

**BEFORE THE ARMY BOARD FOR CORRECTION OF
MILITARY RECORDS**

Army Review Boards Agency

**IN THE MATTER OF THE APPLICATION OF
LIEUTENANT COLONEL JOSEPH W. LAWHORN**

Chaplain Corps, United States Army

For the correction of his military record under 10 U.S.C. § 1552

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF AN APPLICATION FOR THE CORRECTION OF
A MILITARY RECORD**

PART ONE – COUNSEL’S REQUESTS AND STATEMENTS

1. Counsel requests:

- a. Removal of the Summary of Credible Adverse Information, dated 22 February 2021, from the applicant’s promotion selection board file and from every official record in which it appears;
- b. A determination that the findings of the Army Regulation (AR) 15-6 investigation, dated 23 January 2021, approved on a DA Form 1574-1, dated 23 February 2021, do not establish a violation of AR 600-20 (Army Command Policy), dated 24 July 2020, and removal of those findings from the applicant’s records, or alternatively, a direction that they not be furnished to any future selection, command-screening, or personnel board;
- c. A finding of material unfairness in the Fiscal Year (FY) 2026 Colonel, Chaplain Corps promotion selection board within the meaning of 10 U.S.C. § 628(b)(1)(A);
- d. Consideration of the applicant’s corrected record for promotion by a Special Selection Board under the criteria of the FY26 Colonel, Chaplain Corps promotion selection board, the first board to consider him for that grade and the only board to which the Summary was furnished; and
- e. Contingent on selection, appointment with the date of rank, effective date for pay and allowances, and active-duty-list position the applicant would have held had he been selected by the board that considered him, per 10 U.S.C. § 628(d)(2), together with back pay and allowances under 10 U.S.C. § 1552(C); and

2. Counsel states:

- a. On 15 December 2020, the applicant, then a major serving as Brigade Chaplain, 1st Security Force Assistance Brigade (1SFAB), delivered required annual suicide-prevention training by Microsoft Teams to approximately 73 members of the brigade. He titled it “Coming Out of the Closet: Straight-Talk about Depression and Suicidality,” drawing on his own diagnosed depression and his practice of retreating to a closet during his worst periods, and consistent with the brigade commander’s “Readiness and Resiliency” guidance directing leaders conducting such training to “be real.”
- b. One attendee, a behavioral-health provider, objected that the phrase had been used as a punchline at the expense of the LGBTQ+ community and described the incident as a “microaggression.” COL [REDACTED] appointed LTC [REDACTED] as investigating officer (IO) on 18 December 2020, the first day of holiday block leave. The IO reported that the timing “interfered with receiving timely responses from potential witnesses,” and that she was directed not to proceed

until 4 January 2021. She interviewed twenty-two of twenty-seven witnesses and issued findings on 23 January 2021.

- c. **The findings do not establish the offense because they omit an element of it.** AR 600-20, para 6–2b required that disparaging terms “contribute[] to a hostile work environment,” which the regulation defines as a “series of acts that are so severe and pervasive as to alter an individual’s work conditions,” judged by a reasonable person standard. *Id.* at 209. The Report of Investigation (ROI) recites that standard and then makes no finding on it. The applicant does not ask the Board to resolve what was said at the briefing; on this ground it does not matter. A single one-hour virtual training is not a series of acts, cannot be pervasive, and no witness stated that anyone’s working conditions were altered.
- d. **Nor do the findings establish that any disparaging term was used.** The IO found that the presentation “did not use ‘disparaging treatment,’ but did use ‘disparaging terms’ as it relates to sexual orientation or gender identity.” ROI, para 6.b. The only words identified are a clarification that the speaker was not gay. A statement about oneself is not a disparaging term with respect to anyone, and the ROI identifies no term applied to any person or group.
- e. **The awareness finding establishes no element of the offense and rests on a fact that cuts the other way.** Paragraph 6.c finds that the applicant “was conscious the title he chose . . . was associated with the LGBTQIA community since he stated he was not gay himself and his presentation was not about sexual orientation.” ROI, para 6.c. Awareness is not an element: AR 600-20 provides that for disparaging terms, the determining factor is “not the intent but the impact.” *Id.* at 206. And the fact relied on is a disclaimer made to keep the audience focused on depression—an attempt to prevent the association, not to invoke it. The complainant herself stated, “I do not suspect that CH Lawhorn was intentionally malicious.” ROI, Encl. 8, para 8. That reasoning was nonetheless carried verbatim into the Summary.
- f. **The adverse summary predates the approval it rests on.** The Summary of Credible Adverse Information is dated 22 February 2021. The DA Form 1574-1 by which COL ██████ approved the findings bears a single date, reading 23 February 2021. The commander’s Comment block of the Summary is dated 14 December 2020, the day before the briefing occurred. No explanation for any of this appears in the record.
- g. **The instrument of approval is incomplete on its face.** On the DA Form 1574-1, Section IV (Findings) contains only the words “See enclosed attachment.” Section V (Recommendations) is entirely blank. Section VI (Authentication), in which the IO certifies that the ROI is complete and accurate, bears a typed name and no signature. The applicant was never provided a copy of the form and did not see it until 2026.

- h. **The approval authority's own record is irreconcilable with the approval.** The IO recommended either an adverse evaluation entry, a formal letter of reprimand, retraining, the applicant's immediate removal from the brigade TRUST Working Group, and retraining. ROI, para 7. COL [REDACTED] imposed none of it. Five months later, he senior-rated the applicant "High Qualified," wrote that he was "the #1 of 3 BDE Chaplains that I have served with as a BDE CDR in two separate BDEs," and directed "Promote now to LTC and select for attendance for SSC at the first opportunity; unlimited potential," The applicant was in fact promoted. COL [REDACTED] also told the applicant that he had disapproved the findings.
- i. **The ROI is unreliable in ways that appear on its face.** Five of twenty-seven witnesses were never interviewed. One counted witness "did not have sound." ROI, para 5.y. The IO developed findings on profanity outside the scope of her appointment. ROI, para 5.u. Of the nine sworn statements cited at paragraph 3 for the central factual finding, one is to a witness who swore the phrase "does not ring a bell," ROI, Encl. 7, para 15, one is to a witness who answered, "I was told" and could not say whether he was present, ROI, Encl. 20, para 5, and one is to the wrong question, ROI, Encl. 8a. The two defective citations are reproduced at Tab G.
- j. **The briefing was protected expression.** DoD Instruction 1300.17, "Religious Liberty in the Military Services" (1 September 2020), para 1.2b, provides that a Service member's expression of sincerely held beliefs may not, in so far as practicable, be used as the basis of any adverse personnel action or denial of promotion. The Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1, independently requires a compelling interest pursued by the least restrictive means before the government may substantially burden religious exercise, and applies in the military context.
- k. **The application is timely.** Of the measures the IO recommended, none were imposed; instead, the approval authority ranked the applicant first among all brigade chaplains he had commanded, directed "Promote now to LTC," and the applicant was promoted. The approval authority also told him he had disapproved the findings. The applicant discovered the approval in January 2026, on notice given in connection with the FY 26 Colonel, Chaplain Corps, Promotion Selection Board. The non-selection of 30 June 2026 is separately and independently an injustice discovered within the last three years. In the alternative, the interest of justice warrants waiver under 32 C.F.R. § 581.3(e)(3)(iii)(C).
- l. **Administrative remedies are exhausted.** No memorandum of reprimand was issued, and no adverse evaluation was rendered, so neither the Department of the Army Suitability Evaluation Board, nor the evaluation redress program has application; this Board is the only forum able to order removal of the Summary. Counsel responded to the approval authority on 19 February 2021, before he acted. On 24 March 2026, counsel asked the successor commander, COL [REDACTED], to review the findings and direct removal of the Summary. He reviewed the matter and declined to intervene. He issued no written determination and made

no findings, and the Summary remained in the board file. No authority has addressed whether these findings meet the elements of the regulation they invoke. On 27 March 2026, the applicant wrote to the president of the FY26 board, asking it to disregard the Summary. The board did not select him.

PART TWO – MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

On 15 December 2020, Chaplain (then Major) Joseph Lawhorn delivered required annual suicide-prevention training to approximately seventy-four members of the 1st Security Force Assistance Brigade (1SFAB). He titled it “Coming Out of the Closet: Straight-Talk about Depression and Suicidality.” The title came from his own diagnosed depression and from his coping practice, during his worst period, of retreating into a closet. One attendee swore that the briefing led him to meet his behavioral-health provider two days later and that he would “forever be thankful.” Another called it the best suicide-prevention class he had received.

One attendee objected. She was a behavioral-health provider, and she framed the objection in clinical terms, arguing that “coming out of the closet” had been used as a punchline at the expense of a marginalized population, and that the incident was a microaggression of a kind associated with elevated suicide risk. An AR 15-6 investigation followed and substantiated a violation of Army Regulation (AR) 600-20, para 6–2 for the use of “disparaging terms related to sexual orientation or gender identity.”

LTC Lawhorn does not ask this Board to decide what he said at that briefing. The record contains sworn statements on both sides of it, and several of them support the Report of Investigation (ROI). He asks the Board to decide something narrower and entirely documentary: that on the findings the investigating officer (IO) actually made, no violation of AR 600-20 was established, and that the document now in his promotion file is therefore wrong.

The regulation the Army applied defines discrimination by disparaging terms as terms “which contribute[] to a hostile work environment,” and defines a hostile work environment as a “series of acts that are so severe and pervasive as to alter an individual’s work conditions.” AR 600-20, p. 209. The ROI recites that standard. But it makes no finding on it. Instead, it found that thirteen of twenty-two witnesses considered the title “inconsiderate,” “uncomfortable,” or “inappropriate.” ROI, para 6.a.ii. One hour of virtual training is not a series of acts; a single event cannot be pervasive; and nobody said any working condition changed. The finding fails on its own terms, whatever was said.

The rest of the record compounds the error. The adverse summary in his file is dated **22 February 2021**; the approval it rests on is date-stamped **23 February 2021**; and the commander’s comment on the summary is dated **14 December 2020**, the day before the briefing even occurred. The form by which the findings were approved records its findings as “See enclosed attachment,” leaving the recommendations section blank, and carries no signature in the authentication block. And the officer who approved it imposed none of the corrective measures recommended, kept LTC Lawhorn in the job, ranked him first among all the chaplain he had ever commanded, wrote “Promote now to LTC,” and told LTC Lawhorn that he had disapproved the findings.

LTC Lawhorn learned none of this until January 2026, when he was notified that the Summary had been placed in his Colonel promotion board file. He asked the successor commander to intervene and provided his reasoning; the commander reviewed the matter and declined to act, issuing no determination and making no findings. He then asked the promotion board to disregard the document. He was not selected. **No authority has ever determined whether these findings satisfy the regulations they invoke**—not the IO, who never made the finding; not the approval authority, whose form records nothing; not the successor commander, who deferred; and not the promotion board, which has no such power. The Board is the first forum able to decide it.

II. JURISDICTION, TIMELINESS, AND EXHAUSTION

a. Jurisdiction

The Board’s jurisdiction “extends to any military record of the DA.” 32 C.F.R. § 581.3(d)(1)(i). LTC Lawhorn is an active-duty officer, serving in the Regular Army and applying on his own behalf. The Summary of Credible Adverse Information, the underlying investigation, and his promotion selection board file are Department of the Army Records. The Board may “direct[] or recommend[] correction of military records to remove an error or injustice.” 32 C.F.R. § 581.3(c)(2)(i).

b. The application is timely

An application must be filed “within 3 years after an alleged error or injustice is discovered or reasonably should have been discovered,” and the Board “may excuse untimely filing in the interest of justice.” 32 C.F.R. § 581.3(d)(2); *accord* 10 U.S.C. § 1552(b). The application is timely on any of three independent grounds.

i. Discovery occurred in January 2026

The limitations period runs from discovery. LTC Lawhorn learned that these findings had been approved, and that a Summary or Credible Adverse Information was in his promotion file, in January 2026, on notice given in connection with the Fiscal Year (FY)26 Colonel, Chaplain Corps, Promotion Selection Board. He could not reasonably have discovered it earlier, and the reason is documentary.

The IO recommended that the commander either reflect the incident on LTC Lawhorn’s next evaluation or issue him a formal letter of reprimand for his official file, that he be removed from the brigade’s TRUST Working Group immediately, and directed to receive immediate retraining on “identifying controversial terms or points.” ROI, paras 7.a–7.c. **None of these occurred.** No reprimand was issued. Nothing appeared in his evaluation. He was not removed. He received no retraining. Each result is verifiable in the record.

What occurred was the opposite. Five months after the approval, the same commander signed an evaluation rating LTC Lawhorn “Highly Qualified,” ranking him “the #1 of 3 BDE Chaplains I have served with as a BDE CDR in two separate BDEs,” and directing “Promote now

to LTC and select for attendance for SSC at the first opportunity; unlimited potential.” Tab C, para 9. The Summary was not furnished to the board that acted on that recommendation, and LTC Lawhorn was promoted.

Nor was he provided a copy of the DA Form 1574-1 and he did not see it until 2026, when the injury was identified. Tab C, para 6. An officer against whom every recommended consequence is withheld, who is retained in the position from which removal was recommended, who is ranked first among all chaplains his commander has served with, who is endorsed for accelerated promotion and then promoted, and who is never shown the approving document, has no reason to suspect that an adverse finding was approved and filed.

COL [REDACTED] also told LTC Lawhorn directly that he had disapproved the findings, and LTC Lawhorn relied on that statement. Tab C, para 8. LTC Lawhorn said so in writing to the promotion board in March 2026, before this application was contemplated. Tab J, para 3. The letter corroborates what the documents already establish; the argument does not depend on it.

ii. The promotion injury is separately and independently timely

Even if the 2021 approval were treated as discovered in 2021, the injustice of a materially defective Summary deciding a promotion is an injury that occurred and was discovered on 30 June 2026, when the FY26 board results were released. This injury is pleaded as a discrete claim with its own accrual date and is indisputably timely.

iii. In the alternative, the interest of justice warrants waiver

Should the Board conclude that the application is untimely under both theories of injury, it should excuse the delay. The delay is attributable to a representation by the approval authority himself, corroborated by five years of Army conduct wholly inconsistent with an approved finding of discrimination, and by the Army’s failure ever to furnish LTC Lawhorn the document recording the approval. The merits are substantial. And the consequence—non-selection for Colonel after more than two decades of service on findings no authority has ever deemed sufficient under the regulation—is disproportionate to any interest in repose.

c. Administrative remedies have been exhausted

The Board “will not consider an application until the applicant has exhausted all administrative remedies.” 32 C.F.R. § 581.3(d)(3). LTC Lawhorn pursued the two avenues that existed and no other remedy remains, except for the Army Board for Correction of Military Records.

No board-level remedy exists for this record. After the investigation, no memorandum of reprimand was issued, so AR 600-37 and the Department of the Army Suitability Evaluation Board have no application. Similarly, no adverse evaluation was rendered, so the evaluation redress program under AR 623-3 has no application. And no criminal investigation occurred. The Summary of Credible Adverse Information is a document furnished to a promotion selection board under 10 U.S.C. § 615(a)(3); this Board is the only forum with authority to order its removal.

LTC Lawhorn asked the 1SFAB commander to intervene, and the commander declined. On 19 February 2021, before the approval authority acted, counsel submitted a detailed response identifying the defects in the ROI. Tab I. The commander did not address any of the identified flaws in the investigation or findings in his approval. COL [REDACTED], the successor commander, offered to review the investigation and on 24 March 2026, counsel took up that offer, asking COL [REDACTED] to reject the findings and direct the Office of the Judge Advocate General (OTJAG) to remove the Summary before board files closed on 27 March 2026. Tab J, Encl. 1. COL [REDACTED] reviewed the matter and declined to intervene.

That disposition exhausted the command remedy: the request was made, considered, and refused. But it produced no determination. COL [REDACTED] issued no written decision, made no findings, and gave no ruling on whether the investigation satisfied AR 600-20. He declined to disturb what a predecessor had approved, and the Summary stayed where it was. Nothing in the record indicates that the deficiencies identified in the 24 March 2026 letter were ever adjudicated by anyone.

He also asked the promotion board itself. On 27 March 2026, LTC Lawhorn submitted a memorandum to the president of the FY26 Colonel, Chaplain Corps Promotion Selection Board, asking it to disregard the Summary, enclosing the 24 March 2026 letter in full. The board therefore received the complete statement of the objections to the investigation. Tab J. He was not selected.

No reconsideration mechanism was available to him. The request for reconsideration procedure, now at AR 15-6, para 3–18, was created in the 22 June 2025 edition, more than four years after this approval, and its one year window measured from the approval authority’s action had long expired before the mechanism existed. AR 15-6, para 3–18(b)(2) (22 June 2025 edition). To the extent the Board considers it relevant, the 24 March 2026 request satisfied it in substance and was refused.

III. STATEMENT OF FACTS

a. The briefing

- i. LTC Joseph W. Lawhorn is an officer in the Regular Army in the Chaplain Corps. He is presently the Garrison Chaplain, United States Army Garrison Fort Hood, Texas. Tab C.
- ii. In 2020, he was assigned as Brigade Chaplain, 1SFAB, Fort Benning, Georgia, under the command of COL [REDACTED].
- iii. COL [REDACTED] had issued “Readiness and Resiliency” guidance directing leaders conducting suicide-prevention training to “make people uncomfortable . . . it has to be real.” Tab I at 1; Tab J at 2.

- iv. On 15 December 2020, LTC Lawhorn delivered required annual suicide-prevention training to approximately seventy-four members of 1SFAB by Microsoft Teams. ROI, paras 3, 5.b.
- v. He titled it “Coming Out of the Closet: Straight-Talk about Depression and Suicidality.” The title referred to his own diagnosed depression and to his practice of retreating into a closet during his worst period. Tab C, para 3; Tab J, para 2.
- vi. One first-hand witness stated it was “the best suicide training” he had received. ROI, para 5.t (citing Encl. 17). Another “appreciated CH Lawhorn sharing his personal experience and did not find anything as thoughtless or inconsiderate.” ROI, para 5.s (citing Encl. 1).
- vii. A third, whose sworn statement the ROI cites in support of the charge, wrote that the briefing “impacted me in a positive way and has helped me deal with my struggles and ability to open up to my EBH provider,” that he “met with my EBH provider two days after the presentation,” and that he “will forever be thankful for his presentation.” ROI, Encl. 7 (Tab G).

b. The complaint and the investigation

- i. CPT [REDACTED], a behavioral-health provider who attended the briefing, objected. In her sworn statement of 20 January 2021, she described the incident as “an example of a microaggression that minority populations often experience and a factor that increases suicidal risk,” and stated that the phrase had been “applied in a deleterious, derogatory manner to solicit a laugh at the expense of a marginalized population.” ROI, Encl. 8 (Tab I). Asked at question 6 whether the terms were discriminatory, she answered, “Yes.” *Id.* Asked at question 8, after being directed to read the AR 600-20 definitions supplied as Exhibit B to the investigation, whether he had used “disparaging terms,” she answered, “Yes,” adding, “I do not suspect that CH Lawhorn was intentionally malicious.” *Id.*
- ii. On 18 December 2020, the first day of holiday block leave, COL [REDACTED] appointed LTC [REDACTED] as IO under AR 15-6. ROI, paras 1, 2; Tab E, Section I.
- iii. The IO reported that the timing of her appointment “interfered with receiving timely responses from potential witnesses,” and that the Deputy Commander directed her not to proceed until 4 January 2021. ROI, para 4.
- iv. LTC [REDACTED] interviewed twenty-two of twenty-seven identified witnesses. ROI, para 5.b. Five witnesses were never interviewed and the ROI does not address what they would have said.

- v. The IO issued her findings and recommendations on 23 January 2021. Tab D; Tab E, Section II.

c. The findings

- i. The ROI found that LTC Lawhorn “did knowingly or unknowingly, discriminate against Soldiers as described in AR 600-20 . . . Chapter 6” by saying words to the effect of “ . . . don’t worry, I am not gay,” “ . . . it’s not what you think . . .,” “ . . . don’t worry your chaplain is not gay . . .,” or “Don’t worry. Your chaplain won’t be saying he’s gay.” ROI, para 3.
- ii. It cited nine sworn statements in support: Enclosures 2, 6, 7, 8a, 10, 12, 18, 19, and 20. ROI para 3.
- iii. Several of those statements support the citation. Enclosure 2 is the clearest: asked what terms stood out, LTC [REDACTED] answered, “He did use the phrase, ‘Coming Out of the Closet,’ as his title. He did say, ‘don’t worry, I am not gay.’” ROI, Encl. 2.
- iv. Two do not support the citation. Enclosure 7, the sworn statement of [REDACTED], is cited at question 15 for the phrase “ . . . don’t worry, I am not gay.” His answer to that questions states: “I believe something to this effect was used at the beginning of his presentation but cannot recall for certain the words used after he title phrase. **The phrase ‘[.]..don’t worry, I am not gay’ does not ring a bell.**” ROI, Encl. 7 (Tab G) (emphasis added). Mr. [REDACTED] also answered question 9, “I do not believe there was discrimination.” *Id.*
- v. Enclosure 20, the sworn statement of CSM [REDACTED], is cited at question 5 for the phrase “ . . . don’t worry your chaplain is not gay.” His answer states: “**I was told**, he used the phase ‘Don’t worry[,] I am not Gay.’” ROI, Encl. 20 (emphasis added) (Tab G). At question 3, he stated that he “was pulled into the [T]eams event after it had already started,” and at question 10, “No, I didn’t, I don[’]t ever reme[m]ber if I was on [T]eams when the words where [sic] used.” *Id.*
- vi. A further citation, to Enclosure 8a at question 3, is to the wrong question; the quoted phrase appears at question 5. ROI, Encl. 8 (Tab H).
- vii. The formal findings state that LTC Lawhorn “discriminated against Soldiers, violating AR 600-20, page 72, Chapter 6-2, Military equal opportunity policies, paragraph b,” and that he “did not use ‘disparaging treatment,’ but did use ‘disparaging terms’ as it relates to sexual orientation or gender identity.” ROI, paras 6.a, 6.b.

- viii. Under the heading “Impact,” the ROI states that thirteen of twenty-two first-hand witnesses found the title “‘potentially controversial,’ ‘inconsiderate,’ ‘unsuitable,’ ‘discriminatory,’ ‘uncomfortable,’ ‘insensitive,’ ‘inappropriate,’ and ‘discrediting to LGBTQ.’” ROI, para 6.a.ii.
- ix. Question 16 of the witness questionnaire asked whether, “If CH Lawhorn made this statement . . . the title of my brief is ‘Coming Out of the Closet’ but don’t worry, I am not gay,” the witness believed it “may give any impression that being part of the . . . (LBGTQIA) community something to worry about or bad.” *See, e.g.*, ROI, Encl. 3. Witnesses who had not heard the statement answered conditionally. Mr. [REDACTED] answered: “I cannot recall for certain the phrase he used after the title. If the phrase . . . was used, I could see how it could come off.” ROI, Encl. 7 (Tab G).
- x. **No paragraph of the finding addresses whether the conduct contributed to a hostile work environment.** ROI, para 6.
- xi. The ROI further found that LTC Lawhorn “was conscious the title he chose . . . was associated with the LBGTQIA community **since he stated he was not gay himself and his presentation was not about sexual orientation.**” ROI, para 6.c (emphasis added).
- xii. The IO recommended that the commander either reflect the incident on LTC Lawhorn’s next evaluation or issue “a formal letter reprimand in his official file,” that the commander “immediately remove CH Lawhorn from the 1SFAB TRUST Working Group,” and that LTC Lawhorn “receive immediate re-training from a senior chaplain or another professional counselor on identifying controversial terms or points.” ROI, paras 7.a–7.c.

d. The approval

- i. On 19 February 2021, before the approval authority acted, counsel submitted a written response identifying the ROI’s defects and asking that the findings be disapproved. Tab I.
- ii. The Summary of Credible Adverse Information is dated **22 February 2021**. The reporting agency is OTJAG. It reproduces the ROI’s reasoning, including that LTC Lawhorn “was conscious the title he chose . . . was associated with the LBGT[Q]IA community since he stated he was not gay himself and his presentation was not about sexual orientation.” Tab F.
- iii. The Commander’s Comment block of the Summary reads, “No Comment,” and is dated **14 December 2020**, the day before the briefing at issue even occurred. Tab F. No explanation for this appears in the record.

- iv. COL [REDACTED] approved the finding on a DA Form 1574-1. At Section VII, he circled “Approved,” initiated it, and signed. The only date appearing anywhere on the approval is a stamp reading **FEB 23 2021**. Tab E.
- v. On that form, Section IV (Findings) contains on the words, “See enclosed attachment.” Section V (Recommendations) is entirely blank. Section VI (Authentication), in which the IO certifies that the ROI is complete and accurate, LTC [REDACTED]’s name was typed and nothing was signed. Tab E.
- vi. LTC Lawhorn was never provided a copy of the DA Form 1574-1 and did not see it until 2026. Tab C, para 6.

e. The aftermath

- i. COL [REDACTED] imposed none of the recommended measures. LTC Lawhorn received no reprimand. Nothing concerning the incident appeared on his evaluation. He was not removed from the ISFAB TRUST Working Group. He received no re-training. Tab C, para 7.
- ii. COL [REDACTED] told LTC Lawhorn directly that he had disapproved the findings. Tab C, para 8; Tab J, para 3.
- iii. In an Officer Evaluation Report (OER) signed in July 2021, the rater, LTC [REDACTED], wrote that LTC Lawhorn “displayed unquestionable character and values with a rock-solid moral compass,” “inspires mutual respect for every Solider, Civilian, and Family Member,” and **“enforces all SHARP EO/EEO programs.”** Tab L.
- iv. COL [REDACTED], as senior rater on that same ROI, rated LTC Lawhorn “Highly Qualified” and wrote: “Chaplain Lawhorn is the #1 of 3 BDE Chaplains I have served with as a BDE CDR in two separate BDEs. His intellect, care for Soldiers and Families and innovative approach to spiritual fitness is without equal. **Promote now to LTC and select for attendance for SSC at the first opportunity; unlimited potential.** Tab L.
- v. LTC Lawhorn was subsequently selected for promotion to Lieutenant Colonel and promoted. The Summary was not furnished to that board. Tab C, para 10.
- vi. No allegation of a similar nature has been made against LTC Lawhorn at any time in the five years since. Tab C, para 11.

f. Discovery and the promotion board

- i. In January 2026, LTC Lawhorn received an email in connection with his consideration by the FY26 Colonel, Chaplain Corps Promotion Selection

Board, notifying him that a document had been added to his board file. That was the first notice he received that the findings had been approved and that any document concerning the investigation existed. Tab C, para 12.

- ii. COL [REDACTED] offered to review the investigation. On 24 March 2026, counsel wrote to him taking up that offer, requesting review and rejection of the 2021 findings, and direction to OTJAG to remove the Summary before board files closed on 27 March 2026. Tab J, Encl. 1.
- iii. COL [REDACTED] reviewed the matter and declined to intervene. He did not reject the findings, did not direct any change to LTC Lawhorn's records, and issued no written determination. The Summary remained in the promotion board file.
- iv. On 27 March 2026, LTC Lawhorn submitted a memorandum to the President of the FY26 COL Chaplain Promotion Selection Board asking it to disregard the Summary. Tab J. He enclosed the 24 March 2026 letter to COL [REDACTED] in full, so the board received the complete statement of the factual, legal, and religious-liberty objections to the investigation. *Id.*
- v. On 30 June 2026, the FY26 Colonel, Chaplain Corps Promotion Selection Board results were released. LTC Lawhorn was not selected. Tab K. That board was his first consideration for promotion to Colonel.

IV. STANDARD OF DECISION

The Board "begins its consideration of each case with the presumption of administrative regularity," and "[t]he applicant has the burden of proving an error or injustice by a preponderance of the evidence." 32 C.F.R. § 581.3(e)(2). The Secretary "may correct any military record . . . when the Secretary considers it necessary to correct an error **or remove an injustice.**" 10 U.S.C. § 1552(a)(1) (emphasis added).

The presumption of administrative regularity is not a presumption that a finding is substantively correct. It presumes that officials acted in accordance with regulation. *See generally* AR 600-37, para 7-2(d)(1). The arguments below are addressed to the face of the Army's own documents: an element of the offense that was never found, a term that was never identified, a state-of-mind finding that is not an element of anything, an approval dated after the adverse summary it supports, and a form whose findings section is empty. None of that requires the Board to weigh testimony.

V. ARGUMENT

Each ground below is independently sufficient. As a result, the failure of the Board to respond to a non-frivolous argument reversible error. *Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997). Each ground is stated separately so that the Board's disposition of each ground is visible on the face of its Record of Proceedings.

a. On the findings actually made, no violation of AR 600-20 was established, because an element of the offense was never found

The investigation applied AR 600-20, 24 July 2020. ROI, para 1.c. Paragraph 6-2b of that edition provided:

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.**

(Emphasis added). The regulation further defined the term “hostile work environment.” Glossary, Section II, at page 209:

A hostile work environment as a series of acts that are so severe and pervasive as to alter an individual's work conditions. The acts may be discreet acts which are offensive, intimidating, or abusive to another person using the reasonable person standard. They need not result in concrete psychological harm, but need only be perceived by a reasonable person as hostile or offensive.

The disparaging-terms theory therefore has two required elements: (1) the terms must be disparaging with respect to a protected basis, and (2) they must contribute to a hostile work environment. AR 600-20, para 6–2b. In turn, a hostile work environment requires: (1) **a series of acts** that are (2) **severe and pervasive** (the Army's formulation is conjunctive, and so more demanding), and that (3) **alter an individual's work conditions**, as judged by a reasonable person rather than by a subjective reaction. AR 600-20, p. 209.

The investigation's findings address only the first element. The ROI's paragraph 6.b states that LTC Lawhorn “did not use ‘disparaging treatment,’ but did use ‘disparaging terms’ as it relates to sexual orientation or gender identity.” That is the whole of the legal finding. **No paragraph states that LTC Lawhorn's conduct contributed to a hostile work environment, and no paragraph analyzes whether it could have.**

This omission is not an irrelevant detail. The ROI recites the governing standard; the AR 600-20 extract was attached to the investigation as Exhibit B and furnished to witnesses, and the hostile-work-environment language appears in the ROI's own quotation of the definition. ROI, Ex. B. The IO had the rule in front of her, gave it to the witnesses, and made no finding on half of it.

Measured against that definition, the conduct found here cannot satisfy the element, and the ROI does not claim otherwise. This was **one hour event, held once, over Microsoft Teams**. A single briefing is not a series of acts, and a thing that happened once cannot be pervasive. No

witness stated that the briefing altered any working condition, and the ROI contains no finding that it did. Each of those failures is independent and each is fatal.

At question 8, the IO directed each witness to read the AR 600-20 definitions furnished as Exhibit B and to apply them. *See, e.g.*, ROI, Encl. 7. The definition of “disparaging terms” on that page itself contains the words “may contribute to an unlawful hostile work environment.” *Id.* One witness answered that the material “may ha[ve] contributed to an unlawful hostile work environment.” ROI, Encl. 3. That is a witness, restating, in the conditional, the definition he had just been handed, about what might have happened. It is not evidence that any working condition changed, and it is not a finding.

Other witnesses answered the same question the other way, and more definitively. Enclosure 16 stated that the terms identified “do not degrade, belittle, insult, or provide negative statements pertaining to race, color, sex (including gender identity), national origin, or religion, nor do they contribute to an unlawful hostile work environment,” and that “[t]here was no explicit nor implied discrimination that occurred.” ROI, Encl. 16. The only other statements touching the subject do not concern this briefing at all. Enclosure 20 reports second-hand what “the two individuals who I spoke with felt,” from the witness who elsewhere said he could not remember whether he was even on the call. ROI, Encl. 20. Enclosure 22 refers to conditions at LTC’s own previous duty station, as he had described to the audience in explaining his depression. ROI, Encl. 22. **No witness stated that this briefing altered anyone’s working conditions, and the report contains no finding that it did.**

What matters most is what the IO did with those answers. She had a witness in front of her using the words “hostile work environment,” and she still made no finding on that element. ROI, para 6. The Board is therefore not weighing competing evidence about whether a hostile work environment existed; it is reviewing a report that never determined one did, and a Summary that reports a violation the findings do not establish.

What the ROI offers in place of the element is a paragraph captioned “Impact,” reporting that thirteen of twenty-two witnesses found the title “potentially controversial,” “inconsiderate,” “unsuitable,” “discriminatory,” “uncomfortable,” “insensitive,” or “inappropriate.” ROI, para 6.a.ii. Those are subjective reactions to a title. The regulation asks whether a reasonable person would perceive the environment as hostile or offensive, and whether an individual’s work conditions were altered. Being uncomfortable for an hour is neither.

The “Impact” paragraph is also weaker than it appears. Question 16 of the witness questionnaire asked witnesses to assess the effect of a statement they had not necessarily heard: “**If** CH Lawhorn made this statement . . .,” (emphasis added) and witnesses who had not heard it answered conditionally. *See, e.g.*, ROI, Encl. 7. Mr. [REDACTED]’s answer is representative: “I cannot recall for certain the phrase he used after the title. If the phrase . . . was used, I could see how it could come off. . . .” *Id.* Reactions assembled from conditional answers to a hypothetical do not establish severity, pervasiveness, or any alteration of working conditions.

This ground does not require the Board to decide what LTC Lawhorn said. Assume that LTC Lawhorn said every word charged. Even so, the finding still fails because the regulation

requires something more that was never found. Whether a finding satisfies the elements of the regulation it invokes is a question of construction, not judgment, and the answer appears on the face of the ROI. A finding that omits an element is “contrary to law in a matter material to the decision,” 10 U.S.C. § 628(b)(1)(A), and an error within 10 U.S.C. § 1552(a)(1).

b. The ROI identifies no disparaging term

Independently, the first element fails as well, and it fails twice.

First, the definition the IO invoked does not reach sexual orientation. Paragraph 6.b of the findings reads: “As defined by AR 600-20, page 206, CH Lawhorn did not use ‘disparaging treatment,’ but did use ‘disparaging terms’ as it relates to sexual orientation or gender identity.” ROI, para 6.b. The IO thus made two deliberate choices. She cited a specific definition, at a specific page. And she expressly rejected one defined term in favor of the other.

Page 206 is the glossary. It was attached to the investigation as Exhibit F and furnished to witnesses as Exhibit B. It defines the two terms consecutively. **Disparaging terms** are “[t]erms used to degrade, belittle, insult, or negative statements pertaining to race, color, sex (including gender identity), national origin, or religion,” whose use “may contribute to an unlawful hostile work environment if it occurs with respect to a person’s race, color, sex (including gender identity), national origin, or religion.” **Disparaging treatment** is “[t]reatment that is different and unequal because of race, color, sex (including gender identity), national origin, religion, **or sexual orientation.**”

Sexual orientation appears in the definition of disparaging treatment. It appears nowhere in the definition of disparaging terms, not in the opening list, and not in the closing list of bases on which such terms may contribute to a hostile work environment. The IO expressly found that LTC Lawhorn did **not** engage in disparaging treatment and then found a violation resting on disparaging terms “as it relates to sexual orientation.” ROI, para 6.b. On the page she cited, that finding cannot be made.

Paragraph 6–2b of the regulation, unlike the glossary, does list sexual orientation in its disparaging-terms sentence, and the two provisions are in tension. But an IO who identifies the definition she is applying, by page number, should be held to it, and the finding she made is outside of it. At a minimum, the ROI never confronts the discrepancy, never explains which text it is applying, and never explains why the term it rejected is the one that covers the basis it found.

Second, the ROI does not identify a disparaging term. The words the ROI identifies are a clarification the speaker made about himself: “don’t worry, I am not gay,” or “it’s not what you think.” The IO expressly found that LTC Lawhorn “did not use ‘disparaging treatment,’” ROI, para 6.b, and the ROI identifies no epithet, slur, or characterization applied to any person or group. A statement that the speaker is not a member of a group is not a disparaging term with respect to that group. It says nothing about anyone else.

The complainant’s own sworn statement illustrates the gap. Her objection, carefully stated, was that the phrase “coming out of the closet” was “applied in a deleterious, derogatory manner to

solicit a laugh,” and that a disclaimer “insinuat[ed] a negative connotation.” ROI, Encl. 8 (Tab H). That is an objection to tone and to inference, to what listeners might take from a remark, not an identification of a disparaging term. The regulation requires the latter.

The Board need not decide whether the remark was ill-judged. It need only observe that the regulation the Army invoked prohibits disparaging terms with respect to a person, and that the ROI identifies none.

c. The awareness finding is not an element of the offense, and the fact it rests on supports the opposite inference

Paragraph 6.c of the ROI reads:

CH Lawhorn was conscious the title he chose, “Coming Out of the Closet: Straight-talk about Depression and Suicidality,” was associated with the LGBTQIA community **since he stated he was not gay himself and his presentation was not about sexual orientation.**

(Emphasis added). The ROI’s inference itself is unremarkable. A speaker who preemptively says he is not gay, and that his presentation is not about sexual orientation, has plainly anticipated that some listeners might read the title otherwise. The problem with paragraph 6.c is not the inference. It is what the ROI does with it.

First, awareness is not an element of the offense. AR 600-20, para 6–2b prohibits the use of disparaging terms that contribute to a hostile work environment. It says nothing about the speaker’s state of mind, and the regulation is explicit that for disparaging terms the “determining factor” is “not the intent but the impact it has on the recipient or a reasonable person.” AR 600-20, p. 206. A finding about what LTC Lawhorn was “conscious” of during the presentation therefore establishes no element of anything. ROI, para 6.c. The finding has no legal impact, and the ROI nowhere explains what it is meant to prove.

Second, the finding’s key fact points the other way. The evidence of awareness is a disclaimer, a statement made to keep the audience’s focus on depression and suicidality rather than on sexual orientation. A speaker who anticipates a misreading and moves to correct it is demonstrating an intention to prevent the association from attaching, not to invoke or exploit it. The same words that established that he foresaw the problem establish that he tried to head it off. The ROI takes a mitigating act and records it as the basis for an adverse finding, without acknowledging that the act was mitigating or explaining why it should be read otherwise.

The complainant herself did not read it as culpable. Asked whether LTC Lawhorn acted with ill intent, CPT [REDACTED] answered: “I do not suspect that CH Lawhorn was intentionally malicious.” ROI, Encl. 8 (Tab H). The lone objector disclaimed the very inference the ROI draws.

Third, the finding penalizes the clarification. On the logic of paragraph 6.c, a chaplain who said nothing after announcing the title would be in a better position than one who tried to steer the audience back to the subject. That cannot be the rule. It converts an attempt to avoid

misunderstanding into evidence against the speaker, and it does so in a case where the Army's own guidance directed him to be provocative to reach soldiers.

None of this would matter much if the finding had stayed in the ROI. It did not. Paragraph 6.c was carried verbatim into the Summary of Credible Adverse Information, where it is the principal narrative justification offered to a promotion board for an adverse career action. Tab F. A finding that establishes no element of the offense, and that rests on a fact supporting the opposite conclusion, is now the sentence a selection board reads when it considers LTC Lawhorn.

d. The adverse summary predates the approval it rests on, and the instrument of approval is incomplete on its face

Three documents in this record cannot be reconciled.

The **Summary of Credible Adverse Information** is dated **22 February 2021**. Tab F. It recites the findings as though approved and was furnished to a promotion selection board on that footing.

The **DA Form 1574-1** by which COL [REDACTED] approved those findings bears one date: a stamp reading **FEB 23 2021**. Tab E. On the face of the record, the adverse summary was generated the day before the approval it depends on.

The **Commander's Comment** block of the Summary, the entry by which the commander records his view of the adverse information, read "No Comment" and is dated **14 December 2020**. Tab F. That is the day before the briefing at issue took place. The commander is recorded as having commented on adverse information arising from an event that had not yet occurred.

LTC Lawhorn does not speculate about how this happened. He observes that document with three entirely inconsistent dates, one of which precedes the conduct at issue and one of which precedes the approval, is not entitled to a presumption of administrative regularity. The presumption is that officials acted in accordance with regulation; where the record's own dates are incoherent, the presumption has nothing to attach to.

The DA Form 1574-1 compounds the issue:

- Section IV (Findings) contains only the words "See enclosed attachment." The findings COL [REDACTED] approved are not recorded on the form.
- Section V (Recommendations) is entirely blank, notwithstanding that the IO's separate memorandum contains recommendations at paragraphs 7.a and 7.b.
- Section VI (Authentication), in which the IO certifies to the completeness and accuracy of the investigation, bears a typed name and no signature.

And LTC Lawhorn was never given the form. He did not see it until 2026. Tab C, para 6. He therefore never knew, at any point when he might have acted, what precisely had been approved

or that anything had been approved at all. The prejudice is not theoretical: it is the whole reason this application is filed in 2026 and not 2021.

e. The approval authority's own contemporaneous record is irreconcilable with the approval

The IO recommended two things. First, that the commander “use administrative corrective measures by reflecting this incident on CH Lawhorn’s next officer evaluation or give CH Lawhorn a formal letter [of] reprimand in his official file.” ROI, para 7.a. Second, that the commander “immediately remove CH Lawhorn from the 1SFAB TRUST Working Group.” ROI, para 7.b. Third, that CH Lawhorn “receive immediate re-training from a senior chaplain or another professional counselor on identifying controversial terms or points.” ROI, para 7.c.

COL [REDACTED] implemented none of the recommendations. No reprimand issued. Nothing appeared on the evaluation. LTC Lawhorn was not removed and he received no retraining. Five months after the approval, COL [REDACTED] signed an OER on which the rater wrote that LTC Lawhorn “displays unquestionable character and values with a rock-solid moral compass” and “**enforces all SHARP, EO/EEO programs,**” and on which COL [REDACTED] himself rated him “Highly Qualified” and wrote:

Chaplain Lawhorn is the #1 of 3 BDE Chaplains I have served with as a BDE CDR in two separate BDEs. His intellect, care for Soldiers and Families and innovative approach to spiritual fitness is without equal. **Promote now to LTC and select for attendance for SSC at the first opportunity; unlimited potential.**

Those records cannot both be right. An officer does not simultaneously determine that a subordinate discriminated against soldiers on the basis of sexual orientation and certify, five months later, that the same subordinate enforces the Army’s equal-opportunity programs, is the best of the three brigade chaplains he has commanded across two brigades, and should be promoted ahead of his peers, and sent to senior service college at the first opportunity. LTC Lawhorn was in fact promoted.

The reconciliation is what COL [REDACTED] told him at the time: he did not regard the findings as established. Tab C, para 8; Tab J, para 3. Whatever the form records, the approval authority’s conduct, declining every recommended measure, retaining the officer, ranking him first, and recommending accelerated promotion, is the best available evidence of what he actually determined about this officer’s conduct and character.

f. The ROI is unreliable in ways that appear on its face

The ROI has multiple documentary inconsistencies that run through its investigation. LTC Lawhorn asks the Board to weigh the following, which bear not on whether something was said but on how much confidence a career-ending document should command.

- **Two of the nine citations do not support the finding.** Enclosure 7 is cited for a phrase the witnesses swore “does not ring a bell,” and who separately answered “I do not believe

there was discrimination.” ROI, Encl. 7 (Tab G). Enclosure 20 is cited for a phrase the witness said he “was told” about, having been “pulled into the [T]eams event after it had already started” and being unable to say whether he “was on [T]eams when the words w[ere] used.” ROI, Encl. 20 (Tab G). A third citation, to Enclosure 8a, is to the wrong question. ROI, Encl. 8 (Tab H).

- **The investigation was compromised from the outset by its own account.** The appointment issued on the first day of holiday block leave, which “interfered with receiving timely responses from potential witnesses,” and the IO was directed not to proceed for over two weeks. ROI, para 4.
- **Five of twenty-seven witnesses were never interviewed,** and the ROI does not address what they would have said or why their accounts were dispensable. ROI, para 5.c.
- **One counted witness could not hear the briefing.** “1 of 22 first-hand witness did not have sound.” ROI, para 5.y. That witness remains in the denominator from which the ROI’s proportions are drawn.
- **Scope.** The appointment directed an investigation into discrimination by disparaging terms. ROI, para 2. The IO developed and reported extensive findings on profanity, ROI, paras 5.u–5.x, which form no part of the violation charged.
- **The legal framework was supplied to the complainant and then adopted from her.** At question 8, the IO directed the complainant to read the AR 600-20 definition furnished as Exhibit B and to apply them; she did, and answered, “Yes.” ROI, Encl 8. The finding at paragraph 6.b adopts that characterization. Asking a witness what she observed is one thing; supplying her the legal test and resting the legal conclusion on her application of it is another.

Individually these are imperfections. Together, in a ROI whose legal conclusion omits an element and whose approval is dated after the adverse summary it supports, they establish that his was not a reliable basis for a determination that has now cost an officer his promotion.

g. The briefing was protected expression, and the commander acted without ever applying the framework that governs it

Providing faith-informed testimony is a chaplain’s duty. LTC Lawhorn drew the title and the substance of his briefing from his own diagnosed depression and from the faith that carried him through it. Tab C, para 3. That is not incidental to a chaplain’s work. It is the instrument of it. A chaplain is placed in a formation precisely because there are soldiers who will not walk into a behavioral-health clinic but will speak to a minister, and what a chaplain has to offer those Soldiers is not clinical technique but the credibility of a person who has been where they are and found a way out. And an attendee at this briefing swore that the briefing, and not any clinical referral, is what sent him to his behavioral-health provider two days later. ROI, Encl. 7 (Tab G).

Department policy forbids using such expression as the basis for adverse action. DoD Instruction (DoDI) 1300.17, “Religious Liberty in the Military Services” (1 September 2020), para 1.2.b, provides:

In accordance with Section 533(a)(1) of Public Law 112-239, as amended, the DoD Components will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety. A Service member’s expression of such beliefs may not, **in so far as practicable**, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

(Emphasis added). **The ROI finds no adverse impact on readiness, cohesion, good order, or discipline.** Instead, the ROI finds that thirteen of twenty-two witnesses considered a title uncomfortable or inappropriate. ROI, para 6.a.ii. Against that, the same investigation records a witness who called it “the best suicide training” he had received (ROI, para 5.t, citing Encl. 17), a witness who “did not find anything as thoughtless or inconsiderate” (ROI, para 5.s, citing Encl. 1), and a witness who sought behavioral-health care because of it (ROI, Encl. 7.). A briefing that moves a soldier to seek help is the readiness interest the qualifier exists to protect, not a threat to it.

Section 533(a)(2) of the FY2013 NDAA preserves the Army’s authority to discipline “actions and speech that threaten good order and discipline.” LTC Lawhorn was charged under no punitive article, and military law does not treat offense as disruption: it requires “a direct and palpable connection between speech and the military mission or military environment.” *United States v. Wilcox*, 66 M.J. 442 (C.A.A.F 2008) (setting aside a conviction for far more inflammatory speech where the government showed no such connection). The ROI identifies no effect on any mission, unit, or duty. It identifies discomfort.

The phrase “in so far as practicable” raises the question of what it would have cost the Army to leave the expression alone. DoDI 1300.17 (1 September 2020). Here, nothing—no mission was impaired, no order was disobeyed, no duty went unperformed, and the approval authority imposed none of the corrective measures the report recommended, which reflected the Army’s own contemporaneous assessment of what the conduct at issue cost the unit.

Furthermore, **the Religious Freedom Restoration Act (RFRA) independently bars the action here.** 42 U.S.C. § 2000bb-1. The Act prohibits the government from substantially burdening religious exercise unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering it. *Singh v. Berger*, 56 F.4th 88, 92 (D.C. Cir. 2022). RFRA “undoubtedly applies in the military context,” and generalized invocations of uniformity or cohesion do not discharge the government’s burden; it must identify the specific interest that justifies imposing a substantial burden on the particular religious exercise at issue. *Id.*

Penalizing a chaplain for describing his own depression in the vocabulary in which he experienced it burdens the exercise directly: it tells him, and every chaplain, that faith-informed personal testimony is professionally dangerous, and it forces him to sanitize his presentations of

his own personal experiences of depression and healing, in which faith is a central component. The Army has never identified a compelling interest in that result, and it never considered a less-restrictive means. The ROI weighed no alternative to the substantial burden imposed by substantiated adverse findings, and the command imposed none of the corrections the ROI recommended, which is itself an admission that nothing about LTC Lawhorn's presentation required the response it received.

LTC Lawhorn does not ask the Board to resolve a constitutional question. He asks it to apply the Department's own policy, which forbids using an expression of sincerely held belief as the basis for denial of promotion absent a demonstration it can carry its burden under RFRA, which is precisely what occurred.

VI. INDEPENDENT OF ERROR, THE RECORD REFLECTS AN INJUSTICE

Section 1552 authorizes correction to "remove an injustice" as well as to correct error, and the injustice inquiry is whether it is just, today, to leave this record standing. *Id.* at (a)(1).

a. No authority has ever determined whether these findings satisfy the regulation

The IO never found the hostile-work-environment element. The approving commander acted on a form that records no findings on its face and carries no authenticating signature by the IO, one day after the Summary of Credible Adverse Information issued. The successor commander received the full statement of the defects, reviewed the matter, and declined to intervene—without issuing a determination, making findings, or addressing the deficiencies identified to him. The promotion board was asked to disregard the document and had no authority to adjudicate whether a regulatory element was satisfied. The result is an adverse determination that has cost an officer selection for Colonel and that no official has ever tested against the regulation it invokes—not because the argument was heard and rejected, but because no forum that has seen it had the authority to act on it. That is an injustice independent of whether the underlying finding is right.

b. The consequence is disproportionate

The whole of the conduct at issue is the title of a one-hour virtual training, drawn from the speaker's own illness, delivered in compliance with a brigade commander's instruction to be uncomfortable and real. Attendees thanked him and one sought help. No corrective measure was imposed and no similar allegation has been made in the five years since. On that record, ROI's findings have now cost LTC Lawhorn selection for Colonel after more than two decades of service. The disproportion between the conduct and the consequence is itself an injustice the Board should remove.

VII. PROMOTION RELIEF

Correcting the record does not restore what the flawed record cost. The Board should separately determine material unfairness and direct Special Selection Board reconsideration. Under 10 U.S.C. Section 628(b)(1)(A), material unfairness exists where "the action of the promotion board that considered the person was contrary to law in a matter material to the decision

of the board or involved material error of fact or material administrative error.” The FY26 board received the Summary of Credible Adverse Information. That document reports a finding that omits an element of the offense, identifies no disparaging terms, resting its narrative on a state-of-mind determination that is no element of the offense, and postdates its own approval. Its presence in the board file was a material error of fact within the meaning of 10 U.S.C. Section 628(b)(1)(A).

The applicant’s submission to the board does not cure the error. LTC Lawhorn received notice in January 2026 and used the channel available to him. On 27 March 2026, he submitted a memorandum to the board president, asking the board to disregard the Summary, and he enclosed the 24 March 2026 letter to COL [REDACTED] in full. Tab J. The board therefore received not merely an assertion that the Summary was wrong but the complete statement as to why: the absence of a hostile-work-environment finding, the witness statements that did not support the charge, the approval authority’s own evaluation, and the religious-liberty objection. He was not selected. The Army may be expected to argue that a board so informed cannot have acted unfairly. The opposite follows.

A rebuttal does not make an erroneous document accurate. Section 628(b)(1)(A) asks whether the board’s action involved material error of fact, and the error is in the Summary, not in the completeness of the file. 10 U.S.C. § 628(b)(1)(A). A selection board is not constituted to adjudicate whether an AR 15-6 finding satisfies the elements of AR 600-20. It has no authority to set aside a substantiated adverse finding, no authority to order a document removed from a record, and no mechanism for making the kind of determination this application seeks.

LTC Lawhorn put the entire argument in front of the only forum then available to him, and the outcome was unchanged—not because the argument was rejected on its merits, but because the board had no power to act on it. What it had was an official document from OTJAG reporting substantiated discrimination, and an officer saying the document was wrong. A selection board confronted with that will credit the official document, and should. **The remedy for a defective official document is correction of the record, and this Board is the only body that can order it.** Until it does, every board that considers him will see the same file and reach the same result for the same reason.

A Special Selection Board considers the record “as that record, if corrected, would have appeared to the board that considered him,” 10 U.S.C. § 628(b)(2), which presupposes the correction sought here. Where a correction board finds material error, it may not arbitrarily decline to refer the corrected record. *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004). LTC Lawhorn does not ask the Board to promote him; 10 U.S.C. § 628(h) forecloses that and he does not seek it. He asks that the next board to consider him see an accurate record.

VIII. REQUESTED FINDINGS

So that the relief is complete and the record of decision is clear, LTC Lawhorn requests that the Board make the following findings:

- The findings of the AR 15-6 investigation dated 23 January 2021 do not establish a violation of AR 600-20, para 6–2b. They contain no finding that the conduct contributed

to a hostile work environment as that term is defined in the regulation; a single, one-hour briefing is not a series of acts that is severe and pervasive and alters an individual's work conditions. They identify no disparaging term used with respect to any person. And they rest on the definition of disparaging terms, which does not extend to sexual orientation.

- The Summary of Credible Adverse Information, dated 22 February 2021, is materially erroneous and its retention in any official record is an injustice.
- The FY26 Colonel, Chaplain Corps Promotion Selection Board's action involved material error of fact within the meaning on 10 U.S.C. § 628(b)(1)(A).
- Referral of the corrected record to a Special Selection Board is warranted.

IX. CONCLUSION

The Army found that a chaplain discriminated against soldiers on a regulation requiring a hostile work environment without finding one, on a record consisting of a single training hour which cannot be a series of acts, and on a definition of "disparaging terms" that does not reach the basis found, all without identifying any disparaging terms that he applied to anyone. It recorded that finding on a form with a blank findings section referencing a missing attachment, an empty recommendations section, and an unsigned IO authentication block. The adverse summary issued the day before the DA Form 1574-1 was approved; the commander's comment on it is dated the day before the briefing it addresses even occurred. The approving commander then imposed none of the recommended consequences, kept the chaplain in the job, ranked him first among all the chaplains he had ever commanded, recommended him for early promotion, and told him the findings were disapproved. Five years later, a document that no one acted on, and whose sufficiency under the regulation no one has ever determined, cost him his promotion.

The Board should correct the record. LTC Lawhorn respectfully requests the relief set out in Part One, paragraph 1.

Respectfully submitted,

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October 7, 2026

APPENDIX – EXHIBIT INDEX

Tab	Document	Supports
A	LTC Lawhorn’s DD Form 149 (Executed)	Application
B	Memorandum of Points and Authorities	All Grounds
C	Declaration of LTC Joseph W. Lawhorn, 7 October 2026	Timeliness; Grounds IV, V
D	AR 15-6 Findings and Recommendations (23 JAN 2021)	All Grounds
E	DA Form 1574-1 COL [REDACTED] (23 FEB 2021)	Ground IV
F	Summary of Credible Adverse Information (22 FEB 2021)	All Grounds
G	Encl. 7 ([REDACTED]) and Encl. 20 (CSM [REDACTED])	Ground VI
H	Encl. 8 (CPT [REDACTED])	Grounds II, VI
I	First Liberty Response to COL [REDACTED] (19 FEB 2021)	Notice; Exhaustion
J	LTC Lawhorn Memo to FY26 COL CH Promotion Board	Exhaustion; Parts VI.A; VII
K	FY26 COL CH Promotion Board Results	Injury
L	LTC Lawhorn OER (period ending July 2021)	Ground V
M	Extract: AR 600-20 (24 JUL 2020) and DoDI 1300.17 (1 SEP (2020)	Grounds I, II, VII