

Stephen F. Smith
steve@smithmcowenlaw.com
Idaho Bar 2165
Smith & McOwen, Attorneys at Law
102 Superior Street
Sandpoint, ID 83864
Phone: (208) 263-3115

Mathew D. Staver (Fla. 0701092)
court@lc.org
Horatio G. Mihet (Fla. 026581)
hmihet@lc.org
Daniel J. Schmid (VA 84415)
dschmid@lc.org
Richard L. Mast (VA 80660)
rmast@lc.org
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Facsimile: (407) 875-0770
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

MAJOR DAVID T. WORLEY,

Plaintiff,

v.

BRAD LITTLE, in his official capacity as Governor of the State of Idaho and Commander-in-Chief of the Idaho National Guard; MAJOR GENERAL TIMOTHY J. DONNELLAN, in his official capacity as Adjutant General of the Idaho National Guard; BRIGADIER GENERAL JAMES C. PACKWOOD, in his official capacity as Assistant Adjutant General of the Idaho Army National Guard,

Defendants.

Case. No. _____

VERIFIED COMPLAINT FOR
TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND DAMAGES.

“Our citizens in uniform may not be stripped of basic rights simply because they doffed their civilian clothes.”¹

For his VERIFIED COMPLAINT against Defendants, BRAD LITTLE, in his official capacity as Governor of the State of Idaho and Commander-in-Chief of the Idaho National Guard; MAJOR GENERAL TIMOTHY J. DONNELLAN, in his official capacity as Adjutant General of the Idaho National Guard; BRIGADIER GENERAL JAMES C. PACKWOOD, in his official capacity as Assistant Adjutant General of the Idaho Army National Guard, Plaintiff Major David T. Worley, alleges and avers as follows:

URGENCIES JUSTIFYING EMERGENCY RELIEF

1. Plaintiff, Major David T. Worley, is an Infantry Officer in the Idaho Army National Guard, who has been unlawfully, unconstitutionally, and unconscionably subjected to investigation, discrimination, retaliation, and punishment for the simple exercise of his First Amendment rights to engage in speech on matters of public concern—outside the confines of his duties with the Idaho Army National Guard—and to exercise his sincerely held religious beliefs without fear of discriminatory reprisal from his chain of command.

2. Major Worley engaged in private speech—outside the confines and strictures of his military duties—discussing issues and topics relevant to the political discourse taking place in his community. All of Major Worley’s religious exercise and expression took place **before Major Worley even assumed his role in the Idaho Army National Guard**. Major Worley’s constitutionally protected religious expression occurred during his campaigns for Mayor of Pocatello and Idaho State Senate, and while acting as private citizen after those campaigns concluded. He espoused his religious convictions and expressed his religious and moral opposition

¹ *Chappell v. Wallace*, 462 U.S. 296, 304 (1983) (citing E. Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. Rev. 181, 188 (1962)).

to certain issues, such as the so-called “Drag Queen Story Hours” and the indecent and obscene materials being provided to minors in public libraries, taking place in his community.

3. In July 2023, Major Worley took command of the Idaho Army National Guard’s Recruiting and Retention unit. A Sergeant First Class under Major Worley’s command (hereinafter “Complaining Guardsman”) performed a Google search of the Major after he had been promoted to command the unit. As a result of that search, the Complaining Guardsman, who was ideologically opposed to Major Worley’s religious beliefs, views, and expression, filed a complaint with the Equal Opportunity Employment Commission (hereinafter “EO Complaint”), alleging Major Worley created a hostile work environment against the Complaining Guardsman for his alleged sexual orientation. The sole factual predicates of the EO Complaint against Major Worley were the press reports of Major Worley’s opposition to Drag Queen Story Hour and the pornography, obscenity, and other inappropriate materials for minors in the public library, and Major Worley’s speech on religious and moral issues that he gave as part of his political campaigns when he ran for elected office.

4. Major Worley had met Complaining Guardsman on only two occasions, first at the initial meeting of his new command, and then a couple weeks later. Major Worley had no other interactions with Complaining Guardsman.

5. As a result of the EO Complaint, Major Worley was unceremoniously haled into his command’s office—**just a few short days after assuming his new command**—and told that he must resign or face significant and life-altering disciplinary proceedings. Major Worley initially resigned, but rescinded that resignation upon the advice of counsel and the swift realization that capitulation in the face of blatant injustice would be a stain on his honor and a betrayal of his faith.

6. As a result of the EO Complaint, Major Worley was subjected to an administrative proceeding (hereinafter the “AR 15-6”) in which he was investigated for his alleged offenses and was immediately suspended pending the process of that investigation and its conclusion.

7. As a result of the investigation, the Investigating Officer recommended to Defendants that Major Worley be permanently removed from command. The sole basis for this recommended removal of Major Worley was that he had engaged in religious expression and speech the Investigating Officer found offensive.

8. To make matters worse, as part of his report to Defendants, the Investigating Officer recommended that Defendants adopt a policy (hereinafter the “No Christians in Command” Policy) to ferret out “extremists” in the military by looking at the social media profiles of potential command candidates to make sure there is no “concerning information” about them, to determine how those candidates portray themselves publicly, to make sure the candidate would be supportive of a “diverse” groups of subordinates, and to get “the full picture” of the candidate’s beliefs, views, and public expression, including whether they had any “concerning ideologies.”

9. The only “concerning” information about Major Worley was, of course, his religious views, beliefs, expression, and speech, and his religious exercise that the Complaining Guardsman found offensive and the EO Complaint based on that purported offense that Defendants used to investigate, discipline, and remove Major Worley from command.

10. After being removed from command while the investigation was undertaken and the administrative disciplinary proceedings concluded, Major Worley has been deprived of a duty position, assignments, and responsibilities. He was not allowed to drill with any unit, ostracized from the military, and his career has been rendered stagnant since July of 2023. This has caused

irreparable harm to his reputation and career, almost guaranteeing that he will not be selected for future positions of responsibility and has little chance of promotion. Major Worley has served for over 22 years in the Army National Guard and has over 13 years of active service. The derailment of his career has almost rendered it impossible to receive the active-duty retirement he has been working towards for over two decades. This irreparable injury is solely the result of by being punished for the exercise and expression of his sincere religious convictions. And, the allegedly offending religious expression and exercise all occurred prior to Major Worley's position as commanding officer of the Recruiting and Retention Unit.

11. On December 12, Major Worley was informed that he was to be permanently separated from active duty with the Idaho National Guard, effective within thirty days of the finalization of the paperwork. This separation will result in the loss of his livelihood and the ability to acquire points and promotions. It will also severely limit his ability to receive full-time military employment in the future.

12. Absent a temporary restraining order and preliminary injunction maintaining the status quo *ante* while this matter is adjudicated, Major Worley will suffer further irreparable harm that cannot be undone after prevailing on the merits of his claims.

13. The purpose of a TRO is to preserve the status quo between the parties before the Court can hear the matter on the merits, *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009), and the relevant status quo is the "*status quo ante litem*" or "the last uncontested status which preceded the pending controversy." *Regents of the Univ. of Cal. v. Am. Broad. Co., Inc.*, 747 F.2d 511, 514 (9th Cir. 1984).

14. Absent a TRO and preliminary injunction, Major Worley will be unceremoniously, unconstitutionally, and unlawfully removed of his position permanently

and separated from the active-duty force of the Idaho Army National Guard and potentially separated from the military entirely and permanently for the mere exercise of his constitutionally protected rights to religion and speech.

15. The First Amendment, the Fourteenth Amendment, and the Idaho Free Exercise of Religion Protection Act all demand more, and a TRO is necessary to preserve Major Worley's sincerely held and constitutionally protected religious beliefs, views, and expression from irreparable harm and to return him to the position he held prior to the unconstitutional discrimination.

INTRODUCTION

16. "Greater love hath no man than this, that a man lay down his life for his friends." *John* 15:13 (KJV). Major Worley agreed, voluntarily and sacrificially, to devote his life to this axiomatic truth, regardless of the cost to him personally or to his family who likewise sacrifices in defense of this Nation. Major Worley has sworn an oath to protect and defend the Constitution of the United States, to sacrificially lay down his life for his fellow citizens against enemies both foreign and domestic, and to preserve for our progeny the heritage and treasure passed down to them by Veterans of old. And, for that sacrifice in defense of the Constitution and our freedoms, Defendants threatened Major Worley with permanent separation for simply exercising his First Amendment rights to engage in speech on matters of public concern—outside the confines (and before) his duties with the Idaho Army National Guard—and to exercise and express his sincerely held religious beliefs without fear of discriminatory reprisal from his chain of command.

17. Having sacrificed to defend America and its citizenry—and while carrying the images and sounds of war with him throughout his life—Defendants have tarnished and seek to continue tarnishing Major Worley's reputation and good name by separating him from active-duty

service for expressing and exercising his religious beliefs. Thus, for the mere exercise of his sincere religious convictions and the expression of those convictions in the public arena, Defendants seek to throw him out in the cold. This Court must stop that constitutional tragedy from occurring.

18. As the Supreme Court has long affirmed, the heroes of the United States Armed Forces do not shed their constitutional rights at the moment of their sacrificial oath. Indeed, “[t]his Court has never held, nor do we now hold, that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service.” *Chappell v. Wallace*, 462 U.S. 296, 304 (1983).

19. Moreover, while Major Worley certainly has duties and responsibilities “without counterpart in civilian life,” *Schlesinger v. Councilman*, 420 U.S. 738, 757 (1975), **the Constitution still provides him with the same blanket of constitutional protection that his dedicated service and sacrifice provided to the average civilian.** For to turn the same Constitution that Major Worley swore to protect and defend into a weapon against him would be a travesty unknown to the Nation’s founding charter and eclipse any dereliction of duty heretofore seen in the great experiment of America.

20. Indeed, as Justice Brennan noted,

Military (or national) security is a weighty interest, not least of all because national survival is an indispensable condition of national liberties. But the concept of military necessity is seductively broad, and has a dangerous plasticity. **Because they invariably have the visage of overriding importance, there is always a temptation to invoke security “necessities” to justify an encroachment upon civil liberties. For that reason, the military-security argument must be approached with a healthy skepticism: its very gravity counsels that courts be cautious when military necessity is invoked by the Government to justify a trespass on First Amendment rights.**

Brown v. Glines, 444 U.S. 348, 369 (1980) (Brennan, J., dissenting) (emphasis added) (citation omitted).

21. That Major Worley must appeal to this Article III Court is of no constitutional accident, and is of no constitutional barrier:

To be sure, generals and admirals, not federal judges, are expert about military needs. **But it is equally true that judges, not military officers, possess the competence and authority to interpret and apply the First Amendment.** Moreover, in the context of this case, the expertise of military officials is, to a great degree, tainted by the natural self-interest that inevitably influences their exercise of the power to control expression. Partiality must be expected when government authorities censor the views of subordinates, especially if those views are critical of the censors. **Larger, but vaguely defined, interests in discipline or military efficiency may all too easily become identified with officials' personal or bureaucratic preferences. This Court abdicates its responsibility to safeguard free expression when it reflexively bows before the shibboleth of military necessity.**

Id. at 370 (emphasis added).

22. Major Worley, who swore an oath to protect the cherished constitutional freedoms outlined in the Nation's Charter can also invoke those same constitutional protections for breaches of his own liberties, despite military service. Here, Defendants have made it clear that they think Major Worley's sacrificial act of swearing an oath to protect the Nation and support and defend the Constitution is accompanied by the sacrificial surrender of those same constitutional protections he defends. The Constitution opposes such callous indifference to sacrificial service, and so, too, should the Court.

23. Indeed, "military life do[es] not, of course, render entirely nugatory in the military context the guarantees of the First Amendment." *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). *See also Crawford v. Cushman*, 531 F.2d 1114, 1120 (2d Cir. 1976) ("[T]he military is **subject to the Bill of Rights and its constitutional implications.**" (emphasis added)). Put simply, "although First Amendment rights . . . may be 'less' for a soldier than a civilian, they are by no means lost to him." *Anderson v. Laird*, 466 F.2d 283, 295 (D.C. Cir. 1972). "**Individual freedom**

may not be sacrificed to military interests to the point that constitutional rights are abolished.” *Id.* (emphasis added).

24. Major Worley voluntarily and sacrificially answered his Nation’s call to defend the defenseless and preserve for our posterity the freedoms the citizens of America and Idaho enjoy. In return, Defendants seek to flip those constitutional protections against Major Worley and suggest the exercise of such freedoms cease to exist upon his enlistment. Balderdash. “It is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful. **The military departments enjoy no immunity from this proscription.**” *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979) (emphasis added) (citation omitted). For without question, when critical constitutional rights are at issue, “the Supreme Court [has] heard numerous constitutional challenges to military policies.” *Singh v. Carter*, 168 F. Supp. 3d 216, 225 (D.D.C. 2016) (cleaned up).

25. When we have demanded so much of our Soldiers, Sailors, Airmen, and Marines, we owe them nothing less than the full measure of our own devotion to constitutional principles. Anything less would be desecrating the sacrifices the generations of heroes in the United States Military and the Idaho National Guard, including Major Worley, have made for untold numbers of people when the call of duty demanded it and would trample upon the graves of so many who made the ultimate sacrifice for the Constitution to endure.

26. When the great American experiment was commenced, our Founders ordained and established the Constitution—including all of the rights it recognized and enshrined—“in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our

Posterity.” U.S. Const. Pmbl. To this very day, “we continue to strive toward ‘[that] more perfect union.’” *Smith v. City of New Smyrna Beach*, No. 6:11-cv-1110-Orl-37KRS, 2013 WL 5230659, at *1 (M.D. Fla. Sept. 16, 2013). That work is not easy, and sometimes it requires the intervention of the judiciary to set the guardrails for the protection of the Republic’s liberties. For its part, too, the Idaho Constitution began “We, the people of the state of Idaho, grateful to Almighty God for our freedoms, to secure its blessing and promote our common welfare do establish this Constitution.” Idaho Const., Pmbl.

27. Recognizing that times of vehement disagreement surrounding significant public issues would invariably arise, that such times might lead governments to seek to repress precious freedoms in the name of expediency, and that the Republic’s survival depended upon defeating such repressive instincts, the genius of our founding charter is that it placed explicit protections into the text of the Bill of Rights. And, importantly, “[o]ur Bill of Rights placed our survival on firmer ground—that of freedom, not repression.” *Konigsberg v. State Bar of California*, 366 U.S. 36, 79 (1961) (Black, J., dissenting).

28. “[T]he fog of public excitement obscures the ancient landmarks set up in our Bill of Rights.” *American Communist Ass’n, C.I.O. v. Douds*, 339 U.S. 382, 453 (1950) (Black, J., dissenting). But, where the fog of public excitement and disagreement is at its apex, “the more imperative is the need to preserve inviolate the constitutional rights of [the First Amendment].” *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937). Without doubt, “[t]herein lies the security of the Republic, the very foundation of constitutional government.” *Id.*

29. Certainly, governmental instincts toward tranquility of the citizenry are oft accompanied by a desire for convenient disposition of vehement disagreements, “But the ultimate strength of our constitutional guarantees lies in the unhesitating application in times of crisis and

tranquility alike.” *United States v. Bell*, 464 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring). For, “[i]f the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be discarded.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 483 (1934) (Sutherland, J., dissenting) (emphasis added).

30. Major Worley has demonstrated his commitment to the United States and Idaho Constitutions, has sacrificed admirably for the Nation’s future comfort, security, and prosperity, and has served his Nation and Idaho with honor and distinction. He has devoted over two decades to his sacrificial service and has deployed to fight in the Nation’s wars. **The Court should demand that the Nation and Idaho return the favor.**

31. “Our nation asks the men and women in our military to serve, suffer, and sacrifice. But we do not ask them to lay aside their citizenry and give up the very rights they have sworn to protect.” *U.S. Navy Seals 1-26 v. Biden*, 578 F. Supp. 3d 822, 826 (N.D. Tex. 2022).

32. A TRO and preliminary injunction is needed now to prevent the immediate and irreparable injury to Major Worley for the mere exercise of his constitutional rights and to put him back to the status quo *ante*. The official reprimand in his record, the unconstitutional and unconscionable investigation into his name, and the impending separation orders are only preventable by immediate injunctive relief.

PARTIES

33. Plaintiff, Major David T. Worley, is a citizen of the State of Idaho and a Major in the Idaho Army National Guard.

34. Defendant, BRAD LITTLE, is the Governor of the State of Idaho and Commander-in-Chief of the Idaho National Guard. Governor Little is sued in his official capacity.

35. Defendant, MAJOR GENERAL TIMOTHY J. DONNELLAN, is the Adjutant General and the Commanding General of the Idaho National Guard. He is sued in his official capacity.

36. Defendant, BRIGADIER GENERAL JAMES C. PACKWOOD, is the Assistant Adjutant General of the Idaho Army National Guard. He is sued in his official capacity.

JURISDICTION AND VENUE

37. This action arises under the First and Fourteenth Amendments to the United States Constitution, and the Idaho Free Exercise of Religion Protection Act (RFRA), Idaho Code §73-402, *et seq.*

38. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

39. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) because this action arises in the district in which all defendants reside and is the district in which a substantial part of the events and omissions giving rise to the claim occurred.

40. This Court has the authority to grant the requested declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, implemented through Rule 57, Federal Rules of Civil Procedure, and the requested temporary restraining order and injunctive relief under 28 U.S.C. § 2202 and Rule 65, Federal Rules of Civil Procedure.

41. This Court has the authority to award the requested costs and attorney’s fees under 42 U.S.C. § 1988.

GENERAL ALLEGATIONS

A. Major Worley and His 22 Years of Admirable and Honorable Service.

42. Major Worley has been a member of the National Guard for 22 years.

43. Major Worley has deployed multiple times—including two combat deployments to Iraq during Operation Iraqi Freedom.

44. Major Worley is a man of Christian faith and is a leader in his church and community. Major Worley has frequently and publicly expressed his faith in the public arena and shared his religious and political convictions as a matter of principle.

45. Major Worley has sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that he is to follow its teachings.

46. Major Worley has sincerely held religious beliefs, compelled by Scripture, that “to him that knoweth to do good, and doeth it not, to him it is sin.” *James* 4:7 (KJV).

47. Major Worley also has sincerely held religious beliefs, compelled by Scripture, that he is to “take no part in the unfruitful works of darkness,” but to “expose them.” *Ephesians* 5:11 (ESV).

48. Major Worley also has sincerely held religious beliefs, compelled by Scripture, that require him to understand that silence in the face of evil is evil itself. *See Proverbs* 8:1-8 (“Doth wisdom not cry? And understanding put forth her voice . . . She crieth at the gates, at the entry of the city, at the coming in at the doors. . . . Hear, for I will speak excellent things; and the opening of my lips shall be right things. For my mouth speak truth; and wickedness is an abomination to my lips. All the words of my mouth are in righteousness; there is nothing froward or perverse in them.” (KJV)).

49. Major Worley also has sincerely held religious beliefs, compelled by Scripture, that he is to “open [his] mouth for the mute, for the rights of all who are destitute” and to “[o]pen [his] mouth” and “judge righteously.” *Proverbs* 31:8-9 (ESV).

50. Major Worley also has sincerely held religious beliefs, compelled by Scripture, that there is “a time to keep silence, and a time to speak,” *Ecclesiastes* 3:7 (ESV), and that the time to speak is when that which he views as immoral and wrong is taking place in society.

51. Major Worley also has sincerely held religious beliefs that for him to fail to speak out against things he knows are wrong results in the eternal condemnation of his soul. “If you say, ‘behold, we did not know this,’ does not he who weighs the heart perceive it? Does not he who keeps watch over your soul know it, and will he not repay man according to his work.” *Proverbs* 24:12 (ESV).

52. In addition to his admirable service in the Nation’s armed forces, Major Worley has demonstrated his commitment to helping the most vulnerable in the community.

53. Earlier last year, Major Worley was commended for his bravery and heroism for stopping a criminal beating a woman in an intersection. See Journal Staff, *National Guard Maj. Worley reportedly stops man from beating woman at Pocatello intersection*, Idaho State Journal (Feb. 19, 2024), available at https://www.idahostatejournal.com/freeaccess/national-guard-maj-worley-reportedly-stops-man-from-beating-woman-atpocatello-intersection/article_4393557e-cfae-11ee-a548-f3495c5facc4.html (last visited January 15, 2025).

54. In that incident, Major Worley was driving through his hometown and witnessed a violent criminal publicly beating a woman in an intersection. He immediately pulled his vehicle over, quickly exited, and intervened to rescue the woman from the man’s criminal assault.

55. Major Worley held the attacker captive while waiting for police to arrive, and the police arrested the suspect upon arrival. His actions were recognized by the Pocatello Police Department, and he was given an award for his service as a citizen.

56. Major Worley's commitment to the cause of justice, including through his service in the armed forces and in his everyday life, is compelled by his sincerely held religious beliefs that God requires him "to do justice, to live kindness, and to walk humbly with [his] God." *Micah* 6:8 (ESV).

B. The Unlawful EO Complaint against Major Worley.

57. In March 2023, Major Worley was selected for a two-year one-time Occasional Tour with the Idaho Army National Guard as the Commander of the Idaho Army National Guard Recruiting and Retention Battalion. Major Worley's orders started July 1, 2023.

58. Major Worley's first day of work was Wednesday July 5th, and on Friday July 7th his unit had its pre-drill meeting with full-time staff.

59. This is the first time Major Worley met and had any interaction with the Complaining Guardsman who filed the EO Complaint against him.

60. Major Worley shook his hand and sat next to him during the meeting, but didn't have any other interactions.

61. Six days later, on July 13, 2023, the Complaining Guardsman, a Sergeant First Class under Major Worley's command filed the EO Complaint against him.

62. The EO Complaint alleged that Major Worley discriminated against the Complaining Guardsman due to his alleged sexual orientation, and that Major Worley (in the six days he was in command) had created a hostile work environment for the allegedly offended Complaining Guardsman. (A true and correct redacted copy of the EO Complaint is attached hereto as EXHIBIT A and incorporated herein.)

63. The EO Complaint stated that Complaining Guardsman "fe[lt] like [he] had been discriminated against because of [his] sexual orientation and that is has [sic] a hostile work

environment during the time of 6 July 2023 to current.” (Exhibit A, 2.) Notably, “to current” was the vast span of six days.

64. Complaining Guardsman alleged that Major Worley belonged to an “extremist/hate group” which created a hostile work environment and caused the Complaining Guardsman to believe he was “being discriminated against because of [his] sexual orientation.” (Ex. A, 2.)

65. The Complaining Guardsman took issue with Major Worley’s private social media posts that discussed his political campaign for Mayor of Pocatello and State Senate, discussed the positions of his opponents in the senate race, and discussed the need to return to “truth, decency, and morality.” (See Ex. A, 2, 14-20.)

66. The sole basis for the Complaining Guardsman’s EO Complaint against Major Worley was the allegedly offensive, extremists, and hateful views of Major Worley’s sincerely held religious beliefs, views, and expressions.

67. The requested relief in Complaining Guardsman’s EO Complaint was to have Major Worley “IMMEDIATELY REMOVED AS MY COMMANDER AND THEN TO HAVE [MAJOR WORLEY] REMOVED FROM THE IDAHO ARMY NATIONAL GUARD SO THAT HE NEVER HAS COMMAND AUTHORITY OVER ANYONE AGAIN.” (Ex. A, 2 (emphasis original).)

C. The Investigation and Recommendations against Major Worley.

68. On July 18, 2023, Major Worley’s chain of command ordered him into a meeting in which he was forced to choose between signing a “voluntary resignation” or facing significant investigations and punishments. Major Worley’s command did not bother with the constitutional or legal requirements of due process in such meeting, denied his right to legal counsel, did not

follow Department of Defense procedures, and ignored the requirement to provide Major Worley with a reading of his Article 31 rights.

69. Under duress, Major Worley capitulated but immediately rescinded that impermissible procedure upon the advice of counsel and the swift realization that capitulation in the face of blatant injustice would be a stain on his honor and a betrayal of his faith.

70. Major Worley's command accepted the rescinded resignation, and immediately followed through on their threatened investigations and administrative punishments.

71. Major Worley was immediately removed from command during the process of investigation. **That suspension and removal from command continue to this day—over 18 months after the constitutional injury began.**

72. On February 1, 2024, Major Worley's command provided him the Report of Proceedings by Investigating Officer. (A true and correct copy of the Report of Proceedings by Investigating Officer is attached hereto as EXHIBIT B and incorporated herein.)

73. The Investigating Officer found the hostile work environment claims to be "Substantiated" because of Major Worley's "publicly stated views toward LGBTQ members created a workplace environment for [Complaining Guardsman] where [Complaining Guardsman] reasonably felt intimidated and threatened based on his sexual orientation." (Exhibit B, 2.)

74. The Investigating Officer stated, in his findings, that Major Worley had "well-documented discriminatory views against the LGBTQ community" that "suggest an inability to uphold the values of equality, respect, and impartiality expected of a company commander." (Ex. B, 3.)

75. The Investigating Officer stated that removing Major Worley from his command on the basis of his religious beliefs, views, and expression was necessary "not only [to] address

the immediate concerns raised by [Complaining Guardsman] but would also uphold the broader principles of leadership integrity and nondiscrimination in the Idaho Army National Guard.” (Ex. B, 3.)

76. As further support for his findings and recommendations, the Investigating Officer made plain that it was Major Worley’s “publicly documented political activities” and that his report would document “many of those **concerning activities.**” (Ex. B, 5 (emphasis added).)

77. Because Major Worley provided a written response, but refused to participate in the sham proceedings designed to legitimize the political and religious discrimination already undertaken by Defendants in removing him from command, the Investigating Officer stated that “statements made by MAJ Worley in the past are included as evidence of his attitudes toward the LGBTQ community.” (Ex. B, 6.) Those past “statements” included the same social media posts from Major Worley that Complaining Guardsman used as the basis of the EO Complaint.

78. As part of his factual findings, the Investigating Officer stated that evidence of Major Worley’s creation of a hostile work environment included, Complaining Guardsman’s research on Major Worley’s social media posts, “his political activities and his publicly stated feelings on LGBTQ issues,” that Major Worley was affiliated with an advocacy organization that (prior to his time in the full-time Idaho Army National Guard) engaged in “a protest at the Pocatello library” concerning LGBTQ issues, that Major Worley had referred to “LGBTQ ideologies as ‘immoral,’” and that Major Worley had expressed views “directed at transgender care for children, and perceived pornography in libraries.” (Ex. B, 14.)

79. All of the Investigating Officer’s findings are based on Major Worley’s publicly stated expressions of issues of public importance and on Major Worley’s religious speech.

80. The Investigating Officer further concludes that Major Worley’s religious and political views represent “concerning ideologies” and “questionable political activities and statements.” (Ex. B, 13.)

81. The Investigating Officer further found that Major Worley’s conversations with his command revealed his “inner thoughts on the LGBTQ community” in a way that the Investigating Officer found troubling. (Ex. B, 3, 19.)

82. The Investigating Officer then concluded that Major Worley should be “permanently removed from his position” and recommended the same. (Ex. B, 3, 19.)

D. The Substituted Findings and Ordered Relief of Command.

83. Brigadier General Packwood reviewed the Investigating Officer’s findings and made his Substituted Findings and Action Plan on September 3, 2024. (A true and correct copy of the Approval Authority Substituted Findings and Action Plan is attached hereto as EXHIBIT C and incorporated herein.)

84. Despite Brigadier General Packwood’s finding that that the essential components of Complaining Guardsman’s EO Complaint against Major Worley were not justified, lacked evidentiary support, and were otherwise unsubstantiated, Brigadier General Packwood found that the suspension of Major Worley from command during the investigation and AR 15-6 was justified. (Exhibit C, 5.)

85. Brigadier General Packwood found that Major Worley’s treatment of [Complaining Guardsman] did not constitute unlawful discrimination based on Complaining Guardsman’s sexual orientation. (Ex. C, 5.)

86. Brigadier General Packwood found that Major Worley did not create a hostile work environment because “there is not sufficient evidence that Worley’s conduct was *because of* [Complaining Guardsman’s] sexual orientation.” (Ex. C, 5.)

87. Brigadier General Packwood did, however, state that Major Worley’s religious beliefs, views, and expression were “unwelcome and offensive.” (Ex. C., 5.)

88. Brigadier General Packwood found that Major Worley’s alleged actions “did not constitute unlawful harassment *because of* [Complaining Guardsman’s] sexual orientation.” (Ex. C, 5.)

89. Specifically, Brigadier General Packwood stated, “There is no evidence that Worley’s treatment of [Complaining Guardsman] became a condition of employment, or that Worley’s treatment was either severe or pervasive enough to meet the threshold definition of the technical legal definition of discriminatory harassment.” (Ex. C., 5.)

90. Further, Brigadier General Packwood concluded that “[a] reasonable person could not conclude that Worley’s treatment of [Complaining Guardsman] constituted harassment *because of* his sexual orientation.” (Ex. C., 5.)

91. **Despite finding that all of the bases for Complaining Guardsman’s EO Complaint against Major Worley were neither merited nor supported by the evidence, Brigadier General Packwood nevertheless concluded that Major Worley’s religious beliefs, views, and expression demonstrated “counterproductive leadership.”** (Ex. C, 6 (emphasis added).)

92. All of Brigadier General Packwood’s findings concerning the “counterproductive leadership” arose from Major Worley’s assertion of his rights, his exercise of his sincerely held religious beliefs, or the expression of his religious views outside of the workplace. (*See* Ex. C, 6-

8.) In other words, Major Worley's offenses arose not prior to the EO Complaint but as a result of his objections to the EO Complaint that was found unsubstantiated and meritless, his objections to the investigation even commencing on the basis of such unfounded and facially unmerited claims, and his unconstitutional treatment in the process of that investigation.

E. The No Christians In Command Policy.

93. In addition to his unconstitutional and unconscionable findings as it relates to Major Worley's religious beliefs, views, expression, and exercise, the Investigating Officer also recommended to Defendants that they institute a "No Christians in Command" Policy.

94. As part of his recommendations, the Investigating Officer found: "Lack of research into the backgrounds of potential RRB Company Commanders prevented the selection board from having a full and complete picture of the personalities of the candidates being selected." (Ex. B, 19.) The unquestioned thrust of his finding is that had Defendants known of Major Worley's political and religious views, they never would have given him command.

95. He stated, "Recommendations include instituting a policy to review public online profiles of candidates, especially for high-profile positions, to ensure they uphold the trust and professionalism expected in the Military." (Ex. B, 19.)

96. Additionally, the Investigating Officer found that because of

the very public nature of leadership within the RRB, recommend that consideration be given to creating a policy within the RRB of conducting public records search on the Internet and on popular social media sites to see how a selected candidate portrays themselves publicly. This would provide additional information that can be used to better understand the full picture of any candidate selected for a high-profile position and help determine whether they will be able to foster the type of trust and confidence with Soldiers and the public required to be successful in their position.

(Ex. B, 3.)

97. To put it more bluntly, the Investigating Officer found that whenever his newly recommended policy be violated, that those whose social media posts do not conform to the No Christians in Command Policy be reported to the Department of Defense Counterintelligence office to be evaluated as threats. (Ex. B, 3 (“**In light of information uncovered during the conduct of this investigation** and in accordance with the instructions contained in DoDI 1325.06p (Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces, November 27, 2009, Change 2 Effective December 20, 2021) Reporting Requirements, I recommend that all FTNGD candidates **are scrutinized to ensure there is no concerning information within the public domain** that would, if substantiated, potentially involve reporting requirements through the state G2 to the DoD Counterintelligence reporting hub and Insider Threat Hub for adjudication by subject matter experts.” (emphasis added).)

98. In other words, “**In light of [Major Worley’s religious beliefs, views, expression, and exercise],” the Investigating Officer recommended that all candidates for command be scrutinized to ensure that their Christian beliefs, views, or expression are discovered prior to be given command and reported to the Department of Defense for investigation of concerning extremist activity.** (Cf. Ex. B, 3.)

99. As evident by the Investigating Officer’s Report and recommendations, those with Christian and religious views need to be screened to ensure that no such individual is selected for command because those persons cannot “serve with persons of diverse backgrounds.” (Ex. B, 3.)

100. Simply put, Defendants’ Investigating Officer in this matter recommended that there be **No Christians in Command** in the Idaho Army National Guard because of their “concerning ideologies.”

101. Defendant Brigadier General Packwood reviewed the Investigating Officer's findings, and sustained the recommendation concerning the No Christians in Command Policy with slight modifications. (Ex. C, 9.)

102. Rather than running headlong into the Investigating Officer's recommendations, Brigadier General Packwood said that the Guard needed to "research the legality and feasibility" of reviewing the political and religious views of those in line for command. (Ex. C, 9.)

103. Nevertheless, Brigadier General Packwood affirmed **in whole** the recommendation to monitor the "Political Activities of Idaho National Guard" to reflect the "extremism" instruction from the Department of Defense. (Ex. C, 9.)

104. In other words, Brigadier General Packwood affirmed the need to **scrutinize potential candidates for command to ensure that their Christian beliefs, views, or expression are discovered prior to be given command and reported to the Department of Defense for investigation of concerning extremist activity**

105. As such, Brigadier General Packwood affirmed the No Christians in Command Policy by affirming the modification of Idaho National Guard Policy to reflect the "rooting out" of extremism and monitoring potential candidates for command to ensure they have no concerning Christian or religious ideologies.

106. Moreover, Brigadier General Packwood affirmed, not just in word, but in deed, the No Christians in Command Policy by ordering Major Worley removed from command on the basis of an EO Complaint that he found to have no evidence. Instead of dismissing such a baseless complaint for its transparent attempts to silence religious views different from the Complaining Guardsman, Brigadier General Packwood used that evidentiarily defunct complaint to sanction,

punish, and remove Major Worley from his command for the mere exercise and expression of his religious views.

F. Defendants' Final Conclusions Concerning Major Worley.

107. On December 13, 2024, Brigadier General Packwood made the following finding relating to the EO Complaint against Major Worley. (A true and correct copy of Brigadier General Packwood's finding is attached hereto as EXHIBIT D and incorporated herein.)

108. As to the charge that Major Worley discriminated against Complaining Guardsman on the basis of Complaining Guardsman's sexual orientation, Brigadier General Packwood found the claim "UNSUBSTANTIATED." (Ex. D, 1.)

109. As to the charge that Major Worley discriminated against Complaining Guardsman by creating a hostile work environment by engaging in severe and/or pervasive behavior against Complaining Guardsman because of his sexual orientation, Brigadier General Packwood found the claim "UNSUBSTANTIATED." (Ex. D, 1.)

110. As to the charge that Major Worley discriminated against Complaining Guardsman by creating a hostile work environment on the basis of Major Worley's alleged involvement with "extremist/hate groups," Brigadier General Packwood found the claim "UNSUBSTANTIATED." (Ex. D, 1.)

111. As to the charge that Major Worley failed to remove online political content in violation of the order to do so, Brigadier General Packwood found the claim "UNSUBSTANTIATED." (Ex. D, 1.)

112. Thus, as to all of the bases that formed the Complaining Guardsman's EO Complaint against Major Worley, Brigadier General Packwood found each claim to be

unsubstantiated. In other words, there was no basis to even begin the investigation into Major Worley for his religious views and expression.

113. Nevertheless, despite finding all claims by the Complaining Guardsman to be unsubstantiated and lacking in evidence, Brigadier General Packwood concluded that Major Worley engaged in counterproductive leadership as that phrase is defined in ADP 6-22.

114. “Counterproductive leadership” is described in ADP 6-22 as, *inter alia*, “toxic.” See ADP 6-22, *Army Leadership and the Profession*, available at https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN18529-ADP_6-22-000-WEB-1.pdf (last visited January 15, 2025).

115. “Infrequent or one-time negative behaviors do not define counterproductive leadership. Often, counterproductive leadership behaviors have harmful effects on individuals or a unit when several instances occur together or take place frequently.” *Id.* at 8-48.

116. “Counterproductive leadership,” as defined, cannot therefore include one-time behaviors or conduct that, by Brigadier General Packwood’s own admissions, “was not sufficiently severe or pervasive.” (Ex. C, 5.)

117. Thus, the only basis left to conclude that Major Worley engaged in counterproductive leadership is that his religious beliefs, views, and expression were “toxic” in the eyes of his superiors, a finding made explicit by the Investigating Officer whose decision Brigadier General Packwood ratified.

118. The only claim to be substantiated resulted, not from the EO Complaint, but from claims that arose outside of the baseless EO Complaint and from the assertion of rights that Major Worley engaged in during the investigation.

119. In other words, despite lacking any evidence of an actual violation, Major Worley's investigation, administrative proceedings, removal from command, and imminent separation arose outside of the baseless EO Complaint and from the assertion of rights that Major Worley engaged in during the investigation.

G. Defendants' General Officer's Memorandum of Reprimand.

120. On December 18, 2024, Brigadier General Packwood issued Major Worley a General Officer's Memorandum of Reprimand, pouring salt over Defendants' already inflicted constitutional wound. (A true and correct copy of the December 18 GOMOR is attached hereto as EXHIBIT E and incorporated herein.)

121. In the GOMOR, Brigadier General Packwood officially reprimands Major Worley for asserting his rights in the investigation into his religious exercise and comments he made during the course of that unconscionable investigation.

122. Notably, nothing in the reprimand pointed to *any* conduct outside of the course of the investigation, but rather purported to criticize Major Worley for purportedly failing to "maintain the Army's core values and standards." (Ex. E, 1.)

123. In accordance with the terms of the GOMOR, Major Worley provided his written response and materials on January 16, 2025. (A true and correct copy of the January 16 GOMOR Response is attached hereto as EXHIBIT F and incorporated herein.)

H. Irreparable Injury to Major Worley.

124. Major Worley has suffered, is suffering, and will continue to suffer irreparable injury by being unceremoniously removed from command solely on the basis of his constitutionally protected religious beliefs, views, and expression.

125. Major Worley has suffered, is suffering, and will continue to suffer irreparable injury by being forced into resignation (later acceptingly rescinded) on the basis of an unsubstantiated EO Complaint that arose solely from his constitutionally protected religious views, beliefs, and expression.

126. Major Worley has suffered, is suffering, and will continue to suffer irreparable injury by being subjected to an administrative and disciplinary investigation solely on the basis of his constitutionally protected religious views, beliefs, and expression.

127. Major Worley has suffered, is suffering, and will continue to suffer irreparable injury by being threatened with and facing immediate and permanent separation from the active-duty force of the Idaho National Guard, effective within thirty days, solely on the basis of his constitutionally protected religious views, beliefs, and expression.

128. Absent a temporary restraining order and preliminary injunction maintaining the status quo while this matter is adjudicated, Major Worley will suffer further irreparable harm that cannot be undone after prevailing on the merits of his claims.

**COUNT I - VIOLATION OF THE FREE SPEECH CLAUSE OF THE
FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

129. Plaintiff hereby realleges and adopts each and every allegation in paragraphs 1–128 above as if fully set forth herein.

130. The Free Speech Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants from abridging Plaintiff's freedom of speech.

131. The Free Speech Clause of the First Amendment, applicable to the states through the Fourteenth Amendment, prohibits the state from excluding Plaintiff from government

programs and positions based on his religion, and such “exclusion constitutes viewpoint discrimination.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107 (2001).

132. Defendants’ “No Christians in Command” Policy, on its face and as applied, unconstitutionally discriminates on the basis of viewpoint.

133. Through their “No Christians in Command” Policy, on its face and as applied, Defendants acted to exclude Plaintiff from a government program solely due to his religious identity and the expression of his Bible-centered beliefs and viewpoint.

134. Government efforts to punish speech based on the “specific motivating ideology or the opinion or perspective of the speaker” is a “blatant” and “egregious” form of speech restriction. *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

135. Defendants’ “No Christians in Command” Policy, on its face and as applied, singled out Plaintiff solely because of his religious beliefs, and subjected him to investigation, disciplinary proceedings, and punishment solely on the basis of his religious beliefs.

136. Defendants’ “No Christians in Command” Policy, on its face and as applied, unconstitutionally discriminates on the basis of content.

137. Defendants’ “No Christians in Command” Policy is not supported by any compelling, legitimate, substantial, or even rational government interest.

138. Defendants’ “No Christians in Command” Policy, on its face and as applied, is not the least restrictive means of achieving an otherwise permissible government interest.

139. Defendants’ “No Christians in Command” Policy, on its face and as applied, is not narrowly tailored to achieve any such legitimate interest, even if it existed.

140. Defendants’ “No Christians in Command” Policy, on its face and as applied, lacks any rational basis and is irrational and unjustifiable.

141. Defendants’ “No Christians in Command” Policy, on its face and as applied,

142. Defendants’ “No Christians in Command” Policy, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiff’s sincerely held religious beliefs.

143. Plaintiff has no adequate remedy at law to protect the continuing deprivation of his most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiff respectfully prays for relief against Defendants as hereinafter set forth in his prayer for relief.

**COUNT II – RETALIATION IN VIOLATION OF THE FREE SPEECH CLAUSE
OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

144. Plaintiff hereby realleges and adopts each and every allegation in paragraphs 1–128 above as if fully set forth herein.

145. The Free Speech Clause of the First Amendment prohibits government retaliation against persons for engaging in constitutionally protected speech, expression, and conduct.

146. Plaintiff engaged in constitutionally protected conduct by expressing and maintaining his religious beliefs, views, and convictions.

147. Defendants’ “No Christians in Command” Policy, on its face and as applied, is an action that would chill and deter a person of ordinary firmness from exercising his constitutional rights to express or maintain his religious beliefs.

148. Defendants’ investigation, disciplinary proceedings, punishment and removal from command are actions that would chill and deter a person of ordinary firmness from exercising his constitutional rights to express or maintain his religious beliefs.

149. Defendants' investigation, disciplinary proceedings, punishment and removal from command are adverse actions that were undertaken solely in retaliation for Plaintiff's exercise and expression of his sincere religious convictions and protected speech.

150. Defendants' investigation, disciplinary proceedings, punishment and removal from command were retaliatory actions taken in response to Plaintiff exercising his fundamental rights to religious exercise and speech.

151. A clear causal link exists between Plaintiff's religious exercise and expression and Defendants' retaliatory conduct.

152. The timing of Defendants' investigation, disciplinary proceedings, punishment and removal from command demonstrate that Defendants' actions were based solely on Plaintiff's religious status, beliefs, and expression.

153. Defendants' actions were undertaken in bad faith and with the intent to punish Plaintiff for his religious status, beliefs, views, and expression, effectively penalizing Plaintiff for engaging in constitutionally protected conduct and expression.

154. Defendants' "No Christians in Command" Policy, on its face and as applied, is not supported by any compelling, legitimate, substantial, or even rational government interest.

155. Defendants' "No Christians in Command" Policy, on its face and as applied, is not the least restrictive means of achieving an otherwise permissible government interest.

156. There is no direct and palpable connection between Defendants' "No Christians in Command" Policy, on its face and as applied, and punishing and retaliating against Plaintiff for his religious beliefs, views, and expression.

157. Plaintiff's religious beliefs, views, and expression do not have a clear tendency to undermine good order or discipline.

158. Defendants’ “No Christians in Command” Policy, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiff’s sincerely held religious beliefs.

159. Plaintiff has no adequate remedy at law to protect the continuing deprivation of his most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiff respectfully prays for relief against Defendants as hereinafter set forth in his prayer for relief.

**COUNT III - VIOLATION OF THE FREE EXERCISE CLAUSE OF THE
FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

160. Plaintiff hereby realleges and adopts each and every allegation in paragraphs 1–128 above as if fully set forth herein.

161. The Free Exercise Clause of the First Amendment to the United States Constitution prohibits the government from abridging Plaintiffs’ rights to free exercise of religion.

162. Plaintiff has sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that he is to follow its teachings.

163. Plaintiff has sincerely held religious beliefs, compelled by Scripture, that “to him that knoweth to do good, and doeth it not, to him it is sin.” *James 4:7* (KJV).

164. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that he is to “take no part in the unfruitful works of darkness,” but to “expose them.” *Ephesians 5:11* (ESV).

165. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that requires him to understand that silence in the face of evil is evil itself. *See Proverbs 8:1-8* (“Doth wisdom not cry? And understanding put forth her voice . . . She crieth at the gates, at the entry of the city, at the coming in at the doors. . . . Hear, for I will speak excellent things; and the opening of my lips shall be right things. For my mouth speak truth; and wickedness is an abomination to

my lips. All the words of my mouth are in righteousness; there is nothing froward or perverse in them.” (KJV)).

166. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that he is to “open [his] mouth for the mute, for the rights of all who are destitute” and to “[o]pen [his] mouth” and “judge righteously.” *Proverbs* 31:8-9 (ESV).

167. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that there is “a time to keep silence, and a time to speak,” *Ecclesiastes* 3:7 (ESV), and that the time to speak is when that which he views as wrong is taking place in society.

168. Plaintiff also has sincerely held religious beliefs that for him to fail to speak out against things he knows are wrong results in the eternal condemnation of his soul. “If you say, ‘behold, we did not know this,’ does not he who weighs the heart perceive it? Does not he who keeps watch over your soul know it, and will he not repay man according to his work.” *Proverbs* 24:12 (ESV).

169. Defendants’ “No Christians in Command” Policy, on its face and as applied, targets Plaintiff’s sincerely held religious beliefs for disparate and discriminatory treatment, solely on the basis of their religious nature.

170. Defendants’ “No Christians in Command” Policy, on its face and as applied, impermissibly burdens Plaintiff’s sincerely held religious beliefs, compels Plaintiff to either change those beliefs or act in contradiction to them, and forces Plaintiff to choose between the teachings and requirements of his sincerely held religious beliefs in the commands of Scripture and the government’s imposed value system.

171. Defendants' "No Christians in Command" Policy, on its face and as applied, places Plaintiff in an irresolvable conflict between compliance with the Policy and his sincerely held religious beliefs.

172. Defendants' "No Christians in Command" Policy, on its face and as applied, puts substantial pressure on Plaintiff to violate his sincerely held religious beliefs or face loss of his ability to feed his family.

173. Defendants' "No Christians in Command" Policy, on its face and as applied, is neither neutral nor generally applicable.

174. Defendants' "No Christians in Command" Policy, on its face and as applied, specifically targets Plaintiff's religious beliefs for disparate and discriminatory treatment.

175. Defendants' "No Christians in Command" Policy, on its face and as applied, specifically targets religion for disparate and discriminatory treatment.

176. Defendants' "No Christians in Command" Policy, on its face and as applied, creates a system of individualized exemptions for preferred value systems while discriminating against sincerely held religious beliefs.

177. Defendants' "No Christians in Command" Policy, on its face and as applied, constitutes a religious gerrymander by unconstitutionally orphaning sincerely held religious beliefs while permitting the more favored nonreligious value systems.

178. Defendants' "No Christians in Command" Policy, on its face and as applied, constitutes a substantial burden on Plaintiff's exercise of his sincerely held religious beliefs

179. Defendants' "No Christians in Command" Policy, on its face and as applied, fails to accommodate Plaintiff's sincerely held religious beliefs.

180. Defendants’ “No Christians in Command” Policy is not supported by any compelling, legitimate, substantial, or even rational government interest.

181. Defendants’ “No Christians in Command” Policy, on its face and as applied, is not the least restrictive means of achieving an otherwise permissible government interest.

182. Defendants’ “No Christians in Command” Policy, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiff’s sincerely held religious beliefs.

183. Plaintiff has no adequate remedy at law to protect the continuing deprivation of his most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiff respectfully prays for relief against Defendants as hereinafter set forth in his prayer for relief.

**COUNT IV - VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

184. Plaintiff hereby realleges and adopts each and every allegation in paragraphs 1–128 above as if fully set forth herein.

185. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to equal protection under the law.

186. “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

187. The Equal Protection Clause prohibits discrimination on the basis of religion.

188. Defendants’ “No Christians in Command” Policy, on its face and as applied, is an unconstitutional abridgment of Plaintiff’s right to equal protection under the law, is not neutral,

and specifically targets Plaintiff's sincerely held religious beliefs for discriminatory and unequal treatment.

189. Defendants' "No Christians in Command" Policy, on its face and as applied, is an unconstitutional abridgement of Plaintiff's right to equal protection because it permits Defendants to treat Plaintiff differently from other similarly situated Guardsmen on the basis of Plaintiff's sincerely held religious beliefs.

190. Defendants' "No Christians in Command" Policy, on its face and as applied, singles out Plaintiff for selective treatment based upon his sincerely held religious beliefs.

191. Defendants' "No Christians in Command" Policy, on its face and as applied, is explicitly intended to inhibit and punish the exercise of Plaintiff's sincerely held religious beliefs.

192. Defendants' "No Christians in Command" Policy, on its face and as applied, creates a system of classes and categories that permit the government to exclude Guardsmen with sincerely held religious beliefs, such as Plaintiff, from rising to command level or remaining there.

193. Defendants' "No Christians in Command" Policy, on its face and as applied, by categorically excluding religious Guardsmen from command, has created and singled out a specific class of people as compared to similarly situated Guardsmen with no religious convictions.

194. Defendants' "No Christians in Command" Policy, on its face and as applied, is a "status-based enactment divorced from any factual context" and "a classification of persons undertaken for its own sake," which "the Equal Protection Clause does not permit." *Romer v. Evans*, 517 U.S. 620, 635 (1996).

195. Defendants' "No Christians in Command" Policy, on its face and as applied, "identifies persons by a single trait [religious beliefs] and then denies them protections across the board." *Id.* at 633.

196. Defendants’ “No Christians in Command” Policy, on its face and as applied, results in a “disqualification of a class of persons from the right to seek specific protection [for their religious beliefs].” *Id.*

197. Defendants’ “No Christians in Command” Policy, on its face and as applied, “declar[es] that in general it shall be more difficult for one group of citizens than for all others to seek [certain status] from the government is itself a denial of equal protection of the laws in the most literal sense.” *Id.*

198. Defendants’ “No Christians in Command” Policy, on its face and as applied, discriminates between religion and nonreligion by allowing certain, nonreligious Guardsmen the ability to attain promotion and ranking while categorically excluding similarly situated Guardsmen from the same treatment, and does so solely on the basis of religious belief.

199. Defendants’ “No Christians in Command” Policy, on its face and as applied, “raises the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected,” *id.* at 634, and thus violates the Equal Protection Clause.

200. Defendants’ “No Christians in Command” Policy, on its face and as applied, is not supported by any compelling, legitimate, substantial, or even rational government interest.

201. Defendants’ “No Christians in Command” Policy, on its face and as applied, is not the least restrictive means of achieving an otherwise permissible government interest.

202. Defendants’ “No Christians in Command” Policy, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiff’s sincerely held religious beliefs.

203. Plaintiff has no adequate remedy at law to protect the continuing deprivation of his most cherished constitutional liberties and sincerely held religious beliefs

WHEREFORE, Plaintiff respectfully prays for relief against Defendants as hereinafter set forth in his prayer for relief.

COUNT V - VIOLATION OF THE IDAHO FREE EXERCISE OF RELIGION PROTECTION ACT, Idaho Code §73-402, et seq.

204. Plaintiff hereby realleges and adopts each and every allegation in paragraphs 1–128 above as if fully set forth herein

205. Idaho’s Free Exercise of Religion Protection Act (“FERPA”) provides that “Free exercise of religion is a fundamental right that applies in this state, even if laws, rules or other government actions are facially neutral.” Idaho Code §73-402(1).

206. FERPA also provides that “government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.” Idaho Code §73-402(2).

207. FERPA further provides that the government may only substantially burden religious exercise if “it demonstrates that application of the burden to the person is both: (a) Essential to further a compelling governmental interest; (b) The least restrictive means of furthering that compelling governmental interest.” Idaho Code §73-402(3).

208. Similar to its federal counterpart, the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4, FERPA is designed to “to provide very broad protection for religious liberty,” going “far beyond what [the Supreme Court] has held is constitutionally required” under the First Amendment. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693, 706 (2014).

209. And, as the Ninth Circuit has recognized, FERPA goes even farther in its protection of religious beliefs than does its federal counterpart. “FERPA’s definition of a substantial burden is much broader than RFRA’s,” *Does v. Wasden*, 982 F.3d 784, 794 (9th Cir. 2020), and thus provides even greater protection than that of RFRA.

210. “RFRA operates as a kind of super statute, displacing the normal operation of other federal laws.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 682 (2020). So, FERPA’s greater protection operates with even greater super statutory protections of religious beliefs.

211. Plaintiff has sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that he is to follow its teachings.

212. Plaintiff has sincerely held religious beliefs, compelled by Scripture, that “to him that knoweth to do good, and doeth it not, to him it is sin.” *James 4:7* (KJV).

213. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that he is to “take no part in the unfruitful works of darkness,” but to “expose them.” *Ephesians 5:11* (ESV).

214. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that requires him to understand that silence in the face of evil is evil itself. *See Proverbs 8:1-8* (“Doth wisdom not cry? And understanding put forth her voice . . . She crieth at the gates, at the entry of the city, at the coming in at the doors. . . . Hear, for I will speak excellent things; and the opening of my lips shall be right things. For my mouth speak truth; and wickedness is an abomination to my lips. All the words of my mouth are in righteousness; there is nothing froward or perverse in them.” (KJV)).

215. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that he is to “open [his] mouth for the mute, for the rights of all who are destitute” and to “[o]pen [his] mouth” and “judge righteously.” *Proverbs 31:8-9* (ESV).

216. Plaintiff also has sincerely held religious beliefs, compelled by Scripture, that there is “a time to keep silence, and a time to speak,” *Ecclesiastes 3:7* (ESV), and that the time to speak is when that which he views as wrong is taking place in society.

217. Plaintiff also has sincerely held religious beliefs that for him to fail to speak out against things he knows are wrong results in the eternal condemnation of his soul. “If you say, ‘behold, we did not know this,’ does not he who weighs the heart perceive it? Does not he who keeps watch over your soul know it, and will he not repay man according to his work.” *Proverbs* 24:12 (ESV).

218. Defendants’ “No Christians in Command” Policy, on its face and as applied, targets Plaintiff’s sincerely held religious beliefs for disparate and discriminatory treatment, solely on the basis of their religious nature.

219. Defendants’ “No Christians in Command” Policy, on its face and as applied, impermissibly burdens Plaintiff’s sincerely held religious beliefs, compels Plaintiff to either change those beliefs or act in contradiction to them, and forces Plaintiff to choose between the teachings and requirements of his sincerely held religious beliefs in the commands of Scripture and the government’s imposed value system.

220. Defendants’ “No Christians in Command” Policy, on its face and as applied, places Plaintiff in an irresolvable conflict between compliance with the Policy and his sincerely held religious beliefs.

221. Defendants’ “No Christians in Command” Policy, on its face and as applied, puts substantial pressure on Plaintiff to violate his sincerely held religious beliefs or face loss of his ability to feed his family.

222. Defendants’ “No Christians in Command” Policy, on its face and as applied, is neither neutral nor generally applicable.

223. Defendants’ “No Christians in Command” Policy, on its face and as applied, specifically targets Plaintiff’s religious beliefs for disparate and discriminatory treatment.

224. Defendants' "No Christians in Command" Policy, on its face and as applied, specifically targets religion for disparate and discriminatory treatment.

225. Defendants' "No Christians in Command" Policy, on its face and as applied, creates a system of individualized exemptions for preferred value systems while discriminating against requests sincerely held religious beliefs.

226. Defendants' "No Christians in Command" Policy, on its face and as applied, constitutes a religious gerrymander by unconstitutionally orphaning sincerely held religious beliefs while permitting the more favored nonreligious value systems.

227. Defendants' "No Christians in Command" Policy, on its face and as applied, constitutes a substantial burden on Plaintiff's exercise of his sincerely held religious beliefs

228. Defendants' "No Christians in Command" Policy, on its face and as applied, fails to accommodate Plaintiff's sincerely held religious beliefs.

229. Defendants' "No Christians in Command" Policy is not supported by any compelling, legitimate, substantial, or even rational government interest.

230. Defendants' "No Christians in Command" Policy, on its face and as applied, is not the least restrictive means of achieving an otherwise permissible government interest.

231. Defendants' "No Christians in Command" Policy, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiff's sincerely held religious beliefs.

232. Plaintiff has no adequate remedy at law to protect the continuing deprivation of his most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiff respectfully prays for relief against Defendants as hereinafter set forth in his prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. That the Court issue a Temporary Restraining Order and Preliminary Injunction pending trial, and a Permanent Injunction upon judgment, restraining and enjoining Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, from enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with Defendants' "No Christians in Command" Policy, to wit:

- (1) Defendants will immediately cease any and all investigations, disciplinary proceedings, administrative proceedings, or any other form of retaliatory punishment for Plaintiff's exercise of his constitutionally and statutorily protected rights to private speech and religious exercise;
- (2) Defendants will immediately cease any and all efforts to administratively separate Plaintiff from the Idaho Army National Guard or to curtail his active-duty status;
- (3) Defendants will immediately restore Plaintiff to the status quo ante, that is—to his prior position before the EO Complaint, institution of the retaliatory administrative investigation, disciplinary procedures, and administrative separation orders; and
- (4) Defendants will immediately cease enforcement or application of the "No Christians in Command" Policy, or any derivation thereof;

B. That the Court render a declaratory judgment declaring that Defendants' "No Christians in Command" Policy, both on its face and as applied by Defendants, is illegal and

unlawful in that it purports to remove federal civil rights and constitutional protections from Idaho Army National Guardsmen, and further declaring—

- (1) Defendants’ “No Christians in Command” Policy, both on its face and as applied, violates the First Amendment to the United States Constitution by specifically targeting Plaintiff’s sincerely held religious beliefs for disparate and discriminatory treatment;
- (2) Defendants’ “No Christians in Command” Policy, both on its face and as applied, violates the First Amendment to the United States Constitution by singling out Plaintiff’s religious viewpoint and expression for discriminatory treatment;
- (3) Defendants’ “No Christians in Command” Policy, both on its face and as applied, violates the First Amendment to the United States Constitution by permitting Defendants to engage in unlawful retaliation against religious adherents and that Defendants’ investigations, disciplinary proceedings, administrative proceedings, and punishment were unconstitutionally retaliatory against Plaintiff solely on the basis of his religious exercise and speech; and
- (4) Defendants’ “No Christians in Command” Policy, both on its face and as applied, violates the Idaho Free Exercise of Religion Protection Act by imposing a substantial burden on Plaintiff’s sincerely held religious beliefs without any compelling interest;

C. That the Court adjudge, decree, and declare the rights and other legal obligations and relations within the subject matter here in controversy so that such declaration shall have the full force and effect of final judgment;

D. That the Court award Plaintiffs actual damages in an amount to be determined at trial;

E. That the Court award Plaintiff his reasonable attorney's fees, costs, and other expenses and disbursements in this action 42 U.S.C. § 1988, and as otherwise allowed by law;

F. That the Court retain jurisdiction over the matter for the purposes of enforcing the Court's order; and

G. That the Court grant such other and further relief as the Court deems equitable and just under the circumstances.

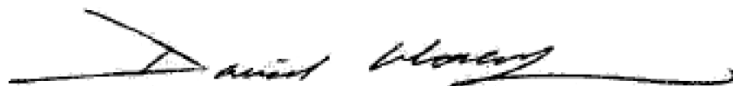
/s/ Stephen F. Smith
Stephen F. Smith
steve@smithmcowenlaw.com
Idaho Bar 2165
Smith & McOwen, Attorneys at Law
102 Superior Street
Sandpoint, ID 83864
Phone: (208) 263-3115

/s/ Daniel J. Schmid
Mathew D. Staver
Florida 0701092
court@lc.org
Horatio G. Mihet
Florida 026581
hmihet@lc.org
Daniel J. Schmid
Virginia 84415
dschmid@lc.org
Richard L. Mast
Virginia 80660
rmast@lc.org
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Facsimile: (407) 875-0770
Attorneys for Plaintiff

VERIFICATION OF COMPLAINT

I, Major David T. Worley, am over the age of eighteen years and the Plaintiff in this action. Pursuant to 28 U.S.C. § 1746, I verify and declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently.

Executed this 15th day of January, 2025

A handwritten signature in black ink, appearing to read "David Worley", with a long horizontal flourish extending to the right.

/s/ David T. Worley
David T. Worley

| | | | |
|---|------------------------------|---|--|
| Discrimination Complaint in the Army and Air National Guard For use of this form see CNGBM 9601.01, the proponent agency is NGB-EO. | | (SEEM Use Only) | Filing State/Territory: |
| | | NGB Case Tracking Number: | |
| PRIVACY ACT STATEMENT | | | |
| Authority: 42 U.S.C., Chapter 21, Subchapter V Principal Purpose: To document allegations of discrimination in the National Guard (NG) Routine Uses: None Disclosure: Voluntary. However, failure to complete all portions of this form could affect the timely processing, or result in the rejection or dismissal of your complaint. | | <input type="checkbox"/> IRR Date: _____ <input type="checkbox"/> FRR Date: _____ <input type="checkbox"/> ADR Date: _____ | |
| INSTRUCTIONS | | | |
| PART I - TO BE COMPLETED BY COMPLAINANT Submit to Your EO State Representative | | | |
| All NG members serving in Title 32 status, to include NG technicians in a military pay status who believe they have been discriminated against based on race, color, national origin, religion, sex-gender, or sexual orientation, or who believe they have been the victim of sexual harassment, or of reprisal for prior engagement in the discrimination complaint process or related activity, may file a request to resolve discrimination allegations. You are encouraged to discuss the complaints with and to seek assistance from your immediate supervisor, unit commander, members of the chain of command or EO office staff. Fill out Part I of this form and file the complaint within 180 days of the date of the alleged discrimination or the date that you became aware of the discriminatory event or action. The complaint should be filed with the unit commander (if the commander is not the alleged discriminating official) or with your unit EO representative. You may file with any other commander in the chain of command, the Adjutant General, the National Guard Bureau, or Inspector General Office. However, regardless of where the complaint is filed, it will be referred to the lowest applicable command level for action. | | | |
| 1. COMPLAINANT | | | |
| a. NAME (Last, First, MI) COMPLAINANT | | b. RANK SFC | c. COMPONENT (ARNG/ANG) ARNG |
| | | d. POSITION [REDACTED] | |
| 2. SEX-GENDER (M/F) M | 3. RACE [REDACTED] | 4. NATIONAL ORIGIN U.S. CITIZEN | |
| 5. HOME ADDRESS (Including Zip Code) [REDACTED] | | 6. TELEPHONE NUMBERS | |
| | | a. BUSINESS [REDACTED] | b. HOME [REDACTED] |
| 7. ACTIVITY OR UNIT IN WHICH ALLEGED DISCRIMINATION OCCURRED X COMPANY SPECIALIZATION LOCATION [REDACTED] ID [REDACTED] | | 8. ARE YOU (Check One) <input type="checkbox"/> PART TIME MILITARY MEMBER <input checked="" type="checkbox"/> AGR TITLE 32/ADOS TITLE 32 <input type="checkbox"/> APPLICANT FOR NG/AGR MEMBERSHIP <input type="checkbox"/> FORMER MILITARY MEMBER <input type="checkbox"/> BENEFICIARY OF NG | |
| 9. ALLEGED DISCRIMINATING OFFICIAL (ADO) | | | |
| a. NAME (Last, First, MI) INFANTRY OFFICER | | b. RANK/TITLE [REDACTED] /Company Commander | |
| 10. REPRESENTATIVE (If any) | | | |
| a. NAME (Last, First, MI) | | b. ADDRESS [REDACTED] LOCATION ID [REDACTED] | |
| 11. CHECK BELOW THE BASIS (Reasons) FOR ALLEGED DISCRIMINATION | | | |
| <input type="checkbox"/> R RACE (Check Your Race) <input type="checkbox"/> Black or African American <input checked="" type="checkbox"/> White <input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian/Pacific Islander <input type="checkbox"/> C COLOR (State Your Color) _____ <input type="checkbox"/> L RELIGION (State Your Religion) _____ <input type="checkbox"/> S SEX-GENDER (Sexual Harassment) (Check Your Gender) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female <input checked="" type="checkbox"/> X SEXUAL ORIENTATION (Specify) GAY/HOMOSEXUAL <input type="checkbox"/> D REPRISAL (Based Upon EO Activity) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N NATIONAL ORIGIN (State Your National Origin or National Group) (Specify) _____ | | | |

| 12. CHECK FOR SPECIFIC ALLEGATIONS AND ISSUES | | |
|--|---|--|
| <input type="checkbox"/> Appointment/Enlistment | <input type="checkbox"/> Evaluation/Appraisal | <input type="checkbox"/> Reassignment |
| <input checked="" type="checkbox"/> Assignment of Duties | <input checked="" type="checkbox"/> Harassment | <input type="checkbox"/> Retirement |
| <input type="checkbox"/> Awards/Decorations | <input checked="" type="checkbox"/> a. Non-Sexual | <input type="checkbox"/> Time and Attendance |
| <input type="checkbox"/> Disciplinary Action | <input type="checkbox"/> b. Sexual | <input type="checkbox"/> Training/Education |
| <input type="checkbox"/> Duty Hours | <input type="checkbox"/> Promotion/Non-Selection | <input type="checkbox"/> Other |

13. STATE ALLEGATION AND ISSUES (Explanations, background, and evidence can be attached as supporting material; they are NOT issues.)

- Issues:
- A. Number each issue.
 - B. Briefly list the alleged act of discrimination, the basis, and the date(s) it took place.
 - C. Indicate the name(s) of the alleged discriminating official(s) (ADO).

SAMPLE: I was discriminated against on (date) on the basis of (Race, Religion, or other basis) when (name the ADO) and briefly list the discriminatory event(s) or personnel action(s). Attach additional blank sheets, if necessary.

1. I feel like I have been discriminated against because of my sexual orientation and that is has a hostile work environment during the time of 6 July 2023 to current from my new Company Commander, **INFANTRY OFFICER** I feel that I was intentionally left out of key conversations about my area of operations due to my sexual orientation. SEE ATTACHED DOCUMENT
2. I feel that **INFANTRY OFFICER**'s involvement with this extremist/hate group has created a hostile work environment and that I'm being discriminated against because of my sexual orientation. I have articals, facebook posts and posts from this groups website that prove his active involvement in this organization. Dates range from 2020 to present. SEE ATTACHED DOCUMENT
3. I feel like this following article and screen shots from **INFANTRY OFFICER**'s Facebook page further shows that i have been discriminated against because of my sexual orientation and that it has caused a hostile work environment. The dates for these offenses range from 2020 to current. I have provided links to articles and screenshots for this. SEE ATTACHED DOCUMENT

14. WHAT CORRECTIVE ACTION DO YOU WANT TAKEN TO RESOLVE YOUR COMPLAINT?

TO HAVE **INFANTRY OFFICER** IMMEDIATELY REMOVED AS MY COMMANDER AND THEN TO HAVE **INFANTRY OFFICER** REMOVED FROM THE IDAHO ARMY NATIONAL GUARD SO THAT HE NEVER HAS COMMAND AUTHORITY OVER ANYONE AGAIN.

| | | | |
|----------------------------------|--------------------|-----------|----------|
| 15a. SIGNATURE OF COMPLAINANT | COMPLAINANT | 15b. DATE | 20230717 |
| 16. OFFICIAL RECEIVING COMPLAINT | | | |
| a. NAME | | b. TITLE | |
| c. SIGNATURE | | d. DATE | |

| PART II - COMPLAINT MANAGEMENT PROCESSING | |
|--|---|
| TO BE COMPLETED AT THE LOWEST APPLICABLE COMMAND LEVEL | |
| COMPLETE AS APPROPRIATE | |
| 1. WHEN DID YOU RECEIVE THE COMPLAINT? | DATE (YYYY/MM/DD) |
| 2. WAS THE COMPLAINT | |
| a. Accepted | <input type="checkbox"/> All <input type="checkbox"/> In Part |
| b. Referred | <input type="checkbox"/> All <input type="checkbox"/> In Part |
| c. Dismissed | <input type="checkbox"/> All <input type="checkbox"/> In Part |
| | TO WHOM? |
| | (State Reason) |
| 3. AFTER REVIEW OF THE LEADERSHIP INQUIRY REPORT I FIND THAT YOUR ALLEGATIONS ARE: | |
| <input type="checkbox"/> Substantiated <input type="checkbox"/> Unsubstantiated <input type="checkbox"/> Discrimination Undetermined | |
| 4. DID YOUR NOTICE OF PROPOSED RESOLUTION (NPR) CONCUR WITH THE FINDINGS OF THE INQUIRY OFFICIAL? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. NAME/DATE NEXT HIGHER LEVEL COMMANDER REVIEWED NPR: | b. DATE (YYYY/MM/DD) |
| a. NAME (Last, First, MI) | |
| 6. DID THE JUDGE ADVOCATE REVIEW THE CASE? | DATE (YYYY/MM/DD) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 7. DID THE SEEM REVIEW THE CASE? | DATE (YYYY/MM/DD) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 8. DID THE ADJUTANT GENERAL (or designated representative) REVIEW THE CASE? | DATE (YYYY/MM/DD) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 9. DATE YOU MET WITH MEMBER AND PROVIDED THEM WITH NPR: | DATE (YYYY/MM/DD) |
| 10. COMPLAINANT'S ELECTION TO THE NPR'S PROPOSED RESOLUTION AND REMEDY: | |
| [] Accept the Proposed Resolution and Remedy. | |
| [] Withdraw my State Informal Resolution Request. | |
| [] File a NGB Formal Resolution Request | |
| a. SIGNATURE OF COMPLAINANT | b. DATE (YYYY/MM/DD) |
| 11. THIS FORM, THE NPR, THE LEADERSHIP INQUIRY REPORT, AND ANY ACCOMPANYING DOCUMENTATION WAS FORWARDED TO NGB-EO-CMA ON: | DATE (YYYY/MM/DD) |
| 12. REMARKS: | |
| | |
| 10a. SIGNATURE OF COMMANDER | 10b. DATE (YYYY/MM/DD) |

| PART III - NGB FRR PROCESSING | |
|--|--|
| FOR NGB-EO-CMA USE ONLY | |
| 1. DATE FRR WAS RECEIVED FROM THE STATE: | DATE (YYYY/MM/DD) |
| 2. PRELIMINARY REVIEW OF NGB FRR: | <input type="checkbox"/> ACCEPT <input type="checkbox"/> DISMISS <input type="checkbox"/> REMAND |
| 3. IF ACCEPTED: DATE INVESTIGATION REQUESTED: _____ DATE INVESTIGATION OFFICER (IO) APPOINTED: _____ NAME/RANK OF IO: _____ CONTACT INFORMATION FOR IO: EMAIL: _____ DATE INVESTIGATION WAS COMPLETED: _____ OFFICE PHONE: _____ DATE REPORT OF FINDINGS RECEIVED: _____ CELL PHONE: _____ DATE NGB NPR ISSUED: _____ | |
| 4. IF DISMISSED: DATE NOTICE OF PROPOSED DISMISSAL SENT: | DATE (YYYY/MM/DD) |
| 5. COMPLAINANT HEARING REQUEST: YES _____ NO _____ | DATE (YYYY/MM/DD) |
| 6. STATE HEARING REQUEST: YES _____ NO _____ | DATE (YYYY/MM/DD) |
| 7. REMARKS: | |

Subject: Formal Complaint of Sexual Orientation Discrimination and hostile work environment

To whom it may concern,

I am writing this letter to formally lodge a complaint against **INFANTRY OFFICER** for sexual orientation discrimination and a hostile work environment. My name is SFC **COMPLAINANT** and I identify as gay/homosexual.

I feel like I have been discriminated against because of my sexual orientation and that is has caused a hostile work environment. The purpose of this complaint is to bring to your attention several instances in which I believe I have faced discriminatory treatment based on my sexual orientation. I am deeply concerned about the hostile and prejudiced behavior I have experienced, which has adversely affected my well-being, work performance, and overall sense of belonging within the workplace/organization.

I believe the following incidents constitute sexual orientation discrimination and a hostile work environment.

1. **INFANTRY OFFICER** is the new command for the **X** Company **SPECIALIZATION** in **LOCATION** Idaho and his official start was on 5 July 2023. I came back to work on 6 July 2023 from paternity leave. Since then, many very disturbing facts about him have come to my attention on 13 July 2023.

INFANTRY OFFICER has introduced himself to everyone on the **X** company team except me and my team in **LOCATION**, that's only a 45 min drive from the **LOCATION** office. I talked with other members of the **SPECIALIZATION** team, and they told me that **INFANTRY OFFICER** had reached out to them many times about different ideas that he has for the area in **LOCATION** and ideas for the **LOCATION** area. I am the team leader in charge of the **LOCATION** area so I kept asking why he wouldn't just call and talk to me directly. On 7 July 2023 all of **X** company had a team meeting at the **LOCATION** armory. I sat right next to **INFANTRY OFFICER** during this meeting. So, after hearing that he was communicating with other members of **X** company and not myself, I got curious as to why. I remembered that he ran for Mayor in **LOCATION** and he also ran for a Senate position for the State of Idaho. I decided to do a quick Google search to see who my new commander was and see if I could find out why he didn't want to talk or communicate with me. That is when I found all this information that is listed below.

LOCATION

LOCATION
LOCATION
[.html](#)

In this article you will read that **INFANTRY OFFICER** is identified as one of the organizers to a protest at a public library in **LOCATION** where Drag Queens were reading to children. As one of the organizers **INFANTRY OFFICER** has participated in the orchestration of the inclusion of an extremist hate group called Mass Resistance against the LGBTQ community. This shows the ties the **INFANTRY OFFICER** has with this hate group. Not only did he bring the Extremist/hate group, but he also participated in the protest with this group, working alongside this group to protest things that he believes to be immoral. **INFANTRY OFFICER** is quoted saying in the article that "It's a public event at a public venue that's owned by the city, so they can't tell anyone they can't come," **INFANTRY OFFICER** points out. "We just show up, fill up all the seats so the room's at max

capacity, and then prevent young children from being brought in and being exposed to this sexually inappropriate content." He is also quoted saying how he believes these things to be immoral.

2. I feel that [INFANTRY OFFICER]'s involvement with this extremist/hate group has created a hostile work environment and that I'm being discriminated against because of my sexual orientation.

The following link is to the Mass Resistance extremist/hate group page and a link to their mission statement:

[MassResistance](#)

<http://www.massresistance.org/AboutUs.html>

<https://www.massresistance.org/docs/> [REDACTED]

In the link listed above you can see [INFANTRY OFFICER] on the Mass Resistance website. They identify him, with the pictures that are posted, as being a member of the [LOCATION] Mass Resistance group. In the above post [INFANTRY OFFICER] is seen as an influential leader in the Mass Resistance group and is giving a presentation during this meeting.

You can clearly see from these links above that this organization is not friendly to the LGBTQ community and can only be defined as an extremist/hate group.

3. I feel like this following article and screen shots from [INFANTRY OFFICER]'s Facebook page further shows that I have been discriminated against because of my sexual orientation and that it has caused a hostile work environment.

[LOCATION] [REDACTED]

In this article you will see that in January of 2020 [INFANTRY OFFICER] is addressing a local militia in [STATE].

As evidence that [INFANTRY OFFICER] holds extreme views, the officials referenced a [DATE] news article out of [LOCATION], [STATE], covering [INFANTRY OFFICER]'s speech to a [STATE] militia. They've also cited [INFANTRY OFFICER]'s statements from local political forums in which he vowed he wouldn't follow court rulings or state, or federal edicts deemed by local leaders to violate the rights of people.

"When [INFANTRY OFFICER] says, 'I will not uphold any law that I feel to be immoral,' that's not the Constitution, which he says he's all about the Constitution," [NAME] said. "My concern is I don't want any one person, I don't care who it is, deciding what's moral and inciting violence. ... I'm all about the Second Amendment, but when you're talking about using the municipal police against the federal government, that's a whole nother level of crazy."

In that quote [INFANTRY OFFICER] says that he will not uphold any law that he feels to be immoral. He feels that gay marriage and gay rights are immoral. So, what is [INFANTRY OFFICER] willing to do and what laws and regulations is he willing to break. Any federal or state law that HE FEELS is immoral he will not uphold that law.

The attached pictures are the screenshots that show **INFANTRY OFFICER** on the Mass Resistance main website and on their main Facebook page.



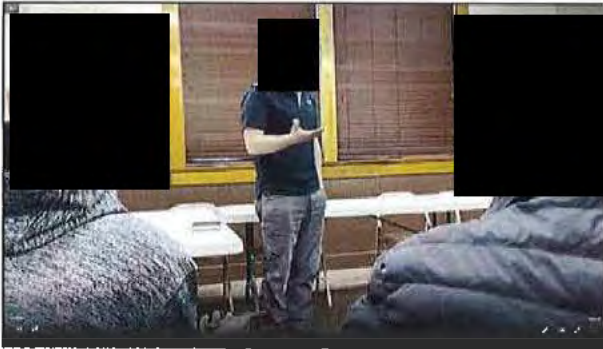
11:38

22%

✕ Idaho Library Board flees meeting to avoid outraged...
massresistance.org

there is "no pornography" in the library.

March 20, 2023



After the library board suddenly cancelled its meeting, the citizens stayed and held their own "Town Hall" there to air their grievances.

There have been a lot of great things going on in Idaho!

On January 17, 2023, about 30 local parents from our **LOCATION** Idaho MassResistance team went to the local Marshall Public Library Board of Trustees meeting to air their grievances during the public comment section. It was one of the largest groups of citizens in memory to come to a library board meeting there.

Outraged over large amount of pornographic children's books

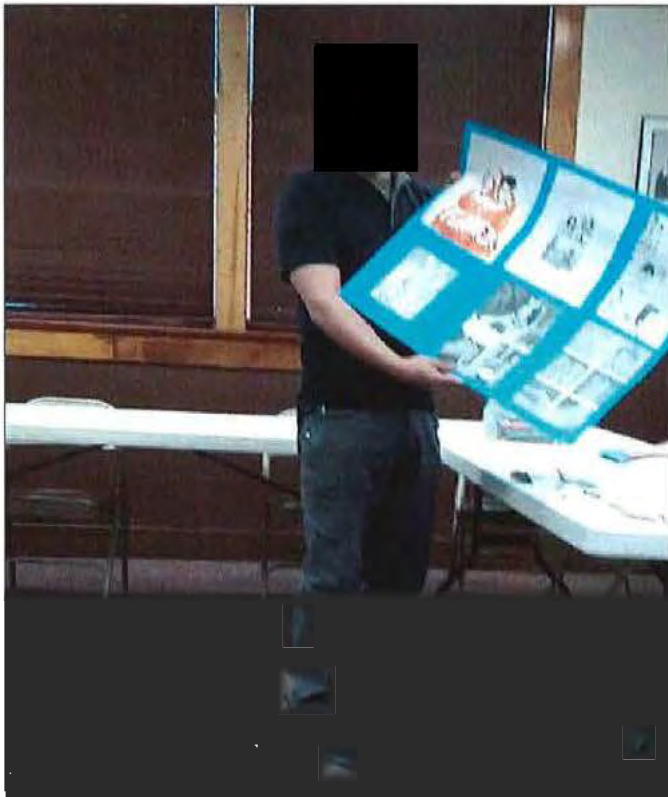


11:33

23%

Idaho Library Board flees meeting to avoid outraged...
massresistance.org

It was really a great Town Hall! They talked about the **three hundred books** they had found in the library – designed to give toxic and degrading messages to children, much of it extremely sexually obscene. It seemed clear, they said, that the intent is to normalize sex to children, essentially grooming them for abuse. Also, many of the children’s books are about destroying the idea of the traditional family.



11:34

23%

Search

Posts About Photos More

6 5 comments • 1 share

Like Comment Share

MassResistance Mar 20

Local Idaho library board members avoid outraged MassResistance citizens by skipping scheduled meeting, causing cancellation. So citizens hold a "town hall" meeting there!

SEE: <https://www.massresistance.org/docs/gen4/23a/ID-Library-Board-flees-from-parents/index.html>



17 3 comments • 1 share

Like Comment Share

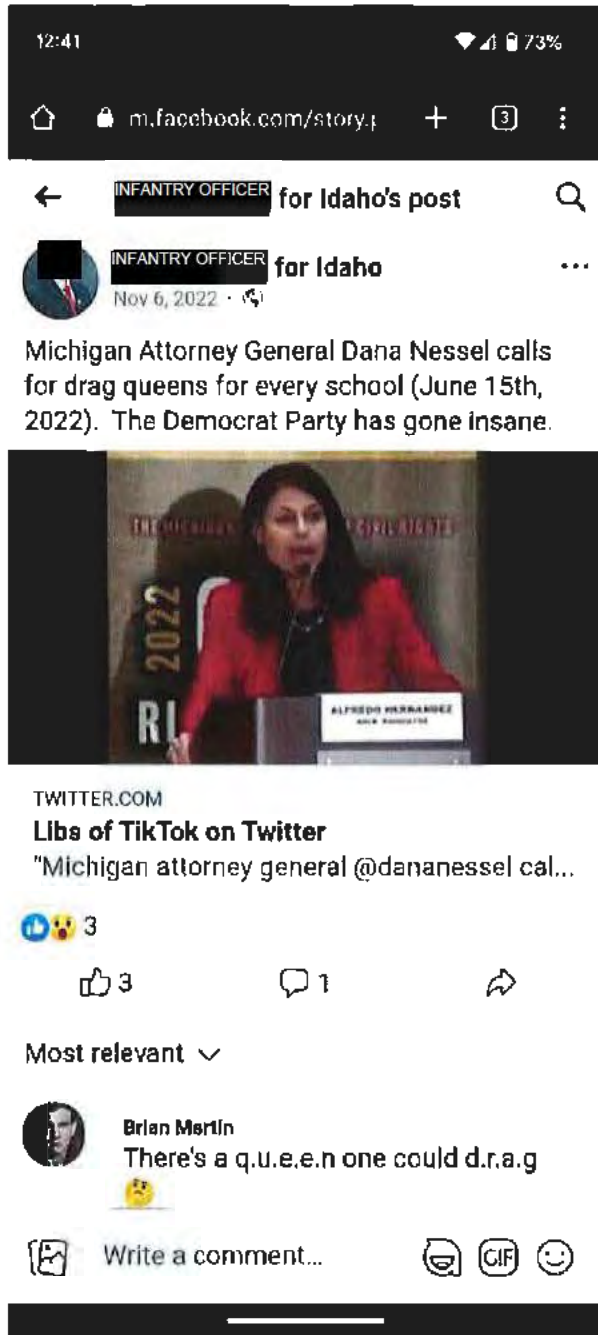
MassResistance Mar 14

Fox News quickly removes attack on MassResistance

The attached pictures below are screenshots from [REDACTED] INFANTRY OFFICER's personal/political social media page. Showing just how much he truly hates the LGBTQ community.



Again saying how immoral he believes the LGBTQ community to be.



Inciting violence again the attorney general for Michigan and attacking the whole democrat party.



← INFANTRY OFFICER for Idaho Message Us 🔍



INFANTRY OFFICER for Idaho

⋮

Aug 6, 2022 · 🌐

Radical gender theory in all its manifestations must be defeated. The Woke Communists will not tolerate you. They want to destroy our way of life. Without victory, there can be no peace.

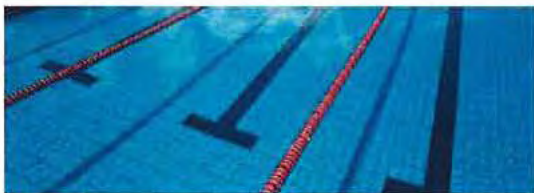
DAILY WIRE

NEWS

80-Year-Old Woman Banned From Community Pool After Complaining Man Watching Little Girls Undress In Shower Room: Report

By Hank Berrien

Aug 5, 2022 DailyWire.com



👍👎🗨️ 6

👍 6

🗨️ 2

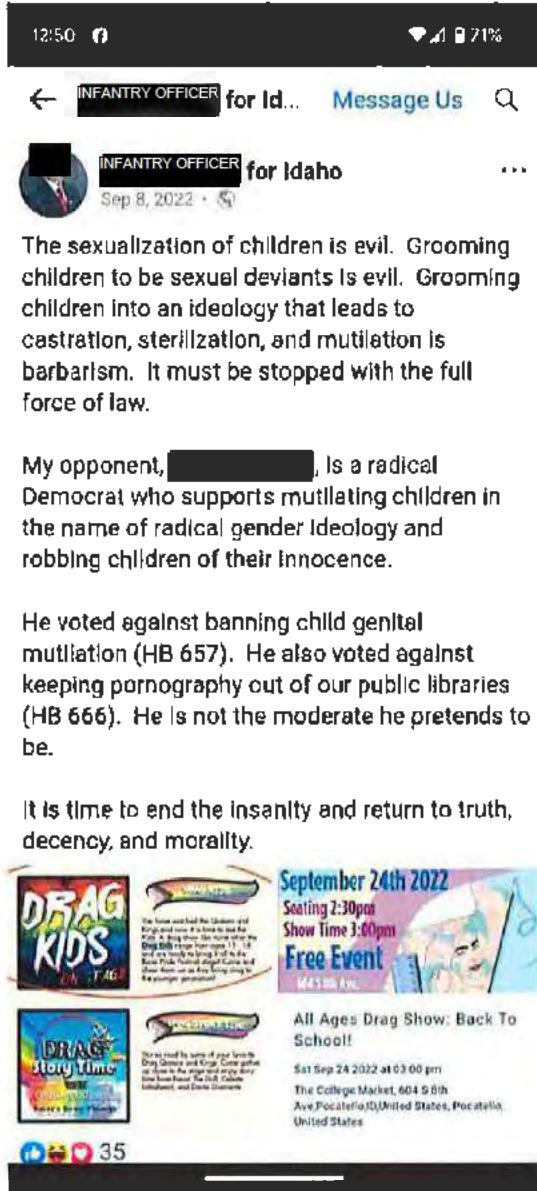
🔗 1



INFANTRY OFFICER for Idaho

⋮

Inciting violence



Talking about the returning to what he feels is the truth, decency, and morality



← INFANTRY OFFICER for Idaho Message Us 🔍



INFANTRY OFFICER for Idaho

Feb 21, 2022 · 🌐

The most destructive aspect of "transgender" Ideology is the constant demand that we deny reality. Only the truth can set people free, whereas lies eventually become chains.



THEBLAZE.COM

Transgender swimmer continues dominating at Ivy League Championships, winning 200 free by more ...

The win comes one day after Thomas had won the ...

👍👍 5

👍 5



INFANTRY OFFICER for Idaho

Feb 21, 2022 · 🌐



[redacted] for Idaho

Feb 20, 2022 · 🌐

Good news, now we need more, and states need to



← **INFANTRY OFFICER** for Idaho Message Us 🔍



INFANTRY OFFICER for Idaho

Jul 30, 2022 · 🌐

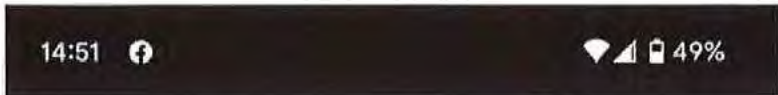
"Gender Affirming Care" Is a euphemism for castration, sterilization, and mutilation. A civilized people cannot tolerate such barbarism.



MESSANGER
INFANTRY OFFICER for Idaho

SEND MESSAGE

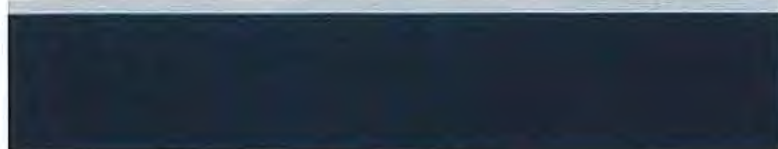
👍❤️ [redacted] and 581 others



Happening in Coeur d'Alene ID! Family friendly!
Drag dance party! The satanic temple of Idaho is offering "unbaptisms" to anyone interested! Come meet the self proclaimed fire breathing satanic nun and her disgusting 🍑 nipples.



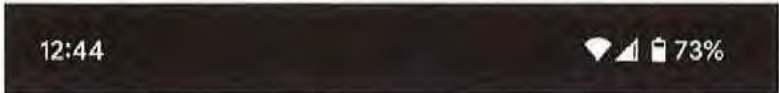
Rowan Astra
@rowanastria
This event will be at Coeur d'Alene's "Pride in the Park" event next Saturday, June 11th from 10am-3pm! We will have merchandise and performing unbaptisms for those interested! Just know, Satan loves you for you! Hail Satan! 🍑🍑🍑🍑
#PrideInthePark
#CoeurD'AleneID
#NorthIdahoPride2022 #Banshe'll



idahotribune.org

On the North Idaho Pride Alliance website,
The Satanic Temple is listed as one of the





← INFANTRY OFFICER for Id... Message Us 🔍



INFANTRY OFFICER for Idaho

Oct 27, 2022 · 🌐

My Democrat opponent, [REDACTED], thinks that if you don't want kid drag shows, porn in libraries, or radical sex and gender ideology in schools then you are the same as the Sharia law police in the Islamic State of Iran.

The radical Left has no intention of coexisting with those who don't support their agenda. Their hostility to Christianity and anyone who supports traditional values is increasingly clear, even in Idaho.

My opponent's comment starts at 1:05:20. Linked below:



LWV LEAGUE OF WOMEN VOTERS **CANDIDATE FORUM**

YOUTUBE.COM

League of Women Voters of [REDACTED] legislative Candidate Forum

The League of Women Voters of [REDACTED] h...



14:56 49%

m.facebook.com/ [redacted]

INFANTRY OFFICER for Idaho [Message Us](#)

INFANTRY OFFICER for Idaho

May 27, 2022 ·

WHEN YOU CAN'T WIN IN COMPETITIVE MALE SPORTS

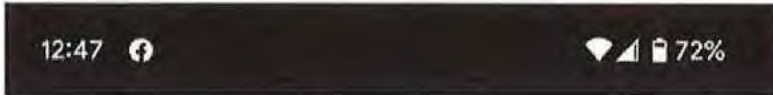


89

89 8 9

INFANTRY OFFICER for Idaho

May 24, 2022 ·



← INFANTRY OFFICER for Id... Message Us 🔍

👍 29 💬 ➦ 7



INFANTRY OFFICER for Idaho



Sep 22, 2022 · 🌐

The detransition community needs to be heard. Transgender ideology is dangerous. "Gender Affirming" treatments harm and disfigure children. They are irreversible and cause lifelong pain and remorse. These "treatments" must be stopped with the full force of law.



TWITTER.COM



👍 4

👍 4 💬 ➦



INFANTRY OFFICER for Idaho



Sep 22, 2022 · 🌐

Proud to have the endorsement of the National Rifle Association. My opponent supports





After finding all this information I called and did the following:

13 July 2023:

- Called and filed complaint with 1SG [REDACTED] the 1SG for [REDACTED] Company. Told him I wanted to talk with MAJ [REDACTED] [REDACTED] Battalion Commander.
- MAJ [REDACTED] called to talk with me about this situation and said that 1SG [REDACTED] had informed him of what was going on. During this phone call MAJ [REDACTED] informed me that he had called and notified [REDACTED] that I was filing a complaint against him because MAJ [REDACTED] felt like [REDACTED] deserved to know that information. This immediately created a hostile work environment.
- [REDACTED] told 1SG [REDACTED] that he wanted to call and talk to me, but I declined to talk to [REDACTED] until we were able to meet with the command team and have them present for the conversation. After seeing all this information, I no longer felt safe around [REDACTED]. After I declined to talk over the phone with [REDACTED] he then told 1SG deWit that [REDACTED] and the 1SG were going to come to the [REDACTED] storefront and [REDACTED] was going to confront

me in person about the complaint that I was filing against him. I again declined to meet with him.

- We had a field training exercise in [REDACTED], ID on Saturday and Sunday, 15-16 July 2023. During this training [REDACTED] INFANTRY OFFICER myself and all the rest of the cadre would be sharing a tent together all weekend.
- I informed MAJ [REDACTED] BCO and 1SG [REDACTED] WITNESS 4 that I did not feel safe around [REDACTED] INFANTRY OFFICER and that I was very uncomfortable being around [REDACTED] INFANTRY OFFICER after everything that I just found out. Also the fact the MAJ [REDACTED] BCO had informed [REDACTED] INFANTRY OFFICER that I filed a complaint against him and that [REDACTED] INFANTRY OFFICER was going to be the highest ranking soldier at the field event and in direct charge of me all weekend.
- I asked MAJ [REDACTED] BCO and 1SG [REDACTED] WITNESS 4 to please make it so that either [REDACTED] INFANTRY OFFICER did not come to the field training exercise or that I be allowed to miss the exercise because of everything going on and until I had an opportunity to sit down with the command team on Wednesday 19 July 2023.

14 July 2023

- 1SG [REDACTED] WITNESS 4 asked [REDACTED] INFANTRY OFFICER not to come to the field training exercise that weekend so that we could meet with the command team on 19 July 2023 and get everything settled. [REDACTED] INFANTRY OFFICER said that he was the commander and that he would not let an E7 dictate what a MAJ would and wouldn't do in his own company.
- 1SG [REDACTED] WITNESS 4 called and asked MAJ [REDACTED] BCO to tell [REDACTED] INFANTRY OFFICER he was not allowed to come to drill until everything had been investigated and all the issues had been addressed. MAJ [REDACTED] BCO informed 1SG [REDACTED] WITNESS 4 that he would not be calling [REDACTED] INFANTRY OFFICER and that he was still going to come to drill. MAJ [REDACTED] BCO said that SFC [REDACTED] COMPLAINANT and [REDACTED] INFANTRY OFFICER will just have to figure it out.
- After hearing this around 1630 I became very upset and sick to my stomach to the point that I could not eat. I was so worried about what was going to happen during the field training exercise and what kind of repercussions and backlash I was about to face all weekend because MAJ [REDACTED] BCO had informed [REDACTED] INFANTRY OFFICER about the complaint and then refused to excuse either one of us from drill.
- I tried to call MAJ [REDACTED] BCO at 1937 and 1959 because he told me that I could call him day or night if I needed any help with this situation. He did not answer either phone call or call me back. I was calling to beg him to please reconsider and excuse either one of us from drill so that I did not have to be put into this potentially very dangerous situation.
- I called the SARC 24 hour hotline number at 1944 in-between trying to reach my BN Commander. I was informed that there was nothing they could do to help since I was not sexually assaulted and this was an EO case. I reached out to 3 listed phone numbers for the National Guard, However, all the EO and IG reps were gone for the weekend and would not be back until Monday at the earliest.
- Not having any guidance, help, instruction and having no one helping me and I felt completely alone, terrified for the weekend that I was being forced into going to with the person that I had just filed a complaint against.
- I then called the Chaplain at 2007 and thankfully Chaplain [REDACTED] CHAPLAIN answered. I explained the situation to him and he told me and I was going to be ok and that he was going to make sure that the situation would be addressed.

15 July 2023

- I arrived at drill at the [REDACTED] LOCATION armory. I went to 1SG [REDACTED] WITNESS 4 and told him that I wanted to talk to the Chaplain and he agreed with me so I called Chapin [REDACTED] CHAPLAIN back.

- Chaplin [CHAPLAIN] talked to 1SG [WITNESS 4] about the situation and then called MAJ [BCO] to advise him to tell [INFANTRY OFFICER] not to go to drill that weekend.
- MAJ [BCO] texted [INFANTRY OFFICER] and had Chaplin [CHAPLAIN] call [INFANTRY OFFICER] to tell him to the leave the armory and leave drill.

I must emphasize that this has created an uncomfortable, unsafe, and a hostile work environment, making it increasingly challenging for me to perform my duties effectively. With the active ties to the extremist/hate group, it makes me feel threatened and unsafe. All the posts on his social media and how public he is about his hate towards individuals like me and my family. Not just for me but for my husband and my newborn son. With views and beliefs like this, what is stopping him from sending this hate group after me and my family? What would stop [INFANTRY OFFICER] from coming after my whole family just because he feels like it is immoral? According to [INFANTRY OFFICER] and in his own words, "When [INFANTRY OFFICER] says, 'I will not uphold any law that I feel to be immoral,' nothing would stop him. That is why I feel threatened and unsafe, and this has created a very hostile work environment.

As a member of the Idaho Army National Guard, I have the right to a work environment that is free from discrimination and harassment. I believe that I am entitled to the same rights, benefits, and opportunities as any other individual in the Idaho Army National Guard. I request a thorough investigation into the incidents mentioned above and appropriate actions taken to address this discrimination. I'm asking for the immediate removal of [INFANTRY OFFICER] as my commander in [X] Company, [SPECIALIZATION] because no one with views and beliefs like this should ever have any command authority over someone who they truly despise and believe to be immoral. I'm also asking that [INFANTRY OFFICER] be removed from the Idaho Army National Guard for unbecoming actions of an Officer in the United States Armed Forces. No one with such hate for any other members of society and such extreme views, values, beliefs, and active ties to an extremist/hate group should ever have any command authority over anyone, in my opinion.

I urge you to take this complaint seriously and address the matter promptly. I am open to discussing this issue further and providing any additional information necessary for the investigation.

Thank you for your attention to this serious issue.

Sincerely,

SFC [COMPLAINANT]

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER

Note. Completed forms may contain personally identifiable information and require handling as set forth in AR 340-21.
 For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by BG Cole Packwood
 (Appointing authority)
 on 20240201 (Date) (Attach enclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - TIMELINE

1. The (investigation) commenced at Gowen Field Idaho at 1400
 (Place) (Time)
 on 20240201
 (Date)

2. The (investigating officer) finished gathering/hearing evidence a 1600 on 20240503 and completed
 (Time) (Date)
 findings and recommendations at 1600 on 20240503
 (Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

| A. COMPLETE IN ALL CASES | | YES | NO ^{1/} | NA ^{2/} |
|--------------------------|---|-------------------------------------|--------------------------|-------------------------------------|
| 1. | Enclosures (para 3-13, AR 15-6) Are the following enclosed and numbered consecutively with Roman numerals: (Attached in order listed) | | | |
| | a. The memorandum of appointment? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | b. All other written communications to or from the appointing authority? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | c. Privacy Act Statements (Certificate, if statement provided orally)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | d. Explanation by the investigating officer of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | e. Any other significant papers (other than evidence) relating to administrative aspects of the investigation? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | f. An Executive Summary, Index of Exhibits, Chronology of the Investigation and lists of all persons interviewed and evidence gathered. (Complex, serious and/or high profile cases)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Exhibits (para 3-14, AR 15-6) | | | |
| | a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | b. Is an index of all exhibits offered to or considered by investigating officer attached before the first exhibit? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| | e. Are descriptions or diagrams included of locations visited by the investigating officer (Appendix C-3, AR 15-6)? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| | f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

FOOTNOTES: ^{1/} Explain all negative answers on an attached sheet.
^{2/} Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation.

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The (investigating officer), having carefully considered the evidence, finds: [Each paragraph should be one conclusion based on the evidence gathered during the investigation. These findings should provide answers to each question posed by the appointing authority in the appointment memorandum. The evidence that supports each finding must be cited.]

1. The EO Complaint filed by SFC [COMPLAINANT] against MAJ David Worley alleging unlawful discrimination based upon sexual orientation constituting a hostile work environment is SUBSTANTIATED. MAJ Worley's social ostracizing of his direct subordinate SFC [COMPLAINANT] as documented in sworn statements by members of the unit, combined with MAJ Worley's publicly stated views toward LGBTQ members created a workplace environment for SFC [COMPLAINANT] where SFC [COMPLAINANT] reasonably felt intimidated and threatened based on his sexual orientation.

2. It is NOT SUBSTANTIATED that MAJ Worley failed to remove online political content that caused LTC Edwards to lose trust and confidence in him. While MAJ Worley had failed to remove limited inactive Facebook profiles related to a past election, these minor oversights by MAJ Worley were not the primary cause of LTC Edwards' loss of trust and confidence. Instead, LTC Edward's loss of trust was due to MAJ Worley's reported ostracization of SFC [COMPLAINANT] his negative interactions with other unit members, and his own attitude and behaviors during interactions with LTC Edwards at the time the EO Complaint was being initiated.

3. Difficulty reaching crisis helplines or counselors. In his original complaint and his sworn statement SFC [COMPLAINANT] explains that when in crisis and feeling distress because of the circumstances related to his EO complaint, he reached out to every phone number and crisis help line that he could find but none were available or able to help except for Chaplain Morris. SFC [COMPLAINANT] called numerous phone numbers including the Idaho National Guard crisis hotline (including 208-272-4224, 208-422-4224, and 208-272-8255) and he either received no answer and could not leave a voicemail because the voicemail box was full, or when someone did answer, he was told that the people he called are not the right people to help him due to the nature of his problem. This represents a concerning situation as Soldiers need to be able to reach crisis counselors 24 hours a day, even on weekends, or at least be able to leave a message and receive a call back.

4. Recruiting and Retention Battalion leadership response to initial EO complaint. Recruiting Battalion's response once the EO complaint was filed is an area of concern. MAJ Worley was informed right away that a complaint had been filed against him by SFC [COMPLAINANT] before the BN Leadership had taken the time to fully understand the full nature of the complaint brought by SFC [COMPLAINANT]. The BN leadership told MAJ Worley to contact SFC [COMPLAINANT] via a phone call rather than letting the EO representatives handle the issue, and separately SFC [COMPLAINANT] was told by LTC Edwards that had to "be the bigger man" and work out his problems with MAJ Worley. These instructions demonstrate that the BN leadership may not have fully understood the complaint or that they did not give the complaint the proper weight and attention it deserved. Attempting to force SFC [COMPLAINANT] and MAJ Worley into a confrontation caused greater stress and anxiety for SFC [COMPLAINANT] which exacerbated an already tense situation. Although leaders are encouraged and advised to handle EO complaints at the lowest level (3.14 - IDNG-27 IMD EEO & EO Policy), instructing SFC [COMPLAINANT] to "be the bigger man" and resolve the EO complaint with MAJ Worley directly was not the best approach to take when LTC Edwards had not yet consulted with the SEEM or a unit EO representative. Once aware of the EO complaint from SFC [COMPLAINANT] the unit commander should have first done sufficient research into the issue to fully understand the details of the complaint and then reach out to their EO representatives at the unit or state level to get guidance on how to handle the complaint moving forward (3.10 - CNGBI 9601.01_27 Sep 15_NG Discrimination Complaint Program and 3.11 - CNGBI 96001.01 20170425_Discrimination Complaint Process). It should be noted however that by Monday 17 July LTC Edwards had correctly reached out and communicated with the SEEM, the JAG, the GI, the ATAG, and the HRO to mobilize his support network to address the complaint appropriately.

5. Lack of research into the backgrounds of candidates selected for Recruiting and Retention Battalion (RRB) Company Commander positions. When interviewing and during the process of selecting the RRB company commanders, no steps were taken to look into the social media footprint or public profiles of any of the personnel selected by the board (LTC Edwards Sworn Statement). Even after concerns were raised by The Adjutant General, MG Garshak regarding one of the selectees identified by name (David Worley), no additional steps were taken to investigate MAJ Worley's actions or statements or to identify what would have prompted the original complaint that was called into the state (1.2 - Email Between Schwartz and Worley).

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the (investigating officer) recommends: [Each paragraph should be one recommendation based on the findings in Section IV. Address what actions, if any, should be taken with regard to the individuals involved, the unit leadership, and any steps that can be taken to prevent the occurrence in the future. Recommendations do not need to be adverse or punitive. For example, the investigation results can be used as a training tool.]

1. Recommendation: Based on the evidence collected and analysis conducted, it is reasonable to conclude that SFC [COMPLAINANT] was justified in his complaint that MAJ Worley created a hostile work environment. MAJ Worley's actions towards SFC [COMPLAINANT] combined with his well-documented discriminatory views against the LGBTQ community, suggest an inability to uphold the values of equality, respect, and impartiality expected of a company commander. It is therefore recommended that MAJ David Worley be removed from his position as company commander and his orders for his One Time Occasional Tour (OTOT) be terminated. This action would not only address the immediate concerns raised by SFC [COMPLAINANT] but would also uphold the broader principles of leadership integrity and nondiscrimination in the Idaho Army National Guard.

2. Recommendation: In order to support Soldiers in crisis, the organization should ensure that the systems designed to provide support are available and working properly and that Soldiers are able to reach crisis support resources 24 hours a day, 7 days a week. At a minimum, if crisis support lines are not manned 24/7 and operators are not available to answer, Soldiers should at least have the ability to leave a voicemail and then receive a call back as soon as counselors are available.

3. Recommendation: Recommend that command teams receive additional scenario-based training on the best ways to handle EO complaints in addition to the training they already receive annually.

4. Recommendation: Currently the state HRO and AGR Branch have no policy instructing, advising, or recommending that organizations research the backgrounds of candidates through a look at their social media or publicly available online profiles.

(1) As public servants, we must maintain the Nation's trust and confidence in the Military as an institution and as a professional force. To be successful, the public and our fellow Soldiers must have confidence in our ability to lead and serve with persons of diverse backgrounds.

(2) Given the very public nature of leadership within the RRB, recommend that consideration be given to creating a policy within the RRB of conducting a public records search on the Internet and on popular social media sites to see how a selected candidate portrays themselves publicly. This would provide additional information that can be used to better understand the full picture of any candidate selected for a high-profile position and help determine whether they will be able to foster the type of trust and confidence with Soldiers and the public required to be successful in their position.

(3) In light of information uncovered during the conduct of this investigation and in accordance with the instructions contained in DoDI 1325.06p (Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces, November 27, 2009, Change 2 Effective December 20, 2021) Reporting Requirements, I recommend that all FTNGD candidates are scrutinized to ensure there is no concerning information within the public domain that would, if substantiated, potentially involve reporting requirements through the state G2 to the DoD Counterintelligence reporting hub and Insider Threat Hub for adjudication by subject matter experts.

(4) National Guard Regulation 600-5 (The Active Guard Reserve (AGR) Program) and AR 135-18 (The Active Guard Reserve Program) contain no statements or prohibitions preventing an organization from utilizing information publicly available in order to better understand the candidates being considered.



IDAHO ARMY NATIONAL GUARD
IDAHO TRAINING CENTER
10228 Huey Lane,
Boise, Idaho 83705-5004

NGID-ITC

3 May 2024

MEMORANDUM FOR Assistant Adjutant General, Commander, Idaho Army National Guard,
ATTN: BG J. Cole Packwood, 4040 West Guard Street, Building 600, Boise, Idaho 83705-5004

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

1. **Executive Summary:** This Military EO Investigation centered on two areas as outlined in the Investigating Officer Appointment memorandum: 1. discriminatory behavior and misconduct by MAJ David Worley as alleged by SFC **COMPLAINANT** and 2. the facts and circumstances causing the RRB Command to lose trust and confidence in MAJ Worley's ability to lead D Company, and specifically did MAJ Worley fail to remove political content online.

a. The EO Complaint filed by SFC **COMPLAINANT** against MAJ David Worley alleging unlawful discrimination based upon sexual orientation constituting a hostile work environment is SUBSTANTIATED. MAJ Worley's social ostracizing of his direct subordinate SFC **COMPLAINANT** as documented in sworn statements by members of the unit, combined with MAJ Worley's publicly stated views toward LGBTQ members and his statements indicating that he would not follow laws that he felt are immoral created a workplace environment for SFC **COMPLAINANT** where SFC **COMPLAINANT** reasonably felt intimidated and threatened based on his sexual orientation.

b. It is NOT SUBSTANTIATED that MAJ Worley failed to remove online political content that caused LTC Edwards to lose trust and confidence in him. While MAJ Worley had failed to remove limited inactive Facebook profiles related to a past election, these minor oversights by MAJ Worley were not the primary cause of LTC Edwards' loss of trust and confidence. Instead, LTC Edward's loss of trust was due to MAJ Worley's reported ostracization of SFC **COMPLAINANT** his negative interactions with other unit members, and his own attitude and behaviors during interactions with LTC Edwards at the time the EO Complaint was being initiated.

c. It is evident from witness interviews that MAJ Worley's behavior during his brief two weeks of command a D Co, and his conduct during his response to the EO Complaint process, was fostering a hostile work environment not only for SFC **COMPLAINANT** but other members of the company. Consequently, it is recommended that MAJ Worley is permanently removed from his company command position and that his One Time Occasional Tour (OTOT) orders are terminated.

d. In his EO Complaint, SFC **COMPLAINANT** also raises several issues regarding MAJ Worley's publicly documented political activities prior to joining the Idaho Army National Guard (IDARNG) that SFC **COMPLAINANT** deems extremist and warrants MAJ Worley's military separation. Some of this evidence is relevant to SFC **COMPLAINANT** Complaint, including statements made by MAJ Worley regarding his ability to ignore laws that he believes are immoral, but it is otherwise outside the scope of this investigation given the activities occurred while MAJ Worley was not a member of IDARNG and to some extent his protests are subject to freedom of speech protections. As such, although this investigation documents many of those concerning

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

activities, no specific findings are made regarding MAJ Worley's prior political activities as being extremist or otherwise contrary to Idaho Military Division, Department of Defense and/or U.S. Army policy.

2. **Background:** In July 2023, I was initially appointed as the Investigating Officer (IO) by BG Farin Schwartz to investigate a Military Equal Opportunity (MEO) complaint filed by SFC **COMPLAINANT** pursuant to CNGBM 9601.01 Informal Resolution Request (IRR) procedures. The Complaint alleged disparate treatment based upon sexual orientation by MAJ David Worley and a corresponding hostile work environment. Additionally, I was appointed to investigate the facts and circumstances as to whether MAJ Worley failed to remove partisan political content from the Internet as an agreed upon precondition of his selection due to prohibitions regarding partisan political activities for full time National Guard personnel, which ostensibly caused LTC Shawn Edwards to lose trust and confidence in MAJ Worley's ability to serve as a Recruiting and Retention Battalion (RRB) Company Commander. In November 2023, while investigating the Complaint I was notified to cease my investigation. On 1 February 2024, I received a renewed appointment to investigate the Complaint and RRB Commander's loss of trust and confidence in MAJ Worley and re-initiated my investigation.

a. This memorandum includes evidence collected concerning MAJ Worley's reported actions, attitudes, and behavior within the context of the MEO complaint. It contains little information provided by MAJ Worley in response to the inquiry despite attempts by me to ensure his participation beginning 12 February 2024 through 28 February 2024. After emailing MAJ Worley, his attorney responded to me that I could only contact MAJ Worley through his office. My attorney advisor then sought to coordinate MAJ Worley and his attorney's participation in an interview. His attorney initially agreed to a meeting provided that questions were submitted in advance. However, after receiving advance questions his attorney responded on 28 February 2024 that MAJ Worley would not participate in an interview and would only answer questions through his attorney, included with his attorney's answers to the initial questions (Exhibit 7.B.1 Worley – Responses to IO questions). I requested whether MAJ Worley would submit the statements as a sworn statement, but his attorney advised on 3 March 2024 that there was no intent to provide sworn statements at that time. Given the increasing delay and potential need to re-interview witnesses identified by MAJ Worley regarding any conflicting statements, I determined it impractical to continue seeking information from MAJ Worley's attorney. These statements are incorporated where indicated.

b. Due to his refusal to participate, this investigation relies primarily upon facts and accounts other than MAJ Worley's to determine whether SFC **COMPLAINANT** complaint is valid and legitimate. In accordance with AR 15-6, a subject's previous statements are acceptable as evidence on factual issues (AR 15-6 para. 3-8.2.c.(5)) and as such, statements made by MAJ Worley in the past are included as evidence of his attitudes toward the LGBTQ community and his willingness to ignore laws he feels are immoral. No negative inference is drawn based upon MAJ Worley's failure to participate in an interview in accordance with the guidance provided in AR 15-6, para. 3-7, given his attorney's implied invocation of rights.

c. In addition to the EO Complaint, this investigation also examined procedural and organizational errors as referenced in SFC **COMPLAINANT** complaint, including the process of MAJ Worley's selection as a RRB Company Commander, MAJ Worley's public actions and

CUI

2

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

statements, and the handling by the State and the Recruiting Battalion leadership of SFC [REDACTED] EO complaint.

2. Timeline of Events:

WED 29 Mar 0800-1530hrs @Bldg 600 – hiring board conducted for four Recruiting Battalion Company Commander positions. Board consisted of BG Schwartz, COL Orcutt, LTC Mandel, CW3 Harmon and LTC Edwards.

During the interview for one of the company commander positions, MAJ Worley brought up his political activities including his run for Pocatello Mayor and stated that although he was not elected Mayor, he is still very active in politics. BG Schwartz told MAJ Worley that as an AGR and RRB Company Commander, he is unauthorized to campaign for or hold a political office. MAJ Worley acknowledged and indicated that he understood. MAJ Worley is told that he will need to remove partisan political statements from his social media pages (Facebook specifically) if he is selected for the position. MAJ Worley indicates that he understands and will comply.

MAJ Worley is selected by the board as the company commander for D Company in Eastern Idaho. Subsequently, BG Schwartz briefs MG Garshak on their selections and MG Garshak discusses with BG Schwartz a TAG hotline complaint called in regarding a National Guard Officer socializing political views. MG Garshak recalled the name of the Soldier involved in the complaint as David Worley, who the civilian complaint had misidentified as an IDARNG member at the time.

THU 30 Mar 1017hrs MAJ Worley emails BG Schwarz thanking him for the opportunity to apply for the Company Commander position and indicates in the email that he “understands that I will need to resign from my offices in the Republican Party and that I will be back under the restrictions on political activity for the full-time force” (Exhibit 1.2. – Email between Schwartz and Worley).

1045hrs BG Schwartz replies to MAJ Worley’s email and directs MAJ Worley that he and MG Garshak want to ensure that he knows and understands that full-time members of the force remain apolitical during their time on duty and do not cross the line regarding political activities. He directs that full-time members must refrain from publicly demonstrating or participating in any activities that may insinuate military political alignment. (Exhibit 1.2. – Email between Schwartz and Worley). BG Schwartz indicates he may have also had a phone conversation with MAJ Worley discussing the same issues.

TUE 4 July MAJ Worley hired by Recruiting Battalion as a full-time company commander for southwest Idaho region.

WED 5 July MAJ Worley takes command of D Co. Recruiting and Retention Battalion.

During his initial discussions about the unit with 1SG DeWit, MAJ Worley learns that SFC [REDACTED] is homosexual. MAJ Worley asks 1SG [REDACTED] if the unit has any transgender Soldiers, he is told “no,” but informed that he does have a member of the unit, SFC [REDACTED] who is homosexual and on paternity leave.

CUI

3

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

THU 6 July SFC [COMPLAINANT] returns to work at the Idaho Falls Recruiting storefront from paternity leave.

FRI 7 July ~1000hrs MAJ Worley called SFC [WITNESS 2] while he was at MEPs to discuss a military science plan. Spoke to him for about an hour.

At a D Company team meeting / pre-drill held at the Pocatello armory, MAJ Worley and SFC [COMPLAINANT] sit next to each other, but MAJ Worley makes no attempt to speak to SFC [COMPLAINANT]. This is SFC [COMPLAINANT] first interaction with MAJ Worley.

After the pre-drill meeting, MAJ Worley spends about an hour talking to SFC [WITNESS 1] about BYUI issues.

SFC [COMPLAINANT] subsequently learns through conversations with his co-workers that MAJ Worley has reached out to, and spoken with, the other team leaders and E7s in D Company, including BYU-I recruiter SFC [WITNESS 1] Team Leader SFC [WITNESS 2] and the RSP Coordinator SFC [WITNESS 3]. To this point MAJ Worley had made no attempts to speak with SFC [COMPLAINANT]. Especially concerning to SFC [COMPLAINANT] is the fact that SFC [WITNESS 1] is subordinate to SFC [COMPLAINANT] within the Idaho Falls area, and he feels that it is strange that MAJ Worley would speak to a subordinate without also talking to the team leader: SFC [COMPLAINANT]. Altogether, SFC [COMPLAINANT] becomes concerned as to why MAJ Worley is seeking to develop and foster relationships with all similarly situated Soldiers except him.

SFC [COMPLAINANT] begins to research MAJ Worley on social media and via Google searches and learns of his political activities and his publicly stated feelings on LGBTQ issues as documented in MAJ Worley's public Facebook posts and news articles in Idaho and Virginia (examples included as attachments to SFC [COMPLAINANT] NGB FORM 333 EO Complaint)

SFC [COMPLAINANT] finds links between MAJ Worley and an activist group called Mass Resistance who list MAJ Worley as a member from Pocatello Idaho on their website. Mass Resistance has organized several events protesting LGBTQ ideology, including a protest at the Pocatello library that MAJ Worley participated in and is featured in photos on their website. Mass Resistance has many well documented stances towards LGBTQ issues that causes SFC [COMPLAINANT] to become distressed given that MAJ Worley is his commander and supervisor.

This distress by SFC [COMPLAINANT] is compounded when he discovers news articles online that quote MAJ Worley as repeatedly referring to LGBTQ ideologies as "immoral" and that LGBTQ members are "sexual deviants" (Exhibit 2.3 – Drag Queen Protest Idaho Statesman). While these statements are largely directed at transgender care for children, and perceived pornography in libraries, they overall present MAJ Worley's hostility towards LGBTQ ideologies and members as immoral and sexual deviants such that children should be protected from them. Additional articles and MAJ Worley's own Social Media pages further depict MAJ Worley as expressing views against the LGBTQ community and that citizens and local governments should challenge federal and/or state authorities when one deems them immoral (Exhibit 2.4 – Idaho State Journal – Pocatello officials question Worley_Sovereignty) (Exhibit 2.9 – Roanoke Times – Floyd militia hears call to prepare for sacrifice).

Upon learning of MAJ Worley's statements and actions protesting LGBTQ groups, SFC [COMPLAINANT] believes that he is being treated differently by MAJ Worley, who is effectively socially ostracizing him versus other similarly situated personnel in the unit, because

CUI

4

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

of his sexual orientation. Consequently, he feels he is in a hostile work environment where he is scared for his safety and believes that his career is going to suffer due to MAJ Worley's hostility to the LGBTQ community and homosexuality.

TUE ~11 July While working at the Pocatello Armory, MAJ Worley comments to a group of Soldiers, including SFC **WITNESS 3** that females in the Army are the reason the Army has adopted lowered standards of Height / Weight, and Physical Fitness, as they cannot meet the standards of the ACFT or Height / Weight. These comments made SFC **WITNESS 3** feel uncomfortable and singled out in front of the other Soldiers especially since she has no trouble passing the ACFT and scores well on her Physical Fitness evaluations. In general, SFC **WITNESS 3** perceived MAJ Worley as seeking to develop and foster relationships with similarly situated male Soldiers, but not her. She also perceived MAJ Worley as obsessed with discussing politics, particularly his failed candidacy for Mayor of Pocatello, in which he told members of the unit that he blames a parent of a transgender student who works at the school district for derailing his run for office (Exhibit 6.2 – **WITNESS 3** Transcript 2023-08-03).

THU 13 July SFC **COMPLAINANT** begins the process to file an EO Complaint with 1SG **WITNESS 4** against MAJ Worley, alleging that MAJ Worley is discriminating against him on the basis of sexual orientation and that this is demonstrated by the way he is treating SFC **COMPLAINANT** differently from the other E7s in the unit. SFC **COMPLAINANT** provides links and screenshots of MAJ Worley's numerous quotes and activities online that exhibit MAJ Worley's public sentiments toward LGBTQ people. SFC **COMPLAINANT** requests to speak with LTC Edwards as well.

1500hrs LTC Edwards learns of SFC **COMPLAINANT** complaint via phone call from 1SG **WITNESS 4**. During the phone call 1SG requests a sit-down meeting to resolve issues with everyone involved present, rather than discussing the issue via phone or text. The plan is to have everyone meet up in Boise on 18 or 19 July on Gowen Field.

*Note: There is a discrepancy between the statements provided by LTC Edwards and SFC **COMPLAINANT** as to the order of phone calls made by LTC Edwards. In his sworn statement LTC Edwards indicates that he called SFC **COMPLAINANT** first and then MAJ Worley, but SFC **COMPLAINANT** says in his statement that LTC Edwards told him on the phone that LTC Edwards had already spoken with MAJ Worley. In a subsequent conversation I asked LTC Edwards to clarify the order of the phone calls and he indicated that he could not be certain but agreed that it was most likely that he called MAJ Worley before calling SFC **COMPLAINANT**. Based on my conversations with both of them, I believe this is the most accurate order of events and is listed in this order in this timeline.*

LTC Edwards calls MAJ Worley and informs him of SFC **COMPLAINANT** complaint and the issues raised by SFC **COMPLAINANT** with MAJ Worley including his public statements against LGBTQ ideologies. During this conversation, LTC Edwards asks MAJ Worley if he still has his political campaign website and posts on social media, even though he was told to remove those by BG Schwartz prior to starting work in his company commander position. MAJ Worley responds aggressively that "[he has] a god given right and will not tolerate this group [the LGBTQ community] to push their views onto [his] children." (Findings Memo 7.B. Combined Sworn Statements, page 7, LTC Edwards Sworn Statement) LTC Edwards directly orders MAJ Worley again to turn off his social media posts as previously directed by the ATAG four months

CUI

5

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

ago and directs him to resolve the conflict he created with SFC [COMPLAINANT] by immediately calling him on the phone.

LTC Edwards calls SFC [COMPLAINANT] to discuss the details of his EO complaint. After hearing SFC [COMPLAINANT] concern that he was being purposely isolated and treated differently due to his sexual orientation, LTC Edwards tells SFC [COMPLAINANT] to reach out to MAJ Worley and attempt to resolve their issues via phone conversation. LTC Edwards assures SFC [COMPLAINANT] that his concerns will be taken seriously and that he will investigate the facts surrounding MAJ Worley's public statements and activities against the LGBTQ community. Knowing that LTC Edwards has informed MAJ Worley of the details of his complaint and knowing he is being forced to speak directly with MAJ Worley by phone causes SFC [COMPLAINANT] to begin to feel very anxious and extremely uncomfortable.

At the direction of LTC Edwards, MAJ Worley attempts to call and speak with SFC [COMPLAINANT] but SFC [COMPLAINANT] does not answer his phone. Seeing the calls from MAJ Worley, SFC [COMPLAINANT] calls 1SG DeWit and he proposes to 1SG [WITNESS 4] that instead of discussing with MAJ Worley by phone, they arrange to have a sit-down conversation with LTC Edwards, CSM [WITNESS 5] MAJ Worley, SFC [COMPLAINANT] and 1SG [WITNESS 4] as this would make him feel more comfortable with additional people and leadership involved and present during the conversation.

Continuing to feel uncomfortable and anxious now that he knows MAJ Worley is aware of his EO Complaint, SFC [COMPLAINANT] requests through 1SG [WITNESS 4] that either MAJ Worley or himself not be required to attend drill until there can be a resolution of the EO complaint.

When told by 1SG [WITNESS 4] about the EO Complaint MAJ Worley comments to 1SG [WITNESS 4] that the Idaho Recruiting Battalion is "very sensitive" and explains that EO complaints like these in his previous units would have been immediately squashed. MAJ Worley downplays the EO complaint to 1SG [WITNESS 4] and comments "it's not like I raped him [SFC [COMPLAINANT] or anything". MAJ Worley tells 1SG [WITNESS 4] that it is the 1SG's fault that this complaint was filed because RRB and 1SG [WITNESS 4] specifically have been walking on eggshells around SFC [COMPLAINANT]. 1SG [WITNESS 4] takes offense to this comment as he feels that this attitude is not true. (Exhibit 6.1 – [WITNESS 4] Transcript 2023-08-02)

FRI 14 July 1SG [WITNESS 4] advises MAJ Worley that due to the EO complaint from SFC [COMPLAINANT] it would be better for the organization if he not attend drill. MAJ Worley comments to 1SG [WITNESS 4] that he "will not let an E7 dictate to him whether he attends drill or not" and informs the 1SG that he will absolutely be attending drill as the new commander.

1630hrs SFC [COMPLAINANT] learns through 1SG [WITNESS 4] that LTC Edwards did not direct MAJ Worley to not attend drill and is told that he (SFC [COMPLAINANT] is critical to the execution of RSP drill weekend, so he also is not excused from drill. When SFC [COMPLAINANT] learns that MAJ Worley will be attending drill he begins to feel extremely unhappy and physically ill as a result.

1937hrs and 1959hrs SFC [COMPLAINANT] attempts to call LTC Edwards, but his calls go unanswered and unreturned.

1944hrs SFC [COMPLAINANT] calls the Sexual Assault Response Coordinator (SARC) hotline but the person who answered informed him that there was nothing they could do to help the situation since this was an EO issue and not a SARC issue.

CUI

6

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

SFC [COMPLAINANT] calls the Idaho National Guard EO hotline and the Inspector General phone numbers but receives no response.

SFC [COMPLAINANT] calls the 24-Hour crisis hotline from the State National Guard website at 208-272-4224, 208-422-4224, and 208-272-TALK (8255) and received no response. He attempts to leave a voicemail but the voicemail box was full so no message could be left.

2007hrs SFC [COMPLAINANT] calls Chaplain Morris who answers his phone call and [COMPLAINANT] explains the situation with MAJ Worley and asks if the Chaplain can help intercede to allow SFC [COMPLAINANT] to not attend drill or to ask MAJ Worley to not attend drill. The Chaplain agrees to speak with LTC Edwards and promises that he will work to resolve the issue.

SAT 15 July Day 1 of RSP Drill Weekend

~0600hrs MAJ Worley goes to the Pocatello armory for drill.

0700hrs Chaplain Morris calls LTC Edwards and explains that it would better for MAJ Worley to not attend drill due to the EO Complaint situation with SFC [COMPLAINANT]. They decide that it would be best for Chaplain Morris to call MAJ Worley.

LTC Edwards texts MAJ Worley and tells him that the Chaplain is going to call him and tell him that he needs to leave drill until the EO complaint is resolved.

0745hrs Chaplain Morris calls MAJ Worley and tells him he needs to leave drill. MAJ Worley appears upset and angry to 1SG [WITNESS 4] but finally begrudgingly leaves, but only after dragging his feet for another 30 minutes.

SUN 16 July Day 2 of RSP Drill Weekend

No major issues.

MON 17 July LTC Edwards begins to research the situation more thoroughly regarding MAJ Worley, and he finds public information online, and also receives screenshots from SFC [COMPLAINANT] showing numerous social media posts and news articles documenting MAJ Worley's public statements and actions against LGBTQ ideologies and his involvement with groups promoting the resistance to federal and state laws. He also learns of MAJ Worley's disregard of 1SG [WITNESS 4]'s attempts to diffuse the conflict and negative perception of the unit regarding EO complaints. Thus, upon digging deeper and speaking with his command team, including 1SG [WITNESS 4] and CSM [WITNESS 5] including reports from 1SG [WITNESS 4] about confrontational and concerning conversations with MAJ Worley regarding the matter, and after his own confrontational conversations with MAJ Worley regarding the EO complaint, LTC Edwards decides that MAJ Worley would be detrimental to the mission of the Recruiting and Retention Battalion.

TUE 18 July LTC Edwards speaks with his JAG representative and briefs BG Schwartz regarding the situation with MAJ Worley and the EO complaint. LTC Edwards decides to ask MAJ Worley to resign his D Co commander position due to his loss of trust and confidence in his ability to function successfully as a company commander in lieu of a 15-6 investigation directed at his conduct.

WED 19 July 1400hrs LTC Edwards meets with MAJ Worley on Gowen Field to ask for his resignation. MAJ Worley initially agrees to the resignation and signs the resignation form.

CUI

7

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

After MAJ Worley signs his resignation papers and before he left the building, he asks to have a "man to man" conversation behind closed doors with LTC Edwards during which he makes a statement that "[referring to LGBTQ ideologies] this will only get worse over time, and we need to fight this!" (Findings Memo 7.B. Combined Sworn Statements, page 7, LTC Edwards Sworn Statement).

1800hrs MAJ Worley sends a text to LTC Edwards informing him that he rescinds his AGR resignation and requests an AR 15-6 investigation (Exhibit 4.1 – MAJ Worley Rescinded Resignation Photo). He also sends an email to LTC Edwards indicating that he rescinds his resignation and requests a 15-6 investigation (Exhibit 4.3 – RE MAJ Worley Rescind Resignation Email)

MAJ Worley is transferred out of command at D Company RRB and into the ITC for the duration of the investigation.

THU 20 July Idaho SEEM, Albert Gomez, refers SFC COMPLAINANT EO complaint to BG Farin Schwartz to initiate an AR 15-6 investigation.

FRI 21 July Investigating Officer Appointed, and investigation begins.

15 Nov 2023 Investigation halted

1 Feb 2024 Investigation renewed

3. Applicable Legal Authority and Guidance Regarding Unlawful Discrimination:

a. IDNG 27 dictates that all IMD military members will receive fair and equitable treatment in all personnel/employment programs, management practices, and decisions, including, but not limited to, recruitment, hiring, merit promotions, transfers, reassignments, training and career development, benefits, and separations with zero tolerance for illegal discrimination including sex (including sexual orientation and gender identity).

b. NGR 600-21 prohibits unlawful discrimination on the basis of sex (including gender identity) or sexual orientation such that military personnel receive fair, equitable, and nondiscriminatory treatment with overarching goals to include maintaining and improving morale and productivity while fostering unit cohesion and readiness. Thus, Soldiers are not be accessed, classified, trained, assigned, promoted, or be otherwise managed in an unlawfully discriminatory manner.

c. NGBI 9601.01 provides that unlawful discrimination may take the form of a hostile work environment, which is discriminatory conduct or behavior in the workplace that is unwelcome and offensive to an employee or group of employees based on sex (including pregnancy) or sexual orientation. The conduct or behavior must be pervasive and constitute a pattern rather than consist of one or two isolated incidents. The pattern of behavior has to be of a degree severe enough to cause disruption beyond a reasonable degree in the work of the targeted employee such as when the employee becomes disturbed because of intimidation or due to fear of loss of employment. The complainant must have reason to believe that such behavior patterns are likely to continue indefinitely. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and

CUI

8

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

interference with work performance. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. The discrimination may occur without economic injury to, or discharge of, the victim.

d. AR 600-20 states the Army will provide an environment that is free of unlawful discrimination. Discrimination occurs when someone, or a group of people, is harassed, intimidated, insulted, humiliated, or is treated less favorably than another person or group, because of their race, color, sex (to include gender identity), national origin, religion, or sexual orientation. It includes use of disparaging terms with respect to a person's race, color, sex (to include gender identity), national origin, religion, or sexual orientation which contributes to a hostile work environment. Terms used to degrade, belittle, insult, or negative statements pertaining to race, color, sex (including gender identity), national origin, or religion. The determining factor whether a term is disparaging is not the intent but the impact it has on the recipient or a reasonable person. The use of these terms may contribute to an unlawful hostile work environment.

4. Findings and Regarding the Complaint and related EO considerations:

a. SFC [COMPLAINANT] Complaint is paraphrased as follows:

(1) Discrimination against SFC [COMPLAINANT] because of his sexual orientation and there existing a hostile work environment, which was evidenced by SFC [COMPLAINANT] being intentionally left out of key conversations about his area of operations due to his sexual orientation.

(2) MAJ Worley's publicly documented involvement and statements in support of anti-LGBTQ extremist/hate groups has created a hostile work environment for SFC [COMPLAINANT] and that he is being discriminated against because of his sexual orientation as supported by articles, Facebook posts, and group websites proving MAJ Worley's active involvement in that organization. This included Major Worley's participation in protests against transgender rights and various public statements made during his political campaigns where he labeled LGBTQ individuals as "sexual deviants", "immoral", and a "danger to children."

(3) Articles and screenshots from MAJ Worley's Facebook page further show that SFC [COMPLAINANT] would not be treated in a fair, unbiased, and respectful manner by his commander because of his sexual orientation.

b. SFC [COMPLAINANT] request for corrective action is paraphrased as follows: removal of MAJ Worley as his Commander and removal of MAJ Worley from IDARNG.

c. Analysis

(1) Following his appointment as Company Commander of the D Company of the Idaho Recruiting and Retention Battalion, MAJ Worley was made aware of SFC [COMPLAINANT] sexual orientation upon asking 1SG [WITNESS 4] whether there were transgender members in the unit at which time 1SG [WITNESS 4] informed him of SFC [COMPLAINANT] sexual orientation and current paternity leave. As documented in numerous sworn statements, as well as in his own statement, during his time as Company Commander MAJ Worley engaged with all the other Senior Non-Commissioned Officers (SNCOs) in D Company, except for SFC [COMPLAINANT]. Even when he had the opportunity to engage in person with SFC [COMPLAINANT] who was MAJ Worley's

CUI

9

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

direct subordinate, MAJ Worley did not take that opportunity as he did with other SNCOs. This selective interaction led SFC [COMPLAINANT] to reasonably feel ostracized and unwelcome, particularly after conversations with other SNCOs confirmed that MAJ Worley had indeed made efforts to connect with them, including with a subordinate NCO of SFC [COMPLAINANT]

(2) Upon researching MAJ Worley's social media and other online content, SFC [COMPLAINANT] reasonably believed that this selective treatment was a result of MAJ Worley's public comments regarding LGBTQ and transgender issues. A significant amount of recent public information outlined Major Worley's very public views regarding the LGBTQ community. This included MAJ Worley's participation in protests against transgender rights and various public statements to the media where he labeled LGBTQ ideologies and members as "sexual deviants", "immoral", and a "danger to children." (Exhibit 2.3 – Drag Queen Protest Idaho Statesman). Further, MAJ Worley's public statements on defending the so called "traditional family" (Exhibit 2.3 – Drag Queen Protest Idaho Statesman), particularly given SFC [COMPLAINANT] recent paternity leave, reasonably created a perception in SFC [COMPLAINANT] that MAJ Worley would be hostile towards him.

(3) Given this background and the direct experience of exclusion and differential treatment within the unit by MAJ Worley, SFC [COMPLAINANT] expressed legitimate concerns regarding MAJ Worley's ability to lead him and potentially other LGBTQ members in a fair, unbiased, and respectful manner. SFC [COMPLAINANT] identified this behavior as creating a hostile work environment for him, which was compounded by MAJ Worley's publicly documented attitudes and actions against the LGBTQ community. Unbeknownst to SFC [COMPLAINANT] these sentiments were also expressed in private by MAJ Worley to LTC Edwards when LTC Edwards attempted to address the matter with MAJ Worley (Findings Memo 7.B. Combined Sworn Statements, page 7, LTC Edwards Sworn Statement).

(4) MAJ Worley was fostering a hostile work environment not only for SFC [COMPLAINANT] by socially ostracizing him, but for other members of RRB. In her interview, SFC [WITNESS 3] recounted comments from MAJ Worley that he stated that females in the Army were the cause of lowered standards within the organization (Exhibit 6.2 – [WITNESS 3] Transcript 2023-08-03). In comments to 1SG [WITNESS 4] MAJ Worley complained that D Company was "very sensitive" and that he didn't understand what the big deal was since "it's not like I raped Sergeant [COMPLAINANT]" (Exhibit 6.1 [WITNESS 4] Transcript 2023-08-02). These interactions made 1SG [WITNESS 4] uncomfortable with the attitudes expressed by MAJ Worley. In addition, while speaking with LTC Edwards, MAJ Worley asked to speak "man to man" and states in a conversation behind closed doors with LTC Edwards that "[referring to LGBTQ ideologies] this will only get worse over time, and we need to fight this!" (Findings Memo 7.B. Combined Sworn Statements, page 7, LTC Edwards Sworn Statement). These additional conversations and statements provide further evidence that SFC [COMPLAINANT] was not the only person experiencing negative attitudes from MAJ Worley and serve to further reinforce the original complaint from SFC [COMPLAINANT]

d. Model for Analysis (Prima facie case): As outlined in NGPAM 600-22 Investigating Military Discrimination Complaints, the standard of proof in EO investigations is the same as that in all administrative investigations in general: proof by a preponderance of the evidence. Another way of stating this is that preponderance means it is more likely than not that discrimination has occurred. After applying this standard to the facts collected during this investigation, it was reasonable for SFC [COMPLAINANT] to believe a hostile work environment existed

CUI

10

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

and for him to feel intimidated, be concerned for his career, and believe that MAJ Worley would not treat him in a fair, equitable, and non-discriminatory manner. Analysis utilizing the analytical framework contained in the NGPAM 600-22:

(1). State a claim of discrimination: Sexual orientation.

(2). Be a member of the protected class: Yes.

(3). Have suffered an adverse action, loss of benefit, disparate treatment, or hostile work environment: SFC [COMPLAINANT] was treated differently than the other Senior NCOs within D Company as he was ostracized by MAJ Worley. Additionally, a hostile work environment reasonably existed to SFC [COMPLAINANT] based on the observed actions of MAJ Worley coupled with his documented disdain for the LGBTQ community. Furthermore, SFC [COMPLAINANT] was able to locate several quotes by MAJ Worley where he stated that he would not be subject to any law that he felt was immoral. By that standard espoused by MAJ Worley, even the legal protections that already exist protecting LGBTQ members could be ignored by MAJ Worley because he stated he did not have to follow laws he felt were immoral. It is reasonable for SFC [COMPLAINANT] to believe that his command would not be able to treat him in a fair, equitable, and non-discriminatory manner based on his sexual orientation.

(4). Establish a causal relationship between b and c: SFC [COMPLAINANT] membership in the protected class is the reason he was treated differently and would continue to be treated differently in the future, as evidenced by the well-documented attitudes and actions that MAJ Worley has demonstrated publicly on many occasions.

(5). Final determination: The evidence is sufficient to create an inference that the complaint's sexual orientation was the likely reason for SFC [COMPLAINANT] disparate treatment at the hands of his company commander, MAJ Worley. While this minor differential treatment did not include differential treatment affecting SFC [COMPLAINANT] career, and was relatively brief in time, the accompanying facts and circumstances as well as statements from other members of D Company (1SG [WITNESS 4] SFC [WITNESS 3] make it objectively reasonable that SFC [COMPLAINANT] was experiencing a hostile work environment .

5. Observations of organizational failings during the handling of SFC [COMPLAINANT] EO complaint and Recommendations:

a. **Difficulty reaching crisis helplines or counselors.** In his original complaint and his sworn statement SFC [COMPLAINANT] explains that when in crisis and feeling distress because of the circumstances related to his EO complaint, he reached out to every phone number and crisis help line that he could find but none were available or able to help except for Chaplain Morris. SFC [COMPLAINANT] called numerous phone numbers including the Idaho National Guard crisis hotline (including 208-272-4224, 208-422-4224, and 208-272-8255) and he either received no answer and could not leave a voicemail because the voicemail box was full, or when someone did answer, he was told that the people he called are not the right people to help him due to the nature of his problem. This represents a concerning situation as Soldiers need to be able to reach crisis counselors 24 hours a day, even on weekends, or at least be able to leave a message and receive a call back.

b. **Recommendation:** In order to support Soldiers in crisis, the organization should ensure that the systems designed to provide support are available and working properly and

CUI

11

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

that Soldiers are able to reach crisis support resources 24 hours a day, 7 days a week. Recommend that the organization ensure that at a minimum, if crisis support lines are not manned 24/7 and operators are not available to answer, Soldiers should at least have the ability to leave a voicemail and then receive a call back as soon as counselors are available.

c. Recruiting and Retention Battalion leadership response to initial EO complaint.

Recruiting Battalion's response once the EO complaint was filed is an area of concern. MAJ Worley was informed right away that a complaint had been filed against him by SFC [COMPLAINANT] before the BN Leadership had taken the time to fully understand the full nature of the complaint brought by SFC [COMPLAINANT]. The BN leadership told MAJ Worley to contact SFC [COMPLAINANT] via a phone call rather than letting the EO representatives handle the issue, and separately SFC [COMPLAINANT] was told by LTC Edwards that had to "be the bigger man" and work out his problems with MAJ Worley. These instructions demonstrate that the BN leadership may not have fully understood the complaint or that they did not give the complaint the proper weight and attention it deserved. Attempting to force SFC [COMPLAINANT] and MAJ Worley into a confrontation caused greater stress and anxiety for SFC [COMPLAINANT] which exacerbated an already tense situation. Although leaders are encouraged and advised to handle EO complaints at the lowest level (Exhibit 3.14 - IDNG-27 IMD EEO & EO Policy), instructing SFC [COMPLAINANT] to "be the bigger man" and resolve the EO complaint with MAJ Worley directly was not the best approach to take when LTC Edwards had not yet consulted with the SEEM or a unit EO representative. Once aware of the EO complaint from SFC [COMPLAINANT] the unit commander should have first done sufficient research into the issue to fully understand the details of the complaint and then reach out to their EO representatives at the unit or state level to get guidance on how to handle the complaint moving forward (Exhibit 3.10 – CNGBI 9601.01_27 Sep 15_NG Discrimination Complaint Program and 3.11 – CNGBI 96001.01 20170425_Discrimination Complaint Process). It should be noted however that by Monday 17 July LTC Edwards had correctly reached out and communicated with the SEEM, the JAG, the G1, the ATAG, and the HRO to mobilize his support network to address the complaint appropriately.

d. Recommendation: Recommend that command teams receive additional scenario-based training on the best ways to handle EO complaints in addition to the training they already receive annually.

e. Lack of research into the backgrounds of candidates selected for Recruiting and Retention Battalion (RRB) Company Commander positions. When interviewing and during the process of selecting the RRB company commanders, no steps were taken to look into the social media footprint or public profiles of any of the personnel selected by the board (LTC Edwards Sworn Statement). Even after concerns were raised by The Adjutant General, MG Garshak regarding one of the selectees identified by name (David Worley), no additional steps were taken to investigate MAJ Worley's actions or statements or to identify what would have prompted the original complaint that was called into the state (1.2 – Email Between Schwartz and Worley).

f. Recommendation: Currently the state HRO and AGR Branch have no policy instructing, advising, or recommending that organizations research the backgrounds of candidates through a look at their social media or publicly available online profiles.

CUI

12

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

(1) As public servants, we must maintain the Nation's trust and confidence in the Military as an institution and as a professional force. To be successful, the public and our fellow Soldiers must have confidence in our ability to lead and serve with persons of diverse backgrounds.

(2) Given the very public nature of leadership within the RRB, recommend that consideration be given to creating a policy within the RRB of conducting a public records search on the Internet and on popular social media sites to see how a selected candidate portrays themselves publicly. This would provide additional information that can be used to better understand the full picture of any candidate selected for a high-profile position and help determine whether they will be able to foster the type of trust and confidence with Soldiers and the public required to be successful in their position.

(3) In light of information uncovered during the conduct of this investigation and in accordance with the instructions contained in DoDI 1325.06p (*Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces, November 27, 2009, Change 2 Effective December 20, 2021*) Reporting Requirements, I recommend that all FTNGD candidates are scrutinized to ensure there is no concerning information within the public domain that would, if substantiated, potentially involve reporting requirements through the state G2 to the DoD Counterintelligence reporting hub and Insider Threat Hub for adjudication by subject matter experts.

(4) National Guard Regulation 600-5 (The Active Guard Reserve (AGR) Program) and AR 135-18 (The Active Guard Reserve Program) contain no statements or prohibitions preventing an organization from utilizing information publicly available in order to better understand the candidates being considered.

6. Evidence of MAJ Worley's attitudes toward the LGBTQ community, his political activities, and concerning statements:

a. During this investigation, and detailed in the original complaint by SFC COMPLAINANT there exists publicly available information regarding MAJ Worley's attitudes toward federally protected classes including the LGBTQ and Transgender community and suggest an association with concerning ideologies and groups, as well as questionable political activities and statements that were found and presented by the Complaint in his EO Complaint. Pursuant to DoDI 1325.06p, AR 600-20, these activities may have constituted violations of Army or DoD policies, however, they occurred prior to MAJ Worley's membership in the IDARNG and other than providing support for SFC COMPLAINANT state of mind and reasonable concerns of a hostile workplace, do not factor into this investigation. Some of MAJ Worley's activities and statements may be protected by his right to free speech, but these questions are outside the scope of this investigation.

b. Publicly sourced statements made by MAJ Worley indicating his anti-LGBTQ beliefs and his belief that he should not be subject to laws he feels are immoral:

(1). Exhibit 2.3 – Drag Queen Protest Idaho Statesman

(2). Exhibit 2.6 - MassResistance.org Idaho Library Board flees meeting to avoid outraged parents

CUI

13

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

(3). Exhibit 2.9 – Roanoke Times – Floyd militia hears call to prepare for sacrifice

(4). Exhibit 2.4 – Idaho State Journal – Pocatello officials question Worley_Sovereignty

c. Where some of this information is relevant to investigative findings related to MAJ Worley's hostility towards SFC [COMPLAINANT] and even the EO process, no findings are made related to whether MAJ Worley violated any DoD or Army policy prior to his membership in IDARNG. I do recommend, however, that MAJ Worley is counseled regarding these policies as they apply to all servicemembers.

7. MAJ Worley political participation while in a full-time status: In September 2019 MAJ Worley was hired as an AGR in Virginia (Exhibit 5.1 - CPT Worley AGR Order (VA) Amendment, 15SEP2019-31DEC2020) and then in Wyoming as an AGR on 1 November 2020 for a 3-year AGR tour (Exhibit 5.4 - MAJ Worley AGR Order (WY) 01NOV2020-31OCT2023) he subsequently resigned his AGR position on 20 Oct 2021 (Exhibit 5.5 - MAJ Worley AGR REFRAD Order (WY) effective 20OCT2021). According to filings obtained from the Bannock County Clerk's office, MAJ Worley officially declared his candidacy for Pocatello Mayor on 30 August 2021 (Exhibit 2.1 – 2021 Candidate filing information Worley). Although he is listed as "self-employed" on the filing paperwork, and his responses to questions submitted by his attorney list him as "M-Day", at that time MAJ Worley was on full-time orders as an AGR with the Wyoming National Guard and his orders continued to 20 October. In addition, MAJ Worley was making public statements, holding rallies, and taking actions in support of his candidacy during this time (Exhibit 2.2 - 17SEP21, Army veteran David Worley officially kicks off campaign for Pocatello mayor – Idaho State Journal). Consequently, it was this activity that led at least one member of the public to call the TAG's hotline to complain about his candidacy and remained an issue for command to address after his selection. Thus, it was reasonable for IDARNG to expect MAJ Worley's removal of online partisan content and to remind him of the political constraints he was subject to as a full-time national guard member. Notably, his failure to remove some inactive partisan Facebook posts related to his prior candidacy was still not the primary cause of LTC Edwards loss of trust and confidence in him, and no findings are made regarding whether MAJ Worley violated in DoD or Army policies related to his campaigning which occurred prior to his membership in IDARNG. I do recommend, however, that MAJ Worley is counseled regarding these policies that apply to all servicemembers.

8. Conclusion and Findings:

a. Based on the evidence collected and analysis conducted, it is reasonable to conclude that SFC [COMPLAINANT] was justified in his complaint that MAJ Worley created a hostile work environment given these facts:

(1). MAJ Worley's disparate treatment of SFC [COMPLAINANT] by ostracizing only him while engaging with all his peers.

(2). MAJ Worley's statements to SFC [WITNESS 3] regarding his attitudes toward females in the military.

CUI

14

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

(3). MAJ Worley's statements to LTC Edwards providing a window into his inner thoughts on the LGBTQ community stating, "this will only get worse over time, and we need to fight this!"

(4). MAJ Worley's well-documented and highly public discriminatory views toward the LGBTQ community.

(5). MAJ Worley's public statements that he does not believe that he is subject to any laws that he feels are immoral.

b. All of these facts taken as a whole suggest an inability by MAJ Worley to uphold the values of equality, respect, and impartiality expected of a company commander and substantiate SFC [COMPLAINANT] complaint of a hostile work environment.

c. It is therefore recommended that MAJ David Worley be permanently removed from his position as company commander and his orders for his One Time Occasional Tour (OTOT) be terminated. This action would not only address the immediate concerns raised by SFC [COMPLAINANT] but would also uphold the broader principles of leadership integrity and nondiscrimination in the Idaho Army National Guard.

9. Summary of all recommendations:

a. MAJ Worley be permanently removed from his position as D Company Commander.

b. MAJ Worley's One Time Occasional Tour orders be curtailed.

d. MAJ Worley be counseled regarding the policies outlining servicemember's obligations to not support or give the perception to support extremist ideologies or groups whether in or out of uniform.

e. MAJ Worley be counseled regarding the policies detailing servicemember's obligations to avoid political activities while in a full-time status.

f. SFC [COMPLAINANT] faced difficulties accessing crisis helplines when in distress, only finding assistance from Chaplain Morris. Despite contacting multiple numbers, he either got no response, found full voicemail boxes, or was told he reached the wrong help line. This highlighted a need for 24/7 crisis support or, at minimum, reliable voicemail and callback systems. Recommend that the organization ensure that those responsible for maintaining these systems should ensure that their services are available and working properly.

b. The response of the Recruiting and Retention Battalion leadership to SFC [COMPLAINANT] EO complaint was concerning. Rather than allowing the appropriate channels to address the issue, MAJ Worley was prematurely informed, leading to unnecessary confrontations and exacerbating the situation. It's advised that command teams get additional in-depth, scenario-based training on handling EO complaints.

c. Lack of research into the backgrounds of potential RRB Company Commanders prevented the selection board from having a full and complete picture of the personalities of the candidates being selected. Recommendations include instituting a policy to review public online profiles of candidates, especially for high-profile positions, to ensure they uphold the trust and professionalism expected in the Military.

CUI

15

CUI

NGID-RTI-AR

SUBJECT: Findings and Recommendations for AR 15-6 Investigation

d. Recommend the state update IMD Policy 15 Political Activities of Idaho National Guard Employees and Military Members to reflect the latest changes in DoDI 1325.06p, AR 600-20, and other applicable policies and regulations.

10. POC for this memorandum is the undersigned at [REDACTED] or [REDACTED].



Digitally signed by
WHITEHEAD.ALLAN.FRANK
1291480272
Date: 2024.05.03 10:16:47
-06'00'

ALLAN F. WHITEHEAD
LTC, AR, IDARNG
Investigating Officer

CUI

Investigative Enclosures

TAB A

- 4. DA Form 1574-1 (Report of Proceedings by Investigating Officer)
- 10. Findings and Recommendations (3 May 2024)
- 11. Investigative Enclosures

TAB B

- 2. Renewed Appointment Memo LTC Whitehead 2-1-2024
- 1. Appointment memo LTC Whitehead 7-21-2023

TAB C

- 3.A. SFC COMPLAINANT NGB 333
- 3.B. SFC COMPLAINANT NGB FORM 333 ATTACHMENTS

TAB D

- 5. Chronology of Actions Taken by IO
- 6. Index of Exhibits

TAB E

- 7.A. Exhibits
- 7.B. Combined Sworn Statements
 - 7.B.1. Worley – Responses to IO questions
- 7.C. Combined Privacy Act Statements
- 8. List of Witnesses Interviewed

TAB F

- 9. CDR Reprisal Plan
 - 9.A. BG MEO Reprisal Plan



IDAHO ARMY NATIONAL GUARD
4040 West Guard Street, Bldg. 600
Boise, Idaho 83705-5004

AAG IDARNG

1 February 2024
S: 2 March 2024

MEMORANDUM FOR LTC Allan Whitehead, Idaho ARNG Training Center, Idaho ARNG,
10228 Huey Lane, Boise, Idaho 83716

SUBJECT: Re-appointment as Investigating Officer

1. **Appointment.** You are hereby appointed as an Investigating Officer (IO) pursuant to Army Regulation (AR) 15-6, *Procedures for Administrative Investigations and Boards of Officers* and CNGBM 9601.01, National Guard Discrimination Complaint Process, to conduct an Administrative Investigation into the facts and circumstances relating to alleged discriminatory behavior and misconduct by MAJ David Worley, ITC, as alleged by SFC **COMPLAINANT** D Co, RRB, which occurred while MAJ Worley was D Co Commander, RRB. Additionally, you will investigate the facts and circumstances causing the RRB Command to lose trust and confidence in MAJ Worley's ability to lead D Co, which ostensibly included his failure to remove online political content, as directed and agreed upon, prior to beginning his full-time national guard duty. While previously you ceased this investigation per the direction of BG Farin Schwartz, this is a renewed appointment to investigate these circumstances regarding MAJ Worley as originally directed by BG Schwartz in your original appointment memorandum dated 21 July 2023. Your responsibilities take precedence over all other military duties. **You have 30 days from the date of this appointment to conduct this investigation.** Coordinate any requests for extensions through your legal advisor.

2. General Instructions.

The purpose of an AR 15-6 investigation is to elicit facts. You are directed to conduct an investigation into the matter set forth in paragraph 3, below. Your investigation should further explore any issues or deficiencies with policy, procedures, resources, doctrine, training, and leadership that might have contributed to this incident. Upon completion of this investigation, you will complete a report of investigation that conforms to the requirements in paragraph 5 of this memorandum, AR 15-6.

If, at any time in the conduct of your investigation, something happens that could cause me to consider enlarging, restricting, or terminating your investigation, or otherwise modifying any instruction in this memorandum of appointment, immediately report this

SUBJECT: Investigating Officer Appointment

situation to me through your legal advisor, together with your recommendations as to the actions I should take in response.

3. Scope of Investigation/Specific Instructions.

You are hereby directed to conduct an investigation into the facts and circumstances of behavior, comments, and actions by MAJ David Worley as set forth in SFC [REDACTED] [REDACTED] MEO NGB 333 Complaint filed with the State Equal Employment Manager (SEEM) on 24 January 2024. Specifically, it is alleged that MAJ Worley engaged in discrimination based on SFC [REDACTED] [REDACTED] sexual orientation and otherwise created a hostile work environment. SFC [REDACTED] [REDACTED] complaint and accompanying documents were previously furnished to you. Furthermore, it is alleged that MAJ Worley failed to remove online political content as directed and agreed by him, prior to beginning his full time IDARNG duties, which caused the RRB Command to lose trust and confidence in MAJ Worley's abilities to lead D Company. Thus, you will focus on this relevant period of time leading up to MAJ Worley's reassignment from D Co.

Your investigation should include a thorough analysis of the relevant circumstances pertaining to organizational failures as alleged in the Complaint are accurate and merit correction. Make recommendations supported by your findings. Include in your recommendations what changes, if any, are needed in terms of policy, procedures, resources, doctrine, training or leadership to avoid incidents of this nature in the future, and what, if any, disciplinary or personnel actions should be taken.

During your investigation you will, at a minimum, ascertain the following: Who, What, Where, When, Why, and How.

4. Conduct of the Investigation.

MAJ Nate Peterson, Attorney Advisor, is your legal advisor. You will consult with your legal advisor before making substantive efforts regarding your investigation. You may also receive additional administrative support through the paralegal services of the Office of Staff Judge Advocate, through SSG Kenneth Kalim.

You may request that additional individuals or subject matter experts be appointed, in writing, to accompany you and assist you in your investigation. Coordinate such request with your legal advisor. Conduct your investigation as confidentially as possible by sharing that information only as required to further your investigation, administrative, and/or reporting requirements.

5. Evidence Collection.

You are to conduct this investigation using the procedures outlined in Chapter 4 and the general guidance provided in Chapter 3, AR 15-6.

To the extent possible, witness statements will be written and sworn. You should record witness statements on a DA Form 2823 (Sworn Statement). If it is impracticable to

SUBJECT: Investigating Officer Appointment

obtain a written and/or sworn statement from a particular witness, you will attest to the accuracy of any transcription or summary of such witness testimony in whatever form it appears within your report of investigation. In accordance with AR 340-21, provide a Privacy Act statement to a witness if you do not use a DA Form 2823 to record the statement of that witness, and your report will be filed in a system of records from which it can be retrieved by reference to the name or other personal identifier of that witness. No U.S. military or civilian witness can be ordered to provide information that may incriminate him or herself. You may order a military or Federal Government civilian employee witness to provide a statement if you believe that they have relevant information that would not incriminate themselves. If, in the course of your investigation you come to suspect a person may have engaged in criminal conduct, you will consult with your legal advisor and inform me. **Under no circumstances should you attempt to elicit any information from a suspect without first advising that person of his/her rights under Article 31, ICMJ, or the Fifth Amendment of the U.S. Constitution, as appropriate. Document your rights advisement and witness waivers of their Article 31 or Fifth Amendment rights on DA Form 3881 (*Rights Warning Procedures/Waiver Certificate*).**

6. Where a civilian employee is a member of a bargaining unit and reasonably believes that the inquiry could lead to disciplinary action against him or her, the employee may have a representative from the bargaining unit present during questioning. You will consult with your legal advisor if you have any questions regarding these procedures.

7. Should you determine in the context of your investigation that a Soldier's status has changed from favorable to unfavorable, as defined in AR 600-8-2, *Suspension of Favorable Personnel Actions*, you must notify me immediately and consult with your legal advisor, to ensure that a flag is initiated against that Soldier.

8. Report of Investigation.

General. You will document your findings and recommendations in writing using a memorandum that conforms substantially to Figure 3-1, AR 15-6, and CNGBMI 9601.01, encl. E, Fig. 3. You will attach all required enclosures and exhibits.

Assembly. Your completed AR 15-6 investigation will include:

- (1) The original memorandum of appointment;
- (2) This amended memorandum of appointment;
- (3) NGB Form 333 (SFC **COMPLAINANT** Complaint) and attachments;
- (4) A completed DA Form 1574-1, *Report of Proceedings by Investigating Officer*;
- (5) A detailed chronology of the daily actions you took during the investigation;
- (6) An index of all attached exhibits;
- (7) All exhibits, labeled and numbered;
- (8) A list of witnesses you interviewed;
- (9) Commander's Reprisal Plan;
- (10) Exhibits included within your report of investigation; and
- (11) A memorandum with your findings and recommendations.

SUBJECT: Investigating Officer Appointment

9. **Findings.** You will reach your findings by a preponderance of the evidence that you gather. A finding is a clear and concise statement of facts that can be readily deduced from evidence in the record. In your report, develop specific findings and cite the evidence that supports your findings. If evidence conflicts (e.g., conflicting witness statements), make a finding as to which evidence is more credible and why you believe to be more credible.

10. **Recommendations.** Based on your findings, make recommendations as to what changes, if any are needed in terms of policy, procedures, resources, doctrine, training, and leadership to avoid incidents of this nature in the future, as well as recommendations consistent with your findings concerning other items your investigation revealed. Each recommendation will cite to the finding that supports it and comport with the guidance in AR 15-6.

11. **Submission.** Submit your report of investigation in hard copy to your legal advisor. You may not release any information related to this investigation to anyone, other than your legal advisor, without my prior approval.

12. **Point of Contact.** POC for this memorandum is MAJ Nate Peterson, at [REDACTED] or [REDACTED].

PACKWOOD.JAMES³⁹ Digitally signed by
PACKWOOD.JAMES.COLE.11528905
.COLE.1152890539 Date: 2024.02.01 13:03:52 -0700'

J. Cole Packwood
Brigadier General
Assistant Adjutant General
Commander, Idaho Army National Guard



IDAHO ARMY NATIONAL GUARD
4040 West Guard Street, Bldg. 600
Boise, Idaho 83705-5004

AAG IDARNG

21 July 2023
S: 21 August 2023

MEMORANDUM FOR LTC Allan Whitehead, Battalion Commander 1/204th Reg., Idaho ARNG, 5050 S. Junker St., Building 810 Boise, Idaho 83705

SUBJECT: Appointment as Investigating Officer

1. **Appointment.** You are hereby appointed as an Investigating Officer (IO) pursuant to Army Regulation (AR) 15-6, *Procedures for Administrative Investigations and Boards of Officers* and CNGBM 9601.01, National Guard Discrimination Complaint Process to conduct an Administrative Investigation into the facts and circumstances relating to alleged discriminatory behavior by MAJ David Worley, D Co Commander, RRB, and additionally his failure to remove online political content, as directed and agreed upon, prior to beginning his full time national guard duty. Your responsibilities take precedence over all other military duties. **You have 30 days from the date of this appointment to conduct this investigation.** Coordinate any requests for extensions through your legal advisor.

2. General Instructions.

The purpose of an AR 15-6 investigation is to elicit facts. You are directed to conduct an investigation into the matter set forth in paragraph 3, below. Your investigation should further explore any issues or deficiencies with policy, procedures, resources, doctrine, training, and leadership that might have contributed to this incident. Upon completion of this investigation, you will complete a report of investigation that conforms to the requirements in paragraph 5 of this memorandum, AR 15-6, and CNGBM 9601.01.

If, at any time in the conduct of your investigation, something happens that could cause me to consider enlarging, restricting, or terminating your investigation, or otherwise modifying any instruction in this memorandum of appointment, immediately report this situation to me through your legal advisor, together with your recommendations as to the actions I should take in response.

3. Scope of Investigation/Specific Instructions.

You are hereby directed to conduct an investigation into the facts and circumstances of behavior, comments, and actions by MAJ Worley as set forth within the MEO complaint. Specifically, it is alleged that he engaged in discrimination based on SFC **COMPLAINANT** sexual orientation and has otherwise created a hostile work environment based upon his current

SUBJECT: Investigating Officer Appointment

and past activities. SFC **COMPLAINANT** complaint and accompanying documents shall be furnished to you. Furthermore, it is alleged that MAJ Worley failed to remove online political content as directed and agreed by him, prior to beginning his full time IDARNG duties, thereby causing the RRB Command to lose trust and confidence in his abilities to lead D Company.

Your review should include a thorough analysis of whether the circumstances alleged in the complaint are accurate and merit correction and make recommendations supported by your findings. Include in your recommendations what changes, if any, are needed in terms of policy, procedures, resources, doctrine, training or leadership to avoid incidents of this nature in the future, and what, if any, disciplinary or personnel actions should be taken. You should report whether any personnel should be held accountable for any shortcomings or failures.

During your investigation you will, at a minimum, ascertain the following: Who, What, Where, When, Why, and How.

4. Conduct of the Investigation.

MAJ Nate Peterson, Attorney Advisor, is your legal advisor. You will consult with your legal advisor before making substantive efforts regarding your investigation. You will also consult with State Equal Employment Manager (SEEM), Mr. Al Gomez, prior to questioning any witnesses. You may also receive additional administrative support through the paralegal services of the Office of Staff Judge Advocate, through SSG Kenneth Kalim.

You may request that additional individuals or subject matter experts be appointed, in writing, to accompany you and assist you in your investigation. Coordinate such request with your legal advisor. Moreover, MAJ Worley has a right to trial defense services such that in the event he elects attorney representation, then any participation by him in the investigation must be conducted through his attorney. Conduct your investigation as confidentially as possible by sharing that information only as required to further your investigation, administrative, and/or reporting requirements.

5. Evidence Collection.

You are to conduct this investigation using the procedures outlined in Chapter 4 and the general guidance provided in Chapter 3, AR 15-6, and otherwise consistent with CNGBM 9601.01 as applicable.

To the extent possible, witness statements will be written and sworn. You should record witness statements on a DA Form 2823 (Sworn Statement). If it is impracticable to obtain a written and/or sworn statement from a particular witness, you will attest to the accuracy of any transcription or summary of such witness testimony in whatever form it appears within your report of investigation. In accordance with AR 340-21, provide a Privacy Act statement to a witness if you do not use a DA Form 2823 to record the statement of that witness, and your report will be filed in a system of records from which it

SUBJECT: Investigating Officer Appointment

can be retrieved by reference to the name or other personal identifier of that witness. No U.S. military or civilian witness can be ordered to provide information that may incriminate him or herself. You may order a military or Federal Government civilian employee witness to provide a statement if you believe that they have relevant information that would not incriminate themselves. If, in the course of your investigation you come to suspect a person may have engaged in criminal conduct, you will consult with your legal advisor and inform me. **Under no circumstances should you attempt to elicit any information from a suspect without first advising that person of his/her rights under Article 31, UCMJ, or the Fifth Amendment of the U.S. Constitution, as appropriate. Document your rights advisement and witness waivers of their Article 31 or Fifth Amendment rights on DA Form 3881 (*Rights Warning Procedures/Waiver Certificate*).**

6. Where a civilian employee is a member of a bargaining unit and reasonably believes that the inquiry could lead to disciplinary action against him or her, the employee may have a representative from the bargaining unit present during questioning. You will consult with your legal advisor if you have any questions regarding these procedures.

7. Should you determine in the context of your investigation that a Soldier's status has changed from favorable to unfavorable, as defined in AR 600-8-2, *Suspension of Favorable Personnel Actions*, you must notify me immediately and consult with your legal advisor, to ensure that a flag is initiated against that Soldier.

8. **Report of Investigation.**

General. You will document your findings and recommendations in writing using a memorandum that conforms substantially to Figure 3-1, AR 15-6, and CNGBMI 9601.01, encl. E, Fig. 3. You will attach all required enclosures and exhibits.

Assembly. Your completed AR 15-6 investigation will include:

- (1) This memorandum of appointment;
- (2) NGB Form 333 (SFC COMPLAINANT Complaint) and attachments
- (3) A completed DA Form 1574-1, *Report of Proceedings by Investigating Officer*;
- (4) A detailed chronology of the daily actions you took during the investigation;
- (5) An index of all attached exhibits;
- (6) All exhibits, labeled and numbered;
- (7) A list of witnesses you interviewed
- (8) Commander's Reprisal Plan, CNGBM 9601.01, Encl. E, Fig. 2;
- (9) If Applicable, proper classification markings for each paragraph, page, and exhibit included within your report of investigation; and
- (10) A memorandum with your findings and recommendations.

9. **Findings.** You will reach your findings by a preponderance of the evidence that you gather. A finding is a clear and concise statement of facts that can be readily deduced from evidence in the record. In your report, develop specific findings and cite the evidence that

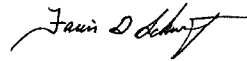
SUBJECT: Investigating Officer Appointment

supports your findings. If evidence conflicts (e.g., conflicting witness statements), make a finding as to which evidence is more credible and why you believe to be more credible.

10. **Recommendations.** Based on your findings, make recommendations as to what changes, if any are needed in terms of policy, procedures, resources, doctrine, training and leadership to avoid incidents of this nature in the future, as well as recommendations consistent with your findings concerning other items your investigation revealed. Each recommendation will cite to the finding that supports it, and comport with the guidance in AR 15-6.

11. **Submission.** Submit your report of investigation in hard copy to your legal advisor. You may not release any information related to this investigation to anyone, other than your legal advisor, without my prior approval.

12. **Point of Contact.** POC for this memorandum is MAJ Nate Peterson, at [REDACTED] or [REDACTED].



Digitally signed by
SCHWARTZ,FARIN,DEAN.1152423752
Date: 2023.07.28 10:49:07 -06'00'

FARIN D. SCHWARTZ
Brigadier General
Assistant Adjutant General
Commander, Idaho Army National Guard

| | | | |
|---|--|---|--|
| Discrimination Complaint in the Army and Air National Guard For use of this form see CNGBM 9601.01, the proponent agency is NGB-EO. | | (SEEM Use Only) | Filing State/Territory: |
| | | NGB Case Tracking Number: | |
| PRIVACY ACT STATEMENT | | | |
| Authority: 42 U.S.C., Chapter 21, Subchapter V Principal Purpose: To document allegations of discrimination in the National Guard (NG) Routine Uses: None Disclosure: Voluntary. However, failure to complete all portions of this form could affect the timely processing, or result in the rejection or dismissal of your complaint. | | <input type="checkbox"/> IRR Date: _____ <input type="checkbox"/> FRR Date: _____ <input type="checkbox"/> ADR Date: _____ | |
| INSTRUCTIONS | | | |
| PART I - TO BE COMPLETED BY COMPLAINANT Submit to Your EO State Representative | | | |
| All NG members serving in Title 32 status, to include NG technicians in a military pay status who believe they have been discriminated against based on race, color, national origin, religion, sex-gender, or sexual orientation, or who believe they have been the victim of sexual harassment, or of reprisal for prior engagement in the discrimination complaint process or related activity, may file a request to resolve discrimination allegations. You are encouraged to discuss the complaints with and to seek assistance from your immediate supervisor, unit commander, members of the chain of command or EO office staff. Fill out Part I of this form and file the complaint within 180 days of the date of the alleged discrimination or the date that you became aware of the discriminatory event or action. The complaint should be filed with the unit commander (if the commander is not the alleged discriminating official) or with your unit EO representative. You may file with any other commander in the chain of command, the Adjutant General, the National Guard Bureau, or Inspector General Office. However, regardless of where the complaint is filed, it will be referred to the lowest applicable command level for action. | | | |
| 1. COMPLAINANT | | | |
| a. NAME (Last, First, MI) COMPLAINANT | | b. RANK SFC | c. COMPONENT (ARNG/ANG) [REDACTED] |
| d. POSITION [REDACTED] | | 2. SEX-GENDER (M/F) M | |
| 3. RACE CAUCASIAN | | 4. NATIONAL ORIGIN U.S. CITIZEN | |
| 5. HOME ADDRESS (Including Zip Code) [REDACTED] | | 6. TELEPHONE NUMBERS | |
| | | a. BUSINESS [REDACTED] | b. HOME [REDACTED] |
| 7. ACTIVITY OR UNIT IN WHICH ALLEGED DISCRIMINATION OCCURRED D COMPANY [REDACTED] | | 8. ARE YOU (Check One) | |
| | | <input type="checkbox"/> PART TIME MILITARY MEMBER <input checked="" type="checkbox"/> AGR TITLE 32/ADOS TITLE 32 <input type="checkbox"/> APPLICANT FOR NG/AGR MEMBERSHIP <input type="checkbox"/> FORMER MILITARY MEMBER <input type="checkbox"/> BENEFICIARY OF NG | |
| 9. ALLEGED DISCRIMINATING OFFICIAL (ADO) | | | |
| a. NAME (Last, First, MI) Worley, David | | b. RANK/TITLE MAJ/Company Commander | |
| 10. REPRESENTATIVE (If any) | | | |
| a. NAME (Last, First, MI) | | b. ADDRESS [REDACTED] Pocatello, ID 83202 | |
| 11. CHECK BELOW THE BASIS (Reasons) FOR ALLEGED DISCRIMINATION | | | |
| <input type="checkbox"/> R RACE (Check Your Race) <input type="checkbox"/> Black or African American <input checked="" type="checkbox"/> White <input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian/Pacific Islander | | | |
| <input type="checkbox"/> C COLOR (State Your Color) _____ | | | |
| <input type="checkbox"/> L RELIGION (State Your Religion) _____ | | | |
| <input type="checkbox"/> S SEX-GENDER (Sexual Harassment) (Check Your Gender) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female | | | |
| <input checked="" type="checkbox"/> X SEXUAL ORIENTATION (Specify) GAY/HOMOSEXUAL | | | |
| <input type="checkbox"/> O REPRISAL (Based Upon EO Activity) <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| <input type="checkbox"/> N NATIONAL ORIGIN (State Your National Origin or National Group) (Specify) _____ | | | |

| 12. CHECK FOR SPECIFIC ALLEGATIONS AND ISSUES | | |
|--|---|--|
| <input type="checkbox"/> Appointment/Enlistment | <input type="checkbox"/> Evaluation/Appraisal | <input type="checkbox"/> Reassignment |
| <input checked="" type="checkbox"/> Assignment of Duties | <input checked="" type="checkbox"/> Harassment | <input type="checkbox"/> Retirement |
| <input type="checkbox"/> Awards/Decorations | <input checked="" type="checkbox"/> a. Non-Sexual | <input type="checkbox"/> Time and Attendance |
| <input type="checkbox"/> Disciplinary Action | <input type="checkbox"/> b. Sexual | <input type="checkbox"/> Training/Education |
| <input type="checkbox"/> Duty Hours | <input type="checkbox"/> Promotion/Non-Selection | <input type="checkbox"/> Other |

13. STATE ALLEGATION AND ISSUES (Explanations, background, and evidence can be attached as supporting material; they are NOT issues.)

- Issues:
- A. Number each issue.
 - B. Briefly list the alleged act of discrimination, the basis, and the date(s) it took place.
 - C. Indicate the name(s) of the alleged discriminating official(s) (ADO).

SAMPLE: I was discriminated against on (date) on the basis of (Race, Religion, or other basis) when (name the ADO) and briefly list the discriminatory event(s) or personnel action(s). Attach additional blank sheets, if necessary.

1. I feel like I have been discriminated against because of my sexual orientation and that is has a hostile work environment during the time of 6 July 2023 to current from my new Company Commander, MAJ David Worley. I feel that I was intentionally left out of key conversations about my area of operations due to my sexual orientation. SEE ATTACHED DOCUMENT

2. I feel that MAJ Worley's involvement with this extremist/hate group has created a hostile work environment and that I'm being discriminated against because of my sexual orientation. I have articals, facebook posts and posts from this groups website that prove his active involvement in this organization. Dates range from 2020 to present. SEE ATTACHED DOCUMENT

3. I feel like this following article and screen shots from MAJ Worley's Facebook page further shows that i have been discriminated against because of my sexual orientation and that it has caused a hostile work environment. The dates for these offenses range from 2020 to current. I have provided links to articles and screenshots for this. SEE ATTACHED DOCUMENT

14. WHAT CORRECTIVE ACTION DO YOU WANT TAKEN TO RESOLVE YOUR COMPLAINT?

TO HAVE MAJ WORLEY IMMEDIATELY REMOVED AS MY COMMANDER AND THEN TO HAVE MAJ WORLEY REMOVED FROM THE IDAHO ARMY NATIONAL GUARD SO THAT HE NEVER HAS COMMAND AUTHORITY OVER ANYONE AGAIN.

| | | | |
|----------------------------------|--------------------|-----------|----------|
| 15a. SIGNATURE OF COMPLAINANT | COMPLAINANT | 15b. DATE | 20230717 |
| 16. OFFICIAL RECEIVING COMPLAINT | | | |
| a. NAME | | b. TITLE | |
| c. SIGNATURE | | d. DATE | |

| PART II - COMPLAINT MANAGEMENT PROCESSING | |
|--|---|
| TO BE COMPLETED AT THE LOWEST APPLICABLE COMMAND LEVEL | |
| COMPLETE AS APPROPRIATE | |
| 1. WHEN DID YOU RECEIVE THE COMPLAINT? | DATE (YYYY/MM/DD) |
| 2. WAS THE COMPLAINT | |
| a. Accepted | <input type="checkbox"/> All <input type="checkbox"/> In Part |
| b. Referred | <input type="checkbox"/> All <input type="checkbox"/> In Part |
| c. Dismissed | <input type="checkbox"/> All <input type="checkbox"/> In Part |
| | TO WHOM? |
| | (State Reason) |
| 3. AFTER REVIEW OF THE LEADERSHIP INQUIRY REPORT I FIND THAT YOUR ALLEGATIONS ARE: | |
| <input type="checkbox"/> Substantiated <input type="checkbox"/> Unsubstantiated <input type="checkbox"/> Discrimination Undetermined | |
| 4. DID YOUR NOTICE OF PROPOSED RESOLUTION (NPR) CONCUR WITH THE FINDINGS OF THE INQUIRY OFFICIAL? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. NAME/DATE NEXT HIGHER LEVEL COMMANDER REVIEWED NPR: | b. DATE (YYYY/MM/DD) |
| a. NAME (Last, First, MI) | |
| 6. DID THE JUDGE ADVOCATE REVIEW THE CASE? | DATE (YYYY/MM/DD) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 7. DID THE SEEM REVIEW THE CASE? | DATE (YYYY/MM/DD) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 8. DID THE ADJUTANT GENERAL (or designated representative) REVIEW THE CASE? | DATE (YYYY/MM/DD) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 9. DATE YOU MET WITH MEMBER AND PROVIDED THEM WITH NPR: | DATE (YYYY/MM/DD) |
| 10. COMPLAINANT'S ELECTION TO THE NPR'S PROPOSED RESOLUTION AND REMEDY: | |
| [] Accept the Proposed Resolution and Remedy. | |
| [] Withdraw my State Informal Resolution Request. | |
| [] File a NGB Formal Resolution Request | |
| a. SIGNATURE OF COMPLAINANT | b. DATE (YYYY/MM/DD) |
| 11. THIS FORM, THE NPR, THE LEADERSHIP INQUIRY REPORT, AND ANY ACCOMPANYING DOCUMENTATION WAS FORWARDED TO NGB-EO-CMA ON: | DATE (YYYY/MM/DD) |
| 12. REMARKS: | |
| | |
| 10a. SIGNATURE OF COMMANDER | 10b. DATE (YYYY/MM/DD) |

| PART III - NGB FRR PROCESSING | |
|--|--|
| FOR NGB-EO-CMA USE ONLY | |
| 1. DATE FRR WAS RECEIVED FROM THE STATE: | DATE (YYYY/MM/DD) |
| 2. PRELIMINARY REVIEW OF NGB FRR: | <input type="checkbox"/> ACCEPT <input type="checkbox"/> DISMISS <input type="checkbox"/> REMAND |
| 3. IF ACCEPTED: DATE INVESTIGATION REQUESTED: _____ DATE INVESTIGATION OFFICER (IO) APPOINTED: _____ NAME/RANK OF IO: _____ CONTACT INFORMATION FOR IO: EMAIL: _____ DATE INVESTIGATION WAS COMPLETED: _____ OFFICE PHONE: _____ DATE REPORT OF FINDINGS RECEIVED: _____ CELL PHONE: _____ DATE NGB NPR ISSUED: _____ | |
| 4. IF DISMISSED: DATE NOTICE OF PROPOSED DISMISSAL SENT: | DATE (YYYY/MM/DD) |
| 5. COMPLAINANT HEARING REQUEST: YES _____ NO _____ | DATE (YYYY/MM/DD) |
| 6. STATE HEARING REQUEST: YES _____ NO _____ | DATE (YYYY/MM/DD) |
| 7. REMARKS: | |

Subject: Formal Complaint of Sexual Orientation Discrimination and hostile work environment

To whom it may concern,

I am writing this letter to formally lodge a complaint against MAJ David Worley for sexual orientation discrimination and a hostile work environment. My name is SFC **COMPLAINANT** and I identify as gay/homosexual.

I feel like I have been discriminated against because of my sexual orientation and that is has caused a hostile work environment. The purpose of this complaint is to bring to your attention several instances in which I believe I have faced discriminatory treatment based on my sexual orientation. I am deeply concerned about the hostile and prejudiced behavior I have experienced, which has adversely affected my well-being, work performance, and overall sense of belonging within the workplace/organization.

I believe the following incidents constitute sexual orientation discrimination and a hostile work environment.

1. MAJ David Worley is the new command for the D Company Recruiting and Retention in Southeast Idaho and his official start was on 5 July 2023. I came back to work on 6 July 2023 from paternity leave. Since then, many very disturbing facts about him have come to my attention on 13 July 2023.

MAJ Worley has introduced himself to everyone on the Delta company team except me and my team in Idaho Falls, that's only a 45 min drive from the Pocatello office. I talked with other members of the recruiting team, and they told me that MAJ Worley had reached out to them many times about different ideas that he has for the area in Pocatello and ideas for the Idaho Falls area. I am the team leader in charge of the Idaho Falls area so I kept asking why he wouldn't just call and talk to me directly. On 7 July 2023 all of D company had a team meeting at the Pocatello armory. I sat right next to MAJ Worley during this meeting. So, after hearing that he was communicating with other members of Delta company and not myself, I got curious as to why. I remembered that he ran for Mayor in Pocatello, and he also ran for a Senate position for the State of Idaho. I decided to do a quick Google search to see who my new commander was and see if I could find out why he didn't want to talk or communicate with me. That is when I found all this information that is listed below.

[A creative protest that protected Pocatello's children \(afn.net\)](#)

https://www.idahostatejournal.com/freeaccess/members-of-local-christian-congregations-hold-sit-in-protest-against-pocatello-drag-queen-reading-program/article_e00393e2-abfb-11ed-823a-db574748bf88.html

In this article you will read that MAJ David Worley is identified as one of the organizers to a protest at a public library in Pocatello where Drag Queens were reading to children. As one of the organizers MAJ Worley has participated in the orchestration of the inclusion of an extremist hate group called Mass Resistance against the LGBTQ community. This shows the ties the MAJ Worley has with this hate group. Not only did he bring the Extremist/hate group, but he also participated in the protest with this group, working alongside this group to protest things that he believes to me immoral. MAJ Worley is quoted saying in the article that "It's a public event at a public venue that's owned by the city, so they can't tell anyone they can't come," Worley points out. "We just show up, fill up all the seats so the room's at max

capacity, and then prevent young children from being brought in and being exposed to this sexually inappropriate content." He is also quoted saying how he believes these things to be immoral.

2. I feel that MAJ Worley's involvement with this extremist/hate group has created a hostile work environment and that I'm being discriminated against because of my sexual orientation.

The following link is to the Mass Resistance extremist/hate group page and a link to their mission statement:

[MassResistance](#)

<http://www.massresistance.org/AboutUs.html>

https://www.massresistance.org/docs/gen4/23a/ID-Library-Board-flees-from-parents/index.html?fbclid=IwAR1ZPhJBnd6D4i4MLrNQ67u8hgkJfa7NcxAgXwiHs5_DbxhyRzemaUPHoo

In the link listed above you can see MAJ Worley on the Mass Resistance website. They identify him, with the pictures that are posted, as being a member of the Pocatello Mass Resistance group. In the above post MAJ Worley is seen as an influential leader in the Mass Resistance group and is giving a presentation during this meeting.

You can clearly see from these links above that this organization is not friendly to the LGBTQ community and can only be defined as an extremist/hate group.

3. I feel like this following article and screen shots from MAJ Worley's Facebook page further shows that I have been discriminated against because of my sexual orientation and that it has caused a hostile work environment.

[Pocatello officials question Worley's views on guns, local sovereignty | Local | idahostatejournal.com](#)

In this article you will see that in January of 2020 MAJ Worley is addressing a local militia in Virginia.

As evidence that Worley holds extreme views, the officials referenced a January 2020 news article out of Roanoke, Virginia, covering Worley's speech to a Virginia militia. They've also cited Worley's statements from local political forums in which he vowed he wouldn't follow court rulings or state, or federal edicts deemed by local leaders to violate the rights of people.

"When (Worley) says, 'I will not uphold any law that I feel to be immoral,' that's not the Constitution, which he says he's all about the Constitution," Ortega said. "My concern is I don't want any one person, I don't care who it is, deciding what's moral and inciting violence. ... I'm all about the Second Amendment, but when you're talking about using the municipal police against the federal government, that's a whole nother level of crazy."

In that quote MAJ Worley says that he will not uphold any law that he feels to be immoral. He feels that gay marriage and gay rights are immoral. So, what is MAJ Worley willing to do and what laws and regulations is he willing to break. Any federal or state law that HE FEELS is immoral he will not uphold that law.

The attached pictures are the screenshots that show MAJ Worley on the Mass Resistance main website and on their main Facebook page.



11:38

22%

✕ Idaho Library Board flees meeting to avoid outraged...
massresistance.org

there is "no pornography" in the library.

March 20, 2023



After the library board suddenly cancelled its meeting, the citizens stayed and held their own "Town Hall" there to air their grievances.

There have been a lot of great things going on in Idaho!

On January 17, 2023, about 30 local parents from our Pocatello, Idaho MassResistance team went to the local Marshall Public Library Board of Trustees meeting to air their grievances during the public comment section. It was one of the largest groups of citizens in memory to come to a library board meeting there.

Outraged over large amount of pornographic children's books



11:33

23%

Idaho Library Board flees meeting to avoid outraged...
massresistance.org

It was really a great Town Hall! They talked about the **three hundred books** they had found in the library – designed to give toxic and degrading messages to children, much of it extremely sexually obscene. It seemed clear, they said, that the intent is to normalize sex to children, essentially grooming them for abuse. Also, many of the children’s books are about destroying the idea of the traditional family.



11:34

23%

Search

Posts About Photos More

6 5 comments • 1 share

Like Comment Share

MassResistance Mar 20

Local Idaho library board members avoid outraged MassResistance citizens by skipping scheduled meeting, causing cancellation. So citizens hold a "town hall" meeting there!

SEE: <https://www.massresistance.org/docs/gen4/23a/ID-Library-Board-flees-from-parents/index.html>



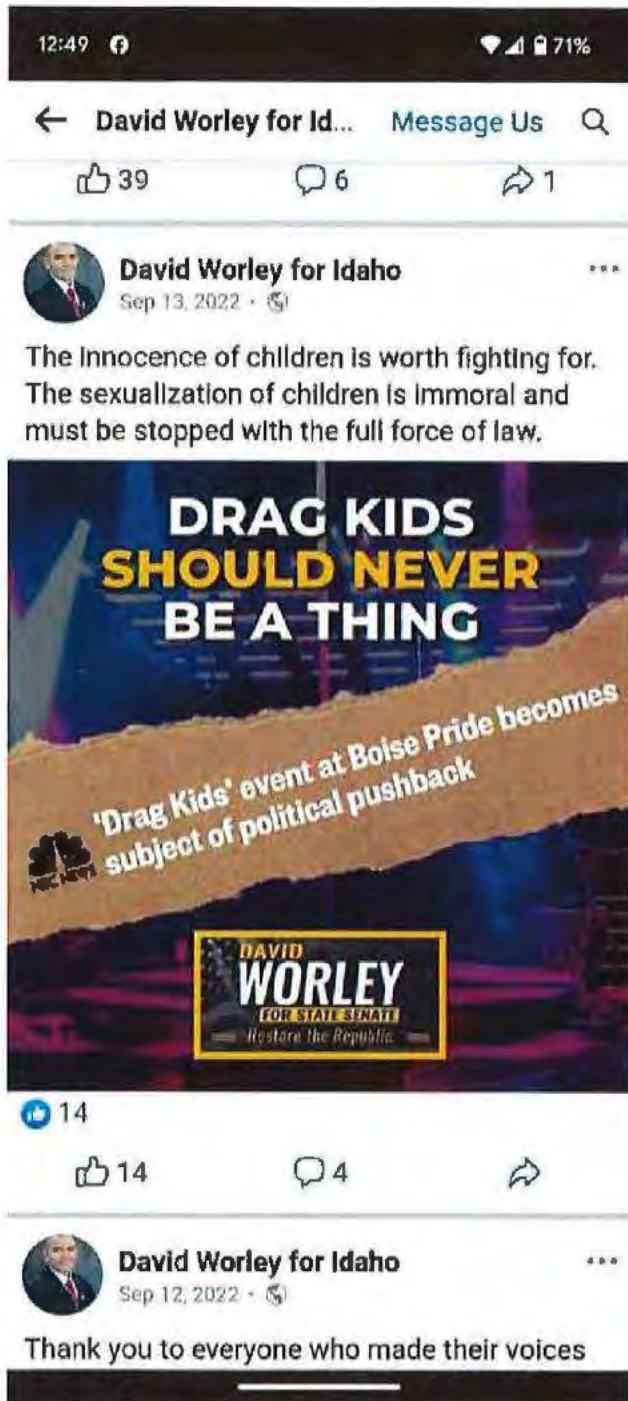
17 3 comments • 1 share

Like Comment Share

MassResistance Mar 14

Fox News quickly removes attack on MassResistance

The attached pictures below are screenshots from MAJ Worley's personal/political social media page. Showing just how much he truly hates the LGBTQ community.



Again saying **how immoral he believes** the LGBTQ community to be.



Inciting violence again the attorney general for Michigan and attacking the whole democrat party.



← David Worley for Idaho Message Us 🔍



David Worley for Idaho

⋮

AUG 6, 2022 · 🌐

Radical gender theory in all its manifestations must be defeated. The Woke Communists will not tolerate you. They want to destroy our way of life. Without victory, there can be no peace.

DAILY WIRE

NEWS

80-Year-Old Woman Banned From Community Pool After Complaining Man Watching Little Girls Undress In Shower Room: Report

By Hank Berrien

Aug 5, 2022 DailyWire.com



👍👎👤 6

👍 6

💬 2

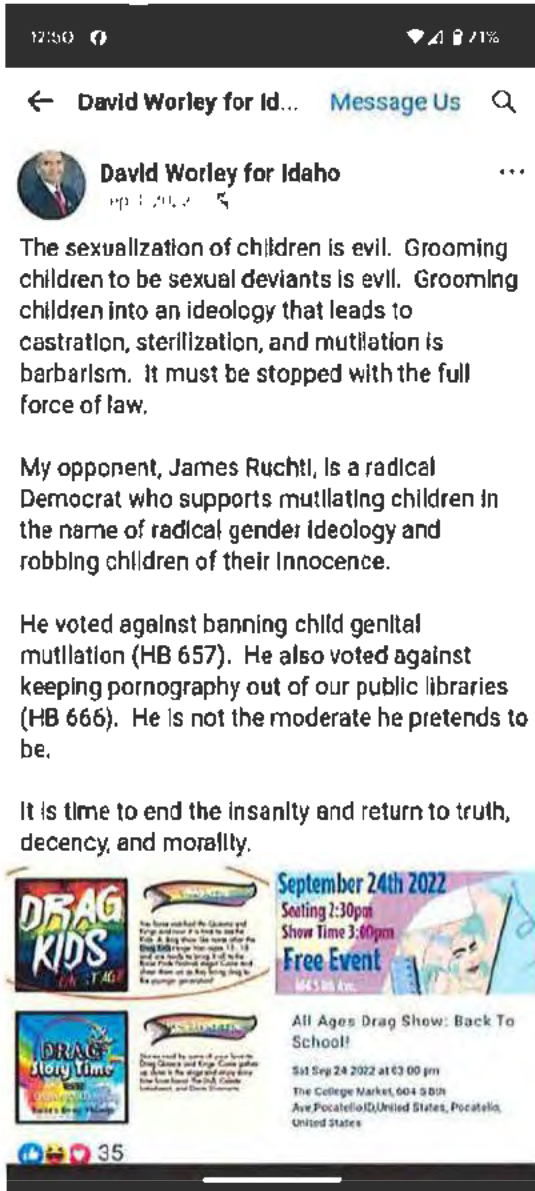
🔗 1



David Worley for Idaho

⋮


Inciting violence



Talking about the returning to what he feels is the truth, decency, and morality



← David Worley for Idaho Message Us 🔍

 **David Worley for Idaho** Feb 21, 2022 · 🌐


The most destructive aspect of "transgender" ideology is the constant demand that we deny reality. Only the truth can set people free, whereas lies eventually become chains.



THEBLAZE.COM
Transgender swimmer continues dominating at Ivy League Championships, winning 200 free by more ...
The win comes one day after Thomas had won the ...

👍❤️ 5
👍 5 💬 📤

 **David Worley for Idaho** Feb 21, 2022 · 🌐

 **Nichols for Idaho** Feb 20, 2022 · 🌐

Good news, now we need more, and states need to



← David Worley for Idaho Message Us 🔍



David Worley for Idaho

Jul 30, 2022 · 🌐

"Gender Affirming Care" is a euphemism for castration, sterilization, and mutilation. A civilized people cannot tolerate such barbarism.



MESSANGER

David Worley for Idaho

🗨️ SEND MESSAGE

👍❤️ Jazmyn Somerville and 581 others



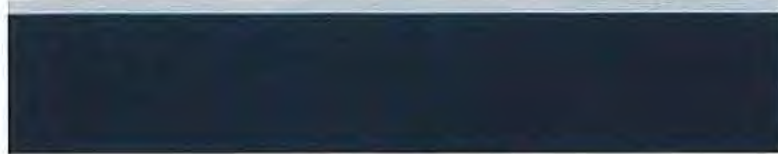
Happening in Coeur d'Alene ID! Family friendly!
Drag dance party! The satanic temple of Idaho is offering "unbaptisms" to anyone interested! Come meet the self proclaimed fire breathing satanic nun and her disgusting 🍑 nipples.



Rowan Astra
@rowanastria
This event will be at Coeur d'Alene's "Pride in the Park" event next Saturday, June 11th from 10am-3pm! We will have merchandise and performing unbaptisms for those interested! Just know, Satan loves you for you! Hail Satan! 🍑🍑🍑🍑🍑
#PrideInThePark
#CoeurD'Alene #CDA #Idaho



👁️ 1
👍 1 💬 ↪️ 1



🔒 idahotribune.org

On the North Idaho Pride Alliance website,
The Satanic Temple is listed as one of the



12:44

73%

← David Worley for Id... Message Us 🔍



David Worley for Idaho

Oct 27, 2022 · 🌐

My Democrat opponent, James Ruchti, thinks that if you don't want kid drag shows, porn in libraries, or radical sex and gender ideology in schools then you are the same as the Sharia law police in the Islamic State of Iran.

The radical Left has no intention of coexisting with those who don't support their agenda. Their hostility to Christianity and anyone who supports traditional values is increasingly clear, even in Idaho.

My opponent's comment starts at 1:05:20. Linked below:



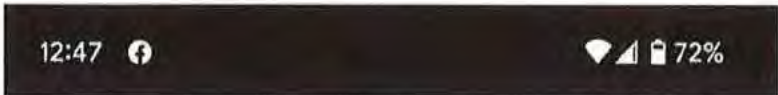
LWV LEAGUE OF WOMEN VOTERS **CANDIDATE FORUM**

YOUTUBE.COM

League of Women Voters of Pocatello legislative Candidate Forum

The League of Women Voters of Pocatello h...





← David Worley for Id... Message Us 🔍

👍 29 💬 🔄 7



David Worley for Idaho ⋮

Sep 22, 2022 · 🌐

The detransition community needs to be heard. Transgender ideology is dangerous. "Gender Affirming" treatments harm and disfigure children. They are irreversible and cause lifelong pain and remorse. These "treatments" must be stopped with the full force of law.



TWITTER.COM

Marina Medvin 🇺🇸 on Twitter

""My friends all turned against me because I...

👍 4

👍 4 💬 🔄



David Worley for Idaho ⋮

Sep 22, 2022 · 🌐

Proud to have the endorsement of the National Rifle Association. My opponent supports



After finding all this information I called and did the following:

13 July 2023:

- Called and filed complaint with 1SG [REDACTED] the 1SG for D Company. Told him I wanted to talk with MAJ Edwards, Recruiting and Retention Battalion Commander.
- MAJ Edwards called to talk with me about this situation and said that 1SG [REDACTED] had informed him of what was going on. During this phone call MAJ Edwards informed me that he had called and notified MAJ Worley that I was filling a complaint against him because MAJ Edwards felt like MAJ Worley deserved to know that information. This immediately created a hostile work environment.
- MAJ Worley told 1SG [REDACTED] that he wanted to call and talk to me, but I declined to talk to MAJ Worley until we were able to meet with the command team and have them present for the conversation. After seeing all this information, I no longer felt safe around MAJ Worley. After I declined to talk over the phone with MAJ Worley he then told 1SG [REDACTED] that MAJ Worley and the 1SG were going to come to the Idaho Falls storefront and MAJ Worley was going to confront

me in person about the complaint that I was filing against him. I again declined to meet with him.

- We had a field training exercise in Mackey, ID on Saturday and Sunday, 15-16 July 2023. During this training MAJ Worley, myself and all the rest of the cadre would be sharing a tent together all weekend.
- I informed MAJ Edwards and 1SG [WITNESS 4] that I did not feel safe around MAJ Worley and that I was very uncomfortable being around MAJ Worley after everything that I just found out. Also the fact the MAJ Edwards had informed MAJ Worley that I filed a complaint against him and that MAJ Worley was going to be the highest ranking soldier at the field event and in direct charge of me all weekend.
- I asked MAJ Edwards and 1SG [WITNESS 4] to please make it so that either MAJ Worley did not come to the field training exercise or that I be allowed to miss the exercise because of everything going on and until I had an opportunity to sit down with the command team on Wednesday 19 July 2023.

14 July 2023

- 1SG [WITNESS 4] asked MAJ Worley not to come to the field training exercise that weekend so that we could meet with the command team on 19 July 2023 and get everything settled. MAJ Worley said that he was the commander and that he would not let an E7 dictate what a MAJ would and wouldn't do in his own company.
- 1SG [WITNESS 4] called and asked MAJ Edwards to tell MAJ Worley he was not allowed to come to drill until everything had been investigated and all the issues had been addressed. MAJ Edwards informed 1SG deWit that he would not be calling MAJ Worley and that he was still going to come to drill. MAJ Edwards said that SFC [COMPLAINANT] and MAJ Worley will just have to figure it out.
- After hearing this around 1630 I became very upset and sick to my stomach to the point that I could not eat. I was so worried about what was going to happen during the field training exercise and what kind of repercussions and backlash I was about to face all weekend because MAJ Edwards had informed MAJ Worley about the complaint and then refused to excuse either one of us from drill.
- I tried to call MAJ Edwards at 1937 and 1959 because he told me that I could call him day or night if I needed any help with this situation. He did not answer either phone call or call me back. I was calling to beg him to please reconsider and excuse either one of us from drill so that I did not have to be put into this potentially very dangerous situation.
- I called the SARC 24 hour hotline number at 1944 in-between trying to reach my BN Commander. I was informed that there was nothing they could do to help since I was not sexually assaulted and this was an EO case. I reached out to 3 listed phone numbers for the National Guard, However, all the EO and IG reps were gone for the weekend and would not be back until Monday at the earliest.
- Not having any guidance, help, instruction and having no one helping me and I felt completely alone, terrified for the weekend that I was being forced into going to with the person that I had just filed a complaint against.
- I then called the Chaplin at 2007 and thankfully Chaplin Morris answered. I explained the situation to him and he told me and I was going to be ok and that he was going to make sure that the situation would be addressed.

15 July 2023

- I arrived at drill at the Pocatello armory. I went to 1SG [WITNESS 4] and told him that I wanted to talk to the Chaplin and he agreed with me so I called Chaplin Morris back.

- Chaplin Morris talked to 1SG **WITNESS 4** about the situation and then called MAJ Edwards to advise him to tell MAJ Worley not to go to drill that weekend.
- MAJ Edwards texted MAJ Worley and had Chaplin Morris call MAJ Worley to tell him to the leave the armory and leave drill.

I must emphasize that this has created an uncomfortable, unsafe, and a hostile work environment, making it increasingly challenging for me to perform my duties effectively. With the active ties to the extremist/hate group, it makes me feel threatened and unsafe. All the posts on his social media and how public he is about his hate towards individuals like me and my family. Not just for me but for my husband and my newborn son. With views and beliefs like this, what is stopping him from sending this hate group after me and my family? What would stop MAJ Worley from coming after my whole family just because he feels like it is immoral? According to MAJ Worley and in his own words, "When (Worley) says, 'I will not uphold any law that I feel to be immoral,' nothing would stop him. That is why I feel threatened and unsafe, and this has created a very hostile work environment.

As a member of the Idaho Army National Guard, I have the right to a work environment that is free from discrimination and harassment. I believe that I am entitled to the same rights, benefits, and opportunities as any other individual in the Idaho Army National Guard. I request a thorough investigation into the incidents mentioned above and appropriate actions taken to address this discrimination. I'm asking for the immediate removal of MAJ Worley as my commander in D Company, Recruiting and Retention because no one with views and beliefs like this should ever have any command authority over someone who they truly despise and believe to be immoral. I'm also asking that MAJ Worley be removed from the Idaho Army National Guard for unbecoming actions of an Officer in the United States Armed Forces. No one with such hate for any other members of society and such extreme views, values, beliefs, and active ties to an extremist/hate group should ever have any command authority over anyone, in my opinion.

I urge you to take this complaint seriously and address the matter promptly. I am open to discussing this issue further and providing any additional information necessary for the investigation.

Thank you for your attention to this serious issue.

Sincerely,

SFC **COMPLAINANT**

26 July – Received VOCO approval to Investigating Officer Appointment by BG Schwartz. Initiated investigation by contacting SEEM for initial in-brief. Began reading complaint, associated regulations, and provided references. Began assembling 15-6 documents and building initial investigation plan as well as preliminary interview questions for Agency Witnesses.

27 July – Met with JAG representative MAJ Peterson to discuss way forward. Contacted Mr. Gomez, SEEM, via email to request another meeting to discuss interview techniques and evidence collection.

31 Jul - Created and submitted reprisal plan to Mr. Gomez for BG Schwartz signature.

1 Aug - Coordinated meetings with SFC [REDACTED] and 1SG De Wit for 2 Aug – 3 Aug in Idaho Falls, ID.

2 Aug – travel to Idaho falls to interview SFC [REDACTED] and 1SG De Wit at the Idaho Falls recruiting store front.

3 Aug – travel to Pocatello to interview SFC [REDACTED] at the Pocatello Army National Guard armory.

4 Aug – Met with JAG counsel to discuss results of Eastern Idaho interviews and plan next steps.

8 Aug – Met with JAG counsel to discuss Extremist organizations regulations and implications for the investigation.

14 Aug – Asked G1 to provide AGR orders for MAJ Worley while in the WY National Guard

15 Aug – Met with JAG to discuss political activities regulations and policies for AGRs

18 Aug – Discussed with AGR Branch at HRO the hiring process for AGR / OTOT positions, asked for MAJ Worley AGR application packet and accessions packet.

29 Aug – Interview with SFC [REDACTED]

29 Aug – Interview with SFC [REDACTED]

30 Aug – Interview with LTC Edwards

31 Aug - Met with JAG counsel to discuss results of [REDACTED] [REDACTED] / Edwards interviews.

5 Sep – “Deep Dive” with JAG on all information collected so far, including reviewing recordings of interviews with key personnel.

6 Sep – Work on Results of Investigations findings memo. Re-listened to all interviews, reviewed all written notes and sworn statements to compile the findings portion of the ROI memo.

7 Sep – Complete Results of Investigations findings memo, submit to JAG counsel for review.

11 Sep – Discussions with JAG rep on way forward for MAJ Worley interview. Continue work on Results of Investigation packet.

12 Sep – Received instructions from JAG rep to pause investigation. Continued work on compiling documents and writing Result of Investigation packet and Findings Memo

19 Sep – Meet with JAG Representative MAJ Peterson to discuss Alternate Resolution possibility and plan for continuing investigation steps

22 Sep – Met with MAJ Peterson, RE: “Tactical Pause” of investigation pending results of agreement with MAJ Worley

27 Sep – Appointment memo amended to re-define scope of investigation in light of MAJ Worley agreement to terminate investigation

2 Oct – Met with MAJ Peterson to discuss details of continuing investigation within the newly defined scope of the amended appointment memo

3 Oct – Work on Findings Memo and ROI Packet

13 Oct – Result of Investigation packet completed and submitted to JAG office

VI. Index of Exhibits

SFC **COMPLAINANT** EO Complaint 15-6 Investigation

LTC Allan Whitehead Investigating Officer

TAB 1 – Emails

1.1 – BG Schwartz VOCO Appointment Memo Approval

1.2 – Email between Schwartz and Worley

1.3 – MAJ Worley Email to Rescind Resignation

1.4 – RE MEO Investigation (from Mr. Gomez)

1.5 – Supporting Authorities for Investigation (from Peterson)

TAB 2 – New Articles

2.1 – 2021 Candidate filing information Worley

2.2 – Army veteran David Worley officially kicks off campaign for Pocatello mayor

2.3 – Drag Queen protest Idaho Statesman

2.4 – Idaho State Journal – Pocatello officials question Worley_sovereignty

2.5 – MassResistance About Us

2.6 – massresistance.org Idaho Library Board flees meeting to avoid outraged parents

2.7 – Note to Clearance Holders_Liking an Extremist Post Can Get You in Trouble

2.8 – Official Candidate List for Pocatello Mayor_Pocatello-Chubbuck Observer

2.9 – Roanoke Times – Floyd militia hears call to prepare for sacrifice

2.10 – Southern Poverty Law Hate Map

2.11 – Pocatello mayoral candidate David Worley Q&A_Idahostatejournal

2.12 – David Worley answers questions from Idaho State Journal_idahostatejournal

TAB 3 – Regulations

3.1 – 2020 Political Activity Update v1

3.2 – CPAC Hatch Act

- 3.3 – DoDI 1325.06p Handling Protest Extremist Activities
- 3.4 – DoDI 1344.10 Political Activities by Members of the Armed Forces
- 3.5 – General Political Activity Guidance
- 3.6 – Insider Threat and Extremist Activity DOD Training
- 3.7 – SEAD-4 Adjudicative Guidelines U
- 3.8 – AR 135-18
- 3.9 – NGR 600-5
- 3.10 – CNGBI 9601.01 Discrimination Complaint Program
- 3.11 – CNGBM 9601.01 Discrimination Complaint Process
- 3.12 – Title 32 Complaint Process Quick Reference Guide
- 3.13 – AR 600-20
- 3.14 – IDNG-27 IMD EEO & EO Policy

TAB 4 – Recruiting and Retention Battalion Documents

- 4.1 – MAJ Worley Rescinded Resignation Photo
- 4.2 – Recruiting BN Flow Chart
- 4.3 – RE: MAJ Worley Rescind Resignation Email

TAB 5 – Worley Docs

- 5.1 – CPT Worley AGR Order (VA) Amendment, 15SEP2019-31DEC2020
- 5.2 – CPT Worley AGR Order (VA), 15SEP2019-15JUL2020
- 5.3 – DA5248 R Worley
- 5.4 – MAJ Worley AGR Order (WY), 01NOV2020-31OCT2023
- 5.5 – MAJ Worley AGR REFRAD Order (WY), effective 20OCT2021
- 5.6 – MAJ Worley Flag
- 5.7 – MAJ Worley Perm Assign Modification (WY), 01NOV2020
- 5.8 – Worley DA 4856 FLAG Counseling
- 5.9 – Worley ID AGR Accession Packet
- 5.10 – Worley ID AGR Application 23-07

TAB 6 – Interview Transcripts

6.1 – **WITNESS A** Transcript 2023-08-02

6.2 – **WITNESS 3** Transcript 2023-08-03



IDAHO ARMY NATIONAL GUARD
4040 West Guard Street, Bldg. 600
Boise, Idaho 83705-5004

AAG IDARNG

3 September 2024

MEMORANDUM FOR Record

SUBJECT: Approval Authority Substituted Findings and Action Plan

1. **Executive Summary**: In accordance with AR 15-6, para. 2-8(b)(3), I hereby make the following modified findings and recommendations to the report of inquiry prepared by the Investigating Officer in this matter. I find that MAJ David Worley demonstrated counterproductive leadership in his time as the commander of D. Co., IDARNG Recruiting and Retention Battalion. This behavior led to a negative leadership climate and reduced morale and the general welfare within his company. MAJ Worley's behavior created conflict and showed little respect for others. MAJ Worley's behavior eroded trust between himself and his subordinates and between himself and higher-level commanders. Although MAJ Worley treated the Complainant differently than others in D. Co., I do not find that MAJ Worley's treatment of the Complainant rose to the level of discrimination, harassment, or hostile work environment. I do not find MAJ Worley's pre-employment activities to be illegal and I find that they are irrelevant to this investigation. I am specifically not considering MAJ Worley's pre-employment political campaigning activities, his documented religious beliefs, his activities in Virginia, or his activities in reference to the Pocatello library as the basis of any of my findings. I direct that MAJ Worley be relieved from command given my loss of trust and confidence in his ability to command, that his One Time Occasional Tour be curtailed, and that he receive a General Officer Memorandum of Reprimand, with a filing decision to be determined at a later date at my discretion.

2. **Background**:

a. On 5 July 2023, MAJ David Worley (Worley) was hired as the Idaho Army National Guard (IDARNG) Recruiting and Retention (RRB) commander for D. Company in Pocatello, Idaho. On 17 July 2023, the complainant, [REDACTED] ([REDACTED]), filed an Equal Opportunity (EO) complaint using an NGB Form 333 alleging a hostile work environment due to discriminatory treatment based on his sexual orientation and that Worley had "alleged involvement with extremist/hate groups" prior to his employment with the IDARNG. [REDACTED]'s requested relief was that Worley be relieved from command and removed from the IDARNG.

b. On 20 July 2023, the IDNG SEEM, Mr. Al Gomez, referred the EO complaint to the IDARNG Assistant Adjutant General, BG Farin Schwartz, with a recommendation to conduct an investigation. On 21 July 2023, LTC Alan Whitehead (Whitehead or the IO) was appointed as investigating officer to conduct an AR 15-6 investigation.

SUBJECT: Approval Authority Substituted Findings and Action Plan

c. Between 20 July 2023 and 22 September 2023, the parties engaged in alternative dispute resolution and ultimately came to terms to resolve this matter. Worley, through his attorney of record, initiated the alternative dispute resolution process. The parties signed a settlement agreement on 22 September 2023. Pursuant to the settlement agreement: 1) ██████ would withdraw his EO complaint against Worley; 2) BG Schwartz would remove Worley as the subject of an investigation and rescope the investigation to address organizational issues within RRB; 3) Worley would, within 120 days, resign from the IDNG or transfer to the National Guard of another state, the US Army Reserve, or the Active Army and the IDNG would make every good-faith effort to assist in his transfer; 4) MAJ Worley would conduct himself with the highest standards during the 120-day period; and 5) the parties would not disparage each other, specifically that Worley would not “publish, post, or otherwise release any material in written or electronic format, make speeches, gain interviews, or make public statements that mention the IDARNG.”

d. On 26 September 2023 (four days after the parties signed the settlement agreement), Worley was unflagged. On 25 September 2023, the IDARNG received an email from Worley’s attorney instructing the agency to lift the flag by close of business on 26 September 2023. The IDARNG met the deadline imposed by Worley’s attorney. On 29 September 2023, ██████ ratified the settlement agreement and withdrew his EO complaint against Worley, with the understanding that if Worley breached the settlement agreement, the investigation would be reinitiated. On 29 September 2023, BG Schwartz reappointed the IO on a rescope investigation without Worley being included. On 6 October 2023, the first investigation was completed.

e. On 22 January 2024, the agency received a demand letter from Worley’s attorney signaling Worley’s intent to breach the settlement agreement. On 24 September 2024, the settlement agreement expired by its own terms after 120 days. Worley breached the agreement by not resigning from the IDARNG or transferring to another state NG or component. On 24 September 2024, ██████ refiled his EO complaint.

f. On 1 February 2024, the IO was reappointed to investigate ██████’s EO complaint. On 1 February 2024, I issued my “Commander’s Reprisal Plan and Whistleblower Protection” memo. I make it clear that “Soldiers have a right to present their complaint to their leaders or supervisors without fear of intimidation and harassment or reprisal.” “Reprisal is any act of ... interference ... or coercion taken against an individual ... for having filed a complaint of discrimination.”

g. On 3 May 2024, the IO completed his findings and recommendations. Worley, through counsel, was afforded the opportunity to participate in the renewed investigation, and he submitted a written response to the IO, which was included in the case file. After receiving a legal review, I referred the investigation to Worley in accordance with AR 15-6, para. 5-4 to prepare rebuttal materials for consideration prior to the investigation being finalized. Along with my referral memo, I provided to Worley, through his counsel, a complete redacted copy of the IO’s initial findings and recommendations and all evidence gathered by the IO. My Commander’s Reprisal Plan and Whistleblower Protection memo

SUBJECT: Approval Authority Substituted Findings and Action Plan

was included as Exhibits 9 and 9A within the case file. I granted Worley an extension based on technology issues. Worley executed his due process rights and submitted his rebuttal matters on 12 August 2024.

h. On 28 August 2024, the media outlet World Net Daily published an article entitled, "Holy War Erupts as National Guard Officer Booted from Command for Voicing Christian Beliefs."¹ The article specifically references ██████'s EO complaint and contains direct quotes from ██████'s NGB Form 333. This story was also carried by the American Family Association, the Christian Post, the Daily Fly, and the Liberty Council. In addition, on 15 August 2024, the Liberty Council submitted a letter to Gov. Brad Little asking for his intervention into this ongoing investigation.

i. This matter is now ripe for final review and action by the appointing authority in accordance with AR 15-6, para. 2-8.

3. Legal Standards and Definitions.

a. Actions by the Approval Authority. Upon receipt of a completed investigation, the approval authority will conduct a final review of the Investigating Officer's findings and recommendations and the legal review. AR 15-6, para. 2-8(b)(1). Unless otherwise prohibited by another regulation or directive, the approval authority is neither bound nor limited by the findings or recommendations of an Investigating Officer. *Id.* at para. 2-8(b)(3)(a). The approval authority may approve, disapprove, modify, or add to the findings and recommendations, consistent with the evidence included in the report of proceedings. *Id.* The approval authority may take action different than that recommended with regard to a respondent or other individual, unless the specific regulation or directive under which the investigation was appointed provides otherwise. *Id.* The approval authority may consider any relevant information in making a decision to take adverse action against an individual, even information the IO did not consider. The approval authority will attach that information to the report of investigation, if available. *Id.* at para. 2-8(b)(3)(b).

b. Evidentiary Standard. Findings must be supported by a preponderance of the evidence, that is, evidence which, after considering all of the evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. *Id.* at paras. 3-10(b) and C-3(h).

c. Discrimination is Prohibited. No NG servicemember or civilian employee may unlawfully discriminate against, harass, intimidate, or threaten another person on the basis of race, color, national origin, religion, sex-gender, or sexual orientation. CNGBI 9601.01,

¹ [Holy war erupts as National Guard officer booted from command for voicing Christian beliefs * WorldNetDaily * by Bob Unruh \(wnd.com\)](#)
[AFA.net - Christian Officer Removed from Command](#)
[Christian infantry officer stripped of position: complaint | U.S. \(christianpost.com\)](#)
[Idaho Army National Guard Intolerant of Religious Speech – Dailyfly](#)
[www.lc.org/newsroom/details/240826-militarys-no-christian-commanders-policy-will-not-stand](#)

SUBJECT: Approval Authority Substituted Findings and Action Plan

para. 4(a). *See also* AR 600-20, para. 4-12, (it is the policy of the United States Army to provide equal opportunity and fair treatment for all Soldiers without regard to race, color, sex (including gender identity), national origin, religion, or sexual orientation).

d. Harassment. Harassment is any unwelcome conduct that is based on race, color, religion, sex or sexual orientation, national origin, age, disability, or genetic information. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment or the conduct is severe or pervasive enough to create a hostile work environment that a reasonable person would consider intimidating, hostile, or abusive. *Id.* at Glossary, p. 2.

e. Hostile Work Environment. Hostile work environment consists of discriminatory conduct or behavior in the workplace that is unwelcome and offensive to an employee based on race, color, religion, sex or sexual orientation, national origin, age, disability, or genetic information. The conduct must be pervasive and constitute a pattern rather than consist of one or two isolated incidents. The pattern of behavior has to be of a degree severe enough to cause disruption beyond a reasonable degree in the work of the targeted employee. *Id.* at Glossary pp. 1-2.

f. Responsibilities of Command. Commanders are responsible for establishing a positive leadership climate within the unit and for developing disciplined and cohesive units. AR 600-20, para. 1-6(c). Commanders will treat their subordinates with dignity and respect at all times. *Id.* Commanders must demonstrate exemplary conduct and are required to show a good example of virtue, honor, patriotism, and subordination; and to take all necessary and proper measures to promote and safeguard the morale, the physical well-being, and the general welfare of the Soldiers within their command or charge. *Id.* at para. 1-6(c)(4)(d). *See also* 10 USC 7233.

g. Counterproductive Leadership. Counterproductive leadership is demonstration of leader behaviors that violate one or more of the Army's core leader competencies or Army Values, preventing a climate conducive to mission accomplishment. ADP 6-22, para. 8-46. Counterproductive leadership can include behavior that creates conflict, is ridiculing, domineering, or shows little or no respect to others. *Id.* at para. 8-49.

h. Relief of Command. When a higher ranking commander loses confidence in a subordinate commander's ability to command due to misconduct, poor judgment, inability to complete assigned duties, or for other similar reasons, the higher ranking commander has the authority to relieve the subordinate commander. AR 600-20, para. 2-18. A commander may be temporarily suspended from assigned duties pending completion of an AR 15-6 investigation. *Id.*

4. Findings. Having considered the Report of Inquiry prepared by the IO, the rebuttal materials submitted by MAJ Worley, all relevant evidence in the case file, additional evidence that I have gathered, and my personal review, I hereby make the following substituted findings.

SUBJECT: Approval Authority Substituted Findings and Action Plan

a. I find that Worley's temporary suspension from assigned duties as the commander of D. Co., RRB was appropriate given the circumstances. This is a routine action while an AR 15-6 investigation is pending against a commander. BG Schwartz made an assessment of the situation and he determined that was the most appropriate course of action in this matter to preserve the welfare of the unit, protect any evidence that might exist, and allow D. Co. to continue its recruiting mission. When I took command, I ratified BG Schwartz's temporary suspension of Worley.

b. I find that Worley demonstrated counterproductive leadership toward [REDACTED]. Specifically, Worley socially ostracized [REDACTED], he sat next to [REDACTED] in a meeting and made no attempt to communicate with him, and he engaged with [REDACTED]'s subordinates without engaging [REDACTED] as team leader. Exhibit 7A, Tab 6.1. Worley knew that [REDACTED] was gay and had been on parental leave prior to 6 July 2023. Worley made no effort to inquire about [REDACTED]'s child, the welfare of his partner, and his readjustment to work following parental leave. Worley sat right next to [REDACTED] during a meeting and made no effort to congratulate him following the arrival of his child. Worley made no effort to understand [REDACTED]'s situation on a human level. Worley's behavior created a perception with [REDACTED] that he was being treated differently than the other E7s in D. Co. Worley's treatment of [REDACTED] did not promote or safeguard [REDACTED]'s morale and general welfare. Worley's treatment also created conflict with [REDACTED] and demonstrated little respect toward him.

c. I do not find that Worley's treatment of [REDACTED] constitutes unlawful discrimination based on [REDACTED]'s sexual orientation. While there is evidence that Worley knew [REDACTED] was gay prior to Worley's first interaction with him, there is no direct evidence (other than Worley's pre-employment activities, which I am not considering) that Worley treated [REDACTED] differently *because* he is gay. This evidence does not support a finding of unlawful discrimination based on the standard set forth above.

d. I do not find that Worley's treatment of [REDACTED] created a discriminatory "hostile work environment" as set forth above. While Worley's conduct was unwelcome and offensive to [REDACTED], there is not sufficient evidence that Worley's conduct was *because* of [REDACTED]'s sexual orientation. In addition, assuming that it was *because* of [REDACTED]'s sexual orientation the conduct was not sufficiently severe or pervasive enough to constitute a hostile work environment.

e. I do not find that Worley's treatment of [REDACTED] constitutes unlawful harassment *because* of [REDACTED]'s sexual orientation. There is no evidence that Worley's treatment of [REDACTED] became a condition of employment, or that Worley's treatment was either severe or pervasive enough to meet the threshold of the technical legal definition of discriminatory harassment. A reasonable person could not conclude that Worley's treatment of [REDACTED] constituted harassment *because* of his sexual orientation. The evidence does not meet the legal definition of discriminatory harassment set forth above.

f. I find that Worley demonstrated counterproductive leadership toward other members of D. Co., RRB. Worley's behavior created conflict in the unit, created a

SUBJECT: Approval Authority Substituted Findings and Action Plan

negative leadership climate, and demonstrated little respect toward others. I find that this behavior upset good order and discipline in D. Co. and jeopardized the recruiting mission in eastern Idaho.

(1) Worley made it a point to ask his 1SG whether there are any transgender Soldiers in the unit. 1SG told Worley that [REDACTED] was gay on 5 July. Worley knew that fact prior to any interactions with [REDACTED]. Exhibit 7A, Tab 6.1.

(2) Worley made comments to a group of Soldiers that females in the Army are the reason why the Army has adopted lower physical fitness and weight standards. These comments made a female Soldier feel uncomfortable and singled out. Exhibit 7A, Tab. 6.1, p. 17; Exhibit 7A, Tab. 6.2.

(3) Worley's behavior toward a female member made that member feel like she was being treated differently because she was female. Exhibit 7A, Tab 6.2, p.4.

(4) Worley was obsessed with talking politics in the military workplace, particularly his failed candidacy for mayor of Pocatello. In addition, he told unit members that he blames the parent of a transgender student who works at the local school district for detailing his run for office. Exhibit 7A, Tab 6.1, pp. 13-15; Exhibit 7A, Tab 6.2, pp. 3-4. Unit members found his discussions about politics in the workplace to be "unusual," and that there "was an agenda" to his discussions in the workplace. Exhibit 7A, Tab 6.2, pp. 3-4.

(5) Worley was not a team player within D Co. Exhibit 7A, Tab 6.2, p. 5. He wanted to "push the envelope on a lot of things," which made unit members uncomfortable since much of their success in the community was the result of long-standing relationships with community partners, which Worley wanted to disrupt. *Id.*

(6) Within two weeks from the time Worley took command, "he immediately drove a toxic wedge in D Co. RRB." Exhibit 7B.

(7) When approached by the unit 1SG about the EO complaint, Worley said that the Idaho RRB is "very sensitive" and that complaints like this in his previous units would have been immediately squashed. Exhibit 7A, Tab 6.1.

(8) Worley downplayed the EO complaint and told his 1SG that "**well, it's not like I raped [REDACTED] ... well, not yet.**" Exhibit 7A, Tab 6.1, p.7. (Emphasis added). I find this comment to be completely inappropriate and a gross deviation from the behavior I would expect of any commander within the IDARNG. I find that Worley demonstrated an extreme lapse of judgment by making this statement.

(9) Worley told his 1SG that [REDACTED]'s EO complaint was the 1SG's "fault." Exhibit 7A, Tab 6.1, pp. 13-15. I find that Worley's passing of the buck to his 1SG to summarily dispose of [REDACTED]'s EO complaint and Worley's insinuation that 1SG had created a weak culture within D. Co. to a significant lapse of judgment.

SUBJECT: Approval Authority Substituted Findings and Action Plan

(10) Worley was aware that his behavior was having an impact on the unit. Exhibit 7A, Tab 6.1, pp. 14-15. During a conversation with 1SG, Worley admitted that his open position created conflict in the unit. 1SG reminded Worley that even though many Soldiers in the company might share Worley's fundamental beliefs, they don't "talk about religion or politics [in the workplace] because we're not supposed to" and that "[Worley] was the first" to openly talk religion or politics in the workplace. *Id.* at p. 14. In addition, 1SG counseled Worley that recruiters are the face of "the guard as a whole" and that if any recruiter makes controversial open statements those comments are reflective of the "guard as ... entirety." *Id.* 1SG reminded Worley that a recruiter's behavior has the possibility of alienating potential recruits, so recruiters have to be completely above board and neutral. After receiving this mentorship from his 1SG, Worley "didn't really seem to care." *Id.* at p. 15.

g. I find that Worley demonstrated counterproductive leadership in dealing with his higher-level commander. The law requires that commanders demonstrate a good example of subordination. See 10 USC 7233. Worley did not demonstrate that in this case.

(1) When told about ██████'s complaint, Worley did not attempt to find a solution that would benefit the unit. Instead, he responded aggressively that he has a "God given right and will not tolerate this group [the LGBTQ] community to push their views onto his children." Exhibit 7B.

(2) When discussing the EO complaint with his commander, Worley states that "[LGBTQ ideologies] will only get worse over time and [that] we need to fight this." Exhibit 7B.

h. I find that Worley's pre-employment political and religious activities are irrelevant to the determination of whether Worley unlawfully discriminated against ██████ and I do not consider them in any way in coming to my findings regarding his treatment of ██████ or the other members of D. Co., IDARNG RRB. Worley was not a member of the IDARNG between 20 October 2021 and approximately 5 July 2023. While his activities during that time period could be considered problematic under various DoD, US Army, National Guard, and Idaho laws and regulations, his activities are irrelevant to my analysis and my conclusion that Worley demonstrated counterproductive leadership. My conclusions are drawn from Worley's actions within the time period from 5 July 2023 through 20 July 2023.

i. I concur with the IO's finding that it is unsubstantiated that Worley failed to remove online political content in violation of the order to do so he received from BG Schwartz.

j. I find that Worley breached the settlement agreement that was entered into on 22 September 2023. Worley reviewed the proposed settlement agreement and signed it. His independent, civilian legal counsel reviewed the settlement agreement and signed it. Going back on his word further erodes my trust in his ability to command.

(1) A mutually-agreed upon material term was that Worley would resign from the IDARNG or transfer to a different state or component within 120 days of the signing of the

SUBJECT: Approval Authority Substituted Findings and Action Plan

agreement. Worley not only failed to do that, he provided advanced notice of his intent to breach the agreement.

(2) Another essential term of the settlement agreement was the non-disparagement clause. Worley specifically agreed that he would not “publish, post, or otherwise release any material in written or electronic format, make speeches, gain interviews, or make public statements that mention the IDARNG.” The media articles from 28 August 2024 specifically mention the IDARNG and direct quotes from ██████’s complaint. The only individuals who had the complaint were agency representatives (the SEEM, the IO, legal officers, and myself), Worley, and his civilian attorney. I find it more likely than not that Worley or his attorney provided a copy of the incomplete and unapproved investigation to media outlets in direct violation of the parties’ signed settlement agreement.

k. I find that Worley or his representatives violate my reprisal plan. In the media reports there are direct quotes from ██████’s NGB Form 333. The actions of providing ██████’s complaint into the public information space constitutes interference and/or coercion against ██████. By going to the media, Worley has circumvented the investigative process in AR 15-6 and is attempting to influence the outcome of the investigation.

5. **Commander’s Action Plan**. Having substituted my findings for those of the Investigating Officer, I direct the following actions:

a. Pursuant to my authority under AR 600-20, I relieve MAJ Worley as commander of D Co., IDARNG RRB effective as of the date of this memorandum. I have lost confidence in his ability to command due to his misconduct and poor judgment.

b. I direct that MAJ Worley’s One Time Occasional Tour orders be curtailed.

c. I direct that MAJ Worley receive a General Officer Memorandum of Reprimand. I will withhold a decision on filing pending resolution of the GOMOR process pursuant to Army regulations.

d. I reject the IO’s recommendations that MAJ Worley be counseled regarding extremist activities and political activities. I direct that the IMD OGC provide MAJ Worley’s independent legal counsel with the applicable policies and regulations and suggest to MAJ Worley’s attorney that he advise his client accordingly.

e. I adopt the recommendation to review the organizations various crisis helplines to determine whether they are properly supported and staffed.

f. I adopt the recommendation for RRB to receive updated training on handling EO complaints. I direct the IMD OGC and IDNG SEEM to facilitate that training.

SUBJECT: Approval Authority Substituted Findings and Action Plan

g. I adopt but modify the IO's recommendation regarding background screenings of potential RRB commanders. I direct that the IMD OGC and IMD HRO research the legality and feasibility of such background checks and provide recommendations to the TAG and ATAGs on possible courses of action.

h. I adopt the IO's recommendation to update IMD Policy 15, Political Activities of Idaho National Guard Employees and Military Members. However, as that policy is within the purview of TAG, I will forward that recommendation to Maj Gen Donnellan for his consideration.

6. **Point of Contact.** POC for this memorandum is MAJ Nate Peterson, at 208-272-5199 or nathaniel.b.peterson.mil@army.mil.

Encl.
See Appendix A Below

PACKWOOD.JAMES.COLE.1152890539
E.1152890539

Digitally signed by
PACKWOOD.JAMES.COLE.1152890539
Date: 2024.09.03 15:57:36 -06'00'

J. COLE PACKWOOD
Brigadier General, IDARNG
Assistant Adjutant General/ Commander

SUBJECT: Approval Authority Substituted Findings and Action Plan

Appendix A – Additional Evidence Considered by Appointing Authority

1. Settlement Agreement dated 22 September 2023
2. Ratification of Settlement of EO Complaint, dated 29 September 2023
3. NGB Form 333 Withdrawing Complaint
4. Worley Memorandum for AAG, dated 22 January 2024
5. 25 January 2024 Agency Reply to Worley's Attorney
6. Reprisal Plan and Whistleblower Protection Memorandum, dated 1 February 2024
7. Email Correspondence between the Agency and Worley's Attorney
8. Media Articles and Content
 - a. World Net Daily article
 - b. American Family Association article
 - c. Christian Post article
 - d. Daily Fly article
 - e. Liberty Council website post
 - f. Liberty Council letter to Governor Little

Daniel Schmid

To: Richard Mast; R. Davis Younts; Caleb Byrd; caleb@clsvirginia.com; David Thomas Worley (Home)
Subject: RE: Results of Investigation

From: Packwood, James C (Cole) BG USARMY NG IDARNG (USA) <james.c.packwood.mil@army.mil>
Date: Friday, December 13, 2024 at 6:18 PM
To: Worley, David T MAJ USARMY NG WYARNG (USA) <david.t.worley2.mil@army.mil>, R. Davis Younts <davis@yountslaw.com>, Caleb Byrd <Caleb@yountslaw.com>, rmast@lc.org <rmast@lc.org>, caleb@clsvirginia.com <caleb@clsvirginia.com>, steve@smithmcowenlaw.com <steve@smithmcowenlaw.com>
Cc: Stokes, Stephen A LTC USARMY NG IDARNG (USA) <stephen.a.stokes.mil@army.mil>
Subject: Results of Investigation

MAJ Worley,

I am writing to inform you of the results of the investigation against you. You will receive formal documentation next week through the legal team and your chain of command. My final findings are as follows:

- Did MAJ Worley discriminate against Complainant because of Complainant’s sexual orientation? **UNSUBSTANTIATED.**
- Did MAJ Worley discriminate against Complainant by creating a hostile work environment by engaging in severe and/or pervasive behavior against Complainant because of his sexual orientation? **UNSUBSTANTIATED.**
- Did MAJ Worley create a hostile work environment against Complainant because of MAJ Worley’s alleged “involvement with ... extremist/hate group[s].” **UNSUBSTANTIATED.**
- Did MAJ Worley engage in counterproductive leadership as that phrase is defined in ADP 6-22. **SUBSTANTIATED.**
- Did MAJ Worley fail to remove online political content in violation of the order to do so issued by BG Schwartz. **UNSUBSTANTIATED.**

Because of your counterproductive leadership, I am relieving you as commander of D Co. IDARNG RRB effective as of 1 November 2024. I have lost confidence in your ability to command due to your poor judgment as reflected in the specific instances of behavior revealed in the investigation. I am directing that your One Time Occasional Tour orders be curtailed. I am directing that you receive a General Officer Memorandum of Reprimand, but I am withholding a decision on filing pending resolution of the GOMOR process pursuant to AR 600-37.

Please direct any questions to me through either your chain of command or the legal team, POC, LTC Steve Stokes at stephen.a.stokes.mil@army.mil.

Respectfully,

J. Cole Packwood
Brigadier General
Commander, Idaho Army National Guard
Assistant Adjutant General - Army

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



**DEPARTMENT OF THE ARMY
IDAHO ARMY NATIONAL GUARD
JOINT FORCE HEADQUARTERS**
4040 West Guard Street, Bldg. 600
Boise, Idaho 83705-5004

NGID-AAG-AR

18 December 2024

MEMORANDUM FOR MAJ David Worley, HHC, Idaho Training Center

SUBJECT: General Officer's Memorandum of Reprimand

1. You are hereby reprimanded. An Army Regulation 15-6 investigation has substantiated that you engaged in counterproductive leadership as that phrase is defined in ADP 6-22. Specifically, you downplayed an Equal Opportunity complaint one of your Soldiers made, and told your 1SG that, "well, it's not like I raped [the complainant] ... well, not yet." You also made comments demonstrating your disdain for and unwillingness to follow the federally required Equal Opportunity process, i.e., that the Idaho RRB is "very sensitive" and that complaints like this in your previous units would have been immediately squashed, and that the EO complaint was the 1SG's fault for creating a weak culture within the unit. Finally, you made comments expressing your opinion that females in the Army are the reason why the Army adopted lower physical and weight standards, which made one of your female Soldiers feel uncomfortable and singled out. Your actions caused disorder in the workplace, were a major distraction to the IDARNG mission, and more importantly, violated core Army values of respect, honor, and integrity. Your counterproductive leadership behaviors caused me to lose faith and confidence in your ability to command.

2. As an officer, you are to lead by example, take care of your fellow Soldiers, and help ensure the good order and discipline of all Soldiers. Not only have you failed to maintain the Army's core values and standards, your misconduct also compromised your ability to lead.

3. Your actions are inexcusable and are a departure from the standards of behavior I expect of all Soldiers within the Idaho Army National Guard to maintain. I now have no choice but to question your judgment, professionalism, and potential for future service as an Officer. You have set a poor example for your peers and subordinates, and you have adversely affected the good order and discipline of your workplace. Your actions were detrimental to the organization's discipline, authority, morale, and ability to accomplish its mission objectives.

4. This reprimand is imposed as an administrative measure IAW AR 600-37, and not as punishment under the Idaho Code of Military Justice. It is however, intended to promptly and directly signal my disapproval of your conduct. I have the ability to file this reprimand locally; however, I also have the ability to file it in your Official Military Personnel File (OMPF). I have not yet made a filing decision. If you should decide to submit matters in

SUBJECT: General Officer's Memorandum of Reprimand

rebuttal, extenuation, or mitigation, I will carefully consider them in making a final determination on imposition of this reprimand.

5. You will acknowledge receipt of this memorandum by signing and dating the below memorandum. Submit the acknowledgment and any rebuttal, extenuating, or mitigating matters to me within **10 days** of you signing the Acknowledgment below.

J. Cole Packwood
Brigadier General, IDARNG
Assistant Adjutant General/Commander

Acknowledgment of Receipt of Memorandum of Reprimand

I, MAJ David Worley, acknowledge receipt of this Memorandum of Reprimand. I further understand that IAW AR 600-37, I may submit matters in rebuttal, extenuation or mitigation within **10 days** from receipt of this memorandum before a filing determination is made. I therefore make the following elections:

_____ I hereby waive my right to submit additional matters.

_____ I hereby exercise my right to submit additional matters and will submit them no later than **10 days** of receipt of this Memorandum of Reprimand.

MAJ David Worley

Date