

THE AMERICAN LEGION DEPARTMENT OF CALIFORNIA
1601 7TH STREET, SANGER, CA 93657-280
Department Convention 27-29 June, 2025
Visalia, CA

Department Resolution No. 2025-001

Subject: Ensuring Merit-Based Advancement in the United States Armed Forces

Origin: Palo Alto Post 375

Submitted By: William von Kaenel

RESOLUTION

WHEREAS, The United States Armed Forces have the solemn duty of defending the nation and thus require the most capable leaders to ensure mission success and optimize the safety of warfighters; and

WHEREAS, Merit-based advancement is fundamental to military effectiveness, requiring all personnel decisions including recruitment, training, assignments, and promotions to be based strictly on demonstrated performance, capability, technical competence, and fitness; and

WHEREAS, Title VII of the Civil Rights Act of 1964 provides protection against race-based discrimination for Department of Defense (DoD) civilian employees but does not extend similar statutory protections to uniformed service members; and

WHEREAS, The DoD has for decades, without sufficient public transparency, employed race-based targets in accession, assignment, command selection, and promotion processes; and

WHEREAS, The consideration of race, ethnicity, and national origin in DoD personnel decisions raises concerns regarding the Constitution's guarantee of Equal Protection under the law, with proponents citing military effectiveness without providing conclusive supporting evidence; and

WHEREAS, The Administration has issued Executive Orders prohibiting DoD consideration of race in personnel decisions; however, these orders have faced judicial challenges, inconsistent implementation, and remain vulnerable to reversal by subsequent administrations; and

WHEREAS, Permanent and comprehensive protection requires that merit-based principles be codified into law governing the DoD; and

WHEREAS, The current Administration's emphasis on merit-based policy has correlated with enhanced public confidence in the military, increased willingness to serve, and strong recruitment numbers, indicating the potential for further benefits through legislative enactment; and

WHEREAS, Under Article I, Section 8 of the U.S. Constitution, Congress holds the authority and responsibility to regulate the armed forces, ensuring that military personnel policies adhere as closely as possible to equal protection principles; now, therefore, be it

RESOLVED, By The American Legion Department of California at the Department Convention in Visalia, California, on June 27-29, 2025, that the American Legion urges the United States Congress to enact legislation reinforcing the exclusive use of merit-based criteria in all Department of Defense military personnel decisions, and to ensure that race, ethnicity, and national origin are not used as selection factors, in order to strengthen public trust, reinforce unit cohesion, and maximize the combat effectiveness and readiness of the Armed Forces.

This is to certify by the signatures below that the above Resolution was passed as described:

A large, stylized handwritten signature in black ink, appearing to be 'N. Lopez', written over a horizontal line.

Adjutant, Post

06/13/25

Date

Adjutant, District

Date

Department Commander

Date

Department Adjutant

Date

FACT SHEET

Resolution: Ensuring Merit-Based Advancement in the United States Armed Forces

American Legion Post 375, Palo Alto

BACKGROUND

The United States military has historically operated on principles of merit, where personnel decisions including recruitment, training, assignments, and promotions are based on demonstrated performance, capability, and fitness^{[1][2]}. While Title VII of the Civil Rights Act of 1964 provides protection against discrimination for Department of Defense (DoD) civilian employees, uniformed service members do not enjoy similar statutory protections^[3]. This has created a situation where military personnel decisions may be influenced by factors beyond merit, potentially affecting combat effectiveness and unit cohesion^[2].

CURRENT CHALLENGES

Constitutional Principles

The consideration of non-merit factors in DoD personnel decisions raises significant constitutional questions regarding Equal Protection under the law^[4]. The Supreme Court has consistently emphasized that the core purpose of the Equal Protection Clause is to eliminate governmentally imposed discrimination, applying universally without regard to differences of race, color, or nationality^[5].

Military Academy Practices

Evidence suggests that some military service academies have employed practices that may not fully align with merit-based principles^[3]. In some instances, applicants with higher qualification scores have reportedly been passed over to facilitate admitting lower-scoring applicants^[3]. These practices have been subject to legal scrutiny and ongoing constitutional debate^[5].

Impact on Military Effectiveness

Research indicates that personnel practices that deviate from merit-based principles can affect morale and undermine trust within military units^[6]. These practices may potentially compromise combat effectiveness by prioritizing factors other than demonstrated performance and capability in the selection of leaders^[7].

Military recruitment has faced significant challenges in recent years, with the Army missing its quota by over 25% in fiscal year 2022^[8]. While multiple factors contribute to recruitment difficulties, perceptions about fairness in military advancement may influence potential recruits' decisions^[9].

LEGISLATIVE CONTEXT

Congressional Authority

Under Article I, Section 8 of the U.S. Constitution, Congress holds the authority and responsibility to regulate the armed forces^[10]. This includes ensuring that military personnel policies adhere as closely as possible to constitutional principles^[4].

The proposed resolution urges Congress to exercise this authority by enacting legislation that would reinforce the exclusive use of merit-based criteria in all DoD military personnel decisions^[3].

Implementation Considerations

Recent policy changes have shown that merit-based approaches can be effectively implemented^[6]. However, permanent and comprehensive protection requires that merit-based principles be codified into law governing the DoD^{[3][12]}.

PROPOSED SOLUTION

Statutory Provisions

The resolution calls for legislation that would explicitly establish merit as the primary consideration in military personnel decisions^[3]. This would align with constitutional principles as explained by the Supreme Court in various decisions^{[5][11]}.

The proposed statutory provisions would apply to all Department of Defense military personnel actions, including accessions, promotions, assignments, command selection, and military and civil schooling selection and training^[3].

Operational Flexibility

The resolution acknowledges legitimate operational needs by providing a narrow exception for specific mission requirements where the indigenous population in the tactical environment may require special consideration^[3].

This exception would:

- Apply only to specific, unconventional missions in foreign countries

- Require approval by the combatant commander
- Include reporting requirements to the House and Senate Armed Services Committees^[3]

Expected Benefits

Research and evidence suggest that legislation reinforcing merit-based criteria would:

1. Strengthen public trust in the military^[9]
2. Reinforce unit cohesion^[6]
3. Maximize combat effectiveness and readiness^[7]
4. Align with constitutional principles^{[4][5]}
5. Potentially improve recruitment by emphasizing fairness and merit^[9]

PRECEDENT AND SUPPORTING EVIDENCE

Military Performance Improvements

Recent policy changes promoting officers based on merit rather than time in grade have shown positive results^[6]. The Army's Officer Merit Promotions policy, implemented in 2019, allows promotion selection boards to recommend officers of particular merit be placed higher on promotion lists^[8].

This talent-based personnel management system recognizes performance and skills beyond what has traditionally been included in official records, potentially improving leader quality and effectiveness^{[6][8]}.

Public Opinion and Recruitment Impact

Evidence suggests that emphasizing merit-based advancement may help address recruitment challenges by restoring military cultural appeal to those who value equal opportunity and merit^[9]. Research indicates that perceived fairness in advancement opportunities influences potential recruits' decisions^{[8][9]}.

Recent improvements in military recruitment numbers correlate with policy changes emphasizing merit-based advancement^[9].

CONCLUSION

The proposed resolution addresses fundamental questions about how military personnel decisions should be made to ensure both constitutional compliance and maximum effectiveness^[12]. By urging Congress to enact legislation reinforcing merit-based criteria in all DoD military personnel decisions, the resolution seeks to

strengthen public trust, reinforce unit cohesion, and maximize the combat effectiveness and readiness of the Armed Forces^{[3][6]}.

The American Legion's support for this resolution would align with its longstanding advocacy for policies that strengthen national security while upholding constitutional principles and supporting the welfare of service members^{[12][13]}.

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2. https://calegion.org/wp-content/uploads/2021/08/Resolution_Guide_2021.8.pdf
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5. <https://www.jacksonlewis.com/insights/us-supreme-court-holds-use-race-admissions-college-university-unconstitutional>
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10. <https://supreme.justia.com/cases/federal/us/453/57/>
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12. <https://www.legion.org/information-center/news/magazine/2019/february/policies-not-partisan-politics>
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