No. 18-676

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

PETITIONERS,

v.

RYAN KARNOSKI, ET AL.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATE OF WASHINGTON'S APPENDIX VOLUME II OF II

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BLUEPRINTS FOR SOUND PUBLIC POLICY

DoD's Rationale for Reinstating the Transgender Ban Is Contradicted by Evidence

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April 2018

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BLUEPRINTS FOR SOUND PUBLIC POLICY

Executive Summary

On March 23, 2018, the White House released a report, endorsed by Defense Secretary James Mattis, entitled, "Department of Defense Report and Recommendations on Military Service by Transgender Persons" ("Implementation Report"). The 44-page document contains recommendations that, if enacted into policy, would have the effect of

banning many transgender individuals from military service. As of the writing of this study, inclusive policy for transgender individuals remains in effect because federal courts have enjoined the administration from reinstating the ban, and because the Report's recommendations have not yet been entered into the Federal Register or enacted into policy. The Justice Department, however, has asked the courts to allow the administration to reinstate the ban.

Given the possibility that the Implementation Report's recommendations could become policy, it is important to assess the plausibility of DoD's justification for reinstating the ban. This report undertakes that assessment and finds its rationale wholly unpersuasive.

The Implementation Report claims that inclusive policy would compromise medical fitness because there is "considerable scientific uncertainty" about the efficacy of medical care for gender dysphoria (incongruity between birth gender and gender identity), and because troops diagnosed with gender dysphoria are medically unfit and less available for deployment. Cohesion, privacy, fairness, and safety would be sacrificed because inclusive policy blurs the "clear lines that demarcate male and female standards and policies." Finally, according to the Report, financial costs would burden the military's health care system because the annual cost of medical care for service members diagnosed with gender dysphoria is three times higher than for other troops.

After carefully considering the recommendations and their justification in the Implementation Report, we have concluded that the case for reinstating the

transgender ban is contradicted by ample evidence clearly demonstrating that transition-related care is effective, that transgender personnel diagnosed with gender dysphoria are deployable and medically fit, that inclusive policy has not compromised cohesion and instead promotes readiness, and that the financial costs of inclusion are not high. Specifically, we make the following eight findings:

1. **Scholars and experts agree that transition-related care is reliable, safe, and effective.** The Implementation Report makes a series of erroneous assertions and mischaracterizations about the scientific research on the mental health and fitness of individuals with gender dysphoria. Relying on a highly selective review of the evidence, and distorting the findings of the research it cites, the Report inaccurately claims there is "considerable scientific uncertainty" about the efficacy of transition-related care, ignoring an international consensus among medical experts that transition-related care is effective and allows transgender individuals to function well.

2. **The proposed ban would impose double standards on transgender service members, applying medical rules and expectations to them that do not apply to any other members.** The Implementation Report's claim that individuals who transition gender are unfit for service only appears tenable when applying this double standard. When service members diagnosed with gender dysphoria are held to the same standards as all

other personnel, they meet medical, fitness, and deployability standards.

3. **Scholarly research and DoD's own data confirm that transgender personnel, even those with diagnoses of gender dysphoria, are deployable and medically fit.** Research shows that individuals who are diagnosed with gender dysphoria and receive adequate medical care are no less deployable than their peers. DoD's own data show that 40 percent of service members diagnosed with gender dysphoria deployed to the Middle East and only one of those individuals could not complete deployment for mental health reasons.

4. **The Implementation Report offers no evidence that inclusive policy has compromised or could compromise cohesion, privacy, fairness, or safety**. Despite the lack of evidence, DoD advances these implausible claims anyway, citing only hypothetical scenarios and "professional military judgment." Yet the military's top Admirals and Generals have explicitly stated that, while the impact on cohesion is being "monitored very closely," they have received "precisely zero reports of issues of cohesion, discipline, morale," and related concerns after two years of inclusive service.

5. **The Report's contention that inclusive policy could compromise cohesion, privacy, fairness, and safety echoes discredited rationales for historical prohibitions against African Americans,**

women, and gays and lesbians. In each of these historical cases, military leaders advanced unsupported arguments about cohesion, privacy, fairness, and safety. In each case, evidence showed that inclusive policies did not bring about the harmful consequences that were predicted, suggesting the fears were misplaced and unfounded.

6. **Research shows that inclusive policy promotes readiness, while exclusion harms it.** A more rigorous and comprehensive assessment of the implications of transgender service shows that a policy of equal treatment improves readiness by promoting integrity, reinforcing equal standards, increasing morale for minorities, and expanding the talent pool available to the military, while banning transgender service or access to health care harms readiness through forced dishonesty, double standards, wasted talent, and barriers to adequate care.

7. **The Implementation Report fails to consider the readiness benefits of inclusive policy or the costs to readiness of the proposed ban**. All policy changes involve costs and benefits, yet DoD's research focuses solely on the costs of inclusion, entirely ignoring the readiness benefits of inclusion and the costs of exclusion.

8. **The Implementation Report's presentation of financial cost data inaccurately suggests that transition-related care is expensive**. The Report states

> that medical costs for troops with gender dysphoria are higher than average, but isolating any population for the presence of a health condition will raise the average cost of care for that population. In truth, DoD's total cost for transition- related care in FY2017 was just $2.2 million, less than one tenth of one percent of its annual health care budget for the Active Component, amounting to just 9¢ (nine cents) per service member per month, or $12.47 per transgender service member per month.

Introduction[1]

On March 23, 2017, the White House released "Department of Defense Report and Recommendations on Military Service by Transgender Persons" ("Implementation Report"), a 44-page document whose recommendations would, if enacted into policy, have the effect of banning many transgender individuals from military service. Alongside the Implementation Report, the White House released a "Memorandum for the President" in which Defense Secretary James Mattis endorsed the Implementation Report's recommendations. As of the writing of this study, inclusive policy for transgender individuals remains in effect because federal courts have enjoined the administration from reinstating the ban, and because the Report's recommendations have not yet been entered into the Federal Register or enacted into policy. Although inclusive policy remains in effect at this time, the Justice Department has asked courts to dissolve the preliminary injunctions that prevent the administration from banning transgender service members. If courts grant the request, the administration will almost certainly

reinstate the ban by implementing recommendations contained in the Implementation Report.

Given the possibility that the Implementation Report's recommendations could be enacted into policy, it is important to assess the plausibility of DoD's justification for the proposed reinstatement of the ban. According to DoD's Implementation Report, inclusive policy for transgender service members could compromise the medical fitness of the force; undermine unit cohesion, privacy, fairness, and safety; and impose burdensome financial costs. According to the Report, inclusive policy would compromise medical fitness because there is "considerable scientific uncertainty" about the efficacy of medical care for gender dysphoria (incongruity between birth gender and gender identity), and because troops diagnosed with gender dysphoria are medically unfit and less available for deployment. Cohesion, privacy, fairness, and safety would be sacrificed because inclusive policy "blur[s] the clear lines that demarcate male and female standards and policies."[2] Finally, according to the Report, financial costs would burden the military's health care system because the annual cost of medical care for service members diagnosed with gender dysphoria is three times higher than for other troops.

After carefully considering the recommendations and their justification in the Implementation Report, we have concluded that the case for reinstating the transgender ban is contradicted by the evidence: (1) Scholars and experts agree that transition-related care is, in fact, reliable, safe, and effective; (2) The proposed ban would impose double standards on transgender service members, in that DoD would

apply medical rules and expectations to them that it does not apply to any other members; (3) Scholarly research as well as DoD's own data confirm that transgender personnel, even those with diagnoses of gender dysphoria, are deployable and medically fit; (4) The Report does not offer any evidence that inclusive policy has compromised or could compromise cohesion, privacy, fairness, and safety, and assertions and hypothetical scenarios offered in support of these concerns are implausible; (5) The Report's contention that inclusive policy could compromise cohesion, privacy, fairness, and safety echoes discredited rationales for historical prohibitions against African Americans, women, and gays and lesbians; (6) A more comprehensive assessment of costs and benefits indicates that inclusive policy promotes readiness, while the proposed ban would compromise it; (7) The Report fails to consider the benefits of inclusive policy or the costs of the proposed ban; and (8) The Report's presentation of financial cost data inaccurately suggests that transition-related care is expensive.

Gender Transition Is Effective

The Implementation Report relies on a series of erroneous assertions and mischaracterizations about the substantial scientific research on the mental health and fitness of transgender individuals with gender dysphoria. As a result, it draws unfounded conclusions about the efficacy of gender transition and related care in successfully treating gender dysphoria and the health conditions that are sometimes associated with it. The Implementation Report argues that there is "considerable scientific uncertainty" about the efficacy of transition-related care, and that the military cannot be burdened with a group of

service members for whom medical treatment may not restore medical fitness and "fully remedy" symptoms. This assertion, however, relies on a highly selective review of the relevant scientific evidence. In truth, the data in this field show a clear scholarly consensus, rooted in decades of robust research, that transgender individuals who have equal access to health care can and do function effectively.[3]

Consensus about the efficacy of care

An international consensus among medical experts affirms the efficacy of transition- related health care. The consensus does not reflect advocacy positions or simple value judgments but is based on tens of thousands of hours of clinical observations and on decades of peer-reviewed scholarly studies. This scholarship was conducted using multiple methodologies, study designs, outcome measures, and population pools widely accepted as standard in the disciplinary fields in which they were published. In many cases, the studies evaluated the complete universe of a country or region's medically transitioning population, not a selection or a sample.

The American Medical Association (AMA) has stated that "An established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment" for those with gender dysphoria. In response to the publication of DoD's Implementation Report, the AMA reiterated its view that "there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude transgender individuals from military service." The AMA stated

that the Pentagon's rationale for banning transgender service "mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of transgender medical care."[4]

The American Psychological Association responded to the publication of the Implementation Report by stating that "substantial psychological research shows that gender dysphoria is a treatable condition, and does not, by itself, limit the ability of individuals to function well and excel in their work, including in military service." A statement released by six former U.S. Surgeons General cited "a global medical consensus" that transgender medical care "is reliable, safe, and effective." The American Psychiatric Association has recognized that "appropriately evaluated transgender and gender variant individuals can benefit greatly from medical and surgical gender transition treatments." The World Professional Association for Transgender Health has stated that gender transition, when "properly indicated and performed as provided by the Standards of Care, has proven to be beneficial and effective in the treatment of individuals with transsexualism, gender identity disorder, and/or gender dysphoria" and that "sex reassignment plays an undisputed role in contributing toward favorable outcomes" in transgender individuals.[5]

The global consensus reflected in this scholarship—that gender transition is an effective treatment for gender dysphoria—is made clear in numerous comprehensive literature reviews conducted across the last thirty years (which themselves confirm conclusions reached in earlier research). By conducting systematic, global literature searches and

classifying the studies generated by the search, researchers and policymakers can avoid basing conclusions and policies on cherry-picked evidence that can distort the full range of what is known by scholars in the field.

Most recently, researchers at Cornell University's "What We Know Project" conducted a global search of peer-reviewed studies that addressed transgender health to assess the findings on the impact of transition-related care on the well-being of transgender people. The research team conducted a keyword search that returned 4,347 articles on transgender health published over the last 25 years. These were evaluated by reading titles, abstracts, and text to identify all those that directly address the impact of transition- related care on overall well-being of transgender individuals. Of the final 56 peer-reviewed studies that conducted primary research on outcomes of individuals who underwent gender transition, the team found that 52, or 93 percent, showed overall improvements, whereas only 4, or 7 percent, found mixed results or no change. No studies were found that showed harms. The research team concluded there was a "robust international consensus in the peer-reviewed literature that gender transition, including medical treatments such as hormone therapy and surgeries, improves the overall well- being of transgender individuals."[6]

The "What We Know" researchers assessed evidence from the last 25 years because it represents the most recent generation of scholarship. But the consensus dates to well before this period. In 1992, one of the first comprehensive literature reviews on transitioning outcomes was published in Germany. It

examined 76 follow-up studies from 12 countries published between 1961 and 1991, covering more than 2,000 individuals. The review concluded that overall outcomes of gender transition were positive, stating that "sex reassignment, properly indicated and performed, has proven to be a valuable tool in the treatment of individuals with transgenderism."[7] A 1999 study notes that, throughout the 1990s, comparative research found uniformly positive outcomes from gender transition surgery, stating: "A review of postoperative cases [during this decade] concluded that transsexuals who underwent such surgery were many times more likely to have a satisfactory outcome than transsexuals who were denied this surgery."[8]

The positive results of research on transition-related care have only grown more robust with time. For more detailed information on the global consensus that transition-related care is effective, please see the Appendix.

DoD's critique of efficacy literature is contradicted by evidence

The Implementation Report claims that permitting service by transgender individuals treated for gender dysphoria poses an unacceptable risk to military effectiveness because "the available scientific evidence on the extent to which such treatments fully remedy all of the issues associated with gender dysphoria is unclear." The Report argues that the evidence that does exist is insufficient or of too poor quality to form a robust consensus. In support of that claim, the Implementation Report cites one government report by the U.S. Centers for Medicare

and Medicaid Services (CMS) concluding that there is "not enough high quality evidence to determine whether gender reassignment surgery improves health outcomes" for individuals with gender dysphoria. In addition, the Implementation Report cites two literature reviews and one research study suggesting that the quality of efficacy evidence is low.

Yet DoD's findings rely on a selective reading of scholarship. Despite decades of peer-reviewed research, the Implementation Report could identify only four studies to sustain its conclusion. Critically, even these four studies, supposedly representing the best evidence documenting the uncertainty about transition-related care's efficacy, all conclude that such care mitigates symptoms of gender dysphoria. As we show below, these four studies do not sustain the Implementation Report's assertion about scientific uncertainty.

Before addressing each study that the Implementation Report relies on individually, several observations about standards of evidence require elaboration. To begin, the Implementation Report's critique that efficacy studies are not randomized controlled trials does not, in and of itself, impeach the quality or the force of the evidence. The Implementation Report places considerable weight on the absence of randomized controlled trials in the efficacy literature, but it fails to acknowledge that there are many criteria for assessing the quality of clinical research and many acceptable study designs. The CMS study that the Implementation Report relies on to indict the efficacy literature explains that while "randomized controlled studies have been typically assigned the greatest strength, . . . a well-designed

and conducted observational study with a large sample size may provide stronger evidence than a poorly designed and conducted randomized controlled trial." CMS concludes that "Methodological strength is, therefore, a multidimensional concept that relates to the design, implementation, and analysis of a clinical study."[9]

Elsewhere, CMS explains that random trials are not the only preferred form of evidence, which can include "randomized clinical trials *or* other definitive studies."[10] CMS continues that other forms of evidence can support Medicare policy as well, including "scientific data or research studies published in peer-reviewed journals" and "Consensus of expert medical opinion."[11] Finally, there is a good reason why the efficacy literature does not include randomized controlled trials of treatments for gender dysphoria: the condition is rare, and treatments need to be individually tailored. Given these circumstances, randomized controlled trials are unrealistic.[12]

The Implementation Report mentions four times that transition-related care does not "fully remedy" symptoms of gender dysphoria, but that is not a standard that the military or other public health entities apply to efficacy evaluation. Using this phrase falsely implies that the military enjoys a level of complete certainty about the medical evidence on which it relies in all other areas of health policy formulation. Yet as six former U.S. Surgeons General explain in a recent response to the Implementation Report, "An expectation of certainty is an unrealistic and counterproductive standard of evidence for health policy—whether civilian or military—because even

the most well-established medical treatments could not satisfy that standard. Indeed, setting certainty as a standard suggests an inability to refute the research."[13] Many medical conditions are not categorically disqualifying for accession or retention, and none come with a guarantee that available treatments always "fully remedy" them, suggesting that a double standard is being applied to the transgender population. As documented above, decades of research confirm the efficacy of medical treatments for gender dysphoria, and recent research underscores that as treatments have improved and social stigma has decreased, transgender individuals who obtain the care that they need can achieve health parity with non-transgender individuals.

Parallel to its "fully remedy" double standard, the Implementation Report attempts to indict the efficacy literature because studies do not "account for the added stress of military life, deployments, and combat."[14] Given the historical transgender ban, it is unclear how efficacy literature could ever meet this standard, as DoD did not allow treatment for gender dysphoria while the ban was in effect, so service members could not have participated as subjects in efficacy studies. Generally, service members are not subjects in civilian research studies, and while service member medical and performance data, such as disability separation statistics, are studied to inform policy decisions about accession standards, civilian studies on the efficacy of medical treatments are not.[15]

CMS Study

The Implementation Report relies heavily on a 2016 CMS review of literature to sustain its claim about

scientific uncertainty concerning the efficacy of gender transition surgery. According to the Implementation Report, CMS "conducted a comprehensive review of the relevant literature, [including] over 500 articles, studies, and reports, [and] identified 33 studies sufficiently rigorous to merit further review." It then cited CMS's conclusion that "the quality and strength of evidence were low."[16]

Yet the Implementation Report's interpretation and application of the CMS findings are highly misleading. By omitting a crucial point of context, the Implementation Report implies that CMS ultimately found insufficient evidence for the efficacy of gender reassignment surgery, when in fact it found the opposite. That point of context turns on the distinction between negative and affirmative National Coverage Determinations (NCDs). Negative NCDs are blanket denials of coverage that prohibit Medicare from reimbursing for the cost of medical treatment. Prior to 2014, a negative NCD prohibited Medicare from covering the cost of gender reassignment surgery, but a Department of Health and Human Services Appeals Board ("Board") overturned the NCD after a comprehensive review of the efficacy literature determined surgery to be safe, effective, and medically necessary. As a result, under Medicare policy the need for gender reassignment surgery is determined on a case-by-case basis after consultation between doctor and patient, and there is no surgical procedure that is required in every case.

An affirmative NCD, by contrast, is a blanket entitlement mandating reimbursement of a treatment, the mirror opposite of a negative NCD. Affirmative NCDs are rare. The CMS review that the

Implementation Report relies on did not contradict the Board's 2014 conclusion that there is "a consensus among researchers and mainstream medical organizations that transsexual surgery is an effective, safe and medically necessary treatment for transsexualism."[17] Nor did it contradict the Board's 2014 findings that "concern about an alleged lack of controlled, long-term studies is not reasonable in light of the new evidence"[18] and that "Nothing in the record puts into question the authoritativeness of the studies cited in new evidence based on methodology (or any other ground)." Rather, CMS concluded in 2016 that there was not enough evidence to sustain a blanket mandate that would automatically entitle *every* Medicare beneficiary diagnosed with gender dysphoria to surgery.

In addition, CMS only found that the evidence was "inconclusive *for the Medicare population*," not for all persons with gender dysphoria. CMS acknowledged that gender reassignment surgery "may be a reasonable and necessary service for certain beneficiaries with gender dysphoria," and confined its conclusions to the Medicare population, noting that "current scientific information is not complete for CMS to make a NCD that identifies *the precise patient population for whom the service would be reasonable and necessary*." CMS explained that the Medicare population "is different from the general population" and "due to the biology of aging, older adults may respond to health care treatments differently than younger adults. These differences can be due to, for example, multiple health conditions or co-morbidities, longer duration needed for healing, metabolic

variances, and impact of reduced mobility. All of these factors can impact health outcomes."[19]

The Board's 2014 repeal of the negative NCD and CMS's 2016 decision not to establish an affirmative NCD means that, like most medical treatments, the need for gender reassignment surgery is determined on a case-by-case basis after consultation between doctor and patient under Medicare policy. The Implementation Report's depiction of the 2016 CMS review, however, obscures that point. In noting that CMS "decline[d] to require all Medicare insurers to cover sex reassignment surgeries," DoD mischaracterizes the CMS decision and erroneously states that its review "found insufficient scientific evidence to conclude that such surgeries improve health outcomes for persons with gender dysphoria." CMS did not bar transition-related coverage for the Medicare population, but determined that care should be offered on an individualized basis, which is the general standard applied to most medical care.

Perhaps the most misleading aspect of the Implementation Report's discussion is the suggestion that the 2016 CMS review undercuts the case for inclusive policy and the provision of medically necessary care. Quite to the contrary, both the 2014 Board review and the 2016 CMS review closely align Medicare policy with DoD's inclusive policy established by former Defense Secretary Ashton Carter. Under the Carter policy, treatment for gender dysphoria is determined on a case-by-case basis after consultation between doctor and patient, and there is no blanket entitlement to care for service members diagnosed with gender dysphoria. The 2016 CMS review may undercut the case for a blanket

entitlement to gender reassignment surgery for Medicare beneficiaries. But it does not, as the Implementation Report insists, undercut the rationale for providing care to service members on an individualized basis as determined by doctor and patient.

According to Andrew M. Slavitt, Acting Administrator of CMS from March 2015 to January 2017, "It is dangerous and discriminatory to fire transgender service members and deny them the medical care they need. It is particularly disingenuous to justify it by a purposeful misreading of an unrelated 2016 CMS decision. Both the 2014 Board review and the 2016 CMS review closely align Medicare policy with DoD's inclusive policy established by former Secretary Carter. Under both Medicare and military policy, treatment for gender dysphoria is determined on a case-by-case basis after consultation between doctor and patient."[20]

Hayes Directory

DoD's Implementation Report cites the Hayes Directory in arguing that there is "considerable scientific uncertainty" about whether transition-related treatment fully remedies symptoms of gender dysphoria:

> According to the Hayes Directory, which conducted a review of 19 peer- reviewed studies on sex reassignment surgery, the "evidence suggests positive benefits," . . . but "because of serious limitations," these findings "permit only weak conclusions." It rated the quality of evidence as "very low" due to the numerous limitations in the studies . . . With respect to

> hormone therapy, the Hayes Directory examined 10 peer-reviewed studies and concluded that a "substantial number of studies of cross-sex hormone therapy each show some positive findings suggesting improvement in well-being after cross-sex hormone therapy." Yet again, it rated the quality of evidence as "very low" . . . Importantly, the Hayes Directory also found: "Hormone therapy and subsequent [gender transition surgery] failed to bring the overall mortality, suicide rates, or death from illicit drug use in [male-to-female] patients close to rates observed in the general male population."[21]

Hayes is not a scholarly organization and the Hayes Reports have not been published in a peer-reviewed journal, unlike the numerous literature reviews cited above. But Dr. Nick Gorton, a nationally recognized expert on transgender health, conducted a critical analysis of the report cited by DoD as well as a 2004 Hayes Report addressing related research, and he shared his findings with us in a memo. "The Hayes Reports evaluating transition-related care," writes Dr. Gorton, "make repeated substantive errors, evidence poor systematic review technique, are inconsistent in applying their criteria to the evidence, make conclusions not supported by the evidence they present, misrepresent the statements made by professional organizations treating transgender patients, and have a strong systematic negative bias." He concludes that "these problems fatally damage the credibility of their analysis, casting substantial doubt on their conclusions. The reports cannot be relied

upon as a valid systematic clinical review of the evidence on transition- related health care."[22]

For example, Hayes claims that its reports are comprehensive, but its 2004 report omitted dozens of relevant studies from its analysis. Dr. Gorton identified 31 applicable scholarly articles that Hayes failed to include in its review.[23] Hayes labels 13 studies it chose for one analysis as consisting only of "chart reviews or case series studies" and concludes that the "studies selected for detailed review were considered to be very poor." But Hayes does not explain why it selected what it considered to be poor quality studies when numerous high quality studies were available. Furthermore, the 13 studies Hayes did choose to review were not, in fact, only chart reviews and case series studies, but included cohort studies, which are considered higher quality evidence. "By mislabeling all the studies as 'chart reviews or case series,'" Dr. Gorton observed, Hayes is "saying they are lower level evidence than what is actually found in that group of studies."[24] Finally, Hayes erroneously states that none of the 13 studies "assessed subjective outcome measures before treatment." Dr. Gorton's review of the studies, however, shows that three of the studies included such baseline measures.

Hayes also asserts that a 2012 Task Force report of the American Psychiatric Association "concluded that the available evidence for treatment of gender dysphoria was low for all populations and treatments, and in some cases insufficient for support of evidence-based practice guidelines." Yet Hayes misrepresents the conclusion of the Task Force by taking quotes out of context and omitting mention of the higher quality

evidence the APA also cites—*and uses as a basis for recommending consensus-based treatment options that include gender transition*. The "insufficient" evidence conclusion that Hayes cites applied only to studies of children and adolescents. What the Task Force concluded about adults with gender dysphoria was that there is sufficient evidence to recommend that treatment including gender transition be made available.[25]

Quoting the APA fully on this matter illustrates Hayes's misrepresentation: "The quality of evidence pertaining to most aspects of treatment in all subgroups was determined to be low; however, areas of broad clinical consensus were identified and were deemed sufficient to support recommendations for treatment in all subgroups. With subjective improvement as the primary outcome measure, current evidence was judged sufficient to support recommendations for adults in the form of an evidence-based APA Practice Guideline with gaps in the empirical data supplemented by clinical consensus."[26]

Finally, Dr. Gorton observes that, "Hayes writes reports that are aimed to please their customers who are all health care payers interested in being able to refuse to cover expensive or, in the case of transgender patients, politically controversial care. They obscure the nature of their systematically biased analysis by preventing scientists and clinicians from reading the reports and calling attention to their poor quality and systematic bias as would happen to any other evidence based review of health care treatments." Thus, clients of Hayes who may have paid for the meta-analyses could have a financial interest in

declining to reimburse patients for transition-related care.[27]

Swedish research

Of the four studies that the Implementation Report cited to sustain its claim that there is scientific uncertainty about the efficacy of transition-related care, only one, a 2011 study from Sweden co-authored by Cecilia Dhejne, offers original research. According to the Swedish study, individuals receiving gender transition surgery had higher mortality rates than a healthy control group.

Yet much of the data on which the 2011 Swedish study relied in assessing outcomes was collected decades prior, when life for transgender individuals was more grim, with many subjects in the study undergoing gender transition as long ago as 1973. Importantly, the Swedish study, which assessed health data across three decades, compared outcomes from the first 15 years to those from the more recent 15 years and found that individuals who underwent transition since 1989 fared far better. This "improvement over time" is elaborated on in a more recent study co-authored by the same Swedish scholar in 2016 that states, "Rates of psychiatric disorders and suicide became more similar to controls over time; for the period 1989–2003, there was *no difference* in the number of suicide attempts compared to controls."[28]

Dhejne's 2016 study reviewed more than three dozen cross-sectional and longitudinal studies of prevalence rates of psychiatric conditions among people with gender dysphoria. The authors found, contrary to research cited in the Implementation Report, that transgender individuals who obtain adequate care can

be just as healthy as their peers. Among its study sample, most diagnoses were of the common variety (general anxiety and depression) whereas "major psychiatric disorders, such as schizophrenia and bipolar disorder, were rare and were no more prevalent than in the general population." They concluded that, even when individuals start out with heightened anxiety or depression, they "improve following gender-confirming medical intervention, in many cases reaching *normative values*."[29]

In a 2015 interview, Dhejne explained that anti-transgender advocates consistently "misuse the study" she published in 2011 "to support ridiculous claims," including that transition-related care is not efficacious, which is not what her study found. She said that, "If we look at the literature, we find that several recent studies conclude that WPATH Standards of Care compliant treatment decrease[s] gender dysphoria and improves mental health."[30]

Mayo Clinic research

Similar to the CMS study, the Hayes Directory, and the Swedish research, the Mayo Clinic study actually concludes that transition-related care mitigates the symptoms of gender dysphoria, with 80 percent of subjects reporting "significant improvement" in gender dysphoria and quality of life, and 78 percent reporting "significant improvement" in psychological symptoms. Moreover, data cited in the Mayo Clinic report reach as far back as 1966, more than 50 years ago, covering a period when the social and medical climates for gender transition were far less evolved than they are today. As we show in this report, more

recent research demonstrates even more positive results.[31]

As we note above, the AMA responded to the release of the Implementation Report by stating that DoD "mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of transgender medical care," and six former U.S. Surgeons General responded to DoD by citing "a global medical consensus" that transgender medical care "is reliable, safe, and effective." Similar to AMA, both APAs, WPATH, and the former Surgeons General, we are wholly unpersuaded by the Implementation Report's contention that there is "considerable scientific uncertainty" about the efficacy of transition-related care. Such a conclusion relies on a selective reading of a much larger body of evidence that flatly contradicts these claims.

Ban Would Create Separate Standards for Transgender Personnel

DoD's current, inclusive regulations hold transgender personnel to the same medical, fitness, and deployability standards as all other personnel. Contrary to the Implementation Report's assertion that former Defense Secretary Carter "relaxed" standards for transgender personnel,[32] the policy that he established requires transgender service members to meet all general medical, fitness, and deployability requirements. There are no exceptions for transgender personnel or for gender transition. The proposed ban, in contrast, would impose double standards on transgender troops, as DoD would apply unique rules and expectations to them that it does not apply to any other members. The Implementation

Report's recommendations are not about requiring transgender personnel to meet military standards, because they already do. Under the guise of maintaining standards, the recommendations are about establishing separate standards that target transgender people alone. Separate standards, in other words, are bans in disguise.

The Implementation Report frequently emphasizes the importance of military standards and the necessity that all service members be required to meet them. It refers to "standards" well over one hundred times in the course of the Report. In endorsing the Implementation Report, the Secretary of Defense also pointed to the importance of standards, writing the following with respect to accession and retention of individuals with a history of gender dysphoria:

> Furthermore, the Department also finds that exempting such persons from well-established mental health, physical health, and sex-based standards, which apply to all Service members, including transgender Service members without gender dysphoria, could undermine readiness, disrupt unit cohesion, and impose an unreasonable burden on the military that is not conducive to military effectiveness and lethality.[33]

No one objects to the fundamental principle that a single standard should apply equitably to all service members. But the Implementation Report redefines the usual military understanding of a "standard" in order to create what are in fact two separate standards, one for transgender service members and one for everyone else.

DoD's regulation on disability evaluation offers a pertinent example of a true single standard, applicable to all. It states that service members will be referred for medical evaluation possibly leading to separation if they have a medical condition that may "prevent the Service member from reasonably performing the duties of their office, grade, rank, or rating . . . for more than 1 year after diagnosis"; or that "represents an obvious medical risk to the health of the member or to the health or safety of other members"; or that "imposes unreasonable requirements on the military to maintain or protect the Service member."[34]

A February 2018 memo from the Under Secretary of Defense, Personnel and Readiness, announced a stricter enforcement of this retention policy with respect to availability for deployment. It directed, consistent with the DoD regulation, that "Service members who have been non-deployable for more than 12 consecutive months, for any reason" will be processed for administrative or disability separation, absent a waiver at the service headquarters level.[35] Again, however, the standard that service members cannot remain non-deployable for more than 12 consecutive months is presumably a standard that applies across the board to all who are subject to the policy.

The Implementation Report on transgender policy turns the idea of a single standard on its head. Rather than determining whether transgender service members, who have been serving openly for almost two years now, have met this or other generally applicable standards, the Implementation Report recommends a behavior-based standard that only

affects transgender personnel. Moreover, the only way to meet this targeted standard is to behave as if one is not transgender. The Implementation Report attempts to cast this as a single standard—that no one can behave as if they are transgender—but it obviously works as a ban targeted only at transgender personnel.

According to the Implementation Report, transgender individuals are eligible to serve if they can prove themselves indistinguishable from individuals who are not transgender. For example, at accession, transgender applicants with a history of gender dysphoria must submit medical documentation showing they are stable living in birth gender—not the gender in which they identify—for at least three years.[36] For transgender persons already in uniform (other than a specifically excepted registry of service members diagnosed with gender dysphoria prior to an effective date), retention is technically permitted but only if they serve in birth gender for the duration and receive no medical care in support of gender identity.[37]

In other words, transgender service members can be retained only if they suppress or conceal their identity as transgender. The Implementation Report characterized this as an equal treatment of, and a single standard for, all service members, whether transgender or not. Nominally, everyone must serve in birth gender, and no one can receive medical care in support of a gender identity that is inconsistent with birth gender:

> Service members who are diagnosed with gender dysphoria after entering military

> service may be retained without waiver, provided that they are *willing and able to adhere to all standards associated with their biological sex*, the Service member *does not require gender transition*, and the Service member is not otherwise non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months).[38]

This is the "standard" to which all service members will be held. According to the Implementation Report, this standard is necessary to maintain equity not only with colleagues who are not transgender, but also with transgender colleagues who, "like all other persons, satisfy all mental and physical health standards and are capable of adhering to the standards associated with their biological sex."[39] This incorrectly suggests that the problem with transgender personnel is that they cannot meet the standard, but the "standard" is drafted to target them by definition. The Implementation Report also casts those needing to transition gender as simply "unwilling" to meet standards, as in "unwilling to adhere to the standards associated with their biological sex."[40]

The Implementation Report carefully avoids any direct evaluation of transgender service members under a true single standard of fitness. It even misstates current accession standards in a way that makes it appear transgender individuals cannot meet them. For example, the Implementation Report incorrectly states that a history of chest surgery is disqualifying for enlistment.[41] The actual enlistment standard states that a history of chest surgery is only

disqualifying for six months, assuming no persistent functional limitations.[42] The Implementation Report also incorrectly states that hormone therapy is specifically disqualifying.[43] It is not. The actual enlistment standard in fact permits enlistment by women who are prescribed hormones for medical management of gynecological conditions.[44]

The consistent theme of the Implementation Report is that transgender service members are so uniquely unfit and uniquely disruptive that they must be measured by unique and separate standards. But the strength of a traditional and single standard is that each service member is measured by the same expectation. Standards are no longer standards when they are not consistent across all members and are instead targeted narrowly to exclude or disqualify only one group.

This is why the current DoD regulation that governs gender transition in military service made clear that not only must transgender members be "subject to the same standards and procedures as other members with regard to their medical fitness," but also that command decisions and policies should ensure individuals in comparable circumstances are treated comparably. For example, the primary regulation governing gender transition directs as follows:

> Any determination that a transgender Service member is non-deployable at any time will be consistent with established Military Department and Service standards, as applied to other Service members whose deployability is similarly affected in comparable circumstances unrelated to gender transition.[45]

The Implementation Report's recommendations are not about requiring transgender personnel to meet military standards because, as we show in the next section of this study, they already do. The recommendations are about establishing separate standards that target transgender people alone. Those separate standards are nothing less than bans in disguise.

Transgender Service Members Are Medically Fit

According to a statement by six former U.S. Surgeons General, "transgender troops are as medically fit as their non-transgender peers and there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude them from military service or to limit their access to medically necessary care."[46] The Implementation Report concludes, however, that individuals who transition gender are uniquely unfit for service. As we demonstrate below, when service members diagnosed with gender dysphoria are held to the same standards as all other personnel, they meet medical, fitness, and deployability standards. The Implementation Report's characterization of unfitness depends on the application of standards that apply only to transgender service members, but not to anyone else.

DOD's claim: Medically unfit by definition

The Implementation Report contends that service members with gender dysphoria who need to transition gender are, *by definition*, medically unfit. According to the Report, transgender service members may or may not be medically fit. But any transgender service member with a medical need to

transition gender is automatically unfit. The Report observes that, "Today, transsexualism is no longer considered by most mental health practitioners as a mental health condition . . . Gender dysphoria, by contrast, is a mental health condition that can require substantial medical treatment . . . According to the APA, the 'condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.'"[47]

Although the Implementation Report is correct in noting that "clinically significant distress or impairment" is a criterion of the diagnosis, it failed to contextualize the observation in terms of the American Psychiatric Association's (APA) reasoning for defining gender dysphoria in this way. In creating the diagnosis, APA was well aware that many transgender individuals who need to transition are fully functional. In the American medical system, however, patients cannot obtain treatment without a diagnosis code. Insurance companies tend not to reimburse care for mental health conditions that do not include the "clinically significant distress or impairment" language.

At the same time, APA was mindful that defining gender dysphoria in terms of clinically significant symptoms could risk stigmatizing transgender individuals as mentally ill. According to Dr. Jack Drescher, who helped create the gender dysphoria diagnosis during his service on the APA's DSM-5 Workgroup on Sexual and Gender Identity Disorders, "one challenge has been to find a balance between concerns related to the stigmatization of mental disorders and the need for diagnostic categories that

facilitate access to healthcare."[48] Dr. Drescher explained to us in a personal communication why a diagnosis of gender dysphoria should not be conflated with unfitness:

> Many transgender individuals who receive gender dysphoria diagnoses are fully functional in all aspects of their lives. When APA revised the diagnosis, words were chosen carefully. Thus, making a diagnosis requires the presence of distress *or* impairment, not distress *and* impairment. One cannot and should not conflate "clinically significant distress" with impairment, as many recipients of the diagnosis experience no impairment whatsoever. In addition, "clinically significant distress" is a purely subjective measure that is difficult to objectively quantify. Many fully functional individuals may have clinically significant distress, such as a soldier separated from his family during deployment. However, being distressed does not mean the individual is impaired.[49]

The fact that DoD's own data reveal, as we discuss below, that 40 percent of service members diagnosed with gender dysphoria have deployed in support of Operations Enduring Freedom, Iraqi Freedom, or New Dawn, and that after the ban was lifted only one individual deploying with a diagnosis of gender dysphoria was unable to complete the deployment for mental health reasons, underscores the inaccuracy of conflating a diagnosis of gender dysphoria with unfitness. In response to DoD's release of the Implementation Report, the American Psychiatric Association's CEO and Medical Director Saul Levin

stated that, "Transgender people do not have a mental disorder; thus, they suffer no impairment whatsoever in their judgment or ability to work."[50]

Artificial restrictions on deployment status

The Implementation Report's discussion of deployability illustrates how attributions of unfitness to transgender personnel depend on double standards. The Report overlooks that the small minority of transgender service members who are unfit, or who become unfit as a result of gender transition, can be managed under existing standards that apply to all service members. This includes the small minority of transgender personnel who, like other personnel, may be temporarily non-deployable. As with its recommendation for accession and retention policy, however, the Implementation Report avoids evaluating transgender members under existing deployability standards and instead assumes a separate standard that no one else will be required to meet. It assumes that transgender members are uniquely at risk of becoming non-deployable and then concludes—contrary to policy—that therefore they must be measured by unique standards.

The Implementation Report makes the uncontroversial observation that deployment is a universal military obligation. No one disagrees that all must take their fair share of the burden:

> Above all, whether they serve on the frontlines or in relative safety in non- combat positions, every Service member is important to mission accomplishment and must be available to perform their duties globally whenever called upon . . . To access recruits with higher rates of

> anticipated unavailability for deployment thrusts a heavier burden on those who would deploy more often.[51]

Determination of medical eligibility for deployment, however, requires an individual assessment of fitness. Army deployment standards, as a representative example, state: "Because of certain medical conditions, some Soldiers may require administrative consideration when assignment to combat areas or certain geographical areas is contemplated."[52] The Army guidance goes on in greater detail to describe considerations that should be taken into account when evaluating certain conditions, including mental health conditions. For example, most psychiatric disorders are not disqualifying, provided the individual can "demonstrate a pattern of stability without significant symptoms for at least 3 months prior to deployment."[53] Medications are also generally not disqualifying for deployment, although the regulation includes a list of medications "most likely to be used for serious and/or complex medical conditions that could likely result in adverse health consequences," and these medications should be reviewed as part of a complete medical evaluation. Hormones, however, are not on this list of medications most likely to be used for serious or complex medical conditions.[54]

Given that medical deployment standards would not appear to be a significant obstacle for service members who are *not* transgender but have been diagnosed with a mental health condition or may be taking prescription medication, the Implementation Report's conclusion that gender transition makes someone uniquely unfit for deployment is difficult to

understand. The Implementation Report does not rely on general standards that apply to service members across the board. Instead, the Report shifts focus to what "could" happen to "render Service members with gender dysphoria non-deployable for a significant period of time—perhaps even a year" or longer.[55]

Neither does the Implementation Report take into account the prior DoD professional judgment that gender transition can often be planned in ways that do not interfere with deployment or pose a risk to service member health. Instead, the Implementation Report sets up a false choice between assuming the risk of treatment and assuming the risk of complete denial of treatment.[56] In contrast, the Commander's Handbook—a DoD document containing military judgment on best practices for managing gender transition—relies on planning a schedule of transition care "that meets the individual's medical requirements and unit readiness requirements."[57] The policy explicitly authorizes commanders to schedule gender transition so as not to interfere with deployment, and this balance is no different from the balance that commanders apply in managing deployment readiness for any other service member. Indeed, current military regulation requires that all service members be determined fit or unfit for deployment in accordance with established standards, "as applied to other Service members whose deployability is similarly affected in comparable circumstances unrelated to gender transition."[58]

The Implementation Report claims that "limited data" make it "difficult to predict with any precision the impact on readiness of allowing gender transition," but it cites the "potential" that individuals

who transition gender will be "sent home from the deployment and render the deployed unit with less manpower."[59] But DoD's own data on deployment of service members diagnosed with gender dysphoria show these conclusions to be incorrect. Out of 994 service members diagnosed with gender dysphoria in FY2016 and the first half of 2017, 393 (40 percent) deployed in support of Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn. *Exactly one* individual deploying with a diagnosis of gender dysphoria was unable to complete the deployment for mental health reasons since policy protecting transgender personnel from arbitrary dismissal was established in June 2016.[60] While the Implementation Report stated that "the Panel's analysis was informed by the Department's own data and experience obtained since the Carter policy took effect,"[61] the Panel's use of data is selective in nature. This information about actual deployment did not appear in the Implementation Report.

What did appear in the Implementation Report instead was a reference to service data showing that "cumulatively, transitioning Service members in the Army and Air Force have averaged 167 and 159 days of limited duty, respectively, over a one-year period."[62] This data was not connected to deployment and did not demonstrate any failure to meet a deployment obligation. What it did demonstrate, however, is the arbitrary way in which separate standards for fitness, targeted specifically against transgender personnel, can make them appear less medically fit and less deployable than their peers. Note that the Implementation Report's discussion of limited-duty status did not include the Navy. That is because, as

the data source itself explains, the Navy does not automatically assign limited-duty status for gender transition without specific justification, which leads to a much smaller percentage of individuals on limited duty.[63] It stands to reason that average days of limited duty will be higher if the status is assigned arbitrarily without individual assessment, unlike the standard practice for personnel who are not transgender.

The Implementation Report cites the specific deployment guidelines[64] applicable to the Central Command (CENTCOM) combatant command in support of its contention that gender dysphoria limits ability to deploy and also presents risk to the service member and to others in a deployed environment.[65] First, as was the case with respect to accession standards, the Implementation Report mischaracterizes the content of CENTCOM deployment standards in order to buttress its case that service members who will transition gender cannot meet them. Second, the CENTCOM deployment standards supply another example of creating a separate standard that targets only transgender service members, rather than applying a single standard that evaluates fitness in comparable fashion to personnel who are not transgender.

It is correct, as the Implementation Report states, that diagnosed psychiatric conditions can, in some circumstances, require individual waiver prior to deployment. However, it is not correct that "most mental health conditions, as well as the medication used to treat them, limit Service members' ability to deploy."[66] Waivers are normally required only if the condition presents special risk: residual impairment of social and/or occupational performance, substantial

risk of deterioration, or need for periodic counseling.[67] A judgment based on these factors would necessarily be individual and case-by-case. All other psychiatric concerns in the CENTCOM standard are tied to the use of particular psychiatric medication such as benzodiazepines, recent hospitalization or suicide ideation/attempt, or recent treatment for substance abuse.[68]

Gender dysphoria, however, stands apart as the only condition requiring waiver regardless of lack of impairment, regardless of lack of risk of deterioration, and regardless of need for counseling. The CENTCOM standard automatically designates gender dysphoria as a condition with "complex needs" that must be treated differently. Not only does the standard require waiver in every instance regardless of mental fitness and stability, it specifically recommends that waiver should *not* be granted ("generally disqualified") for the duration of gender transition, "until the process, including all necessary follow-up and stabilization, is completed."[69]

Standards that designate anyone as automatically unfit for indefinite periods of time, without consideration of individual fitness, are extremely rare. In fact, the only mental health diagnoses that CENTCOM designates as a greater risk than gender dysphoria are psychotic and bipolar disorders, which are "strictly" disqualifying rather than "generally" disqualifying. This is clearly a circumstance in which gender dysphoria and gender transition are being evaluated under a standard that is unique to transgender service members. No other service members with mental health diagnoses are so completely restricted from deployment, with

extremely rare and justified exception. This artificial restriction on deployment is then used to justify a ban on transgender service members and gender transition.

Service members routinely deploy with medication requirements, including hormones, but a transgender person's use of hormones is again assessed in unique fashion. The CENTCOM standard states that hormone therapies for endocrine conditions must be stable, require no laboratory monitoring or specialty consultation, and be administered by oral or transdermal means.[70] Part of the justification for the Implementation Report's conclusion that gender transition is inconsistent with deployment is the assumption that hormone therapy requires quarterly lab monitoring for the first year of treatment.[71] The Implementation Report cited civilian Endocrine Society guidelines in support of that monitoring requirement. According to the Implementation Report:

> Endocrine Society guidelines for cross-sex hormone therapy recommend quarterly bloodwork and laboratory monitoring of hormone levels during the first year of treatment . . . If the operational environment does not permit access to a lab for monitoring hormones (and there is certainly debate over how common this would be), then the Service member must be prepared to forego treatment, monitoring, or the deployment. Either outcome carries risks for readiness.[72]

While it is true that Endocrine Society standards of care recommend one year of monitoring after the

commencement of hormone therapy, the Implementation Report did not disclose that the author of those guidelines communicated in writing to DoD to explain his medical judgment that monitoring hormone levels for three months prior to deployment, not twelve, was easily sufficient and that "there is no reason to designate individuals as non-deployable after the commencement of hormone replacement therapy."[73] Dr. Wylie C. Hembree, author of the Endocrine Society's standards of care, wrote the following in an October 2015 letter to the Pentagon's transgender policy group:

> (1) The recommendation for clinical monitoring was intended to cover a diverse, civilian population, including older, unreliable and/or unhealthy individuals who are not characteristic of the population of service members; An initial monitoring at the 2–3 month mark is important to determine whether the initial prescribed hormone dose is appropriate for bringing an individual's hormone levels into the desired range. The initial dose will be accurate for approximately 80% of young, healthy individuals. Of the remaining 20% whose hormone levels will be discovered to be slightly too high or too low at the initial monitoring, adjusting the dose to bring levels into the desired clinical range is a simple matter; (3) Of the approximately 20% whose hormone levels will be discovered to be slightly too high or too low at initial monitoring, the health consequences of being slightly out of range are not significant; (4) The monitoring and, if necessary, re-adjustment of

> prescribed doses do not need to be performed by endocrinologists or specialists. Any physicians or nurses who have received a modest amount of training can perform these tasks; (5) Research is quite clear that hormone replacement therapy, especially for young, healthy individuals, is safe, with complication rates of less than 5%.

Hembree concluded that "There is no reason to designate individuals as non-deployable after the commencement of hormone replacement therapy. While individuals might be placed on limited duty (office work) until the initial monitoring at the 2–3 month mark, they can perform their jobs overseas in a wide range of deployed settings both before and after the initial monitoring."

The Hembree letter was provided directly to a Pentagon official who played a prominent role on the Transgender Service Review Working Group (TSRWG) that former Defense Secretary Carter created to study readiness implications of inclusive policy. The TSRWG, in turn, relied on the letter in determining how to implement inclusive policy without compromising readiness. That same official played a prominent role in Secretary Mattis's Panel of Experts, but the Implementation Report did not mention the Hembree letter. Instead, it inaccurately claimed that a need for long-term monitoring would preclude deployment. The Report then established a false choice in claiming that service members commencing hormone therapy would have to "forego treatment, monitoring, or the deployment."[74] The Report added that "some experts in endocrinology . . . found no harm in stopping or adjusting hormone

therapy treatment to accommodate deployment during the first year of hormone use."[75] As the author of the Endocrine Society's standards of care explained, however, there is no need to forego deployment after the initial 2–3 month period of monitoring.

Nor is refrigeration an obstacle to deployment. The Implementation Report cites a RAND study observation that British service members taking hormones serve in deployed settings, but that "deployment to all areas may not be possible, depending on the needs associated with any medication (e.g. refrigeration)."[76] However, hormone medications do not require refrigeration.

More broadly, singling out transgender service members as warranting a downgrade in medical fitness or deployment status is at odds with the way that the Defense Department treats hormone therapy for non-transgender troops. In 2014, former U.S. Surgeon General Joycelyn Elders co-directed a commission with a co-author of this study (Steinman), and the commission published a peer-reviewed study addressing hormones, gender identity, deployability, and fitness. While the commission's discussion of hormones is lengthy, we quote it in full because it underscores the contrast between the Implementation Report's treatment of hormone therapy for transgender personnel and the way that non-transgender service members requiring hormones are managed. The commission conducted its research before the implementation of inclusive policy, yet its observations about the double standards of the historical ban are fully applicable to the Implementation Report's proposed ban:

[T]he military consistently retains non-transgender men and women who have conditions that may require hormone replacement. For example, the military lists several gynecological conditions (dysmenorrhea, endometriosis, menopausal syndrome, chronic pelvic pain, hysterectomy, or oophorectomy) as requiring referral for evaluation only when they affect duty performance. And the only male genitourinary conditions that require referral for evaluation involve renal or voiding dysfunctions. The need for cross-sex hormone treatment is not listed as a reason for referral for either men or women. The military also allows enlistment in some cases despite a need for hormone replacement. DoDI 6130.03, for example, does not disqualify all female applicants with hormonal imbalance. Polycystic ovarian syndrome is not disqualifying unless it causes metabolic complications of diabetes, obesity, hypertension, or hypercholesterolemia. Virilizing effects, which can be treated by hormone replacement, are expressly not disqualifying.

Hormonal conditions whose remedies are biologically similar to cross-sex hormone treatment are grounds neither for discharge nor even for referral for medical evaluation, if service members develop them once they join the armed forces. Male hypogonadism, for example, is a disqualifying condition for enlistment, but does not require referral for medical evaluation if a service member develops it after enlisting. Similarly, DoDI

6130.03 lists "current or history of pituitary dysfunction" and various disorders of menstruation as disqualifying enlistment conditions, but personnel who develop these conditions once in service are not necessarily referred for evaluation. Conditions directly related to gender dysphoria are the only gender-related conditions that carry over from enlistment disqualification and continue to disqualify members during military service, and gender dysphoria appears to be the only gender-related condition of any kind that requires discharge irrespective of ability to perform duty.

Military policy allows service members to take a range of medications, including hormones, while deployed in combat settings. According to a Defense Department study, 1.4 percent of all US service members (approximately 31,700 service members) reported prescription anabolic steroid use during the previous year, of whom 55.1 percent (approximately 17,500 service members) said that they obtained the medications from a military treatment facility. One percent of US service members exposed to high levels of combat reported using anabolic steroids during a deployment. According to Defense Department deployment policy, "There are few medications that are inherently disqualifying for deployment." And, Army deployment policy requires that "A minimum of a 180-day supply of medications for chronic conditions will be dispensed to all deploying Soldiers." A former primary behavioral health

> officer for brigade combat teams in Iraq and Afghanistan told Army Times that "Any soldier can deploy on anything." Although Tricare officials claimed not to have estimates of the amounts and types of medications distributed to combat personnel, Tricare data indicated that in 2008, "About 89,000 antipsychotic pills and 578,000 anti-convulsants [were] being issued to troops heading overseas." The Military Health Service maintains a sophisticated and effective system for distributing prescription medications to deployed service members worldwide.[77]

The Implementation Report's contention that transgender service members commencing hormone therapy must "forego treatment, monitoring, or the deployment" is inaccurate. Such therapy is not grounds for characterizing transgender service members as non- deployable or medically unfit beyond the initial 2–3 month monitoring period. Nor are such characterizations consistent with DoD's willingness to access, retain, and deploy tens of thousands of non-transgender service members who require hormones.

DoD's rationale for reinstating the ban cannot be about lost duty time during gender transition, because DoD's latest policy recommendation disqualifies from enlistment applicants who have already transitioned gender. The consistent theme across the Implementation Report is to create separate standards that target gender dysphoria and gender transition as uniquely disqualifying circumstances requiring uniquely disqualifying measures, but to disregard generally applicable standards that transgender members would in fact

meet. This allows the Implementation Report to suggest that transgender service members must be seeking "special accommodations,"[78] when the only accommodation they seek is the opportunity to meet general standards that apply to all.

Mental health encounters mandated by policy

The Implementation Report observes that "Service members with gender dysphoria are also nine times more likely to have mental health encounters than the Service member population as a whole (28.l average encounters per Service member versus 2.7 average encounters per Service member)."[79] [The encounters took place over 22 months, from October 2015 to July 2017.] However, the Implementation Report overlooked the main reason why service members diagnosed with gender dysphoria have high mental health utilization, leaving the incorrect impression that high usage is a reflection of medical unfitness or the difficulty of treating gender dysphoria.

In particular, the Implementation Report neglected to consider over-prescription of appointments for administrative rather than medical reasons. We determined in our research that service members with gender dysphoria diagnoses have high rates of utilization not because they are medically unfit, but because the military has over- prescribed visits as part of the process of providing transition-related care, requiring numerous medically unnecessary encounters for service members diagnosed with gender dysphoria, but not other medical conditions.

The over-prescription of appointments in the military has resulted from two distinct considerations, neither of which reflects medical unfitness. First, it has

resulted from the medicalization of administrative matters, as aspects of care that would normally be handled administratively have been assigned to medical providers. As a result, the gender transition process can require a dozen or more mental health appointments regardless of the individual's actual mental health status and without regard to stability, fitness, or need for care. For example, a command decision to grant permission to wear a different uniform to work (exception to policy) requires a mental health workup and recommendation. Each step of the transition process, regardless of import or need, requires mental health workup and recommendation, and the medicalization of non-medical decisions inevitably increases usage.

The reason for the extra layer of administrative "ticket-punching" is not medical. It is the result, rather, of a military determination that it cannot allow transition-related medical care to occur without command supervision designed to ensure that changes in uniforms, grooming standards, facilities use, and the like do not undermine good order and discipline. And while these considerations are important and necessary to maintain operational readiness, they are not indicators of impaired mental health in the transgender member. The military, of course, follows standard professional guidelines for the diagnosis of gender dysphoria, the prescription of hormone therapy, and the authorization of surgery. The generation of unnecessary mental health visits comes not from these decisions directly, but from the fact that, in the military, mental health providers serve as emissaries between the medical system and commanders. Mental health providers need to sign off

on various administrative decisions along the way that have no counterpart in the civilian system, and no counterpart in the military's treatment of other mental health conditions. The military adds on an extra layer of medical approval to what otherwise would be purely administrative or workplace decisions, and this necessarily affects the degree to which medical providers are involved.

We reviewed a range of documents that mandate or guide the steps taken by military medical teams responsible for the care of transgender service members. For example, the principal DoD regulation governing gender transition[80] expands a medical provider's responsibility beyond making medical diagnoses and determining medically necessary treatment. In addition to those traditional and necessary aspects of health care, medical providers are responsible for justifying those medical judgments "for submission to the commander."[81] Medical providers must "advise the commander" on matters of gender transition, and in turn commanders must "coordinate with the military medical provider regarding any medical care or treatment provided to the Service member, and any medical issues that arise in the course of a Service member's gender transition."[82] The commander must approve every step along the path of gender transition, including the timing of any medical treatment and the timing of gender transition itself. Even with respect to military matters such as an exception to policy to wear a different-gender uniform, a military medical provider is responsible for consultation as part of requesting a commander's approval. These extra administrative consultations cannot help but increase medical

utilization, even though they are not medically necessary in a traditional sense and do not reflect any lack of medical fitness.

The Commander's Handbook similarly emphasizes the unusual dual layer of justification and approval for decisions affecting transgender service members: "The oversight and management of the gender transition process is a team effort with the commander, the Service member, and the military medical provider."[83] Our observations are not intended to suggest there is anything inappropriate or militarily unnecessary about regulatory requirements that medical providers serve as emissaries between the medical system and the command structure. The point is simply that these dual layers of consultation and approval cannot help but drive up utilization of mental health care, but for reasons that are unrelated to mental health or fitness for duty.

Service-specific regulations produce over-prescriptions as well. According to interim guidance contained in a Navy Bureau of Medicine and Surgery document, a mental health diagnosis of gender dysphoria, coupled with a provider's determination that gender transition is medically necessary to relieve gender dysphoria, is only the first step in a series of requirements for approval of that medical care. Once a diagnosis and a recommendation for treatment is made, that diagnosis and recommendation must be referred for another layer of medical approval from the Transgender Care Team (TGCT). The TGCT will either validate or revise those medical decisions and forward the plan back to the originating provider. These decisions must then be documented once again as part of the package

prepared to obtain a commander's approval: "Once the . . . medical provider has received the validated medical treatment plan from the TGCT, the Service member and . . . medical provider should incorporate the validated medical treatment plan into the full gender transition plan for the Service member's commanding officer's review."[84]

Even at the end of the process of gender transition, the service member's "psychological stability" must be validated by a treating provider, validated a second time by the TGCT, and then validated a third time by a commander, all before an official gender marker change can occur. It might make sense to rely on a service member's duty performance as part of the judgment of whether he or she "consistently demonstrated psychological stability to transition to the preferred gender,"[85] but service-level procedures can instead substitute arbitrary numbers of mental-health visits over arbitrary minimums of time to satisfy a finding of "psychological stability." An "Individualized TGCT Care Plan" obtained from the Naval Medical Center in San Diego recommends that "At a minimum, the service member [undergoing transition] should follow up with a mental health provider or psychosocial support group on a monthly basis." These at-least-monthly visits are used to demonstrate a "6 month period of stability in real life experience documented by a mental health professional" and a "6 month period of emotional/psychosocial stability documented by a mental health professional."[86]

A senior military psychologist who has worked with transgender military members confirmed to us that in order to transition gender, a medical team must

document several benchmarks of readiness for treatment and also for permission to change one's gender marker in the military identification system. As a result, he explained, many transgender service members may be required to attend multiple, inexpensive support group sessions that are essentially used as "ticket-punching" to verify administrative requirements. "It almost requires them to have those individual sessions on an ongoing basis," the psychologist said.[87] These requirements established by departments throughout the military health system are far more voluminous than anything required by the civilian medical system. Satisfying them necessitates extensive documentation, which creates incentives for over-prescribing health care appointments.

Lack of experience is the second reason for the over-prescribing of mental health visits, as well-intentioned medical providers inexperienced in transition-related care have been overly cautious in documenting gender stability. It is inevitable that an adjustment period would be needed for the military medical system, given how new it is to transgender health care. A survey of military medical providers found that even after the lifting of the ban, physicians were unprepared to treat transgender service members, as most respondents "did not receive any formal training on transgender care, most had not treated a patient with known gender dysphoria, and most had not received sufficient training" to oversee cross-hormone therapy.[88] This inevitable learning curve is closely connected to the over-prescribing of visits, in that overly cautious medical providers are

requiring numerous, medically unnecessary appointments to document stability.

One social worker who is a clinical case manager for transgender service members explained that "The only way to verify that someone has been stable in their gender for six months is if they communicate with someone showing that they're stable. So they must be checking in at least once per month," and sometimes more. As a result of that requirement, he said his department put recommendations in their transition treatment plans that service members check in with either a primary care provider or mental health provider regularly, or that they attend one of the transgender support groups. "Most of the naval hospitals within our region have a weekly trans support group," he said, "and that tends to be provided through the mental health department. People may be attending those meetings every week and that would show up in their notes as going to a mental health appointment every week." In short, to establish required stability, individuals "have to be reporting that to someone so it's documented so we can point to it and say, 'See? They're stable,' so we can draft a memo verifying it."[89]

A Veterans Affairs psychiatrist familiar with the military's management of transgender personnel told us that doctors "could be requiring the person to go to a mental health provider to check on their stability, and they *have* to go. These are situations that would be absent any specific need for mental health on the part of the service member. They're either explicitly required to go or implicitly required: you can't demonstrate stability if you're not seen by someone." He estimated that "people may have four to seven

appointments, *absent any particular need*, just to demonstrate that they're stable in the course of their in-service transition." He added that most military clinicians "are unfamiliar with the process, and they don't yet have capacity. They're trying to learn this as they go along, and so they're being cautious. There's a kind of learning curve. As the system becomes more adept at working with this population, it could be that the number of visits goes down because the clinicians don't need the comfort of seeing the people as often as they do now."[90]

Transgender service members confirm that most of their mental health encounters are the result of over-prescribing visits, not medical need. We assessed the experiences of ten Active Duty transgender troops who transitioned or started to transition over the past two years. Out of 81 total mental health visits reported, 97.5 percent (79 visits) were classified as obligatory. A large number of these visits were mandated monthly counseling sessions that helped provide administrators with ways to document readiness and stability of transitioning service members. An Army First Lieutenant told us that upon beginning hormone therapy, he had "monthly checkups with my behavioral health clinical social worker, monthly checkups with my nurse case manager." A sailor reported that "I have to go for a five-minute consultation for them just to say, 'this is when your surgery is.'"[91]

An analysis by the Veterans Health Administration demonstrates that when a system is not characterized by over-prescribing, mental health care utilization among transgender individuals is far lower than the rate reported by DoD, and also that utilization among

transgender and non-transgender individuals is roughly equivalent (as suggested below by the California Health Interview Survey). VHA data reveal that from FY2011 to FY2016, transgender patients averaged between 2.3 and 4.4 mental health encounters per year, as compared to slightly lower utilization among non-transgender patients diagnosed with depression.[92] These data suggest that DoD's finding that service members diagnosed with gender dysphoria have an average of 15.3 mental health encounters per year is not a reflection of medical need.

Table 1. Incidence proportion of mental health utilization among VA patients by FY

	FY11	**FY12**
TRANSGENER GROUP	n	n
Total unique patients	396	487
Total # of mental health encounters	923	1454
Incidence of encounters/patients	2.3	3.0
SAMPLE OF NONTRANSGENDER PATIENTS		
Total unique patients	1188	1461
Total patients with depression diagnosis	173	201
Total # of mental health encounters	248	274
Incidence of encounters/patients	1.4	1.4

[cont'd]

FY13	FY14	FY15	FY16
n	n	n	n
562	680	879	1089
1584	2653	2943	4806
2.8	3.9	3.3	4.4
1686	2040	2637	3267
230	276	338	446
432	438	745	1381
1.9	1.6	2.2	3.1

Research indicates that when health care delivery is not over-prescribed, utilization among transgender and non-transgender adults is roughly equivalent. A 2018 study drew on California Health Interview Survey (CHIS) data to assess "utilization rates in access to primary and specialty care among a large cohort of insured transgender and cisgender [i.e., not transgender] patients." The authors calculated the "percentage of patients accessing primary care providers or specialty care providers among patients who reported having insurance coverage" and categorized patients as low, medium, or high utilizers. The results were that transgender patients "accessed both primary and specialty care services at a lower frequency than cisgender individuals and were more likely to fall into the low and medium utilizer groups." Fully 72.9 percent of transgender individuals were low utilizers (0–3 annual visits) compared to 70.9 percent of non-transgender individuals. Just 0.8 percent of transgender individuals were high utilizers (13–25 annual visits) compared to 4.6 percent of non-

transgender people. The authors concluded that "transgender individuals are less likely to utilize healthcare services" than the overall population.[93]

Table 2: Frequency of Doctor Visits by Gender Identity

	GENDER IDENTITY	
NUMBER OF DOCTOR VISITS IN PAST YEAR	Not Transgender (i.e., cisgender)	
Low Utilizers (0-3 visits)	70.9%	15,117,000
Medium Utilizers (4-12 visits)	24.4%	5,203,000
High Utilizers (13-25 visits)	4.6%	990,000
Total	100%	21,310,000

GENDER IDENTITY			
Transgender or gender non-conforming		All	
72.9%	81,000	70.9%	15,197,000
26.3%	29,000	24.4%	5,232,000
0.8%	1,000	4.6%	991,000
100%	110,000	100%	21,421,000

High utilization is not evidence of unfitness, the burdensome needs of transgender troops, or the difficulty of treating gender dysphoria. To the extent that service members diagnosed with gender dysphoria log more mental health visits than average, it is because the system treats them differently and requires more engagement with mental health providers. It has little to do with need for care or fitness for duty. Military medical providers are taking extra steps, sometimes to comply with regulations,

and other times out of excessive caution, to justify medical and administrative decisions during the transition process. DoD's failure to address this possibility in its research creates the misimpression that excessive utilization demonstrates the medical unfitness of transgender troops. But it is the military bureaucracy that creates elevated usage figures, not transgender service members.

Suicide is a military problem, not a transgender problem

Children of service members are more than 50 percent more likely to have attempted suicide than the general population, yet the military does not bar individuals in this high- risk group from entry.[94] The Implementation Report, however, attempts to invoke an analogous risk factor among transgender people in general as a basis for disqualification. The Implementation Report claims that "high rates of suicide ideation, attempts, and completion among people who are transgender are also well documented in the medical literature," and cites research indicating lifetime rates of suicide attempts among transgender civilians ranging from 41 percent to as high as 57 percent. But neither applicants for military service nor serving members in uniform are evaluated by characteristics of larger groups; they are measured by standards as individuals.

The Implementation Report also mischaracterizes and selectively cites DoD data on military personnel that, if accurately presented, would in fact demonstrate that rates of suicidal ideation among transgender and non-transgender service members are roughly equivalent. The Implementation Report

claims that among military personnel, "Service members with gender dysphoria are eight times more likely to attempt suicide than Service members as a whole (12% versus 1.5%)" during a 22-month study window.[95] This is an inaccurate reading of DoD's own data as well as an inaccurate interpretation of what the data mean. First, the DoD data do not show that service members with gender dysphoria were eight times more likely to *attempt* suicide than other service members during the 22-month study period, but to *contemplate* suicide, a major distinction that the Implementation Report misconstrued.

Second, service members with gender dysphoria are not eight times more likely to contemplate suicide than other service members, because the data under-report the frequency of suicidal thoughts among service members as a whole. The reported 1.5 percent suicidal ideation rate among service members as a whole was based on a review of administrative records.[96] When DoD used more sophisticated methods to determine rates of suicidality among service members not being treated for behavioral health problems, military researchers determined that 14 percent of service members have had suicidal thoughts at some time in their lives, 11 percent had suicidal thoughts at some point during their military careers, and 6 percent had suicidal thoughts during the past year.[97] Suicide is a military problem. It is not a transgender problem.

Finally, while DoD data indicate that service members diagnosed with gender dysphoria are slightly more prone to suicidal ideation than other service members, the Implementation Report did not take the historical legacy of the transgender ban into

account. Extensive research has confirmed that both stigma and the denial of medically necessary care can lead to suicidality.[98] The historical transgender ban, in other words, contributed to stigma and deprivation of health care, which exacerbates the problems the Implementation Report has deemed disqualifying.

The reaction of professional mental health providers to this circular reasoning—denying necessary health care to transgender troops and then citing suboptimal health as the reason for exclusion—is summed up by statements recently released by two of the largest mental health associations in America. The CEO of the American Psychological Association recently stated that he was "alarmed by the administration's misuse of psychological science to stigmatize transgender Americans and justify limiting their ability to serve in uniform and access medically necessary health care."[99] And the American Psychiatric Association stated that the Pentagon's anti-transgender "discrimination has a negative impact on the mental health of those targeted."[100] If inclusive policy remains in effect, DoD will continue to provide medically necessary care to transgender service members. As a result, we would expect the slightly elevated ideation rate among service members diagnosed with gender dysphoria to disappear over time.

Unit Cohesion Has Not Been Compromised

The Implementation Report concludes that inclusive policy for transgender personnel could compromise unit cohesion, privacy, fairness, and safety by allowing transgender men who retain some physiological characteristics of their birth sex and

transgender women who retain some physiological characteristics of their birth sex to serve in the military, thus blurring the line that distinguishes male and female bodies:

> [B]y allowing a biological male who retains male anatomy to use female berthing, bathroom, and shower facilities, it [inclusive policy] undermines the reasonable expectations of privacy and dignity of female Service members. By allowing a biological male to meet the female physical fitness and body fat standards and to compete against females in gender-specific physical training and athletic competition, it undermines fairness (or perceptions of fairness) because males competing as females will likely score higher on the female test than on the male test and possibly compromise safety.[101]

According to the Implementation Report, "sex-based standards ensure fairness, equity, and safety; satisfy reasonable expectations of privacy; reflect common practice in society; and promote core military values of dignity and respect between men and women—all of which promote good order, discipline, steady leadership, unit cohesion, and ultimately military effectiveness and lethality."[102] Yet the Report does not include any evidence to support its contention that inclusive policy has had these effects. Three weeks after the Report's publication, Army Chief of Staff General Mark Milley responded to Senator Kirsten Gillibrand, who asked whether he had heard "anything about how transgender service members are harming unit cohesion," by testifying that "I have received precisely zero reports of issues of cohesion,

discipline, morale and all those sorts of things."[103] Chief of Naval Operations Admiral John Richardson, Air Force Chief of Staff General David Goldfein, and Marine Corps Commandant General Robert Neller subsequently confirmed that inclusive policy has not compromised cohesion.[104]

The Implementation Report's explanation for failing to provide evidence is that cohesion "cannot be easily quantified" and that "Not all standards . . . are capable of scientific validation or quantification. Instead, they are the product of professional military judgment acquired from hard-earned experience leading Service members in peace and war or otherwise arising from expertise in military affairs. Although necessarily subjective, this judgment is the best, if not only, way to assess the impact of any given military standard on the intangible ingredients of military effectiveness mentioned above—leadership, training, good order and discipline, and unit cohesion."[105]

This contention, however, does not withstand scrutiny. In response to Senator Gillibrand's question about whether transgender troops have harmed unit cohesion, General Milley testified that "it is monitored very closely because I am concerned about that."[106] In addition, many military experts have quantified cohesion and other dimensions of readiness, and have assessed cause-and-effect claims about those phenomena in their research.[107] In 2011 and 2012, for example, a group of Service Academy professors used multiple methods including surveys, interviews, field observations, and longitudinal analysis to assess whether the repeal of "don't ask, don't tell" (DADT) had impacted readiness and its component dimensions, including unit cohesion and morale, and

results were published in a leading peer-reviewed military studies journal.[108]

In the case at hand, DoD could have studied the validity of its contentions about cohesion, privacy, fairness, and safety without difficulty. For example, DoD could have (1) assessed readiness by comparing the performance of units that include a service member diagnosed with gender dysphoria with units that do not include anyone with a diagnosis; (2) measured cohesion via interviews, surveys, and/or field observations and then compared results from units that include a service member diagnosed with gender dysphoria with units that do not include anyone with a diagnosis; (3) assessed privacy and fairness via interviews, surveys, and/or field observations and then compared results from units that include a service member diagnosed with gender dysphoria with units that do not include anyone with a diagnosis; and (4) assessed safety by comparing disciplinary records of units that include a service member diagnosed with gender dysphoria with units that do not include anyone with a diagnosis.

Instead, and in lieu of evidence, the Implementation Report offers three scenarios, two of which are hypothetical, to sustain its assertions. The scenarios, however, do not sustain the conclusion that inclusive policy has compromised or could compromise cohesion, privacy, fairness, or safety. Under the first hypothetical scenario, fairness and safety are compromised when transgender women compete with cisgender women in sporting events, for example boxing competitions.[109] The Report assumes incorrectly that "biologically-based standards will be applied uniformly to all Service members of the same

biological sex," contrary to current practice in which gender-based presumptions are adjustable based on circumstances. At the U.S. Military Academy, for example, the Implementation Report observes that "Matching men and women according to weight may not adequately account for gender differences regarding striking force." But the Report ignores that Cadets' skill level and aggression, not just weight, are factored into safety decisions, and West Point allows men and women to box each other during training.[110]

While sex-based standards are used in concert with other factors to promote fairness and safety, male-female segregation is not absolute—and it is not sufficient. Ensuring fairness and safety in combative training is always a command concern because of the wide variation in body size and weight within gender even when gender is defined by birth. Commanders at all levels are able to make judgments about how to conduct training in ways that adequately protect the participants, and they are able to do the same thing for transgender service members when and if needed. This hypothetical scenario does not lend any credence to the contention that inclusive policy has compromised or could compromise cohesion, privacy, fairness, or safety.

Under the second hypothetical scenario, a transgender man who has not had chest- reduction surgery wants to perform a swim test with no shirt and breasts exposed. It is farfetched to imagine a transgender service member making such a request, and the Implementation Report does not offer any actual examples to buttress this hypothetical concern despite almost two years of inclusive policy. Despite the low likelihood of such a scenario, the

Commander's Handbook guides commanders in what to do, and the guidance is sufficient. The Handbook holds the transgender service member responsible for maintaining decorum: "It is courteous and respectful to consider social norms and mandatory to adhere to military standards of conduct."[111] Then, the Handbook advises commanders that they may counsel the service member on this responsibility, but also may consider other options such as having everyone wear a shirt. Ultimately, according to the Handbook, the fundamental principle for commanders is that, "It is within your discretion to take measures ensuring good order and discipline."[112] Similar to the first hypothetical scenario, this scenario does not sustain a conclusion that inclusive policy has compromised or could compromise cohesion, privacy, fairness, or safety.

The third scenario, the only scenario that is not hypothetical, describes a cisgender female who claimed that the presence in shower facilities of a transgender female who retained some physiological characteristics of birth sex undermined her privacy, and the transgender service member claimed that her commander had not been supportive of her rights.[113] DoD guidance offers commanders tools that should have been sufficient for resolving the matter. The situation closely matches scenarios 11 and 15 in the Commander's Handbook, which emphasize that all members of the command should be treated with dignity and respect: "In every case, you may employ reasonable accommodations to respect the privacy interests of Service members."[114] Commanders are given the following guidance on reasonable accommodations: "If concerns are raised by Service

members about their privacy in showers, bathrooms, or other shared spaces, you may employ reasonable accommodations, such as installing shower curtains and placing towel and clothing hooks inside individual shower stalls, to respect the privacy interests of Service members. In cases where accommodations are not practicable, you may authorize alternative measures to respect personal privacy, such as adjustments to timing of the use of shower or changing facilities."[115]

The Commander's Handbook also makes clear that the transgender service member has responsibility: "Maintaining dignity and respect for all is important. You will need to consider both your own privacy needs and the privacy needs of others. This includes, but is not limited to, maintaining personal privacy in locker rooms, showers, and living quarters. One strategy might include adjusting personal hygiene hours."[116]

Inclusive policy cannot be blamed if commanders fail to follow the guidance or to implement it properly, and this scenario does not lend any credibility to the Implementation Report's contention that inclusive policy has compromised or could compromise cohesion, privacy, fairness, or safety. Army training materials are even more straightforward, essentially reminding Soldiers that military life involves a loss of privacy and instructing them that it is not the Army's job to protect tender sensibilities: "Understand that you may encounter individuals in barracks, bathrooms, or shower facilities with physical characteristics of the opposite sex despite having the same gender marker in DEERS."[117]

Cohesion and Related Concerns Have Historically Proven Unfounded

The Implementation Report's contention that inclusive policy could compromise cohesion, privacy, fairness, and safety echoes discredited rationales for historical prohibitions against African Americans, women, and gays and lesbians. In each case, military leaders made arguments about cohesion, privacy, fairness, and safety.[118] In the case of "don't ask, don't tell," for example, leaders insisted that because heterosexual service members did not like or trust gay and lesbian peers, lifting the ban would undermine unit cohesion. One of the principal architects of the policy, the late professor Charles Moskos, insisted that allowing gay men and lesbians to shower with heterosexuals would compromise privacy, and a judge advocate general argued that a "privacy injury" would take place every time an openly gay or lesbian service member witnessed the naked body of a heterosexual peer.[119] Others argued that the repeal of DADT would lead to an increase in male-male sexual assault.[120] One year after the ban's repeal, military professors published a study repudiating these predictions, and the New York Times editorialized that "politicians and others who warned of disastrous consequences if gay people were allowed to serve openly in the military are looking pretty foolish."[121]

Inclusive Policy Promotes Readiness

Scholarly research has shown that inclusive policy for transgender personnel promotes military readiness. According to a comprehensive implementation analysis by retired General Officers and scholars writing before the 2016 lifting of the ban, "when the

US military allows transgender personnel to serve, commanders will be better equipped to take care of the service members under their charge."[122] While scholars have explored the relationship between readiness and inclusive policy for transgender personnel from a variety of angles including medical fitness, implementation, command climate, and deployability, all available research has reached the same conclusion: At worst, inclusive policy does not compromise readiness. At best, it enhances readiness by holding all service members to a single standard and promoting medical readiness.[123]

After a year of in-depth research, the Pentagon's Transgender Service Review Working Group (TSRWG) reached that very conclusion. Former Secretary of Defense Carter created the TSRWG on July 28, 2015, to study "the policy and readiness implications of welcoming transgender persons to serve openly."[124] The TSRWG included dozens of civilian and military policy analysts who engaged in extensive research, and who concluded that holding transgender service members "to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming, deployability, and retention, is consistent with military readiness."[125] DoD senior civilian leaders as well as the Service Chiefs signed off on the lifting of the transgender ban on June 30, 2016, because they concluded that inclusive policy would be "consistent with military readiness." The Office of the Secretary of Defense as well as the Services published 257 pages of implementing guidance spread across 14 documents and regulations.[126] These documents instruct commanders and service members how to

implement inclusive policy without compromising readiness.

As part of the TSRWG's research, DoD commissioned the RAND Corporation to study whether inclusive policy for transgender personnel would compromise readiness. RAND studied the health care needs of transgender service members and estimated expected health care utilization rates as well as the expected financial cost of providing care following the lifting of the ban. In addition, RAND studied the impact of inclusive policy on unit cohesion and availability to deploy. Finally, RAND studied whether readiness had been compromised in foreign militaries that allow transgender personnel to serve openly. RAND published a 91-page study concluding that the impact of inclusive policy would be "negligible."[127]

Organizational experiences confirm the findings of the scholarly research. Eighteen foreign militaries allow transgender personnel to serve openly, and none has reported any compromise to readiness, cohesion, or any other indicator of military performance. A peer-reviewed study of 22 years of inclusive policy for transgender personnel in the Canadian Forces concluded that "allowing transgender personnel to serve openly has not harmed the CF's effectiveness."[128] According to RAND's analysis of foreign militaries that allow transgender personnel to serve openly, "In no case was there any evidence of an effect on the operational effectiveness, operational readiness, or cohesion of the force."[129]

In the U.S., transgender service members have been serving openly for almost two years and have been

widely praised by commanders. We interviewed four former senior DoD officials who oversaw personnel policy for more than 6 months of inclusive policy, as well as one current senior DoD official who oversaw personnel policy for more than 9 months of inclusive policy. During their combined 35 months of collective responsibility for personnel policy, none of these senior officials was aware of any evidence that inclusive policy compromised readiness. According to one of the former officials, "As of the time we left office, we had not seen any evidence that the Department's new transgender policy had resulted in a negative impact on readiness." When we asked former Navy Secretary Ray Mabus if inclusive policy for transgender personnel promoted readiness, he observed, "Absolutely . . . A more diverse force enhances readiness and combat effectiveness."[130]

DoD's critique of prior readiness research is unsupported by evidence

In recommending reinstatement of the ban, however, the Implementation Report takes aim at RAND's methodology as well as the validity of its conclusions. According to a memorandum from Secretary Mattis that accompanied the release of the Implementation Report, the RAND study "contained significant shortcomings. It referred to limited and heavily caveated data to support its conclusions, glossed over the impacts of healthcare costs, readiness, and unit cohesion, and erroneously relied on the selective experiences of foreign militaries with different operational requirements than our own."[131] The Implementation Report elaborated:

> The RAND report thus acknowledged that there will be an adverse impact on health care utilization, readiness, and unit cohesion, but concluded nonetheless that the impact will be "negligible" and "marginal" because of the small estimated number of transgender Service members . . . Because of the RAND report's macro focus, however, it failed to analyze the impact at the micro level of allowing gender transition by individuals with gender dysphoria. For example, . . . the report did not examine the potential impact on unit readiness, perceptions of fairness and equity, personnel safety, and reasonable expectations of privacy at the unit and sub-unit levels, all of which are critical to unit cohesion. Nor did the report meaningfully address the significant mental health problems that accompany gender dysphoria—from high rates of comorbidities and psychiatric hospitalizations to high rates of suicide ideation and suicidality—and the scope of the scientific uncertainty regarding whether gender transition treatment fully remedies those problems.[132]

Referring to both the TSRWG as well as the RAND study, the Implementation Report concludes that "the realities associated with service by transgender individuals are more complicated than the prior administration or RAND had assumed."[133]

The Implementation Report's critique of the RAND study is unsupported by evidence. Before addressing flaws in the critique, we underscore the depth of RAND's military expertise and trustworthiness. The

RAND Corporation is perhaps the most distinguished and trusted research institute in the U.S. on matters of defense and national security, and RAND operates three federally funded research and development centers engaging in military research: RAND Arroyo Center, sponsored by the U.S. Army, RAND Project Air Force, sponsored by the U.S. Air Force, and RAND National Defense Research Institute, sponsored by the Office of the Secretary of Defense, the Joint Staff, the Unified Combatant Commands, the Department of the Navy, and other defense agencies.

While these centers are not government entities, they cooperate closely with their Defense Department sponsors. According to RAND Arroyo's 2015 annual report, for example, the Arroyo Center Policy Committee consisted of 17 General Officers (including the U.S. Army Vice Chief of Staff, the Chief of the National Guard Bureau, five Deputy Chiefs of Staff, and the Commanding General of U.S. Army Forces Command) and five Assistant Secretaries of the Army. RAND Arroyo's Director reported that "We collaborate closely with our Army sponsors not only as we develop our research agenda and design individual analysis, but also as we conduct our research."[134]

The Defense Department relies on RAND to provide nonpartisan, methodologically sophisticated research studies on strategy, doctrine, resources, personnel, training, health, logistics, weapons acquisition, intelligence, and other critically important topics. During the past several decades, RAND has published more than 2,500 military reports, and three of those reports concerned military service by LGBT individuals. In 1993, DoD commissioned RAND to do a $1.3 million study of whether allowing gays and

lesbians to serve openly in the military would undermine readiness. RAND assembled a team of 53 researchers who studied foreign militaries, police and fire departments, prior experiences of minority integration into the military, and other aspects of the topic. RAND then published a 518-page report concluding that sexual orientation was "not germane" to military service and that lifting the ban would not undermine readiness. Military and political leaders disagreed with that conclusion, however, and the report was shelved. Seventeen years later, in 2010, DoD hired RAND to replicate its earlier study, and RAND again engaged in comprehensive research and again concluded that allowing gay men and lesbians to serve openly would not compromise readiness. DADT was repealed shortly after the publication of the second RAND study, and subsequent research confirmed the validity of RAND's 1993 and 2010 analyses, in that inclusion did not undermine any aspect of readiness including unit cohesion, morale, retention, and recruitment.[135]

The Implementation Report's critique of the 2016 RAND study on transgender military service is no more persuasive than earlier critiques of RAND's studies on gays and lesbians in the military. First, as argued throughout this study, and despite almost two years of inclusive policy, the Implementation Report has not produced any evidence showing that inclusive policy for transgender personnel has compromised any aspect of readiness, including medical fitness, unit cohesion, or good order and discipline. It is instructive that in its extensive analysis of the ways in which inclusive policy is expected to undermine cohesion, privacy, fairness, and safety, the

Implementation Report did not offer any supporting data. The Implementation Report critiques RAND for failing to assess unit cohesion "at the unit and sub-unit levels," but as noted above, three Service Chiefs confirmed after the Report's publication that inclusive policy has not compromised unit cohesion, including Army Chief of Staff Milley's testimony that cohesion "is monitored very closely because I am concerned about that and want to make sure that they [transgender Soldiers] are in fact treated with dignity and respect and no, I have received precisely zero reports of issues of cohesion, discipline, morale and all those sorts of things."

Second, DoD data validate most of RAND's statistical predictions. RAND estimated that between 1,320 and 6,630 transgender service members serve in the Active Component, and DoD data now show that there are 8,980 active duty transgender troops. RAND estimated that transgender service members in the Active Component would require an overall total of 45 surgeries per year, and DoD data indicate that the actual number was 34 surgeries during a 12-month window, from September 1, 2016, to August 31, 2017.136 RAND estimated that transition-related health care would cost between $2.4 and $8.4 million per year, and DoD data indicate that the cost in FY2017 was $2.2 million.[137]

Third, the Implementation Report mischaracterized RAND's overall finding by drawing selectively from the study. According to the Implementation Report, RAND "acknowledged that there will be an adverse impact on health care utilization, readiness, and unit cohesion, but concluded nonetheless that the impact will be 'negligible' and 'marginal' because of the small

estimated number of transgender Service members." But the Implementation Report misconstrues RAND's analysis. Any policy change yields some costs and some benefits, and RAND found that inclusive policy for transgender troops would have some negative effects, such as the financial cost of health care. But RAND found that inclusive policy would have some positive effects as well, and that continuing to ban transgender troops would entail some costs.[138] RAND did conclude that the effect of lifting the ban would be "negligible" because of the small number of transgender troops, but the Implementation Report fails to acknowledge the context of that conclusion, namely that RAND identified the benefits of inclusive policy and the costs of reinstating the ban, both of which would offset the minor downsides of the policy shift.

Fourth, while it is true that RAND did not address "perceptions of fairness and equity, personnel safety, and reasonable expectations of privacy at the unit and sub-unit levels, all of which are critical to unit cohesion," RAND had a good reason for restricting the scope of its analysis, in that available evidence indicated that cohesion was not compromised in any military force allowing transgender personnel to serve openly. Hence, there was no reason to focus on cohesion at a more granular level. Given that DoD has not offered any evidence to sustain any of its assertions about cohesion, privacy, fairness, and safety despite almost two years of inclusive policy, it seems unreasonable to critique RAND for neglecting to address a problem that does not exist.

Fifth and finally, the Implementation Report's critique of RAND's analysis of foreign militaries is

unsupported by evidence. Neither RAND nor DoD has identified any evidence that any foreign military that allows transgender personnel to serve openly has experienced a decline in readiness or cohesion. But the Implementation Report mischaracterizes evidence in the RAND study to obscure that simple fact. An in-depth study of transgender military service in the Canadian Forces (CF) "found no evidence of any effect on unit or overall cohesion," but did find that the CF's failure to provide commanders with sufficient guidance and failure to train service members in inclusive policy led to implementation problems. But the CF's failure to provide implementation guidance does not mean that inclusive policy compromised readiness or cohesion. Rather, it means that the CF should have provided more guidance. Secretary Carter's TSRWG studied the Canadian example, learned from it, and issued extensive guidance and training materials, thus avoiding the CF's implementation challenges.

The Implementation Report claims that because the CF chain of command "has not fully earned the trust of the transgender personnel," there are "serious problems with unit cohesion." But according to the authors of the study, one of whom is a professor at the Canadian Forces College and one of the world's leading experts on personnel policy in the CF, the lack of trust is not evidence that inclusive policy has compromised unit cohesion. Rather, it is a reflection of the CF's failure to implement inclusive policy effectively, for the reasons discussed above.

The study of the CF that informed the RAND report was published in a leading, peer- reviewed military studies journal and was based on careful

methodology, including an "extensive literature review, using 216 search permutations, to identity all relevant media stories, governmental reports, books, journal articles and chapters."[139] In addition, the authors received written, interview, and focus group data from 26 individuals, including 2 senior military leaders, 10 commanders, 2 non-transgender service members who served with transgender peers, 4 transgender service members and veterans, and 8 scholarly experts on readiness in the CF. By contrast, the Implementation Report presents exactly zero original research on the CF. If a professor in the Canadian Forces College concludes in a peer-reviewed study, and on the basis of extensive research, that inclusive policy, despite implementation problems, has not compromised readiness or cohesion, DoD cannot dismiss the weight of the conclusion by selectively relying on a handful of quotes.

The Implementation Report makes a similar attempt to dismiss RAND's conclusions about readiness and inclusive policy in the Israel Defense Forces (IDF). Available research on transgender service in the IDF is not as thorough as research on the CF, but RAND nonetheless analyzed a study that was based on several interviews, including interviews with two senior IDF leaders who confirmed that inclusive policy had not compromised readiness or cohesion. The Implementation Report dismisses these "sweeping and categorical claims," but offers no evidence to the contrary. If two senior leaders in a military organization confirm that a policy has a certain effect, that counts as data, especially absent contradictory evidence, and especially when the data line up with evidence from other military forces.

The Implementation Report is correct that operational and other differences distinguish the U.S. armed forces from other militaries. That does not detract, however, from the fact that RAND was unable to find any evidence that readiness or cohesion had declined as a result of inclusive policy in any of the 18 nations that allow transgender personnel to serve openly.

DoD Does Not Consider Benefits of Inclusive Policy or Costs of Ban

Every change of policy involves costs and benefits, and when analysts study whether or not to abandon the status quo in favor of an alternative policy option, typically they address the costs and benefits of both the status quo as well as the contemplated policy modification. DoD's research, however, was artificially narrowed at the outset to focus exclusively on the costs of inclusion, and the Implementation Report did not include any assessment of the benefits of inclusive policy or the costs of the proposed ban. DoD could have framed its research question broadly by asking, "What impact has inclusive policy for transgender troops had on military readiness?" Instead, the Implementation Report addressed only the costs of inclusive policy and failed to consider overall readiness implications. A more rigorous and comprehensive assessment of readiness indicates that inclusive policy for transgender personnel promotes readiness, while banning transgender personnel and denying them medically necessary care compromises it.

Failure to consider benefits of inclusive policy

If DoD researchers had studied benefits as well as costs, they could have assessed promotion rates, time-in-service, and commendations to determine whether transgender personnel have served successfully. They could have conducted case studies of transgender personnel who have completed gender transition to determine whether transitions have been effective. DoD researchers could have studied the experience of Lieutenant Colonel Bryan (Bree) Fram, an astronautical engineer currently serving as the Air Force's Iraq Country Director at the Pentagon, overseeing all Air Force security cooperation and assistance activity for operations in Iraq. They could have evaluated the experience of Air Force Staff Sergeant Logan Ireland, who deployed to Afghanistan after transitioning gender and was named "NCO of the Quarter." DoD could have studied the experience of Staff Sergeant Ashleigh Buch, whose commander said that "She means the world to this unit. She makes us better. And we would have done that [supported gender transition] for any airman but it made it really easy for one of your best." Or DoD could have assessed the experience of Lance Corporal Aaron Wixson, whose commander reported that "We are lucky to have such talent in our ranks and will benefit from his retention if he decides to undertake a subsequent tour of duty . . . Enabling LCpl Wixson to openly serve as a transgender Marine necessarily increases readiness and broadens the overall talent of the organization."[140]

The Implementation Report's explanation for failing to study the performance of transgender troops is that "Limited data exists regarding the performance of

transgender Service members due to policy restrictions . . . that prevent the Department from tracking individuals who may identify as transgender as a potentially unwarranted invasion of personal privacy."[141] But this excuse in unpersuasive, as DoD researchers could have asked data analysts to match medical records of service members diagnosed with gender dysphoria with administrative records concerning promotion rates, time-in-service, commendations, and other indicators of performance without revealing names or identifying details. Instead, DoD failed to consider any benefits of inclusive policy, and it focused exclusively on costs.

By omitting any analysis of benefits, the Implementation Report failed to address critical ways in which the accession and retention of transgender personnel promote readiness. To begin, inclusive policy for transgender service members promotes medical readiness by ensuring adequate health care to a population that would otherwise serve "underground." As we mention in our discussion of efficacy, a robust body of scholarly research shows that transgender people who receive the care they need are better off and function well at work and beyond.[142]

After the repeal of "don't ask, don't tell," gay and lesbian service members experienced a decline in harassment, because they could approach offending colleagues and politely point out that unprofessional behavior was no longer acceptable in the workplace, or could safely report inappropriate behavior if it persisted.[143] Inclusive policy for transgender personnel is expected to produce a similar effect, but

the Implementation Report does not address this possibility.

Finally, the Implementation Report ignores the financial gains of retaining transgender personnel. DoD data indicate that the per-person cost of care in FY2017 was $18,000 for each service member diagnosed with gender dysphoria, but the Report does not mention that by DoD's own estimate, recruiting and training one service member costs $75,000.[144] It is much cheaper to provide medical care than to replace service members who need it.

Failure to consider costs of the ban

In response to DoD's release of the Implementation Report, the American Psychiatric Association's CEO and Medical Director Saul Levin stated that the proposed transgender ban "not only harms those who have chosen to serve our country, but it also casts a pall over all transgender Americans. This discrimination has a negative impact on the mental health of those targeted." The Implementation Report, however, seems premised on the notion that the proposed ban would incur no costs. In addition to evidence that enables us to assess costs directly, scholars and experts have produced a great deal of evidence concerning the costs of "don't ask, don't tell," and it is not unreasonable to expect that some of the burdens associated with that failed policy could recur if the transgender ban were reinstated.

Research on transgender military service as well as DADT suggests that reinstating the ban could (1) undermine medical readiness by depriving 14,700 transgender service members of medically necessary care should they require it;[145] (2) increase harassment

of transgender personnel, just as DADT promoted harassment of gay men and lesbians;[146] and (3) drain financial resources due to the cost of replacing transgender personnel and the cost of litigation.[147] In addition, the ban could (4) compromise unit cohesion by introducing divisiveness in the ranks; (5) discourage enlistment and re-enlistment by lesbians, gays, and bisexuals, who would be wary of serving in an anti-LGBT atmosphere; (6) discourage enlistment and re-enlistment by women, because this ban is based on discomfort with people who cross gender lines or otherwise violate traditional gender roles; and (7) promote policy instability. The ban would constitute the fifth policy on transgender military service over the past two years. As former U.S. Navy Judge Advocate General Admiral John D. Hutson observed, "Whatever one thinks about transgender service . . . , there is no question that careening personnel policy from one pole to the other is bad for the armed forces."[148]

Similar to DADT, the reinstatement of the ban would (8) force many transgender service members to hide their gender identity, given the stigma that the Implementation Report implicitly authorizes. Scholars have demonstrated that the requirement to serve in silence effectively forces troops to lie about their identity, leading to elevated incidence of depression and anxiety.[149] (9) When service members lie about their identity, peers suspect that they are not being forthcoming, and both social isolation and general distrust can result.[150] In turn, (10) forcing service members to lie about their identity compromises military integrity. Prior to the repeal of DADT, former Chairman of the Joint Chiefs of Staff

Admiral Mike Mullen said that, "I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens. For me, personally, it comes down to integrity—theirs as individuals and ours as an institution."[151]

Finally, (11) the ban would signal to the youth of America that the military is not a modern institution. Scholarly research established that DADT was an ongoing public relations embarrassment for the Pentagon and that ripple effects impacted recruitment. Every major editorial page in the U.S. opposed DADT, and anti-military activists used the policy to rally opposition.[152] Approximately three-quarters of the public opposed DADT.153 According to one report, high schools denied military recruiters access to their campuses on 19,228 separate occasions in 1999 alone, in part as an effort "to challenge the Pentagon's policy on homosexuals in the military."[154] In the case of military service by transgender personnel, the Implementation Report cites one poll suggesting that service members oppose inclusive policy. Other polling, however, indicates that service members, veterans, retirees, and military family members favor inclusion, as does the public at large.[155] There is every reason to believe that the transgender ban would be just as unpopular as was DADT.

DoD Cites Misleading Figures on Financial Costs of Inclusion

The Implementation Report observed that "Since the implementation of the Carter policy, the medical costs for Service members with gender dysphoria have

increased nearly three times—or 300 percent—compared to Service members without gender dysphoria."[156] While the Implementation Report's claim is correct, the cost data are taken out of context and reported in a misleading way. DoD data indicate that the average annual per-person cost for service members diagnosed with gender dysphoria is approximately $18,000, as opposed to the $6,000 annual cost of care for other service members.[157] But the higher average per-person cost would appear any time a population is selected *for the presence of a specific health condition* and then compared to an average cohort of all other service members.

The Report's claim that medical costs for service members diagnosed with gender dysphoria are three times, or 300 percent, higher than for other troops implies that medical care for transgender personnel is expensive. But the Report does not mention that DoD's total cost for transition-related care in FY2017 was only $2.2 million, which is less than one tenth of one percent of DoD's annual health care budget for the Active Component.

Insurance actuaries sometimes calculate costs in terms of the cost of care per plan member per month of coverage. With financial costs of transition-related care distributed force-wide, the cost of providing transition-related care is 9¢ (nine cents) per service member per month.[158] Even if the per-member/per-month cost estimate were restricted to the cohort of transgender service members, the financial impact of providing care would be low, because very few of the currently serving 14,700 transgender troops required *any* transition-related care during FY2017: $2.2 million / 14,700 = $149.66 per transgender service

member per year; $149.66 / 12 = $12.47 per transgender service member per month.

Higher average per-person costs would appear any time a population is selected for the presence of a specific condition and then compared to an average cohort of other service members. Even setting this qualification aside, reporting the cost of care for service members with gender dysphoria as 300 percent higher than the cost of care for other troops, without contextualizing the observation in terms of the low overall cost, could mislead readers into believing that transition-related care is expensive, which it is not.

Conclusion

Scholars and experts agree that transition-related care is reliable, safe, and effective, and medical research as well as DoD's own data confirm that transgender personnel, even those with diagnoses of gender dysphoria, are deployable and medically fit. In advancing its case for the reinstatement of the transgender ban, however, the Implementation Report mischaracterized the medical research that sustains these conclusions. The proposed transgender ban is based on double standards consisting of rules and expectations that DoD would apply only to transgender service members, but to no one else. The Report did not present any evidence showing that inclusive policy has compromised or could compromise cohesion, privacy, fairness, or safety. Finally, the Implementation Report's justification depends on partial and misleading assessments of costs and benefits, as DoD neglected to assess the benefits of inclusive policy or the costs of the ban.

The RAND study was correct in concluding that inclusive policy was unlikely to pose a meaningful risk to the readiness of the armed forces. If anything, the evidence suggests that inclusive policy for transgender service members has promoted readiness. Just like justifications for prohibitions against women and African Americans in the military as well as the failed DADT policy, the case for banning transgender individuals from the armed forces is not supported by evidence and is unpersuasive.

Appendix

Efficacy of transition-related care

As we described earlier, an international consensus among medical experts affirms the efficacy of transition-related health care. This Appendix details that scholarship, showing that the DoD Report selected only a small slice of available evidence to reach its conclusions about the efficacy of transition-related care.

A large Dutch study published in 2007 reported follow-up data of 807 individuals who underwent surgical gender transition. Summarizing their results, the authors reaffirmed the conclusion of a much-cited 1990 study that gender transition dramatically reduces the symptoms of gender dysphoria, and hence "is the most appropriate treatment to alleviate the suffering of extremely gender dysphoric individuals." They found that, across 18 outcome studies published over two decades, 96 percent of subjects were satisfied with transitioning, and "regret was rare." The authors wrote that, even though there were "methodological shortcomings" to many of the studies they reviewed

(lacking controls or randomized samples), "we conclude that SRS [sex reassignment surgery] is an effective treatment for transsexualism and the only treatment that has been evaluated empirically with large clinical case series." Gender transition, they stated, "is not strongly theory driven, but a pragmatic and effective way to strongly diminish the suffering of persons with gender dysphoria." It must be noted that not all studies of the efficacy of gender transition lack controls. The Dutch authors cite a controlled study from 1990 that compared a waiting-list condition with a treatment condition and found "strong evidence for the effectiveness" of surgical gender transition.[159]

In a 2010 meta-analysis noted by the Implementation Report, researchers at the Mayo Clinic conducted a systematic review of 28 scholarly studies enrolling 1,833 participants who underwent hormone therapy as part of gender transition. The reviewed studies were published between 1966 and February 2008. Results indicated that 80 percent of individuals reported "significant improvement" in gender dysphoria and in quality of life, and 78 percent reported "significant improvement" in psychological symptoms. The authors concluded that "sex reassignment that includes hormonal interventions… likely improves gender dysphoria, psychological functioning and comorbidities, sexual function and overall quality of life."[160]

A 2015 Harvard and University of Houston longitudinal study of testosterone treatment also reviewed prior literature and found that numerous recent cross-sectional studies "suggest that testosterone treatment among transgender men is associated with improved mental health and well-

being," including improved quality of life, less anxiety, depression and social distress, and a reduction in overall mental stress.[161]

A 2016 literature review screened 647 studies to identify eleven longitudinal studies providing data on transgender individuals. Ten of them found "an improvement of psychiatric morbidity and psychopathology following" medical intervention (hormone therapy and/or gender-confirming surgery). Sizing up the overall research body on transgender psychiatric outcomes, Cecilia Dhejne and her co-authors wrote: "This review found that longitudinal studies investigating the same cohort of trans people pre- and post-interventions showed an overall improvement in psychopathology and psychiatric disorders post-treatment. In fact, the findings from *most studies showed that the scores of trans people following GCMI were similar to those of the general population*."[162] Another 2016 study, a systematic review of literature, identified numerous longitudinal studies finding that "depression, global psychopathology, and psychosocial functioning difficulties appear to reduce" in transgender individuals who get treatment for gender dysphoria, leading to "improved mental health."[163]

Copious studies reflecting a wide range of methodologies, population samples, and nationalities reached similarly positive conclusions to what was found by the researchers mentioned above, namely that individuals who obtain the care they need achieve health parity with non-transgender individuals. A 2009 study using a probability sample of 50 transgender Belgian women found "no significant differences" in overall health between subjects and the general population, which the study

noted was "in accordance with a previous study in which no differences in psychological and physical complaints between transsexuals and the general Belgian population were found."[164] A 2012 study reported that "Most transsexual patients attending a gender identity unit reported subclinical levels of social distress, anxiety, and depression" and did "not appear to notably differ from the normative sample in terms of mean levels of social distress, anxiety, and depression." Patients who were not yet treated for gender dysphoria had "marginally higher distress scores than average, and treated subjects [were] *in the normal range*."[165] An Italian study that assessed the impact of hormonal treatment on the mental health of transgender patients found that "the majority of transsexual patients have no psychiatric comorbidity, suggesting that transsexualism is not necessarily associated with severe comorbid psychiatric findings."[166] A Croatian study from the same year concluded that, "Despite the unfavorable circumstances in Croatian society, participants demonstrated stable mental, social, and professional functioning, as well as a relative resilience to minority stress."[167]

Efficacy of hormone therapy

Studies show clearly that hormone treatment is effective at treating gender dysphoria and improving well-being. In 2015, Harvard and University of Houston researchers published the first controlled longitudinal follow-up study to examine the immediate effects of testosterone treatment on the psychological functioning of transgender men. The study used the Minnesota Multiphasic Personality Inventory test (2nd ed.) to take an empirical measure

of psychological well-being after hormone treatment, assessing outcomes before and after treatment. (The MMPI-2 is one of the oldest, most commonly used psychological tests and is considered so rigorous that it typically requires many years of intensive psychotherapy to generate notable improvements in outcomes.) The results showed marked change in just three months: Transgender subjects who presented with clinical distress and demonstrated "poorer psychological functioning than nontransgender males" prior to treatment functioned "as well as male and female controls and demonstrated positive gains in multiple clinical domains" after just three months of testosterone. "There were no longer statistically significant differences between transgender men and male controls" on a range of symptoms including hypochondria, hysteria, paranoia, and others after three months of treatment, the study concluded. "Overall findings here," concluded the study, "suggest significant, rapid, and positive effects of initiating testosterone treatment on the psychological functioning in transgender men."[168]

These findings echoed earlier research on the efficacy of hormone therapy for treating gender dysphoria. A 2006 U.S. study of 446 female-to-male (FTM) subjects found improvements when comparing those who had and had not received hormone treatment: "FTM transgender participants who received testosterone (67 percent) reported statistically significant higher quality of life scores ($p<0.01$) than those who had not received hormone therapy." The study concluded that providing transgender individuals "with the hormonal care they request is associated with improved quality of life."[169] A 2012 study assessed outcome differences

between transgender patients who obtained hormone treatment and those who did not among 187 subjects. It found that "patients who have not yet initiated cross-sex hormonal treatment showed significantly higher levels of social distress and emotional disturbances than patients under this treatment."[170]

An Italian study published in 2014 that assessed hormone therapy found that "when treated, transsexual patients reported less anxiety, depression, psychological symptoms and functional impairment" with the improvements between baseline and one-year follow-up being "statistically significant." The study stated that "psychiatric distress and functional impairment were present in a significantly higher percentage of patients before starting the hormonal treatment than after 12 months."[171] Another study published in 2014 found that "participants who were receiving testosterone endorsed fewer symptoms of anxiety and depression as well as less anger than the untreated group."[172]

Efficacy of surgery

A wide body of scholarly literature also demonstrates the effectiveness of gender- transition surgery. A 1999 follow-up study using multi-point questionnaires and rigorous qualitative methods including in-depth, blind follow-up interviews evaluated 28 MTF subjects who underwent transition surgery at Albert Einstein College of Medicine. The study was authored by four physicians who conducted transition surgeries at university centers in New York and Israel. *All* their subjects reported satisfaction in having transitioned, and they responded positively when asked if their lives were "becoming easier and more comfortable"

following transition. Large majorities said that reassignment surgery "solved most of their emotional problems," adding in follow-up assessments comments such as: "I am now a complete person in every way," "I feel more self-confident and more socially adapted," "I am more confident and feel better about myself," and "I am happier." Summarizing their conclusions, the authors noted "a marked decrease of suicide attempts, criminal activity, and drug use in our postoperative population. This might indicate that there is a marked improvement in antisocial and self- destructive behavior, that was evident prior to sex reassignment surgery. Most patients were able to maintain their standard of living and to continue working, usually at the same jobs."[173]

A 2010 study of thirty patients found that "gender reassignment surgery improves the QoL [quality of life] for transsexuals in several different important areas: most are satisfied of their sexual reassignment (28/30), their social (21/30) and sexual QoL (25/30) are improved."[174] A long-term follow-up study of 62 Belgian patients who underwent gender transition surgery, published in 2006, found that, while transgender subjects remain a vulnerable population "in some respects" following treatment, the vast majority "proclaimed an overall positive change in their family and social life." The authors concluded that "SRS proves to be an effective therapy for transsexuals even after a longer period, mainly because of its positive effect on the gender dysphoria."[175]

Efficacy of the combination of hormone therapy and surgery

Some studies assessed global outcomes from a combination of hormone treatment and transition surgery, or they did not isolate one form of treatment from the other in reporting their overall results. They consistently found improved outcomes when transgender individuals obtained the specific care recommended by their doctor.

A 2011 Canadian study found that "the odds of depression were 2.8 times greater for FTMs not currently using hormones compared with current users" and that FTM subjects "who were planning to medically transition (hormones and/or surgery) but had not begun were five times more likely to be depressed than FTMs who had medically transitioned." The finding shows that gender transition is strongly correlated with improved well-being for transgender individuals.[176] An Australian study found that "the combination of current hormone use and having had some form of gender affirmative surgery provided a significant contribution to lower depressive symptoms over and above control variables."[177]

A 2015 study conducted in Germany with follow-up periods up to 24 years, with a mean of 13.8 years, tracked 71 transgender participants using a combination of quantitative and qualitative outcome measures that included structured interviews, standardized questionnaires, and validated psychological assessment tools. It found that "positive and desired changes were determined by all of the instruments." The improvements included that

"participants showed significantly fewer psychological problems and interpersonal difficulties as well as a strongly increased life satisfaction at follow-up than at the time of the initial consultation." The authors cautioned that, notwithstanding the positive results, "the treatment of transsexualism is far from being perfect," but noted that, in addition to the positive result they found in the current study, "numerous studies with shorter follow- up times have already demonstrated positive outcomes after sex reassignment" and that this study added to that body of research the finding that "these positive outcomes persist even 10 or more years" beyond their legal gender transition.[178]

Regrets low

A strong indicator of the efficacy of gender transition is the extremely low rate of regrets that studies have found across the board. A recent focus in popular culture on anecdotes by individuals who regretted their gender transition has served to obscure the overall statistics on regret rates. A 2014 study co-authored by Cecilia Dhejne evaluated the entirety of individuals who were granted a legal gender change in Sweden across the 50- year period from 1960 through 2010. Of the total number of 681 individuals, the number who sought a reversal was 15, a regret rate of 2.2 percent. The study also found a "significant decline of regrets over the time period." For the most recent decade covered by Dhejne's data, 2000 to 2010, the regret rate was just three tenths of one percent. Researchers attribute the improvements over time to advances in surgical technique and in social support for gender minorities, suggesting that today's transgender population is the most treatable in

history, while also sounding a caution that institutional stigma and discrimination can themselves become barriers to adequate care.[179]

The low regret rate is consistent in the scholarly literature, and it is confirmed by qualitative studies and quantitative assessments. A 1992 study authored by one of the world's leading researchers on transgender health put the average regret rate at between 1 and 1.5 percent. This figure was based on cumulative numbers from 74 different follow- up studies conducted over three decades, as well as a separate clinical follow-up sample of more than 600 patients.180 A 2002 literature review also put the figure at 1 percent.[181] A 1998 study put the figure as high as 3.8 percent, but attributed most regret to family rejection of the subjects' transgender identity.[182] The 1999 study of transition surgery outcomes at Albert Einstein College of Medicine found that "None of the patients regretted or had doubts about having undergone sex-reassignment surgery."[183] The 2006 Belgian study mentioned elsewhere followed 62 subjects who underwent transition surgery and "none of them showed any regrets" about their transition. "Even after several years, they feel happy, adapt well socially and feel no regrets," the authors concluded.[184] And the 2015 German follow-up study of adults with gender dysphoria found that none of its 71 participants expressed a wish to reverse their transition.[185]

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[2] Department of Defense, "Department of Defense Report and Recommendations on Military Service by Transgender Persons" (February 2018), 5.

[3] Ibid., 32.

[4] American Medical Association (Resolution), "Removing Financial Barriers to Care for Transgender Patients" (2008); American Medical Association, Letter to James N. Mattis from James L. Madara, MD, April 3, 2018.

[5] American Psychological Association, "Statement Regarding Transgender Individuals Serving in Military," March 26, 2018; Palm Center (news release), "Former Surgeons General Debunk Pentagon Assertions about Medical Fitness of Transgender Troops," March 28, 2018; American Psychiatric Association, "APA Reiterates Its Strong Opposition to Ban of Transgender Americans from Serving in U.S. Military" (News Release), Mar. 24, 2018; World Professional Association for Transgender Health, "WPATH Policy Statements: Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.," December 21, 2016.

[6] What We Know Project, Center for the Study of Inequality, Cornell University (research analysis), "What does the scholarly research say about the effect of gender transition on transgender well-being?" 2018.

[7] Freidemann Pfäfflin and Astrid Junge (1998), "Sex Reassignment—Thirty Years of International Follow- up Studies after Sex Reassignment Surgery: A Comparison Review, 1961–1991" (translated from the German edition, 1992, into English, 1998).

[8] Jamil Rehman, Simcha Lazer, Alexandru Benet, Leah Schaefer, and Arnod Melman (1999), "The Reported Sex and Surgery Satisfactions of 28 Postoperative Male-to-Female Transsexual Patients," *Archives of Sexual Behavior*, 28(1): 71–89.

[9] Tamara Jensen, Joseph Chin, James Rollins, Elizabeth Koller, Linda Gousis, and Katherine Szarama. "Final Decision Memorandum on Gender Reassignment Surgery for Medicare Beneficiaries with Gender Dysphoria," Centers for Medicare and Medicaid Services (CMS), August 30, 2016, 71.

[10] CMS 100-08, Medicare Program Integrity Manual (2000), 13.7.1, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019033.html, accessed April 23, 2018.

[11] Ibid.

[12] Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna Johansson, Niklas Langstrom, and Mikael Landen (2011), "Long-Term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden," *PLoS One* 6(2).

[13] Palm Center (news release), "Former Surgeons General Debunk Pentagon Assertions about Medical Fitness of Transgender Troops," March 28,

2018. At the time of writing, the publicly released version of the statement has been signed by two former Surgeons General. Since the statement's release, however, four additional former Surgeons General have signed. The revised signatory list will be released soon.

[14] DoD Report, 24.

[15] Department of Defense Instruction 6130.03, Medical Standards for Appointment, Enlistment, or Induction in the Military Services (April 28, 2010, incorporating Change 1, September 13, 2011), 9. Also see http://www.amsara.amedd.army.mil/.

[16] DoD Report, 24, quoting Jensen, et al. "Final Decision Memorandum," 62.

[17] Department of Health and Human Services (HHS), Department Appeals Board Appellate Division, NCD 140.3, Transsexual Surgery Docket No. A-13-87 Decision No. 2576, May 30, 2014, 20.

[18] HHS, Transsexual Surgery Docket, 20.

[19] Jensen et al. "Final Decision Memorandum," 54, 57, emphasis added.

[20] Personal communication with the authors, April 21, 2018.

[21] DoD Report, 25–26.

[22] R. Nick Gorton, "Research Memo Evaluating the 2014 Hayes Report: 'Sex Reassignment Surgery for the Treatment of Gender Dysphoria' and the 2004 Hayes Report: 'Sex Reassignment Surgery and

Associated Therapies for Treatment of GID,' April 2018."

[23] Ibid.

[24] Ibid.

[25] Ibid.

[26] William Byne et al. (2012), "Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder," *Archives of Sexual Behavior* 41(4): 759–96.

[27] Gorton, "Research Memo."

[28] Dhejne et al., "Long-Term Follow-up"; Cecilia Dhejne, Roy Van Vlerken, Gunter Heylens, and Jon Arcelus (2016), "Mental Health and Gender Dysphoria: A Review of the Literature," *International Review of Psychiatry* 28(1): 44–57, emphasis added.

[29] Dhejne et al., "Long-Term Follow-up"; Dhejne et al., "Review of the Literature," emphasis added.

[30] Cristan Williams, "Fact Check: Study Shows Transition Makes Trans People Suicidal," The TransAdvocate, November 2, 2015.

[31] M. Hassan Murad et al. (2010), "Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes," *Clinical Endocrinology*, 72(2): 214–31.

[32] DoD Report, 19.

[33] Memorandum, Secretary of Defense, Military Service by Transgender Individuals (February 22, 2018), 2.

[34] Department of Defense Instruction 1322.18, Disability Evaluation System (August 5, 2014), 23.

[35] Memorandum, Under Secretary of Defense, Personnel and Readiness, DoD Retention Policy for Non- Deployable Service Members (February 14, 2018).

[36] DoD Report, 5

[37] Ibid., 5–6.

[38] Ibid., 5 (emphasis added).

[39] Ibid., 32.

[40] Ibid., 6, 32.

[41] Ibid., 10.

[42] DoDI 6130.03, 18.

[43] DoD Report, 11.

[44] DoDI 6130.03, 25.

[45] Department of Defense Instruction 1300.28, In-Service Transition for Transgender Service Members (October 1, 2016), 3.

[46] Palm Center, "Former Surgeons General."

[47] DoD Report, 20–21.

[48] Jack Drescher et al. (2012), "Minding the Body: Situation Gender Identity Diagnoses in the ICD- 11," *International Review of Psychiatry,* 24(6): 568; See also Jack Drescher (2010), "Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual," *Archives of Sexual Behavior,* 39(2): 427–60.

[49] Personal communication with the authors, April 10, 2018.

[50] American Psychiatric Association, "APA Reiterates Its Strong Opposition."

[51] DoD Report, 27.

[52] Army Regulation 40-501, Standards of Medical Fitness (December 22, 2016), 60.

[53] Ibid., 62.

[54] Ibid., 63.

[55] DoD Report, 33.

[56] Ibid., 34.

[57] Department of Defense, Transgender Service in the U.S. Military: An Implementation Handbook (September 30, 2016), 31 ("Commander's Handbook").

[58] DoDI 1300.28, 3.

[59] DoD Report, 34.

[60] Department of Defense, Health Data on Active Duty Service Members with Gender

Dysphoria: Comparison Health Care Data with Statistical Analysis, Deployment, Treatment Plan, Surgical Recovery Times, Separation Data and Cost Data (December 13, 2017), 10–12.

[61] DoD Report, 18.

[62] Ibid., 33

[63] Department of Defense, Health Data on Active Duty Service Members with Gender Dysphoria, 17.

[64] Modification Thirteen to U.S. Central Command Individual Protection and Individual, Unit Deployment Policy, Tab A (March 2017).

[65] DoD Report, 34n130.

[66] Ibid., 34.

[67] Modification Thirteen, 8.

[68] Ibid., 9–10.

[69] Ibid., 8.

[70] Ibid., 4.

[71] DoD Report, 33.

[72] Ibid.; See also DoD Report, 22–23, 34 and 41n164.

[73] Letter from Dr. Wylie C. Hembree, M.D. (October 25, 2015).

[74] DoD Report, 33.

[75] Ibid., 34.

[76] Ibid., 33n123, citing Agnes Schaefer et al. (2016), "Assessing the Implications of Allowing Transgender Personnel to Serve Openly," RAND Corporation, 59.

[77] M. Joycelyn Elders, George R. Brown, Eli Coleman, Thomas A. Kolditz, and Alan M. Steinman (2014), "Medical Aspects of Transgender Military Service," *Armed Forces and Society*, 41(2): 206–207 (footnotes omitted).

[78] DoD Report, 2.

[79] Ibid., 22.

[80] DoDI 1300.28.

[81] Ibid., 9.

[82] Ibid.

[83] Commander's Handbook, 13.

[84] Department of the Navy, BUMED Notice 6000, Medical Treatment of Transgender Service Members—Interim Guidance (September 27, 2016), 3.

[85] Ibid.

[86] "Individualized TGCT Care Plan (n.d.)," NMW Transgender Care Team, Naval Medical Center San Diego.

[87] Personal communication with the authors, February 7, 2018.

[88] Natasha Schvey et al. (May 2017), "Military Family Physicians' Readiness for Treating Patients

with Gender Dysphoria," *Journal of the American Medical Association, Internal Medicine,* 177(5): 727–29.

[89] Personal communication with the authors, February 6, 2018.

[90] Ibid., February 9, 2018.

[91] Surveys and follow-up emails between anonymous service members and Palm Center researchers, February 1–15, 2018; Telephone interview with authors, August 30, 2017. The 81 mental health visits were the total number reported by the seven of our subjects who completed written surveys.

[92] John Blosnich, Letter to the Editor (draft in preparation for peer-review submission, forthcoming, 2018). Unlike the military, VHA does not provide transition surgery. VHA mental health utilization among transgender individuals could increase if VHA provided surgery, because patients might need additional mental health approval to qualify. At the same time, mental health utilization might decrease if VHA provided surgery, because surgery can mitigate gender dysphoria, which would diminish the need for mental health care.

[93] Jesse M. Ehrenfeld, Del Ray Zimmerman and Gilbert Gonzales (March 16, 2018), "Healthcare Utilization Among Transgender Individuals in California," *Journal of Medical Systems,* 42(5): 77.

[94] Tamika Gilreath et al. (2015), "Suicidality among Military-Connected Adolescents in California

Shools," *European Child & Adolescent Psychiatry* 25(1): 61–66.

[95] DoD Report, 21.

[96] Ibid.

[97] Department of Defense, Defense Suicide Prevention Office, Military Suicide Data Surveillance: Baseline Results from Non-clinical Populations on Proximal Outcomes for Suicide Prevention (July 25, 2017), 5.

[98] See Schaefer et al., "Assessing the Implications," 9–10.

[99] American Psychological Association, "Statement Regarding Transgender Individuals."

[100] American Psychiatric Association, "APA Reiterates Its Strong Opposition."

[101] DoD Report, 31.

[102] Ibid., 28.

[103] Claudia Grisales, "Defense Chief Says He Is 'Prepared to Defend' New Transgender Military Policy," *Stars and Stripes*, April 12, 2018.

[104] Geoff Ziezulewicz, "No Reports of Transgender Troops Affecting Unit Cohesion, Marine Corps and Navy Leaders Say," *Military Times*, April 19, 2018; Rebecca Kheel, "Air Force Chief Not Aware of Cohesion, Morale Issues Due to Transgender Troops," *The Hill*, April 24, 2018.

[105] DoD Report, 3.

[106] Grisales, "Defense Chief Says."

[107] On the measurement of unit cohesion, see, for example, James Griffith (1988), "Measurement of Group Cohesion in U. S. Army Units," *Basic and Applied Social Psychology*, 9(2): 149–71.

[108] Aaron Belkin, Morten G. Ender, Nathaniel Frank, Stacie R. Furia, George Lucas, Gary Packard, Steven M. Samuels, Tammy Schultz, and David Segal (2013), "Readiness and DADT Repeal: Has the New Policy of Open Service Undermined the Military," *Armed Forces and Society*, 39(4): 587–601.

[109] DoD Report, 29.

[110] Alex Bedard, Robert Peterson, and Ray Barone, "Punching through Barriers: Female Cadets Integrated into Mandatory Boxing at West Point," Association of the United States Army, November 16, 2017.

[111] Commander's Handbook, 63.

[112] Ibid.

[113] Ibid., 37.

[114] Ibid., 65.

[115] Ibid., 29.

[116] Ibid., 22.

[117] Training Slides Tier III Training: Education and Training Plan for the Implementation of Army Policy on Military Service of Transgender Soldiers (September 16, 2016), 14.

[118] David Ari Bianco, "Echoes of Prejudice: The Debates Over Race and Sexuality in the Armed Forces," in Craig A. Rimmerman, ed. (2006), *Gay Rights, Military Wrongs: Political Perspectives on Lesbians and Gays in the Military* (New York: St. Martin's Press); Nathaniel Frank (2009), *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America* (New York: St. Martin's); Brian Mitchell (1997), *Women in the Military: Flirting with Disaster* (Washington: Regency Publishing).

[119] Aaron Belkin and Melissa S. Embser-Herbert (2002), "A Modest Proposal: Privacy as a Rationale for Excluding Gays and Lesbians from the U.S. Military," *International Security*, 27(2): 178–97. Melissa Wells-Petry (1993), *Exclusion: Homosexuals and the Right to Serve* (Washington: Regnery Gateway), 127–30.

[120] Peter Sprigg, "Homosexual Assault in the Military," Family Research Council, 2010.

[121] "A Military Success Story," *New York Times* (editorial), September 15, 2012.

[122] Gale S. Pollock and Shannon Minter (2014), "Report of the Planning Commission on Transgender Military Service," Palm Center, 21.

[123] Schaefer et al., "Assessing the Implications"; M. Joycelyn Elders, George R. Brown, Eli Coleman, Thomas A. Kolditz, and Alan M. Steinman (2014), "Medical Aspects of Transgender Military Service," *Armed Forces and Society*, 41(2): 199–220; Pollock and Minter, "Report of the Planning Commission"; Alan Okros and Denise Scott (2014), "Gender Identity in

the Canadian Forces: A Review of Possible Impacts on Operational Effectiveness," *Armed Forces and Society,* 41(2): 243–56.

[124] Department of Defense, "Statement by Secretary of Defense Ash Carter on DoD Transgender Policy," (press release), July 13, 2015, Memorandum from Ashton Carter, Secretary of Defense, "Transgender Service Members" (July 28, 2015).

[125] DTM 16-005, Military Service of Transgender Service Members (June 30, 2016); DoDI 1300.28, In- Service Transition for Transgender Service Members (June 30, 2016), 2.

[126] This list does not include service-level training materials or Military Entrance Processing Command accession documents: DTM 16-005, Military Service of Transgender Service Members (June 30, 2016); DoDI 1300.28, In-Service Transition for Transgender Service Members (June 30, 2016); Department of Defense, Transgender Service in the U. S. Military: An Implementation Handbook (September 30, 2016); Assistant Secretary of Defense, Health Affairs, Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members (July 29, 2016); Interim Defense Health Agency Procedures for Reviewing Requests for Waivers to Allow Supplemental Health Care Program Coverage of Sex Reassignment Surgical Procedures (November 13, 2017); Army Directive 2016-30, Army Policy on Military Service of Transgender Soldiers (July 1, 2016); Army Directive 2016-35, Army Policy on Military Service of Transgender Soldiers (October 7, 2016); OTSG/MEDCOM Policy Memo 16-060,

Interim AMEDD Guidance for Transgender Medical Care (August 3, 2016); SECNAV Instruction 1000.11, Service of Transgender Sailors and Marines (November 4, 2016); U.S. Navy, Transgender and Gender Transition: Commanding Officer's Toolkit (2016); Department of the Navy, BUMED Notice 6000, Medical Treatment of Transgender Service Members–Interim Guidance (September 27, 2016); AFPM 2016-36-01, Air Force Policy Memorandum for In-Service Transition for Airmen Identifying as Transgender (October 6, 2016); Marine Corps Bulletin 1121, Transgender Service (November 22, 2016); U.S. Coast Guard, COMDTINST M1000.13, Military Transgender Service (December 22, 2016).

[127] Schaefer et al., "Assessing the Implications," 70.

[128] Okros and Scott, "Gender Identity in the Canadian Forces," 243.

[129] Schaefer et al., "Assessing the Implications," xiii.

[130] Correspondence with senior civilian DoD official, April 21, 2017; Telephone interview with former Navy Secretary Ray Mabus, April 20, 2017; Correspondence with former Air Force Secretary Deborah James, April 20, 2017; Correspondence with former Army Secretary Eric Fanning, April 24, 2017; Correspondence with former senior civilian DoD official, April 19, 2017.

[131] Memorandum, Secretary of Defense, Military Service by Transgender Individuals (February 22, 2018), 2.

[132] DoD Report, 14.

[133] Ibid., 44.

[134] Rand Arroyo Center Annual Report 2015, 1.

[135] Belkin et al., "Readiness and DADT Repeal."

[136] Department of Defense, Health Data on Active Duty Service Members with Gender Dysphoria, 21.

[137] Ibid., 31.

[138] For various benefits of inclusive policy and costs of the ban, see Schaefer et al., "Assessing the Implications," 8 (surgical skills); 45, 60–61 (diversity and readiness); and 10 (denial of care).

[139] Okros and Scott, "Gender Identity in the Canadian Forces," 246.

[140] John D. Hutson, "An Unwarranted Attack on Transgender Service," *Stars and Stripes*, February 6, 2018; Steve Liewer, "Transgender Offutt Airman – Finally 'Able to Live as My True Self' – Finds Support, Acceptance during Transition," *Omaha World-Herald*, April 22, 2017; Emanuella Grinberg, "A transgender Marine Comes Out, Tests Military's New Policy," *CNN*.com, November 19, 2016.

[141] DoD Report, 37, Note 143.

[142] Dhejne et. al, "Mental Health and Gender Dysphoria."

[143] Gay and lesbian service members reported an increase in morale after DADT repeal. See Belkin et al., "Readiness and DADT Repeal."

[144] According to a 2015 estimate by Accession Medical Standards Analysis and Research Activity (AMSARA), "Recruiting, screening and training costs are approximately $75,000 per enlistee." Accession Medical Standards Analysis & Research Activity, http://www.amsara.amedd.army.mil/Default.aspx, last modified date April 1, 2015, accessed August 3, 2017.

[145] See Schaefer et al., "Assessing the Implications," 9–10. For the estimate that 14,700 transgender personnel serve currently in the Active Component and Selected Reserve, see Palm Center, "Breaking Down the March 23, 2018 Transgender Military Ban," March 27, 2018.

[146] For extensive evidence on this point, see the ten annual reports of the Servicemembers Legal Defense Network that are posted at http://dont.law.stanford.edu/commentary/, accessed April 23, 2018. Sharon Terman argues that harassment cannot be regulated in institutions that allow formal discrimination. See Sharon Terman, "The Practical and Conceptual Problems with Regulating Harassment in a Discriminatory Institution," Center for the Study of Sexual Minorities in the Military, 2004.

[147] Aaron Belkin, Frank J. Barrett, Mark J. Eitelberg, and Marc J. Ventresca (2017), "Discharging Transgender Troops Would Cost $960 Million," Palm Center.

[148] Hutson, "An Unwarranted Attack."

[149] Tobias Barrington Wolff (1997), "Compelled Affirmations, Free Speech, and the U.S. Military's Don't Ask, Don't Tell Policy," Brooklyn Law Review, 63: 1141–1211.

[150] Frank, *Unfriendly Fire*, xix.

[151] "Top Military Officer: Gays Should Serve," *NBC News*, February 2, 2010.

[152] Aaron Belkin (2008), "'Don't Ask, Don't Tell': Does the Gay Ban Undermine the Military's Reputation?" *Armed Forces and Society*, 34(2): 276–91.

[153] Belkin, "'Don't Ask, Don't Tell.'"

[154] "Easier Access for Military Recruiters," *Tampa Tribune*, July 6, 2000, as cited in Belkin, "'Don't Ask, Don't Tell,'" 283, and David F. Burrelli and Jody Feder (2009), "Homosexuals in the U.S. Military: Current Issues," Congressional Research Service, 24.

[155] According to a poll that was administered to 5,650 service members, retirees, veterans, and their family members in October and November 2017, "twice as many respondents support transgender individuals serving in the military as those who don't." See "Survey 2017 Results," Military Family Advisory Network, 31. According to an August 2017 Quinnipiac poll, 68 percent of voters support allowing transgender individuals to serve in the military, with 27 percent opposing. See Quinnipiac University, "U.S.

Voters Say 68–27% Let Transgender People Serve," (press release), August 3, 2017.

[156] DoD Report, 41.

[157] Department of Defense, Health Data on Active Duty Service Members with Gender Dysphoria, 31-32.

[158] $2.2 million / 2.1 million service members / 12 months = 9 cents per member per month.

[159] Luk Gijs and Anne Brewaeys (2007), "Surgical Treatment of Gender Dysphoria in Adults and Adolescents: Recent Developments, Effectiveness, and Challenges," *Annual Review of Sex Research*, 18(1): 178–224. The 1990 study was Charles Mate-Kole, Maurizio Freschi, and Ashley Robin (1990), "A Controlled Study of Psychological and Social Change after Surgical Gender Reassignment in Selected Male Transsexuals," *The British Journal of Psychiatry,* 157(2): 261–64.

[160] Murad et al., "Hormonal Therapy." The DoD Report notes that the Murad study found the quality of most evidence to be "low," a claim we address elsewhere in this report.

[161] Colton Keo-Meier, Levi Herman, Sari Reisner, Seth Pardo, Carla Sharp, and Julia Babcock (2015), "Testosterone Treatment and MMPI-2 Improvement in Transgender Men: A Prospective Controlled Study," *Journal of Consulting and Clinical Psychology,* 83(1): 143–56.

[162] Dhejne et. al, "Mental Health and Gender Dysphoria."

[163] Rosalià Costa and Marco Colizzi (2016), "The Effect of Cross-Sex Hormonal Treatment on Gender Dysphoria Individuals' Mental Health: A Systematic Review," *Neuropsychiatric Disease and Treatment* 12: 1953–66.

[164] Steven Weyers et al. (2009), "Long-Term Assessment of the Physical, Mental, and Sexual Health among Transsexual Women," *The Journal of Sexual Medicine*, 6(3): 752–60.

[165] Ester Gomez-Gil et al. (2012), "Hormone-Treated Transsexuals Report Less Social Distress, Anxiety and Depression," *Psychoneuroendocrinology*, 37(5): 662–70.

[166] Marco Colizzi, Rosalià Costa, and Orlando Todarello (2014), "Transsexual Patients' Psychiatric Comorbidity and Positive Effect of Cross-Sex Hormonal Treatment on Mental Health: Results from a Longitudinal Study," *Psychoneuroendocrinology*, 39: 65–73.

[167] Nataša Jokic-Begic, Anita Lauri Korajlija, and Tanja Jurin (2014), "Psychosocial Adjustment to Sex Reassignment Surgery: A Qualitative Examination and Personal Experiences of Six Transsexual Persons in Croatia," *Scientific World Journal 2014*, 6.

[168] Keo-Meier et al., "Testosterone Treatment."

[169] Emily Newfield, Stacey Hart, Suzanne Dibble, and Lori Kohler (2006), "Female-to-Male Transgender Quality of Life," *Quality of Life Research*, 15(9): 1447–57.

[170] Gomez-Gil et al., "Hormone-Treated Transsexuals."

[171] Colizzi, Costa, and Todarello, "Transsexual Patients' Psychiatric Comorbidity."

[172] Samuel Davis and S. Colton Meier, (2014), "Effects of Testosterone Treatment and Chest Reconstruction Surgery on Mental Health and Sexuality in Female-to-Male Transgender People," *International Journal of Sexual Health*, 26(2): 113–28.

[173] Rehman et al., "The Reported Sex and Surgery Satisfactions."

[174] Nathalie Parola et al. (2010), "Study of Quality of Life for Transsexuals after Hormonal and Surgical Reassignment," *Sexologies*, 19(1): 24–28.

[175] Griet De Cuypere et al. (2006), "Long-Term Follow-up: Psychosocial Outcome of Belgian Transsexuals after Sex Reassignment Surgery," *Sexologies*, 15(2): 126–33.

[176] Nooshin Khobzi Rotondi et al. (2011), "Prevalence of and Risk and Protective Factors for Depression in Female-to-Male Transgender Ontarians: Trans PULSE Project," *Canadian Journal of Community Mental Health*, 30(2): 135–55.

[177] Crystal Boza and Kathryn Nicholson Perry (2014), "Gender-Related Victimization, Perceived Social Support, and Predictors of Depression among Transgender Australians," *International Journal of Transgenderism*, 15(1): 35–52.

[178] Ulrike Ruppin, and Freidemann Pfäfflin (2015), "Long-Term Follow-up of Adults with Gender Identity Disorder," *Archives of Sexual Behavior*, 44(5): 1321–29.

[179] Cecilia Dhejne, Katarina Öberg, Stefan Arver, and Mikael Landén (2014), "An Analysis of All Applications for Sex Reassignment Surgery in Sweden, 1960-2010: Prevalence, Incidence, and Regrets," *Archives of Sexual Behavior*, 43(8): 1535–45.

[180] Freidemann Pfäfflin (1992; sometimes listed as 1993), "Regrets after Sex Reassignment Surgery," *Journal of Psychology and Human Sexuality*, 5(4): 69–85.

[181] Aude Michel, Marc Ansseau, Jean-Jacques Legros, William Pitchot, and Christian Mormont (2002), "The Transsexual: What about the Future?" *European Psychiatry*, 17(6): 353–62.

[182] Mikael Landén, Jan Wålinder, Gunnar Hambert, and Bengt Lundström (1998), "Factors Predictive of Regret in Sex Reassignment," *Acta Psychiatrica Scandinavica*, 97(4): 284–89.

[183] Rehman et al., "The Reported Sex and Surgery Satisfactions."

[184] De Cuypere et al., "Long-Term Follow-up."

[185] Ruppin and Pfäfflin, "Long-Term Follow-up."

Stenographic Transcript Before the

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

HEARING TO RECEIVE TESTIMONY ON THE POSTURE OF THE DEPARTMENT OF THE ARMY IN REVIEW OF THE DEFENSE AUTHORIZATION REQUEST FOR FISCAL YEAR 2019 AND THE FUTURE YEARS DEFENSE PROGRAM

Thursday, April 12, 2018

Washington, D.C.

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Thursday, April 12, 2018

U.S. Senate
Committee on Armed Services
Washington, D.C.

The committee met, pursuant to notice, at 9:37 a.m. in Room SD-G50, Dirksen Senate Office Building, Hon. James M. Inhofe, presiding.

Committee Members Present: Senators Inhofe [presiding], Inhofe, Wicker, Fischer, Cotton, Rounds,

Ernst, Tillis, Sullivan, Perdue, Cruz, Graham, Reed, Nelson, McCaskill, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Heinrich, Warren, and Peters.

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General Milley: Sure.

Senator Gillibrand: Dr. Esper and General Milley, in light of the existing injunctions, DOD is currently operating under the previous transgender open service policy put in place by the last administration, yet transgender soldiers have now seen the Department's recommendations and are on notice that, if the policy is implemented, they will get kicked out for seeking care or treatment for their gender dysphoria. I'm worried that this uncertainty will get -- will have a negative impact on these individuals, but also on their units, and that fear of these recommendations will stop these soldiers from seeking care. What are you doing to ensure readiness in light of the pall that has been cast on the future of transgender soldiers?

Dr. Esper: Senator, we continue to treat every soldier, transgender or not, with dignity and respect, ensure that they're well trained and well equipped for whatever future fights. With regard to accessions, our accessions folks understand that we are operating under the Carter policy, if you will. We've had some persons already join, transgender persons join, and we will continue to access them and train them and treat them well, in accordance with that policy.

Senator Gillibrand: Well, I'm concerned, because the report that was included with the memo claimed that

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transgender persons serving in our military might hurt unit cohesion. So, that is different than treating everyone with dignity and respect. When asked by reporters, in February, whether soldiers have concerns about serving beside openly transgender individuals, you said it really hasn't come up. Are you aware of any problems with unit cohesion arising since you made that comment? And, if so, can you tell us how they were handled by the unit leadership involved?

Dr. Esper: Senator, nothing has percolated up to my level. When I made that comment, I was -- it was a question about, you know, have I met with soldiers and talked about these issues? What do they raise? And, as I said then, the soldiers tend to -- you know, young kids tend to raise the issue in front of them at the day. It could be that they're performing all-night duty or didn't get their paycheck, and this was just not an issue that came up at that moment in time. And, beyond that --

Senator Gillibrand: Have you since heard anything, how transgender servicemembers are harming unit cohesion?

Dr. Esper: Again, nothing has percolated up to me.

Senator Gillibrand: General Milley, have you heard that?

General Milley: No, not at all. The -- and we have a finite number. We know who they are, and it is monitored very closely, because, you know, I'm concerned about that,

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and want to make sure that they are, in fact, treated with dignity and respect. And no, I have received precisely zero reports --

Senator Gillibrand: Okay.

General Milley: -- of issues of cohesion, discipline, morale, and all those sorts of things. No.

Senator Gillibrand: That's good news.

I know that the Secretary spoke with transgender soldiers recently. Of all the ones that you have personally spoke with of the Active Duty transgender soldiers, were you concerned by any of them continuing to serve?

Dr. Esper: Well, I actually met with them in the first 30 days on the job, Senator. And no, nothing came up that would cause me concern. I was, you know, impressed by what I heard.

Senator Gillibrand: And have either of you spoken to any transgender servicemembers since this set of recommendations was released by the administration in March? And, if you have, what did you hear?

Dr. Esper: No, ma'am.

General Milley: I have not. I did before. I have not. But, let -- you know, the case, as you are well aware, is in litigation. It's in four different courts. So,

the - - we're limited in, actually, what we should or could say right this minute, because it could, either one way or the

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Stenographic Transcript Before the

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

HEARING TO RECEIVE TESTIMONY ON THE POSTURE OF THE DEPARTMENT OF THE NAVY IN REVIEW OF THE DEFENSE AUTHORIZATION REQUEST FOR FISCAL YEAR 2019 AND THE FUTURE YEARS DEFENSE PROGRAM

Thursday, April 19, 2018

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HEARING TO RECEIVE TESTIMONY ON THE POSTURE OF THE DEPARTMENT OF THE NAVY IN REVIEW OF THE DEFENSE AUTHORIZATION REQUEST FOR FISCAL YEAR 2019 AND THE FUTURE YEARS DEFENSE PROGRAM

Thursday, April 19, 2018

U.S. Senate
Committee on Armed Services
Washington, D.C.

The committee met, pursuant to notice, at 9:31 a.m. in Room SD-G50, Dirksen Senate Office Building, Hon. James M. Inhofe, presiding.

Committee Members Present: Senators Inhofe [presiding], Wicker, Fischer, Cotton, Ernst, Tillis,

Sullivan, Perdue, Graham, Scott, Reed, Nelson, McCaskill, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Warren, and Peters.

* * * * *

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with our terrific allies in Norway who are just doing yeoman's work monitoring the gap. But, they opened my eyes as to what's going on in the Arctic. I had read about it, but, when you see what's going on there, what Russia is doing, repaving 12,000-foot runways, 10,000 spetznaz up there in Barracks 4, search and rescue, we need to have presence up there.

The complication, as you well know, because we've talked about this, is -- icebreaking is one of the complications. It's not a mission of the Navy. We are working hand in hand with the Coast Guard. In fact, we have just finished helping them design in requirements for the next class of icebreaker. But, that is their mission.

That being said, we do not have ice-hardened ships. There is a new terminology up there, called the Blue Water Arctic, that there now is open blue waters up there. The CNO and I have talked about, How do we have presence up there? We're working on that. And when we see our strategy roll out, you will see more this summer.

Senator Sullivan: Great. I appreciate it.

Thank you, gentlemen.

Senator Inhofe: Thank you, Senator Sullivan.

Senator Gillibrand.

Senator Gillibrand: Thank you, Mr. Chairman.

Admiral Richardson and General Neller, General Milley

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told me, last week, that there were, quote, "precisely zero reports of issues of cohesion, discipline, morale, and all sorts of things in the Army as a result of open transgender service." Are you aware of any issue of unit cohesion, disciplinary problems, or issues with morale resulting from open transgender service?

Admiral Richardson: Senator, I'll go first on that. You know, by virtue of being a Navy sailor, we treat every one of those sailors, regardless, with dignity and respect that is warranted by wearing the uniform of the United States Navy. By virtue of that approach, I am not aware of any issues.

Senator Gillibrand: General Neller?

General Neller: Senator, by reporting, those marines that have come forward -- there's 27 marines that have identified as transgender, one sailor serving -- I am not aware of any issues in those areas. The only issues I have heard of is, in some cases, because of the medical requirements of some of these individuals, that there is a burden on the commands to handle all their medical stuff. But, discipline, cohesion of the force, no.

Senator Gillibrand: Can you amplify what burdens on the command are related to medical issues?

General Neller: Some of these individuals -- and, you know, they've resolved whatever it was that -- as they went

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through the process of identifying other than their birth sex, and so they're going forward. And I think those that came forward, we have a -- we have to honor the fact that they came out and they trusted us to say that, and that we need to make sure that we help them get through that process. Some of them are in a different place than others. And so, there is -- part of it's an education, but part of it is that there are some medical things that have to be involved as they go through the process of transitioning and real-life experience and whatever their level of dysphoria is. So, for commanders, some of them have said, "No, it's not a problem at all." Others have said that there is a lot of time where this individual is -- may or may not be available.

So, we're all about readiness. We're looking for deployability. But, in the areas that you talked about, no, I have not -- I have not heard of or have reported to me any issues.

Senator Gillibrand: Have you had the opportunity, General Neller, to meet with any of your transgender troops?

General Neller: Yes.

Senator Gillibrand: And what did you learn from those meetings?

General Neller: I learned that -- I learned a lot about the experience that they had. I learned that -- I met

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with four -- actually, one was a naval officer, one was an Army staff sergeant, one was a marine officer, and one was a Navy corpsman -- and I learned about their desire to serve. I learned about, you know, where their recognition of their identification opposite their birth sex. We had a very candid, frank conversation. And I respect -- as CNO said -- respect their desire to serve. And all of them, to the best of my knowledge, were ready and prepared to deploy, and they-- as long as they can meet the standard of what their particular occupation was, then I think we'll move forward.

Senator Gillibrand: Thank you, General Neller.

Admiral Richardson, what are you doing to ensure readiness at the personnel and unit level, in light of this new policy that's come forward from the White House, in terms of a new burden placed on transgender sailors and marines?

Admiral Richardson: Ma'am, I will tell you that we're -- it's steady as she goes. We have a worldwide deployable Navy. All of our sailors, or the vast, vast majority of our sailors, are worldwide deployable. We're taking lessons from when we integrated women into the submarine force. And one of the pillars of that was to make sure that there were really no differences highlighted in our approach to training those sailors. That program has gone very well. And so, maintaining that level playing field of a standards-

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based approach seems to be the key to -- a key to success, and that's the approach we're taking.

Senator Gillibrand: Thank you, Admiral.

You and I had a long conversation about military justice. And we talked about some of the sexual harassment and assault issues that are within the Navy. We had a issue with regard to "Bad Santa," as you know, where your public affairs officer was allowed to stay in his position for several months despite his clearly inappropriate behavior. Do you have a sense of what message members serving under you received from him being allowed to stay in that position? And have you changed your approach because of that incident?

Admiral Richardson: The beginning of that approach was really defined by making sure that we got a thorough investigation into a complicated scenario there with allegations and counter-allegations. So, that -- the investigation took some of the time.

Having said all that, I've become acutely aware that that may have sent a bad message, particularly to the survivors of the behavior. And so, that -- you know, my radar has been completely retuned, in terms of sensitivity to that message. And I hope that we've arrived at a good place at the end of the -- at the end of this event. It took longer, in hindsight, than it should have. If I was

* * * * *

Stenographic Transcript Before the

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

HEARING TO RECEIVE TESTIMONY ON THE POSTURE OF THE DEPARTMENT OF THE AIR FORCE IN REVIEW OF THE DEFENSE AUTHORIZATION REQUEST FOR FISCAL YEAR 2019 AND THE FUTURE YEARS DEFENSE PROGRAM

Thursday, April 24, 2018

Washington, D.C.

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HEARING TO RECEIVE TESTIMONY ON THE POSTURE OF THE DEPARTMENT OF THE AIR FORCE IN REVIEW OF THE DEFENSE AUTHORIZATION REQUEST FOR FISCAL YEAR 2019 AND THE FUTURE YEARS DEFENSE PROGRAM

Tuesday, April 24, 2018

U.S. Senate
Committee on Armed Services
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in Room SD-G50, Dirksen Senate Office Building, Hon. James M. Inhofe, presiding.

Committee Members Present: Senators Inhofe [presiding], Wicker, Fischer, Cotton, Rounds, Ernst, Tillis, Sullivan, Cruz, Scott, Reed, Nelson, McCaskill, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Heinrich, Warren, and Peters.

* * * * *

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Senator Sullivan: So you think the Army is capable to provide you the Air Force and the bases that you are in charge of globally with sufficient short-range air defense systems to defend overseas air bases?

General Goldfein: I believe the Army has -- and I cannot speak for my fellow joint chief, General Milley, in terms of what is in his budget submission, but I will tell you that I know the Army is invested and committed to their responsibility for base defense.

Senator Sullivan: But not just ballistic missile. I am talking cruise missile.

General Goldfein: Right.

Senator Sullivan: Madam Secretary, do you have a view on that?

Dr. Wilson: Senator, I do think that when it comes to air base defense, that is an area where we probably need to look really carefully. It is one that long term I think all of us as airmen have concerns about. Are we going to be able to defend the bases from which we fight?

Senator Sullivan: Thank you, Mr. Chairman.

Senator Inhofe: Thank you, Senator Sullivan.

Senator Gillibrand?

Senator Gillibrand: Hi, General Goldfein. Hi, Madam Secretary. Thank you so much for being here.

General Goldfein, in the last 2 weeks, General Milley,

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General Neller, and Admiral Richardson have told me that they have seen zero reports of issues of cohesion, discipline, and morale, as a result of open transgender service in their respective service branches. Are you aware of any specific issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service members in the Air Force?

General Goldfein: Not the way you have presented the question, ma'am, I am not. I will tell you that I have talked commanders in the field, first sergeants, senior NCOs, and I am committed to ensure that they have the right levels of guidance to understand these very personal issues that they are dealing with. And so we continue to move forward to ensure that we understand the issues.

Senator Gillibrand: And have you personally met with transgender service members?

General Goldfein: Yes, ma'am, I have.

Senator Gillibrand: And what did you learn from those meetings?

General Goldfein: A combination of, one, commitment to serve by each of them, and then number two, how individual each particular case is. It is not a one-size-fits-all approach. It is very personal

to each individual. And that is why I go back to we have an obligation to ensure that we understand this medically and that we can provide our

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commanders and supervisors the guidance they need to be able to deal with this so we do not have issues.

Senator Gillibrand: Thank you.

Secretary Wilson, on April 3rd, 2018, the American Medical Association wrote a letter to Secretary decrying the recent policy released by the White House. Echoing concerns raised by the American Psychological Association and two former Surgeon Generals, the American Medical Association said, quote, we believe there is no medically valid reason, including a diagnosis of gender dysphoria, to exclude transgender individuals from military service. The memo mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of transgender medical care. Yet, this DOD panel of experts came to a drastically different conclusion from the preeminent medical organizations in America about gender dysphoria, the effectiveness and impact of gender transition on medical and psychological health, and the ability of transgender service members to meet standards of accession and retention.

Do you know who represented the Air Force on this panel?

Dr. Wilson: On the advisory panel to the Secretary of Defense?

Senator Gillibrand: Yes.

Dr. Wilson: Yes, ma'am, I do.

* * * * *

U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW
Washington, DC 20530

December 29, 2017

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals for
the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

RE: *Karnoski v. Trump*, No. 17-36009 (9th Cir.)
Notice of Withdrawal of Emergency Stay
Motion

Dear Ms. Dwyer:

We write to notify the Court that the government intends to voluntarily dismiss its appeal of the preliminary injunction in the above-captioned matter. In light of the voluntary dismissal of the appeal, the government hereby withdraws its emergency motion for a stay of the preliminary injunction pending appeal.

Respectfully submitted,

s/ *Catherine H. Dorsey*
CATHERINE H. DORSEY

Attorney, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
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(202) 514-3469

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2017, I filed the foregoing notice with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ *Tara S. Morrissey*
Tara S. Morrissey

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN KARNOSKI, *et al.*, Plaintiffs-Appellees, v. DONALD TRUMP, President of the United States, *et al.*, Defendants-Appellants.	No. 17-36009

NOTICE OF VOLUNTARY DISMISSAL OF APPEAL

Pursuant to Federal Rule of Appellate Procedure 42(b), defendants-appellants respectfully request that the Court dismiss the government's appeal from the preliminary injunction in the above-captioned matter, with each side to bear its own fees and costs. Defendants-appellants have notified opposing counsel of our intention to file this notice.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

HASHIM M. MOOPPAN
Deputy Assistant Attorney General

BRINTON LUCAS
Counsel to the Assistant Attorney General

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s/ *Catherine H. Dorsey*
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DECEMBER 2017

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 56 words, according to the count of Microsoft Word.

s/ *Catherine H. Dorsey*
Catherine H. Dorsey

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2017, I filed the foregoing notice with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Tara S. Morrissey
Tara S. Morrissey

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	CASE NO. C17-1297-MJP ORDER DENYING DEFENDANTS' RULE 56(d) MOTION
STATE OF WASHINGTON, Intervenor-Plaintiff, v. DONALD J. TRUMP, et al., Intervenor-Defendants.	

THIS MATTER comes before the Court on Defendants' Rule 56(d) Motion (Dkt. No. 178) filed in response to Plaintiffs' and the State of Washington's Motions for Summary Judgment (Dkt. Nos. 129, 150). Having reviewed all related submissions, the Court DENIES Defendants' Rule 56(d) Motion.

Background

On July 26, 2017, President Donald J. Trump announced on Twitter that "the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military." (Dkt. No. 129 at 10.) On August 25, 2017, he issued a Presidential Memorandum directing the

Secretaries of Defense and Homeland Security to authorize the discharge of openly transgender service members, to prohibit the accession of openly transgender individuals, and to prohibit the funding of certain surgical procedures for transgender service members.

Plaintiffs and the State of Washington ("Washington") challenge the constitutionality of the policy excluding transgender individuals from serving openly in the military. Plaintiffs, who include nine individuals (the "Individual Plaintiffs") and three organizations (the "Organizational Plaintiffs"), contend that the policy violates their rights to equal protection, due process, and freedom of expression under the First Amendment. Washington contends that the policy violates substantive due process and equal protection under the Fifth Amendment.

On December 11, 2017, this Court found that the Individual Plaintiffs, the Organizational Plaintiffs, and Washington had standing to challenge the policy, and entered a preliminary injunction preventing Defendants from implementing or enforcing the ban on military service by openly transgender individuals. (Dkt. No. 103.)

On January 25, 2018, Plaintiffs and Washington moved for summary judgment. (Dkt. Nos. 129, 150.) Instead of opposing the motion, Defendants moved for a continuance pursuant to Federal Rule of Civil Procedure 56(d). (Dkt. No. 178.) Defendants claim they "have not previously had an opportunity to fully pursue discovery in this case," and that such discovery is needed "to develop additional facts that will further support, *inter alia*, why Plaintiffs lack

standing to bring their claims and why summary judgment should be granted for Defendants." (*Id.* at 3, 6.)

Discussion

To obtain a continuance under Rule 56(d), Defendants must show that additional discovery would uncover specific facts essential to opposing summary judgment. *See Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2009). Speculative, vague, and conclusory statements as to the existence of such facts are insufficient. *See Maljack Prods., Inc. v. GoodTimes Home Video Corp.*, 81 F.3d 881, 888 (9th Cir. 1996); *Harris v. City of Seattle*, 315 F. Supp. 2d 1112, 1119 (W.D. Wash. 2004).

Defendants claim additional discovery is needed to "test the accuracy and completeness of the factual assertions" and to "develop additional facts" related to Plaintiffs' standing. (Dkt. No. 178 at 3.) In particular, Defendants speculate as to whether Plaintiffs Karnoski and D.L. can "meet the eligibility requirements for service in the military." (*Id.* at 8.)

The Court finds that Defendants have failed to demonstrate that a continuance is warranted, as the "additional facts" sought by Defendants are not "essential" to opposing summary judgment. Irrespective of their ability to meet eligibility requirements, the policy set forth in the Presidential Memorandum denies Plaintiffs Karnoski and D.L. "opportunities to compete for accession on equal footing with non-transgender individuals," "deprives them of dignity," and "subjects them to stigmatization." (Dkt. No. 103 at 7-8.) "Because the

injury lies in the denial of an equal *opportunity* to compete, not the denial of the job itself," the Court need not "inquire into the plaintiff's qualifications (or lack thereof) when assessing standing." *Shea v. Kerry*, 796 F.3d 42, 50 (D.C. Cir. 2015) (emphasis in original).

Further, "[i]f one plaintiff has standing, it does not matter whether the others do." *Thorsted v. Gregoire*, 841 F. Supp. 1068, 1073 (W.D. Wash. 1994); *Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981). The Court already found that the remaining Plaintiffs – including Individual Plaintiffs currently serving in the military, Organizational Plaintiffs, and Washington – have standing to challenge the constitutionality of the policy, and Defendants do not even attempt to explain how additional discovery could show otherwise.

Finally, Defendants have failed to show that they were diligent in seeking the discovery they now claim to need. *See Harris*, 315 F. Supp. 2d at 1119 (Rule 56(d) continuance "is particularly inappropriate when the party has failed to diligently pursue discovery throughout the course of the litigation."); *Mackey v. Pioneer Nat. Bank*, 867 F.2d 520 (9th Cir. 1989) ("[a] movant cannot complain if it fails to diligently pursue discovery before summary judgment."). This case has been pending for nearly six months. Defendants have already litigated standing in their Motion to Dismiss (Dkt. No. 69), and have been aware of Plaintiffs' Motion for Summary Judgment since December 12, 2017. (Dkt. No. 185 at 4.) While Defendants have had adequate time to do so, they concede they have taken "no discovery . . . whatsoever." (Dkt. No. 178 at 5.)

Conclusion

Because Defendants have failed to show that a continuance is warranted, the Court DENIES Defendants' Rule 56(d) Motion. Defendants are ORDERED to file any opposition to Plaintiffs' and Washington's Motions for Summary Judgment within seven (7) days of the date of this Order. Thereafter, Plaintiffs and Washington will have seven (7) days to reply.

The clerk is ordered to provide copies of this order to all counsel.

Dated February 21, 2018.

s/ Marsha J. Pechman
Marsha J. Pechman
United States District Judge

U.S. Department of Justice
Civil Division
950 Pennsylvania Ave. NW, Rm. 3138
Washington, DC 20530
Tel: 202-305-7920

VIA CM/ECF

November 7, 2018

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

RE: *Karnoski v. Trump*, No. 18-35347 (9th Cir.)
(oral argument held October 10, 2018, before Judges Fisher, Clifton, Callahan)

Dear Ms. Dwyer:

This is an appeal from the district court's preliminary injunction against the Department of Defense's policy concerning military service by transgender individuals. In July 2018, this Court denied the government's motion for a stay pending appeal and announced that it would hear argument in October 2018. Shortly thereafter, the government filed a motion to expedite oral argument in order to allow the Court to issue a decision as soon as possible, and no later than December 2018. As the government explained, such expedition would preserve the opportunity for the Supreme Court to decide these issues in the 2018 Term.

On further consideration of the Supreme Court's calendar, the Solicitor General has determined that the government would need to seek

the Supreme Court's review in this case by November 23 in order to preserve that Court's ability to hear and decide the case this Term. If this Court decides the case before that time and the government does not prevail, the government will likely file a petition for a writ of certiorari to review this Court's judgment. If this Court has not yet decided the case by that time, the government will file a petition for a writ of certiorari before judgment.* If this Court were then to issue an adverse decision before the Supreme Court considered that petition in January, the government would ask the Supreme Court to treat the petition as one for a writ of certiorari seeking review of this Court's decision.

The government recognizes and appreciates the time and energy that this Court has already invested in this case, including in the recent oral argument, and we would not lightly seek certiorari before judgment in these circumstances. But it may be necessary to do so here, in light of the importance of the issues at stake, to preserve the Supreme Court's ability to consider those issues this Term. The district court's preliminary injunction prevents the military from implementing a policy that, in its professional judgment, is necessary to ensure readiness, good order and discipline, steady leadership, unit cohesion, and effectiveness and lethality, among other interests. *See, e.g.*, ER195-204. It is critically important to the

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* The government will also seek certiorari before judgment in the related case of *Doe 2 v. Trump*, 315 F. Supp. 3d 474 (D.D.C. 2018), *appeal docketed*, No. 18-5257 (D.C. Cir. Aug. 29, 2018).

armed forces that the injunction not remain in place any longer than is necessary. The government therefore respectfully requests that this Court issue its decision this month, or in any event by early January, so that the Supreme Court will have the benefit of this Court's decision in considering whether to grant review.

Sincerely,

s/Brinton Lucas
Brinton Lucas
Counsel to the Assistant
Attorney General

cc: all counsel (via CM/ECF)

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/Brinton Lucas
BRINTON LUCAS

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al, Plaintiffs, v. DONALD TRUMP, et al, Defendants. ——————— STATE OF WASHINGTON, Intervenor-Plaintiff, v. DONALD TRUMP, et al, Intervenor-Defendants.	Case No: 2:17-cv-1297-MJP BRIEF OF *AMICI* STATES MASSACHUSETTS, CALIFORNIA, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, IOWA, MARYLAND, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF PLAINTIFFS' AND INTERVENOR-PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT Note on Motion Calendar: February 16, 2018

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Cases

Adkins v. City of New York, 143 F. Supp. 3d 134 (S.D.N.Y. 2015) 2-3

Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592 (1982)..... 20

Ass'n of Civilian Technicians, Inc. v. United States, 603 F.3d 989 (D.C. Cir. 2010)..... 11-12, 13

Doe 1 v. Trump, No. 17-1597, 2017 WL 4873042 (D.D.C. Oct. 30, 2017) 11

Log Cabin Republicans v. United States, No. CV 04-08425-VAP, 2010 U.S. Dist. LEXIS 93612 (C.D. Cal. Sept. 9, 2010) 17

Romer v. Evans, 517 U.S. 620 (1996) 11

Stockman v. Trump, No. 5:17-cv-1799 (C.D. Cal. Dec. 22, 2017)..... 11

Stone v. Trump, No. 1:17-cv-2459, 2017 WL 5589122 (D. Md. Nov. 21, 2017) 11

Federal Statutes

10 U.S.C. § 983 15

10 U.S.C. § 2031(a)(2) 15

10 U.S.C. § 2103 14

32 U.S.C. § 106 13

32 U.S.C. § 107 13

32 U.S.C. § 108 13

State Statutes

Cal. Civil Code § 51(b), (e)(5) 3

Cal. Gov. Code § 12940(a) 3
Cal. Gov. Code § 12955..... 3
Cal Mil. & Vet. Code § 146(a) 12
Haw. Rev. Stat. § 368-1..... 3
Haw. Rev. Stat. § 378-2..... 3
Haw. Rev. Stat. § 489-3..... 3
Haw. Rev. Stat. § 515-16..... 3
Mass. Gen. Laws ch. 33, § 41(a)..... 12
Mass. Gen. Laws ch. 151B, § 4 3
Mass. Gen. Laws ch. 272, § 92A 3
Mass. Gen. Laws ch. 272, § 98 3
N.M. Stat. Ann. § 28-1-7 3
N.Y. Mil. Law § 6..... 12
N.Y. Comp. Codes R. & Regs. tit. 9, § 466.13..... 3
Vt. Stat. Ann. tit. 9 §§ 4500 et seq. 3
Vt. Stat. Ann. tit. 6 § 1-11(26)(B)(iii) 3
Vt. Stat. Ann. tit. 21 § 5-495 3

Periodicals and Professional Articles

Aaron Belkin, *Caring for Our Transgender Troops – The Negligible Cost of Transition-Related Care*, 373:12 New Eng. J. Med. 1089 (Sept. 17, 2015) . 8

Agnes Gereben Schaefer et al., *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, RAND Corp. (2016), *available at* https://www.rand.org/pubs/research_reports/RR1530.html..... 5, 9, 8, 10

Allison Ross, Note, *The Invisible Army: Why the Military Needs to Rescind Its Ban on Transgender Service Members*, 23 S. Cal. Interdisc. L. J. 185 (2014)..... 4, 8, 9, 10, 18, 19

Am. Psychol. Ass'n, *Answers to Your Questions about Transgender People, Gender Identity, and Gender Expression* (2014 update) http://www.apa.org/topics/lgbt/transgender.pdf..... 2, 3

Am. Psychol. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychol. Ass'n 832 (2015) 2, 3

Andrew R. Flores et al., *How Many Adults Identify as Transgender in the United States?*, The Williams Inst. (June 2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf..... 2

Bonnie Moradi, *Sexual Orientation Disclosure, Concealment, Harassment, and Military Cohesion: Perceptions of LGBT Military Veterans*, 21 Mil. Psychol. 513 (2009) 18

Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States*, The Williams Inst. (May 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf 2, 13

Joycelyn Elders & Alan M. Steinman, *Report of the Transgender Military Service Commission*, The Palm Ctr. (March 2014), http://archive.palmcenter.org/files/Transgender%20Military%20Service%20Report.pdf 4, 18

Matthew F. Kerrigan, *Transgender Discrimination in the Military: The New Don't Ask, Don't Tell*, 18 Psychol. Pub. Pol'y & L. 500 (2012) 4, 18

Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey, Nat'l Ctr. for Transgender Equality* (Dec. 2016), https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF 2-3, 3n, 4n

Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103(5) Am. J. Public Health 943 (2013) 3

William V. Padula et al.*, Societal Implications of Health Ins. Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis*, Journal of General Internal Medicine (April 16, 2016), *available at* https://www.ncbi.nlm.nih.gov/pubmed/26481647 8

News, Press Releases, and Other Authorities

Amanda Erickson, *Trump Said Transgender Troops Cause 'Disruption.' These 18 Militaries Show Otherwise*, Wash. Post (July 26, 2017) https://www.washingtonpost.com/news/worldviews/wp/2017/07/26/trump-said-transgender-troops-cause-disruption-these-18-militaries-show- otherwise/?utm_term=.a04643d1b8b8 9

Barbara Starr et al., *US Joint Chiefs blindsided by Trump's transgender ban*, CNN (July 27, 2017), http://www.cnn.com/2017/07/27/politics/trump-military-transgender-ban-joint-chiefs/index.html..... 7

Cal. Dep't of Ins., *Economic Impact Assessment of Gender Nondiscrimination in Health Insurance 1–2, Reg. File No. REG-2011-00023* (Apr. 13, 2012), *available at* http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf..... 9

Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity, Human Rights Campaign (last updated Jan. 28, 2017), https://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender 3

Cornelius L. Bynum, *How a Stroke of the Pen Changed the Army Forever*, Wash. Post (July 26, 2017), https://www.washingtonpost.com/news/made-by-history/wp/2017/07/26/how-a-stroke-of-the-pen-changed-the-army-forever/ 19

Directive-Type Memorandum (DTM) 16-005, Military Service of Transgender Service Members, United States Secretary of Defense (June 30, 2016), *available at* https://www.defense.gov/Portals/1/features/2016/0616_policy/DTM-16-005.pdf 6

General John R. Allen et al., *Statement of Fifty-Six Retired Generals and Admirals Warn That President Trump's Anti-Transgender Tweets, If Implemented, Would Degrade Military Readiness*, The Palm Ctr. (August 1, 2017), http://www.palmcenter.org/fifty-six-retired-generals-admirals-warn-president-trumps-anti-transgender-tweets-implemented-degrade-military-readiness..... 6-7, 9, 14

Katie Keith, *15 States and DC Now Prohibit Transgender Insurance Exclusions*, CHIRblog (Mar. 30, 2016), http://chirblog.org/15-states-and-dc-now-prohibit-transgender-insurance-exclusions/ 8

Major General Timothy J. Lowenberg, *The Role of the National Guard in National Defense and Homeland Security*, The National Guard Ass'n of the United States (last visited Jan. 31, 2018), https://www.ngaus.org/sites/default/files/pdf/primer%20fin.pdf 12

Maritime Administration, United States Department of Transportation (last visited Jan. 31, 2018), https://www.marad.dot.gov/education/maritime-academies/..... 15-16

Memorandum from Attorney General to United States Attorneys Heads of Department Components (Oct. 4, 2017), *available at* https://thinkprogress.org/wp-content/uploads/2017/10/20171005-doj-memo-title-vii.pdf..... 20

New York National Guard Economic Impact 2015, New York State Division of Military and Naval Affairs (Jan. 15, 2016), *available at* https://dmna.ny.gov/NYNG_Economic_Impact.pdf 12

NGAUS Fact Sheet: Understanding the Guard's Duty Status, The National Guard Ass'n of the United States (last visited Jan. 31, 2018), https://www.ngaus.org/sites/default/files/Guard%20Statues.pdf..... 12

Presidential Memorandum, 82 FR 41319 (Aug. 25, 2017), *available at* https://www.whitehouse.gov/the-press-office/2017/08/25/presidential-memorandum-secretary-defense-and-secretary-homeland. 7

Safe Zone Program, California Maritime Academy (last visited Jan. 31, 2018), https://www.csum.edu/web/diversity/home/safe-zone-program..... 10

Secretary Ashton Carter, United States Department of Defense, Remarks on Ending the Ban on Transgender Service in the U.S. Military (June 30, 2016), *available at* https://www.defense.gov/News/Speeches/Speech-View/Article/821833/remarks-on-ending-the-ban-on-transgender-service-in-the-us-military/ 5

Secretary of Defense, *Military Service by Transgender Individuals – Interim Guidance* (Sept. 14, 2017), *available at* https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-Transgender-Individuals-Interim-Guidance.pdf 7

Statement by Secretary of Defense Ashton Carter on DOD Transgender Policy, Release No. NR 272-15 (July 13, 2015) *available at* https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/ 4, 5, 10

Statement of Inclusion, University of Massachusetts Lowell (last visited Jan. 31, 2018), https://www.uml.edu/docs/Inclusion%20Statement_tcm18-167589.pdf..... 15

Strategic Midshipman Program, Massachusetts Maritime Academy (last visited Jan. 31, 2018), https://www.maritime.edu/strategic-sealift-midshipman-program 16

Tech. Sgt. Erich B. Smith et al., *Guard Members Ready For New DOD Transgender Policy, National Guard Bureau* (June 15, 2017), http://www.nationalguard.mil/News/Article/1215104/guard-members-ready-for-new-dod-transgender-policy/ 13

Trans Inclusion Policy, Massachusetts Maritime Academy (last visited Jan. 31, 2018), https://www.maritime.edu/trans-inclusion-policy..... 10

Transgender Service in the U.S. Military: An Implementation Handbook, United States Dep't of Defense (Sept. 30, 2016), https://www.defense.gov/Portals/1/features/2016/0616_policy/DoDTGHandbook_093016.pdf 6

INTEREST OF THE *AMICI* STATES

The Commonwealth of Massachusetts, with California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia[1] (the "*Amici* States"), respectfully submit this *amicus curiae* brief in support of Plaintiffs' Motion for Summary Judgment (ECF No. 129) and Intervenor-Plaintiff State of Washington's Motion for Summary Judgment (ECF No. 150).

The *Amici* States share a strong interest in the readiness and effectiveness of our national defense, including an interest in ensuring that our Armed Forces and related institutions recruit, train, retain, and promote qualified service members. The *Amici* States also strongly support the rights of transgender people to live with dignity, to be free from discrimination, and to participate fully and equally in all aspects of civic life. These interests are all best served by allowing transgender people to serve openly in the military.

Many of the *Amici* States have enacted and enforce explicit civil rights protections for transgender people in areas such as employment, housing, health care, education, and public accommodations. We also command National Guard units, support Reserve Officer Training Corps programs, and run maritime academies that embrace principles of nondiscrimination and

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[1] For ease of reference, the District of Columbia shall be referred to herein as a "State."

that the full inclusion of transgender people equality. Our collective experience demonstrates strengthens our communities, our state and federal institutions, and our nation as a whole. Discriminatory prohibitions on participation in civic life, on the other hand, impose significant harms on the *Amici* States and our residents. The *Amici* States therefore have a strong interest in ensuring that our Armed Forces move forward, not backward, and continue to allow transgender people to serve openly in all branches.

For these reasons, the *Amici* States urge the Court to find that the Trump Administration's effort to reinstate a ban on open service by transgender individuals is unconstitutional and grant the Plaintiffs' and Washington's motions for summary judgment.

ARGUMENT

I. A BAN ON TRANSGENDER PEOPLE OPENLY SERVING IN THE MILITARY IS IRRATIONAL AND UNCONSTITUTIONAL.

A. Transgender People Are a Vital Part of the *Amici* States' Communities, Yet Remain a Historically Marginalized Group.

Nationwide, nearly 1.5 million people identify as transgender.[2] They live in the *Amici* States (as

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[2] Andrew R. Flores et al., *How Many Adults Identify as Transgender in the United States?,* The Williams Inst., 3 (June 2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf.

well as every other State, American Samoa, Guam, and Puerto Rico)[3] and contribute to our communities in countless ways – as parents, educators, students, firefighters, polic officers, musicians, writers, nurses, and doctors, to name a few. Approximately 150,000 veterans, active-duty service members, and members of the National Guard or Reserves identify as transgender, and transgender individuals volunteer to serve and protect our country through the Armed Forces at approximately twice the rate of other adults in the general population.[4] Nothing about being transgender inhibits a person's ability to serve in the military or otherwise contribute to society.[5] To the contrary, the experience of the *Amici* States

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[3] Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey,* Nat'l Ctr. for Transgender Equality, 53, 244 (Dec. 2016), https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF.

[4] Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States,* The Williams Inst., 1 (May 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf (estimating 134,300 transgender veterans and 15,500 members in active service, the National Guard, or Reserves).

[5] *See* Am. Psychol. Ass'n, *Answers to Your Questions about Transgender People, Gender Identity, and Gender Expression*, 3 (2014 update), http://www.apa.org/topics/lgbt/transgender.pdf; Am. Psychol. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychol. Ass'n 832, 834 (2015); *see also* Declaration of George R. Brown, ECF No. 143, ¶¶ 20-22.

shows that transgender individuals are just as capable as their non-transgender counterparts and make a meaningful positive impact in our schools, workplaces, and communities.

Still, the transgender community has suffered "a history of persecution and discrimination" that persists into the present day. *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015). According to the 2015 United States Transgender Survey ("2015 USTS"), transgender individuals face verbal harassment and physical violence at home, in school, and in their communities; grapple with mistreatment in the workplace and a higher rate of unemployment than the general United States population; confront homelessness and difficulty obtaining and maintaining housing; and endure myriad other forms of discrimination in education, employment, housing, and access to health care due to their gender identity.[6] Such discrimination and the associated stigma often cause severe emotional and psychological distress and lead to disproportionately high rates of depression and anxiety in the transgender population.[7]

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[6] 2015 USTS, *supra* note 3, at 8-16; *see* Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population,* 103(5) Am. J. Public Health 943, 943 (2013) ("Transgender people face systematic oppression and devaluation as a result of social stigma attached to their gender nonconformity.").

[7] *See* Bockting, *supra* note 6, at 949 (noting that these mental health outcomes "were not merely a manifestation of gender dysphoria" and were associated "with enacted and felt stigma"); Am. Psychol. Ass'n, *Answers to Your Questions about*

To combat such discrimination, twenty States – including many of the *Amici* States – have enacted civil rights protections for transgender people in education, employment, health care, housing, and/or public accommodations.[8] And about 225 local governments prohibit discrimination based on gender identity or expression by public and private employers in their jurisdictions.[9] As the experiences of the *Amici* States and these other jurisdictions show, transgender-inclusive policies help to ease the stigma on transgender people, thereby mitigating the negative impact on their educational, work, and health outcomes. Such policies also foster

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Transgender People, *supra* note 5, at 3 (explaining that "lack of acceptance within society, direct or indirect experiences with discrimination, or assault . . . may lead many transgender people to suffer with anxiety, depression or related disorders at higher rates than nontransgender persons"); Am. Psychol. Ass'n, *Guidelines*, *supra* note 5, at 840.

[8] *See, e.g.*, Mass. Gen. Laws ch. 151B, § 4; Mass. Gen. Laws ch. 272, §§ 92A, 98; Cal. Civil Code § 51(b), (e)(5); Cal. Gov. Code § 12940(a); Cal. Gov. Code § 12955; Haw. Rev. Stat. § 368-1; Haw. Rev. Stat. § 378-2; Haw. Rev. Stat. § 489-3; Haw. Rev. Stat. § 515-16; N.M. Stat. Ann. § 28-1-7; N.Y. Comp. Codes R. & Regs. tit. 9 § 466.13 (interpreting N.Y. Exec. Law § 296 (Human Rights Law) definition of "sex" to include gender identity); Vt. Stat. Ann. tit. 9 §§ 4500 et seq.; Vt. Stat. Ann. tit. 6 § 1-11(26)(B)(iii); Vt. Stat. Ann. tit. 21 § 5-495.

[9] *Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity*, Human Rights Campaign (last updated Jan. 28, 2017), https://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender.

a more just and productive society for all our residents.

B. The Military Lifted Historical Prohibitions on Service by Transgender Individuals After a Lengthy, Deliberative Process.

As in other aspects of society, transgender individuals who volunteered to fight for our country were long met with discrimination and excluded from military service in the Armed Forces through a patchwork of medical and administrative regulations.[10] To join and advance in the military, thousands of individuals were thus forced to conceal their gender identity or risk discharge.[11] Many other transgender recruits were unable to enlist in the first place. This was the reality for decades – unchanged by the adoption of "Don't Ask, Don't Tell" ("DADT") in the 1990s and the subsequent repeal of that policy in 2011 (which ushered in the era of open service by

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[10] *See e.g.*, Matthew F. Kerrigan, *Transgender Discrimination in the Military: The New Don't Ask, Don't Tell*, 18 Psychol. Pub. Pol'y & L. 500, 506-508 (2012).

[11] *Id.* at 502; 2015 USTS, *supra* note 3, at 170-171; Statement by Secretary of Defense Ashton Carter on DOD Transgender Policy, Release No. NR 272-15 (July 13, 2015) *available at* https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/ ("[T]ransgender men and women in uniform have been there with us, even as they often had to serve in silence alongside their fellow comrades in arms.").

gay, lesbian, and bisexual individuals).[12] After the DADT repeal, however, the public and the military began to reexamine the categorical prohibition against transgender individuals serving in the military, and determined that it was not only untenable, but counterproductive.[13]

Ultimately, in July 2015, then-Secretary of Defense Ashton Carter publicly acknowledged that Department of Defense regulations regarding transgender service members were "outdated," "contrary to our value of service and individual merit," and harmful to "transgender soldiers, sailors, airmen, and Marines – real, patriotic Americans."[14] Secretary Carter established a working group to study "the policy and readiness implications of welcoming transgender persons to serve openly" (the "DOD Working Group").[15] As the Plaintiffs cogently explain (and their supporting declarations show),

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[12] *See* Kerrigan, *supra* note 10, at 501, 503-504.

[13] *See* Joycelyn Elders & Alan M. Steinman, *Report of the Transgender Military Service Commission*, The Palm Ctr., 3-5 (March 2014), http://archive.palmcenter.org/files/Transgender%20Military%20Service%20Report.pdf; Allison Ross, Note, *The Invisible Army: Why the Military Needs to Rescind Its Ban on Transgender Service Members*, 23 S. Cal. Interdisc. L. J. 185 (2014).

[14] Statement by Secretary Carter, No. NR-272-15, *supra* note 11.

[15] *Id.*

the DOD Working Group executed its mission in a systematic and thoughtful manner: it sought to consider all issues that might arise from including openly transgender individuals in the military (including those related to readiness, operational effectiveness, and cost); consulted with experts, active transgender service members, and military personnel from inside and outside of the United States; and commissioned the RAND National Defense Research Institute ("RAND") to analyze the potential health care needs of transgender service members, the potential readiness implications of allowing transgender individuals to serve openly, and the experience of foreign militaries that permit open service by transgender individuals.[16] *See* Pl. Motion, ECF No. 129, at 2-4 (and declarations cited).

As a result of this year-long process, the DOD Working Group concluded that excluding transgender people from military service undermined effectiveness and readiness, *id.* at 4; and, on June 30, 2016, Secretary Carter declared an

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[16] *See* Secretary Ashton Carter, United States Department of Defense, Remarks on Ending the Ban on Transgender Service in the U.S. Military (June 30, 2016), *available at* https://www.defense.gov/News/Speeches/Speech-View/Article/821833/remarks-on-ending-the-ban-on-transgender-service-in-the-us-military/; Agnes Gereben Schaefer et al., *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, RAND Corp., xi-xii, 39-47 (2016), *available at* https://www.rand.org/pubs/research_reports/RR1530.html (hereinafter "RAND Report").

end to the ban.[17] On the same day, the Secretary laid out plans to implement the military's new, inclusive policies, under which: (i) otherwise qualified service members could no longer be involuntarily separated, discharged or denied reenlistment or continuation of service, solely on the basis of gender identity; (ii) current transgender service members were allowed to serve openly and have access to gender-related medical care; and (iii) within one year, the military would begin accessing transgender individuals who met all physical and fitness standards.[18] Three months later, the Department of Defense issued a 71-page handbook to guide service members and commanders through these changes.[19] Among other things, this handbook outlined a framework for bringing gender-related medical care into the Military Health System and specified that the open service policy extended to admission to accession programs, like the Reserve Officers Training Corps ("ROTC").[20]

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[17] Remarks of Secretary Carter (June 30, 2016), *supra* note 16.

[18] *See* Directive-Type Memorandum (DTM) 16-005, Military Service of Transgender Service Members, United States Secretary of Defense (June 30, 2016), *available at* https://www.defense.gov/Portals/1/features/2016/0616_policy/DTM-16-005.pdf.

[19] *Transgender Service in the U.S. Military: An Implementation Handbook*, United States Dep't of Defense (Sept. 30, 2016), https://www.defense.gov/Portals/1/features/2016/0616_policy/DoDTGHandbook_093016.pdf.

[20] *Id.* at 18, 31, 40

By late 2016, each of the military branches had taken steps necessary to implement the new open service policy, and transgender service members, National Guard members, and ROTC cadets in the *Amici* States and across the country were finally freed to disclose – and many did disclose – their gender identity to their command and to their fellow service members.[21] Although a comprehensive study of the policy's first year has not yet been conducted, there is no evidence that it has disrupted military readiness, operational effectiveness, or morale. To the contrary, anecdotal accounts indicate that the military's new inclusive policies were quickly beginning to have a positive effect, as capable and well-qualified individuals who were already serving finally were able to do so authentically.[22]

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[21] *See, e.g.*, Pl. Motion, ECF No. 129, at 4-5; Declaration of Megan Winters ("Winters Decl."), ECF No. 136, ¶¶ 11-17, 27; Declaration of Phillip Stephens ("Stephens Decl."), ECF No. 135, ¶¶ 11- 19; Declaration of Terece Lewis ("Lewis Decl."), ECF No. 134, ¶¶ 11-15.

[22] *See* Declaration of Deborah Lee James, ECF No. 146, ¶¶ 35, 38-39; Declaration of Eric Fanning, ECF No. 145, ¶¶ 51-53, 55; Declaration of Raymond Edwin Mabus, Jr., ECF No. 144, ¶ 24, 37, 43; Winters Decl., ECF No. 136, ¶¶ 16-18, 41-42; Stephens Decl., ECF No. 135, ¶¶ 18-20; Lewis Decl., ECF No. 134, ¶¶ 15, 18, 25; Declaration of Lindsey Muller, ECF No. 133, ¶¶ 19, 23-24; Declaration of Cathrine Schmid, ECF No. 131, ¶¶ 18-21; *see also* General John R. Allen et al.*, Statement of Fifty-Six Retired Generals and Admirals Warn That President Trump's Anti-Transgender Tweets, If Implemented, Would Degrade Military Readiness*, The Palm Ctr. (August 1, 2017),

C. President Trump's Abrupt Reversal of the Military's Open Service Policy Is Unsupported by Any Defensible Rationale.

On July 26, 2017, President Trump abruptly changed course, announcing in a series of Twitter posts that "the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military. . . Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail." The President expanded on this announcement one month later in a memorandum directing the Secretaries of Defense and Homeland Security: (i) to indefinitely refrain from accessing transgender individuals into the military; (ii) to halt "all use of DOD or DHS resources to fund sex reassignment surgical procedures [as of March 22, 2018], except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex"; and (iii) to "return" to the pre-June 2016 practice of excluding and separating transgender service members from the military by March 23, 2018.[23] In an effort to justify this abrupt step

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http://www.palmcenter.org/fifty-six-retired-generals-admirals-warn-president-trumps-anti-transgender-tweets-implemented-degrade-military-readiness (hereinafter "Statement of Retired Military Leaders") ("[T]ransgender troops have been serving honorably

[23] Presidential Memorandum, 82 FR 41319 §§ 1, 2 (Aug. 25, 2017), *available at* https://www.whitehouse.gov/the-press-

backward – apparently announced without any consultation with top military leaders[24]– the President has cited to the allegedly negative impact that open service by transgender individuals would have on the military's budget and effectiveness and raised concerns about unit cohesion among the troops.[25] But each of these claims was discredited by the DOD Working Group, as well as by other researchers and scholars. They are also contradicted by the experience of the *Amici* States.

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office/2017/08/25/presidential-memorandum-secretary-defense-and-secretary-homeland. The fact that the Department of Defense has issued interim guidance allowing current transgender service members to remain in their posts and to reenlist until the Defense Secretary issues "final guidance" in March 2018 is cold comfort to transgender service members whose service and personhood the President devalued in a series of tweets and who are, at best, left in a state of uncertainty or sidelined until the Secretary issues additional guidance. *See* Secretary of Defense, Military Service by Transgender Individuals – Interim Guidance (Sept. 14, 2017), *available at* https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-Transgender-Individuals-Interim-Guidance.pdf.

[24] Barbara Starr et al., *US Joint Chiefs blindsided by Trump's transgender ban*, CNN (July 27, 2017), http://www.cnn.com/2017/07/27/politics/trump-military-transgender-ban-joint-chiefs/index.html.

RAND and other researchers have already dispelled the myth that transition-related health care costs would strain military budgets.[26] To the contrary, they have concluded that – because only a small proportion of service members are statistically likely to seek transition-related treatment each year – the associated costs would "have little impact on and represent[] an exceedingly small proportion" of the military's overall health care expenditures.[27] This conclusion comports with the experience of

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[25] *See* Presidential Memorandum, *supra* note 23, at § 3; Donald Trump (@realDonaldTrump), Twitter posts (July 26, 2017).

[26] RAND Report, *supra* note 16, at xi-xii, 33-38, 70; Aaron Belkin, *Caring for Our Transgender Troops –The Negligible Cost of Transition-Related Care*, 373:12 New Eng. J. Med. 1089, 1090-1091 (Sept. 17, 2015).

[27] RAND Report, *supra* note 16, at xi-xii; *see id.* at 31-32, 70 (estimating that transition-related healthcare costs would increase military healthcare costs by $2.4 million to $8.4 million or – at most – 0.13%); Belkin, *supra* note 26, at 1090 (estimating that transition-related care will cost the military $5.6 million annually and predicting that "under any plausible estimation method, the cost amounts to little more than a rounding error in the military's $47.8 billion annual health care budget"); Ross, *supra* note 13, at 210-212 (arguing that cost objections to open military serve are "exaggerated" and "speculative" in light of the experience of other countries, the small percentage of transgender service members who would seek gender affirmation surgery, and the cost of such surgery relative to the cost of surgery for common military injuries).

many *Amici* States in extending comprehensive health care coverage to transgender individuals, as several States have done so without incurring heightened financial costs or increased premiums.[28] In California, for example, the Insurance Commissioner conducted an extensive cost-benefit analysis of prohibiting private insurers from denying coverage for transition-related services and found that such a prohibition would not only have an "immaterial" impact on premium costs, but would actually benefit individuals, employers, and insurance carriers because it would ultimately improve health outcomes for transgender individuals.[29]

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[28] *See* Katie Keith, *15 States and DC Now Prohibit Transgender Insurance Exclusions*, CHIRblog (Mar. 30, 2016), http://chirblog.org/15-states-and-dc-now-prohibit-transgender-insurance-exclusions/ ("[T]he removal of transgender exclusions [from health plans] does not impose significant costs."); William V. Padula et al., *Societal Implications of Health Ins. Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis*, Journal of General Internal Medicine (April 16, 2016), *available at* https://www.ncbi.nlm.nih.gov/pubmed/26481647 ("Health insurance coverage for the U.S. transgender population is affordable and cost-effective, and has a low budget impact on U.S. society.").

[29] Cal. Dep't of Ins., *Economic Impact Assessment of Gender Nondiscrimination in Health Insurance* 1–2, Reg. File No. REG-2011-00023 (Apr. 13, 2012), *available at* http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf (referencing data from the City and County of San Francisco, the University of California, and a study of

Likewise, RAND's research for the DOD Working Group showed that allowing transgender people to serve openly would have no adverse impact on unit cohesion, operational effectiveness, or readiness.[30] As the RAND Report explained, transition-related constraints on the deployability of transgender service members would be "negligible" and have a "minimal impact on readiness."[31] Existing data also indicate that allowing transgender individuals to serve openly would have a minimal impact – if any – on unit cohesion, and may actually improve the bond among troops by removing stressors that decrease performance ability.[32] For example, of the eighteen foreign nations – including Australia, Britain, Canada, Israel, and Sweden – that allow transgender individuals to serve openly, none has reported any ill effects.[33] Indeed, an extensive inquiry into Canada's decision to open military service to transgender individuals revealed that "the increased diversity improved readiness by

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Fortune 500 companies demonstrating that "extremely low utilization result[ed] from elimination of gender discrimination [in health care plans], as would be expected with such a small population").

[30] RAND Report, *supra* note 16, at xiii, 39-47.

[31] *Id.* at 46-47.

[32] *Id.* at xii; Ross, *supra* note 13, at 204-206, 209-211.

[33] *See* Ross, *supra* note 13, at 206-208; Amanda Erickson, *Trump Said Transgender Troops Cause 'Disruption.' These 18 Militaries Show Otherwise*, Wash. Post (July 26, 2017)

giving 16 units the tools to address a wider variety of situations and challenges."[34] The historical experience of the United States military bolsters this finding: each time our country has diversified the Armed Forces – whether it be through racial integration, expanding combat opportunities for women, or allowing openly gay, lesbian, and bisexual individuals to serve – the military grappled with unit cohesion objections, rejected them, and grew stronger.[35]

The experience of the *Amici* States contradicts the President's stated rationale for reinstating a ban on openly transgender service members on this point as well. For years, transgender individuals have served in the National Guard and have done so with honor and distinction. After the ban was lifted in

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https://www.washingtonpost.com/news/worldviews/wp/2017/07/26/trump-said-transgender-troops-cause-disruption-these-18-militaries-show-otherwise/?utm_term=.a04643d1b8b8; Statement of Retired Military Leaders, *supra* note 22 ("Eighteen foreign nations, including the UK and Israel, allow transgender troops to serve, and none has reported any detriment to readiness.").

[34] RAND Report, *supra* note 16, at 45.

[35] *See* Ross, *supra* note 13, at 205-206; Statement by Secretary Carter, No. NR-272-15, *supra* note 11 ("Over the last fourteen years of conflict, the Department of Defense has proven itself to be a learning organization. This is true . . . with respect to institutional activities, where we have learned from how we repealed 'Don't Ask, Don't Tell,' from our efforts to eliminate sexual assault in the military, and from our work to open up ground combat positions to women.").

2016, some of these Guard members came out to their superiors and peers, and the *Amici* States are unaware of any adverse consequences for the Guard. Transgender cadets in ROTC programs supported by many of our colleges and universities similarly disclosed their gender identities – also with no known adverse consequences. In addition, three *Amici* States are proud to support maritime academies that are designed to prepare students for military or civilian careers in maritime-related fields. These academies – the Massachusetts Maritime Academy, the California Maritime Academy, and the State University of New York Maritime College – welcome transgender students.[36] The *Amici* States' experience with the National Guard, ROTC programs, and maritime academies is consistent with the broader lessons we have learned from implementing transgender-inclusive laws and policies: welcoming transgender individuals to live and participate openly in society not only improves their lives, but also makes our communities stronger as a whole.

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[36] *See, e.g., Trans Inclusion Policy*, Massachusetts Maritime Academy (last visited Jan. 31, 2018), https://www.maritime.edu/trans-inclusion-policy; *Safe Zone Program,* California Maritime Academy (lasted visited Jan. 31, 2018), https://www.csum.edu/web/diversity/home/safe-zone-program.

In sum, the Trump Administration has made an affirmative, irrational decision to reverse recent progress and reinstitute formal discrimination against transgender individuals in the military. As this Court and others across the country have already recognized, the Administration's purported justifications for reinstating the ban are contradicted by research, reason, and experience. *See* ECF No. 103 at 16-17; *Doe 1 v. Trump*, No. 17-1597, 2017 WL 4873042, *30, 33 (D.D.C. Oct. 30, 2017); *Stone v. Trump*, No. 1:17-cv-2459, 2017 WL 5589122, *16 (D. Md. Nov. 21, 2017); *Stockman v. Trump*, No. 5:17-cv-1799, at 20 (C.D. Cal. Dec. 22, 2017). It cannot withstand even minimal scrutiny. *See Romer v. Evans*, 517 U.S. 620, 632 (1996) (where government action discriminates against a disadvantaged class, is "discontinuous with the reasons offered for it," and "seems inexplicable by anything but animus toward the class it affects," it cannot withstand even minimal scrutiny).

II. REINSTATING A BAN ON MILITARY SERVICE BY TRANSGENDER PEOPLE WILL HARM THE *AMICI* STATES AND OUR RESIDENTS.

National security and emergency and disaster management are not simply matters of federal concern. All States play important roles – both direct and indirect – in providing for our collective security and have an interest in ensuring the strongest, most inclusive military possible. We also share an interest in avoiding becoming entangled in discriminatory federal policies. The Administration's decision to reinstitute a ban on open service by transgender individuals harms all of these interests. It also harms

the *Amici* States' veterans, active service members, and those who wish to serve, and our transgender communities more broadly.

A. The Ban Will Entangle the *Amici* States in Invidious Discrimination Harmful to Our National Guard.

Reinstituting the ban will impede the *Amici* States' administration and control of the National Guard and undermine the efficacy of those forces in protecting our communities. The National Guard is a reserve component of the United States Armed Forces, yet remains a "hybrid entity that carefully combines both federal and state characteristics." *Ass'n of Civilian Technicians, Inc. v. United States*, 603 F.3d 989, 992 (D.C. Cir. 2010) (quoting *Lipscomb v. Fed. Labor Relations Auth.*, 333 F.3d 611, 614 (5th Cir. 2003)). While the National Guard is primarily funded by the federal government and subject to federal requirements for service, the state National Guards and their individual units generally operate under state control.[37] As a result, state actors oversee recruitment efforts, exercise day-to-day command over service members in training and most forms of

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[37] *See* Major General Timothy J. Lowenberg, *The Role of the National Guard in National Defense and Homeland Security*, The National Guard Ass'n of the United States, 3 (last visited Jan. 31, 2018), https://www.ngaus.org/sites/default/files/pdf/primer%20fin.pdf (explaining that the National Guard is only under the exclusive control of the federal government when it is activated under Title 10 to supplement the regular components of the federal ground and air forces).

active duty,[38] and deploy the Guard in response to natural or man-made disasters in their own States and across the country.[39] Each of the *Amici* States funds and supports its National Guard forces to ensure that its citizen-soldiers are highly trained and ready to perform a range of critical state missions and to support national defense operations as needed. For example, the California National Guard – which comprises over 18,000 members – receives approximately $50 million in state funds annually and is regularly deployed to assist with firefighting and law enforcement efforts, search and rescue missions, disaster response, homeland defense, and cyber-defense and -security. Similarly, in 2015, the New York National Guard, with over 15,000 members, received more than $66 million in state funds to cover salaries, supplies, facilities, and education.[40]

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[38] *Ass'n of Civilian Technicians*, 603 F.3d at 993 (explaining that, under Title 32 of the United States Code, whenever not called to "federal duty by the President . . . a state National Guard is under the command of the state Governor and State Adjutant General, who is appointed by the Governor").

[39] *See NGAUS Fact Sheet: Understanding the Guard's Duty Status*, The National Guard Ass'n of the United States (last visited Jan. 31, 2018), https://www.ngaus.org/sites/default/files/Guard%20Statues.pdf; *see, e.g.*, Mass. Gen. Laws ch. 33, § 41(a); Cal Mil. & Vet. Code § 146(a); N.Y. Mil. Law § 6.

[40] *See New York National Guard Economic Impact 2015*, New York State Division of Military and Naval Affairs (Jan. 15, 2016), *available at* https://dmna.ny.gov/NYNG_Economic_Impact.pdf.

Over the years, transgender individuals have ably served the *Amici* States – and many States across the country – through the National Guard.[41] After the Department of Defense lifted restrictions on service by transgender members, *see supra* Part I.B, the *Amici* States had to act swiftly to comply with the Department's new policies and ensure that these individuals could serve openly, without fear of discharge.[42] These efforts did not disrupt the operation of the National Guard. To the contrary, by empowering our individual members and diversifying our ranks, these initiatives further enhanced the capability and effectiveness of our state-sited defense and security forces.

Because of the hybrid nature of the National Guard, however, the *Amici* States are required to comply with any directive the Trump Administration issues with respect to transgender service members, or risk losing much-needed funding for our National Guard units. *See Ass'n of Civilian Technicians*, 603 F.3d at 993; 32 U.S.C. §§ 106-108. That would mean, absent any court intervention, enforcing a prohibition on accepting openly transgender recruits. If fully implemented, the ban also may require

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[41] Gates & Herman, *supra* note 4, at 1 (estimating 15,500 members in active service, the National Guard, or Reserves).

[42] *See* Tech. Sgt. Erich B. Smith et al., *Guard Members Ready For New DOD Transgender Policy*, National Guard Bureau (June 15, 2017), http://www.nationalguard.mil/News/Article/1215104/guard-members-ready-for-new-dod-transgender-policy/.

National Guard leadership in the *Amici* States to renege on assurances made to existing transgender service members who came out in reliance on the 2016 open service policy; to pass over qualified transgender individuals for promotion; or to discharge them from service altogether.

In effect, the Administration's policy reversal threatens to require the *Amici* States to undo our efforts to provide an inclusive environment for current transgender service members, and instead foist upon us the discriminatory policies of the past. It will entangle the *Amici* States – once again – in a federal scheme that requires us to differentiate National Guard recruits and service members based on a characteristic that has been demonstrated to have nothing to do with their ability to serve. Such discrimination is in direct conflict with the policies of the *Amici* States, including our prohibitions on discrimination based on gender identity in public or private employment and our laws extending civil rights protections to transgender residents in other aspects of civic life (such as housing and public accommodations). *See supra* note 8.

Equally important, excluding transgender individuals will diminish the effectiveness of the National Guard and thus hamper the *Amici* States' emergency and disaster response efforts. As described above, National Guard members are largely under state control and devoted to state-based missions, such as disaster relief and search and rescue operations. If forced to reinstate a complete ban on transgender service members, the *Amici* States could also lose the aggregate skills and knowledge of our many transgender service members

and – with them – the value of the training and experience the *Amici* States provided through the Guard. Because the *Amici* States maintain and rely on the National Guard to assist us in times of emergency, a reduction in those forces inflicts a significant harm upon us.[43]

B. The Ban Will Entangle the *Amici* States in Harmful Discrimination Limiting Opportunities at Our Public Institutions of Higher Education.

The harmful effects of banning open service by transgender individuals extend beyond the Armed Forces and National Guard to the *Amici* States' public colleges and universities that support ROTC programs and to state-run maritime academies.

ROTC programs are designed to train commissioned officers of the Armed Forces; they are located on and supported by college campuses but subject to federal entry requirements.[44] Many public

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[43] *See* Statement of Retired Military Leaders, *supra* note 22 ("The proposed ban, if implemented, would cause significant disruptions, deprive the military of mission-critical talent, and compromise the integrity of transgender troops who would be forced to live a lie, as well as non-transgender peers who would be forced to choose between reporting their comrades or disobeying policy. As a result, the proposed ban would degrade readiness even more than the failed 'don't ask, don't tell policy.'").

[44] *See* 10 U.S.C. § 2103. Similarly, many elementary and secondary schools in the *Amici* States host the Junior Reserve Officers' Training Corps ("JROTC"). JROTC is a

colleges and universities in the *Amici* States host ROTC programs, provide them with physical space, and, in some instances, financial support in the form of a budget or scholarship funds. For example, one public university in Massachusetts provides its Army and Air Force ROTC programs with a total annual budget of approximately $30,000 and designates an additional $200,000-$300,000 per year for scholarships available only to ROTC cadets. Reinstating the ban on open service by transgender individuals will render these ROTC programs – together with the scholarship and career opportunities they provide – actually or effectively unavailable to transgender students, who will not be eligible to serve openly in the Armed Forces upon graduation. The ban will thus harm the *Amici* States' public colleges and universities by limiting their ability to extend the same opportunities to all of their students, in direct contravention of many schools' own transgender-inclusive policies and the *Amici* States' broader anti-discrimination laws.[45]

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program for high school and middle school students that aims to "instill in students . . . the values of citizenship, service United States, and personal responsibility and a sense of accomplishment." 10 U.S.C. § 2031(a)(2).

[45] *See supra* note *8; Statement of Inclusion*, University of Massachusetts Lowell (last visited Jan. 31, 2018), https://www.uml.edu/docs/Inclusion%20Statement_tcm18-167589.pdf. These public institutions also have no real recourse, as Congress has barred institutions of higher education that receive federal funding from preventing the Armed Forces from establishing or operating ROTC programs on campus. 10 U.S.C. § 983.

The ban also works a distinct set of harms on one subset of state-run educational institutions: the specialized maritime academies operated by Massachusetts, California, and New York that serve as pathways for students interested in pursuing maritime professions or becoming commissioned officers in the Coast Guard or other branches of the Armed Forces. *See supra* at 10. In addition to the state-of-the-art training and curriculum they offer all students, maritime academies extend special benefits to those who intend to join the military, including funding conditioned on subsequent military service[46] and programs that enable students to obtain military commissions after graduation. For example, the maritime academies all offer a "Strategic Sealift Midshipman [or Officer] Program," which allows students earning Coast Guard Licenses to be commissioned as officers in the Navy Reserve upon graduation and provides stipends to help pay for school.[47] As with the ROTC programs (and

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[46] The Student Incentive Payment (SIP) Program is offered for students of all the academies. Following graduation, SIP students must either enter the U.S. Armed Forces on active duty or must be in a reserve unit for at least six years, along with other requirements. *See* Maritime Administration, United States Department of Transportation (last visited Jan. 31, 2018), https://www.marad.dot.gov/education/maritime-academies/.

[47] *See, e.g.*, *Strategic Midshipman Program*, Massachusetts Maritime Academy (last visited Jan, 31, 2018), https://www.maritime.edu/strategic-sealift-midshipman-program.

against these academies' own anti-discrimination policies), reinstating a ban on transgender service members will effectively require these public institutions to offer different pportunities to their students based solely on their gender identity. That is, while non-transgender students will be eligible for the full range of services, scholarships, and programs at the academies, transgender students will be unable to take advantage of a number of benefits – those that depend on a future military career. In light of the more limited opportunities that will be available to transgender students after graduation, the overall education these academies provide will be of significantly lesser value. Both students and the maritime academies themselves will therefore be worse off as a result of the ban.

C. The Ban Will Harm the *Amici* States' Veterans, Active Service Members, and Those Who Wish to Serve.

The Trump Administration's irrational decision to reinstate the ban on openly transgender people from military service will also directly harm the residents of the *Amici* States: our veterans, active service members, and those who wish to serve.

The harm to the dignity of transgender veterans and soldiers alone is significant. The ban degrades the service of the 150,000 veterans, active-duty service members, and members of the National Guard and Reserves who identify as transgender, as well as the intentions of those who wish to serve. Reinstating the ban serves no purpose but to deny this particular group – deemed less worthy by the Administration – equal opportunity and equal

treatment under the law. It relegates them to second-class status, sending the unmistakable message that they are unfit to serve or that their service is not valued, simply due to their gender identity.

The ban also harms the many transgender residents of the *Amici* States who relied upon the assurance of the federal government that they were welcome to serve openly. Many service members in the National Guard and other branches of the military came out as transgender to their command based upon that assurance, believing that they would not thereby be deprived of their opportunity to serve (or their livelihoods). The Trump Administration has broken that promise to the grave detriment of these individuals. Absent court intervention, openly transgender service members may be targeted for discharge or other adverse action. Even if current transgender service members are permitted to serve for the time being, the Administration's intent – to ultimately bar all transgender individuals from serving by mid-March 2018 – is clear. And in the meantime, these service members must continue their service in limbo and with a shadow cast over them.[48]

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[48] *See* Declaration of Mark J. Eitelberg, ECF No. 147, ¶¶ 6-17; Declaration of Ashley Broadway, ECF No. 141, ¶¶ 7-10.

Similarly, transgender residents of the *Amici* States who took steps to prepare for careers in the military, by joining ROTC or enrolling in maritime academies, for example, did so in reliance on the promise that they would be able to serve openly. They too face losing the opportunity to serve, and along with it the investment they have made in their careers thus far and other opportunities foregone.

Finally, transgender service members who have not yet revealed their gender identities, together with those who wish to pursue careers in the military, now face the Hobson's choice of being honest about who they are and being discharged or denied accession outright, or hiding their identities and serving in fear of being discovered.[49] Denying otherwise qualified transgender individuals the opportunity to serve denies them equal participation in a core civic activity. And forcing transgender individuals to hide their identities in order to enlist or continue serving is extremely harmful to their health and wellbeing[50] – a reality evidenced by the

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[49] *See* Declaration of Jane Doe, ECF No. 138, ¶¶ 9-16; *cf. Log Cabin Republicans v. United States*, No. CV 04-08425-VAP, 2010 U.S. Dist. LEXIS 93612, *29-65 (C.D. Cal. Sept. 9, 2010) (recounting testimony of service members describing experience of serving under a "cloud of fear" during Don't Ask Don't Tell).

[50] *See* Elders & Steinman, *supra* note 13, at 4 ("We determined not only that there is no compelling medical reason for the ban, but also that the ban itself is an expensive, damaging and unfair barrier to health care access for the approximately 15,450 transgender personnel who serve

experiences of the thousands of gay, lesbian, and transgender service members who have served under previous discriminatory policies.[51] Concealing core aspects of one's identity has a negative impact on mental health.[52] The need to hide their gender identity causes transgender service members to be less likely to seek necessary mental health and medical care; because there is limited confidentiality for communications with doctors and therapists in the military, these service members cannot be candid with their health care providers and are thus more likely to avoid treatment.[53]

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currently in the active, Guard and reserve components. . . . Research shows that depriving transgender service members of medically necessary health care poses significant obstacles to their well-being.")

[51] *See, e.g.*, Declaration of Admiral Michael Mullen, ECF No. 148, ¶ 14 ("When I led our armed forces under [Don't Ask Don't Tell], I saw firsthand the harm to readiness and morale when we fail to treat all service members according to the same standards. There are thousands of transgender Americans currently serving and there is no reason to single them out[,] to exclude them[,] or deny them the medical care that they require.").

[52] Ross, *supra* note 13, at 209 (citing Moradi, *infra* note 54, at 514).

[53] *See* Kerrigan, *supra* note 10, at 513-14; Elders & Steinman, *supra* note 13, at 4 ("According to one recent study, 'Mental health, medical and substance abuse services obtained outside the military are supposed to be communicated back to the military, so transgender people who seek these services elsewhere will risk exposure . . . This leads individuals to go without treatment, allowing symptoms to exacerbate, and causing some to treat symptoms with alcohol or drugs, which could lead to substance abuse or dependence.'").

Further, prohibiting open service estranges transgender service members from their fellow troops, undermining the group's ability to trust and bond.[54] "Concealment leads to . . . stress and isolation, which can lead to decreased performance ability."[55] The negative repercussions of concealment are especially pertinent in the military, where "interpersonal connection, support, and trust among unit members are thought to be paramount to unit cohesion and effectiveness."[56] Thus, depriving transgender service members of the trust and bonding with fellow service members that is so fundamental to the military experience not only harms them individually, it also undermines military readiness and effectiveness generally.

D. The Ban Will Harm Our Transgender Communities More Broadly.

The consequences of the Trump Administration's reversal on transgender service members are not limited to the Armed Forces and may be felt across society at large. The military is

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[54] *See Ross*, *supra* note 13, at 209; *cf.* Bonnie Moradi, *Sexual Orientation Disclosure, Concealment, Harassment, and Military Cohesion: Perceptions of LGBT Military Veterans*, 21 Mil. Psychol. 513 (2009) (studying the impact of concealment versus disclosure of sexual orientation in the military and finding that concealment relates negatively to unit social and task cohesion and conversely that disclosure positively impacts cohesion).

[55] Ross, *supra* note 13, at 209.

[56] *Id.*

among our country's most integrated and diverse institutions. Historically, though progress has been slow and imperfect, when the military has accepted previously-excluded or marginalized groups into its ranks – African-Americans, women, immigrants, and gay and lesbian individuals – it has helped to lay the groundwork for broader social integration and acceptance.[57] So too here, at a time when – despite continued stigma, discrimination, and violence – acceptance of transgender individuals is on the rise, the military's open service policy was an important step forward, both practically and symbolically. Now, worse than never having permitted them to serve openly in the first place, the Trump Administration has singled out transgender individuals for renewed exclusion, sending a message that threatens to

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[57] *See, e.g.*, Cornelius L. Bynum, *How a Stroke of the Pen Changed the Army Forever*, Wash. Post (July 26, 2017), https://www.washingtonpost.com/news/made-by-history/wp/2017/07/26/how-a-stroke-of-the-pen-changed-the-army-forever/ (discussing the broader impact on the civil rights movement of President Harry Truman's Executive Order 9981, which desegregated the military) ("Though the pace of full-scale change was slow, the executive order was one of the most significant steps toward equal justice since the Emancipation Proclamation in 1863 and the ratification of the 13th Amendment to the U.S. Constitution that abolished slavery in 1865. Indeed, when considered alongside other milestone civil rights achievements, E.O. 9981 is remarkable for its effectiveness and durability . . . Even the momentous civil rights actions that we collectively recognize as modern landmarks of racial progress fail to match the fundamental and lasting institutional change wrought by E.O. 9981.").

slow recent progress and that will be heard and felt throughout our communities. Indeed, it seems that may be the point.[58]

The military has already concluded that allowing transgender individuals to serve openly is in the nation's best interest. Reinstating the ban simply cannot be justified by reference to costs, unit cohesion, or overall readiness. Rather, the Administration seeks to ban otherwise qualified people from service simply because of who they are. In doing so, the Administration would harm both the *Amici* States and our residents in profound ways. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 609 (1982) ("This Court has had too much experience with the political, social, and moral damage of discrimination not to recognize that a State has a substantial interest in assuring its residents that it will act to protect them from these evils."). Reinstating the ban on open service would be a step backward for transgender people, for civil rights, and for the country as a whole.

CONCLUSION

For the foregoing reasons, the *Amici* States join in asking the Court to grant the Plaintiffs' and Washington's Motions for Summary Judgment.

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[58] *See, e.g.*, Memorandum from Attorney General to United States Attorneys Heads of Department Components (Oct. 4, 2017), *available at* https://thinkprogress.org/wp-content/uploads/2017/10/20171005-doj-memo-title-vii.pdf (reversing Department of Justice policy interpreting Title VII to prohibit discrimination based on gender identity).

Dated: February 1, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service of the foregoing will be accomplished by the CM/ECF system.

/s/ Kimberly A. Parr
Kimberly A. Parr

DATED: February 1, 2018

All 4 service chiefs on record: No harm to units from transgender service

By: Tara Copp (/author/tara-copp) April 24, 2018, https://www.militarytimes.com/news/your-military/2018/04/24/all-4-service-chiefs-on-record-no-harm-to-unit-from-gransgender-service/

Air Force Chief of Staff Gen. Dave Goldfein told Congress Tuesday he was not aware of any negative effects from transgender personnel serving (https://www.militarytimes.com/news/your-military/2018/03/26/mattis-pentatgon-quiet-on-new-transgender-policy), joining all three other service chiefs in a rare public split with President Donald Trump (https://www.militarytimes.com/news/your-military/2018/03/24/here-is-the-mattis-guidance-and-pentatgon-study-behind-trump-transgender-decision/) over the issue.

Sen. Kristen Gillibrand, D-N.Y., as she had with the top military leaders of the Army, Navy and Marine Corps when they appeared before the Senate Armed Services Committee for their budget hearings, used the opportunity to question Goldfein as to whether he was aware of any "issues of unit cohesion, disciplinary problems or issues of morale resulting from open transgender service."

"In the last two weeks Gen. [Mark] Milley, Gen. [Robert] Neller, and Adm. [John] Richardson have told me that they have seen zero reports of issues of cohesion, discipline, morale as a result of open transgender service in their respective service branches," Gillibrand said, referring to the chiefs of staff of the Army, Marine Corps and Navy, respectively.

Goldfein said he was not aware of any issues with transgender service members, but emphasized that each case is unique. Goldfein said among the transgender service members he had talked to, he had found a "commitment to serve by each of them."

(/news/your-military/2018/03/24/here-is-the-mattis-guidance-and-pentagon-study-behind-trump-transgender-decision/)
Here is the Mattis guidance and Pentagon study behind the Trump transgender decision (/news/your-military/2018/03/24/here-is-the-mattis-guidance-and-pentagon-study-behind-trump-transgender-decision/)

The White House's late Friday announcement was influenced by the these documents.

By: Tara Copp

Likewise, in earlier testimonies, when the three other service secretaries were asked if they had heard of any harm to unit cohesion or other problems, they responded:

Navy: "By virtue of being a Navy sailor, we treat every one of those Navy sailors, regardless, with dignity and respect," said Chief of Naval Operations Adm. John Richardson (https://www.militarytimes.com/news/your-navy/2018/04/19/no-reports-of-transgender-troops-affecting-unit-cohesion-marine-corps-and-navy-leaders-say/). "That is warranted by wearing the uniform of the United States Navy. By virtue of that approach, I am not aware of any issues."

Marine Corps: "By reporting those marines that have come forward, there's 27 Marines that have identified as transgender, one sailor serving. I am not aware of any issues in those areas," said Marine Commandant Gen. Robert Neller.

Army: "We have a finite number. We know who they are, and it is monitored very closely, because, you know, I'm concerned about that, and want to make sure that they are, in fact, treated with dignity and respect. And no, I have received precisely zero reports," said Army Chief of Staff Gen. Mark Milley.

Last month the White House announced that it would leave the decision to the service secretaries on whether or not to allow transgender personnel to serve; but also directed that a subset of transgender personnel – those with a diagnosis of gender dysphoria – would be prohibited from serving. Gender dysphoria is a condition where a person experiences discomfort with their biological sex.

In his February guidance to President Trump (https://www.militarytimes.com/news/your-army/2018/03/24/trump-order-would-ban-most-transgender-troops-from-serving/), Mattis also listed several other limitations on transgender service, including an extension of the amount of time someone would need to be stable in their preferred sex to 36 months and a prohibition on service members who have undergone corrective surgery.

Critics have said the gender dysphoria argument is an attempt to keep all transgender personnel from serving, because "gender dysphoria" is a broadly used

diagnosis used by the medical community for transgender persons and not indicative of a more serious issue.

The four service chiefs, along with the chief of the National Guard Bureau and Chairman of the Joint Chiefs of Staff Gen. Joseph Dumford, comprise the president's top circle of military advisers. Each service chief's testimony marked an unusual split with the president and Defense Secretary Jim Mattis, who have advised that allowing personnel with gender dysphoria to serve would harm unit cohesion and present an "unreasonable burden on the military."

The administration's prohibitions on transgender service are still being challenged in the courts; four federal courts have already overturned Trump's previous ban on new accessions by transgender personnel and the other aspects of the administration's transgender policy are now part of ongoing lawsuits.

Department Policy No. HR-209-02
October 4, 2017

Department Policy No. HR-209-02

Title:	Equal Opportunity / Affirmative Action
Former Number:	03-203-05
Authorizing Source:	Presidential Executive Orders 11246 (as amended) and 11375; Code of Federal Regulations (CFR) Title 41, Part 60-2; Title VII of the Civil Rights Act of 1964, as amended; Equal Employment Opportunity governing guidelines, CFR Titles 28, 29, and 43; Vietnam-Era Veterans Readjustment Act of 1974; The American with Disabilities Act of 1990, as amended The Rehabilitation Act of 1973, Section 504, as amended The Age Discrimination Act of 1975, as amended Governor's Executive Orders 93-07 and 98-01 RCW Chapters 41.06 and 49.60 WAC Chapter 357-25 Directive of the Governor 16-11

	Human Resource Policy and Procedure #HR-208-01—Anti-Discrimination
Information Contact:	Human Resources Director Building #33 (253) 512-7941
Effective Date:	June 30, 2005
Mandatory Review Date:	October 4, 2021
Revised:	October 4, 2017
Approved By:	*s/ Bret D. Daugherty* Bret D. Daugherty, Major General The Adjutant General Washington Military Department Director

Purpose

The Washington Military Department affirms its commitment to providing equal employment opportunity in accordance with the principles, intent, and purposes of the laws and regulations cited in this policy, recognizing that affirmative action is an effective legal tool for attaining and maintaining parity within the workforce.

Applicability

This policy is applicable to all state employees, applicants for state employment, contractors, vendors, and customers/clients. It does not apply to National Guard personnel on state active duty or to federal personnel to include Active Guard Reserve

(AGR), traditional guard personnel in a federal military status, or military technicians.

Policy

The Military Department is committed to equal employment opportunity and access to its programs and services for all persons without regard to race, color, sex, religion, creed, age, marital status, national origin, sexual orientation or gender identity and expression, disabled and Vietnam-Era veteran, veteran or military status, or the presence of any physical, sensory or mental disability or any other legally protected status.

Equal employment opportunity and affirmative action are vital responsibilities that are equally important within all functions of the agency. It is the responsibility of each employee to comply with and promote this policy and for maintaining a work environment that encourages and promotes diversity and inclusion.

The Military Department will provide access to its services and programs in a fair and impartial manner. Equal employment opportunity is the goal, whereas, the Affirmative Action Plan is the methodology by which the Agency will fulfill this goal. In an effort to eliminate barriers and to improve employment oppo1tunities to underutilized groups, this policy shall be implemented in recruitment, hiring, career development, training, promotion, transfer, retention reclassification, corrective/disciplinary actions, termination, reversion and non-permanent appointments.

The Military Department will provide an environment free from all forms of discrimination. Employees are prohibited from engaging in any form of racial, religious, and sexual harassment behavior including jokes, slurs, and innuendoes. This behavior is inappropriate in the work environment and may be grounds for corrective or disciplinary action in accordance with Washington State Collective Bargaining Agreements and Washington Administrative Code.

Responsibilities

Equal employment opportunity and affirmative action are vital responsibilities and, as such, assume equal importance within all function of the Department.

1. Department Director/The Adjutant General (TAG)

The Department Director/TAG has overall responsibility for implementation of the Department's equal employment opportunity program, Affirmative Action Plan, and to ensure management supports and promotes a high visibility of its commitment to equal employment opportunity/affirmative action.

2. Human Resource Director (HRD)

The HRD is the Director's AA/EEO designee with the responsibility for:

- Developing, implementing, and disseminating the Department's Affirmative Action Plan.
- Designing, implementing, and monitoring internal reporting systems and advising management and staff regarding Equal Opportunity/Affirmative Action policy, plan and strategies.

- Analyzing hiring, promotions, demotions, corrective/disciplinary actions, layoffs, termination, and training participation patterns to identify potential barriers to equal employment oppo1iunity and developing strategies to correct/eliminate the barriers.
- Assisting managers, supervisory and employees with the implementation of the Equal Employment Opportunity/Affirmative action policy, plan, and strategies.

3. Manager/Supervisors

Managers and supervisors are responsible for promoting and implementing the principles of affirmative action and equal opportunity as outlined in the Department's goals and objectives.

4. Employees

Employees are responsible for creating and maintaining a respectful and welcoming work environment, acting within the law, and for complying with this policy.

Information Dissemination

AA/EEO policies will be provided to all new employees. New policies and updates will be distributed to all employees. The Affirmative Action Plan is available through the State Human Resource Office.

Department Policy No. HR-208-01
February 1, 2013

Department Policy No. HR-208-01

Title:	Anti-Discrimination
Former Number:	03-201
Authorizing Source:	Titles VI and VII of the Civil Rights Act of 1964, as amended Section 504 of the Rehabilitation Act of 1973, as amended The Age Discrimination Act of 1975, as amended The Age Discrimination Employment Act of 1967, as amended The Americans with Disabilities Act of 1990, as amended Washington State Law Against Discrimination, RCW 49.60, as amended Washington State Executive Orders: 89-01, Sexual Harassment; 96-04, Reasonable Accommodation; and 93-07, Equal Employment Opportunity/Affirmative Action
Information Contact:	Human Resources Director Building # 33 (253) 512-7941
Effective Date:	January 1, 1998

Mandatory Review Date:	February 1, 2017
Revised:	February 1, 2013
Approved By:	*s/ Bret D. Daugherty* Bret D. Daugherty, Major General The Adjutant General Washington Military Department Director

Purpose

Maintain a work culture and environment within the Washington Military Department that is free from Discrimination.

Scope

This policy applies to all state employees, applicants for state employment, contractors, and vendors.

Policy

a. The Washington Military Department prohibits discrimination on the basis of race, color, creed, national origin, sex, marital status, religion, age, sexual preference/orientation, gender identity, or the presence of any sensory, mental, or physical disability in all aspects of service delivery and employment. Accordingly, complaints alleging discrimination will receive prompt and effective treatment.

b. It is the responsibility of all employees to maintain a work environment free from all forms of discrimination. Employees are prohibited from engaging in any form of discrimination based on

protected group status, as noted above, in the course of conducting Department business. Employees who engage in such discriminator behavior may be subject to corrective and/or disciplinary action in accordance with Merit System Rules.

c. Employees who believe that they have been discriminated against may file a discrimination complaint. No employee will be subject to any form of retaliation as a result of filing a discrimination complaint.

Procedure

Employees that believe they have been subjected to unlawful discrimination should notify the Department as soon as possible, as outlined in the following procedure.

1. Complaints shall be in writing and include a description of the discriminatory act, including the location and date of the action, as well as the name, address, and phone number of complainant. Upon request, alternative means of filing complaints such as personal interview or tape recordings of the complaint will be made available for persons with disabilities.

2. All complaints alleging discrimination should be addressed to:

Human Resources Director
Washington Military Department
State Human Resources Office
Camp Murray, Building #33
Tacoma, WA 98430-5006
(253) 512-7940

3. Complaints alleging sexual harassment should be submitted in accordance with the Department's Sexual Harassment policy.

4. The Human Resources Director will provide written acknowledgment, of all complaints filed in accordance with this procedure, within seven (7) calendar days of their receipt. The acknowledgement will identify a point of contact and provide a reasonable time frame for further response to the complainant. All employees shall cooperate in all phases of the investigative process. The Human Resources Director may determine the need to request the investigation be completed by a neutral, outside party with appropriate investigation skills.

5. Complaints will be investigated, findings shall be addressed expeditiously, and a written response will be provided to the complainant. The response will advise complainants of their right to submit charges to the Washington State Human Rights Commission:

711 South Capitol Way, Suite 402
Olympia, WA 98504-2490
Toll Free (800) 233-3247
TTY: (800) 300-7525

And/or

US Equal Employment Opportunity Commission
Seattle Field Office
Federal Office Building
909 First Avenue, Suite 400
Seattle, WA 98104-1061
Toll Free (800) 669-4000
TTY: (800) 669-6820

6. The investigation of discrimination complaints under this procedure shall be conducted in a confidential manner. Any employee who is a participant in the investigation and violates the confidentiality of the investigation where the integrity of the investigation could be compromised may be subject to corrective and/or disciplinary action in accordance with the Merit System Rules.

7. Employees of the Department who are not satisfied with the Human Resources Director's response to their complaint may request a review by the Adjutant General (Department Director). Requests must be submitted in writing within seven (7) calendars days of the Human Resources Director's written response. The Adjutant General (Department Director) or designee will review the Human Resources Director's response and attempt to seek resolution. The Adjutant General (Department Director) or designee will provide a written response to the employee within twenty-one (21) calendar days from the date of receipt. The response will notify the complainant of their right to seek resolution through appropriate administrative or civil procedure external to the Department. A copy of the response will be forwarded to the Human Resources Director.

JAY INSLEE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 •
(360) 902-4111 • www.governor.wa.gov

DIRECTIVE OF THE GOVERNOR
16-11

June 23, 2016

To: Washington State Cabinet and Small-Cabinet Agencies

From: Governor Jay Inslee

Subject: LGBTQ Inclusion and Safe Places Initiative

The state of Washington has a long and proud history of honoring diversity. Our own law against discrimination predates the Civil Rights Act of 1964, and we were one of the first states to extend civil rights protections to our LGBTQ neighbors, friends, and family members. In Washington we know that the diverse families, expressions of personal identity, and experiences of all our residents enrich our future.

We traditionally celebrate June as LGBTQ Pride Month. I believe that as public leaders and servants, though, our commitment to diversity and inclusion extends beyond a single month of recognition; and the recent violence in Orlando, Florida, highlights the need for us to sustain our efforts year round. Every person in the state of Washington has the right to feel safe, enjoy the benefits of public services, and fully

participate in civic life. Accordingly, I am asking you to support me in the following initiatives:

- **Employee Resource Group.** I have always valued the insight and experience of our own employees in creating better workplaces and services. This is true as well in promoting diversity and inclusion. Accordingly, I am directing OFM's State HR Division to work with agencies to create a statewide LGBTQ employee resource group to advise and develop strategies for creating safe, diverse, and inclusive workplaces for our LGBTQ employees and customers.
- **Best Practices.** Many of you are already doing great work building safe and inclusive environments for our LGBTQ employees and customers. I believe that most of these efforts can be replicated. Therefore, I am also asking OFM's State HR Division to work with agencies, institutions, and the LGBTQ employee resource group to identify and share these best practices, so we can all benefit from each other's innovation.
- **Safe Place WA.** The Seattle Police Department recently created a "Safe Place" program, in which local businesses and organizations can signal to the public that they serve as locations for members of the LGBTQ community to find safe and secure spaces to request and wait for police assistance. Businesses and organizations throughout Seattle, including Starbucks and Seattle Public Schools, are participating in this program. I believe that our public-facing state offices should also be safe places where people can connect with emergency and related support services. Consequently, I am

also asking my Policy Office and OFM to work with agencies and the new employee resource group to develop a similar state program.

Thank you in advance for your support. Staff from my Policy Office and OFM State Human Resources will be reaching out to all of you shortly to begin work on these initiatives. Together we will build a better future for all Washingtonians.

JAY INSLEE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

PROCLAMATION BY THE GOVERNOR
18-03

WHEREAS, a combination of above normal snowpack in the mountains, above average temperatures, and recent rainfall has resulted in higher than normal snow melt causing flooding of rivers and streams in Ferry, Okanogan and Pend Oreille counties; and

WHEREAS, continued higher temperatures are predicted to increase the threat of additional flooding in areas of eastern Washington over the next seven days with additional flooding expected to occur in these and other eastern Washington counties as rivers and streams continue to rise to record or near record levels; and

WHEREAS, the flooding is resulting in road closures, establishment of alternate transportation routes, evacuations, impacts to local utility services, localized reductions in available drinking water, and damage to public and private property and infrastructure; and

WHEREAS, state agencies and local jurisdictions are coordinating resources to address the impacts of and assess damage caused by the flooding, and to implement appropriate response and recovery activities; and

WHEREAS, the threat of damage from this situation and its effects impact the life and health of our people as well as the property and infrastructure of Washington State, all of which is a public disaster

that affects life, health, property, or the public peace; and

WHEREAS, the Washington Military Department has activated the State Emergency Operations Center, implemented response procedures, is coordinating resources to support state and local officials in alleviating the immediate social and economic impacts to people, property and infrastructure, and is continuing to assess impacts resulting from incident.

NOW, THEREFORE, I, Jay Inslee, Governor of the State of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency exists in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Yakima, Walla Walla, and Whitman counties in the state of Washington, and direct the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the incident.

As a result of this incident, I also hereby order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General, to perform such duties as directed by competent authority of the Washington Military Department in addressing this situation.

Additionally, the Washington State Emergency Operations Center is instructed to coordinate all incident-related assistance to the affected areas.

Signed and sealed with the official seal of the State of Washington this 11th day of May, A.D, Two Thousand and Eighteen at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

JAY INSLEE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

PROCLAMATION BY THE GOVERNOR
17-13

WHEREAS, on the morning of December 18, 2017, an Amtrak Train derailed onto Interstate 5 at the Mounts Road overpass in Pierce County near the Thurston County line, resulting in loss of life, injuries, and damage to infrastructure; and

WHEREAS, the derailment has caused significant structural damage to the overpass, railway and highway infrastructure, resulting in closure of the overpass and Interstate 5 for the safety of the travelling public until repairs can be completed; and

WHEREAS, the effects of the derailment and related rail and highway closures impact the life and health of the people as well as the property and infrastructure of Washington State, all of which is a public disaster that affects life, health, property, or the public peace; and

WHEREAS, the Washington Military Department has activated the State Emergency Operations Center, implemented response procedures, is coordinating resources to support state and local officials in alleviating the immediate social and economic impacts to people, property and infrastructure, and is continuing to assess impacts resulting from incident.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted

situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency exists in Pierce and Thurston counties in the state of Washington, and direct the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the incidents.

As a result of this incident, I also hereby order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General, to perform such duties as directed by competent authority of the Washington Military Department in addressing this event. Additionally, the Washington State Emergency Operations Center is instructed to coordinate all incident-related assistance to the affected areas.

Signed and sealed with the official seal of the state of Washington this 18th day of December, A.D, Two Thousand and Seventeen at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

JAY INSLEE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

PROCLAMATION BY THE GOVERNOR
17-12

WHEREAS, since June 2017, we have experienced drier than normal weather conditions with periods of above average temperatures throughout the State which, when combined with projected weather and fire fuel conditions for early September, present a high risk of severe wildfires throughout the State of Washington; and

WHEREAS, current weather forecasts predict continuing elevated temperatures throughout the State for the next seven days, providing hot and dry conditions that, combined with the existing high-risk fire fuel conditions, support an active burning environment capable of producing significant multiple wildfires requiring the need for additional immediate response throughout the State; and

WHEREAS, the Jolly Mountain Fire in Kittitas County, which has been burning since August 11, has grown to over 14,500 acres and is threatening local communities, homes and businesses, resulting in road closures and the issuance of evacuation notices by local authorities for some threatened areas; and

WHEREAS, the threat to life and property from existing and threatened wildfires throughout the State is extreme and could cause extensive damage to homes, public facilities, businesses, public utilities, and infrastructure impacting the life and health of

people throughout Washington State, all of which affect life, health, property, or the public peace, and is a public disaster demanding immediate action; and

WHEREAS, current availability of firefighting resources throughout the state of Washington and the western United States is limited due to existing and projected fire conditions and activities throughout the region, and existing firefighting resources may already be committed to fighting wildfires throughout the Pacific Northwest; and

WHEREAS, because available firefighting resources may not be adequate to address the outbreak of simultaneous large wildfires resulting from the above noted conditions, the Washington National Guard and State Guard may be needed to assist local jurisdictions and state agencies throughout the state of Washington with this public disaster and for the public health, safety and welfare; and

WHEREAS, the Washington Military Department has activated the State Emergency Operations Center, implemented response procedures, is coordinating resources to support state and local officials in alleviating the immediate social and economic impacts to people, property and infrastructure, and is continuing to assess the wildfire danger resulting from existing high risk weather and fire fuel conditions.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency exists in all Counties in the state of Washington, and direct the plans and procedures of the *Washington*

State Comprehensive Emergency Management Plan be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the incidents.

As a result of this event, I also hereby order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General, to perform such duties as directed by competent authority of the Washington Military Department in addressing this event.

Additionally, the Washington State Emergency Operations Center is instructed to coordinate all incident-related assistance to the affected areas.

Signed and sealed with the official seal of the state of Washington on this 2nd day of September A.D., Two Thousand and Seventeen at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

Department of Defense Press Briefing by Secretary Carter on Transgender Service Policies in the Pentagon Briefing Room

Press Operations

June 30, 2016

SECRETARY OF DEFENSE ASH CARTER: Good afternoon, everyone. Thanks for being here.

I am here today to announce some changes in the Defense Department's policies regarding transgender service members. And before I announce what changes we're making, I want to explain why.

There are three main reasons, having to do with their future force, our current force and matters of principle. The first and fundamental reason is that the Defense Department and the military need to avail ourselves of all talent possible in order to remain what we are now, the finest fighting force the world has ever known.

Our mission is to defend this country and we don't want barriers unrelated to a person's qualification to serve preventing us from recruiting or retaining the soldier, sailor, airman or Marine who can best accomplish the mission.

We have to have access to 100 percent of America's population for our all-volunteer force to be able to recruit from among them the most highly qualified and to retain them.

Now, while there isn't definitive data on the number of transgender service members, RAND looked at the existing studies out there, and their best estimate was that about 2,500 people out of

approximately 1.3 million active-duty service members, and about 1,500 out of 825,000 reserve service members are transgender, with the upper end of their range of estimates of around 7,000 in the active component and 4,000 in the reserves.

Although relatively few in number, we're talking about talented and trained Americans who are serving their country with honor and distinction. We invest hundreds of thousands of dollars to train and develop each individual, and we want to take the opportunity to retain people whose talent we've invested in and who have proven themselves.

And this brings me to the second reason, which is that the reality is that we have transgender service members serving in uniform today. And I have a responsibility to them and to their commanders to provide them both with clearer and more consistent guidance than is provided by current policies.

We owe commanders better guidance on how to handle questions such as deployment, medical treatment and other matters. And this is particularly true for small unit leaders, like our senior enlisted and junior officers. Also, right now, most of our transgender service members must go outside the military medical system in order to obtain medical care is judged by doctors to be necessary, and they have to pay for it out of their own pockets. This is inconsistent with our promise to all our troops that we will take care of them and pay for necessary medical treat.

I, and the Defense Department's other senior leaders who have been studying this issue the past year, have met with some of these transgender service

members. They've deployed all over the world, serving on aircraft, submarines, forward operating bases and right here in the Pentagon. And while I learned that in most cases, their peers and local commanders have recognized the value of retaining such high-quality people, I also learned the lack of clear guidelines for how to handle this issue puts the commanders and the service members in a difficult and unfair position.

One service member I met with described how some people had urged him to leave the military, because of the challenges he was facing with our policies, and he said he just wouldn't quit. He was too committed to the mission, and this is where he wanted to be. These are the kind of people we want serving in our military.

The third and final reason for the change, also important, is a matter of principle. Americans who want to serve and can meet our standards should be afforded the opportunity to compete to do so. After all, our all-volunteer force is built upon having the most qualified Americans, and the profession of arms is based on honor and trust.

Army Chief-of-Staff General Milley recently reminded us of this when he said, and I quote him, "The United States Army is open to all Americans who meet the standard, regardless of who they are. Embedded within our Constitution is that very principle, that all Americans are free and equal. And we, as an Army, are sworn to protect and defend that very principle. And we are sworn to even die for that principle. So, if we in uniform are willing to die for that principle, then we in uniform should be willing to live by that principle." That's General Milley.

In view of these three reasons to change our policy, last July I directed the commencement of a study to identify the practical issues related to transgender Americans serving openly, and to develop an implementation plan that addresses those issues consistent with military readiness, because our mission -- which is defending the country -- has to come first.

I directed the working group to start with the presumption that transgender persons can serve openly without adverse effect -- impact, excuse me, on military effectiveness and readiness, unless and except where objective, practical impediments are identified.

I think it's fair to say this has been an educational process for a lot of people here in the department, including me. We had to look carefully and deliberately at medical, legal and policy considerations that have been evolving very rapidly in recent years. And we had to take into account the unique nature of military readiness and make sure we got it right.

I'm proud of the thoughtful and deliberate manner in which the department's leadership has pursued this review. I've been guided throughout by one central question. Is someone the best-qualified service member to accomplish our mission?

Let me now describe the process we used to study this over the last year. The leadership of the armed services, the Joint Chiefs of Staff, the service secretaries, myself, together with personnel, training, readiness and medical specialists from across the Department of Defense, studied all the data available

to us. We also had the RAND Corporation analyze relevant data and studies to help us with our review. And we got input from transgender service members, from outside expert groups, and from medical professionals outside of the department.

We looked carefully at what lessons could be learned from the outside, including from allied militaries that already allow transgender service members to serve openly. And from the private sector also, because even though we're not a business and are different than a company in important ways, their experience and their practices are still relevant.

It's worth noting, for example, that at least 18 countries already allow transgender personnel to serve openly in their militaries. These include close allies such as the United Kingdom, Israel, and Australia. And we were able to study how they dealt with this issue.

We also saw that among doctors, employers and insurance companies today, providing medical care for transgender individuals is becoming common and normalized in both public and private sectors alike. Today, over a third of Fortune 500 companies, including companies like Boeing, CVS, and Ford, offer employee health insurance plans with transgender-inclusive coverage. That's up from zero such companies in 2002.

Similarly, nondiscrimination policies at two-thirds of Fortune 500 companies now cover gender identity, up from just three percent in 2002.

And for the public sector, all civilian federal employees have access today to a health insurance

plan that provides comprehensive coverage for transgender-related care and medical treatment.

Based on its analysis of allied militaries and the expected rate at which American transgender service members would require medical treatment that would impact their fitness for duty or deployability, RAND's analysis concluded that there would be, quote, "minimal readiness impacts from allowing transgender service members to serve openly," end quote.

And in terms of cost, RAND concluded that health care costs would represent, again in their words, "an exceedingly small proportion of DOD's overall health care expenditures."

Now, as a result of this year-long study, I'm announcing today that we're ending the ban on transgender Americans in the United States military.

Effective immediately, transgender Americans may serve openly and they can no longer be discharged or otherwise separated from the military just for being transgender.

Additionally, I have directed that the gender identity of an otherwise qualified individual will not bar them from military service or from any accession program.

In taking the steps, we are eliminating policies that can result in transgender members being treated differently from their peers based solely upon their gender identity, rather than upon their ability to serve and we are confirming that going forward we will apply the same general principles, standards and

procedures to transgender service members as we do to all service members.

What I heard from the transgender service members I met with overwhelmingly was that they don't want special treatment. They want to be held to the same standards and be treated like everybody else.

As I directed, the study identified practical issues that arise with respect to transgender service, and it developed an implementation plan to address those issues.

Let me briefly describe that implementation plan. I want to emphasize that in this case, as in the department's decisions on Don't Ask, Don't Tell and women in service, simply declaring a change in policy is not effective implementation.

That is why we have worked hard on the implementation plan and must continue to do so. These policies will be implemented in stages over the next 12 months, starting most immediately with guidance for current service members and their commanders, followed by training for the entire force and then beginning to access new military service members who are transgender.

Implementation will begin today. Starting today, otherwise qualified service members can no longer be involuntarily separated, discharged or denied reenlistment or continuation of service just for being transgender.

Then, no later than 90 days from today, the department will complete and issue both a commander's guidebook for leading currently serving

- for leaders of currently serving transgender members and medical guidance to doctors for providing transition-related care, if required, to currently serving transgender service members.

Our military treatment facilities will begin providing transgender service members with all medically necessary care based on that medical guidance. Also starting on that date, service members will be able to initiate the process to officially change their gender in our personnel management systems.

Next, over the nine months that follow, based on detailed guidance and training materials that will be prepared, the services will conduct training of the force and commanders to medical personnel, to the operating force and recruiters.

When the training is complete, no later than one year from today, the military services will begin accessing transgender individuals who meet all standards, holding them to the same physical and mental fitness standards as everyone else who wants to join the military.

Our initial accession policy will require an individual to have completed any medical treatment that their doctor has determined as necessary in connection with their gender transition and to have been stable in their identified gender for 18 months, as certified by their doctor before they can enter the military.

I have directed that this succession standard be reviewed no later than twenty-four months from today to ensure it reflects what we learn over the next two

years as this is implemented as well as the most up-to-date medical knowledge.

I've discussed the implementation plan with our senior military leaders, including Chairman Dunford. The chief sent specific recommendations about the timeline, and I made adjustments to the implementation plan timeline to incorporate those recommendations. The chairman has indicated the services support the final implementation timeline that I've laid out today.

Overall, the policies we are issuing today will allow us to assess -- excuse me, access talent of transgender service members to strengthen accomplishment of our mission, clarify guidance for commanders and military medical providers, and reflect better the department's and our nation's principles.

I want to close by emphasizing that deliberate and thoughtful implementation will be key. I, and the senior leaders of the department will therefore be ensuring all issues identified in this study are addressed in implementation.

I'm confident they can and will be addressed in implementation. That's why we are taking the step-by-step approach I've described. And I'm 100 percent confident in the ability of our military leaders and all men and women in uniform to implement these changes in a manner that both protects the readiness of the force and also upholds values cherished by the military -- honor, trust and judging every individual on their merits.

I'm also confident that we have reason to be proud today of what this will mean for our military, because it is the right thing to do, and it's another step in ensuring that we continue to recruit and retain the most qualified people.

And good people are the key to the best military in the world. Our military and the nation it defends will be stronger.

Thank you. And now, I'll take some questions. And -- Phil, you want to start?

Q: Sure. Mr. Secretary, could you talk a bit about -- I know you spoke about the costs for health care. Are there other costs associated with this implementation plan? And could you elaborate a bit on the timing issue, the adjustments in timing you spoke to?

SEC. CARTER: Sure. With respect to cost -- by the way, I will mention that Peter Levine will be here later and will be prepared to answer questions in detail.

But the reason that RAND concluded the costs would be minimal is that the medical treatment that service members who are currently transgender requires fairly straightforward, well-understood -- they were able to make those estimates. And that was, as they said, minimal.

And with respect to accessing new members as I indicated, they will have already completed and been stable in their transition for a period of not less then 18 months before they can access service, so there will be no medical costs associated with that.

And with respect to the timetable for implementation, the -- there's -- as I indicated in the stages, there's the -- the preparation of the medical guidance, that is up to the doctors who need to do that, so that doctors at military treatment facilities all have a standard protocol.

I'm giving them 90 days to that. That is what they asked for. The commanders' guidance, the -- as I indicated, the chairman and the chiefs asked for 90 days in that regard -- to prepare that commanders guidance and the training guidance.

And I agreed to that. I think that's reasonable. That's the amount of time it will take them to complete the job. Obviously, they've begun some of that.

And then, the rest of the time is time to train the force, which is comparable to the time we took to train the force say, in Don't Ask, Don't Tell. We do have some experience in this kind of thing, and we're following that template to successful implementation -- change of this kind.

Q: (inaudible) -- on Russia?

SEC. CARTER: Sure.

Q: –On a separate subject -- there's a report today that spoke to a proposal to strengthen coordination -- military coordination with Russia in targeting al-Nusra in Syria. And I'm just wondering is there -- you've been a skeptic in the past about cooperating with Russia militarily in Syria, given that their motives are different than those of the United States. Has something changed? Would you support this proposal?

SEC. CARTER: Well, we do have a professional relationship with the Russian military to make sure that there are no incidents and no safety issues as we both operate in neighboring areas of Syria. But I -- I've said before, the Russians got off on the wrong foot in Syria. They said they were coming in to fight ISIL. And that they would assist the political transition in Syria towards a post-Assad government that could run the country and put that terribly broken country back together and give the people the future they deserve.

They haven't done either of those things. So I think while I'm still hopeful that they will do both of those things, and I think that's what Secretary Kerry's talks, which are very frequent with the Russians, are all about. But meanwhile, we have a channel which is focused on safety issues, and we maintain that. And that's a very professional working channel between us.

Q: Can I follow up on that and ask you something else? It's a follow-on to Phil's question. You're well known to be skeptical of the Russians and some of the things that they have -- their military has done. So, really straight up, are you willing -- are you in favor now of an expanded effort for military cooperation with the Russians inside Syria?

Because most people in this town think you are not.

SEC. CARTER: If the Russians would do the right thing in Syria, and that's an important condition, as in all cases with Russia, we're willing to work with them. That's what we've been urging them to do since they came in. That's the objective that

Secretary Kerry's talks are aimed at. And if we can get them to that point, that's a good thing.

Q: But may I follow up on two small items? Are you willing to include an effort for the U.S. to begin airstrikes against al-Nusra? And may I also ask you about Raqqah? As the world has watched what's happened in Istanbul, how urgent now are you, beyond the usual discussion of accelerants, to see the Syrian Arab coalition and the other fighters get to Raqqah? Because --

SEC. CARTER: Oh, very, very eager to get them to Raqqah. This is the same group that we've been working successfully with, that is they have been successful, and we've been enabling and supporting them, in -- to envelop and take, which they will, from ISIL the city of Manbij, which like Raqqah, isn't as well known, but Manbij is a city from which external plotting has been conducted by ISIL into Europe and into the United States as well.

And was part of the transit hub from the Turkish border down to ISIL in Syria. So that was an important objective. Those same forces, and that same approach, or really the same approach and some larger forces, actually, are the ones that we plan -- and I just was discussing this with General Votel and General MacFarland the other day, along with General Dunford.

Those are the forces that we are going to position to, again, envelop and collapse ISIL's control of Raqqa.

And the reason I want to do that, Barbara, as soon as possible is that Raqqa is the self-proclaimed

capital of the self-proclaimed caliphate of ISIL. And it's important to destroy the ISIL in Iraq and Syria, because that's absolutely necessary.

It's not sufficient to avoid all kinds of radicalization and so forth, but it's necessary in order to eliminate the idea that there can be a state based upon that ideology. That's why we are so intent in our military campaign against ISIL on Iraq and Syria. So we would like to get Raqqah as soon as -- as soon as we possibly can, like everything else.

Chris?

Q: Mr. Secretary, a couple of questions about what this change will mean for the transgender service members. First, can you verify that the health -- the military health care coverage will cover all aspects of transition-related care, including gender reassignment surgery?

And second, will the Pentagon add gender identity or transgender status to the military equal opportunity policy in the event that a transgender service member feels like they're experiencing discrimination?

SEC. CARTER: The answer to the first one is the medical standards don't change. The transgender individual, like all other servicemembers, will get all medical care their doctors deem necessary.

They will have to do that with their -- subject to, if it's non-urgent medical care, subject to their commanders. Because, you know, if they need to be deployed, they need to be deployed. And it's normal that if you -- if you have, say, a procedure which is not

urgent, that you have to defer that if you are being deployed.

So we don't have any -- we're not going to have any different medical policy for transgender service members than others. Our doctors will treat them -- give them medically necessary treatment according to the protocols that are determined by the medical profession.

Q: (inaudible) -- MEO policy? Will you add transgender status for the MEO?

SEC. CARTER: You know, I don't know the specific answer to that. I certainly assume the answer is yes, and Peter is telling me yes, that certainly stands to reason that we would. That makes sense.

Let's see. Cory. Cory is not here. How about Paul?

Q: I wanted to follow-up on that question. So there's been some debate on whether the military would only cover hormone therapy versus covering full reassignment surgery. So will reassignment surgery be covered?

SEC. CARTER: This is for currently serving members. Again, that's going to be a matter that the doctors will determine in accordance with what is medically necessary. That's a decision that they make with their physician.

And the timing of it -- of any treatment, of any kind, like any other non-urgent medical care, will be something that their commanders will have a voice in for the very simple reason that we -- we as, in this matter as in all matters, readiness and deployability are critical. Tom?

Q: Mr. Secretary, if I could follow-up very quickly. You said a current service member --

SEC. CARTER: Only because --

Q: So incoming service members who are transition would not be eligible for that transitional surgery?

SEC. CARTER: It depends, Nick. If someone who is transgender and comes out will need to and be required to have undergone transition and be stable in that state for 18 months before they can enter the military.

Q: But the U.S. military will not provide that surgery. Is that what you're saying?

SEC. CARTER: They won't be in the U.S. military at that time because they won't have accessed until they have undergone transition. Tom --

Q: Just wondering, if I could -- how many transgender troops have been dismissed under the old policy? And also, I'm wondering why Chairman Dunford isn't here to discuss this policy since it affects the uniformed military --

SEC. CARTER: I'll take the second part first. This is my decision. However, I have, we have arrived at it together, the senior leadership of the department. They support this timetable, this implementation plan, as I indicated, I actually made some adjustments in it specifically to take into account some of the desire by some of the chiefs to have a little more time on the front end, particularly for the commanders in training guidance, and so I agreed to that because I thought that was reasonable. And I have a general principle around here which is very important which is that it's

important that the people who have to implement decisions be part of the decision making, and the armed services are the ones that are going to have to implement that, so it's very important that they've been part of this study, but now, they're a critical part of implementation, because they and I all agree, as I said before, that simply declaring the military open to transgender individuals does not constitute effective implementation. We have work to do and we'll do it and we'll do it together.

Q: Mr. Secretary, in light of the events this morning at Andrews Air Force Base, are you getting a little fed up about all these false alarms for an active shooter? And why the communications problems this morning?

SEC. CARTER: Well, I wouldn't say fed up, because I think we have to take these things seriously when they occur, and I'm sure if a mistake was made here, if somebody inadvertently did, they weren't doing that on purpose, and it also shows a high degree of readiness and rapidity of responses. So it does appear, based on the information that I have at this moment, that this was mistaken, and that this was a drill that was going on that was mistaken for a real event, and a response was made, and that is something -- because it has happened before, that I think we need to pay attention to -- how to minimize the chances of false alarms like that. At the same time, I think it's important to have a reasonable level of awareness of the possibility of this kind of event and what to do, and I thought the response was strong and solid. So that's the good news. The bad news is, it appears to have been a mistake, and we'd like to

reduce the number of mistakes made in this way, no question about it. David --

Q: Mr. Secretary, I'm still confused by your answer to Mik's question. Someone who is already in the military, if he is -- he or she is deemed medically -- if sex change surgery is deemed medically necessary, the military will pay for it?

SEC. CARTER: That's correct.

Q: What happens now -- and then you explained the 18 month stable before you commit, but what happens to a service man or woman who joins --

SEC. CARTER: They'll receive --

(CROSSTALK)

Q: They join as a man or woman and then decide at some point after they've joined the service that they need --

SEC. CARTER: Any medical treatment in that instance, that is determined to be medically necessary by their doctors, will be provided like any other medical care. However, and I emphasize this, they're subject to the normal readiness requirements that are imposed upon any military serviceman.

Q: So, this is not a one-time -- one-time offer? It -- this is going to --

SEC. CARTER: No, I think our -- our offer in this is an all medical -- because there is no change in medical policy. Medically-necessary policy to serving service -- medically-necessary care to -- as determined by doctors, which is appropriate, will be provided to service members in -- as is part of our promise about medical care in general.

Can I -- one -- one more?

Q: Reaction to the response from Capitol that's, of course, already come in. This is the way things work and this electronic age as -- Chairman Mac Thornberry of the House Armed Services Committee has already reacted to your announcement, even as you're still making it.

And I -- if I could just read a tiny bit of his statement, and just get your response. He says, quote, "This is the latest example of the Pentagon and the president prioritizing politics over policy. Our military readiness, and hence, our national security, is dependent on our troops being medically ready and deployable. The administration seems unwilling or unable to assure the Congress and the American people that transgender individuals will meet these individual readiness requirements."

Can you --

SEC. CARTER: Well, the chair -- the chairman is right -- that is Chairman Thornberry -- is right to emphasize readiness. That is a key part of our -- was a key part of our study, and will be a key part of implementation.

And the chairman and other members of the committee and I -- committees and -- I've actually heard a variety of opinions on this, some urging us to move even faster than we have moved, and some wanting -- and this is very legitimate -- to understand what the effects on readiness and so forth are.

But we have some principles here. We have a necessity here. And we're going to act upon that. We're

going to do it in a deliberate, and thoughtful and step-by-step manner. But it's important that we do it.

(CROSSTALK)

Q: One question. Is that in Afghanistan -- (inaudible)?

SEC. CARTER: Thank you very much.

-END-

Department Policy No. HR-253-02
April 25, 2016

Department Policy No. HR-253-02

Title:	State Active Duty Injury/Illness – Death Reporting and Claim Process
Former Number:	00-020-02
Authorizing Source:	Title 38, Revised Code of Washington, Chapter 38.40.030 Title 51, Revised Code of Washington Title 296, Washington Administrative Code Attorney General Opinion dated December 7, 2001 Department of Defense Instruction 1332.38 AFI 36-2910, Line of Duty (Misconduct) Determination AR 600-8-1, Army Casualty Operations/Assistance/Insurance ANGI 36-2910, Line of Duty and Misconduct Determinations
References:	WMD Form 2029-15, Request for Medical Treatment for Washington National Guard (WNG) Member on State Active Duty (SAD) WMD Form 2030-15, WA State Active Duty – Line of Duty Personnel & Medical Information

	WMD Form 2031-15, Pre-State Active Duty Medical Questionnaire WMD Form 2032-15, Post State Active Duty Medical Questionnaire WMD Form, 2033-15 State Active Duty Personal Expense Reimbursement Request
Information Contact:	Military Department Human Resources Director Building #33 (253) 512-7940
Effective Date:	August 19, 2002
Mandatory Review Date:	April 25, 2020
Revised:	April 25, 2016
Approved By:	*s/ Bret D. Daugherty* Bret D. Daugherty The Adjutant General Washington Military Department Director

Purpose

To set forth policy regarding initiation and processing of State Active Duty (SAD) Line of Duty (LOD) illness, injury, or fatal incident claims, to include eligibility determination for medical treatment, loss time after deactivation and benefits when accidents or illnesses

result in a fatality while in the line of duty.

Scope

This policy applies to all Washington Army and Air National Guard (WNG) members activated by the Governor in state active duty status only. It does not apply to regular state employees, federal military technicians, or guardsmen in a Title 32 military status.

Policy

A. When a Washington National Guard (WNG) Airman or Soldier is injured, becomes ill or incapacitated, or dies while on SAD, a Line of Duty investigation form will be completed in accordance with procedural guidance set forth in this policy. The investigation will be documented using the Washington State Active Duty – Line of Duty Personnel and Medical Information Form (WMD Form 2030-15), and referenced throughout this policy as the SAD LOD form.

B. Pre-State Active Duty Medical Questionnaire

Prior to mobilization to state active duty, a member of the National Guard must complete a Pre-State Active Duty Medical Questionnaire (WMD Form 2031-5). The questionnaire will be reviewed to determine suitable physical and mental health for SAD activation of the member. Any response indicating medical challenges must be cleared with the consultation of a medical professional prior to activation.

C. State Active Duty Medical Personnel

When it is determined by the J3 JOC that the

operation of the mission warrants the need for medical personnel (doctor, nurse, physician's assistant, or medical specialist), the necessary medical personnel will also be activated in support of the state active duty mission.

D. Military Medical Review Board

RCW 38-40-030 establishes the Military Medical Review Board (MMRB) as the mechanism for inquiring into SAD claims, making findings about compensation eligibility, compensation for review by TAG, and review and approval by the Governor. The WMD's Representative from the State Office of the Attorney General has advised the WMD that it is appropriate and permissible for the MMRB to use federal military LOD standards and guidance in determining whether a claim is compensable. The MMRB is comprised of the Military Department Joint Chief of Staff, Federal Human Resources Director, and a Medical Officer. The State Injury/Illness Claims Administrator and the JAG (Judge Advocate General) serve as board resources.. The MMRB reserves the right to consult with Subject Matter Experts.

E. Reporting a death, in-patient hospitalization, amputation or loss of an eye

When a state activation results in the death or in-patient hospitalization of a WNG member, the incident must be reported to the Labor and Industries Division of Occupational Safety and Health within the specific timeframes.

a. A workplace fatality or in-patient hospitalization must be reported *within 8 hours* of the incident.

b. An amputation or loss of an eye(s) must be reported *within 24 hours of the incident. Use the 8-hour guideline, if the amputation or loss of the eye(s) results in a death.*

c. Contact the Labor and Industries Division of Occupational Safety and Health via their Hotline at 1-800-423-7233. The following information must be provided.

- Your contact name and number
- Injured Worker's Name
- WMD Risk Manager Contact Information – 253-512-7940
- Agency name: Washington Military Department
- Location of the incident
- Time and date of the incident
- # of employees who have expired, lost limbs or eyesight; and their names
- A brief description of the incident.

F. Responsibilities

1. The WNG member who sustains an injury, becomes ill, or is otherwise medically incapacitated while activated on SAD shall:

a. Notify their chain-of-command/commander immediately of injury, illness or other incapacitation. If they are unable to do so, another knowledgeable person may report it to the commander.

b. Provide information on facts and circumstances of injury or illness by completing Part I of the SAD LOD form, including the release section allowing agency access to medical, employment, and military record information required to administer the state active duty medical claim.

c. Respond to any other requests for information or documentation from the command or the state administrative services office for purposes of processing the state active duty medical claim.

2. The WNG Medical Personnel/JOC Officer in Charge shall:

a. Determine whether the injured or ill member should be sent to a medical facility for further treatment.

b. Determine whether the member should be demobilized and released from SAD, due to the medical condition.

c. When a WNG member is sent to a medical facility, the medical personnel (or the commander's representative assisting the member if no medical personnel are activated) is responsible to:

1) Ensure the injured WNG member completes and signs Part II of the SAD LOD form, unless the severity of the injury or illness precludes it at the time of admittance to the medical facility.

2) Complete Part III of the SAD LOD form.

3) Complete a Request for Medical Treatment for Washington National Guard (WNG) Member on State Active Duty (SAD) (WMD Form 2029-15),

4) Ensure there will be a "buddy" to accompany injured WNG member to the medical facility. This "buddy" must be able to explain claim criteria and processing procedures (Part IV of the SAD LOD form must be completed by the physician) and ensure all necessary forms are returned to the Commander/TF S1.

3. The Commander shall:

a. Ensure the SAD LOD form regarding the injury or illness is completed.

b. Forward the completed SAD LOD form with accompanying supporting witness statements and medical treatment documents to the Joint Operations Center (JOC) within 24 hours of the injury, who shall forward it to the State Risk Manager.

c. In the event of death or dismemberment immediately call the Labor and Industries (L&I) Reporting Hotline as notated previously in this policy.

d. Take pictures of the scene as it appears immediately following the incident; cordon off the area whenever possible in preparation for L&I Inspection.

e. Notify the Agency Risk Manager along with other required notifications.

4. The State Risk Manager shall:

a. Receive the SAD LOD form from the JOC, review for completeness and send the form to the MMRB for their review and recommendation.

b. Maintain files on each WNG member including all correspondence, medical bills, and other appropriate claim information.

c. Forward the information to the MMRB for their review and recommendation.

d. Forward the MMRB recommendation to TAG.

e. Prepare documentation for TAG to the Governor.

f. Coordinate all actions with the Office of Financial Management to expedite approval of claims.

g. Administer disbursement of compensation.

h. Oversee further actions regarding the claim to include further medical treatment and/or rehabilitation.

i. In the event of a death or dismemberment validate that the L&I Hotline has been called. Respond to the location if safe to conduct an independent investigation while cooperating fully with L&I Inspectors.

j. Coordinate death processing with the Agency Claims Manager.

5. The MMRB shall:

a. Review the claim to determine whether injury, illness, or incapacitation occurred in line of duty and should be compensated.

b. Make finding regarding eligibility for compensation.

c. Forward findings to the State Risk Manager for further processing.

d. Investigate further or direct further investigation of the claim, and to request and/or subpoena people and documents in accordance with RCW 38.40.030 in order to make its determinations.

6. TAG shall:

a. Review the findings of the MMRB and submit the claim to the Governor with recommendations as to disposition.

b. Receive notification from the Governor of the approval, denial, or direct further action to be taken regarding the claim.

c. When the Governor approves the findings of the MMRB, TAG will notify the State Risk Manager to take action on all claims as appropriate.

Procedures

The following procedure outlines the actions to take for reporting SAD LOD illness, injury, or fatal incident claims.

1. The Service Member (SM) or other knowledgeable person notifies their chain of command of the injury and completes Part I of the SAD LOD form.
2. The WNG Medical Personnel will examine the SM. In absence of Medical Personnel the Commander or Task Force Leader will evaluate the situation.
    a. If the SM does not need care above/beyond the basic medic care, the SM returns to duty to complete the mission.
    b. If the SM is in need of medical care above/beyond the basic medic care then:
        1) SM completes Part II of the SAD LOD form.
        2) SM, Commander, Task Force Leader or Medic completes Part III of the SAD LOD form.
        3) Military Medical personnel/Commander or Task Force Leader completes WMD Form 2029-15 and assigns a designated "buddy" to the injured SM.

4) Designated "buddy" accompanies the SM to a civilian hospital or urgent care facility in order to manage the SAD LOD paperwork.

5) SM receives treatment.

6) Attending physician completes Part IV of the SAD LOD form.

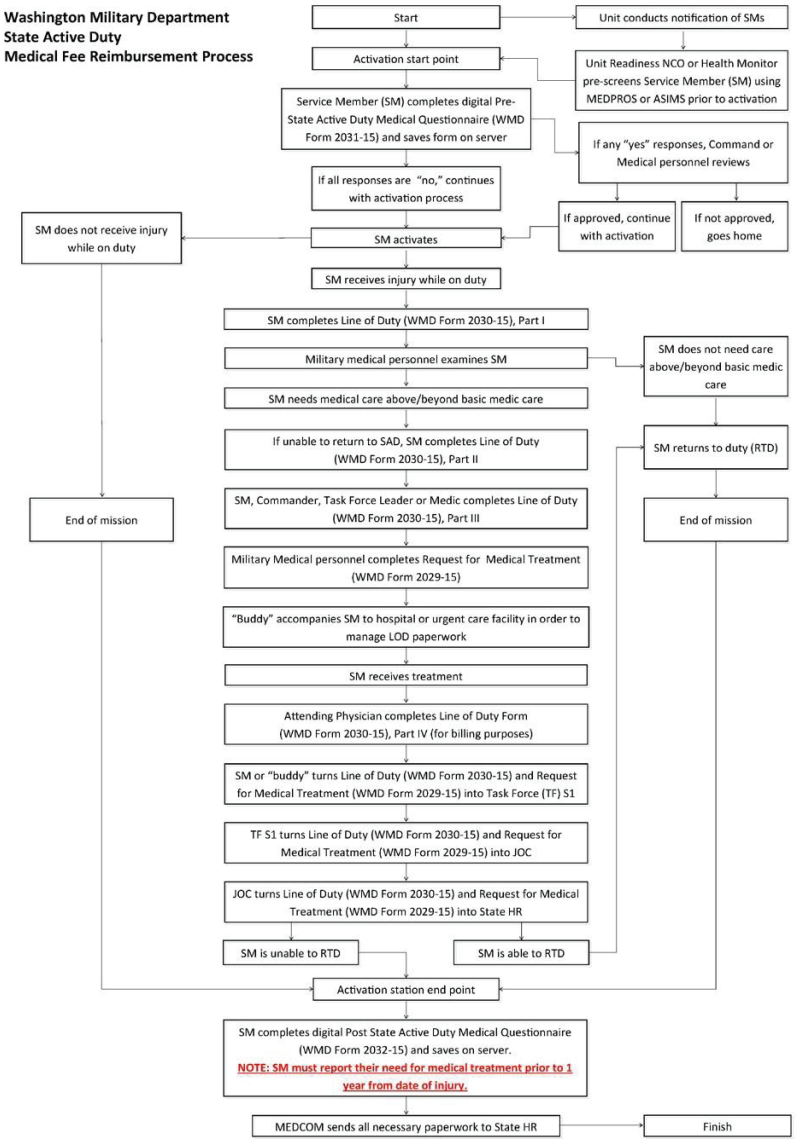
7) SM or "buddy" turns the SAD LOD form and WMD Form 2029-15 into the TASK Force (TF) S1.

8) TF S1 turns the SAD LOD form and WMD Form 2029-15 into the JOC.

9) JOC turns the SAD LOD form and WMD Form 2029-15 into State HR.

10) If unable to return to duty, the SM completes the digital Post State Active Duty Medical Questionnaire (WMD Form 2032-15).

11) MEDCOM sends all of the necessary paperwork to State HRO.


Washington Military Department
State Active Duty
Medical Fee Reimbursement Process
Start
Unit conducts notification of SMs
Activation start point
Unit Readiness NCO or Health Monitor pre-screens Service Member (SM) using MEDPROS or ASIMS prior to activation
Service Member (SM) completes digital Pre-State Active Duty Medical Questionnaire (WMD Form 2031-15) and saves form on server
If any "yes" responses, Command or Medical personnel reviews
If all responses are "no," continues with activation process
If approved, continue with activation
If not approved, goes home
SM does not receive injury while on duty
SM activates
SM receives injury while on duty
SM completes Line of Duty (WMD Form 2030-15), Part I
Military medical personnel examines SM
SM does not need care above/beyond basic medic care
SM needs medical care above/beyond basic medic care
If unable to return to SAD, SM completes Line of Duty (WMD Form 2030-15), Part II
SM returns to duty (RTD)
End of mission
SM, Commander, Task Force Leader or Medic completes Line of Duty (WMD Form 2030-15), Part III
End of mission
Military Medical personnel completes Request for Medical Treatment (WMD Form 2029-15)
"Buddy" accompanies SM to hospital or urgent care facility in order to manage LOD paperwork
SM receives treatment
Attending Physician completes Line of Duty Form (WMD Form 2030-15), Part IV (for billing purposes)
SM or "buddy" turns Line of Duty (WMD Form 2030-15) and Request for Medical Treatment (WMD Form 2029-15) into Task Force (TF) S1
TF S1 turns Line of Duty (WMD Form 2030-15) and Request for Medical Treatment (WMD Form 2029-15) into JOC
JOC turns Line of Duty (WMD Form 2030-15) and Request for Medical Treatment (WMD Form 2029-15) into State HR
SM is unable to RTD
SM is able to RTD
Activation station end point
SM completes digital Post State Active Duty Medical Questionnaire (WMD Form 2032-15) and saves on server.
NOTE: SM must report their need for medical treatment prior to 1 year from date of injury.
MEDCOM sends all necessary paperwork to State HR
Finish

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNELL AND READINESS

Feb 14, 2018

MEMORANDUM FOR
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
CHIEF, NATIONAL GUARD BUREAU
DIRECTOR OF COST ASSESSMENT AND PROGRAM EVALUATION

SUBJECT: DoD Retention Policy for Non-Deployable Service Members

In July, the Secretary of Defense directed the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) to lead the Department's effort to identify changes to military personnel policies necessary to provide more ready and lethal forces. In his initial memorandum to the Department, Secretary Mattis emphasized, "[e]very action will be designed to ensure our military is ready to fight today and in the future." Given the Secretary's guidance, OUSD(P&R) moved forward from the underlying premise that all Service members are expected to be world-wide deployable. Based on the recommendations of the Military Personnel Policy Working Group, the Deputy Secretary of Defense determined that DoD requires a Department-wide

policy establishing standardized criteria for retaining non-deployable Service members. The objective is to both reduce the number of non-deployable Service members and improve personnel readiness across the force.

The Deputy Secretary of Defense directed the following interim policy guidance, which will remain in effect until the Department issues a DoD Instruction on reporting and retention of non-deployable Service members.

- Service members who have been non-deployable for more than 12 consecutive months, for any reason, will be processed for administrative separation in accordance with Department of Defense Instruction (DoDI) 1332.14, *Enlisted Administrative Separations*, or DoD Instruction 1332.30, *Separation of Regular and Reserve Commissioned Officers*, or will be referred into the Disability Evaluation System in accordance with DoDI 1332.18, *Disability Evaluation System (DES)*. Pregnant and post-partum Service members are the only group automatically excepted from this policy.
- The Secretaries of the Military Departments are authorized to grant a waiver to retain in service a Service member whose period of non-deployability exceeds the 12 consecutive months limit. This waiver authority may be delegated in writing to an official at no lower than the Military Service headquarters level.

- The Military Services have until October 1, 2018, to begin mandatory processing of non-deployable Service members for administrative or disability separation under this policy, but they may begin such processing immediately.
- The Military Services may initiate administrative or disability separation upon determination that a Service member will remain non-deployable for more than 12 consecutive months; they are not required to wait until the Service member has been non-deployable for 12 consecutive months.
- The Military Services will continue to provide monthly non-deployable reports to OUSD(P&R) in the format established by the Military Personnel Policy Working Group.

My office will issue a DoDI to provide additional policy guidance and codify non-deployable reporting requirements. Publication of the DoDI will supersede and cancel this policy memorandum.

s/ Robert L. Wilkie
Robert L. Wilkie

cc:
Assistant Secretary of the Army
for Manpower and Reserve Affairs
Assistant Secretary of the Navy
for Manpower and Reserve Affairs
Assistant Secretary of the Air Force
for Manpower and Reserve Affairs

Senior Enlisted Advisor to the Chairman
of the Joint Chiefs of Staff
Deputy Chief of Staff, G-1, U.S. Army
Chief of Naval Personnel, U.S. Navy
Deputy Chief of Staff for Personnel and Services,
U.S. Air Force
Deputy Commandant for Manpower and Reserve
Affairs, U.S. Marine Corps
Director, Reserve and Military Personnel,
U.S. Coast Guard
Director, Manpower and Personnel, Joint Staff
National Guard Bureau, J-1

PALM CENTER
BLUEPRINTS FOR SOUND PUBLIC POLICY

MARCH 27, 2018

26 Retired General and Flag Officers Oppose Trump Transgender Military Ban

SAN FRANCISCO, CA – Following the American Psychological Association's statement yesterday, expressing alarm over the Trump Administration's "misuse of psychological science to stigmatize transgender Americans and justify limiting their ability to serve in uniform and access medically necessary health care," the Palm Center today released the following statement by 26 retired General and Flag Officers:

> "The Administration's announcement on the treatment of transgender service members is a troubling move backward. Many of us personally experienced the belated removal of

> 'don't ask, don't tell' and faced firsthand how that mistaken policy set back our force and enabled discrimination against patriotic gay and lesbian Americans. We learned a clear lesson: the singling out of one group of service members for unequal treatment harms military readiness, while inclusion supports it. Under the newly announced policy, most transgender individuals either cannot serve or must serve under a false presumption of unsuitability, despite having already demonstrated that they can and do serve with distinction. They will now serve without the medical care every service member earns, and with the constant fear of being discharged simply for who they are. We should not return to the days of forcing men and women to hide in the shadows and serve their country without institutional support. This deprives the military of trained and skilled service members, which harms readiness and morale. There is simply no reason to single out brave transgender Americans who can meet military standards and deny them the ability to serve."

Vice Admiral Donald Arthur, USN (Retired)
Vice Admiral Kevin P. Green, USN (Retired)
Lieutenant General Arlen D. Jameson, USAF (Retired)
Lieutenant General Claudia Kennedy, USA (Retired)
Major General Donna Barbisch, USA (Retired)
Major General J. Gary Cooper, USMC (Retired)
Rear Admiral F. Stephen Glass, USN (Retired)
Major General Irv Halter, USAF (Retired)
Rear Admiral Jan Hamby, USN (Retired)

Rear Admiral John Hutson, JAGC, USN (Retired)
Major General Dennis Laich, USA (Retired)
Major General Randy Manner, USA (Retired)
Major General Gale Pollock, CRNA, FACHE, FAAN, USA (Retired)
Major General Peggy Wimoth, PhD, MSS, RN, FAAN,USA (Retired)
Rear Admiral Dick Young, USN (Retired)
Brigadier General Ricardo Aponte, USAF (Retired)
Rear Admiral Jamie Barnett, USN (Retired)
Brigadier General Julia Cleckley, USA (Retired)
Rear Admiral Jay DeLoach, USN (Retired)
Brigadier General John Douglass, USAF (Retired)
Brigadier General David R. Irvine, USA (Retired)
Brigadier General Carlos E. Martinez, USAF (Retired)
Brigadier General John M. Schuster, USA (Retired)
Rear Admiral Michael E. Smith, USN (Retired)
Brigadier General Paul Gregory Smith, USA (Retired)
Brigadier General Marianne Watson, USA (Retired)

UNITED STATES DISTRICT COURT
WESTEREN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al., Plaintiffs, v. DONALD TRUMP, in his official capacity as President of the Unite States; the UNITED STATES OF AMERICA; JAMES N. MATTIS, in his official capacity as Secretary of Defense; and the UNITED STATES DEPARTMENT OF DEFENSE, Defendants.	Case No. 2:17-cv-1297 DECLRATION OF DAVID POSTMAN IN SUPPORT OF WASHINGTON STATE'S MOTION TO INTERVENE

Pursuant to 28 U.S.C. § 1746(2), I, DAVID POSTMAN, hereby declare as follows:

1. I over 18 years of age, have personal knowledge of the facts set forth in this declaration and am competent to testify about them.

2. I am the Chief of Staff for Washington State Governor Jay Inslee and have served as such since December 14, 2015. Prior to becoming Chief of Staff, I served as Governor Inslee's Executive Director of Communications from 2013 to 2015.

3. As Chief of Staff for the Governor, I oversee all operations of state government under the purview of the Governor. This includes, but is not limited to, management of the Governor's policy, legal,

communications and legislative staff, as well as primary supervision of the Governor's cabinet, including the Military Department. As Chief of Staff, I serve as the Governor's primary advisor and ensure that his priorities and policy directions are carried out by state agencies.

4. The Governor is the chief executive of the State. The Governor is responsible for overseeing the operations of the State and ensuring the faithful execution of tis laws, including but not limited to the Washington Law Against Discrimination, which, among other things, prohibits discrimination based on gender or sexual orientation in employment. Chapter 49.60 RCW.

5. The Governor sets policy and priorities to protect both the physical and economic well-being of the State and its residents. The Governor implements these policies and priorities with the assistance of department and agency heads.

6. As chief executive of the State, the Governor is responsible for protecting Washingtonians in emergencies and disasters. The Washington National Guard is an integral part of Washington's emergency preparedness and disaster recovery planning as well as a member of Washington's militia. Wash. Rev. Code § 38.04.030.

7. As commander-in-chief, the Governor has the authority to deploy the Washington National Guard to respond to emergencies and disasters in order to safeguard lives, property, and the economy of Washington State by providing in-state disaster recovery and assistance. Wash. Rev. Code §§ 38.08.020, 38.080.40. When the Governor deploys

the Guard for in-state service, such activation is called State Active Duty.

8. Currently, there are more than 8,000 citizen soldiers and airmen in the Washington National Guard. Since 2007, the Guard has been deployed eight times intrastate to fight forest fires, battle flooding, and provide rescue services to communities devastated by landslides.

9. When the Governor deploys the Washington National Guard for emergencies that occur in State, the State pays Guard members for their service. When the Guard is on State Active Duty, Guard members are paid with State funds at the same rate of pay for their rank or grade as their active duty counterparts. The State also ensures that all costs and expenses incurred by the Guard during State Active Duty are paid. The State also maintains records to ensure that accurate accounting records are kept.

10. Between 2007 and September 2017, the Governor has deployed the Washington National Guard eight times to respond to emergencies in Washington State. The State has paid the below amounts for these State duty activations:

YEAR	DEPLOYMENT	ACTIVATED WASHINGTON NAT'L GUARD MEMBERS	NG STATE ACTIVE DUTY EXPENDITURE
2007-2008	Flooding – Western Washington	480	$272,232.00
2009	Flooding – Thurston and Pierce Counties	340	$401,775.00
2012	Taylor Bridge Fire Complex	15	$396,410.00

2014	SR530 Landslide (Oso Mudslide)	700	$1,969,570.00
2014	Wildfire Support	800	$4,969,045.00
2015	Wildfire Support	1500	$8,058,795.00
2017	March Flooding Eastern WA	41	$59,526.00
2017	Sep 2017 Wildfire Activation (Note – includes the total for all fires)	356	Currently mobilized and costs not available yet
		4,232	

11. To ensure that Guard members have the appropriate knowledge, tools, and training when utilized in wildfire response, Washington State annually spends $392,000 to fund a special Fire Land training.

12. Although the federal government primarily funds the Washington National Guard and its operations, Washington State is responsible for funding the following three full-time positions: Adjutant General and two Assistant Adjutant Generals. The salary and benefits cost per year for these three positions is $605,615.00.

13. Washington State also provides $2,795,512 per year to maintain the buildings utilized by the Washington National Guard. This amount equals 25% of the funding necessary to keep the buildings operational.

14. In 2016, the Department of Defense ("DoD") directed that members who openly identified as transgender would be permitted to join and serve

opening in the military. The Washington National Guard conducted training on this policy and was prepared to implement it on its effective date of July 1, 2017.

15. On June 30, 2017, the DoD issued a directive delaying accession by openly transgender individuals to the military, including the Guard, until January 1, 2018.

16. The Washington National Guard currently has one soldier that identifies as transgender. This individual has not taken steps to change their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS). Due to this soldier's gender transition, the soldier desired to leave the Washington National Guard, and with the Washington National Guard's approval, this soldier voluntarily agreed to assume inactive status until the solder's term of service expired. This member entered service on March 7, 2012 and is currently in an inactive status approaching their military Expiration of Term of Service (ETS) on March 6, 2018, which means that their military service obligation is complete.

Executed September 22, 2017 in
Olympia, Washington.

s/ David Postman
DAVID POSTMAN
Chief of Staff for the Governor of
Washington State