

Case No. 18-35347

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

RYAN KARNOSKI, *et al.*,

*Plaintiffs-Appellees,*

STATE OF WASHINGTON, Attorney General's Office Civil Rights Unit,

*Intervenor-Plaintiff-Appellee,*

v.

DONALD J. TRUMP, in his official capacity as President of the U.S., *et al.*,

*Defendants-Appellants.*

---

On Appeal from the United States District Court,  
Western District of Washington

---

**BRIEF OF *AMICUS CURIAE* THE TREVOR PROJECT  
IN SUPPORT OF APPELLEES**

---

Stuart F. Delery  
Douglas C. Dreier\*  
*\*Counsel of Record*  
ddreier@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306  
Telephone: (202) 887-3650  
Facsimile: (202) 530-9523

*Counsel for Amicus Curiae*

---

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1(a) and 29(c)(1): The Trevor Project hereby certifies that it has no parent corporation and no publicly held corporation owns ten percent or more of its stock.

**TABLE OF CONTENTS**

	Page
I. STATEMENT OF INTEREST .....	1
II. ARGUMENT .....	2
A. Excluding Transgender Individuals From Military Service Denies Them The Ability To Participate Fully In Society. ....	3
B. Transgender People Are Every Bit As Capable Of Thriving As Their Peers.....	5
C. The Trevor Project Has Witnessed First-Hand The Negative Effects Of The Transgender Military Ban On Transgender Youth.....	15
III. CONCLUSION.....	19

## TABLE OF AUTHORITIES

### Cases

<i>Adkins v. City of New York</i> , 143 F. Supp. 3d 134 (S.D.N.Y. 2015) .....	10
<i>Arver v. United States</i> , 245 U.S. 366 (1918).....	3
<i>Bowers v. Hardwick</i> , 478 U.S. 186 (1986).....	12
<i>Brown v. Board of Educ.</i> , 347 U.S. 483 (1954).....	12
<i>Doe 1 v. Trump</i> , 275 F. Supp. 3d 167 (D.D.C. 2017).....	7, 10
<i>Doe 1 v. Trump</i> , No. 17-5267, 2017 WL 6553389 (D.C. Cir. Dec. 22, 2017).....	8
<i>Karnoski v. Trump</i> , No. 17-cv-1297, 2018 WL 1784464 (W.D. Wash. Apr. 13, 2018).....	3, 7, 10
<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003).....	12
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584 (2015).....	13
<i>Stone v. Trump</i> , 280 F. Supp. 3d 747 (D. Md. 2017).....	7
<i>United States v. Windsor</i> , 570 U.S. 744 (2013).....	12
<i>Winters v. United States</i> , 89 S. Ct. 57 (1968).....	4

*Witt v. U.S. Dep’t of Air Force*,  
739 F. Supp. 2d 1308 (W.D. Wash. 2010) .....4

**Statutes**

10 U.S.C. § 504(a) .....15

**Other Authorities**

AM. PSYCHIATRIC ASS’N, *APA Opposes Banning Transgender Service Members from Serving in Military* (July 27, 2017),  
<https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military> .....11

AM. PSYCHIATRIC ASS’N, *APA Reiterates Its Strong Opposition to Ban of Transgender Americans from Serving in the U.S. Military* (Mar. 24, 2018), <https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-its-strong-opposition-to-ban-of-transgender-americans-from-serving-in-u-s-military> .....9

AM. PSYCHIATRIC ASS’N, *Position Statement on Discrimination Against Transgender and Gender Variant Individuals* (July 2012),  
<https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf> .....8

AM. PSYCHOLOGICAL ASS’N, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* (2011), <http://www.apa.org/topics/lgbt/transgender.pdf> .....13

AM. PSYCHOLOGICAL ASS’N, *APA Statement Regarding Transgender Serving in Military* (Mar. 26, 2018),  
<http://www.apa.org/news/press/releases/2018/03/transgender-military.aspx>.....9

Amit Paley, *Victory! “Bathroom Bills” Threatening Trans Youth Defeated in Texas*, TREVOR PROJECT (Aug. 15, 2017),  
<http://www.thetrevorproject.org/blog/entry/victory-bathroom-bills-threatening-trans-youth-defeated-in-texas1> .....16

Ash Carter, U.S. Sec’y of Def., *Statement by Secretary of Defense Ash Carter on DOD Transgender Policy* (July 13, 2015), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/> .....5

George Washington, *Aug. 7, 1782 General Orders*, in 24 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES: 1745-1799 (John C. Fitzpatrick ed., 1938) .....4

Ilan H. Meyer, *Resilience in the Study of Minority Stress and Health of Sexual and Gender Minorities*, 2 PSYCHOL. OF SEXUAL ORIENTATION & GENDER DIVERSITY 209 (2015).....11

Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. YOUTH & ADOLESCENCE 1001 (2009).....14

John F. Kennedy, Jr., *Remarks at the U.S. Naval Academy* (Aug. 1, 1963), <http://www.presidency.ucsb.edu/ws/?pid=9367> .....4

Joseph G. Kosciw et al., *The 2015 National School Climate Survey* (2016), [https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report\\_0.pdf](https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf).....14

Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3) PEDIATRICS 1 (Mar. 2016) .....13, 14

Leon Panetta, U.S. Sec’y of Def., *Video Message for Lesbian, Gay, Bisexual, Transgender Pride Month from the Pentagon* (June 15, 2012), <http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=5062>.....4, 5

Letter from James L. Madara, Chief Exec. Officer, AM. MED. ASS’N, to James N. Mattis, U.S. Sec’y of Def. (Apr. 3, 2018), *available at* <https://searchlf.ama-assn.org/undefined/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-4-3-Letter-to-Mattis-re-Transgender-Policy.pdf>.....9

M. Joycelyn Edlers & David Satcher, *Former Surgeons General Debunk Pentagon Assertions about Medical Fitness of Transgender Troops*, PALM CTR. (Mar. 28, 2018), <https://www.palmcenter.org/former-surgeons-general-debunk-pentagon-assertions-about-medical-fitness-of-transgender-troops/> .....10

*Military Chiefs of Staff Unanimous: Transgender Inclusion Has Not Harmed Unit Cohesion*, PALM CTR. (Apr. 25, 2018), <https://www.palmcenter.org/military-chiefs-of-staff-unanimous-transgender-inclusion-has-not-harmed-unit-cohesion/> .....6

MILITARY.COM, *Military Benefits at a Glance*, <http://www.military.com/join-armed-forces/military-benefits-overview.html> .....17

S.E. Herman et al., *The Report of the 2015 U.S. Transgender Survey* (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> .....13

TREVOR PROJECT, *Spike in Crisis Contacts Related to Anti-Trans Rhetoric* (Aug. 2, 2017), <https://www.thetrevorproject.org/blog/entry/spike-in-crisis-contacts-related-to-anti-trans-rhetoric> .....16

U.S. DEP’T OF DEFENSE, *Secretary of Defense Ash Carter Announces Policy for Transgender Service Members* (June 30, 2016), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/821675/secretary-of-defense-ash-carter-announces-policy-for-transgender-service-members/>.....6

U.S. DEP’T OF DEFENSE, *Transgender Service Member Policy Implementation Fact Sheet*,  
[https://www.defense.gov/Portals/1/features/2016/0616\\_policy/Transgender-Implementation-Fact-Sheet.pdf](https://www.defense.gov/Portals/1/features/2016/0616_policy/Transgender-Implementation-Fact-Sheet.pdf) .....6

United States Senate Committee on Armed Services, *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* (Apr. 12, 2018),  
[https://www.armed-services.senate.gov/imo/media/doc/18-37\\_04-12-18.pdf](https://www.armed-services.senate.gov/imo/media/doc/18-37_04-12-18.pdf).....6

United States Senate Committee on Armed Services, *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* (Apr. 19, 2018),  
[https://www.armed-services.senate.gov/imo/media/doc/18-42\\_04-19-18.pdf](https://www.armed-services.senate.gov/imo/media/doc/18-42_04-19-18.pdf).....7

Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103 AM. J. PUB. HEALTH 943 (May 2013) .....11, 13



## I. STATEMENT OF INTEREST

The Trevor Project, which is the nation's largest lesbian, gay, bisexual, transgender, queer, and questioning ("LGBTQ") youth crisis intervention and suicide prevention organization, respectfully submits this *amicus curiae* brief in support of Appellees. Founded in 1998, the Trevor Project offers the only accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of individuals each month. By monitoring, analyzing, and evaluating data obtained from these services, the Trevor Project produces innovative research that brings new knowledge and clinical implications for issues affecting LGBTQ youth. The Trevor Project also provides training and other educational resources to youth-serving professionals, such as counselors, educators, and school nurses, to teach them how to act as allies to LGBTQ youth and to provide support to young people.

The Trevor Project has a substantial interest in opposing government discrimination against the transgender youth it serves. It has worked firsthand with transgender youth for decades, thereby developing significant expertise on the issues that affect the community.<sup>1</sup> It knows that transgender youth are fully

---

<sup>1</sup> No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief. The parties have consented to the filing of this brief.

capable of contributing productively to society. For instance, the Trevor Project's Youth Ambassador Council consists of bright LGBTQ youth, including transgender youth, who give back to their communities and serve as role models for their peers. The Trevor Project constantly bears witness to the resounding strength of transgender youth.

## II. ARGUMENT

The Trevor Project has witnessed how detrimental and damaging the transgender military ban has been on the transgender community it serves—active and aspiring young transgender service members, as well as youth more broadly. Excluding transgender people from the military denies them the opportunity to answer the noble call to serve their country, and this act of discrimination deprives them of full membership in society. Time and time again, research has demonstrated that transgender youth thrive just like their peers when given the familial and community support that many of us take for granted. But transgender youth must overcome systemic discrimination, and systemic discrimination is harmful to any minority group that experiences it. Acts of discrimination by the government are particularly harmful because, as courts have long recognized, they beget acts of private discrimination and send a uniquely authoritative message of inferiority.

President Trump’s tweet announcing the transgender military ban had a profound negative impact on transgender youth. After this sudden pronouncement that an entire category of people is uniquely unworthy of the chance to serve in the Armed Forces, the Trevor Project saw a spike in the number of transgender individuals calling into its support helpline or reaching out to its chat and messaging helplines. The second iteration of the ban, issued after courts unanimously struck down the first, causes precisely the same harms. *Karnoski v. Trump*, No. 17-cv-1297, 2018 WL 1784464, at \*10 (W.D. Wash. Apr. 13, 2018). The decision below to enjoin this unjustified discriminatory policy should be affirmed.

**A. Excluding Transgender Individuals From Military Service Denies Them The Ability To Participate Fully In Society.**

The exclusion of an entire group of individuals from service in the Armed Forces is demeaning and prevents individuals from being treated as full members of society. For centuries, the “supreme and noble duty of contributing to the defense of the rights and honor of the nation” has called millions of this nation’s youth to enlist in the military. *Arver v. United States*, 245 U.S. 366, 390 (1918). As President Kennedy once remarked, there is “no more rewarding career” than “to serve the cause of freedom and your country all over the globe, to hold positions of the highest responsibility, to recognize that upon your good judgment in many cases may well rest not only the well-being of the men with whom you serve, but

also in a very real sense the security of your country.”<sup>2</sup> The brave individuals “constituting our Armed Forces are treated as honored members of society,” *Winters v. United States*, 89 S. Ct. 57, 60 (1968), serving in “the most professional, dedicated and effective military in the world,” *Witt v. U.S. Dep’t of Air Force*, 739 F. Supp. 2d 1308, 1315 (W.D. Wash. 2010).

In August 1782, George Washington proclaimed that “the road to glory in a Patriot army and a free country is . . . open to all.”<sup>3</sup> While that has not always been the case in practice, the military historically has been proud of its commitment to being an inclusive force, allowing individuals to serve regardless of their sex, race, color, national origin, religion, or, most recently, sexual orientation. After the military opened its ranks to gay, lesbian, and bisexual service members, former Secretary of Defense Leon Panetta proclaimed that “[t]he successful repeal of ‘Don’t Ask, Don’t Tell’ proved to the Nation that just like the country we defend, we share different backgrounds, different values, and different beliefs—but together, we are the greatest military force in the world.”<sup>4</sup> Secretary Panetta

---

<sup>2</sup> John F. Kennedy, Jr., *Remarks at the U.S. Naval Academy* (Aug. 1, 1963), <http://www.presidency.ucsb.edu/ws/?pid=9367>.

<sup>3</sup> George Washington, *Aug. 7, 1782 General Orders*, in 24 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES: 1745-1799, at 487, 488 (John C. Fitzpatrick ed., 1938).

<sup>4</sup> Leon Panetta, U.S. Sec’y of Def., *Video Message for Lesbian, Gay, Bisexual, Transgender Pride Month from the Pentagon* (June 15, 2012), <http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=5062>.

averred that he was “committed to removing as many barriers as possible to make America’s military a model of equal opportunity, to ensure all who are qualified can serve in America’s military, and to give every man and woman in uniform the opportunity to rise to their highest potential.”<sup>5</sup>

**B. Transgender People Are Every Bit As Capable Of Thriving As Their Peers.**

The military has recognized that, over the last decade and a half of conflict in the Middle East, “transgender 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.”<sup>6</sup> Former Secretary of Defense Ash Carter stated that the military has “transgender soldiers, sailors, airmen, and Marines – real, patriotic Americans – who I know are being hurt by an outdated, confusing, inconsistent approach that’s contrary to our value of service and individual merit.”<sup>7</sup> As Secretary Carter explained, allowing these service members to fight for their country “is the right thing to do for our people and for the force . . . . We’re talking about talented Americans who are serving with distinction or who want the opportunity to serve.

---

<sup>5</sup> *Ibid.*

<sup>6</sup> Ash Carter, U.S. Sec’y of Def., *Statement by Secretary of Defense Ash Carter on DOD Transgender Policy* (July 13, 2015), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/>.

<sup>7</sup> *Ibid.*

We can't allow barriers unrelated to a person's qualifications prevent us from recruiting and retaining those who can best accomplish the mission.”<sup>8</sup>

Even during the current Administration, the Joint Chiefs of Staff have each confirmed that the presence of transgender service members has had zero negative effect on unit cohesion.<sup>9</sup> For instance, in response to a senator's question in April 2018 to U.S. Army Chief of Staff General Mark A. Milley about whether he had heard anything about transgender service members harming unit cohesion, the General replied: “No, not at all. . . . [I]t is monitored very closely because, you know, I am concerned about that, and want to make sure that [transgender service members] 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.”<sup>10</sup> Also in April 2018, in response to a similar question, U.S. Navy

---

<sup>8</sup> U.S. DEP'T OF DEFENSE, *Secretary of Defense Ash Carter Announces Policy for Transgender Service Members* (June 30, 2016), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/821675/secretary-of-defense-ash-carter-announces-policy-for-transgender-service-members/>; U.S. DEP'T OF DEFENSE, *Transgender Service Member Policy Implementation Fact Sheet*, [https://www.defense.gov/Portals/1/features/2016/0616\\_policy/Transgender-Implementation-Fact-Sheet.pdf](https://www.defense.gov/Portals/1/features/2016/0616_policy/Transgender-Implementation-Fact-Sheet.pdf).

<sup>9</sup> *Military Chiefs of Staff Unanimous: Transgender Inclusion Has Not Harmed Unit Cohesion*, PALM CTR. (Apr. 25, 2018), <https://www.palmcenter.org/military-chiefs-of-staff-unanimous-transgender-inclusion-has-not-harmed-unit-cohesion/>.

<sup>10</sup> United States Senate Committee on Armed Services, *Hearing to Receive Testimony on the Posture of the Department of the Army in Review of the*

Chief of Naval Operations, Admiral John M. Richardson, testified that “[w]e 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’m not aware of any issues.”<sup>11</sup>

The “exemplary military service” of the named plaintiffs in each of the pending cases challenging the military ban further illustrates that discrimination against transgender people is unrelated to their ability to perform in the military. *Doe I v. Trump*, 275 F. Supp. 3d 167, 209 (D.D.C. 2017); *see also Karnoski*, 2018 WL 1784464, at \*10; *Stone v. Trump*, 280 F. Supp. 3d 747, 768 (D. Md. 2017) (describing the “discriminatory impact to a group of our military service members who have served our country capably and honorably”). “For years, they have risked their lives serving in combat and non-combat roles, fighting terrorism around the world, and working to secure the safety and security of our forces overseas.” *Karnoski*, 2018 WL 1784464, at \*10. As the D.C. Circuit explained, “it must be remembered that all Plaintiffs seek during this litigation is to serve their

---

*Defense Authorization Request for Fiscal Year 2019 and the Future Years Defense Program* 99–100 (Apr. 12, 2018), [https://www.armed-services.senate.gov/imo/media/doc/18-37\\_04-12-18.pdf](https://www.armed-services.senate.gov/imo/media/doc/18-37_04-12-18.pdf).

<sup>11</sup> United States Senate Committee on Armed Services, *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* 82 (Apr. 19, 2018), [https://www.armed-services.senate.gov/imo/media/doc/18-42\\_04-19-18.pdf](https://www.armed-services.senate.gov/imo/media/doc/18-42_04-19-18.pdf).

Nation with honor and dignity, volunteering to face extreme hardships, to endure lengthy deployments and separation from family and friends, and to willingly make the ultimate sacrifice of their lives if necessary to protect the Nation, the people of the United States, and the Constitution against all who would attack them.” *Doe I v. Trump*, No. 17-5267, 2017 WL 6553389, at \*3 (D.C. Cir. Dec. 22, 2017).

These judgments are unsurprising. The medical community, too, has united around the position that transgender people are every bit as capable as their peers to participate fully in society, including by serving in the military, but that discrimination—such as the ban—can have profoundly harmful effects.<sup>12</sup>

Following President Trump’s latest memorandum, several organizations and individuals have reasserted their opposition to the transgender military ban. The American Psychiatric Association (“APA”) reaffirmed its strong opposition, emphasizing that “[t]ransgender people do not have a mental disorder; thus, they suffer no impairment whatsoever in their judgment or ability to work,” and adding that “[a]ll Americans who meet the strenuous requirements to volunteer to serve in

---

<sup>12</sup> See, e.g., AM. PSYCHIATRIC ASS’N, *Position Statement on Discrimination Against Transgender and Gender Variant Individuals* (July 2012), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf>.



the U.S. military should be given the opportunity to do so.”<sup>13</sup> The APA also noted that *discrimination*, rather than gender dysphoria or some inherent characteristic of transgender people, is what “has a negative impact on the mental health of those targeted.”<sup>14</sup> Likewise, the American Psychological Association relayed that it is alarmed “by the administration’s misuse of psychological science to stigmatize transgender Americans,” and stated that substantial psychological research demonstrates that gender dysphoria does not “limit the ability of individuals to function well and excel in their work, including in military service.”<sup>15</sup> Similarly, in April of 2018, the American Medical Association (“AMA”) declared that “[t]ransgender individuals have served, and continue to serve, our country with honor, and we believe they should be allowed to continue doing so” because “there is no medically valid reason” to exclude them from service.<sup>16</sup> In addition, two former U.S. Surgeons General released a statement emphasizing that “transgender

---

<sup>13</sup> AM. PSYCHIATRIC ASS’N, *APA Reiterates Its Strong Opposition to Ban of Transgender Americans from Serving in the U.S. Military* (Mar. 24, 2018), <https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-its-strong-opposition-to-ban-of-transgender-americans-from-serving-in-u-s-military>.

<sup>14</sup> *Ibid.*

<sup>15</sup> AM. PSYCHOLOGICAL ASS’N, *APA Statement Regarding Transgender Serving in Military* (Mar. 26, 2018), <http://www.apa.org/news/press/releases/2018/03/transgender-military.aspx>.

<sup>16</sup> Letter from James L. Madara, Chief Exec. Officer, AM. MED. ASS’N, to James N. Mattis, U.S. Sec’y of Def. (Apr. 3, 2018), *available at* <https://searchlf.ama-assn.org/undefined/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-4-3-Letter-to-Mattis-re-Transgender-Policy.pdf>.

troops are as medically fit as their non-transgender peers and . . . there is no medically valid reason . . . to exclude them from military service or to limit their access to medically necessary care.”<sup>17</sup> The statement also noted “the robust body of peer-reviewed research” and the “global medical consensus” regarding the efficacy, reliability, and safety of transgender medical care that directly contradicts the presidential memorandum.<sup>18</sup>

Courts, too, have noted that there is a dearth of evidence suggesting that being transgender renders a person any less productive or capable. *See, e.g., Doe 1*, 275 F. Supp. 3d at 209. Indeed, “[d]iscrimination against transgender people clearly is unrelated to their ability to perform and contribute to society.” *Karnoski v. Trump*, 2018 WL 1784464, at \*10; *see also Doe 1*, 275 F. Supp. 3d at 209 (“Despite this discrimination, the Court is aware of no argument or evidence suggesting that being transgender in any way limits one’s ability to contribute to society.”); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015) (“The Court is not aware of any data or argument suggesting that a transgender

---

<sup>17</sup> M. Joycelyn Edlers & David Satcher, *Former Surgeons General Debunk Pentagon Assertions about Medical Fitness of Transgender Troops*, PALM CTR. (Mar. 28, 2018), <https://www.palmcenter.org/former-surgeons-general-debunk-pentagon-assertions-about-medical-fitness-of-transgender-troops/>.

<sup>18</sup> *Ibid.*

person, simply by virtue of transgender status, is any less productive than any other member of society.”).

In psychology, the minority stress model explains that “prejudice and stigma . . . cause adverse health outcomes.”<sup>19</sup> Transgender people are not inherently likely to suffer mental health problems; rather, “stress associated with stigma, prejudice, and discrimination”—like the military ban—“will increase rates of psychological distress” in any community that experiences it.<sup>20</sup> In this vein, the American Psychiatric Association has voiced its opposition to the military ban because “[d]iscrimination has a negative impact on the mental health of those targeted” and the ban “harms not just those transgender Americans who have dedicated themselves to service of others, but it unfairly casts a pall over all transgender Americans.”<sup>21</sup>

Courts, too, have long recognized that government-sanctioned discrimination causes substantial and material harm to anyone who experiences

---

<sup>19</sup> Ilan H. Meyer, *Resilience in the Study of Minority Stress and Health of Sexual and Gender Minorities*, 2 PSYCHOL. OF SEXUAL ORIENTATION & GENDER DIVERSITY 209, 209 (2015).

<sup>20</sup> Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103 AM. J. PUB. HEALTH 943, 943 (May 2013).

<sup>21</sup> AM. PSYCHIATRIC ASS’N, *APA Opposes Banning Transgender Service Members from Serving in Military* (July 27, 2017), <https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military>.

it—and to youth first and foremost. In *Brown v. Board of Education*, the Court based its reasoning in part on the fact that *de jure* segregation of black schoolchildren “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” 347 U.S. 483, 494 (1954). The Court noted that the detrimental impact on children “is greater when it has the sanction of the law.” *Ibid.*

Likewise, in *Lawrence v. Texas*, the Court observed that “[w]hen homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.” 539 U.S. 558, 575 (2003). Concluding that “[t]he State cannot demean their existence or control their destiny by making their private sexual conduct a crime,” the Court overruled its prior decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986), which had allowed states to criminalize homosexual conduct. *Lawrence*, 539 U.S. at 578–79. Subsequently, in striking down parts of the Defense of Marriage Act, the Court stated that the discriminatory marriage law “tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition.” *United States v. Windsor*, 570 U.S. 744, 772 (2013). When the Court recognized the constitutional right for same-sex couples to marry, it explained that state bans on same-sex marriage forced children of same-sex couples to “suffer the stigma of knowing their families

are somehow lesser.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015). The Court understood that “[d]ignitary wounds cannot always be healed with the stroke of a pen,” and acknowledged that its past decision in *Bowers* caused “pain and humiliation” that “no doubt lingered long after *Bowers* was overruled.” *Id.* at 2606.

It should come as no surprise that support and acceptance, by contrast, benefit transgender youth significantly.<sup>22</sup> The evidence demonstrates that “allowing children to present in everyday life as their gender identity rather than their natal sex is associated with developmentally normative levels of depression and anxiety.”<sup>23</sup> When transgender youth are supported by their families, “results

---

<sup>22</sup> Family support, peer support, and identity pride are all associated with lower psychological distress. Bockting, *supra* note 20, at 948; *see also* AM. PSYCHOLOGICAL ASS’N, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 3 (2011), <http://www.apa.org/topics/lgbt/transgender.pdf> (“[T]he significant problem is finding affordable resources . . . and the social support necessary to freely express their gender identity and minimize discrimination.”).

<sup>23</sup> Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3) PEDIATRICS 1, 5 (Mar. 2016); *see also* S.E. Herman et al., *The Report of the 2015 U.S. Transgender Survey* 70 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> (describing survey findings that transgender adults with supportive families were more likely to be employed, less likely to have experienced homelessness, and less likely to report currently experiencing serious psychological distress than those whose families were unsupportive); Decl. of George R. Brown ¶ 29, *Karnoski*, No. 2:17-cv-01297 (W.D. Wash. 2018), Dkt. 143 (“Particularly as societal acceptance towards transgender individuals grows and there are more examples of high-functioning, successful transgender

provide clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings.”<sup>24</sup> Further, a study assessing the impact of discrimination on LGBTQ youth found that LGBTQ youth who did *not* report experiencing discrimination had similarly low levels of depressive symptoms as did their peers.<sup>25</sup> And when LGBTQ students receive institutional support through non-discriminatory policies, they not only report lower levels of depressive symptoms, but also significantly lower absenteeism, higher self-esteem, and greater educational achievement.<sup>26</sup>

Through the second iteration of the ban, the government continues to deny plaintiffs the opportunity to serve, instead telling transgender people that— notwithstanding the Joint Chiefs’ unanimous opinion to the contrary and the consensus of medical professionals—they are inherently unfit to heed the supreme and noble call to defend their country. The military will welcome everyone else

---

individuals represented in media and public life, younger people in increasing numbers have access to medical and mental health resources that help them understand their experience . . .”).

<sup>24</sup> Olson, *supra* note 23, at 7.

<sup>25</sup> Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. YOUTH & ADOLESCENCE 1001, 1008, 1010 (2009).

<sup>26</sup> Joseph G. Kosciw et al., *The 2015 National School Climate Survey* 45, 49 (2016), [https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report\\_0.pdf](https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf).

who can do the job—people of any sex, race, color, national origin, religion, or sexual orientation—except for transgender service members. Whereas convicted felons and deserters may receive “moral waivers” to allow them to serve in the Armed Forces, *see* 10 U.S.C. § 504(a), even the most dedicated transgender individuals are deemed innately and irrevocably unworthy to fight for the country they love without suppressing their core identity.

**C. The Trevor Project Has Witnessed First-Hand The Negative Effects Of The Transgender Military Ban On Transgender Youth.**

While transgender individuals are not inherently less successful and well-adjusted members of society, many are subject to discrimination, which can have negative effects. The Trevor Project recognizes and attempts to heal the wounds caused by discrimination against the LGBTQ community by providing several crisis intervention and counseling services. Specifically, Trevor Lifeline is a telephone hotline that LGBTQ youth can call for counseling in times of stress and trouble, and TrevorChat and TrevorText are online chat and text messaging services, respectively, that LGBTQ youth can use as an alternative to speaking on the telephone. The Trevor Project maintains statistical data regarding the people who use its crisis and counseling intervention services. This data, consistent with the studies described above, shows that discrimination—particularly governmental discrimination—creates stress for transgender youth. During the Trevor Project’s decades of experience, its counselors periodically have observed spikes in youth

contacting the Trevor Project in response to the enactment or announcement of discriminatory laws and in response to discriminatory statements by government officials or other respected individuals.

Within 24 hours of the President’s July 26, 2017 tweet announcing the transgender military ban, the percentage of self-identified transgender people who contacted the Trevor Project through all channels—Trevor Lifeline, TrevorChat, and TrevorText—more than doubled from 7.3% to 17.5% of all contacts.<sup>27</sup> This connection between discrimination and youth in crisis is not limited to the military ban, but rather extends to any example of government-sanctioned discrimination. For instance, after the 2017 introduction of proposed legislation in Texas that would have prohibited transgender students and adults from using bathrooms that correspond to their gender identity, the Trevor Project observed a sharp increase in contacts to Trevor Lifeline, TrevorChat, and TrevorText from transgender youth in Texas.<sup>28</sup>

Many of the youth who reached out to the Trevor Project after the transgender military ban was announced described how important it was to them to

---

<sup>27</sup> TREVOR PROJECT, *Spike in Crisis Contacts Related to Anti-Trans Rhetoric* (Aug. 2, 2017), <https://www.thetrevorproject.org/blog/entry/spike-in-crisis-contacts-related-to-anti-trans-rhetoric>.

<sup>28</sup> Amit Paley, *Victory! “Bathroom Bills” Threatening Trans Youth Defeated in Texas*, TREVOR PROJECT (Aug. 15, 2017), <http://www.thetrevorproject.org/blog/entry/victory-bathroom-bills-threatening-trans-youth-defeated-in-texas1>.



join the military. For many of the transgender youth using the Trevor Project's services, the military often represents not only an opportunity to fight for their country, but also a means to a better life. The military provides a chance to contribute to the country and, for many, is part of their family experience or dreams of their future. *See, e.g.*, Declaration of Dylan Kohere ¶ 2, *Doe 1 v. Trump*, No. 1:17-cv-01597 (D.D.C. Aug. 31, 2017), ECF No. 13-15; Declaration of Nicholas Talbott ¶¶ 7–14, *Stockman v. Trump*, No. 5:17-cv-01799 (C.D. Cal. Oct. 2, 2017), ECF No. 17. In addition, in exchange for their willingness to endure hardships and even the ultimate sacrifice as part of service, the military provides tuition assistance, health and life insurance, veterans' benefits, pension rights, and a steady source of income.<sup>29</sup> Even those without longstanding dreams and family traditions of military service, including those bullied by their classmates, discriminated against by their teachers, and rejected by their parents, sometimes aspire to join the military. These transgender youth hope to be valued for their contribution toward the service of this country, rather than for how well they comply with traditional gender norms. It is not surprising, then, that the ban, which eliminated these opportunities, has had negative consequences for transgender youth.

---

<sup>29</sup> MILITARY.COM, *Military Benefits at a Glance*, <http://www.military.com/join-armed-forces/military-benefits-overview.html> (last visited May 29, 2018).

During a conversation between a transgender youth and a Trevor Project counselor, one individual explained that they<sup>30</sup> had dreamed of joining the military since childhood, as they believed it was their only path to an affordable college education. This individual, who is an honors student and junior ROTC member, felt that the announcement of the ban had completely stripped away their hope and plans for the future. However, despite feeling upset, angry, and hopeless, this individual showed great strength in stating that they would still pursue their plans if the military ban were repealed. Another individual stated that they, too, had plans of joining the military and that they felt disheartened that they were being told they were too much of a burden to do so. As a result, this individual said they felt badly about themselves and who they are.

Even transgender youth who are not contemplating military service reached out to the Trevor Project because of the announcement of the ban. To hear from the leader of your country that you are a burden and not good enough to defend your own country is profoundly hurtful. One individual felt like the President thought that they were less than human and, therefore, feared that his message would incite violence against transgender people. The common theme that the

---

<sup>30</sup> Where appropriate, this brief uses “they” and “their” as singular, gender-neutral pronouns.

Trevor Project witnessed is that transgender youth feel that the transgender military ban means that they are unwelcome as full members of society.

These transgender individuals simply want the same opportunity as their peers: To stand beside other service members and defend this country. Even for those transgender individuals who may never join the military, countless benefits flow from knowing that their government grants them this opportunity equally under the law. By excluding transgender people from military service, the ban strips transgender individuals of full citizenship and conveys to the nation that they are inherently inferior and unworthy. The soldiers who fight for our country are heroes and role models, yet, by denying transgender people the opportunity to serve, the government demeans all transgender people and legitimizes prejudice against them, with specific consequences for transgender youth.

### **III. CONCLUSION**

For the foregoing reasons, the Trevor Project hereby requests that this Court affirm the preliminary injunction issued by the district court.

Dated: July 2, 2018

Respectfully submitted,

/s/ Douglas C. Dreier

---

Stuart F. Delery

Douglas C. Dreier\*

*\*Counsel of Record*

ddreier@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5306

Telephone: (202) 887-3650

Facsimile: (202) 530-9523

*Counsel for Amicus Curiae*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 29, I certify that the attached brief is proportionately spaced, has a typeface of 14 points, and complies with the word count limitations set forth in Fed. R. App. P. 29(a)(5). This Brief has 4,285 words, excluding the portions exempted by Fed. R. App. P. 32, according to the word count feature of Microsoft Word used to generate this Brief.

Dated: July 2, 2018

By: /s/ Douglas C. Dreier  
Douglas C. Dreier

**CERTIFICATE OF SERVICE**

I hereby certify that 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 on July 2, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 2, 2018

By: /s/ Douglas C. Dreier  
Douglas C. Dreier