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

DOE, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No. 17-cv-1597 (CKK)
)	
DONALD TRUMP, et al.,)	
)	
<i>Defendants.</i>)	

**DECLARATION OF BRAD R. CARSON IN SUPPORT OF PLAINTIFFS' JOINT
OPPOSITION TO MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION**

1. I, Brad R. Carson, have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation.

2. My professional background and qualifications are set forth in my previous declaration dated August 28, 2017. *See* Dkt. No. 13-3. A copy of that declaration is attached as Exhibit A.

3. As discussed in my previous declaration, I served as the Acting Under Secretary of Defense for Personnel and Readiness (“USD P&R”) from April 2, 2015 to April 8, 2016. In that capacity, and at the direction of the Secretary of Defense, I led a group of senior personnel drawn from all of the armed services to develop, over many months of information collection and analysis, a Department-wide policy regarding service by transgender people (the “Open Service Policy”).

4. The purpose of this supplemental declaration is to respond to the “Department of Defense Report and Recommendations of Military Service By Transgender Persons,” which I refer to in this declaration as the “Implementation Report.”

5. I have knowledge of the matters stated in this declaration and have collected and cite to relevant literature concerning the issues that arise in this litigation.

THE WORKING GROUP'S MANDATE

6. As discussed in my previous declaration, on July 28, 2015, then-Secretary of Defense Ashton B. Carter ordered me, in my capacity as USD P&R, to convene a working group to formulate policy options for DoD regarding transgender service members (the "Working Group").

7. Secretary Carter's order directed the Working Group to "start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective practical impediments are identified." Memorandum from Ashton Carter, Secretary of Defense, "Transgender Service Members" (July 28, 2015). That mandate did not mean, as the Implementation Report insinuates, that "standards were adjusted or relaxed to accommodate service by transgender persons." Implementation Report at 19. Rather, instead of simply assuming that the medical needs of transgender service members were inconsistent with generally applicable standards for fitness or deployability, we conducted an evidence-based assessment to determine whether those prior assumptions were actually true.

8. We began our work based on reports from commanders that there were already transgender individuals serving in the field and performing their duties well, so the task before us was not merely an abstract exercise to establish a policy on military service by transgender persons. Rather, the question was whether there was any reason these existing service members should be deemed unfit for service and involuntarily separated due to their transgender status. We were receiving questions from the field about whether these individuals could continue serving, and we needed to develop a consistent policy rather than leaving the issue to ad hoc determinations by commanders.

9. Among other things, the Implementation Report ignores the significant contributions being made by transgender service members.

10. The Implementation Report is atypical of military assessments of policy because it does not account for the service level impacts where its conclusions may result in discharge of thousands of people currently in service.

11. The Implementation Report is also atypical of military assessment of policy because it does not consider the impacts of a reversal in policy with regard to the need to retrain command and troops. Nor does it account for the impacts a reversal of policy would have on non-transgender service members who may question whether other historically disadvantaged groups could be targeted for similar discriminatory treatment.

ADHERENCE TO MILITARY STANDARDS AND READINESS

12. A guiding principle for the Working Group whose work I led was that there would be no change in standards for fitness and deployability, and there would be no new standards or categories created only for transgender service members. Instead, the issue was how to apply the same standards equally to both transgender and non-transgender service members. After a lengthy process of review, our conclusion was that equal application of existing standards required transgender service members who complete gender transition as part of an approved medical treatment plan to meet the fitness standards of their gender following service members' gender transition.

13. In evaluating those standards, the Working Group examined the implications of ensuring equitable application of individual standards during the gender transition process, while also ensuring that commanders were able to maintain the highest standards of operational readiness for their units. The resulting regulations and military documentation released to support the Open Service Policy provide extensive guidance on the waivers and Exception to Policy (ETP) procedures that are available for service members and commanders to manage transitions. They recognize the reality that before a service member has completed gender

transition, the service member will be treated as a member of the pre-transition gender. The rules expressly address physical fitness tests, facilities, and grooming standards. They also make it clear that a service member is not necessarily entitled to any particular ETP, and emphasize that the process is tailored and individualized, taking into account the service member's needs and the readiness requirements of the command.

14. A change in gender marker in the DEERS system represents the end of the gender transition process, and requires a commander's approval, consistent with that commander's evaluation of "expected impacts on mission and readiness." DoDI 1300.28, "In-Service Transition for Transgender Service Members (June 30, 2016). What commanders may not consider in that evaluation, however, is "biases against transgender individuals." *Id.*

FITNESS AND DEPLOYABILITY

15. We also determined that service by transgender individuals would have no greater impact on deployability than service by individuals with many other medical conditions that are not disqualifying. Fitness and deployability are not measured in a vacuum. In our systematic review, we sought to ensure that any concerns about transgender service members' fitness or deployability were being treated consistently with the way service members with other conditions were being treated.

16. For example, with respect to deployment, the Working Group concluded that transgender service members could deploy while continuing to receive cross-sex hormone therapy without relaxing generally applicable standards. The Working Group determined that military policy and practice allows service members to use a range of medications, including hormones, while in such settings. The Military Health System ("MHS") has an effective system for distributing prescribed medications to deployed service members across the globe, including those in combat settings.

17. Avoiding an increase in the number of non-deployable service members was a priority for the Working Group. This led to the development of a policy on gender transition by

existing service members that minimized any impact on deployability. Under the policy we developed, a service member could not begin a treatment plan for gender transition without prior consultation with his or her commander. The service member was required to work with his or her commander and military medical provider to develop a transition plan that would not impact deployability. Depending on the individual's medical needs and the timing of any planned deployment, this might mean delaying the commencement of hormone replacement therapy or postponing planned surgeries.

18. Military and non-military medical experts confirmed that this approach was consistent with medical standards and satisfied military readiness concerns.

19. We also considered contingencies such as whether a transgender individual could safely experience periods of disruption in prescribed medications and found no significant issues that would impact deployability. We further considered whether transgender service members would need close medical monitoring during or after completing a treatment plan for gender transition, and after consulting with medical experts and considering all the available evidence, found that the recommended monitoring is for only a short period of time at the beginning of transition and could be safely adjusted or delayed to avoid any impact on readiness.

20. The Implementation Report does not provide any reason to think that the Working Group's conclusions were incorrect. Transgender people—like other service members who receive prescription medication on deployment—have been deploying across the globe for decades, and have been able to do so openly while receiving medical treatment for the past year and a half. The Implementation Report does not identify any instances in which a MHS was unable to provide transgender service members with access to cross-sex hormones the same way it provides medication to other service members.

21. In addition, the Working Group discussed that while some transgender service members might not be deployable for short periods of time due to their treatment, temporary periods of non-deployability are not unusual. It is common for service members to be non-

deployable for periods of time due to medical conditions such as pregnancy, orthopedic injuries, obstructive sleep apnea, appendicitis, gall bladder disease, infectious disease, and myriad other conditions. The Implementation Report does not provide any indication that the temporary non-deployability of some transgender service members raises unique logistical concerns.

COSTS

22. The Implementation Report does not provide any new information undermining the Working Group's predictions regarding the minimal costs of providing for the essential health care needs of transgender service members.

23. At the same time, the Implementation Report does not appear to take into account the substantial costs that would be incurred by reversing the Open Service Policy. For example, the implementation of the Open Service Policy was accompanied by extensive training for commanders, medical personnel, and service members. Not only would changing that policy result in waste of those sunk costs, it would entail significant training and other new costs without any meaningful reduction in medical or other costs.

PRIVACY AND UNIT COHESION

24. Although the Implementation Report states that its "analysis makes no assumptions" regarding transgender service members' ability to serve, a substantial portion of the Implementation Report consists of assumptions regarding transgender service members' impact on privacy and on good order and discipline. The Working Group addressed these questions, including privacy-related questions about showers and other sex-separated facilities. The evidence we considered, which included discussions with commanders and transgender service members who had been on deployment under spartan and austere conditions, was that transgender service members' use of shared facilities had not led to any significant issues or impacted morale or unit cohesion.

25. To begin with, for most service members, shower and toilet facilities are a secondary consideration at best compared to the other challenges and demands of military

deployment. In addition, even in relatively harsh conditions, some privacy is usually available in showers and other facilities.

26. Finally, the policy developed by the Working Group gave discretion to commanders to deal with any privacy-related issues and make appropriate accommodations concerning facilities where necessary, such as scheduling the use of showers or offering alternate facilities. The need for such flexibility is not unusual on military deployments, nor is it limited to transgender service members. Combat service by female service members and local conditions in the place of deployment sometimes require such adjustments. For example, during my own military service in Iraq, it was necessary to deal with increased privacy needs for Iraqi women; commanders were able to accommodate these needs without disruption.

27. Similar concerns about privacy and unit cohesion were raised preceding policy changes permitting open service by gay and lesbian personnel and allowing women to serve in ground combat positions. In both cases, those concerns proved to be unfounded. The Implementation Report offers no evidence that such concerns are any more justified in the case of military service by transgender individuals.

28. The military's experience under "Don't Ask, Don't Tell" has shown that arbitrarily banning a group of people harms unit cohesion and military readiness.

29. Contrary to the conclusions of the Implementation Report, it is changing the Open Service policy, not maintaining it, that would likely have a negative impact on readiness, morale, and cohesion. Particularly after commanders and service members have received extensive training and begun implementation of the Open Service policy, an abrupt change in the policy would undermine the consistency and predictability on which morale and good order rely, increasing uncertainty and anxiety among those currently serving.

Executed this 17th day of April, 2018

A handwritten signature in black ink, appearing to read "Brad Carson", written over a horizontal line.

Brad R. Carson