

Congress of the United States
Washington, DC 20515

July 8, 2020

The Honorable Mark T. Esper
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Secretary Esper and Attorney General Barr,

In light of the U.S. Supreme Court ruling in *Bostock v. Clayton County*, in which a 6-3 majority ruled that Title VII of the Civil Rights Act of 1964 protects LGBTQ people from workplace discrimination, we urge the Department of Defense (DOD) to immediately update its policies to eliminate the ban on open transgender military service. Additionally, to prevent further harm to transgender servicemembers, we urge the DOD to instruct the Department of Justice (DOJ) to negotiate the end to litigations challenging the ban.

On April 12, 2019, the Trump administration’s policy banning transgender persons from serving openly in the military went into effect. This policy denies transgender people the ability to enlist in the military and puts transgender troops at risk of being discharged for living openly and authentically. The Trump Administration’s Ban was implemented against the recommendations of several former Surgeons General and against a wide array of military experts. Additionally, the country’s preeminent health care organizations, including the American Psychiatric Association, the American Psychological Association and the American Medical Association, have all issued statements affirming that transgender people can competently serve in the military.

The *Bostock* decision unambiguously clarified that Title VII’s prohibition against discrimination on the basis of sex includes protections for LGBTQ workers. Justice Gorsuch wrote “[t]he statute’s message for our cases is equally simple and momentous: An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

There are four lawsuits challenging the ban on open transgender military service on the grounds that it violates the Due Process Clause in the Fifth Amendment of the U.S. Constitution, which like Title VII prohibits sex-based discrimination. The Ninth Circuit court had already ruled in *Karnoski v. Trump* that heightened scrutiny applies to anti-transgender discrimination. The U.S. Supreme Court’s ruling in *Bostock* will provide significant weight to those already substantial claims: the principle announced—that gender-identity discrimination is discrimination “because of ... sex”—applies equally to claims under

the Constitution. Prolonging the litigation in the face of almost certain defeat, and thereby prolonging the existing policy, will continue to inflict serious harm on transgender people seeking to serve our country and on those already serving while living in the shadows, enduring the dignitary harm of being told they're a burden.

This policy is an attack on transgender service members who are risking their lives to serve our country and it should be reversed immediately.

We appreciate your timely attention to these matters.

Sincerely,



Suzan K. DelBene
Member of Congress

Signatories

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