

[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 United States,
et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA,
CASE NO. 1:17-cv-01597-CKK
HON. COLLEEN KOLLAR-KOTELLY

**BRIEF OF 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, US &
LATIN VETERANS' SUPPORT EMBASSY, AND VOTEVETS.ORG AS
AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES AND IN
SUPPORT OF AFFIRMANCE**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), counsel for Amici certify as follows:

A. Parties and Amici.

As far as we are aware, except for 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, the Truman Center for National Policy, US & Latin Veterans' Support Embassy, and VoteVets.org, all parties, intervenors, and amici appearing before the district court and this Court are listed in the brief for Plaintiffs-Appellees.

B. Rulings Under Review.

References to the rulings at issue appear in the brief for Plaintiffs-Appellees.

C. Related Cases.

Amici are aware of no related cases other than those set forth in the Brief for Plaintiffs-Appellees.

CORPORATE DISCLOSURE STATEMENT

Amici are nonprofit organizations. They have no parent corporations and do not issue stock.

TABLE OF CONTENTS

	Page
STATEMENT OF IDENTITY, INTEREST IN CASE, SOURCE OF AUTHORITY TO FILE, AND AUTHORSHIP AND FINANCIAL CONTRIBUTIONS	1
CERTIFICATE UNDER CIRCUIT RULE 29.....	3
BACKGROUND AND SUMMARY OF ARGUMENT	4
ARGUMENT	7
I. THE MATTIS POLICY MAKES MILITARY UNITS WEAKER, NOT STRONGER.....	7
A. Unit Cohesion Is the Product of Values and Experiences Shared by Those Who Serve	8
B. Permitting Openly Transgender Personnel to Serve Does Not Hinder Unit Cohesion.....	12
C. Allowing Openly Transgender Personnel to Serve Enhances Unit Cohesion.....	20
II. THE MATTIS POLICY IS INCONSISTENT WITH NATIONAL SECURITY INTERESTS AND THE MILITARY’S FUNDAMENTAL VALUES	21
A. The Mattis Policy Arbitrarily Excludes Capable Individuals Who Are Willing to Serve Their Country	22
B. The Mattis Policy Demeans All Who Serve	24
CONCLUSION.....	26

TABLE OF AUTHORITIES

	Page(s)
William Darryl Henderson, <i>Cohesion: The Human Element in Combat</i> (Nat'l Def. Univ. Press 1985)	8
Frederick J. Manning, <i>Morale and Cohesion in Military Psychiatry, in Military Psychiatry: Preparing in Peace for War</i> (Russ Zajtchuk et al. eds. 1994)	7, 10
Robert J. MacCoun, et. al., <i>Does Social Cohesion Determine Motivation in Combat?</i> , 32 <i>Armed Forces & Soc'y</i> 1 (2006)	10
George M. Reynolds & Amanda Shendruk, <i>Demographics of the U.S. Military</i> , Council on Foreign Relations (Apr. 24, 2018), https://www.cfr.org/article/demographics-us-military	11

**STATEMENT OF IDENTITY, INTEREST IN CASE,
SOURCE OF AUTHORITY TO FILE, AND AUTHORSHIP
AND FINANCIAL CONTRIBUTIONS**

Amici are organizations committed to policy advocacy on behalf of or provision of direct services to U.S. military veterans and their families.

Specifically,

- American Veterans Alliance is a nonprofit organization that serves to coordinate the efforts of veterans service organizations, nonprofit agencies that serve veterans and their dependents, corporate sponsors, and government agencies to provide veterans with local and national support and advocacy.
- American Veterans for Equal Rights is a nonprofit, chapter-based organization of active, reserve, and veteran service members dedicated to full and equal rights and equitable treatment for all present and former members of the U.S. Armed Forces, in particular lesbian, gay, bisexual, and transgender personnel.
- Jewish War Veterans of the USA, the oldest active veterans organization in the United States, is a nonprofit organization founded to combat anti-Semitism in the military and dedicated to honoring Jewish veterans, fighting bigotry in the armed forces in all its forms, and ensuring the right to serve.
- Minority Veterans of America is a nonprofit organization dedicated to building an inclusive community and services for minority and underrepresented veterans.
- Swords to Plowshares is a community-based not-for-profit organization that provides needs assessment and case management, employment and training, housing, and legal assistance to veterans in the San Francisco Bay Area. Swords to Plowshares promotes and protects the rights of veterans through advocacy, public education, and partnerships with local, state, and national entities.
- Transgender American Veterans Association is a nonprofit

organization founded with the purpose of ensuring that transgender veterans receive equality of medical treatment at Veterans Health Administration facilities, and dedicated to broadly advocating for the interests of transgender service members and veterans.

- The Truman Center for National Policy is a nonprofit organization that focuses on progressive national security and foreign policies. Its sister organization maintains a community of diverse members that includes many veterans, front line civilians, and national security policy professionals in support of government activity. These members also include individuals within the LGBTQ community and their vocal allies.
- US & Latin Veterans' Support Embassy is a nonprofit organization dedicated to supporting Latino veterans and their families by providing assistance in obtaining U.S. citizenship, ensuring that the family members of deceased veterans receive the benefits they are due, and ensuring that the deceased receive proper burial services.
- VoteVets.org is the umbrella organization for two separate entities: VoteVets Action Fund, a nonprofit organization focused on nonpartisan education and advocacy on behalf of veterans and their families, and VoteVets PAC, a federal political committee that primarily helps elect Iraq and Afghanistan war veteran candidates and educates about veterans and military issues aimed at influencing the outcome of the next election.

Plaintiffs-Appellees and Defendants-Appellants have consented to the filing of this brief.

Pursuant to Fed. R. App. P. 29(a)(4)(E), the undersigned counsel certify (1) that no party's counsel authored this brief in whole or in part; and (2) that no party or party's counsel, or any other person, other than Amici, their members, or their counsel, contributed money that was intended to fund the preparation or submission of this brief.

CERTIFICATE UNDER CIRCUIT RULE 29

Pursuant to Circuit Rule 29(d), counsel for Amici certify that as of the date of this certification, no other amicus brief of which we are aware addresses in-depth the issues of military values, unit cohesion, and readiness implicated by the Defendants-Appellants' policy from the perspective of veterans and the organizations that represent them.

Amici are organizations that advocate for and include among their members individuals who have served in all branches of the armed forces, hail from a diversity of backgrounds, and identify as both transgender and non-transgender. Amici share a commitment to honoring those who serve and ensuring that all who are capable and worthy of service may do so, regardless of their identity or background. Here, Amici argue that the strength of the U.S. military comes from the bonds among service members—bonds that supersede any differences in demography or identity that individuals bring to the armed forces. They reject the view that allowing transgender individuals to serve openly undermines unit cohesion. To the contrary, shared values and a desire to serve cut across individual differences to create cohesive military units and a ready force. Because Amici offer a unique view on issues of unit cohesion, readiness, and the values instilled by military service, Amici did not consider it practical to join this brief with other amicus briefs that may be filed in support of Plaintiffs-Appellees.

BACKGROUND AND SUMMARY OF ARGUMENT

“When you are in the military, no one thinks of you as black, or Asian, or gay, or transgender. These are life-and-death situations, and people are just thinking about whether you can do your job and have their backs. Being a service member overshadows any other identity you have.”¹

This is the voice of an Army veteran, who identifies as transgender, describing his experience of proud military service. Amici, their members, and their allies share his voice.

Amici are organizations whose members have served in every branch of the military and fought in every American conflict since World War II. Their members come from diverse racial and ethnic backgrounds. They are gay, lesbian, straight, and bisexual. They are transgender and non-transgender. They are Republicans, Democrats, and Independents. They hail from every region of the United States. They are atheists, Christians, Muslims, and Jews. They are men and women. Above all, they are individuals who stand ready to guard the values that military service instills in all who choose to serve—values that include treating all people with respect, putting the needs of others before their own, and honoring those who take up the call to serve their country.

¹ Unless otherwise indicated, all quotations in this brief are taken from interviews of active duty and veteran service members conducted by Amici’s counsel during the month of October 2018.

The Department of Defense’s 2018 policy (the “Mattis Policy”) barring transgender service members from serving openly in the military is fundamentally inconsistent with those shared values, and the government’s justifications for the Mattis Policy are fundamentally at odds with the experience of the veterans whom Amici represent. The government suggests that allowing transgender Americans to serve openly disrupts the daily lives of service members to the point of eroding unit cohesion. But Amici’s members and allies know from firsthand experience that the bonds between service members are made of stronger stuff.

These bonds, which are forged through service members’ shared values and experiences—despite the personal characteristics that might divide people in civilian life—are the source of the military’s strength. They carry service members through life-or-death situations and beyond. They can easily overcome the frictions that the government identifies as justifications for the Mattis Policy.

Amici believe there is no better way to understand the values shared by those who serve than to listen to the voices of past and present service members themselves. The voices in this brief are those of veteran and active duty soldiers, sailors, marines, and coast guardsmen. Some of them are transgender; some are not. Some have served with transgender individuals; some have not. These

individuals give voice to Amici's belief that excluding openly transgender people from the armed forces disrespects and demeans all individuals who have, and do, serve their country with honor and dignity.

ARGUMENT

I. THE MATTIS POLICY MAKES MILITARY UNITS WEAKER, NOT STRONGER

Amici submit that the U.S. armed forces owe their success to the bonds among their diverse service members. Together, these bonds form what is called, in military parlance, “unit cohesion.”² In defending the Mattis Policy, the government claims that permitting openly transgender individuals to serve disrupts unit cohesion because it will “invade the expectations of privacy of the other servicemembers,” “generate perceptions of unfairness in the ranks,” and “create friction in the ranks.”³ The government suggests that these problems arise from allowing transgender service members to utilize facilities, train, compete, and groom in accordance with their gender identity.⁴

The government is wrong. As reflected in leading military science studies and the experiences of those who serve and have served, unit cohesion is created by joining diverse parties in pursuit of a common goal. Indeed, Amici believe that, rather than being disrupted, unit cohesion is enhanced when transgender individuals can serve without hiding their identities. It is open and

² See Frederick J. Manning, *Morale and Cohesion in Military Psychiatry*, in *Military Psychiatry: Preparing in Peace for War* 4 (Russ Zajtchuk et al. eds. 1994).

³ See Appellants’ Br. 31–33.

⁴ See *id.*

honest service that fosters the positive bonds between service members essential to building unit cohesion and making a stronger fighting force.

A. Unit Cohesion Is the Product of Values and Experiences Shared by Those Who Serve

Unit cohesion plays a vital role in mission success: a unit that is more cohesive shares a greater sense of purpose, and is therefore more effective.⁵ The armed forces seek to build this unit cohesion by fostering bonds between service members based on common values and experience.

The most important of these common values is present even before a service member enlists. Although each new recruit may give a different reason for choosing to join, all share a commitment to service and self-sacrifice that unites them with fellow service members, regardless of who they are or where they come from. According to one current Army service member, who is transgender:

“I joined the Army after the second plane hit the Twin Towers I wanted to serve my country.”

His fellow veterans and service members, both transgender and not, shared their stories as well:

“As first generation immigrants, my parents raised me to believe there is nothing more precious than American freedom I joined out of pure patriotism.”

⁵ See William Darryl Henderson, *Cohesion: The Human Element in Combat*, 1–6 (Nat’l Def. Univ. Press 1985).

“I am a second generation American but we’ve had somebody in every war since World War I, and both my parents are Marines I just knew it was something I wanted to do.”

“I joined the military because I wanted to be part of something bigger than myself.”

“[I joined] to serve my country.”

Once recruits put on their uniforms and begin training, their shared sense of duty grows into a shared commitment to become a powerful fighting unit and to overcome any challenges that stand in the way of success. An Army veteran recounted his experience:

“When my unit started, we were a group of individuals. People from all over the country, some of whom had never left home before. We did not have anything in common except our shared desire to serve our country. Every day as we trained together, we became more than just a group of people, we became one unit. The only thing I cared about, and the person next to me cared about, was whether I could help complete the mission.”

And one Marine veteran shared her experience of becoming a “family” with the Marines in her unit (which included a transgender person), regardless of the differences that she and her fellow service members brought with them:

“When you join the Marines, that is what you are, a Marine. Your gender, your race, your religion do not matter. It is hard to explain but you form a special bond with the people that you train with and serve with. Whether it’s being deployed and being shot at, or the drudgery of mandated tasks, these people become your family. They understand you like no one else possibly can. Regardless of whether I liked them personally,

they were Marines and they were in my unit. They became my family and I would defend their honor no matter what.”

Researchers who have studied unit cohesion similarly conclude that the strongest force binding a unit together comes from the shared experiences of service members as they undergo training and serve alongside one another in pursuit of common goals.⁶ The cohesion that comes from this type of bonding is sometimes called “task cohesion,” and researchers have found it has a positive correlation with a unit’s performance.⁷ As told by a former Army intelligence specialist, who deployed during the Iraq War:

“You have people who join the military who have never left their hometown or county before—people who have never met people of different backgrounds. Everyone is shoved together. Everyone is serving together. And by and large discipline and training is an effective way of handling relationships that might be challenging in just a purely social situation.”

Today, the U.S. military is the most disciplined and deadly fighting force this world has ever known. At the same time, it is remarkably diverse: its service members come from all fifty states; over 40% of enlisted recruits are

⁶ See Manning, *supra*, at 8–9.

⁷ See Robert J. MacCoun, et al., *Does Social Cohesion Determine Motivation in Combat?*, 32 *Armed Forces & Soc’y* 1 (2006).

Hispanic or a racial minority; and women represent 16% of the enlisted forces and 18% of the officer corps.⁸

This diversity does not threaten unit cohesion. On the contrary, Amici believe that the diversity of the U.S. military makes the military stronger and more effective by broadening the shared experiences of units. One Marine veteran who served in Iraq explained:

“The most effective units I saw were those that had people with different perspectives who could think about how to solve a problem in a way you never thought of. When I was in the Middle East I wanted a unit comprising a variety of people, that way I knew that when a problem occurred, and one always occurred, we would be thinking about how to tackle it from all the angles. All I, and my team, cared about was how do we solve the problem.”

The Marine veteran who commanded a transgender Marine noted that her unit, which consisted of individuals of all different races, religions, and political ideologies, was *more* effective due to its diversity. She explained that “the ability to work with so many different individuals, with their own varied and unique experiences, was critical. This process led to creative solutions that, truthfully, I never would have found on my own.” The positive effects of this diversity extend beyond military service. After serving, veterans carry these

⁸ George M. Reynolds & Amanda Shendruk, *Demographics of the U.S. Military*, Council on Foreign Relations (Apr. 24, 2018), <https://www.cfr.org/article/demographics-us-military>.

experiences with them for the rest of their lives and model for the rest of society how to respect, and work across, differences.

The bonds between service members transcend individual differences and last long after individuals leave their units. This is just as true for transgender service members as for those who are not. As one transgender Army veteran recounts:

“To this day I’m still very close to the people I deployed with. We consider ourselves an extended military family. We try to see each other as often as possible, and I always visit when I am in the area. I know their kids and they know mine. It’s great that my son has this huge extended military family that loves him and supports me.”

B. Permitting Openly Transgender Personnel to Serve Does Not Hinder Unit Cohesion

Amici reject the government’s position that allowing openly transgender individuals to serve in the armed forces interferes with unit cohesion. None of the government’s concerns are consistent with Amici’s understanding of unit cohesion, nor with experiences of Amici’s members.

First, the government argues that allowing openly transgender individuals to serve interferes with service members’ reasonable expectations of privacy, due to the possible presence of transgender service members in the berthing, bathroom, and shower facilities that correspond to their identified gender.

In reality, service members—whether transgender or not—are concerned with things that are far more important than these facilities:

“We were not concerned about things like ‘expectations of privacy.’ We were concerned about not getting killed.”

“When you find yourself in combat or bracing for it, trivial discussions like grooming and privacy just melt away. The only thing that is important is teamwork. Privacy is the last concern on your mind.”

“The answer to privacy concerns in the military is that there is no privacy in the military. We shower together, sleep together, do everything together. In the military, every morning you wake up, you are going out of your comfort zone and pushing yourself to become a better soldier.”

Indeed, service members are frequently expected to be flexible and adjust to relatively harsh living conditions, especially when deployed, and they do so capably. The former Army intelligence specialist shared experiences from her deployment in the Middle East during the Iraq War:

“We all slept under the open sky. I slept on the ground at first, then on the hood of my Humvee—I didn’t have a cot until later. On the rare occasions when I slept in a tent or in a building, men and women shared sleeping quarters. This was never an issue. Bathrooms were either port-a-johns or holes in the ground.”

Another veteran, who served for almost two decades in the Navy and Army, and who is transgender, details her experiences:

“During my deployment in Afghanistan, men and women were all housed together. We had no issues or complaints because everyone has things more important on their minds: like our

mission. We are all one team and we are all fighting together—this is our Army. Everything else is trivial.”

Second, the government contends that allowing transgender service members to serve in their identified gender causes a perception of unfairness due to the sex-based standards that apply to military training. But the sort of issues the government raises are not likely to lead to any serious problems with unit cohesion, nor are issues concerning physical fitness levels unique to the context of transgender service members. According to the former Army intelligence specialist:

“This has been an issue for women in combat for a while. People said for many years that it wasn’t fair that I didn’t have to run as fast or do as many pushups as a man. Sometimes that led to grumblings or complaints, but that’s not unusual. Colin Powell once said that ‘[t]he day soldiers stop complaining to you, that’s when you should worry.’ I don’t think there was any effect on unit cohesion, and I don’t see why accommodating transgender service members would be any different.”

And a Marine veteran explained:

“Creating and enforcing fitness standards while accommodating people’s biological differences has never been new to the military. For example, I had two fellow Marines in the same unit: one was five-foot-three and about 160 pounds, and the other was six-foot-five and over 250 pounds. Units deal with these structural barriers all the time. They find ways to compensate for them, and they make things work. I can’t think of why it has to be different when it comes to transgender people serving.”

Third, the government claims that allowing transgender service members to serve in their identified gender creates friction in the ranks due to a perceived unfairness caused by requiring transgender service members to meet the uniform and grooming standards for their identified gender. But Amici share the view of active service members and veterans alike, who stated that “this is trying to make a mountain out of tiny little pebbles” and they “just can’t imagine anyone making a big deal out of this.” After all, service members “are trained to serve closely with people of different skin colors or who grew up speaking different languages—how could a grooming standard be a larger gap than that?”

Lastly, the government asserts that each of these concerns it has raised with the open service of transgender individuals requires commanders to devote their time and resources to resolving any resulting issues. In the government’s view, this then erodes trust and diverts too much time away from “military tasks,” which in turn threatens unit cohesion. But the idea that “military tasks” are so all-consuming that the armed forces cannot invest any time or resources in “non-military tasks” is, to say the least, inconsistent with the day-to-day realities of military life. Each branch of the armed forces has put in place extensive infrastructure, training regimes, and rules that allow personnel to deal with “non-military” issues so that they can remain a ready and capable fighting force. As a

transgender veteran of the Navy who transitioned while in service, and a transgender Army veteran explained, respectively:

“There are already so many policies in place to deal with all sorts of services and things that are not really ‘military tasks.’ Things like medical waivers, daycare services, pregnancies, divorce services, psychological services, and financial counseling. These all affect daily life; these all take time and resources.”

“There are so many bits and pieces, so many levels of service in the military that are just about day-to-day life. We have young people serving in the military who are going through identity crises, we have people going through divorces, and we have people who are going through other stuff at home. So much of military leadership’s job is to help people figure out these issues and not let them affect their performance in battle.”

Moreover, those who shared their stories of service were confident that rank-and-file commanders could perform their duties capably for transgender individuals, just as they do for all other individuals under their watch:

“Handling personnel issues and handling training on those issues is already built in to the way the military works. We are not talking about a nine-to-five job where someone goes home at the end of the day and no one sees each other after that. The military is highly integrated into the lives of its service members. Commanders get calls if one of their troops gets a DUI, or misses a payment on his or her car. I used to have to get permission from a commander just to go to the medical clinic if I had a cold. This is just how the military works.”

“Most of the so-called ‘cohesion issues’ raised by the government are just part of the job description for lower-level leaders’ jobs.”

Amici fail to see how allowing openly transgender people to serve

materially changes the amount of time and resources spent on the day-to-day management of a fighting force of hundreds of thousands. Indeed, veteran commanders, including those who have commanded transgender service members, have stated that existing military structures—and the leadership required in a diverse fighting force—require consideration of individual needs, and that addressing any additional concerns arising from the inclusion of transgender individuals is “minimal”:

“I cared about all my Marines deeply regardless. I cared about my trans Marine the same way I cared about my deeply religious Southern Baptist Marine who chose to be a virgin until the day he got married. I was already intimately involved with Marines’ lives. That’s just the way it is. Commanding a transgender soldier is no different.”

In Amici’s view, the bonds between service members are too strong to be broken by the types of issues surrounding transgender service that the government claims are detrimental to unit cohesion. Service members are concerned, above all else, with the ability of their teammates to accomplish their tasks. And all service members, regardless of their branch of the armed forces, and regardless of their rank, are trained to treat each other with dignity and respect.

This is no less the experience of transgender service members. A Navy veteran who transitioned during service recounts:

“I never ran into any problems with my teammates. They all knew I was transitioning, and no one ever said anything negative to me. I definitely had to play the role of educator, but

they were willing to learn. You just don't care who you're serving next to as long as they can do their jobs."

A current Army service member who is transgender shared that:

"I do not know of anyone in the military who supports this new policy or who actually wants to remove transgender people from the military. I don't know of anyone who had a negative reaction when I came out as transgender. My unit and my commanders have been great—my commanders have even really gone to bat for me when I needed assistance. And I am still very close with my old unit from when I was deployed to Iraq, and they all have been great too. My worst experiences with being openly transgender in the military have come from people just lacking an understanding of what it means to be transgender, and even those experiences have not been very bad."

And a Coast Guard veteran who transitioned during service said that

"[e]ven when [she] was openly serving after [her] surgery, [she] never had any incident of disrespect or discomfort, and it was a complete non-issue."

Amici submit that these individuals were treated with respect and dignity because of the U.S. military's success at instilling strong values among its extraordinarily diverse body of service members. The former Army intelligence specialist describes her faith in the ability of military leadership to prevent the type of "friction" that the government argues is insurmountable in the case of transgender individuals:

"As a woman, I found that a lot of how I was treated by men was determined by my leaders. When commanders treated me with respect and dignity, so did the men in my unit. If you have an environment where commanders demand professionalism

from everyone and hold everyone to high standards, as they should, then you aren't going to have any problems. One of the strongest lessons we all learn from childhood is not to kill other people—yet we train people to do that. How could it be that the military can train people to do that, but cannot train people to treat their colleagues with professionalism?”

Amici, too, hold a deep-seated belief that the open service of transgender people in no way undermines the powerful bonds between service members or threatens unit cohesion. Their belief is fortified by statements made by members of the Joint Chiefs of Staff, who testified before Congress that they had “received precisely zero reports . . . of issues of cohesion, discipline, morale, and all those sorts of things” (General Milley, Chief of Staff of the Army);⁹ were not aware of “any specific issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service members in the Air Force” (General Goldfein, Chief of Staff of the Air Force);¹⁰ and were not “aware of any issue of unit cohesion, disciplinary problems, or issues with morale resulting from open transgender service” (Admiral Richardson, Chief of Naval Operations, and General Neller, Commandant of the Marine Corps).¹¹

Given Amici's faith in the power of military leaders to imbue their service members with values of dignity and respect for one another, Amici are

⁹ JA836.

¹⁰ JA832.

¹¹ JA834.

unsurprised that unit cohesion has not suffered as a result of welcoming openly transgender service members into their ranks. After all, as one Marine veteran notes, negative effects on unit cohesion are “brought up every time a new population is allowed to serve—whether it was black people, Native Americans, women, or when Don’t Ask Don’t Tell was repealed—and it has never been the case, so why would it be any different now?”

C. Allowing Openly Transgender Personnel to Serve Enhances Unit Cohesion

In Amici’s view, it is the Mattis Policy that hinders unit cohesion by forcing transgender service members to hide their identities. Further, the Mattis Policy ignores the effects on unit cohesion caused by removing from service dedicated transgender individuals who have spent years training with their units.

The Mattis Policy, if implemented, will deter transgender service members from forming close bonds with their fellow service members by discouraging them from serving as openly transgender. A current officer in the United States Army Reserve shared a story from her deployment:

“When I was deployed in Kuwait, I served with someone who I knew was transgender, and who had to hide it. I could just see the pain this person went through. I knew that if this person did not have to deal with that it would have made the Army stronger. But instead this person had to hide who they were. As officers we are told to know more-or-less everything about our soldiers so that we can support them. But this policy contradicts that—it makes it so people have to hide who they are from their commanders and from each other.”

Likewise, a current Army service member who is transgender explained:

“When I told my unit I was transitioning, no one cared. If anything, it brought me closer together with my unit because I felt that I could be honest about who I was.”

He went on to explain how departures by service members who have been serving alongside their fellow service members can negatively affect a unit’s cohesion:

“We build relationships with each other on a daily basis. Over time we get used to working with each other. When you take someone out, that affects that unit’s readiness; it affects that unit’s cohesion. You might be taking out the only pilot who knows how to fly that aircraft. You think that doesn’t affect morale?”

And the Marine veteran who commanded a transgender Marine echoed these views:

“Losing Marines you trained with is no small thing. Aside from lack of morale, there’s also a lack of mission readiness when you start booting people out who have multiple deployments. You still see it. Experience is invaluable. That camaraderie is invaluable. Morale suffers whenever a unit loses people, whether by being discharged or losing them in combat.”

II. THE MATTIS POLICY IS INCONSISTENT WITH NATIONAL SECURITY INTERESTS AND THE MILITARY’S FUNDAMENTAL VALUES

Amici, their members, and their allies believe that military service is one of the highest forms of individual service that a person can perform for his or her country. For the last forty years, the military has relied on an all-volunteer

fighting force composed of individuals who are willing to risk their lives for something larger than themselves. Those who make this commitment do so on the promise that they will be judged solely on their merit and that if they serve they will never be left behind. Honoring and fulfilling this promise is not only a moral imperative, it is vital to our nation's security, because adherence to these principles allows the U.S. military to maintain a substantial volunteer force that comprises the highly skilled and capable individuals it requires. The Mattis Policy, which prevents exemplary men and women from serving their country, contravenes the military's ideals and breaks this promise.

A. The Mattis Policy Arbitrarily Excludes Capable Individuals Who Are Willing to Serve Their Country

Amici believe it is essential that the military welcome those who are willing and able to perform military service. Imposing barriers unrelated to a person's ability to perform the duties of military service limits the pool of willing recruits, and not only bars them from the opportunities the armed forces can provide, but weakens the military itself.

Amici are unaware of any reason that openly transgender people, as a group, are unable to perform the duties of military service. Therefore, to exclude them categorically deprives the military of capable individuals whose service would make this nation stronger. In the words of the former Army intelligence specialist:

“At this point in time, less than 30% of young people are qualified to serve in the military. The majority are disqualified because of obesity, lack of high school education, or a criminal record. To further restrict the pool of eligible recruits based on something like gender identity is harmful to our national security.”

The Mattis Policy would not just limit the pool of candidates who join the military in the future. Absent exceptions, it could also lead to the expulsion of current service members who today are proudly and capably serving their country, such as a transgender soldier who stated:

“I know that I am good at my job, and my unit benefits from that. Why would anyone tell me that I am taking anything away by being here? My unit doesn't care what I do in my personal life; they just care that I get my job done. If you asked any of my co-workers about me, they would only have good things to say. I exceed the standards for this job. I add value. Why would anyone want to lose me as an asset?”

In addition to the rejection of skilled and capable service members, the Mattis Policy would also lead to the inefficient spending of military resources on training and retention of service members who, for no legitimate reason, would be removed from military service and replaced by individuals who require extensive training to do the same job. A Coast Guard veteran described a transgender individual whom the Coast Guard had “put lots of money into educating and training in topics related to cyber and computer issues,” but who “ended up quitting because of the repeated rule changes” regarding transgender

service members. Likewise, the Navy veteran who transitioned during service observed:

“I was one of less than maybe ten people that performed a particular highly specialized job in the Navy. I was also one of the top people in my field. If I had been kicked out, the Navy would have lost an excellent, productive service member, and would have had to spend a lot of time and money training someone to replace me.”

Amici are committed to a U.S. military that does not waste this nation’s talents or budget by jettisoning the best and brightest who wish to serve. For this reason, they cannot support the Mattis Policy.

B. The Mattis Policy Demeans All Who Serve

At bottom, the Mattis Policy violates the very ideals of the military—ideals personified by transgender service members such as the Army veteran who said that he “joined the military to become part of something bigger than [him]self.”

When individuals serve and risk their lives for their country, the military owes them a duty to treat them with honor, loyalty, and respect. Transgender troops deserve no less. Amici and their members, many of whom have served with transgender service members, commanded transgender service members, and are transgender service members, demand no more. Instead, however, the Mattis Policy, in the words of that Army veteran, forces veterans to “feel subhuman, like [their] existence is some extreme inconvenience that is too

taxing to accommodate,” when the reality is that “the transgender people [he] knows just want to blend in, do [their] job, and perform whatever tasks are given to [them].”

That any loyal soldier can be made to “feel subhuman” by the Mattis Policy is unconscionable. It is an assault on the ideals and values of the military—ideals that are not limited to the military but are reflective of the country as a whole. Amici know that the military is a microcosm of the United States itself. When the military institutes exclusionary policies that disrespect particular groups, the effects ripple through our society.

The Mattis Policy demeans all veterans who value their service and their fellow veterans. As one Marine veteran explained:

“I am offended when I am told by people that we cannot encounter or handle a new situation such as transgender troops. It flies in the face of everything that I have seen and know about the military. It is demeaning. We are responsible for fighting for this country, risking our lives—but somehow we are not trusted to be able to function if one of our teammates is transgender. This is not the military I remember.”

And in the words of a Vietnam War veteran, the son of Holocaust survivors:

“I am a first-generation American. I chose to join the Navy at a time when thousands of people were lying and fleeing the country in order to avoid serving. I wasn’t drafted—I joined out of pure patriotism. When one group is humiliated, we are all humiliated. Equality and freedom are what America is about—and it demeans the people who serve to defend it when the military adopts a position of prejudice.”

* * *

Amici believe that the military, and this nation, are at their strongest when they stand by their values and use them to forge bonds that can survive even the trauma of war. Examined through the lens of these values, the Mattis Policy should not survive.

CONCLUSION

For all of the foregoing reasons, the decision below should be affirmed.

Dated: October 29, 2018

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5) because it contains 6,143 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2018, I electronically filed the foregoing Amicus Curiae Brief on Behalf of 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, US & Latin Veterans' Support Embassy, and Votevets.org in Support of Plaintiffs-Appellees and Affirmance with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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