

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COMMANDER EMILY SHILLING; *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States;
et al.,

Defendants.

No. 2:25-cv-241-BHS

**BRIEF OF AMICI CURIAE
THE STATES OF
WASHINGTON, VERMONT,
ARIZONA, CALIFORNIA,
COLORADO, CONNECTICUT,
DELAWARE, HAWAII,
ILLINOIS, MAINE,
MARYLAND,
MASSACHUSETTS,
MICHIGAN, MINNESOTA,
NEVADA, NEW JERSEY, NEW
YORK, NORTH CAROLINA,
OREGON, RHODE ISLAND,
AND WISCONSIN IN
SUPPORT OF PLAINTIFFS’
MOTION FOR A
PRELIMINARY INJUNCTION**

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19	https://www.maritime.dot.gov/education/maritime-academies/student-incentive-payment-sip-program	18
20	U.S. Dep't of Defense, <i>Department of Defense Releases Annual Demographics Report – Upward Trend in Number of Women Serving Continues</i> (Dec. 14, 2022),	
21	https://www.defense.gov/News/Releases/Release/article/3246268/departments-of-defense-releases-annual-demographics-report-upward-trend-in-numbe/	5
22		
23	University of Vermont, <i>Equal Opportunity in Educational Programs and Activities</i> (last visited Feb. 1, 2025),	
24	https://catalogue.uvm.edu/undergraduate/aboutuniv/equalopportunity/	17
25	University of Washington, <i>EO31-Nondiscrimination and Affirmative Action</i> (last visited Feb. 1, 2025), https://policy.uw.edu/directory/po/executive-orders/eo-31-nondiscrimination-and-affirmative-action/	17
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1	USA Facts, <i>What percentage of the US population is transgender?</i> ,	
2	https://usafacts.org/articles/what-percentage-of-the-us-population-is-transgender/ (last	
	visited Feb. 26, 2025)	12
3	Vermont National Guard, <i>Joint Enlistment Enhancement Program (JEEP)</i> ,	
4	https://vt.public.ng.mil/Join-The-VT-Guard/Joint-Enlistment-Enhancement-Program/	10
5	Whitney Hughes, <i>National Guard Provides Critical Election Cybersecurity</i> , National	
6	Guard (Nov. 7, 2022),	
	https://www.nationalguard.mil/News/Article/3211891/national-guard-provides-	
	critical-election-cybersecurity/	8

I. INTRODUCTION

The President’s executive order banning transgender people from serving in the military not only violates the Constitution—as Plaintiffs’ Motion for Preliminary Injunction demonstrates—but it will also weaken our nation’s military, including the National Guard, and undermine the Amici States’ institutions and efforts to protect their communities. It harms the Amici States’ interests in emergency and disaster preparedness by depriving our National Guard units of experienced and qualified soldiers at a time when recruiting is especially challenging. Without providing any evidence-based rationale for doing so, it again pulls the rug out from under service members who have served with honor and distinction. And it entangles the Amici States in a discriminatory policy fundamentally at odds with their own experiences in enacting and enforcing laws protecting transgender individuals. Their experience shows that allowing transgender individuals to participate fully in society, including the military, benefits Amici States and the nation. The executive order is unconstitutional and harms national security. The Court should grant Plaintiffs’ Motion for Preliminary Injunction.

II. IDENTITY AND INTEREST OF AMICI

The States of Washington, Vermont, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, and Wisconsin (“Amici States” or “States”) respectfully submit this *amicus curiae* brief in support of Plaintiffs’ Motion for Preliminary Injunction. The Amici States have an interest in the strength and preparedness of our national defense, including the National Guard, over which the States have partial control and on which the States rely in times of peace and emergency. The Amici States also have interests in protecting other state institutions implicated by the executive order and in enforcing their own civil rights protections for transgender individuals. These interests are best served by allowing transgender individuals to serve in the military and National Guard without discrimination.

III. ARGUMENT

A. The National Guard Serves a Vital Role in Ensuring the Security and Disaster Preparedness of the States.

As the modern-day successor to the Founding-era concept of the militia, the National Guard is explicitly governed by the United States Constitution. *Ass’n of Civilian Technicians, Inc. v. United States*, 603 F.3d 989, 992 (D.C. Cir. 2010). Article I, Section 8 gives Congress the power “[t]o provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.” U.S. Const. art. I, § 8, cl. 15. It also gives Congress the power “[t]o provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.” U.S. Const. art. I, § 8, cl. 16. These two clauses, known as the Militia Clauses, “reflect a delicate compromise that gives the States power over their respective militias—subject to the President’s power to call those militias into national service when necessary.” *Abbott v. Biden*, 70 F.4th 817, 821 (5th Cir. 2023).

The statutory scheme governing the National Guard reflects this compromise. As the Fifth Circuit has explained, “the National Guard includes two ‘overlapping but distinct organizations’—the National Guards of the various States and the National Guard of the United States.” *Id.* at 822 (quoting *Perpich v. Dep’t of Def.*, 496 U.S. 334, 345 (1990)). “All who enlist in a State’s National Guard must simultaneously enlist in the National Guard of the United States, which is a reserve component[] of the armed forces.” *Id.* (internal quotations and citations omitted); 10 U.S.C. § 10101. However, “[m]embers of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.” 10 U.S.C. § 12401.

Both the Constitution and federal statutes allocate authority over the National Guard between the Federal Government and the States and Commonwealths. The States retain control

over the National Guard when it is not called into federal service. 32 U.S.C. §§ 328, 502(f). Each state’s Governor, and its Adjutant General, who is appointed by the Governor, control the National Guard when it is not called up for federal service. 32 U.S.C. § 314. The President cannot change “the branch, organization, or allotment of a unit located entirely within a State” without the Governor’s approval. *Id.* § 104(c). And each State “may fix the location of the units and headquarters of its National Guard.” *Id.* § 104(a). In sum, the National Guard is “a “hybrid” entity that carefully combines both federal and state characteristics.” *Ass’n of Civilian Technicians*, 603 F.3d at 992 (quoting *Lipscomb v. Fed. Labor Relations Auth.*, 333 F.3d 611, 614 (5th Cir. 2003)).

Although the National Guard is primarily funded through federal appropriations, *see* 32 U.S.C. §§ 106-07, it also receives funding from the States. For example, California’s enacted budget for fiscal year 2024 allocated more than \$293 million for its National Guard; of this amount, more than \$148 million—approximately 51% of the budget—came from California’s General Fund.¹ Vermont’s fiscal year 2024 Budget allocates more than \$6 million to its military department, most of which flows to various National Guard functions.² In Washington, the adopted budget for 2023-2025 allocated \$784,000 in state funds to the National Guard for fire suppression training, equipment, and supporting costs, and \$23,000 in state funds for National Guard recruitment.³ In Massachusetts, the enacted budget for the fiscal year 2025 included state

¹ California State Budget Office, 2023-24 STATE BUDGET – GG1, 8940 Military Dep’t, <https://ebudget.ca.gov/2023-24/pdf/Enacted/GovernorsBudget/8000/8940.pdf>.

² FY2024 State of Vermont Executive Budget Recommendation 482, https://finance.vermont.gov/sites/finance/files/documents/FY2024%20Executive%20Budget%20Book_0.pdf.

³ S.B. 5950, 68th Leg., Reg. Sess., Chapter 376 Wash. Sess. Laws 2024, 206-07.

1 spending for (among other things) the office of the adjutant general, certain National Guard
2 aviation facilities, and National Guard missions and division operations.⁴

3 The National Guard has thousands of members assigned for duty in each state. Data from
4 June 2024 on members assigned for duty show, for example, that Washington had 5,482
5 members of the Army National Guard and 1,977 members of the Air National Guard assigned
6 for duty in the State.⁵ California had 12,608 members of the Army National Guard and 4,778
7 members of the Air National Guard assigned for duty in the State.⁶ Illinois had 9,745 members
8 of the Army National Guard and 2,658 members of the Air National Guard assigned for duty in
9 the State.⁷ Even Vermont had 1,751 members of the Army National Guard and 1,011 members
10 of the Air National Guard assigned for duty in the State.⁸

11 The National Guard is unique for its dual state-federal service and because it provides
12 for part-time service. As the Army National Guard explains, joining the Guard requires attending
13 one weekend of drill per month and a two-week training course each year.⁹ The National Guard
14 allows service members to keep their civilian jobs while serving.¹⁰ This type of service allows
15 more individuals to participate. For example, women make up a larger percentage of the National
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18 ⁴ Military Division, Budget Summary FY2025 Enacted, Commonwealth of Massachusetts,
19 [https://budget.digital.mass.gov/summary/fy25/enacted/public-safety/military-
division/?tab=budget-summary](https://budget.digital.mass.gov/summary/fy25/enacted/public-safety/military-division/?tab=budget-summary).

20 ⁵ Defense Manpower Data Center, *Number of Military and DoD Appropriated Fund (APF)*
21 *Civilian Personnel* (June 30, 2024) (Spreadsheet), [https://dwp.dmdc.osd.mil/dwp/app/dod-
data-reports/workforce-reports](https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports).

22 ⁶ *Id.*

23 ⁷ *Id.*

24 ⁸ *Id.*

25 ⁹ Army National Guard, *Guard FAQs*, <https://nationalguard.com/guard-faqs>.

26 ¹⁰ Military One Source, *National Guard Employment Support*,
<https://www.militaryonesource.mil/resources/millife-guides/national-guard-employment>.

Guard and reserves than active-duty forces.¹¹ The Amici States benefit from a National Guard comprised of individuals from different professional backgrounds who are engaged in different civilian careers and bring different skills to their service.

In addition to serving as a reserve force of the U.S. Military, the National Guard saves lives by responding to natural disasters. The National Guard responded to major wildfires in Washington in 2024 and California in 2025.¹² Members of the Vermont Army National Guard collaborated with search and rescue teams to evacuate nineteen people from Hurricane Beryl in one night in 2024.¹³ In 2023, the Hawai'i National Guard responded to devastating wildfires in Lahaina by maintaining order, fighting the fires, and searching for victims.¹⁴ In 2019, 200 members of the Illinois National Guard responded to major river floods by placing sandbags and

¹¹ U.S. Dep't of Defense, *Department of Defense Releases Annual Demographics Report – Upward Trend in Number of Women Serving Continues* (Dec. 14, 2022), <https://www.defense.gov/News/Releases/Release/article/3246268/departments-of-defense-releases-annual-demographics-report-upward-trend-in-numbe/>.

¹² Joseph Siemandel, *Year in Review: 2024 was a busy year for Washington Military Department*, Defense Visual Information Distribution Service (DVIDS) (Jan. 7, 2025), <https://www.dvidshub.net/news/488741/year-review-2024-busy-year-washington-military-department>; Kimberly Hill, *California National Guard supports wildfire response following devastating fires in SoCal*, DVIDS (Jan. 20, 2025), <https://www.dvidshub.net/news/489368/california-national-guard-supports-wildfire-response-following-devastating-fires-socal>.

¹³ J. Scott Detweiler, *Vermont National Guards Supports Cyclone Beryl Response*, DVIDS (July 11, 2024), <https://www.dvidshub.net/news/475930/vermont-national-guards-supports-cyclone-beryl-response>.

¹⁴ Erich B. Smith, *Hawaii Army National Guard Supports Maui Wildfire Response*, National Guard (Aug. 28, 2023), <https://www.nationalguard.mil/News/Article-View/Article/3507502/hawaii-army-national-guard-supports-maui-wildfire-response/>.

1 monitoring levees.¹⁵ Maryland recently activated its National Guard to respond to a winter
2 storm.¹⁶

3 States also send members of their National Guard to assist other states facing major
4 natural disasters. All fifty states, plus the District of Columbia, Puerto Rico, Guam, U.S. Virgin
5 Islands, and the Northern Mariana Islands, have enacted legislation to become members of the
6 Emergency Management Assistance Compact (“EMAC”).¹⁷ EMAC is a formal compact that
7 facilitates states’ sharing of personnel and resources when a governor in one state declares an
8 emergency.¹⁸ National Guard members are deployed to respond to disasters in other states
9 through EMAC.¹⁹ For example, in 2024, many states sent personnel and resources to Florida to
10 help respond to Hurricane Milton. New York sent sixty-five members of its National Guard.²⁰
11 Colorado sent a helicopter and crew.²¹ Delaware sent 100 members of its National Guard.²²

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13 ¹⁵ Bradford Leighton, *Ill. National Guard helps civilian agencies fight flooding*, National
14 Guard (June 3, 2019), [https://www.nationalguard.mil/News/Article-View/Article/1863818/ill-
national-guard-helps-civilian-agencies-fight-flooding/](https://www.nationalguard.mil/News/Article-View/Article/1863818/ill-national-guard-helps-civilian-agencies-fight-flooding/).

15 ¹⁶ Maryland National Guard, *Maryland National Guard activated to support winter storm*
16 *response across the state* (Jan. 8, 2025), [https://news.maryland.gov/ng/2025/01/08/maryland-
national-guard-activated-to-support-winter-storm-response-across-the-state/](https://news.maryland.gov/ng/2025/01/08/maryland-national-guard-activated-to-support-winter-storm-response-across-the-state/).

17 ¹⁷ EMAC, *What is EMAC?*, [https://www.emacweb.org/index.php/learn-about-emac/what-
is-emac](https://www.emacweb.org/index.php/learn-about-emac/what-is-emac).

18 ¹⁸ *Id.*

19 ¹⁹ *Id.*

20 ²⁰ State of New York, *New York National Guard Will Move Personnel From Syracuse and*
21 *Long Island to Camp Blanding Joint Training Center Florida on Wednesday, October 9* (Oct.
22 9, 2024), [https://www.governor.ny.gov/news/governor-hochul-announces-65-new-york-
national-guard-soldiers-and-airmen-are-deploying-assist](https://www.governor.ny.gov/news/governor-hochul-announces-65-new-york-national-guard-soldiers-and-airmen-are-deploying-assist).

23 ²¹ Colorado National Guard, *Colorado National Guard supports Hurricane Milton relief*
24 *efforts* (Oct. 9, 2024), [https://co.ng.mil/News/Archives/Article/3930948/colorado-national-
guard-supports-hurricane-milton-relief-efforts/](https://co.ng.mil/News/Archives/Article/3930948/colorado-national-guard-supports-hurricane-milton-relief-efforts/).

25 ²² State of Delaware, *Governor Carney to Activate Delaware National Guard to Assist with*
26 *Florida’s Hurricane Response* (Oct. 8, 2024), [https://news.delaware.gov/2024/10/08/governor-
carney-to-activate-delaware-national-guard-to-assist-with-floridas-hurricane-response/](https://news.delaware.gov/2024/10/08/governor-carney-to-activate-delaware-national-guard-to-assist-with-floridas-hurricane-response/).

Connecticut deployed members of its National Guard in the wake of Hurricane Helene in 2024.²³ In 2022 alone, over 100,000 members of the National Guard were deployed to fight wildfires in nineteen states.²⁴ And in 2012, in the aftermath of Hurricane Sandy, 12,000 National Guard members—including 2,000 deployed by New Jersey—assisted eleven states, working with search and rescue teams, staffing evacuation shelters, clearing routes, and delivering essential equipment and supplies.²⁵ As the Amici States—and the nation as a whole—face increasingly catastrophic wildfires, hurricanes, and other natural disasters, a robust National Guard staffed with every qualified service member is essential to protect people and property.

In addition to natural disasters, states sometimes activate members of the National Guard to provide security support at major events. For example, in 2024, members of Nevada’s National Guard assisted local law enforcement in providing security at the Formula 1 Las Vegas Grand Prix, which drew several hundred thousand attendees to the city.²⁶ Members of the National Guard from the District of Columbia and about forty other states provided security for

²³ State of Connecticut, *Governor Lamont Announces Connecticut National Guard Sending Additional Soldiers and Aircraft to North Carolina for Further Hurricane Helene Disaster Assistance* (Oct. 3, 2024), https://portal.ct.gov/governor/news/press-releases/2024/10-2024/governor-lamont-announces-connecticut-national-guard-sending-additional-soldiers-to-north-carolina?language=en_US.

²⁴ Anshu Siripurapu and Noah Berman, *What does the U.S. National Guard Do?*, Council on Foreign Relations (last updated Apr. 3, 2024), <https://www.cfr.org/background/what-does-us-national-guard-do#:~:text=The%20National%20Guard%20can%20also,normally%20funded%20by%20the%20state.>

²⁵ Jim Greenhill, *12,000 National Guard Members Helping 11 States Recover from Hurricane Sandy* (Oct. 30, 2012), <https://www.nationalguard.mil/News/Article/574966/12000-national-guard-members-helping-11-states-recover-from-hurricane-sandy/>; National Centers for Environmental Information, *Storm Events Database*, <https://www.ncdc.noaa.gov/stormevents/eventdetails.jsp?id=416939>.

²⁶ Emerson Marcus, *Nevada Guard set to support Clark County first responders during Formula 1 Las Vegas Grand Prix*, Nevada National Guard (Nov. 20, 2024), <https://nv.ng.mil/News/Article-Display/Article/3973518/nevada-guard-set-to-support-clark-county-first-responders-during-formula-1-las/>.

1 the recent Presidential Inauguration, in a tradition dating back to the first inauguration of
2 President George Washington.²⁷

3 The National Guard also uses the technical expertise of its members to provide
4 cybersecurity support during elections. As of 2022, the National Guard cyber force included over
5 2,200 members from thirty-eight units.²⁸ These members provided cybersecurity support during
6 the 2022 primary elections in eight states.²⁹ In 2024, fifteen states activated the National Guard
7 to provide cybersecurity for the November election.³⁰ Many states rely on the National Guard
8 for their cybersecurity needs because many state and local governments experience gaps in their
9 cybersecurity workforce.³¹

10 **B. Banning Transgender Individuals from Military Service Will Harm National**
11 **Guard Recruitment Efforts and Jeopardize States' Security and Readiness.**

12 While the pressing need for its services continues to grow, the National Guard has
13 struggled with recruitment in recent years. More than a decade ago, in 2014, the Army expressed
14 concerns about future recruitment based on physical fitness issues and young Americans
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17 ²⁷ District of Columbia National Guard, *National Guard support to the District of*
18 *Columbia and the 60th Presidential Inauguration* (Jan. 13, 2025), <https://dc.ng.mil/Public-Affairs/News-Release/Article/4028262/national-guard-support-to-the-district-of-columbia-and-the-60th-presidential-in/>.

19 ²⁸ Whitney Hughes, *National Guard Provides Critical Election Cybersecurity*, National
20 Guard (Nov. 7, 2022), <https://www.nationalguard.mil/News/Article/3211891/national-guard-provides-critical-election-cybersecurity/>.

21 ²⁹ *Id.*

22 ³⁰ Jeff Schogol, *Many of the National Guardsmen activated for election focus on*
23 *cybersecurity*, Task & Purpose (Nov. 5, 2024), <https://taskandpurpose.com/news/national-guard-election-cybersecurity/>.

24 ³¹ Skylar Rispens, *National Guard ready to assist states with cyber response, say officials*,
25 State Scoop (Mar. 20, 2024), <https://statescoop.com/national-guard-ready-assist-with-state-cyber-response/>.
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1 showing less interest in military careers.³² In fiscal year 2023, the National Guard had “another
 2 rough year for recruiting[.]”³³ Many states have fallen short of their recruiting targets in the past
 3 several years. For example, Washington has failed to reach targets for the last five years.³⁴
 4 Oregon failed to reach targets in 2021 and 2022.³⁵ Minnesota lowered its recruiting goal in 2023
 5 after failing to meet its target for three years.³⁶ Some states have instituted programs for referral
 6 bonuses.³⁷ Washington law authorizes a bonus of up to \$500 when a current member of the
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13 ³² C. Todd Lopez, *Recruiting force remains unchanged, despite shrinking goals*, U.S. Army
 14 (Jan. 22, 2014),
 15 https://www.army.mil/article/118369/recruiting_force_remains_unchanged_despite_shrinking_goals.

16 ³³ National Guard Association of the United States, *Recruiting Continues to Be*
 17 *Challenging* (Oct. 17, 2023), <https://www.ngaus.org/newsroom/recruiting-continues-be-challenging>.

18 ³⁴ Joseph Siemandel, *Adjutant General testifies for the Keeping our Washington National*
 19 *Guard Strong Act legislation*, DVIDS (Jan. 10, 2024),
 20 <https://www.dvidshub.net/news/461590/adjutant-general-testifies-keeping-our-washington-national-guard-strong-act-legislation>.

21 ³⁵ Annual Performance Progress Report at 3, Oregon Military Dep’t (Oct. 3, 2022),
 22 <https://www.oregon.gov/omd/Documents/2022%20Proposed%20APPR.pdf>.

23 ³⁶ Jonah Kaplan, *Minnesota National Guard meets its annual recruitment goal after three-*
 24 *year slump*, WCCO News (May 24, 2023),
 25 <https://www.cbsnews.com/minnesota/news/minnesota-national-guard-meeting-its-recruitment-goals-after-three-year-slump/>.

26 ³⁷ Desiree D’Iorio, *Know someone who wants to join the National Guard? In some states,*
you now can get a finder’s fee, the American Homefront Project (Jan. 19, 2023),
<https://americanhomefront.wunc.org/news/2023-01-19/know-someone-who-wants-to-join-the-national-guard-in-some-states-you-now-can-get-a-finders-fee>.

1 National Guard refers someone who joins the Guard.³⁸ Vermont offers \$1,000 for a successful
 2 enlistment.³⁹ Other states have similar referral programs.⁴⁰

3 The National Guard's recruitment struggles are not unique. The Army has fallen short of
 4 its targets in recent years by thousands of recruits,⁴¹ leading it to lower its recruiting targets.⁴²
 5 As a recent paper by a lieutenant colonel and a national security analyst explains, the Army's
 6 insufficient recruiting poses a national security risk.⁴³ The American Enterprise Institute recently
 7 released a report by a retired major general noting that the number of eighteen-year-olds is
 8 expected to drop, and arguing that current pay for new soldiers is too low to attract enough
 9 recruits.⁴⁴ A 2020 study found that 77% of youth cannot qualify for military service.⁴⁵ In this
 10 difficult recruiting environment, the military cannot afford to turn away otherwise qualified
 11 recruits simply because they are transgender.

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 13
 14 ³⁸ Wash. Rev. Code Ann. § 38.24.070.

15 ³⁹ Vermont National Guard, *Joint Enlistment Enhancement Program (JEEP)*,
<https://vt.public.ng.mil/Join-The-VT-Guard/Joint-Enlistment-Enhancement-Program/>.

16 ⁴⁰ Indiana National Guard, *Referral Enlistment Program*, [https://www.in.gov/indiana-](https://www.in.gov/indiana-national-guard/about/referral-enlistment-program/)
 17 [national-guard/about/referral-enlistment-program/](https://www.in.gov/indiana-national-guard/about/referral-enlistment-program/); Oregon Army National Guard, *Enlistment*
Enhancement Program, <https://www.oregonarmyguard.com/referral>.

18 ⁴¹ Lt. Col. Frank Dolberry & Charles McEnany, "*Be All You Can Be*": *The U.S. Army's*
 19 *Recruiting Transformation*, Association of the United States Army (Jan. 2024),
<https://www.ausa.org/publications/be-all-you-can-be-us-armys-recruiting-transformation>.

20 ⁴² Svetlana Shkolnikova, *Army on pace to meet lowered recruitment goal for 2024, but*
 21 *long-term challenges remain* (Apr. 18, 2024), [https://www.stripes.com/branches/army/2024-](https://www.stripes.com/branches/army/2024-04-18/army-soldiers-recruiting-enlistment-senate-wormuth-13590935.html)
[04-18/army-soldiers-recruiting-enlistment-senate-wormuth-13590935.html](https://www.stripes.com/branches/army/2024-04-18/army-soldiers-recruiting-enlistment-senate-wormuth-13590935.html).

22 ⁴³ Dolberry & McEnany, *supra* note 36.

23 ⁴⁴ John G. Ferrari, *McDonald's or the Army? A California Case Study*, American
 24 Enterprise Institute (Mar. 19, 2024), [https://www.aei.org/research-products/report/mcdonalds-](https://www.aei.org/research-products/report/mcdonalds-or-the-army-a-california-case-study/)
[or-the-army-a-california-case-study/](https://www.aei.org/research-products/report/mcdonalds-or-the-army-a-california-case-study/).

25 ⁴⁵ Council for a Strong America, *77 Percent of American Youth Can't Qualify for Military*
 26 *Service* (Jan. 24, 2023), [https://www.strongnation.org/articles/2006-77-percent-of-american-](https://www.strongnation.org/articles/2006-77-percent-of-american-youth-can-t-qualify-for-military-service)
[youth-can-t-qualify-for-military-service](https://www.strongnation.org/articles/2006-77-percent-of-american-youth-can-t-qualify-for-military-service).

1 The President’s executive order makes matters worse by excluding transgender
 2 individuals from military service and requiring the Amici States to be discriminatory employers,
 3 contrary to their own laws. This forced discrimination will further hamper already-challenging
 4 recruitment efforts for the National Guard. Johns Hopkins University found that members of
 5 Generation Z—those born in the late 1990s through the early 2010s—“embrace[] the right to
 6 freely express one’s gender identity.”⁴⁶ An overwhelming 88% of respondents to Johns Hopkins’
 7 poll “felt companies must inquire about preferred gender pronouns.”⁴⁷ In addition to violating
 8 the Constitution, the President’s discriminatory executive order will harm recruiting efforts with
 9 young Americans in the peak age demographic for recruitment. Former high-ranking military
 10 officials share this concern about the effect of the ban. *See* Declaration of Alex Wagner, Dkt. #
 11 33 ¶ 31 (“An organization that is perceived by America’s youth as discriminatory will be at a
 12 competitive disadvantage in this race for talent.”); Declaration of Yvette Bourcicot, Dkt. # 32 ¶
 13 34 (“This sudden reversal of policy will damage the reputation of the military and diminish its
 14 attractiveness among the young people we most need to persuade to join our ranks.”).

15 Transgender individuals have served in the military for years. A 2014 study found that
 16 approximately 150,000 veterans, active-duty service members, and members of the National
 17 Guard or Reserves identified as transgender.⁴⁸ As of 2020, one study estimated that at least 8,000
 18 transgender people were serving on active duty in the U.S. Military.⁴⁹ Notably, transgender

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 20 ⁴⁶ Johns Hopkins University, *Gen Z In The Workplace: How Should Companies Adapt?*
 21 (Apr. 18, 2023), <https://imagine.jhu.edu/blog/2023/04/18/gen-z-in-the-workplace-how-should-companies-adapt/>.

22 ⁴⁷ *Id.*

23 ⁴⁸ Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States*, The
 24 Williams Inst. (May 2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Military-Service-US-May-2014.pdf> (estimating 134,300 transgender veterans and 15,500 members in active service).

25 ⁴⁹ Natasha A Schvey et al., *A Descriptive Study of Transgender Active Duty Service*
 26 *Members in the U.S. Military*, 5 *Transgender Health* 149, 149 (2020), available at
<https://pmc.ncbi.nlm.nih.gov/articles/PMC7906232/pdf/trgh.2019.0044.pdf>.

1 individuals are about twice as likely as other adults to have served their country in the Armed
 2 Forces.⁵⁰ The President's executive order would require the National Guard to discharge
 3 transgender members and turn away potential recruits solely because they identify as
 4 transgender. The lost potential for new personnel, not to mention the loss of personnel in whom
 5 training and money have been invested, will impede the National Guard's ability to respond to
 6 natural disasters and perform its other functions at a time when a robust National Guard is more
 7 necessary than ever.

8 **C. The Executive Order Broadly Undermines the Amici States' Institutions and**
 9 **Efforts to Protect Members of Their Communities.**

10 In addition to harming military recruitment and national security, the executive order
 11 constitutes a blatantly discriminatory policy targeting transgender residents of the Amici States.
 12 As Amici States' experience shows, discrimination of this sort threatens to harm all state
 13 residents, whether part of the transgender community or not.

14 **1. Transgender people are a vital part of the Amici States' communities but**
 15 **face ongoing discrimination.**

16 Nationwide, about 2.3 million adults—or about 0.95% of the nation's population—
 17 identify as transgender.⁵¹ They live in the Amici States (as well as every other State and U.S.
 18 territory)⁵² and contribute to our communities in countless ways—as parents, educators,
 19 students, firefighters, police officers, musicians, writers, nurses, doctors, and more. Nothing
 20 about being transgender inhibits a person's ability to contribute to society or to serve in the

21 ⁵⁰ Gates & Herman, *Transgender Military Service*, *supra* note 45.

22 ⁵¹ USA Facts, *What percentage of the US population is transgender?*,
 23 <https://usafacts.org/articles/what-percentage-of-the-us-population-is-transgender/> (last visited
 Feb. 26, 2025).

24 ⁵² Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*,
 25 Nat'l Ctr. For Transgender Equality, 15 (Feb. 2024),
 26 https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf.

1 military.⁵³ On the contrary, the experience of the Amici States shows that transgender people are
 2 just as capable as their cisgender counterparts and make a meaningful, positive impact not only
 3 in the military, but in our schools, workplaces, and communities.

4 Still, the transgender community has suffered “a history of persecution and
 5 discrimination” that persists to the present day. *Adkins v. City of New York*, 143 F. Supp. 3d 134,
 6 139 (S.D.N.Y. 2015); *Flack v. Wis. Dep’t of Health Servs.*, 328 F. Supp. 3d 931, 953 (W.D. Wis.
 7 2018) (“In short, other than certain races, one would be hard-pressed to identify a class of people
 8 more discriminated against historically or otherwise more deserving of the application of
 9 heightened scrutiny when singled out for adverse treatment, than transgender people.”). The
 10 Ninth Circuit has held that gender identity is at least a quasi-suspect class, and that classifications
 11 based on gender identity are subject to heightened scrutiny—including in the context of military
 12 decisions. *Karnoski v. Trump*, 926 F.3d 1180, 1200-01 (9th Cir. 2019); *Hecox v. Little*, 104 F.4th
 13 1061, 1079-80 (9th Cir. 2024), *as amended* (June 14, 2024). While progress has been made in
 14 recent years because of increased recognition and awareness of the significant and far-reaching
 15 barriers the transgender population faces, transgender people continue to experience
 16 discrimination that impairs their physical and mental health, curtails their economic prospects,
 17 and ultimately limits their ability to realize their potential and participate fully in society.
 18 According to the 2022 United States Transgender Survey (“2022 USTS”),⁵⁴ transgender
 19 individuals continue to face verbal harassment and physical violence at home, in school, and in
 20 their communities; grapple with mistreatment in the workplace and a higher rate of

21
 22 ⁵³ American Medical Association, *Military Medical Policies Affecting Transgender*
 23 *Individuals H-40.966* (2015), [https://policysearch.ama-](https://policysearch.ama-assn.org/policyfinder/detail/40.966?uri=%2FAMADoc%2FHOD.xml-0-3487.xml)
 24 [assn.org/policyfinder/detail/40.966?uri=%2FAMADoc%2FHOD.xml-0-3487.xml](https://policysearch.ama-assn.org/policyfinder/detail/40.966?uri=%2FAMADoc%2FHOD.xml-0-3487.xml). (“[T]here is
 no medically valid reason to exclude transgender individuals from service in the US
 military.”).

25 ⁵⁴ The 2022 USTS “is the largest survey ever conducted to examine the experiences of
 26 binary and nonbinary transgender people in the United States.” James et al., *supra* note 52, at
 4.

unemployment than the general United States population; confront homelessness and difficulty obtaining and maintaining housing; and endure myriad other forms of discrimination in education, employment, housing, and access to health care due to their gender identity.⁵⁵

To combat those problems, states began providing civil rights protections for transgender people over a quarter century ago. Currently, 24 states—including many of the Amici States—and the District of Columbia have enacted civil rights protections for transgender people in education, employment, health care, housing, and/or public accommodations.⁵⁶ And at least 374

⁵⁵ See generally *id.*

⁵⁶ **California:** Cal. Civ. Code § 51(b), (e)(5), (6) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov’t Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(9)-(10) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.*, tit. 6, § 4502(11) (definition); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai‘i:** Haw. Rev. Stat. § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Iowa:** Iowa Code § 216.2(10) (definition); *id.* § 216.6 (employment); *id.* § 216.7 (public accommodations); *id.* § 216.8 (housing); *id.* § 216.9 (education). **Kansas:** Kansas Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug. 21, 2020) (advising that Kansas laws prohibiting discrimination based on “sex” in “employment, housing, and public accommodation” contexts “are inclusive of LGBTQ and all derivatives of ‘sex’”). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(5-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov’t § 20-101(e) (definition); *id.* § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7 (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit) (as amended by Ch. 205, 2024 Mass. Acts); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Michigan:** Mich. Comp. Laws § 37.2102(1) (employment, housing, public accommodations, education); *id.* 37.2103(f) (definition). **Minnesota:** Minn. Stat. § 363A.03(44), (50) (definitions); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (definition, housing); *id.* §§ 613.310(4), 613.330 (definition, employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing, employment); *id.* § 18A:36-41 (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender

1 municipalities offer express protections against discrimination based on gender identity.⁵⁷ As the
 2 experiences of the Amici States and these other jurisdictions show, transgender-inclusive policies
 3 help to ease the stigma on transgender people, and mitigate the negative impact on their
 4 educational, work, and health outcomes. Those policies also foster a more just and productive
 5 society for all our residents.

6 **2. The executive order will needlessly harm the Amici States by limiting**
 7 **National Guard readiness and creating unequal opportunities at public**
 8 **institutions.**

9 The Amici States' experience belies the President's stated rationale for reinstating a ban
 10 on transgender service members in the military. For years, transgender individuals have served
 11 in Amici States' National Guard components and have done so with honor and distinction. After
 12 the first, longstanding ban was lifted in 2016, and again when the Trump Administration's first
 13 attempt to ban transgender service was reversed in 2021, some of these Guard members came
 14 out to their superiors and peers with no negative impact on the Guard's functions.⁵⁸ The National

15 identity"). **New Mexico:** N.M. Stat. Ann. § 28-1-2(T) (definition); *id.* § 28-1-7(A)
 16 (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New**
 17 **York:** N.Y. Exec. Law §§ 291, 292, 296 (definition, education, employment, public
 18 accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850
 19 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Pennsylvania:**
 20 43 Pa. Stat. § 953; 16 Pa. Code § 41.206 (definition, employment, housing, public
 21 accommodations). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28
 22 R.I. Gen. Laws §§ 28-5-6(12) (definition), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-
 23 3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 34A-5-
 102(o) (definition); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition);
id. tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495
 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* §
 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit
 transactions, and insurance transactions); *id.* § 49.60.040(29) (definition); *id.* § 49.60.180
 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing). **District of**
Columbia: D.C. Code § 2-1401.02(12A-i) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-
 1402.21 (housing); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

24 ⁵⁷ Movement Advancement Project, *Local Nondiscrimination Ordinances* (current as of
 Jan. 1, 2023), https://www.lgbtmap.org/equality-maps/non_discrimination_ordinances.

25 ⁵⁸ *E.g.*, Minnesota National Guard, *Here to Serve* (June 25, 2020),
 26 <https://ngmnpublish.azurewebsites.us/here-to-serve/>; Megan Kon, *Transgender guardsman born*
for military service, U.S. Dep't of Veterans Affairs (Mar. 27, 2023),

Guard trained its members on compliance with the nondiscrimination policy, expressing no particular concerns about compliance.⁵⁹ Likewise, transgender cadets in ROTC programs supported by many of Amici States' colleges and universities also disclosed their gender identities. The Amici States are unaware of any adverse consequences to their Guard units or ROTC programs because of those disclosures.

The Trump Administration's latest about-face threatens to require the Amici States to undo our efforts to provide an inclusive environment for current transgender service members and foist upon us the discriminatory policies of the past. It will entangle the Amici States—once again—in a federal scheme that requires us to differentiate National Guard recruits and service members based on a characteristic that has been demonstrated to have nothing to do with their ability to serve. Such discrimination is in direct conflict with the policies of the Amici States, including our prohibitions on discrimination based on gender identity in public or private employment and our laws extending civil rights protections to transgender residents in other aspects of civic life.⁶⁰

Beyond harming state military components, the Trump Administration's ban on transgender service will also harm the Amici States' public colleges and universities that support ROTC programs. ROTC programs are designed to train commissioned officers for the Armed Forces; they are located on and supported by college campuses but are subject to federal entry requirements.⁶¹ Many public colleges and universities in the Amici States host ROTC programs

<https://www.va.gov/augusta-health-care/stories/transgender-guardsman-born-for-military-service/>.

⁵⁹ Erich B. Smith and Jon Soucy, *Guard members ready for new DoD transgender policy*, National Guard (June 15, 2017), https://www.army.mil/article/189440/guard_members_ready_for_new_dod_transgender_policy.

⁶⁰ See *supra* note 56.

⁶¹ See 10 U.S.C. § 2103. Similarly, many elementary and secondary schools in the Amici States host the Junior Reserve Officers' Training Corps ("JROTC"). JROTC is a program for high school and middle school students that aims to "instill in students . . . the values of

1 and provide them with physical space, and, in some instances, financial support in the form of a
 2 budget or scholarship funds. Reinstating the ban on transgender service will render these ROTC
 3 programs—together with the scholarship and career opportunities they provide—actually or
 4 effectively unavailable to transgender students, who will be ineligible to serve in the Armed
 5 Forces upon graduation. The ban will thus harm the Amici States’ public colleges and
 6 universities by limiting their ability to extend the same opportunities to all students, in direct
 7 contravention of many schools’ own transgender-inclusive policies and the Amici States’ broader
 8 anti-discrimination laws.⁶²

9 Finally, the ban also imposes a distinct set of harms on one subset of state-run educational
 10 institutions: the public specialized maritime academies in Massachusetts, California, and New
 11 York that serve as pathways for students interested in pursuing maritime professions or becoming
 12 commissioned officers in the Coast Guard or other branches of the Armed Forces.⁶³ These
 13 academies welcome transgender students.⁶⁴ In addition to the state-of-the-art training and
 14 citizenship, service to the United States (including an introduction to service opportunities in
 15 the military, national, and public service), and personal responsibility and a sense of
 16 accomplishment.” 10 U.S.C. § 2031(a)(2).

17 ⁶² See *supra* note 56; see also, e.g., University of Vermont, *Equal Opportunity in*
 18 *Educational Programs and Activities* (last visited Feb. 1, 2025),
 19 <https://catalogue.uvm.edu/undergraduate/aboutuniv/equalopportunity/>; University of
 20 Washington, *EO31-Nondiscrimination and Affirmative Action* (last visited Feb. 1, 2025),
 21 [https://policy.uw.edu/directory/po/executive-orders/eo-31-nondiscrimination-and-affirmative-](https://policy.uw.edu/directory/po/executive-orders/eo-31-nondiscrimination-and-affirmative-action/)
 22 [action/](https://policy.uw.edu/directory/po/executive-orders/eo-31-nondiscrimination-and-affirmative-action/). These public institutions have no real recourse, either, as Congress has barred
 23 institutions of higher education that receive federal funding from preventing the Armed Forces
 24 from establishing or operating ROTC programs on campus. 10 U.S.C. § 983.

25 ⁶³ Massachusetts operates the Massachusetts Maritime Academy; California, the California
 26 State University Maritime Academy; and New York, the State University of New York
 Maritime College. New York is also home to the federally administered U.S. Merchant Marine
 Academy.

27 ⁶⁴ Massachusetts Maritime Academy, *Equal Opportunity and Diversity*,
 28 <https://www.maritime.edu/human-resources/equal-opportunity/>; State University of New York,
 29 *Supporting our LGBTQIA+ community*, <https://www.suny.edu/diversity/lgbtq/>; California
 30 State University Maritime Academy, *Non-Discrimination Statement*,
 31 <https://www.csum.edu/admissions/non-discrimination-statement.html>.

1 curriculum they offer all students, maritime academies extend special benefits to those who
 2 intend to join the military, including funding conditioned on subsequent military service⁶⁵ and
 3 programs that enable students to obtain military commissions after graduation. For example, the
 4 maritime academies all offer a “Strategic Sealift Midshipman [or Officer] Program,” which
 5 allows students earning Coast Guard Licenses to be commissioned as officers in the Navy
 6 Reserve upon graduation and provides stipends to help pay for school.⁶⁶ As with the ROTC
 7 programs (and against these academies’ own anti-discrimination policies), reinstating a ban on
 8 transgender service members will effectively require these public institutions to offer different
 9 opportunities to their students based solely on their transgender status. That is, while cisgender
 10 students will be eligible for the full range of services, scholarships, and programs at the
 11 academies, transgender students will be unable to take advantage of benefits that depend on a
 12 future military career. Considering the more limited opportunities that will be available to
 13 transgender students after graduation, the overall education these academies provide will be of
 14 significantly lesser value.

15 The Amici States’ experience with the National Guard, ROTC programs, and maritime
 16 academies is consistent with the broader lessons we have learned from implementing
 17 transgender-inclusive laws and policies: welcoming transgender individuals to live and
 18 participate fully in society consistent with their gender identity not only improves their lives but
 19 also makes our communities stronger. Reversing the military’s policy on transgender service will

20 ⁶⁵ The Student Incentive Payment (SIP) Program is offered for students of all the
 21 academies. Following graduation, SIP students must either enter the U.S. Armed Forces on
 22 active duty or must be in a reserve unit for at least six years, along with other requirements. *See*
 23 46 C.F.R. § 310.7; U.S. Dep’t of Transp., Maritime Administration, *The Student Incentive*
 24 *Payment (SIP) Program* (last visited Feb. 25, 2025),
[https://www.maritime.dot.gov/education/maritime-academies/student-incentive-payment-sip-](https://www.maritime.dot.gov/education/maritime-academies/student-incentive-payment-sip-program)
[program](https://www.maritime.dot.gov/education/maritime-academies/student-incentive-payment-sip-program).

25 ⁶⁶ *See, e.g.,* Naval Service Training Command, *Strategic Sealift Midshipman Program* (last
 26 visited Feb. 25, 2025), [https://www.netc.navy.mil/Commands/Naval-Service-Training-](https://www.netc.navy.mil/Commands/Naval-Service-Training-Command/NROTC/Prospective-Midshipmen/NROTC-Program-Options/SSMP/)
[Command/NROTC/Prospective-Midshipmen/NROTC-Program-Options/SSMP/](https://www.netc.navy.mil/Commands/Naval-Service-Training-Command/NROTC/Prospective-Midshipmen/NROTC-Program-Options/SSMP/).

1 harm Amici States by undermining our institutions and requiring us to discriminate against our
2 own residents based on their gender identity.

3 **3. The executive order will harm the Amici States’ veterans, active service**
4 **members, and those who wish to serve.**

5 The Trump Administration’s irrational decision to reinstate the ban on transgender
6 service will also directly harm the residents of the Amici States: our veterans, active service
7 members, and those who wish to serve. As Plaintiffs point out in their Complaint, the President
8 has repeatedly expressed animus towards transgender individuals. *See* Dkt. #1 ¶¶ 163-64. Indeed,
9 the executive order itself repeats a number of incendiary, disparaging claims about transgender
10 people, including that being transgender is somehow inconsistent with “an honorable, truthful,
11 and disciplined lifestyle” or the “humility and selflessness required of a service member.”
12 Executive Order 14183, 90 Fed. Reg. 8757 (Feb. 3, 2025). But the experiences of the named
13 Plaintiffs who have longstanding, distinguished service—even during their transitions—plainly
14 belie those claims, as do the positions of the major medical organizations that have weighed in
15 on the issue.⁶⁷ Another Plaintiff will be deprived of the opportunity to serve absent court
16 intervention.

17 The Amici States have an interest in upholding their residents’ right to live free from
18 discrimination and its associated harms. *See, e.g., Alfred L. Snapp & Son, Inc. v. Puerto Rico ex*
19 *rel. Barez*, 458 U.S. 592, 609 (1982) (“[A] State has a substantial interest in assuring its residents
20 that it will act to protect them from these evils [of discrimination].”). The harm to the dignity of
21 transgender veterans and soldiers is obvious. The ban degrades the service of 150,000

22
23 ⁶⁷ *See* American Psychological Association, *Statement Regarding Transgender Individuals*
24 *Serving in Military* (2018), [https://www.apa.org/news/press/releases/2018/03/transgender-](https://www.apa.org/news/press/releases/2018/03/transgender-military)
25 [military](https://www.apa.org/news/press/releases/2018/03/transgender-military) (“No scientific evidence has shown that allowing transgender people to serve in the
26 armed forces has an adverse impact on readiness or unit cohesion.”); American Medical
Association, *Statement on Pentagon’s Ban on Transgender in Military* (Apr. 11, 2019),
[https://www.ama-assn.org/press-center/press-releases/ama-statement-pentagons-ban-](https://www.ama-assn.org/press-center/press-releases/ama-statement-pentagons-ban-transgender-military)
[transgender-military](https://www.ama-assn.org/press-center/press-releases/ama-statement-pentagons-ban-transgender-military).

1 transgender veterans, active-duty service members, and members of the National Guard and
 2 Reserves, as well as those who wish to serve. Reinstating the ban serves no purpose but to deny
 3 a group disfavored by the Trump Administration equal opportunity and equal treatment under
 4 the law and erode our military readiness. The executive order relegates transgender individuals
 5 to second-class status, sending the unmistakable message that their Commander-in-Chief
 6 believes they are unfit to serve or that their service is not valued.

7 The ban also harms the many transgender residents of the Amici States who relied on the
 8 assurance of the federal government over the years that they were welcome to serve without
 9 discrimination. Many service members in the National Guard and other branches of the military
 10 identified themselves as transgender to their command based on that assurance, believing that
 11 they would not thereby be deprived of their opportunity to serve (or their livelihoods). The
 12 executive order breaks that promise to the grave detriment of those who relied on it. Transgender
 13 service members may now be targeted for discharge, other adverse actions, or harassment and
 14 discrimination. Likewise, transgender residents of the Amici States who took steps to prepare
 15 for careers in the military, by joining ROTC or enrolling in the maritime academies, for example,
 16 did so in reliance on the promise that they would be able to serve. They too face losing the
 17 opportunity to serve, and along with it the investment they have made in their careers thus far
 18 and other opportunities forgone.

19 Finally, transgender service members who have not yet revealed their transgender status,
 20 together with those who wish to pursue careers in the military, will soon face the unfathomable
 21 choice of being honest about who they are and being discharged or denied accession outright, or
 22 hiding their identities and serving in fear of being discovered.⁶⁸ Denying otherwise qualified
 23 transgender individuals the opportunity to serve denies them equal participation in a core civic

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 25 ⁶⁸ Cf. *Log Cabin Republicans v. United States*, 716 F. Supp. 2d 884, 897-909 (C.D. Cal.
 26 2010) (recounting harrowing testimony of service members describing the experience of
 serving under a “cloud of fear” during the military’s Don’t Ask Don’t Tell policy).

1 activity. And forcing transgender people to hide their identities in order to enlist or continue
 2 serving is extremely harmful to their health and wellbeing⁶⁹—a reality evidenced by the
 3 experiences of the thousands of gay, lesbian, and transgender service members who have served
 4 under previous discriminatory policies.⁷⁰ Concealing core aspects of one’s identity has a negative
 5 impact on mental health.⁷¹ The need to hide their gender identity makes transgender service
 6 members less likely to seek necessary mental health and medical care, as the limited
 7 confidentiality of communications with medical providers in the military makes it more difficult
 8 for them to be candid in seeking help.⁷²

9 Further, prohibiting transgender individuals from serving consistent with their gender
 10 identity estranges them from their fellow service members and encourages latent discriminatory

11 ⁶⁹ Joycelyn Elders & Alan M. Steinman, *Report of the Transgender Military Service*
 12 *Commission*, The Palm Ctr., 4 (March 2014), [https://palmcenterlegacy.org/wp-](https://palmcenterlegacy.org/wp-content/uploads/2014/03/Transgender-Military-Service-Report_1.pdf)
 13 [content/uploads/2014/03/Transgender-Military-Service-Report_1.pdf](https://palmcenterlegacy.org/wp-content/uploads/2014/03/Transgender-Military-Service-Report_1.pdf) (“We determined not
 14 only that there is no compelling medical reason for the ban, but also that the ban itself is an
 15 expensive, damaging and unfair barrier to health care access for the approximately 15,450
 16 transgender personnel who serve currently in the active, Guard and reserve components. . .
 17 Research shows that depriving transgender service members of medically necessary health care
 18 poses significant obstacles to their wellbeing.”); Vice Admiral Donald C. Arthur and Major
 19 General Gale Pollock et al., *DoD’s Transgender Ban Has Harmed Military Readiness*, The
 20 Palm Ctr., 24-26 (Nov. 2020) [https://palmcenterlegacy.org/wp-content/uploads/DoDs-](https://palmcenterlegacy.org/wp-content/uploads/DoDs-Transgender-Ban-Has-Harmed-Military-Readiness-copy-3.pdf)
 21 [Transgender-Ban-Has-Harmed-Military-Readiness-copy-3.pdf](https://palmcenterlegacy.org/wp-content/uploads/DoDs-Transgender-Ban-Has-Harmed-Military-Readiness-copy-3.pdf).

18 ⁷⁰ Declaration of Former Chairman of Joint Chiefs of Staff, Admiral Michael Mullen,
 19 *Stockman v. Trump*, Case No. 5:17-cv-01799-JGB-KK (C.D. Cal.) [ECF Doc. 21].

20 ⁷¹ See, e.g., J. E. Pachankis et al., *Sexual orientation concealment and mental health: A*
 21 *conceptual and meta-analytic review*, *Psychological Bulletin*, 146(10), 831–871 (2020) (a
 22 meta-analysis of 193 studies finding that sexual orientation concealment was associated with
 23 increased rates of mental health problems such as depression, anxiety, and psychological
 24 distress).

25 ⁷² See Matthew F. Kerrigan, *Transgender Discrimination in the Military: The New Don’t*
 26 *Ask Don’t Tell*, 18 *Psychol. Pub. Pol’y & L.* 500, 513-14 (2012); Elders & Steinman, *supra*
 note 69, at 4 (“According to one recent study, ‘[m]ental health, medical and substance abuse
 services obtained outside the military are supposed to be communicated back to the military, so
 transgender people who seek these services elsewhere will risk exposure . . . This leads
 individuals to go without treatment, allowing symptoms to exacerbate, and causing some to
 treat symptoms with alcohol or drugs, which could lead to substance abuse or dependence.”).

attitudes, undermining the group's ability to trust and bond. One study on the impact of concealment versus disclosure of sexual orientation in the military found that concealment relates negatively to unit and social task cohesions and conversely, that disclosure positively impacts cohesion.⁷³ "Concealment leads to . . . stress and isolation, which can lead to decreased performance ability."⁷⁴ The negative repercussions of concealment are especially pertinent in the military, where "interpersonal connection, support, and trust among unit members are thought to be paramount to unit cohesion and effectiveness."⁷⁵ Thus, depriving transgender service members of the trust and bonding with fellow service members that is so fundamental to the military experience not only harms them individually, it also undermines military readiness and effectiveness generally. By changing military policy based on animus and without regard for the realities of military service, the executive order will have the opposite effect of its stated goal.

D. The Executive Order Undermines the Military's Role as an Inclusive Institution That Reflects Our Nation's Population.

The consequences of the executive order are not limited to the Armed Forces. They will be felt across society at large. The military is among our country's most integrated and diverse institutions, as it has eliminated several discriminatory restrictions on service over the last seventy years. By 1954, the military was fully racially integrated, and to this day the percentage of African Americans in the military is higher than the percentage of African Americans in the general population.⁷⁶ Women have been allowed to serve in combat since 2015, and the rate of

⁷³ Bonnie Moradi, *Sexual Orientation Disclosure, Concealment, Harassment, and Military Cohesion: Perceptions of LGBT Military Veterans*, 21 Mil. Psychol. 513 (2009).

⁷⁴ Allison Ross, Note, *The Invisible Army: Why the Military Needs to Rescind Its Ban on Transgender Service Members*, 23 S. Cal. Interdisc. L. J. 185, 209 (2014).

⁷⁵ *Id.*

⁷⁶ Paul-Thomas Ferguson, *African American Service and Racial Integration in the U.S. Military*, U.S. Army (Feb. 23, 2021), https://www.army.mil/article/243604/african_american_service_and_racial_integration_in_the_u_s_military.

1 military service by women has been rising.⁷⁷ Since 2011, individuals who are not heterosexual
 2 have been allowed to serve without concealing their sexual orientation, and a Pentagon report
 3 issued ten years later found that concerns about repealing the “Don’t Ask, Don’t Tell” policy
 4 were “vastly overblown.”⁷⁸ Reinstating a ban on transgender service members is equally
 5 unfounded. Beginning in 2016, and again in 2021, the military took similar steps forward for
 6 transgender individuals by allowing them to serve consistent with their gender identity. The
 7 executive order singles out transgender individuals for renewed exclusion, sending a message
 8 that threatens to slow progress and that will be heard and felt throughout our communities.
 9 Indeed, it seems that is precisely the point.

10 The military has already concluded—twice—that allowing transgender individuals to
 11 serve consistent with their gender identity is in the nation’s best interest. Reinstating the ban
 12 simply cannot be justified by reference to costs, unit cohesion, or overall readiness.⁷⁹ Rather, the
 13 Administration seeks to ban otherwise qualified people from service simply because of who they
 14 are. In doing so, the Administration would harm both the Amici States and our residents in
 15 profound ways. The National Guard’s experience allowing transgender individuals to serve
 16 consistent with their gender identity aligns with the military’s role as a highly trained,
 17 professional fighting force that prioritizes its national security mission over political debates.
 18 The executive order is a step backwards for transgender people, for civil rights, for the military,
 19 and for the country.

21 ⁷⁷ Emma Moore, *Women in Combat: Five-Year Status Update*, Center for a New American
 22 Security (Mar. 31, 2020), <https://www.cnas.org/publications/commentary/women-in-combat-five-year-status-update>.

23 ⁷⁸ Meghann Myers, *Fears of openly gay troops were vastly overblown: Pentagon report*,
 24 The Military Times (Sept. 28, 2022), <https://www.militarytimes.com/news/your-military/2022/09/28/fears-of-openly-gay-troops-were-vastly-overblown-pentagon-report/>.

25 ⁷⁹ Wagner Decl., Dkt. #33 ¶¶ 29-35; Bourcicot Decl., Dkt. #32 ¶¶ 25-28; Cisneros Decl.,
 26 Dkt. #36 ¶¶ 15-20; Skelly Decl., Dkt. #38 ¶¶ 10-16; Vazirani Decl., Dkt. #34 ¶¶ 12-15; Del Toro Decl., Dkt. #35 ¶¶ 11-22.

1 **IV. CONCLUSION**

2 This Court should grant Plaintiffs' Motion for Preliminary Injunction.

3 February 26, 2025

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