STATEMENT

OF

JOHN D. ALTENBURG, JR.
MAJOR GENERAL (RETIRED)
FORMERLY, THE DEPUTY JUDGE ADVOCATE GENERAL, U.S. ARMY

BEFORE THE

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

THE FERES DOCTRINE

AND

THE CARMELO RODRIGUEZ MILITARY MEDICAL ACCOUNTABILITY ACT OF 2009

PRESENTED ON

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Mr. Chairman and Distinguished Representatives, I am privileged to appear before you concerning H.R. 1478, The Carmelo Rodriguez Military Medical Accountability Act of 2009. Thank you for inviting me to appear before the Committee on the Judiciary Subcommittee on Commercial and Administrative Law to provide my views on the Federal Tort Claims Act, the Feres Doctrine, and its importance to the United States military with the case of Marine Staff Sergeant Carmelo Rodriguez and military medicine in mind.

Although I am a retired Army Major General and previously served on active duty as The Deputy Judge Advocate General, I do not appear before you on behalf of the Army or any other military Service, Department of Defense, or other agency. I appear solely by your invitation to provide my personal views.

I appeared before a Senate Committee in 2002 to present my views on the same topic, the Feres Doctrine and the Federal Tort Claims Act, but in the context and backdrop of another case; one of different factual circumstances that neither involving a specific bill nor such a sharp concern for military medical care.

I respectfully request that my prior written submission from the 2002 Senate

hearing be incorporated and made a part of the record here, which I have attached to this written submission. I ask you to consider what I said in 2002. I may cover similar ground today, but because the matter before us today is unique, I want to focus my comments on the legal and practical aspects of the proposed Act. I believe the proposed Bill creates more problems than solutions. The intent and purpose of the Rodriguez family and the lawmakers proposing congressional action to improve benefits for service members and their families is worthy and sincere, but I believe their actions are misdirected through this particular Act, H.R. 1478, The Carmelo Rodriguez Military Medical Accountability Act of 2009. I want to discuss how it might better accomplish those worthy goals and, of course, address the particular concerns of the Committee.

The Case of Carmelo Rodriguez

In my preparations to appear before you, I reviewed several news articles about Carmelo Rodriguez, and in particular, a 2008 CBS News special report by Mr. Byron Pitts that included a video report with the Carmelo Rodriquez family on the day, and actually at the very moment, Carmelo died from cancer. I have attached the news articles to these prepared remarks. My knowledge of the case is limited to the media reports I have reviewed; I have not seen any official reports from the Department of Defense's investigations.

Before proceeding any further, I wish to convey my deepest sympathy and condolences to the Rodriguez family and loved ones. Without question, Staff Sergeant Rodriguez was a combat-tested Marine whose patriotism, sense of duty, and honor were in keeping with the finest traditions and customs of the Marine Corps and all

citizens who seek service in any capacity to our Nation. As a former military leader, it pains me greatly and I regret deeply that we lost such an immensely talented and committed young man, especially under the circumstances of the insidious disease of cancer and the poor medical care in his case. I believe the poor medical care was the result of simple negligence, but not gross negligence, recklessness, or conscious disregard for his safety and health by any of his doctors or leaders. Based on the media accounts I have reviewed, the negligent medical care in Staff Sergeant Rodriguez' case is inexcusable and without justification.

The case of Staff Sergeant Carmelo Rodriguez, and what his family endures, is tragic and heartbreaking; I wholly agree with his uncles and sister who I heard during the interviews speak on Carmelo's behalf to describe his fight: "I just want to save the next Marine" from the same errors and fate that could have been avoided. I agree with this fight.

What I heard from the Carmelo Rodriguez Family

I listened intently to the thoughts expressed by the Carmelo Rodriguez family. Their words resonated with me then and now. His uncle, Dean Ferraro, said: "[It was Carmelo's] wish to have this known, because he doesn't want any other soldier to fight for his country and go through what he had to go through -- to be neglected.," Dean explained:

> When [Carmelo] enlisted in 1997, from his initial medical [physical] - the doctor documented [in his medical records] that he had melanoma, but never told him or had anyone follow up on it. And that was back in '97.

If we would have known back in '97, [Carmelo] would still be with us.

His sister, Elizabeth Rodriguez, followed and pointed to wrongful medical care while Carmelo was deployed in defense of this country in a war zone. Eight years passed from his enlistment physical and Carmelo was in Iraq when he was examined for a painful lesion on a birth mark, which his sister Elizabeth understands was "raised and pussing [and perhaps bleeding] -- and just to let it go and say it is a wart? Who [what medic or doctor] does that? How does [a medical system let] that happen? I just don't understand it? It's not right. It's not right!"

Upon returning from Iraq after the deployment, and because of difficulties obtaining a doctor's appointment through no fault of his own, Carmelo did not see a medical doctor until about nine months later. By that time the cancer had spread. It was too late; he was diagnosed with Stage III melanoma and after the long and painful ordeal fighting for his life through myriad treatments he succumbed. Elizabeth tells us that Carmelo wanted his family to continue fighting after he died: "He said, 'don't let this be it. Don't let this be it. Fight!'"

I understand their fight. I agree with the family; this should have been prevented, and I know that Carmelo left behind a young son who needs financial support, and I did see in the CBS News report that Carmelo's son received a portion of his father's military benefits. I also saw that there was a problem with funeral expenses not covered by the government, which greatly compounded the pain and justified anger. This is not right and should not have occurred. Such a problem must be fixed immediately.

Although I have not spoken with the Rodriguez family, or directly with other

families who have suffered because of negligent military medical care, I understand their fight. I understand what they mean and what change they want to bring about, but as a former enlisted soldier and then military lawyer for many years, my experience and judgment inform my understanding of our system. It counsels that waiver of sovereign immunity to permit tort lawsuits focused on the military for "improper medical care and for other purposes," as this Bill proposes, is not the way to effect meaningful and lasting change. Rather than lawsuits, there are other, more direct, faster, better, and more efficient tools in place to correct medical errors and to provide needed compensation. These systems and methods are scant solace to families like the Rodriquez family who lose loved ones in spite of systems that minimize negligence and improve constantly the quality of military medical care.

Congress can better serve our service members and their families by improving benefits, by eliminating disparities and inequities, and by increasing compensation to better approximate damage recoveries of civil lawsuits. When you consider a change in the law, a basic chord of fairness must be struck. After all, a Marine who loses a limb in combat and an Army Soldier who loses a leg due to medical malpractice in a military hospital both experience similar pain and suffering, and both will likely experience reduced economic earning capacity, among other damages. Both injured service members, and their families, need -- they deserve -- similar benefit packages that genuinely take into account the realities of life in the 21st century.

While causes of injury may differ, their basic situations are the same. To authorize a medical malpractice lawsuit for the possibility of more compensation than a

service member injured on the battlefield seems to me fundamentally unfair. Such a result ignores the real and practical challenges that both service members face as a result of similar injuries suffered in service to the Nation. Service members and their families need to be treated the same regardless of the source of injury.

Lawsuits are not the answer to what is admittedly a problem. America's fighting men and women and their families need meaningful and responsible compensation benefits. Our service members and their families need meaningful benefits that can be timely delivered in a non-adversarial administrative forum with appropriate checks and balances, without making our brave service members resort to litigation.

Overview of H.R. 1478 to Amend the Federal Tort Claims Act

H.R. 1478, The Carmelo Rodriquez Military Medical Accountability Act of 2009, would permit active-duty military personnel injured by other service members or government civilian employees to sue the government under the Federal Tort Claims Act for "medical care and other purposes." The title of the Bill suggests the military is irresponsible and unaccountable for the quality of its medical care (which is far from the truth) and thus civil lawsuits are needed to review and to correct the quality of military medical care. This Act authorizing lawsuits for money damages as just compensation for injuries suffered due to military service directly questions whether Congress has adequately equipped the system of military and veteran benefits already authorized.

As you consider the wisdom of H.R. 1478, I believe there are two fundamental principles you must keep in mind. First, it is important to understand that military medical care is unique. Military medical care is a necessity to keep the fighting force

healthy and fit to win the Nation's wars. No other employer -- government or private employer -- is charged with such a unique undertaking. The military's medical system is fundamentally different because the care is performed by colleagues and comrades in arms, under a wide range of conditions difficult to predict and to control. Military medical care is organic and integral to the military; essentially, it is part of the military job. Service members injured by military medical care have essentially suffered a job-related injury.

The second principle important to appreciate is that the government already provides for a uniform system of benefits to compensate service members for on-the-job injuries, including medical malpractice injuries. These uniform benefits cover all service members under all conditions and circumstances while performing military duty. No one is excluded or treated differently. The benefits are the same whether the service member is injured on the battlefield or in a hospital. The benefits remain consistent for the same type of injury, no matter how the injury was incurred. To permit one service member more compensation because of the circumstance of the injury is fundamentally unfair to other service members. If our compensation benefits are not adequate, then we must fix that system for all service members, not just a particular category of service members. The government should not force its brave service members and their families to resort to a lawsuit for appropriate compensation.

In considering a change to the Federal Tort Claims Act (FTCA), I think it is important to appreciate the purpose of Congress in implementing the FTCA in 1946. Congress designed the FTCA to permit private citizens to sue the government for

personal injury, but not government employees to sue their own employer, the United States. Prior to the passage of the FTCA, Congress was flooded with private bills of relief from citizens injured by government employees. WWII war-time activities increased the frequency of injury to private citizens by government employees. The FTCA authorized private tort lawsuits against the government, but not tort lawsuits from government employees like civil servants and members of the armed forces for injuries incurred while performing government service.

This congressional purpose is why civilian employees cannot sue the government under the FTCA for on-the-job injuries. The exclusive remedy for civil servants provided by Congress is a workers' compensation program under the Federal Employees Compensation Act, a litigation-free administrative program of medical, health, and wage-compensation benefits. This same premise is the foundation of all state workers compensation laws. Injured civilian workers receive "no-fault" compensation for injuries incident to employment, and in return, cannot sue their employer for fault-based tort recovery. Like civilian federal employees, all military members injured while in the line of duty are supported by a broad system of workers' compensation-like benefits administered by the military Services and the Veterans Administration. For military members, the coverage of benefits is even broader than other federal civil servants because military members are considered on the job 24 hours a day, seven days a week; thus they are covered by the military's compensation benefits for virtually anything that happens to them. These benefits make lawsuits for money damages unnecessary, in theory. In practice, they may be inadequate; let’s

enhance them to make certain they are adequate.

Military members already covered by a system of benefits generally cannot sue the United States, other service members, or civil servants for job-related injuries for what we call “incident to service” activities. The incident to service legal principle used to define military job-related activities has been known to courts and military personnel alike for over fifty years as the Feres Doctrine under the Supreme Court’s interpretation of the FTCA. Feres v. United States, 340 U.S. 135 (1950). The Feres Doctrine does not bar all lawsuits. Rather, the Feres Doctrine's "incident to service" test defines which lawsuits should be permitted to go forward as unrelated and unconnected to military service. The factors of the “incident to service” test include: (1) the location of the injury; (2) the nature of the service member's activities at the time of the incident; (3) the duty status of the service member at the time of the incident; and (4) the benefits accruing to the service member. This test has proven to capture accurately most circumstances that should remain barred. A change in the FTCA law is not needed.

The Real Issue

The purpose and utility of medical tort lawsuits is the real contention before us. Advocates argue that active duty service members are mistreated by inadequate benefits and deprived of the right to sue for just compensation. Admittedly, current government-provided benefits may be inadequate to match lost economic earning power, pain and suffering, and other similar damages awarded in typical tort lawsuits. However, permitting additional lawsuits will harm morale among service members and families who do not have the right to sue for similar injuries due to causes other than

medical malpractice, and additional lawsuits will overburden the military while providing uncertain benefit to those who sue. Improving administrative benefits will better serve our service members and their families and our Nation.

I believe our military medical system is fundamentally sound, despite the clear evidence of errors in the case of Staff Sergeant Carmelo Rodriguez. The Feres Doctrine and the limits of the FTCA are legally sound. If Congress agrees with me and others who believe current Department of Defense and Veterans Administration benefits are inadequate, Congress can -- and must -- do much better for our Soldiers, Sailors, Marines, and Airmen in the area of administrative benefits rather than authorizing more FTCA lawsuits; and at the same time, preserve morale and good order and discipline of the military under a system of judicial review that has worked well for more than fifty years since the implementation of the FTCA.

Holding the Military Accountable

Turning to the proposed Act, H.R. 1478, I would like first to address the idea of holding the military responsible for medical care because this appears to be the primary issue for the Rodriguez family and others. Indeed, the name of the proposed bill, "The Carmelo Rodriguez Military Medical Accountability Act of 2009," tells us that improving military medical care is a lead purpose of the amendment to the FTCA. What I would like to highlight is that there are in place military programs and systems to prevent medical wrongs and to make sure the same medical error is not repeated, or at the very least, the possibility of making the same mistake is minimized. These military systems and processes prevent and correct medical errors independently of lawsuit. Increased

litigation will not enhance these systems, which are immediate and focused on constant improvement of the quality of military medical care.

Perhaps misunderstood by most of the public is that lawsuits against the United States government, unlike private lawsuits, are not brought against individual defendants. Only the United States is the named defendant. Also, punitive damages are not authorized against the United States, and medical malpractice actions are not criminal proceedings against individuals. With this understanding, the utility of holding individuals or government institutions accountable through a medical malpractice lawsuit is misdirected.

Although participation in a civil lawsuit can leave a lasting impression and adverse judgments can cause reporting actions to state medical licensing authorities, missing is full consideration and appreciation of the military's internal corrective systems and programs to improve medical care that often move quicker than lawsuits. Courts focused on assessing money damages generally do not direct changes or corrective action to medical systems or programs. The primary purpose of medical malpractice lawsuits is not to hold individuals or institutions accountable, but to justly compensate people for money losses who have no other remedy or source of compensation, unlike our military service members.

The many systems in place to hold military medicine accountable are known to the Committee, and practiced in military hospitals, clinics, and aid stations on a daily basis. The systems and programs include individual medical case studies and presentations, quality assurance peer review processes, credentialing actions, and

adverse reporting to state licensing boards. Military commanders also have oversight authority over medical care. They can and do order investigations. They also can request investigations by inspectors general located both within medical commands and at other, superior levels of command throughout the military services. Military doctors and medical professionals receive individual efficiency performance reports at least annually by their supervisors, which become part of their permanent military employment record. When necessary, military commanders impose adverse administrative action and disciplinary proceedings under the Uniform Code of Military Justice. All of these military systems and processes are designed to fix responsibility for wrongful medical care. I trust that the right procedures were properly pursued in the Case of Carmelo Rodriguez to find exactly what went wrong with a view to implement preventive measures, and as the family and Congressman Hinchey desire, to save other Marines and to avoid future medical neglect.

H.R. 1478, The Carmelo Rodriguez Military Medical Accountability Act

Two basic practical considerations must be explored when discussing the proposal to permit military members to bring medical malpractice lawsuits. First, would claimants actually realize their compensation goals? Second, how would the additional burden of military medical litigation affect the service members, their families, and the military?

The Benefit and Compensation Program Offset Provision of H.R. 1478

For overseas medical cases, H.R. 1478 proposes to adopt the law where the service member is domiciled and to offset or to reduce the money award of an FTCA

lawsuit by the present value of Service and Veterans' Administration benefits attributable to the physical injury or death from which the claim arose. This provision is consistent with the common law and statutory law currently in effect among the states requiring tort awards to be reduced by non-collateral source compensation already provided by the party at fault to the injured party. This provision seeks to ensure service members do not obtain double recoveries for injuries.

However, the monetary difference between government-provided benefits and the potential recovery under a tort lawsuit is not specifically identified in H.R. 1478; and therefore, the value of compensation already authorized is not known and explained in the legislation. Government provided benefits valued at hundreds of thousands of dollars such as continued medical care, medical disability, vocational training and job placement services, survivor benefits, and potential pay and entitlements (among others like life and injury insurance), will substantially reduce the award of a lawsuit. At this point, a careful accounting of the value of government-provided benefits has not been compared to the possible money judgments from lawsuits, so the potential difference, or gain, is difficult to ascertain. The money gap, if any, most likely will be found in non-economic damages like pain and suffering. Until a careful monetary analysis is undertaken, the relative money value of permitting lawsuits cannot be clear either to lawmakers or to the public. Exactly what will be recovered by a lawsuit needs close examination.

In my estimation, the value of lost future wages or earning capacity and non-economic damages like pain and suffering and reduced quality of life are the main areas

where government-provided benefits fall short. The judgment value of these damages can be significant awards in typical lawsuits, but many states have enacted tort reform to cap the money recovered on pain and suffering awards. Some states now permit reduction for collateral source income like life insurance. With all of the other compensation elements of a tort lawsuit reduced, it is not clear whether a lawsuit will produce a significant money dividend for the service member and their families. Clearly, it will vary from state to state.

If H.R. 1478 is implemented, I expect much of the litigation to target excluding or reducing the value of government-provided benefits to make the recovery through a lawsuit worthwhile. Additional costs and fees to lawyers and others to advance the lawsuit will further reduce that final amount. The combination of authorized attorney fees and legal expenses can approach, and possibly exceed, 40% of the total recovery. Thus, with all reductions calculated, the actual money gap may be a relatively small dollar amount in most cases. Lawsuits may, in fact, offer little realistic and practical gain for our service members and their families.

Disparate Results in Compensation

Uniformity, consistency, and fairness — in fact and in appearance — are absolutely vital to the preservation of military discipline, and unit cohesiveness. These factors are directly linked to combat readiness and national security. Medical lawsuits for money damages are designed to provide compensation for needs, but the needs of military members and their families are covered by fair, equitable, no-fault, and non-adversarial Service and Veterans Administration compensation and benefit plans, which

provide equal treatment under all line of duty circumstances. Only when similarly situated service members and their families are treated in the same manner can we ensure that they have and that they maintain the faith and morale in their military leadership that is so important to maintaining an effective military force. As stated earlier, Congress can increase the benefits to service members and their families if the current benefits are inadequate.

The current military disability and compensation system is designed to ensure service members receive similar compensation for similar injuries under all circumstances experienced in the line of duty, and the Feres Doctrine "incident to service" test directly supports this design. Yet, H.R. 1478 proposes a discriminatory favoritism among service members and will harm morale by undermining the equities of the benefit system and the justice system. For example, a Marine who loses his leg because of military medical malpractice could recover additional compensation for pain and suffering while another Marine who loses his leg in a military vehicle accident due to the negligence of the Marine driving the vehicle could not. Even for those permitted to sue, tort reform among the states will produce disparate results even among only those injured by medical negligence. How will service members understand this disparate treatment for similar injuries incurred in the line of duty?

H.R. 1478 also specifically proposes to maintain the FTCA's combat exclusion, so service members who suffer the same type of medical negligence injury in a combat-connected situation would not be permitted to bring a lawsuit. Even further, how will the surviving next of kin understand that they are only entitled to certain benefits for the

death of their Marine while deployed overseas fighting against our enemies, but they are not allowed to sue for additional compensation like the family of a Marine who died in a United States hospital due to a medical error or some other negligent activity?

I share the deep concern for our injured service members and their families while serving our country. Regardless of whether injury or death results from training mishaps, automobile accidents, medical malpractice, friendly fire, or hostile fire, the injury and loss to the individual service member and next of kin is no less painful or real. If the rationale underlying H.R. 1478 to amend the FTCA is the inadequacy of compensation and other benefits under the current statutory scheme, then that should be analyzed and corrected for all. Our focus should not simply be tort litigation for just one type or circumstance of injury suffered in the line of duty, but instead on improving our total system on behalf of all military members and their families.

Undue Burdens on the Military and the Government

The additional medical litigation proposed by H.R. 1478 would increase the military's burden. Instead of focusing on providing medical treatment to eligible service members and family members, military medical personnel would dedicate more time preparing expert reports, submitting to interviews and depositions, and attending other judicial and quasi judicial proceedings related to the claims and litigation process. Congress would need to provide additional funding and staffing to handle an increased number of claims. The claims services and litigation divisions of the Services, the U.S. Attorney Offices, and the Federal Courts would similarly need to increase capacity. At a time when we need to increase our military's capacity and readiness, the capability

should not be spent fighting courtroom battles at home. Instead, our military must remain focused on confronting our Nation's enemies through readiness, deterrence, and failing deterrence, combat success.

Permitting lawsuits for overseas torts, in particular, may entail questioning into sensitive areas of military decision making. Governmental negligence can be alleged at many levels, any of which could become part of a plaintiff's theory of the case. For instance, a service member harmed in Iraq as a result of medical malpractice could allege that the doctor in Iraq was negligent in failing to diagnose the carcinoma, and although the FTCA's combat exception would seem to bar such a suit, the same plaintiff could also allege that the military leadership's decisions in training and equipping the doctor occurred in the United States and the negligence was committed in a location not connected to combat or a war zone. Such a lawsuit crafted to skirt the intent of H.R. 1478 could nonetheless be permitted to proceed.

Litigation is by its nature disruptive and time consuming. The litigation process itself ensures this result. Military plaintiffs and witnesses will be summoned to attend depositions and trials. They will be called from their regularly assigned duties to confer with counsel and investigators. They also may be recalled from distant posts. Such disruptions degrade the quality of our national defense, which demands Soldiers, Sailors, Airmen, and Marines be ready to perform their duties at all times anywhere in the world.

Logistically, defending and litigating a lawsuit arising from an overseas medical tort can prove expensive and extremely difficult. This increases the costs, difficulties,

and delays for the military and any potential service member-plaintiff alike. Because H.R. 1478 allows suits for overseas medical malpractice, witnesses will likely be located throughout the world. A federal court may not have authority under the Federal Rules of Civil Procedure to compel production of a witness from overseas. Even if a federal court has such authority, the associated travel expenses could prove extremely burdensome. Permitting medical claims and lawsuits more than a decade old as H.R. 1478 proposes will prove difficult to conduct because memories fade, witnesses relocate, and evidence disappears. The time, effort, and expense of conducting these lawsuits would be better devoted to resourcing the military's administrative benefits programs.

Impact on Military Combat Readiness

Discipline and prompt obedience to military orders and directives are the principles that bind the members of our armed forces into a cohesive team. The preservation of discipline and obedience is a constant dynamic, which requires authoritative rule. Congress has long understood the peculiar needs of the military to maintain good order and discipline. The Uniform Code of Military Justice criminalizes acts such as the failure to follow orders, disrespect to superiors, and conduct unbecoming an officer. The Supreme Court has repeatedly recognized that the military institution is distinctly different than civilian society, and as such, deserves special protections, unique treatment, and deference. The unique culture and requirements of military life lead the courts to resist interfering in military decision making, most often in personnel decisions, but also regarding medical issues.

I urge Congress to continue to take the same approach in dealing with military matters regarding lawsuits. The implications of amending the FTCA to permit medical malpractice lawsuits by service members are further reaching than they may appear. Numerous military administrative actions and command decisions are directly based on medical determinations and assessments. Consider the following situations and consequences if H.R. 1478 were permitted to amend the FTCA.

- An Army Flight Status Board disqualifies a Pilot from flying status based on a medical evaluation, but the Pilot disagrees with the decision and sues in federal court. Through an FTCA medical malpractice action, the Pilot claims personal injury alleging his career has been irreparably harmed, he will suffer economic loss, and he has experienced emotional distress. The smooth and orderly operation of that Flight Status Board comes to a halt to defend the case in federal court. Other cases before the Flight Status Board must be delayed, causing disruption to other military personnel decisions, inhibiting the Army's ability to operate its aircraft.
- A Soldier being processed for administrative separation for a personality disorder contests the medical aspects of the diagnosis and brings a lawsuit alleging medical malpractice.
- While participating in a training exercise, a Medic provides aid to a Soldier for a stomach ache, but the Soldier suffers a burst appendix and severe personal injury complications. The Soldier and his family sue the Medic and the

Commander for missed diagnosis and the resultant pain and suffering and loss of consortium.

These examples are just a few of the situations under which H.R. 1478 may expose the military to medical lawsuits. They illustrate the adverse implications of permitting malpractice claims by active-duty military members. But the implications go far beyond simply providing money compensation for physical injuries. Military decisions and compliance with important orders would be impaired waiting for judicial resolution. Unavoidably, practically all command and leader actions based on medical decisions would be fair game as a federal lawsuit under H.R. 1478. Any medical decision might be construed as actionable malpractice even if administrative in nature. The legislative change intended by H.R. 1478 would necessarily embroil the civilian courts in military decision making.

Conclusion

The Feres Doctrine has remained for 50 years without legislative modification, which counsels tremendous hesitation to alter a workable system and risk irreparable harm to the state of our legal system and the military. I believe the military accountability purpose of H.R. 1478 is misplaced because the government has programs and procedures (many at the behest of Congressional oversight committees) in place to enforce medical standards and to improve military medical care. It is my understanding that they have become more focused and aggressive in recently years. Those systems are used on a daily basis to improve constantly the care military members receive. Lawsuits, after long, drawn out, contentious, and adversarial legal

battles that may take years to conclude, do eventually arrive -- after the fact -- at sound compromises for money compensation, but lawsuits are not tools designed to prevent medical errors. The military's internal systems and programs move more quickly than lawsuits.

If adequate compensation is the goal of H.R. 1478, authorizing the opportunity to seek additional compensation through tort litigation is the wrong answer. Disparate treatment of similarly injured service members will most assuredly harm morale and therefore combat readiness. We should not force our injured service members and their families into the courtroom. A grateful Nation should take care of all service members and their families fairly, without subjecting them to litigation and all the associated turmoil. To the extent Congress believes current Department of Defense and Veterans Administration compensation is inadequate, that system should be modified immediately to provide the kind of compensation the family of Staff Sergeant Rodriguez and others deserve. His desire would be fulfilled. Enhanced and improved benefits for family members of all service members would be his lasting legacy to his family, his Marine Corps, and the Nation he proudly and with great dedication served.