

**HEARING BEFORE THE UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP**

“Beyond the Bench: Ramifications of the Supreme Court *Kingdomware* Decision”

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**Written Testimony of LaTonya Barton
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Chairman Vitter, Ranking Member Shaheen, and Members of the Committee, thank you for the opportunity to appear before you today. My name is LaTonya Barton. I work at Kingdomware Technologies with my husband, Timothy Barton, a service-disabled U.S. Army veteran who served in Operation Desert Storm. Kingdomware is a small business that develops and manages web, software, and database applications.

I am thrilled to appear here today in the wake of the Supreme Court’s unanimous decision last week supporting Kingdomware. I would like to express my and Tim’s deep appreciation to all of those Members of Congress who have stood with veterans over the years, and in particular to those who filed an *amicus* brief supporting Kingdomware in the Supreme Court. I want to especially thank Senator Boozman, who in addition to supporting the *amicus* brief, was a principal author of the law at issue, and Representative Bill Johnson, who spearheaded our efforts to recruit Members of Congress to support the brief.

I appreciate the interest the Committee has shown in ensuring that small businesses owned by veterans, and in particular service-disabled veterans, receive the support they deserve from the VA.

I. Background

In 1999, Congress enacted legislation to require modest annual government-wide goals for contracting with service-disabled veteran-owned small businesses. In 2003, after agencies fell far short of those goals, Congress amended the Small Business Act to allow all agencies, including the VA, to use a discretionary veterans preference, known as the Rule of Two, to restrict competition to service-disabled veteran-owned small businesses where two such businesses would submit bids. Agencies, including the VA, repeatedly failed to meet these targets.

¹ Speaker Bio: Kingdomware Technologies, Inc. is a certified Service-Disabled Veteran Owned Small Business. It holds contracts with the Federal Government and was the plaintiff in the *Kingdomware Technologies v. United States* case. Ms. Barton is responsible for leading Kingdomware Technologies, Inc.’s business operations.

In 2006, because of the agencies' failure to meet the goals using the discretionary tool, Congress passed the 2006 Veterans Benefits, Health Care, and Information Technology Act, which imposed a mandatory duty on the VA to apply the Rule of Two, stating that the VA "*shall award*" contracts using the Rule of Two giving first consideration to small businesses owned by service-disabled veterans and then veteran-owned small businesses before all others.

Congress imposed that requirement on the VA to ease veterans' transition from soldiers to civilians and to reward them for their years of service and sacrifice. Congress singled out the VA because the mandate directly advances the VA's central mission, in the words of Abraham Lincoln, to "care for him who shall have borne the battle." It believed that the VA should "set the example among government agencies for procurement with veteran and service-disabled veteran-owned small businesses." H.R. Rep. 109-592, at 16 (2006). The idea was to prove to others in government that veteran-owned small businesses are just as capable, if not more so, at meeting government contracting needs. This would break down a lot of stereotypes and prejudices and help build the capacity of the small businesses.

Unfortunately, the VA refused to comply with the clear statutory command and continued to award contracts without even considering whether service disabled veteran owned and veteran-owned small businesses could compete for the contracts under the Rule of Two. In particular, the VA refused to consider serviced-disabled veteran-owned and veteran-owned small businesses and to apply the Rule of Two when it ordered goods or services off of the Federal Supply Schedule or FSS. Kingdomware and other veteran-owned businesses challenged the VA's misinterpretation of the law before the GAO, but the VA refused to heed the GAO's recommendation.

This refusal has had innumerable costs, severely impacting us and other veteran-owned small businesses. In terms of contracts, billions of dollars have been steered away from veterans trying to establish and grow their businesses and feed their families. Many veterans are now out of business, some even having contemplated suicide, because there were no opportunities to contract with the VA. In terms of time and dollars, thousands upon thousands of hours fighting for the proper interpretation of the law have been spent by our company, other small veteran-owned companies, WilmerHale and other law firms, the American Legion and many other veteran services organizations, and Members of Congress. In terms of lives, our first lawyer passed away during the course of this journey, and I know that he was and is not the only Vets First supporter that we have lost along the way.

Last week, the Supreme Court ruled decisively in favor of service-disabled veteran and veteran-owned small businesses. The Court ruled that the Rule of Two "is mandatory, not discretionary," and that the Department is required "to apply the Rule of Two to all contracting determinations

and to award contracts to veteran-owned small businesses. The Act does not allow the Department to evade the Rule of Two on the ground that it has already met its contracting goals or on the ground that the Department has placed an order through the FSS.”

We are thrilled with the outcome in the Supreme Court and excited to work with the Department and the Committee on effective implementation of the Act.

II. Post-Kingdomware – Implementation

We hope the VA takes the Supreme Court decision and the Rule of Two mandate seriously and diligently works to implement it. We have already lost almost ten years. It is time for the VA to stop looking for loopholes and to redirect that energy into making the mandate work.

By working with veterans, the VA can achieve the important objectives of the law while still maintaining an efficient procurement process. For example, the VA can already streamline the process for smaller contracts through existing authority to make sole source or noncompetitive awards.

The critical question going forward is how the VA conducts the market research needed for the Rule of Two—that is, figuring out whether two or more veteran-owned small businesses will compete at fair and reasonable prices. Under the 2006 Act, the VA is required to maintain an online database of eligible veteran-owned and service-disabled veteran-owned small businesses. We can tell you from experience that it is a very arduous and rigorous process to become successfully certified by the VA and thereafter be included in the VA’s Vendor Information Pages (VIP) database. The first step in any market research the VA conducts should be consulting the VIP database to see if qualified service disabled veteran owned and veteran-owned small business suppliers are available. In fact, consulting the database is already supposed to be a mandatory step in the agency’s market research under existing VA regulations.

The Supreme Court left open the possibility, in a footnote, that *part of* the VA’s market research may consist of searching for veteran-owned suppliers that are already listed on the Federal Supply Schedule. But the VA should not be able to limit its market research to just the Federal Supply Schedule. The VA should always be required to consult its own VIP database.

Given the VA’s long track record of misinterpreting its responsibilities, we will be closely watching how the agency implements the Supreme Court decision and stand ready to help the VA implement policies that are faithful to the law. We ask that the Members of this Committee and the Veterans Affairs Committee work with us to keep a close eye on the VA’s reaction to ensure that the VA honors this mandate that, up until this time, the VA has continued to resist. We believe that one way to do this might be to hold ongoing hearings that make sure the VA remains accountable for its progress in pursuing the mandate.

III. Conclusion

Thank you again to the Committee for inviting us to appear today and to all of the Members of Congress who stood with the veterans over the years in hearings and before the Supreme Court. We look forward to working with the Committee to improve the VA's operations and increase opportunities for this nation's veterans, particularly those with service-connected disabilities, to establish successful small businesses.

I would be happy to answer any questions.