No. 2015-7081

IN THE
UNITED STATES COURT of APPEALS
For The FEDERAL CIRCUIT

DISABLED AMERICAN VETERANS and
VETERANS OF FOREIGN WARS OF THE
UNITED STATES,

Petitioners,

v.

SECRETARY OF VETERANS AFFAIRS,

Respondent.

On petition for review pursuant to 28 U.S.C. § 502.

BRIEF OF *AMICI CURIAE* NEW YORK STATE BAR ASSOCIATION IN SUPPORT OF PETITIONERS DISABLED AMERICAN VETERANS and VETERANS OF FOREIGN WARS OF THE UNITED STATES

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CERTIFICATE OF INTEREST

Counsel for the *Amicus Curiae* certifies the following:

1. The full name of every party or *amicus* represented by me is:

   New York State Bar Association

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

   N/A

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

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4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

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Dated: August 20, 2015

Respectfully Submitted,
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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae, New York State Bar Association, is a Not-For-Profit Corporation organized under the laws of the State of New York, that is chartered to "promote the public good," and "to uphold and defend the Constitution of the United States,"[1] on behalf of all citizens of the State of New York, but particularly the approximately 900,000 veterans[2] who reside in the State of New York. The Committee on Veterans of the *Amicus Curiae*, which initiated consideration and facilitated the ultimate decision of *Amicus Curiae* to participate in this action, was established by *Amicus Curiae* to focus upon the interests of veterans in the State of New York. *Amicus Curiae* is, therefore, uniquely positioned to file this brief.

This brief[3] is submitted by *Amicus Curiae* pursuant to Fed. R. App. 29 (a) and Federal Circuit Rule 29 (c). In this regard, Petitioner consents to the filing of this brief; Respondent, although contacted by Counsel for *Amicus Curiae*, has not

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[1] NEW YORK STATE BAR ASSOCIATION, *By-Laws*, Section II (January 2015) http://www.nysba.org/Bylaws/.

[2] *Veteran Population*, DEPARTMENT OF VETERANS' AFFAIRS, NATIONAL CENTER FOR VETERANS ANALYSIS AND STATISTICS, http://www.va.gov/vetdata/Veteran_Population.asp (last visited August 19, 2015).

[3] Counsel for *Amicus Curiae* authored the herein brief in whole or in part; counsel for *Amicus Curiae* did not contribute money that was intended to fund preparing of submitting this brief; no person or party contributed money or resources toward preparation of this brief.

determined its position.

Amicus Curiae, asserts that the Secretary's new regulations will prejudice the rights and privileges of the 57,475[4] elderly WWII veterans, with the average age being 89.5,[5] the 88,848 [6] Korean War Veterans, with the average age being 80.5,[7] and the approximately 4650[8] homeless veterans who live in New York State, including approximately 3000[9] homeless veterans living in the City of New York, to apply for and receive disability compensation benefits from the Respondent.

ARGUMENT

A. SUMMARY OF ARGUMENT

The 57,475[10] WWII veterans who reside in the State of New York

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[4] *See Veteran Population*, *supra* note 2.
[5] This number is an approximation based on the following calculation: WWII veterans who were 18 years of age in 1941 are currently age 92; and those who were age 18 in 1946 are currently age 87.
[6] *See Veteran Population*, *supra* note 2.
[7] This number is an approximation based on the following calculation: Korean War veterans who were 18 years of age in 1950 are currently age 83; and those who were age 18 in 1955 are currently age 78.
[8] New York State total is 4659. NATIONAL COALITION FOR HOMELESS VETERANS, *Estimates of Homeless Veterans by State* (2013), http://www.nchv.org/index.php/connect/story/location (last visited on August 19, 2015).
[9] DECIDE NYC, (Apr. 30, 2014), http://www.decidenyc.com/issues/veterans-affairs/ (last visited on August 19, 2015).
[10] *See Veteran Population*, *supra* note 2.

constitute the 5th largest concentration of WWII veterans in the United States.[11] Only California, Florida, Texas and Pennsylvania are home to more WWII veterans than New York.[12] With 4,659 homeless veterans residing in New York, this demographic trend is more acute - only California and Florida exceed New York;[13] of the 4,659, approximately 3000 homeless veterans reside in the City of New York.[14] New York is also home to the 88,848 [15]elderly Korean War Veterans with an average age of 80.5.[16] These veterans have restricted access to and use of the internet to research VA services or benefits procedures, or to access VA forms. [17]

Three aspects[18] of Respondent's new regulation create major impediments for the most vulnerable groups of veterans in New York: (1) the

---

[11] *Id.*
[12] *Id*.
[13] New York State total is 4659. NATIONAL COALITION FOR HOMELESS VETERANS, *Estimates of Homeless Veterans by State* (2013), http://www.nchv.org/index.php/connect/story/location (last visited on August 19, 2015).
[14] DECIDE NYC, (Apr. 30, 2014), http://www.decidenyc.com/issues/veterans-affairs/ (last visited on August 19, 2015).
[15] *See Veteran Population*, *supra* note 2.
[16] *See supra* note 7.
[17] Westat, NATIONAL SURVEY OF VETERANS, ACTIVE DUTY SERVICE MEMBERS, DEMOBILIZED NATIONAL GUARD AND RESERVE MEMBERS, FAMILY MEMBERS, AND SURVIVING SPOUSES 97 (2010), http://www.va.gov/SURVIVORS/docs/NVSSurveyFinalWeightedReport.pdf.
[18] *Amicus Curiae* concurs with Petitioner with regard to arguments advanced by Petitioner regarding the remaining sections of Respondent's new regulation.

new regulations eliminate the "informal claims" process entirely, replacing it with an "intent to file" process. *See* 38 C.F.R. § 3.155(b) (2015); (2) Veterans now must identify specific benefits or they are ignored by Respondent; Respondent's new regulations require that a claim identify the "specific benefit" sought. 38 C.F.R. § 3.1(p) (2015). The Final Rule, too, narrows the claims Respondent will consider to those "that are reasonably within the scope" of that specific benefit; veterans as a result may lose benefits. 38 C.F.R. § 3.155(d)(2) (2015); and, (3) Respondent's new Regulation ended the decades-long practice of accepting any written communication from a veteran "in terms which can be reasonably construed as disagreement with [a VA] determination and a desire for appellate review," as a Notice of Disagreement (NOD). *See* 38 C.F.R. § 20.201 (2014).

B. APPLICABLE STATUTES AND REGULATIONS

When reviewing an agency's interpretation of a statute it is charged with administering, this Court applies the Supreme Court's standard in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). The first *Chevron* question is "whether Congress has directly spoken to the precise question at issue." *Id.* at 842. If Congress's intent is clear, the Court "must give effect to the unambiguously expressed intent of Congress." *Id*. When reviewing veterans' statutes, the Supreme Court has

clarified that, even under the first question, "interpretative doubt is to be resolved in the veteran's favor." *Brown v. Gardner*, 513 U.S. 115, 117-18 (1994).

After resolving interpretative doubt in the veteran's favor, if the Court concludes that the statute is ambiguous, *Chevron* prompts a second question, whether the agency's actions are both "reasonable and consistent in light of the statute and congressional intent." *Disabled Am. Veterans* v. *Gober*, 234 F.3d 682, at 691 (2000)[hereinafter *DAV*]. If the agency's actions are unreasonable or conflict with Congress's intent, they cannot stand.

a. **Informal Claims No Longer Available to Veterans**

Authorizing statute, 38 U.S.C. § 5102, provides,

> **Application forms furnished upon request; notice to claimants of incomplete applications**
>
> (a) Furnishing Forms.—*Upon request made by any person claiming or applying for,* ***or*** *expressing an intent to claim or apply for,* a benefit under the laws administered by the Secretary, *the Secretary shall* furnish such person, free of all expense, all instructions and forms necessary to apply for that benefit. [Emphasis added.]
>
> (b) Incomplete Applications.—If a claimant's application for a benefit under the laws administered by the Secretary is incomplete, the Secretary *shall* notify the claimant and the claimant's representative, if any, of the information

> necessary to complete the application. [Emphasis added.]
>
> (c) Time Limitation.—(1) If information that a claimant and the claimant's representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary ***within one year from the date such notice is sent***, no benefit may be paid or furnished by reason of the claimant's application. [Emphasis added].

Respondent's new regulation, replaced the following, which previously implemented 38 U.S.C. § 5102, and gave veterans the explicit right to receive disability compensation benefits, by filing an informal claim with Respondent. The 2014 regulation stated,

> **§ 3.155 Informal claims.**
>
> (a) *Any communication or action*, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant . . . may *be considered an informal claim. . . .Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution.* ***If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.*** [Emphasis added.]

The new regulation takes away from veterans the informal claim method of filing for benefits. Added by Respondent, to implement § 5102, the new and prejudicial regulation, provides,

§ 3.155 How to file a claim.

(b) *Intent to file a claim.* A claimant . . . may indicate a . . . desire to file a claim for benefits by submitting an intent to file a claim to VA. . . .Upon receipt of the intent to file a claim, VA will furnish the claimant with the appropriate application form prescribed by the Secretary. If VA receives a complete application form prescribed by the Secretary . . . within 1 year of receipt of the intent to file a claim, VA will consider the complete claim filed as of the date the intent to file a claim was received.

(i) An intent to file a claim can be submitted in one of the following three ways: (i) [electronic through Respondent's digital portal]. (ii) Written intent on prescribed intent to file a claim form. The submission to an agency of original jurisdiction of a signed and dated intent to file a claim, *on the form prescribed by the Secretary* for that purpose, will be accepted as an intent to file a claim. . . .(iii) Oral intent communicated to designated VA personnel . . . will be accepted if it is directed to a VA employee designated to receive such a communication, . . . and the VA employee documents the date VA received the claimant's intent to file a claim in the claimant's records. [Emphasis added.]

b. <u>VA No Longer Infers Claims for Veterans</u>

38 U.S.C. § 5107. Claimant responsibility; benefit of the doubt

(b) Benefit of the Doubt.—The Secretary shall consider *all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary.* When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant. [Emphasis added.]

Previously, Respondent inferred claims for benefits, going beyond the actual claim that Respondent received from a veteran. Prior to the new Regulation, Respondent implemented § 5107, as follows,

> §3.157 **Report of examination or hospitalization as claim for increase or to reopen** . . . (b) Claim. Once a formal claim for pension or compensation has been allowed or a formal claim for compensation disallowed for the reason that the service-connected disability is not compensable in degree, receipt of one of the following *will be accepted as an informal claim*] for increased benefits or an informal claim to reopen. [Emphasis added.]
>
> (1) Report of examination or hospitalization by Department of Veterans Affairs or uniformed service. The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital *will be accepted as the date of receipt of a claim*. [Emphasis added.]

Continuing, *Amicus* notes that, as Respondent explained in the Preamble to the new Regulation, Respondent had a "longstanding practice to infer or identify and award certain benefits that a claimant has not expressly requested but that are related to a claimed condition and there is evidence of record indicating entitlement." 79 Fed. Reg. at 57,672.

The new regulation(s), however, changed this former pro-veteran requirement, and provides:

> 38 C.F.R. §3.1(p) *Claim* means a written communication requesting a determination of entitlement or evidencing a

> belief in entitlement, to a *specific benefit under the laws administered by the Department of Veterans Affairs submitted* on an application form prescribed by the Secretary. [Emphasis added.]

Pursuant to new 3.155(d)(2), "Scope of Claim," Respondent will evaluate additional claims that are reasonably "within the scope" of the issues enumerated in the complete claim.

c. <u>Notice of Disagreement [NOD] Now Fact Specific</u>

Authorizing statute, 38 U.S.C. 7105. Filing of notice of disagreement and appeal, provides,

> (a) Appellate review will be initiated by a notice of disagreement [NOD] *and completed* by a substantive appeal after a statement of the case is furnished as prescribed in this section. [Emphasis added.]
>
> (2) Notices of disagreement, and appeals, must be in writing.

The new regulation that Respondent published, however, implements § 7105 as follows,

> 38 C.F.R. § 20.201 Rule 201. Notice of Disagreement.
>
> (a) Cases in which a form is provided by the agency of original jurisdiction for the purpose of initiating an appeal. (1) *Format.* For every case in which the agency of original jurisdiction (AOJ) provides, in connection with its decision, a form for the purpose of initiating an appeal, a Notice of Disagreement consists of a completed and timely submitted copy of that form. VA will not accept as a notice of disagreement . . . that is submitted in

> any other format, including on a different VA form.
>
> (5) *Alternate form or other communication.* The filing of an alternate form or other communication will not extend, toll, or otherwise delay the time limit for filing a Notice of Disagreement.

This new regulation requires the use of a standard form, which if not submitted by a veteran, would cause the 12-month filing period to run without any tolling – completely different from the former regulation.

C. REGULATIONS VIOLATE APPLICABLE STATUES

a. Informal Claims Abolished

Initially, *Amicus Curiae*, notes that the effective date for a grant of disability compensation benefits, as administered by Respondent, "will be the date of receipt of the claim or the date entitlement arose, whichever is the later." *See* 38 C.F.R. § 3.400 (2015). "[D]ate of receipt of the claim," as defined and applied by Respondent is critical because this is the date from which the payment of monetary benefits starts.

In this regard, prior to the Respondent's new regulations, pursuant to 38 C.F.R. § 3.155(a) (2014), if the veteran submitted a complete application within one year of his or her original communication or action, i.e., the "informal claim,"

VA would award benefits from the date it received the informal claim. This method matches the requirements of the authorizing statute, 38 U.S.C. § 5102(c), which gives veterans one year from the date the Secretary sends notice to finish completing an incomplete application. Under the new 38 C.F.R. § 3.155(b) and (c), however, the veteran receives one year from his or her submission of an intent to file or incomplete claim [on a Standard Form] to Respondent, to complete and submit a formal application, not one year from notice from the Secretary, as required by § 5102(c) (2014). Elderly WWII and Korean War veterans, and homeless veterans may not, for reasons stated in this brief, possess the capability to complete and file fully compliant forms with the Respondent. As a result, the new VA Rule eliminates the 12-month retroactive window, that is, 12 months of retroactivity as measured from the date of notice from the Respondent.

The former regulation, § 3.155(a), tracked the authorizing statute – 38 U.S.C. § 5102, particularly subsection (c). That implementing regulation, which Respondent deleted, provided that if the Respondent issued application was received "within one year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim." The intent of Congress, therefore, as implemented by the former 38 C.F.R. § 3.155(a) (2014), is unambiguous.

In stark contrast, the statute as implemented by the new regulation, does not require an "intent to file a claim," on a "form prescribed by the Secretary." This new requirement, which mandates use of a form that Respondent prescribes, is created by Respondent's new regulation, not the authorizing statute. Nor does the statute permit the effective date to start "as of the date the intent to file claim was received." Both new requirements do not track the statute. Additionally, the new regulation, contrary to § 5102, requires the claimant to determine, for an oral communication to Respondent, the name and location of "a VA employee designated to receive," an "oral intent to file." Under the new regulation, however, the claimant would possess no way of knowing whether the "VA employee documents the date VA received the claimant's intent to file a claim in the claimant's records." *See* the 2015 version of § 3.155.

Chevron's first step, therefore, applies; the authorizing statute is clear, and the previous implementing regulation followed the statute, meaning - § 5102 requires that Respondent "Furnish Forms – Upon Request . . . [one year to respond]." Compliant with, and tracking to the authorizing statute, the former regulation provided that, "Any Communication . . . informal claim . . . application received . . . within one year [the effective date is] date of receipt of informal claim."

Assuming, only for discussion, that § 5102 is ambiguous, the second *Chevron* question is whether the agency's actions are both "reasonable and consistent in light of the statute and congressional intent." *See DAV*, 234 F.3d 682, at 691. If the agency's actions are unreasonable or conflict with Congress's intent, they cannot stand.

Elderly WWII and Korean War veterans, and homeless veterans in the State of New York, prior to the Respondent's new regulations, enjoyed the benefit of the informal claim method and process. A telephone call from the veteran or a designated family member representative to the Respondent; a handwritten note delivered to the Respondent, or a one-sentence treatment note in a medical record, could fit the definition of an informal claim. Retroactivity to the date of informal claim for the veteran, would result if a completed application was returned to Respondent – *one year of retroactive benefits of the claim was granted.* [Emphasis added.]

However, under the new regulations, elderly WWII veterans, who on average are at least 89.5 years old,[19] Korean War Veterans, who on average are 80.5[20] and homeless veterans, including those with no adequate housing, or even

[19] *See supra* note 5.
[20] *See supra* note 7.

any housing, no telephone or transportation, are required to do the following.

First, locate the appropriate intent to file claims form, get a paper copy of that form, or find and use a computer and locate an electronic copy, and then hopefully submit this form to the appropriate claims office. Second, if the WWII veteran or homeless veteran locates the correct form and submits it to the appropriate claims office, the veteran would hopefully receive and complete the actual application. Third, the elderly WWII veterans and homeless veterans, no longer permitted to submit informal claims, would have to properly complete at least two separate forms: the intent to file and a complete claims form.

This interpretation of § 5102, is therefore, not "reasonable and consistent in light of the statute ." *See DAV*, 234 F.3d 682, at 691. The Respondent's interpretation does not track any components that are set forth in § 5102. With regard to elderly WWII and Korean War veterans, and homeless veterans, however, the analysis actually stops at the first *Chevron* question, where the Supreme Court has ruled that in connection with veterans' statutes "interpretive doubt is to be resolved in the veteran's favor." *Gardner* at 117-18.

b. <u>VA No Longer Infers Claims for Veterans</u>

Chevron's first question, and *Gardner* speak directly to the Respondent's application and interpretation of 38 U.S.C. § 5107 (b), which mandates the

following,

> Benefit of the Doubt – The [Respondent] shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary.

Before the new regulation, Respondent had a "longstanding practice to infer or identify and award certain benefits that a claimant has not expressly requested but that are related to a claimed condition and there is evidence of record indicating entitlement." 79 Fed. Reg. at 57,672. A veteran could also claim an increase or to reopen his or her claim if VA received hospitalization or medical records. 38 C.F.R. § 3.157 (2014).

The new regulation now requires veterans to identify the "specific benefit" sought, 38 C.F.R. § 3.1(p), and VA will only evaluate that specific benefit and those "that are reasonably within the scope" of that specific benefit. 38 C.F.R. § 3.155(d)(2) (2015). VA will now ignore "conditions [not] identified on a standard claim form" if they do not "logically relate to and arise in connection with" the claim sought on the form. 79 Fed. Reg. at 57,672. Additionally, the new Rule also eliminates the receipt of hospitalization or medical records as a request to increase or reopen a claim for benefits, and now requires veterans to submit those

claims on a standardized form as well. 38 C.F.R. § 3.400(o)(2) (2015).[21]

None of the changes that the Respondent implemented with the new regulation are found in or resemble the § 5107 (b) statutory requirements that require Respondent to, consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary.

Elderly WWII and Korean War, and homeless veterans are now, as the result of the Respondent's faulty interpretation of § 5107 (b), required to discern from complex, and sometimes difficult to read medical records, whether, for example, there exists a back disability in addition to a shoulder or knee disability. No longer can receipt of a "buddy statement," by Respondent from a veteran, Statement in Support of Claim, or Ship Deck Log, require Respondent to, for example, evaluate a claim raised by this evidence for posttraumatic stress disorder, in addition to a neurological disorder, or a nerve disorder along with a claim for hand condition.

Failing the first *Chevron* test as to the plain reading of § 5107 (b), particularly in light of *Gardner,* assuming that the statute is ambiguous, which it is

[21] The Federal Circuit has held that "the VA 'must determine *all potential claims* raised by the evidence, applying all relevant laws and regulations.'" *Cook v. Principi*, 318 F.3d 1334, 1347 (Fed. Cir. 2002) (emphasis added) (quoting *Roberson v. Principi*, 251 F.3d 251 F.3d 1378, 1384 (Fed. Cir. 2001)).

not, the Respondent's actions as set forth in the new regulation are explicitly detrimental to elderly WWII and Korean War veterans and to homeless veterans, and are, therefore, unreasonable. *See Chevron*.

c. Fact Specific Notice of Disagreement Now Required

Prior to the Respondent's new regulation, elderly WWII and Korean War veterans and homeless veterans, could benefit from a clearly defined and understandable 12-month appellate review window for any denied claim. Members from either group of these vulnerable veterans could send a hand-written note to Respondent that generally described her or his dissatisfaction with Respondent's decision regarding a claim.

This notation or communication would prompt Respondent to, for all veterans, including these vulnerable veterans, further develop the claim, issue a statement of the case, which more clearly defined and explained the Respondent's decision, and offer the veteran the Decision Review Officer process [Local Agency Level second review of claim denial]. No special forms or special wording was required at this point, which gave elderly WWII and homeless veterans an easily accessible method of filing for an appeal.

Respondent's new regulation pivoted away from wording of the authorizing

statute, 38 U.S.C. § 7105, which mandates,

> Appellate review will be initiated by a notice of disagreement *and completed* by a substantive appeal after a statement of the case is furnished. [Emphasis added.]

The plain language of § 7105 and its legislative history explain that a Notice of Disagreement is essentially the same as a notice of appeal. *Hamilton v. Brown*, 39 F.3d 1574, 1582-83 (Fed. Cir. 1994) ("No other function of a [Notice of Disagreement] is mentioned."); *Burton v. Derwinski,* 933 F.2d 988, 989 (Fed. Cir. 1991); H.R. Rep. 100-963, at 14(1988), *reprinted **in*** 1988 U.S.C.C.A.N. 5782, ("[T]he filing of a Notice of Disagreement . . . simply states a claimant's intention to appeal."). As a notice of appeal, no specificity is required by the statute. *See* 38 U.S.C. §§ 7105(b) & (c).

Respondent's new regulation, 38 C.F.R. § 20.201(a)(5), now prohibits the Board of Veterans' Appeals [Board] from considering any extension, toll, or other delay of the time limit for filing a Notice of Disagreement if a veteran does not file a complete standardized form. By removing *any* circumstance in which the Board may hear an appeal, absent strict compliance with standardized form rules, VA has effectively made the Notice of Disagreement deadline jurisdictional. *See Henderson v. Shinseki*, 131 S. Ct. 1197, 1200 (2011).

As with the elimination of informal claims and inferred claims, the authorizing statute, here § 7105, is not ambiguous. In violation of the statute, and contrary to the needs of elderly WWII and homeless veterans, Respondent's new regulation requires these vulnerable veterans to complete a standard form provided by the Respondent. *See* 38 C.F.R. § 20.201. (2015). If the Veteran submits a clear argument on a standard letter or another of the VA's forms, but a standard form is not used, the 12-month period for filing an NOD will continue to run. The statute, 38 U.S.C. § 7105, is clear – no standard form is required, and a non-standard form should toll the 12-months filing requirement. *See Chevron, Gardner,* and *Henderson*.

CONCLUSION

Amicus Curiae respectfully request that the Court hold unlawful portions of the new regulation identified above and addressed in Petitioner's Brief, that conflict with the statute, Supreme Court and Federal Circuit precedent; these new regulations harm the most vulnerable members of the disabled veterans population. *Amicus Curiae* respectfully urge the Court to grant the Petitioner's challenge to the Secretary's rulemaking.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 5158 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify, that on this 20th day of August, 2015, a true and correct copy of the foregoing Brief of *Amici Curiae* was timely filed electronically with the Clerk of the Court using CM/ECF, which will send notification to all counsel registered to receive electronic notices.

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