

ORAL ARGUMENT SCHEDULED FOR DECEMBER 10, 2018

No. 18-5257

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

JANE DOE 2, *et al.*,
Plaintiffs-Appellees,

v.

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

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**BRIEF OF *AMICUS CURIAE* THE TREVOR PROJECT
IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE**

Stuart F. Delery*

**Counsel of Record*

sdelery@gibsondunn.com

Douglas C. Dreier

Charlotte A. Lawson

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5306

Telephone: (202) 887-3650

Facsimile: (202) 530-9523

Counsel for The Trevor Project

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES
PURSUANT TO CIRCUIT RULE 28(A)(1)**

(A) Parties and Amici. All parties, intervenors, and *amici* appearing before the district court are listed in the Appellees' Certificate as to Parties, Rulings, and Related Cases, except for the following *amici curiae* in this Court: Constitutional Accountability Center, Retired Military Officers and Former National Security Officials, NAACP Legal Defense & Education Fund, Inc., High Ground Veterans Advocacy, Iraq and Afghanistan Veterans of America, National Law School Veterans Clinic Consortium, National Veterans Legal Services Program, New York City Veterans Alliance, Protect Our Defenders, Service Women's Action Network, American Veterans Alliance, American Veterans for Equal Rights, Jewish War Veterans of the USA, Minority Veterans of America, Swords to Plowshares, Transgender American Veterans Association, Truman Center for National Policy, Massachusetts, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, the District of Columbia, American Medical Association, American College of Physicians, American Academy of Nursing, American Medical Women's Association, American Nurses Association, Endocrine Society, GLMA: Health Professionals Advancing LGBT Equality, and Mental Health America. At this time, there are no intervenors in this Court.

(B) Rulings Under Review. An accurate reference to the ruling at issue appears in the Appellees' Certificate as to Parties, Rulings, and Related Cases.

(C) Related Cases. An accurate statement regarding related cases appears in the Appellees' Certificate as to Parties, Rulings, and Related Cases.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a) and 29(c)(1), *amicus curiae* The Trevor Project hereby certifies that it is a non-profit, tax-exempt organization incorporated in California. The Trevor Project has no parent corporation, and no publicly held corporation has a ten percent or greater ownership interest in The Trevor Project.

**STATEMENT REGARDING CONSENT TO FILE
AND SEPARATE BRIEFING**

All parties have consented to the filing of this brief. 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 The Trevor Project, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

Pursuant to Circuit Rule 29(d), The Trevor Project certifies that a separate brief is necessary to provide The Trevor Project's unique perspective regarding the injuries the transgender military ban inflicts—including on the youth who utilize The Trevor Project's services—and regarding the scientific evidence supporting the conclusion that transgender people are just as capable of success and productive contributions as their peers, absent discrimination.

TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST.....	1
ARGUMENT	2
I. Excluding Transgender Individuals From Military Service Denies Them The Ability To Participate Fully In Society.	3
II. Transgender People Are Every Bit As Capable Of Serving As Their Peers.....	5
III. The Trevor Project Has Witnessed First-Hand The Negative Effects Of The Transgender Military Ban On Transgender Youth.....	16
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<i>Adkins v. City of New York</i> , 143 F. Supp. 3d 134 (S.D.N.Y. 2015)	11
<i>Arver v. United States</i> , 245 U.S. 366 (1918).....	3
<i>Bowers v. Hardwick</i> , 478 U.S. 186 (1986).....	12
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954).....	11, 12
<i>Doe 1 v. Trump</i> , No. 17-5267, 2017 WL 6553389 (D.C. Cir. Dec. 22, 2017).....	8
<i>Doe 1 v. Trump</i> , 275 F. Supp. 3d 167 (D.D.C. 2017).....	7, 11
<i>Doe 2 v. Trump</i> , 315 F. Supp. 3d 474 (D.D.C. 2018).....	3
<i>Karnoski v. Trump</i> , No. 17-cv-1297, 2018 WL 1784464 (Apr. 13, 2018).....	7, 11
<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003).....	12
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584 (2015).....	12, 13
<i>Stockman v. Trump</i> , No. 17-cv-1799, 2018 WL 4474768 (C.D. Cal. Sept. 18, 2018).....	3
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<i>United States v. Windsor</i> , 570 U.S. 744 (2013).....	12
<i>Winters v. United States</i> , 89 S. Ct. 57 (1968).....	3
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Statutes	
10 U.S.C. § 504(a)	16
Other Authorities	
AM. PSYCHIATRIC ASS’N, <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	11
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George Washington, <i>Aug. 7, 1782 General Orders</i> , in 24 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES: 1745-1799 (John C. Fitzpatrick ed., 1938)	4
Ilan H. Meyer, <i>Resilience in the Study of Minority Stress and Health of Sexual and Gender Minorities</i> , 2 PSYCHOL. OF SEXUAL ORIENTATION & GENDER DIVERSITY 209 (2015).....	10
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John F. Kennedy, Jr., <i>Remarks at the U.S. Naval Academy</i> (Aug. 1, 1963), http://www.presidency.ucsb.edu/ws/?pid=9367	3
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STATEMENT OF INTEREST

The Trevor Project, which is the nation's largest lesbian, gay, bisexual, transgender, queer, and questioning ("LGBTQ") youth crisis intervention and suicide prevention organization, respectfully submits this *amicus curiae* brief in support of Appellees. Founded in 1998, The Trevor Project is the only organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of individuals each month. Through monitoring, analyzing, and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, regarding issues affecting LGBTQ youth. In addition, The Trevor Project's Youth Ambassador Council consists of bright LGBTQ youth, including transgender youth, who give back to their communities and serve as role models for their peers.

The Trevor Project has a substantial interest in opposing government discrimination against the transgender youth it serves. It has worked firsthand with transgender youth for decades, thereby developing significant expertise on the issues that affect the community. The Trevor Project's experience demonstrates that transgender youth are fully capable of contributing productively to society, absent the harms that result from discrimination.

ARGUMENT

The transgender military ban has damaged the transgender community—active and aspiring young transgender service members, as well as transgender youth more broadly. The Trevor Project has seen these negative effects through its work. Excluding transgender people from the military denies them the opportunity to answer the noble call to serve their country, and this act of discrimination deprives them of full membership in society. Research demonstrates that transgender youth thrive just like their peers when given the familial and community support that many of us take for granted. But transgender youth must overcome systemic discrimination, which is harmful to any minority group that experiences it. Acts of discrimination by the government are particularly harmful because, as courts have long recognized, they send uniquely authoritative messages of inferiority that legitimize acts of private discrimination.

President Trump's announcement of the transgender military ban and the ban's first implementation had a profound negative impact on transgender youth. After this sudden pronouncement that an entire category of people is uniquely unworthy of the chance to serve in the Armed Forces, The Trevor Project saw a spike in the number of transgender individuals calling into its support helpline or reaching out to its chat and messaging helplines. The second iteration of the ban, issued after courts unanimously struck down the first, sends a similarly hostile

message to the transgender community. *See Doe 2 v. Trump*, 315 F. Supp. 3d 474, 497 (D.D.C. 2018); *Stockman v. Trump*, No. 17-cv-1799, 2018 WL 4474768, at *7 (C.D. Cal. Sept. 18, 2018). The district court’s decision to enjoin this unjustified discriminatory policy should be affirmed.

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

The exclusion of an entire group of individuals from service in the Armed Forces is demeaning and prevents individuals from being treated as full members of the national community. For centuries, the “supreme and noble duty of contributing to the defense of the rights and honor of the nation” has called millions of this nation’s youth to enlist in the military. *Arver v. United States*, 245 U.S. 366, 390 (1918). As President Kennedy said, 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.”¹ The brave individuals “constituting our Armed Forces are treated as honored members of society,” *Winters v. United States*, 89 S. Ct. 57, 60 (1968), serving in “the most

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

professional, dedicated and effective military in the world,” *Witt v. U.S. Dep’t of Air Force*, 739 F. Supp. 2d 1308, 1315 (W.D. Wash. 2010).

In August 1782, George Washington proclaimed that “the road to glory in a Patriot army and a free country is . . . open to all.”² While that has not always been the case in practice, the military historically has been proud of its commitment to being an inclusive force, allowing individuals to serve regardless of their sex, race, color, national origin, religion, or, most recently, sexual orientation. After the military opened its ranks to gay, lesbian, and bisexual service members, former Secretary of Defense Leon Panetta proclaimed that “[t]he successful repeal of ‘Don’t Ask, Don’t Tell’ proved to the Nation that just like the country we defend, we share different backgrounds, different values, and different beliefs—but together, we are the greatest military force in the world.”³ 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.”⁴

² 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).

³ Leon Panetta, U.S. Sec’y of Def., *Video Message for Lesbian, Gay, Bisexual, Transgender Pride Month from the Pentagon* (June 15, 2012), <http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=5062>.

⁴ *Ibid.*

II. Transgender People Are Every Bit As Capable Of Serving As Their Peers.

The military has recognized that, over the last decade and a half of conflict in the Middle East, “transgender men and women in uniform have been there with us, even as they often had to serve in silence alongside their fellow comrades in arms.”⁵ When former Secretary of Defense Ash Carter issued a directive to assess the policy and readiness implications of allowing transgender people to serve openly in the military, he stated that the military has “transgender soldiers, sailors, airmen, and Marines – real, patriotic Americans – who I know are being hurt by an outdated, confusing, inconsistent approach that’s contrary to our value of service and individual merit.”⁶ As Secretary Carter explained when he later announced that transgender people could serve openly in the military, allowing these service members to fight for their country “is the right thing to do for our people and for the force We’re talking about talented Americans who are serving with distinction or who want the opportunity to serve. We can’t allow barriers unrelated

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

⁶ *Ibid.*

to a person’s qualifications prevent us from recruiting and retaining those who can best accomplish the mission.”⁷

During the current Administration, the Joint Chiefs of Staff have each confirmed that the presence of transgender service members has had zero negative effect on unit cohesion.⁸ For instance, in response to a senator’s question in April 2018 to U.S. Army Chief of Staff General Mark A. Milley about whether he had heard anything about transgender service members harming unit cohesion, the General replied: “No, not at all. . . . [I]t is monitored very closely because, you know, I am concerned about that, and want to make sure that [transgender service members] are, in fact, treated with dignity and respect. And no, I have received precisely zero reports . . . of issues of cohesion, discipline, morale, and all those sorts of things.”⁹ Also in April 2018, in response to a similar question, U.S. Navy

⁷ U.S. DEP’T OF DEFENSE, *Secretary of Defense Ash Carter Announces Policy for Transgender Service Members* (June 30, 2016), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/821675/secretary-of-defense-ash-carter-announces-policy-for-transgender-service-members/>; U.S. DEP’T OF DEFENSE, *Transgender Service Member Policy Implementation Fact Sheet*, https://www.defense.gov/Portals/1/features/2016/0616_policy/Transgender-Implementation-Fact-Sheet.pdf.

⁸ *Military Chiefs of Staff Unanimous: Transgender Inclusion Has Not Harmed Unit Cohesion*, PALM CTR. (Apr. 25, 2018), <https://www.palmcenter.org/military-chiefs-of-staff-unanimous-transgender-inclusion-has-not-harmed-unit-cohesion/>.

⁹ United States Senate Committee on Armed Services, *Hearing to Receive Testimony on the Posture of the Department of the Army in Review of the*

Chief of Naval Operations, Admiral John M. Richardson, testified that “[w]e treat every one of those sailors, regardless, with dignity and respect that is warranted by wearing the uniform of the United States Navy. By virtue of that approach, I’m not aware of any issues.”¹⁰

The “exemplary military service” of the named plaintiffs in each of the pending cases challenging the transgender military ban further illustrates that discrimination against transgender people is unrelated to their ability to perform in the military. *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 209 (D.D.C. 2017); *see also Karnoski v. Trump*, No. 17-cv-1297, 2018 WL 1784464, at *10 (Apr. 13, 2018); *Stockman v. Trump*, No. 17-cv-1799, 2017 WL 9732572, at *5 (C.D. Cal. Dec. 22, 2017); *Stone v. Trump*, 280 F. Supp. 3d 747, 768 (D. Md. 2017) (describing the “discriminatory impact to a group of our military service members who have served our country capably and honorably”). As this Court explained, “it must be remembered that all Plaintiffs seek during this litigation is to serve their Nation with honor and dignity, volunteering to face extreme hardships, to endure lengthy

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

¹⁰ United States Senate Committee on Armed Services, *Hearing to Receive Testimony on the Posture of the Department of the Navy in Review of the Defense Authorization Request for Fiscal Year 2019 and the Future Years Defense Program* 82 (Apr. 19, 2018), https://www.armed-services.senate.gov/imo/media/doc/18-42_04-19-18.pdf.

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

These military judgments concerning service and readiness are unsurprising. The medical community, too, has united around the position that transgender people are every bit as capable as their peers to participate fully and productively in society, including by serving in the military—but that discrimination, such as the transgender military ban, can have profoundly harmful effects.¹¹

Following President Trump’s second memorandum on military service by transgender individuals in March 2018, several professional organizations have reasserted their opposition to the transgender military ban. The American Psychiatric Association (“APA”) reaffirmed its strong opposition, emphasizing that “[t]ransgender people do not have a mental disorder; thus, they suffer no impairment whatsoever in their judgment or ability to work,” and adding that “[a]ll Americans who meet the strenuous requirements to volunteer to serve in the U.S.

¹¹ See, e.g., AM. PSYCHIATRIC ASS’N, *Position Statement on Discrimination Against Transgender and Gender Variant Individuals* (July 2012), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf>.

military should be given the opportunity to do so.”¹² Likewise, the American Psychological Association relayed that it is alarmed “by the administration’s misuse of psychological science to stigmatize transgender Americans,” and stated that substantial psychological research demonstrates that gender dysphoria does not “limit the ability of individuals to function well and excel in their work, including in military service.”¹³ Similarly, in April 2018, the American Medical Association (“AMA”) declared that “[t]ransgender individuals have served, and continue to serve, our country with honor, and we believe they should be allowed to continue doing so” because “there is no medically valid reason” to exclude them from service.¹⁴

In addition, two former U.S. Surgeons General released a statement emphasizing that “transgender troops are as medically fit as their non-transgender peers and . . . there is no medically valid reason . . . to exclude them from military

¹² AM. PSYCHIATRIC ASS’N, *APA Reiterates Its Strong Opposition to Ban of Transgender Americans from Serving in the U.S. Military* (Mar. 24, 2018), <https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-its-strong-opposition-to-ban-of-transgender-americans-from-serving-in-u-s-military>.

¹³ AM. PSYCHOLOGICAL ASS’N, *APA Statement Regarding Transgender Serving in Military* (Mar. 26, 2018), <http://www.apa.org/news/press/releases/2018/03/transgender-military.aspx>.

¹⁴ Letter from James L. Madara, Chief Exec. Officer, AM. MED. ASS’N, to James N. Mattis, U.S. Sec’y of Def. (Apr. 3, 2018), *available at* <https://searchlf.ama-assn.org/undefined/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-4-3-Letter-to-Mattis-re-Transgender-Policy.pdf>.

service or to limit their access to medically necessary care.”¹⁵ The statement also noted “the robust body of peer-reviewed research” and the “global medical consensus” regarding the efficacy, reliability, and safety of transgender medical care that directly contradicts the presidential memorandum.¹⁶

In psychology, the minority stress model explains that “prejudice and stigma . . . cause adverse health outcomes.”¹⁷ Transgender people are not inherently likely to suffer mental health problems; rather, “stress associated with stigma, prejudice, and discrimination”—like the military ban—“will increase rates of psychological distress” in any community that experiences it.¹⁸ Accordingly, the American Psychiatric Association has voiced its opposition to the military ban because “[d]iscrimination has a negative impact on the mental health of those targeted” and the ban “harms not just those transgender Americans who have dedicated

¹⁵ M. Joycelyn Edlers & David Satcher, *Former Surgeons General Debunk Pentagon Assertions about Medical Fitness of Transgender Troops*, PALM CTR. (Mar. 28, 2018), <https://www.palmcenter.org/former-surgeons-general-debunk-pentagon-assertions-about-medical-fitness-of-transgender-troops/>.

¹⁶ *Ibid.*

¹⁷ Ilan H. Meyer, *Resilience in the Study of Minority Stress and Health of Sexual and Gender Minorities*, 2 PSYCHOL. OF SEXUAL ORIENTATION & GENDER DIVERSITY 209, 209 (2015).

¹⁸ Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103 AM. J. PUB. HEALTH 943, 943 (May 2013).

themselves to service of others, but it unfairly casts a pall over all transgender Americans.”¹⁹

Courts have reached the same conclusions as the consensus of leading medical and scientific organizations. Courts have noted that the evidence does not support a conclusion that being transgender renders a person inherently any less productive or capable. *See, e.g., Doe I*, 275 F. Supp. 3d at 209. Indeed, “[d]iscrimination against transgender people clearly is unrelated to their ability to perform and contribute to society.” *Karnoski*, 2018 WL 1784464, at *10; *see also Doe I*, 275 F. Supp. 3d at 209 (“Despite this discrimination, the Court is aware of no argument or evidence suggesting that being transgender in any way limits one’s ability to contribute to society.”); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015) (“The Court is not aware of any data or argument suggesting that a transgender person, simply by virtue of transgender status, is any less productive than any other member of society.”).

Courts also have long recognized that government-sanctioned discrimination causes substantial and material harm to anyone who experiences it—and that this impact is particularly strong on youth. In *Brown v. Board of Education*, the Court

¹⁹ AM. PSYCHIATRIC ASS’N, *APA Opposes Banning Transgender Service Members from Serving in Military* (July 27, 2017), <https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military>.

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

Likewise, in *Lawrence v. Texas*, the Court observed that “[w]hen homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.” 539 U.S. 558, 575 (2003). Concluding that “[t]he State cannot demean their existence or control their destiny by making their private sexual conduct a crime,” the Court overruled its prior decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986), which had allowed states to criminalize homosexual conduct. *Lawrence*, 539 U.S. at 578–79. Subsequently, in striking down parts of the Defense of Marriage Act, the Court stated that the discriminatory marriage law “tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition.” *United States v. Windsor*, 570 U.S. 744, 772 (2013). When the Court recognized the constitutional right for same-sex couples to marry, it explained that state bans on same-sex marriage forced children of same-sex couples to “suffer the stigma of knowing their families are somehow lesser.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015). The

Court understood that “[d]ignitary wounds cannot always be healed with the stroke of a pen,” and acknowledged that its past decision in *Bowers* caused “pain and humiliation” that “no doubt lingered long after *Bowers* was overruled.” *Id.* at 2606.

It should come as no surprise that support and acceptance, by contrast, benefit transgender youth significantly.²⁰ The evidence demonstrates that “allowing children to present in everyday life as their gender identity rather than their natal sex is associated with developmentally normative levels of depression and anxiety.”²¹ When transgender youth are supported by their families, “results

²⁰ Family support, peer support, and identity pride are all associated with lower psychological distress. Bockting, *supra* note 18, at 948; *see also* AM. PSYCHOLOGICAL ASS’N, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 3 (2011), <http://www.apa.org/topics/lgbt/transgender.pdf> (“[T]he significant problem is finding affordable resources . . . and the social support necessary to freely express their gender identity and minimize discrimination.”).

²¹ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3) PEDIATRICS 1, 5 (Mar. 2016); *see also* S.E. Herman et al., *The Report of the 2015 U.S. Transgender Survey* 70 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> (describing survey findings that transgender adults with supportive families were more likely to be employed, less likely to have experienced homelessness, and less likely to report currently experiencing serious psychological distress than those whose families were unsupportive); Decl. of George R. Brown ¶ 29, *Doe I*, No. 1:17-cv-01597 (D.D.C. 2017), Dkt. 13-11 (“Younger people in increasing numbers have access to medical and mental health resources that help them understand their experience and allow them to obtain medical support at an earlier age.”).

provide clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings.”²² Further, a study assessing the impact of discrimination on LGBTQ youth found that LGBTQ youth who did *not* report experiencing discrimination had similarly low levels of depressive symptoms as did their peers.²³ 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.²⁴

Many young people have visions and hopes for the country that include equality and fundamentally fair treatment for their peers, including transgender individuals. Research demonstrates that younger generations overwhelmingly support continued strides toward equality.²⁵ Non-discriminatory policies, in particular, find significant support among youth. According to a recent poll, sixty-

²² Olson, *supra* note 21, at 7.

²³ 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).

²⁴ 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.

²⁵ See Pew Research Center, *The Generation Gap in American Politics* (Mar. 1, 2018), <http://www.people-press.org/2018/03/01/4-race-immigration-same-sex-marriage-abortion-global-warming-gun-policy-marijuana-legalization/>.

seven percent of survey respondents between the ages of 18 and 29 supported policies permitting transgender individuals to use the public restrooms of the gender with which they currently identify.²⁶ And more broadly, sixty-five percent of respondents between the ages of 18 and 34 supported comprehensive non-discrimination protections for LGBTQ people in employment, housing, and other areas of life.²⁷ These youth are the individuals who will be considering military enlistment, but the transgender military ban forces them to choose between a potential career of service and their strong support for equality.

Through the second iteration of the ban at issue in this appeal, the government continues to inflict widespread harm. It denies plaintiffs the opportunity to serve, instead telling transgender people that—notwithstanding the Joint Chiefs’ unanimous opinion to the contrary and the consensus of medical professionals—they are inherently unfit to heed the supreme and noble call to defend their country. The military will welcome everyone else who can do the

²⁶ See Michael Lipka, *Americans Are Divided Over Which Public Bathrooms Transgender People Should Use*, Pew Research Center (Oct. 3, 2016), <http://www.pewresearch.org/fact-tank/2016/10/03/americans-are-divided-over-which-public-bathrooms-transgender-people-should-use/>.

²⁷ Sarah McBride & Zenen Jaimes Pérez, *Millennials Overwhelmingly Support Comprehensive LGBT Nondiscrimination Protections*, Center for American Progress (Apr. 7, 2015), <https://www.americanprogress.org/issues/lgbt/news/2015/04/07/110523/millennials-overwhelmingly-support-comprehensive-lgbt-nondiscrimination-protections/>.

job—people of any sex, race, color, national origin, religion, or sexual orientation—except for transgender service members. Whereas convicted felons and deserters may receive “moral waivers” to allow them to serve in the Armed Forces, *see* 10 U.S.C. § 504(a),²⁸ even the most dedicated transgender individuals are deemed innately and irrevocably unworthy to fight for their country without suppressing their core identity. This discriminatory message from the government has severe consequences.

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

While transgender individuals are not inherently less capable, successful, or well-adjusted than other members of society, many are subject to discrimination, which can have negative effects. The Trevor Project works to address the harms caused by discrimination against the LGBTQ community by providing several crisis intervention and counseling services. Specifically, Trevor Lifeline is a telephone hotline that LGBTQ youth can call for support in times of stress and trouble, and TrevorChat and TrevorText are online chat and text messaging services, respectively, that LGBTQ youth can use as an alternative to speaking on

²⁸ “No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.” 10 U.S.C. § 504(a).

the telephone. The Trevor Project maintains statistical data regarding the people who use its crisis intervention services. These data, consistent with the studies described above, show that discrimination—particularly governmental discrimination—creates stress for transgender youth. During The Trevor Project’s decades of experience, its counselors periodically have observed spikes in youth contacting The Trevor Project in response to the enactment or announcement of discriminatory laws and in response to discriminatory statements by government officials or other respected individuals.

Within 24 hours of the President’s July 26, 2017 tweet announcing the transgender military ban, the percentage of people who contacted The Trevor Project through all channels—Trevor Lifeline, TrevorChat, and TrevorText—and self-identified as transgender more than doubled from 7.3% to 17.5% of all contacts.²⁹ The Trevor Project has observed this connection between discrimination and youth in crisis with other examples of government-sanctioned discrimination, as well. For instance, after the 2017 introduction of proposed legislation in Texas that would have prohibited transgender students and adults from using bathrooms that correspond to their gender identity, The Trevor Project

²⁹ 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>.

observed a sharp increase in contacts to Trevor Lifeline, TrevorChat, and TrevorText from transgender youth in Texas.³⁰ More recently, *The New York Times* published an article revealing an effort within the federal government to “essentially eradicate federal recognition” of transgender people by defining “sex” by reference to “immutable biological traits identifiable by or before birth.”³¹ In the 24 hours following this article’s publication, the number of self-identified transgender youth who contacted The Trevor Project via digital crisis services nearly doubled.

Many of the youth who reached out to The Trevor Project after the transgender military ban was announced described how important it was to them to join the military. For many of the transgender youth using The Trevor Project’s services, the military often represents not only an opportunity to fight for their country, but also a path to a better life. The military provides a chance to contribute to the country and, for many, is part of their family experience or dreams of their future. *See, e.g.*, Decl. of Dylan Kohere ¶ 2, *Doe 1 v. Trump*, No.

³⁰ Amit Paley, *Victory! “Bathroom Bills” Threatening Trans Youth Defeated in Texas*, TREVOR PROJECT (Aug. 15, 2017), <http://www.thetrevorproject.org/blog/entry/victory-bathroom-bills-threatening-trans-youth-defeated-in-texas> 1.

³¹ Erica L. Green, Katie Benner & Robert Pear, *‘Transgender’ Could Be Defined Out of Existence Under Trump Administration*, N.Y. TIMES, Oct. 21, 2018, <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html>.

1:17-cv-01597 (D.D.C. Aug. 31, 2017), ECF No. 13-15; Decl. of Nicholas Talbott ¶¶ 7–14, *Stockman v. Trump*, No. 5:17-cv-01799 (C.D. Cal. Oct. 2, 2017), ECF No. 17. In addition, in exchange for their willingness to endure hardships and even the ultimate sacrifice as part of service, the military provides tuition assistance, health and life insurance, veterans’ benefits, pension rights, and a steady source of income.³² Even those without longstanding dreams and family traditions of military service, including those bullied by their classmates, discriminated against by their teachers, and rejected by their parents, sometimes aspire to join the military. These transgender youth hope to be valued for their contribution toward the service of this country, rather than for how well they comply with traditional gender norms. It is not surprising, then, that the prospect of a ban, which if implemented would eliminate these opportunities, has had negative consequences for transgender youth.

During a conversation between a transgender youth and a Trevor Project counselor, one individual explained that they³³ 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,

³² MILITARY.COM, *Military Benefits at a Glance*, <http://www.military.com/join-armed-forces/military-benefits-overview.html> (last visited Oct. 29, 2018).

³³ Where appropriate, this brief uses “they” and “their” as singular, gender-neutral pronouns.

felt that the announcement of the ban had completely stripped away their hope and plans for the future. However, despite feeling upset, angry, and hopeless, this individual showed great strength in stating that they would still pursue their plans if the military ban were repealed. Another individual stated that they, too, had plans of joining the military and that they felt disheartened that they were being told they were too much of a burden to do so. As a result, this individual said they felt badly about themselves and who they are.

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

This discriminatory policy harms more than just the people it targets. After President Trump's tweet announcing the transgender military ban, the total volume of contacts to The Trevor Project increased by more than twenty percent. A significant share of those contacts were from transgender youth, but there was an additional increase from youth who did not identify as transgender but nonetheless

sought The Trevor Project's crisis intervention services in the immediate wake of discrimination against their peers.

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

CONCLUSION

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

Dated: October 29, 2018

Respectfully submitted,

/s/ Stuart F. Delery

Stuart F. Delery*

**Counsel of Record*

sdelery@gibsondunn.com

Douglas C. Dreier

Charlotte A. Lawson

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5306

Telephone: (202) 887-3650

Facsimile: (202) 530-9523

Counsel for The Trevor Project

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29, I certify that the attached brief is proportionately spaced, has a typeface of 14 points, and complies with the word count limitations set forth in Fed. R. App. P. 29(a)(5). This Brief has 4745 words, excluding the portions exempted by Fed. R. App. P. 32 and Circuit Rule 32(e)(1), according to the word count feature of Microsoft Word used to generate this Brief.

Dated: October 29, 2018

By: /s/ Stuart F. Delery
Stuart F. Delery

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on October 29, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 29, 2018

By: /s/ Stuart F. Delery
Stuart F. Delery