

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JANE DOE 1, JANE DOE 2, JANE DOE 3,
JANE DOE 4, JANE DOE 5, JOHN DOE 1,
REGAN V. KIBBY, and DYLAN KOHERE,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States; JAMES N.
MATTIS, in his official capacity of Secretary
of Defense; JOSEPH F. DUNFORD, JR., in
his official capacity as Chairman of the Joint
Chiefs of Staff; the UNITED STATES
DEPARTMENT OF THE ARMY; RYAN D.
MCCARTHY, in his official capacity as
Secretary of the Army; the UNITED STATES
DEPARTMENT OF THE NAVY; RICHARD
V. SPENCER, in his official capacity as
Secretary of the Navy; the UNITED STATES
DEPARTMENT OF THE AIR FORCE;
HEATHER A. WILSON, in her official
capacity as Secretary of the Air Force; the
UNITED STATES COAST GUARD;
ELAINE C. DUKE, in her official capacity as
Secretary of Homeland Security; the
DEFENSE HEALTH AGENCY; RAQUEL C.
BONO, in her official capacity as Director of
the Defense Health Agency; and the UNITED
STATES OF AMERICA,

Defendants.

Civil Action No. 17-cv-1597 (CKK)

**PROPOSED BRIEF *AMICUS CURIAE* OF THE TREVOR PROJECT IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

CORPORATE DISCLOSURE STATEMENT

Amicus curiae hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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| American Medical Ass'n, <i>Military Medical Policies Affecting Transgender Individuals H-40.966</i> (2015), https://policysearch.ama-assn.org/policyfinder/detail/Military%20Medical%20Policies%20Affecting%20Transgender%20Individuals%20H-40.966?uri=%2FAMADoc%2FHOD.xml-0-3487.xml | 9 |
| American Psychiatric Ass'n, Press Release, <i>APA Opposes Banning Transgender Service Members from Serving in Military</i> (July 27, 2017), https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military | 9 |

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| American Psychological Ass’n, <i>Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression</i> (2011), http://www.apa.org/topics/lgbt/transgender.pdf | 10 |
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| Ash Carter, Sec’y, Dep’t of Defense, Statement by Secretary of Defense Ash Carter on DOD Transgender Policy (July 13, 2015), <i>available at</i> https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/ | 5, 6 |
| Emanuella Grinberg & Paul P. Murphy, <i>Transgender Troops: “We’re Not Burdens,”</i> CNN (July 26, 2017), http://www.cnn.com/2017/07/26/politics/transgender-troops-voices/index.html | 19 |
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| Joseph G. Kosciw et al., <i>The 2015 National School Climate Survey</i> 45 (2016), https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf | 10, 13 |
| Leon Panetta, Sec’y, Dep’t of Defense, Video Message for Lesbian, Gay, Bisexual, Transgender Pride Month from the Pentagon (June 15, 2012), <i>available at</i> http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=5062 | 5 |
| Meghan Keneally, <i>Transgender Service Members Speak Out Against Trump’s Ban</i> , ABC News (July 27, 2017), http://abcnews.go.com/Politics/transgender-service-members-speak-trumps-ban/story?id=48883441 | 19 |
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| RAND National Defense Research Institute, <i>Assessing the Implications of Allowing Transgender Personnel to Serve Openly</i> (2016), <i>available at</i> https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf | 6, 7 |
| S.E. Herman et al., <i>The Report of the 2015 U.S. Transgender Survey</i> (2016), , <i>available at</i> https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF | 7, 12, 17 |
| The Trevor Project, <i>Spike in Crisis Contacts Related to Anti-Trans Rhetoric</i> (Aug. 2, 2017), https://www.thetrevorproject.org/blog/entry/spike-in-crisis-contacts-related-to-anti-trans-rhetoric | 14 |
| The Trevor Project, <i>Victory! “Bathroom Bills” Threatening Trans Youth Defeated in Texas</i> (Aug. 15, 2017), http://www.thetrevorproject.org/blog/entry/victory-bathroom-bills-threatening-trans-youth-defeated-in-texas1 | 14 |
| U.S. Dep’t of Defense, <i>Secretary of Defense Ash Carter Announces Policy for Transgender Service Members</i> (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/ | 7, 8 |
| Williams Institute, <i>Transgender Military Service in the United States</i> (May 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf | 7 |

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 Plaintiffs' Motion for Preliminary Injunction (D.E.-13). 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 utilized 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. Furthermore, as a leader and expert voice in issues affecting LGBTQ youth, the Trevor Project provides in-person trainings designed for adults who work with youth, a free online learning module with resources for middle school and high school teachers, and other resources for youth and adults.

The Trevor Project has a substantial interest in opposing governmental action premised on discrimination against the transgender youth it serves. The Trevor Project has worked firsthand with transgender youth for decades, thereby developing significant expertise on the issues that affect the community. The Trevor Project is acutely aware of the negative mental health effects that government discrimination has on youth.¹

¹ 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.

II. ARGUMENT

Transgender people are those whose gender identity or gender expression differs from their sex at birth. The life experiences of transgender people are often unfamiliar to the public or policy makers, but they make, and have always made, meaningful contributions to their communities—including in the military. As courts have recognized, the transgender community “has traditionally been unrecognized, unrepresented, and unprotected.” *G.G. v. Gloucester Cty. Sch. Bd.*, 853 F.3d 729, 730 (4th Cir. 2017) (mem.) (Davis, J., concurring). Through its decades of service to the LGBTQ community, the Trevor Project has developed a unique understanding not only of the force for good that transgender individuals can be, but also of the harmful effects of government-sponsored discrimination. The transgender military ban brings another iteration of discrimination against transgender people, with the President announcing his intent to prohibit transgender individuals from serving in the armed forces because of the supposed “disruption that transgender [*sic*] in the military would entail.”²

Transgender service members are not a “disruption” or a risk to national security. They are people who have heeded the call to defend the country they love and have served with distinction. They have the same hopes and desires and worries and fears that their cisgender³ peers have. But while many transgender individuals are well-adjusted and living their lives to the fullest, some transgender individuals – like their cisgender counterparts – are trying to cope with mental health issues. Scientific studies cast serious doubt on any attempts to paint transgender people as inherently more susceptible to these issues, while also demonstrating that

² Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2017, 6:08 AM), <https://twitter.com/realdonaldtrump/status/890197095151546369>.

³ The term cisgender refers to individuals whose sense of gender identity corresponds to their sex at birth.

government-sanctioned discrimination causes tangible harms that make it more difficult for transgender youth to live the lives they are meant to live.

The Trevor Project has seen firsthand the harmful effects that the announced ban on military service by transgender individuals has had on the transgender community it serves—transgender service members and transgender youth more broadly as well. A decision by this Court invalidating the ban would be an important step for the protection of transgender youth.

A. Excluding Transgender Individuals from Military Service Denies Them the Ability to Participate Fully in Society.

The Supreme Court has long recognized the substantial psychological harm that government-sanctioned discrimination has on youth. 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 the children “is greater when it has the sanction of the law.” *Ibid*.

More recently, the Court has considered the stigmatic impact of laws that target LGBTQ people. In *Lawrence v. Texas*, 539 U.S. 558, 575 (2003), 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.” 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, and invalidated the Texas criminal sodomy statute. *Id.* at 578-79. Subsequently, in striking down parts of the Defense of Marriage Act, the Court stated that the discriminatory marriage law causes stigmatic harm to same-sex couples by “tell[ing] those couples, and all the

world, that their otherwise valid marriages are unworthy of federal recognition.” *United States v. Windsor*, 133 S. Ct. 2675, 2694 (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 acknowledged that its own past decision in *Bowers v. Hardwick*, caused “pain and humiliation” that “no doubt lingered long after *Bowers* was overruled.” *Id.* at 2606. The Court recognized that “[d]ignitary wounds cannot always be healed with the stroke of a pen.” *Ibid.*

Exclusion from service in the armed forces is particularly demeaning and prevents individuals from being treated as full citizens in society. For centuries, the “supreme and noble duty of contributing to the defense of the rights and honor of the nation as the result of a war” has called millions of this nation’s youth to enlist in the armed forces. *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.”⁴ Those who serve deserve to be respected and honored by all of us, and, indeed, the people “constituting our Armed Forces are treated as honored members of society.” *Winters v. United States*, 89 S. Ct. 57, 60 (1968).

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

In August 1782, George Washington proclaimed that “the road to glory in a Patriot army and a free country is . . . open to all.”⁵ While that has not always been the case in practice, the military is 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 proudly 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.”⁶ Secretary Panetta 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.”⁷

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.”⁸ In response to the military’s prior ban on transgender service members, former Secretary of Defense Ash Carter stated that the military has “transgender soldiers, sailors, airmen, and Marines – real, patriotic Americans – who

⁵ 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).

⁶ Leon Panetta, Sec’y, Dep’t of Defense, Video Message for Lesbian, Gay, Bisexual, Transgender Pride Month from the Pentagon (June 15, 2012), *available at* <http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=5062>.

⁷ *Ibid.*

⁸ Ash Carter, Sec’y, Dep’t of Defense, Statement by Secretary of Defense Ash Carter on DOD Transgender Policy (July 13, 2015), *available at* <https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/>.

I know are being hurt by an outdated, confusing, inconsistent approach that's contrary to our value of service and individual merit.”⁹ Indeed, the plaintiffs in this case and countless others prove that to be true. *See* Part II.D, *infra*. That is why, effective July 13, 2015, the Department of Defense decided that no service member shall be involuntarily separated or denied reenlistment or continuation of active or reserve service on the basis of their gender identity, pending further evaluation.¹⁰

As part of its evaluation, the Department of Defense commissioned a study by the RAND National Defense Research Institute to: (1) identify the health care needs of the transgender population, transgender service members' potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess the potential readiness implications of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly.¹¹ Despite the previous ban on transgender people serving in the military, the study found that there are between 1,320 and 6,630 active service members who are transgender, and an additional 830 to 4,160 service members who are transgender in the Selected Reserve.¹² Another study estimates that, as of 2014, there were approximately 134,300 transgender people

⁹ *Ibid*.

¹⁰ Ash Carter, Sec'y, Dep't of Defense, Memorandum for Secretaries of the Military Departments: Transgender Service Members (July 28, 2015), *available at* https://www.defense.gov/Portals/1/features/2016/0616_policy/memo-transgender-service-directive-28-July-2015.pdf.

¹¹ RAND National Defense Research Institute, Assessing the Implications of Allowing Transgender Personnel to Serve Openly, at iii (2016), *available at* https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf.

¹² *Id.* at 16.

who were veterans or retired from Guard or Reserve service.¹³ Of more than 27,000 respondents to a 2015 nationwide survey of transgender adults, 18% reported previous or current military service, with 15% being veterans.¹⁴ In comparison, only 8% of Americans are veterans.¹⁵

The RAND study noted that Australia, Canada, Israel, and the United Kingdom all allow transgender personnel to serve openly, and these countries have seen zero negative effects on military cohesion, operational effectiveness, or readiness.¹⁶ In contrast, prohibiting transgender service members from fighting in the military and separating transgender service members “can involve costly administrative processes and result in the discharge of personnel with valuable skills who are otherwise qualified.”¹⁷ Furthermore, the study found that allowing transgender service members access to health care would have only “a marginal impact on health care costs.”¹⁸

In light of that study’s conclusions, the Department of Defense announced, on June 30, 2016, that transgender individuals are able to serve openly in the military.¹⁹ As Secretary Carter

¹³ The Williams Institute, *Transgender Military Service in the United States* (May 2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf>.

¹⁴ S.E. Herman et al., *The Report of the 2015 U.S. Transgender Survey 167* (2016), *available at* <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

¹⁵ *Ibid.*

¹⁶ RAND, *supra* note 11, at 45. In addition, Austria, Belgium, Bolivia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Netherlands, New Zealand, Norway, Spain, and Sweden all allow transgender personnel to serve openly, and the study was aware of no negative effects on the cohesion, operational effectiveness, or readiness for those militaries. *Id.* at 50.

¹⁷ *Id.* at 46.

¹⁸ *Id.* at 69.

¹⁹ 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/>.

explained: “This 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. We can’t allow barriers unrelated to a person’s qualifications prevent us from recruiting and retaining those who can best accomplish the mission.”²⁰

With no record to counter the RAND study that the Department of Defense just recently commissioned, the federal government has announced an about-face. President Trump declared that “the previous Administration failed to identify a sufficient basis” to warrant allowing transgender service members to fight for their country and that he needed to see more data about whether allowing these people to serve would “hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources.”²¹ Secretary Mattis responded by stating that the Department of Defense would “develop a study and implementation plan, which will contain the steps that will promote military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law.”²² However, the government has not contended that there is any data indicating that service by transgender individuals would have deleterious effects on military readiness, lethality, or unit cohesion.

Without any supporting data, the government has told transgender people that they are unfit to heed that supreme and noble call to fight for their country. The military—the broadest-based, most inclusive organization in the United States—is now sending the message that it will welcome everyone else who can do the job—people of any sex, race, color, national origin, religion, or sexual orientation—everyone except transgender service members. That is the one

²⁰ *Ibid.*

²¹ Presidential Mem. for the Sec’y of Defense and Sec’y of Homeland Sec., Aug. 25, 2017 (D.E.-13-2, Ex. A).

²² Statement by Sec’y of Defense Jim Mattis on Military Service by Transgender Individuals, Aug. 29, 2017 (D.E.-13-2, Ex. D).

group that cannot be tolerated. 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), transgender individuals are deemed inherently and irrevocably unworthy to fight for the country they love. Notwithstanding these individuals’ desires to fight beside their comrades-in-arms, the military now must turn them away simply because of a fear, contrary to fact, that they may constitute a “disruption.” That statement from the highest levels of their government has severe consequences for transgender individuals—service members and other youth alike.

B. Discrimination Can Cause Serious Psychological Harm, but Being Transgender Is Not Inherently More Likely to Lead to Mental Health Issues.

The medical community has united around the position that the Trevor Project knows to be true based on its own experience: Transgender people are every bit as capable as their cisgender peers to serve in the military, but discrimination against them can have profoundly harmful effects. The American Medical Association has stated that “there is no medically valid reason to exclude transgender individuals from service in the US military.”²³ The American Psychiatric Association has added its voice to the opposition to the military ban: “Banning transgender service members from serving our country harms not just those transgender Americans who have dedicated themselves to service of others, but it unfairly casts a pall over all transgender Americans. Discrimination has a negative impact on the mental health of those targeted.”²⁴ And the American Psychological Association confirms the key point: “Research

²³ American Medical Ass’n, *Military Medical Policies Affecting Transgender Individuals H-40.966* (2015), <https://policysearch.ama-assn.org/policyfinder/detail/Military%20Medical%20Policies%20Affecting%20Transgender%20Individuals%20H-40.966?uri=%2FAMADoc%2FHOD.xml-0-3487.xml>.

²⁴ American Psychiatric Ass’n, Press Release, 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>.

has shown that discrimination is a significant source of stress for . . . transgender people and has substantial adverse effects on their health and well-being.”²⁵

Indeed, institutional discrimination is particularly noxious. For example, one study found a statistically significant association between denial of access to bathrooms or campus housing and lifetime suicide attempts among transgender people.²⁶ In another study, researchers found a marked increase in the prevalence of psychiatric disorders among gay, lesbian, and bisexual people who lived in states that adopted constitutional amendments prohibiting same-sex marriage in 2004 and 2005.²⁷

For transgender people, recent studies have found that any disproportionately high rates of psychological distress in that community are not “a manifestation of gender dysphoria,” but instead correlate with “enacted and felt stigma.”²⁸ Another study that assessed the impact of

²⁵ American Psychological Ass’n, Press Release, APA Questions Announcement to Bar Transgender People From US Military (July 26, 2017) <http://www.apa.org/news/press/releases/2017/07/transgender-military.aspx>; see also Vickie M. Mays et al., *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91(11) Am. J. Pub. Health 1869, 1874 (Nov. 2001) (“[T]he experience of discrimination can result in negative psychologic and physiologic changes.”); 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 (finding that anti-LGBTQ discrimination in the school environment correlated with lower self-esteem, higher rates of depression, lower educational achievement, and school absenteeism).

²⁶ Kristie L. Seelman, *Transgender Adults’ Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63(10) J. Homosexuality 1378, 1393 (2016).

²⁷ Mark L. Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100(3) Am. J. Pub. Health 452, 455-56 (Mar. 2010).

²⁸ Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103(5) Am. J. Pub. Health 943, 948 (May 2013). The study also found that family support, peer support, and identity pride were all negatively associated with psychological distress. *Ibid.*; see also American Psychological Ass’n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression*, at 3 (2011),

discrimination on LGBTQ youth found that LGBTQ youth who did *not* report experiencing discrimination had similarly low levels of depressive symptoms as did their heterosexual and cisgender counterparts.²⁹ In contrast, LGBTQ youth who reported experiencing discrimination had significantly higher levels of depressive symptoms, revealing a correlation between discrimination and negative mental health outcomes.³⁰

Court cases involving transgender youth provide additional evidence of the mental and even physical harm that results from institutional discrimination on the basis of gender identity. A recently prominent example involves restrictions designed to compel transgender persons to use the bathroom that corresponds with their sex at birth. One high school student who was forbidden by his school to use the boys' bathroom severely restricted his water intake to avoid using the bathroom at school, which caused him to faint. *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1041 (7th Cir. 2017). The student, Ash Whitaker, "suffered from stress-related migraines, depression, and anxiety because of the [school] policy's impact on his transition and what he perceived to be the impossible choice between living as a boy or using the restroom," and "[h]e even began to contemplate suicide." *Ibid.* Ash is not alone. A 2015 survey of 27,715 transgender adults revealed that 59% of respondents had avoided using public

<http://www.apa.org/topics/lgbt/transgender.pdf> ("[I]dentifying as transgender does not constitute a mental disorder. For these individuals, the significant problem is finding affordable resources . . . and the social support necessary to freely express their gender identity and minimize discrimination.").

²⁹ 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).

³⁰ *Ibid.*

bathrooms in the preceding year for fear of confrontation or other problems, and 32% had avoided drinking or eating so that they would not need to use the bathroom.³¹

Additional plaintiffs in similar cases have also experienced feeling “marginalized . . . causing them genuine distress, anxiety, discomfort and humiliation” sufficiently severe and irreparable to warrant a preliminary injunction against assigned-sex bathroom restrictions. *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 294 (W.D. Pa. 2017); *see also Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 878 (S.D. Ohio 2016) (finding irreparable harm in “[t]he stigma and isolation Jane feels when she is singled out and forced to use a separate bathroom” and granting preliminary injunction). The day-to-day stress that transgender people endure because of this kind of institutional discrimination and the stigma of being singled out for differential treatment based on their identity is unfathomable to many.

It should come as no surprise that support and acceptance, by contrast, benefit transgender youth significantly. New evidence demonstrates that supporting transgender children in accordance with their gender identities is positively correlated with developmentally normative levels of depression and anxiety in those children.³² Studies confirm that “allowing children to present in everyday life as their gender identity rather than their natal sex is

³¹ Herman, *supra* note 14, at 228-29; *see also Carcano v. McCrory*, 203 F. Supp. 3d 615, 650 (M.D.N.C. 2016) (describing transgender plaintiffs in “bathroom bill” case who “limit[ed] their fluid intake and resist[ed] the urge to use a bathroom whenever possible,” leading to medical consequences for one of the plaintiffs).

³² 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* Herman, *supra* note 14, at 70 (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).

associated with developmentally normative levels of depression and anxiety.”³³ When transgender youth are supported by their families, “results provide clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings.”³⁴ 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.³⁵ With support and acceptance, transgender people are no different than their cisgender peers.

C. The Trevor Project Has Witnessed First-Hand the Negative Effects of the Transgender Military Ban on the Mental Health of Transgender Youth.

The Trevor Project recognizes and attempts to heal the psychological wounds caused by discrimination against the LGBTQ community. In support of this mission, the Trevor Project provides several crisis intervention and suicide prevention services. Specifically, Trevor Lifeline is a telephone hotline that LGBTQ youth can call in times of trouble, and TrevorChat and TrevorText are online chat and text messaging services, respectively, that LGBTQ youth can utilize as an alternative to speaking on the telephone.

The Trevor Project maintains statistical data regarding the people who utilize its crisis intervention services. This data, consistent with the studies described above, shows that events of discrimination and stigmatization, including government-sponsored discrimination, are sources of psychological stress for transgender youth. In the Trevor Project’s decades of experience, its counselors have consistently seen spikes in youth contacting the Trevor Project in crisis in response to the enactment or announcement of discriminatory laws and in response to discriminatory statements by government officials or other respected individuals.

³³ Olson, *supra* note 32, at 5.

³⁴ *Id.* at 7.

³⁵ Kosciw, *supra* note 25, at 45, 49.

The connection between discriminatory statements and youth in crisis applies with equal force to transgender youth. For example, after the announcement of the so-called “bathroom bill” in Texas, which would prevent transgender students and adults from using bathrooms that correspond with their gender identity, the Trevor Project observed a sharp increase in contacts to Trevor Lifeline, TrevorChat, and TrevorText from transgender youth in Texas.³⁶

The same was true of the President’s tweet announcing his intent to ban transgender people from the military. Within 24 hours of the tweet, 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.³⁷ This upswing was not merely a temporary statistical blip. In the eleven-month period from August 2016 to July 2017, an average of 45.6 percent of people who contacted TrevorChat identified as transgender; however, in August 2017, the first month after the announcement of the transgender ban, that figure spiked to a record high of 54.5 percent. The Trevor Project continues to have conversations with transgender youth who are in crisis as a result of these announcements of government-sanctioned discrimination against transgender people.

The grave ramifications of President Trump’s actions are exhibited not only by this alarming increase in transgender youth seeking the Trevor Project’s crisis intervention services after the announcement of the ban, but also by the experiences that many of these individuals have shared with professionals at the Trevor Project. In this *amicus* brief, the Trevor Project

³⁶ The Trevor Project, *Victory! “Bathroom Bills” Threatening Trans Youth Defeated in Texas* (Aug. 15, 2017), <http://www.thetrevorproject.org/blog/entry/victory-bathroom-bills-threatening-trans-youth-defeated-in-texas1>.

³⁷ The 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>.

provides anonymized excerpts of conversations between transgender users of the Trevor Project's Trevor Lifeline and TrevorChat services and the accredited professionals who staff these services.

The Trevor Project has observed that, for many of the transgender youth that use its 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 tuition assistance, health and life insurance, veterans' benefits, pension rights, and a steady source of income.³⁸ When transgender schoolchildren are bullied by their classmates, discriminated against by their teachers, and rejected by their parents, the Trevor Project has seen some place all their hopes and dreams for a better life on joining the military. In the military, they hope to be valued for their contribution toward the service of this country, rather than for how well they comply with traditional gender norms.

For example, one individual explained that they³⁹ 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 despondent 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.

³⁸ *Military Benefits at a Glance*, Military.com, <http://www.military.com/join-armed-forces/military-benefits-overview.html> (last visited Oct. 11, 2017).

³⁹ Where appropriate, this brief uses "they" and "their" as singular, gender-neutral pronouns.

Even transgender youth who are not contemplating military service reached out to the Trevor Project's crisis services 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. Several young people explained that they were contemplating suicide as a direct result of the President's announcement. One individual explained that they were an activist in the community and generally a strong and strategic thinker, but that President Trump's words had surprised and completely overwhelmed them. Another individual was in a state of crisis because it seemed like the President thought that they were less than human, and they were afraid that this message would incite violence against transgender people. One stated that President Trump's words made them regret ever coming out as transgender. Another individual stated that the announcement made them question whether undergoing the medical transition they had planned for and desired was still worth pursuing.

The common theme that the Trevor Project has witnessed is that transgender youth feel that the transgender military ban means that they are unwanted burdens and unwelcome in society. They feel that the government does not value them and does not want them to exist. Youths who should be living happy, care-free lives are instead fearing that government-sanctioned discrimination against them will incite their classmates and teachers to bully them and treat them as unhuman. The Trevor Project sees this backlash whenever the government broadcasts a message of discrimination, and enough is enough. These children do not deserve this pain.

D. The Court Can Help Transgender Youth Be All They Can Be.

Notwithstanding the negative effects of discrimination, there is still hope. Transgender youth can be as well-adjusted as their peers and are often ready and able to make society a better

place. The Trevor Project has created a Youth Ambassador Council, which consists of bright LGBTQ youth who are looking forward to contributing to society and who serve as role models for their peers. Alex, for instance, is a 16-year-old transgender man who has “had the privilege of encountering some great teachers and administrators” and is the perfect example of how living in an accepting environment can help transgender people live ordinary, well-adjusted lives.

Transgender service members have served admirably for years in the military. A survey of transgender veterans conducted in 2015 found that thirty percent of respondents indicated that they would return to the military if transgender people were allowed to serve, and another 30% said that they would consider returning.⁴⁰ These figures demonstrate that many transgender people answered the call to serve their country despite knowing they would have to remain closeted to do so. For many willing and able veterans, the only thing holding them back from continued service is the inability to serve openly.

Transgender people have demonstrated their ability to serve capably and honorably in the military, even at great personal sacrifice. The plaintiffs here—six transgender service members and two prospective service members—demonstrate the positive impact that transgender individuals can have in the military. Plaintiffs’ Motion for Preliminary Injunction and the plaintiffs’ respective declarations describe their service and explain that they have received an array of medals, commendations, and ribbons for their exemplary service. (D.E.-13, at 9.) These are honorable people who have heeded the call to serve. They have attested to how happy they are that they have been able to serve openly, with one remarking that “[i]t has been incredibly empowering to be true to who I am at work while serving my country, and to have my team members be so encouraging and supportive.” Redacted Decl. in Support of Pls.’ Mot. for

⁴⁰ Herman, *supra* note 14, at 173.

Preliminary Injunction ¶ 14 (D.E.-40-4). They have told the Court that their fellow service members have been “very supportive” of them. *Id.* at ¶ 15. They “feel honored to serve, defend, and be willing to die for [their] country.” Redacted Decl. in Support of Pls.’ Mot. for Preliminary Injunction ¶ 15 (D.E.-40-5).

These individuals do not stand alone. Many other transgender service members have filed suit against the transgender military ban in recent weeks. *See, e.g., Stockman v. Trump*, No. 5:17-cv-1799-JGB (C.D. Cal. filed Sept. 5, 2017); *Karnoski v. Trump*, No. 2:17-cv-1297-MJP (W.D. Wash. filed Aug. 28, 2017); *Stone v. Trump*, No. 1:17-cv-2459-MJG (D. Md. filed Aug. 28, 2017). Like plaintiffs here, these plaintiffs have served admirably in the military or wish to heed the supreme and noble call. For instance, the *Karnoski* plaintiffs “have fought terrorism, served in far-flung locations around the world, and promoted stability in strife-riven regions”; they “have collectively served our country for decades, and each represents a significant investment of public resources, including specialized training.” Plaintiffs’ Motion for Preliminary Injunction at 4, *Karnoski v. Trump*, No. 2:17-cv-1297-MJP (W.D. Wash. Sept. 14, 2017) (D.E.-32). Likewise, the *Stone* plaintiffs include Petty Officer Stone, who has served for over eleven years, including a nine-month deployment to Afghanistan, as well as Technical Sergeant Tommie Parker, who has served in the military for over thirty years, and several additional service members who have helped the military be all that it can be. Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction at 13-17, *Stone v. Trump*, No. 1:17-cv-2459-MJG (D. Md. Sept. 14, 2017) (D.E.-40-2). Furthermore, the *Stockman* plaintiffs have also received an array of awards for their service, including early promotions, achievement medals, commendation medals, and Colonel Coins of Excellence. Complaint ¶¶ 10-17, *Stockman v. Trump*, No. 5:17-cv-1799-JGB (C.D. Cal. Sept. 5, 2017) (D.E.-1).

Additional transgender service members have told their stories to the press. Kristin Beck offers just one of many examples: She served in the Navy for twenty years, including on the elite SEAL Team 6, and earned a Bronze Star for valor and the Purple Heart.⁴¹ These service members have found fulfillment in their service. Trish King, a transgender staff sergeant in the Army, stated that her peers told her: “‘We have your back and you have our support’ And I felt better because I knew that camaraderie that I’ve come to know the last 18 years was still there and that I was still a part of this amazing team.”⁴² Navy Lieutenant Commander Blake Dremann proudly stated that transgender service members have proven to their peers that they are “not burdens,” but rather are “fully qualified” and “fully deployable.”⁴³ These service members reported that their colleagues in the military “weren’t concerned with [their] gender”; rather, “[w]hat they were concerned with is [their] history of service and the fact that they . . . could do [their] job.”⁴⁴

These transgender individuals simply want what we all want: an opportunity to be a valuable member of society and to be judged on their merits. They want the same opportunity as their cisgender peers to stand beside other service members and defend this country from those who reject our freedom. And even for those transgender individuals who may never join the military, countless benefits flow from being granted equal opportunity under the law. By

⁴¹ Paul Szoldra, *Kristin Beck, Transgender Navy SEAL Hero: ‘Let’s Meet Face to Face and You Tell Me I’m Not Worthy’*, Business Insider (July 26, 2017), <http://www.businessinsider.com/kristin-beck-trump-transgender-ban-2017-7>.

⁴² Meghan Keneally, *Transgender Service Members Speak Out Against Trump’s Ban*, ABC News (July 27, 2017), <http://abcnews.go.com/Politics/transgender-service-members-speak-trumps-ban/story?id=48883441>.

⁴³ Emanuella Grinberg & Paul P. Murphy, *Transgender Troops: “We’re Not Burdens,”* CNN (July 26, 2017), <http://www.cnn.com/2017/07/26/politics/transgender-troops-voices/index.html>.

⁴⁴ Keneally, *supra* note 42.

excluding transgender people from military service, the military ban strips transgender individuals of full citizenship and tells the country that they are inherently inferior and unworthy. The soldiers who fight for our country are heroes and role models, and, by denying transgender people the opportunity to serve, the government demeans all transgender people and legitimizes prejudices against them.

The Trevor Project hopes that this Court will allow transgender youth to have the same opportunities as their peers to serve and to thrive. As Gavin Grimm, the plaintiff in *Gloucester County School Board v. G.G.*, 137 S. Ct. 1239 (2017) (mem.), has said: “I am not the only transgender [person] . . . and I deserve the rights of every other human being. I am just a human. I am just a boy. Please consider my rights when you make your decision.”⁴⁵

III. CONCLUSION

The message that the Trevor Project has heard from transgender youth is clear: we are ready; we are able; let us fight beside you. This Court should not make the same mistake the Supreme Court made in *Bowers v. Hardwick* by allowing the government to discriminate against the LGBTQ community, which caused “pain and humiliation” that “no doubt lingered long after *Bowers* was overruled.” *Obergefell*, 135 S. Ct. at 2606. For the foregoing reasons, the Trevor Project hereby requests that the Court grant Plaintiffs’ Motion for Preliminary Injunction.

⁴⁵ ACLUvideos, *Gavin Grimm at Gloucester County School Board Meeting*, YouTube (Sept. 1, 2016), https://youtu.be/My0GYq_Wydw.

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Respectfully Submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Howard Sean Hogan
Howard Sean Hogan

Howard Sean Hogan (Bar No. 492002)
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue NW
Washington, DC 20036
Phone: (202) 887-3640
Fax: (202) 530-9550
hhogan@gibsondunn.com

Counsel for The Trevor Project

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2017, I filed the foregoing document via the Court's CM/ECF system. The document will be served electronically on counsel of record for the parties.

/s/ Howard Sean Hogan
Howard Sean Hogan