

United States Senate

WASHINGTON, DC 20510

November 13, 2023

The Honorable Lloyd J. Austin
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Secretary Austin:

You have broken your promise to the American people not to politicize the military, and your actions have harmed and threaten to further harm institutional norms within our democracy. On June 28, 2022, four days after the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*,¹ you issued a memorandum to senior leaders in the Department of Defense (“Department”) stating that the Department is authorized to pay for government funded, official travel for active duty personnel to receive abortions outside of the state in which they are stationed.²

On October 20, 2022, you issued the memorandum *Travel for Non-Covered Reproductive Health Care Services*, properly referred to as the Department’s abortion travel policy (“Policy”), which directed the Department to pay travel expenses not only for active duty personnel to receive abortions, but for their dependents to receive abortions as well.³ Importantly, on July 19, 2023, at a hearing on the Department’s abortion travel policy, the Deputy Under Secretary of Defense for Personnel and Readiness confirmed that this policy extends to late term abortions.⁴

All legislative power is vested in Congress, and the Executive branch is responsible for implementing and enforcing the law. While the Department may issue regulations, it can only do so under the laws authorized and enacted by Congress. But, Congress never authorized the Department to expend funds to facilitate abortions and, until the Policy was issued, the military

¹ *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

² Memorandum from Under Secretary of Defense for Personnel and Readiness Gil Cisneros, “Ensuring Access to Essential Women’s Health Care Services for Service Members, Dependents, Beneficiaries, and Department of Defense Civilian Employees” for Senior Pentagon Leadership & Defense Agency and DoD Field Activity Directors (Jun. 28, 2022), <https://media.defense.gov/2022/Jun/28/2003026770/-1/-1/1/MEMORANDUM-ENSURING-ACCESS-TO-ESSENTIAL-WOMENS-HEALTH-CARE-SERVICES-FOR-SERVICE-MEMBERS-DEPENDENTS-BENEFICIARIES-AND-DEPARTMENT-OF-DEFENSE-CIVILIAN-EMPLOYEES.PDF>.

³ Memorandum from Director, Defense Human Resources Activity Chair, Per Diem, Travel, and Transportation Allowance Committee Jeffrey R. Register on Military Advisory Panel Item 86-22(R), Paragraph 033013 “Travel for Non-Covered Reproductive Health Care Services” for Director, Defense Travel Management Office (Feb. 16, 2023), <https://media.defense.gov/2023/Feb/16/2003163300/-1/-1/1/MEMORANDUM-TRAVEL-FOR-NON-COVERED-REPRODUCTIVE-HEALTH-CARE-SERVICES.PDF>.

⁴ Letter from Roger F. Wicker, United States Senator, to Lloyd J. Austin III, Secretary of Defense, (Sept. 15 and Oct. 27, 2023).

never facilitated abortions except in cases of rape, incest, or where the life of the mother would be endangered if the unborn child were carried to term.⁵ Now taxpayers—many of whom have deeply-held religious and moral objections to abortions—are on the hook to facilitate the very abortions they fundamentally oppose. Indeed, a Marist poll in January 2023 found that 60% of Americans strongly oppose the use of taxpayer dollars to pay for an abortion, consistent with polls taken throughout recent years.⁶

Rather than respect the Supreme Court’s decision, you decided to engage the Department, and our men and women in uniform, in a policy debate properly reserved for the legislature. You did so by claiming that *Dobbs* had “readiness, recruiting, and retention implications for the Force.”⁷ By your own officials’ admissions, however, the Department has no data to support that claim, and few servicemembers or dependents have utilized the Policy.⁸

After multiple inquiries from Congress on this question,⁹ the Under Secretary of Defense for Personnel and Readiness finally confirmed that “The Department does not have any data on women being deterred from joining the military for fear of being stationed at an installation or base in a state or nation that has restrictive abortion laws.”¹⁰ Finally, a recent letter from the Ranking Member of the Senate Armed Services Committee revealed that only 12 women have taken advantage of the Policy since its inception, which undercuts your argument that *Dobbs* has significant recruiting and retention implications.¹¹

Our men and women in uniform deserve Senate-confirmed leadership but the current situation began with your original sin of promulgating the Policy. Much has been made in the press about one Senator’s decision to try and stop your egregious wrongs, without acknowledging the Senate Majority Leader’s refusal to bring general and flag officer nominations to the floor until forced to by Republicans.¹² Seeking to circumvent the Senate prerogative of the informal “hold” practice without addressing the underlying causes—the novel Policy and subsequent refusal of

⁵ 10 U.S.C. § 1093 (2023).

⁶ Press Release, Knights of Columbus, New 2023 Knights of Columbus–Marist Poll: Post *Roe*, A Majority of Americans Continue to Support Legal Limits on Abortion (Jan. 18, 2023), <https://www.kofc.org/en/resources/communications/polls/majority-americans-still-support-abortion-limits.pdf>.

⁷ Memorandum from U.S. Sec. of Defense Lloyd Austin on Ensuring Access to Reproductive Health Care for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency and DoD Field Activity Directors 1 (Oct. 20, 2022), <https://media.defense.gov/2022/Oct/20/2003099747/-1/-1/1/MEMORANDUM-ENSURING-ACCESS-TO-REPRODUCTIVE-HEALTH-CARE.PDF>.

⁸ Lara Seligman & Joe Gould, *Troops avoid abortion travel policy fueling Tuberville blockade*, POLITICO, (Sep. 15, 2023), <https://www.politico.com/news/2023/09/15/troops-reject-abortion-travel-policy-fueling-tuberville-blockade-00116276#:~:text=But%20few%20actually%20use%20the,care%2C%20according%20to%20the%20Pentagon.>

⁹ *Supra* note 4; letter from James M. Inhofe, United States Senator, Et al, to Lloyd J. Austin III, Secretary of Defense, (Jul. 13 and Nov. 21, 2022); letter from Roger F. Wicker, United States Senator, Et al, to Lloyd J. Austin III, Secretary of Defense, (Mar. 1, 2023).

¹⁰ To receive testimony on military and civilian personnel programs in the Department of Defense in Review of the Defense Authorization Request for Fiscal Year 2024 and the Future Years Defense Program Before the Subcomm. on Personnel of the S. Comm. on Armed Svcs., 118th Cong. (2023) (questions for the record of Gil Cisneros, Under Secretary of Defense for Personnel and Readiness).

¹¹ *Supra* note 4.

¹² Caroline Coudriet, *Senate confirms Brown as chairman of the Joint Chiefs*, ROLL CALL (Sep. 20, 2023), <https://rollcall.com/2023/09/20/in-preemptive-strike-schumer-files-cloture-on-top-dod-jobs/>.

the Majority to bring these nominees to the floor—will not ultimately reconcile this matter. It could create a toxic precedent with lasting negative effects on future military nominations.

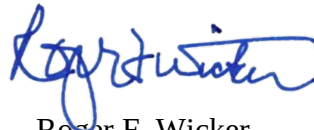
Your decision to issue the Policy politicized the military and placed the wants of a few over the needs of the entire nation.

Do the right thing. Rescind the Policy now.

Sincerely,



Ted Budd
U.S. Senator



Roger F. Wicker
U.S. Senator



Cynthia M. Lummis
U.S. Senator



Mike Lee
U.S. Senator



M. Michael Rounds
U.S. Senator



John Barrasso, M.D.
U.S. Senator



Rand Paul
U.S. Senator



Cindy Hyde-Smith
U.S. Senator



Pete Ricketts
U.S. Senator



Katie Boyd Britt
U.S. Senator



Mike Braun
U.S. Senator



Ted Cruz
U.S. Senator



Rick Scott
U.S. Senator



Markwayne Mullin
U.S. Senator



Deb Fischer
U.S. Senator



Kevin Cramer
U.S. Senator



Eric Schmitt
U.S. Senator



Roger Marshall, M.D.
U.S. Senator



Lindsey Graham
U.S. Senator



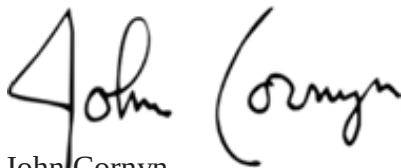
Joni Ernst
U.S. Senator



Tom Cotton
U.S. Senator



Chuck Grassley
U.S. Senator



John Cornyn
U.S. Senator



John Boozman
U.S. Senator



John Thune
U.S. Senator



Marsha Blackburn
U.S. Senator



Dan Sullivan
U.S. Senator