents supporting the MVA™ position are available online on our website at:
<https://www.militaryveteransadvocacy.org/vets-of-panama.html>

HR 2127/S 927 TEAM Bill

HR 2372/S 952 Warfighters Bill

MVA™ consolidates their comments for all four bills because they are all solutions to an important problem – that of burn pits. While the bills somewhat overlap, there are strengths to both TEAM and WARFIGHTERS that require passage of both bills – or the merger of the two.

Although the bills address all toxic exposures, they are primarily brought to the forefront using Open-Air Burn Pits. These burn pits were found throughout the Iraq/Afghanistan theaters but were also used in other areas including the Continental United States.

MVA™ represented the estate of a burn pit victim, LCDR Celeste Santana, who was an Environmental Health Officer at Camp Leatherneck Afghanistan in 2009. She took daily air samples and reported to the Base Commander and the Marine Corps General Officer that harmful levels of toxins were being discharged into the air. Cashiered for her repeated protestations, she eventually developed multiple myeloma and passed away in 2018.

Petty Officer Lauren Price, the founder of MVA™ partner Veteran Warriors, served in Iraq. Mobilized as part of Operation Enduring Freedom she was also exposed to burn pits and was medically retired from the Navy. She developed cancer and after a decade long struggle succumbed in March of 2021.

These two brave women are examples of the tens of thousands of veterans who have sickened and sometimes died as a result of exposure to open air burn pits.

In 2010, the Government Accountability Office reported to Congress that: “the military has relied heavily on open pit burning in both conflicts, and operators of burn pits have not always followed relevant guidance to protect service members from exposure to harmful emissions.” GAO Report 11-63, *DOD Should Improve Adherence to Its Guidance on Open Pit Burning and Solid Waste Management* (2010) (Report Highlights). The report went on to note that each soldier generated 10 pounds of solid waste per day and that much of this, including toxic plastics, were burned in the open-air burn pits. Despite this finding, the Institute of Medicine failed to find enough evidence to connect burn pits and lung diseases. IOM (Institute of Medicine). 2011. *Long-term health consequences of exposure to burn pits in Iraq and Afghanistan*. Washington, DC: The National Academies Press. The reason for this curious finding became readily apparent during the testimony of Dr. Steve Coughlin before the House Veterans Affairs Committee. [Dr. Steven S. Coughlin | House Committee on Veterans Affairs](#) Dr. Coughlin revealed that while working for the Department of Veterans Affairs, he was ordered to suppress any evidence showing a causal connection between burn pits and breathing disorders. Notably, the Special Inspector General for Afghanistan Reconstruction (hereinafter SIGAR) revealed that: “[a]lthough DOD knew about the risks associated with open-air burn pits long before contingency operations began in Afghanistan, it was not until 2009 that U.S. Central Command (CENTCOM) developed policies and procedures to guide solid waste management, including requirements for operating, monitoring, and minimizing the use of open-air burn pits.” SIGAR, *Final Assessment: What We Have Learned From Our Inspections of Incinerators and Use of Burn Pits in Afghanistan* (February 2015) at 1. The SIGAR Report went on to confirm

the service member complaints of a connection between health risks and burn pits, noting that: “Recent health studies have raised concerns that the particulate matter and toxic smoke contaminated with lead, mercury, dioxins, and irritant gases generated by open-air burn pits could negatively affect an individual’s organs and body systems, such as the adrenal glands, lungs, liver, and stomach.” *Id.* Often called the Agent Orange of the 21st Century, the damage to American and Allied service members by this toxic waste pollution is still being assessed. Unfortunately, while it is being assessed, people are dying.

HR 2127/S 927, in an effort to stem the bleeding, provides medical coverage to victims of toxic exposure. The strength of this bill is that it does not have a beginning date and could be expected to cover all toxic exposures including radiation, PFAS, asbestos, depleted uranium, and herbicide. The legislative history should reflect that this does not apply just to burn pits but all forms of toxic exposure.

MVA™ also welcomes the inclusion of the requirement that the Secretary respond within 60 days to the recommendations of the National Academy of Sciences, Engineering and Medicine (NASEM) to add diseases to the presumptive coverage list. As the Committee knows, the VA has taken the approach of stonewalling these recommendations. That led to the inclusion of three herbicide presumptive diseases in the 2021 National Defense Authorization Act (NDAA) and the need to cover an additional presumptive as evidenced by Senator Tester’s S 810, which MVA™ also supports.

The inclusion of a Toxic Exposure Research Committee. Along with its annual report to Congress, is an important provision of this bill. MVA has proposed similar legislation with broader scope in the past, however we believe that this Commission is an important step towards reaching the goal of identifying toxic exposure in its early stages and implementing preventative measures. This approach will save lives and be more economical than the current “catch-up” we are playing now. MVA does suggest DOD involvement as necessary to ensure that problems associated with toxic exposure are detected and corrected.

The weakness of HR 2127/S 927 is that it only provides for medical care and not compensation. HR 2372/S 952 corrects this deficiency by also provided for disability compensation and survivor benefits. This is necessary since veteran victims are often forced to leave the work force decades before the average American. Often spouses are also required to quit employment to act as care givers. This results in a lower standard of living for the veteran victim and his family. Compensation will help alleviate this predicament.

One of the strengths of this bill is the use of deployment awards to define eligibility to toxic exposure. This successfully narrows the focus to those who served in areas where toxic exposure was prevalent. The bill also provides a wider list of diseases than HR 2127/S 927, but more important, allows for an expanded ability to make changes. While HR 2127/S 927 requires the Secretary to respond to recommendations from NASEM, HR 2372/S 952 expands the list of “interested parties” to include veterans’ service organizations, other veterans’ groups, collective bargaining agents, medical associations or state and local governments. This expansion just makes sense as does the requirement that the Secretary respond to Congress and in the Federal Register.

HR 2372/S 952 also strengthens the relationship and codifies requirements for cooperation between the Secretary and NASEM. The relationship between the two worked well under the

original Agent Orange Act and HR 2372/S 952's provisions work to restore that relationship for more recent toxic exposure issues.

Our allies in Australia have often taken a proactive approach to toxic exposure. It was the Australians who detected the exposure of Blue Water Navy to herbicides by tracking the health of all their veterans and thereby discovering clusters of diseases and disabilities quickly. At best, the United States has been reactive, not proactive when it comes to the identification of victims of military toxic exposure. This needs to change. These two bills are important first steps in making that change and they have the wholehearted support of MVA and our members.

This should not be a case of choosing one bill over the other. They complement each other well. MVA urges the Committee to merge these two bills into one emphasizing the strength of each.

S. 189 Veterans' Disability Compensation Automatic COLA Act of 2021

This bill will provide for annual cost-of-living adjustments to be made automatically by law each year in the rates of disability compensation for veterans with service-connection disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. Enacting annual legislation to codify a cost-of-living increase is a waste of legislative resources. Tying these increases to Title II of the Social Security Act just makes good sense and we support this common sense legislation.

S. 437 Veterans Burn Pits Exposure Recognition Act of 2021

MVA™ supports this legislation, however notes that it could be merged with S 927/S 952. This bill will concede exposure to airborne hazards and toxins from burn pits under certain circumstances. As previously stated, burn pits are the Agent Orange of the 21st Century. Unfortunately, our combat forces put expediency over safety and utilized burn pits even when environmentally friendly incinerators were available. Today we see the best of our youth who willingly served in Iraq and Afghanistan wracked with cancers and lung disorders as a direct result of burn pits. We cannot undo the damage, but we can take care of our heroes, both medially and financially. We believe S 437 is a step in the right direction.

HR 1355/S. 454 K2 Veterans Care Act of 2021.

This bill will provide health care and benefits to veterans who were exposed to toxic substances while serving as members of the Armed Forces at Karshi Khanabad Air Base, Uzbekistan. Troops stationed at "K2" were exposed to high levels of radiation from yellowcake uranium residue at the Uzbek base. It is estimated that the radiation levels were 7-9 times the times the normal background radiation. We estimate that 10,000 military members were exposed - many of whom have developed rare cancers associated with radiation exposure. MVA™ supports this legislation but notes that it could be merged with the S. 927/S. 952,

HR 1585/S 565 Mark Takai Atomic Veterans Healthcare Parity Act of 2021

This bill will provide for the treatment of veterans who participated in the cleanup of Agnatic Atoll as radiation-exposed veterans for purposes of the presumption of service-connection of certain disabilities by the Secretary of Veterans Affairs. It is time to move this bill

off dead center and provide these veterans their earned benefits while they are still alive. MVA™ supports this bill.

HR 1014/S 2189.

These bills will establish a program at the VA to use Hyperbaric Oxygen Treatment (HBOT) to treat Traumatic Brain Injury (TBI). This program is well known in the Special Operations groups. Senator Tuberville used it to treat concussions received by his football players. With little cost this treatment could help correct many of the problems associated with TBI.

HR 1656.

HR 1656 the Treat PTSD Act would provide a Stellate ganglion block for treatment of Post Traumatic Stress. This treatment has been found to be effective in veterans suffering from post traumatic stress. Cost would be negligible.

HR 855/S 2280.

The VETS Safe Travel Act has been referred to the Homeland Security and Veterans Committee in the House and the Commerce, Science and Transportation Committee in the Senate. This common-sense bill provides for automatic TSA pre-check for disabled veterans. Cost would be negligible.

Funding Proposals.

Military-Veterans Advocacy® is cognizant of the statues and Congressional rules that require an offset for any additional mandatory spending. Although we disagree with those requirements, we recognize the reality of them.

Accordingly, we propose that Congress enact a trust fund to be used for mandatory spending for these veteran benefits. Any excess could be used to fund Medicare and Medicaid and any other mandatory spending. The fund should be administered by a Commission appointed by the Speaker, the House Majority and Minority Leaders, the Senate Majority and Minority Leaders, the Secretaries of Veterans Affairs, the Social Security Commissioner and Secretary of Health and Human Services. Excess funds, if any, should be carried over to the next fiscal year. Use of the fund for anything other than mandatory benefits, should require a Presidential finding of necessity and 2/3 vote of both Houses of Congress. First priority for disbursements should be to veterans programs.

Freedom Fee.

In 2020, 240,160,843 tax returns were filed with the Internal Revenue Service. This included both individual, corporate and other miscellaneous forms. This actually represented a decrease in the number of forms filed in 2019. The economic problems caused by the pandemic naturally had an impact on the number of tax returns filed. As the pandemic winds down, the

resultant economic expansion should return the number of tax filings to at least the 2019 level.¹ MVA proposes the following fee structure for filing:

Individual forms	\$ 10.00
Corporate forms (Commercial)	\$100.00
Corporate Forms (S)	\$ 75.00
Partnerships	\$ 75.00
All Others	\$ 50.00

This “Freedom Fee” would raise sufficient funds to meet PAYGO requirements for a number of bills discussed herein. While not sufficient to fund PACT or COST, it would certainly help.

The defense of the nation is important for every American to survive and hopefully flourish. Apportioning this cost among the population is only fair. The \$10.00 individual cost should not be an extreme burden on any taxpayer. Those who do not make sufficient money to file a tax return would be exempt from the fee.

Control of the End of the Year “Spend-o-rama.”

Throughout the federal bureaucracy, budgetary personnel tend to withhold money appropriated by Congress to fund unplanned events or cost overruns. Approximately 6 weeks before the end of the year, these retained funds are dumped on the agencies with orders to “spend it or lose it.” Faced with the fear of budget cuts if not all money is expended, massive waste occurs across the federal government. Recoupment of this money into a dedicated trust fund could provide funding for veterans, senior citizens and still make a substantial payment on

1	2019	2020	
United States, total [1]	253,035,393	240,160,843	-5.1
Income taxes, total	191,471,082	189,562,923	-1.0
C or other corporation [2]	2,146,904	1,819,301	-15.3
S corporation, Form 1120-S	5,186,557	5,044,303	-2.7
Partnership, Form 1065	3,946,342	4,470,095	13.3
Individual, total [3]	154,094,555	157,195,302	2.0
Forms 1040, 1040-A, 1040-EZ, 1040-SR	153,130,682	156,580,123	2.3
Forms 1040-C, 1040-NR, 1040NR-EZ, 1040-PR, 1040-SS	963,873	615,179	-36.2
Individual estimated tax, Form 1040-ES	22,225,590	17,579,898	-20.9
Estate and trust, Form 1041	3,116,479	2,820,317	-9.5
Estate and trust estimated tax, Form 1041-ES	754,655	633,707	-16.0
Employment taxes [4]	31,566,173	28,028,002	-11.2
Estate tax [5]	25,742	15,023	-41.6
Gift tax, Form 709	239,618	158,095	-34.0
Excise taxes [6]	1,073,183	902,342	-15.9
Tax-exempt organizations [7]	1,590,421	1,360,719	-14.4
Supplemental documents [8]	27,069,174	20,133,739	-25.6

[1] Excludes information returns (e.g., Forms 1098, 1099, 5498, W-2 and W-2G, and Schedule K-1); tax-exempt bond returns (Forms 8038, 8038-B, 8038-CP, 8038-G, 8038-GC, 8038-T, 8038-TC, and 8328); and employee retirement benefit plan returns (Forms 5500, 5500-EZ, and 5500-SF). See Table 21 for information on tax-exempt bond returns. See Tables 15 and 21 for information on employee retirement benefit plans. See Table 22 for data on information returns.

[Returns Filed Taxes Collected and Refunds Issued | Internal Revenue Service \(irs.gov\)](https://www.irs.gov)

Table 2

the deficit.

Certainly some agencies offices and units plan for the end of the year windfall and use it for large expenditures. Unfortunately, some of it is wasted on items that are not even relevant to the mission. MVA™ estimates as much as 5-10% of expenditures in the last six weeks of the fiscal year are wasted.

In order to better estimate the effect of this program, MVA™ recommends that the Committees ask GAO to inquire into the financial allocation process by the Executive Branch in the last two months of the fiscal year. This inquiry should be federal government wide. The inquiry should include an evaluation to determine what allocations are for mission essential, mission related and mission irrelevant and provide, by budget line item, a breakdown of allocations into these categories. The inquiry should secure and review any funding documents or supplemental budget documents issued in the last two months of the fiscal year.

Once the problem has been defined and quantified, use incentives to induce the SES members of the Executive Branch to return money not utilized rather than wasting it. Incentives would include assurances budgets will not normally be reduced, establishment of Congressional, Presidential and Departmental awards for recoupment and recognition of efficient operations and cost-savings.

Combined with or in place of the “Freedom Fee,” reduction or elimination of the Spend-o-Rama should reprogram sufficient monies to support mandatory spending.

Conclusion

On behalf of our membership, we would like to extend our thanks to the Chairmen, Ranking Members, and remaining Committee members for the opportunity to discuss our legislative priorities.

A handwritten signature in black ink, appearing to read "John B. Wells". The signature is written in a cursive, flowing style with a long, sweeping underline.

John B. Wells
Commander USN (retired)
Chairman