



Center For Military Readiness 

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Congress Should Not Extend SCOTUS Transgender Policy to the Military

Military.com has [reported](#) that some members of the *House and Senate Armed Services Committee* are sponsoring legislation to repeal the [2018 DoD policy](#) regarding transgenders and persons diagnosed with gender dysphoria. The following comments may be attributed to **Elaine Donnelly**, President of the *Center for Military Readiness*:

“As this 4-page analysis explains, there are many good reasons why Congress should stand its ground and refuse to ratify the recent **Supreme Court *Bostock v. Clayton County*** decision:

- CMR Policy Analysis: [Supreme Court Ruling Does Not Make Case for Repeal of 2018 DoD Policy re Transgenders in Military](#)

“If Congress approves legislation to repeal the 2018 DoD policy as part of the National Defense Authorization Act for 2021, President Donald Trump should veto the NDAA.

“Contrary to comments attributed to **Sen. Kirsten Gillibrand** (D-NY), the *Bostock* ruling does not apply to the military for two primary reasons:

- Unlike civilian “workplaces,” the military is not subject to **Title VII of the Civil Rights Act of 1964**.
- Current policy is based on a medical condition, **gender dysphoria**, not transgender status. Except for certain “grandfather” provisions related to the 2016 policy, the 2018 DoD policy accommodates transgender persons who serve in their **biological sex** if they meet deployability requirements and have been stable (without gender dysphoria) for **36 months**.

“Sen. Susan Collins (R-ME) also is wrong in claiming that the 2018 DoD Policy consists of three presidential tweets sent out in August 2017.

- President Trump approved the 2018 policy following more than **six months** of review and a comprehensive report produced by a **Department of Defense** panel of experts.

- The **U.S. Court of Appeals for the D.C. Circuit** in *Doe v. Shanahan*, which reversed a lower court’s injunction against the 2018 DoD policy, relied on the significant differences between the President’s August 2017 tweets and the 2018 DoD policy. The Court found that Plaintiffs’ argument, like Sen. Collins’ statement that the 2018 DoD Policy and the 2017 tweets were the same, was “**clear error**” and then proceeded to set out the significant differences between the tweets and the 2018 DoD policy. (No. 18-5257, Jan. 4, 2019, pp. 2-3)
- The DoD report underlying the 2018 policy presented detailed information about the costs and consequences of the previous administration’s policies, including high costs and lost time related to treatments for gender dysphoria, plus higher rates of psychological problems such as suicide.

“The [CMR Policy Analysis](#) summarizes many of the harmful consequences of legislation in the defense bill, which would be even more extreme than the previous administration’s 2016 policy.

“These would include conflicts of conscience for **military doctors and nurses**, an end to women’s separate-gender **athletic teams** at all military service academies and schools, plus violations of **religious liberty** for chaplains and people of faith, **mandatory training** that denies biological realities, and violations of **women’s personal privacy** in gender-separate facilities.

“Furthermore, individual members voting to repeal the 2018 policy would be putting themselves on the record in favor of the unscientific notion that gender is “*designated*” or “*assigned at birth*.” Such an action would reject well-established scientific knowledge about immutable DNA, human genetics, development, and physiology.

As **Justice Neil Gorsuch** stated, there will be other cases related to this issue that will come “before the Supreme Court. It would not help to see Congress voting for NDAA legislation to repeal the 2018 DoD transgender policy.

“Unnecessary and extreme congressional action to repeal the 2018 policy would do nothing to support the troops or to strengthen mission readiness and morale.

“If the defense bill includes such legislation, President Trump would have no choice but to veto the NDAA.

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The Center for Military Readiness is an independent public policy organization that reports on and analyzes military/social issues. More information is posted on CMR’s website, www.cmrlink.org, and President Elaine Donnelly can be reached at 734/464-9430.