

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 17-1460

Dee Fulcher, Giuliano Silva, and Transgender American Veterans Association

v.

Secretary of Veterans Affairs

DOCKETING STATEMENT

This Docketing Statement must be completed by all counsel and filed with the court within 14 days of the date of docketing. When the United States or its officer or agency is a party, this Docketing Statement must be completed by all counsel and filed with the court within 30 days of docketing. All questions must be answered or the statement will be rejected.

Name of the party you represent Dee Fulcher, Giuliano Silva, and Transgender American Veterans Association

Party is (select one) Appellant/Petitioner Cross-Appellant
 Appellee/Respondent Intervenor

Tribunal appealed from and Case No. Department of Veterans Affairs

Date of Judgment/Order November 10, 2016 Type of Case Review of a denial of a petition for rulemaking

Relief sought on appeal Compel the agency to engage in rulemaking to amend or repeal 38 C.F.R. § 17.38(c)(4).

Relief awarded below (if damages, specify) None.

Briefly describe the judgment/order appealed from (see below)

The VA denied petitioners' request that the VA engage in rulemaking to amend or repeal a regulation, 38 C.F.R. § 17.38(c)(4), which excludes medically necessary sex reassignment surgery for transgender veterans from the medical benefits package provided to veterans. +

Nature of judgment (select one)

Final Judgment, 28 USC 1295
 Rule 54(b)
 Interlocutory Order (specify type) _____
 Other (explain; see Fed. Cir. R. 28(a)(5)) (see below)

Denial of a petition for rulemaking pursuant to 5 U.S.C. § 553(e).

Name and docket number of any related cases pending before this court plus the name of the writing judge

if an opinion was issued.

If none, please state none.

None

Brief statement of the issues to be raised on appeal (see below)

Whether the Department of Veterans Affairs' denial of petitioners' request to engage in rulemaking was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Have there been discussions with other parties relating to settlement of this case? Yes No If "yes," when were the last such discussions?

Before the case was filed below?

During the pendency of the case below?

Following the judgment/order appealed from?

If "yes," were the settlement discussions mediated? Yes No

If they were mediated, by whom? N/A

Do you believe that this case may be amenable to mediation? Yes No

Please explain why you believe the case is or is not amenable to mediation.

The relief sought in this case is specific and narrow, and the Secretary of Veterans Affairs has already denied the request.

Provide any other information relevant to the inclusion of this case in the court's mediation program.

None.

I certify that I filed this Docketing Statement with the Clerk of the United States Court of Appeals for the Federal Circuit and served a copy on counsel of record, this

7th day of February, 2017

by: Electronic means (CM/ECF)

(manner of service)

Paul R.Q. Wolfson

/s/ Paul R.Q. Wolfson

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