

## Winston Appellate Team Successfully Defends Injunction Preventing Discharge of HIV-Positive Airmen

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A Winston pro bono team secured an important decision before the U.S. Court of Appeals for the Fourth Circuit that will allow all active-duty Airmen living with HIV to continue serving without fear of discharge.

Winston & Strawn, in partnership with Lambda Legal and the Modern Military Association of America (MMAA), filed a complaint in the Eastern District of Virginia on behalf of two active-duty Airmen living with HIV. Plaintiffs were facing discharge from the Air Force on the basis that they are living with HIV, and thus subject to discharge because they are “non-deployable” under U.S. Department of Defense (DoD) policy. MMAA is also an organizational plaintiff in this case to advance the interests of its members who are living with HIV and serving in the military.

In February 2019, the district court granted our clients’ motion for a preliminary injunction against DoD and the Secretary of the Air Force to halt discharge proceedings against active duty HIV-positive Airmen. In September 2019, Winston presented oral arguments for the plaintiffs before the Fourth Circuit in the government’s appeal of the lower court’s preliminary injunction ruling.

In its January 10 opinion, the Fourth Circuit unanimously ruled in *Roe & Voe v. Esper* that the government’s justifications “fail to account for current medical literature and expert opinion about current HIV treatment and transmission risks.” The three-judge panel further stated that “...any understanding of HIV that could justify this ban is outmoded and at odds with current science. Such obsolete understandings cannot justify a ban, even under a deferential standard of review and even according appropriate deference to the military’s professional judgments.” The court found that the plaintiffs are likely to succeed on their challenge to the Air Force’s discharge decision and on their challenge to the military’s deployment policy.

“I am extremely relieved to learn that I can continue to serve this country like any other service member. Serving in the U.S. military has been the greatest honor of my life and I’m thrilled to see this court affirm the lower court ruling in our favor. No one should be discharged or discriminated against because of HIV when it does not interfere whatsoever with our capacity to serve,” stated one of our clients in Lambda Legal’s press release about the decision.

Bloomberg Law [reported on the decision](#).

Other Washington, D.C. and Chicago office attorneys who contributed to this win are Associates Zach Cohen, Vinnie Gianino, and Nathan Gilbert.

Winston pro bono attorneys are handling two other lawsuits that challenge the Pentagon's current policies preventing enlistment, deployment, or commissioning as an officer if a person is living with HIV.

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Nathan Gilbert