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STATEMENT OF
GERALD T. MANAR, DEPUTY DIRECTOR
NATIONAL VETERANS SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES
BEFORE THE
VETERANS DISABILITY BENEFITS COMMISSION
WITH RESPECT TO

WHETHER SOCIAL SECURITY DISABILITY INSURANCE (SSDI) DATA SHOULD BE INCLUDED IN ITS ANALYSIS OF COMPENSATION AND EARNINGS OF SERVICE DISABLED VETERANS.

WASHINGTON, DC

MAY 19, 2006

General Scott and members of the Commission, thank you for the opportunity to present the views of the men and women of the American Legion, Blinded Veterans Association, Disabled American Veterans, Military Order of the Purple Heart and Veterans of Foreign Wars of the United States.

The Commission, by press release, has denied speculation that the Commission intends to recommend offsets or reduction in compensation against SSDI income. Lady and gentlemen, most of you are veterans and many of you are heroes of both conventional combat, and also the horrific non-conventional combat that they call policy making here in Washington. Yet, we do not find that the dialogue within this Commission is entirely consistent with your press release, or at all comforting. While the language in the record is often veiled, the intent of this narrowly focused effort is clear to us. If pursued in the present context, there can be little doubt of the outcome, or that it should be of concern to all veterans.

While we have reservations about the direction of debate in the Commission, we also have serious concerns about how the law of unintended consequences¹ affects your actions. When your task is completed, you will have moved veterans' policy forward to some yet undefined point. Some consider this Commission comparable to the commission chaired by General Omar Bradley just past the midpoint of the last century. Certainly, the Bradley Commission was a milestone in veterans' benefits policy, a reference still used today. What will be

¹ The law of unintended consequences, often cited but rarely defined, is that actions of people—and especially of government—always have effects that are unanticipated or "unintended." Norton, Rob, "Unintended Consequences", [The Concise Encyclopedia of Economics](http://www.econlib.org/library/Enc/UnintendedConsequences.html). Liberty Fund, Inc. Ed. David R. Henderson. Library of Economics and Liberty. 10 May 2006. <<http://www.econlib.org/library/Enc/UnintendedConsequences.html>>.

the legacy of this Commission is still to be determined. While you may intend no harm to America's present and future veterans, we must be more concerned with the practical consequences of your actions than with your intentions.

The vote that you may take today on this issue will certainly be material to the Commission's legacy: to how this Commission will affect the lives of America's military men and women, and their families, and how history and the veteran community remember the people who served here on this Commission. Many of you have already found a place in American history by your dedicated service and demonstrated valor; but history will remember you for your service on this Commission as well.

Perhaps you have heard us say that the timing of this Commission, the effort to revisit what America owes its service men and women, past and present, is unfortunate. We are a country at war, and we will remain at war for the foreseeable future. Many of you are not strangers to conflict. You understand the pain of war because you have experienced it. We are veterans' advocates who have worked with Congress and VA to build and implement these programs, imperfect as they might be, to serve veterans and future veterans, I'm sure you also understand the concern that we feel as we watch them pulled apart and analyzed in ways that we don't always agree are entirely objective and pro veteran.

I mentioned "unintended consequences" and I return to that. We do not doubt your honor and sincerity; we do not doubt your intention to take your task seriously. We do not doubt that, in the end, many of your recommendations may very well be intended to address and offer solutions to correct problems with various benefit programs. However, we also have no doubt that most of your recommendations beneficial to veterans will be brushed aside as too costly while most of your recommendations reducing costs will be accepted by a Congress and Administration under pressure to reign in benefit costs. These are the unintended consequences of which we speak.

The Commission appears to us to be divided. While there are arguments to be made regarding the intellectual merits of further data analysis, there appears to those of us familiar with veterans programs, no question of where this analysis will go if it proceeds in the limited direction and context that its supporters are urging. It is necessarily a one sided argument against fairness and the best interests of veterans. We believe that the American people will share this view.

We will state our views of your legal position in requesting SSDI data in a few minutes. For now, let us discuss the practical consequences of such a move. We would anticipate that the data will show several things: the most obvious is that some severely disabled veterans participate in both programs. What it should also show is that not all severely disabled veterans who receive compensation also receive SSDI. And it would show that not all severely

disabled veterans who receive SSDI receive compensation, even though they may have disabilities which could be service connected. It might even show that some in service go to war so quickly that they don't even earn eligibility for SSDI before they are maimed in battle. Clearly, this data should encourage VA and Veteran Service Organizations to conduct outreach; however, outreach is not the mission of this Commission, and data is not necessary to correct eligibility deficiencies that are a disservice to those who pay a high price for our freedom.

You have corresponded with the parent Congressional Committees of the Commission, asking their views of the intent of Congress in establishing this Commission. The guidance they provided is mixed. Some have offered clear encouragement while another stated that they are not constitutionally authorized to advise you legally on the subject of what they intended when the legislation was passed. Indeed, two of the Committees you solicited for opinions held no hearings on this legislation so logically had no advice besides personal opinion to provide. Like most of us in Washington, they offered opinions. Like most they were to some extent contradictory and, like most, to be weighed and valued by the reader and not by any objective standard.

The arguments regarding the legal standing of these opinions have been both well debated already in this Commission and elsewhere. We urge you to recognize that these letters have no legal weight and should not factor into your decision to expand the scope of your inquiry. The legal question of the intent of Congress is one to be decided by the Courts, not Congressional Chairmen long after the fact.

Notwithstanding the legal issues, we expect that you may accept that the letters were from officials who did have some knowledge of what thoughts and discussion went into the decision to create the Commission. This being the case, as individual Commissioners you are likely to give the letters some weight before you vote today. Frankly, we think that you might have been better off without these opinions. While most appear to support including SSDI in the analysis, a careful reading of the letters reveals two problems. First, it is quite clear that they are merely an expression of what the ultimate customers of your final report would like to see today and not necessarily what they were thinking when the legislation was considered and passed. Second, and more important, they would like you to include not just SSDI but **all** benefit programs for disabled veterans, non-disabled veterans and civilians: basically, they would like an analysis of all benefit programs for disabled persons from not just the Federal establishment, but also state, local and private programs as well.

What these Congressional leaders do **not** tell you to do is to pick and choose which programs you should review. Chairman Warner said that “[w]e consider it essential that the Commission thoroughly review the **full range of benefits by the United States.**” Chairman Craig reminds the Commission to evaluate and assess “comparable disability benefits provided to individuals by the Federal

Government, State governments, and the private sector” and goes on to state that to look at only VA and DOD programs “to the exclusion of **others** will not provide Congress with a complete understanding of benefits we provide veterans and their survivors.” Chairman Hunter said that the “Commission would be remiss in its responsibilities if it were to choose to ignore **any** form of Federal compensation provided to such veterans.” [Emphasis provided] Interestingly, Senator Warner accepts your word that review and analysis of all these other programs will not delay your report.

Any decision that arbitrarily limits the constellation of programs that would be considered is vulnerable to bias. The congressional chairmen appear to be sensitive to this problem. A report that only looks at SSDI, a benefit almost universally available to all citizens, but styled as a Federal benefit similar or redundant to veterans’ compensation, without the context of every other circumstanced group of citizens, would certainly invite a predictable conclusion, and, we would hope, rejection on that basis. If you decide that your charge is to review all Federal, state, local and private benefit programs, any report you provide which only encompasses data from selected Federal programs must be considered incomplete and subject to bias.

We believe that the leadership in these Committees responded to your inquiry by asking for far more than was contemplated in the original legislation, more than you have the resources or time to produce, and in all likelihood, more information than could ever prove useful. It appears to us that this is the price of extending this inquiry beyond benefits “attributable to military service”. However, once you go down this road, you will be honor bound to obtain it all, analyze it all and use it all. Failure to do so will almost certainly result in a report that is likely to be, at best, controversial, and, quite likely, vulnerable to criticism.

Once again, we believe that the Commission does not have the legal authority to request SSDI data. We also believe that these programs were created for totally distinct and separate reasons, that the criteria is different and the fact that some veterans may be eligible for both is irrelevant to your charter.

- “The commission shall carry out a study of the benefits under the laws of the United States that are provided to *compensate* and assist veterans and their survivors for disabilities and deaths *attributable* to military service.” Section 1502(a), Public Law 108-136, enacted November 24, 2003.

SSDI is not a benefit of the United States provided to compensate veterans for disabilities attributable to military service. SSDI is akin to an insurance or annuity program, paid to wage earners who, with their employers, paid taxes for a minimum period to the Social Security Administration. To receive SSDI, a qualifying wage earner must be “under

disability” and unable to work for a period of 12 months. No military service is required. It converts to Social Security retirement benefits at age 65 and, in practical form, constitutes an early distribution of reduced retirement benefits based on the wage earner’s inability to work due to physical disability from any source.

- Veterans’ disability compensation is not a disability insurance program. Military service members pay no premiums and may receive compensation for the residuals of a disease or injury incurred from the first day of their military service. No minimum service requirement exists. SSDI and veterans disability compensation are two completely separate programs. Any similarity between these programs is superficial. Consider the Lesser and Greater Panda. While they share the name “panda” they are, in fact, totally unrelated creatures.
- SSDI pays benefits only for total disability producing an inability to work. While veterans’ disability compensation may also pay benefits based on total disability, a service connected disability may entitle a veteran to no money whatsoever. Service connected disabilities are evaluated from zero percent to 100 percent disabling in increments of 10 percent. Interestingly, while disabilities are evaluated in gradations of 10 percent, benefits are asymmetric. Benefits for a totally disabled veteran without dependents is \$2,393 per month while a 10 percent evaluation fetches \$112 per month (less than 5 percent of the total). A 50 percent disabled veteran receives \$690 (29 percent) and a 90 percent disabled veteran receives \$1,436 (60 percent). SSDI pays nothing for a disability that does not cause unemployability.
- A veteran who receives total benefits from VA for service connected disabilities may also qualify for SSDI based solely on his service connected disabilities. On the other hand, there may be non-service connected disabilities that, independent of service connected disability, make him or her unemployable and eligible for SSDI (e.g., a veteran who has bilateral amputations is considered 100 percent service connected. It is quite possible for that veteran, with rehabilitation and training, to return to work. However, should he or she be disabled by a non-service connected cancer, he or she would be presumably eligible for SSDI based on her non-service connected disability.) Finally, veterans may become eligible for SSDI through a combination of service connected and non-service connected disabilities or solely as the result of a nonservice-connected disability.

- Veterans' records are protected by the Privacy Act. Although Congress has authorized VA to compare records with the Social Security Administration, that match is authorized solely to validate pension and other income based program integrity through income verification. See title 38, United States Code, sections 5317 and 5318. Obtaining a match of discrete VA claims records against SSDI information will require an act of Congress, and, consequently, delay the report of the Commission.

For these reasons, we urge you to vote against accessing SSDI data. We do not believe that Congress authorized you to do the match and analysis of SSDI data. If you conclude differently, you will surely incur additional administrative burdens, encounter privacy hurdles and, almost certainly, face legal opposition in the courts.

We ask that you limit your analysis and studies to programs clearly "attributable to military service." Do not confound the Commission report with a strategy that is vulnerable to criticism of bias or a preconceived agenda. To do so will undermine your efforts to produce a fair, useful and insightful tool for the welfare of future veterans just as General Bradley's Commission did a half century ago.