

**A LEGISLATIVE HEARING ON H.R. 1461, THE  
“VETERANS, EMPLOYEES, AND TAXPAYERS  
PROTECTION ACT OF 2017”**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON ECONOMIC  
OPPORTUNITY**

OF THE

**COMMITTEE ON VETERANS’ AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

**ONE HUNDRED FIFTEENTH CONGRESS**

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**Tuesday, March 21, 2017**

COMMITTEE ON VETERANS' AFFAIRS,  
U. S. HOUSE OF REPRESENTATIVES,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 2:04 p.m., in Room 334, Cannon House Office Building, Hon. Jodey Arrington [Chairman of the Subcommittee] presiding.

Present: Representatives Bilirakis, Wenstrup, Rutherford, Banks, Roe, O'Rourke, Takano, Correa, Rice, Walz.

Mr. ARRINGTON. The Subcommittee will come to order.

**OPENING STATEMENT OF JODEY ARRINGTON, CHAIRMAN**

I welcome everyone here today to the legislative hearing on the bill I have introduced, H.R. 1461, the Veterans, Employees, and Taxpayers Protection Act of 2017, or the VET Protection Act.

Before I recognize my friend and fellow Texan, Mr. Beto O'Rourke, for his opening comments, I want to briefly describe what the bill does and provide some context for its introduction.

At the joint hearing the Subcommittee had with the Subcommittee on Government Operations of the Committee on Oversight and Government Reform, we learned in great detail about the use of official time within the Department of Veterans Affairs. At our hearing, GAO released their recent report on official time at VA, where they found that VA is still not accurately or sufficiently tracking how much time employees are using on official and that the data that we do have from the VA is unreliable at best.

As I said at that hearing, this report begs the question: Are people taking advantage of the system? And I would conclude that most likely they are, because whether intentional or not, without a functioning system there is no means—consistent means to track official time, even if you wanted to.

That is why my bill would require the VA to consistently track the use of official time and submit a report to Congress and the Office of Personnel Management on its use to address the issue raised by the GAO report. This reporting requirement would also bar VA from using ranges or estimates in their reporting. I think this provision and this change are critically important because as the old saying goes, “you can't manage what you can't measure.”

Another issue that was highlighted in our joint hearing was the amount of time that doctors, nurses, clinicians, and other employ-

ees who are critical to VA's mission, are spending on official time and union activities, as opposed to the job they were hired to do and the job that they are being paid to do by taxpayers. We learned that VA has doctors, nurses, medical assistants, addiction therapists, pharmacists, disability claims raters, senior raters, and the list goes on and on, serving on official time; many of them on a hundred percent of official time and many making over six figures, which is paid for, again, by the American taxpayer.

This means we have hundreds, if not thousands, of VA employees spending part, and sometimes all, of their working day serving the union instead of directly serving our veterans; again, the job that they were hired to do.

My bill would address this problem by prohibiting VA physicians, dentists, podiatrists, chiropractors, or optometrists from spending any of their time on union activities. It would prohibit any employee involved with direct patient care from spending more than twenty-five percent of their time on union activities and it would prohibit any VA employee from spending more than fifty percent of their time on union activities. Furthermore, the bill would prohibit the use of official time for political activities or lobbying.

Now, I want to be clear. These provisions are not meant to completely eliminate the use of official time at the VA. As the amount of allotted hours in a union's official time bank would not change, but instead, this bill would bring common sense reforms to the use of official time and would ensure that those who are charged with providing care and services to veterans are fulfilling the VA's mission and doing their jobs.

As I said at our hearing last month, the legal standard for official time is to use it on "representational work" that is "reasonable, necessary, and in the public's best interests." That is at the heart of the issue for me today in our discussions. I don't believe the average American would see doctors and nurses receiving a taxpayer-funded salary, especially with the context of our veterans and the current service to our veterans from the VA, as reasonable or as being in the public's interests.

Additionally, my bill would add—would allow, rather, collective bargaining unit employees to join or leave the union at any point. Currently, collective bargaining agreements at the VA seem to be designed to make it nearly impossible for employees to stop paying union dues and nearly impossible to leave the union when they choose.

For example, the VA's master contract with AFGE requires that the only time an employee can make a request to stop paying dues is during the ten-day period that annually coincides with them joining the union.

VA's master contract with the National Nurses United goes a step further and limits their window to leave the union to the anniversary of their decision to join the union.

Clearly, these restrictions are in place to do one thing and one thing only; limit the employee's freedom of choice—and I will make it two things—and generate revenue for the union.

Finally, my bill would extend the probationary period for new employees to 18 months and would require that the manager make an affirmative decision that the employee has successfully com-

pleted their probationary period before becoming a full-fledged civil servant with all of its protections.

Members, I know many will say that my bill is anti-union or even anti-employee. Nothing could be further from the truth, as I do see that there is limited value in what the unions bring to the table, and I am not here to litigate the ability for Federal employees to unionize.

I am, however, trying to restore public confidence in the Department of the Veterans Affairs by ensuring that taxpayer dollars and hard-working Americans—or of hard-working Americans, are focused on advancing the VA's mission. In the end, the VA and the status quo are not sacred, but our veterans are.

I thank the witnesses for being here this afternoon. I look forward to your testimony and now I want to yield five minutes to my friend, fellow Texan, and Ranking Member Mr. O'Rourke.

**OPENING STATEMENT OF BETO O'ROURKE, RANKING MEMBER**

Mr. O'ROURKE. Mr. Chairman, thank you.

I think the bottom line for me, and I would argue for us, as Members of this Committee and Members of the U.S. Congress, is to ensure the highest quality and timeliness in the care and services that we deliver to the veterans who have earned that care and services.

If official time improves our ability to do that, then we should have official time. If it detracts from our ability to do that, we should not have official time.

If we conclude that official time helps us to deliver quality care and services to veterans, then I think we have to ask ourselves what is the best way to organize that official time?

And if we conclude that in some cases, having a hundred percent of an employee's day dedicated to official time because it improves the delivery of care and services to veterans is helpful, then we will support that, or I will support that. If we find that it does not, then I will not support one hundred percent of official time.

And then the third category the Chairman mentioned, if we conclude that certain classes of VA employees should be able to participate in official time and that it is helpful in delivering care and services in a timely, quality way, then we should support that, and if we conclude that it does not, then we should not.

I think we need the data and the facts to make informed decisions in every one of these areas, and so I agree with the Chairman, and I think with probably everyone on this Committee, that the VA's failure to measure official time effectively has put us at a disadvantage in answering these questions. And that is one of the first things that we need to be able to do, which is to measure; that which is not measured cannot be improved and we cannot make informed decisions without it.

It is going to be hard for me to conclude beyond that, the value in these areas until we have the data and the facts, but I look forward to the testimony from this panel and we will reserve questions until after I hear from them.

So, Mr. Chairman, thank you, and I yield back.

Mr. ARRINGTON. Thank you, Mr. O'Rourke.

I want to now recognize our first and only panel of witnesses today. With us we have Ms. Kimberly Perkins McLeod, Acting Executive Director for Labor Management Relations at the U.S. Department of Veterans Affairs, and she is accompanied by Mr. Rondy Waye, a Human Resources Policy Advisor at the Office of Human Resources Management at the U.S. Department of Veterans Affairs. Welcome.

We also have Ms. Shirley Parker Blommel, President of the Local 390 unit of the American Federation of Government Employees of St. Cloud VA Health Care System and Mr. Derk A. Wilcox, a senior attorney at the Mackinac Center for Public Policy. I want to thank you all for being here today.

Ms. McLeod, let's begin with you. You have five minutes for your opening statement.

#### **STATEMENT OF KIMBERLY PERKINS MCLEOD**

Ms. MCLEOD. Thank you.

Good afternoon, Mr. Chairman, Ranking Member O'Rourke, and other Members of the Subcommittee. Thank you for the opportunity to discuss H.R. 1461, entitled the "Veterans, Employees, and Taxpayers Protection Act of 2017," which pertains to the use of official time and probationary employees.

I am accompanied today by Rondy Waye, human resources policy advisor, in VA's Office of Human Resources and Management.

VA generally supports H.R. 1461, but we have some concerns with the legislation. With regard to section 741, the inclusion of this recordkeeping requirement will result in increased costs in resources for the VA. The Department currently has the ability to electronically track union official time for employees in the VA Time and Attendance System, or VATAS, and is in the process of fully implementing the system with the projected completion date of July 2018.

Using VATAS, the Department can now track the categories of official time in accordance with OPM's four categories, term negotiations, midterm negotiations, general labor management relations, and dispute resolution, similar to the way all other agencies track official time across the Federal government; however, section 741 would require the capture of additional information regarding official time which would require a revision to VATAS, as well as the use of additional systems, resulting in additional costs in order to capture the monetary and space aspects of the bill.

Section 741 also calls for the collection and analysis of subjective data, requiring VA to determine the impact that granted official time has on its operations.

Overall, to maintain the tracking and reporting of this administrative data total level of granularity required in this bill, VA would be required to create additional systems at significant cost. To reduce the cost burden, we ask that the Committee reconsider some of the granular reporting requirements in the bill and we would welcome the opportunity to work with the Committee to alleviate these concerns while achieving the important objective of increased transparency.

With respect to section 742, VA does not oppose the time limitations established in the legislation, however, VA finds certain lob-

bying activities on behalf of VA, beneficial to VA stakeholders, the veterans. Indeed, veterans have benefited from union lobbying efforts in areas such as expansions of scopes of practice for nurses and pay and hiring flexibilities to provide expedited patient care.

The Department is also generally in favor of the types of limitations on the use of official time for certain individuals set out in section 742. We would prefer that doctors spend all their work time caring for veterans; in addition, we think it is important for every employee to spend at least half of their work time performing management- directed tasks. Currently, however, the law does not allow us to limit official time to particular employees or classes of employees. If this bill passes Congress and becomes law, VA will have that capability.

VA also notes that unless otherwise superceded by section 742, the provisions in 5 U.S.C. 7131 continue to apply to certain mandatory official time. To the extent the intent is to supercede that provision, VA recommends clarifying language in section 742. We would be happy to work with the Committee on this language.

VA does not have a position with regard to section 743, however, we propose that the bill include clarifying language regarding what termination means in the context of the bill. VA recommends that the term “termination” be clarified to mean the submission of an employee’s SF-1188 to his or her servicing HR or payroll office.

With regard to section 719, VA does not oppose this provision. We note that under 5 U.S.C. 7511, certain VA probationary employees are already entitled to appeal a separation action to the Merit Systems Protection Board if they have worked for the Federal Government for more than 12 months. The 18-month probationary period prescribed by this bill would not change this right.

Consequently, to the extent that the intent is to curtail appeal rights during the probationary period, relevant changes should also be made to 5 U.S.C. 7511. VA would be happy to work with the Committee on this language.

Mr. Chairman, this concludes my statement. VA looks forward to working with the Committee to provide technical guidance on those elements we have noted, may be of concern. I am happy to answer your questions.

[THE PREPARED STATEMENT OF KIMBERLY PERKINS MCLEOD APPEARS IN THE APPENDIX]

Mr. ARRINGTON. Before we move to the next panelist, if you would indulge me, I failed to recognize the Ranking Member of the VA Committee, Mr. Walz—thank you for joining us today—and I want to yield as much time as you need to make comments.

Mr. WALZ. I’ll wait until the end, Mr. Chairman. Thank you.

Mr. ARRINGTON. You sure?

Mr. WALZ. Yeah.

Mr. ARRINGTON. Okay. Thanks for joining us again and let’s continue on with our panelist, Ms. Parker Blommel. You have five minutes.

#### STATEMENT OF SHIRLEY PARKER BLOMMEL

Ms. BLOMMEL. Thank you.

Chairman Arrington, Ranking Member O'Rourke, and Members of the Subcommittee, thank you for the opportunity to testify today.

I come to work at the St. Cloud VA as an LPN in 2008 after working at several different private practices in rural and urban areas.

I was elected president of Local 390 in 2014 and vice president in 2012. Our bargaining unit covers a wide range of positions including housekeepers, doctors, food service workers, therapists at the St. Cloud VA main campus and the CDOCs.

After one year at the St. Cloud VA as a nurse working on the floor, I signed up to be a union member, went to meetings, and learned that I could make a difference. Also, my father and son have served our country overseas in the Army and I want to give back for all that they have sacrificed. I realized that getting involved with AFGE, I could help the front line employees learn how to work with management to improve veteran experience.

Being a local officer has been very fulfilling for me and it has taught me it is not about, the union is right and management is wrong, but rather, that we have a shared goal in improving care. And when the union and management work together, we can move towards the same positive outcome.

When I first came as vice president of the union, I was only on fifty percent official time. As the need increased for us to be present, management frequently pulled me from my regular duties. As I was elected local president, it was clear that management's expectation was the president would be working only administrative hours. Management likes the continuity of having me work one hundred percent official time so I am available when they call a meeting, schedule a grievance hearing, or when they have an employee crisis.

In 2015, veterans' employees went outside to complain about the lack of providers and the increase primary care panels. Congressmen Walz and Emmer came to our facility after the union contacted them. The union coordinated a meeting with the congressmen and the employees where they could share their concerns without fear of retaliation.

After mediation, we now have a leadership in our facility who is willing to work closely with the union to address the issues.

Another example is when OSHA inspectors came to our facility in 2013 and found a long list of violations; for instance, when staff did not always have the right equipment to avoid bloodborne injuries when handling sharps.

As the union representative, I worked with OSHA and management to ensure the violations were corrected and made sure staff had the correct training so our environment is safer for our employees, also for our veterans we serve.

Every day I go to bat to serve—to work for our employees to resolve differences with management as quickly as possible. One hundred percent of our housekeepers are combat veterans and they play a critical role in patient care by keeping operating rooms and other areas free of infection; many of these veterans suffer from other combat-related injuries.

When these veterans came to the union for help, we explained their rights under Family Medical Leave Act and we reached out

to management to soothe the tensions that asked for greater understanding. These employees are combat veterans who are America's heroes. They deserve a job and they deserve to be treated with dignity.

My final example was just recently a new directive on Querying State Prescription Drug Monitoring Program that came out. This has a big impact on the working conditions. Providers will have to begin to query when veterans get narcotics or change in prescriptions.

The union worked with management to determine which positions are best-suited to assist with the queries. We also need to continue to work together to make sure providers understand who should be delegated this task and the process that needs to be completed.

If H.R. 1461 were to become law, I would only be able to spend a quarter time fulfilling my duty of fair representation. The knowledge base and effectiveness would be different, depending on who was on official time that day. There would be no consistency. This would have an adverse impact on our veterans, our employees, and as well as management.

We achieve more consistency and efficiency when labor and management are working with the same knowledge base among individuals. It is a faster, smoother process when we have one person working full-time on representation, rather than four people at twenty-five percent.

If you don't have the right person at the table who can actually make the binding decisions, then everything will get delayed.

This concludes my statement, and I would be happy to answer any questions you have.

[THE PREPARED STATEMENT OF SHIRLEY PARKER BLOMMEL APPEARS IN THE APPENDIX]

Mr. ARRINGTON. Thank you, Ms. Parker Blommel.

And finally, Mr. Wilcox, I will now recognize you for five minutes.

#### **STATEMENT OF DERK A. WILCOX**

Mr. WILCOX. Good afternoon, Chairman Arrington, banking—Ranking Member O'Rourke, and Members of the Committee. Thank you for holding this hearing and giving me an opportunity to discuss this issue of the use of official time at the Department of Veterans Affairs.

My name is Derk Wilcox; I am the senior attorney at the Mackinac Center for Public Policy. The Mackinac Center is a non-partisan research and educational institute, dedicated to improving the quality of life by promoting sound solutions to public policy questions.

I would like to note that as a practice attorney, I have had the honor of representing many veterans as their court-appointed counsel in mental health, guardianship, and conservatorship hearings. I have spent many hours at the VA facility in Ann Arbor, Michigan, working with the staff and veterans there.

The VA hospitals are beset with many problems, as they try to meet the needs of our veterans and official time is added to those

problems. Official time is time spent by Federal employees, who are paid to perform representational work for their union, instead of their regularly assigned work.

In the recent past, this body has heard testimony from the Office of Personnel Management, estimated that in 2012, the most recent year for which data is available, employees at the VA used just over one million hours on official time. The estimated cost to the VA was just under 47 million.

The GAO has criticized the OPM's method of accounting, saying that it undercounts the amount of salaries devoted to official time. Testimony before this Committee on February 16th, 2017, also criticized the OPM methodology, because it failed to account for office space, equipment, phones, travel time, and other factors.

But what the GAO did not look at is whether or not the official timekeeping itself is flawed. From my investigations, it appears that use of official time is underreported. I examined cases brought before both, the Department of Labor's Employees' Compensation Appeals Board and the Federal Labor Relations Authority.

These cases involved the use of official time by VA employees and official time was an essential part of these cases. In so doing, I found several cases where more time was devoted to the union's activities, than had been reported as official time, as set forth in my written statement.

Perhaps the most egregious was an FLRA case out of the medical center at Leeds, Massachusetts. A clinical neuropsychologist was also the union president. She was allowed to spend sixty percent of her work week on official time; however, an arbitrator found that because of her official time, it was an unfair labor practice to require her, as part of her performance appraisal plan, to see any patients per week because "official union duties placed time constraints on the grievance clinical schedule during the work week." It was unfair to require her to see as few as one patient for testing per week; in short, what was recorded as sixty percent official time effectively became a hundred percent official time.

The enactment of H.R. 1461 could provide the necessary tool to properly count the hours and total cost of official time at the VA; likewise, it was restrict official time activities so that physicians, like the psychiatrist in the case above at the Leeds facility, are using their skills and expertise on the treatment for which they are trained and hired and not for union activities.

Section 741(a)'s requirement that time be accounted for accurately and to a specific degree, should eliminate the case of duty time being used for union activities outside of official time, as the aforementioned cases found.

Section 741(2)(E) and (F) should correct the flaws pointed out in the February 16th CEI testimony before this body which pointed out that official time was not accounting for first thing benefits, office space, or other facilities used for official time.

Section 742(a) correctly restricts official time for being used for political activities or activities related to lobbying.

In summary, when cases have been looked at in-depth, it has been shown that employees have been using more time for union activities than has been allocated to them as official time. H.R. 1461 would appear to be a necessary first step to properly track

how much time VA employees spend on official time, account for the true costs, and restrict the improper uses of official time.

Following the enactment of H.R. 1461, we should get a more complete picture of the extent of the problem and better enable managers to effectively use the resources available to help our veterans.

I would like to thank this Subcommittee and for this opportunity and welcome any questions.

[THE PREPARED STATEMENT OF DERK A. WILCOX APPEARS IN THE APPENDIX]

Mr. ARRINGTON. Thank you, Mr. Wilcox.

I now will yield myself five minutes for questions and let me start by saying that I think we would all agree that the most-important asset to the VA in its accomplishing its mission to serve veterans, like most organizations, would be its people. And I have been in management positions; I have managed in government, I have managed in the private sector, and I can't imagine that you could effectively manage your personnel assets when you have people that are spending a hundred percent of their time on union activities or even fifty percent of their time on union activities.

And I agree with the Ranking Member that, you know, our job is to make sure that you guys have the tools and the VA leadership has the tools to maximize their effectiveness and that where there are distractions, we need to root them out because we all want desperately to make good on our promises to our veterans.

So, with that, let me ask you, Ms. Parker Blommel—I'm sorry—Blommel Parker—I apologize—what is the mission of the VA, just in your own words? I am not looking for the textbook answer.

Ms. BLOMMEL. The mission of VA is to serve our veterans.

Mr. ARRINGTON. Yeah, hit the button. There you go.

Ms. BLOMMEL. The vision of the VA is to serve our veterans. They are our heroes. They have sacrificed their lives for us.

Mr. ARRINGTON. And then your job, when you applied for the job, and you interviewed for the job, and ultimately got the job, what is the mission of your job, specifically, to advance that overarching goal of serving our veterans?

Ms. BLOMMEL. When I was hired for the VA—I am a licensed practical nurse; I have been there nine years—and my mission is to take care of our veterans, to honor them for the sacrifice, to take care of them physically and mentally, however it needs to be done.

Mr. ARRINGTON. So, the three-part legal test, as I understand it, for appropriate use of official time is that it is necessary, reasonable, and in the public's best interests.

You were hired to provide health care services to veterans, to advance the overall mission to serve veterans. How can you spend a hundred percent of your time—and with all due respect; I know there are more people that are spending a hundred percent of their time than you—but give me your perspective on how you can achieve that desired outcome you described as your mission, and that which you are paid to do by taxpayers, while you are a hundred percent active on official time advancing union objectives.

Ms. BLOMMEL. Being on a hundred percent time, what I do, I take care of our veterans. First of all, when a directive or a policy

comes forward, we have the opportunity to look at that and see what work needs to be done. I take the policy, I look at it, I go to the front line staff and I say, this is the policy that is coming out. How can we do this? How can we make this work the best? Because they are the subject-matter experts.

And I get that information and I go back to the meeting or the Committee and say, this is what is going on, this is what is happening, how can we do it better? We got this directive from the VA; let's make it right.

Mr. ARRINGTON. Ms. McLeod, is—we put a standard in the legislation of no more than fifty percent of their time. Do you get—do you have managers express their frustration with their ability to manage their operation, whatever component of the VA, on account of this runaway official use of official time?

Ms. MCLEOD. Certainly, we have managers who have expressed frustration with, you know, official time. We have also certainly had managers, and the GAO report notes, we have had managers who appreciate certain employees being on official time for the reasons that that witness discussed. So, we do see both sides.

Mr. ARRINGTON. Let me ask you this, is it necessary for employees to spend a hundred percent of their time? Is it absolutely necessary for employees to spend a hundred percent of their time on union activities?

Ms. MCLEOD. The Department does not think so. We support the legislation.

Mr. ARRINGTON. Do you believe it is necessary to spend fifty percent of your time? Is it necessary to spend fifty percent of your time on union activities? It is my last question; I will let you answer it.

Ms. MCLEOD. Well, the Department supports the legislation, and so to the extent the legislation caps it or limits it to fifty percent, no more than fifty percent, the Department supports that. And we don't believe that any time over fifty percent would be reasonable, necessary, or in the public's interest.

Mr. ARRINGTON. Okay. I yield to the Ranking Member for five minutes for questions.

Mr. O'ROURKE. Great. Thanks, Mr. Chairman.

I ask unanimous consent to submit two letters; one from National Nurses United, dated March 20th, 2017, and the other from Michelle Washington, Ph.D., psychologist, AFGÉ member.

Mr. ARRINGTON. Without objection.

Mr. O'ROURKE. So, a couple of questions here. First, some observations. I heard Ms. McLeod acknowledge the value of official time and she even went further and talked about the value of bargaining unit employees using official time to lobby Members of Congress. And you cited, helping to inform Members of Congress about expanding scope of practice and helping to inform Members of Congress about the value of flexibilities in hiring at a time that we're 43,000 clinical positions short and we desperately need those providers, psychologists and psychiatrists primarily, in community like El Paso, Texas. So, I appreciate you, from the VA, underscoring the importance.

Answer this question for me, when we hear from our AFGÉ president in St. Cloud that the expectation was that, from management, that she always be available to expedite the process to better

serve veterans and ensure that management is effectively coordinating with the employees to serve those veterans, what is your argument against hundred percent? That is management asking for a hundred percent, not AFGE, and so what is your argument as somebody who oversees management?

Ms. MCLEOD. The Department believes that, you know, at certain levels, official time is valuable and so—

Mr. O'ROURKE. But I am asking about a hundred percent, so answer that question for me, please.

Ms. MCLEOD. I mean, I think to the extent that the Department or her management is requesting her assistance to perform official time or union representational activities, that local manager knows best and they are requesting the time.

Mr. O'ROURKE. So that local manager knows best and is requesting a hundred percent time, and yet, you are supporting a cap at fifty percent. So those two do not seem to match up.

So, if you see the value and would like to give discretion to that local manager who understands the value in hundred percent official time in that VA, why would you support legislation that would remove the ability of that manager to do what is best for the care for those veterans, based on coordinating with the employees who deliver it?

Ms. MCLEOD. I can only say the Department supports legislation and the limitations that are placed on it.

Mr. O'ROURKE. And then I have a question on the other side of this for Ms. Blommel, and I want to thank you for traveling here to Washington DC and being before us. I have got to say that the Chairman's argument that when we have a time of clinical positions that are vacant, that, you know, having a doctor at a hundred percent and not having them perform some clinical function is pretty persuasive.

Make the argument to me that those primary or those care providers, who are on the front lines of delivering that care, should not have some part of their day devoted to care delivery.

Ms. BLOMMEL. Most physicians, even if they have administrative jobs, they do have to have care—have to have so many people on a panel. So, most of them are not a hundred percent, because they have to care for veterans.

The majority—why you have a physician that wants to be in the union is because they have a greater understanding of what is happening on that side and they can bring a wide range of talent and knowledge to the union and for management.

Mr. O'ROURKE. Okay. I think you can tell where I am getting to. I see the value in official time. I see the value in a hundred percent official time, at least as management has conveyed it to us, where they want to more effectively coordinate with the staff that is delivering that care.

I also see an argument where we have shortages in clinical positions that you might want to have some controls on that. So, I am trying to find the ideal place for us to be.

Going back to Ms. McLeod, 2018 July to get this stuff done is—I mean we are at the end of this session of Congress by then, functionally. Our ability to conduct oversight on what you have implemented before the next Congress kicks in is gone.

Why can't you do that sooner? Why can't we have the information this summer?

Ms. MCLEOD. The Department, we are about sixty percent, you know, in, in terms of fully implementing VATAS and we are moving as quickly as we can, trying to make sure that as we implement, the system is working appropriately and people are trained.

Unfortunately, I am not responsible for making sure that is fully implemented, but we are moving as rapidly—

Mr. O'ROURKE. Who do we talk to—who do we talk to if you are not the person responsible? How do I find out how to get that information sooner? It just does not seem acceptable to me to wait until July 2018—

Ms. MCLEOD. Office—

Mr. O'ROURKE [continued]. —you know, otherwise, we are going to move forward with a bill that I think is very well-intentioned from the Chairman's standpoint; I think he wants to do the right thing for veterans, but from my standpoint, it does not have the data or the information to support the conclusions. So, you know, you are not giving me much to work with here.

I yield back to the Chairman.

Mr. ARRINGTON. Thank you, Ranking Member.

And I want to recognize or just acknowledge that the Chairman of our VA Committee is here as well, but I am going to yield to Mr. Rutherford, for five minutes for questions.

Mr. RUTHERFORD. Thank you, Mr. Chairman.

And I will direct my first question to Ms. Perkins. If you could, in your written statement, it says, currently, however, the Federal Service Labor-Management Relations Statute does not allow us to limit official time to particular employees or classes of employees.

Can you tell me where that excluding language is within the Federal Service Labor-Management Relations document?

Ms. MCLEOD. You are not going to find it necessarily in the statute, but the Federal Labor Relations Authority that interprets the statute through case law, they have found that we can't limit the employees or the occupations that those employees sit in, in terms of providing official time.

Mr. RUTHERFORD. So, there is some finding by them?

Ms. MCLEOD. There are a number of cases that discuss that you can't limit who those individuals are who serve; those are elected positions through the union and that determines, generally speaking, who is on a hundred percent or somewhere near that.

Mr. RUTHERFORD. Okay. However, you go on to state also, that if this bill passes Congress and becomes law, you would have that ability.

Ms. MCLEOD. That is correct, sir.

Mr. RUTHERFORD. Okay. So, we need to make sure that we do put that enabling language in the bill, Mr. Chairman, so that we have that right or the VA has that right to limit those positions.

Next, I would like to ask Ms. Blommel—am I saying that right?

Ms. BLOMMEL. Yes, that is right?

Mr. RUTHERFORD. Thank you.

Ms. BLOMMEL. You mentioned the directives that come down that management—or official time is used to help management carry out directives that come down.

Can I ask, what does management do, then?

Ms. BLOMMEL. What management will do is they will get the new directive from the VHA. They will read it over and then they will contact the president of that local and they will forward the directive to me and I have the opportunity to read it. We gather at a meeting and we go through it, pretty much line by line, of the changes of work condition.

The example they gave before was the prescription—is that the physicians now have to query the veterans to make sure that they do that, but they can also select a delegate. The question is, who is the most-appropriate delegate?

In the directive, it says it could be also a licensed—an unlicensed person. RVA does not find that appropriate. We find that having a licensed nurse be the most appropriate. So, it was working that out; how this information—and how we are going to do it and how we are going to get the training to the physicians and the correct people.

Mr. RUTHERFORD. So, are there not VA managers who are making those decisions?

Ms. BLOMMEL. The direct—yes.

Mr. RUTHERFORD. I mean, I am simply trying to find out who is running the VA; is it union members or is it VA management?

Ms. BLOMMEL. We have managers who are—who work for the VA, yes, sir.

Mr. RUTHERFORD. Okay. You haven't—but is management union members also?

Ms. BLOMMEL. No, sir.

Mr. RUTHERFORD. Okay. Thank you, Mr. Chairman.

I yield back my time.

Mr. ARRINGTON. Thank you, Mr. Rutherford.

And now, I will yield five minutes to Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman.

Ms. McLeod, H.R. 1461 is predicated on the notion that allowing employees to be on a hundred percent official time is getting in the way of the veteran's access to health care, yet, one of the criticisms of the GAO is—the report, is that the VA itself doesn't really have a firm accounting for official time, right?

And because we don't have it, my question is, I don't understand how we can come to the conclusion that official time is impeded or not. I mean I am having a hard time how we get to that conclusion.

My—but isn't there—I mean, I have a hard time thinking about the 45,000 current vacant positions at the Veterans Health Administration. I mean, I just think compared to the small number of employees that we have on the official time, that the 45,000 vacancies pose a far, far greater, I think, impediment to VH—to giving appropriate health care to our veterans.

So, my thing is, I want to ask you, do you have any idea of how many employees that Ms. Blommel represents in her area?

Ms. MCLEOD. No, I don't know how many employees she specifically represents now. I know that approximately 285,000 of our employees are bargaining unit employees, but that is stretched across all of the unions that represent them.

Mr. TAKANO. And do you know how many meetings she might attend every day?

Ms. MCLEOD. I do not.

Mr. TAKANO. I mean, might there be a cost savings that accrues by having a professional, having someone on official time actually try to resolve these disputes, than to have someone else do it, I mean, to have to hire extra people to go solve these disputes?

Ms. MCLEOD. Sir, we haven't looked at the cost-saving aspect of the time that employees spend on official time. I can only give you the numbers themselves, but we have never looked at what the cost effect is of that.

Mr. TAKANO. Don't you think we might want to do that before we move forward with a bill that blanketly says that a hundred percent official time is bad, without knowing all the facts, without knowing whether or not there might be a cost savings?

Ms. MCLEOD. I believe a portion of this bill does require us to take a look at some pieces of that; the amount of benefits and costs and salary for each official time employee and what that is for the agency. So, we would be looking at that as part of the reporting requirements.

Mr. TAKANO. Well, you know, I am concerned that with the hiring freeze and the shortages, the attrition rate, the—you know, the GAO tomorrow is going to testify about the VA's limited HR capacity. Currently, there is a twelve percent attrition rate at VA's HR workforce that is being caused, in part, by unmet HR staffing targets, contributing to increase HR workloads and staff burnout.

Additionally, HR occupations are not exempt from the hiring freeze and the GAO believes that a prolonged freeze could further erode the VA's ability to provide HR services.

Employees who are on official time solve workplace disputes and resolve issues between front line employees. In light of this shortage and attrition rate, it would seem to me that there is probably even maybe a greater demand, but we don't know that because we don't have accurate statistics or we don't have a study to know whether or not there might be a cost savings, especially in this current environment.

Ms. MCLEOD. We don't know.

Mr. TAKANO. Ms. Blommel, whistleblowers, don't they especially often need people on official time? They are reluctant to come forward without having an official time VA employee be by their side; isn't that right?

Ms. BLOMMEL. That is correct. A lot of people do come forward. They come to the union because of concerns and we help direct them to the right way to get that protection of concerns of a veteran or a policy.

Mr. TAKANO. So, an arbitrary cap at fifty percent might end up unresolved or whistleblowers may not have access to someone who will stand by their side if they are needed?

Ms. BLOMMEL. That is correct. We are very instrumental with the staff. They come to us. A lot of times they will come to us before going to management, because they have concerns and they don't want their—to be known that they are coming forward. And we just give them the support to go forward.

Mr. TAKANO. Well, thank you. My time is up.

Mr. Chairman, I yield back.

Mr. ARRINGTON. Thank you, Mr. Takano.

And now, I will yield five minutes for questions to Mr. Correa.  
 Mr. CORREA. Thank you, Mr. Chairman. First of all I want to thank you for bringing forward this piece of legislation. The timing couldn't be better. As I was listening to testimony of our witnesses I noticed Ms. Kimberly Perkins McLeod, our acting Director, stated she supports the legislation, yet at the same time she had some concerns regarding some definitional issues and other issues in the bill. And I would say, Mr. Chairman, that maybe this legislation might need a little bit of wordsmithing and some work to make sure that what we mean and what we say and what is written is actually consistent, so to speak.

Again, the issues you are touching upon here I believe are important ones, which are taking care of veterans and making sure we have an efficiently run VA. And you want to make sure that you reduce the possibility of unintended consequences. Therefore, I would ask you to take heed to Ms. Perkins McLeod's comments. And before we move the legislation forward I would ask you to work with some of the witnesses to make sure that this is some legislation that does exactly what you, Mr. Chairman, intended to do. Thank you.

Mr. ARRINGTON. Our Ranking Member of the VA Committee, Mr. Walz, I yield to you for five minutes.

Mr. WALZ. Thank you, Mr. Chairman. And thank you all for being here. I think the first thing is that we are starting out with the assumption that union time is something separate than trying to improve the process for veteran care. That's not the case. And I heard some of the things we are saying, well, if you are lobbying on time. I would argue that Ms. Blommel is here today lobbying. But this is helpful for us to get at the heart of how we fix veterans' issues. So it is not always as simple as it is made out to be.

And I would ask first to just look at this from this perspective: we are here to serve veterans. And I am thinking about this as a veteran. The Army and the taxpayers paid me to shoot artillery. That was my job, that is what I should be doing. If I were not shooting artillery, if you were not being an LPN, was I not adding anything to the Army? So what ended up happening was as I became more efficient at shooting artillery, I ended up being a sergeant major. The management is the officers and the colonel would give his directive.

My job was to go down to make sure all of the other folks firing artillery were able to do it efficiently, safely and accurately to fulfill their mission. For the last five years of my career, although I was supposed to be the best artilleryman in the unit, I never fired artillery. But I made sure all those other people could do it. Without that ability, the colonel would have to come down through the chain of command and go to each of them.

And the reason this is an HR perspective is, is the people that actually have to deliver it will sometimes tell you, sir, with all due respect, this directive will not work and it imperils our patients. So that flow of information back up that is considered union time is trying to figure out better ways, just like sergeant's time, to figure out how to make us more efficient to deliver the care.

So the argument that we are making without the data that we are instantly more efficient without having them there, I think is

specious at best. And as you said, you got asked, Ms. McLeod, about how many people Ms. Blommel had. I realize that that is not—and that question is asked just point out—and Mr. Takano is exactly right, that you don't know in that case, nor should you know. It is not to jam you up. It is the question of even if they could say that she represents 1600 people and know how many meetings she had, you are making an arbitrary decision across the spectrum when wouldn't it be best for local management and HR personnel and management to do that, Ms. McLeod?

Ms. PERKINS MCLEOD. Sir, I think there is an opportunity here even with the legislation for managers to take a look at, you know, what amount of official time is reasonable, necessary and in the public's interest. I mean the limitations here are with respect to certain occupations, but it does not completely limit, you know, these individuals' ability to perform union representational activities. And it is still the management and the local manager's responsibility to make that decision.

Mr. WALZ. What if we find out we need more official time?

Ms. PERKINS MCLEOD. Sir, there is also—by the way, this is written, there is certainly still an opportunity there to provide additional official time to the extent it is reasonable, necessary and in the public interest.

Mr. WALZ. Ms. Blommel, do you keep track of your official time?

Ms. BLOMMEL. Yes, I do.

Mr. WALZ. How do you do it?

Ms. BLOMMEL. I do it—I have a paper copy that all of my union people that have any time in the union, and we forward that to HR at the end of the month, we do it monthly. Mr. WALZ. Ms. McLeod, what does VA do with that then? She kept track of it, she wrote it down what she is doing. What do you do with it?

Ms. PERKINS MCLEOD. Each of those local HR offices, they provide that information to my office on a yearly basis to Labor Management Relations. And we provide that information back to OPM when they make their data call to all the executive branch agencies.

Mr. WALZ. So it is collated. Whose fault is it if it is not being kept, the idea that we don't know? Would you say it is the employee's fault, was it Ms. Blommel's fault?

Ms. PERKINS MCLEOD. Sir, we keep the information. Now, the way that we have received it in the past has been through different methods. But in large part we believe that most of the information we have is pretty accurate. We are just going to a new system that will ensure its accuracy.

Mr. WALZ. Okay. Ms. Blommel, have you ever seen anybody abuse official time?

Ms. BLOMMEL. No.

Mr. WALZ. What would you do if they did?

Ms. BLOMMEL. I have—I am very rigid about official time. I have had people that I have felt maybe might not have taken their 30 minutes. I will talk to them, I will counsel them. And I have also, with having—in regards to maybe if I think it is inappropriate I will ask them to step down. I have no problem doing that. This is a trust that we have and we have to honor that.

Mr. WALZ. Am I right that your father and your son are both veterans?

Ms. BLOMMEL. That is correct.

Mr. WALZ. Do you feel like if they came to your hospital, that you, in your current position, would be serving them well with what you are doing or could you do it better elsewhere?

Ms. BLOMMEL. They would come to our hospital. My father did and my son is a current at St. Cloud VA.

Mr. WALZ. And you in official time are improving their care in your mind?

Ms. BLOMMEL. Yes, I am, sir.

Mr. WALZ. I yield back.

Mr. ARRINGTON. Thank you, Mr. Ranking Member. And we will go for round two here for anybody that would like to stay and can stay. I am thinking as you are commenting on these questions what it would be like if I brought you to a town hall meeting in Big Spring where they have a large veteran community, they have a VA hospital, and I introduced you as somebody that was paid to be a nurse to provide care for our veterans, but now you are spending 100 percent of your time on union activities, then I would proceed to say, but wait a minute, before you pick up the rocks, the law allows her to spend some of her time as a VA tax paid employee on union activity, but it has to be reasonable, it has to be necessary and in the best interest of the public.

What would you say to that group of people if I brought you with me to Big Spring next time I get out in the district about why you do what you do and that it is justified as necessary and reasonable?

Ms. BLOMMEL. Well, I would love to go with you to Big Spring and have that discussion at the town hall. First of all—

Mr. ARRINGTON. Can I hide behind the podium when I ask that question?

Ms. BLOMMEL. Sure. One of the reasons, you know, I would really say to that crowd, and I have gone to town halls, is that I am there for them. I may not be doing the hands on directly, but indirectly I am making sure that they have the best instruments, the best people doing the job. You know, I can help make sure that we have the policies the way—

Mr. ARRINGTON. Ma'am, how are you advocating for the veterans to make sure they have the best people and the best instruments?

Ms. BLOMMEL. I was going to—I have the opportunities to go to these meetings. An example, we have—

Mr. ARRINGTON. You know what, I don't have a lot of time here. So let me—what the veterans need is to see a doctor or a nurse or a health care professional. They're waiting way too long. I think if you ask the veterans they would say just let me see a health care provider because I am sick. And I don't know that they would say and I don't believe they would agree that 100 percent of your time being spent when you are a health care provider on union activity is reasonable, necessary and in the best interest of the public. I don't believe that. I haven't met one, not one, that says that. So how many bargaining union employees are there at the VA roughly?

Ms. PERKINS MCLEOD. Roughly 285,000.

Mr. ARRINGTON. And it is my understanding that the bank of hours is four hours per bargaining unit employee roughly; is that correct?

Ms. PERKINS MCLEOD. Roughly.

Mr. ARRINGTON. So with all those employees, 285- bargaining union employees, how can anybody—well, let me just ask the questions, just yes or no, with 285,000 employees do you truly believe, we will start over here and work our way across, do you believe, Mr. Wilcox, that it is necessary for somebody to spend 100 percent of their time, that they couldn't possibly spread out 25 percent among the 285,000 employees; is that necessary?

Mr. WILCOX. I would not say so, sir.

Mr. ARRINGTON. Do you believe it is necessary?

Ms. BLOMMEL. Yes, I do.

Mr. ARRINGTON. Ms. McLeod?

Ms. PERKINS MCLEOD. No.

Mr. ARRINGTON. With 45,000 vacancies and the stories that are more than disheartening, they are shameful, and the wait times, and the lack of access to care that our veterans get, are you telling me that somebody, especially somebody that is in a health care provider position, working 100 percent of their time on union activities is reasonable, in the best interest of the public? In that scenario do you believe it is reasonable and in the best interest of the public?

Mr. WILCOX. No, I wouldn't find that to be reasonable or in the best interest of the public.

Mr. ARRINGTON. Do you think it is reasonable and in the best interest of the public with 45,000 vacancies, long wait times and lack of access to care for our veterans that you are spending 100 percent of your time on union activities?

Ms. BLOMMEL. Yes, I do.

Mr. ARRINGTON. You think it is reasonable?

Ms. BLOMMEL. What I think is reasonable is that I am doing it and we are not pulling different people from different areas to do it and then we are disrupting care. I can tell you that what I have just recently done in mental health is where they came up with a policy where they wanted to remove two triage, mental health triage, nurses and only use one, and use an LIP, which is a licensed independent provider. But—

Mr. ARRINGTON. I would feel more honest with the taxpayers if we redefined your position and made you apply for a full-time union advocate position than to do what we are doing here. It just, it doesn't feel right. I am out of time so I am going to yield now to Ranking Member O'Rourke for five minutes.

Mr. O'ROURKE. Thank you, Mr. Chairman. I want to make sure that we are being accurate with the words that we are using. To be clear, official time is time that is spent improving the quality and efficacy and timelines of care and services to veteran. Union time or union activities are things that help the union. And you can not use official time on behalf of the union. And some folks on the Committee have used those two phrases interchangeably. They are not the same.

I think we have to start with the fundamental question: is official time valuable for veterans? If it is not, I say let us do away

with it now. Let us not even bother with counting it or qualifying it or determining what percentage of which employees can spend on official time. If it is not helpful, let us not do it. But I think that employees who works for the VA agree that official time is valuable.

And the VA itself brought forward examples of where official time has improved the quality and timeliness and level of care delivered to veterans. So for me that question is settled. And there are—when we had our oversight hearing last month there were other examples given. For example, mental health care treatment regimens that because of the coordination with AFGE they were able to add substance abuse counseling. Having just visited Big Spring and where we have some El Pasoians who are receiving treatment and seeing the great care that they told me they were receiving themselves from those bargaining unit employees I am convinced that there is value and efficacy. But I, you know, to be intellectually honest I want to make sure that I understand this from a fact based and data based perspective. And because the VA has failed in effectively measuring and reporting this back to Congress, we are unable to do effective oversight.

And so I ask through Ms. McLeod that someone from the VA who can answer this question and is in charge of this come before this Subcommittee or the Full Committee to tell us why they can not deliver this data to us sooner, like this summer, instead of later, like next summer. I think that is issue number one.

And issue number two, and I ask AFGE to come back to us with a compelling answer, does it make sense at a time of clinical shortages at the VA to have high demand providers have 100 percent of their time devoted to official time. The answer may be yes. You made a great case from the perspective of the St. Cloud VA management that they did not want to talk to someone 10 percent of the time and another person 13 percent of the time. They wanted to be able to go to you 100 percent of the time and that ensure that they are more effective in delivering high quality timely care to veterans.

And if AFGE can make a compelling case that it should in some cases be a physician who does that, then make that case to us. I want to start and end with what is best for veterans. And if you convince me that official time, 100 percent of official time in some cases and 100 percent of the official time of a practicing physician is in the best interest of veterans, I am going to go to the mat for official time under those circumstances. If you can not, then I am going to be more open to changes to the system that we have today.

So I think that is what we are all looking for as Members of the Committee. But I would caution my colleagues in rushing to any judgment or in passing a bill that even the VA, at least the representative from the VA today, cannot defend. Even though you say you support it, you also acknowledge that in the case of St. Cloud and in other areas management has found value in 100 percent of time. And yet the VA's position is that they support the Chairman's 50 percent cap. Those two things do not add up. And so we need to talk to someone or hear from someone who can make the case to us or support either one of those.

So I still need some more information, Mr. Chairman, before I think I can make an informed decision on this bill. But I appreciate your effort in writing it and trying to address an issue that is of importance to the Committee. And with that, I yield back.

Mr. ARRINGTON. Thank you, Mr. Ranking Member. Very good remarks. And I am now going to yield to Mr. Rutherford. Five minutes in addition for questions.

Mr. RUTHERFORD. Thank you, Mr. Chairman. I would propose to the Committee and the panel that the evidence that official time has failed in its stated mission of making things better at the VA it is the case before us, it is why we are here, is because official time and its purpose has failed as in this written documentation by Mr. Wilcox is so eloquently put.

Official time has failed the VA. It is failing our veterans every day. Because if your job through official time has been to make it better for our veterans, they have failed. Official time is not working, Mr. Chairman. It is evidenced by wait lines. It is evidenced by lack of service to our veterans who have earned that care.

Official time has failed. The evidence is all through this testimony. We have seen it at our VA facilities. We hear it from our veterans. Official time has failed. I don't need anymore information. I can look at the history of the VA to see that this has failed. And so, Mr. Chairman, I think the bill is absolutely necessary.

Now, I don't put all the blame on the VA or the union even. The Federal Labor Relations Authority, if they are making decisions about who can be a union representative outside of the law, which is what I heard—I hear one person tell me there is no language that I am going to be able to find that restricts those categories of employees that can or cannot be union representatives, but then I am told that they make this decision that we can't restrict them—Mr. Chairman, I think we pass this legislation and make the Federal Labor Relations Authority adhere to it.

But make no mistake about it, official union time has failed in its mission because you sat there and said many times that the mission is to make it better at the VA. And it simply has not happened. And so I think we need to find a way to make it better, to get these classes of people particularly is what I am concerned about. When you have individuals, and Mr. Wilcox pointed out several of these cases, they are supposed to be providing services to veterans and they are not seeing a single patient. Not one. That is just not acceptable, Mr. Chairman. I yield back my time.

Mr. ARRINGTON. Thank you, Mr. Rutherford. I now yield five minutes again to Ranking Member, Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman. In the most recent VFW poll of veterans who use the VA facilities they have a 92 percent satisfaction rate. Cause and effect is always a very difficult thing to try and prove. There is other parts of this equation like management and oversight. But I will go to this, Mr. Wilcox, have you ever worked in the VA?

Mr. WILCOX. I have not worked for the VA; I have worked within the confines of the VA to meet with veterans and legal counsel and work with staff there on mental health issues.

Mr. WALZ. Are you a veteran?

Mr. WILCOX. No, they wouldn't take me.

Mr. WALZ. Have you ever been in a union?

Mr. WILCOX. No, sir.

Mr. WALZ. All right. Is this correct that your institution recommended granting emergency managers state of emergency power in the State of Michigan to override elected officials to toss out union contracts? Is that a position advocated by your organization?

Mr. WILCOX. We did advocate for the emergency manager law. And as general oversight of the failing municipality, he did have that authority.

Mr. WALZ. Would you recommend that for the VA?

Mr. WILCOX. If there is a serious enough situation that it warrants a takeover by governing officials, it would seem to be a possibility. But it is not something obviously I have thought about before.

Mr. WALZ. Are you publically funded?

Mr. WILCOX. Publicly funded?

Mr. WALZ. Yeah.

Mr. WILCOX. No, sir.

Mr. WALZ. Privately funded?

Mr. WILCOX. Privately funded.

Mr. WALZ. Okay. Ms. Blommel, how many people do you say you represent in your bargaining units?

Ms. BLOMMEL. We have over 1600 bargaining members.

Mr. WALZ. How many people are on official time, 100 percent of official time?

Ms. BLOMMEL. At the St. Cloud VA?

Mr. WALZ. Yes.

Ms. BLOMMEL. I have two.

Mr. WALZ. So there's two of you.

Ms. BLOMMEL. Yes.

Mr. WALZ. How long will you do that? How did you get this position, if I could ask?

Ms. BLOMMEL. I was elected to this position two years ago and I have one year left in my term by the bargaining members.

Mr. WALZ. Okay. So your peers and the folks who work there, nurses, those combat veterans who work down there, they said we want you to go speak to management for us?

Ms. BLOMMEL. That is correct.

Mr. WALZ. Do you believe they asked you to do that to improve their own personal lives or enrich themselves or why do you think they wanted you to do that?

Ms. BLOMMEL. Because they felt that I had integrity. They felt that I would do the right thing and I would stand up, listen to them when they had concerns and do the right thing.

Mr. WALZ. What will happen when your term is up?

Ms. BLOMMEL. What will happen? There is either two things. Either I will be reelected to be the union president or I will go back and be a nurse on the floor.

Mr. WALZ. And either way in your mind you are serving veterans—

Ms. BLOMMEL. Yes, I am.

Mr. WALZ [continued]. —to the best of your ability?

Ms. BLOMMEL. I am serving them either way.

Mr. WALZ. Okay. So I would ask all of us this, there is two people representing 1600 working with management at the St. Cloud VA. Had a management issue at the St. Cloud VA, had whistle blower situations. By the way, the St. Cloud VA is rated the highest in the VA system. Am I correct in that, in the star ratings?

Ms. BLOMMEL. That is correct, we are five star.

Mr. WALZ. Okay. Would you say your institution is failing?

Ms. BLOMMEL. We are—our employees work very hard, so no, we are not failing.

Mr. WALZ. And I notice you hesitated on that. Is that because if you feel if one veteran is not served, then you consider that personal failure?

Ms. BLOMMEL. If a veteran is not served, yes, that is a failure.

Mr. WALZ. Okay. But the data shows that, again, from the VFW on systemwide, St. Cloud even higher than that, because we have had that polled after Mr. Emmer and I were up there, a very high satisfaction rate with what is happening there. You have new management. How is that working?

Ms. BLOMMEL. We have new management, it came over this summer. And we have a new director that will be coming aboard April 2nd. All of the staff are very excited. And as you know, we have over 409 of our employees who are veterans there and they are excited about that too.

Mr. WALZ. How long was the director position open before it was filled?

Ms. BLOMMEL. The past director left July 1st and Mr. Black was just recently announced last week.

Mr. WALZ. Nine months then?

Ms. BLOMMEL. Yes.

Mr. WALZ. Which is spectacularly fast in the VA HR system, I might add. Okay. I would just ask, and Mr. Chairman, I don't disagree with you on this that we need to know these answers. And if we cannot provide the data, you are absolutely right to ask those questions. But I would end with too, I would hope when you took Ms. Blommel to that town hall, you would also introduce her as the daughter and a mother of a veteran. And as someone who is serving in the VA, she could take those skills elsewhere. And I am not disagreeing. Again, if anybody is abusing this, then we need to crack heads. But I think the assumption—how would each of us if each day we had a different chief of staff giving us advice going back and forth? So you can take 100 percent. I think you maybe ought to have the argument on this. If you are going to say we should have four at twenty-five, what is the difference in that? You are making the assumption then that this one person is going to just by going back in there—my example before was I never fired artillery, but I helped our unit fire artillery. So I just ask us to think about that. I don't disagree with wanting to get the data. But I do think assuming that union time is not performed—helping veterans is a pretty big leap. I yield back.

Mr. ARRINGTON. Thank you, Mr. Ranking Member. And now we will yield to Dr. Wendstrup for five minutes of questions.

Mr. WENSTRUP. Yeah, thank you, Mr. Chairman. I apologize for getting here late. And so forgive me in some of my questioning. But just trying to get a picture of like what your day is like. You know,

what do you do? You know, the union activity, is it taking care of veterans, are you helping people take care of veterans? You mentioned, for example, making sure instruments are there. Did I hear you correctly?

Ms. BLOMMEL. That is correct.

Mr. WENSTRUP. As a surgeon, that is a pretty important thing, making sure the instruments are there—

Ms. BLOMMEL. Yes, it is sir.

Mr. WENSTRUP [continued]. —right, before you go and do your surgery. But, you know, in our hospital that is somebody's job. It is somebody's job. So you are saying if you are not there, the instruments may not be there?

Ms. BLOMMEL. What I am saying is sometimes we have to look—we look at the instrument set, are there—because maybe they are not as efficient or they have caused an injury to an employee.

Mr. WENSTRUP. So are you really a supervisor, are you a hospital supervisor—

Ms. BLOMMEL. No, sir.

Mr. WENSTRUP [continued]. —to try and make sure? That is what I am trying to figure out because, you know, people have a job, they have a responsibility. Their responsibility is to make sure, for example, that the instruments are there as requested, as needed for the case, and they deliver it. There is no one else involved with that necessarily, unless there is a repeated problem. So I don't understand. So are you there to make sure that someone in the union is doing their job correctly? I don't get it. I don't understand why—and you used that as an example, and that is why I went to that.

Ms. BLOMMEL. Sure.

Mr. WENSTRUP. Because in our hospitals there is a person responsible for having the instruments there.

Ms. BLOMMEL. Yes. That someone is [indiscernible].

Mr. WENSTRUP. And there isn't someone 100 percent of the time trying to make sure that the instruments are there because that is somebody else's job. So I don't—are you there just for people who are not doing their job or is that your job? Do you put the instruments together, do you deliver the instrument pack to the OR? Just help me here.

Ms. BLOMMEL. No, I don't. What I do is I make sure that—because our physicians are bargaining union, you know, could be union or bargaining members—what I do is make sure they have the right instruments to help and take care of our veterans. And sometimes when we have an instrument that maybe is not as effective or if there was an injury, I make sure we get the right stuff. I get asked for opinion, or the employee will come to me and say, you know, this isn't working. And I will go to management and we will sit down and we will have a conversation about what is the best and we get to look at it. And, no, I am not—

Mr. WENSTRUP. So it takes an interim person to do that?

Ms. BLOMMEL. Not all the time, sir.

Mr. WENSTRUP. You mean the surgeon can't say, hey, this instrument is broken, I need—

Ms. BLOMMEL. They do.

Mr. WENSTRUP [continued]. —a new one? You know, can we put in for that, can I get that? They need another person? I am just trying to figure out why you need to be part of that process. It seems to me that we are adding an extra step. I don't know, I just—it is not very clear to me why you need to be in that role necessarily if people are doing their job. And if there is a problem that they can handle it without having to go running to someone else and say, hey, we need a new instrument, can you be my voice? That person, it is their job. I just don't see that in other situations where that is taking place in private sectors. So it is just kind of confusing to me in that regards.

But I appreciate that you are there and you are trying to make sure that things get done. But it sounds to me like you are there in case someone isn't doing their job, because I shudder to think that if you weren't there one day that they'd have to cancel a surgery or something like that because you weren't there, because it is already somebody else's job to get that done. And with that, I yield back. Thank you.

Mr. ARRINGTON. Thank you, Dr. Wenstrup. I am just going to ask if anybody else has any further questions or comments. I wanted to say again thank you to the panelists and appreciate your time and your thoughtful responses to our questions. You know, I am new to the Committee and I have tried to listen and observe more than opine. But there is this theme whether it is the IT, the first hearing we had on IT systems and millions of dollars in waste because of mismanagement there, or it is the Choice Act, or it is tracking union time, to me the heart of the problem at the VA is a lack of accountability and the inability to manage the VA effectively, because I think one could argue we have thrown billions and billions of dollars, and in my opinion some good money after bad, because of a dysfunctional culture and system. And it is not dysfunctional people.

I think you are a well-intended good hearted person. And I haven't met a VA employee yet that I don't think is a fine American and who deep down wants to serve veterans. But it is—there is nobody who would run their business or run their non-profit the way the VA runs their business. And there is, in my opinion, there is no way to have the culture and the lack of accountability and be able to provide excellent service to your customer, in this case the VA.

And like my friend and colleague, Mr. Rutherford, I don't need any more evidence to know that somebody spending 100 percent of their time on union activity when you have 45,000 vacancies and these awful wait lines and the lack of access to care, there is just no way somebody can convince me that that is reasonable and in the best interest of the taxpayer, let alone the veteran.

We all want to serve our veterans. We all on this Committee want them to receive the best care. I suspect also that everybody on the panel does. And we all know they deserve nothing less. I introduced this bill so that more individuals were focusing on this goal and focusing on the jobs that they were hired to do, as well as to bring greater transparency for the American taxpayer about where their tax dollars are going, especially if the money is being

used for union activities as opposed to paying for someone to do the job, again the job that they were hired to do.

I look forward to continuing—to continue working with all stakeholders involved and my colleagues on this legislation going forward. And I now ask unanimous consent that the statement submitted by Mr. J. David Cox, National President of AFGE, be submitted into the record.

Hearing no objection so ordered.

Finally, I now ask unanimous consent that all Members have five legislative days in which to revise and extend their remarks and include any extraneous material on today's hearing.

Without objection so ordered.

Thank you all again for being here today. This hearing is now adjourned.

[Whereupon, at 3:21 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### Prepared Statement of Kimberly Perkins McLeod

Good afternoon, Mr. Chairman, Ranking Member O'Rourke, and other Members of the Subcommittee. Thank you for the opportunity to discuss H.R. 1461, entitled the "Veterans, Employees, and Taxpayers Protection Act of 2017," which pertains, in significant part, to the use of official time and probationary employees. I am accompanied today by Rondy Waye, Human Resources Policy Advisor in VA's Office of Human Resources and Management.

VA generally supports H.R. 1461, but we do have a few concerns with the legislation which we have noted below. We note that H.R. 1293, a bill with Government-wide applicability, includes similar requirements - but, under different tracking and reporting deadlines, which will likely be problematic from an implementation perspective.

With regard to section 2 of the legislation, which would insert a new section 741 in Title 38 of the United States Code (U.S.C.), the inclusion of this recordkeeping requirement will result in increased administrative responsibilities and obligations for VA. In addition, an October 1st deadline for a report covering the most recently ended fiscal year will present insurmountable challenges, especially in light of the Department's current system for tracking the information. The Department recommends a reporting date of March 1 following the period covering the most recently ended fiscal year. The Department currently has the ability to electronically track union official time for employees in the VA Time and Attendance System (VATAS), and is in the process of fully implementing this system, with a projected completion date of July 2018. Using VATAS, the Department can now track the categories of official time in accordance with the Office of Personnel Management's (OPM) four categories: 1) term negotiations; 2) mid-term negotiations; 3) general labor-management relations; and 4) dispute resolution, similar to the way all other agencies track official time across the Federal Government. However, section 741 would require the capture of additional information regarding official time, which would require a revision to VATAS, as well as the use of a secondary system, HR Smart, to capture the monetary aspects of the bill. Section 741 also calls for the collection and analysis of subjective data, requiring VA to determine the impact that granted official time has on its operations. Overall, to maintain the tracking and reporting of this administrative data to the level of granularity required in this bill, VA would be required to add additional FTE in administrative support. To reduce administrative and cost burden, we ask that the Committee reconsider some of the granular reporting requirements in the bill, and would like to work with the Committee to alleviate these concerns while achieving the important objective of increased transparency.

With respect to section 742, which would be inserted in Title 38 under the legislation, VA does not oppose the time limitations established in the legislation. VA finds certain union lobbying efforts on behalf of VA beneficial to VA's stakeholders - the Veterans. Indeed, Veterans have benefitted from union lobbying efforts in areas such as expansion of scopes of practice for nurses and pay and hiring flexibilities to provide expedited patient care.

The Department is also generally in favor of the types of limitations on the use of official time for certain individuals set out in section 742. We would prefer that doctors spend all their work time caring for Veterans. In addition, we think it is important for every employee to spend at least half of their work time performing management-directed tasks. Currently, however, the Federal Service Labor-Management Relations Statute does not allow us to limit official time to particular employees or classes of employees. Although we can negotiate overall use of official time, we cannot prohibit doctors from using official time or restrict registered nurses to no more than 25 percent official time. If this bill passes Congress and becomes law, VA will have that capability.

VA also notes that, unless otherwise superseded by section 742, the provisions in 5 U.S.C. § 7131(a) continue to apply to certain mandatory official time. To the extent the intent is to supersede that provision, VA recommends clarifying language in section 742. VA will be happy to work with the Committee on this language.

VA does not have a position with regard to section 743, which would be inserted in Title 38 under the legislation. However, VA proposes that the bill include clarifying language regarding what "termination" means in the context of the bill. VA recommends that the term "termination" be clarified to mean the submission of an employee's SF-1188 to his or her servicing HR or payroll office.

With regard to section 3 of the legislation, which would insert a new section 719 in Title 38, VA does not oppose this provision. However, we note that expanding the probationary period for all covered employees may have the unintended effect of dissuading candidates, including Veterans, from seeking employment with VA. In addition there would be three different probationary periods depending on the type of appointment for VA employees (12 months, 18 months and 24 months) which will likely lead to misapplication and confusion on the part of employees and managers. Moreover, under 5 U.S.C. § 7511, certain VA probationary employees are already entitled to appeal a separation action to the Merit Systems Protection Board if they have worked for the Federal Government for more than 12 months. The 18 month probationary period prescribed by this bill will not change this right. Consequently, to the extent that the intent is to curtail appeal rights during the probationary period, relevant changes should also be made to 5 U.S.C. § 7511. VA will be happy to work with the Committee on this language.

Mr. Chairman, this concludes my statement. VA looks forward to working with the Committee to provide technical guidance on those elements that we have noted may be of concern. I am happy to answer your questions.

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#### **Prepared Statement of Shirley Parker Blommel**

Chairman Arrington, Ranking Member O'Rourke and Members of the Subcommittee:

Thank you for the opportunity to share the views of Local 390 of the American Federation of Government Employees, AFL-CIO (AFGE). Local 390 represents 1,642 bargaining unit (BU) employees working as medical professional and support personnel at the St. Cloud, Minnesota VA Health Care System (St. Cloud VA), a quarter of whom are veterans.

I came to work at the St. Cloud VA as a licensed practical nurse (LPN) in 2008, after working at several different private practices in rural and urban areas, including a maternity ward, urology practice and community based nursing home. At the VA, I started out in the nursing home and then I worked in primary care and the residential rehabilitation treatment program (RRTP). I worked in primary care until 2014 when I began working full time as a union representative.

I was elected vice president of Local 390 in 2012, and I have served as president of my local since 2014. Our bargaining unit covers a wide range of positions at the St. Cloud VA Main Campus and Brainerd, Alexandria and Montevideo community outpatient clinics (CBOC).

After one year at the St. Cloud VA for one year as a nurse working on the floor, I signed up to be a union member, went to meetings and learned I could make a difference. Also, my dad was infantry in the Army and I wanted to give back for all he sacrificed. I realized that by getting involved in the union, I could help front line employees and learn how to work collaboratively with management to improve the veteran experience.

Personally, it's taken on something more for me now because my son is a veteran. I've taken more of a personal ownership of what I do.

Being a local officer has been a very fulfilling experience and has taught me a great deal, especially that labor-management relations are not about I'm right and they're wrong but rather that we have different perspectives but a shared goal of wanting to improve care. When the union and management work collaboratively, we can move toward the same positive outcome.

As a local officer, I have the opportunity to make sure employees are getting proper training and that the workplace is safe. Our members all want to provide the best care to veterans, but they cannot do this without adequate training and a safe working environment.

I come before this Subcommittee today at the request of my Representative, Congressman Walz, and I am here to talk about how I try to address problems at my facility using official time. I must confess that I am concerned about retaliation from

management when I go back because over the last two years, the environment at St. Cloud became very hostile. In 2015, veterans using the St. Cloud VA went to the media to complain about a lack of providers and increased primary care panels. Congressmen Walz and Emmer came our facility and spoke with BU employees and got us some help. The Federal Mediation and Conciliation Service conducted a five-day mediation and we also got a visit from former VA Secretary McDonald. The outcome of this process was that the medical center director retired and we now have new leadership at our facility.

There are many other examples of how I have used official time to keep the St. Cloud VA workforce strong, make the work environment safer and collaborate with management carry out the agency's mission and take great care of veterans at our facility.

For example, Occupational Safety and Health (OSHA) inspectors came to our facility in 2013 and found a long list of violations. They spent 20 days at our facility. After correcting the violations, medical center leadership and I went to their district office to review the charges and make sure staff had correct training.

On a frequent basis, I represent housekeepers in their disputes with their supervisors. All of our housekeepers are combat veterans and they play a critical role in patient safety by keeping operating rooms and other areas free of infection. Many of these veterans suffer from anxiety, substance abuse, PTSD or other mental health issues. When a combat veteran in the bargaining unit has to take leave to get care at a VA treatment center, supervisors sometimes give them a very hard time when they return and the veterans end up feeling stigmatized and targeted. Instead of the supervisor saying, "Good for you, I am glad you got treatment", they often harass them for being low on sick leave, even though the veteran sought treatment for a condition he acquired in the military.

When these veterans come to the union for help, we explain their rights under the Family Medical Leave Act and we reach out to management to smooth out tensions and ask for greater understanding from management.

I frequently have conversations with employees because they are feeling intimidated and bullied by some of the comments made by managers. We ask the employees about problems such as how schedules are changed without notifying the employee, which then leads to management charging them with AWOL for not showing up for the new shift. As a union official, I have been able to resolve these types of misunderstandings informally at an early stage.

The union plays an essential role in addressing other arbitrary management actions that create unnecessary conflicts that interfere with the agency mission. I assisted a food service worker who prepares meals for veterans. He is an excellent employee who would not hurt a flea and greets everyone he sees and never had any trouble on the job. Then one day, as a favor to a coworker who could not attend the morning huddle, he shared management's guidelines for the day with the team. When the service line director showed up, she chastised him for not speaking loudly enough. He tried to explain that his throat was bothering him. She issued a reprimand anyway. We challenged the reprimand and instead of it staying in his file for three years, the union was able to get it removed after three months.

I represented another food service worker who was the target of manager accusations because she had a medical notification related to her inability to work extra shifts because of a back injury. The manager went around and talked to everyone about her medical condition, which intimidated the employee a great deal. I was able to talk with the manager about the employee's rights and needs. As a result, the manager stopped harassing her and the employee continues to be a productive employee to this day.

When I first became the union vice president, I was only on 50% official time. As the need increased for us to be present, management frequently asked me to come in on a day off from my RRPT duties. After I became president of the local, it became clear that management's expectation was that the president would be working only administrative hours. Management likes the continuity of having me work 100% official time. I need to be there when management calls a meeting, or schedules grievances under the required timeframes. If I am to be effective, my availability has to overlap management's availability. In addition, the local needs official time so that management can send shop stewards to the many training classes that are scheduled on health and safety and other matters.

In addition, to representation of individual employees, my regular duties as union president including:

- Attending monthly meetings called by management including director meetings, meetings with nurse executives and staff meetings,
- Meeting with service lines to talk about existing and new policies,

- Meeting with management to discuss policy changes and how it will impact working conditions, and how we can work in a collaborative manner to improve veteran care,
- Discussing new directives from VA Central Office and how they will impact work flow; then I go to the employees to ask about the workflow and how can we do it better and share this information with management,
- Resolving disagreements between employees, and
- Mentoring new employees.

If H.R. 1461 were to become law, I would only have 25% official time. This would have an adverse impact on the veterans as well as the employees at St. Cloud. I need to time to address the many new directives that come down from the Veterans Health Administration. I would not have enough time to sit down and work things out with management and determine how to implement the new requirements.

For example, just recently, a new directive on the Query State Prescription Drug Monitoring Program came out. This has a big impact on working conditions; providers will have to start a query when veterans get narcotics or changes in prescription. The union has to work with management to determine which positions are best suited to assist with the queries. Also, we need to work together to make sure our providers understand who should be delegate exactly and make sure all our Is are dotted and our Ts are crossed.

Duty time was also essential to implement another recent directive on how to upgrade urgent care to an emergency department (ED). It is a complex directive and there are many new requirements that must be met, including inpatient beds and having social workers available on call.

I have no problem providing medical care to my veterans. But I also think that my duties as a union official are also very important for taking care of veterans.

I also want to state that I am a very good steward of the use of official time at my local time. I make sure that shop stewards on official time only take 30 minute breaks. If they go over, I have a conversation with them. I am a work horse myself and I work very hard and I expect the other local officers to do the same. I have asked some shop stewards to step down because I insist on proper use of official time. There is zero abuse of official time at my local; we are using less than allowed under the contract at the present time.

H.R. 1461 would also prohibit me from lobbying. I am here today on duty time. I used duty time two years ago to work with Congressmen Walz and Emmer on the staffing problems already discussed, including meeting with the Congressmen's DC staff who came to St. Cloud, and to conduct a meeting between the lawmakers and the BU employees.

I am also very concerned about two other provisions of this bill and how they would impact the union's ability to work with management to carry out the agency's mission. If members could drop their union dues deductions at any time, instead of the current one year commitment, it would be a financial diaster to our local. These dues are essential to paying for member training, and arbitration fees, among other needs.

Finally, I think a longer probationary period is unnecessary and would be harmful, especially to the many veterans among our new hires. A good manager knows within six months whether an employee is good enough to stay on after probation. I can recall a case involving another LPN who was on probation and management promised to provide training to improve his performance. Instead, management just said goodbye without keeping its commitment on the training, right after forcing him to cover a holiday weekend.

Thank you for the opportunity to share the views of AFGE Local 390 on H.R. 1461.

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## Prepared Statement of Derk A. Wilcox

### Introduction

Chairman Arrington, Ranking Member Walz, and Members of the Committee, thank you for holding this hearing and giving me an opportunity to discuss the issue of the use of "Official Time" at the Department of Veterans Affairs.

My name is Derk Wilcox, and I am the Senior Attorney at the Mackinac Center for Public Policy. The Mackinac Center is a is a nonpartisan research and educational institute dedicated to improving the quality of life of people in its home state of Michigan and nationwide by promoting sound solutions to public policy questions.

I'd like to note that as a practicing attorney I have had the honor of representing many veterans as their court-appointed counsel in mental health, guardianship, and conservatorship hearings. I have spent many hours at the VA facility in Ann Arbor working with the staff and the veterans there.

VA Hospitals are beset with many problems as they try to meet the needs of our veterans. Official Time has added to those problems. Official Time is the practice of releasing employees to perform union functions while they are paid by the government agency - Veterans' Affairs, in this instance.

H.R. 1461 is a much needed first step requiring tracking and reporting the use of Official Time, and that is what I am here to testify about today.

### **History**

This bill is not the first effort to track Official Time. Back in 1979 the General Accounting Office (GAO) found that 18 of 26 bargaining units at four agencies had no record of Official Time usage, and recommended that the Office of Personnel Management (OPM) issue annual reports on its use.<sup>1</sup>

Through the Federal Personnel Manual, OPM directed agencies to develop a record keeping system.<sup>2</sup> However, the Federal Personnel Manual was discontinued in 1994, along with any requirements for tracking Official Time.

Since then, agencies have been subject to different requirements by differing administrations. Hence, the need for legislation to create a standardized database which will assist effective personnel management at the VA.

### **Official Time has been misreported and underreported**

OPM currently reports sporadically on limited aspects of Official Time. In the Fiscal Year 2012, the last year for which estimates appear, OPM estimated that Official Time cost the VA \$46,868,149.40. This cost represented 253,691 employees performing 1,086,257 total hours. This was up over \$4 million from the previous year, when it was estimated to be \$42,565,000.79.<sup>3</sup> There does not appear to be published estimates from OPM for the last five years.

But even these costs are merely estimates. As pointed out in the February 16, 2017 testimony before this subcommittee by William "Trey" Lawrence Kovacs III of the Competitive Enterprise Institute, these estimated costs fall short of the true costs because these fail to account for the use of office space, phones, and travel by employees using Official Time.<sup>4</sup>

The GAO report from 2014 criticized the OPM's method of accounting for Official Time. The GAO found that using a more sound method of accounting resulted in higher Official Time costs at four of the six agencies it examined. The estimates by the GAO were 15% higher than the OPM estimates because they changed the methodology of determining the amount of salaries devoted to Official Time.<sup>5</sup>

But what the GAO did not look at is whether or not the official timekeeping itself is flawed. From my investigations, it appears that the use of Official Time is underreported. I examined cases brought before both the Department of Labor's Employees' Compensation Appeals Board (ECAB) and the Federal Labor Relations Authority (FLRA). These cases involved the use of Official Time by VA employees, and Official Time was a central part of the case. In so doing I found several cases where more time was devoted to the union's activities than was being reported as Official Time.

In a case out of the Dayton, Ohio VA Medical Center, a patient services assistant petitioned for workers' compensation after she was injured while performing a union function.<sup>6</sup> She initially claimed that she had been on Official Time when the injury occurred. But an investigation into the facts found that she had been performing a union-related function during her regular work time - not on approved Official Time. She was a union steward, and chose to attend an appraisal meeting where

<sup>1</sup> Office of Personnel Management Summary Report: Official time for Representational Activities Fiscal Year 2002. <https://www.chcoc.gov/content/official-time-union-related-activities>

<sup>2</sup> Federal Personnel Manual letter 711-161

<sup>3</sup> United States Office of Personnel Management, "Labor-Management Relations in the Executive Branch," October 2014, <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports/labor-management-relations-in-the-executive-branch-2014.pdf>

<sup>4</sup> William Lawrence Kovacs, III, "The Use of Official Time for Union Activities at the Department of Veterans Affairs: Testimony before Subcommittee on Economic Opportunity and Subcommittee on Government Operations," February 16, 2017. <https://oversight.house.gov/wp-content/uploads/2017/02/kovacs.pdf>

<sup>5</sup> Government Accountability Office, "Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time," GAO-15-9, October 2014, <http://oversight.house.gov/wp-content/uploads/2014/11/GAO-report.pdf>

<sup>6</sup> Simpson, ECAB Docket No. 04-1809, 57 ECAB 197 (2005).

her presence was not required. She had been granted Official Time usage during the morning, but not during the afternoon when her injury occurred.

In another ECAB claim, this one out of the Philadelphia VA Medical Center, a medical supply assistant was injured while travelling to attend a union meeting.<sup>7</sup> Again, the Board found “Appellant’s supervisor and appellant both note that based on her union position she was entitled to use up to four hours a day of official time. However, both agree that her time sheet did not reflect that she was on official time at the time of injury and that appellant was in a regular duty status when her injury occurred.” Again, the official time keeping did not reflect that she was performing the union’s work.

Perhaps most egregious was a FLRA case out of the Medical Center at Leeds, Massachusetts.<sup>8</sup> A clinical neuro-psychologist was also the union president. She was allowed to spend 60 percent of her workweek on Official Time. However, an arbitrator found that, because of her Official Time, it was an unfair labor practice to require her, as part of her performance appraisal plan, to see any patients per week. Because “official union duties placed time constraints on the grievant’s clinical schedule during the workweek” it was “unfair” to require her to see as few as one patient for testing per week. In short, what was recorded as 60 percent Official Time effectively became 100 percent Official Time. Furthermore, she was exempt from the procedures for scheduling patient “consults.” i.e., she was not required to participate in “requests from physicians or others that a veteran be seen for psych[iatric] or neuro-psych[hiatric] evaluation.” Although the time sheets would not show it, Official Time kept this neuro-psychologist from seeing any patients as a requirement of her employment.

In 2013 Senator Rob Portman (R–OH) and Tom Coburn (R–OK) wrote to the then-Secretary of Veterans Affairs, Eric Shinseki, noting that: “Documents show that your department recently employed at least 85 VA nurses, some with six-figure salaries, who were in 100 percent official time <sup>9</sup>status.”<sup>10</sup> Yet as the cases I have cited show, there are others, perhaps many, whose Official Time usage exceeds their allotment and who are effectively on 100 percent Official Time despite being on record as only devoting 60 percent to Official Time.

So while the OPM found that in VA employees spent 1,086,257 hours on Official Time, based on the cases I have cited, there is ample reason to believe that hours reported to the OPM are undercounted.

One of the common responses to the use of Official Time for union-related business is that the unions are required to represent all bargaining unit members, both dues paying members and non-members. And that this universal representation requirement imposes an unfair burden on the unions in their representational activities. However, according to the VA, the union which represents most VA employees is the Government Employees AFGE AFL–CIO.<sup>11</sup>

In FY 2015 Government Employees AFGE AFL–CIO National Headquarters reported receipts of \$134,852,702 on its LM–2 disclosure forms. (This number does not include the locals.) It would not be unreasonable to expect the AFGE and other unions to bear the costs of their own activities rather than shifting these costs to taxpayers and shortchanging the veterans who are supposed to be served by the VA employees who are instead on Official Time. If the burden of representing non-union members in the bargaining unit is too great, than perhaps the unions should be relieved of that requirement in exchange for non-union-member employees being allowed to represent themselves, a.k.a., “Workers’ Choice.”<sup>12</sup>

The enactment of H.R. 1461 could provide the necessary tool to properly count the hours and total cost of Official Time at the VA. Likewise, it would restrict Official Time activities so that physicians like the psychiatrist in the case above at the Leeds facility are using their skills and expertise on the treatment for which they were trained and hired, and not for union activities. Section 741(a)’s requirement that time be accounted for “accurately and to a specific degree” should eliminate the

<sup>7</sup> K.L. and Dept. of Veterans Affairs, Docket No. 06–2154, 2007 WL 1227942

<sup>8</sup> NAGE Local R1–274, 68 FLRA No. 160 (2015)

<sup>9</sup> “Portman/Coburn Letter: Should 188 VA Employees Be Paid To Do Union Work Full-time While Veterans Face Backlog?,” June 5, 2013, Office of Senator Rob Portman, <http://www.portman.senate.gov/public/index.cfm/pressreleases?ID=6bbbed8f6–35c2–49e3–a0fb–fd10a0089f04>

<sup>10</sup> In another FLRA case out of the Dayton, Ohio VA, a woman was hired as a prosthetics representative. But on becoming union president, she spent 14 years on 100 percent official time. She then filed a grievance and won when the Agency did not consider those 14 years of union business to be equivalent to advancement in the prosthetics field. AFGE Local 2209, 65 FLRA No. 206 (2011).

<sup>11</sup> <https://www.va.gov/LMR/laborunions.asp>

<sup>12</sup> <http://www.mackinac.org/22471>

case of duty time being used for union activities, as the aforementioned cases found. Section 741(2)(E) and (F) should correct the flaws pointed out in the February 16, 2017 CEI testimony before this body, which pointed out that Official Time was not accounting for fringe benefits, office space, or other facilities used for Official Time. Section 742(a) correctly restricts Official Time from being used for “political activities or activities related to lobbying.” As noted above, the unions representing VA employees have annual revenues of well over \$100 million - under no circumstances should taxpayers be required to fund political activities on their behalf. Lastly, and perhaps most importantly, Section 742(b) is a necessary correction prohibiting physicians and other highly-skilled medical professionals from using Official Time when their unique skills and training should be used to treat our veterans.

### **Summary**

In summary, when cases have been looked at in-depth, it has been frequently shown that employees have been using more time for union activities than has been allocated to them as Official Time. H.R. 1461 would appear to be a necessary first step to properly track how much time VA employees spend on Official Time, account for the true costs, and restrict the improper uses of Official Time. Following the enactment of H.R. 1461, we should get a more complete picture of the extent of the problem, and better enable managers to effectively use the resources available to help our veterans.

I would like to thank the subcommittee for this opportunity and will welcome any questions.

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## **Statements For The Record**

### **AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO (AFGE)**

J. DAVID COX, SR., NATIONAL PRESIDENT

Chairman Arrington and Ranking Member O'Rourke, and members of the Subcommittee, my name is J. David Cox, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). I submit this statement in opposition to H.R. 1461 on behalf of the 700,000 federal and District of Columbia employees AFGE represents, and I urge the Subcommittee to reject this legislation.

### **Background**

On January 17, 1962, President John F. Kennedy signed Executive Order 10988, Employee-Management Cooperation in the Federal Service, which gave federal employees the right to unionize and bargain collectively. Seven years later, on October 29, 1969, President Richard Nixon issued Executive Order 11491, which reaffirmed and expanded those rights.

In 1978, Congress enacted the Civil Service Reform Act (CSRA) of 1978 which states clearly the public interest in labor unions and collective bargaining in the federal sector. The language of the law includes the following:

The Congress finds that-

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them-

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.<sup>1</sup>

The CSRA went on to require federal employee unions to provide a wide range of representational services for all employees in their collective bargaining units, including those who choose not to join the union, not to pay dues. Under this “open shop” arrangement, federal employee unions are also forbidden from collecting any fair share payments or fees from non members for the services which the union has a legal obligation to provide.

In order to fulfill unions’ legal obligation to provide the same services to those who pay as well as those who choose not to pay, the Executive Orders and the CSRA instructs agencies to bargain with federal employee unions to determine a reasonable amount of “official time” to carry out these duties. These legal provisions have produced an efficient and effective mechanism for the fulfillment of the duty of fair representation. Federal employees agree to serve as volunteer employee representatives, and agencies allow them to use a reasonable amount of official time to engage in representational activities while on duty status.

The representation activities that these elected volunteers may engage in while in duty status are limited, and include:

- Developing systems to allow workers to perform their duties from alternative sites, thus increasing the effectiveness and efficiency of government;
- Participating in management-initiated efforts to improve work processes; and
- Creating fair promotion procedures that require that personnel selections be based on merit, in order to allow employees to advance their careers;
- Establishing flexible work hours that enhance agencies’ service to the public while allowing employees some control over their schedules;
- Setting procedures that protect employees from on-the-job hazards;
- Enforcing protections from unlawful discrimination in employment;
- Providing affected workers with a voice in determining their working conditions.

Official time may not be used for union organizing, the union’s political activities, or the conduct of internal union business, all of which are prohibited by law to be undertaken during hours designated as official time.

The CSRA provides that the amount of official time deemed reasonable for negotiations and other representational responsibilities that may be used is limited to that which the agency and its unions agree is “reasonable, necessary, and in the public interest”.<sup>2</sup> The actual amount of time permitted to any union representative is determined in the course of formal negotiations that follow established legal regulations. The notion that agencies have ever provided any kind of open-ended quantity of official time is erroneous. There is always a cap or maximum amount authorized by the agency and set forth in the collective bargaining agreement. Under AFGE’s current collective bargaining agreement with the Department of Veterans’ Affairs, local union officials are allocated official time under a formula of no more than 4.25 hours per bargaining unit employee per calendar year times the number of employees the union is legally required to represent at each facility. This number represents an annual maximum.

To protect the taxpayer and the independence and integrity of the union, the statute clearly states that all non-representational activities of the union must be performed while in a non-duty status. That is, the same individual who has volunteered and been elected by his or her co-workers to provide representational services cannot do any of the following while on “official time” or while in duty status:

- solicitation of membership;
- internal union meetings;
- elections of officers; and
- partisan political activities.

I want to emphasize, Mr. Chairman, that official time may not be used for the above activities. I can assure you that AFGE’s elected representatives receive extensive training and guidance on what activities are permitted and what activities are forbidden on official time. We take very seriously both our legal obligation to represent all members of our bargaining units, and the legal prohibitions against engaging in non-representational activities. AFGE representatives know the difference and act accordingly.

Finally, federal employees are permitted to file appeals of personnel actions outside the scope of the union’s negotiated collective bargaining agreement. Examples include appeals through an agency’s internal administrative grievance system or

<sup>1</sup> <https://www.law.cornell.edu/uscode/text/5/7101>

<sup>2</sup> <https://www.law.cornell.edu/uscode/text/5/7131>

Equal Employment Opportunity programs, appeals to the Merit Systems Protection Board (MSPB) for adverse personnel actions such as suspensions, removals, and reductions-in-force, appeals to the Department of Labor (DOL) and/or the MSPB for violations of veterans' preference rules, appeals to DOL for workers' compensation, and appeals to

OPM for violations of the Fair Labor Standards Act. These statutes provide a reasonable amount of time to employees and their representatives to file such appeals.

Specifically, AFGE opposes the provisions of H.R. 1461 for the following reasons:

#### **Excessive Limitations of Official Time**

While H.R. 1461 does not, on its face, eliminate official time in the Veterans Administration, it places limits that are inconsistent with unions' legal obligation to provide the same services to those employees who pay dues as well as those who choose not to pay. This legislation severely limits the use of this longstanding tool which gives federal agencies and their employees the means to expeditiously and effectively address mission-related challenges and bring closure to conflicts that arise in the workplace.

Dictating who may or may not use official time arbitrarily makes a significant portion of federal employees who choose to join the union ineligible for election to leadership positions in the union. In accordance with the law, official time is used only by elected officers in the union. By prohibiting most medical professionals from using any official time, and severely restricting the use of official time by patient care professionals, the Veterans Health Administration will no longer have a managed system in place that gives employees with specific health care expertise a structured system to safely report and address issues impeding the delivery of quality medical care to veterans. In many cases, the union official best able to address employer-employee relations effectively and timely is a person who has worked in a similar profession.

Further, management has often expressed to our local elected leaders a preference for engaging on labor-management issues with just a few representatives who are available and knowledgeable to address those issues in a timely manner. Many labor-management concerns can be addressed in the early stages. If we are not able to have sufficient time dedicated to these needs, problems that can be resolved before they become larger may grow and multiply. An efficient working relationship between labor and management, with individuals dedicated to this work from both labor and management, is the best way to ensure that VA staff are at their jobs serving America's veterans.

#### **Revoking Membership At Any Time**

H.R. 1461 allows union members to revoke their membership at any time. Right now, they sign a contract for a year. Bargaining unit members should not be able to drop in and out several times each year, and a contractual agreement between the union and its members must be upheld. Individuals cannot buy health insurance just in time to go to the doctor, drop it the next day, and then pick it up again a few months later when they get sick. The union dedicates resources to its membership and should be able to count on a year-long membership at a time.

#### **Extension of Probationary Periods**

H.R. 1461 extends from 12 months to 18 months the probationary period for newly hired employees. Any good manager knows within a year, in fact within six months, whether a new hire is a good fit and will thrive in their position. Further, with 45,000 positions to be filled, the VA is at a deficit in attracting highly trained and experienced professionals. The VA will lose its competitive edge as an employer if it cannot provide the stability and benefits of full-time career positions, especially when recruiting medical professionals.

#### **Ban on Communication with Congress while on Duty Time**

H.R. 1461 prohibits formal communication with lawmakers while on official time. This would include the ability to inform Congress of the impact of new or pending legislation or an agency's failure to comply with Congressional inquiries or requests. The ability to make presentations to lawmakers is an important element of our representational responsibilities. We ask that you modify this blanket prohibition because it is too broad and ultimately inconsistent with the public interest in having formal lines of communication open between Congress and rank and file federal employees in the Executive Branch. Please be assured that we train our member on the requirements of the Hatch Act and we adhere closely to those appropriate restrictions. Oversight of federal agencies is the one of the most important functions of the Congress. We urge you to recognize that federal employees are often the most

knowledgeable and committed advocates for the mission of the government. Congress and the American people benefit when they are able to have direct formal communication regarding processes and systems that may be working or not working, and what might be needed to improve an agency's mission. Although as citizens federal employees can always meet with their Congressional representatives, as federal employees our members have voted to have the right to be represented formally by their employee organization and have voted to have their views conveyed to Congress through their union.

#### **Official Time: A Partnership that Works**

The provision of a reasonable amount of official time for representational duties in the federal sector reflected a choice from among the variety of arrangements that existed in the private sector labor-management relations and collective bargaining agreements. The alternative to "official time" in private sector collective bargaining agreements has been to charge employees who exercise the right not to pay dues to the union a "fair share fee" to cover the costs a union bears in enforcing its contract with an employer. In these cases, the union uses the fees to hire "business agents" to perform representational duties. There may still be elected shop stewards who convey information to business agents, but the actual costs of representation are born by the union and paid for by both dues and fair share fees.

Imagine for a moment an arrangement where there is neither official time nor fair share fees, yet the union is legally liable for representation of each individual in the bargaining unit. These representational duties would include both negotiating and enforcing the terms of the contract on behalf of the employees in the unit. There could be no union representation. This is an obvious absurdity, as indeed there is no private entity that is required by law to offer its services for free. No business is required to do this. No non-profit is required to do this. Even religious institutions and other tax-exempt entities are not required to do this. This is the peculiarity of law that gave rise to the negotiation between federal agencies and their unions for reasonable time to carry out these representational duties prescribed by law.

#### **GAO's Report: Official Time Also Makes the Government More Efficient, Effective, and Gives Value to the Taxpayer**

At the Department of Veterans' Affairs (DVA), employee representatives are able to work together with agency managers to use their time, talent, and resources to improve the delivery of services to veterans. The January 2017 Government Accountability Office (GAO) report we are here to discuss today (Union Activities: VA Could Better Track the Amount of Official Time Used by Employees) found time and again that elected union representatives who worked with VA managers on workplace and patient issues brought value because of the deep commitment to veterans' care that AFGE shares with DVA. "Managers and union officials from most groups we interviewed said that employees' use of official time improved decision making and helped them resolve problems at their respective VA facilities, and some believed it improved relationships between management and labor."<sup>3</sup>

The GAO report found that in two out of three facilities investigated, 80% of the groups of managers interviewed agreed that union representatives improved decision making and helped resolve problems, and 60% of the manager groups agreed that the union helped improve relationships.<sup>4</sup> Our members' only goal is to deliver excellent care and services to our nation's veterans. Excellent, highly satisfied and dedicated employees are the VA's most important resource and reasonable amounts of official time allows employees to participate directly in agency decisions that affect them. And the data in the GAO report confirm this to be true.

It must be emphasized that nowhere in the GAO report is there any suggestion or allegation of union wrongdoing with regard to the use of official time in DVA. GAO found no union failure to report information and no instance where information reported was inaccurate. Rather the GAO found simply that DVA failed to collect the data properly.

Private industry has known for years that a healthy and respectful relationship between labor and management improves productivity, innovation, quality, and customer service and is often the key to survival in a competitive market. It is not uncommon for healthcare companies in the private sector to bargain with unions over paid time for union officials to be released from duty to work on quality improvement, safety and other workplace matters. Kaiser Permanente, Johns Hopkins Hospital, the Mayo Clinic, the University of Chicago Hospital, New York Presbyterian,

<sup>3</sup> <http://gao.gov/assets/690/682250.pdf> page 19.

<sup>4</sup> <http://gao.gov/assets/690/682250.pdf> page 20.

Cedars-Sinai—the crown jewels of America’s private healthcare system—all have unionized employees.

No effort to improve governmental performance—whether it’s called reinvention, restructuring, or reorganizing—will thrive in the long run if labor and management have an adversarial relationship or are precluded from engaging in a mutually respectful exchange of ideas. The reasonable use of official time provides the means, not only in DVA but also throughout the federal government by which employees and their elected representatives participate in the improvement of DVA services. In these times, it is essential for management and labor to develop and maintain a stable and productive working relationship. We must continue to allow employees to choose their representatives who will interact and work with DVA management. This is crucial if we are to continue to improve the delivery of DVA services to veterans.

Employee representatives and managers have used official time through labor-management partnerships to transform the labor management relationship from an adversarial stand-off into a robust alliance. And that just makes sense. If workers and managers are communicating effectively, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally. And that is exactly what happens in DVA. Absent the union’s ability to resolve a misunderstanding or dispute quickly at the local level, managers and employees have few options. If an employee leaves or is terminated because of a misunderstanding that could easily have been handled through a union dispute resolution process, DVA bears the costs of recruitment and training of a replacement, a costly, disruptive and unnecessary outcome that a good labor-management relationship can and does prevent on a routine basis.

Routinely, we see examples of official time under labor-management partnerships or forums used to bring closure to workplace disputes between the DVA and an employee or group of employees. GAO’s findings support this—it found that VA managers and union officials confirm that including the union pre-decisionally in the process of considering management decisions improved the decision-making process. The GAO study also cited that the union and management worked together on nurse scheduling at one facility with the goal of improving staff retention and morale. Staff retention and increased morale among VA employees is critical to being able to hire and retain outstanding staff to improve quality treatment of veterans. It is the inclusion of front-line employees through their elected union representatives that make these kinds of changes not only more frequent, but also more successful and more likely to result in better service to our veterans.

#### **Healthier Labor Management Relations in the Federal Government Also Produce Cost Savings in Reduced Administrative Expenses**

Employee representatives use official time for joint labor-management activities that address operational, mission-enabling issues that improve VA’s service to veterans. Patient safety initiatives are a prime example of this type of work, and the VHA’s prominence and success in this area is a source of pride for AFGE. Official time is allowed for activities such as designing and delivering joint training of employees on work-related subjects; and introduction of new programs and work methods that are initiated by the agency or by the union. As examples, such changes may be technical training of health care providers or jointly inspecting the workplace for hazards; participating in VA-wide improvement initiatives like MyVA which examined a multitude of ways to improve veterans’ care, veterans benefit processing and other VA system improvements.

Employee representatives use official time for routine and unusual problem-solving of emergent and chronic workplace issues. For example, when they participate in VA health and safety programs which emphasize the importance of effective safety and health management systems in the prevention and control of workplace injuries and patient safety, representatives have been granted official time by their managers. Another example comes from the important area of patient safety. The reasonable use of official time also allows union representatives to alert management to issues reported to them without disclosing the identity of the employee who made the disclosure, issues that may be a matter of life and death to patients. Employee representatives have also used allotted official time to ensure that employees are hired and promoted fairly. This work leads to better recruitment and retention of desperately needed front-line health care to better care for veterans.

#### **Further Findings in the GAO Report**

The GAO Report found that the use of official time by union representatives was valuable to making VA a great place to work and improving the delivery of care to veterans. In particular, the GAO report found that the use of official time by elected

union representatives: improved agency decision making, improved conflict resolution and led to better, less adversarial outcomes. The use of official time improved the relationship between VA management and employees. While some challenges in staffing were identified in GAO's report, it is important to note that release from duty is always coordinated and agreed to by VA management when employee representatives participate in workplace matters. Improved employee engagement is a goal of the federal government overall and also of the VA in particular. Scaling back the involvement of employee representatives under the guise of alleged "government efficiency" would be a mistake, a short-sighted policy which would deprive the agency of the valuable contributions front line employees make to the VA through the use of official time.

The challenges and issues cited by GAO are solely related to VA's administrative decisions about how to track official time. AFGI supports the accurate collection of data, which is called for in H.R. 1461. It would be inappropriate, however, to use any failure on the part of the VA in the implementation of its internal management systems as a basis to disturb existing law and practices with regard to official time, which H.R. 1461 does. The GAO report found that the use of official time was value added to the agency and any bookkeeping failure on the part of DVA management would not be a legitimate basis on which to undermine the valuable contributions of employee representatives in the workplace.

The GAO report confirms that official time is a valuable tool for facilitating employee input into the shared goal of improving the VA. Despite the numerous investigations undertaken by Congress, GAO, VA, and VA's OIG and other entities, the use of negotiated time for union representatives has never been found to be connected in any way to veteran waitlists, slow processing of veteran claims or any of the challenges identified over the years in VA. Instead, the facts show that official time is valued by both VA management and employees for problem-solving and improving the delivery of care and services to veterans. Participation of employees' elected representatives in improving the VA and adding value to VA and the whole federal government needs to continue so we can all accomplish the goal of providing the best services. We urge Congress and the Administration not to undermine a system that has a proven track record of success in improving government. Inclusion of employees' perspectives in efforts to make the VA a better workplace and a better healthcare system have proven their worth, and I ask that the committees present today recognize the importance of permitting this important work to continue.

#### **Opposition to the use of Official Time**

Those who would like there to be no union representation in the Department of Veterans Affairs or in any other workplace, public or private, have tried to suggest that VA's understaffing problems could be eliminated if only there were no one involved in representation of bargaining unit employees. Of course, the numbers make this assertion ridiculous. As stated previously, it is estimated that the VA has in excess of 45,000 unfilled medical positions nationwide. Even if we assume that GAO's concerns about VA's recordkeeping with respect to the use of official time are valid and VA has perhaps understated the number of hours used annually, the numbers reported for 2015 are small: approximately 2.7 hours annually per bargaining unit employee.<sup>5</sup> The number of hours reported to have been spent on official time throughout DVA, including the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA) was equivalent to no more than 508 FTE for bargaining units of nearly 300,000 in an agency with 350,000 employees.

To attempt to place the blame for VA understaffing on this small element of the Department's operations is ludicrous. It would be just as appropriate to blame it on the number of people who work in the Office of Resolution Management (288), or the number in the General Counsel's Office (723), or the Office of the Deputy Assistant Secretary for Finance (869) or even the 537 who work in the Secretary's Office.<sup>6</sup> If all of the people in these positions were transferred to the bedside of veterans, one could say that there were more people providing direct patient care. But the Department is an enterprise with many functional needs, and each of these offices perform necessary functions. No one is suggesting that the work of these offices should cease in order that incumbents be transferred to fill openings elsewhere. The function performed by union representatives is just as vital and important as any other Department function focused on support of veterans. To suggest otherwise is nothing more than a transparent effort to deny employees the union representation for which they have voted. And more important, it does a disservice to both the vet-

<sup>5</sup> <http://gao.gov/assets/690/682250.pdf> page 13

<sup>6</sup> <https://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll>

erans who work at the Department and the veterans who rely on DVA's employees for the services they have earned.

**Conclusion**

This Subcommittee held a hearing on February 16, 2107 at which it was acknowledged that the GAO report did recommend that the DVA improve its recordkeeping with regard to union representatives' use of the reasonable amounts of official time permitted to them. The report did not conclude that any of the provisions of H.R. 1461 were necessary or warranted. It identified no union failure or unwillingness to report use of official time to DVA management. And in no way did the report suggest that the use of official time presents problems for the Department. Instead, GAO that this Subcommittee reviewed confirms that both union and management representatives report positive outcomes as a result of allowing for time for union representation. Better decisions, better resolution of the inevitable problems that arise in a workplace, and improved relationships were all identified as benefits of the work of union representatives. And these benefits all accrue to the veterans we hold in such high esteem, the veterans to whose care we have devoted our careers.

I ask the members of the committee to bear in mind that fully one third of the Department's workforce are veterans themselves. They have fought bravely for the freedoms we all cherish, and that includes the freedom to form, join and be represented by a union. Any effort to undermine these veterans' union rights should be vehemently opposed. The right to form and join a union is surely undermined if that union is prevented from exercising its representational duties because representation is the very purpose of the union. I thank you for the opportunity to submit this statement and I strongly urge the Subcommittee to reject H.R. 1461.

