

United States Senate

WASHINGTON, DC 20510

April 26, 2018

The Honorable James N. Mattis
Secretary of Defense
1100 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Mattis,

We write with great concern and disappointment about your implementation policy recommendations for President Trump's transgender ban that were released on March 23, 2018. The recommendations and their supporting report are contrary to medical and scientific consensus and misrepresent the most comprehensive analysis of the costs and implications of transgender service, published by RAND for the Department only two years ago.¹ The recommendations and report break faith with the men and women serving in our military by establishing a new "Don't Ask, Don't Tell" for transgender service members, permitting them to serve only if they are willing to forego any chance of living as their true selves. Just as our mistaken policy regarding lesbian, gay and bisexual service members harmed readiness and ultimately was repealed, the implementation of your recommendations will also harm our nation's military. Accordingly, we are opposed to the implementation of this discriminatory policy.

This new policy came as a surprise to many of us, particularly in light of the many statements—from all levels of military and political leadership under your tenure—arguing that open service has had no impact on readiness or good order and discipline, and that transgender service members should be treated with dignity and respect and allowed to serve as long as they meet the standards. Just last month, Secretary of the Army Mark Esper told the press that the issue of transgender service "has not come up" in his conversations with soldiers.² Last year, Chairman of the Joint Chiefs of Staff General Joe Dunford testified before the Senate Armed Services Committee that "[a]ny individual who meets the physical and mental standards and is worldwide deployable and is currently serving should be afforded the opportunity to continue to serve."³ Last year, Chief Master Sergeant of the Air Force Kaleth Wright told airmen that "[t]here was a time when I couldn't serve in our United States Air Force. There was a time when my wife, who is retired, couldn't serve in our United States Air Force, because [the military] thought it would be too disruptive. So as long as they are in uniform and considered airmen in our United States Air Force, we treat them with the same level of dignity and respect we would treat any other airmen."⁴ And 56 retired general and flag officers said

¹ "On RAND's Research Findings Regarding Transgender Military Personnel Policy," Agnes Gereben Schaefer, Commentary (The RAND blog), March 27, 2018. <https://www.rand.org/blog/2018/03/on-rands-research-findings-regarding-transgender-military.html>

² "Soldiers not asking about transgender policy: Army secretary," Elizabeth McLaughlin, Feb 15, 2018, <http://abcnews.go.com/US/soldiers-transgender-policy-army-secretary/story?id=53118727>

³ General Joseph F. Dunford, Jr, testimony before the Senate Armed Services Committee, September 26, 2017, https://www.armed-services.senate.gov/imo/media/doc/17-80_09-26-17.pdf

⁴ "Air Force's top enlisted pledges transgender airmen will be treated with respect," Stephen Losey, September 20, 2017, <https://www.airforcetimes.com/news/your-air-force/2017/09/20/air-forces-top-enlisted-pledges-transgender-airmen-will-be-treated-with-respect/>

“proposed ban, if implemented, would cause significant disruptions, deprive the military of mission-critical talent, and compromise the integrity of transgender troops who would be forced to live a lie, as well as non-transgender peers who would be forced to choose between reporting their comrades or disobeying policy. As a result, the proposed ban would degrade readiness even more than the failed ‘don’t ask, don’t tell’ policy.”⁵

Yet, on March 23, in ongoing litigation challenging the President’s proposed ban, the Department of Justice filed a declaration in federal court that included a memo under your signature providing implementation recommendations to the President that would essentially bar transgender service members from accession and retention.

These recommendations purport to be based on an attached report that misrepresents the scientific consensus on gender dysphoria and falsely claims that transgender individuals cannot meet the same physical and mental health standards applied to others.⁶ These misrepresentations are in contravention of the conclusions of medical and mental health professionals about gender dysphoria and transgender service in the military. The American Medical Association reiterated its stance on April 3, 2018, that “[w]e believe there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude transgender individuals from military service.”⁷ The American Psychological Association released the following statement:

The American Psychological Association is alarmed by the administration’s misuse of psychological science to stigmatize transgender Americans and justify limiting their ability to serve in uniform and access medically necessary health care.

Substantial psychological research shows that gender dysphoria is a treatable condition, and does not, by itself, limit the ability of individuals to function well and excel in their work, including in military service. The science is clear that individuals who are adequately treated for gender dysphoria should not be considered mentally unstable. Additionally, the incidence of gender dysphoria is extremely low.

No scientific evidence has shown that allowing transgender people to serve in the armed forces has an adverse impact on readiness or unit cohesion. What research does show is that discrimination and stigma undermine morale and readiness by creating a significant source of stress for sexual minorities that can harm their health and well-being.⁸

⁵ “Fifty-Six Retired Generals and Admirals Warn That President Trump’s Anti-Transgender Tweets, If Implemented, Would Degrade Military Readiness,” August 1, 2017 <https://www.palmcenter.org/fifty-six-retired-generals-admirals-warn-president-trumps-anti-transgender-tweets-implemented-degrade-military-readiness/>

⁶ For misrepresentation of scientific consensus, see statements from American Medical Association and American Psychological Association, below. Further, What We Know project at Cornell University conducted a systematic literature review of all peer-reviewed articles published in English between 1991 and June 2017 that assess the effect of gender transition on transgender well-being. The project identified 56 studies that consist of primary research on the topic, of which 93% found that gender transition improves the overall well-being of transgender people, while 7% reported mixed or null findings. They found no studies concluding that gender transition causes overall harm.

⁷ Letter from James L. Madara, MD, executive vice president and CEO of the American Medical Association, to Secretary of Defense James Mattis, April 3, 2018. <https://www.politico.com/f/?id=00000162-927c-d2e5-ade3-d37e69760000>

⁸ “APA Statement Regarding Transgender Individuals Serving in Military,” March 26, 2018 <http://www.apa.org/news/press/releases/2018/03/transgender-military.aspx>

Further, in a statement issued on March 28, former U.S. Surgeons General M. Joycelyn Elders and David Satcher debunked the report's assertion that there is "considerable scientific uncertainty and overall lack of high quality scientific evidence demonstrating the extent to which transition-related treatments . . . remedy the multifaceted mental health problems associated with gender dysphoria."⁹ The former surgeons general counter that "there is a global medical consensus that such care is reliable, safe, and effective" and conclude that "[a]n expectation of certainty is an unrealistic and counterproductive standard of evidence for health policy—whether civilian or military—because even the most well-established medical treatments could not satisfy that standard" and setting such a standard "suggests an inability to refute the research."¹⁰ Finally, they "underscore that transgender troops are as medically fit as their non-transgender peers and that there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude them from military service or to limit their access to medically necessary care."¹¹

The March 23 report also claims that "[u]nlike past reviews, the Panel's analysis was informed by the Department's own data and experience obtained since the Carter policy took effect."¹² However, most of the bases for the report's recommendations are not grounded in any reported experience from the last two years, but rather in "potential" issues. For example, the report asserts that "[t]he potential for discord in the unit during the routine execution of daily activities is substantial and highlights the fundamental incompatibility of the Department's legitimate military interest in uniformity, the privacy interests of all Service members, and the interest of transgender individuals in an appropriate accommodation."¹³ Given that the Department's experience with open service should, after almost two years, include "routine execution of daily activities," it is telling that this conclusion is offered without evidence of such "discord." It is one of many such assertions that open transgender service poses problems made without any evidence drawn from "the Department's own data and experience."¹⁴

The Department of Defense and every service promised their transgender service members that they would be treated with dignity and respect. These recommendations and report fail in that promise. The report has provided no proof that open transgender service would undermine readiness, yet has been used to recommend a policy that would deny transgender Americans the opportunity to serve their country unless they hide their identities.

In 2010, then Chairman of the Joint Chiefs Admiral Mike Mullen told Congress with regard to the Don't Ask, Don't Tell policy: "No matter how I look at the issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens. . . . For me, personally, it comes down to integrity — theirs

⁹ Department of Defense Report and Recommendations on Military Service by Transgender Persons (Feb. 2018), pg 5.

¹⁰ Ibid.

¹¹ Ibid.

¹² DoD Report, pg 18

¹³ DoD Report, pg 38.

¹⁴ Footnote 143 on page 37 of the DoD Report says that DoD policy instructions "prevent the Department from tracking individuals who may identify as transgender as a potentially unwarranted invasion of privacy" putting in question the Department's claims about how its data informed this report.

as individuals and ours as an institution....I also believe that the great young men and women of our military can and would accommodate such a change. I never underestimate their ability to adapt.”¹⁵

These words are as true today as they were in 2010. At a time when the U.S. military is struggling to recruit and retain the number of quality individuals that it requires to meet today’s challenging environment, this policy will undermine morale within the services and send a message to young Americans that the military is an outdated institution that discriminates against those who are able and want to serve simply because of who they are.

We strongly oppose your recommendations. Rather than a policy which excludes all transgender individuals, the military should establish a policy which includes all Americans who are willing to serve and a policy that reasonably protects the military’s interest as an employer in providing necessary medical care for those willing to serve our country.

Sincerely,



Kirsten Gillibrand
United States Senator

Lisa Murkowski
United States Senator



Heidi Heitkamp
United States Senator



Elizabeth Warren
United States Senator



Chris Van Hollen
United States Senator



Jeanne Shaheen
United States Senator

¹⁵ Hearing of the Senate Armed Services Committee; Subject: Defense Authorization Request For Fiscal Year 2011; The Future Years Defense Program; The 2011 Quadrennial Defense Review (Qdr); The 2011 Ballistic Missile Defense Review (BMDR); The "Don't Ask, Don't Tell" Policy, February 2, 2010



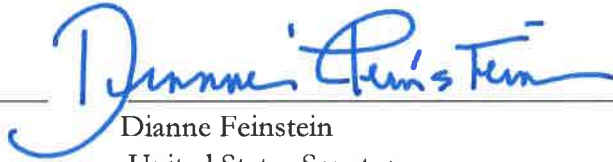
Maria Cantwell
United States Senator



Tammy Baldwin
United States Senator



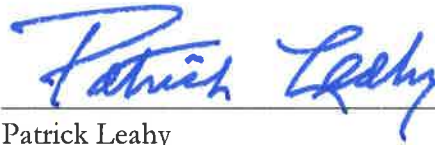
Bernard Sanders
United States Senator



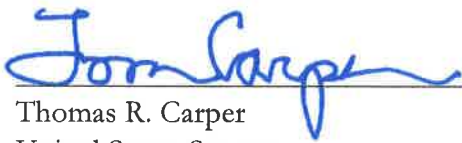
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Tina Smith
United States Senator



Patrick Leahy
United States Senator



Thomas R. Carper
United States Senator



Mazie K. Hirono
United States Senator



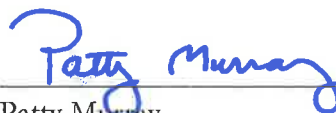
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Amy Klobuchar
United States Senator



Sherrod Brown
United States Senator



Patty Murray
United States Senator



Catherine Cortez Masto
United States Senator



Christopher S. Murphy
United States Senator



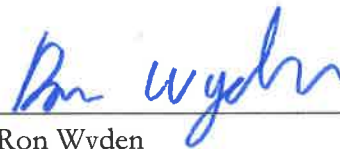
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Ron Wyden
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Tammy Duckworth
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Kamala D. Harris
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Sheldon Whitehouse
United States Senator



Brian Schatz
United States Senator



Benjamin L. Cardin
United States Senator



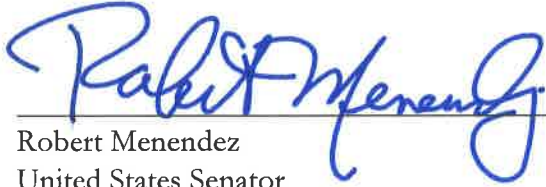
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United States Senator



Christopher A. Coons
United States Senator



Michael F. Bennet
United States Senator



Robert Menendez
United States Senator



Richard Blumenthal
United States Senator



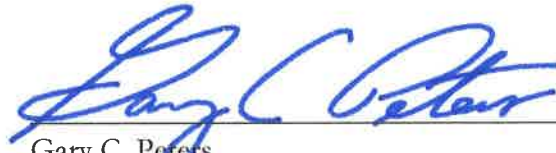
Cory A. Booker
United States Senator



Mark R. Warner
United States Senator



Debbie Stabenow
United States Senator



Gary C. Peters
United States Senator



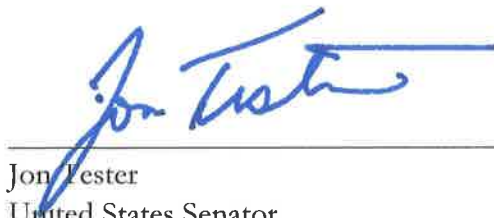
Martin Heinrich
United States Senator



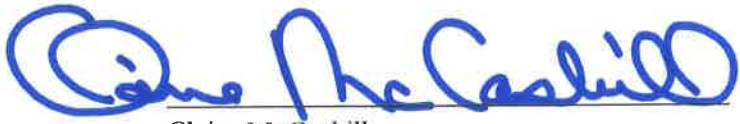
Tom Udall
United States Senator



Margaret Wood Hassan
United States Senator



Jon Tester
United States Senator



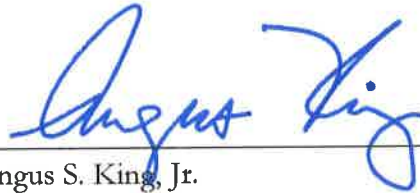
Claire McCaskill
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Doug Jones
United States Senator



Joe Donnelly
United States Senator



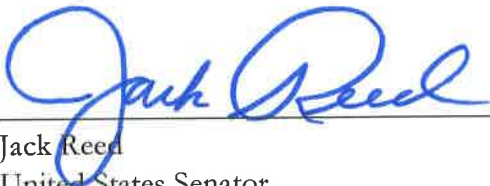
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