



December 14, 2021

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

Dear Secretary Austin,

We write to request you withdraw part of your and the Service Secretaries' directives to National Guard members in their Title 32 duty status concerning the COVID-19 vaccine. We acknowledge your right to establish readiness standards for the National Guard for activation into a Title 10 status. However, directives dictating whether training in a Title 32 status can occur, setting punishment requirements for refusing to be COVID-19 vaccinated, and requiring separation from each state National Guard if unvaccinated are beyond your constitutional and statutory authority.

The U. S. Supreme Court has for decades affirmed in cases, such as in *Perpich v. Department of Defense*, 496 U.S. 334 (1990), that the National Guard is under the command and control of the Governor of each state unless those members are called to active service under Title 10. The Militia Clauses found in Article 1, Section 8, of the U.S. Constitution clearly state, "...reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." Further, 10 U.S. Code § 12401 states, "Members of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law." Finally, Congress has required National Guard members attend unit training assemblies (drills) under 32 U.S.C. §502(f), and the statute does not say 'unless they fail to meet all readiness standards.'

For these reasons, we request reconsideration of the directives from your office and the Service Secretaries concerning National Guard members in their Title 32 duty status.

Sincerely,

Handwritten signature of Mark Gordon in blue ink.

Governor Mark Gordon  
State of Wyoming

Handwritten signature of Mike Dunleavy in blue ink.

Governor Mike Dunleavy  
State of Alaska

Handwritten signature of Kim Reynolds in blue ink.

Governor Kim Reynolds  
State of Iowa

Handwritten signature of Tate Reeves in blue ink.

Governor Tate Reeves  
State of Mississippi

Handwritten signature of Pete Ricketts in blue ink.

Governor Pete Ricketts  
State of Nebraska