

**LAW REVIEW 16046**

**May 2016**

**Good News on VA Compensation and Health Care for Vietnam War Navy  
Veterans Exposed to Agent Orange**

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Update on Sam Wright

**11.0—Veterans' claims**

On May 19, 2016, the House of Representatives considered amendments to and passage of H.R. 4974, the proposed Military Construction and Veterans' Affairs and Related Agencies Appropriations Act for Fiscal Year 2017. Representative Chris Gibson of New York drafted, introduced, and successfully advocated for Amendment 1078:

None of the funds made available in this Act may be used to enforce VA Adjudication Manual M21-1, Part IV, Subpart ii, Chapter 1, Section H, Topic 28.h related to Developing Claims Based on Service Aboard Ships Offshore the Republic of Vietnam.

If included in the Act as finally passed by the House and Senate and signed by the President, Representative Gibson's amendment will correct the grave injustice that we (Little and Wright) discussed in detail in Law Review 16010 (February 2016) and Law Review 16017 (March 2016).

Representative Gibson spoke eloquently and at some length in favor of this amendment, and no Representative spoke against the amendment. The amendment was adopted on a voice vote, with no recorded votes against. After several other amendments (unrelated to this issue) were adopted and some were rejected, the House passed H.R. 4974 by a vote of 295-129. This bill is now being considered by the Senate. Reader: Please contact your two United States Senators and ask them to support including Representative Gibson's amendment, with exactly the same language, in the Senate bill.

During the debate, Representative Gibson spoke in favor of his amendment:

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<sup>2</sup> BA 1973 Northwestern University, JD 1976 University of Houston, LLM 1980 Georgetown University. Captain Wright served in the Navy and Navy Reserve as a Judge Advocate General's Corps Officer and retired in 2007. He is a life member of ROA. He served as the Director of ROA's Service Members Law Center from 2009m to 2015.

Mr. Chair, I am here this morning to bring forward an amendment that is for our sailors who fought in the Vietnam War. This is about ensuring they get the health care and benefits that they have earned through their service in Vietnam.

But in a broader sense, this is really about justice. This is about veterans who went forward and fought that war, a deeply unpopular war that divided our Nation. They were never asked about their political leanings or what their views were on the war. They simply did what they were ordered to do. They went forward and they gave their very best effort to serve us.

In the process of that war, we used Agent Orange to defoliate. In the case of these sailors, serving just offshore in Vietnam, we had ships that were involved in resupply operations at the ports and harbors, and they were vulnerable. They were vulnerable because there was vegetation near the ports and the harbors. As our countermeasure to that, we defoliated to give standoff for those ships to protect them.

But what we have learned over time, Mr. Chairman, is that that was poisoning our sailors, and anyone that was in close proximity. Now, and in fact in 1991, this body, along with the Senate and the President of the United States of America, enacted a law, the Agent Orange Act of 1991, that ensured that our veterans who were exposed to Agent Orange had access to the health care and benefits that they earned.

Regrettably, in 2002, executive overreach led to a rule that narrowed the interpretation of our law. Now it is so that you have to have served on the ground in Vietnam or in the Riverine Navy to get access to this law and these benefits.

Mr. Chairman, the people's representatives never spoke on that. This is an issue that we have dealt with time and again in this Chamber, both sides of the aisle, fighting back, fighting for our Article I prerogatives.<sup>3</sup> And this is very clear here. This body spoke. We said we had to try to make right what was wrong.

So now we have about 90,000 sailors that don't have access to health care. Mr. Chairman, be advised and be assured that Members of this body fight every day for these veterans in a case-by-case basis, and we win some, but we don't win all of them. It is just flatly wrong.

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<sup>3</sup> Representative Gibson is referring to Article I of the United States Constitution.

Mr. Chairman, what this amendment does is really ensure that our Article I prerogatives are secured. That we go back to the original language that we passed and the President signed.

I would ask all my colleagues on both sides of the aisle to support this amendment.<sup>4</sup>

We thank Representative Gibson for his persistence and leadership on this issue.

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<sup>4</sup> Congressional Record, May 19, 2016.