

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
ON
PENDING LEGISLATION**

APRIL 28, 2021

Chairman Tester, Ranking Member Moran, and distinguished members of the committee, on behalf of our National Commander, James W. "Bill" Oxford and our nearly 2 million members, we thank you for the opportunity to comment on the following pieces on pending legislation. The American Legion is directed by its membership who dedicate their time and resources to continued service for veterans, service members, and their families. As a resolution-based organization, The American Legion's positions are guided by more than 100 years of advocacy that originates at the grassroots level of our organization. Every time The American Legion testifies before Congress, the veteran's community is given a direct voice in the legislative process.

The men and women of the U.S. Armed Forces confront health challenges of a scope and complexity that few others experience. In addition to the immediate life-threatening realities of the battlefield, many servicemembers have been exposed to slower-acting, and in some cases just as lethal, toxins in the form of atomic radiation, toxic defoliations, and burn pits. These toxic exposures have resulted in service-related illnesses, some of which veterans are unable to seek care for at the Department of Veterans Affairs (VA).

The American Legion has been at the forefront of the fight to ensure that veterans receive the care they deserve for decades. In 1983, Columbia University published a study that served as the scientific foundation upon which presumptive conditions were eventually established for Vietnam War veterans. This study was sponsored by The American Legion and since then our organization has been heavily invested in the issue of presumptive conditions for veterans who suffered from toxic exposures during their service.

For the purposes of this hearing, The American Legion will be expressing support for legislation specifically related to toxic exposures. Particular attention will be paid to legislation which recognizes presumptive conditions, provides benefits to veterans exposed to burn pits, adequately provides disability compensation, and allocates death benefits to the spouse and minor children of veterans who survived toxic exposure.

S.437 - Veterans Burn Pits Exposure Recognition Act of 2021

To amend title 38, United States Code, to concede exposure to airborne hazards and toxins from burn pits under certain circumstances, and for other purposes.

Millions of veterans have deployed in the Global War on Terrorism and a disturbingly high percentage of them were exposed to airborne toxic hazards during their service because of burn pits. Currently, veterans who are seeking VA healthcare benefits for illnesses related to burn pit exposure are expected to provide evidence of exposure while deployed. Efforts by the Department of Defense to track burn pit locations have been arduously long and left many sick veterans trying to prove they were deployed to a location in close proximity to a burn pit before they can receive care. This laborious and unnecessary process, given the near ubiquitous use of burn pits at forward operating bases in Iraq and Afghanistan, has created a barrier to healthcare for many veterans who have become seriously ill as a result of their exposure.

S.437 will provide a concession of exposure for veterans who were exposed to airborne hazards and toxic substances from burn pits while serving in Iraq and Afghanistan. It will not automatically grant healthcare benefits to veterans who served near a burn pit, nor create a presumption of service connection, but simply acknowledge the lack of information on when and where burn pits were active and concede exposure to the harmful chemicals associated with them.

Through Resolution No. 118: *Environmental Exposures*, The American Legion supports efforts to expand access to VA healthcare benefits for veterans who have been exposed to toxic hazards while on active duty.¹ We support legislative action that vigorously ensures veterans are properly compensated for disabilities that have a positive association with particular exposures.

The American Legion supports S.437 as currently written.

S.454 - K2 Veterans Care Act of 2021

A bill to 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, and for other purposes.

Nearly 16,000 of our troops were deployed to the Karshi Khanabad Air base (K2), known as Camp Stronghold, in Uzbekistan from about October 2001 to December 2005. According to a U.S. Army study done in 2015, these veterans have a 500 percent higher likelihood of developing cancer and are now dying at an increasing rate, potentially due to their toxic exposure in Uzbekistan. K2 veterans received no medals or ribbons for their secret deployment to Uzbekistan, in fact, their mission remained classified until December 2020. This lack of official recognition has impeded the efforts of K2 veterans to obtain VA healthcare and disability benefits, or to get any of their illnesses recognized by VA as presumptive conditions.

¹ The American Legion Resolution No. 118 (2016): *Environmental Exposures*

S.454 fills a much-needed gap in the recognition of presumptive conditions for toxic exposures at K2. This bill specifically states that veterans “who served on active duty in the Armed Forces at Karshi Khanabad Air Base, Uzbekistan” from Jan. 1, 2001 through Dec. 31, 2005 will be eligible “for hospital care, medical services, and nursing home care.” Additionally, this legislation makes clear that diseases having a positive association with several toxic substances identified at K2, “shall be considered to have been incurred in or aggravated by such service.” Such positive associations have been established by the National Academies of Sciences, Engineering and Medicine.

The American Legion contends that sufficient scientific evidence already exists for the recognition of many presumptive conditions for our K2 veterans; further studies, such as those directed by a January 2021 executive order², are unnecessary. As the U.S. Court of Appeals for Veterans Claims has previously ruled, medical principles do not require consensus in the medical community-at-large in order to support a veteran’s disability claim.³

Through Resolution No. 118: *Environmental Exposures*, The American Legion supports efforts to expand access to VA healthcare benefits for veterans who have been exposed to toxic hazards while on active duty.⁴ We support legislative action that vigorously ensures veterans are properly compensated for disabilities that have a positive association with particular exposures.

The American Legion supports S.454 as currently written.

S.565 - Mark Takai Atomic Veterans Healthcare Parity Act of 2021

To amend title 38, United States Code, to provide for the treatment of veterans who participated in the cleanup of Enewetak Atoll as radiation-exposed veterans for purposes of the presumption of service-connection of certain disabilities by the Secretary of Veterans Affairs, and for other purposes.

From 1977 to 1980, thousands of members of the U.S. Armed Forces participated in a radiation cleanup of atomic test sites in the Marshall Islands. Since then, veterans who served there have struggled to gain access to treatment and benefits for illnesses related to their participation in the radiation clean up. The American Legion highlighted the plight of these veterans in the March 2016 issue of The American Legion Magazine entitled, “Toxic Paradise.”⁵

The Mark Taki Atomic Veterans Healthcare Parity Act of 2021 will provide for the presumption of service connection for certain disabilities related to those veterans who participated in the

² Executive Order No. 13982, Fed. Reg. Vol. 86, No. 14 (January 25, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01712.pdf>

³ See *Wise v. Shinseki*, 26 Vet.App. 517, 532 (2014) and *McCray v. Wilkie*, 31 Vet.App. 243 (2019).

⁴ The American Legion Resolution No. 118 (2016): *Environmental Exposures*

⁵ Veterans of the 1970s Enewetak Atoll atomic cleanup continue to pay a high price. “Toxic Paradise.” The American Legion, February 22, 2016. <https://www.legion.org/magazine/231288/toxic-paradise>.

cleanup of the Enewetak Atoll and other areas where nuclear testing was conducted. This legislation will help veterans who were exposed through the cleanup at these atomic test sites to access the benefits and treatment they earned.

Through Resolution No. 118: *Environmental Exposures*, The American Legion supports efforts to expand access to VA healthcare benefits for veterans who have been exposed to toxic hazards while on active duty. We support legislative action that vigorously ensures veterans are properly compensated for disabilities that have a positive association with particular exposures.

The American Legion supports S.565 as currently written.

S.657

A bill to 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, and for other purposes.

Currently, VA does not automatically recognize veterans' exposure to herbicides while serving in Thailand during the Vietnam War era. VA does, however, acknowledge herbicide exposure on the perimeters of eight Thai Royal Air Force Bases for specific military occupational specialties. This limited recognition of exposure fails to properly address the likelihood that far more veterans who were stationed at these bases were similarly exposed to harmful toxic defoliants.

S.657 will automatically concede herbicide exposure for all veterans who served at military installations in Thailand during the Vietnam War era, regardless of the base, duty on the perimeter, or military occupational specialty. As a result, the presumptive conditions currently associated with herbicide exposure, including spina bifida for children, will be applicable to all veterans who served at military installations in Thailand from Jan. 9, 1962 through June 30, 1976.

Through Resolution No. 35: *Agent Orange*, The American Legion supports legislation to provide entitlement to these presumptive conditions for those veterans who were exposed to Agent Orange while serving in areas other than the Republic of Vietnam where Agent Orange was tested, sprayed, or stored.⁶

The American Legion supports S.657 as currently written.

S.810 - Fair Care for Vietnam Veterans Act of 2021

To amend title 38, United States Code, to expand the list of diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who served in the Republic of Vietnam to include hypertension, and for other purposes.

The Fair Care for Vietnam Veterans Act restores an original provision of the National Defense Authorization Act (NDAA) for Fiscal Year 2021 that was stricken from the final version of the

⁶ The American Legion Resolution No. 35 (2016): [Agent Orange](#)

bill. While presumptive condition status was recognized for bladder cancer, hypothyroidism and Parkinsonism or Parkinson-like symptoms, the condition of hypertension remains unrecognized as such.

While hypertension was apparently removed from the NDAA as a compromise, The American Legion believes that compensating veterans for their service-connected disabilities should never be compromised. Once a positive association for a condition has been identified by the National Academy of Sciences, Engineering, and Medicine (NASEM) or another credible scientific agency, VA should recognize it as a presumptive condition without delay. In 2018, NASEM reported that sufficient evidence had been found for positive associations between Agent Orange/herbicide exposure and two conditions: hypertension and monoclonal gammopathy of undetermined significance (MGUS). Yet VA has failed to recognize them as presumptive conditions.

Through Resolution No. 180: *Designate Hypertension as a Presumptive Condition for Veterans Exposed to Agent Orange*, The American Legion supports the Fair Care for Vietnam Veterans Act of 2021 and calls on congress to pass this long overdue piece of legislation to ensure our Vietnam Veterans can finally receive the care they deserve.⁷

The American Legion supports S.810 as currently written.

S.927 - Toxic Exposure in the American Military (TEAM) Act

To improve the provision of health care and other benefits from the Department of Veterans Affairs for veterans who were exposed to toxic substances, and for other purposes.

The exposure of military personnel to toxic substances, both while deployed overseas or stationed at home, has been an ongoing issue across a range of wars and generations. These exposures have resulted in conditions and illnesses among veterans which can have long-lasting adverse effects on health and quality of life. Throughout The American Legion's history, the organization has vigorously fought an ongoing struggle for service-connected disability benefits for adverse health conditions linked to exposures from various toxic substances. Our members have passed resolutions on toxic exposure related to Gulf War hazards, Agent Orange, ionizing radiation, and depleted uranium. Over the past 20 years, increased concern has been raised regarding veterans' illnesses and disabilities and their connection to burn pit exposure.

S.927, the TEAM Act, will expand training on toxic exposure issues for VA healthcare personnel and require VA to develop a questionnaire for primary care appointments, to determine whether a veteran may have been exposed to toxic substances during service. It will improve VA healthcare for veterans exposed to toxic substances by guaranteeing that treatment for conditions related to such exposures are covered free of charge. Additionally, it will establish an independent scientific commission to research the effects of toxic exposure in veterans and report the commission's findings to VA and Congress.

⁷ The American Legion Resolution No. 180 (2016): [*Designate Hypertension as a Presumption Condition for Veterans Exposed to Agent Orange*](#)

Many veterans are often forced on an arduous journey through the VA claims process before receiving the healthcare they need for diseases that stem from toxic exposure during military service. In the worst cases, veterans of the wars in Iraq and Afghanistan die before they get the care they need for diseases that resulted from burn pit exposure. After the Vietnam War ended, it took another 20 years for veterans to get VA healthcare and benefits for Agent Orange exposure. This legislation will ensure that many veterans from more recent wars will not have to suffer the same fate. Through Resolution No.118: *Environmental Exposures*, The American Legion supports legislation that ensures presumptions for service-connected disabilities are all-inclusive.⁸

The American Legion supports S.927 as currently written.

**S.952 - Presumptive Benefits for Warfighters Exposed to Burn Pits
and Other Toxins Act of 2021**

A bill to amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, and for other purposes.

S.952 will remove the burden of proof for veterans to prove direct service-connection for illnesses related to burn pits and other toxic exposures. Instead, it requires veterans to submit documentation that they received campaign medals associated with the Global War on Terrorism or the Gulf War, and that they suffer from a qualifying health condition. Some of these presumptive conditions include but are not limited to sarcoidosis, pulmonary fibrosis, pleuritis, emphysema, brain cancer, and granulomatous disease.

In addition, the VA, in conjunction with the National Academies of Sciences, Engineering, and Medicine (NASEM), is directed to evaluate petitions to determine whether there is scientific evidence of a link between additional diseases and exposure to one of the covered toxins, for potential addition to the list of presumptive diseases. Following the recommendation by NASEM, the VA must add that disease to the list or publicly state why it is not being added.

Finally, the bill will create a presumption for disability or death incurred by a civilian federal employee of the Department of Defense, Department of State, or an element of the intelligence community, caused by the same list of diseases, and will make it compensable under the Federal Employees' Compensation Act (FECA) if that employee had served overseas in support of military operations.

This legislation does for victims of toxic exposures and burn pits what the Agent Orange Act of 1991 did for veterans who were exposed to Agent Orange in Vietnam. The presumption of exposure and service connection which will be established by the bill is long overdue for veterans who were exposed to toxic emissions.

⁸ The American Legion Resolution No. 118 (2016): *Environmental Exposures*

The American Legion advocacy on the Agent Orange issue included the filing of an October 2018 amicus brief in the case of *Procopio v. Wilkie*, which led to the recognition of presumptive conditions for Vietnam War veterans who served within 12 nautical miles of the Vietnamese coast. It is our fervent hope that judicial action is not necessary to get burn pit survivors the healthcare they have earned. We will continue to support all-inclusive efforts to ensure veterans receive VA healthcare and benefits for diseases related to burn pits and other toxic exposures.

Through Resolution No. 118: Environmental Exposures, The American Legion supports efforts to expand access to VA healthcare benefits for veterans who have been exposed to toxic hazards while on active duty. We support legislative action that vigorously ensures veterans are properly compensated for disabilities that have a positive association with particular exposures.⁹

The American Legion supports S.952 as currently written.

S.1188 - SFC Heath Robinson Burn Pit Transparency Act

To direct the Secretary of Veterans Affairs to notify Congress regularly of reported cases of burn pit exposure by veterans, and for other purposes.

Far too often, service connection for a disability claim must be determined on the strength of lay statements submitted by the veteran and third parties. This is necessitated by the fact that many exposures to burn pits are entirely undocumented. While the U.S. Court of Appeals for Veterans Claims has ruled more than once that lay statements must be properly considered as evidence by VA examiners, The American Legion has seen many claims and appeals denied because lay statements were not properly considered.¹⁰

S.1188 emphasizes the importance of self-reported cases of burn pit exposure to the granting of VA disability benefits from such exposure. It also provides for the cross-referencing of such reporting with the Airborne Hazards and Open Burn Pit Registry. Even if veterans were not included in this registry before their death, this bill will direct VA to “permit a survivor of the deceased veteran to report to the registry ... the exposure of the veteran to toxic airborne chemicals and fumes caused by an open burn pit.”

Furthermore, this bill reinforces the importance of veterans’ lay statements about their health conditions by noting that a “covered veteran” can report to a VA medical facility for treatment “that the veteran describes as being related to, or ancillary to, the exposure of the veteran to toxic airborne chemicals and fumes caused by open burn pits at any time while serving in the Armed Forces.”

This legislation increases the value of lay statements by providing “covered” status to veterans who state that their conditions are related to in-service toxic exposure. It also increases the value of lay statements made by surviving spouses, who also can report toxic exposures to burn pits on

⁹ The American Legion Resolution No. 118 (2016): *Environmental Exposures*

¹⁰ *McLendon v. Nicholson*, 20 Vet.App. 79, 81 (2006); *Jandreau v. Nicholson*, 492 F.3d 1372, 1376-1377 (Fed. Cir. 2007); and *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009).

behalf of their deceased spouses. The American Legion commends such provisions because they recognize the probative value of lay statements by veterans, or their surviving spouses, in establishing service connection for illnesses related to toxic exposure.

Through Resolution No. 118: Environmental Exposures, The American Legion supports efforts to expand access to VA healthcare benefits for veterans who have been exposed to toxic hazards while on active duty.¹¹ We support legislative action that vigorously ensures veterans are properly compensated for disabilities that have a positive association with particular exposures.

The American Legion supports S.1188 as currently written.

CONCLUSION

Chairman Tester, Ranking Member Moran, and distinguished members of the subcommittee, The American Legion thanks you for your leadership on this matter and for allowing us the opportunity to explain the position of our nearly two million members. For additional information regarding this testimony, please contact Mr. Lawrence Montreuil at The American Legion's Legislative Division at (202) 861-2700 or lmontreuil@legion.org.

¹¹ The American Legion Resolution No. 118 (2016): *Environmental Exposures*