

From Military-Veterans Advocacy (please like our Facebook page and follow us on twitter @MVadvocacy.

Just back from another week in the Swamp where I had a number of meetings mostly on the Senate side. Had to shovel my way through the snowflakes that were disrupting business. Look, I don't care if they protest that is their right. But accosting and screaming at people (I scream back), blocking hallways and occupying Senate offices while chanting crosses the line. The Capitol Police did a good job of protecting the right to protest while removing those who interfered with access to the Senate offices.

I think we all felt that 2018 would be the year for the Blue Water Navy veterans. We had the support of the VA Secretary, Secretary Shulkin, Congressman Phil Roe of TN, the House Committee Chairman supported us. We had a new sponsor who also served on Appropriations Committee. Over 300 Members of Congress across both parties sponsored our bill. What could go wrong?

The first roadblock was when the Ranking Member, Tim Walz of Minnesota (currently running for Minnesota Governor) blocked the financial offset required by the Pay As You Go Act of 2010. The Committee was trying to use COLA round downs, which would have rounded down increases in annual cost of living compensation benefits to the nearest dollar. We had tried that in 2015 and been blocked by Senator Bernie Sanders. Still we felt that a bi-partisan vote from the House would have overcome Sanders resistance - especially in an election year. But that was not to be and we knew a party line vote would let it die in the Senate. So Chairman Roe wisely tabled the bill.

After six months of creative financing, and constant urging by Chairman Roe, the House Committee came up with a plan to finance the bill using an increase in the VA Home Loan guarantee fees. Disabled veterans would be exempt except for jumbo loans (in excess of \$453,000.00) where only 100% disabled vets would be exempt. ALL, repeat ALL VSOs agreed to this offset.

In May 2018 HR 299 passed the House Committee unanimously, We ran into another speed bump. The State Department had reservations about defining the Vietnamese territorial seas. This is understandable, given the ongoing issues with the Red Chinese in the South China Sea. We also considered that we were giving too much latitude to the VA by allowing them to define the territorial sea. That could result in them limiting it to a lake in Saigon. So we worked with the Committee to designate geographical points instead of the term territorial seas although they mirrored the area Vietnam claims as their territorial sea. The House then passed HR 299 by a vote of 382-0.

We hoped to pass the bill by unanimous consent but the Senate Chairman, Sen. Johnny Isakson of Georgia decided to pursue "regular order." There had been an objection to the jumbo loan provisions by a real estate group and Sen Isakson was himself a former real estate agent. We addressed these concerns with the Senate Committee, noting that the bill also lifts the cap on jumbo loans which would allow the veteran to exceed the cap without having to arrange for

secondary financing. This would save the veteran money in the long run. Senator Tillis of North Carolina, who has done great work in enacting legislation to block predatory lenders, also had some concern with the effect of the bill.

It was at this point that the naysayers struck back. Secretary Shulkin had left the VA and returned to private life. The VA ambushed us starting with an op-ed by former Secretary Principi and culminating with the August 1, 2018 legislative hearing where they trashed the bill. Under Secretary Paul Lawrence, who refused to talk with me, and Dr. Ralph Erickson, who in my opinion lied to the Committee, presented false and misleading information. They highlighted the jumbo loan provision as a negative and actually inflated the cost estimate of the bill. This was followed by a September 6 letter from Robert Wilkie, the new VA Secretary reiterating the disingenuous August 1, testimony.

We fought back. I wrote a rebuttal to Secretary Wilkie's letter. We distributed talking points and began to receive more favorable media coverage. The VA submitted a letter signed by four former VA Secretaries, we countered with a letter from former Secretary Shulkin. Thanks to the assistance of Fleet Reserve Association National Executive Director Tom Snee, the Military Coalition, which recreants 5.5 million veterans, wrote a strong letter in our support. Admiral Chris Cole of the Association of the United States Navy wrote a terrific op-ed supporting us.

It was pretty obvious that the momentum had changed in our favor until we ran into what I am afraid will be a fatal road block. Our so called allies - the Legion the VFW, the DAV and the Paralyzed Veterans of America wrote what was termed a letter of support, but included a lethal paragraph opposing the jumbo loan provisions. This was the same provision they had agreed to prior to the May House Committee hearing. They did not discuss this with us or even give us a warning that they were going to take this approach. The VA, of course, jumped on this letter as justification for their opposition to the bill.

I believe that this cowardly reversal on the part of these VSOs, will be the death knell if HR 299 in its present form. The problem is that we have no time left for behind the scenes negotiation, Any changes to the bill will require a vote by the House. The House is in recess until the election, so we are looking at the lame duck session.

In my talks in the Senate this past week, the jumbo provision is toast. If the jumbo provision goes away, that will reduce the offset by about \$124 million. There was some additional money in the bill to cover discretionary costs (two types of spending mandatory and discretionary. The VA has inflated both). This reduction would leave us short on the discretionary money. It could possibly be worked out with more creative financing, but then the bill would have to go back to the Congressional Budget Office for scoring and possibly come back to the Senate or go to Conference. There will not be enough time to accomplish all of this before adjournment. In other words, the Legion, VFW, PVA and DAV have killed HR 299 in its present form.

Not to say there isn't any good news, Senator Isakson did lay the law down to Secretary Wilkie and tell him there would be a blue water bill passed. In meetings with the Senate Committee staffs, the indications are that the Senator wanted the bill passed but he was uncomfortable with

the jumbo provisions.

I'm not being critical of Senator Isakson or Senator Tillis. They are trying to do the right thing. I have been in contact with the Committee staff director and he has asked good questions. Have met with the Committee three times in the last six weeks. When I met with them last week I saw our chart showing Vietnam, baseline, territorial seas and the VSM service medal area blown up on a big chart in his office. They are working the problem. Our issue is not with the Senate it is with the calendar. Of course the Legion, VFW, DAV and PVA have not helped the situation,

We may have to live with reduced coverage - perhaps the harbor areas, with the understanding that we would come back next Congress to cover the remaining area. The House and the sponsors think that this is not desirable but due to time constraints may be our only option to covering some folks this year. The important thing is that if this happens, I want to make sure everyone, on these pages and in the Congress know that we will be back to cover the remaining area next year. I do not like this alternative, but if the other option is that nothing gets passed, we have to be willing to deal with it. It will allow us to cover some of our folks, and frankly the majority of them, rather than no one.

I ambushed (excuse me accidentally ran into) Secretary Wilkie at the September 26 hearing. HE said he would meet with me. He also told me that his September 6 letter was not the final decision. It seemed final to me but that was after Senator Isakson had told him there will be a blue water bill. I was also invited to join a VSO round table on Friday September 28 at the VA. While Blue Water Navy was not on the agenda (ok I slipped in a couple of comments) there was a lot of good information concerning other things going on within the VA, This included the electronic health records (10 year implementation plan way too long in my opinion) the appellate reform program (still sucks in my opinion but the same VSOs who stabbed us in the back love it) and an approval to filling vacancies which I thought had some merit. There is also a new emphasis on customer service and I met with the Deputy Chief of Staff in charge of that. They were interested in my feedback. This process is at early stage but at least they are addressing the problem.

We have to work with Secretary Wilkie and the VA. After this battle is over there are many more that need to be addressed. The invitation to this round table (and yes I was invited to the next one) is a show of good faith on their part. So we need to move past our current disagreement. They also know that we are not backing down. We also have a strong advocate in our corner, former Secretary David Shulkin. They have also recognized we have strong allies on the Hill. I think they realize that we will not go quietly into the night. Military-Veterans Advocacy is here to stay!

We also have to note the progress being made on the Procopio case. I met again with the partner from the Orrick firm who is working the case pro bono. We sat down with representatives from FRA and AUSN who will be along with BWNVVA filing an amicus brief. Another attorney from San Diego will be drafting that brief. Our principal brief is due on October 1<sup>st</sup>. I have just finished my final review of it. Remember oral argument is December 7 at the Court of Appeals for the Federal Circuit, 717 Madison Pl NW Washington DC. Afterwards we can walk the two

blocks to the VA and let them know we are still around. (NOTE: Rules for conduct will be forthcoming. We will not do what the protestors at the Senate Office building did).

I am feeling good about our chances with Procopio, but do not expect a decision before late Spring or early Summer, This is a full court briefing before 11 Judges so we may see some concurring and dissenting opinions. Procopio will not only help us, it will force the VA to apply the pro-veteran canon of statutory construction. That could assist hundreds of thousands if not millions of veterans.

Brian Moyer has been shouldering the Guam situation and has given a number of interviews. He has been a hero in his own right while I have been tied down here with HR 299.

We will hopefully keep the Thailand and Korea provisions in HR 299 as those folks deserve coverage too. I talked with Senator Boozman about the expanded Thailand provisions in S 2105. CBO has costed it at \$1.6 billion. That is way too expensive.

The overall answer to this is a comprehensive veterans toxic exposure bill to cover everything from blue water to burn pits. This bill must have an independent source of funding, We spend a bit of time this Congress floating some trial balloons. Next Congress we need to hit the ground running. There are over 4.5 million victims of Military Toxic Exposure. They are our brothers and sisters. We need to help them all.

Going back to the swamp in October!

John B Wells  
Commander USN (Retired)  
Executive Director