

Conservative Action Project

The Conservative Action Project (CAP), founded in 2008 by many conservative leaders with former **Attorney General Edwin Meese III** serving as the Founding Chairman. CAP is currently chaired by **The Honorable Becky Norton Dunlop** and is designed to facilitate conservative leaders working together on behalf of common goals. Participants include the CEOs of over 100 organizations representing all major elements of the conservative movement-economic, social and national security.

Memo for the Movement

President Trump, Not Federal Judges or Obama Holdovers, Should Determine Policies Re: Transgenders in the Military

February 14, 2018
Washington, DC

On August 25, 2017, President Trump issued a Memorandum providing formal guidance on policies regarding transgenders in the military. ¹ The memo directed the Secretaries of Defense and Homeland Security (representing the Coast Guard) to:

- a) Return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016;
- b) Halt all use of Defense Department or Homeland Security resources to fund “*sex-reassignment surgical procedures*” for military personnel; and
- c) By February 21, 2018, determine how to address the status of transgender individuals currently serving in the United States military.

The armed forces have always maintained lists of medical conditions that disqualify persons from enlistment or re-enlistment in the military. ² These requirements reflect legitimate concerns about high-cost, time-consuming medical care for physical and psychological conditions that detract from readiness to deploy and function in a military environment.

In June 2016, then-Secretary of Defense Ashton Carter removed gender dysphoria, a history of gender transition, or sex reassignment surgery from the list of psychological conditions that disqualify individuals from service in the military.

As Commander-in-Chief, President Trump has every right to review and revise his predecessor’s policies, and to seek recommendations on how to implement policy changes that are, as he wrote in his Memorandum, “*consistent with military effectiveness and lethality, budgetary constraints, and applicable law.*”

President Trump’s stated plans would simply restore long-standing military enlistment policies, which were established to ensure personal readiness to train, deploy, and fight in military operations.

President Trump's Memorandum also stated, "*Until the Secretary has made that determination, no action may be taken against [transgender] individuals . . .*" This clause discredits claims that currently-serving personnel who identify as transgender have suffered irreparable harm because the Trump Administration is in the process of reviewing and revising military transgender policies.

Nevertheless, several federal district court judges exceeded their authority by issuing preliminary injunctions mandating the unprecedented enlistment of individuals diagnosed with gender dysphoria or identifying as transgender, starting on January 1, 2018. These rulings were handed down even before relevant facts of the issue were presented in court.

Power to make policy for the military is shared by Congress (Article I, Sect. 8) and the Executive Branch (Article II, Sect. 2). Under Article III, federal judges have no power to substitute their own opinions for directives from the President of the United States.

As with all national security matters, the issue here is not the transgender policy alone, but who gets to decide what the military's policy will be. Federal judges in black robes should not be allowed to run our military.

Late in 2017, the Department of Justice (DoJ) filed solid petitions for stays of district court rulings, which two Courts of Appeals rejected. But unlike previous decisions to immediately appeal judicial rulings challenging presidential prerogatives, the DoJ did not petition the Supreme Court for an immediate stay of lower court rulings.

As a result, military officials began enlisting persons identifying as transgender for the first time in history, starting on January 1, 2018. The situation has triggered many unusual situations that have nothing to do with improving military readiness. For example, in December the Commander of Military Enlistment Processing Stations (MEPS) found it necessary to issue an official 7-page Memorandum setting forth convoluted guidelines regarding the appropriate undergarments to be worn by "transitioning" recruits exposed in semi-public conditions while in a state of undress.³

We call on the Department of Justice to petition the Supreme Court for appropriate intervention in the transgender cases, and every time a federal court tries to substitute its own judgment for that of the President on matters of national security. If they don't, the incremental loss of Executive authority will be lost and unrecoverable.

We also call on the Department of Defense to avoid misunderstandings and protect the President's right to change policy in the event that the government prevails at the conclusion of litigation. This can be done by ensuring that any new accession or re-enlistment contracts with people who identify as transgender are written in conditional terms.⁴

We agree with President Trump that military qualification standards should strengthen readiness, not weaken it. Furthermore, we support President Trump's intent to restore sound policies that recognize the high financial and personal costs of "transition" treatments and surgeries that attempt to change gender identity.

We call on the Department of Defense to take into consideration the concerns of experts who have serious concerns about the consequences of Obama-era transgender policies.⁵

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¹ Whitehouse.gov: [Presidential Memorandum to the Secretary of Defense and Secretary of Homeland Security, Subject: Military Service by Transgender Individuals](#), August 25, 2017.

² See examples in [DoDI 6130.03](#), an 82-page Defense Department Instruction that sets forth a long list of conditions that are used to evaluate qualifications for military service. (Transgenderism is mentioned on p. 76)

³ *Military Times*: [Transgender Recruits Now Have Official DoD Rules Concerning Their Underwear](#). Military personnel have no protections when required to share private spaces with persons who identify as transgendered.

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Conditional contracts, which are not unusual, would inform inductees that their status could change, depending on the outcome of ongoing litigation.

⁵ According to written responses provided to the Senate Armed Services Committee in November 2017. Anthony Kurta has been chairing Defense Secretary Mattis's "panel of experts" that was formed to review transgender policies and make recommendations in accordance with President Trump's August 25 Memorandum.

All organizations listed for IDENTIFICATION purposes only)

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