



# THE CASE FOR INCLUSION

News and Legal Analysis on Issues Related to Diversity and Inclusion

## Secretary Mattis to Convene Panel of Experts to Study Transgender Service in the Military – Can He Do That?

BY CHELSIE A. VOKES • SEPTEMBER 25, 2017

On August 25, 2017, President Trump released a memorandum banning transgender individuals from the military. Following this announcement, Secretary of Defense James Mattis (“Secretary Mattis”) said he would convene a “panel of experts” to study transgender service in the military and make recommendations.

Can Secretary Mattis do this?

Yes, he can. Under the Federal Advisory Committee Act ([FACA](#)), Congress, the President and agency heads can create advisory committees. However, appointees must be “fairly balanced in terms of the points of view represented” and may not be “inappropriately influenced by the appointing authority or any special interest.”

History also illustrates that Secretary Mattis has this power. In 1951, Secretary of Defense George C. Marshall appointed 49 women to the Advisory Committee on Women in the Services ([DACOWITS](#)). Still in existence today, the Committee provides “advice and recommendations on matters and policies relating to the recruitment and retention, treatment, employment, integration and well-being of highly qualified professional women in the Armed Forces.”

Will this do anything?

Maybe. In fact, research suggests that agency-appointed panels are more likely to find their suggestions fully implemented than those appointed by Congress. However, the implementation rate is still [below 70%](#). Most of the time, these committees serve a political end. Appointing a committee signals that an agency is addressing a problem.

What if the committee disagrees with the President?

The President is commander in chief of the military and the Secretary of Defense has delegated responsibility to lead. Even if Secretary Mattis does disobey the President’s orders, the Constitution provides the President with the right to

hire and fire department heads at will. Further, Secretary Mattis could be Court Martialed for ignoring commands under [Article 92](#) of the Uniform Code of Military Justice. Given the President's current stance, it looks like a transgender committee would be more of a political statement than an entity with teeth.