“Landmark Victory” Court Ruling for Service Members Living With HIV

Federal judge strikes down Pentagon policies that discharge and deny promotions to service members living with HIV.

April 7, 2022 By Trent Straube

The Defense Department must stop discriminating against service members living with HIV, ordered a federal district court in a “groundbreaking ruling” that “reflects the reality that HIV is a chronic, treatable condition, not a reason to discriminate,” according to a press statement from Lambda Legal, a nonprofit legal defense group that fights for HIV and LGBTQ communities.

The ruling involved two different cases—Harrison v. Austin and Roe and Voe v. Austin—that were combined. (Austin refers to Secretary of Defense Lloyd Austin, who heads the U.S. military.)

> WIN: Yesterday, a federal district court handed down one of the strongest rulings in over two decades for people living with HIV! Because of this landmark victory, @DeptofDefense can no longer block people living with HIV from becoming officers. https://t.co/ZRjIn6ed0s
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> — Lambda Legal (@LambdaLegal) April 7, 2022

Some quick background on the cases: In February 2018, President Trump announced a new “Deploy or Get Out” policy. It ordered the discharge of service members who could not be deployed for 12 consecutive months, regardless of their fitness or ability to serve. Under Pentagon policy at the time, service members who contracted HIV while in the military were considered nondeployable and therefore faced discharge. In addition, they could not be appointed as officers. (People living with HIV are not allowed to enlist in the military.)

In December 2018, two members of the U.S. Air Force were discharged days before Thanksgiving because they had tested positive the previous year. Both were taking meds, and their doctors deemed them fit to deploy. The resulting lawsuit, Roe and Voe v. Shanahan, was filed anonymously to protect their identities. (Patrick Shanahan was the secretary of defense at that time.)

In a separate case, also from 2018, plaintiff Sergeant Nick Harrison, a member of the DC Army National Guard, was denied a position in the Judge Advocate General's (JAG) Corps, a branch of the military that deals with law and justice, simply because he has HIV. He also faced discharge.

This week's ruling, by District Court Judge Leonie Brinkema, orders the Air Force and Army to repeal their previous discriminatory decisions.

"Until these lawsuits, the Department of Defense was the only entity in the U.S. that was still legally permitted to discriminate against people living with HIV despite the existence of the Americans with Disabilities Act and the Rehabilitation Act," said Kara Ingelhart, senior attorney at Lambda Legal. "This ruling knocks down the barrier preventing people living with HIV from commissioning and brings an end to the military's ongoing discrimination against the approximately 2,000 service members currently serving while living with HIV."

Lambda Legal filed the cases along with OutServe-SLDN, which partnered with law firm Winston & Strawn; OutServe-SLDN is an association that serves LGBTQ veterans and military members.

After reviewing a record that included dozens of depositions, thousands of pages of documents, two Department of Defense reports to Congress and expert testimony from four medical doctors and former military secretaries, the court ruled that the Pentagon's policies regarding service members with HIV are not only outdated, but unlawful, arbitrary and capricious, and unconstitutional," added Scott Schoettes, Esq. "Recognizing that appropriately managed HIV is a chronic condition with little to no effect on a person's overall health or daily activities and that merely being HIV positive is no impediment to safely deploying and performing as a member of the U.S. military, the court has issued one of the strongest judicial rulings in over two decades for people living with HIV."

For more background on these cases, see "Military and Medical Experts Denounce Trump's HIV Discharge Policy." And for a POZ interview with Peter Perkowski, the legal and policy director for OutServe-SLDN, read "Stronger Together."

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