

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NICOLAS TALBOT, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,

Defendants.

No. 1:25-cv-240-ACR

**BRIEF OF AMICUS CURIAE THE STATES OF VERMONT, WASHINGTON,
CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS,
MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, AND
WISCONSIN IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A PRELIMINARY
INJUNCTION**

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I. INTRODUCTION

The President’s executive order banning transgender people from serving in the military not only violates the Fifth Amendment—as Plaintiffs’ Application for Preliminary Injunction demonstrates—but it will also weaken our nation’s military, including the National Guard, and undermine the Amici States’ institutions and efforts to protect their communities. It harms the Amici States’ interests in emergency and disaster preparedness by depriving our National Guard units of experienced and qualified soldiers at a time when recruiting is especially challenging. Without providing any evidence-based rationale for doing so, it again pulls the rug out from under service members who have served with honor and distinction. And it entangles the Amici States in a discriminatory policy fundamentally at odds with their own experiences in enacting and enforcing laws protecting transgender individuals. Their experience shows that allowing transgender individuals to participate fully in society, including the military, benefits Amici States and the nation. The executive order is unconstitutional and harms national security. The Court should grant Plaintiffs’ Application for Preliminary Injunction.

II. IDENTITY AND INTEREST OF AMICI

The States of Vermont, Washington, California, Colorado, Connecticut, Delaware, Hawai’i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, and Wisconsin (“Amici States”) respectfully submit this *amicus curiae* brief in support of Plaintiffs’ Application for Preliminary Injunction as of right pursuant to Local Civil Rule 7(o)(1). The Amici States have an interest in the strength and preparedness of our national defense, including the National Guard, over which the States have partial control and on which the States rely in times of peace and emergency. The Amici States also have interests in protecting other state institutions implicated by the executive order and in enforcing their own civil rights protections for transgender individuals. These interests are best served by allowing transgender individuals to serve in the military and National Guard without discrimination.

III. ARGUMENT

A. The National Guard Serves a Vital Role in Ensuring the Security and Disaster Preparedness of the States.

As the modern-day successor to the Founding-era concept of the militia, the National Guard is explicitly governed by the United States Constitution. *Ass'n of Civilian Technicians, Inc. v. United States*, 603 F.3d 989, 992 (D.C. Cir. 2010). Article I, Section 8 gives Congress the power “[t]o provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.” U.S. Const. art. I, § 8, cl. 15. It also gives Congress the power “[t]o provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.” U.S. Const. art. I, § 8, cl. 16. These two clauses, known as the Militia Clauses, “reflect a delicate compromise that gives the States power over their respective militias—subject to the President’s power to call those militias into national service when necessary.” *Abbott v. Biden*, 70 F.4th 817, 821 (5th Cir. 2023).

The statutory scheme governing the National Guard reflects this compromise. As the Fifth Circuit has explained, “the National Guard includes two ‘overlapping but distinct organizations’—the National Guards of the various States and the National Guard of the United States.” *Id.* at 822 (quoting *Perpich v. Dep’t of Def.*, 496 U.S. 334, 345 (1990)). “All who enlist in a State’s National Guard must simultaneously enlist in the National Guard of the United States, which is a reserve component[] of the armed forces.” *Id.* (internal quotations and citations omitted); 10 U.S.C. § 10101. However, “[m]embers of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.” 10 U.S.C. § 12401.

Both the Constitution and federal statutes allocate authority over the National Guard between the Federal Government and the States and Commonwealths. The States retain control over the National Guard when it is not called into federal service. 32 U.S.C. §§ 328, 502(f). The National Guard is thus “a “hybrid” entity that carefully combines both federal and state characteristics.” *Ass’n of Civilian Technicians*, 603 F.3d at 992 (quoting *Lipscomb v. Fed. Labor Relations Auth.*, 333 F.3d 611, 614 (5th Cir. 2003)). Each state’s Governor, and its Adjutant General, who is appointed by the Governor, control the National Guard when it is not called up for federal service. 32 U.S.C. § 314. The President cannot change “the branch, organization, or allotment of a unit located entirely within a State” without the Governor’s approval. *Id.* § 104(c). And each State “may fix the location of the units and headquarters of its National Guard.” *Id.* § 104(a).

Although the National Guard is primarily funded through federal appropriations, *see* 32 U.S.C. §§ 106-07, it also receives funding from the States. For example, California’s enacted budget for fiscal year 2024 allocated more than \$293 million for its National Guard; of this amount, more than \$148 million—approximately 51% of the budget—came from California’s General Fund.¹ Vermont’s fiscal year 2024 Budget allocates more than \$6 million to its military department, most of which flows to various National Guard functions.² In Washington, the adopted budget for 2023-2025 allocated \$784,000 in state funds to the National Guard for fire suppression training, equipment, and supporting costs, and \$23,000 in state funds for National

¹ California State Budget Office, 2023-24 STATE BUDGET – GG1, 8940 Military Dep’t, <https://ebudget.ca.gov/2023-24/pdf/Enacted/GovernorsBudget/8000/8940.pdf>

² FY2024 State of Vermont Executive Budget Recommendation 482, https://finance.vermont.gov/sites/finance/files/documents/FY2024%20Executive%20Budget%20Book_0.pdf

Guard recruitment.³ In Massachusetts, the enacted budget for the fiscal year 2025 included state spending for (among other things) the office of the adjutant general, certain National Guard aviation facilities, and National Guard missions and division operations.⁴

The National Guard has thousands of members assigned for duty in each state. Data from June 2024 on members assigned for duty show, for example, that Washington had 5,482 members of the Army National Guard and 1,977 members of the Air National Guard assigned for duty in the State.⁵ California had 12,608 members of the Army National Guard and 4,778 members of the Air National Guard assigned for duty in the State.⁶ Illinois had 9,745 members of the Army National Guard and 2,658 members of the Air National Guard assigned for duty in the State.⁷ Even Vermont had 1,751 members of the Army National Guard and 1,011 members of the Air National Guard assigned for duty in the State.⁸

The National Guard is unique for its dual state-federal service and because it provides for part-time service. As the Army National Guard explains, joining the Guard requires attending one weekend of drill per month and a two-week training course each year.⁹ The National Guard allows

³ Engr. Sub. S.B. 5950 at 206-07, 68th Leg., Reg. Sess. (Wa. 2024).

⁴ Military Division, Budget Summary FY2025 Enacted, Commonwealth of Massachusetts, <https://budget.digital.mass.gov/summary/fy25/enacted/public-safety/military-division/?tab=budget-summary>

⁵ Defense Manpower Data Center, *Number of Military and DoD Appropriated Fund (APF) Civilian Personnel* (June 30, 2024) (Spreadsheet), <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>

⁶ *Id.*

⁷ See Defense Manpower Data Center, *Number of Military and DoD Appropriated Fund (APF) Civilian Personnel* (June 30, 2024) (Spreadsheet), <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>

⁸ *Id.*

⁹ Army National Guard, *Guard FAQs*, <https://nationalguard.com/guard-faqs>

service members to keep their civilian jobs while serving.¹⁰ This type of service allows more individuals to participate. For example, women make up a larger percentage of the National Guard and reserves than active-duty forces.¹¹ The Amici States benefit from a National Guard comprised of individuals from different professional backgrounds who are engaged in different civilian careers and bring different skills to their service.

In addition to serving as a reserve force of the U.S. Military, the National Guard saves lives by responding to natural disasters. The National Guard responded to major wildfires in Washington in 2024 and California in 2025.¹² Members of the Vermont Army National Guard collaborated with search and rescue teams to evacuate nineteen people from Hurricane Beryl in one night in 2024.¹³ In 2023, Hawaii's National Guard responded to devastating wildfires in Lahaina by maintaining order, fighting the fires, and searching for victims.¹⁴ In 2019, 200

¹⁰ Military One Source, *National Guard Employment Support*, <https://www.militaryonesource.mil/resources/millife-guides/national-guard-employment>

¹¹ U.S. Department of Defense, *Department of Defense Releases Annual Demographics Report – Upward Trend in Number of Women Serving Continues* (Dec. 14, 2022), <https://www.defense.gov/News/Releases/Release/article/3246268/department-of-defense-releases-annual-demographics-report-upward-trend-in-numbe/>

¹² Joseph Siemandel, *Year in Review: 2024 was a busy year for Washington Military Department*, Defense Visual Information Distribution Service (DVIDS) (Jan. 7, 2025), <https://www.dvidshub.net/news/488741/year-review-2024-busy-year-washington-military-department>; Kimberly Hill, *California National Guard supports wildfire response following devastating fires in SoCal*, DVIDS (Jan. 20, 2025), <https://www.dvidshub.net/news/489368/california-national-guard-supports-wildfire-response-following-devastating-fires-social>

¹³ J. Scott Detweiler, *Vermont National Guards Supports Cyclone Beryl Response*, DVIDS (July 11, 2024), <https://www.dvidshub.net/news/475930/vermont-national-guards-supports-cyclone-beryl-response>

¹⁴ Erich B. Smith, *Hawaii Army National Guard Supports Maui Wildfire Response*, National Guard (Aug. 28, 2023), <https://www.nationalguard.mil/News/Article-View/Article/3507502/hawaii-army-national-guard-supports-maui-wildfire-response/>

members of the Illinois National Guard responded to major river floods by placing sandbags and monitoring levees.¹⁵ Maryland recently activated its National Guard to respond to a winter storm.¹⁶

States also send members of their National Guard to assist other states facing major natural disasters. All fifty states, plus the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and the Northern Mariana Islands, have enacted legislation to become members of the Emergency Management Assistance Compact (“EMAC”).¹⁷ EMAC is a formal compact that facilitates states’ sharing of personnel and resources when a governor in one state declares an emergency.¹⁸ National Guard members are deployed to respond to disasters in other states through EMAC.¹⁹ For example, in 2024, many states sent personnel and resources to Florida to help respond to Hurricane Milton. New York sent sixty-five members of its National Guard.²⁰ Colorado sent a

¹⁵ Bradford Leighton, *Ill. National Guard helps civilian agencies fight flooding*, National Guard (June 3, 2019), <https://www.nationalguard.mil/News/Article-View/Article/1863818/ill-national-guard-helps-civilian-agencies-fight-flooding/>

¹⁶ Maryland National Guard, *Maryland National Guard activated to support winter storm response across the state* (Jan. 8, 2025), <https://news.maryland.gov/ng/2025/01/08/maryland-national-guard-activated-to-support-winter-storm-response-across-the-state/>

¹⁷ EMAC, *What is EMAC?*, <https://www.emacweb.org/index.php/learn-about-emac/what-is-emac>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ State of New York, *New York National Guard Will Move Personnel From Syracuse and Long Island to Camp Blanding Joint Training Center Florida on Wednesday, October 9* (Oct. 9, 2024), <https://www.governor.ny.gov/news/governor-hochul-announces-65-new-york-national-guard-soldiers-and-airmen-are-deploying-assist>

helicopter and crew.²¹ Delaware sent 100 members of its National Guard.²² Connecticut deployed members of its National Guard in the wake of Hurricane Helene in 2024.²³ In 2022 alone, over 100,000 members of the National Guard were deployed to fight wildfires in nineteen states.²⁴ And in 2012, in the aftermath of Hurricane Sandy, 12,000 National Guard members—including 2,000 deployed by New Jersey—assisted eleven states, working with search and rescue teams, staffing evacuation shelters, clearing routes, and delivering essential equipment and supplies.²⁵ As the Amici States—and the nation as a whole—face increasingly catastrophic wildfires, hurricanes, and other natural disasters, a robust National Guard staffed with every qualified servicemember is essential to protect people and property.

In addition to natural disasters, states sometimes activate members of the National Guard to provide security support at major events. For example, in 2024, members of Nevada’s National

²¹ Colorado National Guard, *Colorado National Guard supports Hurricane Milton relief efforts* (Oct. 9, 2024), <https://co.ng.mil/News/Archives/Article/3930948/colorado-national-guard-supports-hurricane-milton-relief-efforts/>

²² State of Delaware, *Governor Carney to Activate Delaware National Guard to Assist with Florida’s Hurricane Response* (Oct. 8, 2024), <https://news.delaware.gov/2024/10/08/governor-carney-to-activate-delaware-national-guard-to-assist-with-floridas-hurricane-response/>

²³ State of Connecticut, *Governor Lamont Announces Connecticut National Guard Sending Additional Soldiers and Aircraft to North Carolina for Further Hurricane Helene Disaster Assistance* (Oct. 3, 2024), https://portal.ct.gov/governor/news/press-releases/2024/10-2024/governor-lamont-announces-connecticut-national-guard-sending-additional-soldiers-to-north-carolina?language=en_US

²⁴ Anshu Siripurapu and Noah Berman, *What does the U.S. National Guard Do?*, Council on Foreign Relations (last updated Apr. 3, 2024), <https://www.cfr.org/backgrounder/what-does-us-national-guard-do#:~:text=The%20National%20Guard%20can%20also,normally%20funded%20by%20the%20state>

²⁵ Jim Greenhill, *12,000 National Guard Members Helping 11 States Recover from Hurricane Sandy* (Oct. 30, 2012), <https://www.nationalguard.mil/News/Article/574966/12000-national-guard-members-helping-11-states-recover-from-hurricane-sandy/>; National Centers for Environmental Information, *Storm Events Database*, <https://www.ncdc.noaa.gov/stormevents/eventdetails.jsp?id=416939>

Guard assisted local law enforcement in providing security at the Formula 1 Las Vegas Grand Prix, which drew several hundred thousand attendees to the city.²⁶ Members of the National Guard from the District of Columbia and about forty other states provided security for the recent Presidential Inauguration, in a tradition dating back to the first inauguration of President George Washington.²⁷

The National Guard also uses the technical expertise of its members to provide cybersecurity support during elections. As of 2022, the National Guard cyber force included over 2,200 members from thirty-eight units.²⁸ These members provided cybersecurity support during the 2022 primary elections in eight states.²⁹ In 2024, fifteen states activated the National Guard to provide cybersecurity for the November election.³⁰ Many states rely on the National Guard for their cybersecurity needs because many state and local governments experience gaps in their cybersecurity workforce.³¹

²⁶ Emerson Marcus, *Nevada Guard set to support Clark County first responders during Formula 1 Las Vegas Grand Prix*, Nevada National Guard (Nov. 20, 2024), <https://nv.ng.mil/News/Article-Display/Article/3973518/nevada-guard-set-to-support-clark-county-first-responders-during-formula-1-las/>

²⁷ District of Columbia National Guard, *National Guard support to the District of Columbia and the 60th Presidential Inauguration* (Jan. 13, 2025), <https://dc.ng.mil/Public-Affairs/News-Release/Article/4028262/national-guard-support-to-the-district-of-columbia-and-the-60th-presidential-in/>

²⁸ Whitney Hughes, *National Guard Provides Critical Election Cybersecurity*, National Guard (Nov. 7, 2022), <https://www.nationalguard.mil/News/Article/3211891/national-guard-provides-critical-election-cybersecurity/>

²⁹ *Id.*

³⁰ Jeff Schogol, *Many of the National Guardsmen activated for election focus on cybersecurity*, Task & Purpose (Nov. 5, 2024), <https://taskandpurpose.com/news/national-guard-election-cybersecurity/>

³¹ Skylar Rispens, *National Guard ready to assist states with cyber response, say officials*, State Scoop (Mar. 20, 2024), <https://statescoop.com/national-guard-ready-assist-with-state-cyber-response/>

B. Banning Transgender Individuals From Military Service Will Harm National Guard Recruitment Efforts and Jeopardize States' Security and Readiness.

While the pressing need for its services continues to grow, the National Guard has struggled with recruitment in recent years. More than a decade ago, in 2014, the Army expressed concerns about future recruitment based on physical fitness issues and young Americans showing less interest in military careers.³² In fiscal year 2023, the National Guard had “another rough year for recruiting[.]”³³ Many states have fallen short of their recruiting targets in the past several years. For example, Washington has failed to reach targets for the last five years.³⁴ Oregon failed to reach targets in 2021 and 2022.³⁵ Minnesota lowered its recruiting goal in 2023 after failing to meet its target for three years.³⁶ Some states have instituted programs for referral bonuses.³⁷ Washington law authorizes a bonus of up to \$500 when a current member of the National Guard

³² C. Todd Lopez, *Recruiting force remains unchanged, despite shrinking goals*, U.S. Army (Jan. 22, 2014), https://www.army.mil/article/118369/recruiting_force_remains_unchanged_despite_shrinking_goals.

³³ National Guard Association of the United States, *Recruiting Continues to Be Challenging* (Oct. 17, 2023), <https://www.ngaus.org/newsroom/recruiting-continues-be-challenging>

³⁴ Joseph Siemandel, *Adjutant General testifies for the Keeping our Washington National Guard Strong Act legislation*, DVIDS (Jan. 10, 2024), <https://www.dvidshub.net/news/461590/adjutant-general-testifies-keeping-our-washington-national-guard-strong-act-legislation>

³⁵ Annual Performance Progress Report at 3, Oregon Military Department (Oct. 3, 2022), <https://www.oregon.gov/omd/Documents/2022%20Proposed%20APPR.pdf>

³⁶ Jonah Kaplan, *Minnesota National Guard meets its annual recruitment goal after three-year slump*, WCCO News (May 24, 2023), <https://www.cbsnews.com/minnesota/news/minnesota-national-guard-meeting-its-recruitment-goals-after-three-year-slump/>

³⁷ Desiree D'Iorio, *Know someone who wants to join the National Guard? In some states, you now can get a finder's fee*, the American Homefront Project (Jan. 19, 2023), <https://americanhomefront.wunc.org/news/2023-01-19/know-someone-who-wants-to-join-the-national-guard-in-some-states-you-now-can-get-a-finders-fee>

refers someone who joins the Guard.³⁸ Vermont offers \$1,000 for a successful enlistment.³⁹ Other states have similar referral programs.⁴⁰

The National Guard's recruitment struggles are not unique. The Army has fallen short of its targets in recent years by thousands of recruits,⁴¹ leading it to lower its recruiting targets.⁴² As a recent paper by a lieutenant colonel and a national security analyst explains, the Army's insufficient recruiting poses a national security risk.⁴³ The American Enterprise Institute recently released a report by a retired major general noting that the number of eighteen-year-olds is expected to drop, and arguing that current pay for new soldiers is too low to attract enough recruits.⁴⁴ A 2020 study found that 77% of youth cannot qualify for military service.⁴⁵ In this difficult recruiting environment, the military cannot afford to turn away otherwise qualified recruits simply because they are transgender.

³⁸ Wash. Rev. Code Ann. § 38.24.070.

³⁹ Vermont National Guard, *Joint Enlistment Enhancement Program (JEEP)*, <https://vt.public.ng.mil/Join-The-VT-Guard/Joint-Enlistment-Enhancement-Program/>

⁴⁰ Indiana National Guard, *Referral Enlistment Program*, <https://www.in.gov/indiana-national-guard/about/referral-enlistment-program/>; Oregon Army National Guard, *Enlistment Enhancement Program*, <https://www.oregonarmyguard.com/referral>

⁴¹ Lt. Col. Frank Dolberry & Charles McEnany, *"Be All You Can Be": The U.S. Army's Recruiting Transformation*, Association of the United States Army (Jan. 2024), <https://www.ausa.org/publications/be-all-you-can-be-us-armys-recruiting-transformation>

⁴² Svetlana Shkolnikova, *Army on pace to meet lowered recruitment goal for 2024, but long-term challenges remain* (Apr. 18, 2024), <https://www.stripes.com/branches/army/2024-04-18/army-soldiers-recruiting-enlistment-senate-wormuth-13590935.html>

⁴³ Dolberry & McEnany, *supra* note 36.

⁴⁴ John G. Ferrari, *McDonald's or the Army? A California Case Study*, American Enterprise Institute (Mar. 19, 2024), <https://www.aei.org/research-products/report/mcdonalds-or-the-army-a-california-case-study/>

⁴⁵ Council for a Strong America, *77 Percent of American Youth Can't Qualify for Military Service* (Jan. 24, 2023) (copy attached as Appendix A.)

The President’s executive order makes matters worse by excluding transgender individuals from military service and requiring the Amici States to be discriminatory employers, contrary to their own laws. This forced discrimination will further hamper already-challenging recruitment efforts for the National Guard. Johns Hopkins University found that members of Generation Z—those born in the late 1990s through the early 2010s—“embrace[] the right to freely express one’s gender identity.”⁴⁶ An overwhelming 88% of respondents to Johns Hopkins’ poll “felt companies must inquire about preferred gender pronouns.”⁴⁷ In addition to violating the Constitution, the President’s discriminatory executive order will harm recruiting efforts with young Americans in the peak age demographic for recruitment. Former high-ranking military officials share this concern about the effect of the ban. *See* Declaration of Alex Wagner ¶ 29 [ECF Doc. 13-20] (“Any organization that is perceived by America’s youth as discriminatory will be at a competitive disadvantage in this race for talent.”); Declaration of Yvette Bourcicot ¶ 32 [ECF Doc. 13-28] (“This sudden reversal of policy will damage the reputation of the military and diminish its attractiveness among the young people we most need to persuade to join our ranks.”).

Transgender individuals have served in the military for years. A 2014 study found that approximately 150,000 veterans, active-duty service members, and members of the National Guard or Reserves identified as transgender.⁴⁸ As of 2020, one study estimated that at least 8,000

⁴⁶ Johns Hopkins University, *Gen Z In The Workplace: How Should Companies Adapt?* (Apr. 18, 2023), <https://imagine.jhu.edu/blog/2023/04/18/gen-z-in-the-workplace-how-should-companies-adapt/>

⁴⁷ *Id.*

⁴⁸ 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/Trans-Military-Service-US-May-2014.pdf> (estimating 134,300 transgender veterans and 15,500 members in active service).

transgender people were serving on active duty in the U.S. Military.⁴⁹ Notably, transgender individuals are about twice as likely as other adults to have served their country in the Armed Forces.⁵⁰ The President's executive order would require the National Guard to discharge transgender members and turn away potential recruits solely because they identify as transgender. The lost potential for new personnel, not to mention the loss of personnel in whom training and money have been invested, will impede the National Guard's ability to respond to natural disasters and perform its other functions at a time when a robust Guard is more necessary than ever.

C. The Executive Order Broadly Undermines the Amici States' Institutions and Efforts to Protect Members of Their Communities.

In addition to harming military recruitment and national security, the executive order constitutes a blatantly discriminatory policy targeting transgender residents of the Amici States. As Amici States' experience shows, discrimination of this sort threatens to harm all state residents, whether part of the transgender community or not.

1. Transgender people are a vital part of the Amici States' communities but face ongoing discrimination.

Nationwide, about 3 million adults—or about 1.14% of the nation's population—identify as transgender.⁵¹ They live in the Amici States (as well as every other State and U.S. territory)⁵² and contribute to our communities in countless ways—as parents, educators, students, firefighters,

⁴⁹ Natasha A Schvey et al., *A Descriptive Study of Transgender Active Duty Service Members in the U.S. Military*, 5 *Transgender Health* 149, 149 (2020), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC7906232/pdf/trgh.2019.0044.pdf>

⁵⁰ Gates & Herman, *Transgender Military Service*, *supra* note 45.

⁵¹ USA Facts, *What percentage of the US population is transgender?*, <https://usafacts.org/articles/what-percentage-of-the-us-population-is-transgender/>

⁵² Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, Nat'l Ctr. For Transgender Equality, 15 (Feb. 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf

police officers, musicians, writers, nurses, doctors, and more. Nothing about being transgender inhibits a person's ability to contribute to society or to serve in the military.⁵³ On the contrary, the experience of the Amici States shows that transgender people are just as capable as their cisgender counterparts and make a meaningful, positive impact not only in the military, but in our schools, workplaces, and communities.

Still, the transgender community has suffered “a history of persecution and discrimination” that persists to the present day. *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015); *Flack v. Wis. Dept. of Health Servs.*, 328 F. Supp. 3d 931, 953 (W.D. Wisc. 2018) (“In short, other than certain races, one would be hard-pressed to identify a class of people more discriminated against historically or otherwise more deserving of the application of heightened scrutiny when singled out for adverse treatment, than transgender people.”). While progress has been made in recent years because of increased recognition and awareness of the significant and far-reaching barriers the transgender population faces, transgender people continue to experience discrimination that impairs their physical and mental health, curtails their economic prospects, and ultimately limits their ability to realize their potential and participate fully in society. According to the 2022 United States Transgender Survey (“2022 USTS”),⁵⁴ transgender individuals continue to 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;

⁵³ American Medical Association, *Military Medical Policies Affecting Transgender Individuals H-40.966* (2015), <https://policysearch.ama-assn.org/policyfinder/detail/40.966?uri=%2FAMADoc%2FHOD.xml-0-3487.xml> (“[T]here is no medically valid reason to exclude transgender individuals from service in the US military.”).

⁵⁴ The 2022 USTS “is the largest survey ever conducted to examine the experiences of binary and nonbinary transgender people in the United States.” James et al., *supra* note 48, at 4.

and endure myriad other forms of discrimination in education, employment, housing, and access to health care due to their gender identity.⁵⁵

To combat those problems, states began providing civil rights protections for transgender people over a quarter century ago. Currently, 24 states—including many of the Amici States—and the District of Columbia have enacted civil rights protections for transgender people in education, employment, health care, housing, and/or public accommodations.⁵⁶ And at least 375

⁵⁵ See generally *id.*

⁵⁶ **California:** Cal. Civ. Code § 51(b), (e)(5), (6) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov't Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(9)-(10) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.*, tit. 6, § 4502(11) (definition); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai'i:** Haw. Rev. Stat. § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Iowa:** Iowa Code § 216.2(10) (definition); *id.* § 216.6 (employment); *id.* § 216.7 (public accommodations); *id.* § 216.8 (housing); *id.* § 216.9 (education). **Kansas:** Kansas Hum. Rts. Comm'n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court's Bostock Decision* (Aug. 21, 2020) (advising that Kansas laws prohibiting discrimination based on "sex" in "employment, housing, and public accommodation" contexts "are inclusive of LGBTQ and all derivatives of 'sex'"). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(5-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov't § 20-101(e) (definition); *id.* § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7 (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit) (as amended by Ch. 205, 2024 Mass. Acts); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Michigan:** Mich. Comp. Laws § 37.2102(1) (employment, housing, public accommodations, education); *id.* 37.2103(f) (definition). **Minnesota:** Minn. Stat. § 363A.03(44), (50) (definitions); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (definition, housing); *id.* §§ 613.310(4), 613.330 (definition, employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public

municipalities offer express protections against discrimination based on gender identity.⁵⁷ As the experiences of the Amici States and these other jurisdictions show, transgender-inclusive policies help to ease the stigma on transgender people, and mitigate the negative impact on their educational, work, and health outcomes. Those policies also foster a more just and productive society for all our residents.

2. The executive order will needlessly harm the Amici States by limiting National Guard readiness and creating unequal opportunities at public institutions.

The Amici States’ experience belies the President’s stated rationale for reinstating a ban on transgender service members in the military. For years, transgender individuals have served in Amici States’ National Guard components and have done so with honor and distinction. After the first, longstanding ban was lifted in 2016, and again when the Trump Administration’s first attempt to ban transgender service was reversed in 2021, some of these Guard members came out to their

accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing, employment); *id.* § 18A:36-41 (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender identity”). **New Mexico:** N.M. Stat. Ann. § 28-1-2(T) (definition); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New York:** N.Y. Exec. Law §§ 291, 292, 296 (definition, education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Pennsylvania:** 43 Pa. Stat. § 953; 16 Pa. Code § 41.206 (definition, employment, housing, public accommodations). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(12) (definition), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 34A-5-102(o) (definition); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); *id.* tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* § 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance transactions); *id.* § 49.60.040(29) (definition); *id.* § 49.60.180 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing). **District of Columbia:** D.C. Code § 2-1401.02(12A-i) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-1402.21 (housing); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

⁵⁷ Movement Advancement Project, *Local Nondiscrimination Ordinances* (current as of Jan. 1, 2023), https://www.lgbtmap.org/equality-maps/non_discrimination_ordinances

superiors and peers with no negative impact on the Guard's functions.⁵⁸ The National Guard trained its members on compliance with the nondiscrimination policy, expressing no particular concerns about compliance.⁵⁹ Likewise, transgender cadets in ROTC programs supported by many of Amici States' colleges and universities also disclosed their gender identities. The Amici States are unaware of any adverse consequences to their Guard units or ROTC programs because of those disclosures.

The Trump Administration's latest about-face threatens to require the Amici States to undo our efforts to provide an inclusive environment for current transgender service members and 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. *See supra* note 56.

Beyond harming state military components, the Trump Administration's ban on transgender service will also harm the Amici States' public colleges and universities that support ROTC programs. ROTC programs are designed to train commissioned officers for the Armed Forces; they are located on and supported by college campuses but are subject to federal entry

⁵⁸ *E.g.*, Minnesota National Guard, *Here to Serve* (June 25, 2020), <https://ngmnpublish.azurewebsites.us/here-to-serve/>; Megan Kon, *Transgender guardsman born for military service*, U.S. Dep't of Veterans Affairs (Mar. 27, 2023), <https://www.va.gov/augusta-health-care/stories/transgender-guardsman-born-for-military-service/>

⁵⁹ Erich B. Smith and Jon Soucy, *Guard members ready for new DoD transgender policy*, National Guard (June 15, 2017) (copy attached as Appendix B—the article appears to have been removed from the internet during the time the Amici States were preparing this filing).

requirements.⁶⁰ Many public 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. Reinstating the ban on transgender service will render these ROTC programs—together with the scholarship and career opportunities they provide—actually or effectively unavailable to transgender students, who will be ineligible to serve 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 students, in direct contravention of many schools’ own transgender-inclusive policies and the Amici States’ broader anti-discrimination laws.⁶¹

Finally, the ban also imposes a distinct set of harms on one subset of state-run educational institutions: the public specialized maritime academies in 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.⁶² These

⁶⁰ 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 program for high school and middle school students that aims to “instill in students . . . the values of citizenship, service to the United States (including an introduction to service opportunities in the military, national, and public service), and personal responsibility and a sense of accomplishment.” 10 U.S.C. § 2031(a)(2).

⁶¹ See *supra* note 56; see also, e.g., University of Vermont, *Equal Opportunity in Educational Programs and Activities* (last visited Feb. 1, 2025), <https://catalogue.uvm.edu/undergraduate/aboutuniv/equalopportunity/>; University of Washington, *EO31-Nondiscrimination and Affirmative Action* (last visited Feb. 1, 2025), <https://policy.uw.edu/directory/po/executive-orders/eo-31-nondiscrimination-and-affirmative-action/>. These public institutions have no real recourse, either, 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.

⁶² Massachusetts operates the Massachusetts Maritime Academy; California, the California Maritime Academy; and New York, the State University of New York Maritime College. New York is also home to the federally administered U.S. Merchant Marine Academy.

academies welcome transgender students.⁶³ 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 service⁶⁴ 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.⁶⁵ As with the ROTC programs (and against these academies’ own anti-discrimination policies), reinstating a ban on transgender service members will effectively require these public institutions to offer different opportunities to their students based solely on their transgender status. That is, while cisgender 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 benefits that depend on a future military career. Considering 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.

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-

⁶³ See, e.g., Massachusetts Maritime Academy, *Equal Opportunity and Diversity*, <https://www.maritime.edu/human-resources/equal-opportunity>; State University of New York, *Supporting our LGBTQIA+ community*, <https://www.suny.edu/diversity/lgbtq/>

⁶⁴ 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 46 C.F.R. § 310.7; U.S. Dep’t of Transp., Maritime Administration, *The Student Incentive Payment (SIP) Program* (last visited Feb. 1, 2025), <https://www.maritime.dot.gov/education/maritime-academies/student-incentive-payment-sip-program>

⁶⁵ See, e.g., Naval Service Training Command, *Strategic Sealift Midshipman Program* (last visited Feb. 1, 2025), <https://www.netc.navy.mil/Commands/Naval-Service-Training-Command/NROTC/Prospective-Midshipmen/NROTC-Program-Options/SSMP/>

inclusive laws and policies: welcoming transgender individuals to live and participate fully in society consistent with their gender identity not only improves their lives but also makes our communities stronger. Reversing the military's policy on transgender service will harm Amici States by undermining our institutions and requiring us to discriminate against our own residents based on their gender identity.

3. The executive order 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 transgender service will also directly harm the residents of the Amici States: our veterans, active service members, and those who wish to serve. As Plaintiffs point out, the President has repeatedly expressed animus towards transgender individuals. *See* Compl. ¶ 121 [ECF Doc. 2-1]. Indeed, the executive order itself repeats a number of incendiary, disparaging claims about transgender people, including that being transgender is somehow inconsistent with "an honorable, truthful, and disciplined lifestyle" or the "humility and selflessness required of a service member." Executive Order 14183, 90 Fed. Reg. 8757 (Feb. 3, 2025). But the experiences of the named Plaintiffs who have longstanding, distinguished service—even during their transitions—plainly belie those claims, as do the positions of the major medical organizations that have weighed in on the issue.⁶⁶ Other plaintiffs will be deprived of the opportunity to serve absent court intervention.

⁶⁶ *See* American Psychological Association, *Statement Regarding Transgender Individuals Serving in Military* (2018), <https://www.apa.org/news/press/releases/2018/03/transgender-military> ("No scientific evidence has shown that allowing transgender people to serve in the armed forces has an adverse impact on readiness or unit cohesion."); American Medical Association, *Statement on Pentagon's Ban on Transgender in Military* (Apr. 11, 2019), <https://www.ama-assn.org/press-center/press-releases/ama-statement-pentagons-ban-transgender-military>

The Amici States have an interest in upholding their residents' right to live free from discrimination and its associated harms. *See, e.g., Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 609 (1982) (“[A] State has a substantial interest in assuring its residents that it will act to protect them from these evils [of discrimination].”). The harm to the dignity of transgender veterans and soldiers is obvious. The ban degrades the service of 150,000 transgender veterans, active-duty service members, and members of the National Guard and Reserves, as well as those who wish to serve. Reinstating the ban serves no purpose but to deny a group disfavored by the Trump Administration equal opportunity and equal treatment under the law and erode our military readiness. The executive order relegates transgender individuals to second-class status, sending the unmistakable message that their Commander-in-Chief believes that they are unfit to serve or that their service is not valued.

The ban also harms the many transgender residents of the Amici States who relied on the assurance of the federal government over the years that they were welcome to serve without discrimination. Many service members in the National Guard and other branches of the military identified themselves as transgender to their command based on that assurance, believing that they would not thereby be deprived of their opportunity to serve (or their livelihoods). The executive order breaks that promise to the grave detriment of those who relied on it. Transgender service members may now be targeted for discharge, other adverse actions, or harassment and discrimination. Likewise, transgender residents of the Amici States who took steps to prepare for careers in the military, by joining ROTC or enrolling in the maritime academies, for example, did so in reliance on the promise that they would be able to serve. 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 forgone.

Finally, transgender service members who have not yet revealed their transgender status, together with those who wish to pursue careers in the military, will soon face the unfathomable 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.⁶⁷ Denying otherwise qualified transgender individuals the opportunity to serve denies them equal participation in a core civic activity. And forcing transgender people to hide their identities in order to enlist or continue serving is extremely harmful to their health and wellbeing⁶⁸—a reality evidenced by the experiences of the thousands of gay, lesbian, and transgender service members who have served under previous discriminatory policies.⁶⁹ Concealing core aspects of one’s identity has a negative impact on mental health.⁷⁰ The need to hide their gender identity makes transgender service members less likely to seek necessary mental health and medical care, as the limited confidentiality

⁶⁷ Cf. *Log Cabin Republicans v. United States*, 716 F. Supp. 2d 884, 897-909 (C.D. Cal. 2010) (recounting harrowing testimony of service members describing the experience of serving under a “cloud of fear” during the military’s Don’t Ask Don’t Tell policy).

⁶⁸ Joycelyn Elders & Alan M. Steinman, *Report of the Transgender Military Service Commission*, The Palm Ctr., 4 (March 2014), https://palmcenterlegacy.org/wp-content/uploads/2014/03/Transgender-Military-Service-Report_1.pdf (“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 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 wellbeing.”); Vice Admiral Donald C. Arthur and Major General Gale Pollock et al., *DoD’s Transgender Ban Has Harmed Military Readiness*, The Palm Ctr., 24-26 (Nov. 2020).

⁶⁹ Declaration of Former Chairman of Joint Chiefs of Staff, Admiral Michael Mullen, *Stockman v. Trump*, Case No. 5:17-cv-01799-JGB-KK (C.D. Cal.) [ECF Doc. 21].

⁷⁰ See, e.g., J. E. Pachankis et al., *Sexual orientation concealment and mental health: A conceptual and meta-analytic review*, *Psychological Bulletin*, 146(10), 831–871 (2020) (a meta-analysis of 193 studies finding that sexual orientation concealment was associated with increased rates of mental health problems such as depression, anxiety, and psychological distress).

of communications with medical providers in the military makes it more difficult for them to be candid in seeking help.⁷¹

Further, prohibiting transgender individuals from serving consistent with their gender identity estranges them from their fellow service members and encourages latent discriminatory attitudes, undermining the group's ability to trust and bond. One study on the impact of concealment versus disclosure of sexual orientation in the military found that concealment relates negatively to unit and social task cohesions and conversely, that disclosure positively impacts cohesion.⁷² "Concealment leads to . . . stress and isolation, which can lead to decreased performance ability."⁷³ 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."⁷⁴ 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. By changing military policy based on animus and without regard for the realities of military service, the executive order will have the opposite effect of its stated goal.

⁷¹ See Matthew F. Kerrigan, *Transgender Discrimination in the Military: The New Don't Ask Don't Tell*, 18 Psychol. Pub. Pol'y & L. 500, 513-14 (2012); Elders & Steinman, *supra* note ___, at 4 ("According to one recent study, [m]ental 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.").

⁷² Bonnie Moradi, *Sexual Orientation Disclosure, Concealment, Harassment, and Military Cohesion: Perceptions of LGBT Military Veterans*, 21 Mil. Psychol. 513 (2009).

⁷³ 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, 209 (2014).

⁷⁴ *Id.*

D. The Executive Order Undermines the Military’s Role as an Inclusive Institution That Reflects Our Nation’s Population.

The consequences of the executive order are not limited to the Armed Forces. They will be felt across society at large. The military is among our country’s most integrated and diverse institutions, as it has eliminated several discriminatory restrictions on service over the last seventy years. By 1954, the military was fully racially integrated, and to this day the percentage of African Americans in the military is higher than the percentage of African Americans in the general population.⁷⁵ Women have been allowed to serve in combat since 2015, and the rate of military service by women has been rising.⁷⁶ Since 2011, individuals who are not heterosexual have been allowed to serve without concealing their sexual orientation, and a Pentagon report issued ten years later found that concerns about repealing the “Don’t Ask, Don’t Tell” policy were “vastly overblown.”⁷⁷ Reinstating a ban on transgender service members is equally unfounded. Beginning in 2016, and again in 2021, the military took similar steps forward for transgender individuals by allowing them to serve consistent with their gender identity. The executive order singles out transgender individuals for renewed exclusion, sending a message that threatens to slow progress and that will be heard and felt throughout our communities. Indeed, it seems that is precisely the point.

⁷⁵ Paul-Thomas Ferguson, *African American Service and Racial Integration in the U.S. Military*, U.S. Army (Feb. 23, 2021), https://www.army.mil/article/243604/african_american_service_and_racial_integration_in_the_u_s_military

⁷⁶ Emma Moore, *Women in Combat: Five-Year Status Update*, Center for a New American Security (Mar. 31, 2020), <https://www.cnas.org/publications/commentary/women-in-combat-five-year-status-update>

⁷⁷ Meghann Myers, *Fears of openly gay troops were vastly overblown: Pentagon report*, The Military Times (Sept. 28, 2022), <https://www.militarytimes.com/news/your-military/2022/09/28/fears-of-openly-gay-troops-were-vastly-overblown-pentagon-report/>

The military has already concluded—twice—that allowing transgender individuals to serve consistent with their gender identity is in the nation’s best interest. Reinstating the ban simply cannot be justified by reference to costs, unit cohesion, or overall readiness.⁷⁸ 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. The National Guard’s experience allowing transgender individuals to serve consistent with their gender identity aligns with the military’s role as a highly trained, professional fighting force that prioritizes its national security mission over political debates. The executive order is a step backwards for transgender people, for civil rights, for the military, and for the country.

IV. CONCLUSION

This Court should grant Plaintiffs’ Application for Preliminary Injunction.

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⁷⁸ Wagner Decl. ¶¶ 27-33 [ECF Doc. 13-20]; Bourcicot Decl. ¶¶ 23-26 [ECF Doc. 13-28]; Cisneros Decl. ¶¶ 12-18 [ECF Doc. 13-30]; Skelly Decl. ¶¶ 8-14 [ECF Doc. 13-31].

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Better nutrition and physical activity can yield healthier outcomes for youth and bolster national security

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The retired admirals and generals of Mission: Readiness recognize that the underlying causes of obesity cannot be solved by the efforts of the military alone. With an increase in youth being ineligible for military service, it is more important than ever for policymakers, including state and local school boards, to promote healthy eating, increased access to fresh and nutritious foods, and physical activity for children from an early age.

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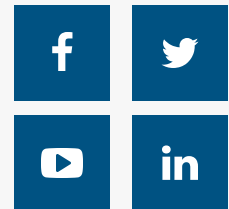
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77 Percent of American Youth Can't Qualify for Military Service

Better nutrition and physical activity can yield healthier outcomes for youth and bolster national security

77 percent of young adults cannot join the military

Malnutrition, especially malnutrition manifesting as obesity, poses a threat not only to our nation's health, but to our national security. Nationwide, 77 percent of youth between the ages of 17 and 24 cannot qualify for military service, an increase from 2017's ineligibility rate of 71 percent. Overweight disqualifies 11 percent of youth from serving if they so choose, and contributes to the 44 percent of youth who are disqualified for multiple reasons.¹

Obesity rates for 2- to 19-year-olds increased from 17 percent in 2009–10, to 19 percent in 2017–18.² During the pandemic, rates of obesity among children in this age group increased even further, from 19 percent in August 2019 to 22 percent in August 2020.³ While such increases are alarming, there are solutions.

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provides access to healthy foods and nutrition education for women, infants, and children under 5 years old. Participation has been linked to improved dietary quality, and increased fruit and vegetable consumption.⁴ Older children consume up to half of their daily calories at school, making the National



“ Nationwide, 77% of youth between the ages of 17 and 24 cannot qualify for the military service.”

School Lunch Program (NSLP) an important component of good nutrition. The Healthy Hunger-Free Kids Act of 2010 led to updated nutrition standards for the NSLP and improved guidelines for food and drinks available in schools.⁵ Since these standards were implemented, fruit and vegetable consumption by participating children increased by 16 and 23 percent, respectively.⁶ Providing opportunities for children to reach the recommended 60 minutes of moderate to vigorous activity at school can also help kids maintain a healthy weight.⁷

Policymakers should support nutrition and physical activity programs

The retired admirals and generals of Mission: Readiness recognize that the underlying causes of obesity cannot be solved by the efforts of the military alone. With an increase in youth being ineligible for military service, it is more important than ever for policymakers, including state and local school boards, to promote healthy eating, increased access to fresh and nutritious foods, and physical activity for children from an early age.

¹ U.S. Department of Defense, Office of People Analytics (2022). 2020 Qualified Military Available (QMA) study.

² Robert Wood Johnson Foundation (n.d.). State of childhood obesity. National obesity monitor. <https://stateofchildhoodobesity.org/monitor/>

³ Lange, S. J., Kompaniyets, L., Freedman, D.S., et al. Longitudinal trends in Body Mass Index before and during the COVID-19 pandemic among persons aged 2–19 Years — United States, 2018–2020. https://www.cdc.gov/mmwr/volumes/70/wr/mm7037a3.htm?s_cid=mm7037a3_w

⁴ Food Research and Action Center. (2017). The role of the federal child nutrition programs in improving health and well-being. <https://frac.org/wp-content/uploads/hunger-health-role-federal-child-nutrition-programs-improving-health-well-being.pdf>

⁵ U. S. Department of Agriculture. (2017). Healthy Hunger Free Kids Act. <https://www.fns.usda.gov/school-meals/healthy-hunger-free-kids-act>

⁶ U. S. Department of Agriculture. Fact sheet: Healthy, Hunger-Free Kids Act school meals implementation. <https://www.usda.gov/media/press-releases/2014/05/20/fact-sheet-healthy-hunger-free-kids-act-school-meals-implementation>

⁷ Centers for Disease Control and Prevention (2022). How much physical activity do children need? [https://www.cdc.gov/physicalactivity/basics/children/index.htm#:~:text=Children%20and%20adolescents%20ages%206,doing%20push%20Dups\)%20%E2%80%93%203](https://www.cdc.gov/physicalactivity/basics/children/index.htm#:~:text=Children%20and%20adolescents%20ages%206,doing%20push%20Dups)%20%E2%80%93%203)

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NEWS | June 15, 2017

Guard members ready for new DoD transgender policy

By Tech. Sgt. Erich B. Smith and Sgt. 1st Class Jon Soucy National Guard Bureau

ARLINGTON, Va. – National Guard members have been taking part in training sessions on coming changes to Department of Defense transgender policy,

ensuring Guard members understand the new policy changes and are in full

Beginning July 1, a person's gender status – including being transgender — will no longer be a disqualifying factor from enlisting in the military. That serves as an extension of a 2016 policy shift that meant currently serving transgender service members could not be discharged as a result of their transgender status.

"The policy of the Department of Defense is that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness," said then-Secretary of Defense Ash Carter in a memo from June 2016.

The training sessions are being done to ensure Guard members are fully aware of the changes.

"All of this is an effort to ensure the seamless transition and the full implementation of [the] DoD policy," said Zenia Boswell, with the Army National Guard's Personnel Policy Division.

The road to the policy change began as early as 2015, said Boswell, adding that the personnel policy division provided input to DoD policy makers on how those policy changes would affect the Guard, including issues of medical care for transgender Guard members.

"If a [Guard member] is on active duty orders, TriCare Prime will provide gender transition medical care to service members based on medical guidance from a military provider," she said. "If traditional [Guard members] have TriCare Reserve Select, they would have to use that in concert with whatever civilian insurance they have, or they would have to use the civilian insurance by itself."

Boswell added that fitness standards and requirements for transgender Service members would reflect the gender status established in their personnel files.

"No special treatment is ever afforded," she said, referring to the physical fitness requirements.

Boswell said the policy change reflects the Guard's commitment to being open and inclusive, with readiness at the forefront.

"This is all about diversity and inclusion," she said, adding that military service by those who are transgender "is no different than anybody else" who wishes to serve in the military.

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