



**STATEMENT OF  
THE AMERICAN LEGION**

**BEFORE A HEARING OF THE**

**SUBCOMMITTEE ON DISABILITY ASSISTANCE & MEMORIAL AFFAIRS  
VETERANS' AFFAIRS COMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**PENDING AND DRAFT LEGISLATION**

**OCTOBER 22, 2019**



**EXECUTIVE SUMMARY**

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|  |                   |
|--|-------------------|
| H.R.592, "Protect Veterans from Financial Fraud Act of 2019"   | Support           |
| H.R.628, "Working to Integrate Networks Guaranteeing Member Access Now (WINGMAN) Act"  | Oppose            |
| H.R.1030, "Veteran Spouses Equal Treatment Act"  | No position       |
| H.R.1424, "Fallen Warrior Battlefield Cross Memorial Act"  | Support           |
| H.R.1911, "SFC Brian Woods Gold Star and Military Survivors Act"   | Support           |
| H.R.4165, "Improving Benefits for Underserved Veterans Act"  | No position       |
| H.R.4183, "Identifying Barriers and Best Practices Study Act"  | Support           |
| H.R.4360, "VA Overpayment Accountability Act"  | Support           |
| Draft: Legislation to permit appellants to appear before the Board of Veterans' Appeals via picture and voice transmission from locations outside the Veterans Affairs Department. | Support<br>w/amdt |



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**October 22, 2019**

Chair Luria, Ranking Member Bost, and distinguished members of the subcommittee, on behalf of our National Commander, James W. “Bill” Oxford and our nearly 2 million members, we thank you for inviting The American Legion to submit the following testimony.

The American Legion is directed by millions of active Legionnaires who dedicate their time and resources to the continued service of veterans and their families. As a resolution-based organization, our positions are guided by more than 100 years of advocacy and resolutions that originate at the grassroots level of our organization. Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress.

**H.R. 592 – The “Protect Veterans from Financial Fraud Act of 2019”**

*To amend title 38, United States Code, to ensure that the Secretary of Veterans Affairs repays the misused benefits of veterans with fiduciaries, to establish an appeals process for determinations by the Secretary of Veterans Affairs of veterans’ mental capacity, and for other purposes.*

The VA’s Fiduciary Program was established to protect veterans and other beneficiaries who are unable to manage their financial affairs by appointing a fiduciary to assist in managing benefit payments. Currently, the VA can remove the fiduciary if they mismanage or steal a veteran’s benefits but can only re-issue benefits to the veteran if the appointed fiduciary manages benefits for 10 or more veterans. Under this current policy, a veteran’s only recourse is to sue the fiduciary in an attempt to recoup the lost or mismanaged funds. There is also no process to appeal a determination of the need for a fiduciary based on a veteran’s mental capacity.

The American Legion believes that no veteran should be harmed or put in a financial hardship through no fault of their own. The American Legion is aware that mismanagement and theft of veteran’s funds by fiduciaries does happen on occasion. When a veterans funds are mismanaged or stolen by a VA-appointed and vetted fiduciary, the VA should re-pay the benefit to the veteran. H.R. 592 will require the Secretary of Veteran Affairs to repay the misused benefits of veterans with fiduciaries and to establish an appeals process for determinations of a veterans’ mental capacity by the VA. Through Resolution No. 377: *Support for Veteran Quality of Life*, The

American Legion urges Congress and the VA to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents.<sup>1</sup>

**The American Legion supports this legislation as currently written.**

**H.R. 628 – “The Working To Integrate Networks Guaranteeing Member Access Now Act”  
or the “WINGMAN Act”**

*To amend title 38, United States Code, to permit veterans to grant access to their records in the databases of the Veterans Benefits Administration to certain designated congressional employees, and for other purposes.*

The WINGMAN Act would permit veterans to grant certain congressional employees in the office of a member of Congress to have read-only access to all of the veteran's records in the Department of Veterans Affairs (VA) Veterans Benefits Management System (VBMS) for the purpose of assisting constituents. A Member may designate up to two such congressional employees, but the employees may not be recognized as an agent or attorney with respect to veterans' benefit claims. Funds under this bill may not be used to design or administer any training for congressional employees.

The American Legion has more than 3,600 accredited representatives who assist veterans with their claims located throughout the nation. These professionals receive regular professional training ensuring they have the most current understanding of the impact of changes in statutes, regulations, and case law. It is simply not a matter of receiving initial training and meeting the requirement of being accredited, like many professions, it requires on-going, thorough training. Additionally, veterans are repeatedly advised of their opportunity to elect to have a Veterans Service Organization (VSO) represent them in their quest to receive VA disability benefits at no cost. The American Legion does not have a resolution to support the enactment of this bill; however, we urge Congress to consider the long-term ramifications of supporting legislation that requires their own employees to have a minimal level of understanding in veterans' law assisting their constituents. To ensure our veterans receive the assistance they deserve, we highly recommend that a VSO advocate on their veterans' behalf.

**The American Legion opposes this legislation.**

**H.R. 1030 – “Veteran Spouses Equal Treatment Act”**

*To amend title 38, United States Code, to amend the definition of the term “spouse” to recognize new State definitions of such term for the purpose of the laws administered by the Secretary of Veterans Affairs, and for other purposes.*

The provisions of this bill fall outside the scope of established resolutions of The American Legion. The American Legion is a resolution based, grassroots organization that takes positions on

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<sup>1</sup> <https://archive.legion.org/handle/20.500.12203/5696>

legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. The American Legion has no current position on H.R. 1030 dictated by resolution, however, as laws evolve we expect VA to act in accordance with them.

**The American Legion has no current position on H.R. 1030.**

**H.R. 1424 – “Fallen Warrior Battlefield Cross Memorial Act”**

*To amend title 38, United States Code, to ensure the Secretary of Veterans Affairs permits the display of Fallen Soldier Displays in national cemeteries.*

The proposed legislation would allow the Secretary of VA to display the “Fallen Warrior Battlefield Cross Memorial” at all national cemeteries. The Fallen Warrior Battlefield Cross Memorial consists of helmet, rifle (inverted), boots, and identification tags (dog tags) draped from the rifle. A U.S. Army field manual notes: "The helmet and identification tags signify the dead soldier. The inverted rifle with bayonet signals a time for prayer, a break in the action to pay tribute to our comrade. The combat boots represent the final march of the last battle."<sup>2</sup>

The tradition of inverting the rifle into the ground dates back to the Revolutionary War as a crude way of marking the position of a fallen soldier. The custom continues to this day; units in theater traditionally hold a remembrance ceremony in country (as the body is flown back stateside for burial) to allow the unit to pay last respects to those killed in action (KIA).

In October 2017, at Ohio’s Western Reserve National Cemetery, a battlefield cross was removed by cemetery officials. The National Cemetery Administration (NCA) cited the reason for removal as a violation of the administration’s policy regarding monuments depicting weaponry. The cemetery ultimately decided to restore the cross.

The Fallen Warrior Battlefield Cross Memorial Act (H.R. 1424) would permit the display of the weapon when accompanying the other items that make up the Battlefield Cross. NCA currently allows for the display of the cross, however, it does not specifically mention the Battlefield Cross. The passage of H.R. 1424 would prevent another NCA cemetery/official from misinterpreting the policy and disallowing the display of the Battlefield Cross.

Relevant here is the recent U.S. Supreme Case decision in *American Legion v. American Humanist Association*, No. 17-1717, 588 U.S. \_\_\_\_ (2019), dealing with the separation of church and state related to maintaining the Bladensburg Peace Cross, a World War I memorial shaped after a Latin cross, on government-owned land, though initially built with private funds on private lands.<sup>3</sup> In a landmark victory for The American Legion, the Court ruled 7-2 that the 40-foot memorial can remain on public land in Prince George’s County, Md., where it has stood since 1925.

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<sup>2</sup> <https://www.milsci.ucsb.edu/sites/secure.lsit.ucsb.edu.mili.d7/files/sitefiles/resources/FM%207-21.13%20Soldier%27s%20Guide.pdf>

<sup>3</sup> <https://www.legion.org/honor/246061/legion-wins-bladensburg-memorial-supreme-court-case>

“This was not just about a single cross,” then American Legion National Commander Brett Reistad said of the victory. “This was about the right of a community to honor its fallen heroes. And that’s why the World War I veterans of Bladensburg sacrificed their lives, to protect the freedom of others.”

Additionally, The American Legion supported the same legislation, as H.R. 4312, during the 115<sup>th</sup> Congress and testified in support on September 5, 2018.<sup>4</sup> Since its creation in 1919, The American Legion has been dedicated to preserving the memories of our fallen and we will continue to do so whenever possible.

**The American Legion supports H.R. 1424 as currently written.**

**H.R. 1911 – “SFC Brian Woods Gold Star and Military Survivors Act”**

*To amend titles 10 and 38, United States Code, to expand certain benefits for survivors of members of the Armed Forces who die in line of duty, and for other purposes.*

No family of a servicemember ever wants to receive the dreaded knock at the door informing them that their loved one has paid the ultimate sacrifice. Dealing with such loss can be a life long struggle, and every available resource must be at the family’s disposal to help them try to heal. Unfortunately, the loss of a servicemember means a change in status for the surviving spouse and dependent children which often leads to loss of certain benefits and access to the military community they have been a part of.

After the passing of a servicemember, the surviving spouse will lose access to military installations and on-base facilities such as the commissary and post exchange. Loss is not only access, but potentially monetary as well. Under current policy a surviving spouse is entitled to Dependent Indemnity Compensation (DIC) through the Department of Veteran Affairs, however, they will lose this benefit if they chose to remarry prior to age 55. The American Legion believes that surviving spouses are being unfairly cut off from their military community, facilities and are being unduly harmed by taking away their monetary benefits.

Another issue is the transportation of their loved one’s remains. Under current policy all in-theater KIA’s are flown to Dover Air Force Base. The Department of Defense (DoD) will then transport the remains to a location of the families choosing. The problem is that some families want to add another location for transport by DoD. An example would be if the service member is from California, but their wishes were to be buried at Arlington National Cemetery (ANC), the family can request the remains be flown to California for a memorial service but must pay out of pocket to transport their loved one to ANC for burial.

The bill would alleviate the aforementioned issues by:

- Allowing survivors that remarry to continue to have access to on-base facilities if they have dependent children;

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<sup>4</sup> <https://archive.legion.org/bitstream/handle/20.500.12203/11937/aa007254.pdf?sequence=1&isAllowed=y>



- Allowing surviving spouses of servicemembers who were killed while on duty to continue to receive DIC or SBP should they remarry and ensures survivors that remarried before the bill becomes law are eligible to collect benefits moving forward;
- Directing the Pentagon to pay the transportation costs of remains for those killed in combat back to their hometown for any memorial services AND to a national cemetery of the surviving family's choice (current law only authorizes one trip); and
- Authorizing the Pentagon to extend the existing child care service assistance program (for civilian providers) to survivors of servicemembers that die in the line of duty.

We can never fully repay the debt we owe to a Gold Star family, but we can try do what is possible to support them after their loss. The American Legion, through Resolution 85: *Support for Military Quality of Life Standards*, supports H.R. 1911 in its endeavors to address the issues that reduce the quality of life of America's Gold Star Families.<sup>5</sup>

**The American Legion supports H.R. 1911 as currently written.**

#### **H.R. 4165 – “Improving Benefits for Underserved Veterans Act”**

*To direct the Secretary of Veterans Affairs to publish a report regarding veterans who receive benefits under laws administered by the Secretary, disaggregated by sex and minority group member status.*

The provisions of this bill fall outside the scope of established resolutions of The American Legion. The American is a resolution based, grassroots organization that takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. The American Legion has no current position on H.R. 4165. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

**The American Legion has no current position on H.R. 4165.**

#### **H.R. 4183 – The “Identifying Barriers and Best Practices Study Act”**

*To direct the Comptroller General of the United States to conduct a study on disability and pension benefits provided to members of the National Guard and members of reserve components of the Armed Forces by the Department of Veterans Affairs, and for other purposes.*

The United States military has increasingly relied on its reserve components to meet the national security demands during the War on Terror and the current security environment. This has required increased commitments from reservists and their families as the nation has moved from a strategic to an operational reserve. However, those serving in these reserve components do not receive the benefits they deserve to account for these increased responsibilities. This is compounded by the

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<sup>5</sup> <https://archive.legion.org/handle/20.500.12203/10004>

fact that Guard and Reserve veterans have historically been at a disadvantage when seeking VA compensation and disability benefits due to poor reporting and documentation of injuries which occur during a period of reserve or Active Duty for Training (ADT).

The American Legion believes that all veterans should be afforded the benefits they have earned regardless of service component and that veterans should not be hindered in their attempts to gain access to VA benefits. The American Legion supports legislation to provide the military reserve components with greater benefits befitting of the increased role they play in the security of the nation and the greater commitments they must sustain. H.R. 4183, the “Identifying Barriers and Best Practices Study Act” would direct the Comptroller General of the United States to conduct a study on disability and pension benefits provided to members of the National Guard and members of reserve components of the Armed Forces by the Department of Veterans Affairs. The American Legion Resolution No. 17: *Position on the Operational Reserve* urges Congress to reform the laws and policies governing the reserve components to provide them programmable sustainability as an operational force.<sup>6</sup>

**The American Legion supports this legislation as currently written.**

#### **H.R. 4360 – “VA Overpayment Accountability Act”**

*To amend title 38, United States Code, to improve due process accorded veterans with respect to recovery of overpayments made by the Department and other amounts owed by veterans to the United States, to improve the processing of veterans benefits by the Department of Veterans Affairs, and for other purposes.*

VA overpays hundreds of thousands of veterans yearly. During fiscal year 2018, VA made a total of \$1.6 billion in overpayments.<sup>7</sup> The most common reasons for overpayments include a change of status in a veteran’s income, dependents, school attendance, military drills, or incarceration. Most concerning is that a large portion of VA overpayments are created due to lack of integration between IT systems used by VA. The overpayment will be forwarded to the Debt Management Center in Saint Paul, MN, for collection action. If a veteran is receiving an active benefit, it will be garnished to repay the amount owed. If the overpayment is not payed, it will be referred to the Department of Treasury for collection. Due to overpayments by the VA, thousands of veterans are potentially being placed in financial hardship situations which might include loss of an active benefit or damage to a veteran’s credit history.

The proposed legislation contains three key elements that are aimed at protecting veterans during the overpayment and debt collection process. Firstly, it introduces measures to correct erroneous information sent to credit reporting agencies about a debt incurred by a veteran as a result of their participation in a benefits program. Secondly, it requires the VA to improve the notification system once a veteran has incurred a debt and requires tracking of metrics associated with the overpayment process. Thirdly, it requires VA to conduct an audit to study the metrics previously mentioned and

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<sup>6</sup> <https://archive.legion.org/handle/20.500.12203/5500>

<sup>7</sup> <https://www.militarytimes.com/news/pentagon-congress/2019/09/19/va-concedes-its-debt-collection-systems-leave-veterans-confused-frustrated/>

examine how a multitude of factors, to include vacancies at VA, contribute to perpetuating the issue.

The American Legion, through Resolution No. 228: *Timely Processing of Overpayments for Reserve Components and/or Active Duty Pay*, supports efforts to “place greater emphasis on processing of these overpayments.”<sup>8</sup> Debt caused by VA overpayments are a major concern for The American Legion. Since 1978, The American Legion has retained a dedicated staff member at the Debt Management Center for the sole purpose of advocating on behalf of veterans and their dependents facing garnishment. Too often, we have seen unnecessary financial burdens placed on veterans and their families as a result of bureaucratic errors.

The American Legion most recently testified on this issue on September 19, 2019, and we are encouraged to see that many of the recommendations made by the Veteran Service Organization (VSO) community are included in pieces of legislation like H.R. 4360.<sup>9</sup> If passed, this legislation would greatly improve the way VA manages debt collection while minimizing the negative impact for veterans.

**The American Legion supports H.R. 4360 as currently written.**

### **Draft Legislation**

*To amend title 38, United States Code, to permit appellants to appear in disability compensation cases before the Board of Veterans' Appeals by picture and voice transmission from locations other than facilities of the Department of Veterans Affairs.*

Historically, veterans have had long wait times to go before the Board of Veterans Appeals (BVA) and have suffered from barriers based on the locations they could go for a hearing. BVA has made great strides and seeks to reduce the backlog and decide appealed cases in under 365 days. Among these options to reduce the backlog is to utilize a video or tele-conferencing option which would allow greater access to resources to accommodate veterans hearing requests. However, under current law, the Veterans Law Judge who presides over a given hearing must do so from inside the BVA building in Washington, D.C., and the veteran must travel to a VA regional office or local Veterans Health Administration facility to join the video conference. The veteran's representative must be with the veteran in person, or at a similar facility. This places unnecessary burdens on both the veterans and VA staff.

The American Legion believes that veterans should not be unduly burdened with cost, time, and physical limitations when attempting to make their case before a Veterans Law Judge at the BVA. The American Legion supports legislation that would decrease wait times and remove barriers for veterans during the appeals process. This draft legislation would permit veterans to appear in disability compensation cases before the BVA by picture and voice transmission from locations other than VA facilities. Through Resolution No. 377: *Support for Veteran Quality of Life*, The

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<sup>8</sup> <https://archive.legion.org/bitstream/handle/20.500.12203/5558/2016N228.pdf?sequence=4&isAllowed=y>

<sup>9</sup> <https://www.legion.org/legislative/testimony/247102/“preventing-harm-veterans-examining-vas-overpayments-and-debt>

American Legion urges Congress and the VA to enact legislation and programs within the VA that will enhance, promote, restore or preserve benefits for veterans and their dependents.<sup>10</sup>

The American Legion supports this legislation as currently written, but would strongly encourage the draft legislation be amended to include all veterans' appeals before the BVA, not just disability compensation cases. The American Legion believes all veterans and the VA would greatly benefit from utilizing a video or tele-conferencing option outside of VA facilities, not just disability compensation cases. Additionally, the need for security regarding transmission and atmosphere should be considered as policies for implementation are developed.

**The American Legion supports this draft legislation *but strongly encourages the amendment noted above.***

## **CONCLUSION**

Chair Luria, Ranking Member Bost, and distinguished members of the subcommittee, The American Legion thanks you for your leadership on these matters and for allowing us the opportunity to explain the positions of our nearly two million members. Questions concerning this testimony can be directed to Mr. Lawrence Montreuil, Legislative Associate, National Legislative Division at (202) 861-2700, or [lmontreuil@legion.org](mailto:lmontreuil@legion.org).

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<sup>10</sup> <https://archive.legion.org/handle/20.500.12203/5696>