No. 26-1861

United States Court of Appeals for the Federal Circuit

MINORITY VETERANS OF AMERICA,

Petitioner,

v.

SECRETARY OF VETERANS AFFAIRS,

Respondent.

On Petition for Review Pursuant to 38 U.S.C. § 502

BRIEF FOR *AMICI CURIAE* DISABILITY RIGHTS EDUCATION AND DEFENSE FUND ET AL. IN SUPPORT OF PETITIONER AND GRANTING THE PETITION FOR REVIEW

Maria Michelle Uzeta
Jillian MacLeod
Disability Rights Education and Defense Fund
3075 Adeline St., Suite 210
Berkeley, California 94703
Telephone: 510-644-2555
muzeta@dredf.org
jmacleod@dredf.org

Counsel for Amici Curiae

CERTIFICATE OF INTEREST

Counsel for *Amici Curiae* certify under Federal Circuit Rule 47.4 that the following information is accurate and complete to the best of their knowledge:

1. **Represented Entities.** Provide the full names of all entities represented by undersigned counsel in this case.

Disability Rights Education and Defense Fund; Autistic Self Advocacy Network; Autistic Women & Nonbinary Network; Disability Law United; Disability Rights Bar Association; New Disabled South; Professor Robyn M. Powell; Professor Ruth Colker.

2. **Real Party in Interest.** Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

None.

3. **Parent Corporations and Stockholders.** Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

None.

4. **Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None.

5. **Related Cases.** Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

None.

6. **Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

Not applicable.

Dated: November 6, 2026



Maria Michelle Uzeta
Jillian MacLeod
Disability Rights Education & Defense Fund
3075 Adeline Street, Suite 210
Berkeley, CA 94703
510-644-2555

Attorneys for Amici Curiae

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STATEMENT PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 29(a)(2)

All parties consented to the filing of this amicus brief, and this brief is therefore filed pursuant to Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 29(a)(4)(E)

The undersigned certifies that no party's counsel authored this brief in whole or in part, and that no party, party's counsel, or any other person other than *Amici*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

INTERESTS OF THE *AMICI*

Amici are disability organizations and scholars dedicated to advancing the civil and human rights of disabled people, including disabled veterans. *Amici* have a strong interest in ensuring that disabled veterans have equitable access to reproductive health care—including abortion care and counseling—so they can make autonomous and informed decisions that protect their health and lives. *Amici* submit this brief to provide the Court with a disability rights perspective absent from the parties' briefing. For disabled veterans,[1] who face high risks of serious

[1] This brief uses the term "disabled veterans" to describe veterans with a VA disability rating, *and* veterans who do not have a VA disability rating but have a

pregnancy complications and death, the harms of the Rule are profound and irreparable.

Amici's interest is rooted in the disability community's long struggle for bodily autonomy and equal access to health care. Disabled people have historically been denied the ability to make their own reproductive decisions, face markedly higher rates of serious pregnancy complications and pregnancy-related death, and encounter physical, communication, financial, and attitudinal barriers to reproductive health care. For disabled veterans—many of whom acquired the very conditions that heighten pregnancy risk through military service—health care provided by the U.S. Department of Veterans Affairs ("VA") is often the primary, and sometimes the only, source of care. *Amici* have worked for years to ensure that disabled people receive accurate information, accessible care, and the opportunity to make informed decisions about their own bodies and health. The Rule's elimination of abortion care and counseling threatens each of those commitments. *Amici* therefore have a direct interest in the proper application of the Administrative Procedure Act ("APA") to a rule that, in disregarding VA's own findings and the comments of the disability community, will fall hardest on

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condition that qualifies as a disability under the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq*. Statistics reporting the number of veterans with disability ratings undercount the total number of veterans with disabilities because not every veteran with a disability applies for VA benefits.

disabled veterans.

The individual *amici* are described below.

The Disability Rights Education and Defense Fund ("DREDF") is a national nonprofit law and policy organization dedicated to protecting and advancing the civil rights of disabled people. Founded in 1979 and board- and staff-led by disabled people since its inception, DREDF pursues its mission through litigation, education, advocacy, and law reform. DREDF has a particular interest in ensuring that all disabled people, including disabled veterans, have access to all reproductive healthcare options so they can make autonomous decisions about their bodies and futures.

The Autistic Self Advocacy Network ("ASAN") is a nonprofit organization led by people with disabilities. ASAN advocates for equitable access to medical treatment for people with disabilities. ASAN's advocacy focuses on the rights and wellbeing of people with intellectual and developmental disabilities ("I/DD"), and as the brief highlights, veterans with I/DD are at elevated risk of health complications in pregnancy and childbirth and face barriers to providing informed consent to medical procedures when not provided with adequate supports like counseling.

The Autistic Women & Nonbinary Network ("AWN") provides community support and resources for Autistic women, girls, transfeminine and

transmasculine nonbinary people, trans people of all genders, Two Spirit people, and all people of marginalized genders or of no gender. AWN is committed to recognizing and celebrating diversity and the many intersectional experiences in our community. AWN's work includes solidarity aid, community events, publications, fiscal support, and advocacy to empower disabled and autistic people in their fight for disability, gender, and racial justice.

Disability Law United ("DLU") (formerly the Civil Rights Education and Enforcement Center) is a nonprofit legal organization that fights for liberation through the lens of intersectional disability justice with a combination of education, legal advocacy, direct services, and impact litigation. DLU has successfully enforced both state and federal anti-discrimination laws protecting the disabled in multiple jurisdictions, bringing both individual actions and class actions challenging access restrictions. DLU clients and members of partner organizations continue to face access challenges that limit their full participation in our society.

The Disability Rights Bar Association ("DRBA") is a 501(c)(3) membership organization incorporated in the District of Columbia. DRBA was formed to advance the rights of people with disabilities in all spheres of life by supporting members' use of litigation and other legal advocacy strategies. DRBA has a strong interest in participating as *amici curiae* in this litigation because this Court's decision will affect the fundamental legal rights of people with disabilities

to have access to reproductive healthcare.

New Disabled South is a regional nonprofit dedicated to improving the lives of disabled people and cultivating disability rights and disability justice frameworks across the South. Disabled people in the South, including disabled veterans, face some of the most severe barriers to reproductive health care in the country—including provider shortages, limited transportation, and concentrated poverty. Any restriction on those modalities of abortion care and counseling will cause immediate, concrete harm to the disabled veterans in the South that New Disabled South serves.

Professor Robyn M. Powell (Ph.D., J.D.) is an associate professor at Stetson University College of Law and a nationally recognized scholar of disability rights and justice for disabled parents. Her scholarship focuses on the intersections of disability law, family law, reproductive justice, and health policy. She examines how laws, policies, and stigma impede disabled people's reproductive autonomy and parenting rights, including how abortion restrictions affect their ability to make decisions about their bodies and futures. As both a scholar and a disabled woman, Dr. Powell brings disability perspectives to conversations about reproductive justice. Her work aims to advance disabled people's rights to self-determination in all aspects of life, including parenthood and reproduction. Professor Powell joins this brief in her personal capacity. Reference to her institutional affiliation is for

identification purposes only.

Professor Ruth Colker (J.D.) is a Distinguished University Professor Emerita and the Heck Faust Memorial Chair in Constitutional Law Emerita at the Moritz College of Law, The Ohio State University. She is the author of 17 books and over 100 law review articles. She is one of the country's preeminent scholars in constitutional law and disability discrimination, as well as reproductive rights. Since the 1990s, she has written about the importance of reproductive rights to women's equality interests, including women with disabilities. The United States Supreme Court has twice cited her work. Professor Colker joins this brief in her personal capacity. Reference to her institutional affiliation is for identification purposes only.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Amici support Petitioner Minority Veterans of America ("MVA") in asking this Court to hold unlawful and set aside VA's rule reinstating a near-total ban on abortion care and counseling in VA health care. *See generally* Appx1-19 ("the Rule").

In recognition of the great sacrifices military service members make for our country, Congress has promised to provide "a complete medical and hospital service for the medical care and treatment of veterans" through the VA's health care system. 38 U.S.C. §7301(b). Veterans who are patients of this system have the

right to "reasonable protection from harm" and the right to make informed decisions about their health care. 38 C.F.R. §17.33(a)(1); 38 C.F.R. §17.32(b)–(c). The Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA") provides "medically necessary" health care to veterans' families. 38 C.F.R. §17.272(a). In 2022, VA made abortion care and counseling available to veterans and CHAMPVA beneficiaries when a pregnancy endangered their life or health or resulted from rape or incest. *See generally* Appx621-630 ("the 2022 Rule"). That change rested on extensive findings about the safety and necessity of abortion care and counseling. *Id*.

Reversing course in 2025, VA proposed to eliminate this already limited access and to bar VA clinicians from providing abortion care unless the pregnant person's life is endangered, and to eliminate abortion counseling entirely. *See generally* Appx1097-1099 ("the Proposed Rule"). The Proposed Rule also sought to eliminate the abortion ban exception for pregnancies resulting from rape or incest, *see id*., making VA's ban the strictest in any federal program. Petition for Review at 3, *Minority Veterans of Am. v. Sec'y of Veterans Affs*., No. 26-1861, Dkt No. 1-2 (Fed. Cir. May 21, 2026) ("Pet. for Review"). Despite receiving over 20,000 public comments, Appx2, VA finalized the Rule on December 31, 2025, without changes. Appx1-19.

The harms of the Rule fall particularly hard on disabled veterans, many of

whom acquired the very conditions that make pregnancy dangerous while serving their country. Under the Rule, a disabled veteran whose pregnancy threatens their health, but not yet clearly their life, must endure the worsening of their existing disabilities or creation of new disabilities. Because clinicians face uncertainty about what qualifies as life-threatening, they may delay care until it is too late. Further, the ban on abortion counseling prevents disabled veterans from giving informed consent to decisions about their pregnancies.

The Rule is arbitrary and capricious under the Administrative Procedure Act ("APA"). VA's own 2022 findings establish that abortion care and counseling are "needed" care for veterans whose pregnancies endanger their health, and those findings are particularly salient for disabled veterans (Part A). VA reversed course without addressing those findings and without meaningfully responding to significant comments about the Rule's effect on disabled veterans (Part B). Therefore, the Rule should be set aside.

ARGUMENT

This Court reviews VA rulemaking under 38 U.S.C. §502, which incorporates the APA's standard of review, and must set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). Agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem" or "offered an

explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Rule fails on both counts.

A. VA's Own Findings Show That Abortion Care and Counseling Are "Needed to Promote, Preserve, or Restore the Health" of Veterans and CHAMPVA Beneficiaries.

In accordance with its promise to provide "complete" medical care to veterans, VA covers health care that is "needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice." 38 C.F.R. §17.38(b). As commenters noted, abortion is safe and clinically accepted health care.[2] Appx3. Abortion care and counseling when pregnancy threatens a person's health or life, or results from rape or incest, thus meet VA's standard for "needed" care.

Veterans are as likely as the general population to experience unintended pregnancy, and, before *Dobbs v. Jackson Women's Health Organization*, 597 U.S.

[2] *See The Safety and Quality of Abortion Care in the United States*, NAT'L ACADS. OF SCI., ENG'G, & MED. 1, 77 (2018), https://nap.nationalacademies.org/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states (finding that serious complications from abortion occur in fewer than 1% of abortions).

215 (2022), they were just as likely to have an abortion.[3] Because of VA's prior abortion ban, veterans had to obtain that care outside VA. After *Dobbs*, as many states banned abortion, VA recognized that obtaining non-VA abortion care and counseling had become much harder, which put veterans' health and lives at risk. Appx622. VA therefore found that abortion care and counseling in limited circumstances are "needed" within the meaning of its general treatment authority. *Id*. That change mitigated the heightened risks disabled veterans face in pregnancy. The Rule strips disabled veterans of these modest protections.

1. *Disabled People, Including Disabled Veterans, Face Heightened Risks in Pregnancy and Childbirth.*

The need for abortion care and counseling is greatest for disabled people, including disabled veterans, for whom pregnancy poses heightened risks. In the 2022 Rule, VA recognized that pregnancy can "exacerbate underlying or preexisting conditions . . . and can severely compromise health or even cause death." Appx625.

The experiences of MVA members bring these risks to life. *See* Decl. of Lindsay Church ("Church Decl."), ¶¶ 17-22, Pet. for Review, Dkt. 1-2; Decl. of Member A ("Member A Decl."), ¶¶ 1-19, Pet. for Review, Dkt. 1-2. Member A has

[3] Eleanor Schwarz et al., *Induced Abortion Among Women Veterans: Data From the ECUUN Study*, 97 CONTRACEPTION 41 (2018), https://pmc.ncbi.nlm.nih.gov/articles/PMC5732058/.

a congenital uterine anomaly, a history of postpartum hemorrhage, and service-connected[4] and other disabilities, including anemia, circulatory issues, and PTSD. Member A Decl. ¶¶ 9-14. Hemorrhage causes nearly 11% of pregnancy-related deaths in the United States,[5] and disabled pregnant people are 27% more likely to experience it.[6] Several of Member A's miscarriages required medical intervention, each of her full-term pregnancies involved serious complications including hemorrhage, and each pregnancy worsened her disabilities, at times leaving her bedridden. Member A Decl. ¶¶ 9, 11-13, 15-17. Member B's clotting disorder resulted in a life-threatening pulmonary embolism after the birth of her child. Church Decl. ¶ 19. Embolisms are a leading cause of complications and death in pregnancy,[7] and disabled pregnant people are six times more likely than nondisabled people to experience them.[8] Pregnancy and birth pose serious threats

[4] A service-connected disability is an "illness or injury that was caused by—or got worse because of—[a veteran's] active military service." *Eligibility for VA Disability Benefits*, U.S. DEP'T OF VETERANS AFFS. (updated April 23, 2025), https://www.va.gov/disability/eligibility/.

[5] *Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees: Clinical Characteristics*, CTRS. FOR DISEASE CONTROL (Apr. 20, 2026), https://www.cdc.gov/maternal-mortality/php/data-research/mmrc/index.html?cove-tab=1 ("CDC, *Pregnancy Related Deaths*").

[6] Jessica L. Gleason et al., *Risk of Adverse Maternal Outcomes in Pregnant Women With Disabilities*, J. AM. MED. ASS'N NETWORK OPEN 1, 6 (Dec. 15, 2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787181 ("Gleason, *Risk of Adverse Maternal Outcomes*").

[7] CDC, *Pregnancy Related Deaths*, *supra* note 5.

[8] Gleason, *Risk of Adverse Maternal Outcomes*, *supra*, note 6 at 7.

to Member B's life and health. Church Decl. ¶ 19. Member C has service-connected head and neck injuries, is rated 100% disabled by VA, and takes medication to manage her disabilities and risk of cancer that are contraindicated in pregnancy. *Id.* ¶ 20. Stopping them would endanger her health and life. *Id*. Member D has a genetic disorder and service-connected disabilities that are linked to serious pregnancy complications. *Id*. ¶ 21. MVA's Executive Director, Mx. Church, has physical disabilities, and their doctors have advised that "there is no way [they] could safely carry a pregnancy to term without causing extreme distress to the fetus and/or to [their] own body." *Id*. ¶ 22.

Yet under the Rule, none of the MVA members can obtain abortion care or counseling to protect their health through the VA, because the Rule has no health exception. They may not even be able to obtain life-saving care. The Rule's life exception appears only in the CHAMPVA regulations, and VA refused to codify the life exception for the veteran medical benefits package. *Compare* 38 C.F.R. §17.272(a)(58), *with id.* §17.38(c)(1); *see also* Appx4. MVA members' experiences show the dangers pregnancy poses for disabled women veterans[9] and why access to abortion care and counseling is essential to protect their health and

[9] Although people of various gender identities can become pregnant, the VA data and studies cited in this brief generally report by sex, so the brief uses "women" when describing them. These data likely undercount transgender and nonbinary veterans who can become pregnant.

lives.

The affected population is substantial. Women veterans make up 11% of the veteran population.[10] In 2023, approximately 600,000 women veterans used VA health care, and about half of them were of childbearing age.[11] In 2015, 63% of women VA patients had a service-connected disability rating, and 38% were rated 50% or higher.[12] As MVA members' experiences illustrate, disabled people face dramatically elevated pregnancy risks. Pregnant people with physical, intellectual, and sensory disabilities experience significantly higher rates of nearly all serious pregnancy complications—including sepsis, thromboembolism, severe cardiovascular events, infection, hemorrhage, preeclampsia, eclampsia, placental abruption, and preterm premature rupture of membranes ("PPROM")—and are eleven times more likely to die during pregnancy, childbirth, or the postpartum period.[13] Each of these conditions can cause lasting health impacts and even

[10] *Serving Her Country: Exploring the Characteristics of Women Veterans*, U.S. DEP'T OF VETERANS AFFS. (2024), https://www.data.va.gov/stories/s/wci3-yrsv ("VA, *Serving Her Country*").
[11] *VA Expands Maternity Care Coordination for Veterans*, VETERANS AFFS. NEWS (Sept. 29, 2023), https://news.va.gov/press-room/va-expands-maternity-care-coordination-for-veterans/.
[12] Susan M. Frayne et al., *Sourcebook: Women Veterans in the Veterans Health Administration: Volume 4*, U.S. DEP'T OF VETERANS AFFS. 1, 3, 22 (Feb. 2018), https://www.womenshealth.va.gov/WOMENSHEALTH/docs/Sourcebook_Vol_4.pdf ("Frayne, *Women Veterans in the VHA*").
[13] Gleason, *Risk of Adverse Maternal Outcomes*, *supra* note 6, at 7.

death.[14] VA's 2022 findings confirm that veterans are at increased risk for pregnancy complications and have high rates of chronic medical and mental health conditions that further increase risks associated with pregnancy. Appx625. VA also found in 2022 that rising maternal mortality may be influenced by abortion restrictions and that access to abortion care and counseling protects the health and lives of veterans and CHAMPVA beneficiaries. *See id*.

These complications can also cause lasting harm and new disabilities. As VA found, "[i]ndividuals at risk of pregnancy complications who do not have access to contraception or abortion may experience conditions resulting from pregnancies that can leave them at risk for loss of future fertility, significant morbidity, or death." *Id*. VA further found that abortion is sometimes the "only" stabilizing care that can preserve a patient's health or save their life. *Id*. That care is critical for disabled veterans, who are at heightened risk of facing such complications. The Rule disregards this evidence and places thousands of disabled veterans in harm's way.

2. *VA's Rule Denies Care to Veterans Whose Service-Connected Disabilities Make That Very Care Necessary.*

For many veterans, pregnancy is dangerous because of disabilities incurred

[14] Gleason, *Risk of Adverse Maternal Outcomes*, *supra* note 6, at 7.

or aggravated during military service. Among the most common conditions for women veterans are high blood pressure (27%), depression (26%), lipid disorders (25%), PTSD (18%), and musculoskeletal conditions (18%).[15] Of the 786,000 women veterans with service-connected disabilities, over 500,000 have a rating of 70% or higher, and nearly one third are rated 100%.[16] Women veterans are more likely than men to have a disability rating over 70%.[17] VA found in 2022 that many veterans have chronic medical and mental health conditions that increase pregnancy risks, including severe hypertension (high blood pressure), chronic PTSD, and chronic renal disease. Appx625. High blood pressure, the most common of these conditions, is associated with increased risk of preeclampsia, eclampsia, stroke, and placental abruption.[18] PTSD and depression are associated with several adverse pregnancy outcomes.[19] Renal disease is associated with higher

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[15] Frayne, *Women Veterans in the VHA*, *supra*, note 12 at 105.
[16] *Annual Benefits Report*, U.S. DEP'T OF VETERANS AFFS. 1, 79 (2025), https://www.benefits.va.gov/REPORTS/abr/docs/2025-abr.pdf (reporting that 786,000 women veterans receive service-connected disability compensation) ("*2025 VA Annual Benefits Report*").
[17] *Id*.
[18] Vesna D. Garovic et al., *Hypertension in Pregnancy: Diagnosis, Blood Pressure Goals, and Pharmacotherapy*: *A Scientific Statement From the Am. Heart Assn*., 79 AM. H. ASS'N: HYPERTENSION e21–e22 (Feb. 2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9031058/.
[19] Jonathan Shaw, et al., *Post-traumatic Stress Disorder and Antepartum Complications: a Novel Risk Factor for Gestational Diabetes and Preeclampsia*, 31 PAEDIATRIC PERINATAL EPIDEMIOLOGY 185 (May 2017), https://onlinelibrary.wiley.com/doi/10.1111/ppe.12349 ("Shaw, *PTSD and Antepartum Complications*"); Natalie M. Zitoun et al., *Associations Between PTSD*

risk of preeclampsia and venous thromboembolism.[20] And pregnancy may require stopping prescribed medications which can worsen disabilities and mental health conditions common among veterans.[21]

VA thus knows, because it adjudicates service-connected disability ratings, how prevalent these disabilities are among veterans, and it found in 2022 that those conditions make abortion care and counseling necessary. *See* Appx625. Yet, the Rule denies veterans the very care their service-connected disabilities make necessary.

3. Abortion Counseling is Essential for Informed Consent.

Abortion counseling is also "needed" care. Under the American Medical Association's Code of Medical Ethics, patients must be able to receive information

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and Pregnancy Outcomes: Systematic Review and Meta-Analysis, 25 BMC PREGNANCY AND CHILDBIRTH 1, 11-12 (Aug. 1, 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12317543/ ("Zitoun, *PTSD and Pregnancy Outcomes*"); Tiziano Prodi et al., *The Impact of Mental Health Disorders in Pregnancy on Obstetric and Neonatal Outcomes: a Narrative Review*, 57 BRAIN, BEHAVIOR & IMMUNITY - HEALTH 1, 2 (Aug. 2026), https://www.sciencedirect.com/science/article/pii/S2666354626001766#bib43.

[20] Mona Hersi, *Renal Disease In Pregnancy*, 35 OBSTETRICS, GYNAECOLOGY AND REPRODUCTIVE MEDICINE 187 (Jul. 2025), https://www.sciencedirect.com/science/article/abs/pii/S1751721425000685.

[21] Adele C. Viguera, *Risk of Recurrence in Women with Bipolar Disorder During Pregnancy: Prospective Study of Mood Stabilizer Discontinuation*, 164 AM. J. PSYCHIATRY 1817, 1820 (2007), https://pubmed.ncbi.nlm.nih.gov/18056236/; Jennifer Pruskowski, et al., *Deprescribing & Tapering Benzodiazepines #355*, 21 J. PALLIATIVE MED. 1040 (Jul. 2018), https://journals.sagepub.com/doi/abs/10.1089/jpm.2018.0264.

about all treatment options and ask questions so that they can make reasoned decisions about their health.[22] VA affirmed this principle in 2022, finding abortion counseling necessary for veterans to make informed decisions about their care. Appx622, Appx626-627.

VA's own regulations require practitioners obtaining informed consent to provide "information that a reasonable person in the patient's situation would expect to receive in order to make an informed choice about whether or not to undergo the treatment or procedure." 38 C.F.R. §17.32(c). A patient whose health conditions may lead to serious pregnancy complications would reasonably expect information about abortion, as MVA members confirm. Church Decl. ¶¶ 18-22; Member A Decl. ¶ 8, 18.

The regulations also require practitioners to explain, "in a language understandable to the patient," the treatment's risks and complications, "reasonable and available alternatives" and what might happen if nothing is done. 38 C.F.R. §17.32(c)(2). For veterans whose disabilities make pregnancy dangerous, including Members A, B, C, D and Mx. Church, abortion may be a reasonable alternative to continuing a pregnancy. Without information about that option, they cannot make fully informed decisions. The counseling ban falls especially hard on veterans with

[22] *AMA Code of Medical Ethics*, AM. MED. ASS'N, https://code-medical-ethics.ama-assn.org/ethics-opinions/informed-consent (last visited Nov. 3, 2026).

traumatic brain injury or psychiatric, cognitive, or intellectual disabilities, who may need additional counseling, supported decision-making, and accessible formats to understand their options and give informed consent. *See id*.; 38 C.F.R. §15.160.

Commenters warned that beneficiaries could not give informed consent regarding their pregnancy options without information about abortion. Appx14; Appx17. VA responded only that beneficiaries will receive the information necessary for informed consent. *Id*. But VA never explains how a disabled veteran can give informed consent to continue a pregnancy that threatens their health or life without learning about abortion—a clinically accepted and safe form of health care that can protect a pregnant person's health and life. Nor does VA define the "abortion counseling" it bans, Appx19, despite commenters' warnings that the omission would leave doctors and patients uncertain about what they may discuss, Appx14. That uncertainty will chill preconception and risk counseling for veterans whose disabilities make pregnancy dangerous and for those, like Member C, who take medication contraindicated in pregnancy. The result is an ethical dilemma for clinicians and a health crisis for patients who cannot discuss all of their options with trusted providers.

Given these findings, VA was required to give a reasoned explanation for reversing course. It did not.

B. VA Acted Arbitrarily and Capriciously by Disregarding Its Own Findings and Failing to Address Disability-Specific Comments.

VA's 2022 findings, reinforced by extensive evidence in the comments to the Rule, establish that abortion care and counseling are "needed" care for veterans whose pregnancies threaten their health. VA acted arbitrarily and capriciously by disregarding those findings without a reasoned explanation and by failing to address significant comments raising disability-specific concerns.

1. *VA Ignored Its Own 2022 Findings, Including Those Relevant to Disabled Veterans.*

When an agency's new policy "rests upon factual findings that contradict those which underlay its prior policy," the agency must provide "a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy." *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515–16 (2009). Ignoring such findings is itself arbitrary and capricious. *See id*. at 515 ("It would be arbitrary or capricious to ignore such matters.")

VA's 2022 findings, discussed in Part A, rested on evidence of rising maternal mortality, of common veteran disabilities that heighten pregnancy risks, and of circumstances in which abortion is the only intervention that can preserve a patient's health or life. Appx625-626. VA also found that forcing survivors of rape or incest to carry resulting pregnancies to term can cause PTSD and other lasting

psychological harm, conditions already common among women veterans.[23] Appx626.

The Rule reverses that policy entirely, yet it cites no medical or scientific evidence and never engages with VA's 2022 findings, including those about the risks disabled veterans face in pregnancy. Instead, the Rule rests on a reading of VA's statutory authority as prohibiting abortion care. That reading is wrong, *see* Opening Brief for Petitioner Minority Veterans of America at 23-35, *Minority Veterans of Am. v. Sec'y of Veterans Affs*., No. 26-1861 (Fed. Cir. Oct. 30, 2026), and it cannot excuse VA's failure to explain why it disregarded its own factual findings. Appx1-5; Appx9-10. VA's failure is arbitrary and capricious, and the Rule should be set aside.

2. VA Failed to Address Comments Warning That the Rule Would Cut Off Abortion Access for Veterans With Disabilities, Including Veterans With Mental Health Conditions.

The APA requires executive agencies to "give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments." 5 U.S.C. §553(c). The agency, in turn, "must consider and respond to significant comments received during the period for public comment." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015). Failing to give a reasoned

[23] Frayne, *Women Veterans in the VHA*, *supra*, note 12 at 105.

response to significant comments renders agency action arbitrary and capricious. *Bloomberg L.P. v. SEC*, 45 F.4th 462, 472 (D.C. Cir. 2022) (finding agency action arbitrary and capricious where agency "did not provide a reasoned response" to commenter's concerns). VA repeatedly failed to meet that obligation, including by failing to address significant disability-related comments.

Commenters warned that the Rule would cut off abortion care and counseling altogether for many beneficiaries, because logistical, financial, and geographic barriers, compounded by the patchwork of state abortion bans, put non-VA care out of reach. *See* Appx15. Commenters noted that these effects would be more pronounced among marginalized groups, including "those with disabilities including mental health disorders." *Id*. Research confirms that disabled people face logistical, physical, communication, transportation and attitudinal barriers that make reproductive health care extremely difficult and sometimes nearly impossible to obtain.[24]

[24]Antonia Biggs et al., *Access to Reproductive Health Services Among People with Disabilities*, J. AM. MED. ASS'N NETWORK OPEN 1 (Nov. 29, 2023), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2812360; Abigail L. Cochran et al., *Transportation Barriers to Care Among Frequent Health Care Users During the COVID Pandemic*, BMC PUB. HEALTH 1, 7 (Sept. 20, 2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9486769/; Tara Lagu et al., *'I Am Not the Doctor For You': Physicians' Attitudes About Caring For People With Disabilities*, 41 HEALTH AFFS., 1387, 1389–90 (2022), https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00475; Nancy R. Mudrick et al., *Physical Accessibility in Primary Health Care Settings: Results from*

VA made no changes in response. It said only that it was returning to its pre-2022 ban because it does not believe continuing the current policy is appropriate, without explaining why. Appx15. VA's sole response to the substance of these comments was that "this rulemaking is expected to have a relatively small impact given the low volume of abortions furnished by VA." *Id*. But VA itself acknowledges elsewhere in the Rule that "low volume of provision of a medical service should not be a basis to exclude such service; indeed, some veterans sustain significant and unique injuries during their service, and VA would not deny them medical procedures to treat such injuries even if most other veterans do not sustain such injuries." Appx5. Veterans whose service-connected disabilities make pregnancy dangerous fit that description exactly. Under VA's own reasoning, they should not be denied care. Yet the Rule does just that. An agency that relies on reasoning it has itself rejected has not given a reasoned response to significant comments.

3. *VA Failed to Address Comments Warning That Eliminating the Rape and Incest Exception Harms Survivors of Military Sexual Trauma, Which is Linked to Common Service-Connected Disabilities.*

Commenters opposed the Rule's elimination of the rape and incest

California On-Site Reviews, 5 DISABILITY & HEALTH J. 159, 159 (2012), https://www.sciencedirect.com/science/article/abs/pii/S1936657412000453.

exception, a change that again falls especially hard on veterans with disabilities. They noted that many women veterans experience military sexual trauma ("MST") and are at greater risk of sexual assault and intimate partner violence, and they warned that forcing survivors to continue resulting pregnancies would exacerbate existing trauma and cause long-term harm. *See* Appx15.

MST, meaning sexual assault or sexual harassment during military service,[25] is reported by one third of women veterans who use VA health care.[26] Veterans who experience MST are more likely to be diagnosed with PTSD, depression, mood disorders, substance use disorders, hypertension, and other conditions.[27] VA does not rate MST itself as a service-connected disability, but it does rate PTSD and many other MST-related conditions. PTSD, in turn, is associated with serious pregnancy complications, including preeclampsia.[28]

Disabled American Veterans ("DAV"), a congressionally chartered veterans

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[25] *PTSD: National Center for PTSD*, DEP'T OF VETERANS AFFS. (updated Sept. 25, 2026), https://www.ptsd.va.gov/understand/types/sexual_trauma_military.asp ("*Nat'l Ctr. For PTSD*").

[26] *Id*.; *see also* Carolyn J. Gibson et al., *Sexual Assault, Sexual Harassment, and Physical Victimization During Military Service Across Age Cohorts of Women Veterans*, 26 WOMEN'S HEALTH ISSUES 225 (2016), https://www.sciencedirect.com/science/article/abs/pii/S1049386715001474.

[27] *Nat'l Ctr. For PTSD*, *supra* note 25; *see also* Jenny K. Hyun et al., *Military Sexual Trauma,* 20 PTSD RESEARCH QUARTERLY: NAT'L CTR. FOR PTSD 2 (2009), https://www.ptsd.va.gov/publications/rq_docs/V20N2.pdf.

[28] Zitoun, *PTSD and Pregnancy Outcomes*, *supra* note 19, at 12; Shaw*, PTSD and Antepartum Complications*, *supra* note 19.

service organization with over a million members, objected that eliminating the exception is inconsistent with the Hyde Amendment, which restricts federal funding of abortion by certain other agencies but expressly exempts pregnancies resulting from rape or incest. *See* Appx1218. DAV illustrated the Rule's cruelty: an active-duty service member or a VA employee who is raped can obtain an abortion, but a veteran raped during service who later enrolls in VA health care would be denied one. *See id*. Forcing a veteran, including one who is raped while serving their country, to carry such a pregnancy is cruel and dangerous, but the Rule does just that. *See* Appx15. For veterans with existing disabilities, carrying a pregnancy to term under these circumstances also risks worsening those disabilities and causing even worse health and pregnancy outcomes.

VA said it "understands and acknowledges" these concerns but made no changes to the Rule, stating only that it was returning to its pre-2022 position, again without explaining why. *See id*. It added that "[n]othing in this rulemaking impacts the care VA provides to those who experience domestic/intimate partner violence or military sexual trauma." *Id*. That statement denies reality: the Rule strips survivors of MST, rape and incest of care critical to their health, bodily autonomy, and healing. VA's failure to meaningfully address these comments was arbitrary and capricious.

CONCLUSION

The Rule strips veterans and CHAMPVA beneficiaries of care needed to promote, preserve, and restore their health. For disabled veterans, who make up a large share of VA patients and often acquired their disabilities in service, the consequences are dire in light of their heightened risk of severe pregnancy complications and death during pregnancy, childbirth and postpartum. VA reversed its own well-supported findings without a reasoned explanation and failed to meaningfully address significant comments, including those about the Rule's impact on disabled veterans. For these reasons, *Amici* respectfully urge this Court to hold unlawful and set aside the Rule.

Respectfully submitted,



Maria Michelle Uzeta
Jillian MacLeod
Disability Rights Education & Defense Fund
3075 Adeline Street, Suite 210
Berkeley, CA 94703
510-644-2555

Attorneys for Amici Curiae

Dated: November 6, 2026

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Federal Circuit Rules 29(b) and 32(b)(1) because it contains 5,335 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2), as counted by Microsoft Word, including footnotes. This certificate is submitted pursuant to Federal Rule of Appellate Procedure 32(g)(1) and Federal Circuit Rule 32(b)(3).

This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font, including in footnotes.



Maria Michelle Uzeta
Jillian MacLeod
Disability Rights Education & Defense Fund
3075 Adeline Street, Suite 210
Berkeley, CA 94703
510-644-2555

Attorneys for Amici Curiae

Dated: November 6, 2026

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2026, I electronically filed the foregoing Brief for *Amici Curiae* Disability Rights Education and Defense Fund et al. in Support of Petitioner and Granting the Petition for Review with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system.

I certify that all the participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.



Maria Michelle Uzeta
Jillian MacLeod
Disability Rights Education & Defense Fund
3075 Adeline Street, Suite 210
Berkeley, CA 94703
510-644-2555

Attorneys for Amici Curiae

Dated: November 6, 2026