



**Statement of Russ Duerstine  
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**On**

**H.R. 4278: The Restore Department of Veterans Affairs Accountability Act**

**House Veterans' Affairs Subcommittee on Oversight and Investigations  
Legislative Hearing**

**July 12<sup>th</sup>, 2023**

Thank you to Chairwoman Kiggans, Ranking Member Mrvan, and the Members of the Subcommittee for the opportunity to submit this statement on behalf of Concerned Veterans for America (CVA). CVA is a grassroots network of thousands of veterans, family members, and patriotic citizens that advocates for and defends policies to preserve freedom and prosperity for all Americans. Our organization is driven to organize and amplify the American veteran's unique perspective to both the American people and to our leaders in Washington.

**CVA's History in Veterans' Health Care Oversight: Why Accountability Matters**

As a leading advocate for reform and accountability at the Department of Veterans Affairs and for increased health care choices for our veterans since 2012, CVA appreciates the opportunity to support key legislation before the subcommittee today. Throughout our ten-year history, CVA has worked on the leading edge of the effort to improve veterans' health care outcomes and hold the VA accountable when it falls short.

As systemic failures came to light in 2014 after the Phoenix VA scandal, CVA activists were on the front lines from the beginning demanding change, contributing to the passage of three major pieces of veterans' health care legislation, one of which is improved upon by legislation before the committee today. Following the Phoenix scandal, CVA fought for the Veterans Access, Choice, and Accountability Act of 2014, which established the first iteration of a choice program for veterans to seek care outside the VA.

CVA also supported the VA Accountability and Whistleblower Protection Act of 2017, which gave the VA greater freedom to terminate poorly performing employees while shielding whistleblowers from retaliation. While these efforts laid an early foundation to change incentives at the VA and improve outcomes for veterans, more work was needed to improve veterans' care experiences. Unfortunately, a flood of litigation and administrative decisions rendered most of this law unenforceable, and the VA announced it would stop following it this very March.<sup>1</sup> Fortunately, legislation before the subcommittee today would help restore Congress' original intent as expressed in this law.

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<sup>1</sup> Eric Katz, "VA Will No Longer Use Its Marquee Civil Service Reform Law to Punish Employees," *Government Executive*. March 24, 2023. <https://www.govexec.com/pay-benefits/2023/03/va-will-no-longer-use-its-marquee-civil-service-reform-law-punish-employees/384419/>

Lastly, CVA was a key supporter of the passage of the VA MISSION Act in 2018, which passed with overwhelming bipartisan support. This legislation incorporated many of the recommendations of the bipartisan 2015 Fixing Veterans' Health Care Task Force convened by CVA, namely by creating the Veterans Community Care Program (VCCP).<sup>2</sup> By consolidating existing choice programs and simplifying access standards, the VA MISSION Act offered greater health care choice to millions of veterans, enabling far more to access care where and when they needed it.

Ensuring the full implementation of the VA MISSION Act and holding the VA accountable for failures to do so have been consistent priorities of CVA's since the legislation passed and remains a core oversight priority for this subcommittee. During the height of the COVID-19 pandemic, the VA admitted to cancelling or delaying 20 million appointments, often without evidence of follow-up.<sup>3</sup> This failure makes access to alternative treatment outside the Veterans Health Administration (VHA) essential.

Unfortunately, the VA's reluctance to honor its regulatory and statutory obligations since the VA MISSION Act's passage has limited millions of veterans' health care choices, too often resulting in delayed and denied care. Reports have emerged of VA administrative staff overruling doctors' assessments of patients' best medical interests to overturn community care referrals, even though the validity of these clinical referrals are established in the VA MISSION Act text.<sup>4</sup>

The VA's apparent reluctance to facilitate access to community care was also made clear when it quietly shut down [MissionAct.va.gov](https://missionact.va.gov) in 2021, the dedicated website educating veterans on community care options. To address this educational gap, CVA's sister organization, Concerned Veterans for America Foundation (CVAF), created [VAMissionAct.com](https://vamiissionact.com), replicating the previous community care resources for the fifth anniversary of the MISSION Act's passage.<sup>5</sup> These efforts by CVAF should not be needed, but an organizational culture within the VA that is content to actively disregard the will of Congress as expressed in the MISSION Act makes such outreach necessary.

As part of its efforts to support the MISSION Act's implementation and improve VA oversight, CVA has amplified the findings of a Freedom of Information Act (FOIA) lawsuit from the Americans for Prosperity Foundation filed against the VA. The FOIA suit, which is still pending, reveals that the VA systematically manipulates wait times by using outdated guidance contrary to its own regulations, making public wait times appear shorter than what veterans truly experience. Because access to community care is based in part on VHA wait times, manipulating these statistics cuts off swathes of veterans off from access to the treatment options they are legally entitled to.<sup>6</sup> AFPP's FOIA suit

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<sup>2</sup> "Fixing Veterans Health Care: A Bipartisan Policy Task Force," *Concerned Veterans for America*. 2015. <https://cv4a.org/wp-content/uploads/2016/01/Fixing-Veterans-Healthcare.pdf>

<sup>3</sup> "Secretary McDonough's remarks to Veterans Service Organizations regarding the American Rescue Plan," VA News, *Department of Veterans Affairs*. February 12, 2021. <https://news.va.gov/84721/secretary-mcdonoughs-remarks-veterans-service-organizations-regarding-american-rescue-plan/>

<sup>4</sup> Jill Castellano, "The Mission Act is supposed to help US veterans get health care outside the VA. For some, it's not working," *USA Today*, November 1, 2021. <https://www.usatoday.com/in-depth/news/investigations/2021/11/01/mission-act-aid-veterans-healthcare-va-isnt-letting-it/8561618002/>

<sup>5</sup> "Increasing Veterans' Access to Health Care: The VA MISSION Act," *Concerned Veterans for America Foundation*, June 2023. <https://vamiissionact.com>.

<sup>6</sup> For a detailed explanation of VA wait time manipulation practices, see: "Delayed and Denied Care: Transparency and Oversight Needed for VA Wait Times," *Concerned Veterans for America*, February 22, 2022. [https://cv4a.org/wp-content/uploads/2022/02/22\\_298900\\_VAPolicyBriefingHandout.pdf](https://cv4a.org/wp-content/uploads/2022/02/22_298900_VAPolicyBriefingHandout.pdf).

further revealed that internal VA guidance directs schedulers to attempt to persuade veterans to use VHA facilities instead when they request community care access.<sup>7</sup>

That this information had to be produced via FOIA litigation underscores the VA's efforts to keep its efforts to thwart MISSION Act implementation from the public and Congress, despite the efforts of Members in both Houses and parties to pressure the agency to carry out the law.<sup>8</sup>

Even if additional treatment choices like community care are protected, it is clear that poor VA personnel incentives institutionalizing a lack of accountability will continue to create obstacles for veterans unless addressed. VA administrative decisions and an employee culture all too hostile to helping veterans pursue the treatment that best meets their needs must be confronted.

### **H.R. 4278: The Restore Department of Veterans Affairs Accountability Act**

CVA endorses H.R. 4278, the Restore Department of Veterans Affairs Accountability Act, brought by Chairman Bost. The Restore VA Accountability Act would carry out the will of Congress as expressed in the overwhelmingly supported VA Accountability and Whistleblower Protection Act of 2017. CVA supported this 2017 legislation, along with a majority of legacy Veteran Service Organizations. When fully in place, this law gave the VA Secretary the authority to discipline, suspend, demote, or remove employees that were poorly performing or had committed misconduct, expediting procedures to do so and requiring a greater burden of proof for these decisions to be overturned. Unfortunately, as discussed, litigation and administrative rulings rendered the 2017 accountability hollow.

In any organization, personnel incentives can make or break a culture. Protecting those who do not take their responsibility to our nation's veterans seriously demoralizes quality VA employees who want to help those who have served to the best of their abilities. On its staff, CVA has multiple former VA employees who were passionate about caring for veterans at the VA. They became disillusioned with an organizational culture that tolerated failure and too often did not reward or even discouraged employees from going above and beyond to provide quality care.<sup>9</sup>

The consequences of the status quo are clearest at the Loma Linda VA Medical Center (VAMC) in California. At this facility, a supervisor accused of creating a toxic working environment remains employed despite three internal investigations in as many years, 36 witnesses, and 4,000 pages of evidence.<sup>10</sup> Two of the three investigations have recommended this individual's removal, yet inexplicably, this person remains entrusted to supervise those caring for our nation's veterans. The

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<sup>7</sup> "Standard Mission Act Guidance: Patient Eligibility and Scheduling Sheet," *Department of Veterans Affairs*, October 28, 2020. <https://americansforprosperity.org/wp-content/uploads/2021/09/03-Mission-Act-Guidance-Oct.-2020.pdf>

<sup>8</sup> For examples of previous Congressional letters to the VA over its failures to implement the MISSION Act, see: "Chairman Bost Fights For Veteran Community Care Access, Pushes Back on Biden Administration," *House Committee on Veterans Affairs*, June 6, 2023.

[https://veterans.house.gov/uploadedfiles/final\\_2023\\_05\\_31\\_letter\\_to\\_va\\_re\\_veteran\\_community\\_care.pdf](https://veterans.house.gov/uploadedfiles/final_2023_05_31_letter_to_va_re_veteran_community_care.pdf);

"Daines, Colleagues Demand VA Do A Better Job Of Providing Community Care To Veterans," *Office of Senator Steve Daines*, July 18, 2022. <https://www.daines.senate.gov/wp-content/uploads/imo/media/doc/VA-%20Community%20Care-%20FINAL%207.14.2022.pdf>;

"Clark Leads Delegation Letter Calling on VA Secretary McDonough to Address Veterans Care Concerns, Mission Act," *Office of Rep. Katherine Clark*, February 25, 2021. <https://katherineclark.house.gov/2021/2/clark-leads-delegation-letter-calling-on-va-secretary-mcdonough-to-address-veterans-care-concerns-mission-act>

<sup>9</sup> "My VA Story: Former VA Employee Sheds Light On A Dream Job Turned Into A Nightmare," *Concerned Veterans for America*, April 10, 2023. <https://cv4a.org/the-overwatch/my-va-story-former-va-employee-sheds-light-on-a-dream-job-turned-nightmare/>

<sup>10</sup> "Rep. Obernolte, Chairman Bost demand answers from VA on Loma Linda employee misconduct case," *Office of Rep. Jay Obernolte*, April 13, 2023. <https://obernolte.house.gov/media/press-releases/rep-obernolte-chairman-bost-demand-answers-va-loma-linda-employee-misconduct>

Loma Linda VAMC leadership has been unable to terminate this supervisor due to existing legal constraints, leaving employees with the choice to either tolerate a toxic environment or leave.

As this subcommittee is aware, many VA employees choose to vote with their feet. According to reporting required by the MISSION Act, the VA lists over 78,000 employee vacancies as of the second quarter of 2023.<sup>11</sup> Though a more critical discussion of the rate of increase of authorized FTEs at the VA is in order—the veteran population has been steadily declining over the past several decades—retention of existing employees should be a priority. A demoralizing work culture wrought by poor personnel incentives undermines the VA’s ability to hire and retain talented staff.


The Restore VA Accountability Act would revive the Congressional intent denuded by the actions taken against the 2017 VA Accountability law. H.R. 4278 would provide a comprehensive follow-on. The bill would empower the VA Secretary with the disciplinary tools necessary to have on hand to maintain a constructive, motivating employee culture. The legislation would combat frivolous appeals that would delay an otherwise warranted personnel decision by ensuring that those supported by substantial evidence are upheld. It would also streamline the disciplinary process by eliminating the requirement for a personnel improvement plan (PIP) prior to disciplinary action being taken. At their worst, PIPs can allow employees, like the Loma Linda supervisor discussed above, to linger when it is clear to supervisors that they are holding back their team’s operations.

Most importantly, the Restore VA Accountability Act would more widely apply accountability across the VA workforce. It would allow for expedited disciplinary processes to be employed not just on Senior Executives, but on supervisors and employees as well. The bill would also require supervisors and Senior Executives to appeal decisions directly to the VA Secretary rather than through the Merit Systems Protection Board. This step would give the Secretary greater control over the leadership standards he or she seeks to ensure are modeled for the rest of the Department.

**Conclusion:**

The VA’s failures to fully implement the MISSION Act are well-known and affect millions of veterans in every Congressional district around the country. The Restore VA Accountability Act takes necessary steps to protect community care options by codifying current access standards. It adds further protections to community care scheduling to thwart bureaucratic restrictions on veterans’ access to the full range of care they have earned. For these reasons, I strongly urge the subcommittee to support H.R. 4278, the Restore VA Accountability Act.

Respectfully Submitted,



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<sup>11</sup> “VA MISSION Act Section 505 Data – FY 2023 Quarter 2,” *Department of Veterans Affairs*, June 9, 2023. <https://www.va.gov/employee/va-mission-act-section-505-data/>