

Congress of the United States

Washington, DC 20515

September 13, 2024

The Honorable Lloyd Austin
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Austin,

As members of Congress, we write to ask that you not appeal the U.S. District Court's recent decision in *Wilkins v. Austin*. Additionally, we write to request that you direct the Department of Defense (DOD) to update its enlistment policy to reflect the court's decision and allow people living with HIV, as well as those living with chronic hepatitis B, to enlist and seek appointment within the U.S. military.

We are pleased to learn that the U.S. District Court for the Eastern District of Virginia (EDVA) struck down DOD's policies barring the enlistment and appointment of people living with HIV in the U.S. military, calling these policies "irrational, arbitrary, and capricious." This ruling has been long overdue, considering EDVA's 2022 ruling that DOD must end its practices of discharging, not deploying, and not allowing the commissioning of current members of the military due solely to HIV status. The ongoing accessions ban at issue in *Wilkins* is not grounded in modern science, and it perpetuates unjust stigma against people living with HIV. We therefore request that you do not appeal this decision. The rejection of perfectly able candidates based solely on their HIV status not only denies these individuals their equal opportunity right to pursue enlistment, but it also diminishes the strength of the U.S. military.

We appreciate that, following the 2022 rulings in *Harrison v. Austin* and *Roe v. Austin*, Secretary Austin directed the DOD to promulgate new policies allowing service members with HIV to continue to serve, deploy, and receive commissions. We now ask you again to update that policy to allow individuals living with HIV to seek enlistment or appointment into the U.S. military. The justifications for maintaining this bar to entry are not worthy of further support and have been summarily rejected by EDVA. As the court notes, "[m]odern science has transformed the treatment of HIV," and people living with HIV can live long and healthy lives — including while fulfilling military duties. In fact, thousands of service members are currently defending the country while living with HIV. There is no evidence that these service members have faced complications from their disease, nor that there is any risk of battlefield transmission. Now, with the *Wilkins* decision, concerns over the cost of healthcare to support service members with HIV have been declared as insufficient to bar service. DOD already provides healthcare for other chronic conditions, including HIV-related care for dependents of servicemembers. All other justifications for these policies were rejected in *Harrison* and *Roe* (and again in *Wilkins*). A person's HIV status alone should not disqualify any individual who is otherwise fit for duty from serving.

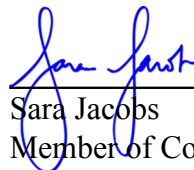
Additionally, the current bar to entry and restrictions on the service of people living with chronic hepatitis B (HBV) need to be similarly overturned. While many people who acquire HBV can clear the virus, some develop a chronic HBV infection for which there is currently no cure. In the United States, an estimated 880,000 to 1.89 million people are living with chronic HBV. As with HIV, people living with HBV can manage their condition with as little as one pill a day, and they are also able to lead long and healthy lives. Further, a vaccine for hepatitis B — which is provided to all people joining the military — is highly effective and reduces the theoretical risk of battlefield transmission to near zero. Again, as with HIV, the current accessions ban of people living with chronic HBV is not rooted in modern science. The DOD's policies barring the enlistment and appointment of people living with HBV were not litigated in *Wilkins v. Austin*. However, the underlying

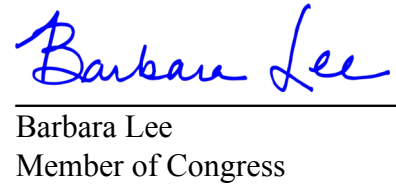
policies and principles used to decide this case are parallel to those affecting people living with HBV. Therefore, we ask that you take this opportunity to review and overhaul all regulations, policies, and practices regarding the service of people living with chronic HBV to bring them in line with the contemporary understanding of this health condition. The DOD must not unfairly discriminate against people who simply want to serve.

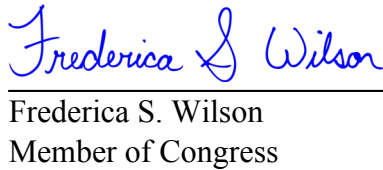
As the courts have noted, anyone who is qualified and has a desire to serve their country should be allowed to do so. We ask that you use your authority as Secretary of Defense to change these enlistment policies and ensure that every qualified individual living with HIV or chronic HBV is given the opportunity to serve their country.

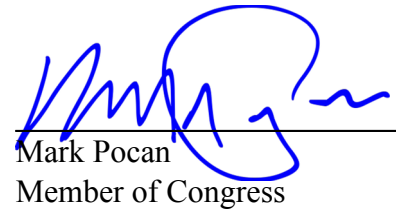
Sincerely,

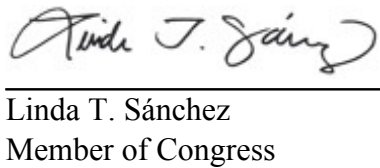

Mike Quigley
Member of Congress

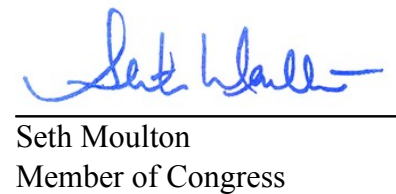

Sara Jacobs
Member of Congress

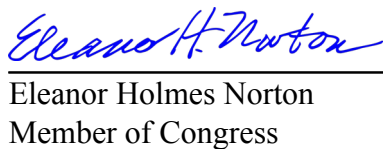

Barbara Lee
Member of Congress

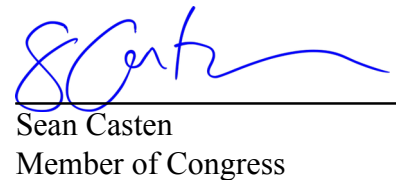

Frederica S. Wilson
Member of Congress

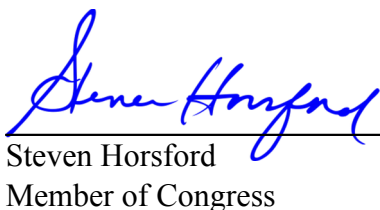

Mark Pocan
Member of Congress

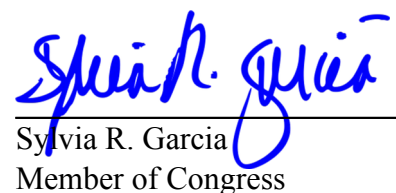

Linda T. Sánchez
Member of Congress

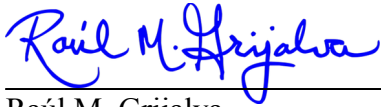

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Member of Congress


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Member of Congress


Steven Horsford
Member of Congress


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Member of Congress



Raúl M. Grijalva
Member of Congress



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Member of Congress



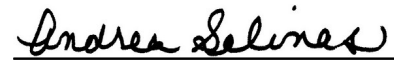
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Member of Congress



Summer L. Lee
Member of Congress



Eric Sorensen
Member of Congress



Andrea Salinas
Member of Congress



Terri A. Sewell
Member of Congress



Nanette Diaz Barragán
Member of Congress



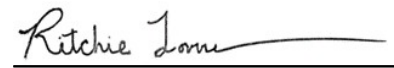
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