Trump Transgender Policy Promotes Military Readiness, Not Political Correctness

Administration Will Have to Fight in Court to Retain High Ground

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CMR Special Report

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NOTE: This **CMR Special Report**, in its entirety, is accessible in PDF format by pasting or keying the following URL into your web browser address bar:

https://cmrlink.org/data/sites/85/CMRDocuments/CMRSR_TrumpTransgenderPolicyReport-041518A.pdf

The PDF provides hyperlinks to highlighted documents, including additional sources referenced in all endnotes.

*Prepared by the **Center for Military Readiness**, an independent public policy organization that reports on and analyzes military/social issues. More information is available at **www.cmrlink.org**.*

Executive Summary: the 2018 Mattis/Department of Defense Report

On the issue of transgenders in the military, **President Donald J. Trump** and Defense Secretary **James Mattis** have done the right thing, for the right reasons. On February 22, 2018, Secretary Mattis submitted **recommendations** on the eligibility of persons who identify as transgender to serve in uniform, focusing on sound priorities: mission readiness and combat lethality.

Secretary Mattis also submitted a 44-page **report**, produced by a panel of military and medical experts, which cited **Department of Defense (DoD)** data documenting high health care costs and other issues affecting morale, cohesion, and readiness to deploy worldwide on short notice. President Trump endorsed the new policy with a **Memo** dated March 23, 2018.

The Mattis memo and DoD report proposed a nuanced approach that would a) Allow persons identifying as "transgender" but without **gender dysphoria** to serve in their **biological gender**, if they have been "stable" for **36 months** and meet requirements for deployability; b) Disqualify persons with gender dysphoria from military service; and c) Retain "grandfathered" personnel identifying as transgender and receiving treatment under previous administration policies.

The Mattis/DoD report (page numbers noted) states, *"Fitness for combat must be the metric against which all standards and requirements are judged. To give all Service members the best chance of success and survival in war, the Department must maintain the **highest possible standards of physical and mental health** and readiness across the force."* (p. 2)

- Secretary Mattis criticized **"significant shortcomings" i**n the 2016 RAND report, which the Obama Defense Department paid for, because it relied upon "*limited and heavily caveated data that glossed over the impacts of healthcare costs, readiness, and unit cohesion.*"

- The DoD panel of experts noted, *"Because of the RAND report's macro focus . . . it failed to analyze the impact at the micro level of allowing gender transition by individuals with gender dysphoria . . .[T]he report did not examine the potential impact on unit readiness, perceptions of fairness and equity, personnel safety, and reasonable expectations of privacy at the unit and sub-unit levels, all of which are critical to unit cohesion."* (p. 14)

- *"Nor did the report meaningfully address the significant mental health problems that accompany gender dysphoria -- from high rates of comorbidities and psychiatric hospitalizations to high rates of suicide ideation and suicidality -- and the scope of the scientific uncertainty regarding whether gender transition treatment fully remedies those problems."* (p. 14)

In addition, RAND is faulted for selective and misleading interpreting the experiences of **Australia**, **Canada**, **Israel**, and the **United Kingdom** with transgenders in their militaries, and for failing to note distinctions between foreign forces and the American military. (p. 38-39)

The DoD Panel of Experts cited data and information from the **Military Health System Data Repository**, based on actual DoD experience between Oct 2015 and July 2017. This data contradicts estimates and projections in the RAND report, which the Obama Administration relied upon in changing the policy in July 2016:

- RAND had estimated that there were between **2,150** to **10,790** transgender personnel, and their loss would cause a readiness crisis. The Mattis/DoD report reveals that **937** active-duty service members have been diagnosed with gender dysphoria since June 30, 2016. (p. 7, Footnote #10) (An estimate that there might be **8,980** servicemembers claiming to be transgender is extrapolated from an online survey, not actual numbers.)

- From October I, 2015, to October 3, 2017, **994** active duty Service members diagnosed with gender dysphoria accounted for **30,000 mental health visits**. (p. 22)

- Since implementation of the Carter policy, the medical costs for Service members with gender dysphoria have increased nearly **three times -- or 300%.** (p. 41)

- *"[C]urrently available in-service data already show that, cumulatively, transitioning Service members in the **Army** and **Air Force** have averaged **167** and **159 days of limited duty**, respectively, over a **one-year period**.* (p. 33)

- *"**Endocrine Society** guidelines for cross-sex hormone therapy recommend quarterly blood work and laboratory monitoring of hormone levels during the first year of treatment. Of the **424 approved Service member treatment plans available for study**, almost all of them – **91.5%** – include the prescription of cross-sex hormones.* (p. 33)

RAND claimed that negative effects on readiness would be minimal because of the small number of transgender servicemembers who would seek transition-related treatment. But the Mattis/DoD report, focusing on military effectiveness and combat lethality, found that disqualifying conditions such as bipolar disorder or schizophrenia also involve relatively small numbers. *"**And yet, that is no reason to allow persons with those conditions to serve.**"* (p. 35)

The Mattis/DoD Report provided even more information about significant losses of time associated with transgender treatments.

- Recovery times for genital surgeries range **between six weeks and three months.** ***"When combined with 12 continuous months of hormone therapy . . . prior to genital surgery, the total time necessary for surgical transition can exceed a year.*** (p. 23)

- Even RAND admitted that **6% to 20%** of those receiving [male-to-female] genital surgeries experience complications and long-term disability, and as many as **25% (one in four)** of those receiving [female to male] surgeries will have complications. (pp. 23-24)

- *"Transition-related treatment that involves cross-sex hormone therapy or sex reassignment surgery could render Service members with gender dysphoria **non-***

deployable for a significant period of time *– perhaps even a year – if the theater of operations cannot support the treatment."* (p. 33)

- Some commanders reported that it has been necessary to divert **operational and maintenance funds** to pay for currently-serving transgender servicemembers' extensive travel throughout the United States to obtain specialized medical care. (p. 41)

The Science Surrounding Transgender Treatments Is Not Settled

Findings in the Mattis/DoD report suggest that the high human and operational costs associated with treatments may not be helpful to people with psychological problems and gender dysphoria. The **Centers for Medicare and Medicaid Services (CMS)** recently conducted a comprehensive review of **over 500 articles. studies, and reports**, to determine if there was *'sufficient evidence to conclude that gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria . . .' "* (p. 24)

- *"'Overall,' according to CMS, '**the quality and strength of evidence were low** due to mostly observational study designs with **no comparison groups**, subjective endpoints . . . small sample sizes, lack of validated assessment tools, and **a considerable [number of study subjects] lost to follow-up.'** . . . CMS concluded that there was '**not enough high quality evidence to determine whether gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria**' "* (p. 24)

One of the few credible longitudinal studies, done in **Sweden,** followed transgender patients who had undergone sex reassignment surgery for more than **ten years**, comparing them to a healthy control group. The Centers for Medicare and Medicaid Services reported: *"The [Sweden study] mortality was primarily due to **completed suicides (19.1-fold greater** than in the control group) . . . We note, mortality from this patient population did not become apparent until **after 10 years**."* (p. 25)

- *"Transgender persons with gender dysphoria suffer from high rates of mental health conditions such as **anxiety, depression, and substance use disorders**. High rates of **suicide ideation, attempts, and completion** among people who are transgender are also well documented in the medical literature, **with lifetime rates of suicide attempts** reported to be **as high as 41 %** (compared to **4.6%** for the general population)."* (p. 21)

- "*A review of the administrative data indicates that **Service members with gender dysphoria** are **eight times more** likely to attempt suicide than Service members as a whole (**12%** versus **1.5%**).* (p. 21)

- Furthermore, *"Service members with gender dysphoria are also **nine times more likely to have mental health encounters** than the Service member population as a whole. (**28.l average encounters** versus **2.7 average encounters** per Service member)* (p. 22)

- None of the prevailing remedies for gender dysphoria *"account for the **added stress of military life, deployments, and combat**."* (p. 24)

- The Mattis/DoD report warns, *"Given the **scientific uncertainty** surrounding the efficacy of transition-related treatments for gender dysphoria, **it is imperative that the Department proceed cautiously** in setting accession and retention standards for persons with a diagnosis or history of gender dysphoria."* (p. 27)

Personal Privacy & Morale

Under Obama-era mandates, women objecting to biological men in their private facilities and showers essentially were told to just "get used to it." The **Defense Health Agency** warns of the consequences of privacy violations in gender-separate military facilities:

- *"[O]f the **424** approved Service member treatment plans available for study, **388** included cross-sex hormone treatment, but only **34** non-genital sex reassignment surgeries and one genital surgery have been completed thus far. Only **22** Service members have requested a waiver for a genital sex reassignment surgery."* (p. 31)

- *"Low rates of full sex reassignment surgery and the otherwise wide variation of transition-related treatment . . . weigh in favor of maintaining **a bright line based on biological sex – not gender identity**."* (p. 31)

- "*[A] biological male who identifies as female could remain a biological male in every respect and still be governed by female standards. Not only would this result in **perceived unfairness by biological males who identify as male**, it would also result in perceived unfairness by biological females who identify as female."* (p. 36)

- Citing the **International Olympic Committee**, the report endorses separate standards in sports competitions organized around gender-specific standards. ***"Biological females who may be required to compete against such transgender females in training and athletic competition would potentially be disadvantaged."*** (p. 29, FN #110, and p. 36)

- The report also endorses uniform and grooming standards that *"flow from longstanding societal expectations regarding differences in attire and grooming for men and women."* (p. 30)

The Mattis/DoD report concludes, *"[T]he Department's professional military judgment is that the risks associated with maintaining the [previous] Carter policy – risks that are continuing to be **better understood as new data become available** – counsel in favor of the recommended approach."* (p. 44)

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*The 33-page **April 2018 CMR Special Report** (available on the website **www.cmrlink.org**) provides more details and an analysis of ways to defend and strengthen the Mattis/DoD policy recommendations.*

Trump Transgender Policy Promotes Military Readiness, Not Political Correctness

Administration Will Have to Fight in Court to Retain High Ground

I. BACKGROUND & OVERVIEW

On the issue of transgenders in the military, **President Donald J. Trump** has done the right thing, for the right reasons. The Commander in Chief and Defense Secretary **James Mattis** have seized the high ground, but now they will have to fight to keep it.

Never-satisfied transgender activists were quick to criticize the effort, redoubling their efforts to demand judicial interference in the policy-making process. Late last year four federal judges and two courts of appeals handed down orders that effectively commandeered President Trump's **Article II** executive power to make policy for the military. They did this even though federal judges have no such authority under **Article III** of the **U.S. Constitution**. [1]

The activist judges and two Courts of Appeals did not wait for the President to complete the policy review that he had ordered with a formal Memorandum on August 25, 2017. [2] The Pentagon study continued nonetheless.

On Friday evening, March 23, news organizations began reporting that Secretary Mattis had submitted previously-undisclosed recommendations to President Trump on February 22: [3]

Mattis Memorandum for the President: Military Service by Transgender Individuals

Secretary Mattis supported his 3-page Memorandum with the February 2018 report that a Department of Defense (DoD) "Panel of Experts" had prepared under his direction. The 44-page report refuted misinformation that has fueled the LGBT campaign for transgenders in the military, citing many credible sources, including actual DoD data collected since June 2016: [4]

Department of Defense Report and Recommendations on Military Service by Transgender Persons (February 2018)

Late on March 23, the White House Press Office released a President Memorandum Trump had signed, concurring with recommendations of the Secretaries of Defense and **Homeland Security** (representing the **Coast Guard**): [5]

Memorandum to Secretary of Defense and Secretary of Homeland Security (Mar. 23)

The two-page Memorandum, initially released without Secretary Mattis' recommendations and the comprehensive report backing them up, was somewhat unclear. Standing alone, the Presidential Memorandum did not explain reasons why President Trump had revoked his own August 25 Memorandum, or provide details on what would replace that policy.

Prior to March 23, CMR had no way of knowing what was in the Pentagon report, or whether research used in the decision-making process would be made public. The full Mattis/DoD report was released, fortunately, but in an unusual way forced by pending litigation.

Justice Department Senior Trial Counsel **Ryan B. Parker** filed the Mattis/DoD documents in support of a persuasive Motion to Dissolve the Preliminary Injunction, which had been handed down by **Judge Marsha Pechman** in the **Western District of Seattle, WA.** [6] Judge Pechman is one of four high-handed federal district judges who had ordered the current Administration to disregard President Trump's August memorandum, and to reinstate his predecessor's transgender policies by January 1, 2018. [7] Now it is up to the Department of Justice to wage an effective legal fight to defend sound policies and President Trump's right to make them.

This CMR Policy Analysis highlights major principles and new information in the newly-released Pentagon report. It is a complicated document that commands attention because of the new and highly-credible information that it brings to light. Indicated page numbers refer to that document, and emphasis is added throughout.

Principles Behind the New Trump/Mattis Policy

The process that President Trump initiated on August 25, 2017, has produced a fact-filled, heavily-footnoted report and thoughtful recommendations that are rooted in sound priorities. Some issues remain unresolved, and Secretary Mattis will need to deter misunderstandings by clarifying regulations that strengthen discipline, morale and unit cohesion. But the clear departure from harmful policies imposed by the Obama Administration marks a major step toward ending political correctness in the military. [8]

In his 3-page Memorandum, Defense Secretary Mattis stated new priorities reflecting those of President Trump, and clearly departing from President Obama's PC philosophy and mandates. He also took issue with former Defense Secretary **Ashton Carter**'s reliance on the frequently-quoted **RAND National Defense Research Institute**, saying that that study contained *"significant shortcomings."*

The **2016 RAND report**, wrote Mattis, *"referred to **limited and heavily caveated data** to support its conclusions, **glossed over the impacts of healthcare costs**, readiness, and unit cohesion, and **erroneously relied on the selective experiences of foreign militaries** with different operational requirements than our own."* (More comments discrediting the RAND report appear on pages 35-39 of the Mattis/DoD report.)

Secretary Mattis continued,

> *"By its very nature, military service requires sacrifice. The men and women who serve voluntarily accept limitations on their personal liberties - freedom of speech, political activity, freedom of movement - in order to provide the military lethality and readiness*

necessary to ensure American citizens enjoy their personal freedoms to the fullest extent. ***Further, personal characteristics, including age, mental acuity, and physical fitness - among others - matter to field a lethal and ready force."***

Mattis' recommendations proposed a nuanced approach that would do three things: a) Allow persons identifying as "transgender" but without gender dysphoria to serve in their biological gender, if they have been "stable" for 36 months and meet deployability requirements; b) Disqualify persons with gender dysphoria from military service; and c) "Grandfather" in persons who had sought treatment for gender dysphoria under previous Obama-era policies.

Even before President Trump had expressed his intent with tweets in July 2017 and formally with his August 25 Presidential Memorandum, Secretary Mattis had ordered an internal review of transgender policies established by the previous administration. On June 30, Secretary Mattis postponed for six months mandates to recruit persons with gender dysphoria, which were supposed to go into effect on July 1, 2017. [9]

Pentagon officials may have been surprised by President Trump's form of communication via Twitter, but their concerns about the issue were publicly known weeks before then. According to several contemporaneous media reports, three of the four military service chiefs had asked for one to two years to study the issue before induction of new transgender recruits began. [10]

In his February 22 Memo, Secretary Mattis recommended that President Trump revoke his August 25 Memorandum and replace it with the policies set forth in his Memo and the 44-page report produced by a "Panel of Experts." Secretary Mattis had established the in-house panel to study transgender policies in September 2016. [11]

The resulting Mattis/DoD report has three major provisions:

1. **Transgender persons without a history of gender dysphoria, who are otherwise qualified, may serve, under limited circumstances.** (p. 4)

   Exceptions would apply if personnel have been stable for **36 consecutive months in their biological sex prior to accession;** and if they do not require a change of gender and remain deployable within **"applicable retention standards."** Under new policies that apply to all Servicemembers, persons who are non-deployable for more than **12 months** may be separated from service. [12]

   This provision will require clarification in regulations, to avoid misinterpretations or acceptance of behavior that might be deemed contrary to longstanding rules of discipline that apply to all military personnel. (see pp. 9-11 of the Mattis/DoD report, and comments in Section III, below)

2. **Transgender persons with a history or diagnosis of gender dysphoria are disqualified, except under certain limited circumstances.** (p. 5)

Unlike mandatory policies that Defense Secretary Ashton Carter imposed, the Trump/Mattis policy treats persons diagnosed with gender dysphoria in the same way that it treats others with disqualifying psychological or physical conditions. Disqualifying conditions require extensive medical treatments, which interfere with military performance and deployability.

3. **Transgender persons who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy, but before the effective date of the Trump/Mattis policy, may continue to serve.**

   These "grandfathered" individuals may continue to receive medical care and seek a change in their "gender marker" to reflect their "preferred gender" – procedures that are discontinued under the Trump/Mattis policy. There are differences in rules as they apply to active-duty personnel and new recruits, before and after January 1, 2018. (p. 5)

Taken together, these actions and documents should overcome all objections raised in litigation against President Trump, but preliminary injunctions handed down by four federal district judges currently remain in effect while litigation proceeds. Until the U.S. Supreme Court intervenes, likely on constitutional grounds, unqualified federal judges will continue to run our military and the Mattis rules will not go into effect.

Policy Based on Fitness for Combat

The Mattis/DoD report emphasizes combat realities and requirements of achieving victory:

> *"**The purpose of the Armed Forces is to fight and win the Nation's wars**. No human endeavor is more physically, mentally, and emotionally demanding than the life and death struggle of battle. Because the stakes in war can be so high – both for the success and survival of individual units in the field and for the success and survival of the Nation – it is **imperative that all Service members are physically and mentally able to execute their duties and responsibilities without fail, even while exposed to extreme danger, emotional stress, and harsh environments.*** (Executive Summary, p. 2)
>
> *"Although not all Service members will experience direct combat, standards that are applied universally across the Armed Forces must nevertheless account for the possibility that **any Service member could be thrust into the crucible of battle at any time.....**A fighting unit is not a mere collection of individuals; it is a unique social organism that, when forged properly, can be far more powerful than the sum of its parts.*[13] (p. 2)
>
> *"..... To the greatest extent possible, military standards – especially **those relating to mental and physical health –** should be based on **scientifically valid and reliable evidence**. Given the life-and-death consequences of warfare, the Department has historically taken a conservative and cautious approach in setting the mental and physical standards for the accession and retention of Service members.* (p. 3)

> *"Not all standards, however, are capable of scientific validation or quantification. Instead, they are the product of* ***professional military judgment*** *acquired from hard-earned experience leading Service members in peace and war or otherwise arising from expertise in military affairs. Although necessarily subjective, this judgment is the best, if not only, way to assess the impact of any given military standard on the intangible ingredients of military effectiveness mentioned above –* ***leadership, training, good order and discipline, and unit cohesion."*** (p. 3)

The Obama/Carter policy established complex procedures for individuals suffering from gender dysphoria, described as ***"the distress or impairment of functioning that is associated with incongruity between one's biological sex and gender identity."*** Carter directives permitted military personnel with gender dysphoria to receive medical treatments and to change their *"gender marker"* designating a transition to their *"preferred gender."* (p. 4)

In contrast, the Mattis/DoD discussion of reasons why transgender persons who require or have undergone gender transition are disqualified is unequivocal. The report states that accommodating gender transition could impair unit readiness, unit cohesion, good order, and discipline by ***"blurring the clear lines that demarcate male and female standards and policies, and lead to disproportionate costs."*** (p. 5)

The Mattis/DoD report also references ***"the considerable scientific uncertainty and overall lack of high quality scientific evidence*** *demonstrating the extent to which transition-related treatments, such as cross-sex hormone therapy and sex reassignment surgery . . . remedy the multifaceted mental health problems associated with gender dysphoria."* (p. 5)

Mattis Policy Rejects Carter Mandates

The Mattis/DoD report describes Obama-era policies, which went to extraordinary lengths to accommodate persons who identify as transgender. It does not mention all elements of the elaborate, time-consuming sex-change "transition" mandates imposed by Secretary Carter, which were analyzed in a 23-page **CMR Special Report** in July 2018. [14]

Carter and the military services promulgated more than a dozen Directives, Instructions, Handbooks, and training programs, complete with bizarre training scenarios demonstrating what was expected of commanders faced with transgender dilemmas, such as a "man" announcing he is pregnant. The Carter mandates also authorized 3-12 months off for **"real life experience" (RLE)** living as a person of the opposite sex, plus more time off for "medically-necessary" hormone treatments and/or body-altering surgeries. [15]

Carter established remote "**Service Central Coordination Cells" (SCCCs)** to provide guidance on the way to full "transition" marked with a change in a person's bureaucratic "gender marker." The entire program was based on the unscientific notion that gender can be changed by alterations in personal appearance.

In contrast, the Mattis/DoD recommendations and report are almost entirely free of politically correct language that defies scientific realities. These include unscientific claims that gender is "assigned" at birth and can be "reassigned" in ways that can change a biological man into a real woman, or a biological woman into a real man.

The Trump Administration's return to fact-based terminology also dispenses with tortured-pronoun vocabulary mandates, which the Obama Administration fully embraced. PC pronoun mandates forced everyone to feign belief in delusions that are inconsistent with the science of human biology. Gender is not "assigned" at birth; it is identified, and gender is determined by DNA chromosomes, which exist every cell of a person's body. Former Army **Pfc. Bradley Manning** changed his legal name to **Chelsea** and may believe he is a woman, but Chelsea Manning still is a biological man.

A Step Away from Politicized Medicine and Toward Common Sense

Instead of providing professional health care independent of outside influences, Ashton Carter's mandates politicized military medicine. Military commanders and medical professionals were required to treat persons identifying as transgender in only one way – affirming the self-diagnoses of persons suffering psychological pain related to gender confusion.

Carter imposed these mandates despite many longitudinal studies finding that body-altering surgeries do not resolve underlying psychological problems, including very high risks of suicide. By any measure, it is wrong for military institutions to withhold from patients suffering psychological distress credible information about controversial, irreversible treatments and surgeries that are not proven effective.

The Mattis/DoD policy disqualifies persons with gender dysphoria, with limited exceptions. It also allows some people who describe themselves as "transgender" to join or remain, but only if they are stable for 36 months, are fully deployable, prepared to live and perform in their **biological** gender, and are not suffering from or seeking treatment for gender dysphoria.

These changes are significant, but apparent ambiguities will have to be clarified in disciplinary rules that apply to everyone. [16] Answers to questions may be found in the Mattis/DoD Report discussion of transgender policies as they were before Secretary Carter imposed his transgender mandates in June 2016.

Disciplinary Regulations Should Still Apply

A series of long-standing DoD Instructions have modified eligibility standards every three or four years, based on 30 bodily systems and medical focus areas. This process carefully considers evidence-based clinical information measured against military operational

requirements. [17] The goal of these standards is to ensure that *"individuals are physically and psychologically 'qualified, effective, and able-bodied persons' capable of performing military duties."*

The Mattis/DoD report reinforces the point: *"Military effectiveness requires that the Armed Forces manage an integrated set of unique medical standards and qualifications because **all military personnel must be available for worldwide duty 24 hours a day without restriction or delay."*** (pp. 8-9)

All persons being considered for induction must be free of contagious diseases that threaten the health of others, and free of medical conditions or physical defects that may require **excessive time lost from duty** for necessary treatment or hospitalization, or probably will result in separation from service for medical unfitness. (p. 9)

Unless otherwise expressly provided, a current diagnosis or verified past medical history of a condition listed in **DoDI 6130.03** is presumptively disqualifying. [18] The Mattis/DoD report adds,

> *"Historically, mental health conditions have been a great concern because of the **unique mental and emotional stresses of military service.** Mental health conditions frequently result in attrition during initial entry training and the first term of service and are routinely considered by in-service medical boards as a basis for separation.....Prior to implementation of the Carter policy, the Department's accession standards barred persons with a **'[h]istory of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias.'"*** (p. 10)

The Mattis/DoD Report mentions several physical and psychological conditions that are often associated with persons identifying as transgender, which were repeatedly validated as disqualifying on multiple grounds. (p. 10)

It also mentions that under **DoDI 1332.14**, *"In practice, transgender persons were not usually processed for administrative separation on account of gender dysphoria or gender identity itself, but rather on account of **medical comorbidities** (e.g., **depression or suicidal ideation) or misconduct due to cross dressing and related behavior."*** (p. 11)

The emphasized words are important, since a growing cohort of experts and individuals who have undergone and later regretted transgender surgeries themselves have been warning about the dangers of failing to recognize "comorbidities" – serious psychological conditions that sometimes co-exist with gender confusion, or may be left untreated while patients are pushed into the pipeline for irreversible hormone therapies and surgeries for gender dysphoria.

All mental health and behavioral issues that affect individuals and others must be treated with compassion and competence in an independent military health system that is not politicized by PC pressures and expectations.

Military Medicine as a "Force Multiplier"

Several pages of the Mattis/DoD report discuss changes in descriptions of the condition that used to be called **"gender identity disorder."** The **American Psychiatric Association (APA)** changed the term to "gender dysphoria" in their **Diagnostic and Statistical Manual of Mental Disorders, (DSM-5)** in 2013. (p. 12)

The Mattis/DoD Report states, ***"DSM-5 observed that gender dysphoria 'is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.' "*** (p. 13)

On another page, the Mattis/DoD Report quotes the APA suggesting differences between gender dysphoria and transgenderism: "[I]*t is not a medical condition for persons to identify with a gender that is different from their biological sex. Put simply, transgender status alone is not a condition."* (p. 20, Footnote #56, which refers to DSM-5 at 452-53)

The conduct vs. status discussion raises a legitimate question: Is there a diagnostic test that can be used to confirm or rule out gender dysphoria? **Walt Heyer**, an author with personal experience living as a woman for eight years, and who currently counsels others considering or suffering from similar experiences with transgender surgeries, quotes several studies indicating that the answer is No:

> *"The problem is that transgender identity is based solely on **subjective criteria**. There is no objective, robust physical test to prove whether 'transgender persons' exist beyond a person strongly insisting that he or she is a transgender person."* [19]

Ryan T. Anderson, Ph.D. of the **Heritage Foundation** cites a number of experts who have taken issue with policy positions of the APA, in many articles and in his recent, groundbreaking book, *When Harry Became Sally – Responding to the Transgender Moment.* [20]

Anderson quotes **Dr. Paul McHugh**, the former Chief of Psychiatry at **Johns Hopkins University**, who has described people who identify as transgender as *"suffer[ing] a disorder of 'assumption' like those in disorders familiar to psychiatrists."* McHugh continued, "*The 'disordered assumption' of those who identify as the opposite sex, he says, is similar to the faulty assumption of those who suffer from anorexia nervosa, who believe themselves to be overweight when in fact that are dangerously thin."*

The Defense Department has chosen to incorporate apparent contradictions sourced to the APA, a civilian professional organization that favors transgender surgeries, even for children. In doing so, the DoD has waded into a complicated world, assuming the risk of creating confusion.

Will the typical lieutenant at **Fort Bragg** understand nuances of psychological diagnoses and health care for transgenders, with or without gender dysphoria? And what if the APA changes DSM-5 definitions again, with or without notice, pushing the transgender frontier well past the point where the Mattis/DoD policies are now?

The fact remains that military personnel with psychological problems need competent health care that serves their own best interests, not the political agendas of others. The situation underscores the need for a force-multiplying Military Health System that is not skewed by PC group-think.

Toward that goal, the Defense Department should discontinue training programs that promote transgender ideology, and disestablish the Obama-era network of remote "coordinating cells" set up to recommend one-size-fits-all diagnoses for serious psychological conditions.

Mattis/DoD Report Discredits 2016 RAND Cost Estimates

In June 2016, Defense Secretary Carter's mandates pressured military doctors and nurses to authorize or participate in "medically-necessary" treatments, which many consider to be unethical as well as ineffective. In contrast, the Mattis/DoD report includes many facts that discredit Obama-era presumptions and mandates.

For the first time, the Department of Defense has released actual data reflecting the military's experiences under the previous administration's mandates. These numbers are very credible, especially when they are compared to the mistaken estimates, speculations, and assumptions set forth by the RAND National Defense Research Institute in their 2016 report.

Far from being an objective "study," RAND delivered questionable data and arguments favored by the Obama Administration, which commissioned and paid for the report. For example:

- RAND presented estimates of the number of transgenders serving in the military – between **1,320** and **6,630** in active-duty components, plus **830** to **4,160** in the Selected Reserve. (p. 13) The combined totals of these elastic estimates, which were often quoted as "facts," served to raise the alarm that President Trump's new policies would result in the sudden, devastating loss of **2,150** to **10,790** transgender personnel.

- In contrast, the Mattis/DoD report states that **937** active-duty service members have been diagnosed with gender dysphoria since June 30, 2016. (p. 7, Footnote #10) This relatively small number discredits RAND's speculations about readiness, especially since currently-serving persons who identify as transgender are "grandfathered" in to preclude any negative personal consequences due to policy revisions.

- In the same footnote, the Mattis/DoD report suggests that there might be **8,980** servicemembers claiming to be transgender. This apparently precise number is only an

estimate, however. The number was extrapolated from the **1%** of respondents to an anonymous, self-reported online survey, not an actual head-count. [21]

Risks of Suicide Cannot Be Ignored

The Mattis/DoD report includes more facts that discredit RAND's attempts to minimize potential costs of Carter policies. For example, the 2016 RAND report predicted that annual gender transition-related health care would be *"an extremely small part of the overall health care provided to the [active component] population . . . [and that] Transgender health care costs would increase only between **$2.4 million** and **$8.4 million** annually."* [22] (pp. 13-14, quoting RAND Report, xi-xii)

The Mattis/DoD report notes that RAND had admitted there would be an "***adverse impact on health care utilization and costs, readiness, and unit cohesion,"*** but concluded nonetheless that the impact will be *"negligible"* and *"marginal"* because of the small estimated number of transgender Service members. The DoD panel of experts suggests otherwise: *"The RAND report's macro **focus failed to analyze the impact at the micro level of allowing gender transition by individuals with gender dysphoria."*** [23] (p. 14)

- Quoting the American Psychiatric Association's DSM-5, the Mattis/DoD report reiterates "*The condition [gender dysphoria] is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.*" (p. 21)

- It continues,*"Transgender persons with gender dysphoria suffer from high rates of mental health conditions such as **anxiety, depression, and substance use disorders**. High rates of **suicide ideation, attempts, and completion** among people who are transgender are also well documented in the medical literature, **with lifetime rates of suicide attempts** reported to be **as high as 41 %** (compared to **4.6%** for the general population). According to a 2015 survey, the rate skyrockets to **57%** for transgender individuals without a supportive family." [24]* (p. 21)

Transgender Treatments: Costly in Terms of Time, Money, and Mortality

Shedding new light on the subject, the DoD/Mattis report quotes specific data retrieved from the **Military Health System (MHS) Data Repository** (Oct. 2017.) The data, which are based on actual experience between October 2015 and July 2017, reveal the high costs and consequences of Obama Administration transgender policies:

- "[After referring to civilian rates] *. . . Preliminary data of Service members with gender dysphoria reflect similar trends. A review of the administrative data indicates that **Service members with gender dysphoria** are **eight times more** likely to attempt suicide than Service members as a whole (**12%** versus **1.5%**).* (p. 21)

- Furthermore, *"Service members with gender dysphoria are also **nine times more likely to have mental health encounters** than the Service member population as a whole. (**28.l average encounters per Service member** versus **2.7 average encounters** per Service member)* (p. 22)

- From October I, 2015, to October 3, 2017, the 994 active duty Service members diagnosed with gender dysphoria accounted for **30,000 mental health visits**. (p. 22)

- Since implementation of the Carter policy, the medical costs for Service members with gender dysphoria have increased nearly **three times -- or 300%.** Some commanders reported that it has been necessary to divert **operational and maintenance funds** to pay for servicemembers extensive travel throughout the United States to obtain specialized medical care. (p. 41)

These reported disturbing personal consequences and expenditures are only the beginning of what should be an ongoing discussion of the costs and consequences of retaining and recruiting persons who identify as transgender or are diagnosed with gender dysphoria.

- According to an **Endocrine Society** professional journal, **cross-sex hormone therapies** for women "transitioning" to men involves *"the administration of testosterone, whereas treatment for men transitioning to women requires the blocking of testosterone and the administration of estrogens."* Clinical guidelines recommend ***laboratory bloodwork every 90 days for the first year of treatment*** *to monitor hormone levels."* (p. 22)

- Getting into clinical details of various types of gender-altering surgeries that the Carter policies had authorized, the report states, *"The **estimated recovery time** for each of the surgical procedures, even assuming no complications, can be **substantial**. For example, assuming no complications, the recovery time for a hysterectomy is **up to eight weeks**; a mastectomy is **up to six weeks**."* (p. 23)

- Recovery times for additional genital surgeries range **between six weeks and three months. *"When combined with 12 continuous months of hormone therapy, which is required prior to genital surgery, the total time necessary for surgical transition can exceed a year.*** [25] (p. 23)

- Even the RAND study admitted that **6% to 20%** of those receiving [male-to-female] genital surgeries experience complications and long-term disability, and as many as **25% – one in four – of those receiving [female to male] surgeries will have complications.** (pp. 23-24)

The Department of Defense has done a service to the nation by exposing actual numbers such as these, from credible studies and the military's experiences since June 2016. The Trump

administration has the right, and the responsibility, to ask: ***How do these substantial costs and consequences improve military readiness?***

The Science Surrounding Transgender Treatments Is Not Settled

The Mattis/DoD report improves public understanding of the transgender issue by citing **a large body of medical studies that discredit the prevailing wisdom** that transgender hormone treatments, real life experience, and sometimes surgeries always improve mental health outcomes. The report also notes that none of the prevailing remedies for gender dysphoria *"account for the **added stress of military life, deployments, and combat**."* The report states:

- *"As recently as August 2016, the **Centers for Medicare and Medicaid Services (CMS)** conducted a comprehensive review of the relevant literature, **over 500 articles. studies, and reports**, to determine if there was 'sufficient evidence to conclude that gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria . . . 'Overall,' according to CMS, '**the quality and strength of evidence were low** due to mostly observational study designs with **no comparison groups**, subjective endpoints, potential confounding..... small sample sizes, lack of validated assessment tools, and **a considerable [number of study subjects] lost to follow-up.'"*** (p. 24)

- *"..... With respect to whether sex reassignment surgery was 'reasonable and necessary' for the treatment of gender dysphoria, CMS concluded that there was '**not enough high quality evidence to determine whether gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria**'* (p. 24)

*"Importantly, CMS identified only six studies as potentially providing 'useful information on the effectiveness of sex reassignment surgery ..... Additional studies found that the 'cumulative rates of **requests for surgical reassignment reversal of change in legal status** were **between 2.2%** and **3.3%.' "*** (pp. 24-25) If airline passengers knew that over 3% of them would not survive their flights, most would not board the airplanes.

A longitudinal study done in **Sweden** followed transgender patients who had undergone sex reassignment surgery for more than ten years, comparing them to a healthy control group. According to the Centers for Medicare and Medicaid Services:

- *''The [Sweden study] mortality was primarily due to completed suicides (**19.1-fold greater** than in the control group)..... We note, mortality from this patient population did not become apparent until **after 10 years**. The risk for **psychiatric hospitalization was 2.8 times greater** than in controls even after adjustment for prior psychiatric disease (**18%**). The risk for **attempted suicide** was greater in male-to-female patients regardless of the gender of the control."* (p. 25)

- Citing the same credible study, the Mattis/DoD report notes, *"As a treatment for gender dysphoria, sex reassignment surgery is '**a unique intervention not only in psychiatry but in all of medicine**.'"* (pp. 22-23)

- Even the RAND study confirmed, *"There have been no randomized controlled trials of the effectiveness of various forms of treatment comes from retrospective studies. . . . "[N]one of these studies were **randomized controlled trials (the gold standard for determining treatment efficacy**)."* (pp. 26-27)

- Furthermore, *"In the absence of quality randomized trial evidence," RAND concluded, **"it is difficult to fully assess the outcomes of treatment for [gender dysphoria]."*** (p. 27)

The DoD panel of experts warns, *"Given the **scientific uncertainty** surrounding the efficacy of transition-related treatments for gender dysphoria, **it is imperative that the Department proceed cautiously** in setting accession and retention standards for persons with a diagnosis or history of gender dysphoria."* (p. 27) (More information on medical expenditures and related costs appears on pages 41-42 of the Mattis/DoD report.)

Military Health Standards Exist for Good Reasons

It should not be necessary for leaders of the strongest military in the world to explain what should be self-evident, but some critics fail to understand basic realities:

> *"Not only is maintaining high standards of mental health critical to military effectiveness and lethality, maintaining high standards of physical health is as well. Above all, whether they serve on the frontlines or in relative safety in non-combat positions, every Service member is important to mission accomplishment and must be available to perform their duties globally whenever called upon.* ***"To access recruits with higher rates of anticipated unavailability for deployment thrusts a heavier burden on those who would deploy more often."*** (p. 27)

The Mattis/DoD report notes that physical and psychological standards *"have long applied uniformly to all persons, regardless of transgender status.* ***The Carter policy, however, deviate[d] from these uniform standards*** *by exempting, under certain conditions, treatments associated with gender transition, such sex reassignment surgery and cross-sex hormone therapy."* (p. 28)

Personal Privacy & Morale

The Mattis/DoD report addresses issues of "***good order, discipline, steady leadership, unit cohesion, and ultimately military effectiveness and lethality."*** (p. 28)

> *"For example,* ***anatomical differences between males and females, and the reasonable expectations of privacy that flow from those differences****, at least partly account for the laws and regulations that require* ***separate berthing, bathroom, and shower facilities and different drug testing procedures for males and females.*** (p. 29)
>
> *"To maintain good order and discipline, Congress has even required by statute that the* ***sleeping and latrine areas*** *provided for 'male' recruits be* ***physically separated*** *from the sleeping and latrine areas provided for 'female' recruits during basic training . . . "* (p. 29)

The Mattis/DoD report criticizes previous Carter policies for *"making military sex-based standards contingent, not necessarily on the person's biological sex, but on the person's gender marker in* ***DEERS [Defense Enrollment Eligibility Reporting System]****, which can be changed to reflect the person's [preferred] gender identity."* (p. 30)

The Carter policy did not require that individuals undergo sex reassignment surgery, or even cross-sex hormone therapy to be recognized as – and subject to the standards associated with – their preferred gender. (p. 30) This unrestricted, unrealistic policy violated privacy rights of military women who object to biological men in their private facilities.

Carter mandates and training manuals tried to minimize these concerns, essentially telling women concerned about gender pretenders to "just get used to it." [26] Defense Health Agency Supplemental Health Care Program Data, released in the Mattis/DoD report, suggest that the privacy issues would persist in Obama-era policies were continued:

> *"[O]f the* ***424*** *approved Service member treatment plans available for study,* ***388*** *included cross-sex hormone treatment, but only* ***34*** *non-genital sex reassignment surgeries and one genital surgery have been completed thus far. Only* ***22*** *Service members have requested a waiver for a genital sex reassignment surgery.* (p. 31)
>
> *"Low rates of full sex reassignment surgery and the otherwise wide variation of transition-related treatment, with all the challenges that entails for privacy, fairness, and safety, weigh in favor of maintaining* ***a bright line based on biological sex – not gender identity*** *or some variation thereof – in determining which sex-based standards apply to a given Service member.* [27] (p. 31)

The DoD panel of experts concludes that there is no way to justify these social burdens in terms of readiness, discipline, and morale.

II. WHAT WILL THE NEW POLICY MEAN IN PRACTICE?

A. <u>Gender Non-Conforming Persons Without Gender Dysphoria</u>

The Mattis/DoD Report expresses respect and appreciation for persons who volunteer to serve while identifying as transgender, with or without a history or current diagnosis of gender dysphoria. The report draws distinctions between both groups, even though the terms "transgender" and "persons with gender dysphoria" often are used interchangeably. To reduce confusion, it may be necessary to use different terms or definitions that clarify intent.

The size of the group of people who identify as "transgender," but do not suffer from gender dysphoria, is not known with certainty, even though an anonymous online survey found that 1% reported themselves to be transgender. All persons in this gender non-conforming category are subject to disciplinary rules and deployability requirements applying to all others. The Mattis/DoD report states the policy as follows:

> *"Transgender persons who have not transitioned to another gender and do not have a history or current diagnosis of gender dysphoria – i.e., they identify as a gender other than their biological sex but* ***do not currently experience distress or impairment of functioning in meeting the standards associated with their biological sex –*** *are eligible for service, provided that they, like all other persons, satisfy all mental and physical health standards and are capable of adhering to the standards associated with their biological sex."* (p. 32)

Because enlistment (accession) standards generally are more stringent, new recruits must be able to demonstrate **36 months** of "stability" immediately preceding their application. With the exception of "grandfathered" servicemembers who began treatment under Obama-era policies, gender non-conforming members who do not currently experience distress or impairment of functioning in meeting the standards associated with their biological sex must not require gender treatments or transition. They also must not be non-deployable for 12 consecutive months.

B. Reasons Why Persons Who Require Gender Transition are Disqualified

The Mattis/DoD report clearly explains why persons who were diagnosed with gender dysphoria, either before or after entry into service, or who require transition-related treatment, or have already transitioned to their preferred gender, should be disqualified from service:

> *"While transition-related treatments, including real life experience, cross-sex hormone therapy, and sex reassignment surgery, are widely accepted forms of treatment, there is* ***considerable scientific uncertainty concerning whether these treatments fully remedy, even if they may reduce, the mental health problems associated with gender dysphoria.***
>
> *"Despite whatever improvements in condition may result from these treatments,* ***there is evidence that rates of psychiatric hospitalization and suicide behavior remain higher for persons with gender dysphoria, even after treatment, as compared to persons without gender dysphoria. The persistence of these problems is a risk for readiness."*** (p. 32)

1. **Lost Time and Non-Deployability**

To support that conclusion, the report reveals empirical data revealing lost time consequences that are reason for concern about the impact on military readiness:

- *"[C]urrently available in-service data already show that, cumulatively, transitioning Service members in the Army and Air Force have averaged **167** and **159 days of limited duty**, respectively, over a **one-year period**.* (p. 33)

- *"Transition-related treatment that involves cross-sex hormone therapy or sex reassignment surgery could render Service members with gender dysphoria non-deployable for a significant period of time – perhaps even a year – if the theater of operations cannot support the treatment.* (p. 33)

- *"For example: Endocrine Society guidelines for cross-sex hormone therapy recommend quarterly blood work and laboratory monitoring of hormone levels during the first year of treatment. Of the **424 approved Service member treatment plans available for study**, almost all of them – **91.5%** – include the prescription of cross-sex hormones.* (p. 33)

- *"**The period of potential nondeployability increases for those who undergo sex reassignment surgery**. As described earlier, the recovery time for the various sex reassignment procedures is substantial.* (p. 33)

- *"For non-genital surgeries (assuming no complications), the range of recovery is **between two and eight weeks** depending on the type of surgery, and for genital surgeries (again assuming no complications), the range is between **three and six months** before the individual is able to return to full duty. When combined with **12 continuous months** of hormone therapy, which is recommended prior to genital surgery, the **total time** necessary for sex reassignment surgery could exceed a year." (p. 33)*

The panel of experts received "input" that "varied considerably." One source reported that, from the time of diagnosis to completion of a transition plan, a person would be non-deployable for **two-and-a-half years**. This involved servicemembers who *"managed"* their treatments by adjusting therapies to accommodate deployment during the first year of hormone use. (pp. 33-34)

The Mattis/DoD report expressed concern about the risks of deploying persons who delay treatments for gender dysphoria:

> "Of course, postponing treatment, especially during a combat deployment, **has risks of its own** insofar as the treatment is necessary to mitigate the clinically significant distress and impairment of functioning caused by gender dysphoria. After all, (quoting the **Institute for**

Defense Analyses), 'when Service members deploy and then do not meet medical deployment fitness standards, there is **risk for inadequate treatment within the operational theater, personal risk due to potential inability to perform combat required skills, and the potential to be sent home from the deployment and render the deployed unit with less manpower.' (p. 34)**

*"In short, the periods of transition-related non-availability and the **risks of deploying untreated Service members with gender dysphoria are uncertain, and that alone merits caution.** Moreover, most mental health conditions, as well as the medication used to treat them**, limit Service members' ability to deploy.** Any DSM-5 psychiatric disorder with residual symptoms or **medication side effects, which impair social or occupational performance**, require a waiver for the Service member to deploy."* (p. 34)

Quoting the **Assistant Defense Secretary for Health Affairs**, *"In managing mental health conditions while deployed, providers must consider the **risk of exacerbation** if the individual were exposed to **trauma or severe operational stress**."* (p. 34)

The panel of experts concludes that assuming these medical risks, especially in time of war, would not benefit the military.

2. Flawed RAND Analysis of Medical Issues and Foreign Militaries

RAND conceded that the information cited *"must be interpreted with caution,"* because *"much of the current research on transgender prevalence and medical treatment rates relies on self-reported, non-representative samples."* (p. 35, quoting RAND study at pp. 40, 42, and 39)

In its analysis of the experiences of foreign militaries with transgender servicemembers, RAND admitted negative effects on readiness, but claimed that they would be minimal because of the small number of transgender servicemembers who would seek transition-related treatment. The Mattis/DoD report, focusing on military effectiveness and combat lethality, states:

*"[By] **RAND's standard, the readiness impact of many medical conditions that the Department has determined to be disqualifying – from bipolar disorder to schizophrenia – would be minimal** because they, too, exist only in relatively small numbers. **And yet that is no reason to allow persons with those conditions to serve."*** (p. 35)

*". . . In sum, the available information indicates that there is **inconclusive scientific evidence** that the serious problems associated with gender dysphoria can be fully remedied through transition-related treatment and that, even if it could, most persons requiring transition-related treatment could be non-deployable for a potentially significant amount of time. **By this metric, Service members with gender dysphoria who need transition-related care present a significant challenge for unit readiness."*** (p. 35)

The RAND study largely dismissed concerns about the impact on unit cohesion by pointing to the experience of four countries that allow transgender service – **Australia**, **Canada**, **Israel**, and the **United Kingdom**. Although the vast majority of armed forces around the world do not permit or have policies on transgender service, RAND noted that 18 militaries do, but only four have well-developed and publicly available policies. (p. 38)

RAND concluded that the available research revealed *"no significant effect on cohesion, operational effectiveness, or readiness."* It reached this conclusion, however, despite noting reports of resistance in the ranks, and acknowledging that the available data on small numbers of transgender personnel was *"limited."* (pp. 38-39)

The Mattis/DoD report criticizes the RAND study for mischaracterizing or overstating the reports upon which it rested its conclusions.

- For example, the RAND report cited *Gays in Foreign Militaries 2010: A Global Primer*, by LGBT activist **Nathaniel Frank**, as support for the conclusions that there is no evidence that transgender service has had an adverse effect on cohesion, operational effectiveness, or readiness in the militaries of Australia and the United Kingdom. Frank also claimed that diversity has actually led to increases in readiness and performance.

- The Mattis/DoD report notes that that particular study had *"nothing to do with examining the service of transgender persons; rather, it is about the integration of homosexual persons into the military."* (p. 39, Footnotes #149, 150)

- The DoD also notes flaws in RAND conclusions about the Israeli Defense Forces (IDF), which were based on limited interviews and failed to explain differences between IDF practices and operational considerations within the American military. (p. 39)

According to RAND, a journal article on the **Canadian Forces** military experience with gender identity issues, *"found no evidence of any effect on unit or overall cohesion."*

- The Mattis/DoD report observes that the article in question not only failed to support the RAND study's conclusions (not to mention the article's own conclusions), but it confirmed the concerns that animate the Department's recommendations.

- Commanding officers quoted in the article discussed the difficulties they had in balancing competing interests between transgenders and everyone else. (p. 40)

These facts, and more, support Secretary Mattis' criticisms of "significant shortcomings" in the 2016 RAND report.

3. Carter Policy Incompatible with Sex-Based Standards

The Mattis/DoD report reiterates the importance of maintaining a *"clear line between men and women where their biological differences are relevant,"* especially in private facilities.

> ***"This line promotes good order and discipline, steady leadership, unit cohesion, and ultimately military effectiveness and lethality because it ensures fairness, equity, and safety; satisfies reasonable expectations of privacy; reflects common practice in the society from which we recruit; and promotes core military values of dignity and respect between men and women.***" (p. 35)

The report takes issue with the Carter policy, which did not require a transgender person to undergo any biological transition to be treated in accordance with the person's preferred gender:

> "*Therefore, a biological male who identifies as female could remain a biological male in every respect and still be governed by female standards. Not only would this result in* ***perceived unfairness by biological males who identify as male****, it would also result in perceived unfairness by biological females who identify as female.* ***Biological females who may be required to compete against such transgender females in training and athletic competition would potentially be disadvantaged.*****"** (p. 36)

The Mattis/DoD report contributes to the ongoing national debate about different physical fitness and athletic qualification standards that ensure equity, fairness, and protection from injury. It cites deliberations of the **International Olympic Committee**, and endorses separate gender-specific standards in sports competitions organized around gender-specific standards, which account for anatomical differences between males and female. [28] (p. 29, Footnote #110)

In addition, the report endorses uniform and grooming standards that *"flow from longstanding societal expectations regarding differences in attire and grooming for men and women."* (p. 30)

Second, the Mattis/DoD Report addressed issues of personal privacy, viewing them in terms of military values and requirements.

> *"Allowing transgender persons who have not undergone a full sex reassignment . . . would invade the* ***expectations of privacy*** *that the strict male-female demarcation in berthing, bathroom, and shower facilities is meant to serve. . . Without separate facilities for transgender persons or other mitigating accommodations . . .* ***the privacy interests of biological males and females and transgender persons could be anticipated to result in irreconcilable situations."*** (p. 37)

One of these "irreconcilable situations" was reported by a commander who was expeted to deal with dueling equal opportunity complaints – one from a pre-surgical transgender female

seeking access to women's shower facilities, and the other from women who objected to the biological male violating their privacy (p. 37)

As the Mattis/DoD report notes, ***"The collision of interests discussed above are a direct threat to unit cohesion and will inevitably result in greater leadership challenges without clear solutions."*** Leaders at all levels already face immense challenges in building cohesive military units, and blurring the line that differentiates male and female standards will only exacerbate those challenges and divert valuable time and energy from military tasks. (pp. 37-38)

Advocates of transgenders in the military have failed to explain how any of these social burdens improve mission readiness, discipline, or morale; there is no such case to be made.

4. Disproportionate Costs

The Mattis/DoD report released notable actual-experience data on the costs of transition-related treatments, which are proving to be disproportionately costly on a per capita basis, *"especially in light of the absence of solid scientific support for the efficacy of such treatment."* (p. 41)

> "Since implementation of the Carter policy, the medical costs for Service members with gender dysphoria have increased nearly **three times -- or 300%** – compared to Service members without gender dysphoria, and this increase is despite the low number of costly sex reassignment surgeries that have been performed so far. (p. 41)
>
> "As noted earlier, **only 34** non-genital sex reassignment surgeries and **one** genital surgery have been completed, with an additional **22** Service members requesting a waiver for genital surgery. [However,] as many as **77%** of the **424** Service member treatment plans available for review include requests for transition-related surgery, although it remains to be seen how many will ultimately obtain surgeries. (p. 41, quoting Military Health System Data Repository and Defense Health Agency Data, as of Feb. 2018)
>
> "In addition, several commanders reported to the Panel of Experts that transition-related treatment for Service members with gender dysphoria in their units had a **negative budgetary impact** because they **had to use operations and maintenance funds to pay for the Service members' extensive travel throughout the United States to obtain specialized medical care."** (p. 41)

Advocates of transgenders in the military have failed to explain why operational and maintenance funds should be diverted to cover these additional costs, and how these burdens improve mission readiness, discipline, or morale.

C. Transgender Persons With a History or Diagnosis of Gender Dysphoria are Disqualified, Except Under Certain Limited Circumstances

The Mattis/DoD report states, *"As explained earlier in greater detail, persons with gender dysphoria experience significant distress and impairment in social, occupational, or other important areas of functioning. Gender dysphoria is also accompanied by extremely high rates of suicidal ideation and other comorbidities.* (p. 42)

It continues, *"Therefore, to ensure unit safety and mission readiness, which is essential to military effectiveness and lethality, persons who are diagnosed with, or have a history of, gender dysphoria are* ***generally disqualified from accession or retention in the Armed Forces."*** (p. 42)

Recommended procedures for waiver are consistent with the DoD's handling of other mental conditions that require treatment. With regard to the accession of new recruits, the report states,

> *"Accordingly, persons with a history of gender dysphoria may access into the Armed Forces, provided that they can demonstrate* ***36 consecutive months of stability*** *– i.e., absence of gender dysphoria – immediately preceding their application; they have not transitioned to the opposite gender; and they are willing and able to adhere to all standards associated with their biological sex.* (p. 42)
>
> *"The 36-month stability period is the same standard the Department currently applies to persons with a history of depressive disorder."* [29] (p. 42)

The Mattis/DoD report continues,

> *"[R]etention standards focus squarely on whether the Service member, despite his or her condition, can continue to do the job. This reflects the Department's desire to retain, as far as possible, the Service members in which it has made substantial investments and to avoid the cost of finding and training a replacement.* (p. 42)
>
> *"Therefore, Service members who are diagnosed with gender dysphoria after entering military service may be retained without waiver, provided that they are willing and able to adhere to all standards associated with their biological sex, the Service member does not require gender transition, and the Service member is not otherwise non-deployable for more than 12 months."* (p. 42)

The Department of Defense has decided to retain transgender Service members who were diagnosed with gender dysphoria and either remained in service following the announcement of the Carter policy and the court orders requiring transgender accession on January 1, 2018. The Department of Defense has not dismissed the reasonable expectations of these Service

members, but people in this "grandfathered" group must comply with all deployability requirements.

Conclusion

The Mattis/DoD report makes it clear that the Department of Defense is not convinced that the risks of recruiting or retaining transsexuals with dysphoria can be responsibly dismissed. Even negligible harms should not be incurred, *"given the Department's grave responsibility to fight and win the Nation's wars in a manner that maximizes the effectiveness, lethality, and survivability of our most precious assets – our* ***Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen****."* (p. 44) *The report concludes:*

> *"It is the Department's view that the various balances struck by the recommendations above provide the best solution currently available, especially in light of the significant uncertainty in this area. Although military leadership from the prior administration reached a different conclusion. the Department's* ***professional military judgment*** *is that the risks associated with maintaining the Carter policy – risks that are continuing to be better understood as new data become available – counsel in favor of the recommended approach.* (p. 44)

III. CMR POLICY ANALYSIS

The **Center for Military Readiness**, an independent, non-partisan public policy organization, has reported on and analyzed military/social issues since 1993. CMR advocates for high, uncompromised standards and sound priorities in the making of military/social policies. The Center has published many policy analyses and articles about subjects addressed in the Mattis/DoD report, but the "panel of experts" that wrote the document did not consult with or seek information from CMR.

Any report written by a committee of experts will have inconsistencies and omissions, and the Mattis/DoD report is no exception. Still, President Trump and Secretary Mattis have taken carefully considered steps to formulate rational policies that will strengthen our military, not weaken it. From CMR's independent perspective, several unresolved issues should be clarified, in pursuit of that objective.

1. <u>The Need to Defend Sound Policies in Court</u>

Transgender activist groups have filed lawsuits against President Trump, accusing him of announcing policy changes without military support, even though AP reported in June 2017 that three of the four military service chiefs wanted 1-2 more years to study the issue. In his April 12, 2018, **House Armed Services Committee** testimony, Secretary Mattis confirmed that he delayed full implementation of Obama-era policies for six months and began a study of the

issue because the service chiefs were concerned about problems with the policy. **This occurred well before President Trump's July tweets and August 2017 Memorandum**.

Four federal district judges, in the **District of Columbia**, **Maryland**, **California**, and **Washington** state, have issued orders trying to deny to President Donald J. Trump Executive powers to revoke policies imposed by his predecessor, President Barack Obama. The district judges and two federal **Courts of Appeals** have failed to give appropriate deference to the President's legitimate exercise of constitutional authority.

The question now goes beyond the transgender policy itself. In matters of national security, who gets to decide what policy will be? The Commander in Chief cannot defend America if federal judges interfere. The **Supreme Court** has long recognized that federal judges are *"ill-equipped to determine the impact upon discipline that any particular [judicial] intrusion upon military authority might have."* [30]

The Department of Defense has studied the transgender issue and produced a solid report that reveals new information and insights into the costs and consequences of continuing policies imposed by the previous administration. Since lower courts have so far refused to recognize the rational basis behind Secretary Mattis' recommendations and President Trump's policy decisions, the **Department of Justice** should petition the Supreme Court for intervention and prepare to present what will be a persuasive and successful case.

2. <u>Conditional Contracts</u>

Since October 30, 2017, the Defense Department has been complying with four district court preliminary injunction orders, which have attempted to limit President Trump's executive powers to review and change policies regarding transgenders in the military. The ultimate outcome of the litigation, which the Supreme Court likely will consider in the near future, cannot be predicted with certainty.

During this time, the Department of Defense should protect the prerogatives of the Executive and Legislative branches, which have the sole power to make policy for the military under Articles I and II of the U.S. Constitution. This could and should be done by informing transgender applicants that litigation is pending, and all enlistment or re-enlistment contracts issued under court orders are subject to cancellation if the government prevails. Conditional contracts, which are not unusual, would be prudent and fair, but the Mattis/DoD Report does not mention them.

3. <u>Principles and Premises</u>

The first paragraph in the DoD/Mattis report sounds harmless, but it could cause problems by creating confusion about priorities:

> *"It is a bedrock principle of the DoD that any eligible individual who can meet the high standards for military service without special accommodations should be permitted to*

serve. This is no less true for transgender persons than for any other eligible individual. This report, and the recommendations contained herein, proceed from this fundamental premise." (Executive Summary, p. 2)

The sentiment could be misinterpreted and misused to nullify military priorities that are otherwise consistent throughout the report. The reasons are simple:

1) There is no *"bedrock principle"* or *"fundamental right"* for anyone to serve in the military – it is problematic to say that there is.

2) Persons whose personal needs detract from mission readiness, or whose behavior detracts from good order, discipline, and morale, are <u>not</u> *"meeting the high standards for military service;"* they might be ineligible or disqualified under military regulations.

3) Recommendations in the Mattis/DoD report do not proceed from career considerations – they proceed from the intent to achieve different priorities – mission readiness and combat lethality.

Taken to its logical, literal conclusion, the discordant paragraph could be misinterpreted by commanders, medical personnel, and media who want to read into it more than the Administration intends.

4. <u>Application of Disciplinary Rules</u>

The new rules say that a non-dysphoric person who identifies as transgender can serve if he/she conforms to standards of their <u>biological</u> gender and meets deployability requirements. This appears to rule out Obama-era options to take time off for real life experience (RLE), living as a person of the opposite sex for 3 to 12 months prior to transgender treatments or surgeries.

It is not clear, however, whether persons who identify as transgender will be subject to disciplinary rules around the clock, 24/7, on-base and off-base. Implementation regulations should make it clear that designated standards apply at all times that individuals remain in the service.

5. <u>Will Other Sexual Minorities Also Be Eligible to Serve?</u>

Footnote #10 on page 7 of the Mattis/DoD report quotes a statement from the **Human Rights Campaign**: *" '[t]he transgender community is incredibly diverse. Some transgender people identify as **male or female**, and some identify as **genderqueer. non-binary, agender, or somewhere else on or outside of the spectrum of what we understand gender to be**." In some school systems, y*oung people (potential recruits) are being taught about sexual minorities represented by acronyms such as **"LGBTQQIAPP+**. [31]

The HRC comment and LGBT educational materials, which have been used in some schools, raise several questions; e.g., Could people who engage in unusual behaviors that involve gender non-conforming behavior, or pretending to be the opposite sex, join or stay in the military?

If the "umbrella" term "transgender" includes people who do not consider themselves to be "binary," would the door be open to "drag queens" who like to dress as women but retain male names and pronouns? And how do disciplinary rules apply to men dressing and socializing as women but who don't want to *be* women?

Given the wide variety of definitions in LGBT vocabularies, Pentagon officials will have to think through where personal choice ends and military discipline begins. It is not clear how local commanders are supposed to sort out which gender non-conforming persons calling themselves "transgender" are eligible to serve, and which are not.

The Defense Department has every right to set limits on personal behavior engaged in by individuals and categories of people who share similar characteristic. The military, which is not just another equal opportunity employer, defends individual rights of free expression, but it must be governed by different rules.

To avoid misunderstandings and other problems, the Department of Defense should update and clarify official Instructions defining acceptable behavior for all members of the military. The Department also should discontinue annual events at the Pentagon and elsewhere celebrating **LGBT Pride** month in **June**. In recent years, these events have been used as occasions to promote and pressure Congress for policies advancing the LGBT agenda, not military readiness. In addition, the DoD also should drop educational programs that promote Obama-era policies that the Mattis/DoD report has discredited. These actions would remove distractions that detract from morale and overall readiness.

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Endnotes:

[1] CMR: "Supreme Judicial Commanders" Should Not Run Our Military, December 7, 2017.

[2] Whitehouse.gov: Presidential Memorandum to the Secretary of Defense and Secretary of Homeland Security, Subject: Military Service by Transgender Individuals, August 25, 2017.

[3] Memorandum for the President, Military Service by Transgender Individuals, February 22, 2018, 3 pages. ***SEE:***

[4] Department of Defense Report and Recommendations on Military Service by Transgender Persons, February This was a surprise, since the closed-door panel was chaired by a Defense Department holdover responsible for implementation of Obama-era policies. *See* CMR: Defense Department Retains Obama Holdover to Recommend Transgender Policies Contrary to Trump Guidance, December 11, 2017.

[5] Presidential Memorandum for the Secretary of Defense and Secretary of Homeland Security, Military Service by Transgender Individuals, March 23, 2018, 2 pages.

[6] Motion to Dissolve the court's preliminary injunction (PI), in ***Ryan Karnoski v. Donald J. Trump***, No. 2:17-1297 (MJP). The persuasive Motion to Dissolve argued that the Plaintiffs' complaints have been rendered moot.

[7] A similar Motion to Dissolve was filed in the Washington, D.C. courtroom of **Judge Colleen Kollar-Kotelly**, ***Jane Doe v. Donald J. Trump***, Civil Action No. 17-1597 (CKK). Legal battles will continue through appeals in this and other jurisdictions, until the issue reaches the Supreme Court of the United States.

[8] This is the second time that the Trump Administration has pushed back against transgender ideology – the first being in 2017 when the **Departments of Education** and **Justice** revoked Obama-era "guidance" regarding transgenders in schools, which caused many schools to adopt "open-door" policies in gender-separate facilities.

[9] Defense Secretary James Mattis: Memorandum re Accession of Transgender Individuals into the Military Services, June 30, 2017.

[10] AP: Military Chiefs Seek Delay in Transgender Enlistments, June 23, 2027, and *The Hill*: Military Chiefs Seek Six Month Delay in Transgender Recruits Policy Report, June 23, 2017. President Trump issued tweets on the subject more than a month later, on July 26, 2017.

[11] Memo from Defense Secretary James Mattis: Military Service by Transgender Individuals – Interim Guidance, September 14, 2017.

[12] Memo from Under Secretary of Defense for Personnel & Readiness **Robert L. Wilkie**, DoD Retention Policy for Non-Deployable Service Members, February 14, 2018.

[13] The report continues: *"Human experience over millennia – from the **Spartans at Thermopylae** to the band of brothers of the **101st Airborne Division** in **World War II**, to Marine squads fighting building-to-building in **Fallujah** – teaches us this. Military effectiveness requires transforming a collection of individuals into a single fighting organism – merging multiple individual identities into one. This transformation requires many ingredients, including strong leadership, training, good order and discipline, and that most intangible, but vital, of ingredients - unit cohesion or, put another way, human bonding."* (pp. 2-3)

[14] CMR Special Report: Department of Defense & Military Services Should Revoke Problematic Transgender Policy Directives and Instructions, July 2017, and Executive Summary.

[15] DoD Instruction 1300.28, DoD DTM 16-005 Directive-Type Memorandum; and DoD Implementation Handbook: Transgenders in the Military.

[16] Footnote #10 on p, 7 quotes the discredited 2016 RAND Report in defining the broad term "transgender" as *"an umbrella term used for individuals who have sexual identify or gender expression that differs from their assigned sex at birth."* This reversion to transgender terminology is disturbing, especially since the footnote also quotes the **Human Rights Campaign**'s description of the *"incredibly diverse"* transgender community: *"Some transgender people identify as male or female, and some identify as genderqueer, nonbinary, agender, or somewhere else on or outside of the spectrum of what we understand gender to be."*

[17] DoD Instruction 6130.03 Apr. 28, 2010, as amended, September 13, 2011. Medical Standards for Appointment, Enlistment, or Induction in the Military Services, updated by the Accession Medical Standards Working Group, (AMSWG).

[18] Pages of DoD Instruction 6130.03 that are referenced in Footnotes #20 and #21, 18 and 25-27, respectively, appear to be in error. *See* pages 74-76 and 24, 35-41 of the amended DoDI.

[19] Walt Heyer, *The Daily Signal*, No Solid Evidence of Genetic Basis for Transgender Identity, Apr. 3, 2018. Heyer continues, *"With no medical proof to help diagnose gender dysphoria, and with most who identify as transgender having other issues that need treatment, one could argue that too many people are being gathered under the blanket term "transgender" and being inappropriately directed toward cross-gender hormone therapies and surgeries."*

[20] Ryan T. Anderson, Ph.D., *When Harry Became Sally: Responding to the Transgender Moment*, Encounter Books, 2018, pp. 95-96 Also see *Daily Signal*: Sex Reassignment Doesn't Work – Here's the Evidence.

[21] Footnote #10 on p. 7 quotes pp. 1-2 of the DoD **"2016 Workplace and Gender Relations Survey of Active Duty Members, Transgender Service Members"** but the source appears to be in an Annex to that report, pp. 355-357. Pie charts show that 1% of respondents in the online, anonymous survey indicated they were "transgender," which was used to calculate the 8,980 figure. The estimate does not reflect empirical data; none are available.

[22] RAND estimates were previously discredited by **Congresswoman Vicky Hartzler** (R-OK) and the **Family Research Council**: Transgender Policy Could Cost Military Billions Over Ten Years.

[23] The Mattis/DoD report continues, *"For example, as discussed in more detail later, the [RAND]report did not examine the potential impact on unit readiness, perceptions of fairness and equity, personnel safety, and reasonable expectations of privacy at the unit and sub-unit levels, all of which are critical to unit cohesion. Nor did the report meaningfully address the significant mental health problems that accompany gender dysphoria – from high rates of comorbidities and psychiatric hospitalizations to high rates of suicide ideation and suicidality – and the scope of the scientific uncertainty regarding whether gender transition treatment fully remedies those problems.* (p. 14)

[24] The report adds, *"The Department is concerned that the stresses of military life, including basic training, frequent moves, deployment to war zones and austere environments, and the relentless physical demands, will be additional contributors to suicide behavior in people with gender dysphoria. In fact, there is recent evidence that military service can be a contributor to suicidal thoughts." (p. 21)*

[25] An additional comment on this subject, quoting a 2016 survey done by the **National Center for Transgender Equality,** is significant but unclear, due to PC pronouns: *"Although relatively few people who are transgender undergo genital reassignment surgeries (**2%** of transgender men and **10%** of transgender women), we have to consider that the rate of complications for these surgeries is significant, which could increase a transitioning Service member's availability."* (Footnote #76, p. 23)

[26] DoD Implementation Handbook: Transgenders in the Military and other documents analyzed in the July 2017 CMR Special Report, supra, #13.

[27] The Mattis/DoD report continues, *"After all, a person's biological sex is generally ascertainable through objective means. Moreover, this approach will ensure that biologically-based standards will be applied uniformly to all Service members of the same biological sex. Standards that are clear, coherent, objective, consistent, predictable, and uniformly applied enhance good order, discipline, steady leadership, and unit cohesion, which in turn, ensure military effectiveness and lethality."* (p. 31)

[28] Footnote #139 on page 36 discusses how the International Olympic Committee (IOC) and the National Collegiate Athletic Association (NCAA) have attempted to mitigate issues of gender disparities in athletic competitions by testing hormone (testosterone) levels, noting that similar tests would not be practical in military settings.

[29] The report also notes that the Carter policy's 18-month stability period for gender dysphoria, by contrast, had no analog with respect to any other mental condition listed in DoDI 6130.03.

[30] *Chappel v. Wallace*, 462 U.S. 196, 305 (1983), quoting Earl Warren, *The Bill of Rights and the Military*, 37 N.Y.U.L. Rev. 181, 187 (1962).

[31] According to an LGBT website run by the **Trans Student Educational Resources (TSER**), the acronym LGBTQ+ represents "A collection of identities short for lesbian, gay, bisexual, trans, queer, questioning, intersex, asexual, aromantic, pansexual, polysexual (sometimes abbreviated to LGBT or LGBTQ+). TSER pledges to update the list as often as possible *"to keep up with the rapid proliferation of queer and trans language."*