

President Donald J. Trump

ID: LFG-2017-0008

The White House

1600 Pennsylvania Ave NW,

Washington, D.C, 20500

Sent via: Mail

Secretary James Mattis

United States Department of Defense

1000 Defense Pentagon

Washington, D.C. 22202

Sent via: Mail

September 25th, 2017

Re: Opposition to a ban on transgender individuals from serving in the armed forces of the United States of America

President Donald J. Trump and Secretary James Mattis,

I am sending you this letter out of extreme serious concern as to President Donald J. Trump's tweets¹ that were in regard as to banning transgender individuals from being able to serve in the armed forces of the United States of America. I strongly believe that all individuals that are wanting to serve this great² country should be encouraged to join and should not be prevented or discouraged as from joining or serving due to any personal biased or prejudiced views that some people may have towards individuals that are transgender. Everyone who is qualified to work should be given employment and when it applies as to government jobs, I believe that the government must treat all employees the same and should not treat any community superior or inferior to the other.³ I believe that this also applies as to candidates as for government jobs.

While I am not an attorney yet, I do hope that you understand that Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). With that being said, the Supreme Court of the United States has clarified that the phrase "because of ... sex" means "that gender must be irrelevant to employment decisions." See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 240 (1989). Title

¹ Tweets refers to comments made on Twitter.com. Twitter.com is an online news and social networking service where users post and interact with messages. Its founders are: Jack Dorsey, Evan Williams, Noah Glass, Biz Stone and its current chief executive officer is: Jack Dorsey.

² While I do love this country, we are no way perfect and we do need many changes in which does include stopping discrimination and biased and prejudiced attitudes against individuals residing in the United States of America.

³ Article 23 of the Universal Declaration of Human Rights states that everyone has a right to work.

VII’s prohibition on sex discrimination does encompass “discrimination based on the ... fail[ure] ... to conform to ... gender expectations.” See *Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000). As with this issue, it does appear that every federal appellate court has recognized that a transgender individual may state a claim for discrimination because of sex if their employer’s action was motivated by the plaintiff’s nonconformance with a sex stereotype or norm. See *Smith v. City of Salem*, 378 F.3d 566, 572-73 (6th Cir. 2004).⁴

Let us first take a look at some tweets that President Donald J. Trump has made with regard as to the issue and then some of the other reasons why I do not believe that it is lawful to ban individuals that are transgender from the armed forces of the United States. President Donald J. Trump has stated in [Twitter.com](https://twitter.com) the following:



While it is true that a tweet or tweets does not change the policy of the armed forces of the United States, I would like to point out that I strongly believe that banning transgender individuals from the armed forces of the United States is illegal. As I look at President Trump’s tweets as a reasonable person, I would conclude that these tweets from the Commander In Chief of the Armed Forces of the United States is an employment based decision to ban individuals that do not conform with some views as to traditional gender stereotypes of men or women. I believe that this type of adverse employment decision is “because of sex” that “because of sex” as in this case should have be irrelevant in this type of employment situation as with any government position in the United States. Government employers should not be able to ban individuals from entering employment with them because of their employees

⁴ The Sixth Circuit Court of Appeals held that an adverse action taken because of transgender plaintiff’s failure to conform to sex stereotypes concerning how a man or woman should look and behave constitutes unlawful gender discrimination.

or because the candidates as for the government jobs are individuals that fail to conform with traditional gender expectations.⁵

Constitution of the United States of America:

When looking at this issue as from a constitutional perspective, banning transgender individuals from the armed forces of the United States does in my opinion raise constitutional concerns. The Constitution of the United States of America protects all Americans and that includes those who are serving in the armed forces or who are candidates as to joining the armed forces of the United States. While every single constitutional argument is not going to be raised in my letter to you all, here are some reasons as to why I believe that banning individuals that are transgender from the armed forces is unconstitutional:

1. Fifth Amendment as to the Constitution of the United States of America

As with regards as to the Fifth Amendment as to Constitution of the United States of America, the Fifth Amendment states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Due Process Clause prohibits the federal government of the United States from denying equal protection of the law as to all of its citizens. This is also applied as to employment based decisions such as those that involve individuals in the armed forces or individuals that are candidates as to being in the armed forces of the United States. Therefore, decisions made by the Commander in Chief of the Armed Forces in which is or could be used to deny employment to individuals that identify as transgender, most likely violates the Equal Protection Component of the Due Process Clause of the Fifth Amendment of the Constitution of the United States.

I do not believe that it is constitutional as for any government employers of the United States to terminate a person's employment based on stereotypes as far as a perception as to what is moral or immoral is concerned, as to a class of people alone who do not conform as to some views of traditional gender expectation or by them exercising their right to transform as a member of another sex. I believe that a termination of employment under these circumstances would violate an employee's liberty, privacy and property interests.⁶ Most government employees, including those in the armed forces, do

⁵ An example as to this would be adverse employment action taken against an individual that identify as transgender because they are not living as a member of their birth sex and because they are doing everything that they can do, medically and physically, to conform as with their lived sex.

⁶ I believe that transgender service members have a constitutional privacy right to be free from being forced to partake in employment inquires as to their conforming or their non-conforming status or as to their personal relationships.

have a constitutional property interest in not losing their jobs for arbitrary reasons.⁷ Therefore transgender individuals also are included because they also have a constitutional property interest in not losing their jobs as for arbitrary reasons.

International Law:

I believe that banning individuals who are transgender from employment in the armed forces of the United States does violate international law. I also believe that denying transgender individuals adequate medical services while they are enlisted also is a violation of international law.⁸ As you may already know, the United States is a signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It is to my understanding that according to international law, the people are guaranteed the right as to information and to freedom of expression⁹, freedom of assembly¹⁰, and freedom of association.¹¹ All people are entitled to equality before the law¹², and all people also have a right to be free from discrimination.¹³ The federal government of the United States should be upholding the liberty of the people because citizens of the United States in which identify as being transgender do have a right to liberty under international law.¹⁴

International law is supposed to be the law of the land as long as the international law that the United States is a signatory to does not conflict with the Constitution of the United States.¹⁵ Article VI of the Constitution of the United States does state that "all treaties . . . shall be the supreme law of the land; and the Judges in every state shall be bound thereby."¹⁶ In 1974 the then Congress of the United States signed and ratified the Universal Declaration of Human Rights and the then Congress of the United States signed and ratified to my knowledge the International Covenant on Civil and Political Rights in 1992. Therefore, I believe that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights is of higher value than a sole executive agreement because those were approved by Congress and were thus ratified when a sole executive agreement is not.

There have been arguments made that certain international agreements in which the United States is a signatory to may not be legally binding through legal enforcement. While this may be true as with some international agreements in which the United States is a signatory to, I do not believe that is the case as with regards as to the Universal Declaration of Human Rights or as to the International Covenant on Civil and Political Rights because those were approved and were ratified by Congress. Even

⁷ See *Goldberg v. Kelly*, 397 U.S. 254, 262 & n.9 (1970), dictum followed in *Board of Regents v. Roth*, 408 U.S. 564, 571-72 (1972); *Slochower v. Board of Higher Education, City of New York*, 350 U.S. 551, 555-56 (1956)

⁸ Article 25 of the Universal Declaration of Human Rights States that everyone has the right to a standard of living adequate for the health and the well-being of himself and of his family.

⁹ See Article 19 of the International Covenant on Civil and Political Rights.

¹⁰ See Article 21 of the International Covenant on Civil and Political Rights.

¹¹ See Article 22 of the International Covenant on Civil and Political Rights.

¹² See Article 2 of the International Covenant on Civil and Political Rights and Article 1 of the Universal Declaration of Human Rights.

¹³ See Article 26 of the International Covenant on Civil and Political Rights.

¹⁴ See Article 3 of the Universal Declaration of Human Rights.

¹⁵ When comparing the Constitution of the United States of America to International Law, the Constitution of the United States is supreme over international law. That is because the United States of America is a constitutional republic.

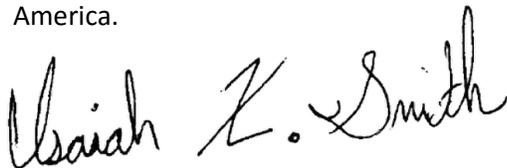
¹⁶ *Id.*

for some reason if the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights was found to not be enforceable through the legal system of the United States, I would still believe that the United States should be in compliance as with those international agreements. I believe that it would be hypocritical for the United States to demand that another country be in compliance as with international law if we as a country cannot even be in compliance as with international law in which we are a signatory to, as long as the international law is in compliance as with the Constitution of the United States.

Conclusion:

In conclusion, I want to be extremely clear that I strongly oppose any type of ban on transgender individuals from serving in the armed forces of the United States. Citizens of the United States should be encouraged and not discouraged from joining to serve this great country. As a country, we should not be preventing individuals that are unique from being a part of our country because they do not conform with some traditional gender expectations as to men and women that some individuals may have. That is not the way in which the United States should ever operate. We are all supposed to be in the twenty-first century and I believe that most citizens of the United States would find that banning transgender individuals from government employment to be purely stupid and ridiculous. Even if that was not the case, the law protects all in which includes the minority. The majority does not have a legal right to infringe on the rights of the minority.

The Native Americans believed in the British Colonial Era that everyone had their place in our world and that all of us must show respect and dignified treatment towards one another. With that principle, I would strongly urge the United States to not create or enforce any policy that bans transgender individuals from serving in the armed forces for any reason. All of us have a place in our world and I absolutely hope that is respected. I hope that the United States will be on the right side of history as to this issue and I hope that the United States will uphold the rights as to all individuals that are employees or who are candidates as for employment with the armed forces of the United States of America.

A handwritten signature in black ink that reads "Isaiah X. Smith". The signature is written in a cursive, flowing style.

Respectfully,

Isaiah X. Smith

Isaiah Smith Campaign

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