

**In the Supreme Court
of the United States**

UNITED STATES OF AMERICA, ET AL., APPLICANTS

v.

EMILY SHILLING., ET AL.

**On Application for a Stay of the Injunction
Issued by the United States District Court
for the Western District of Washington**

**BRIEF OF *AMICUS CURIAE* DAVID BOYLE IN SUPPORT
OF NO PARTY RE APPLICATION FOR A STAY OF THE
INJUNCTION ISSUED BY THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF WASHINGTON**

David Boyle
Counsel of Record
P.O. Box 15143
Long Beach, CA 90815
(734) 904-6132
dbo@boyleslaw.org

***AMICUS CURIAE* STATEMENT OF INTEREST**

The present *amicus curiae*, David Boyle (hereinafter, “Amicus”),¹ sees the Trump Administration is attempting to exclude transgender (“trans”) people from the military, even if under the cloak (some would say, the “drag”...) of calling it “gender dysphoria exclusion”. Amicus, though in no way endorsing gender change (which, like climate change, has its critics...), still finds this exclusion suspicious, even animus-infected, bigoted, and hurtful to American military preparedness and trans individuals’ rights (and duty) to serve. Since threats to the Nation’s security and individual rights might indirectly threaten Amicus and others, he writes this brief, although it is for no party, since, e.g., nationwide injunctions irritate some people.

SUMMARY OF ARGUMENT

A Trump order excluding trans from the military is defiled by hateful animus, which may fatally compromise the exclusion effort. A recent British Supreme Court case shows how trans can be included in the military, and other society, while also respecting, e.g., cisgender people’s bathroom privacy. America’s Defense Secretary contradicts the trans-exclusion efforts by demanding “equalized” (i.e., heightened) standards for women, but denying equality to trans who could meet the standards.

ARGUMENT

I. TRUMP’S “MILITARY READINESS” ORDER IS STAINED BY ANIMUS AND MAY FATALLY INFECT MILITARY ANTI-TRANS MEASURES

Trump’s “Prioritizing Military Excellence and Readiness” order, Jan. 27, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/prioritizing-military->

¹ No party or its counsel wrote or helped write this brief, or gave money for it, *see* S. Ct. R. 37.

excellence-and-readiness/ (last checked Apr. 25, 2025, as with all links here), actually prioritizes animus and abuse, and may hurt our Nation's security:

[A]doption of a gender identity inconsistent with an individual's sex conflicts with a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life. A man's assertion that he is a woman, and his requirement that others honor this falsehood, is not consistent with the humility and selflessness required of a service member.

Id. § 1. Notwithstanding questions about who should call whom dishonorable (e.g., should, say, some hypothetical rapist/batterer with multiple felony convictions, who never served in the military himself, really be calling *other people* dishonorable?), there is a monstrous stench of unconstitutional animus to the Order's words. Even if, say, a trans woman hasn't become a biological woman in every possible respect, does that mean she is *ipso facto* a liar, dishonorable, or undisciplined? especially since she is willing to die for her country? Is there "projection" going on here? Too, the quoted words' focus, *id.*, only on a man saying he is a woman, not the other way around, makes the Order sexist, and sensationalist, which is not encouraging.

The Order and its possibly-unconstitutional, almost Nazi-esque animus may explain why anti-trans measures are even stricter, needlessly so, than in the first Trump Administration, e.g., a prospective soldier/sailor now can't even ever have *attempted* gender transition, U.S. Application at 16 (citation omitted). The latter prohibition seems close to a flat ban on trans people, despite the fig leaf or "drag" of saying "gender dysphoria" is the relevant issue. (By the way, government efforts against Kilmar Abrego Garcia also seem "drag-gy"—even if unintentionally so—to Amicus, in that they seem to wear a mask of claiming this Court is trying to order

around El Salvador; but the Court is, of course, trying to order our own government to behave.) —Now we “transition” to useful guidance from across the Atlantic:

II. THE BRITISH SUPREME COURT’S RECENT OPINION SAYING TRANS MEN/WOMEN ARE NOT BIOLOGICAL MEN/WOMEN, BUT CAN STILL BE PROTECTED FROM DISCRIMINATION, MAY BE INSTRUCTIVE

In the United Kingdom’s noted, recent Supreme Court case, *For Women Scotland Ltd v The Scottish Ministers*, [2025] UKSC 16, Apr. 16, 2025 (Lord Hodge, Lady Rose, Lady Simler, JJ.) (hereinafter, “*For Women*”), available at https://supremecourt.uk/uploads/uksc_2024_0042_judgment_aea6c48cee.pdf, the case’s Press Summary, https://supremecourt.uk/uploads/uksc_2024_0042_press_summary_8a42145662.pdf, says, under “Judgment”, that the Court “holds that the terms ‘man’, ‘woman’ and ‘sex’ in the E[quality Act] 2010 refer to biological sex.” *Id.*, PDF at 2. In other words, trans people in Britain may not now, e.g., be able to use the bathrooms they’d like to, regardless of what sex/gender they call themselves.

However, paragraphs 245-46 of the *For Women* Opinion (PDF pp. 76-77) seem to allow trans to serve in the military, though if there are particular gender-related issues preventing a particular trans person from serving in a certain capacity (say, using a certain bathroom?), that restriction may be allowed, *see id.* Too, the Press Summary, *supra*, notes, under “Protection from Discrimination”, that the Opinion’s

interpretation of the E[quality Act] 2010 does not remove protection from trans people, [who] are protected from discrimination on the ground of gender reassignment [and] also able to invoke the provisions on direct discrimination and harassment, and indirect discrimination on the basis of sex[, e.g., being] perceived to be a woman.

Id., PDF at 4. Thus, *see id.*, *For Women* is not some panacea for anti-trans people who might want to cite it for the elimination of trans rights. Rather, *For Women*

seems to offer a nuanced, balanced perspective, whereby trans people's substantial rights are recognized, but balanced with others' rights, e.g., the right of both women-born-women and men-born-men ("cisgenders") to bathroom privacy.

For Women, then, while not an American case, seems to support trans people's rights to be in the military (i.e., not to be discriminated against needlessly), albeit with proper limitations. *See also* the British Army recruiting site's *LGBT+* page, <https://jobs.army.mod.uk/regular-army/inclusion-values/lgbt/>, "The Army welcomes transgender personnel and all who apply to join the Army must meet the same mental and physical entry standard as any other candidate. If you have completed transition you will be treated as an individual of your affirmed gender." *Id.*

III. HEGSETH'S "EQUAL TRAINING STANDARDS REGARDLESS OF SEX" CONTRADICTS THE "LOGIC" OF EXCLUDING TRANS FROM THE MILITARY, REGARDLESS OF WHETHER THEY MEET STANDARDS

On that note, "meet the same ... standard", British Army *LGBT+*, *supra*, Defense Secretary Peter Hegseth has recently raised standards U.S. women must meet, *see* Jonathan Wolfe, *Female Soldiers Will Have to Pass 'Sex-Neutral' Physical Test, U.S. Army Says*, N.Y. Times, Apr. 22, 2025, <https://www.nytimes.com/2025/04/22/us/new-army-fitness-test-women.html>, "For example, to pass the dead lift event, women ages 17 to 21 will need to lift at least 140 pounds, instead of the 120 required under the old standards." *Id.* This may be a good thing (if not, say, motivated by animus towards women), raising standards in a neutral way: but then, the logic of that contradicts the exclusion of transgender troops, if they can meet the same standard as others. This error may be legally fatal to the Administration's exclusion efforts.

While there are some genuine burdens that trans troops can have, e.g., recovery

time from gender-transition surgery, what if, say, they had the surgery long ago? What if, everything considered, they can meet the same standards as other troops? If one excludes trans troops because there may be some burden for some of them at some times, why not, say, exclude all women troops, since women bleed once every few weeks, i.e., menstruate, which may not be a bonus in combat situations? But Hegseth allows them to fight—if they can meet the standards. Why not trans, then?

* * *

If we want an effective military, maybe we can focus more on Hegseth's phone security and less on excluding trans. As Pope Francis (RIP) might have said, animus stinks: *see* "Whoever hateth his brother is a murderer", 1 *John* 3:15 (KJV); *see also* U.S. Const. amend. V (due process, equal protection). —One reason not to exclude trans, is that they have an equal duty to die for their country like the rest of us. It could hurt the military if, say, rich kids "attempt gender transition" just to get out of military service. But if trans have duties, they, including those brave enough to volunteer for service, may also have a *right* to serve, if they can meet common standards. ...People have a right to their opinion in the "culture wars"; parents may have a right to opt children out of LGBTQ books in schools, say. But to force trans out of the military, seems like opting out of democracy itself. Does this seem fair?

CONCLUSION

Amicus sees scant reason to grant a stay; "but, national injunctions", some say: a frequent lament. —Amicus humbly thanks the Court for its time and consideration.

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Respectfully submitted,

David Boyle
Counsel of Record
P.O. Box 15143
Long Beach, CA 90815
dbo@boyleslaw.org
(734) 904-6132