



1 **I. INTRODUCTION**

2 A. The Appellant’s Opening Brief is made part of this amended brief by this reference  
3 thereto.

4 B. This Amended Appellant’s Brief is made to incorporate into argument newly discovered  
5 law pertinent to the mandates upon the courts regarding Veterans’ rights in the courts of  
6 the United States of America – *The Veterans’ Judicial Review Act of 1988, Pub. L. No.*  
7 *100-687, 102 Stat. 4105 (1988).*

8 **II. FACTS**

9 A. The Veterans’ Judicial Review Act of 1988 (VJRA) established the Veterans’ Courts  
10 System as Article 1 courts limited to review denials of Veterans’ claims and transferred  
11 to the Veterans’ Courts jurisdiction from the US District Courts over direct challenges to  
12 VA regulations and other policies of general applicability.

13 B. The Veterans’ Courts are still strictly limited to hearing individual Veterans appeals of  
14 VA decisions on benefits and disability claims. The Veterans Courts can neither hear  
15 original class action complaints of VA deprivations of lawful due process nor original  
16 class action complaints of VA violations of law.

17 C. The VJRA clarified and expanded 38 USC §211(a) [now 38 USC §511].

18 D. The jurisdiction of the US District Courts over questions of the Constitutionality of VA  
19 policies and practices was never transferred away from the US District Courts. This  
20 jurisdiction includes hearing complaints of VA deprivations of civil rights, VA  
21 derivations of due process rights, and VA violations of law.

22 E. VJRA NEVER removed the US District Courts’ original jurisdiction to hear Veterans  
23 complaints of VA deprivations of US Constitutional issues, and; NEVER created or

1 transferred that jurisdiction to the Veterans Courts. That original jurisdiction still is  
2 mandated to the US District Courts.

3 F. *Johnson v Robinson*, 415 U.S. 361, 367 (1974) the Supreme Court ruled that 38 USC  
4 §211(a) [now 38 USC §511], the judicial review preclusion statute, does not bar federal  
5 courts from entertaining constitutional challenges to veterans benefits legislation. “The  
6 Court’s reasoning led to the development of a body of lower court case law allowing  
7 district courts to entertain challenges brought under the Administrative Procedure Act  
8 (APA) to a variety of VA actions. For example, lower courts ruled that VA regulations,  
9 policies, and other actions affecting the adjudication of claims for benefits were  
10 reviewable in district courts to determine whether the actions were constitutional. The  
11 lower courts also allowed challenges to VA regulations to determine whether the  
12 regulations were arbitrary and capricious or whether they violated statutory authority.  
13 The only lawsuits that the courts consistently dismissed as barred by statute were non-  
14 constitutional challenges to the VA’s decisions on individuals’ claims for benefits.”

15 G. Even though the VJRA expanded the scope of §211(a), recodified in 1991 as §511(a),  
16 overruling some of the case law allowing district courts to entertain actions brought under  
17 the APA challenging VA actions, VJRA specifically DID NOT remove the jurisdiction of  
18 the US District Courts to here challenge to the constitutionality of either VA law,  
19 regulations, policies, practices, or acts or omissions of the VA in the process applied to  
20 the determinations of Veterans’ benefits. Veterans are absolutely entitled to the same due  
21 process civil rights under VA authority as any person under any other US administrative  
22 process or remedy. Veterans are also entitled to bring their complaints of constitutional  
23 and civil rights violations by the VA to the proper jurisdiction of the US District Courts.

1 H. US District Courts still retains the jurisdiction over lawsuits challenging the  
2 constitutionality of title 38 US Code, VA regulations, VA policies, VA procedures, VA  
3 deprivations of civil rights, VA deprivations of due process, and VA acts and omissions  
4 in deprivation or violation of the Constitution and US Code.

5 I. In *Marozsan v US*, 852 F. 2<sup>nd</sup> 1469, 1473 (7<sup>th</sup> Cir 1988) (en banc) the court ruled that “A  
6 veteran may obtain review, not of his individual claim determination, but of  
7 unconstitutional methods employed by the V.A. in arriving at that benefits decision.”

8 J. US District Court for the District of Idaho case number 12-330-CV-LMB is not about  
9 individual claims or benefits decisions of the VA or the Secretary of the VA. The case is  
10 clearly and undeniably about VA deprivations of US Constitutional civil rights, due  
11 process rights, and violations of existing law on a systemic scale unheard of in US history  
12 in any other US Government agency – “unconstitutional methods”!

13 K. 12-330-CV-LMB is supported by the notarized joinders and statements of a hundred or  
14 more Veterans and their immediate family members, as well as the Veterans who have  
15 joined other class actions which were dismissed for various technical issues that had  
16 nothing to do with the viability of their complaints. In effect, this court is well aware that  
17 THOUSANDS of Veterans and family members in recent years have attempted to bring  
18 these issues to redress through the courts! THOUSANDS of said plaintiffs invokes a set  
19 of laws, court rules, and precedent that reverses the preponderance of the evidence and  
20 weight of proof from the plaintiffs to the respondents to prove that plaintiffs are deceptive  
21 in their complaints.

1 **III. CONCLUSIONS**

2 A. Regarding jurisdiction, there is only one honorable and lawful conclusion that can be  
3 reached: the plaintiffs hold the unquestionable and inalienable right to have this class  
4 complaint of VA unconstitutional methods, acts, and omissions heard by the US District  
5 Courts.

6 B. The plaintiffs have proven their right to have their action certified by the court as a class  
7 action.

8 C. The plaintiffs have the right to have their chosen representative of the class recognized by  
9 the courts to represent the class to the class counsel – and vice versa - to appear in their  
10 stead in a court of law, and to negotiate for/deny/or approve redress.

11 D. The plaintiffs have the right to have a class counsel appointed by the court, to represent  
12 this class action to the court.

13 E. The plaintiffs have the right to demand – through their representative of the class – to  
14 have their class action complaints heard by the US Ninth Circuit Court due to the  
15 undeniable incompetence, injustice, prejudice, and conflict of interest found rampant in  
16 the US District Court in Idaho.

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1 **IV. ATTESTATION AND AFFIDAVIT**

2 County of Ada )  
3 Ss ( )  
4 State of Idaho )

5  
6 A. I, Gary Kendall, so state and certify that I am the Representative of the Class – by written  
7 order of the class - and a plaintiff in the above action, and that:

- 8 1. Under penalty of perjury applicable to a sovereign citizen, I have read the above opinions  
9 of fact, and that it is true and correct to the best of my knowledge, and;
- 10 2. **SERVICE MANDATED TO BE PROVIDED BY THE COURT:** That under Title 38  
11 USC rights of Veterans to bring their litigations on deprivations of civil rights to the  
12 courts free of charge, and under the 28 USC §1915 In Forma Pauperis rights of all  
13 disabled Veterans on disability compensation, the court is responsible to provide all  
14 process and service, and to perform all duties for the In Forma Pauperis Litigant(s),  
15 whether as a class or as individuals. In Forma Pauperis applies to ALL plaintiffs herein  
16 due to their receipt of VA disability which is prohibited by federal law from being  
17 considered as income for any other purpose than the necessary costs of living.
- 18 3. I approach this Court as a United States recognized sovereign, individual entity equal to  
19 any in the kingdoms and nation states of humans, and as a Royal Prince in the Kingdom  
20 of God, as empowered and officially recognized via the Declaration of Independence, the  
21 Paris Peace Accord of 1783 and the United States Congress ratification of that Accord as  
22 a United States Treaty and part of the supreme law of this land - and by the Constitution  
23 of the United States of America, and;
- 24 4. **OATHS AS EVIDENCE:** I accept the sworn oaths of all officers and justices of the  
25 United States, the States of the Union and all lawful Courts there-under – that each said  
26 such officer shall uphold and defend the United States Constitution, US Laws, and US  
27 Treaties, as the Supreme Law of this land, and that they shall each be BOUND thereby  
28 “ANYTHING... TO THE CONTRARY NOTWITHSTANDING” - into evidence before  
29 this Court, and that this Court – in this action - is a Court of United States Constitutional  
30 and US Law – and is therefore bound to US Constitution, US Codes, US Regulations, and  
31 US Treaties as the supreme law of the land - where Equity under the Law is Paramount  
32 and Mandatory.

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34 \_\_\_\_\_  
35 petitioner

36 Signed and dated, by the identified person

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38 on this date \_\_\_\_\_.

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40 \_\_\_\_\_  
41 Notary

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43 Commission expires: \_\_\_\_\_  
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**ADDITIONAL CITES OF LAW AND AUTHORITIES**

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- A. VETERANS' JUDICIAL REVIEW ACT of 1988, Pub. L. No. 100-687, 102 Stat. 4105 (1988).
- B. OLD LAW: 38 USC §211(a)
- C. 38 USC §511(a)
- D. Johnson v Robinson, 415 U.S. 361, 367 (1974)
- E. DVA Codification Act, Pub. L. No. 102-83, §2(a), 105 Stat. 378, 388 (1991)
- F. Administrative Procedure Act, 5 USC §§701-706 (1988)
- G. "The Impact of The Veterans' Judicial Review Act on The Federal Court" Barton F. Stichman J.D., New York University School of Law, in the American University Law Review [Vol. 41:855 1992]