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“Advocating injustice”

- a qualitative content analysis concerning the legitimization regarding
the transgender service- ban in the US military.

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Sammanfattning/Abstract

Den 12 april 2019 verkställdes ett förbud mot transpersoners militärtjänstgöring, av president Donald Trump och försvarsdepartementet. Förbudet antogs trots resultaten från RAND-studien, en studie som genomfördes endast ett år före förbudet, som drog slutsatsen att transpersoner borde få tillåtas tjänstgöra i militären. Flera individer motsatte sig till detta förbud, och vissa valde även att stämma presidenten och de andra inblandade. Presidenten och resten av de åtalade representerades av flera försvarare. Syftet med denna studie är att undersöka försvararnas argument för förbudet, och få en tydligare förståelse kring hur de försöker legitimera och försvara förbudet, samt hur det kan tolkas genom den här studiens valda teoretiska ramverk. Detta kommer att uppnås genom att använda en kvalitativ och deduktiv innehållsanalys, diverse tidigare forskning kring forskningsämnet, och ett teoretiskt ramverk som definieras och motiveras av termer såsom 'hegemonisk maskulinitet' och 'transgender', för att nämna ett par. Resultaten som denna studie kommer fram till handlar om legitimering för uteslutande av en viss grupp av individer för att de inte kan uppfylla kraven för ett hegemoniskt maskulint narrativ.

On April 12, 2019, a ban on trans people's military service was implemented, by President Donald Trump and the Department of Defense. The ban was adopted despite the results of the RAND study, a study conducted only one year before the ban, which concluded that transgender people should be allowed to serve in the military. Several individuals opposed this ban, and some even chose to sue the President and the others involved. The President and the rest of the defendants were represented by several defenders. The purpose of this study is to investigate the defenders' arguments for the ban, and gain a clearer understanding of how they attempt to legitimize and defend the ban, and how it can be interpreted through the chosen theoretical framework of this study. This will be achieved by using a qualitative and deductive content analysis, various previous research on the research topic, and a theoretical framework defined and motivated by terms such as 'hegemonic masculinity' and 'transgender', to name a few. The results of this study argue that the argumentation made by the defenders is about legitimizing the exclusion of certain individuals for not being able to fulfill the requirements for a hegemonically masculine narrative.

Nyckelord: *transpersoner, militär, diskrimination, Trump, förbud, tjänstgöra, hegemonisk maskulinitet, kön*

Keywords: *transgender, military, discrimination, Trump, ban, enlistment, hegemonic masculinity, gender*

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1.) Introduction

On February 22, 2015, US Secretary of Defense Ashton Carter was asked about the ability of transgenders' service in the military.¹ Carter explained that he considered that individuals' ability to meet the military's requirements for service was the only thing that mattered, and that individuals' personal issues should not matter.² Only a few days after Carter's opinion, the White House chose to "increase" its support towards transgender people already serving in the military. Subsequently, the army, the Air Force and the Navy, passed directives protecting trans soldiers from discharge. For example, the Army issued a directive that maintained that any discharge of transgender personnel, ought to be decided by the service's top civilian for personnel matters, instead of mid-level officers. While the Air Force conveyed that there was no legitimate reason to dismiss already serving transgender soldiers, or potential future personnel with gender dysphoria or who identified as trans. A transgender individual might only face dismissal from the Air Force if one's condition caused "disruption" with one's potential deployment or performance in active duty.³ With this in mind, Carter opted in July 2015 to establish a working group within the Pentagon that would, within six months, examine the political implications and readiness possibilities regarding the "embracement" of transgender service within the military.⁴ To achieve this, the RAND National Defense Research Institute was asked to study the implications of trans soldiers' service, identifying, among other things, trans soldiers' health needs, the impact of the troop's readiness on the individual, and the experience of foreign military forces that allowed trans members to serve

¹ "Remarks by Secretary Carter at a Troop Event in Kandahar, Afghanistan" (Press release), U.S. Department of Defense, February 22, 2015, <https://dod.defense.gov/News/Transcripts/Transcript-View/Article/607016/>, accessed: 23/06-2019.

² *ibid.*

³ Pilkington, Ed, "US air force: being transgender is no longer grounds for discharge", *The Guardian*, 05/01-2015, <https://www.theguardian.com/us-news/2015/jun/05/us-air-force-transgender-no-discharge>, accessed: 23/06-2019.

⁴ Locker, Ray, Brook, Tom Vanden, "Pentagon moves closer to allowing transgender troops to serve", *USA TODAY*, 13/07-2015, <https://www.usatoday.com/story/news/nation/2015/07/13/carter-defense-transgender-policy/30104403/>, accessed: 23/06-2019.

openly.⁵ In a report published in June 2016, RAND estimated that 2,450 active soldiers and 1,500 reserve personnel identified themselves as trans. RAND then also examined how much the military could be affected by the trans soldiers' needs for medical care in their gender transition, and how "ready" they were to serve. The study found that these factors had a minimal impact on the military, and chose to emphasize this fact, by comparing it with foreign transgender soldiers' effectiveness in serving in other countries. RAND therefore stated that a "strong leadership support" was required, that the military should provide training for the rest of the soldiers and the military in order to understand the situation that trans soldiers may be in and thereby develop and apply "a clear anti-harassment policy".⁶ On June 30, 2016, US Secretary of Defense Ashton Carter announced that the ban on transgender military service had been "lifted".⁷ Following Carter's statement, the Army, the Air Force and the Navy developed various policies on how the gender transition of trans soldiers in service could be facilitated without hindering their jobs, and how transgender officials who had already officially come out could avoid discrimination in service.⁸ Although, the decision was met with strong opposition and skepticism, as some believed that transgender military service might have a negative impact on the military's effectiveness and readiness.⁹ Merely a year later, President Donald Trump 'tweeted' that transgender people would no longer have the right to serve in the military.¹⁰ Trump proclaimed that the military could not be burdened with the massive medical expenses and "disruptions" that transgender people might incur. He chose to underline his

⁵ Schaefer, Agnes Gereben, Iyengar Plumb, Radha, Kadiyala, Srikanth, Kavanagh, Jennifer, C. Engel, Charles, M. Williams, Kayla, M. Kress, Amii, "Assessing the Implications of Allowing Transgender Personnel to Serve Openly", Santa Monica, CA: RAND Corporation, 2016, https://www.rand.org/pubs/research_reports/RR1530.html.

⁶ "Impact of Transgender Personnel on Readiness and Health Care Costs in the U.S. Military Likely to Be Small" (Press release), RAND Corporation, 30/06- 2016, <https://www.rand.org/news/press/2016/06/30.html>, accessed: 25/06-2019.

⁷ "Secretary of Defense Ash Carter Announces Policy for Transgender Service Members" (Press release), Department of Defense, 30/06 - 2016, <https://dod.defense.gov/News/News-Releases/News-Release-View/Article/821675/secretary-of-defense-ash-carter-announces-policy-for-transgender-service-members/>, accessed: 23/06-2019.

⁸ Vanden Brook, Tom, "More than 100 troops seeking transgender care", 10/11-2016, *USA Today*, <https://www.usatoday.com/story/news/politics/2016/11/10/more-than-100-troops-seeking-transgender-care/93566330/>, accessed: 25/06-2019.

⁹ J. Solomon, Daniel, "Ben Shapiro Praises Trump's Ban On 'Transgenders' In The Military", *Forward*, 27/07-2017, <https://forward.com/fast-forward/378189/ben-shapiro-praises-trumps-ban-on-transgenders-in-the-military/> accessed: 23/06-2019.

¹⁰ BBC, "Trump: Transgender people 'can't serve' in US military". 26/07-2017, *BBC News*, <https://www.bbc.com/news/world-us-canada-40729996>, accessed: 26/06-2019.

reasoning by referring to his consultation with 'generals and military experts', stating that this was the reason why transgender people should be banned from serving, despite contradicting the conclusions of the RAND- study.¹¹

Trump's ban on trans people's right to serve in the military was met with fierce resistance and backlash. However, Trump "explained" that he actually did transgender people a "great service" through the ban, as his ban might prohibit "mentally unstable" individuals from engaging in tough military situations and thus prohibiting them from harming themselves and/or others.¹² Opponents of this, said this was not true, and that Trump's real reason for the ban was not out of concern for the well-being of transgender people, but to adhere to conservative officials and his voters. They pointed out that Trump raised the ban because members of the U.S. House of Representatives threatened to cut the funding for his planned wall between the US and Mexico if the military continued to spend health care funds for medical treatment on gender dysphoria.¹³ Trump spoke with former Defense Minister James Mattis, who made sure to issue a report to the president, which would ensure whether the ban on trans soldiers would continue or be canceled. Mattis claimed that he had put together a group of "experts" on this topic, although who these individuals were, is not something Mattis has revealed to the public. In summary, transgender people with a background or diagnosis of gender dysphoria could be disqualified from military service, except under the following circumstances; 36 consecutive months of "mental stability" in one's biological sex before military service. The individuals who are currently serving and who have been diagnosed with gender dysphoria - if they "do not need" a gender transition after starting their service, they may continue to serve. For staff currently diagnosed with gender dysphoria under the previous policy (as written by Ashton Carter) and prior to the new date of this new policy, they can continue their service "in their preferred gender and receive medically necessary treatment for

¹¹ Mabeus, Courtney; Hafner, Katherine; Sidersky, Robyn, "Trump's transgender military ban sparks outrage, applause from Hampton Roads". 26/07-2017, *The Virginian-Pilot*, https://pilotonline.com/news/military/local/trump-s-transgender-military-ban-sparks-outrage-applause-from-hampton/article_fa33b881-656e-549e-a14c-212fba4b272d.html, Hämtad: 26/06-2019.

¹² Cooper, Helene, "Trump Says Transgender Ban Is a 'Great Favor' for the Military", 10/09-2017, *The New York Times*, <https://www.nytimes.com/2017/08/10/us/politics/trump-transgender-military.html>, Hämtad: 26/06-2019.

¹³ Kim, Richard, "Donald Trump's Ban on Transgender Troops Is Not a Distraction: It's the point", 26/07-2017, *The Nation*, <https://www.thenation.com/article/donald-trumps-ban-on-transgender-troops-is-not-a-distraction/>, Hämtad: 26/06-2019.

gender dysphoria".¹⁴ All other individuals who need or have undergone a gender transition would be disqualified from military service. And all transgender people without a background or diagnosis of gender dysphoria, who are otherwise eligible for employment, may serve, like other staff, except only in their biological sex. Mattis' report also chose to criticize the RAND study, stating that it referred to "limited and heavily-caveated" data to support its conclusions, that it "skimmed" over the effects of health care costs, preparedness and unit cohesion, and that it incorrectly relied on the selective experience of foreign military with different operational requirements than the US.¹⁵ On August 9 2017, a lawsuit was filed against President Trump, the Secretaries of Defense (James Mattis), the Army (Ryan McCarthy, acting), the Navy (Richard Spencer), the Air Force (Heather Wilson), and Homeland Security (Kirstjen Nielsen). The suit was filed on behalf of five anonymous transgender service members by two major LGBT-rights organizations, GLBTQ Legal Advocates & Defenders (GLAD) and the National Center for Lesbian Rights. The court ruled that the policy ought not to be blocked, and the plaintiffs lost the case.¹⁶ On March 23, 2018, President Trump issued a new memorandum (thus also withdrawing the previous memorandum), in which former Mattis had recommended that transgender people who required extensive medical treatment, including medication and surgery, and had been diagnosed with gender dysphoria, be disqualified from military service. It authorized Mattis to develop an "appropriate" military service policy that transgender people could "manage".¹⁷ After the United States Supreme Court ruling on January 22, 2019, allowing the ban, the ban was implemented on April 12 that year.¹⁸

¹⁴ Mattis, James, "Memorandum for the President", 22/02-2018, https://www.lamdalegal.org/sites/default/files/legal-docs/downloads/dkt.216-1.mattis_memo_randum_3.23.18.pdf, accessed: 26/07-2019.

¹⁵ *ibid.*

¹⁶ "Trump's Transgender Military Ban Remains Blocked Despite New Decision Dissolving One of Four Nationwide Preliminary Injunctions", GLAD, 04/01 - 2019, <https://www.glad.org/post/trumps-transgender-military-ban-remains-blocked-despite-new-decision-dissolving-one-of-four-nationwide-preliminary-injunctions/> <https://www.nbcnews.com/news/military/lawsuit-opposes-trump-s-ban-transgender-military-service-n791241> accessed: 17/11 - 2019.

¹⁷ "Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security Regarding Military Service by Transgender Individuals", NATIONAL SECURITY & DEFENSE, 23/03-2018, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-secretary-homeland-security-regarding-military-service-transgender-individuals/>, accessed: 26/06-2019.

¹⁸ Holpuch, Amanda, "Supreme court allows Trump trans military limit to be enforced", *The Guardian*, 22/01-2019, <https://www.theguardian.com/us-news/2019/jan/22/trans-ban-military-trump-supreme-court-ruling-latest>, Hämtad: 26/06-2019.

1.1. Purpose and research questions

As previously mentioned, President Trump's ban on transgender people has spurred resistance and uproar. Many argue that the ban is not valid, as it does not provide any legitimate reason for transgender people to be banned from serving, but is merely a means of discrimination.¹⁹ Since the Trump administration has dismissed the results of a study conducted to investigate trans people's ability to serve in the military, and has instead chosen to draw up a ban based on the administration's own views on the issue, it is interesting to investigate the reason for this.²⁰ The purpose of this study will therefore be based on examining why transgender persons are not allowed to serve, despite that this ban goes against scientifically proven facts conducted by the RAND-study. However, this study will not investigate whether a ban on transgenders' rights to military employment is right or not, as the RAND study has already, in due part, done so.²¹ Instead, the goal is to investigate why the results of this study are ignored, despite appearing to support basic human rights. This study will therefore work of of two research questions;

- 1.) How do the defenders in this lawsuit argue, reason and legitimize their viewpoints and arguments against transgender service?
- 2.) How can their reasoning be explained through the chosen theoretical framework that this study will work from?

¹⁹ Goodnough, Abby, L. Green, Erica, Sanger-Katz, Margot, "Trump Administration Proposes Rollback of Transgender Protections", 24/05-2019, The New York Times, <https://www.nytimes.com/2019/05/24/us/politics/donald-trump-transgender-protections.html>, Hämtad: 26/06-2019.

²⁰ Copp, Tara, "Mattis, Pentagon quiet on new transgender policy, 27/04-2018, *Military Times*, <https://www.militarytimes.com/news/your-military/2018/03/26/mattis-pentagon-quiet-on-new-transgender-policy/>, accessed: 26/06-2019.

²¹ Schaefer., Iyengar, Kadiyala, Kavanagh, Engel, Williams,, Kress, "Assessing the Implications of Allowing Transgender Personnel to Serve Openly" 2016, pp. ix-xvi.

2.) Material

The materials in this study will consist of two primary materials, in the form of a lawsuit issued against the Trump administration from anonymous individuals and a memorandum issued by the Department of Defense, as well as secondary materials, in the form of the RAND study and other relevant previous research. It is important to note that not all of the material that will be used in this study will be detailed in this paragraph as that would take up too much space and words. However, the focus will be directed towards the works that will be used the most and that have been of high importance for this study.

2.1. Primary material

The primary material in this study, will consist of the defenders' motion to dismiss and opposition the plaintiffs' application for a preliminary injunction. The point of this study is to examine how the Trump administration argues concerning this ban, and why that may be. Therefore, a lawsuit which details some of the arguments from the administration, DoD and several others, is a highly useful text to help answer these questions.

There are several aspects of this issue that could very well be covered and researched further (and perhaps they will be), however, this study is limited by its word/page-amount, and can therefore not undertake all materials and aspects that this topic may concern. The chosen primary material does delve into several different aspects that may not necessarily be useful for this study as they do not strictly focus on the subject matter in hand. By therefore focusing on themes such as *hegemonic masculinity* or terms such as *transgender*, one is more able to highlight the necessary components that can be used to actually answer the research questions of this study. Such terms and themes have been picked because they are either indirectly or directly referred in the document.

As the purpose of this essay is to provide a better understanding of how the defenders argue regarding the transgender ban, and why it may be so - a judicial document presenting their argumentation, alongside a memorandum concerning the ban itself, are useful materials for answering this study's research questions. Although the judicial document is not directly written

by the defendants themselves, but by the several attorneys representing them, the views and arguments that are presented are still the ones that the defendants uphold.

It is however important to note that a document in this manner cannot or may not be able to reflect all the viewpoints of the defenders on its own, and will therefore be analysed through various former research, with the help of the research method and theoretical framework of this study.

The memorandum itself has been briefly touched upon in a previous chapter. It prohibits new applicants for military service who have had any history of medical transitional treatment. Applicants with a history of gender dysphoria are presumably disqualified if they are not considered "stable" after 36 months and/or are willing to "return" to their biological sex.²² The memorandum addresses points that include the physical/mental, well-being and ability of individuals to serve in the military. If an applicant cannot meet the requirements of the military, the individual is not allowed to serve.²³ Although, the document advocates that there may be exceptions that would allow an individual to be able to serve, even though they are trans, these exceptions usually pertain to the individual having to conform to their biological gender.²⁴

While the purpose of this study is to gain an answer to questions that have been presented based on the contents of the judicial document, the memorandum is there to serve as a complimentary text of sorts. The reason for this lies in the fact that since not a lot of material regarding this issue is suitable or available as primary material, and because the memorandum is a clear indication of the Trump administration and the DoD's plan of action concerning this issue, it serves as a useful addition to the statements and arguments that have been made by the defenders in the lawsuit. It was also written after the judicial document, and presents an idea of how the ban will be enacted. It can therefore shed some light on why the defenders are arguing in a certain manner and how their reasoning was shaped in order to adhere to and protect this ban.

²² Norquist, David L., "Directive-type Memorandum (DTM)-19-004", 12/03-2019, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dtm/DTM-19-004.pdf?ver=2019-03-13-103259-67> 0.

²³ Norquist, 2019, pp. 7-12.

²⁴ *ibid*, pp. 7-8.

2.2. Former research

Concerning the topic of transgender issues within the military, there does not consist a lot of literature and former research that deals with the specific issues and questions that this study raises. However, this study has found some that may be of use, which deal with various topics, such as gender, transgender issues and other aspects, that may be useful for this study to be able to answer its research questions. This paragraph will cover some of the available research concerning this topic, and illustrate how it may be of value to this study.

As stated previously, one the research materials this study aims to use, is the RAND-study by, Agnes Gereben Schaefer, Radha Iyengar, Srikanth Kadiyala, Jennifer Kavanagh, Charles C. Engel, Kayla M. Williams and Amii M. Kress. The study was conducted four years before the ban took action, and was created to investigate and identify the needs, utilization rates, and the costs associated with extending healthcare coverage to transgender military members, whilst also assessing the “potential readiness implications” from letting transgender members serve openly and examine the experiences from transgender soldiers in foreign militaries that allow transgender members to serve openly.²⁵

The RAND-study came to the conclusion that since the term ‘transgender’ encompasses many factors and aspects, the enlistment of transgender service members ought to be a “case-by-cases” practice, as not all transgender people will share the same experience, both psychologically and physically. The study therefore advised the DoD to create a policy that would be inclusive to all members of the transgender community, where service members would have to enroll in diversity-training to be shown the benefits of having individuals with different backgrounds and identities. It also stated that subject-matters experts ought to be available for commanders to be able to seek advice on how to move forward on certain issues regarding gender identities. The main aspect that could be derived from the RAND-study, is that it exemplified, by examining open transgender service in foreign countries, that transgender service is nothing new to the military and that it ought to be allowed and not shunned.²⁶

This is also something which is detailed in the research by Michelle Dietert and Dianne Dentice. Their work highlighted the experiences of transgender service members through various

²⁵ Schaefer, Iyengar, Kadiyala, Kavanagh, C. Engel, M. Williams, and M. Kress, 2016, pp. iii-iv.

²⁶ *ibid*, pp. x-xv.

former research and data that explored what it means to be transgender in the military.²⁷ However, the term ‘transgender’ is a relatively broad term, that encompasses a variety of different aspects. Authors such as Nicholas Teich have produced texts that detail the wide complexity of this term.²⁸

This is explored further in a text that deals with the wide scope of what it means to be transgender in the military. M Sheridan Embser-Herbert emphasizes how tricky it might be to cover everyone who is transgender within this singular definition, as many people view and experience it differently. Embser-Herbert pertains to the fact that because ‘transgender’ is an “umbrella” term (meaning that it covers a large number of aspects and factors), it is hard to define people solely as either being ‘masculine’ and/or ‘feminine’, as most people do not view themselves within this binary framework.²⁹ He explains how difficult it is to try and understand the dichotomy and role that transgenders have in such a gendered institution as the military.

The notion that the military is gendered, is not just something that Embser-Herbert seems to think, but has been explored further upon by Godfrey Maringira. His research focuses on how the military enforces a strong masculine mindset upon its soldiers, and that life after the military (which Maringira argues is not only composed of the same masculinity which is reinforced within the military), can be a heavy burden for some soldiers.³⁰ The interplay of gender roles in the military is further explored by Laura Sjoberg.

Her work explores how gender roles play a huge part in the creation of warfare. Using a wide range of examples from conflicts around the world, she shows that the importance of gender can be found within each war, and has shaped how and why war is conducted at all.³¹ Another author that delves into similar aspects such as Sjoberg, is Siniša Malešević’.

²⁷ Dietert, Michelle. and Dentice, Dianne, “*The Transgender Military Experience: Their Battle for Workplace Rights*”, Journal of Workplace Rights , 04-05/ 2015: pp. 1 – 12.

²⁸ Teich, Nicholas, “The History of Transgenderism and its Evolution Over Time”. *Transgender 101: A Simple Guide to a Complex Issue*, Columbia University Press, 2012, pp 76-77.

²⁹ Embser-Herbert, M Sheridan, “*Transgender Military Service: A Snapshot in Time*”, in Woodward, Rachel, Duncanson, Claire (eds) 2017, “The Palgrave International Handbook of Gender and the Military”, Palgrave Macmillan Limited, pp.177-178.

³⁰ Maringira, Godfrey, “*Gendered Military Identities: Military Deserters in Exile*”, in Woodward,, Duncanson, (eds) 2017, “The Palgrave International Handbook of Gender and the Military”, pp. 289-291.

³¹ Sjoberg, 2014, pp. 12-18.

He tries to convey that war is a social conflict that is both dynamic and complex.³² His book covers the changing nature of war and organized violence, and promulgates the importance of using sociological tools to better understand such social phenomena. His theory explores to which effect warfare alongside coercion have had on the social life, in both a historical and contemporary degree. The theories from Sjoberg and Malešević share some similarities, but differ in the perspective they choose to focus on. While Sjoberg examines how power relations play a role in war from a gender perspective, Malešević chooses to examine this issue from a sociological perspective that does not specifically focus on gender alone, but other aspects, such as, nationality and religion. The works of these individuals seem to pertain to the idea of hegemonic masculinity within a gendered institution. The terms will be detailed and explained further in following chapters, and will also be used as part of the theoretical framework.

The notions regarding hegemonic masculinity within the military can also be found in the work of Ben Wadham. Wadham's text explores how a 'strong culture' within in the military is often formed around violence, both towards others and within the various groups and platoons. Although Wadham's text mainly focuses with topics such as rape within the military, it also manages to focus on the dominating hold that hegemonic masculinity has on the military.³³

The work of Stefan Dudink, Karen Hagemann and Josh Tosh are also useful when understanding how hegemonic masculinity interplays within the military, as it briefly illustrates the history of this mindset in the military and how it has shaped this institution to where it is today.³⁴

In the work of Helena Carreiras, the notion of an organized, gendered military is presented. Carreiras explores the notion of how gender has organized the military and formed its several norms and values. It deals with similar issues and topics that Maringira and Wadham raise, but managed also to show several different theories and texts about this topic.³⁵

³² Malešević, Siniša, "*The Sociology of War and Violence*", Cambridge University Press, 2010, pp. 1-5.

³³ Wadham, Ben, "*Violence in the Military and Relations Among Men: Military Masculinities and 'Rape Prone Cultures'*" in Woodward,, Duncanson, (eds) 2017, "The Palgrave International Handbook of Gender and the Military", p. 241.

³⁴ Dudink, Stefan., Hagemann, Karen., Tosh, Josh., "*Masculinities in Politics and War: Gendering Modern History*", Manchester University Press, 2004, p. 192.

³⁵ Carreiras, Helena, "*Gendered Organizational Dynamics in Military Contexts*", in Woodward,, Duncanson, (eds) 2017, "The Palgrave International Handbook of Gender and the Military", pp. 105 - 117.

The damages that this hegemonic masculinity may cause, are exemplified further in a text by Hilary Cornish, that explores how mental health and gender are linked within the military. Some of the argumentation that the defenders have made in the chosen research document for this study, revolves around the fact that transgender people would be unfit to serve due to their mental instability. To analyze such arguments, this study will make use of the research that Cornish has provided concerning this issue.³⁶ Cornish examines how gender interplays with mental health to create hierarchies and inequalities that promote the warfare narrative. Cornish's text shows how mental health may have a large part in the warfare narrative. It can be used as "motivation" of sorts, where it can drive certain soldiers to perform more during the war. Cornish explains that military institutions, alongside the states they serve, need to uphold a certain viable fighting force that cannot seem weak or frail. Mental health becomes an issue that is swept away as not to concern the institutions.³⁷

This study will also take into account the work of Lauren Greenwood, who demonstrates the importance of a qualitative approach to analyzing gender within the military. Greenwood's work is focused on analyzing how certain gendered norms and terms shape one's perception of the military, and that they often, if not always, are hegemonically masculine.³⁸ It will also rely on the work of Sarah Bulmer, who explains how discriminatory policies have shaped the US military.³⁹ However, this mindset of a strong and powerful military, that relies on this hegemonic masculinity - what is its origin?

According to Alessia Zaretti, this viewpoint originates from various aspects. The main one that she pertains to, is that of religion.⁴⁰ In a country with such strong religious foundations, such

³⁶ Cornish, Hilary, "*Gender, Mental Health and the Military*", in Woodward,, Duncanson, (eds) 2017, "The Palgrave International Handbook of Gender and the Military", pp. 275-277.

³⁷ Cornish, 2017, p. 275 - 278.

³⁸ Greenwood, Lauren, "*Qualitative Approaches to Researching Gender and the Military*", in Woodward,, Duncanson, (eds) 2017, "The Palgrave International Handbook of Gender and the Military", pp. 89-101.

³⁹ Bulmer, Sarah, "Sexualities in State Militaries", in "*The Palgrave International Handbook of Gender and the Military*", 2017, p 163.

⁴⁰ Zaretti, Alessia, "*Lesbian Gay Bi-sexual Transgender (LGBT) Personnel: A Military Challenge*" in; Caforio G., Nuciari M. (eds) "Handbook of the Sociology of the Military", Handbooks of Sociology and Social Research, Springer, Cham, pp. 393-395.

as the USA, Zaretti means that there has to have evolved a way of regarding members of the LGBTQ-community as “mentally ill” and “unfit” for service.⁴¹

Zaretti brings up the case of the DADT-policy (*Don't ask, don't tell* - a discriminatory policy that prohibited homosexual service members from serving openly for several years), and illustrates how discriminatory that policy was towards specific members of the LGBTQ-community who were seen as ‘weakening the morale’ of rest of the soldiers.⁴² Zaretti's main focus lies on the magnitude that religion has had on the military. Her work begins by showcasing how various militaries have actually benefitted from members of the LGBTQ-community over the centuries. She starts off by explaining that in Ancient Rome, homosexual soldiers were used as “functionality” to advance the capacity of developing qualities such as a “sense of sacrifice, mutual trust and moral solidarity”, disciplined emotions, that were viewed as essential to a soldier.⁴³ Zaretti pertains that homosexuality could be found in various militaries, such as the Japanese samurais and the Nazis. She explains that the reason as to why homosexuality and other LGBTQ-communities were shunned from the military narrative, was because of the persecution that the Catholic Church would bring down on members from the LGBTQ-community, mainly homosexuals (but this would also later on extend to others, such as with President Trump's service ban against transgenders).⁴⁴

Zaretti's work is of importance to this study, because it explains what an impact religion has had on the narrative of LGBTQ-soldiers in the military. In later chapters, this will be further examined, and Zaretti's research sets up a strong framework from which to work upon. However, it also illustrates how “strategic” it is to allow members of the LGBTQ-community to openly serve, as it increases their morale, and also demonstrates how valuable it is to allow several willing and able individuals to serve in a job that requires strength, courage and determination.⁴⁵ The works that have been presented in this subchapter will be referenced in the following chapters. They are all of great value to this study and illustrate different aspects and important factors that will contribute to answering the research questions that this study has posed. However, it is worth to note that since

⁴¹ Zaretti, 2018, p. 395.

⁴² *ibid*, p. 395.

⁴³ *ibid*, p. 393.

⁴⁴ *ibid*, pp. 393, 395.

⁴⁵ *ibid*, pp. 401-402.

this study has a word/page-limitation, the way these works will be referenced in the the following chapters, is through a chapter concerning the theoretical framework, and then further on, primarily through the footnotes, so as not to take up too much space in main text.

3.) Theory

This study's theoretical framework will consist of two theoretical narratives, one concerning hegemonic masculinity and the other concerning gendered military. These theoretical narratives examine how traditional roles (masculinity, femininity, race, gender, etc.) play a role in shaping warfare and why it may be important to uphold and thus prohibiting individuals who might "disturb" them. These narratives will consist of several different researchers and authors and will in turn comprise the theoretical framework. The terms that have been selected to serve as the theoretical framework, are not all explicitly referred to by the defenders. They have been chosen to explain and illustrate some of the various themes which the defenders' argumentation revolves around, such as; gender, transgender, traditions and other aspects.

3.1. Hegemonic masculinity and the gendered military

The theoretical framework is comprised of authors; M Sheridan Embser-Herbert, Siniša Malešević, Godfrey Maringira and Laura Sjoberg.

Before the theories are explained further, it would suitable to explain what hegemonic masculinity is and what it means when a military is gendered. Sjoberg defines a gendered military, in the book, "*Gender, War, and Militarism: Feminist Perspectives*", as involving a construction of war and militarism and examining how that interplays with gender to create gender hierarchies and inequalities to further advance a war and military-agenda.⁴⁶

⁴⁶ Sjoberg, Laura, "*Gender, War, and Militarism: Feminist Perspectives*", ABC-CLIO, 2010, p. 10.

The definition of hegemonic masculinity is also one that is derived from Sjoberg, from her book, *Gender and International Security: Feminist Perspectives*. Sjoberg's explanation for hegemonic masculinity is in turn defined by Charlotte Hooper, and explained as being a construction of subordinated masculinities that oppose femininity.⁴⁷ In essence, it is a legitimization of a man's dominating societal position whilst also being a justification of the subordination of men and women who "fail" to meet these masculine standards and norms.

This is further explained by Sjoberg. In another book, *Gender, War, and Conflict*, Sjoberg describes how various groups (women and/or LGBT groups, for example), which have not been regarded as traditionally masculine, take their place in formal and informal military structures previously reserved for and assumed to be only suitable for men.⁴⁸ For example, she describes how women, through history, have fought in wars, either as women or secretly dressed as men. Although this has been occurring throughout history, it is only 'recently' that they have been allowed to join state militaries, rebel groups and/or terrorist organizations in a larger scale than ever before.⁴⁹ This, in turn, raises the question of how useful are traditional gender-specific categories in order to understand the dynamics of war and conflict, and who benefits from them?

Sjoberg's book illustrates a specific picture of gender roles in war, and why they are important for a war to "succeed". She proposes that individuals who "cannot" be applied to a "traditionally masculine" image are not portrayed as warriors, because it might "destroy" the traditional masculine war narrative.⁵⁰ Sjoberg highlights this fact by citing examples of wars in which transgender people have been very involved (the American Civil War, for example), but who have been "ignored" because this narrative does not glorify the traditional male warrior.⁵¹ This is also the reason why Sjoberg's theory is useful for this study. Her theory conveys the idea that anyone who cannot be categorized as the traditional male warrior is often excluded from the warfare narrative.⁵²

⁴⁷ Sjoberg, Laura, *Gender and International Security: Feminist Perspectives*, Routledge, 2009, p. 89.

⁴⁸ Sjoberg, Laura, *Gender, War, and Conflict*, Polity Press, 2014, pp. 31-34.

⁴⁹ Sjoberg, 2014, pp. 36-45.

⁵⁰ *ibid*, pp. 19-22.

⁵¹ *ibid*, p. 44.

⁵² *ibid*.

As mentioned previously, Malešević's ideas share a certain similarity with Sjoberg's. In order to formulate his theory on warfare and wars themselves, Malešević takes advantage of various theorists and theories, which means that there are some similarities to theorists such as Sjoberg. He says that war has certain components that always have to be fulfilled in order for wars to "succeed", which can be compared to Sjoberg's theory. However, the components that Malešević talks about are more in line with social hierarchy than gender hierarchy, but aspects of gender hierarchy can still be found in his reasoning.⁵³

Malešević states that soldiers must have a certain feeling of fulfilling the role of the traditional male warrior, and in order to achieve this there has to be soldiers and other individuals, whether military or civilian, who are to be considered unable to fulfill this masculine role. It becomes prevalent to exercise and implement a dichotomy within the various gender roles. Malešević exemplifies this by mentioning the traditional perception of men being considered strong and courageous, while women are seen as the exact opposite. The soldiers fighting for their country are portrayed more within the traditional norm of what a man should be considered to be. The enemy is therefore portrayed with the traditional "women's role", a role considered as weak and non-masculine. Malešević believes that this is mainly intended to "implement" a motivating image for the soldiers in the field to use for themselves, in order to feel stronger than the enemy. He also pertains that if this narrative is brought in within the platoon itself, then even the soldiers with the lowest of self-esteem might feel validated as they are considered the opposite of the enemy - a truly masculine and strong soldier.⁵⁴ Malešević's ideas regarding 'traditional masculinity' and how it shapes the military, can also be found in the works of Embser-Herbert. However, the way in which they differ, is that Embser-Herbert chooses to focus on transgender individuals' military experiences specifically.

Embser-Herbert goes on to illustrate that many people throughout US-military history, could have been categorised within the term 'transgender'. He explains that many women who started out as simply masquerading their identity - from female to male, to be able to follow their husbands into war, might not have identified themselves as transgender, but are important examples to showcase that this is not a "phenomenon" that began in recent years, but has existed within the military for several decades. Embser-Herbert details that since the military is a highly

⁵³ Malešević, 2010, pp. 11-14.

⁵⁴ *ibid*, pp. 202-210, 215, 219-223.

“gendered” institution, anyone who is not “properly defined” (meaning not defined as belonging to a certain gender) poses a great deal of ‘uncertainty’ for the rest of their troop, colleagues and others.⁵⁵ He explains that in order to diminish this uncertainty, the term transgender is defined as someone who is ‘uncomfortable’ with their biological sex and desires to have this changed through surgical means. Embser-Herbert explains that not only is this incorrect, as not all transgender people feel the need to have a sex-reassignment surgery, but that it simultaneously ignores all the people who served in the military that never had surgery but have either come out as trans or been regarded as trans.⁵⁶

Embser-Hubert’s research is of value because it highlights the fact that non-binary identity within the military has been occurring for a long time. It also demonstrates the importance of binary gender within the military, and how strongly it has affected the mindset of soldiers and personnel alike, in such a manner that in the 21-century a ban against transgender military service has occurred. Maringira’s work is helpful to this study, because it showcases the destructive nature of a hegemonic masculinity. It also presents the notion that anyone who cannot meet the standards of this dominant masculinity, is often discarded from the military.⁵⁷ Maringira explains how anything that might be regarded as feminine, is viewed as weak and frail for the military. By presenting a view of how gender roles play a part in shaping the narrative and way of thinking within the military, it becomes more clear as to why some individuals and gender identities are embraced in the military, while others are prohibited from serving and viewed as weak.⁵⁸

In short summary, the way in which hegemonic masculinity can be understood through these authors, is that it is a standard upon which the “true” masculinity is based upon. It is a way of shaping individuals, men mostly, to fit into an aggressive and hostile aspiration to dominate anyone who falls outside this narrative; women, members of the LGBTQ-sommunity, and other groups.⁵⁹ A gendered military, on the other hand is the idea of examining how the military shapes and uses gendered roles (traditional/stereotypical roles), expectations and ideologies so as to be able to go

⁵⁵ Embser-Herbert, 2017, pp. 179-182.

⁵⁶ *ibid.*

⁵⁷ Maringira, Godfrey, 2017, pp. 292-296.

⁵⁸ *ibid.*, pp. 296-298.

⁵⁹ Sjoberg, Laura, 2010, p. 43.

into war and combat.⁶⁰ There are several other authors and works that will be used and referenced throughout this study, such as the previously mentioned works of Helena Carreiras and Ben Wadham. However not all will be used as the theoretical framework, due to a word/page-limitation and because some of the works do not provide enough material to be used in such an extensive way as the ones in the theoretical framework.

4.) Method

The primary material will be reviewed using a qualitative content analysis, which is derived from Kristina Boréus and Göran Bergström's work, as well as Hsiu-Fang Hsieh and Sarah E. Shannon. The method will also be used alongside the various former research and theoretical framework of this study.

4.1.) Qualitative and deductive content analysis

The method, content analysis, is derived from the books '*Textens mening och makt*', by Kristina Boréus and Göran Bergström, and '*Three Approaches to Qualitative Content Analysis*', by Hsiu-Fang Hsieh and Sarah E. Shannon. As one of the questions that this study aims to answer is how the defenders of this document argue, a content analysis of a qualitative kind is the most appropriate method. It is a social science method that allows the researcher to consider both the manifest and the latent contents of a text in systematic ways.

However, the interest of this study does not lie in unfolding the latent contents of the argumentation made by the defenders, as that would be a tangent that this text will not go into, nor do the questions it poses concern that. The primary material will be analyzed based on terms such as hegemonic masculinity, gender, transgender, gendered narrative or mental health, in order to be interpreted with the theoretical framework of the study. This way of analyzing assures that the

⁶⁰ *ibid*, pp. 10-11.

chosen primary material is interpreted subjectively, but also illustrates that the study has used relevant and useful research to achieve this.⁶¹

A content analysis can also differentiate in whether it is of an inductive or deductive kind. An inductive approach, avoids using predetermined themes and categories, and instead allows them to be designed based on how the textual content looks. By doing this, the study illustrates how it has used different relevant research to formulate and provide new insights into this topic. A deductive content analysis - such as the one that this study aims to use, allows the researcher's theoretical perspective to create categories and/or themes to subdivide the text, and is appropriate when there are large amounts of relevant theories and former research concerning a specific issue.⁶²

The reason why a qualitative content analysis was chosen instead of, for example an argumentation or text analysis, is because it is not as "strict" in its implementations towards a text as these other analyses would be. Methods such as argumentation and text analyses, are usually used for analyzing the strength and durability of an argument. Since that is not the primary concern of this study, a method that is more focused on illustrating and presenting the various arguments, is a more appropriate method for this study. It is more flexible and thus enables the researcher to apply the method in their own desired way and how it might suit the primary material best.

5.) Analysis

To answer this study's research question, this chapter will be divided into two parts with several subchapters. The first part will consist of the first question of this study - how the defenders argue, reason and legitimize their viewpoints. In this part, the argumentation made in the document will be somewhat 'summarized' (as this study has a word/page limitation and because this study is specifically interested in the portions of the document that deal with terms such as transgender,

⁶¹ Bergström, Göran, Boréus, Kristina, "*Textens mening och makt*", Lund: Studentlitteratur, 2012, pp. 50 - 90.

⁶² Hsieh, Hsiu-Fang, Shannon, Sarah E., "*Three Approaches to Qualitative Content Analysis*", Qualitative Health Research, vol. 15 issue 9, 2005, pp.1277-1286.

hegemonic masculinity, mental health and gender - whether they are expressed intently or not, this study will focus on points in the document that touch upon these aspects) and analyzed through a content analysis.

The second part will consist of the second question - how can the arguments be explained through the theoretical framework? The chosen method, the results of the first part and the theoretical framework will also be used in order to answer the second question.

5.1.) The first question.

This chapter will analyse the document with the first question in mind - how do the defenders argue? It will be divided into four sub-chapters, where three sub-chapters will examine parts of the document, and the fourth sub-chapter will briefly present the results (which will be detailed further more in the 'Results' chapter). As the argumentation may be quite long, it will be 'summarized' and broken down in these three parts and analyzed using the chosen method - qualitative and deductive content analysis, and the former research.

5.1.1) No harm, no foul.

The first line of reasoning that the defenders' argumentation is based upon, is that the plaintiffs' motion ought be dismissed on the grounds that no visible injuries can be seen.⁶³ This paragraph deals with injuries and how mental health affects soldiers. The defenders' argumentation will focus on the premise that injuries have to be seen in order to be validated, which could negate any mental injury that would not directly be visible. As presented previously, Hilary Cornish mentions that mental health can often be swept away, as to not 'bother' the various military institutions. This paragraph will highlight how the defenders may be using this for their argumentation.

⁶³ "Jane Doe, et. al. v. Donald J. Trump, et. al.; Complaint for Declaratory and Injunctive relief, Case No. 17-cv-1597" 09/08 - 2017, pp. 15-18.

The defenders argue that the plaintiffs are claiming to have been subjected to injustice and restrictions that have not taken place, and present several cases of individuals who have served during this period and have done so without any ‘complications’.⁶⁴ The defenders also argue that the plaintiffs’ claim that “a preliminary injunction based in part on the alleged stigmatic effect of possible future restrictions on military service” is not a reasonable claim for an injunction.⁶⁵

The defenders begin their defense and argumentation by illustrating, through various former cases and individuals that no actual injury has been seen, nor are the plaintiffs correct in their claim that an injunction ought to take place, since their claims rely on future restrictions that have not taken place. This is an interesting argumentation, because the defenders do not specify if these ‘future restrictions’ will be put into action or not. They are simply dismissing the plaintiffs’ claims as not valid, because these injustices have not yet taken place.

This line of reasoning seems quite similar to dismissing the concerns raised by an individual who has been threatened with violence, for instance, simply because the violence has not taken place yet. It also demonstrates that the defenders appear to be quite aware of the restrictions that have been brought forth against transgender service members, and are trying to discourage any concerns by labeling it as actions that are still waiting to happen, and are therefore not valid as arguments against the defenders.

Additionally, the defenders rely on the reasoning that injuries have to be seen in order to be validated. They bring up some instances where this has happened to support their arguments.⁶⁶ However, the cases that they present to support their claims, deal with unjustifiable segregation on the basis of race, gender and/or other identity markers (Allen, 468 U.S. at 755).⁶⁷ As well as dealing with future injuries that may or may not occur (Amnesty Int’l USA, 568 U.S. at 409).⁶⁸ The argumentation that the defenders are using, seems to be supported by cases that have proven that unidentifiable injuries and criticizing the government without justifiable evidence do not hold a strong argumentational sustainability.

⁶⁴ *ibid*, p. 16.

⁶⁵ *ibid*, p. 18.

⁶⁶ *ibid*, pp. 15, 17.

⁶⁷ *ibid*, p. 17.

⁶⁸ *ibid*.

However, the plaintiffs have not criticized the government without justifiable evidence or demanded that the laws and rules be altered for their own personal gain. Rather, the argumentation that they have presented, is based on the findings of a study conducted by RAND, an institute that the previous administration consulted to gain a better understanding of this issue. The findings of that study showed that there is no legitimate reason to prohibit transgender personnel from serving, and is thus a discriminatory action that warrants justifiable criticism.

Furthermore, while the case that has been brought forth by the defenders to support their argumentation of ‘invisible injuries’, does address the fact that injuries have to be “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.”, this line of reasoning negates itself on the fact that the Trump administration and others, such as the DoD, have explicitly proclaimed that being transgender is a mental illness and/or instability.⁶⁹ To therefore go against the argumentation made by the very same individuals that one is defending, is to also present a distorted view of how the defenders actually view this issue.

The reasoning that is presented revolves around the fact that the Trump administration and others do not see a medical injury being evident in this matter. If that were true, which it is not, then there would also not be a reason for the plaintiffs to file a lawsuit against the Trump administration and claim that they were discriminated against on the merit of their gender identity. It would also mean that there would be no valid reason for the ban to be enacted in the first place, and since it has been, the criticism against the administration is justifiable and warranted.

In accordance with the work of Hilary Cornish, it is stated that mental health in the military is a highly gendered perception. Cornish explains that depending on the service members’ gender, a mental injury may either be seen as heroic or weakening.⁷⁰ For the defenders to therefore argue that no injury could be seen, is both a positive aspect for the plaintiffs, but a negative one for

⁶⁹ Pilkington, Ed, “*Revealed: the trans military members living in fear under Trump’s ban*”, The Guardian, 13/06-2019, <https://www.theguardian.com/society/2019/jun/12/revealed-how-trumps-transgender-ban-has-forced-military-members-back-into-hiding>, accessed: 25/11-2019;

Thompson, Matt, “*How to Spark Panic and Confusion in Three Tweets*”, The Atlantic, 13/01-2019, <https://www.theatlantic.com/politics/archive/2019/01/donald-trump-tweets-transgender-military-service-ban/579655/>, accessed: 25/11-2019;

Haynes, Susan, “*The World Health Organization Will Stop Classifying Transgender People as Having a ‘Mental Disorder’*”, TIME, 28/05-2019, <https://time.com/5596845/world-health-organization-transgender-identity/>, accessed: 25/11-2019;

Clapper v. Amnesty Int’l USA, 568 U.S. 398 (2013).

⁷⁰ Cornish, Hilary, “*Gender, Mental Health and the Military*”, 2017, pp. 275-277.

the defenders themselves. Although the World Health Organization (WHO), has declassified transgender people as being mentally ill, and it is a positive aspect for members of the trans-community - this is a great disservice to the defenders, who are defending the argumentation that transgender individuals may not serve in the military.⁷¹

To use mental health as an argument for banning transgender people from serving, has been uttered before, which is why it is fascinating to see that the defenders are not explicitly arguing in that manner. As Cornish explains, mental illness is an injury that is 'used' as a 'tool' to determine heroism or undermine the self-image of individuals by portraying them as weak for having a mental illness and therefore being unable to serve.⁷²

The reason as to why the defenders may not want to argue in that manner, may be because it would warrant the arguments made by the plaintiffs, and demonstrate that the Trump-administration and others are actively trying to hinder transgender people from military service, which the defenders are trying to argue against.

5.1.2) Inequality on the basis of gender.

As the defenders are trying to steer clear from presenting transgender people as being mentally ill, their focus is instead directed to trying to prove that the plaintiffs' argumentation is not 'ripe', as they have not illustrated how the Trump-administration and others are prohibiting them for serving or recognizing gender dysphoria.⁷³

⁷¹ Griggs, Brandon, Pickman, Ben, "*The World Health Organization will stop classifying transgender people as mentally ill*", CNN, 20/06-2018, <https://edition.cnn.com/2018/06/20/health/transgender-people-no-longer-considered-mentally-ill-trnd/index.html>, accessed: 26/11-2019;
Ford, Zack, "*WHO declassifies being transgender as a mental illness, undermines Trump's trans military ban*", ThinkProgress, 20/06-2018, <https://thinkprogress.org/world-health-organization-transgender-mental-disorder-dd8f92a42c50/>, accessed: 26/11-2019.

⁷² Cornish, 2017, pp. 275-277.

⁷³ "Jane Doe, et. al. v. Donald J. Trump, et. al.; Complaint for Declaratory and Injunctive relief, Case No. 17-cv-1597" 09/08-2017, pp. 18-23.

This paragraph will analyze how gender plays a vital role in shaping the military. By highlighting that transgender people are in psychological turmoil, that might hinder them from effectively serving, the defenders have used an argumentation made by many transgender individuals (that gender dysphoria is causing mental anguish and self-harm), to their advantage.⁷⁴ They have also changed the narrative, so that transgender individuals seem weak and unable to fit into the strong military. They have presented a gendered narrative that relies on this hegemony.⁷⁵ This paragraph will explain how this has been done.

The defenders point their argumentation towards the operative Interim Guidance issued on September 14, 2017 (a policy that bars any disparate treatment of current transgender service members), and explain how the plaintiffs ignore the arguments made in the document, that are there to support transservice members;

[N]o action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status. Transgender Service members are subject to the same standards as any other Service member of the same gender; they may be separated or discharged under existing bases and processes, but not on the basis of gender dysphoria diagnosis or transgender status.⁷⁶

They then go on to argue that the reason as to why the plaintiffs' are wrong, essentially, is because their argumentation is not 'ripe'. The term, 'ripe', is explained by the defenders as both being "drawn by Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.". They also speak of the fact that 'the ripeness doctrine' exists in order to protect the courts and the judicial system from entangling itself in "abstract disagreements" and "to protect the other branches from judicial interference until their decisions are formalized and their effects felt in a concrete way by the challenging parties."⁷⁷ In short summary, what this means is

⁷⁴ Aitken, Madison, VanderLaan, Doug P., Wasserman, Lori, Stojanovski, Sonja, Zucker, Kenneth J., "Self-Harm and Suicidality in Children Referred for Gender Dysphoria" in *Journal of the American Academy of Child & Adolescent Psychiatry*, Volume 55, Issue 6, 2016, pp. 513-520.

⁷⁵ Carreiras, Helena, 2017, p. 109

⁷⁶ Doe v Trump, 09/08-2017, p. 23.

⁷⁷ *ibid*, p. 18.

that the defenders are trying to reason that the plaintiffs are advocating for unequal treatment without any legal or reasonable merit.

The argumentation that the defenders are using, conveys the understanding that the plaintiffs are actually demanding to be treated differently solely on the basis of their gender. The defenders argue that the plaintiffs have ignored the Interim Guidance, and chosen to proclaim that their individual needs ought to weigh more heavily than any others. In essence, the defenders are trying to present the plaintiffs' request for military service as being a demand for inequality.

To achieve this, 'the ripeness doctrine' is used. By referring to this doctrine, the defenders are trying to present the case that the plaintiffs' "challenge is not fit for judicial decision".⁷⁸ As mentioned in the previous sub-chapter, the defenders reason that since none of plaintiffs have been discharged or denied accession, their argumentation is not valid. They also choose to focus on the fact that the plaintiffs argue about future, undecided events and rely heavily on former officials and military leaders regarding the policy on military service by transgender individuals.⁷⁹ As this was an undecided policy proposal, the defenders felt that the focus on former administrations and officials ought not to weigh that heavily, if at all, when examining this policy, as it was not based on former events and/or decisions, but was created by current based on current events. What drastic change might have encouraged these officials from drafting this policy in such a short period of time from when former officials drafted policies concerning this issue, is not made clear by the defenders.

The defenders then ask the court to decline to form an opinion regarding the plaintiffs' claims, and wait until they become ripe.⁸⁰ Something which in itself is quite interesting because it might mean that the intended discriminatory policy making of the Trump administration regarding transgender military service might happen, and opens up the possibility for others to file lawsuits using the same arguments as the plaintiffs, as those arguments will now be 'ripe'.

As touched upon previously, it would appear that the defenders are trying to present the notion that the plaintiffs are trying to 'push for inequality'. The way in which they do this, is by explaining that the plaintiffs would want for the court "to order that transgender service members "may not be separated from the military, denied reenlistment, demoted, denied promotion, [or]

⁷⁸ Doe v Trump, 09/08-2017, p. 18.

⁷⁹ *ibid*, p. 19.

⁸⁰ *ibid*, p. 20.

denied medically necessary treatment on a timely basis.”⁸¹ This in turn would mean that such individuals are ones that have special needs and require medical assistance and care on a timely basis.

As mentioned previously, the defenders seem to avoid trying to argue about mental health as an important aspect as to why they think that transgender people ought to be prohibited from military service. However, their reasoning with the ripeness-argument still seems rooted in a health-aspect, only now it is concerning the medical burden that transgender individuals may present. Whether they think that transgender individuals military service would cost the military itself too much (as hormone therapy and other medical care could cost a lot, but have been estimated to cost less than the cost which President Trump has proclaimed), or believe that individuals who require medical care on timely basis on a timely basis are unfit for service, is not made fully clear.⁸² That which is clear is that the defenders are arguing that the plaintiffs’ request goes against ‘medical facts’, and is not an issue on gender discrimination, but a safety manner.

The defenders do argue that the Interim Guidance promotes equality, and to ask for further rights and demands would be to *truly* be treated unequally. They reason that the Interim Guidance does not prohibit “service members based on transgender status, but rather prohibits disparate treatment of existing service members based on transgender status.”⁸³ This is perhaps the strongest argumentation that the defenders have, as it is an argument that portrays the opposing side as being the perpetrators of inequality, and does so with a strong sense of sound reasoning behind it. Although the Trump-administration has proposed a ban that would hinder capable service members from serving, solely based on their gender identity, and ignoring former research in order to do so - by arguing that the plaintiffs are the ones that are ‘obstructing’ the flow of equality, the defenders have engaged in a strong offence to build up their defense.

The reason as to why the ‘ripeness’ - argument holds strong logic, is because it mainly focuses on the plaintiffs themselves. Unofficially, both the plaintiffs and defenders may be viewed as championing on opposing sides regarding the proposed transgender ban policy. No matter what one’s view is on the matter, one is going to agree with either one of these sides - whether it be for or

⁸¹ *ibid*, 24.

⁸² Hamblin, James, “*The Cost of Banning Transgender Service Members*”, The Atlantic, 26/07-2017, <https://www.theatlantic.com/health/archive/2017/07/things-that-cost-more-than-medical-care-for-transgender-soldiers/534945/>, accessed: 29/11-2019.

⁸³ *ibid*.

against the ban. In a poetic way, the plaintiffs are championing the rights of not just themselves as members of the trans-community, but of the several others that may be affected by this policy. The same would apply for the defenders. However, in a judicial sense, this is still a case of eight individuals v. the President of the United States of America. To therefore apply such arguments as, none of the plaintiffs have been affected by this proposal, or by claiming that the plaintiffs are advocating for inequality by demanding 'exclusive' treatment solely on the premise of their gender, is not only a strong form of argumentation - it is also a way of singling out the plaintiffs argumentation as being exclusive for them, and not for all transgender service members. By doing so, arguing for the transgender ban becomes 'easier', as the focus is not a whole community, but the arguments made by eight individual members.

As Lauren Greenwood describes, gender is a relatively fluid, social and cultural concept.⁸⁴ Greenwood means that this can mostly be seen when studying gender generally but also in military contexts.⁸⁵ Thus, gender can be viewed in different ways and perspectives. Although this may be an interesting and useful tool when examining such a complex topic, the results of one's research may also be quite subjective.⁸⁶ The same could be said of one's interpretation of gender roles and identities within judicial documents, for instance. Greenwood reasons that one must encompass many different aspects when discussing and researching gender as a topic.⁸⁷ As stated, the argumentation by the defenders holds solid ground, but it is important to note that their argumentation is not focused on a variety of individuals, but is rather limited on the argumentation of the plaintiffs. It fails in acknowledging the many experiences of several service members other than the plaintiffs, and thus dismisses valuable information. It is one of the aspects that strengthens the defenders' argumentation for the case, but 'weakens' the argumentation for the transgender service ban, as it provides the reader with a limited view on a complex issue.

⁸⁴ Greenwood, Lauren, "*Qualitative Approaches to Researching Gender and the Military*", 2017, p. 89.

⁸⁵ *ibid*, p. 90.

⁸⁶ *ibid*, p. 91-92.

⁸⁷ *ibid*.

5. 1. 3.) Can transgender people exist within the military narrative?

The final sections of the document specify the defenders' recommendations for the court's dismissal of the plaintiffs' demands. The defenders bring up several of the arguments that have been examined in the two previous sub-chapters of this study, but also go into other aspects. These include; comparing the military service experience of transgender individuals to that of religious service members, ignoring the results of the RAND -study and thereby exhibiting an unlikelihood for the plaintiffs to succeed on due process merits. This sub-chapter will focus on these aspects, and present them in a summarized version, as most of them are quite long.

The first argumentation that can be found, is the defenders comparison of the plaintiffs' argumentation to that of several denied religious requests for military accession. The defenders argue that since religious individuals, such as a jewish man being prohibited from military service because he was wearing a kippah, could be legitimized, then so should this policy. The religious head garment did not meet the appropriate dress code criteria of the Air Force, and a court found that the Air Force was correct in denying the man from working in military service.⁸⁸ The defenders argue that this issue revolves around similar or the same aspects as the kippah incident and the same line of reasoning could be applied here.⁸⁹

The Air Force and other military branches do have certain dress codes, which are designed in order to facilitate a strong workforce efficiency (nothing that transgender military service would in any way impede) and so that all members of staff are hindered by their garments in doing so. It is also put in place to insure that service members are not differentiated based on their religious views and garments and also to not destroy 'discipline and "esprit de corps" (the morale of a group).⁹⁰ Nonetheless, reasoning that prohibition of service based on gender identity may in some way be applicable to prohibition of specific garments during military service, is simply not equitable.

⁸⁸ *ibid*, p. 28.

⁸⁹ *ibid*.

⁹⁰ Taylor Jr, Stuart, "JUSTICES UPHOLD CURB ON YARMULKE", The New York Times, 26/03-1986, <https://www.nytimes.com/1986/03/26/world/justices-uphold-curb-on-yarmulke.html>, accessed: 29/11-2019; Wadham, Ben, "Violence in the Military and Relations Among Men: Military Masculinities and 'Rape Prone Cultures'" in Woodward,, Duncanson, (eds) 2017, "The Palgrave International Handbook of Gender and the Military", p. 245.

These are two completely different topics, that deal with different reasons as to why someone would be prohibited from military service. Dress codes in the military serve the purpose of hindering religious intolerance and persecution, as well as creating an environment where all service members are equal in the way that they present themselves. Though this may vary from the different military branches, all of them have some form of dress code for their service members to adhere to. Some might request their service members to have short hair, so as not to be a hindrance in active duty, and may focus on their service members to not wear civilian garb in the line of duty, while others may have a different policy on these matters.⁹¹ Nonetheless, the same line of reasoning can not be applied to service members' gender identity. The reason for this lies on the fact that different garments can interfere in one's day-to-day tasks, especially in a tough job as military service (a long scarf, for instance, could be a choking hazard in military operations).⁹² The gender identity with which one identifies with, is not something that could impede one's workplace efficiency in that same manner, as it is often a personal psychological matter with which one consults professionals and/or finds a way of dealing with personally. Several transgender people simply want to be accepted in the gender with which they ascribe to, and are not interested in gender reassignment surgery or any alterations in that manner. Some of which do not even want to alter anything about themselves other than, perhaps their name or pronoun.⁹³ If many individuals who are transgender have served without any major complications or hindrances (other than being prohibited from serving or considered 'strange' or treated differently), then it is interesting as to why they would be prohibited from serving.

Religious garments are also prohibited on the grounds that they would disturb a workplace environment that was designed to constrain religious persecution and intolerance. However, service members are not prohibited from serving simply because they belong to a certain gender, as that would be a form of discrimination. The merits on which service members are permitted to serve is based on their physical and psychological capabilities, not their gender identity.⁹⁴ Though gender identity may share a correlation with one's psychological condition, it is an individual aspect that

⁹¹ Powers, Rod, "Army Grooming Standards for Men and Women", The Balance Careers, 20/06-2018, <https://www.thebalancecareers.com/army-grooming-standards-3331780>, accessed: 29/11-2019.

⁹² *ibid.*

⁹³ Human Rights Campaign, "Understanding the Transgender Community", <https://www.hrc.org/resources/understanding-the-transgender-community>, accessed: 29/11-2019.

⁹⁴ Cornish, 2017, pp. 278-279.

can not be applied to a whole community. In the case of the man who was hindered on continuing his military service if he continued wearing a kippah, that was not a prohibition designed for all Jewish service members or for them specifically, but to prohibit anyone who wished to wear religious garments that may disturb the discipline and esprit de corps of the military.⁹⁵

It was not a judgement that was in any way personal against the individual that decided to continue to wear his kippah to the workplace, but merely an instruction of the appropriate dress code. The policy that the Trump - administration, alongside others, have proposed, involves prohibiting a whole group of people on the basis of what gender they may identify with. It is not a policy that views this issue on an individualistic level and decides on that merit if a person is fit for military service, but discourages and disbars anyone that may not identify with their biological gender.⁹⁶ It therefore becomes more clear as to why the defenders would disparage the findings of the RAND- study.

The RAND- study concluded that one's gender identity and gender transition should not be a concluding factor to prohibit transgender individuals from joining the military. The findings of the RAND- study demonstrated that the cost of transgender service members would not be so high as to warrant an concern or prohibition. By examining, amongst several things, the 'readiness' of openly transgender service members in other countries, the RAND- study was able to come to the conclusion transgender service within the military is not something to be discarded or that would affect the military in a negative manner, as several other countries had benefited from it and helped prevent suicide among the transgender community.⁹⁷

The RAND-study came to the conclusion that since the term 'transgender' encompasses many factors and aspects, the enlistment of transgender service members ought to be a "case-by-cases" practice, as not all transgender people will share the same experience, both psychologically and physically. The study therefore advised the DoD to create a policy that would be inclusive to all members of the transgender community, where service members would have to

⁹⁵ Taylor, Stuart, 26/03-1986, <https://www.nytimes.com/1986/03/26/world/justices-uphold-curb-on-yarmulke.html>, accessed: 29/11-2019; Wadham, Ben, 2017, p. 245.

⁹⁶ Norquist, David L., "Directive-type Memorandum (DTM)-19-004", 12/03-2019, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dtm/DTM-19-004.pdf?ver=2019-03-13-103259-670>, accessed: 27/11-2019. pp. 7-8; Teich, Nicholas, 2012, pp. 76-77.

⁹⁷ Schaefer, Iyengar, Kadiyala, Kavanagh, C. Engel, M. Williams, and M. Kress, 2016, pp. iii-iv.

enroll in diversity-training to be shown the benefits of having individuals with different backgrounds and identities. It also stated that subject-matters experts ought to be available for commanders to be able to seek advice on how to move forward on certain issues regarding gender identities. The main aspect that could be derived from the RAND-study, is that it exemplified, by examining open transgender service in foreign countries, that transgender service is nothing new to the military and that it ought to be allowed and not shunned.⁹⁸

The value that the RAND-study has, is that it showcases that transgender personnel within the military exist, and that there is no apparent reason as to why they should not be allowed to openly serve. However, it also addresses the fact that prohibiting transgender service members is to repeat the mistakes of the “*Don’t ask, don’t tell*”-policy (DADT) - a discriminatory policy that prohibited homosexual service members from serving openly for several years without any scientific merit. The RAND-study has concluded that to not allow transgender individuals from openly serving, is to discriminate them in a matter similar to that of the DADT- policy.

To therefore argue that a study, which examined as many aspects of the transgender military experience (from foreign trans-service to the healthcare needs of transgender individuals, military health system capacity, gender transition–related treatment and several other facets of this topic), ought to be dismissed, solely because it was administered under a previous administration, is wrong. The reason as to why this is wrong, is because the defenders acknowledge the RAND-study’s finding that the cost of transgender service members would be minimal. However, the defenders argue that it is not for the plaintiffs to decide as to how the military ought to spend their money, but rather for the military itself to examine the ways in which the money ought to be spent. This is true, however, it is not made clear as to what research (if any) the defenders have cited instead of the findings of the RAND- study. If the RAND-study’s findings ought to be dismissed, because there might perhaps be new relevant research and information that has emerged since the study was conducted, then that would be interesting to see. The defenders do not present any such information, but rather inform the court that the findings of the RAND-study ought to be dismissed on the merit that they were conducted by a previous administration and may therefore hold a bias towards this administration. This argumentation is false, as the RAND-study is a non-governmental and non-biased research study without any political affiliations. However, even if the argumentation by the defenders regarding the RAND-study was true, then they have failed

⁹⁸ *ibid*, pp. x-xv.

to provide any relevant research that would support the ban and prove their claim regarding bias towards the Trump-administration.

The spending for transgender troops' treatment since 2016, has been estimated to lie on nearly 8 million dollars.⁹⁹ It therefore raises the idea that spending on efficiating service members' readiness is not necessary, and that spending should be focused on other military aspects. As the defenders do not specify what such aspects may be, it is therefore only left for speculation as to what such spendings may entail. However, the spending would have to go to something which would benefit the military. Based on the US military's previous spendings it could be anything from spending money on forest camouflage-wear for service members in the Afghan dessert, money on studies to see if elephants were capable of sniffing out explosives, or financing President Trump's expensive golf trips that would cost the taxpayers of America around 340 million dollars.

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To therefore negate the findings of the RAND- study and dismiss them as absurd spendings that do not benefit the military in a greater capacity is to argue in a false manner, as the US military has spent money on issues that have proven to be a far less significant than one would have hoped for. It could be argued that the plaintiffs would fail on a due process claim, as the policy had not yet taken effect as of that time, and therefore not been able to breach any laws or inflict any pain on the plaintiffs. However, the argumentation to ignore the findings of the RAND- study and to argue that the spending for transgender military service is essentially not worth the expenditure, is a false and dishonest claim when compared to the previous spendings of the military.

⁹⁹ Vanden Brook, Tom, "Exclusive: Pentagon spent nearly \$8 million to treat 1,500 transgender troops since 2016", USA Today, 27/02-2019, <https://eu.usatoday.com/story/news/politics/2019/02/27/exclusive-report-shows-8-million-spent-more-than-1-500-transgender-troops-pentagon-dysphoria/2991706002/>, accessed: 29/11-2019.

¹⁰⁰ Specia, Megan, "A Dumb Decision? U.S. Said to Waste \$28 Million on Afghan Army Camouflage", The New York Times, 21/06-2017, <https://www.nytimes.com/2017/06/21/world/asia/afghanistan-army-uniform-camouflage.html>, accessed: 30/11-2019;

Ehley, Brianna, "Bomb-Sniffing Elephants Among \$1 Billion in 'America's Most Wasted'", The Fiscal Times, 08/05-2015, <https://www.thefiscaltimes.com/2015/05/08/Bomb-Sniffing-Elephants-Among-1-Billion-America-s-Most-Wasted>, accessed: 30/11-2019;

Jones, Chuck, "Trump's Golf Trips Could Cost Taxpayers Over \$340 Million", Forbes, 10/072019, <https://www.forbes.com/sites/chuckjones/2019/07/10/trumps-golf-trips-could-cost-taxpayers-over-340-million/>, accessed: 30/11-2019.

5.1.4) The answer to the first question.

With these sub-chapters in mind, what is the answer to the first question? The argumentation and legitimization of the defenders lies on a offensive defense, that tries to present the plaintiffs as demanding inequality. As explained in the previous sub-chapters, the defenders rely on reasoning that no injury, whether physical or psychological (as the plaintiffs would be protected by the Interim Guidance) has taken place. Therefore, the arguments made by the plaintiffs has no merit to rest on. A specific thesis in the defenders reasoning is prohibiting of transgender individuals from military service. By focusing on the plaintiffs specifically, their argumentation is not focused on the entirety of the trans-community, and their reasoning becomes more clear and sound. They are arguing in ways that do not detail that they want to prohibit the plaintiffs from serving, but rather that their requests are unjustifiable and unequal, through comparisons with religious requests that went against protocol and dismissing scientific results as inadequate and unimportant.

5.2.) The second question.

This chapter will answer the second question - how can the defenders reasoning be explained? In order to do this, the results of the first question will be utilized alongside the chosen theoretical framework of this study, former research and the qualitative content analysis.

5.2.1.) Imaginative claims

The first forms of argumentation that can be found from the defenders, revolve around disproving the plaintiffs, by comparing their arguments to that of 'unreal' or 'figurative'. By reasoning that the plaintiffs have not suffered any actual injuries or any injuries that can be visible, the defenders have made the argument that the damage that this policy may have inflicted upon the plaintiffs is not real. Furthermore, the defenders argue that since this policy has not yet taken place, and is a suggestive policy, the plaintiffs cannot claim that it has caused any damage or hurt in any way.

As stated in the previous chapter, this would seem to be a strong form of reasoning, because the policy had not actually taken place and therefore not been able to inflict damage on the plaintiffs. However, the damage or injury that the defenders mention, is never actually explained as to what it may entail. The reason for this may lie in the fact that it would not be in the defenders' interest to actually define what such an injury may be. Their purpose is also to prove the plaintiffs wrong and to defend the defendants. To therefore present a legitimate example of an inflicted injury is not a good idea. This means that the defenders have to, in some, go against the arguments made by the Commander in Chief. President Trump has made sure to undermine some of the accomplishments made by President Barack Obama regarding the LGBTQ-community.¹⁰¹ President Trump has also signed memorandums that would see this ban put to action.¹⁰²

For the defenders to therefore argue in this manner is to present a picture where the plaintiffs are wrong and nothing discriminatory has actually taken place. As stated previously, the plaintiffs and defenders are presenting arguments concerning an individual case, they are not advocates for the entirety of the trans-community or the ones opposing it, respectively. However, the plaintiffs are fighting this ban as it may affect other transgender individuals, and the defenders are defending it as this is what the President is wishing to do. Although they are not official representatives of their own causes, their arguments are worthy to be put in such a relative context. With that in mind, how can the defenders' reasoning concerning 'invisible injuries' and 'undecided future events' be explained through the theoretical framework?

Well, first and foremost, it is relevant to note the importance of wording and thus framing a situation. The defenders have, unofficially, presented this case as being an 'imaginative' idea that the plaintiffs have brought forth, in order to gain an 'exclusive' treatment from the rest of the soldiers. Their request for a fair inclusion is thereby seen as more of a demand for unfair or exclusive treatment compared to everyone else. Through the 'ripeness'- doctrine, they present the notion that transgender people are not sufficient in their attempt to join the military on their physical and psychological merits, but would have to partake in unequal and unfair measures to achieve this. By

¹⁰¹ L. Green, Erica, Benner, Katie, Pear, Robert, "*'Transgender' Could Be Defined Out of Existence Under Trump Administration*", The New York Times, 21/04 - 2018, <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>, accessed: 30/11-2019.

¹⁰² "*Presidential Memorandum on Military Service by Transgender Individuals by Donald Trump*", 23/03-2018, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-secretary-homeland-security-regarding-military-service-transgender-individuals/>, accessed: 30/11-2019.

doing that, it frames transgender persons as individuals who are not physically capable of joining the military, when in reality all that most transgender individuals are interested in, is serving in their desired gender. Transgender individuals are thus portrayed as weak and frail in comparison to other individuals.

Laura Sjoberg mentions that non-heterosexual male warriors have usually been excluded from history, either because it does not correspond to a developed image of what warfare should be and who it should be for, or because it goes against a specific purpose.¹⁰³ It is the idea that strong and masculine warriors are a desired definition for a soldier. This applies to women who join the military - they have to suppress their feminine side. However, it might arguably be more expected from men, as this is traditionally an image associated with men, and even more so when in combat situations. When presented with such a notion, one might develop an understanding as to why the defenders would argue against the plaintiffs request for tolerance.

The plaintiffs could not be permitted to be right regarding this issue, as it would demonstrate that the point of the ban is to 'hide' transgender individuals from the military narrative. This might be why the defenders reason that the plaintiffs cannot argue against this policy, as it is a suggestive policy that has yet to take place as of the writing of that document. Since then, the President and the DoD have issued two separate memorandums declaring a ban on transgender service members. The memorandum issued by the DoD is a directive document, instructing the various military branches on how to implement the ban. The defenders did claim that the plaintiffs would not suffer any harm or discrimination through prohibition by this ban. However, with the memorandum having been issued by the time when this study was written, one can examine if this is correct or not.

The DoD memorandum addresses the requirements that a soldier must fulfill in order to serve in the military, and addresses the reasons why transgender people are unable to fulfill these requirements. The memorandum prohibits new applicants for military service who have had any history of medical transitional treatment. Applicants with a history of gender dysphoria are presumably disqualified if they are not considered "stable" after 36 months and/or are willing to "return" to their biological sex.¹⁰⁴

¹⁰³ Sjoberg, 2014, pp. 31-36.

¹⁰⁴ Norquist, 2019, p. 7.

In the memorandum, there are points that include the physical/mental, well-being and ability of individuals to serve in the military. If an applicant cannot meet the requirements of the military, the individual is not allowed to serve.¹⁰⁵ Although, the document advocates that there may be exceptions that would allow an individual to be able to serve, even though they are trans.¹⁰⁶ However, there may be some confusion about this section of the document, since the same grounds that would be considered exempt and could allow an individual to serve are largely what the DoD has laid down as requirements that would prohibit a trans person from serving. The reason that this may sound confusing is because it is.

The reason for this is because it is very contradictory to what the defenders are trying to argue - namely, that transgender individuals are not denied service enlistment. This is most evident when reading the memorandum, which manages at the same time, to state that an individual must not be denied an application for employment or continuation of one's service, solely on one's gender identity.¹⁰⁷ Although, the document already mentions, in the next paragraph, that hormone therapy and gender reassignment operations are "disqualifying" for the applicant.¹⁰⁸ It does not mention whether it is meant to be disqualifying before 18 months, as mentioned earlier, but rather that the applicant cannot be recruited if they have undergone a sex operation. It contradicts the previous paragraph. In addition, it is interesting that the document incorporates a paragraph that states that individuals must not be discriminated against on the basis of one's gender identity.¹⁰⁹ To exclude someone who has undergone a sex operation may feel quite discriminatory, as it, does not necessarily include a connection to being trans, or having to undergo hormone therapy, but may involve surgery for injuries that have affected the individual. The term 'transgender' seems to therefore solely be defined through a medical aspect, not factoring in the social and psychological aspects as well, which, as explained by several of the used works of this study, note that this is false.

With this information in mind, the theory by Sjoberg becomes more relevant. The notion of 'hiding' transgender service members from the military narrative becomes evident, as they do not fulfill the traditional role of the hegemonic masculine warrior. However, one would also have to

¹⁰⁵ *ibid*, pp. 7-12.

¹⁰⁶ *ibid*, pp. 7-8.

¹⁰⁷ *ibid*.

¹⁰⁸ *ibid*, p. 7-8.

¹⁰⁹ *ibid*, p. 11.

have a reason for doing this. The LGBTQ-community has suffered several discriminatory instances within the military, most notably perhaps with the DADT-policy. But progress has occurred over the years with several openly serving LGBTQ-service members in active duty.¹¹⁰ To therefore advocate that certain individuals cannot meet the standards of military service when there are notable cases that disprove this, must mean that there could be an alternative reason. So why would someone argue against this in 2019 - what purpose does it fulfil?

For several years, the military had been characterized by hegemonic masculinity, a legitimizing practice of the male dominant position in society, and a 'justifiable' subordination of women, other men, and various other individuals who do not fit into this hegemonic narrative. If one were to look back to the DADT-policy, one might gain the perception that the reason as to why the policy was put in place, was because it 'hid' the homosexual soldier, much like this ban hides transgender service members. Allowing homosexuals to be recruited and to serve would risk the destruction of this masculine image.¹¹¹ If then the strongest military in the world relied, in large part, on the fact that it was precisely this image that propelled the military and its soldiers forward toward "great deeds", it would not be so desirable to destroy this narrative. Siniša Malešević emphasizes that there must be a "we against them" thinking in order for the soldiers to be motivated. He points out that the most effective role that the enemy can be assigned is a feminine role, which downgrades the enemy as insufficient warriors (through association with the fact that women were not allowed to go to war, but were considered to be more appropriate in performing chores in the home), while at the same time praising the soldiers for being the exact opposite - big, strong, warriors.¹¹²

As Malešević points out, war is largely designed on the basis that there must be a dichotomy about who is strong and who is weak. Once that is figured out, one might apply this to the enemy and in turn motivate one's own soldiers.¹¹³ Transgender people are not allowed to be part of the military because they could disrupt this dichotomy. But at the same time, they are also needed to

¹¹⁰ Levin, Sam, "*A critical point in history: how Trump's attack on LGBT rights is escalating*", The Guardian, 03/09-2019, <https://www.theguardian.com/world/2019/sep/03/trump-attack-lgbt-rights-supreme-court>, accessed: 29/11-2019.

¹¹¹ Bulmer, Sarah, "*Sexualities in State Militaries*", in "The Palgrave International Handbook of Gender and the Military", 2017, p. 163.

¹¹² Malešević, 2010, pp. 202-203.

¹¹³ Malešević, 2010, pp. 202-210, 215, 219-223.

exemplify individuals who do not fit into the military. According to the Trump administration, transgender people are mentally ill, physically incapable and a security risk for the rest of the troops.¹¹⁴ This proposed ban also shares some similarity with the DADT- policy, in that they both present a discriminatory proposal as a ‘helpful hand’. The DoD- memorandum states that transgender people will only be allowed to serve if they agree to do so in their biological sex. The DADT policy allowed homosexuals to serve only if no one knew that they did it.

The way in which the defenders appear to try and ‘disguise’ this, is by presenting the plaintiffs as advocates for inequality, primarily through the ‘ripeness’ - doctrine. As stated previously, this line of reasoning is quite strong, possibly the defenders strongest argumentation in the document. It is also followed by the argumentation that the RAND-study results ought to be discarded and how prohibited religious garb shares similarities with being trans. However, this question is interested in finding out *how* that reasoning may be explained through the theoretical framework. The following sub-chapter will attempt to further answer this.

5.2.2.) The hegemonic masculinity of a gendered institution.

In a previous subchapter, the ‘ripeness’-doctrine was presented and explained. It was also highlighted that the doctrine is the strongest line of argumentation from the defenders. In essence, the doctrine relies on showcasing that the plaintiffs’ reasoning is not valid as it relies on ‘unofficial’ policy-making that had not yet been finalized. This is, however, not the only form of reasoning that the defenders are choosing to draw upon. They bring up the notion that the plaintiffs’ request for transgender inclusion in the military can be compared to religious individuals’ request for wearing their religious garment in a strict dress code- oriented workplace. Comparing transgender individuals’ experience of being prohibited from military service is not the same as being hindered from wearing the garment of one's choice in a dress code area. No matter how one might view the concept of gender identity and gender transition, it is still something which is psychologically complicated and may lead to self-harm and suicide, which there are several examples of.¹¹⁵ To

¹¹⁴ Vesoulis, Amy, “*President Trump Blamed the Transgender Military Ban on an Inaccurate Cost for Surgery*”, TIME, 05/06-2019, <https://time.com/5601347/trump-transgender-military-ban-costs/>, accessed: 03/07-2019.

¹¹⁵ Aitken, VanderLaan, Wasserman, Stojanovski, Zucker, 2016, pp. 513-520.

therefore equate it to a piece of clothing, which can always be removed no matter how strongly one feels about it, is not quite plausible.

The works of M Sheridan Embser-Herbert and Godfrey Maringira explore the fluidity of the term transgender. Their research showcases how complicated and undefined the term transgender is, and how much more room for further research exists. They also raise awareness around the fact that transgender service members have existed throughout history, and explain that this is not a choice or 'recent trend', but has in a way defined how the military functions.¹¹⁶ They explain that the military as an institution, is quite gendered. Therefore, the perception of gender in the military will be of a certain kind - either masculine or feminine.¹¹⁷ Throughout history, the military has been considered traditionally hegemonically masculine, and is something that has not been "dissolved" or disappeared from the military.¹¹⁸

The fact that women, LGBT members or individuals who would otherwise fall outside the role of "the traditional male warrior", have been excluded from military service is nothing new. The reasoning behind this form of exclusion has been based on the fact that such individuals are "fragile" beings who could not meet the standards demanded by the military.¹¹⁹ This is something which has been touched upon in the previous sub-chapter with Sjoberg and Malešević's theories.

To therefore argue that being transgender is something which can be as 'easy' as removing a garment is not the same, nor is it an appropriate argument to be made when considering the religious hostility towards LGBTQ-individuals in the military. Being religious is also met with less hostility than being a member of the LGBTQ-community. The reason for this is because the US military is heavily influenced by religion and does not disparage religion in the same manner as being transgender.¹²⁰

¹¹⁶ Maringira, Godfrey, 2017, pp. 292-296.

¹¹⁷ Embser-Herbert, 2017, pp. 179-182.

¹¹⁸ Dudink., Hagemann, Tosh., 2004, p. 192.

¹¹⁹ Dudink., Hagemann, Tosh, 2004, p. 192;
Carreiras, Helena, 2017, p. 110.
Wadham, Ben, 2017, p. 246-252.

¹²⁰ Zaretti, pp. 392-402.

Nor should it, but if the argument is made by a cisgendered individual that transgender service members are not allowed to serve as their mental state would be a liability, then that would be as offensive as a non-believing service member refusing to work with religious service members, simply because they believe and rely on unproven forces to keep them alive in life-threatening situations. This is a matter of how traditions and narrative form institutions to function, and have done so for many years.¹²¹ When any change in this narrative is introduced, a strong resistance may occur, perhaps as a form of ‘protection’ from unknown change.

The works of Alessia Zaretti, for example, explore the role that religion has had in the exclusion of service members. Zaretti explains that in a country that has been so influenced by religion, and where religion has dominated its military for several years, the military itself would have been conservatively influenced.¹²² For the defenders to use the example of prohibiting religious garments as an argument, is quite a bold decision. The intention may have probably been to explain that nothing, not even one’s faith, may come before military protocol. However, with the works of Zaretti, Maringira and Embser-Herbert, and the theories of Sjoberg and Malešević, the complexity of being transgender cannot exactly be explained nor compared with being the same as taking off a religious headgear.

To understand the complexity of being transgender, one would benefit from studies and research material that explain this in greater detail. Such material would be the RAND-study conducted in order to gain further information and understanding regarding transgender service in the military. The defenders have chosen to argue for a dismissal of this study. The main reason for this may lie in the fact that the RAND-study has actually produced evidence that details how much the military would have to spend on transgender military service - a number which seems small in comparison to the amounts of money that the government spends on military funding.¹²³

To focus on the expenditure of transgender medical costs and to view them as insignificant to the point of not even being substantial enough to fund, while the individual that one is defending is costing the US taxpayer large sums of money, would seem quite hypocritical. But it also shows that the defenders are not interested in the results of the RAND-study, perhaps because they would demonstrate that transgender personnel is not to be disparaged but rather encouraged

¹²¹ *ibid*, pp. 391-392.

¹²² *ibid*.

¹²³ Schaefer, Iyengar, Kadiyala, Kavanagh, C. Engel, M. Williams, and M. Kress, 2016, pp. 33-37.

and welcomed. The RAND-study does mention that there has not been enough information to gather an extensive perception if accession would affect unit cohesion.¹²⁴ The defenders therefore argue that the President would have some form of ‘freedom’ in this decision, and would ultimately have to make a decision on whether or not transgender personnel should be allowed accession or if it would be harmful. The President chose the latter.

In order to make that decision, the President would have had to engage in further studies, which would have covered this in greater depth than the RAND-study managed to do. No such studies were conducted. The defenders do argue that “the political branches are ordinarily free to engage in “line-drawing,” even where, unlike here, “some persons who have an almost equally strong claim to favored treatment” are “placed on different sides of the line.””.¹²⁵ They explain it as being a decision that is made by examining the individuals physical and psychological merits, and thus concluding if the person in question is fit for active duty. Asthma, curvature of the spine or proneness to migraines would serve as disqualifying traits.¹²⁶ However, this would be an individualistic decision, based on the individual themselves, not a whole community. To prohibit an entire community, one would have to examine the reasons as to why that community is unable to serve, and the results would pretty much have to apply to every member of that group. As such a decision is almost impossible to make (as every individual is unique in their own way), one could not based a decision of prohibition on such a merit, especially when no additional research has been made to gain further understanding.

Because of this, it becomes clear that the President has not taken this decision based on factual evidence or research, but rather on something else. This paper would theorise that the reason for this may lie in the theories by Sjoberg and Malešević. To choose not include a whole community, based on physical attributes is unjust, when considering the fact that several transgender soldier and service members have served in the military without any ‘difficulty’ on that part. Laura Sjoberg explains that individuals who cannot be classified as traditionally masculine are usually excluded from the war context or hailed in roles that are considered more appropriate for their gender identity. It has to do, in due part, with strengthening the unit cohesion, which the

¹²⁴ *ibid*, p. 44.

¹²⁵ *Doe v Trump*, 09/08-2017, p. 34.

¹²⁶ *ibid*.

defenders have mentioned as a vital aspect of the military, and solidifies that tradition is a strong part in maintaining the military.

That in itself is true, and if the narrative for what constitutes a soldier is altered, then one of the strongest militaries, which has built its strength on this aspect, may be in 'jeopardy'. Sjoberg believes that if any of these individuals were glorified in a way, it would prove that individuals who are not traditionally masculine could serve and contribute to the military as well as traditionally masculine individuals.

Even Malešević's theory describes what gender roles are assigned to different individuals in war, and how important it is for these roles to be maintained in order for a war to "work". He explains that the "traditional" view of gender roles in war is that men are considered brave and powerful, while all 'others' are seen as the exact opposite. Malešević also believes that this image is necessary because there will be individuals who will not be able to fulfill the gender role they are expected to be "faithful" to, and thus will need to be assigned a different role. This is usually intended for men who are not considered traditionally masculine. Such men will be assigned the role of "woman" - a role that is considered weak and fragile.¹²⁷ Malešević believes that there is a reason as to why this happens, and it is largely a motivating factor, although this study would argue that it is rather a deterrent.

If a soldier is to risk their life for their homeland, one must be able to motivate and strengthen that soldier to know with the utmost certainty that this is a noble and important mission. A mission that is more important than one's own life. But how can a soldier maintain this thought when they are out in the field, witnessing first-hand all the tragedy that occurs in war? No matter how patriotic one may be, it's hard to remember this when the shots are raining down on one and bombs are waiting under the ground. Malešević believes that the soldiers are introduced to a "we against them" thinking before being deployed, and that this can be an effective method of motivating someone to go to war. A mindset of "we are better and stronger than the enemy", occurs. 'We' get the role of the great, strong masculine warriors, while the enemy is assigned the opposite - the feminine role; 'women'.

Therefore, it is necessary to introduce someone that most soldiers, even the very "weakest" can consider themselves superior to. They are presented with the idea that they are not at a "bottom

¹²⁷ Malešević, 2010, pp. 202 -210, 215, 219-223, 275-307.

level" when it comes to strength or endurance, but that there is someone who is considered weaker than them. An "internal enemy" has been introduced.¹²⁸

Using members of the LGBTQ- community as a 'deterrent' to the other soldiers would prove to be an ineffective means, since, surprisingly, these individuals did not like to be treated this way, and showed on numerous occasions that they could do the same job and should be treated in the same manner as everyone else. Clear examples of this are individuals such as Albert Cashier (a biologically born female who transitioned and was more accepted by his peers to be a male soldier than a feminine soldier) and Christine Jorgensen (one of the first individuals to undergo a sex-reassignment operation, and was rather accepted as a woman, than a feminine man), but also several others that this study is unable to address due to a word/page restriction. The Trump administration chose to ignore this aspect because it may not agree with their narratives and because most of President Trump's supporters are accustomed to a conservative and stereotypical traditional worldview. In such a world, there is no place for anyone who dares to believe that there are more than two genders. Especially not in the military.

5.2.3.) The answer to the second question.

The main purpose of the defenders' argumentation is to defend the accused. However, this study would also like to present another alternative (otherwise, this study would not have been conducted). By applying the theoretical framework to the argumentation made by the defenders, it becomes clear that the main thesis of their argumentation is not to directly promote the service ban that their defendant is interested in. What it does, through its argumentation, is reason that certain individuals are not fit for military service. By denouncing the previous studies on the matter and comparing this issue to other 'unproven' discriminatory incidents, the argumentation is that the plaintiffs' reasoning is without merit. The second question was interested in finding out why such an argumentation was to be made, through the theoretical framework. A possible answer is shown to revolve around 'hiding' certain individuals who cannot be applicable to the military narrative, and by doing so also managing to strengthen the unit cohesion.

¹²⁸ Malešević, 2010, pp. 202 -210, 215, 219-223, 275-307.

6.) Results

This study was interested in reviewing a judicial document that presented the argumentation made by the defenders of President Donald Trump and the DoD. By focusing on answering the question of how the arguments are reasoned and legitimized, it became clear that the argumentation was reasoned in a manner that would try to demonstrate that discrimination was the line of reasoning of the plaintiffs, not the defenders. The defenders made the case that the plaintiffs were not interested in justice, but were arguing for inequality by demanding certain 'unfair' rights solely on their gender identity. The defenders argued that allowing transgender people to serve would be to favour certain individuals simply because of their gender identity, and to allow members, who they felt were unfit to serve, solely on an identity marker, would be unfair to other applicants. They did this by comparing the plaintiffs' demands for change, to that of previous cases that dealt with discrimination. By bringing up cases of religious discrimination and showing why these failed (mostly because they demanded that the rules be altered in their personal favour - making exceptions to the dress code, for instance) to prove injustice, the defenders argued that the plaintiffs' demands were without merit, because most of the claims that they made resembled these cases. Simultaneously, they argued that no injustice had actually taken place, and that the claims that the plaintiffs had made, were about instances that had not yet happened, or were most likely not going to happen. This was untrue, as the memorandum confirmed all of the claims that the plaintiffs had made.

The thesis of their argumentation would therefore have to be twofold, in that they are both of a normative (asserting the value that transgender personnel in the military would weaken unit cohesion, and hinder the military) and prescriptive (proposing that the RAND-study be dismissed and the ban not be prohibited). With the answers of the first questions being presented, the second question can be answered - how does the theoretical framework explain this line of reasoning? By applying the theories by Sjöberg and Malešević, it becomes evident that the argumentation is made in order to advance the service ban, and thus also advance the premise of the ban. The cause of the ban is explained as being there to 'suppress and hide' transgender personnel from the military narrative, as it does a disservice to the unit cohesion military morale. Through Sjöberg's theory the notion of hiding individuals who do not meet the standards and norms of the masculine narrative is presented. It is also explained as being a reason as to why the defenders would argue for dismissing the RAND-study or the President deciding not to invest in further research after he felt

that the RAND-study was insufficient in order to make a complete decision. Malešević's theory is brought in to explain why the 'hiding' of certain individuals may have happened. While Sjoberg talks about exclusion as being a reason for narrative framing, Malešević argues that it may also be there as a 'deterrent' and/or motivation for other soldiers, to strengthen morale and fighting spirit. In such a way, the theories presented by this study illustrate two different reasons as to why the defenders would argue for the service ban. The results of this study therefore argue that the defenders are legitimizing claims surrounding inequality and injustice for the possible reason of excluding individuals who do not fit into a hegemonically masculine and gendered institution.

7.) Discussion

So what do these results actually entail? For starters, they provide the understanding that the argumentation brought forth by the defenders is designed to defend the President, which is the main purpose of the argumentation. However, it also provides understanding concerning the service ban, and why it may have been put forth. To be able to see the reasoning behind the service ban through this document, one must apply certain theories that cover this particular topic. Theories concerning gender and military work as a form of lense from which to view this issue from, and present the reader with new perspectives as to why this ban may have arisen and how the defenders argue about it.

Using these particular theories presents the notion that the ban is centered around exclusion and thereby also morale-motivation, as this is seen by applying Sjoberg and Malešević's theories to the arguments made by the plaintiffs. Introducing the various former research further solidifies these theories as being applicable to the argumentation and manages to illustrate why the ban may have been enacted despite scientific studies and former research that have opposed such an action. It is also interesting that a document designed to defend the President may entail so much about a certain issue. The main premise of the document was to defend the accused, but managed to highlight the reasons and motives of the president's desire to instruct a service ban on transgender individuals. It also showcased why the ban might have been specifically targeted towards transgender persons.

The reason for this was explained in the previous chapters, and revolved around the fact that there needs to be a 'suppressive' figure in the military narrative. In due part to promote a masculine narrative within the military context, but also to advance the soldiers morale and commitment for service.

By combining these two factors, an administration such as the one under President Trump, whose core base is conservative supporters, would probably see this as strong combination, as it promotes a traditional view of the military that has been viewed as 'positive' for several decades and helped advance the US military to its current position as a strong force. One might argue that the ban was a direct contradiction to the advances for LGBTQ-rights, made by former President, Barack Obama, and is not only a conservative action to go against liberal politics, but a direct contradiction from President Trump towards his predecessor, something which he has been known for doing.¹²⁹

¹²⁹ Quigley, Aidan, "*All of Trump's executive actions so far*", Politico, 25/01-2017, <https://www.politico.com/agenda/story/2017/01/all-trump-executive-actions-000288>, accessed: 05/07-2019.

8.) Conclusion

The purpose of this study was to answer two questions; how the defenders of a judicial document, argued and defended the accused, and how their reasoning could be explained through the chosen theoretical framework of this study. The answers that were presented, illustrated that the defenders argued in a offense manner, meaning that they were trying to present the plaintiffs as being the perpetrators of discrimination. Through a qualitative and deductive content analysis, it became clear that the thesis in the arguments was twofold, in that it was a normative as well as prescriptive kind. This meant that the argumentation was formed in such a manner that it warranted concern for allowing transgender military service, and reasoned why it ought to be prohibited by dismissing previous scientific results. This made it possible for the second question to be answered through the theoretical framework, and present new viewpoints through a gendered military perspective.

The findings of this study provide possible reasons as to why the ban may have arisen. Although the ban is not finalised, and therefore the true reason behind its origin is not fully explained, this study presents probable reasoning as to why it may have occurred. However, it is not a free interpretation of a situation, but is consistent with what previous research has said on this subject, thus contributing to a clearer understanding of why this discriminatory measure has arisen and how it is violating the most fundamental of human rights.

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