**THE AMERICAN LEGION**

**DEPARTMENT OF CALIFORNIA**

**1601 7TH STREET, SANGER, CA 93657-2801**

**103 Annual Department Convention, Visalia, California**

**June 24-26, 2022**

**THIS FORM MUST BE FILLED OUT IN TRIPLICATE**

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Resolution No. 2022-028

Subject: TAL Support Legislation to Define “Incident to Service”

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(DO NOT FILL ABOVE THIS LINE)

DEFINING INCIDENT OF SERVICE

WHEREAS the Federal Torts Claims Act (FTCA) of 1946 allowed plaintiffs to file and prosecute certain types of tort lawsuits against the United States and thereby potentially recover financial compensation from the federal government; and

WHEREAS section 2680 of the FTCA establishes several exceptions preventing private litigants from pursuing specific categories of claims against the United States, including “any claim arising out of combatant activities of the military or naval forces, or Coast Guard, during time of war; and

WHEREAS in addition to statutory limitations outlined in Section 2680 of the FTCA, the U.S. Supreme Court (SCOTUS) has articulated an additional exception to the United States’ waiver of sovereign immunity known as the Feres doctrine, which held “that the Government is not liable under the FTCA for injuries to military servicemen where the injuries arise out of or are in the course of activity incident to service.”; and

WHEREAS the 2020 NDAA did include a narrow exception to the Feres doctrine related to certain medical malpractice claims, Congress never codified Feres and there’re is no statutory definition of “incident to service”; and

WHEREAS this legal ambiguity has resulted in confusion about the specific types of non-combat claims that should be permitted under the FTCA and which non-combat clams are barred under Feres; and

WHEREAS providing a statutory definition of “incident of service, “would more clearly delineate the Department of Defense’s under the FTCA; now therefore be it

**RESOLVED,** **by Post No. 161, of The American Legion Department of California, in regular**

**meeting assembled in Antioch, CA on May 11, 2021, requests that The American Legion support**

**legislation that would define “incident to service” to clarify Feres and Section 2680 of the FTCA; and, be it finally**

**RESOLVED,** **that this Resolution shall be transmitted forthwith to The American Legion,**

**Department of California for consideration and adoption at the Annual Convention of the**

**American Legion Department of California, to be held June 24 - 26, 2021 in Visalia CA, and**

**thereafter upon passage submitted to the National Headquarters of The American Legion for**

**consideration by the appropriate Commission.**

Author of Resolution

Manuel Vega, Post 731 Department of California

Autrey James Post 161 Department of California

This is to certify that the above resolution was adopted by Post 161

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Post Adjutant

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Date

This is to certify that the above resolution was adopted by Department Convention.

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Department Adjutant

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Department Commander

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Date

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