

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

**MAY 5, 2021**

Chairman Takano, Ranking Member Bost, and distinguished members of the full 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). We thank you for your diligent efforts to ensure that these issues are brought to light during today's hearing.

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 suffer from toxic exposures. We look forward to working with this committee to ensure American veterans of all generations receive the care and benefits they deserve.

**H.R. 1355 - 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.

H.R. 1355 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 order<sup>1</sup>, are unnecessary.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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 H.R. 1355 as currently written.**

### **H.R. 1585 - 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

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<sup>1</sup> 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>

<sup>2</sup> “The Casualties of K2.” The American Legion Magazine, March, 2021. <https://drive.google.com/file/d/1epQf8LrPbhqOctXFw13NBv6ouFHiMerr/view?usp=sharing>

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

<sup>4</sup> The American Legion Resolution No. 118 (2016): *Environmental Exposures*

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.”<sup>5</sup>

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 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 H.R. 1585 as currently written.**

### **H.R. 1972 - 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 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

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<sup>5</sup> 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>.

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.<sup>6</sup>

**The American Legion supports H.R. 1972 as currently written.**

### **H.R. 2127 - 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.

H.R. 2127, 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.

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.<sup>7</sup>

**The American Legion supports H.R. 2127 as currently written.**

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<sup>6</sup> The American Legion Resolution No. 180 (2016): [\*Designate Hypertension as a Presumption Condition for Veterans Exposed to Agent Orange\*](#)

<sup>7</sup> The American Legion Resolution No. 118 (2016): [\*Environmental Exposures\*](#)

**H.R. 2372 - 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.*

H.R. 2372 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.

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.<sup>8</sup>

**The American Legion supports H.R. 2372 as currently written.**

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<sup>8</sup> The American Legion Resolution No. 118 (2016): *Environmental Exposures*

## **H.R. 2436 - 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.<sup>9</sup> 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 H.R. 2436 as currently written.**

## **H.R. 2607 – Fairly Assessing Service-related Toxic Exposure Residuals (FASTER) Presumptions Act**

*To amend title 38 of the U.S. Code to establish in the VA procedures to determine presumptions of service connection based on toxic exposure.*

In the past, it has taken as long as 20 years between the end of a conflict and the recognition of presumptive conditions for veterans' disability benefits. Despite U.S. troops being withdrawn from South Vietnam in 1973, VA only recognized presumptive conditions associated with service in 1993.<sup>10</sup> After Operation Desert Storm took place in 1991, VA failed to recognize presumptive conditions until 2010.<sup>11</sup> Even when Gulf War veterans did file claims, in March 2016 the House

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<sup>9</sup> The American Legion Resolution No. 118 (2016): *Environmental Exposures*

<sup>10</sup> "[Secretary Brown Approves Service-Connection for Respiratory Cancers and Multiple Myeloma: Regulations Finalized](#)," *Agent Orange Review*, Vol. 11, No. 1, October 1994.

<sup>11</sup> "[VA Publishes Final Regulation on "Presumptive" Illnesses for Gulf War and Iraq, Afghanistan Veterans](#)," Department of Veterans Affairs News Release, Sept. 28, 2010.

Veterans Affairs Committee held a hearing where they found only 16 percent of claims submitted by Gulf War veterans for presumptive conditions had been granted.<sup>12</sup>

Such a long process is opaque and disgraceful. Veterans continue to fall ill and die from illnesses caused from service-connected toxic exposure while their surviving spouses are forced to deal with an onerous and bureaucratic VA claims process. Reforming this process and taking the burden of proving service-connected exposure off the veteran will ensure veterans can more easily access their rightful disability benefits. It will also ensure surviving spouses receive Dependency and Indemnity Compensation swiftly.

H.R. 2607 would create a new process for establishing presumptions of service connections from toxic exposure based on recommendations of the Institute of Medicine (IOM) published in a 2008 report.<sup>13</sup> This process would include a Formal Advisory Committee on Toxic Exposure, with at least one member appointed who is a representative of disabled veterans. The Committee would be required to submit a biennial report to Congress which would be made publicly available. Additionally, this legislation would provide training for VA claims adjudicators to improve their ability to handle compensation and pension claims that relate to toxic exposure.

Through Resolution No. 118: *Environmental Exposures*, The American Legion supports efforts to expand access to VA healthcare benefits for veterans exposed to toxic hazards, implement an all-inclusive policy, and expeditiously conduct scientific investigations through IOM.<sup>14</sup>

**The American Legion supports H.R. 2607 as currently written.**

**H.R. 2368 – the Conceding Our Veterans’ Exposures Now and Necessitating Training (COVENANT) Act**

*To amend title 38 of the U.S. Code to establish a presumption of service connection for illnesses associated with exposure to certain airborne hazards, and for other purposes.*

Although the VA has been collecting data on toxic exposure since the beginning of the Wars in Iraq and Afghanistan, it has not established presumptive conditions related to toxic exposure for those conflicts.<sup>15</sup> Yet, since then, a significant amount of research has been published that relates toxic exposure to illnesses suffered by veterans of these wars who were deployed to the Middle East and Africa. For example, a 2015 study found that ambient particulate matter was a cause for concern as the chemical might increase inflammation which can cause respiratory diseases.<sup>16</sup>

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<sup>12</sup> [Twenty-five years after the Persian Gulf War: An assessment of Veterans’ Affairs disability claim process with respect to Gulf War Illness](#),” 114<sup>th</sup> Congress, 2<sup>nd</sup> Session, March 15, 2016, Serial No. 114-59, U.S. GPO, Washington, 2017.

<sup>13</sup> See “Improving the Presumptive Disability Decision-Making Process for Veterans,” The National Academies Press, 2008.

<sup>14</sup> The American Legion Resolution No. 118 (2016): *Environmental Exposures*.

<sup>15</sup> [“VA expected Iraq, Afghanistan wars would lead to toxic exposures, officials say.”](#) Stars and Stripes, April 2, 2021.

<sup>16</sup> [“Evaluation of the Pulmonary Toxicity of Ambient Particulate Matter from Camp Victory, Iraq”](#), by K.L. Porter, et al, Journal of Toxicology and Environmental Health, Part A, Vol. 78, 2015, Issue 23-24.

In May 2020, the results of a pilot study were published on Iraq War veterans who were exposed to airborne hazards. Findings showed an increase in respiratory clinical symptoms and a decrease in overall physical fitness upon the veterans return home.<sup>17</sup> Despite these findings, and others in the scientific community that corroborate it, VA has not shown enough initiative in recognizing presumptive conditions for veterans who were exposed to toxins while serving overseas.

H.R. 2368 would reform and streamline VA benefits processes by conceding service-exposure to certain airborne hazards present in specific locations during a veteran's service regardless of source. It includes over 15 presumptive conditions covering respiratory conditions and several types of cancer. This legislation also covers veterans who served on or after August 2, 1990 and performed active military service while deployed to one of eight different countries and veterans who served on or after September 11, 2011, in one of nine different countries.

It would also require compensation and pension examinations and medical opinions for non-presumptive conditions through VA and ensure qualifying veterans are granted Priority Group 6 VHA healthcare. Additionally, it would provide the Secretary of VA authority to stay any claims made by covered veterans after the legislation has passed but before the VA has implemented its provisions.

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.<sup>18</sup> We support legislative action that vigorously ensures veterans are properly compensated for disabilities that have a positive association with particular exposures. As Congress considers new procedures to deal with contemporary toxic exposure issues, it is crucial the lessons of previous generations are taken into consideration.

**The American Legion supports H.R. 2368 as currently written.**

## CONCLUSION

Chairman Takano, Ranking Member Bost, and distinguished members of the full committee, 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](mailto:lmontreuil@legion.org).

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<sup>17</sup> "[A Pilot Study of Airborne Hazards and Other Toxic Exposures in Iraq War Veterans](#)," by Chelsey Poisson, et al, International Journal of Environmental Research and Public Health, May 9, 2020.

<sup>18</sup> The American Legion Resolution No. 118 (2016): *Environmental Exposures*