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VETERANS ORGANIZATIONS WORKING TOGETHER TO RESTORE PURPOSE, UNITY & TRUST IN THE US MILITARY

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POSITION PAPERS
TABLE OF CONTENTS

DISCLAIMER:
The Calvert Task Group (CTG) supports the efforts of STARRS and the MacArthur Society. CTG's mission however is more narrowly focused: the restoration and preservation of merit as the primary consideration in the appointment, development and promotions of officers for service in the United States Navy. Specifically, CTG advocates that admission to the United States Naval Academy, performance evaluation while at the Academy and advancement after commissioning should be grounded principally in demonstrated ability, leadership, character and war fighting potential. CTG has met with members of the USNA Board of Visitors, the Superintendent and members of the Academy leadership team, and will continue to support their efforts to reinforce merit-based standards and the development of highly capable naval officers.

POSITION PAPER

Codifying Presidential Executive Orders and Department of War Memos to Eradicate Radical Ideology

PROBLEM:

Presidential Executive Orders (EOs) and Department of War (DOW) memos that expunge radical ideology (i.e., Critical Race Theory/Diversity, Equity, and Inclusion [CRT/DEI], feminism, transgenderism, sexual lifestyles, identity and affinity groups, vaccination mandates, etc.) are useful but vulnerable to subsequent EOs, Memos, and an intransigent unelected bureaucracy.

BLUF: This paper urges Congress to take decisive legislative action to permanently eliminate Critical Race Theory (CRT) and Diversity, Equity, and Inclusion (DEI) initiatives from the U.S. military and federal government. It argues that these ideologies, rooted in Marxist theory, undermine foundational American values and national security, and that only codified laws—not executive orders or memos—can effectively prevent their continued influence. The paper recommends statutory disincentives for DEI, incentives for civics education based on the American Creed, and clear recognition of CRT/DEI as threats to the nation.

BACKGROUND SUPPORTING DATA:

FACTS:

- In the Fall of 2008, the Black Congressional Caucus chartered, without debate, the Military Leadership Diversity Commission (MLDC) in the FY 2009 National Defense Authorization Act (NDAA).
- In March 2011, the MLDC issued its final report. Highlights (p. 18):
  - ***"Diversity management calls for creating a culture of inclusion [why not assimilation?]. . .***
  - "Creating this culture will ***involve changing the way in which people relate to one another*** within a single unit, within a particular military branch, and throughout the DoD."
  - "In particular, although good diversity management rests on a foundation of fair treatment, ***it is not about treating everyone the same***."
  - "This can be a difficult concept to grasp, especially for leaders who grew up with the EO [equal opportunity]-inspired mandate to be both color and gender blind."
  - "Blindness to difference, however, can lead to ***a culture of assimilation in which differences are suppressed rather than leveraged***" (bold, italics added for emphasis).

- The MLDC was a Congressionally sanctioned effort to demonstrate and then to institutionalize discrimination contrary to the Civil Rights Act of 1965.

- On **August 18, 2011**, President Barack Obama signed **Executive Order 13583**, titled *Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce*

  - Congress further codified DEI in the FY 2021 NDAA that required a DoD Chief diversity officer and senior advisors for DEI (10 U.S.C. Sec. 147). See https://www.govinfo.gov/content/pkg/USCODE-2020-title10/html/USCODE-2020-title10-subtitleA-partI-chap4-sec147.htm.

  - FY 2022 NDAA *required* Service Academies to conduct DEI training programs addressing racism, discrimination and harassment.

  - The 2026 NDAA repealed 10 U.S.C. Sec. 147 by Pub.L.119-60,Sec.901.Seehttps://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title10-section147&num=0&edition=prelim.

- STARRS advocates for further codification to eradicate CRT/DEI in the federal government and to disincentivize its promulgation via other institutions such as business, education, and the media. STARRS supports:

  - The CHARLIE Act: https://www.congress.gov/bill/119th-congress/house-bill/8705/text and https://www.govtrack.us/congress/bills/119/hr8705.

  - Similar legislative language proposals by the Center for Military Readiness. See https://www.cmrlink.org/issues/full/will-congress-fully-support-actions-to-end-wokeism-in-the-military.

DISCUSSION:

- Radical ideology, primarily characterized by CRT/DEI, but also associated with the expectation of "obedience to experimental vaccination mandates," has a discernible history in America. The current evolution of the ideology is Cultural Marxism.

  - Marxism, via the Communist Manifesto, entered America before the Civil War.

  - The Frankfurt School expounded their critical theory (an "oppressor-oppressed" political identity model in place of the economic struggle model) as early as the 1930s at Columbia University in New York. They recognized the "classical" Marxist prediction of revolutionary class warfare failed. They proposed to capture Capitalist Societies culturally with a long march through their institutions.

  - Herbert Marcuse (a member of the Frankfurt School cohort) energized the feminist and student movement in the 1960s.

  - In the post-Civil Rights Act era, law schools advanced racial justice via critical legal theory to mitigate the imagined "oppressor-oppressed" injustice.

  - The election of a black president in 2008 dedicated to fundamentally transform America ushered in CRT ideology and its praxis, DEI.

- The radical ideology diminishes and even denigrates the American Creed, characterized by our founding documents: The Declaration of Independence, the Constitution, and Bill of Rights and summarized by the Gettysburg Address.

  - Unalienable rights are granted by a Creator (Declaration) and preserved and protected by government (Constitution and Bill of Rights).

  - Marxism is atheistic, thus justifying government-granted rights.

- CRT views everything through the lens of race, class (or privilege), and gender. That paradigm is empirically false. Moreover, it is pernicious in establishing fixed categories of permanent grievances.
- CRT is fixed on Groups rather than individuals. The Founding Fathers pointedly rejected group rights as an American concept.
- CRT and DEI are the polar opposite of the U.S. motto "E Pluribus Unum".

- Until the ideology is eliminated, it continues to spread and threatens our Constitutional Republic.
  - Ample evidence of the threat exists.
  - Books by Drexel University Professor Stanley Ridgely describe Cultural Marxism's march through Education as an institution.
  - The Center for Military Readiness provides analysis and key policy recommendations to counter the ideological trend.
  - STARRS also educates the public on the American Creed Threatened by Radical Ideology.
- Growing evidence and violence demonstrates Cultural Marxism is devolving into Marx-Lenin Bolshevism—the weaponization of Marxism.

RECOMMENDATIONS:

- Congress codify the dangers of CRT/DEI as Marxist ideology that is contrary to our American Creed and threatens our national security.
- Congress disincentivize DEI practices through statutory language and funding.
- Congress incentivize civics education that embraces the American Creed.

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POSITION PAPER

Recruiting and Retention Position Paper

PROBLEM:

An all volunteer military is not sustainable without an eligible recruiting pool that is qualified and willing to enter the military. The continued decline of such a qualified and willing pool creates a looming national security crisis that must be addressed by congress.

BLUF: The U.S. all-volunteer military faces a critical and worsening recruitment and retention crisis due to a shrinking pool of qualified and willing candidates, driven by societal issues such as poor health, lack of education, and declining interest in service. Immediate, phased reforms are urgently needed—including a joint pre-basic training system and expanded youth programs—to ensure national security and sustain military readiness, as current measures are insufficient and place unsustainable burdens on the services.

BACKGROUND SUPPORTING DATA:

DISCUSSION:

The congressionally mandated volunteer military is dependent upon a society that produces an adequate pool of qualified recruits that are motivated to join and remain in the military to fulfill at least an initial term of service.

For the past several years only ~23% of eligible personnel in the age groups of 17-24 have been able to qualify and roughly 9% of eligible youth show any interest in joining the military.

Obesity, poor physical condition, lack of a high school education or GED, and criminal records are the major causes of disqualification.

The lack of self discipline and the desire in the eligible population to serve our Nation are important additional societal contributing factors.

T***he culture in our society creates this situation and our military cannot solve this daunting societal problem.***

This situation has required some military branches to recently take extraordinary measures at arguably unacceptable costs to include lowering standards in order to meet recruiting goals.tation" is, therefore "a strategic imperative."

FACTS BEARING ON THE PROBLEM:

- Congress is responsible "…to raise and support Armies and to provide and maintain a Navy…" Congress is responsible for properly funding, resourcing, regulating, establishing end strengths for the services, etc.
- Congress ended the draft and established an all volunteer military in 1973.

- The imposition of two mandated programs, the unlawful Covid-19 vaccination and the Diversity, Equity, and Inclusion (DEI) program, resulted in recruitment numbers dropping to dangerously low levels.
- A major source of recruits has historically come from family connections with as high as 68% of recruits having family ties in the military. These family ties were damaged due to the Covid and DEI programs as family members were no longer recommending joining the military.
- Of those who do enlist, only ~8% have clean enlistments, without needing waivers.
- The Army and Navy have implemented pre-basic training courses: ~25% of Army enlistees go to Future Soldier Prep Courses (FSPC) to qualify them to meet entry standards to begin actual basic training.
- An IG report indicates 14% who go to the FSPC exceed the increased body fat standard of 8% above the Army norm to be considered for entry into the course.
- 20-25% of enlistees leave the Army at around two years of service, further aggravating the recruiting crisis.
- Less than 1% of our population serves in the military.

POINTS:

- Current enlistment numbers look good on the surface but those numbers hide the dangerous societal recruitment pool problem and the high costs associated with meeting recruitment numbers. Obvious costs include:
- Increased personnel monetary costs; providing the cadre (officers and NCOs) necessary to run the FSPCs; increased facility costs; increased medical costs; etc.
- When~25% of enlistees leave the Army after serving only two years of their contract, a significant turnover rate is created causing turmoil in units as replacements for those leaving must be trained, equipped, housed, etc. This turnover requires more leadership time resulting in degraded unit readiness to bring replacements up to proficiency levels.
- Army and Navy total end strengths must be increased to properly staff pre basic training programs so that officers and NCOs are not removed from their normal duties, creating short falls in line units.

RECOMMENDATIONS:

Time Phased but Concurrent Corrective Actions:

IMMEDIATE:

- Congress authorizes, funds, and resources a joint pre-basic training system that will take all recruits who cannot pass entry standards for basic training. The system would be staffed by various service cadre with the mission to bring recruits up to a common joint standard so that upon graduation they would go to their desired military branch to participate in basic military training based on standards of their selected branch of service.
- Advantages: this would take the pre-basic training operations off the backs of individual services
- It would be resourced separately by Congress and not by service budgets and their existing personnel staffing
- Common standards would be applied to enter into actual basic training
- It provides a Congressionally created action to address the societal/cultural problem of unqualified potential recruits to provide them a pathway to enter the military.
- Services continue with their pre-basic programs until a joint program is implemented.

MID TERM: (actions to increase the qualified pool of potential recruits)

- Congress provides resources to greatly invigorate Jr ROTC programs across the Nation with qualified military cadre, activating them with incentives from retirement, along with needed budgetary support. Make JROTC the stepping stone into the military.
- DOW provides resourcing for Boy Scouts of America (if they reform), Trail Life, Civil Air Patrol, and home schooling programs that support military values and encourage military service.
- DOW insures the DOW schools have high academic standards, require vigorous PE programs, support military values, and provide a natural pathway into our military.

LONG TERM:

- Congress recognizes a voluntary military cannot be sustained without a qualified pool of eligible recruits that are motivated to serve our Nation in the military.
- Congress recognizes the military cannot solve the societal problems which currently disqualify so many recruits from entering the military.
- Congress recognizes it is its responsibility "…to raise and support Armies and to provide and maintain a Navy…" Therefore, a strategic assessment is needed to identify what is required to properly man and resource a voluntary military over at least the next decade.
- Congress supports military end strength numbers that are needed to satisfy the NSS, NDS, and NMS instead of basing end strength on budget and/or recruiting constraints.

REFERENCES:

https://www.military.com/daily-news/2025/03/07/army-losing-nearly-one-quarter-of-soldiers-first-2-years-of-enlistment.html

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https://www.military.com/daily-news/2023/10/06/last-stop-usa-how-army-trying-fill-broken-education-system.html

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POSITION PAPER

PACT Act and VA Care for Service Connected Vaccine Injuries

PROBLEM:

An unknown number, likely in the many thousands, of veterans are not being provided VA care to treat serious and often life-threatening conditions stemming from their being ordered to take the COVID-19 mRNA injections. Indisputable medical evidence continues to surface that links the vaccination and adverse medical conditions including myocarditis and other heart conditions, neurological disorders, strokes, blood clots, certain kinds of cancers, etc., as occurring as a result of taking the vaccination.

BLUF: This paper argues that veterans harmed by mandatory COVID-19 mRNA vaccinations—administered under unlawful conditions without proper informed consent—should receive VA medical care for resulting injuries under the PACT Act. It contends that the Secretary of Veterans Affairs has the authority to recognize these vaccine injuries as "presumptive conditions" due to toxic exposure, and if not, Congress should amend the PACT Act to ensure coverage. The paper emphasizes that political or budgetary concerns should not prevent providing care to affected veterans.

BACKGROUND SUPPORTING DATA:

FACTS BEARING ON THE PROBLEM:

- In Aug 2021, the SECDEF ordered the military to take the COVID vaccine.
- The vaccine administered to service members (SMs) did not have full licensure and approval from the FDA; it was categorized legally as Emergency Use Authorization (EUA).
- The EUA requires that "informed consent" be obtained from each SM before that SM takes the vaccine but that did not happen.
- Requests for exemption from taking the vaccination based on religious grounds were nearly totally ignored, violating the Religious Freedom Restoration Act (RFRA).
- Both the EUA and RFRA violations make the use of the vaccination unlawful as implemented; the SECWAR has so indicated.
- Both the current POTUS and SECWAR have pledged to provide remedies for those SMs discharged due to the "unlawful" [Endnote 1], "unfair, overbroad, and completely unnecessary burden on our SMs" [Endnote 2] caused by the military's COVID vaccination mandate.

DISCUSSION:

In 2022 Congress passed the PACT Act, which was the largest expansion of VA benefits in history; it added 20 new "presumptive conditions" including exposure to

burn pits, contaminated water at Camp Lejeune, and the 1991 Agent Orange Act.

- Eligibility involves exposure to "toxic substances" connected with military service.
- Common exposures include chemicals, air pollutants, occupational hazards, radiation, and warfare agents, either when deployed or at home duty stations.
- Examples of exposures are Agent Orange, burn pit gases, asbestos, radiation, industrial solvents, depleted uranium, and x-rays.

The TERA Act (Toxic Exposure Risk Activity) is defined in 38 U.S.C. § 1710(e)(4)(C) as any activity that requires a corresponding entry in an exposure tracking record system "…(as defined in Section 1119(c)); ***or that the Secretary determines qualifies for purposes of this subsection when taking into account what is reasonably prudent to protect the health of Veterans*** (Emphasis added)."

- Section 1119(c) defines "exposure tracking record system" as any system, program, or pilot program used by the Secretary of Veterans Affairs or the Secretary of Defense to track how Veterans or members of the Armed Forces have been exposed to various occupational or environmental hazards. The Defense Medical Epidemiology Data Based (DMED) is such a tracking system; additionally the Vaccine Adverse Event Reporting System (VEARS) has been used by DoD/DoW to track injuries and deaths.
- It appears the Secretary of VA has the discretionary TERA authority to determine that veterans who were exposed to a toxic risk by being required to take a COVID-19 mRNA injections can receive VA care for medical injuries resulting from such exposure on a "presumptive condition" basis.
- However, the VA has apparently administratively determined that vaccines and medications administered to SMs are not considered part of the TERA.

SOLUTION:

Provide VA care for veterans medically harmed by a COVID-19 mRNA injection. ***How?*** Two possible ways, one administrative and the other Congressional:

1. The Secretary of the VA uses his authority to allow qualification for VA care for medical harm associated with the COVID-19 mRNA injections on a "presumptive condition" basis due to being ***"reasonably prudent to protect the health of Veterans"*** — as stated above.
2. Congress amends the PACT Act to include VA medical care on a "presumptive condition" basis for veterans harmed by being required to take an unlawful COVID-19 mRNA injection.

DOING THE RIGHT THING:

Two potential barriers exist for the solutions—both political:

1. Cost to provide VA care for the medical conditions associated with the vaccination. The VA budget has come under scrutiny for rising costs and the cost of additional coverage coming from the 2022 PACT Act was a factor.
2. If the Covid mRNA vaccine is included under TERA allowing VA medical care for veterans harmed by the unlawful mandate, there may be spin-off legal implications for producers of the vaccine and others involved in the unlawful mandatory policy.

Neither of these political considerations should prevent the VA offering care for those who were required to take an unlawful vaccine and are suffering serious medical conditions as a result. Doing the Right Thing for Veterans must drive this decision process.

RECOMMENDATIONS:

1. Congress requests or requires the Secretary of the VA to administratively include medical coverage on a "presumptive condition" basis to veterans who suffer from medical conditions associated with the unlawful Covid mRNA vaccine.
1. If the Secretary of the VA does not take said administrative action, then Congress amends the PACT Act to include VA medical care on a "presumptive condition" basis for veterans medically harmed by being required to take the unlawful COVID-19 mRNA vaccine.

ENDNOTES:

1. Supplemental Guidance to the Military Department Discharge Review Boards and Boards for Correction of Military/ Naval Records Considering Requests from Service Members Adversely Impacted by Coronavirus Disease 2019 Vaccination Requirements, May 7, 2025. See https://www.war.gov/Portals/1/Spotlight/2025/Guidance_For_Federal_Policies/Supplemental-Guidance-to-the-Military-Department-Discharge-Review-Boards-and-Boards-for-Correction-of-Military-Naval-Records.pdf.

2. Executive Order 14184—Reinstating Service Members Discharged Under the Military's COVID–19 Vaccination Mandate January 27, 2025. See https://www.govinfo.gov/content/pkg/DCPD-202500188/pdf/DCPD-202500188.pdf.

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POSITION PAPER

Freedom of Information Act Stonewalling

PROBLEM:

Federal agencies are not complying with the Freedom of Information Act (FOIA). Seldom are responses completed within the statutory 10-day period (20-days for complex requests). Responses repeatedly are impermissibly and unnecessarily redacted. In some cases, lawsuits are needed to get a federal judge to order compliance. This phenomenon strongly suggests members of the federal government refuse to be transparent and accountable.

BLUF: Federal agencies are routinely failing to comply with the Freedom of Information Act (FOIA), as demonstrated by widespread delays, excessive and improper redactions, and a lack of transparency that often requires litigation to resolve. This paper highlights these systemic issues through specific examples, underscores the resulting lack of accountability, and calls for legislative reforms and stronger oversight to ensure federal agencies fulfill their FOIA obligations.

BACKGROUND SUPPORTING DATA:

FACTS:

- Since Summer of 2020, STARRS has filed 61 FOIAs.
- Only one request received a response within the 20-day statutory period.
  - The request simply asked who approved the display of a Pride Month banner at the entrance of the USAF Academy Base Exchange.
  - The response coincided with the banner's removal.
- Most responses are heavily redacted (more under discussion below).
- One FOIA request simply asked for a copy of a report assessing systemic racism at the USAFA Academy as directed by its Superintendent.
  - A Judicial Watch-sponsored lawsuit led to a federal judge directing compliance with the FOIA.
  - The Academy finally released the document; 52 entire pages of a 163-page report were completely redacted; other pages had additional redactions.
  - Every page had been inappropriately labeled For Official Use Only (FOUO).
  - No evidence of racism, let alone systemic racism, was shown in the report provided.
  - The 3-years of stonewalling disguised the identification and training of 90 cadets to serve as Diversity and Inclusion officers, wearing purple arm ropes throughout the entire USAF cadet wing—two per 40 squadrons, four groups, and

one wing; they served a parallel chain of command to the Chief Diversity Officer, who reported to the Superintendent.

- The most recent court-ordered response (stemming from a Judicial Watch lawsuit), dated May 1, 2026, was for a request filed on July 7, 2021.
  - This request was for records associated with CRT/DEI in courses taught by a USAFA professor, who in a Washington Post op-ed declared that she teaches CRT.
  - See https://www.washingtonpost.com/opinions/2021/07/06/military-academies-should-teach-critical-race-theory/.
  - The *Atlantic Monthly* featured an article, on May 16, 2016, "The Tricky Pursuit of Diversity at the U.S. Air Force Academy." See https://www.theatlantic.com/education/archive/2016/05/why-the-air-force-academy-held-a-forum-on-ferguson/482895/.
  - ***An excerpt from that article:*** "The focus on diversity is "embedded in many of the courses we teach," said Brigadier General Andrew Armacost, the dean of faculty at the academy. New hires go through an orientation the summer before they start teaching to learn how to lead classes in a way that makes people feel like they belong. During the year, faculty gather occasionally during lunch to talk about books on belonging. Up recently were Beverly Daniel Tatum's *Why Are All the Black Kids Sitting Together in the Cafeteria: And Other Conversations About Race* and Claude Steele's *Whistling Vivaldi: How Stereotypes Affect Us and What We Can Do*. "

DISCUSSION:

- "We the people" are the sovereign to which federal agencies are accountable. The FOIA statutes codify this authority.
- Transparency is a check on the abuse of federal powers. There can be no accountability without transparency.
- In 1976, STARRS's current General Counsel won a U.S. Supreme Court case setting the precedent of "redaction" – i.e., requiring the government to produce documents with names and personal identifiers deleted, instead of failing to produce documents requested under FOIA because they contained names or personal identifiers. See https://supreme.justia.com/cases/federal/us/425/352/.
  - Given STARRS experiences in seeking transparency via FOIA requests, it appears agencies are abusing the redaction provision.
  - Should members on the federal payroll (employees and contractors) be given the same privacy protections as private citizens?
  - Should response times be extended? Either way, how might they be more rigorously enforced?

RECOMMENDATIONS:

- Congress consider to what extent privacy protection applies to government employees and contractors.
- Congress update language in the FOIA statutes to make them more enforceable.
- Congress conduct oversight hearings to expose and enforce accountability for stonewalling in violation of the FOIA.

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POSITION PAPER

Requiring Written Informed Consent Before Military Service Members Receive An Emergency Use Authorization Vaccine

PROBLEM:

The Department of Defense/War has forced thousands of military service members (SMs) to take the Emergency Use Authorization (EUA)-status COVID vaccine without having obtained informed consent from the SMs, and has punished SMs for declining to take that EUA product without informed consent, in violation of 10 U.S.C. 1107. [Endnotes 1, 2, 3].

An unknown number, likely in the many thousands, of SMs have serious and often life-threatening conditions stemming from their being forced to take the COVID injections having EUA status, without having provided the SMs informed consent.

Medical evidence links the vaccination and adverse medical conditions including myocarditis and other heart conditions, neurological disorders, strokes, blood clots, certain kinds of cancers, etc., as occurring as a result of taking the COVID vaccine.

Those adverse medical conditions might have been avoided if SMs had been allowed to avoid taking the COVID vaccine by declining to give their informed consent as required by law instead of being forced to take the COVID vaccine without having provided their informed consent in violation of law.

BLUF: The Department of Defense required military service members to receive Emergency Use Authorization (EUA) COVID-19 vaccines without obtaining legally mandated informed consent, violating 10 U.S.C. 1107 and resulting in adverse health outcomes and unlawful punishments for those who declined. The paper calls for Congress to mandate written, signed informed consent for all service members before administering EUA products, ensuring legal compliance and equal protection as proposed for veterans under pending legislation.

BACKGROUND SUPPORTING DATA:

FACTS BEARING ON THE PROBLEM:

EUA COVID VACCINE:

- In Aug 2021, the SECDEF ordered SMs to take the EUA-status COVID vaccine.
- That vaccine administered to SMs did not have full licensure and approval from the FDA; it was categorized legally as Emergency Use Authorization (EUA).

- The EUA law (10 U.S.C. 1107) requires that informed consent be obtained from each SM before that SM takes the vaccine, but that did not happen.
- Requests for exemption from taking the vaccination based on religious grounds were nearly totally ignored, violating the Religious Freedom Restoration Act (RFRA) according to multiple federal court decisions.
- Both the EUA and RFRA violations made the military's COVID vaccine mandate unlawful as implemented, as the POTUS, the SECWAR and/or federal Courts have indicated.
- The POTUS has pledged to provide remedies for those SMs discharged due to the "unfair, overbroad, and completely unnecessary burden on our SMs" [Endnote 5] caused by the military's COVID vaccination mandate.

VA SIGNED INFORMED CONSENT LAW

- The VA distinguishes between (1) "Ordinary Informed Consent," whereby a clinician discusses risks, benefits, and alternatives and documents the discussion in the record and (2) "Signature Informed Consent," whereby a signed consent form is required for certain higher-risk treatments or procedures specifically identified by VA policy.
- The VA already is required to provide non-signature Ordinary Informed Consent before prescribing certain medications to veterans; see 38 C.F.R § 17.32 and VHA Directive 1004.01, Informed Consent for Clinical Treatments and Procedures (Dec. 12, 2013). However, often this required informed consent has not been provided.
- In December, 2025, Congress introduced two bills (H.R. 4837/S.3314) directing the Secretary of Veterans Affairs to cause a veteran to sign a standardized consent form ("Signature Informed Consent") acknowledging the veteran has been informed of the risks, benefits, and alternatives of certain medications for which "Ordinary Informed Consent" already was being required, plus for additional medications, before the VA administers those medications to the veteran.
- H.R. 4837/S. 3314 would require veterans to sign a standardized VA consent form ("Signature Informed Consent") for existing medications for which a veteran's non-signature "Ordinary Informed Consent" already is required, and for additional medications.
- H.R. 4837/S. 3314 is supported by the American Legion, Veterans of Foreign Wars, Disabled American Veterans, Iraq and Afghanistan Veterans of America, Military Order of the Purple Heard, Tragedy Assistance Program for Survivors, and numerous other military and veterans organizations.

DISCUSSION:

- Federal law (10 U.S.C. 1107) prohibits the military from administering vaccines under an Emergency Use Authorization without prior notice to the SM and without obtaining the SM's informed consent, unless the President waives this requirement due to national security. [Endnotes 1, 2, 3, 4]
- Under 10 U.S.C. 1107, the Department of Defense (DoD) cannot force SMs to take an EUA-status product without first obtaining informed consent from the SM. If consent is withheld, a SM cannot be punished for declining the specific product under EUA. [Endnotes 1, 2, 3]
- The President of the United States has the legal authority to bypass the informed consent requirement for EUA products. The President can waive the consent requirement in writing if he determines that obtaining it is not feasible, contrary to the best interests of the member and not in the interests of national security.
- The COVID vaccine was an EUA product and the President did not waive the informed consent requirement. Therefore, forcing SMs to take the COVID vaccine and punishing SMs for not taking the COVID vaccine without obtaining prior informed consent from the SM were illegal, in violation of 10 U.S.C. 1107.

SOLUTION AND RECOMMENDATION:

Congress should pass legislation requiring the Department of War to obtain from each SM an informed consent form signed by the SM acknowledging that the SM has been informed of the risks, benefits, and alternatives of taking an EUA product and voluntarily consents to taking that EUA product.

Doing that would improve compliance with the requirement of informed consent for EUA products and provide service members the same protections ensuring compliance with the informed consent law for EUA products that will be provided to veterans for certain medications if H.R. 4837/S.3314 become law.

Service members deserve no less protection from non-compliance with informed consents laws than will be provided to veterans.

ENDNOTES:

1. Krick JA, Reese TR. *Mandating the COVID-19 Vaccine for U.S. Service Members: An Exploration of Ethical Arguments*, Mil Med. 2022 Mar 28;187(3-4):73-76. doi: 10.1093/milmed/usab369. PMID: 34476471; PMCID: PMC8499929. See https://pmc.ncbi.nlm.nih.gov/articles/PMC8499929/.

2. "Protection of Human Subjects; Informed Consent, Exception From General Requirements." See https://nclalegal.org/firing-military-personnel-for-refusing-covid-vaccine/.

3. "Mandatory COVID-19 Vaccinations in the Military: Constitutionality, Exemptions, and Consequences for Refusing to Comply." See https://www.nationalsecuritylawfirm.com/mandatory-covid-19-vaccinations--in-the-military-constitutionality-exemptions-and-consequences-for-refusing-to-comply/.

4. "COVID 19 VACCINATION REFUSALS AND EXEMPTIONS." See https://www.jagdefenders.com/covid-19-vaccination-refusals-and-exemptions/.

5. See Executive Order by President Donald Trump, January 27, 2025, entitled "Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate," Section 1; Memorandum dated May, 2026, by Secretary of War Pete Hegseth, entitled "Reinstating Service Members Unjust Discharged Under the Coronavirus Disease 2019 Vaccine Mandate."

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POSITION PAPER

FY '27 NDAA – Merit in the Military – Requirement of Equal Opportunity, Racial Neutrality and Exclusive Use of Merit in Military Personnel Actions

PROBLEM:

Former DOD's longstanding, intermittent use of racial classifications and preferences in various military personnel actions became pervasive during the previous administration. Such practices were, for decades, well-concealed and internally justified by lack of statutory prohibition. DOD's Instruction 1350.02, prohibiting them, and which requires that "service members are evaluated only on individual merit, fitness, capability and performance," was either ignored or loosely interpreted to permit consideration of race.

Resumption of such practices in future years is likely absent statutory prohibition, would decrease combat effectiveness and would violate constitutional equal protection.

BLUF: This paper advocates for a legislative ban on race-based considerations in all military personnel actions, arguing that only merit, fitness, capability, and performance should determine military advancement and selection. It highlights that past use of racial preferences has undermined unit cohesion, leader quality, and combat effectiveness, and asserts that statutory prohibition—rather than internal Department of Defense policies—is urgently needed to ensure equal opportunity, racial neutrality, and national security.

BACKGROUND SUPPORTING DATA:

Service Academies. USMA for many years (until recently) used various practices that applied different admissions standards to fulfill race-based, class composition goals. Admission of marginally qualified African American and Hispanic applicants, and rejection of many, significantly better qualified candidates (as measured by USMA's own metrics) resulted. USAFA and USNA engaged in similar practices. Multiple sources confirm lower performance (academic and military) and graduation rates for such "preferenced" candidates.

USAF UPT and other DOD school selections were influenced by identity characteristics, sometimes ignoring regulations that had been issued precisely to prevent discrimination.

Command selection. Command selection programs (e.g., the Army's Battalion Command Selection Program (BCAP)) quietly used racial preferences under the guise of "Inclusion."

ADVERSE IMPACT:

Return of these and other uses of racial preferences would be divisive, undermine unit cohesion, lower leader quality, erode trust, and reduce combat effectiveness.

SOLUTION:

An *enduring* solution - legislative ban on the consideration of race in military personnel actions - is urgently needed. Title VII prohibits consideration of race in federal *civilian* personnel actions; but there is no statutory prohibition against race-based discrimination in military personnel actions. DOD Instructions and other directives have historically proven inadequate to deter such conduct. *Permanently* restoring equal opportunity, racial neutrality and exclusive use of merit in military personnel actions is a national security imperative.

ACTION:

FY '27 NDAA. Proposed legislation (same as FY '26 House NDAA version) would require exclusive use of merit and prohibit consideration of race in all DOD military personnel actions (including accessions), with narrow exception for certain, foreign special operations.

Legislation has been filed as proposed amendment to HR 8800, FY '27 NDAA. See Appendix at the end of this report for the bill text and detailed position paper (explaining proposed text).

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POSITION PAPER

FY 2027 NDAA - Service Academy Admissions Reform Amendments

PROBLEM:

Admissions practices for the United States Military Academy, United States Naval Academy, and United States Air Force Academy are prescribed by outdated statutes that contain language no longer followed and lack provisions needed to assure admission of best-qualified candidates. Gaps in existing statutes do not require use of merit in admissions decisions and permit admission of marginally qualified candidates, reducing incoming class quality.

BLUF: The proposed FY 2027 NDAA Service Academy Admissions Reform aims to modernize and standardize admissions practices at U.S. service academies by closing statutory gaps, codifying merit-based selection, and increasing transparency. These amendments seek to ensure that the most qualified candidates are admitted, improve class quality and graduation rates, and enhance equal opportunity, all without altering nomination processes or diminishing diversity and opportunity for underrepresented groups.

BACKGROUND SUPPORTING DATA:

Recent manifestations of the problem have included:

- artificially low minimum standards that, when met (or waived), obscure marginal qualifications of some candidates
- significantly lowered admissions standards for "preferenced" candidates
- rejection of significantly better qualified candidates, denying equal opportunity
- deliberate underfilling of certain statutory nominating categories and abuse of "additional appointee" statutes, contrary to expressed congressional intent
- lower performance and graduation rates, and higher attrition, for preferenced groups

SOLUTION:

Update and close gaps in 10 USC 7442, 8454, 9442 and 10 USC 7443, 8456 and 9443 through amendments in FY '27 NDAA, building on reforms in FY '24 NDAA.

Amendments, without changing existing statutory framework, would:

- codify existing best practices and eliminate outdated, ambiguous and variably interpreted provisions
- incorporate merit-ranking and minimum standards in academies' scoring metrics that evaluate applicants' overall character, intellect and fitness

- align use of "Additional Appointee" ("AA") statute with Congressional "top off" intent
- increase quality of entering/graduating classes, reduce attrition, increase equal opportunity, and increase taxpayer ROI
- facilitate transparency and oversight of academies' admissions practices and results, curtailing use of artificially low minimum standards and abuse of AA statute

Amendments would not:

- change how Members nominate candidates or nomination eligibility criteria
- change the academies' practices of considering a candidate's background/obstacles
- end racial/ethnic diversity or admission of recruited athletes
- diminish opportunities for women

Legislation has been filed as proposed amendment to HR 8800, FY '27 NDAA. Detailed discussion and bill text are available in the Appendix.

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APPENDIX A

FY 2027 NDAA - Merit in the Military—Requirement of Equal Opportunity, Racial Neutrality and Exclusive Use of Merit in Military Personnel Actions

SUMMARY:

DOD should be permanently required to treat all service members based on merit, regardless of race, to conform to the Constitution and to optimize combat effectiveness.

National security requires optimal leader quality, undiluted by preferences. Explicit, statutory prohibition against the consideration of race in military personnel actions and mandating use of merit is thus a national security—and moral—imperative.

Legislation has been filed as a proposed amendment to HR 8800, FY '27 NDAA

GENERAL:

Consideration of race and ethnicity in DOD military personnel actions has, until recently, been a perennial problem. Legislation that would prohibit racial preferences in DOD military personnel actions is needed to provide an enduring solution.

To be effective, the statute's prohibition must be explicit. The political environment is now conducive to such legislative action.

This document explains that need, proposes such legislation and discusses its provisions.

PROPOSED LEGISLATION FOR INCLUSION IN FY '27 NDAA:

Requirement of Equal Opportunity, Racial Neutrality, and Exclusive Use of Merit in Military Personnel Actions.

(a) **Merit Requirement**. All Department of Defense military personnel actions, including accessions, promotions, assignments, command selection, and military and civil schooling selection and training, shall be based exclusively on individual merit, fitness, capability and performance.

(b) **Consideration of Race Prohibited**. Consideration of an individual's race, ethnicity, or national origin in any personnel action is prohibited throughout the Department of Defense.

(c) **Limited Exception for Tasking of Specific Missions**.

(1) In general. —This section shall not be construed to prohibit tasking for specific, unconventional missions in foreign countries, where the anticipated ground operating environment of indigenous populations may justify consideration of race, ethnicity or national origin when tasking for the mission to optimize mission success.

(2) Combatant commander approval required. —Any tasking pursuant to the exception described in paragraph (1) shall require the approval of the combatant commander concerned.

(3) Reporting requirement. —Not later than 60 days after a tasking pursuant to the exception described in paragraph (1), the Secretary of Defense shall report the tasking to the Committees on Armed Services of the Senate and House of Representatives. The report shall describe—

(A) the mission, including location and duration;

(B) the staffing of the mission;

(C) the demographic factors warranting the tasking;

(D) the number of personnel involved, including their rank, position, and race, ethnicity, and national origin, and

(E) the rationale for the tasking.

The foregoing is identical to FY '26 House NDAA, HR 3838, Sec. 524, which was not in the final FY '26 NDAA signed into law.

BRIEF COMMENTS:

Subsection (a)'s proposed language tracks part of DODI 1350.02, para 2.8(a)(3) ("Service members are evaluated only on individual merit, fitness, capability and performance.") Also, it encompasses all categories of personnel actions where it is known or believed that racial preferences have occurred in past years.

Subsection (b)'s express prohibition against consideration of race, et al, is necessary because without it the statute would be ineffective. DODI 1350.02, para 2.8(a)(3) has for years required evaluation of service members "only on individual merit, fitness, capability, and performance." That DODI has been regularly ignored under multiple administrations (discussed below). Absent a statutory, express prohibition against use of race, et al, (as in Titles VI and VII), it would be argued that words like "merit" and "capability" permit consideration of an individual's attending circumstances, including race, facilitating resumption of use of racial preferences in future administrations. An express, statutory prohibition would eliminate any such interpretation and prevent a return of racial preferences.

Subsection (c)'s limited exception for specific mission tasking in only certain types of missions anticipates a concern based on certain tactical considerations, a requirement for combatant commander approval, and reporting to Congress of each such instance.

DOD's tasking needs for special, unconventional ground missions where the indigenous population in the tactical environment may require consideration of race or ethnicity are legitimate and should be accommodated. They do not, however, justify widespread disregard of constitutional equal protection throughout DOD and use of racial preferences in personnel actions generally. Using a narrowly worded exception, high level approving authority, and the reporting requirement would accommodate the need and deter abuse.

DISCUSSION:

Subsection (b)'s express prohibition would add clarity and serve the following goals:

1. Prohibit, DOD-wide, use of race-based preferences in military personnel actions, which (because in the past they were concealed) was a bigger problem than was realized. (Racial preferences in DOD civilian personnel actions are already statutorily prohibited.)

2. *Permanently* prohibit use of race-based preferences in accession programs such as service academy admissions.

3. Codify prohibition of racial discrimination in the military using a separate statute, not relying on Titles VI and VII (which have been held inapplicable to military members)..

4. Unequivocally demonstrate Congressional intent, once and for all **rejecting** former DoD's longstanding, far-fetched, contrived argument that racial preferences and pursuit of officer-enlisted racial demographic parity are essential to national security and thus a "compelling national interest" sufficiently strong to justify suspension of enforcement of constitutional guarantee of equal protection.

5. By mooting the constitutional issue and expressing the requirement for racial neutrality in the military, *permanently* eliminate need to litigate the argument set forth in item 4 (above), attendant delay, cost and uncertainty of judicial result.

6. *Permanently* end identity-based preferences (that are vaguely disguised as "Inclusion" practices) that in the past have been justified using

the absence of statutory prohibition and the "national security imperative" argument stated in item 4, above.

7. *Permanently* align service academy admissions practices to same Equal Protection requirements that all other U.S colleges and universities must now observe, and that a substantial majority of Americans favor and a plurality of Black Americans support.

8. *Permanently* restore military cultural imperatives including undiluted merit, color blindness and selflessness, enhancing morale, unit cohesion, and combat effectiveness.

9. *Permanently* restore public confidence in military resulting from alignment with Constitution and permanent elimination of racial preferences (as favored by the public).

10. Support recruiting and retention by *permanently* enhancing military cultural appeal to those who value equal opportunity, "colorblindness," and merit undiluted by identity preferences.

11. Facilitate congressional oversight of DOD personnel management practices.

FORMER DOD'S LONGSTANDING IDENTITY PREFERENCES:

Former DoD's longstanding use of racial classifications and preferences became pervasive under the previous administration. They were well-concealed and undeterred by DODI 1350.02, para 2.8(a)(3), Military Equal Opportunity Program. DoDI 1350.02 unequivocally requires that "service members are evaluated only on individual merit, fitness, capability and performance."

But under multiple administrations, former DoD routinely ignored that instruction, apparently because it does not explicitly "prohibit" consideration of race and the term "individual merit" is interpreted too broadly. Subsection (a), alone, would codify the "merit" part of that regulation. Subsection (b) would supply the needed express statutory prohibition. DOD, under future administrations, because of the express, statutory prohibition, would then be unable to resume its prior practice of racial preferences.

In accessions (and similar to Harvard and UNC), West Point for many years used "Class Composition Goals" (see file p. 59). These "goals" included percentages for specific racial categories (one for "African Americans" and one for "Hispanics," among others) that were tracked throughout the admissions cycle.

In pursuit of these "goals," various admissions practices (e.g., restricting issuance of Letters of Assurance early in the admissions cycle to certain applicants, including by race) to advantage certain classifications of applicants and to disadvantage others were used. Application of differing standards (e.g., different composite score thresholds, by race) in admissions practices, including out-of-order-of-merit selection for certain classifications of applicants, including race, also were used.

These practices were, at USMA, expressly (in writing) authorized for the stated objective of helping to "balance diversity."

As a result, applicants having higher (sometimes significantly higher) Whole Candidate Scores (per West Point's application scoring system) were rejected to facilitate admitting "preferenced," lower scoring applicants (because of their race) to fulfill racial composition goals for the overall purpose of "balance" in racial diversity.

In contrast to the above facts, former DoD described deceptively the academies' relevant admissions practices in the United States' amicus brief in SFFA v. Harvard/UNC. The practices were claimed to consist of the consideration of race as just one of "many other qualities" (U.S. br. at 12), when they "employ holistic recruiting and admissions policies that consider race—along with many other factors—in an individualized review of applicants" or use "limited consideration of race in a holistic admissions system ... necessary to achieve the educational and military benefits of diversity." (U.S. br. at 17).

Those representations were demonstrably false and misleading in multiple ways. The academies do an outstanding job of gathering (and scoring) information that facilitates evaluating the whole person. But holism stopped when admissions decisions were made for cer-

tain appointment categories. At USMA (and likely USNA and USAFA), widely varying candidate composite score thresholds, by race, were (until recently) used for LOA (early admission) eligibility. White and Asian males were severely disadvantaged by those practices. Appointments in two statutory appointment categories totaling over one fifth of each class were reserved for recruited athletes (all races) and certain minorities. White and Asian candidates who were not recruited athletes were generally excluded from competing for those appointments, resulting in significantly better qualified white and Asian candidates being rejected in large numbers to facilitate admission of marginally, and sometimes poorly, qualified diversity and recruited athlete candidates.

USAF UPT and other DOD school program selections were influenced by identity characteristics, sometimes ignoring regulations that had been issued precisely to prevent such discrimination.

The Air Force used race and gender-based classifications in its Rated Diversity Improvement Strategy (RDI) program, wherein it deliberately advanced women and minorities in the Undergraduate Pilot Training pipeline (ahead of white males, who had to wait longer for a training slot) in an effort to accelerate the numbers of women and minority pilots. Program managers were told such practices were lawful and that they must compose UPT classes considering race and gender, disadvantaging white males.

The Army directed applicants in 2021 to submit Funded Legal Education Program ("FLEP") selection board packets *without* redacting race and gender information. Such was in direct violation of a written directive requiring redaction.

The FLEP board results suggested that such prohibited information influenced the selection process, in violation of AR 600-20, paras, 6-1(a) and 6-2(b); DODI 1350.02, para 2.8(a)(3), and the 2011 Army Chief of Staff's written Equal Opportunity and Discrimination Policy.

The last of those states the Army's EO policy is "based solely on merit" et al … and "right to participate in and benefit from programs for which they are qualified without regard to race, color, gender …." "Soldiers will not be accessed, classified, trained, assigned, promoted or otherwise managed on the basis of race, color, gender, religion, or national origin, except as required by Federal law. *Such discriminatory behaviors and practices undermine teamwork, loyalty and the shared sacrifices of the men and women of America's Army.*" (emphasis added)

Command selection. The Army's heralded Battalion Command Assessment Program (BCAP), a 4½ day process by which candidates for battalion command are thoroughly tested and evaluated, according to two, independent reports by persons with knowledge, used what functioned as racial quotas, whereby, after compilation of scores, higher scoring candidates were passed over when necessary to allow selection of lower scoring candidates by reason of race.

PREFERENCES' HARMFUL CONSEQUENCES:

These and similar race-based, personnel practices, if resumed, would be divisive, erode morale, and undermine trust. They would be antithetical to and weaken battle-tested, selfless, colorblind warrior culture, undermine unit cohesion and compromise combat effectiveness. They would violate Equal Opportunity policy and constitutional equal protection.

Were they to be used regarding DOD civilians, they would violate a federal statute (Title VII). But, there is no similar, federal statute preventing such practices being used regarding military personnel. A statute to fill that vacuum is urgently needed to prevent permanently resumption of such practices, particularly in light of their harmful consequences to the military, not the least of which are reduced leader quality and resultant compromise of combat effectiveness.

Incremental differences in military leader quality can mean the difference between mission success or failure and warfighters' life or death. Accordingly, these practices and others like them also violate a trust owed to our warfighters and to the American people. It is our moral and professional obligation to provide our warfighters the "best-qualified" leaders available, always. Diluting leader quality with identity preferences, even once, is a moral failure that should be intolerable.

But, at former DoD leadership's direction—spurred by ideological commitment to "Diversity and Inclusion" —identity preferences' displacement of merit was, until recently, routine,

- disregarding the requirement of constitutional equal protection (and thus violating leadership's oath to "bear true faith and allegiance to the" Constitution),
- denying/concealing preferences' use and being blind to the resulting erosion of trust
- ignoring preferences' many deleterious military cultural effects
- indifferent to preferences' denial of equal opportunity/basic fairness,
- heedless of preferences' inherent moral hazard, and
- oblivious to preferences' negative secondary consequences (e.g., lowered leader quality and compromised combat effectiveness) for individual warfighters.

FORMER DOD'S CLAIM:

Former DoD used preferences in obsessive pursuit of its goal of officer-enlisted racial demographic parity, claiming, when challenged, that the percentages of specified minorities in the officer ranks must approximate those in the enlisted ranks. It also asserted that there must be racial demographic parity between the officer corps and the national population. DoD used phrases such as "critical officer diversity" and "strategic imperative" to justify its use of *racial* preferences at the service academies and by colleges having ROTC.

The Air Force explicitly set percentage goals for increasing the numbers of women and minority pilots, claiming such efforts to increase diversity would "result in a more lethal Air Force to retain our competitive advantage."

Notably absent, however, was evidence to support claims that such balancing is necessary to make our military combat-effective or that increasing diversity in the rated officer (pilot) groups would make the Air Force more combat effective. These goals, however well-intentioned, were founded on a theory—racial balancing —that the Supreme Court has uniformly rejected as "patently unconstitutional" in every context in which it has been raised (see below).

Finally, former DoD, at the time, disingenuously claimed that it did not lower standards when using identity preferences under the guise of "Inclusion." Available data regarding service academy admissions, however, indisputably exposes that pretense as demonstrably false.

REMEDY INFUSES CONSTITUTIONAL EQUAL PROTECTION:

Expressly prohibiting (by statute) consideration of race permanently would end this subterfuge once and for all. It would codify for DOD's observance the constitutional mandate of equal protection as meticulously explained by the Supreme Court in SFFA v. Harvard/UNC. Equal protection of the law requires that citizens' legal standing in all of society be "colorblind" in recognition of the fundamental principle that no person is of greater or lesser dignity or worth by reason of his or her race, and governments must scrupulously adhere to that principle in how they treat their citizens. The Court said:

- The "core purpose of the Equal Protection Clause" is "do[ing] away with all governmentally imposed discrimination based on race." (600 U.S. at 206)
- "Eliminating racial discrimination means eliminating all of it." (600 U.S. at 206)
- "… Equal Protection … applies 'without regard to any differences of race, of color or of nationality' – it is 'universal in [its] application." (600 U.S. at 206)
- "[T]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. [cit. omitted) If both are not accorded the same protection, then it is not equal." (600 U.S. at 206)

- "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." (600 U.S. at 208)
- "[r]acial discrimination is invidious in all contexts" (600 U.S. at 214)
- "[R]ace may never be used as a 'negative'" (600 U.S. at 218)
- "race … may not operate as a stereotype." (600 U.S. at 218)
- "One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities." (600 U.S. at 220)
- Rejecting legitimacy of "proportional representation" argument, "'[O]utright racial balancing' is 'patently unconstitutional …. That is so … because '[a]t the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class.'" (600 U.S. at 223)
- Rejecting the legitimacy of using racial classifications to achieve racial demographic balance, because otherwise "'race will always be relevant … the ultimate goal of eliminating race as a criterion will never be achieved.'" (600 U.S. at 224)

CONGRESSIONAL AUTHORITY:

The policy questions inherent in whether DOD should be prohibited from using racial preferences are within Congress' Article I, Section 8 power to regulate the military forces. Congress was expressly delegated such power and thus has both the constitutional authority and obligation to exercise them in this context.

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APPENDIX B

FY 2027 NDAA - Service Academy Admissions Reform

GENERAL:

This paper discusses the need for revision of the six statutes that govern admissions procedures for the United States Military Academy, United States Naval Academy, and United States Air Force Academy ("Military Service Academies" or "MSAs") - 10 USC 7442, 8454, 9442 and 10 USC 7443, 8456 and 9443 - and proposed amendments to those statutes. The legislation has been filed as a proposed amendment to HR 8800, FY '27 NDAA.

PROBLEM:

The MSAs in recent years admitted many marginally qualified candidates while concurrently rejecting many highly qualified candidates. Current statutes are outdated (contain language no longer followed) and lack provisions needed to require (a) practices that would ensure admission of best-qualified candidates and (b) transparency. Some existing provisions are also ambiguous and/or variably interpreted, most recently evidenced by USAFA's and USNA's significant underfilling the Presidential appointment category, ostensibly to facilitate expanded misuse of the discretionary Additional Appointee category.

The MSAs, for decades, covertly exploited these statutory gaps to admit excessive numbers of marginally qualified candidates in pursuit of policy agendas, lowering quality of substantial parts of each entering class. These gaps facilitated, for example, use of race-based preferences in admissions decisions. Multiple data sources[1] reveal longstanding use of:

- **artificially low minimum standards** that obscure marginal/poor qualifications of "qualified" candidates (and waiver of these artificially low minimums)
- **significantly lowered admissions standards** for marginally qualified, "preferenced" candidates
- **rejection of many, *significantly better qualified,*** male and female candidates
- **deliberate underfilling of certain statutory nominating categories and abuse of "Additional Appointee" ("AA") statutes,** contrary to expressed congressional intent that AA statutes serve only as "top off" statutes
- **inadequate standards in academic component of candidate composite score,** diluting the score's ability to identify strongest candidates
- **abuse of subjective component of candidate composite score**, diluting the score's ability to identify candidates most likely to succeed
- **lower performance and graduation rates, and higher attrition,** of cadets who, as candidates had been "preferenced" at admission

1 a. Preferences in the Service Academies, Lerner, R & Nagai, A, Ctr. For Equal Opp. (Oct. 16, 2006), pp. 8, 11.
b. Analysis of Effect of Quantitative and Qualitative Admissions Factors in Determining Student Performance at USNA, Phillips, Barton L. Naval Postgraduate School 2004, pp. 1, 2, 24, 25, 28, 32, 71, 72.
c. Declaration of COL Deborah McDonald, fmr Dir. of Admissions, USMA filed Nov. 22, 2023 in *SFFA v. USMA*, et al, (U.S. Dist. Ct., So. Dist. NY), Exhibits A&B.
d. Report of Special Inspection – Assessment of Race or Ethnicity Based Treatment of Cadets at USMA, Oct. 2020, USMA Inspector General, pp. 38, 40, 42, 49.
e. GAO Report to Congressional Committees – Military Service Academies GAO-22-105130, July 2022, pp. 21-23; 70-75.
f. *Carved from Granite – West Point Since 1902*, Lance Betros (BG, USA ret.), fmr Professor USMA, fmr Provost, Army War College, Texas A&M University Press, 2012, pp. 301-316.
g. *Still Soldiers and Scholars? An Analysis of Army Officer Testing*, Dec. 2017. Coumbe, A.T., Condly, S.J., Skimmyhorn, W. L., Strategic Studies Institute and U.S. Army War College Press, pp. xix, 8, 9, 353.
h. Examining Diversity in Developmental Trajectories of Cadets' Performance and Character at USMA, (2021). Schaefer, H.S. et al. Journal of Character Education, Vol. 17, No. 1, p. 73.
i. On Diversity as Strength, usmadata (June 10, 2018), https://usmadata.com/2018/06/10/on-diversity-as-strength/.
j. U.S. Service Academy Admissions, Selecting for Success at the Military Academy/West Point and as an Officer. RAND Corporation 2015, pp. x, xi.

- **denial of equal opportunity**[2] for rejected, better qualified candidates (moral hazard)
- **unnecessarily lowered quality of significant portions of entering classes.**

Recent executive action requiring exclusive use of merit has (for now) curtailed some of these practices. Legislation is required, however, to complete the transition and to prevent their return.

SOLUTION:

Modify governing statutes (without changing the existing statutory framework) to:

- **codify existing best practices, e.g., use of candidate composite score for determining merit rank, and mandatory use of full, Qualified Alternate category**
- **require merit-ranked selection within appointment categories, including congressionally nominated "unranked" slates** (most Members submit "unranked" slates) (Congress' nominating role unchanged)
- **eliminate outdated provisions**
- **clarify ambiguous and inconsistently interpreted provisions**
- **incorporate minimum standards for composite score metrics** (for evaluation of applicants' overall character, intellect and fitness)
- **align use of "Additional Appointee" statutes with Congressional "top off" intent**
- **increase transparency** and **facilitate congressional oversight** of admissions practices and results.

Amendments are limited in scope/extent. Each academy would retain the ability to tailor admissions practices to meet its specific requirements.

RESULT:

Amendments would

- **increase quality** of entering classes,
- **reduce attrition** (increase taxpayer ROI)
- provide **more "best-qualified" leaders** to warfighters, improving battlefield survival and mission success
- increase **equal opportunity**

AMENDMENT SPECIFICS:

Primary Appointment statutes –
10 USC 7442, 8454, and 9442.

1. Clarify meaning of "order of merit" by adding "as determined by candidate composite score," replacing outdated language.
2. Require selection in certain appointment categories to use "order of merit" rank order within each category:
    a. Congressional "competitive" (a/k/a "unranked") slates
    b. Presidential
    c. Service Secretaries – regular enlisted
    d. Service Secretaries – reserve enlisted
    e. Service Secretaries – ROTC/JROTC
    f. Children of KIA, 100% disabled, and MIAs
3. Qualified Alternates (statutes already require "order of merit" selection):
    a. Require all QA slots be used
    b. Expand eligibility from just congressional/delegate nominees to include all other fully qualified, non-selected nominees from any nominating authority
4. Candidate qualification, evaluation and selection:
    a. Codify current practice that qualifications for admission be determined

2 DoD Instruction 1350.02, Sept. 4, 2020, Change 1 effective Dec. 20, 2022. Military Equal Opportunity Program; para 1.2(a)(1) ("DoD, through the DoD MEO Program, will: (1) Ensure that Service members are … afforded **equal opportunity** …."); paras 2.8(a)(3) ("Establish MEO prevention and response programs for their Components that ensure … Service members are **evaluated only on individual merit, fitness, capability and performance**.") and (c) ("**Implement and ensure compliance with this issuance** within their respective Military Services, **including the Military Service Academies**.") (emphasis added). This DODI and similar directives were selectively and routinely ignored, demonstrating the need for legislation.

by use of candidate composite score uniformly calculated for each applicant

b. Require that academic component of candidate composite score be weighted at no less than 60% of overall composite score (current USMA practice)
c. Specify that candidate composite score shall include candidate's standardized test score (part of the academic component) weighted at no less than 45% of the overall composite score (current USMA practice = 46%).
d. Limit total weighting of all subjective components, if any, or subjective adjustments, if any, of candidate composite score to 10% of the overall composite score.
e. Require use of candidate composite scores to determine order of merit.

5. Reporting requirements:
    a. Require Service Secretaries to report to House and Senate Armed Services Committees annually, by Oct. 1, regarding the preceding admissions cycle:
        1) The established minimum candidate composite and college entrance examination rank ("CEER") scores used in such cycle, and
        2) All waivers of such minimum candidate composite score and/or CEER score for each appointee, including each such waived appointee's candidate composite score and CEER score, a brief explanation of the reasons for such waiver, the category of appointment under which each such appointee was appointed (and if congressional, the type of slate that nominated the waived appointee).
    b. Require Service Secretaries to report to House and Senate Armed Services Committees annually by Oct. 1, for each of the prior four years' waived appointees, the status of each waived appointee, including
        1) Whether still at the Academy
        2) Circumstances of any waived appointee's departure
        3) Cumulative academic GPA and military GPA
        4) Any major conduct or honor violations
        5) Any remedial measures undertaken
        6) Any other noteworthy information (positive or negative)

Additional Appointee statutes – 10 USC 7443, 8456, and 9443

1. Clarify eligibility for consideration to include all qualified, nominated candidates
2. Incorporate by reference to the primary statutes (10 USC 7442, 8454, and 9442, respectively) the provisions that specify requirements for calculation and use of candidate composite score.
3. Require Service Secretaries to report to House and Senate Armed Services Committees annually, by Oct. 1, regarding the preceding admissions cycle:
    a. the candidate composite scores and CEER scores of the ten candidates appointed as either Additional Appointees or Superintendent nominees who had the lowest candidate composite scores,
    b. the total number of qualified and nominated (by any source), but not selected, candidates, and
    c. the candidate composite scores and CEER scores of the ten qualified and nominated candidates having the highest candidate composite scores and who were not selected for appointment.

WHAT THE AMENDMENTS WOULD *NOT* DO:

- **Not change how Members nominate candidates**. Members would retain the option to nominate a principal candidate and ranked alternates, **entirely within the Member's discretion**, and, if minimum qualification criteria are met, the academy would have to offer appointment to the principal nominee (no change). Members could, instead, still use either of the other two statutory nomination slate options (principal/unranked alternates or unranked/competitive), neither of which would be changed.

- **Not prevent the academies from considering a candidate's background,** such as hardships that have been overcome, deprivations of opportunities, etc., when evaluating applicants' character/leadership, intellect and fitness. They do so now, with mechanisms to award **points for such factors. That would continue.**

- **Not end admission of racial/ethnic minorities or of recruited athletes.** Many minorities and recruited athletes gain admission based solely on merit. In addition:

  (1) There would still be some out-of-merit-order appointments authorized by statute for recruited athletes,

  (2) "Prep School" programs would continue to operate for the benefit of marginally qualified candidates, including recruited athletes, leading to appointments (85 in the reserve enlisted category, plus others in regular enlisted (maximum 85), Superintendent (maximum 50) and Additional Appointee categories for those who successfully complete the prep school programs.

  (3) Percentage of recruited athletes in each entering class (currently 20-23%, far exceeding percent of college freshmen admitted on athletic scholarships) would be unchanged.

- **Not diminish opportunities for women.** Opportunities for well-qualified women would continue, data for one academy show. Well-qualified women applicants who desire to serve have in the past sometimes been displaced by lesser qualified, "preferenced" candidates. Maintaining the Qualified Alternate appointment category (which is merit-based and for the entire nominated and qualified candidate pool) at 200 and making its full use mandatory would continue providing merit-based opportunities for well-qualified women.

DISCUSSION:

"Blurred … focus on character and intellect". The MSAs exist to produce well-educated, critically thinking leaders of character for the armed services. Since their founding, emphasis on "character and intellect" has been paramount, discussed at length (for USMA) in the seminal work ***Carved from Granite,*** authored by Lance Betros, BG USA (ret.), former USMA History Department Head and, after retirement, Academic Provost at the U.S. Army War College.[3]

Meticulously documented, General Betros explains the dramatic evolution of West Point's academic, military and physical programs since 1902 "to a high level of excellence" and admissions process reforms "raising the overall quality of the Corps of Cadets." He then documents that in the years after the 1976 cheating incident, the "positive changes were **compromised … by systemic problems** that grew increasingly worse … most evident in the areas of governance, **admissions and intercollegiate athletics**" (emphasis added).

He writes that these problems "**blurred the Academy's focus on character and intellect as the key developmental goals,**" adding that "**until these problems are remedied, [West Point] will operate below its potential as a leader development institution for the army and nation**" (emphasis added).

Regarding intercollegiate athletics, speaking from personal experience (BG Betros was recruited to play football at West Point) and later from exhaustive research, he explains how admissions standards are lowered for many recruited athletes (who in recent years have comprised 20-23% of each academy's entering class).

3 *Carved from Granite – West Point Since 1902*, Lance Betros (BG, USA ret.), former Professor USMA, former Provost, Army War College, Texas A&M University Press, 2012, pp. 301-316. BG Betros is a 1977 USMA graduate.

He then observes **"every shred of evidence indicates that deemphasizing intercollegiate athletics would raise the quality of the Corps of Cadets and keep West Point graduates in the army longer and at higher rank"** (emphasis added).

He continues, "A second problem resided in **the admissions system, which allowed a large number of lower-quality applicants to enter West Point and thus displace more-qualified applicants"** (emphasis added).

Concluding with a plea to future academy leadership, he writes, "**If West Point is to continue its past success, if it is to produce even better officers in the future, there is no surer way than to focus on character and intellect"** (emphasis added).

The problems with SA admissions have gone uncorrected because (in part) BG Betros' admonition regarding the need for renewed emphasis on character and intellect has received, if anything, mostly lip service. Unquestionably, continuation of the quality problems was facilitated by ignoring the admissions statutes for decades while the academies perfected their exploitation of gaps and ambiguities – carefully devised merit workarounds - in those statutes. Congress now has an opportunity to update the admissions statutes to *require* renewed emphasis on character and intellect for all the academies, increasing use of merit (as measured by candidate composite score) in admissions decisions and, through greater transparency, assuring compliance with that commitment and more effective candidate and public awareness.

Optimizing quality of future military leaders is paramount.

Incremental differences in military leader quality can mean the difference between mission success or failure and warfighters' life or death. Ambiguities on the battlefield, where information is incomplete, leaders and their warfighters are under fire, and the tactical situation often requires instantaneous decisions, make sound decision-making in combat among the most difficult leadership challenges anywhere. Leaders with, among other traits, high character and intellect are a critical necessity under such circumstances.[4]

Accordingly, **practices that diminish leader quality also violate a trust owed to our warfighters and to the American people**. It is the Nation's moral and professional obligation to provide warfighters with the "best-qualified" leaders available, always. Diluting leader quality, at any time, is thus an unacceptable failure with real-world consequences.

Available data regarding service academy admissions shows, nevertheless, that in the recent past substantial numbers of candidates with far superior qualifications have been rejected to facilitate admission of marginally qualified, "preferenced" candidates in pursuit of policy agendas, including to increase diversity and NCAA Div. I intercollegiate athletic competitiveness.

Our warfighters need and deserve the best-qualified leaders. The service academies' mission is to provide them. But, as BG Betros (for USMA) documented, and as recent data confirm, West Point, USNA and USAFA have not been admitting the best-qualified candidates in too many instances. While some improvements have been recently made as a result of executive action, codification of those changes and existing best practices, closing gaps and updating the statutes are sorely needed. Any return to former (now suspended) practices adversely impacting quality in the future should be prevented. This legislation would require the academies to correct their past admissions shortcomings, codify best practices and recent executive action, and provide transparency to Congress, all to maximize quality of admitted classes permanently.

Congressional Powers include Service Academy policy. The policy questions inherent in MSA admissions practices are within Congress' Article I, Section 8 power to regulate the military forces. Congress was expressly delegated such powers and has the right and obligation to exercise them in this context.

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4 Four such leaders are Lt. Gen. Harold G. "Hal" Moore (USA ret., USMA '45, Distinguished Service Cross), Vice Admiral David B. Robinson (USN ret., USNA '63, Navy Cross), Brig. Gen. Robin Olds (USAF ret., USMA '43, Air Force Cross), Colonel Harvey C. Barnum, Jr. (USMC ret., Medal of Honor). These are but a tiny fraction of superior military leaders whose battlefield decisions, in great part due to their character and intellect, are well-documented to have accomplished missions that were in great jeopardy under extraordinarily difficult circumstances and, in the process, saved many American warfighters' lives.

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