

TITLE: Stories from the Front Lines: Military Policies Regarding Openly Transgender Americans

SUBJECT MATTER: LGBTQ; Civil Rights

DESCRIPTION:

People who identify as transgender have long served honorably in the U.S. military; by one estimate, there are approximately 15,500 transgender people, including APAs, who are currently serving, many still silently. Some came out in 2016 following the Obama Administration's announcement that existing policies would be changed, but President Trump reversed course, first with a tweet in July 2017, and then with a formal policy in March 2018, which attempted to prohibit most transgender Americans from serving in the military. So far, four federal courts have held Trump's ban to be unconstitutional. This panel, featuring two openly transgender veterans and retired U.S. Army JAG, will discuss the human realities of the policy prohibiting transgender Americans from serving in the military, as well as the military readiness, public policy and legal arguments being advanced to challenge and defend the ban. Representatives of advocacy organizations will also give an update regarding the status of the numerous legal challenges to the ban.

MODERATOR: Rachel See

SPEAKERS:

New Panelist and title

Brynn Tannehill (LCDR, USN (ret)), Director of Advocacy at Service members, Partners, and Allies for Respect and Tolerance for All (SPART*A):

Laila Villanueva (USAF (ret)), SPARTA

Program Materials - Bibliography

1. "New Trump Transgender Military Policy Bars Those With Gender Dysphoria". March 23, 2018. (<https://www.military.com/daily-news/2018/03/23/new-trump-transgender-military-policy-bars-those-gender-dysphoria.html>)

This article provides an overview of the main contentions in the issue behind changing the policies with regards to transgender military servicepersons.

2. "Top Military Brass at Odds with Mattis on Transgender Issues". [Military.com](https://www.military.com/daily-news/2018/04/20/top-military-brass-odds-mattis-transgender-issues.html). April 20, 2018. (<https://www.military.com/daily-news/2018/04/20/top-military-brass-odds-mattis-transgender-issues.html>).

This article discusses top military leaders like Sergeant Major of the [Army](#) Dan Dailey, Chief of Naval Operations Adm. John Richardson, Gen. Robert Neller, the Marine Commandant, Army Chief of Staff Gen. Mark Milley, Adm. Paul Zukunft, the Coast Guard Commandant.

3. Memorandum for the Secretary of Defense the Secretary of Homeland Security regarding Military Service by Transgender Individuals (Released March 23, 2018) (<https://www.politico.com/f/?id=00000162-5590-df2f-a7e2-d7d2ebe00001>)

This memorandum provides the new policies recently adopted by the Department of Defense on March 23, 2018.

4. Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security (released August 25, 2017) (<https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-secretary-homeland-security/>)

This memorandum provides the Secretary of Defense and Secretary of Homeland Security with a new policy and directives different from the previous administration's policy implemented on June, 2016, regarding transgender individuals' service in the military and use of DoD or DHS resources to fund sex reassignment surgical procedures for military personnel.

5. "Transgender Service in the U.S. Military. An Implementation Handbook". United States Department of Defense. September 30, 2016. (https://digital.library.unt.edu/ark:/67531/metadc949052/m2/1/high_res_d/army_trans_handbook.pdf)

This handbook provides commander and service member responsibilities implemented in the former policy. In addition, it provides process such as Gender Transition Approval Process Overview, background, policy, and terms and definitions

6. "DoD Instruction 1300.28 In-Service Transition for Transgender Service Members". Ashton Carter, Secretary of Defense. (https://www.defense.gov/Portals/1/features/2016/0616_policy/DoD-Instruction-1300.28.pdf)

This document's purpose include: to establish a construct by which transgender Service members may transition gender while serving, to enumerate prerequisites and prescribes procedures for changing a Service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), to specify medical treatment provisions for Active Component (AC) and Reserve Component (RC) transgender Service members, and to implement the policies and procedures in Directive-type Memorandum 16-005.

7. "Order Granting in Part and Denying in Part Plaintiffs' and Washington's Motions for Summary Judgment; Granting in Part and Denying in Part Defendants' Motion for Partial Summary Judgment". April 13, 2018. (<http://files.eqcf.org/wp-content/uploads/2018/04/233-Order.pdf>)

This is Judge Marsha Pechman's order directing parties to proceed with discovery and prepare for trial on the issues of whether, and to what extent, deference is owed to the Ban and whether the Ban violates equal protection, substantive due process, and the First Amendment. The

order also concludes that all Plaintiffs and Washington have standing; that the 2018 Memorandum and Implementation Plan do not moot their claims; and that transgender people constitute a suspect class necessitating a strict scrutiny standard of review. Karnoski, et al. v. Trump, et al. – 2:17-cv-01297 (D.Western District of Washington, Seattle).

8. “Order Denying Defendants’ Request for Stay of Proceedings”. November 20, 2017. (<http://files.eqcf.org/wp-content/uploads/2018/01/98-Order-Denying-Stay.pdf>)

This is Judge Marsha Pechman’s Order Denying Defendants’ Request for Stay of Proceedings which analyzes that granting Defendant’s stay will harm Plaintiffs. The Court rejected Defendants’ contention that because the Memorandum Opinion and Order issued in Doe 1, et al. v. Trump, et al., Case No. 17-1597 (CKK), 2017 WL 4873042 (D.D.C. Oct. 30, 2017), preliminarily enjoined the government from enforcing two sections of the Presidential memorandum at issue here, see 82 FR 41319, (the “Presidential Memorandum”), the Court should stay the proceedings, since State of Washington asserts interests different from private plaintiffs, and where Plaintiffs raise claims not considered by the District Court for the District of Columbia. Karnoski, et al. v. Trump, et al. – 2:17-cv-01297 (D.Western District of Washington, Seattle).

9. “Order Denying Motion for Clarification and Partial Stay of Preliminary Injunction Pending Appeal”. December 29, 2017. (<http://files.eqcf.org/wp-content/uploads/2018/01/121-Order-Denying-D-Mtn-Clarification-and-Partial-Stay.pdf>)

Judge Perchamn enjoined Defendants from “taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump’s July 26, 2017 announcement” regarding military service by transgender individuals, and clarified Defendants have not demonstrated that a partial stay of the Court’s Order is warranted. Karnoski, et al. v. Trump, et al. – 2:17-cv-01297 (D.Western District of Washington, Seattle).

10. “Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss and Order Granting Plaintiffs’ Motion for Preliminary Injunction”. December 11, 2017. (<http://files.eqcf.org/wp-content/uploads/2017/12/103-Order-on-PI-and-MTD.pdf>)

Judge Perchman granted Defendants’ Motion to Dismiss with Plaintiffs’ procedural due process claim; denied Defendants’ Motion to Dismiss Plaintiffs’ equal protection, substantive due process, and First Amendment claims; granted Plaintiffs’ Motion for a Preliminary Injunction, and enjoined Defendants, et al. from taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump’s July 26, 2017 announcement, to take effect immediately and shall remain in effect pending resolution of this action on the merits or further order by the

Court. Karnoski, et al. v. Trump, et al. – 2:17-cv-01297 (D. Western District of Washington, Seattle).

11. “Order [Denying Defendants’ Motion for Stay of Preliminary Injunction Pending Appeal”. July 18, 2018. (<http://files.eqcf.org/wp-content/uploads/2018/07/90-ORDER-Denying-Stay-Pending-Appeal.pdf>)

Circuit Judges TASHIMA, SILVERMAN, and GRABER upheld the district court’s December 11, 2017 preliminary injunction which preserves the status quo, allowing transgender service members to serve in the military in their preferred gender and receive transition-related care. They denied appellants’ request to stay the preliminary injunction, pending the outcome of this appeal, in order to implement a new policy. Karnoski, et al. v. Trump, et al. D.C. No. 2:17-cv-01297-MJP

12. “Order denying Motion for temporary administrative stay; denying Motion for stay pending appeal”. December 21, 2017. (<http://files.eqcf.org/wp-content/uploads/2017/12/31-Order-Denying-Stay.pdf>)

Judge Motz, Judge Diaz, and Judge Harris from the U.S. Court of Appeals, Fourth District, denied appellants’ emergency motion for administrative stay and partial stay pending appeal. Stone, et al. v. Trump, et al. No. 17-2398 (1:17-cv-02459-MJG)

13. “Order granting [Appellants’] Motion to dismiss appeal pursuant to FRAP 42(b)”. February 2, 2018. (<http://files.eqcf.org/wp-content/uploads/2018/02/38-Order-Granting-Dismissal.pdf>)

Judge Motz, Judge Diaz, and Judge Harris from the U.S. Court of Appeals, Fourth District, granted appellants’ motion to dismiss pursuant to FRAP 42(b). Stone, et al. v. Trump, et al. No. 17-2398 (1:17-cv-02459-MJG)

14. “Order”. August 14, 2018. (<http://files.eqcf.org/wp-content/uploads/2018/08/205-Order-re-discovery-motions.pdf>)

Magistrate Judge A. David Copperthite’s Order dismissed as moot 178 Motion ; granted in part and denied in part 179 Motion for Protective Order; and granted 177 Motion to Compel/Local Rule 104.7 Certificate. Stone, et al. v. Trump, et al. No. 17-2398 (1:17-cv-02459-GLR)

15. “Memorandum Opinion“. August 14, 2018. (<http://files.eqcf.org/wp-content/uploads/2018/08/204-Memo-Opinion-re-discovery-motions.pdf>)

Magistrate Judge A. David Copperthite’s Memorandum Opinion explains the relevant issues in discovery such as whether Plaintiffs can obtain the information necessary from the non-Presidential discovery to define the government’s “intent” with respect to the ban. Stone, et al. v. Trump, et al. No. 17-2398 (1:17-cv-02459-GLR)

16. “Memorandum Opinion Regarding 154 ORDER GRANTING Defendants’ 90 Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the Preliminary Injunction and DENYING Defendants’ 89 Motion for a Protective Order.” August 6, 2018 (<http://files.eqcf.org/wp-content/uploads/2018/08/155-Memo-Opinion.pdf>)

Judge Colleen Kollar-Kotelly decided that the President should not be retained as the Defendant, as there is “no sound reason for risking constitutional confrontations,” and separation of power principles set forth in United States Supreme Court and D.C. Circuit precedent. Court’s preliminary injunction will be dissolved only as it applies to the President. Doe, et al. v. Trump, et al. – 1:17-cv-01597-CKK (D.DC)

17. “Memorandum Opinion of Order Denying Defendants’ 115 Motion to Dismiss Plaintiffs’ Second Amended Complaint or, in the Alternative, Defendants’ Motion for Summary Judgment, and DENYING Plaintiffs’ 131 Cross-Motion for Summary Judgment.” August 24, 2018. (<http://files.eqcf.org/wp-content/uploads/2018/08/160-Opinion.pdf>).

Judge Colleen Kollar-Kotelly denied summary judgment, stating the need to resolve the level of scrutiny the Court must apply, and the degree of deference owed, before the Court can assess the constitutionality of the challenged policy. Doe, et al. v. Trump, et al. – 1:17-cv-01597-CKK (D.DC)

18. “Memorandum Opinion Regarding 154 ORDER GRANTING Defendants’ 90 Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the Preliminary Injunction and DENYING Defendants’ 89 Motion for a Protective Order.” August 6, 2018 (<http://files.eqcf.org/wp-content/uploads/2018/08/155-Memo-Opinion.pdf>)

Judge Colleen Kollar-Kotelly decided that the President should not be retained as the Defendant, as there is “no sound reason for risking constitutional confrontations,” and separation of power principles set forth in United States Supreme Court and D.C. Circuit precedent. Court’s preliminary injunction will be dissolved only as it applies to the President. Doe, et al. v. Trump, et al. – 1:17-cv-01597-CKK (D.DC)

19. “Order/Referral to ADR”. July 30, 2018. (<http://files.eqcf.org/wp-content/uploads/2018/08/118-Order-ADR-Referral.pdf>)

Judge Jesus G. Bernal. Case ordered to Magistrate Judge Kenly Kiya Kato for Settlement Conference. ADR Proceeding to be held no later than 4/22/19. Stockman, et al. v. Trump, et al. 5:17-cv-01799 (C.D.Cal.)

