

United States Senate

WASHINGTON, DC 20510-3205

September 7, 2022

President Joseph R. Biden
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500

Dear President Biden,

We write asking you to direct the Department of Defense (DOD) to allow the enlistment and appointment of people living with HIV who have stabilized in treatment.

As members of Congress, we are pleased to learn that DOJ will no longer defend the constitutionality of regulations barring the deployment and commissioning of Service members with HIV who are currently serving in the U.S. military. The DOJ also informed Congress that it would withdraw its appeals in *Harrison v. Austin* and *Roe and Voe v. Austin*, in which the U.S. District Court for the Eastern District of Virginia (EDVA) declared these restrictions unconstitutional and issued an injunction requiring the DOD to allow Service members living with stabilized HIV to deploy and to commission. Concurrently with DOJ's announcement, Secretary of Defense Lloyd J. Austin III issued a letter outlining changes to DOD regulations that apparently were being made to comply with the injunction issued by the EDVA.

We applaud the decision your administration made to abandon the defense of these outdated and discriminatory policies. The summary judgment opinion of the district court and the opinion of the U.S. Court of Appeals for the Fourth Circuit affirming a preliminary injunction in *Roe/Voe* and the district court's opinion issuing that preliminary injunction are well reasoned and firmly founded in the facts and applicable case law. As the district court held, the categorical bars to the deployment and commissioning of Service members with HIV had no rational basis and served only to discriminate against these individuals in violation of the equal protection clause of the U.S. Constitution. We are glad the DOD has recognized this and chosen to move past these anachronistic policies, a move that many of us have long supported in the form of legislation to revisit federal and state laws and policies that discriminate against people living with HIV.

We now ask that your administration follow to its conclusion the path set forth by the well-reasoned opinions in these cases and allow individuals living with HIV to enlist, to seek appointment, and to otherwise join the U.S. military. The purported justifications for maintaining the bar to entry proffered by the DOD in the litigation in the EDVA — the additional costs of providing HIV-related care to such individuals and the purported incentive that people living with HIV will have to join the military in order to obtain health care — are not worthy of this administration's support. Just as it abandoned the defense of discriminatory restrictions on Service members living with HIV, we ask your administration to abandon these excuses for continuing to prevent people living with HIV who are stabilized in treatment from joining the U.S. military.

Furthermore, the current bar to entry and restrictions on the service of people living with hepatitis B (HBV) are even less justifiable than the restrictions on the service of people living with HIV. A vaccine for hepatitis B — which is provided to all people joining the military — is highly effective and reduces even the merely theoretical risk of battlefield transmission to near zero. Therefore, we ask that you also require the DOD to review and overhaul its regulations, policies and practices regarding the service of people living with HBV to bring them in line with the contemporary scientific understanding of this health condition—including the medical treatments now available to effectively manage chronic HBV—and ensure they do not unfairly discriminate against people living with HBV who simply want to serve their country.

Anyone who is qualified and has a desire to serve their country should be allowed to do so. We ask that you use your authority as Commander in Chief to ensure that every qualified individual living with HIV or chronic HBV is given the opportunity to serve their country.

Sincerely,



Kirsten Gillibrand
United States Senator



Christopher A. Coons
United States Senator

Mazie K. Hirono

Mazie K. Hirono
United States Senator

Tammy Baldwin

Tammy Baldwin
United States Senator

Brian Schatz

Brian Schatz
United States Senator

Bob Casey

Robert P. Casey, Jr.
United States Senator