

**Congress of the United States**  
**Washington, DC 20515**

December 15, 2022

The Honorable Lloyd Austin  
Secretary of Defense  
U.S. Department of Defense  
1300 Defense Pentagon  
Washington, DC 20301 – 1000

Dear Secretary Austin,

We write in strong opposition to the memorandum entitled, “Ensuring Access to Reproductive Health Care,” published on October 20, 2022. This memorandum violates decades-old federal law prohibiting the Department of Defense (DOD) from funding elective abortion (which includes facilitating such abortions), and we urge you to immediately rescind it.

The memorandum announced that DOD would “establish travel and transportation allowances for Service members and their dependents, as appropriate and *consistent with applicable federal law*... to facilitate official travel to access noncovered reproductive health care that is unavailable within the local area of a Service member’s permanent duty station.” While the memorandum claims that this policy will be implemented consistent with federal law, funding travel and transportation to obtain non-covered, elective abortions through the DOD would, in and of itself violate federal law. It also contradicts DOD’s past recognition, interpretation, and implementation of this law.

Both the law itself and Congressional intent are clear: the U.S. military may not fund elective abortion. This necessarily includes funding for any activity necessitated by the abortion, such as travel and transportation. After many years of preventing DOD from paying for elective abortions, in 1984 Congress made permanent the restriction in [10 U.S.C. § 1093](#). In 1993, President Bill Clinton attempted to circumvent the law; he issued a [memorandum](#) allowing federally-funded DOD facilities to provide abortions if “the procedure is privately funded.”<sup>1</sup> Congress responded by further clarifying its intent. In 1996, it explicitly banned DOD facilities from performing abortions. Now, through the travel and transportation policy, DOD is once again unlawfully claiming authority to use taxpayer funds to facilitate elective abortions if the abortion procedure itself is privately funded. However, Congress has already clarified that similar action by DOD to facilitate elective abortions violates federal law. This law continues to prohibit DOD from facilitating elective abortions today.

Prior to this memorandum, DOD had repeatedly acknowledged the plain meaning of the law and applied the law consistent with such understanding. For example, DOD regulations state that TRICARE may not pay for medical services or supplies related to elective abortion.<sup>2</sup> The TRICARE Policy Manual 6010.60-M also states that TRICARE is prohibited from funding “services and supplies related to a noncovered abortion,” as well as “abortion counseling,

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<sup>1</sup> President William J. Clinton. “Memorandum on Abortions in Military Hospitals.” January 22, 1993.  
<https://www.presidency.ucsb.edu/documents/memorandum-abortion-military-hospitals>

<sup>2</sup> [32 CFR 199.4\(e\)\(2\) note](#)

referral, preparation, and follow-up for a non-covered [abortion].”<sup>3</sup> Paying for travel or transportation to obtain an elective abortion falls squarely within a “service” or “supply” relating to an elective abortion. Such payments are prohibited under DOD’s own regulations and policies implementing federal law, and there has been no change in the law to warrant DOD’s latest directive blatantly contradicting it.

In summary, Congress has clearly and consistently acted to prevent the U.S. military from funding elective abortion procedures and services necessitated by those procedures, and DOD has acknowledged and complied with the law. We are appalled by the flagrant disregard for the law expressed by the Department in this memorandum. We request a meeting by no later than January 15, 2023, to personally reiterate our expectation that this memorandum be immediately withdrawn. In the meantime, please provide the following data for our review by December 31, 2022:

1. Has DOD begun providing transportation and travel for elective abortion? If so, how many individuals have been provided transportation and travel to obtain elective abortion?
2. If this illegal policy were implemented, from which account(s) would DOD be funding this travel and transportation? How many taxpayer dollars would the DOD expect to spend on abortion travel and transportation costs in a fiscal year?
3. Under this illegal policy, how many Service members do you expect would receive transportation and travel for elective abortion each month and each year?
4. Under this illegal policy, would the dependents of Service members also be provided transportation and travel to obtain elective abortion? If so how many dependents of Service members would DOD anticipate would receive transportation and travel for elective abortion each month and each year? Would these dependents include children under the age of 18?
5. Under this illegal policy, would patients receive counseling about DOD services and protections to support pregnancy, childbirth, and parenthood ahead of receiving transportation and travel for elective abortion?
6. Under this illegal policy, would DOD personnel obtain informed consent from the patient before conducting the transport of the patient? If so, please provide a copy of all materials used to train personnel regarding informed consent and all informed consent documents that will be provided to the patient.
7. Under this illegal policy, would DOD provide transportation and travel for any abortion procedure regardless of whether the abortion procedure, or the use or method of delivery of the abortion drug, would violate federal, state, or local law?

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<sup>3</sup> “TRICARE Policy Manual 6010.60-M, April 1, 2015.” Chapter 4, Section 18.3. Revision March 10, 2017.  
[https://manuals.health.mil/pages/DisplayManualHtmlFile/2021-04-20/AsOf/tp15/C4S18\\_3.html](https://manuals.health.mil/pages/DisplayManualHtmlFile/2021-04-20/AsOf/tp15/C4S18_3.html)

8. Under this illegal policy, through what week gestation would travel and transportation to obtain an elective abortion be provided? Would this include transportation and travel for abortion up until birth? Would DOD take responsibility for assessing the age of the unborn child?
9. Does DOD already provide or intend to provide funding for transportation or travel for medical services not offered on the military base to maintain a pregnancy or for pregnancy or childbirth complications?
10. Under this illegal policy, would DOD employees be required to perform or facilitate transportation or travel for abortion? How would they be informed of a right to opt-out of such activities in accordance with their medical judgment, conscience, sincerely held religious or moral beliefs, or any additional reason?

We look forward to your prompt response and provision of the data requested above.

Sincerely,



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Steve Daines  
United States Senator



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Christopher H. Smith  
Member of Congress



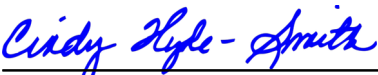
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James Lankford  
United States Senator



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Vicky Hartzler  
Member of Congress



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Cindy Hyde-Smith  
United States Senator



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Michelle Fischbach  
Member of Congress



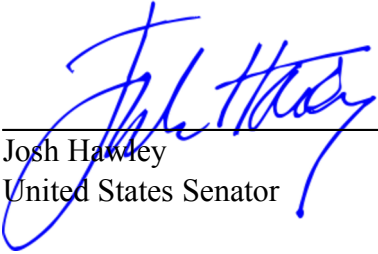
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Marsha Blackburn  
United States Senator



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Andy Harris, M.D.  
Member of Congress



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Josh Hawley  
United States Senator



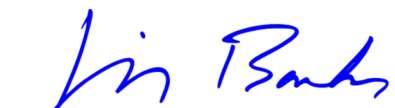
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Doug Lamborn  
Member of Congress



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Kevin Cramer  
United States Senator



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Jim Banks  
Member of Congress



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Tom Cotton  
United States Senator



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C. Scott Franklin  
Member of Congress



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Rick Scott  
United States Senator



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Michael Waltz  
Member of Congress



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Roger Marshall, M.D.  
United States Senator



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Ronny L. Jackson, M.D.  
Member of Congress



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Mike Braun  
United States Senator



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Virginia Foxx  
Member of Congress



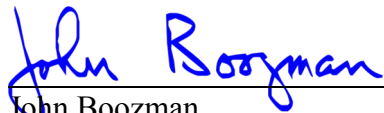
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Dan Sullivan  
United States Senator



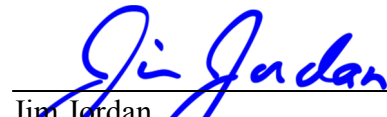
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Robert B. Aderholt  
Member of Congress



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John Boozman  
United States Senator



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Jim Jordan  
Member of Congress



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Diana Harshbarger  
Member of Congress



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Randy K. Weber, Sr.  
Member of Congress



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Brad R. Wenstrup, D.P.M.  
Member of Congress



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Bruce Westerman  
Member of Congress



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Mike Bost  
Member of Congress



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Ted Budd  
Member of Congress



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Tracey Mann  
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Van Taylor  
Member of Congress



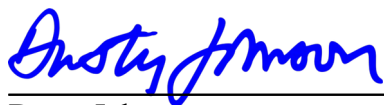
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Michael Guest  
Member of Congress



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Ben Cline  
Member of Congress



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Dusty Johnson  
Member of Congress



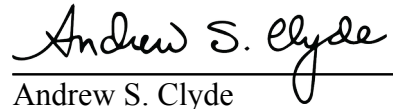
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Chip Roy  
Member of Congress



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Bob Good  
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Andrew S. Clyde  
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Earl L. "Buddy" Carter  
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Randy Feenstra  
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Bill Posey  
Member of Congress



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Darrell Issa  
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Gus M. Bilirakis  
Member of Congress



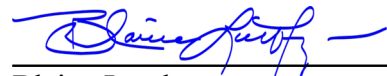
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Lloyd Smucker  
Member of Congress



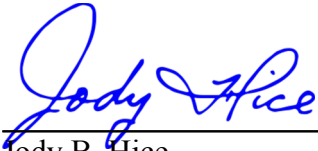
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Ralph Norman  
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Blaine Luetkemeyer  
Member of Congress



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Jody B. Hice  
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Adrian Smith  
Member of Congress



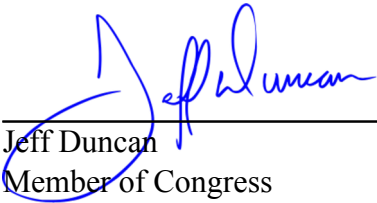
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Eric A. "Rick" Crawford  
Member of Congress



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Markwayne Mullin  
Member of Congress



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Jeff Duncan  
Member of Congress



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Steven M. Palazzo  
Member of Congress



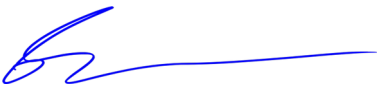
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H. Morgan Griffith  
Member of Congress



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Steve Womack  
Member of Congress



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Brian J. Mast  
Member of Congress



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Russ Fulcher  
Member of Congress





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Louie Gohmert  
Member of Congress



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Michael Cloud  
Member of Congress



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Richard Hudson  
Member of Congress



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Ron Estes  
Member of Congress



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Brad Finstad  
Member of Congress



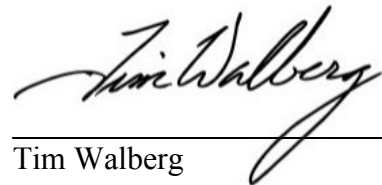
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Michael C. Burgess, M.D.  
Member of Congress



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Jake LaTurner  
Member of Congress



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Tim Walberg  
Member of Congress



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John Hoeven  
United States Senator



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Mike Lee  
United States Senator