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United States Senate
COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

ELIZABETH L. KING, STAFF DIRECTOR
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March 1, 2023

Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Austin:

We are writing to you in response to the policies your staff promulgated at your direction on February 16, 2023, regarding administrative absence for access to abortion services, changes to command notification of pregnancy, and authorization of travel and transportation allowances to access abortion services.

In our letter dated July 17, 2022, we asked you for evidence to support the Department of Defense's claim in a June 28, 2022, memorandum that the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* would have "significant implications" for the "readiness of the Force." We also asked you to identify the policies and procedures that were under review by the department and to commit to consult with the Senate and House Committees on Armed Services before issuing any additional guidance.

In response to our letter, on August 3, 2022, Under Secretary Gilbert R. Cisneros, Jr. failed to answer our questions. He also did not commit to consult with our committee regarding the Department of Defense's plans about this policy. These actions directly contradicted the commitment he made to this committee during his confirmation process. When answering his Advance Policy Questions, he promised to ensure the department "informs and consults with the Senate Armed Services Committee . . . on the implementation of personnel policies." Instead, we received a letter that falsely equated access to abortion with the health and readiness of the force.

The Department of Defense then released a memorandum on October 20, 2022—less than 20 days before the midterm election—asserting the *Dobbs* decision has "readiness, recruiting, and retention implications for the Force." Again, the Department of Defense provided no support for this specious claim.

With no apparent regard for the facts in this important matter, you directed the department to develop significant policy changes related to the prevention and termination of a pregnancy. This can only be interpreted as a purely political action taken without consulting Congress.

In good faith, we again submitted a letter, dated November 21, 2022, asking you to provide answers to our questions about this memorandum. Specifically, we requested that you offer data on the number of women

or military families who have refused to be stationed in Germany, South Korea, or any other country based on the host country's abortion laws. Additionally, we asked for figures on the types of non-covered elective procedures for which the Department of Defense currently authorizes official leave and whether the Department of Defense has reimbursed travel for service members or their dependents for such procedures. Finally, we asked for clarification on any plans the department has to offer "reproductive health care" for DOD personnel and others eligible. We have yet to receive a response to this letter.

The policies the Department of Defense announced on February 16, 2023, are a blatant attempt to circumvent numerous federal statutes that distance the military from abortion-related decisions. Namely, it would force taxpayers to subsidize abortions by paying for service members or their dependents to travel to obtain the procedure and by granting additional leave for this purpose. Facilitating a service member's abortion through this channel violates the spirit of 10 U.S.C. § 1093, which prohibits the Department of Defense from funding elective abortions; it also brazenly departs from the Department of Defense's historic interpretation of its travel authorities in 37 U.S.C. §§ 452 and 453. These regulations authorize official travel for many activities, but, notably, they say nothing about funding travel to receive an elective abortion. Taking such significant liberties with federal law is a grave matter.

Additionally, the grant of an administrative absence for such purposes violates 10 U.S.C. § 704a by authorizing a new form of leave for a member to receive, or support a dependent receiving, an elective medical procedure not covered by TRICARE.

Lastly, and most troublingly, these policies will force military commanders that hold sincere pro-life beliefs to choose between their beliefs and their command. The recent actions of the Department of Defense on this issue are an affront to many devoted and loyal patriots serving in our armed forces.

The Department of Defense's actions tell our service members pregnancy is a liability to the force. They also imply our military's success hinges on access to abortion. The former is a mistake; the latter is false.

Since the *Roe v. Wade* decision in 1973, women and families have served proudly at U.S. military bases in countries whose laws restrict or ban abortion. Until the recently issued Department of Defense memos, we never heard concerns from service members or from the department about sending women to a location that "severely restricts their options for reproductive health care" or that any woman felt "deterred from joining the military for fear of being stationed at an installation or base in such" countries.¹ If you or your colleagues have evidence of such deterrence, we are eager to review it.

Given these concerns, we ask a third time: Please provide data on the number of women or military families who have refused to be stationed in Germany, South Korea, or any other country because of those nations' abortion laws. Also, please provide us with data on the leave and travel expenses provided by the Department of Defense to service members so they or their dependents could receive an abortion.

We again request the following information:

1. The Department of Defense's definition of "reproductive health care."
2. Data on the types of non-covered elective procedures for which the Department of Defense currently authorizes official leave and whether the Department of Defense has paid for the travel of the service member or their dependents for such procedures.

¹ Letter from Under Secretary of Defense, Gilbert R. Cisneros, Jr. to Senator James M. Inhofe dated August 3, 2022.

3. Since recruiting and retention challenges were apparent long before the *Dobbs* decision, please provide the committee with any public, Department of Defense-wide memos issued by this Administration prior to June 24, 2022, addressing military recruiting and retention issues.
4. Any information, guidance, or briefing materials provided by the Department of Defense to commanding officers, executive officers, enlisted advisers, or other leaders regarding “reproductive health care.”
5. A copy of the Department of Defense memorandum dated August 22, 2022, titled “Re: Legal Availability of DoD Appropriations to Pay Transportation Costs to Obtain Abortions Outside the Scope of 10 U.S.C. § 1093.”
6. Information the Department of Defense provides or plans to provide service members and other eligible beneficiaries regarding “reproductive health care” and what resources the Department of Defense plans to highlight “if they experience difficulties accessing reproductive health care at military medical treatment facilities.”
7. In the event these policies go into effect, the Department of Defense’s plans to “establish additional privacy protections for reproductive health care information” while verifying the need for covered leave and travel.
8. The role of chaplains in developing these new policies, guidance, and informational resources.

Lastly, we request the following additional information:

9. What actions, if any, would the Department of Defense take against a commander that refused to facilitate the abortion of an unborn child?
10. How is the administrative absence contemplated in the February 16, 2023, policy distinguished from voluntary leave to convalesce from an elective medical procedure or to support a dependent who is convalescing from an elective medical procedure?
11. What other elective medical procedures not covered under TRICARE has the Department of Defense authorized administrative absence for and funded associated travel costs?

Your policy is stated to go into effect 30 days after the February 16, 2023, promulgation. Please provide the above-requested information to us by March 10, 2023, so we may have sufficient time to consider your responses prior to the effective date.

The United States is at a pivotal moment for national defense, and there is no time for distractions. When the Department of Defense becomes sidetracked by divisive political sideshows, the missions of deterrence and readiness are the first to suffer. The Department of Defense’s focus should always be our national defense, not on circumventing federal law to facilitate abortions. We ask you to rescind these policies immediately.

Sincerely,



Roger F. Wicker
United States Senator



Deb Fischer
United States Senator

Tom Cotton
United States Senator

Mike Rounds
United States Senator

Joni Ernst
United States Senator

Dan Sullivan
United States Senator

Kevin Cramer
United States Senator

Rick Scott
United States Senator

Tommy Tuberville
United States Senator

Markwayne Mullin
United States Senator

Ted Budd
United States Senator

Eric Schmitt
United States Senator