

**FILED**

**FOR PUBLICATION**

NOV 16 2011

**UNITED STATES COURT OF APPEALS**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR THE NINTH CIRCUIT**

**VETERANS FOR COMMON SENSE, a  
District of Columbia nonprofit  
organization; VETERANS UNITED  
FOR TRUTH, INC., a California  
nonprofit organization, representing  
their members and a class of all  
veterans similarly situated,**

Plaintiffs - Appellants,

v.

**ERIC K. SHINSEKI, Secretary of  
Veterans Affairs; UNITED STATES  
DEPARTMENT OF VETERANS  
AFFAIRS; JAMES P. TERRY,  
Chairman, Board of Veterans' Appeals;  
MICHAEL WALCOFF, Acting Under  
Secretary, Veterans Benefits  
Administration; BRADLEY G.  
MAYES, Director, Compensation and  
Pension Service; ROBERT A. PETZEL,  
M.D., Under Secretary, Veterans Health  
Administration; PRITZ K. NAVARA,  
Veterans Service Center Manager,  
Oakland Regional Office, Department  
of Veterans Affairs; UNITED STATES  
OF AMERICA,**

Defendants - Appellees.

No. 08-16728

D.C. No. 3:07-cv-03758-SC

**ORDER**

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judge W. Fletcher did not participate in the deliberations or vote in this case.