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BLUEPRINTS FOR SOUND PUBLIC POLICY

TRANS-RESTRICTIVE ACCESSION POLICY WOULD BE “DON’T ASK, DON’T TELL” ALL OVER AGAIN

September/October 2015

Context: Along with our partner organizations, we spent more than a decade discrediting “don’t ask, don’t tell” in the court of public opinion, and as a result, the policy was seen as an abject failure that wasted talent, undermined readiness, and compromised core values. During 2015-2016 debates inside the Pentagon over the formulation of inclusive policy for transgender troops, we occasionally learned of internal proposals for the new policy that would have effectively set up separate standards for transgender personnel. We believed that policy durability would require the Pentagon to treat all troops the same, and that separate standards would doom any policy to failure. In these two memos (written a month apart in response to two similar Pentagon efforts), which we circulated to Pentagon officials in charge of the repeal process, we argued that proposals then gaining traction would recapitulate some of the flaws of DADT. Our point was not just to illustrate the flaws of the proposal, but to invoke the DADT frame as a communications tool.

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BLUEPRINTS FOR SOUND PUBLIC POLICY

REQUIRING ACCESSION WAIVERS FOR GENDER DYSPHORIA IS “DON’T ASK, DON’T TELL” ALL OVER AGAIN

An accession policy requiring waivers for gender dysphoria (GD) would invite the same hypocrisy and concealment that undermined military values in the “don’t ask, don’t tell” (DADT) era. It would also be at odds with Secretary Carter’s stated “presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective, practical impediments are identified.”

First, a waiver policy would look on paper like a ban and would function in practice like a ban. An accession policy relying on waivers presumes, by definition, that all affected applicants are disqualified, and puts the uphill burden on them to prove otherwise. It is a ban by another name in appearance and effect, offering only an unpredictable possibility of exception granted behind the scenes, under standards that are not public.

Second, a waiver policy would discourage applicants with GD from being forthcoming at accession. Given that a waiver-based DODI 6130.03 would look exactly like a ban in designating GD as disqualifying, applicants who have or suspect they have GD would face a strong incentive to lie. Like DADT, the effect would be to suppress the truth, raising Admiral Mullen’s concern about the gay ban, namely that he was “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.”

Third, a waiver policy would discourage candor after accession even if the retention ban is lifted. Requiring accession waivers would put personnel who require transition-related care after enlistment into the uncomfortable position of having to explain why they did not identify themselves at accession. This, in turn, would encourage them to conceal their identity and hide health conditions that, while not incompatible with military service, may require treatment.

An alternative would be for enlistment regulations to specify qualifying standards, and applicants with GD would be assessed accordingly. For example, DODI 6130.03 neither disqualifies all persons with ADHD nor requires them to obtain waivers, even though ADHD is clearly relevant to the ability to serve. Instead, the regulation lists five factors such as success in school that, when present, indicate that ADHD no longer poses an unacceptable risk and is no longer disqualifying.

DODI 6130.03 could enumerate similar standards to identify when GD is not disqualifying, for example: Gender dysphoria, UNLESS 1) There is no history of comorbid mental disorder that would be disqualifying under DODI 6130.03; 2) Maintenance hormone medications (if taken) are medically stable and effective; 3) At least [X] months have elapsed since any transition-related surgical procedure and no complications or functional limitations persist; 4) If the applicant has transitioned gender, at least [X] months have elapsed since the [beginning] [end] of transition.

The disadvantage of this approach is stigmatizing applicants with GD as different even when disqualifying conditions, such as depression, are the same that non-transgender applicants might present. But, it would be far better than a waiver-based accession policy that would, in appearance and effect, recycle DADT all over again.

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REQUIRING SPECIAL SERVICE APPROVAL FOR GENDER DYSPHORIA IS “DON’T ASK, DON’T TELL” ALL OVER AGAIN

An accession policy requiring special Service approval for gender dysphoria (GD) would invite the same hypocrisy and concealment that undermined military values in the “don’t ask, don’t tell” (DADT) era. In subjecting transgender applicants to separate rules, it would also be inconsistent with the spirit of Secretary Carter’s stated “presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective, practical impediments are identified.”

First, a policy requiring special Service approval would look on paper like a ban and would treat transgender applicants differently from non-transgender applicants. A requirement for special Service approval presumes, by definition, that all affected applicants cannot be evaluated under the same standards that apply to everyone else. It is a ban by another name in appearance and effect, offering only an unpredictable possibility of exception granted behind the scenes, under standards that are not public.

Second, requiring special Service approval would discourage applicants with GD from being forthcoming at accession. Given that a Service approval requirement in DODI 6130.03 would look like a ban in designating GD as more problematic than any other condition addressed through “UNLESS” factors, applicants who have or suspect they have GD would face a strong incentive to lie. Like DADT, the effect would be to suppress the truth, raising Admiral Mullen’s concern about the gay ban, namely that he was “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.”

Third, a policy requiring special Service approval would discourage candor after accession even if the retention ban is lifted. It would put personnel who require transition-related care after enlistment into the uncomfortable position of having to explain why they did not identify themselves at accession. This, in turn, would encourage them to conceal their identity and hide health conditions that, while not incompatible with military service, may require treatment.

An alternative would be for DODI 6130.03 to specify “UNLESS” standards identifying when GD is not disqualifying, for example: Gender dysphoria, UNLESS 1) There is no history of comorbid mental disorder that would be disqualifying under DODI 6130.03; 2) Maintenance hormone medications (if taken) are medically stable and effective for at least six months; 3) At least six months have elapsed since any transition-related surgical procedure and no complications or functional limitations persist; and 4) If the applicant has transitioned gender, at least six months have elapsed since the applicant began living in his or her target gender.

Some DoD participants in the review process suggest that special Service approval is needed because “UNLESS” conditions are insufficient for enabling the Services to “know what they’re buying” at the time of accession. In addition, they tie the supposed inadequacy of “UNLESS” conditions to an absence of data about GD, and to MEPS examiners’ unfamiliarity with GD. This strikes us as implausible. Any physician, regardless of specialty, can easily and objectively certify whether an applicant meets all four “UNLESS” conditions specified above. Finally, the clear, evidence-based conclusion to be drawn from the recent AMA resolution and supporting statement by four retired US Surgeons General is that any individual meeting all four “UNLESS” conditions is fit for duty.