

2019 Transgender Talking Points

Random Thoughts

- Our country has a place for all Americans, and the current administration is trying to devalue and erase transgender people.
- Transgender service members are combat effective, as we currently serve in every US military combat zone.
- There is not a job in the military that transgender service members cannot do effectively and exemplarily.
- Transgender service members have served openly without any real issue for roughly the past 2 years.
- Throughout the history of the US Military, transgender service members have served honorably.
- The ban gives a false sense of credibility to the inaccurate notion that transgender people are somehow less or less capable than their peers.
- Our military is strongest when every qualified, willing American has an opportunity to serve.

Common Misconceptions

- The healthcare costs for transgender service members is too much - The upper estimate of annual transgender care is a thousandth of 1 percent of the Defense Department's annual budget^[1]. Total military spending on erectile dysfunction medicines amounts to \$84 million annually, according to an analysis by the Military Times^[2] — 10 times the cost of annual transition-related medical care for active duty transgender servicemembers.
- Why should taxpayers have to pay for gender change? Under current law^[3], active duty personnel are entitled to military health care and have a right or claim to this care. According to the American Medical Association^[4], transgender care is medically necessary. Those that join the military sign a contract and promise to give the ultimate sacrifice. In return, the government promises to provide healthcare for military members.

The Decision

- It is not a ruling but a decision by the Supreme Court that lifts a lower court injunction blocking the transgender ban on service members.
- The Supreme Court will allow the policy to be enforced as the legal challenges proceed through the court systems.
- The justices cleared the way for the Trump administration to require that transgender troops serve as members of their biological gender unless they received a medical diagnosis of gender dysphoria.
- In 2016, the Obama administration began allowing transgender men and women already serving in the military to undergo gender transition if they were diagnosed with gender dysphoria.
- The policy to exclude transgender service members was tweeted on July 26, 2017 and a memo to the Secretary of Defense and Secretary of Homeland Security was sent March 23, 2018^[5].
- Following the tweet, Secretary of Defense James Mattis developed the current policy on transgender service members in February 2018^{[6][7]}.
- Under previous lower court orders, transgender individuals had been allowed to enlist in the military since Jan. 1, 2018.

- Estimates vary of how many transgender people serve in the military. A 2016 Rand study^[8] estimated that between 1,320 and 6,630 transgender people were on active duty. The Mattis report⁶ said that since June 2016, about 900 people on active duty have been diagnosed with gender dysphoria — the medical term for a conflict between one’s physical gender and the gender with which the person identifies. The report also said that a 2016 survey of the military found that almost 9,000 people identified as transgender.
- It is estimated that there are 134,000 transgender veterans and 15,500 actively serving in the guard, reserves, and active duty according to the Williams Institute^[9].
- The process to receive a diagnosis and plan is slow.
- Individuals who have transitioned from their biological sex won’t be allowed to enlist under the Trump administration’s policy while the lower court challenges proceed.
- The lower court cases will continue, so the final outcome on transgender military service is still undecided.

The Policy[6][7]

- “Transgender persons with a history or diagnosis of gender dysphoria are disqualified from military service, except under the following limited circumstances: (1) if they have been stable for 36 consecutive months in their biological sex prior to accession; (2) Service members diagnosed with gender dysphoria after entering into service may be retained if they do not require a change of gender and remain deployable within applicable retention standards; and (3) currently serving Service members who have been diagnosed with gender dysphoria since the previous administration's policy took effect and prior to the effective date of this new policy, may continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria.”
- “Transgender persons who require or have undergone gender transition are disqualified from military service.”
- “Transgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex.”
- “Exempting Current Service Members Who Have Already Received a Diagnosis of Gender Dysphoria. Transgender Service members who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy, but before the effective date of any new policy, may continue to receive all medically necessary care, to change their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), and to serve in their preferred gender, even after the new policy commences. This includes transgender Service members who entered into military service after January 1, 2018, when the Carter accession policy took effect by court order. The Service member must, however, adhere to the Carter policy procedures and may not be deemed to be non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months). While the Department believes that its solemn promise to these Service members, and the investment it has made in them, outweigh the risks identified in this report, should its decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption is and should be deemed severable from the rest of the policy.”

What happens now?

That’s up to the Trump administration and courts. While the Trump administration has the go-ahead to implement its policy for now, it’s unclear how quickly that will happen. Court challenges will continue,

and the cases could eventually get back to the Supreme Court on the merits of the case, whether the Trump administration policy is legal. It's very unlikely, however, that would happen before the Supreme Court recesses for the summer in late June.

Should I join?

A person has to weigh whether or not they want to live their most authentic life, or whether they want to continue to serve a country they love.

Timeline from GLAD/NCLR^[10]

June 30, 2016: The United States Department of Defense (DOD) adopts a policy permitting transgender people to serve in the military based on a nearly two year DOD review determining that there was no valid reason to exclude qualified personnel from military service simply because they are transgender.

July 26, 2017: President Trump tweets that “the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.”

August 9, 2017: NCLR and GLAD file *Doe v. Trump*, the first lawsuit filed to stop the ban, challenging its constitutionality and requesting that the court issue a nationwide preliminary injunction to stop it from taking effect while the case is being heard in court.

August 25, 2017: President Trump issues a memorandum ordering Secretary of Defense James Mattis to submit “a plan for implementing” the ban by February 21, 2018. Secretary Mattis delivers this (the “Mattis Plan” and panel report) to President Trump on February 22, 2018.

August 28, 2017: The ACLU files *Stone v. Trump*, challenging the Trump-Pence transgender military ban, in the United States District Court for the District of Maryland. On this same day, Lambda Legal files *Karnoski v. Trump*, challenging the Trump-Pence transgender military ban, in the United States District Court for the District of Washington.

September 5, 2017: Equality California files *Stockman v. Trump*, challenging the Trump-Pence transgender military ban, in the United States District Court for the Central District of California.

October 2, 2017: NCLR and GLAD join Equality California's case, *Stockman v. Trump*, and file a motion for preliminary injunction.

October 30, 2017: The United States District Court for the District of Columbia rules that *Doe v. Trump* plaintiffs established a likelihood of success on their claim that President Trump's ban violates equal protection, that plaintiffs would be irreparably harmed without a preliminary injunction to stop the ban, and that the public interest and balance of hardships weighed in favor of granting injunctive relief and temporarily halting the ban while the case is heard by the court.

November 17, 2017: The state of California is now a plaintiff in *Stockman v. Trump*, as the court grants California Attorney General Xavier Becerra's motion to intervene.

November 21, 2017: United States District Court for the District of Maryland Judge Marvin J. Garvis issues a preliminary injunction in the ACLU's case, *Stone v. Trump*.

December 11, 2017: United States District Court for the District of Washington Judge Marsha J. Pechman issues a preliminary injunction in Lambda Legal's case, *Karnoski v. Trump*.

December 22, 2017: United States District Court for the Central District of California Judge Jesus G. Bernal issues a preliminary injunction in *Stockman v. Trump*.

March 23, 2018: President Trump accepts the "Mattis Plan" and issues a memorandum in which he "revoked" his August 25 Memorandum.

April 20, 2018: Defendants file a motion to dissolve the October 30 nationwide preliminary injunction enjoining the transgender military ban issued by the U.S. District Court for the District of Columbia; a motion to dismiss Plaintiffs' Second Amended Complaint; and a Motion for Summary Judgment.

May 12, 2018: Plaintiffs file their cross-motion for summary judgment, as well as motions in opposition to Defendant's motions to dissolve the injunction and dismiss Plaintiffs' complaint.

August 6, 2018: United States District Judge Colleen Kollar-Kotelly denies Trump administration motions to dismiss *Doe v. Trump* and to dissolve the preliminary injunction preventing the ban from going into effect.

August 27, 2018: Defendants filed a notice of appeal to the D.C. Circuit Court of Appeals of Judge Kollar-Kotelly's denial of their motion to dissolve the preliminary injunction preventing enforcement of the transgender military ban.

September 21, 2018: The Defendants-Appellants filed their opening brief in the D.C. Circuit Court of Appeals.

October 22, 2018: Plaintiffs-Appellees filed their opposition to Defendants' appeal, asking the D.C. Circuit Court of Appeals to leave in place the preliminary injunction blocking enforcement of the transgender military ban.

October 29, 2018: A wide array of former military leaders, veterans' and civil rights organizations, women's groups, military scholars and historians, and states went on record opposing President Trump's ongoing efforts to exclude transgender people from military service, in thirteen friend-of-the-court briefs filed in the United States Court of Appeals for the District of Columbia.

November 23, 2018: The Trump administration filed petitions for cert before judgment in *Doe v. Trump*, *Stockman v. Trump*, and *Karnoski v. Trump*.

November 30, 2018: Judge Colleen Kollar-Kotelly forcefully denied the Trump administration's motion to stay her preliminary injunction while the administration seeks cert from the Supreme Court.

December 10, 2018: D.C. Circuit Court of Appeals heard oral arguments on Defendants-Appellants appeal of the denial of their motion to dissolve the preliminary injunction.

December 13, 2018: The Trump administration filed petitions asking the U.S. Supreme Court to lift the

injunctions blocking the ban from taking effect if the Court declines to hear the cases this term.

December 24, 2018: Plaintiffs filed briefs opposing the administration's request that the U.S. Supreme Court hear cases on the ban prematurely.

December 28, 2018: Plaintiffs filed briefs opposing the administration's request that the U.S. Supreme Court lift the injunctions blocking the ban from taking effect while the cases continue.

January 4, 2019: The U.S. Court of Appeals for the District of Columbia Circuit issued a per curiam order lifting the D.C. Federal District Court's injunction blocking the Trump administration from enforcing its ban while the case against it proceeds.

January 22, 2019 – The Supreme Court denied the Trump administration's request that it hear legal challenges to Trump's transgender military ban this term, allowing the cases to proceed in the lower courts. In a separate order, the Court allowed the ban to go into effect temporarily while the cases against it proceed.

References

- 1: Department of Defense, FY 2018 Budget Request Overview Book, 2017, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2018/fy2018_Budget_Request_Overview_Book.pdf
- 2: Patricia Kime, DoD spends \$84M a year on Viagra, similar meds, 2015, <https://www.militarytimes.com/pay-benefits/military-benefits/health-care/2015/02/13/dod-spends-84m-a-year-on-viagra-similar-meds/>
- 3: US Congress, 1 Stat. 721 and 1 Stat. 729, 1799
- 4: William M. Kuzon, Jr., MD, PhD, Emily Sluiter, and Katherine M. Gast, MD, MS, Exclusion of Medically Necessary Gender-Affirming Surgery for America's Armed Services Veterans, 2018, <https://journalofethics.ama-assn.org/article/exclusion-medically-necessary-gender-affirming-surgery-americas-armed-services-veterans/2018-04>
- 5: Donald Trump, Military Service by Transgender Individuals, 2018, https://partner-mco-archive.s3.amazonaws.com/client_files/1521897503.pdf
- 6: James Mattis, Military Service by Transgender Individuals, 2018, https://partner-mco-archive.s3.amazonaws.com/client_files/1521897476.pdf
- 7: Department of Defense, Department of Defense Report and Recommendations of Military Service by Transgender Persons, 2018, https://partner-mco-archive.s3.amazonaws.com/client_files/1521898539.pdf
- 8: Agnes Gereben Schaefer, Radha Iyengar Plumb, Srikanth Kadiyala, Jennifer Kavanagh, Charles C. Engel, Kayla M. Williams, Amii M. Kress, Assessing the Implications of Allowing Transgender Personnel to Serve Openly, 2016, https://www.rand.org/pubs/research_reports/RR1530.html
- 9: Gary J. Gates, Jody L. Herman, Transgender Military Service in the United States, 2014, <https://williamsinstitute.law.ucla.edu/research/military-related/us-transgender-military-service/>
- 10: GLAD, NCLR, Trump's Transgender Military Ban Timeline, 2019, <https://notransmilitaryban.org/timeline/>