

No. 2020-1958

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IN THE  
**United States Court of Appeals  
for the Federal Circuit**

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AMANDA JANE WOLFE, PETER BOERSCHINGER,  
*Claimants-Appellees,*  
*v.*

DENIS McDONOUGH,  
Secretary of Veterans Affairs  
*Respondent-Appellee.*

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On Appeal from the United States Court of  
Appeals for Veterans Claims, No. 18-6091

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**BRIEF OF *AMICUS CURIAE***  
**NATIONAL LAW SCHOOL VETERANS CLINIC CONSORTIUM**  
**SUPPORTING CLAIMANT-APPELLEES**

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July 19, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF INTEREST**

**Case Number** 2020-1958

**Short Case Caption** Wolfe v. McDonough

**Filing Party/Entity** National Law School Veterans Clinic Consortium

**Instructions:** Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 07/14/2021

Signature: *Jillian Berner*

Name: Jillian Berner

<p><b>1. Represented Entities.</b> Fed. Cir. R. 47.4(a)(1).</p>	<p><b>2. Real Party in Interest.</b> Fed. Cir. R. 47.4(a)(2).</p>	<p><b>3. Parent Corporations and Stockholders.</b> Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>
<p>National Law School Veterans Clinic Consortium</p>		

Additional pages attached

**4. Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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**5. Related Cases.** Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court’s decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None/Not Applicable                       Additional pages attached


**6. Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

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**IDENTITY OF AMICUS CURIAE, ITS INTEREST IN THE CASE,  
AND SOURCE OF AUTHORITY TO FILE**

*Amicus Curiae* National Law School Veterans Clinic Consortium (the “NLSVCC” or “Consortium”) submits this brief in support of the position of the Claimant-Appellees, Amanda Jane Wolfe and Peter Boerschinger. The Board of the NLSVCC, a 501(c)(3) organization, authorized the filing of this brief.<sup>1</sup> All parties have consented to the filing of this brief.

The NLSVCC is a collaborative effort of the nation’s law school legal clinics dedicated to addressing the unique legal needs of U.S. military veterans on a pro bono basis. The Consortium’s mission is to gain support and advance common interests with the VA, Congress, state and local veterans service organizations, court systems, educators, and all other entities for the benefit of veterans throughout the country.

The NLSVCC exists to promote the fair treatment of veterans. It therefore is keenly interested in this case and is grateful for the

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<sup>1</sup> This brief’s writer is identified in the signature block. NLSVCC thanks and acknowledges law students Laretta Kramer, Leyna Brostowski, Peter-Gaye Howell, and Rachel Jacob and attorneys Blair Thompson, Jacqueline Condon, and Yelena Duterte for their valuable help in researching and editing the brief.



opportunity to advocate in support of veterans who have been unfairly impacted by the subject of this litigation.

**STATEMENTS PURSUANT TO FEDERAL RULE OF  
APPELLATE PROCEDURE 29(a)(4)(E)**

Under Federal Rule of Appellate Procedure 29(a)(4)(E) and Federal Circuit Rule 29(a), the NLSVCC states:

- a) No party's counsel has authored this brief in whole or part;
- b) No party or party's counsel has contributed money intended to fund the preparation or submission of this brief; and
- c) No other person has contributed money intended to fund the preparation or submission of this brief.

## ARGUMENT

### **I. Out-of-Pocket Medical Expenses Impose Substantial Financial and Mental Health Burdens on Veterans.**

- a. Research shows that financial stress, including debt, is linked to veteran suicide.

Veterans are at higher risk of death by suicide than non-veterans.<sup>1</sup> The number of annual veteran suicides continues to rise each year despite a consistent decrease in the overall veteran population.<sup>2</sup> Although veterans only made up eight percent of the total US population in 2017, they accounted for 13.8 percent of all US adult suicides, making veterans almost two times as likely to die by suicide than the general civilian population.<sup>3</sup>

The U.S. Department of Veterans Affairs (VA) has found that adverse social determinants of health are strong indicators of suicide risk among veterans.<sup>4</sup> Adverse social determinants of health include financial problems, employment problems, housing instability, and lack of access to health care.<sup>5</sup> VA has identified the seven major adverse determinants affecting veterans and their risk of suicide as “violence, housing instability, financial or employment problems, legal problems, familial or social problems, lack of access to health care and transportation, and nonspecific

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<sup>1</sup> U.S. DEPARTMENT OF VETERANS AFFAIRS, NATIONAL VETERAN SUICIDE PREVENTION ANNUAL REPORT 3-4 (2020), <https://www.mentalhealth.va.gov/docs/data-sheets/2020/2020-National-Veteran-Suicide-Prevention-Annual-Report-11-2020-508.pdf>.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.* at 13.

<sup>4</sup> John R. Blosnich et al., *Social Determinants and Military Veterans' Suicide Ideation and Attempt; a Cross-sectional Analysis of Electronic Health Record Data*, US DEPARTMENT OF VETERANS AFFAIRS, VA PITTSBURGH HEALTHCARE SYSTEM 1 (Nov. 19, 2019), <https://link.springer.com/content/pdf/10.1007/s11606-019-05447-z.pdf>.

<sup>5</sup> *Id.* at 2, 4-6.

psychosocial needs.”<sup>6</sup> Of these determinants, financial problems were the third most common experienced by veterans with suicidal ideation.<sup>7</sup>

Recent medical research published in the *American Journal of Epidemiology* shows that “financial strain prospectively predicted suicide attempts” in American adults.<sup>8</sup> The research revealed that “financial debt and crises” are “significantly and positively associated with subsequent suicide attempts.”<sup>9</sup>

Many veterans experience financial hardship upon reintegration into civilian life and continue to struggle with financial issues over time. Just over one-third of veterans reported “trouble paying their bills in the first few years after leaving the military,” with about 28 percent receiving unemployment, 12 percent enrolled in federal food assistance programs, and 16 percent struggling to access and afford critical medical care for themselves and their families.<sup>10</sup> Further, financial issues are more common for younger, post-9/11 veterans, and veterans who survived traumatic in-service events, as well as those suffering from post-traumatic stress.<sup>11</sup>

Medical research indicates that “financial strain triggered by the COVID-19 pandemic—including financial crises, job loss, and lower income—has potential to

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<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 4 (“The category of non-specific psycho-social needs was the most prevalent SDH (6.9%), followed by housing instability (6.0%) and employment/financial problems (3.5%).”).

<sup>8</sup> Eric B. Elbogen et al., *Financial Strain and Suicide Attempts in a Nationally Representative Sample of US Adults*, AM. J. OF EPIDEMIOLOGY (2020), available at <https://academic.oup.com/aje/article/189/11/1266/5874604> (last visited Apr. 21, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> Kim Parker et al., *The American Veteran Experience and the Post-9/11 Generation*, PEW RESEARCH CENTER 5, 21-22 (2019), available at <https://www.pewresearch.org/social-trends/2019/09/09/readjusting-to-civilian-life/>.

<sup>11</sup> *Id.* at 21-22.

contribute to higher rates of suicide.”<sup>12</sup> VA’s stated mission is to “fulfill President Lincoln’s promise ‘To care for him who shall have borne the battle, and for his widow, and his orphan’ by serving and honoring the men and women who are America’s veterans.”<sup>13</sup> Because financial stressors are strong predictors of veteran suicide, and veterans are at a higher risk of death by suicide than non-veterans, it is imperative that VA abide by the direction of Congress to reimburse certain out-of-pocket expenses that veterans enrolled in VA’s health care system incur for obtaining emergency treatment at non-VA healthcare facilities for non-service-connected conditions.

- b. Disabled Veterans reliant on VA benefits for income do not have the financial capability to withstand medical expenses incurred in emergencies.

United States Navy veteran Frank Edwards<sup>14</sup> was unfortunately involved in a car accident in 2006 when he was driving and hit black ice. His injuries were so severe that he had a shattered pelvis, five broken discs in his back, and severe brain bleeding. When the accident occurred, Mr. Edwards was unemployed and in receipt of a 100 percent disability rating for service-connected conditions and total disability due to individual unemployability, resulting in monthly income of just

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<sup>12</sup> Eric B. Elbogen et al., *Financial Strain and Suicide Attempts in a Nationally Representative Sample of US Adults*, AM. J. OF EPIDEMIOLOGY 1273 (2020), available at <https://academic.oup.com/aje/article/189/11/1266/5874604> (last visited Apr. 21, 2021).

<sup>13</sup> *About VA*, US DEPARTMENT OF VETERANS AFFAIRS, [https://www.va.gov/ABOUT\\_VA/index.asp](https://www.va.gov/ABOUT_VA/index.asp) (last visited Apr. 21, 2021).

<sup>14</sup> Mr. Edwards is a client of the Betty and Michael D. Wohl Veterans Legal Clinic at Syracuse University College of Law, a member of the National Law School Veterans Clinic Consortium.

over \$3,000. After his initial recovery, Mr. Edwards required emergency medical treatment again for chronic pain and received treatment at a non-VA facility.

The bill for Mr. Edwards's treatment—for over \$5,000 worth of medical treatment—was sent to him. He began receiving calls from a collection agency after he was unable to pay this large bill, which was almost twice the amount of his monthly benefits income—his sole source of income. Unbeknownst to Mr. Edwards when he received a call from the collection agency, he had been deemed responsible for paying the full balance of his emergency treatment, despite the fact that this treatment had only been sought at a non-VA facility due to the emergent nature of the injuries suffered in his serious car accident. As an unemployable, totally disabled veteran, this bill placed grave financial hardship on Mr. Edwards. Unfortunately, there are many other veterans such as Mr. Edwards who have suffered these consequences due to the VA's harmful policies and practices.

- c. Data on Veterans' socioeconomic status indicates that medical expenses impose significant financial burdens on them.
  - i. *Veterans Increasingly Rely on Public Programs for Health Care Coverage*

Similar to other working-class and middle-class Americans, veterans are increasingly relying on public health programs.<sup>15</sup> Between 2000 and 2016, the percentage of veterans who relied on VA as their sole source of health care coverage

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<sup>15</sup> Jessica L. Adler, *Veterans, Like Other Working- and Middle-Class Americans, Increasingly Rely on Public Health Programs*, 108 AM. J. OF PUB. HEALTH 298 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803823/pdf/AJPH.2017.304274.pdf>.

tripled from four percent to 11.3 percent.<sup>16</sup> Further, according to a 2016 report from the RAND Corporation, although the veteran population has fallen 21 percent since 1980, the number of veterans who use VA healthcare has increased “substantially.”<sup>17</sup> Specifically, there were 2.5 million VA patients in 1995 and 5.9 million by 2014.<sup>18</sup>

This increase in reliance on VA healthcare clearly correlates with periods of service. Among veterans who had served “in theater” in the Vietnam War, 26 percent have accessed VA outpatient care, and 12 percent have accessed VA inpatient care.<sup>19</sup> However, between 2002 and 2015, 62 percent of post-9/11 veterans sought care from the VA.<sup>20</sup> One explanation for this could be that post-9/11 veterans “are generally less economically advantaged” than other veterans; they “are more likely to be unemployed or impoverished than Vietnam-era and pre-9/11 veterans.”<sup>21</sup>

Analyzing veterans’ heavy reliance on public health care, and more specifically VA healthcare, in relation to their socioeconomic status evidences an often-grim financial situation. Out-of-pocket medical costs, which are often unexpected, place a significant amount of financial pressure on American families. A 2014 study analyzing the effects out-of-pocket expenses on American households in the context

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

of the Affordable Care Act painted a serious picture of financial burden and distress.<sup>22</sup> The study showed that, in 2014, 9.28 million Americans were pushed into near poverty, or 150 percent of the federal poverty line, when their medical outlays were subtracted from their family incomes.<sup>23</sup> Further, 7.013 million Americans were lowered into poverty (below 100 percent of the federal poverty line), and 3.946 million Americans were pushed into the extreme poverty range, or below 50 percent of the federal poverty line, due to the immense burden of medical out-of-pocket costs.<sup>24</sup> Demonstrative of the devastating financial effects of out-of-pocket medical costs, this study, although in the context of a non-VA healthcare program, is important in understanding the impact of medical out-of-pocket costs in comparison with individual and family income.

Moreover, a notable percentage of veterans fall below the federal poverty line *before* medical outlays are even accounted for.<sup>25</sup> The veteran “working-poor” is defined as those veterans who are participating in the labor force and whose income is at or below the federal poverty level.<sup>26</sup> The labor force consists of those individuals between the ages of 18 and 64 who are either employed or actively looking for employment.<sup>27</sup> In 2015, there were 7.2 million veterans considered to be

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<sup>22</sup> See Andrea S. Christopher et al., *The Effects of Household Medical Expenditures on Income Inequality in the United States*, 108 AM. J. OF PUB. HEALTH 351 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803800/pdf/AJPH.2017.304213.pdf>.

<sup>23</sup> *Id.* at 352.

<sup>24</sup> *Id.*

<sup>25</sup> See *The Veteran Working-Poor: The Relationship between Labor Force Activity and Poverty Status*, U.S. DEPT OF VETERANS AFF. (2017), [https://www.va.gov/vetdata/docs/SpecialReports/The\\_Veteran\\_Working\\_Poor.pdf](https://www.va.gov/vetdata/docs/SpecialReports/The_Veteran_Working_Poor.pdf).

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 4.



a part of the labor force, almost 341,000 of whom fell below the poverty level—nearly five percent of the veteran labor force.<sup>28</sup>

ii. *Veterans’ Supplemental Health Care Coverage Use and Income Level*

This Court’s decision in *Wolfe v. Wilkie* will significantly affect veterans enrolled in VA health care who incur medical costs that are not covered by their insurance after visiting non-VA facilities in emergency situations. According to a 2019 survey, when asked about supplemental health insurance coverage, veterans reported that “about half of enrollees (52.1%) reported Medicare coverage, compared to 7.0 percent who reported Medicaid coverage, 20.7 percent TRICARE coverage, and 26.2 percent private insurance coverage.”<sup>29</sup>

By law, most of these supplemental health care coverage options are intended to assist those of lower socioeconomic standing. For example, Medicare is intended for individuals at least 65 years of age or with disabilities.<sup>30</sup> Medicaid is only available to individuals up to 138 percent of the Federal Poverty Level.<sup>31</sup> Medicaid eligibility “accounts for nearly half of uninsured Veterans and about one-third of their family members who are eligible for Medicaid coverage under the ACA in states with expanded coverage.”<sup>32</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> Z. Joan Wang et al., *2019 Survey of Veteran Enrollees’ Use of Health Care*, DATA FINDINGS REPORT 31 (2020), [https://www.va.gov/HEALTHPOLICYPLANNING/SOE2019/2019\\_Enrollee\\_Data\\_Findings\\_Report-March\\_2020\\_508\\_Compliant.pdf](https://www.va.gov/HEALTHPOLICYPLANNING/SOE2019/2019_Enrollee_Data_Findings_Report-March_2020_508_Compliant.pdf).

<sup>30</sup> *Id.* at 29-30.

<sup>31</sup> *Id.* at 30.

<sup>32</sup> *Id.*

Many veterans have to seek medical care at non-VA facilities because they cannot get care at a VA facility quickly. When asked why veterans chose to use health care services other than VA's, approximately 34 percent of respondents answered that they "required immediate attention and could not get [an] appointment at [a] VA" facility.<sup>33</sup> Further, members of VA Priority Groups 1 through 3 were more likely than the rest to identify need for immediate care as a reason for seeking out-of-network care.<sup>34</sup> Members of these priority groups are those who have a service-connected disability, a former prisoner of war, and/or received a Purple Heart medal and are the highest priority groups for VA healthcare.<sup>35</sup> Therefore, the veterans seeking emergency care from non-VA facilities are very likely those whose injuries were incurred during or as a result of their service. If VA's "highest priority" veterans—those who have service-connected disabilities that are at least 50 percent disabling, who were prisoners of war, or who were wounded in combat—are having difficulty getting prompt medical care from VA, it is likely that it is even more difficult for veterans who do not fall into these high-priority categories. When VA refuses to reimburse veterans for out-of-pocket medical expenses incurred at non-VA facilities in these situations, VA punishes veterans for its own inefficiencies.

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<sup>33</sup> *Id.* at xix.

<sup>34</sup> *Id.*

<sup>35</sup> VA Priority Groups, US DEP'T OF VETERANS AFFAIRS, [www.va.gov/health-care/eligibility/priority-groups/](http://www.va.gov/health-care/eligibility/priority-groups/) (last visited Apr. 21, 2021).

The majority of veterans who obtain supplemental health coverage choose Medicare.<sup>36</sup> Of this population, the plurality of enrollees earns less than \$35,000 annually.<sup>37</sup> It is important to consider the significant impact that unexpected medical bills will have on veterans of lower economic status. In the above survey, VA found that over 40 percent of veterans who earned below \$35,000 annually reported that their self-reported physical health status was “fair” or “poor.”<sup>38</sup> Similarly, this same population reported the highest proportion of poor mental health status.<sup>39</sup> If these veterans seek emergency treatment from a non-VA hospital and are denied total coverage, this could leave our veterans financially devastated and unable to access necessary medical care.

iii. *The Impact of COVID-19 on Veteran Income and Employment*

February 2020 marked the beginning of a period of financial stress for almost all Americans.<sup>40</sup> Unemployment rates dramatically increased as businesses laid off employees to cope with the effects of operating during a pandemic.<sup>41</sup> Veterans were not excluded from the economic loss experienced throughout the COVID-19 pandemic. Total veteran unemployment, in April of 2020, more than doubled from

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<sup>36</sup> Z. Joan Wang et al., *2019 Survey of Veteran Enrollees' Use of Health Care*, DATA FINDINGS REPORT 56 (2020), [https://www.va.gov/HEALTHPOLICYPLANNING/SOE2019/2019\\_Enrollee\\_Data\\_Findings\\_Report-March\\_2020\\_508\\_Compliant.pdf](https://www.va.gov/HEALTHPOLICYPLANNING/SOE2019/2019_Enrollee_Data_Findings_Report-March_2020_508_Compliant.pdf).

<sup>37</sup> *Id.* at 56.

<sup>38</sup> *Id.* at 50.

<sup>39</sup> *Id.* at 53.

<sup>40</sup> See *Unemployment Rates During the COVID-19 Pandemic: In Brief*, Congressional Research Service 1 (Jan. 12, 2021), <https://fas.org/sgp/crs/misc/R46554.pdf>.

<sup>41</sup> *Id.*

4.1 percent to 11.7 percent.<sup>42</sup> According to the Bureau of Labor Statistics, unemployment rates in 2020 reached a height of 6.5 percent for male veterans and 6.7 percent for female veterans.<sup>43</sup> 581,000 veterans were unemployed in 2020, and younger veterans (between 25 and 54) made up over half of this number.<sup>44</sup>

COVID-19's impact on veteran unemployment also varied based on the period in which the veteran served. Post-9/11 veteran unemployment saw a significant increase in 2020.<sup>45</sup> Unemployment among this sector of veterans rose from 4.1 percent in March 2020 to 13 percent in April 2020.<sup>46</sup> Younger post 9/11 veterans (between ages 18 and 24) experienced the greatest impact, with an unemployment increase from 4.9 percent to 36.1 percent in April 2020.<sup>47</sup> Post-9/11 female veterans' unemployment rate more than tripled, increasing from 6.2 percent in March 2020 to 20 percent in April 2020.<sup>48</sup>

As mentioned above, medical research indicates that “financial strain triggered by the COVID-19 pandemic—including financial crises, job loss, and lower income—has potential to contribute to higher rates of suicide.”<sup>49</sup> Although early

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<sup>42</sup> *The Employment Situation of Veterans*, INST. FOR VETERANS AND MIL. FAMILIES (April 2020), [https://ivmf.syracuse.edu/wp-content/uploads/2020/05/IVMF-Monthly-Employment-One\\_pager-FINAL-May-2020.pdf](https://ivmf.syracuse.edu/wp-content/uploads/2020/05/IVMF-Monthly-Employment-One_pager-FINAL-May-2020.pdf).

<sup>43</sup> EMPLOYMENT SITUATION OF VETERANS – 2020, BUREAU OF LABOR STATISTICS, US DEP'T OF LABOR 1 (2021), <https://www.bls.gov/news.release/pdf/vet.pdf>.

<sup>44</sup> *Id.* at 1.

<sup>45</sup> See *The Employment Situation of Veterans*, INST. FOR VETERANS AND MIL. FAMS. (April 2020), [https://ivmf.syracuse.edu/wp-content/uploads/2020/05/IVMF-Monthly-Employment-One\\_pager-FINAL-May-2020.pdf](https://ivmf.syracuse.edu/wp-content/uploads/2020/05/IVMF-Monthly-Employment-One_pager-FINAL-May-2020.pdf).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Eric B. Elbogen et al., *Financial Strain and Suicide Attempts in a Nationally Representative Sample of US Adults*, AM. J. OF EPIDEMIOLOGY 1273 (2020), available at <https://academic.oup.com/aje/article/189/11/1266/5874604> (last visited Apr. 21, 2021).

2020 was an unprecedented time in our nation's history, these unemployment rates demonstrate the significant impact that the pandemic has had on veteran workers and further signals the kind of economic, mental, and emotional turmoil veterans face today, as the country begins to recover from the pandemic.

- d. Research shows that out-of-pocket medical expenses impose an even greater financial burden on veterans who are women and people of color.

Women are the fastest-growing group in the veteran population.<sup>50</sup> In 2018, about nine percent of our country's veterans—or 1.7 million veterans—were women.<sup>51</sup> It is projected that number will jump to 17 percent by 2040.<sup>52</sup> Unfortunately, women also comprise the fastest-growing homeless veteran population.<sup>53</sup> From 2016 to 2017, the number of homeless female veterans increased by seven percent, compared with one percent for male veterans.<sup>54</sup> The VA-funded National Center on Homelessness Among Veterans projects that homelessness among women veterans will rise by about nine percent by 2025.<sup>55</sup>

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<sup>50</sup> Disabled American Veterans, *Women Veterans: The Journey Ahead* 1 (2018), [https://www.dav.org/wp-content/uploads/2018\\_Women-Veterans-Report-Sequel.pdf](https://www.dav.org/wp-content/uploads/2018_Women-Veterans-Report-Sequel.pdf).

<sup>51</sup> Jonathan E. Vespa, *Those Who Served: America's Veterans From World War II to the War on Terror*, US Census Bureau 1 (June 2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acs-43.pdf>.

<sup>52</sup> *Id.* at 6.

<sup>53</sup> Mike Richman, *A new battlefield: Female Veterans comprise fastest-growing segment of homeless Veteran population*, OFFICE OF RESEARCH AND DEVELOPMENT, US DEP'T OF VETERANS AFFAIRS (Mar. 21, 2018), <https://www.research.va.gov/currents/0318-Female-Veterans-comprise-fastest-growing-segment-of-homeless-Veteran-population.cfm>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

VA's 2017 report on the Veteran Working-Poor showed that racial and ethnic minorities have a higher working-poor rate than non-minorities.<sup>56</sup> The report revealed that the "working-poor rate among Black Veteran women was 9.8 percent," compared with 6.7 percent for Black Veteran men, 6.1 percent for White Veteran women, and 3.7 percent for White Veteran men.<sup>57</sup>

In March 2017, VA released a Minority Veterans Report, which included many important findings regarding veteran socioeconomic status and race. For example, the report found that minority veterans have a 44 percent higher risk of unemployment than non-minority veterans, and minority veterans are almost twice as likely to live in poverty as non-minority veterans.<sup>58</sup> Poverty rates are highest among American Indian and Alaskan Native veterans and among African American veterans.<sup>59</sup>

In light of this research, VA will impose a greater financial burden upon veterans who are women and/or people of color by refusing to reimburse them for out-of-pocket medical expenses incurred when they require non-VA emergency medical care.

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<sup>56</sup> *The Veteran Working-Poor: The Relationship between Labor Force Activity and Poverty Status*, US DEP'T OF VETERANS AFFAIRS 7 (2017),

[https://www.va.gov/vetdata/docs/SpecialReports/The\\_Veteran\\_Working\\_Poor.pdf](https://www.va.gov/vetdata/docs/SpecialReports/The_Veteran_Working_Poor.pdf).

<sup>57</sup> *Id.*

<sup>58</sup> MINORITY VETERANS REPORT, US DEP'T OF VETERANS AFFAIRS, 34, 35 (Mar. 2017),

[https://www.va.gov/vetdata/docs/SpecialReports/Minority\\_Veterans\\_Report.pdf](https://www.va.gov/vetdata/docs/SpecialReports/Minority_Veterans_Report.pdf).

<sup>59</sup> *Id.* at 35.

**CONCLUSION**

For the reasons stated above, the Federal Circuit should rule in favor of the Claimant-Appellees' request for affirmance of the decision issued by the Veterans Court, as VA's actions will impose immense financial burden upon veterans.

Respectfully submitted,

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Dated: July 19, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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Name: Jillian Berner



## CERTIFICATE OF SERVICE

I, Jillian Berner, counsel for amici curiae and a member of the Bar of this Court, certify that, on July 19, 2021, a copy of the attached Brief of Amici Curiae National Law School Veterans Clinic Consortium was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

JULY 19, 2021

/s/ Jillian Berner

JILLIAN BERNER