

Statement of Lorry M. Fenner

Director of Government Relations, Service Women's Action Network Joint Hearing of the Senate and House Veterans' Affairs Committees

6 March 2024

Good morning Chairmen, Ranking Members, and other distinguished members of the Veterans Affairs Committees. Thank you for the opportunity to speak with you on behalf of the Service Women's Action Network. Founded in 2008, SWAN is a national nonpartisan, not-for-profit organization of almost 10,000. We advocate for the needs of currently serving women and women veterans of all eras. Over the years, SWAN has played a major role in opening all jobs to qualified women, holding offenders accountable for sexual assault under the military justice system, supporting all survivors of military sexual trauma (MST), bringing about changes in the disability claims system to better help those MST survivors, and expanding access to a broader range of primary, reproductive, and mental-wellness care and services for military women and veterans.

First, we want to thank Congress for the bi-partisan *PACT Act* as well as the *Deborah Sampson, MAMMO*, and *Protecting Moms Who Served Acts*.¹ As we continue to work with you on new legislation and on your continued oversight of law and policy, we hope you will provide VSOs with copies of the reports you require from the VA in legislation. Some of your staffs have been very helpful in this.

¹ *Sergeant First Class (SFC) Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022* (P.L. 117-168). *Making Mammography and Medical Options for Veterans Act of 2022*. Johnny Isaksen and David P. Coe M.D. *Veterans Health Care Bill* with provisions of the *Deborah Sampson Act, 2021*. *Protecting Moms Who Served Act of 2021* (P.L. 117-69) for coordinating maternal care.

We also thank the VA for its efforts to implement the PACT Act quickly and for the expansion of it as announced last week as well as for some of its other new policies.² The VA has been steadily improving benefits processes and care. We are still processing the recently released *VA Equity Action Plan* and *VBA Benefits Equity Assurance Plan* (14 February 2024) and other reports. Some things we talk about today are addressed in these, but many remain very vague. We know the devil is in the details of implementation, and that Congress' oversight will be critical. We can help.

We offer a special thanks to the other VSOs and partners who provide constructive recommendations to long standing and new challenges to improve the lives of Veterans, their beneficiaries, and survivors. If we had much more time, we would echo their concerns and proposals. Instead, I'll focus on a few of women Veterans' complex and intersecting challenges that we hear almost every day from our members and partners. We can give many examples.

This testimony may seem a lot like "ground hog day." That is because I borrowed freely from our previous visits over the last several years because many concerns are not yet resolved.³ I will only briefly mention a few; they are covered in more detail in our written testimony.

² According to the VA Press Release of 26 February 2024, this new policy will help recognize the service of and provide care for many more Veterans including women.

³ Captain Lory Manning, USN Retired, SWAN Testimony to the HVAC Health Subcommittee on Cultural Barriers Impacting Access, 2019. Manning, Oral Statement to the HVAC Economic Opportunity Subcommittee, 2021. SWAN Testimony to Joint SVAC/HVAC Hearing 2022. Colonel Lorry M. Fenner, USAF Retired, SWAN Testimony to the HVAC DAMA Subcommittee on PACT Act Implementation, May 2023. SWAN Statement for the Record to HVAC DAMA on the *Jax Act*, November 2023.

Our focus has been on the following:

1. We feel invisible...or worse. Women Veterans face a lack of respect often because they have not received recognition for their contributions. This underpins most other issues. More specific and creative outreach is required to reach those of us who have been insulted, neglected, ignored (especially our elderly), or those who are afraid of or angry at the VA or have left. In this regard, we thank the VA for finally changing the extremely outdated motto.⁴ And, please pass the *Jax Act - Plus* to recognize the Lioness, Female Engagement, and the Cultural Engagement Team members.⁵ These things matter.
2. Sexual assault and harassment by other Veterans and, sometimes VA staff, must be eliminated. First and foremost, the VA reporting system has to be overhauled and rationalized as well as be made consistent between facilities, VISNs (Veterans Integrated Service Networks), and Regions. Trust has to be earned every day so it is devastating that we have to add “VST” (Veteran Sexual (Harassment and) Assault) to existing MST.⁶

⁴ Old VA motto: Since 1959, Abraham Lincoln from *Second Inaugural Address*, “To care for him who shall have borne the battle and for his widow and his orphan” since 1959. March 2023 VA motto: “To fulfill President Lincoln’s promise to care for those who have served in our Nation’s military and for their families, caregivers, and survivors.” The change recognizes that women make up over 10% of the Veteran population today (and this is increasing rapidly) and that not all Veterans have served in “combat” (read: men too) – but all are valued. We hope Congress does not make this long-awaited change a dead letter by withholding funding to make it a concrete reality.

⁵ H.R. 1753 passed the HVAC in December 2023. *Jax* covers Cultural Engagement Teams (CET), 2010-2021. The “Plus” means adding the predecessor Lioness and Female Engagement Teams (and all CET members), 2003-2021 for OIF/OEF. Footnote 19.

⁶ VHA Assault and Harassment Prevention Office, Summer 2024.

3. MST claims processing and care must be made less traumatizing. Congress must pass the *Servicemembers and Veterans Empowerment Act (SAVES)* S.1028 and H.R. 2441.⁷ Further improvements can also be made if the VA and DOD collaborate even more in MST survivors' transition from Service to Veteran status.⁸ In addition, the VA must continue to improve the process of upgrading Characters of Discharge for some of our Veterans in order for them to qualify for life-saving care because their “bad paper” discharge might be related to a host of MST collateral issues.

4. Women's health care must be continually assessed and improved. With the rapid and continuing increase in women Veterans, the range of care they need, and issues that keep them away must be addressed. This includes reproductive health care including fully implementing the 2022 Interim Federal Rule (IFR), eliminating copays for FDA approved contraceptives, expanding eligibility for ART including IVF under the forthcoming policy, and expanding targeted research rather than just classifying women and minorities as “lesser included cases.”⁹ In addition, the VA must better respond to a rule-making petition on gender-affirming care per Section 1557 of the *Patient Protection and Affordable Care Act* asking that it provide at least as much care for Veterans as those covered under civilian plans.¹⁰

⁷ Bipartisan, SAVES is sponsored by Senators Tester and Murkowski and by Representative Pingree and cosponsors in the House. This Bill addresses issues uncovered by the VA Inspector General in 2021. The *SAVES Act* is supported by a number of VSOs/MSOs including Disabled American Veterans, Military Officers of America Association, Veterans of Foreign Wars, Vietnam Veterans of America, Iraq and Afghanistan Veterans of America, Wounded Warriors Project, Paralyzed Veterans of American, Protect our Defenders, SWAN, and the Alliance to End Sexual Violence, among others.

⁸ We hope that sexual assault, sexual and gender harassment, and intimate partner violence is covered fully and meaningfully in the Transition Assistance Program. Congress should reintroduce H.R. 7390 (K. Rice, 116th).

⁹ SWAN supports the forthcoming changes to VA policy on expanding eligibility for IVF and supports H.R. 544, the *Veterans Infertility Treatment Act*.

¹⁰ Petition to the VA from the Veterans Legal Service Clinic, Yale Law School, 20 July 2023. VA acknowledged that petition on 26 October 2023. The National Veterans Legal Services filed a Petition for Writ of Mandamus to the

5. Finally, the new Disabled American Veterans report shows that the increase in suicides among women Veterans is horrific and unacceptable.¹¹ We applaud the VA's research and Task Force efforts as well as its commitment to work closely with the Women Veterans VSO Working Group. Congress must resource this VA work appropriately. VA must specifically name it as a priority need allowing Congress to fence the funding.¹²

Culture Matters:

The bottom line is that further and significant cultural change at the VA is required in order to make meaningful progress in these and many other areas. We appreciate Congressional actions and VA initiatives to change the VA culture, but these efforts must be constant and continual because the problems persist. Adding new laws and policies, and making operational changes to the still existing VA culture, might make improvements on the margins, but it will not meet the Nation's promise to women Veterans.¹³

Department of Veterans Affairs in the U.S. Court of Appeals for the Federal Circuit, 29 January 2024. SWAN served as an *amicus* with other VSOs. The VA responded to the court on 22 February 2024. SWAN is aware of the resource and political issues in play, but government agencies should be able to respond to petitions on time per legislative requirements, one way or the other.

¹¹ Disabled American Veterans, *Women Veterans: The Journey to Mental Wellness*, 27 February 2024. Based on VA reporting, women Veterans' suicides rose by 24.1% from 2020-2021 compared to 6.3% for male veterans and 2.6% among non-veteran women.

¹² Monteith, et al, "Preventing Suicide Among Veterans: Gender Sensitive, Trauma-Informed Conceptualization," NIH National Library of Medicine, National Center for Biotechnology Information, 15 June 2022. The 2023 National Veterans Suicide Prevention Annual Report (www.mentalhealth.va.gov/docs), covering 2001-2021. Solutions require targeted and integrated solutions. See RAND Epstein Family Veterans Policy Research Institute, "Comparison of Suicide Rates among U.S. Veteran and Nonveteran Populations," in *JAMA* by Morral, Schell, and Smart, 18 July 2023. Comparisons with non-Veterans by age group: Women Veterans: 20.7 vs. 6.5 ages 18-34, 17.1 vs. 8.9 ages 35-54, 15.5 vs. 6.5 for 55 and over (there were no numbers for 75 and over unlike for men). See also the new DAV, *Women Veterans: The Journey to Mental Wellness*, (footnote 11) includes 50 significant recommendations for improvement.

¹³ Senator Hirono, 27 February 2024, remarks at DAV's Lunch and Learn on "Women Veterans," referring to the disrespect some Veterans experience at VA facilities commented that continual attention and commitment are required to change to change attitudes toward women Veterans.

SWAN's Legislative and Policy Goals for Women Veterans

- Ensure women and all Veterans feel respected, safe, welcome, and well-cared for at VA facilities. While there have been improvements in quality, comprehensiveness, and access to women's health care, these go for naught if we do not eliminate sexual assault and harassment. There are still too many reports of women and other Veterans being "catcalled," propositioned, the subject of derogatory remarks, or even assaulted.¹⁴ The programs and reports required under the *Deborah Sampson Act* are a positive step. Again, we hope Congress will continue to demand appropriate implementation and will share the required reports. Women, members of ethnic, racial, and religious minorities, and LGBTQ+ Veterans must feel welcome and respected at all VA facilities.¹⁵ In order to help change a VA culture that allows or even fosters assault and harassment with

¹⁴ Women and other Veterans (and staff) report continued and continuing harassment and challenges in making reports. In addition, SWAN Board members, staff, and members and VSO/MSO partners have given us their stories of personal experience. See also, Jennifer Alvarado, DAV report, 27 February 2024, and Panel Discussion. Thomas Costa, GAO, Testimony to the House Veterans' Affairs Committee Oversight and Investigation Subcommittee, "Sexual Harassment: Opportunities Remain for VA to Improve Program Structure, Policies, and Data Collection" on the status of GAO's 2020 recommendations to prevent and address sexual harassment, 2022. Military Women's Coalition Testimony to the HVAC O&I Subcommittee, 22 July 2022. *Report of the Department of Veterans Affairs Advisory Committee on Women Veterans*, 2020. Leo Shane, "House Chair Calls for the VA Secretary to Resign Over Handling of Sexual Assault Case," *Military Times*, 10 December 2020. VA Women's Health Research Network, "Women Veterans' Experiences with Harassment at the VA," 2021. Klap, R. Darling, J.E. Hamilton, et al. "Prevalence of Stranger Harassment at VA Medical Centers and Impacts on Delayed and Missed Care," *Women's Health Issues*, April 2019. Jennifer Steinhauer, "Treated Like a Piece of Meat: Female Veterans Endure Harassment at the VA," *New York Times*, March 12, 2019.

¹⁵ All discrimination and disrespect matters. SWAN notes the recent anti-Semitic social media postings of a VA counsel. Our partners, Jewish War Veterans (VSO), held serious discussions with VA leadership and Congressional committees. SWAN supports their constructive suggestions and for actions to be taken with this individual and the on the broader issue of preventing anti-Semitic behavior in the VA. JWV speaks to the Joint Committee Hearing on 13 March. Also, there is no place for actions by VA staff that destroys the trust of Veterans. See *The Hill* in an op-ed by three VA psychologists entrusted with the care of all Veterans. The op-ed, 20 January 2024, includes misinformation that can foster fear- and hate-mongering. A number of groups (23) including VSOs signed a letter to the VA in February denouncing this op-ed and asking the VA to take immediate action to ensure the safety and quality of care for all Veterans, see Modern Military Association of America, 21 February 2024. See also Press Release on 13 February 2024, "SWAN Statement in Response to Divisive Op-ed." In addition, discriminatory posters with the official VA seal were found in January 2024 in elevators of the Portland, Oregon VA facility that attacked minority Veterans, and mocked the VA's policy to honor all Veterans. VA Press Secretary Terrence Hayes issued a statement on 1 February and the VA police, Office of Inspector General, and the FBI are investigating.

impunity Congress must: (1) Provide appropriate resourcing for creating a single, national system (all-Regions, VISNs, and facilities) for reporting and tracking assault and harassment and the people involved (multiple reporting systems do not talk to each other); (2) Hold a hearing with the VA and VSOs specifically to assess progress on the *Deborah Sampson Act* before adding more legislation in order to target future legislation on the gaps; (3) Request a GAO report on the strengths and weaknesses of current efforts, including the data collection plans included in the *Equity Action Plan* (and *VBA Equity Assurance Plan*) and other programs to eliminate assault and harassment by Veterans; and, (4) Most importantly, all of us must demand accountability for perpetrators as well as of leaders who are not part of the solution.¹⁶ Punishment must be meaningful to have an impact.

- Continue to improve the VBA system for claims and VHA care for MST and PTSD across the Department and local communities.¹⁷ The Veterans Affairs and Armed Services Committees must collaborate even more closely especially on transition programs, so that we have smooth handoffs from one community and system of care to the other. Note that when the VA Inspector General reported that a majority of MST reports were being inappropriately rejected,¹⁸ the VA made some hurried changes which resulted in injecting more errors into the system. In April 2023, some Veterans visiting Capitol Hill told their stories reporting that they

¹⁶ VA Report of its internal investigation of the VA Office of Accountability and Whistleblower Protection (OAWP) within the Office of Resolution Management, Diversity & Inclusion (ORMDI) January 2024. HVAC Hearing, 14 February 2024, on the Investigation of Sexual Harassment and Misconduct within the Department of Veterans Affairs Office of Resolution Management, Diversity & Inclusion (ORMDI) – the office charged with preventing harassment and promoting diversity, equity, and inclusion.

¹⁷ VA Centers are helping many Veterans with urgent needs especially service members and Veterans suffering from mental health issues and MST. Congress must fully resource them; their connection to community services is critical.

¹⁸ VA OIG: “Improvement Still Needed in Processing MST Claims,” Report #20-00041-163, August 5, 2021 (increased to 57%) and many other reports for over a decade including GAO Reports in 2014 (14-447) and 2021 (21-444T), VA OIG Reports in 2018 (17-05248-241), and HVAC DAMA Hearings in 2019 and 2021.

had suddenly found out that long delayed claims or appeals were approved without even a conversation or appointment. However, the resulting low approval rates and disability ratings do not match the seriousness of those claims. Those Veterans are put in a position of having to have the courage and time to appeal yet again. They were still trying to resolve their claims over five years later. We know that hiring, training, and retraining adjudicators takes time, but we must move faster and give the VA resources to correct this. We welcome your continuing and vigorous oversight. Again, the *SAVES Act* would help. Among other efforts, it seeks to prevent retraumatization. Congress must also pass an expanded *Jax Act* (Jax Plus, preferably) to officially provide combat recognition, for all Lioness, Female Engagement, and Cultural Support Team members serving from 2003-2021, to ease the burden of PTSD, TBI, and other disability claims as well as to provide appropriate care for this small, unique group.¹⁹ But the issue is not the number. The point is that these women are Veterans and they earned these benefits and care. With courage, including those who did not receive appropriate training or equipment (including proper PPE), these women did what was asked of them. Most have been denied this recognition; we should not let it be because of a

¹⁹ With thanks to the Special Operations Association of America and others, the bipartisan *Jax Act* H.R. 1753 passed the HVAC in December 2023. Pass “Jax Plus”; to include the Pappas Amendment which included the Lioness and Female Engagement Teams (and all the CST) members from 2003-2021. There was concern about CBO scoring, but it is virtually impossible to know how many women served in combat roles in OIF/OEF (and earlier). History shows that commanders in the field, by necessity, used women in “collateral/additional duties” outside their MOSs/AFSCs/Designators to perform under “combat conditions” beside their male teammates. This was true in live operations before the combat exclusion of women in ground combat was rescinded in 2013 (but not lifted until 2016). Because leaders under fire might have been operating outside law and policy, these duties were not often documented in women’s service records or on their DD214s. Women’s percentage of Service members and of persons in the field, and the fact that only some have applied for or been denied VA benefits based on combat exposure (and some have stopped trying), the number is not large. There is a massive amount of documentation that this happened in OEF/OIF including in interviews on “Veteran’s Breakfast Club” podcasts by Daria Somers and the earlier 2012 documentary, *Lioness*. Among others also see the 2023 Sarah Percy, *Forgotten Warriors: The Long History of Women in Combat*, Basic Books, or for earlier examples, Erin Solaro, *Women in the Line of Fire: What You Should Know About Women in the Military*, Seal Press, 2006 and Lorry M. Fenner, “Moving Targets: Women’s Roles in the U.S. Military in the 21th Century,” *Women in Combat: Civic Duty or Military Liability*, Georgetown University Press, 2001.

rounding error in accounting. Of course, we hope this recognition will not stop with only these women but that we will eventually recognize all of those who served “in combat.”²⁰ For now and going forward, the Armed Services Committees must ensure that DOD and the Services correctly record duties that put women into “combat” so we don’t have to argue semantics years later. For others, the VA must train or retrain those who decide claims/appeals. This recognition will not only support women Veterans’ claims approval and appropriate care, it will support increased respect for servicewomen and Veterans. This respect has been missing. Reaffirming these womens’ service will contribute to changing a culture by showing their contributions are valued – so we are seen – no longer invisible.

- Get to the root causes of, and work to eliminate, the increase in women and minority Veterans’ suicides. We appreciate the VA Task Force connecting researchers and practitioners who will develop more meaningful treatments and programs. We appreciate that VA leaders and researchers, including Dr. Sally Haskell, Elizabeth Yano (PhD), Susan Strickland (PhD), Lindsey Monteith (PhD) and many others, are willing to collaborate with the long-standing Women Veteran VSO Working Group.²¹ Congress must robustly resource specific research to be the foundation for this suicide prevention effort and ensure funding is not diverted

²⁰ We can first recognize those who served in the Persian Gulf War, 1990-2003, (see Ramirez Amendment to *Jax*) and other operations and then go back even earlier for all living women Veterans who were thrown into “combat conditions” and performed with courage; some were killed, some injured or disabled, and some taken as POWs even though the law theoretically excluded them from combat in order to “protect” them. Only a few of the recent names to remember include Lori Piestewa, Marie Rossi, Shoshana Johnson, Jessica Lynch, Melisa Rathbun-Nealy, and Maj. Rhonda Cornum, MD, in Holm, *Women in the Military*. See also, Lorry M. Fenner, “Either You Need these Women or You Do Not [Senator Margaret Chase Smith]: Informing the Debate on Military Service and Citizenship,” *Gender Issues*, Summer 1998.

²¹ *Health Services Research and Development: Tailoring Suicide Prevention for Women Veterans*. The 2023 Office of Women’s Health annual report was briefed to the WSWG on 1 February 2023 and the DAV report *Women Veterans: The Journey to Mental Wellness*, 27 February 2024.

for other purposes when it reaches the VA. In order for this to happen, the VA must name this as a very specific, high priority.

- Continue to reform and improve the Character of Discharge determination process with transparency and standardization across VBA Regional Offices.²² Access to Veterans benefits is not automatic but is based on discharge “under honorable conditions.” We appreciate that the VA is trying to improve, but there is a longstanding and continuing problem with DOD discharge characterization and a broken appeals process. Many Veterans suffering from PTSD, MST, and other mental health issues, as well as LGBTQ+ Veterans, were discharged under “other than honorable conditions.” For instance, assault victims received discharges coded as “personality disorders” or other derogatory and gendered terms so they were not covered by medical retirements. Note also that not so long ago, pregnant women were discharged for “failure to adapt” and other negative euphemisms.²³ Veterans have been denied the benefits and care that they earned.²⁴ Laudably, Congress has changed the requirements of the Services’ Discharge Boards, Discharge Review Boards, and Boards for the Correction of Military Records to avoid unfair discharges going forward. To remedy past mistakes, DOD and the

²² See also, the testimony of Lory Manning, SWAN, to the Joint Hearing of SVAC and HVAC, March 2022.

²³ Multiple sources including Oriana Pawlyk, “For Decades, Women Were Discharged from the Military for Pregnancy. Now a Lawmaker Wants to Restore Their Benefits,” *Military.com*, 9 April 2021. Women were discharged for pregnancy and motherhood, even if they adopted stepchildren and including those of a military man from a previous marriage even if they had been living with him as a single parent. P.L. 625 was used until Executive Order 10240, 27 April 1951, provided official and specific authority, see Maj. Gen. Jeanne Holm, *Women in the Military: An Unfinished Revolution*, Presidio, revised 1992. The official policy to involuntarily discharge women with children was largely dismantled in the mid-1970s, but some women were discharged for pregnancy using various narratives and derogatory codes even after that.

²⁴ Kayla M. Williams, “Support for Veterans Leaves Rape Victims Behind,” *Commentary, The RAND Blog*, 2 February 2024. Williams notes that since the majority of assault victims are within their first three years of service when they choose to leave or were forced out, they do not qualify under the post 9-11 GI Bill and for some other benefits and care. A number of studies address this issue including those from Galorski et al, “The State of Knowledge of VA MST Research,” *Journal of Internal Medicine*, 30 August 2022; Human Rights Watch in 2016 on rape survivors, “Booted”; Brown University in 2017 on “Bad Paper”; and Maureen Siedor, “Swords to Plowshares,” Testimony to the HVAC DAMA Subcommittee in 2020.

VA have conducted some outreach to those who might be eligible for an upgrade and access to VA benefits. In addition, DOD is starting to automatically review records of some who were discharged under “Don’t Ask, Don’t Tell” but only if their discharges clearly state that homosexuality was the basis for discharge.²⁵ These records will be forwarded to Service Discharge Boards for Review. Unfortunately, the Service Boards are experiencing significant backlogs in general. In addition to all this, many Veterans are still unaware that they can apply directly to the VA for benefits, which would then trigger a VBA COD determination. However, even then, the VBA seldom decides in the Veteran’s favor. Congress can help. Congress and the VA should further clarify the vague statutory and regulatory language underlying COD determinations, standardize COD procedures and transparency across all Regions, better train COD adjudicators, and conduct more outreach to the public specifically aimed at women Veterans of all eras who are not users of VA benefits or enrolled in care. Moreover, SWAN recommends a GAO study on the outcomes of recent DBA COD determinations and to specifically compare rates among various demographics. The study should examine COD procedures and training at all regional offices and gather available data on denial and approval rates. GAO should then recommend any data collection and analysis improvements that are needed. SWAN supports the reintroduction of the *Unlawful Turn-Aways Act* (S. 2786 and H.R. 5321 from the 117th).²⁶

²⁵ The DOD policy was announced 20 September 2023. Following a DOD meeting with VSOs on 7 December 2023, a number signed a letter with Minority Veterans of America on 1 February 2024 with a proposal to widen the pool of those eligible for review and to simply provide more specific guidance to the Services (based on an MVA et al letter from 13 July 2022).

²⁶ Senate cosponsors included Senators Blumenthal, Sanders, and Smith, T.; House co-sponsors included Representatives Underwood and Pappas.

- Take action to fix gaps in VA reproductive and other women’s health care: (1) Eliminate copays for FDA approved contraceptives. The *Affordable Care Act* requires almost all private health plans to cover birth control without cost sharing. It is disgraceful, that unlike other women in this country, women Veterans are subject to this cost, which for some can be prohibitive. Pass the long-overdue *Equal Access to Contraception for Veterans Act* (H.R. 894) that has been reintroduced in this Congress.²⁷ (2) SWAN applauds Congress for passing the *Making Mammography and Medical Options for Veterans Act* (MAMMO Act) of 2022. Now Congress must make sure the VA has the resources to make access to these services easier for paralyzed and other disabled Veterans. We also ask that the VA ensures in guidelines and practice that mammograms are regularly and easily not just available for all Veterans under 40, but especially for those who served in all areas and occupations subject to toxic exposure.²⁸ (3) Expand access to ART, including IVF. SWAN supports the forthcoming VA policy and would like to see VA and DOD to go further.²⁹ Passing H.R. 544, the *Veterans Infertility Treatment Act of 2023* with amendments, would help. Under VA Directive 1334 of March 2021, the VA restricts eligibility to heterosexual married couples who

²⁷ This Bill, reintroduced by Representative Brownley, has at least 25 co-sponsors. It passed the House with clear majorities in the 116th and 117th Congresses. We also support parallel measures for DOD which were actually passed by the House as part of previous NDAs but was not included in the enacted versions. The effort to make this change has gone on for a decade or more.

²⁸ “The American Cancer Society Guidelines for the Early Detection of Cancer,” www.cancer.org/cancer/screening. See also *Dr. Hate Hendricks Thomas Supporting and Expanded Review for Veterans in Combat Environments Act*, 2022. Dr. Thomas died from breast cancer caused by toxins at age 39 had served as a SWAN researcher. SWAN thanked Congress for this legislation including in testimony to HVAC DAMA, 16 May 2023.

²⁹ VA policy is based on DOD’s (Title 10). In response to the NOW-NYC legal case based on ACA 1557 filed in August 2023, DOD announced a change in January 2024 to include “service members in any relationship status” (and allowing for donor eggs or sperm). The VA announced shortly afterward that since it aligns its policy with DOD’s, it will also change its policy. Drew Friedman, *Federal News Network*, 29 January 2024, and Joe Wilson, mymilitarybenefits.com, 31 January 2024. The February 2024 Alabama Supreme Court ruling complicates this. Some Veterans may now have to travel out of state repeatedly, at considerable expense, adding to already prohibitive costs. While clinics in AL suspend their IVF treatments, Veterans may not be able to retrieve their blastocysts in AL, or from other states that might follow suit, in order to get the procedures they had already arranged and paid for. See H.R. 544 and amend to account for the recent AL court decision.

can produce their own gametes and the Veteran must be diagnosed with “service connected” infertility or infertility resulting from disability or serious illness resulting from military service. This left out Veterans whose service or combat-related disabilities prevented them from even producing gametes, single Veterans and Survivors, same sex married couples, and others. Most of these limitations may be lifted under the new policy. The VA should collect data on how many Veterans want this care but are still not eligible in order to create a path forward. (4) As the VA fully implements its Interim Federal Rule on counseling and limited abortion care, all Veterans who need this care must be able to access it.³⁰ (5) Include gender affirming counseling and care including surgery ensuring equity in treatment that the ACA Section 1557 requires for non-veterans.³¹ (6) Resource the childcare that many Veterans need in order to meet appointments.

- Ensure continual improvement of PACT Act implementation, including continuing research and targeted, fenced funding, to examine the effect of exposures on the development of breast cancer and infertility in women and men as well as in all minority veterans. Congress must increase gender and other groups’ specific research funding across the board – call it out for women and other groups in more grants rather than just including more demographic data using the usual (male) constructs. VA must make this a stated priority if Congress is going to ensure a specific appropriation.³²

³⁰ VA Press Release on the Interim Federal Rule, 2 September 2022. The VA made the rule “final” this week.

³¹ The National Veterans Legal Services Petition, 29 January 2024. The case was made moot when the Secretary of the VA denied the petition in a letter on 22 February 2024 clarifying that while the VA provides gender affirming care, it is not ready to initiate rule making addressing specific regulatory changes to the medical benefits package to add gender affirming surgery. See also footnote 10.

³² See DAV Report, *Women Veterans*, 27 February 2024. Male models and standards have been used for much past research. Some at the VA are working hard to change this; they need to be supported. In early February, Dr. Strickland told the WVVWG that the REACH VET research algorithm was being updated to include MST and other conditions specific to women in order to better evaluate suicide risk factors. Discussion revealed some ways

- Designate additional cemeteries that will render full military honors for eligible Veteran interments. SWAN supports the bi-partisan H.R. 1413 *Expanding National Cemeteries Act*.³³ Soon, the criteria for in ground interment at Arlington National Cemetery (ANC) might be reserved only to those who were POWs; recipients of awards for combat valor at the Silver Star level or above; recipients of Purple Hearts; those on active duty who died while preparing for operations related to combat; U.S. Presidents and Vice Presidents; and Veterans with armed conflict service who later serve in significant government positions. Burials at ANC include the rendering of full military honors for some, unlike current burials at other national, state and tribal Veterans' cemeteries. The revocation of this long-promised benefit – a great comfort to many families – affects certain groups in particular: (1) A great number of Cold War Veterans; (2) Most women Veterans and others who were considered “non-combat” or non-regular - this classification is often based on historic constraints on women’s participation instead of on the actual conditions of their service;³⁴ and, (3) Some high-achieving Veterans who served as astronauts and in other pioneering and dangerous occupations and operations. Interment at a national cemetery with full military honors must remain a benefit for all currently eligible Veterans now and in the future.³⁵

Veterans not now in the VHA system and LGBTQ+ specific research could be thought about in new ways, even as simple as helping Veterans who change their names ensure this is recorded properly in all databases.

³³ Hope Hodge Seek, “Why Congress Must Act on Arlington National Cemetery,” *Military Officer*, MOAA, 8 May 2023. See especially quotes from Lory Manning, CAPTAIN, USN Retired, SWAN Board of Directors, and Phyllis Wilson, CW5, USA Retired, Chief Executive of the Military Women’s Memorial at ANC.

³⁴ Women were not allowed to serve on “combat” aircraft until the early 1990s, and the ground “combat” exclusion was not lifted until 2016. The evidence shows that women Veterans served under combat conditions much earlier in our history. Although the Army stated that its new draft rule does not entail gender bias, it would bar many women Veterans including all Korean and Vietnam War nurses who served under fire in favor of some service persons who have not even been born yet (Manning).

³⁵ Women were excluded from all “combat” occupations and assignments until the early 1990s when combatant ships and aircraft were opened by Congress with Army positions only closed by policy. (SWAN worked for over a decade to open all occupations to qualified women, *SWAN v. Austin* only resolved in 2023 (there are still issues in the ARNG and USMC). See ACLU and SWAN Press Releases, 13 March 2023. In 2016, the Secretary of Defense

Conclusion

To close, we continue to stand ready to assist Congress both in legislating improvements to VA benefits, care, and practice, and in conducting its oversight. We continue to stand ready to help the VA beyond improving its policies and operations, to continuing efforts to change its culture in order to provide the respect, recognition, and care that women and other Veterans have earned. We are committed, along with other VSOs, to continuing to help define problems and to be a part of better solutions. Thank you again for inviting SWAN today.

opened all ground combat positions to women. In reality, women were exposed to and served under combat conditions throughout U.S. history. See Percy, Holm, Fenner, et al. If not earlier, during OIF/OEF the legislative and policy combat exclusions had become publicly and legally indefensible when commanders on the ground, as a matter of operational necessity, began “integrating” women into units under and returning fire between 2003 and 2016. They proved themselves capable and in some cases, indispensable. The combat requirements for interment at ANC would eliminate most women except for 4 living POWs, 2 Silver Star recipients, and those who received the Purple Heart (without being recorded as “combat” eligible) as a result of terrorist attacks and service in the Gulf War or the post-9/11 wars. See Lory Manning in SWAN Testimony to the Joint HVAC/SVAC hearing March 2022. See also the *Jax Act*, footnote 19 above.