

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

RICHARD ROE, VICTOR VOE and  
OUTSERVE-SLDN, INC.,

*Plaintiffs,*

v.

RICHARD V. SPENCER, in his official capacity  
as acting Secretary of Defense; MATTHEW  
DONOVAN, in his official capacity as the Acting  
Secretary of the Air Force; and the UNITED  
STATES DEPARTMENT OF DEFENSE,

*Defendants.*

NO. 1:18-CV-01565-LMB-IDD

**PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT (COUNTS II AND III)**

Plaintiffs Richard Roe, Victor Voe, and OutServe-SLDN, Inc. move for partial summary judgment on Defendants' decisions to separate Plaintiffs Roe and Voe<sup>1</sup> under Counts II and III of their Complaint. As elaborated upon in their memorandum in support, the decisions to separate Roe and Voe are arbitrary and capricious, and contrary to law, in violation of the Administrative Procedure Act. The decisions are inconsistent on the same factual record, and violate Defendants' own regulations. Accordingly, Plaintiffs' motion for summary judgment on Counts II and III of their Complaint should be granted.

---

<sup>1</sup> Plaintiffs are not moving on the portions of these claims relating to the arbitrary and capricious nature of Defendants' deployment policies. Those aspects of Counts II and III remain for trial.

Dated: July 23, 2019

/s/ Scott Schoettes

Scott A. Schoettes\*  
SSchoettes@lambdalegal.org  
Kara Ingelhart\*  
KIngelhart@lambdalegal.org  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
105 W. Adams St., Suite 2600  
Chicago, IL 60603  
T: (312) 663-4413

Anthony Pinggera\*  
APinggera@lambdalegal.org  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
4221 Wiltshire Blvd., Suite 280  
Los Angeles, CA 90010  
T: (213) 382-7600

Peter E. Perkowski\*  
PeterP@outserve.org  
OUTSERVE-SLDN, INC.  
P.O. Box 65301  
Washington, DC 20035-5301  
T: (800) 538-7418

*\*pro hac vice*

Respectfully submitted,

/s/ John W.H. Harding

John W.H. Harding  
Virginia State Bar No. 87602  
JWHarding@winston.com  
Lauren Gailey\*  
LGAiley@winston.com  
Laura Cooley  
Virginia State Bar No. 93446  
LCooley@winston.com  
Alexandra J. Hemmings\*  
AHemmings@winston.com  
WINSTON & STRAWN LLP  
1700 K St., NW  
Washington, DC 20006  
T: (202) 282-5000

Julie A. Bauer\*  
JBauer@winston.com  
WINSTON & STRAWN LLP  
35 W. Wacker Dr.  
Chicago, IL 60601  
T: (312) 558-560

Andrew R. Sommer  
Virginia State Bar No. 70304  
Sommera@gtlaw.com  
GREENBERG TRAUIG, LLP  
1750 Tysons Boulevard  
Suite 1000  
McLean, VA 22102  
T: (703) 749-1370

## CERTIFICATE OF SERVICE

I certify that, on the 23rd day of July, 2019, I caused this document to be filed electronically through the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: July 23, 2019

Respectfully submitted,

/s/ John W.H. Harding

John W.H. Harding

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

RICHARD ROE, VICTOR VOE and  
OUTSERVE-SLDN, INC.,

*Plaintiffs,*

v.

RICHARD V. SPENCER, in his official capacity  
as acting Secretary of Defense; MATTHEW  
DONOVAN, in his official capacity as the Acting  
Secretary of the Air Force; and the UNITED  
STATES DEPARTMENT OF DEFENSE,

*Defendants.*

NO. 1:18-CV-01565-LMB-IDD

**PROPOSED ORDER**

Upon consideration of Plaintiffs' Motion for Partial Summary Judgment on Defendants' decisions to separate Plaintiffs Roe and Voe under Counts II and III of their Complaint, the Court GRANTS the motion, finding that there are no disputes of fact, and that Defendants decisions are arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act because the decisions are inconsistent on the same factual record, and because they violate Defendants' own regulations.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
United States District Judge