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VETERANS SUE VA FOR GENDER-CONFIRMATION SURGERY

WASHINGTON, DC – Today, the Transgender American Veterans Association (TAVA) filed a federal lawsuit against the U.S. Department of Veterans Affairs (VA) seeking an order that the VA act on TAVA’s 2016 rulemaking petition for gender-confirmation surgery. Nearly eight years since TAVA submitted its rulemaking petition asking the VA to provide this essential and lifesaving medical care, and more than two years since Secretary McDonough pledged to make this care available, the VA has failed to act. The VA’s delay endangers the health and well-being of many of the nation’s 163,000 transgender veterans. It also violates the VA’s legal obligations.

“Three years ago today, President Biden repealed the military’s ban on transgender service members,” said Rebekka Eshler, President of TAVA. “Yet when we return from service, we do not receive the same level of healthcare from the VA that other veterans do. The natural next step toward transgender people’s true inclusion in the military is for the VA to remedy this gap. Transgender veterans have waited far too long for the VA to provide the gender-affirming surgery so many of us need to survive. We hope that this lawsuit will force Secretary McDonough to follow through on what he has been promising us since 2021. We’re tired of empty promises; we need care.”

This lawsuit, filed in the U.S. Court of Appeals for the Federal Circuit, follows a demand letter TAVA sent the VA on Transgender Day of Remembrance, November 20, 2023. TAVA warned the VA then that if it did not grant or deny TAVA’s petition within 30 days, TAVA would file suit. The VA responded with a letter that recycled the same language it has been using since 2021, affirming its plan to provide gender-confirmation surgery someday—but declining to decide the petition.

“VA’s failure to provide gender-confirmation surgery has been more dangerous for me than my time in the service,” said Natalie Kastner, a TAVA member who cannot receive this surgery through the VA. “Without VA coverage for this surgery, I was financially out of options. I tried to perform my own gender-affirming surgery at home, without any medical training. Were it not for emergency room care, I would have lost my life. I was told that the VA would take care of me because I was willing to risk my life for this country. Instead, I was safer in the service than I am now.”

TAVA’s lawsuit cites myriad evidence that gender-confirmation surgery dramatically reduces the risks of suicidal ideation, depression, and psychological distress for transgender people who live with gender dysphoria. These risks are especially acute for transgender veterans, as

veterans already exhibit disproportionately high rates of suicide and depression. Medical professionals, scientific researchers, veterans service organizations, civil rights groups, former military officials, and political figures in both local and federal governments have urged the VA to provide adequate gender-affirming care, which includes gender-confirmation surgery.

“Major medical associations agree that gender-affirming surgery is an essential part of transgender care,” said K.N. McCleary, a law student intern with the Yale Law School Veterans Legal Services Clinic, which represents TAVA. “Forcing transgender veterans to pay out of pocket for these often prohibitively expensive procedures, while providing these same procedures to cisgender veterans to treat different conditions, is out of step with the VA’s commitment to care for all veterans.”

TAVA’s lawsuit contends that the nearly eight-year delay in the VA responding to the rulemaking petition violates the Administrative Procedure Act, which requires that agencies decide matters presented to them within a reasonable time. “The VA’s failure to answer TAVA’s petition runs afoul of basic principles of administrative law,” said Alex Johnson, another law student intern representing TAVA. “Congress requires agencies to decide rulemaking petitions like TAVA’s and authorizes courts to review those decisions. The VA’s inaction defies Congress and frustrates judicial review. Most importantly, transgender veterans deserve an answer: will they receive this care, or will the VA continue to treat them as second-class patients?”

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Transgender American Veterans Association (TAVA) is a nationwide, non-partisan, nonprofit organization that works to ensure its members receive full services and dignified treatment from the VA and to provide a supportive community for all veterans who identify under the “Transgender Umbrella.”

The Veterans Legal Services Clinic, which represents the petitioner, is part of the Jerome N. Frank Legal Services Organization at Yale Law School.