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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 EASTERN DIVISION  
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14 AIDEN STOCKMAN, NICOLAS  
15 TALBOTT, TAMASYN REEVES,  
16 JACQUICE TATE, JOHN DOES 1-2,  
17 JANE DOE, and EQUALITY  
CALIFORNIA,

18 Plaintiffs,

19 v.

20 DONALD J. TRUMP, et al.,

21 Defendants.  
22

CASE NO. 5:17-cv-01799-JGB-KK

**NOTICE OF MOTION AND  
MOTION OF MASSACHUSETTS,  
CALIFORNIA, CONNECTICUT,  
DELAWARE, HAWAII, ILLINOIS,  
IOWA, MARYLAND, NEW  
MEXICO, NEW YORK, OREGON,  
PENNSYLVANIA, RHODE  
ISLAND, VERMONT, AND THE  
DISTRICT OF COLUMBIA FOR  
LEAVE TO FILE AN *AMICUS  
CURIAE* BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

**Hearing**

Date: November 20, 2017  
Time: 9:00 a.m.  
Courtroom: Riverside, Courtroom 1  
Judge: Hon. Jesus G. Bernal

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on November 20, 2017, or as soon as this  
3 matter may be heard before the Honorable Jesus G. Bernal, United States District  
4 Court Judge, in Courtroom 1 of the United States District Court for the Central  
5 District of California, the Commonwealth of Massachusetts, together with  
6 California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, New Mexico,  
7 New York, Oregon, Pennsylvania, Rhode Island, Vermont and the District of  
8 Columbia<sup>1</sup> (the “*Amici States*”), will and hereby do move for leave to file the  
9 attached *amicus curiae* brief in support of Plaintiffs’ Motion for Preliminary  
10 Injunction in the above-captioned matter. Dkt Entry 15.

11 This Motion is made on the grounds that the concurrently submitted brief  
12 will aid the Court in adjudicating Plaintiffs’ Motion for Preliminary Injunction.  
13 The *Amici States* share a strong interest in the readiness and effectiveness of the  
14 country’s national defense. National security and emergency and disaster  
15 management are not simply matters of federal concern. All States play important  
16 roles – both direct and indirect – in providing for our collective security and have  
17 an interest in ensuring the strongest, most inclusive military possible. The *Amici*  
18 States also strongly support the rights of transgender people to live with dignity, to  
19 be free from discrimination, and to participate fully and equally in all aspects of  
20 civic life. To that end, many of the *Amici States* have enacted and enforce explicit  
21 civil rights protections for transgender people in areas such as employment,  
22 housing, health care, education, and public accommodations. We also command  
23 National Guard units, support Reserve Officer Training Corps programs, and run  
24 maritime academies that embrace principles of nondiscrimination and equality.

25 The Trump Administration’s efforts to exclude transgender individuals from  
26 openly serving in the United States military implicates all of these interests, and  
27 inflicts numerous harms on the *Amici States* and our residents. Accordingly, the

28 <sup>1</sup> For ease of reference, the District of Columbia shall be referred to herein as a “State.”

1 *Amici* States seek leave to file the attached brief in order to provide the Court with  
2 insight into those harms and the adverse consequences a ban on service by  
3 transgender individuals may have on our National Guard units and public  
4 institutions of higher education. We also seek to inform the Court of our collective  
5 experience implementing civil rights protections for transgender individuals, which  
6 demonstrates that the full inclusion of transgender people strengthens our  
7 communities, our state and federal institutions, and our nation as a whole.

8 This Court “has broad discretion to appoint *amici curiae*.” *Hoptowit v. Ray*,  
9 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sadin v.*  
10 *Conner*, 515 U.S. 472 (1995). An *amicus* brief “should normally be allowed . . . .  
11 when the amicus has unique information or perspective that can help the court  
12 beyond the help that the lawyers for the parties are able to provide.” *Bostick v.*  
13 *Herbalife Internat’l of America, Inc.*, No. CV-13-2488, 2015 WL 12731932, n 13  
14 (C.D. Cal. May 14, 2015) (quoting *Ryan v. Commodity Futures Trading Comm’n*,  
15 125 F.3d 1062, 1063 (7th Cir. 1997)). See *NGV Gaming, Ltd. v. Upstream Point*  
16 *Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (noting that federal  
17 district courts “frequently welcome amicus briefs from non-parties concerning legal  
18 issues that have potential ramifications beyond the parties directly involved or if the  
19 amicus has ‘unique information or perspective that can help the court beyond the  
20 help that the lawyers for the parties are able to provide’”). The *Amici* States’  
21 proposed *amicus* brief meets these standards.

22 This Notice of Motion and Motion are based on the foregoing, the  
23 concurrently filed brief, all pleadings, records, and files in the above-captioned  
24 case, all matters of which the Court shall take judicial notice, and on such argument  
25 as may be presented by counsel at any hearing on this Motion.

26 Undersigned counsel confirmed that Plaintiffs consent to the filing of this  
27 Motion, and the Defendants take no position on it.

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**CONCLUSION**

For the foregoing reasons, the *Amici* States respectfully request that the Court grant leave to file the attached *amicus curiae* brief in support of Plaintiffs’ Motion for Preliminary Injunction.

Dated: November 6, 2017

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I, Genevieve C. Nadeau, hereby certify that a true copy of the above document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this date.

/s/ Genevieve C. Nadeau  
Genevieve C. Nadeau

DATED: November 6, 2017

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18 DONALD J. TRUMP, et al.,

19 Defendants.

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**BRIEF OF AMICI STATES  
MASSACHUSETTS, CALIFORNIA,  
CONNECTICUT, DELAWARE,  
HAWAII, ILLINOIS, IOWA,  
MARYLAND, NEW MEXICO,  
NEW YORK, OREGON,  
PENNSYLVANIA, RHODE ISLAND,  
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 26 [https://www.defense.gov/Portals/1/Documents/PDFs/Military-](https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-Transgender-Individuals-Interim-Guidance.pdf)  
 27 [Service-By-Transgender-Individuals-Interim-Guidance.pdf](https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-Transgender-Individuals-Interim-Guidance.pdf) ..... 8

28 Statement by Chief Pentagon Spokesperson Dana M. White on  
 Transgender Accessions, Release No. NR-250-17 (June 30,  
 2017) *available at* [https://www.defense.gov/News/News-](https://www.defense.gov/News/News-Releases/News-Release-View/Article/1236145/statement-by-chief-pentagon-spokesperson-dana-w-white-on-transgender-accessions/)  
 Releases/News-Release-View/Article/1236145/statement-by-  
 chief-pentagon-spokesperson-dana-w-white-on-transgender-  
 accessions/ ..... 15

1 Statement by Secretary of Defense Ashton Carter on DOD  
2 Transgender Policy, Release No. NR 272-15 (July 13, 2015)  
3 available at [https://www.defense.gov/News/News-](https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/)  
4 Releases/News-Release-View/Article/612778/ .....4, 5, 10

5 *Statement of Inclusion*, University of Massachusetts Lowell (last  
6 visited Oct. 16, 2017),  
7 [https://www.uml.edu/docs/Inclusion%20Statement\\_tcm18-](https://www.uml.edu/docs/Inclusion%20Statement_tcm18-167589.pdf)  
8 167589.pdf..... 16

9 *Strategic Midshipman Program*, Massachusetts Maritime Academy  
10 (last visited Oct. 16, 2017), [https://www.maritime.edu/strategic-](https://www.maritime.edu/strategic-sealift-midshipman-program)  
11 sealift-midshipman-program ..... 17

12 Tech. Sgt. Erich B. Smith et al., *Guard Members Ready For New DOD*  
13 *Transgender Policy*, National Guard Bureau (June 15, 2017),  
14 [http://www.nationalguard.mil/News/Article/1215104/guard-](http://www.nationalguard.mil/News/Article/1215104/guard-members-ready-for-new-dod-transgender-policy/)  
15 members-ready-for-new-dod-transgender-policy/ ..... 14

16 *Trans Inclusion Policy*, Massachusetts Maritime Academy (last visited  
17 Oct. 16, 2017), <https://www.maritime.edu/trans-inclusion-policy> ..... 11

18 *Transgender Service in the U.S. Military: An Implementation*  
19 *Handbook*, United States Dep’t of Defense (Sept. 30, 2016),  
20 [https://www.defense.gov/Portals/1/features/2016/0616\\_policy/D](https://www.defense.gov/Portals/1/features/2016/0616_policy/DoDTGHandbook_093016.pdf)  
21 oDTGHandbook\_093016.pdf..... 6

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1 **INTEREST OF AMICI STATES**

2 The Commonwealth of Massachusetts, together with California, Connecticut,  
3 Delaware, Hawaii, Illinois, Iowa, Maryland, New Mexico, New York, Oregon,  
4 Pennsylvania, Rhode Island, Vermont and the District of Columbia (the “Amici  
5 States”),<sup>1</sup> respectfully submit this *amicus curiae* brief in support of Plaintiffs’  
6 Motion for Preliminary Injunction.

7 The *Amici* States share a strong interest in the readiness and effectiveness of  
8 our national defense, including an interest in ensuring that our Armed Forces and  
9 related institutions recruit, train, retain, and promote qualified service members.  
10 The *Amici* States also strongly support the rights of transgender people to live with  
11 dignity, to be free from discrimination, and to participate fully and equally in all  
12 aspects of civic life. These interests are all best served by allowing transgender  
13 people to serve openly in the military.

14 Many of the *Amici* States have enacted and enforce explicit civil rights  
15 protections for transgender people in areas such as employment, housing, health  
16 care, education, and public accommodations. We also command National Guard  
17 units, support Reserve Officer Training Corps programs, and run maritime  
18 academies that embrace principles of nondiscrimination and equality. Our  
19 collective experience demonstrates that the full inclusion of transgender people  
20 strengthens our communities, our state and federal institutions, and our nation as a  
21 whole. Discriminatory prohibitions on participation in civic life, on the other hand,  
22 impose significant harms on the *Amici* States and our residents. The *Amici* States  
23 thus have a strong interest in ensuring that our Armed Forces move forward, not  
24 backward, and continue to allow transgender people to serve openly in all branches.

25 For these reasons, as discussed more fully herein, the *Amici* States urge the  
26 Court to enjoin the Trump Administration’s plans to reinstate an unconstitutional,  
27 unjustified and discriminatory ban on open military service by transgender people.

28 <sup>1</sup> The District of Columbia shall be referred to herein as a “State.”

**ARGUMENT**

**I. A BAN ON TRANSGENDER PEOPLE OPENLY SERVING IN THE MILITARY IS IRRATIONAL AND UNCONSTITUTIONAL.**

**A. Transgender People Are a Vital Part of the *Amici* States’ Communities, Yet Remain a Historically Marginalized Group.**

Nationwide, nearly 1.5 million people identify as transgender.<sup>2</sup> They live in the *Amici* States (as well as every other State, American Samoa, Guam, and Puerto Rico)<sup>3</sup> and contribute to our communities in countless ways – as parents, educators, students, firefighters, police officers, musicians, writers, nurses, and doctors, to name a few. Approximately 150,000 veterans, active-duty service members, and members of the National Guard or Reserves identify as transgender, and transgender individuals volunteer to serve and protect our country through the Armed Forces at approximately twice the rate of other adults in the general population.<sup>4</sup> Nothing about being transgender inhibits a person’s ability to serve in the military or otherwise contribute to society.<sup>5</sup> To the contrary, the experience of

<sup>2</sup> Andrew R. Flores et al., *How Many Adults Identify as Transgender in the United States?*, The Williams Inst., 3 (June 2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

<sup>3</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat’l Ctr. for Transgender Equality, 53, 244 (Dec. 2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>4</sup> Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States*, The Williams Inst., 1 (May 2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf> (estimating 134,300 transgender veterans and 15,500 members in active service, the National Guard, or Reserves).

<sup>5</sup> See Am. Psychol. Ass’n, *Answers to Your Questions about Transgender People, Gender Identity, and Gender Expression*, 3 (2014 update), <http://www.apa.org/topics/lgbt/transgender.pdf>; Am. Psychol. Ass’n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychol. Ass’n 832, 834 (2015). With research and medical advances, the medical professions recognize that a person’s internal sense of gender may differ from the sex the person was assigned at birth, and that a person’s gender identity “is the result of biological factors” and is “deep-seated, set early in life, and impervious to external influences.” Expert Declaration of George Richard Brown,



1 the *Amici* States shows that transgender individuals are just as capable as their non-  
2 transgender counterparts and make a meaningful positive impact in our schools,  
3 workplaces, and communities.

4 Still, the transgender community has suffered “a history of persecution and  
5 discrimination” that persists into the present day. *Adkins v. City of New York*, 143  
6 F. Supp. 3d 134, 139 (S.D.N.Y. 2015). According to the 2015 United States  
7 Transgender Survey (“2015 USTS”), transgender individuals face verbal  
8 harassment and physical violence at home, in school, and in their communities;  
9 grapple with mistreatment in the workplace and a higher rate of unemployment than  
10 the general United States population; confront homelessness and difficulty  
11 obtaining and maintaining housing; and endure myriad other forms of  
12 discrimination in education, employment, housing, and access to health care due to  
13 their gender identity.<sup>6</sup> Such discrimination and the associated stigma often cause  
14 severe emotional and psychological distress and lead to disproportionately high  
15 rates of depression and anxiety in the transgender population.<sup>7</sup>

16 To combat such discrimination, twenty States – including many *Amici* States  
17 – have enacted civil rights protections for transgender people in education,  
18 employment, health care, housing, and/or public accommodations.<sup>8</sup> And about 225

19 \_\_\_\_\_  
ECF No. 27, at ¶¶ 22-23.

20 <sup>6</sup> 2015 USTS, *supra* note 3, at 8-16; see Walter O. Bockting et al., *Stigma, Mental*  
21 *Health, and Resilience in an Online Sample of the US Transgender Population*,  
22 103(5) *Am. J. Public Health* 943, 943 (2013) (“Transgender people face systematic  
oppression and devaluation as a result of social stigma attached to their gender  
nonconformity.”).

23 <sup>7</sup> See Bockting, *supra* note 6, at 949 (noting that these mental health outcomes  
24 “were not merely a manifestation of gender dysphoria” and were associated “with  
25 enacted and felt stigma”); Am. Psychol. Ass’n, *Answers to Your Questions about*  
26 *Transgender People*, *supra* note 5, at 3 (explaining that “lack of acceptance within  
society, direct or indirect experiences with discrimination, or assault . . . may lead  
many transgender people to suffer with anxiety, depression or related disorders at  
higher rates than nontransgender persons”); Am. Psychol. Ass’n, *Guidelines*, *supra*  
note 5, at 840.

27 <sup>8</sup> See, e.g., Mass. Gen. Laws ch. 151B, § 4; Mass. Gen. Laws ch. 272, §§ 92A, 98;  
28 Cal. Civil Code § 51(b), (e)(5); Cal. Gov. Code § 12940(a); Cal. Gov. Code §

1 local governments prohibit discrimination based on gender identity or expression  
2 by public and private employers in their jurisdictions.<sup>9</sup> As the experiences of the  
3 *Amici* States and these other jurisdictions show, transgender-inclusive policies help  
4 to ease the stigma on transgender people, thereby mitigating the negative impact on  
5 their educational, work, and health outcomes. Such policies also foster a more just  
6 and productive society for all our residents.

7 **B. The Military Lifted Historical Prohibitions on Service by**  
8 **Transgender Individuals After a Lengthy, Deliberative Process.**

9 As in other aspects of society, transgender individuals who volunteered to  
10 fight for our country were long met with discrimination and excluded from military  
11 service in the Armed Forces through a patchwork of medical and administrative  
12 regulations.<sup>10</sup> To join and advance in the military, thousands of individuals were  
13 thus forced to conceal their gender identity or risk discharge.<sup>11</sup> Many other  
14 transgender recruits were unable to enlist in the first place. This was the reality for  
15 decades – unchanged by the adoption of “Don’t Ask, Don’t Tell” (“DADT”) in the  
16 1990s and the subsequent repeal of that policy in 2011 (which ushered in the era of  
17 open service by gay, lesbian, and bisexual individuals).<sup>12</sup> After the DADT repeal,  
18 however, the public and the military began to reexamine the categorical prohibition

19 \_\_\_\_\_  
20 12955; N.Y. Comp. Codes R. & Regs. tit. 9 § 466.13 (interpreting N.Y. Exec. Law  
§ 296 (Human Rights Law) definition of “sex” to include gender identity).

21 <sup>9</sup> *Cities and Counties with Non-Discrimination Ordinances that Include Gender*  
*Identity*, Human Rights Campaign (last updated Jan. 28, 2017),  
22 [https://www.hrc.org/resources/cities-and-counties-with-non-discrimination-](https://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender)  
[ordinances-that-include-gender](https://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender).

23 <sup>10</sup> See e.g., Matthew F. Kerrigan, *Transgender Discrimination in the Military: The*  
*New Don’t Ask, Don’t Tell*, 18 *Psychol. Pub. Pol’y & L.* 500, 506-508 (2012).

24 <sup>11</sup> *Id.* at 502; 2015 USTS, *supra* note 3, at 170-171; Statement by Secretary of  
25 Defense Ashton Carter on DOD Transgender Policy, Release No. NR 272-15 (July  
13, 2015) *available at* [https://www.defense.gov/News/News-Releases/News-](https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/)  
26 [Release-View/Article/612778/](https://www.defense.gov/News/News-Releases/News-Release-View/Article/612778/) (“[T]ransgender men and women in uniform have  
been there with us, even as they often had to serve in silence alongside their fellow  
27 comrades in arms.”).

28 <sup>12</sup> See Kerrigan, *supra* note 10, at 501, 503-504.

1 against transgender individuals serving in the military – and determined that it was  
2 not only untenable, but counterproductive.<sup>13</sup>

3 Ultimately, in July 2015, then-Secretary of Defense Ashton Carter publicly  
4 acknowledged that Department of Defense regulations regarding transgender  
5 service members were “outdated,” “contrary to our value of service and individual  
6 merit,” and harmful to “transgender soldiers, sailors, airmen, and Marines – real,  
7 patriotic Americans.”<sup>14</sup> Secretary Carter established a working group to study “the  
8 policy and readiness implications of welcoming transgender persons to serve  
9 openly” (the “DOD Working Group”).<sup>15</sup> As the Plaintiffs cogently explain (and  
10 their supporting declarations show), the DOD Working Group executed its mission  
11 in a systematic and thoughtful manner: it sought to consider all issues that might  
12 arise from including openly transgender individuals in the military (including those  
13 related to readiness, operational effectiveness, and cost); consulted with experts,  
14 active transgender service members, and military personnel from inside and outside  
15 of the United States; and commissioned the RAND National Defense Research  
16 Institute (“RAND”) to analyze the potential health care needs of transgender service  
17 members, the potential readiness implications of allowing transgender individuals  
18 to serve openly, and the experience of foreign militaries that permit open service by  
19 transgender individuals.<sup>16</sup> See, e.g., Memorandum in Support of Plaintiffs’ Motion

20 <sup>13</sup> See Joycelyn Elders & Alan M. Steinman, *Report of the Transgender Military*  
21 *Service Commission*, The Palm Ctr., 3-5 (March 2014),  
22 <http://archive.palmcenter.org/files/Transgender%20Military%20Service%20Report.pdf>;  
23 Allison Ross, Note, *The Invisible Army: Why the Military Needs to Rescind Its*  
24 *Ban on Transgender Service Members*, 23 S. Cal. Interdisc. L. J. 185 (2014).

25 <sup>14</sup> Statement by Secretary Carter, No. NR-272-15, *supra* note 11.

26 <sup>15</sup> *Id.*

27 <sup>16</sup> See Secretary Ashton Carter, United States Department of Defense, Remarks on  
28 Ending the Ban on Transgender Service in the U.S. Military (June 30, 2016),  
*available at* <https://www.defense.gov/News/Speeches/Speech-View/Article/821833/remarks-on-ending-the-ban-on-transgender-service-in-the-us-military/>;  
Agnes Gereben Schaefer et al., *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, RAND Corp., xi-xii, 39-47 (2016),  
*available at* [https://www.rand.org/pubs/research\\_reports/RR1530.html](https://www.rand.org/pubs/research_reports/RR1530.html) (hereinafter

1 for Preliminary Injunction, ECF No. 15, at 2-13.

2 As a result of this year-long process, the DOD Working Group concluded  
3 that excluding transgender people from military service undermined effectiveness  
4 and readiness, *id.* at 13; and, on June 30, 2016, Secretary Carter declared an end to  
5 the ban.<sup>17</sup> On the same day, the Secretary laid out plans to implement the military's  
6 new, inclusive policies, under which: (i) otherwise qualified service members could  
7 no longer be involuntarily separated, discharged or denied reenlistment or  
8 continuation of service, solely on the basis of gender identity; (ii) current  
9 transgender service members were allowed to serve openly and have access to  
10 gender-related medical care; and (iii) within one year, the military would begin  
11 accessing transgender individuals who met all physical and fitness standards.<sup>18</sup>  
12 Three months later, the Department of Defense issued a 71-page handbook to guide  
13 service members and commanders through these changes.<sup>19</sup> Among other things,  
14 this handbook outlined a framework for bringing gender-related medical care into  
15 the Military Health System and specified that the open service policy extended to  
16 admission to accession programs, like the Reserve Officers Training Corps  
17 ("ROTC").<sup>20</sup>

18 By late 2016, each of the military branches had taken steps necessary to  
19 implement the new open service policy, and transgender service members, National  
20 Guard members, and ROTC cadets in the *Amici* States and across the country were

21 \_\_\_\_\_  
"RAND Report").

22 <sup>17</sup> Remarks of Secretary Carter (June 30, 2016), *supra* note 16.

23 <sup>18</sup> See Directive-Type Memorandum (DTM) 16-005, Military Service of  
24 Transgender Service Members, United States Secretary of Defense (June 30, 2016),  
*available at* [https://www.defense.gov/Portals/1/features/2016/0616\\_policy/DTM-16-005.pdf](https://www.defense.gov/Portals/1/features/2016/0616_policy/DTM-16-005.pdf).

25 <sup>19</sup> *Transgender Service in the U.S. Military: An Implementation Handbook*, United  
26 States Dep't of Defense (Sept. 30, 2016),  
[https://www.defense.gov/Portals/1/features/2016/0616\\_policy/DoDTGHandbook\\_093016.pdf](https://www.defense.gov/Portals/1/features/2016/0616_policy/DoDTGHandbook_093016.pdf).

27 <sup>20</sup> *Id.* at 18, 31, 40

1 finally freed to disclose – and many did disclose – their gender identity to their  
2 command and to their fellow service members.<sup>21</sup> Although a comprehensive study  
3 of the policy’s first year has not yet been conducted, there is no evidence that it has  
4 disrupted military readiness, operational effectiveness, or morale. To the contrary,  
5 anecdotal accounts indicate that the military’s new inclusive policies were quickly  
6 beginning to have a positive effect, as capable and well-qualified individuals who  
7 were already serving finally were able to do so authentically.<sup>22</sup>

8 **C. President Trump’s Abrupt Reversal of the Military’s Open**  
9 **Service Policy Is Unsupported by Any Defensible Rationale.**

10 On July 26, 2017, President Trump abruptly changed course, announcing in a  
11 series of Twitter posts that “the United States Government will not accept or allow  
12 Transgender individuals to serve in any capacity in the U.S. Military. . . Our  
13 military must be focused on decisive and overwhelming victory and cannot be  
14 burdened with the tremendous medical costs and disruption that transgender in the  
15 military would entail.” The President expanded on this announcement one month  
16 later in a memorandum directing the Secretaries of Defense and Homeland  
17 Security: (i) to indefinitely refrain from accessing transgender individuals into the  
18 military; (ii) to halt “all use of DOD or DHS resources to fund sex reassignment  
19 surgical procedures [as of March 22, 2018], except to the extent necessary to  
20 protect the health of an individual who has already begun a course of treatment to

21 \_\_\_\_\_  
22 <sup>21</sup> See, e.g., Declaration of Jacquice Tate, ECF No. 19, at ¶¶ 18-19.

23 <sup>22</sup> See, e.g., Declaration of Eric K. Fanning, ECF No. 22, at ¶53; Declaration of  
24 Raymond Edwin Mabus, Jr., ECF No. 23, at ¶¶ 37, 43; Declaration of Deborah Lee  
25 James, ECF No. 24, at ¶ 35; Declaration of Jacquice Tate, *supra* note 21, at ¶ 19;  
26 *see also* General John R. Allen et al., *Statement of Fifty-Six Retired Generals and*  
27 *Admirals Warn That President Trump’s Anti-Transgender Tweets, If Implemented,*  
28 *Would Degrade Military Readiness*, The Palm Ctr. (August 1, 2017),  
<http://www.palmcenter.org/fifty-six-retired-generals-admirals-warn-president-trumps-anti-transgender-tweets-implemented-degrade-military-readiness>  
(hereinafter “Statement of Retired Military Leaders”) (“[T]ransgender troops have  
been serving honorably and openly for the past year, and have been widely praised  
by commanders.”).

1 reassign his or her sex”; and (iii) to “return” to the pre-June 2016 practice of  
2 excluding and separating transgender service members from the military by March  
3 23, 2018.<sup>23</sup> In an effort to justify this abrupt step backward – apparently announced  
4 without any consultation with top military leaders<sup>24</sup>– the President has cited to the  
5 allegedly negative impact that open service by transgender individuals would have  
6 on the military’s budget and effectiveness and raised concerns about unit cohesion  
7 among the troops.<sup>25</sup> But each of these claims was discredited by the DOD Working  
8 Group, as well as by other researchers and scholars. They are also contradicted by  
9 the experience of the *Amici* States.

10 RAND and other researchers have already dispelled the myth that transition-  
11 related health care costs would strain military budgets.<sup>26</sup> To the contrary, they have  
12 concluded that – because only a small proportion of service members are  
13 statistically likely to seek transition-related treatment each year – the associated  
14 costs would “have little impact on and represent[] an exceedingly small  
15 proportion” of the military’s overall health care expenditures.<sup>27</sup> This conclusion

16 <sup>23</sup> Presidential Memorandum, 82 FR 41319 §§ 1, 2 (Aug. 25, 2017), *available at*  
17 [https://www.whitehouse.gov/the-press-office/2017/08/25/presidential-](https://www.whitehouse.gov/the-press-office/2017/08/25/presidential-memorandum-secretary-defense-and-secretary-homeland)  
18 [memorandum-secretary-defense-and-secretary-homeland](https://www.whitehouse.gov/the-press-office/2017/08/25/presidential-memorandum-secretary-defense-and-secretary-homeland). The fact that the  
19 Department of Defense has issued interim guidance allowing current transgender  
20 service members to remain in their posts and to reenlist until the Defense Secretary  
21 issues “final guidance” in March 2018 is cold comfort to transgender service  
22 members whose service and personhood the President devalued in a series of tweets  
23 and who are, at best, left in a state of uncertainty or sidelined for the next five  
24 months. *See* Secretary of Defense, *Military Service by Transgender Individuals –*  
25 *Interim Guidance* (Sept. 14, 2017), *available at*  
26 [https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-](https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-Transgender-Individuals-Interim-Guidance.pdf)  
27 [Transgender-Individuals-Interim-Guidance.pdf](https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-Transgender-Individuals-Interim-Guidance.pdf).

28 <sup>24</sup> Barbara Starr et al., *US Joint Chiefs blindsided by Trump’s transgender ban*,  
CNN (July 27, 2017), [http://www.cnn.com/2017/07/27/politics/trump-military-](http://www.cnn.com/2017/07/27/politics/trump-military-transgender-ban-joint-chiefs/index.html)  
[transgender-ban-joint-chiefs/index.html](http://www.cnn.com/2017/07/27/politics/trump-military-transgender-ban-joint-chiefs/index.html).

<sup>25</sup> *See* Presidential Memorandum, *supra* note 23, at § 3; Donald Trump  
(@realDonaldTrump), Twitter posts (July 26, 2017).

<sup>26</sup> RAND Report, *supra* note 16, at xi-xii, 33-38, 70; Aaron Belkin, *Caring for Our*  
*Transgender Troops –The Negligible Cost of Transition-Related Care*, 373:12 *New*  
*Eng. J. Med.* 1089, 1090-1091 (Sept. 17, 2015).

<sup>27</sup> RAND Report, *supra* note 16, at xi-xii; *see id.* at 31-32, 70 (estimating that  
transition-related healthcare costs would increase military healthcare costs by \$2.4

1 comports with the experience of many *Amici* States in extending comprehensive  
2 health care coverage to transgender individuals, as several States have done so  
3 without incurring heightened financial costs or increased premiums.<sup>28</sup> In  
4 California, for example, the Insurance Commissioner conducted an extensive cost-  
5 benefit analysis of prohibiting private insurers from denying coverage for  
6 transition-related services and found that such a prohibition would not only have an  
7 “immaterial” impact on premium costs, but would actually benefit individuals,  
8 employers, and insurance carriers because it would ultimately improve health  
9 outcomes for transgender individuals.<sup>29</sup>

10 Likewise, RAND’s research for the DOD Working Group showed that  
11 allowing transgender people to serve openly would have no adverse impact on unit  
12

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13 million to \$8.4 million or – at most – 0.13%); Belkin, *supra* note 26, at 1090  
14 (estimating that transition-related care will cost the military \$5.6 million annually  
15 and predicting that “under any plausible estimation method, the cost amounts to  
16 little more than a rounding error in the military’s \$47.8 billion annual health care  
17 budget”); Ross, *supra* note 13, at 210-212 (arguing that cost objections to open  
18 transgender military serve are “exaggerated” and “speculative” in light of the  
19 experience of other countries, the small percentage of transgender service members  
20 who would seek gender affirmation surgery, and the cost of such surgery relative to  
21 the cost of surgery for common military injuries).

22 <sup>28</sup> See Katie Keith, *15 States and DC Now Prohibit Transgender Insurance Exclusions*, CHIRblog (Mar. 30, 2016), <http://chirblog.org/15-states-and-dc-now-prohibit-transgender-insurance-exclusions/> (“[T]he removal of transgender exclusions [from health plans] does not impose significant costs.”); William V. Padula et al., *Societal Implications of Health Ins. Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis*, *Journal of General Internal Medicine* (April 16, 2016), available at <https://www.ncbi.nlm.nih.gov/pubmed/26481647> (“Health insurance coverage for the U.S. transgender population is affordable and cost-effective, and has a low budget impact on U.S. society.”).

23 <sup>29</sup> Cal. Dep’t of Ins., *Economic Impact Assessment of Gender Nondiscrimination in Health Insurance* 1–2, Reg. File No. REG-2011-00023 (Apr. 13, 2012), available at <http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf>. The  
24 Commissioner based this determination in part on existing data from the City and  
25 County of San Francisco, the University of California, and a study of Fortune 500  
26 companies demonstrating that “extremely low utilization result[ed] from  
27 elimination of gender discrimination [in health care plans], as would be expected  
28 with such a small population.” *Id.* at 4-5.

1 cohesion, operational effectiveness, or readiness.<sup>30</sup> As the RAND Report  
2 explained, transition-related constraints on the deployability of transgender service  
3 members would be “negligible” and have a “minimal impact on readiness.”<sup>31</sup>  
4 Existing data also indicate that allowing transgender individuals to serve openly  
5 would have a minimal impact – if any – on unit cohesion, and may actually  
6 improve the bond among troops by removing stressors that decrease performance  
7 ability.<sup>32</sup> For example, of the eighteen foreign nations – including Australia,  
8 Britain, Canada, Israel, and Sweden – that allow transgender individuals to serve  
9 openly, none has reported any ill effects.<sup>33</sup> Indeed, an extensive inquiry into  
10 Canada’s decision to open military service to transgender individuals revealed that  
11 “the increased diversity improved readiness by giving units the tools to address a  
12 wider variety of situations and challenges.”<sup>34</sup> The historical experience of the  
13 United States military bolsters this finding: each time our country has diversified  
14 the Armed Forces – whether it be through racial integration, expanding combat  
15 opportunities for women, or allowing openly gay, lesbian, and bisexual individuals  
16 to serve – the military grappled with unit cohesion objections, rejected them, and  
17 grew stronger.<sup>35</sup>

18 <sup>30</sup> RAND Report, *supra* note 16, at xiii, 39-47.

19 <sup>31</sup> *Id.* at 46-47.

20 <sup>32</sup> *Id.* at xii; Ross, *supra* note 13, at 204-206, 209-211.

21 <sup>33</sup> See Ross, *supra* note 13, at 206-208; Amanda Erickson, *Trump Said Transgender*  
22 *Troops Cause ‘Disruption.’ These 18 Militaries Show Otherwise*, Wash. Post (July  
23 26, 2017) [https://www.washingtonpost.com/news/worldviews/wp/2017/07/26/trump-said-transgender-troops-cause-disruption-these-18-militaries-show-otherwise/?utm\\_term=.a04643d1b8b8](https://www.washingtonpost.com/news/worldviews/wp/2017/07/26/trump-said-transgender-troops-cause-disruption-these-18-militaries-show-otherwise/?utm_term=.a04643d1b8b8); Statement of Retired Military Leaders,  
24 *supra* note 22 (“Eighteen foreign nations, including the UK and Israel, allow  
25 transgender troops to serve, and none has reported any detriment to readiness.”).

26 <sup>34</sup> RAND Report, *supra* note 16, at 45.

27 <sup>35</sup> See Ross, *supra* note 13, at 205-206; Statement by Secretary Carter, No. NR-272-  
28 15, *supra* note 11 (“Over the last fourteen years of conflict, the Department of  
Defense has proven itself to be a learning organization. This is true . . . with respect  
to institutional activities, where we have learned from how we repealed ‘Don’t Ask,  
Don’t Tell,’ from our efforts to eliminate sexual assault in the military, and from  
our work to open up ground combat positions to women.”).



1 The experience of the *Amici* States contradicts the President’s stated rationale  
2 for reinstating a ban on openly transgender service members on this point as well.  
3 For years, transgender individuals have served in the National Guard and have done  
4 so with honor and distinction. After the ban was lifted in 2016, some of these  
5 Guard members came out to their superiors and peers, and the *Amici* States are  
6 unaware of any adverse consequences for the Guard. Transgender cadets in ROTC  
7 programs supported by many of our colleges and universities similarly disclosed  
8 their gender identities – also with no known adverse consequences. In addition,  
9 three *Amici* States are proud to support maritime academies that are designed to  
10 prepare students for military or civilian careers in maritime-related fields.<sup>36</sup> These  
11 academies welcome transgender students.<sup>37</sup> The *Amici* States’ experience with the  
12 National Guard, ROTC programs, and maritime academies is consistent with the  
13 broader lessons we have learned from implementing transgender-inclusive laws and  
14 policies: welcoming transgender individuals to live and participate openly in  
15 society not only improves their lives, but also makes our communities stronger as a  
16 whole.

17 In sum, the Trump Administration has made an affirmative, irrational decision  
18 to reverse recent progress and reinstitute formal discrimination against transgender  
19 individuals in the military. The Administration’s purported justifications for  
20 reinstating the ban are contradicted by research, reason, and experience. Where, as  
21 here, a government action discriminates against a disadvantaged class and the  
22 action is “so discontinuous with the reasons offered for it” that it “seems  
23

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24 <sup>36</sup> Massachusetts operates the Massachusetts Maritime Academy; California, the  
25 California Maritime Academy; and New York, the State University of New York  
26 Maritime College. New York is also home to the federally administered U.S.  
27 Merchant Marine Academy.

28 <sup>37</sup> See, e.g., *Trans Inclusion Policy*, Massachusetts Maritime Academy (last visited  
Oct. 16, 2017), <https://www.maritime.edu/trans-inclusion-policy>; *Safe Zone  
Program*, California Maritime Academy (last visited Oct. 16, 2017),  
<https://www.csum.edu/web/diversity/home/safe-zone-program>.

1 inexplicable by anything but animus toward the class it affects,” that action cannot  
2 withstand even minimal scrutiny. *Romer v. Evans*, 517 U.S. 620, 632 (1996).

3 **II. Reinstating a Ban on Military Service by Transgender People Will Harm**  
4 **the *Amici* States and Our Residents.**

5 National security and emergency and disaster management are not simply  
6 matters of federal concern. All States play important roles – both direct and  
7 indirect – in providing for our collective security and have an interest in ensuring  
8 the strongest, most inclusive military possible. We also share an interest in  
9 avoiding becoming entangled in discriminatory federal policies. The  
10 Administration’s decision to reinstitute a ban on open service by transgender  
11 individuals harms all of these interests. It also harms the *Amici* States’ veterans,  
12 active service members, and those who wish to serve, and our transgender  
13 communities more broadly.

14 **A. The Ban Will Entangle the *Amici* States in Invidious**  
15 **Discrimination Harmful to Our National Guard.**

16 Reinstating the ban will impede the *Amici* States’ administration and  
17 control of the National Guard and undermine the efficacy of those forces in  
18 protecting our communities. The National Guard is a reserve component of the  
19 United States Armed Forces, yet remains a “hybrid entity that carefully combines  
20 both federal and state characteristics.” *Ass’n of Civilian Technicians, Inc. v. United*  
21 *States*, 603 F.3d 989, 992 (D.C. Cir. 2010) (quoting *Lipscomb v. Fed. Labor*  
22 *Relations Auth.*, 333 F.3d 611, 614 (5th Cir. 2003)). While the National Guard is  
23 primarily funded by the federal government and subject to federal requirements for  
24 service, the state National Guards and their individual units generally operate under  
25 state control.<sup>38</sup> As a result, state actors oversee recruitment efforts, exercise day-to-

26 \_\_\_\_\_  
27 <sup>38</sup> Indeed, the only time the National Guard is under the exclusive control of the  
28 federal government is when activated under Title 10 to supplement the regular  
components of the federal ground and air forces. *See* Major General Timothy J.

1 day command over service members in training and most forms of active duty,<sup>39</sup>  
2 and deploy the Guard in response to natural or man-made disasters in their own  
3 States and across the country.<sup>40</sup> Each of the *Amici* States funds and supports its  
4 National Guard forces to ensure that its citizen-soldiers are highly trained and ready  
5 to perform a range of critical state missions and to support national defense  
6 operations as needed. For example, the California National Guard – which  
7 comprises over 18,000 members – receives approximately \$50 million in state  
8 funds annually and is regularly deployed to assist with firefighting and law  
9 enforcement efforts, search and rescue missions, disaster response, homeland  
10 defense, and cyber-defense and -security.<sup>41</sup>

11 Over the years, transgender individuals have ably served *Amici* States – and  
12 many States across the country – through the National Guard.<sup>42</sup> After the  
13 Department of Defense lifted restrictions on service by transgender members, *see*  
14 *supra* Part I.B, the *Amici* States had to act swiftly to comply with the Department’s  
15 new policies and ensure that these individuals could serve openly, without fear of

16 \_\_\_\_\_  
17 Lowenberg, *The Role of the National Guard in National Defense and Homeland*  
18 *Security*, The National Guard Ass’n of the United States, 3 (last visited Oct. 16,  
19 2017), <https://www.ngaus.org/sites/default/files/pdf/primer%20fin.pdf>.

20 <sup>39</sup> Under Title 32 of the United States Code, whenever not called to “federal duty by  
21 the President . . . a state National Guard is under the command of the state  
22 Governor and State Adjutant General, who is appointed by the Governor.” *Ass’n of*  
23 *Civilian Technicians*, 603 F.3d at 993.

24 <sup>40</sup> In accordance with state law and policy, state governors are empowered to  
25 activate National Guard personnel to “State Active Duty.” During such times,  
26 “[s]oldiers and airmen remain under the command and control of the [state]  
27 Governor.” *NGAUS Fact Sheet: Understanding the Guard’s Duty Status*, The  
28 National Guard Ass’n of the United States (last visited Oct. 16, 2017),  
<https://www.ngaus.org/sites/default/files/Guard%20Statues.pdf>; *see, e.g.,* Mass.  
Gen. Laws ch. 33, § 41(a); Cal Mil. & Vet. Code § 146(a); N.Y. Mil. Law § 6.

<sup>41</sup> Similarly, in 2015 the New York National Guard, with over 15,000 members,  
received more than \$66 million in state funds to cover salaries, supplies, facilities,  
and education. *See New York National Guard Economic Impact 2015*, New York  
State Division of Military and Naval Affairs (Jan. 15, 2016), *available at*  
[https://dmna.ny.gov/NYNG\\_Economic\\_Impact.pdf](https://dmna.ny.gov/NYNG_Economic_Impact.pdf).

<sup>42</sup> Gates & Herman, *supra* note 4, at 1 (estimating 15,500 members in active  
service, the National Guard, or Reserves).

1 discharge.<sup>43</sup> These efforts did not disrupt the operation of the National Guard. To  
2 the contrary, by empowering our individual members and diversifying our ranks,  
3 these initiatives further enhanced the capability and effectiveness of our state-sited  
4 defense and security forces.

5 Because of the hybrid nature of the National Guard, however, the *Amici*  
6 States are required to comply with any directive the Trump Administration issues  
7 with respect to transgender service members, or risk losing much-needed funding  
8 for our National Guard units. *See Ass'n of Civilian Technicians*, 603 F.3d at 993;  
9 32 U.S.C. §§ 106-108. Most immediately, that means enforcing the prohibition on  
10 accepting openly transgender recruits. If fully implemented, the ban also may  
11 require National Guard leadership in the *Amici* States to renege on assurances made  
12 to existing transgender service members who came out in reliance on the 2016 open  
13 service policy; to pass over qualified transgender individuals for promotion; or to  
14 discharge them from service altogether.

15 In effect, the Administration's policy reversal threatens to require the *Amici*  
16 States to undo our efforts to provide an inclusive environment for current  
17 transgender service members, and instead foist upon us the discriminatory policies  
18 of the past. It will entangle the *Amici* States – once again – in a federal scheme that  
19 requires us to differentiate National Guard recruits and service members based on a  
20 characteristic that has been demonstrated to have nothing to do with their ability to  
21 serve. Such discrimination is in direct conflict with the policies of the *Amici* States,  
22 including our prohibitions on discrimination based on gender identity in public or  
23 private employment and our laws extending civil rights protections to transgender  
24 residents in other aspects of civic life (such as housing and public  
25 accommodations). *See supra* note 8.

26 \_\_\_\_\_  
27 <sup>43</sup> *See* Tech. Sgt. Erich B. Smith et al., *Guard Members Ready For New DOD*  
28 *Transgender Policy*, National Guard Bureau (June 15, 2017),  
<http://www.nationalguard.mil/News/Article/1215104/guard-members-ready-for-new-dod-transgender-policy/>.

1 Equally important, excluding transgender individuals will diminish the  
2 effectiveness of the National Guard and thus hamper the *Amici* States’ emergency  
3 and disaster response efforts. As described above, National Guard members are  
4 largely under state control and devoted to state-based missions, such as disaster  
5 relief and search and rescue operations. The *Amici* States are already restricted by  
6 the Trump Administration’s decision to extend the prohibition on transgender  
7 recruits,<sup>44</sup> which limits the pool of otherwise qualified candidates who wish to join  
8 our National Guard units. If forced to reinstate a complete ban on transgender  
9 service members, the *Amici* States could also lose the aggregate skills and  
10 knowledge of our many transgender service members and – with them – the value  
11 of the training and experience *Amici* States provided through the Guard. Because  
12 the *Amici* States maintain and rely on the National Guard to assist us in times of  
13 emergency, a reduction in those forces inflicts a significant harm upon us.<sup>45</sup>

14 **B. The Ban Will Entangle the *Amici* States in Harmful**  
15 **Discrimination Limiting Opportunities at Our Public Institutions**  
16 **of Higher Education.**

17 The harmful effects of the ban on transgender service members extend  
18 beyond the Armed Forces and National Guard to the *Amici* States’ public colleges  
19 and universities that support ROTC programs and to state-run maritime academies.  
20 ROTC programs are designed to train commissioned officers of the Armed Forces;  
21 they are located on and supported by college campuses but subject to federal entry  
22 requirements.<sup>46</sup> Many public colleges and universities in the *Amici* States host

23 <sup>44</sup> See Statement by Chief Pentagon Spokesperson Dana M. White on Transgender  
24 Accessions, Release No. NR-250-17 (June 30, 2017) available at  
25 <https://www.defense.gov/News/News-Releases/News-Release-View/Article/1236145/statement-by-chief-pentagon-spokesperson-dana-w-white-on-transgender-accessions/>.

26 <sup>45</sup> See Statement of Retired Military Leaders, *supra* note 22.

27 <sup>46</sup> See 10 U.S.C. § 2103. Similarly, many elementary and secondary schools in the  
28 *Amici* States host the Junior Reserve Officers’ Training Corps (“JROTC”). JROTC  
is a program for high school and middle school students that aims to “instill in

1 ROTC programs, provide them with physical space, and, in some instances,  
2 financial support in the form of a budget or scholarship funds. For example, one  
3 public university in Massachusetts provides its Army and Air Force ROTC  
4 programs with a total annual budget of approximately \$30,000 and designates an  
5 additional \$200,000-\$300,000 per year for scholarships available only to ROTC  
6 cadets. Reinstating the ban on open service by transgender individuals will render  
7 these ROTC programs – together with the scholarship and career opportunities they  
8 provide – actually or effectively unavailable to transgender students, who will not  
9 be eligible to serve openly in the Armed Forces upon graduation. The ban will thus  
10 harm the *Amici* States’ public colleges and universities by limiting their ability to  
11 extend the same opportunities to all of their students, in direct contravention of  
12 many schools’ own transgender-inclusive policies and the *Amici* States’ broader  
13 anti-discrimination laws.<sup>47</sup>

14 The ban also works a distinct set of harms on one subset of state-run  
15 educational institutions: the specialized maritime academies operated by  
16 Massachusetts, California, and New York that serve as pathways for students  
17 interested in pursuing maritime professions or becoming commissioned officers in  
18 the Coast Guard or other branches of the Armed Forces. *See supra* note 36. In  
19 addition to the state-of-the-art training and curriculum they offer all students,  
20 maritime academies extend special benefits to those who intend to join the military,  
21 including funding conditioned on subsequent military service<sup>48</sup> and programs that

22 students . . . the values of citizenship, service United States, and personal  
23 responsibility and a sense of accomplishment.” 10 U.S.C. § 2031(a)(2).

24 <sup>47</sup> *See supra* note 8; *Statement of Inclusion*, University of Massachusetts Lowell  
25 (last visited Oct. 16, 2017), [https://www.uml.edu/docs/Inclusion%20Statement\\_tcm18-167589.pdf](https://www.uml.edu/docs/Inclusion%20Statement_tcm18-167589.pdf). These public institutions also have no real recourse, as Congress  
26 has barred institutions of higher education that receive federal funding from  
preventing the Armed Forces from establishing or operating ROTC programs on  
campus. 10 U.S.C. § 983.

27 <sup>48</sup> The Student Incentive Payment (SIP) Program is offered for students of all the  
28 academies. Following graduation, SIP students must either enter the U.S. Armed  
Forces on active duty or must be in a reserve unit for at least six years, along with

1 enable students to obtain military commissions after graduation. For example, the  
2 maritime academies all offer a “Strategic Sealift Midshipman [or Officer]  
3 Program,” which allows students earning Coast Guard Licenses to be  
4 commissioned as officers in the Navy Reserve upon graduation and provides  
5 stipends to help pay for school.<sup>49</sup> As with the ROTC programs (and against these  
6 academies’ own anti-discrimination policies), reinstating a ban on transgender  
7 service members will effectively require these public institutions to offer different  
8 opportunities to their students based solely on their gender identity. That is, while  
9 non-transgender students will be eligible for the full range of services, scholarships,  
10 and programs at the academies, transgender students will be unable to take  
11 advantage of a number of benefits – those that depend on a future military career.  
12 In light of the more limited opportunities that will be available to transgender  
13 students after graduation, the overall education these academies provide will be of  
14 significantly lesser value. Both students and the maritime academies themselves  
15 will therefore be worse off as a result of the ban.

16 **C. The Ban Will Harm the *Amici* States’ Veterans, Active Service**  
17 **Members, and Those Who Wish to Serve.**

18 The Trump Administration’s irrational decision to reinstate the ban on openly  
19 transgender people from military service will also directly harm the residents of the  
20 *Amici* States: our veterans, active service members, and those who wish to serve.  
21 The harm to the dignity of transgender veterans and soldiers alone is significant.  
22 The ban degrades the service of the 150,000 veterans, active-duty service members,  
23 and members of the National Guard and Reserves who identify as transgender, as  
24

25 \_\_\_\_\_  
26 other requirements. *See* Maritime Administration, United States Department of  
27 Transportation (last visited Oct. 16, 2017),  
28 <https://www.marad.dot.gov/education/maritime-academies/>.

<sup>49</sup> *See, e.g., Strategic Midshipman Program*, Massachusetts Maritime Academy  
(last visited Oct. 16, 2017), [https://www.maritime.edu/strategic-sealift-  
midshipman-program](https://www.maritime.edu/strategic-sealift-midshipman-program).

1 well as the intentions of those who wish to serve. Reinstating the ban serves no  
2 purpose but to deny this particular group – deemed less worthy by the  
3 Administration – equal opportunity and equal treatment under the law. It relegates  
4 them to second-class status, sending the unmistakable message that they are unfit to  
5 serve or that their service is not valued, simply due to their gender identity.  
6 The ban also harms the many transgender residents of the *Amici* States who relied  
7 upon the assurance of the federal government that they were welcome to serve  
8 openly. Many service members in the National Guard and other branches of the  
9 military came out as transgender to their command based upon that assurance,  
10 believing that they would not thereby be deprived of their opportunity to serve (or  
11 their livelihoods). The Trump Administration has broken that promise to the grave  
12 detriment of these individuals. Openly transgender service members may now be  
13 targeted for discharge or other adverse action. Even if current transgender service  
14 members may be permitted to reenlist for the time being, *see supra* note 23, the  
15 Administration’s intent – to ultimately bar all transgender individuals from serving  
16 by mid-March 2018 – is clear. And in the meantime, these service members must  
17 continue their service in limbo and with a shadow cast over them.

18 Similarly, transgender residents of the *Amici* States who took steps to prepare  
19 for careers in the military, by joining ROTC or enrolling in maritime academies, for  
20 example, did so in reliance on the promise that they would be able to serve openly.  
21 They too face losing the opportunity to serve, and along with it the investment they  
22 have made in their careers thus far and other opportunities foregone.

23 Finally, transgender service members who have not yet revealed their gender  
24 identities, together with those who wish to pursue careers in the military, now face  
25 the Hobson’s choice of being honest about who they are and being discharged or  
26 denied accession outright, or hiding their identities and serving in fear of being  
27  
28



1 discovered.<sup>50</sup> Denying otherwise qualified transgender individuals the opportunity  
2 to serve denies them equal participation in a core civic activity. And forcing  
3 transgender individuals to hide their identities in order to enlist or continue serving  
4 is extremely harmful to their health and wellbeing<sup>51</sup>— a reality evidenced by the  
5 experiences of the thousands of gay, lesbian, and transgender service members who  
6 have served under previous discriminatory policies.<sup>52</sup> Concealing core aspects of  
7 one’s identity has a negative impact on mental health.<sup>53</sup> The need to hide their  
8 gender identity causes transgender service members to be less likely to seek  
9 necessary mental health and medical care; because there is limited confidentiality  
10 for communications with doctors and therapists in the military, these service  
11 members cannot be candid with their health care providers and are thus more likely  
12 to avoid treatment.<sup>54</sup>

13 Further, prohibiting open service estranges transgender service members  
14

15 <sup>50</sup> Cf. *Log Cabin Republicans v. United States*, Case No. CV 04-08425-VAP, 2010  
16 U.S. Dist. LEXIS 93612, \*29-65 (C.D. Cal. Sept. 9, 2010) (recounting testimony of  
17 service members describing experience of serving under a “cloud of fear” during  
18 Don’t Ask Don’t Tell).

19 <sup>51</sup> See Elders & Steinman, *supra* note 13, at 4 (“We determined not only that there  
20 is no compelling medical reason for the ban, but also that the ban itself is an  
21 expensive, damaging and unfair barrier to health care access for the approximately  
22 15,450 transgender personnel who serve currently in the active, Guard and reserve  
23 components. . . . Research shows that depriving transgender service members of  
24 medically necessary health care poses significant obstacles to their well-being.”)

25 <sup>52</sup> See, e.g., Declaration of Former Chairman of Joint Chiefs of Staff, Admiral  
26 Michael Mullen, ECF No. 21, at ¶ 14 (“When I led our armed forces under [Don’t  
27 Ask Don’t Tell] I saw firsthand the harm to readiness and morale when we fail to  
28 treat all service members according to the same standards. There are thousands of  
transgender Americans currently serving and there is no reason to single them out[,]  
to exclude them[,] or deny them the medical care that they require.”).

<sup>53</sup> Ross, *supra* note 13, at 209 (citing Moradi, *infra* note 55, at 514).

<sup>54</sup> See Kerrigan, *supra* note 10, at 513-14; Elders & Steinman, *supra* note 13, at 4  
 (“According to one recent study, ‘Mental health, medical and substance abuse  
services obtained outside the military are supposed to be communicated back to the  
military, so transgender people who seek these services elsewhere will risk  
exposure . . . This leads individuals to go without treatment, allowing symptoms to  
exacerbate, and causing some to treat symptoms with alcohol or drugs, which could  
lead to substance abuse or dependence.’”).

1 from their fellow troops, undermining the group’s ability to trust and bond.<sup>55</sup>  
2 “Concealment leads to . . . stress and isolation, which can lead to decreased  
3 performance ability.”<sup>56</sup> The negative repercussions of concealment are especially  
4 pertinent in the military, where “interpersonal connection, support, and trust among  
5 unit members are thought to be paramount to unit cohesion and effectiveness.”<sup>57</sup>  
6 Thus, depriving transgender service members of the trust and bonding with fellow  
7 service members that is so fundamental to the military experience not only harms  
8 them individually, it also undermines military readiness and effectiveness generally.

9 **D. The Ban Will Harm Our Transgender Communities More**  
10 **Broadly.**

11 The consequences of the Trump Administration’s reversal on transgender  
12 service members are not limited to the Armed Forces and may be felt across society  
13 at large. The military is among our country’s most integrated and diverse  
14 institutions. Historically, though progress has been slow and imperfect, when the  
15 military has accepted previously-excluded or marginalized groups into its ranks –  
16 African-Americans, women, immigrants, and gay and lesbian individuals – it has  
17 helped to lay the groundwork for broader social integration and acceptance. So too  
18 here, at a time when – despite continued stigma, discrimination, and violence –  
19 acceptance of transgender individuals is on the rise, the military’s open service  
20 policy was an important step forward, both practically and symbolically. Now,  
21 worse than never having permitted them to serve openly in the first place, the  
22 Trump Administration has singled out transgender individuals for renewed

23 <sup>55</sup> A study conducted on the impact of concealment versus disclosure of sexual  
24 orientation in the military found that concealment relates negatively to unit social  
25 and task cohesion and conversely that disclosure positively impacts cohesion.  
26 Bonnie Moradi, *Sexual Orientation Disclosure, Concealment, Harassment, and*  
*Military Cohesion: Perceptions of LGBT Military Veterans*, 21 *Mil. Psychol.* 513  
(2009). The same can be expected to be true of gender identity. *See Ross, supra*  
note 13, at 209.

27 <sup>56</sup> *Id.* at 209.

28 <sup>57</sup> *Id.*

1 exclusion, sending a message that threatens to slow recent progress and that will be  
2 heard and felt throughout our communities. Indeed, it seems that may be the point.  
3 The military has already concluded that allowing transgender individuals to serve  
4 openly is in the nation’s best interest. Reinstating the ban simply cannot be  
5 justified by reference to costs, unit cohesion, or overall readiness. Rather, the  
6 Administration seeks to ban otherwise qualified people from service simply  
7 because of who they are. In doing so, the Administration would harm both the  
8 *Amici* States and our residents in profound ways. *See, e.g., Alfred L. Snapp & Son,*  
9 *Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 609 (1982) (“[A] State has a  
10 substantial interest in assuring its residents that it will act to protect them from these  
11 evils [of discrimination].”). Reinstating the ban on open service would be a step  
12 backward for transgender people, for civil rights, and for the country as a whole.

13 **CONCLUSION**

14 For the foregoing reasons, the *Amici* States join in asking the Court to grant  
15 the Plaintiffs’ Motion for Preliminary Injunction.

16 Dated: November 6, 2017

Respectfully submitted,

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18 Attorney General of Massachusetts

19  
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**CERTIFICATE OF SERVICE**

I, Genevieve C. Nadeau, hereby certify that a true copy of the above document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this date.

/s/ Genevieve C. Nadeau  
Genevieve C. Nadeau

DATED: November 6, 2017

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

AIDEN STOCKMAN, NICOLAS  
TALBOTT, TAMASYN REEVES,  
JACQUICE TATE, JOHN DOES 1-2,  
JANE DOE, and EQUALITY  
CALIFORNIA,  
  
Plaintiffs,  
  
v.  
  
DONALD J. TRUMP, et al.,  
  
Defendants.

CASE NO. 5:17-cv-01799-JGB-KK  
**[PROPOSED] ORDER GRANTING  
LEAVE FOR AMICI STATES TO  
FILE BRIEF**

1           Upon consideration of the motion of Massachusetts, California, Connecticut,  
2 Delaware, Hawaii, Illinois, Iowa, Maryland, New Mexico, New York, Oregon,  
3 Pennsylvania, Rhode Island, Vermont and the District of Columbia (the “*Amici*  
4 States”) for leave to file as *amicus curiae*, and finding that the *Amici* States have  
5 “unique information or perspective that can help the court beyond the help that the  
6 lawyers for the parties are able to provide,” *see Bostick v. Herbalife Internat’l of*  
7 *America, Inc.*, No. CV-13-2488, 2015 WL 12731932, n 13 (C.D. Cal. May 14,  
8 2015), it is hereby

9           ORDERED that the motion of the *Amici* States for leave to file as *amicus*  
10 *curiae* is GRANTED.

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12 DATED: \_\_\_\_\_

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16 The Honorable Jesus G. Bernal  
17 United States District Judge  
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