



Yale Law School
Veterans Legal Services Clinic
Reproductive Rights and Justice Project

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Press Conference: NOW-NYC and Air Force Veteran Announce Suits Against Pentagon, VA for Discriminatory Fertility Policies

Rules Exclude Same-Sex and Unmarried Couples, Single Veterans and Service Members

New York, NY – Today, the New York City chapter of the National Organization for Women (NOW-NYC) filed a lawsuit in federal court in Manhattan challenging the discriminatory eligibility policies of the Department of Defense (DOD) and the Department of Veterans Affairs (VA) for In Vitro Fertilization (IVF) services. A second lawsuit was filed today in federal court in Boston by Air Force veteran Ashley Sheffield against the VA, on behalf of a proposed class of veterans excluded from IVF care.

To access IVF, DOD and VA require service members and veterans to be legally married, able to produce the necessary gametes (sperm and eggs) with their spouse, and have a significant service-connected injury impacting fertility. VA defines “infertility” as arising only when a married opposite-sex couple fails to achieve a pregnancy. As a result, same-sex and unmarried couples and single service members or veterans are denied coverage, in violation of federal statutory and constitutional anti-discrimination protections and fundamental rights. Yet from toxic exposures, combat stress, and delays due to service obligations, military services leaves many veterans and service members with limited family building options. Fertility services are an essential means of supporting military and veteran families.

In its lawsuit, NOW-NYC challenges the policies of VA and DOD that deny IVF coverage to veterans and service members who are in same-sex marriages or unmarried. NOW-NYC brings suit on behalf of its members, who include active duty service members and veterans in a same-sex marriage; their spouses; an unmarried veteran in an opposite sex couple; and single veterans. NOW-NYC is represented by the Yale Law School’s Veterans Legal Services Clinic and Reproductive Rights and Justice Project.

“NOW-NYC is committed to amplifying the voices of people with marginalized gender identities and sexual orientations through action and accountability,” says Sonia Ossorio, Executive Director of NOW-NYC. “For years, VA and DOD have enforced discriminatory policies harming service members and veterans. NOW-NYC members have faced these policies and want to ensure future generations do not face the same discrimination. These members sacrificed for this country. They should not have to sacrifice their right to build a family.”

“As a veteran, I proudly wore the uniform of our nation, sacrificing the best reproductive years of my life to protect the values we hold dear,” said Lindsay Church, a NOW-NYC member who is non-binary and uses they/them pronouns. “However, my service came with severe injuries, leaving me disabled and unable to carry a child due to extensive damage to my ribs, sternum, spine, and torso. Despite my service-connected disability, my spouse and I do not have access to vital fertility treatments, such as IVF, because my disabilities are not to my reproductive system, and we are in a same-sex marriage. Our family has joined NOW-NYC's legal challenge because we believe that every individual, regardless of their marital status, sexual orientation, or the nature of their disability, deserves equal treatment under the law and should have the opportunity to begin a family free of discriminatory barriers.”

“Members of the military endlessly sacrifice for our country,” said a current service member who is also a member of NOW-NYC. “We go where they tell us to when they tell us to, devote our prime family building years to the military, and put ourselves in harm’s way. The military preaches the importance of families in our mission, but when the time comes for some of us to build our own, we are told we don’t qualify. Discriminatory requirements should not hold us back from building the families we have suffered so much to have.”

“Throughout my time in service, and now as a veteran, I have seen so many friends and colleagues struggle with fertility. This is not just a coincidence; our service has seriously impacted our ability to build families,” said Renée Mihail, a law student intern with the Yale Veterans Legal Services Clinic, West Point graduate, and Army veteran. “We risked our lives serving the people of the United States; the least the Government can do now is help us build the futures and families we delayed for so long. Instead, the Departments of Defense and Veterans Affairs impose discriminatory policies that reenforce outmoded stereotypes of family building, particularly for women and same-sex couples. These policies are unconscionable and unlawful.”

The second case is brought by Air Force veteran Ashley Sheffield, a Massachusetts resident, on behalf of herself and a class of other married veterans. Because of injuries from her service, Ms. Sheffield has developed conditions that affect her fertility. She sought IVF services from the VA, but the agency told her that she did not qualify for IVF benefits because she is married to a woman. Ms. Sheffield is represented by counsel at the National Veterans Legal Services Program; Brody, Hardoon, Perkins, & Kesten, LLP; and Peter Romer-Friedman Law PLLC.

“Like so many LGBTQ+ veterans, I honorably served in the Armed Forces, and I earned the health benefits that millions of veterans enjoy. I’m shocked and disappointed that the VA is denying me and other veterans IVF benefits because we’re in same-sex marriages,” said Ms.

Sheffield. “We are entitled to equal treatment, and we should no longer be treated as second-class citizens.”

“Ten years ago, the Supreme Court struck down the Defense of Marriage Act because that heinous law treated same-sex marriages as invalid and dehumanized LGTBQ+ people,” said Michael Stefanilo, Jr., a partner who leads the LGBTQ+ Civil Rights practice at the Boston-based litigation firm of Brody Hardoon, Perkins, & Kesten, LLP. “There is no excuse for the VA breathing new life into the bigotry that LGBTQ servicemembers and veterans have faced for hundreds of years.”

The lawsuits ask the courts to enjoin the discriminatory eligibility provisions of the IVF policies of DOD and VA and to declare them unlawful. Read the [New York complaint here](#) and the [Boston complaint here](#).

NOW-NYC focuses on igniting change through advancing laws, promoting women in leadership, fighting for reproductive justice, and challenging discrimination and violence against people with marginalized gender identities and sexual orientations.

The Veterans Legal Services Clinic and the Reproductive Rights and Justice Project clinic, which represent NOW-NYC, are, respectively, part of the Jerome N. Frank Legal Services Organization at Yale Law School, and Yale Law School’s Information Society Project.

Ashley Sheffield is represented by counsel at three organizations. The National Veterans Legal Services Program is a 501(c)(3) nonprofit organization that has worked since 1981 to ensure that the government delivers to our nation's veterans and active duty personnel the benefits to which they are entitled.

Brody, Hardoon, Perkins & Kesten, LLP, is a Boston-based law firm specializing in civil rights litigation with a practice area dedicated to advancing the LGBTQ+ community through law.

Peter Romer-Friedman Law PLLC is a public interest law firm that represents people, non-profits, and unions to advance social and economic justice in a range of legal areas, including employment discrimination, constitutional rights, fair housing, public accommodations, and consumer protection.