



Center for Military Readiness



Promoting high standards and sound priorities for our military men and women.

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Contact: Elaine Donnelly, CMR President

(734) 464-9430

## Departments of Defense and Justice Letting Down President Trump on Military Transgender Policies

*Four federal district court judges and two Courts of Appeals have ordered the **Department of Defense** to recruit persons identifying as transgender, starting on **January 1, 2018**. The **Department of Justice** failed to file an immediate emergency appeal to the U.S. Supreme Court, citing as their excuse a pending **Defense Department** “study” of the issue. The following comments may be attributed to **Elaine Donnelly**, President, **Center for Military Readiness**:*

“Under **Article III** of the **U.S. Constitution**, the federal courts have no authority to make policy regarding the military. The Department of Justice (**DoJ**) should have protected the constitutional rights of **President Donald J. Trump** by filing an emergency appeal with the **Supreme Court** immediately after the **District of Columbia** and **Fourth Circuit Courts of Appeals** denied requests for stays of lower court preliminary injunctions.

“**The issue is not the military transgender policy alone, but who gets to decide what the policy will be. By failing to petition the Supreme Court to stay the lower court orders, the DoJ has tacitly conceded that federal judges can make military policy and establish medical standards for enlistments.**

“[According to Reuters](#), a Justice Department official who requested anonymity noted that the Defense Department has set up a “study” to review the issue. *‘Rather than litigate this interim appeal before that occurs, the administration has decided to wait for the DoD’s study and continue to defend the president’s lawful authority in district court in the meantime.’*”

“This is a lame excuse, making as much sense as the **2016 Trump Campaign** allowing the **Federal Election Commission** to declare **Hillary Clinton** the winner of the presidential race early on Election Night, relying on vote counts coming in later to undo that result.

“The DoJ’s reported strategy might be plausible **IF** the Defense Department “study” in question were truly fact-based and objective, and **IF** the DoD had taken steps to provide conditional enlistment contracts with transgender personnel who are recruited under the force of federal court orders. Neither expectation has been met.

“As this article explains, both the Departments of Justice and Defense are letting down President Trump by allowing transgender policy to be made by federal judges and a high-

level Obama holdover official who was one of the architects of Obama's controversial transgender mandates:

- **CMR: [Failure to File Supreme Court Appeal Invites Judges to Run the Military](#)**

“In order to preserve prerogatives of the **Commander-in-Chief**, Secretary Mattis should direct that any new enlistment contracts with people who identify as transgender are written in conditional terms. Every accession or reenlistment contract involving a person who identifies as transgender, or has a diagnosis of gender dysphoria, should include conditional language referencing compliance with court orders.

“Accession and reenlistment contracts also should state that if the government prevails in the litigation, the accession or reenlistment contract will be voided, the person will be immediately released from active duty, and any subsequent applications for accession or reenlistment will be processed in accordance with duly promulgated accession standards.

“**The Justice Department's irresponsible failure to appeal to the SCOTUS for a stay calls into question whether President Trump will be able to implement his own policies, which were announced with a [Memorandum](#) on August 25. There does not appear to be a strategy to fight on principle and win.**

“This situation gives rise to several questions which President Trump should ask of **Attorney General Jeff Sessions** and **Defense Secretary James Mattis**:

- Why did Secretary Mattis assign **Anthony Kurta**, an Obama holdover with a record of **LGBT** activism before and after the Trump Inauguration, to chair the “[panel of experts](#)” that is supposed to produce a report and recommendations on transgender policies by February 21?
- Why does the Justice Department think the courts will view the result of the Mattis “study” more favorably than the **2016 Ashton Carter/RAND report** promoting transgenders in the military?
- Why have Justice Department attorneys essentially conceded that it is right for the courts to impose enlistment standards in the first place?
- Why have DoD officials been obsessing about [what type of underwear](#) transgender recruits should wear to the **MEPS** (military entrance processing station), instead of preparing conditional enlistment contracts that will protect presidential prerogatives?

“The most important question is:

- **How does any of this improve mission readiness and combat lethality?**

“The Center for Military Readiness stands ready to assist President Trump in fighting for his constitutional right to make sound policy for our military.”

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*To arrange an interview with Mrs. Donnelly, call 734/464-9430. The Center for Military Readiness is an independent, non-partisan, public policy organization that reports on and analyzes military/social issues. Follow **CMR @militaryready** on Twitter.*

**Center for Military Readiness | P. O. Box 51600 | Livonia, MI 48151 | 734-464-9430**