



Should Individuals Who Identify as Transgender Be Permitted to Serve in the Military?

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On June 30, 2016, Secretary of Defense Ash Carter announced that effective the next day, July 1, “transgender Service members may serve openly, and they can no longer be discharged or otherwise separated from the military solely for being transgender individuals.” While this policy applies to existing Service members, Secretary Carter also announced that by July 1, 2017, “the services will begin allowing transgender individuals to join the armed forces, assuming they meet accession standards.” They will also be eligible for admission to service academies, ROTC, “or any other accession program.”¹ The announcement was the (delayed) culmination of a process begun a year earlier, in July 2015, when Carter issued a statement announcing formation of “a working group to study over the next six months the policy and readiness implications of welcoming transgender persons to serve openly.”²

Previous policy contained in regulations at least as early as the 1980s did not permit persons who identify as transgender to serve in the U.S. military. A Department of Defense Instruction regarding “Medical Standards,” listed a “[h]istory of major abnormalities or defects of the genitalia such as change of sex” as a disqualifying physical condition.³ In 1981, a U.S. District Court upheld the rejection of an Army Reserve officer, under what was then Army Reg. 40-501, Sec. 2-14(s), a male applicant who had undergone sex reassignment surgery and sought acceptance as female. The court accepted the Army’s defense of this regulation, which was justified by the concern “that transsexuals would require medical maintenance . . . and that the army would have to acquire the facilities and expertise to treat the endocrinological complications which may stem from the hormone therapy” – factors that “could cause plaintiff to lose excessive duty time and impair [the] ability to serve in all corners of the globe.”⁴

Under the same Department of Defense Instruction cited above, under the heading of “Learning, Psychiatric, and Behavioral,” conditions that are disqualifying were, “Current or history of psychosexual conditions . . . including but not limited to transsexualism . . . [and] transvestitism.”⁵ While the evolution of this disqualification on psychological grounds has proven more difficult to track, an Air Force physician wrote in a journal article in 1988 that transgender “patients are diagnosed with personality disorders . . . and administratively discharged as ‘unadaptable to military service.’”⁶ Furthermore, an opinion of the Judge Advocate General of the Air Force in 1989 upheld the recommendation of a Board of Inquiry that a male officer who on multiple occasions “attired himself in female clothing and subjected himself to public view” should be discharged on grounds that he “failed to show acceptable qualities of leadership.”⁷

Finally, the military had been barred from providing or paying for medical care related to gender reassignment. The Policy Manual for the military’s health care system (TRICARE) had a provision forbidding coverage for “[s]ervices and supplies related to transsexualism or such other conditions as gender dysphoria (including, but not limited to, intersex surgery, psychotherapy, and prescription

drugs).”⁸ While all of the provisions above can be changed through executive action alone, one remaining restriction that is statutory forbids TRICARE payments for “surgery which improves physical appearance but is not expected to significantly restore functions (including ... sex gender changes).”⁹ This was enacted in 1984 as part of the Department of Defense Authorization Act for 1985.¹⁰ However, this restriction appears in a part of the U.S. Code (10 U.S.C. 1079) dealing with “medical care for spouses and children,” and therefore does not serve to bar the provision of such services to military personnel on active duty.

The 1993 law which had codified the longstanding ban on military service by persons who engage in homosexual acts (commonly but inaccurately referred to as “Don’t Ask, Don’t Tell”) did not say anything explicitly about “gender identity.” The 2010 bill overturning the 1993 law also said nothing about “gender identity.” However, the activists who pushed to allow homosexual conduct and openly self-identifying homosexuals in the military were at the same time declaring that they supported “the right of transgender people to serve openly,” stating, “We are building the arguments – based on modern medicine and mental health care.”¹¹ Previously, a service member who cross-dressed would be in violation of dress and grooming standards, and a person who sought sex-change surgery could be discharged. However, overturning the law on homosexuality in the armed forces made it easier for individuals who identify as transgender to argue that they should not be discharged simply because of their self-perceived “gender identity.”

The arguments that transgender activists relied on were crafted by a handful of well-funded LGBT think tanks.¹² In August 2013, The Williams Institute, in partnership with the National Gay and Lesbian Task Force, released a “National Transgender Discrimination Survey,” in which service members who identify as transgender and veterans reported on “issues in ... accessing military health care, and experiences of discrimination.”¹³ In March 2014, a private, non-governmental “Transgender Military Service Commission,” headed by former U.S. Surgeon General Joycelyn Elders, released a report through the pro-LGBT think tank the Palm Center. It claimed that “there is no compelling medical rationale for banning transgender military service.”¹⁴

In February 2016, however, the Defense Department issued a proposed rule which would “remove the categorical exclusion on treatment of gender dysphoria” and instead “permit coverage of all non-surgical medically necessary and appropriate care in the treatment of gender dysphoria” – thus opening the door, for example, to taxpayer-funded hormone treatments for those undergoing “gender transition.”¹⁵

The Defense Department’s website now features an entire page devoted to “Policy Highlights” and related resources and links regarding the transgender policy.¹⁶ The *Washington Times* drew attention¹⁷ to one of these documents, a DoD Instruction on “In-Service Transition for Transgender Service Members.”¹⁸ This 18-page document requires the military to provide “all medically necessary care and treatment” to facilitate the “gender transition” of service members (although actual gender reassignment surgery cannot be included unless Congress repeals the 1984 statutory provision mentioned above).¹⁹ It also reveals (sometimes only implicitly) some of the tensions and difficulties involved in allowing military service by individuals who identify as transgender.

For example, it acknowledges that transgender status may constitute “a medical condition that may limit their performance of official duties,” and that it may render a service member “non-deployable.” It may even require a leave of absence. Standards that have been developed for the process of “gender transition” normally require a period of “Real Life Experience” (RLE), living and working in the social role of the intended gender, prior to final medical or legal action to adopt the new “gender identity”

permanently. However, DoD notes that “consistent application of military standards will normally require that RLE occur in an off-duty status and away from the Service member’s place of duty.”

This change in policy might actually make the military a magnet for people seeking “gender reassignment” procedures at taxpayer expense. This concern is reflected in the new policy’s statement that a new recruit who identifies as transgender must “have completed any medical treatment that their doctor has determined is necessary in connection with their gender transition, and . . . have been stable in their preferred gender for 18 months.” The DoD Instruction even warns, “A Service member is subject to administrative separation for a fraudulent or erroneous enlistment or induction . . . based on any deliberate material misrepresentation, omission, or concealment of a fact, including a medical condition.” However, these precautions are undermined by the declaration, “A blanket prohibition on gender transition during a Service member’s first term of service is not permissible.”

One journal article (by law student Allison Ross) written to argue in favor of transgender military service ironically highlights several of the reasons why such a change may threaten morale and readiness. For example, Ross attempts to minimize the demands transgender person would place on the military’s system of health care by comparing pill-based hormone treatments with the use of oral contraceptives, use of injectable hormones with the use of insulin by diabetics, and even by comparing gender-reassignment surgery with pregnancy and childbirth.²⁰ Ross also compares “the average cost of a male-to-female sex-reassignment surgery” (estimated at \$20,000) with the cost of surgery for Achilles tendonitis or lower-extremity fractures.²¹ It would be no surprise if women and diabetics resented these comparisons between their conditions and the elective surgeries and therapies undertaken by persons who identify as transgender.

As for readiness, Ross admits that transgender service members might not be able to perform in their assigned roles, but instead would have to “occupy temporary, low-risk jobs that allow them to take time off for the required surgeries” – and she has the gall to assert that this “affects military readiness no differently than allowing non-transgender service members to receive medical care for injuries received in battle.”²² As recently as 2014, the Defense Department had re-affirmed that “service members must serve in austere environments, many of which make necessary and ongoing treatments related to sex reassignment and many other conditions untenable.”²³

Ross’s article does not even mention the risks to good order, morale, and discipline from forced cohabitation and sharing of intimate spaces such as restrooms and showers with someone of the opposite biological sex. Elaine Donnelly of the Center for Military Readiness predicts that putting people who identify as transgender in barracks, showers, and other sex-segregated facilities could cause sexual assaults to increase and infringe on the privacy of non-transgender personnel. “This is putting an extra burden on men and women in the military that they certainly don’t need and they don’t deserve,” Donnelly said.²⁴

Believing that one is (or desiring to be) of a different “gender identity” from one’s biological sex has long been recognized as a mental disorder.²⁵ Psychiatrist Sander Breiner declares, “[W]hen an adult who is normal in appearance and functioning believes there is something ugly or defective in their appearance . . . there is a psychological problem.”²⁶ Another psychiatrist, Rick Fitzgibbons, calls it “a fixed false belief . . . specifically a delusion.”²⁷ Psychiatrist Paul McHugh declares, “It is a disorder of the mind. Not a disorder of the body.”²⁸

A recent comprehensive review of the scientific literature, co-authored by McHugh and his colleague Lawrence S. Mayer, undermines several of the key premises of the transgender movement. They explain:

The hypothesis that gender identity is an innate, fixed property of human beings that is independent of biological sex – that a person might be “a man trapped in a woman’s body” or “a woman trapped in a man’s body” – is not supported by scientific evidence.

Mayer and McHugh also note that brain studies “do not provide any evidence for a neurobiological basis for cross-gender identification.”²⁹

Full gender transition involves expensive hormone treatments, breast surgery (removal or implants), other cosmetic surgery, genital reconstruction, and a change of personal identification.³⁰ The surgical procedures are not always successful and can be extremely painful.³¹ A lifetime of hormone treatments can also have profound physical and psychological consequences.³² Psychiatrist Jon Meyer concluded that “surgery is not a proper treatment for a psychiatric disorder”³³, and Lawrence Mayer and Paul McHugh point out that “adults who have undergone sex-reassignment surgery continue to have a higher risk of experiencing poor mental health outcomes.”³⁴ High rates of suicide exist even after surgery, which suggests that suicidal tendencies result from an underlying pathology.³⁵

The story of America’s most famous transgender service member tends to reinforce concerns that such individuals are not fit for military service. Bradley Manning is the soldier who was arrested in 2010 and charged with releasing over 700,000 confidential documents to the website Wikileaks. In 2013, Manning was convicted on 21 counts, including seven counts of espionage.³⁶

Prior to his arrest, Manning had done little to conceal his own homosexuality, and his anger over the so-called “Don’t Ask, Don’t Tell” law against open homosexuality in the military appears to have been one of the motives for his massive security leak.³⁷ As early as 2009, a supervisor noticed Manning’s “instability,” and he received a mental health screening but no therapy.³⁸ It was Manning’s own attorneys, at a preliminary hearing, who revealed that Manning was also suffering from gender identity disorder.³⁹

The day after Manning was sentenced to 35 years in prison for his crimes, however, he “came out” as transgendered, announcing in a statement a new name and gender: “I am Chelsea Manning. I am a female ... I want to begin hormone therapy as soon as possible.”⁴⁰ After initially refusing Manning’s request, in February 2015 the Army reversed its position and approved taxpayer-funded hormone treatment for the imprisoned soldier.⁴¹

LGBT activists dismiss any connection between Manning’s sexuality and gender confusion and his crimes. There is a clear link between “gender dysphoria” and other mental illnesses, however. (In July 2016, Manning acknowledged having attempted suicide in prison.⁴²) Transgender persons – especially those on hormone therapy, as Manning is receiving – face multiple serious health risks, as even the Gay and Lesbian Medical Association acknowledges.⁴³

A person who has had gender-reassignment surgery should be considered to have a pre-existing condition that is disqualifying for military service, due to the need for hormone therapy and potential complications arising from surgery. However, “gender transition” by persons already serving in the military jeopardizes readiness and would be extremely disruptive to unit cohesion.

FRC believes gender dysphoria should be considered a condition which continues to prevent one from entering or remaining in the military.

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- ² Secretary of Defense Ash Carter, “Statement by Secretary of Defense Ash Carter on DOD Transgender Policy,” U.S. Department of Defense, press release, July 13, 2015, <http://www.defense.gov/News/News-Releases/News-Release-View/Article/612778>.
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- ⁴ *Doe v. Alexander*, 510 F. Supp. 900 (D. Minn. 1981); citing Army Reg. 40-501, Sec. 2-14(s) statement that “major abnormalities and defects of the genitalia such as change of sex” are disqualifying.
- ⁵ “Medical Standards for Appointment, Enlistment, or Induction in the Military Services,” p. 48.
- ⁶ George R. Brown, M.D., Capt. USAF, “Transsexuals in the Military: Flight Into Hypermasculinity,” *Archives of Sexual Behavior* 17, no. 6 (1988), p. 534.
- ⁷ “Discharge of Officer Cross-Dressing in Female Clothing Supports Finding that Respondent Demonstrated Unacceptable Qualities of Leadership,” OpJAGAF 1989/40 (June 30, 1989); in *Civil Law Opinions of the Judge Advocate General, United States Air Force, 1978-1983*, p. 159-64.
- ⁸ TRICARE Policy Manual 6010.57-M (2008), Chapter 1, § 1.2, ¶ 1.1.29.
- ⁹ 10 U.S.C. 1079(a)(11), <https://www.law.cornell.edu/uscode/text/10/1079>.
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²² Ibid, 213.

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