



Statement of

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Thank you, Mr. Chairman and Mr. Ranking Member for the opportunity to testify on behalf of the Congressional Research Service this morning on civilian control of the armed forces, a principle that is a foundational element of our constitutional democracy.

The Founding Fathers, fearful of an overly powerful military, placed a number of limits on the armed forces to ensure that an American military would be both subordinate and accountable to the political leadership of the United States. They did so by making control of the armed forces a shared responsibility of the Executive and Legislative branches, and by taking actions, such as George Washington's admonitions to his soldiers to obey civilian rule during the Whiskey Rebellion, that put civilian control of the military into practice. In some ways, the relationship between the military and the civil society it serves can be thought of as a paradox: the military, by its very nature, has coercive power that could threaten civil society. Yet without a sufficiently strong and capable military, civil society becomes vulnerable to attack, and the former might not be able to defend the latter. The United States has balanced this tension through formulating and promulgating the principle of civilian control of the military.<sup>1</sup>

Subsequent generations have taken care to underscore that fundamental relationship. Tensions arise, of course. President Lincoln's dismissal of his generals during the civil war is one often-cited example; the 1950s "Revolt of the Admirals" another. Despite disagreements—sometimes vehement—between military and civilian leaders throughout the nation's history, contemporary scholars of civil-military relations have noted that these norms, inculcated and promulgated by Washington and his successors, remain robust, even though the details of their implementation have evolved over time.<sup>2</sup> Arguably, the fundamental subordination of the military to the civilians they serve has remained intact due to careful oversight and continuous management by both branches of the U.S. government.

## Post-World War II

The experience of World War II convinced many, including President Truman, of the need for greater coordination with and oversight of the military in order to prepare the United States for the strategic challenges ahead. Observers at the time expressed concern that a single individual serving as head of the armed forces might become too powerful within the Government; even more so if that person had previously served as an officer of the Armed Forces. Fears abounded that such an individual could aggregate power and become a political force in their own right, not subject to democratic control. The overall intention of the 1947 National Security Act was to ensure that the American instruments of national security and defense might be better prepared and organized in order to meet the challenges presented by the post-war period and the dawn of the Cold War. As such, in designing a new National Military Establishment (which would subsequently be redesignated as the Department of Defense), Congress sought to create greater unity of command while at the same time ensuring that the institution they were creating—and the individuals they would be empowering to lead it—would not threaten the principle of civilian control of the military.<sup>3</sup>

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<sup>1</sup> See Mackubin Thomas Owens, *U.S. Civil-Military Relations after 9/11: Renegotiating the Civil-Military Bargain* (New York: Continuum International Publishing Group) 2011, and Rosa Brooks, "Civil-Military Paradoxes," as found in Jim Mattis and Kori N. Schake (eds), *Warriors and Citizens: American Views of Our Military*, (Stanford, CA: Hoover Institution Press, 2016), pp. 21-68.

<sup>2</sup> Before his nomination to be Secretary of Defense, James Mattis directed a YouGov public opinion survey of military and civilian attitudes—the first of its kind produced in over a decade, and one of the more comprehensive looks at these "norms" that help guide military attitudes and behavior toward civil society and civilian leaders. See Jim Mattis and Kori N. Schake, "A Great Divergence?," in *Warriors and Citizens: American Views of Our Military*, ed. Jim Mattis and Kori N. Schake (Stanford, CA: Hoover Institution Press, 2016), p. 289.

<sup>3</sup> Other measures designed to ensure that the principle of civilian control was upheld included preserving the civilian service secretaries and ensuring that the Chairman of the Joint Chiefs of Staff was a relatively weak position compared to the other service chiefs, and out of the chain of command.

As enacted in 1947, Section 202 of the National Security Act (later codified as 10 U.S.C. §113) stipulated that a person “who has within ten years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Secretary of Defense.” This provision emerged from conference negotiations—while both the House and Senate bills required the Secretary of Defense to be a civilian appointed by the President, the House bill specified that the Secretary of Defense “shall not have held a commission in a Regular component of the armed services.” Historic congressional documentation is silent on the *specific* reasons for arriving at this compromise. However, one can infer from the statements made by Members of Congress as they debated the 1947 act, as well as the historical context at the time, that some viewed a break between military service and a Secretary of Defense appointment as desirable. This break period would help ensure that no one military service would dominate the newly established Defense Department; ensure that the new Secretary of Defense was truly the President’s (rather than a service’s) representative; and, again, preserve the principle of civilian control of the military at a time when the United States was departing from its century-and-a-half long tradition of a small standing military.

In 2008, Congress reduced that requirement to seven years; in recent years, that requirement has been extended to key civilian leadership positions across DOD.<sup>4</sup> The history of the modern Department of Defense bears two exceptions to that waiting period for a prospective Secretary of Defense: for General Marshall in 1950, and for General Mattis in 2017.

## Recent Tensions in the U.S. Civil-Military Relationship

President-elect Biden has indicated he intends to nominate General Lloyd Austin, USA (ret) to the position of Secretary of Defense. As Austin retired from military service in 2016, Congress will be asked to waive the statutory provision once again. According to many observers, the strategic and political context in which Austin’s nomination may be considered is one that is markedly different from that of four years ago when Mattis was considered for the same role. Criticism of the proposed nomination is generally rooted in concerns about the overall health of civil-military relations today rather than concerns about Austin’s valor, patriotism or accomplishments. Some of the more notable tensions that have arisen in recent years are outlined below.

### Civil-Military Roles and Responsibilities

Some contend that civil-military relations have experienced such significant tensions and setbacks in recent years as to require a recalibration of the roles of civilian and military positions and organizations within the Department of Defense. For example, the National Defense Strategy Commission (NDSC), a congressionally mandated bipartisan group of external experts charged with reviewing the National Defense Strategy (NDS), argued in its 2018 report that “civilian voices have been relatively muted on issues at the center of U.S. defense and national security policy, undermining the concept of civilian control.”<sup>5</sup> At issue are concerns regarding military dominance over defense policy decisions and an attendant view that the civilian components of DOD have been diminished in recent years. Observers point to both policy and human capital dimensions of the issue. With respect to the former, some maintain that the Chairman of the Joint Chiefs of Staff (CJCS), as well as the organization that supports him, have been assigned—or taken on—tasks that are inappropriate given the Chairman’s role as a military advisor. The CJCS is a position that was initially designed by the 1947 National Security Act to be a neutral

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<sup>4</sup> Pub. L. 114–328; Pub. L. 115–91.

<sup>5</sup> Eric Edelman and Gary Roughead (co-chairs), *Providing for the Common Defense: The Report of the National Defense Strategy Commission*, United States Institute for Peace, November 2018.

arbiter between the military services and the principal military advisor to the President rather than an operationally focused one; this is why the Chairman is not in the military chain of command. Yet recent augmentations to the statutory role of the Chairman to lead joint force development and global force integration have led to concerns by some that CJCS may be becoming more an inherently directive position (and therefore more political) than initially envisioned in statute.<sup>6</sup> According to this view, the cumulative result of these actions is “weakening significantly” the civilian oversight of key DOD posture and planning decisions.<sup>7</sup> The NDSC, for its part, pointed to insufficient civilian oversight of DOD’s force management as argued for the need to improve civil-military relations:

The implementation of the NDS must feature empowered civilians fulfilling their statutory responsibilities, particularly regarding issues of force management. Put bluntly, allocating priority—and allocating forces—across theaters of warfare is not solely a military matter. It is an inherently political-military task, decision authority for which is the proper competency and responsibility of America’s civilian leaders. Unless global force management is nested under higher-order guidance from civilians, an effort to centralize defense direction under the Chairman of the Joint Chiefs of Staff may succeed operationally but produce profound strategic problems. It is critical that DOD—and Congress—reverse the unhealthy trend in which decision-making is drifting away from civilian leaders on issues of national importance.<sup>8</sup>

With respect to the personnel dimensions of recent civil-military tensions, some express concern regarding departure of key civilian mid- and senior-level positions in DOD, as well as the overall declining health of the DOD civil service, especially acute in the Office of the Secretary of Defense, have contributed to a shift away from robust civilian oversight, practically speaking.<sup>9</sup> Some of these trends have spanned multiple Administrations. According to one observer, “Budget cuts under the Budget Control Act of 2011 led to a series of hiring freezes and cuts to the civil service, which depleted the workforce and contributed to poor morale.”<sup>10</sup> Another observer argues that “civilian oversight of the military was already weakening in the last administration, and I think it basically fell off a cliff ....”<sup>11</sup> Others point to the Trump Administration’s frequent description of civil servants as the “deep state” with their own agenda as further compounding issues of low morale—and relatively low workforce retention—in the national security civil service.<sup>12</sup>

## Overreliance Upon Military Service Members on Policy Matters?

One criticism many scholars and practitioners raised with respect to then-Secretary Mattis’s tenure as Secretary of Defense was a reported overreliance upon advice from uniformed military colleagues at the expense of that of civil servants. This issue has both structural and personality-oriented dimensions. With respect to the former, concepts like “Best Military Advice”—a term that has become more frequently used in recent years—are viewed by some as inherently problematic, as the term has come to connote that

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<sup>6</sup> Chairman of the Joint Chiefs of Staff Instruction 3050.1, *Implementing Joint Force Development and Design*, December 3, 2019. Mara Karlin, Alice Hunt Friend, and Loren Dejonge Schulman, “Two Cheers for Esper’s Plan to Reassert Civilian Control of the Military,” *Defense One* September 9, 2019.

<sup>7</sup> Mara Karlin, Alice Hunt Friend, and Loren Dejonge Schulman, “Two Cheers for Esper’s Plan to Reassert Civilian Control of the Military,” *Defense One* September 9, 2019.

<sup>8</sup> Eric Edelman and Gary Roughead (co-chairs), *Providing for the Common Defense: The Report of the National Defense Strategy Commission*, United States Institute for Peace, November 2018, p. xi.

<sup>9</sup> Lara Seligman, “How the Generals are Routing the Policy Wonks at the Pentagon,” *Foreign Policy*, November 15, 2018.

<sup>10</sup> Brian McKeon, as quoted in *ibid*.

<sup>11</sup> Loren Dejonge Schulman, *Managing the National Security Workforce Crisis*, Center for a New American Security, May 15, 2019.

<sup>12</sup> Loren Dejonge Schulman, as quoted in Lara Seligman.

military advice on strategic matters is more valuable than comparable guidance formulated and promulgated by civilian leaders.<sup>13</sup> With respect to the latter, some observers contend that Secretary Mattis exacerbated these structural misalignments in the civilian-military relationship by delegating key civilian policymaking and other tasks to the Joint Staff rather than empowering his civilian leaders.<sup>14 15</sup> According to some, these tendencies were arguably exacerbated by the Trump Administration's reliance on acting officials and delays in civilian appointments, and continued after Mattis departed office.<sup>16</sup> Some observers contend, however, that these aspects of Mattis's tenure are overshadowed by his overall successful management and leadership of the Department of Defense, particularly given complex national security crises such as the 2017 North Korean test of an intercontinental ballistic missile thought capable of reaching the continental United States.<sup>17</sup>

## Military Involvement in Domestic Politics?

Some scholars have argued that the appointment of recently retired generals to civilian political positions further blurs the lines between appropriate civilian and military roles, and between foreign and domestic politics. A recent study noted that large numbers of Americans could not differentiate whether Secretary Mattis had retired or whether he was still on active duty, which some say was exacerbated by President Trump's frequent referring to Mattis by his military rank.<sup>18</sup> Further, there is an ongoing debate about whether blurred lines between active duty military officers and partisan politics are influencing societal perceptions about the military's role in domestic and electoral politics.

The possible use of federal armed forces as part of the U.S. executive branch's response to incidents of violence during June 2020 protests and unrest also raised questions about how the military is controlled by domestic political institutions and the U.S. military's relationship with American society. For example, the June 1, 2020, photographs of Chairman of the Joint Chiefs of Staff General Mark Milley in Lafayette Square immediately after protestors had been forcibly removed from the area was seen by some (including, on June 11, Milley himself) to have created a perception of the military's involvement in domestic politics.<sup>19</sup> In the wake of June 1, several retired senior military leaders, including former Secretary of Defense Mattis, voiced their concern about the use of National Guard personnel in a manner that appeared to infringe on Americans' constitutional right to free assembly. General Milley and then-

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<sup>13</sup> As Mara Karlin and Jim Golby note, "First, the emphasis on 'best' in best military advice creates an impression, perhaps unintentionally, that military advice is superior to civilian perspectives. Given that there is no civilian corollary to this term, its use suggests that military voices should carry more weight than civilian voices during policy debates. It also suggests that military advice is both more certain, and more unified, than it often is in reality. These perceptions often serve to undermine trust with civilian leaders and interagency counterparts, and they call into question professional norms related to humility and selfless service." Mara Karlin and Jim Golby, "Why 'Best Military Advice' is Bad for the Military—and Worse for Civilians" *Orbis*, vol. 62, issue 1, 2018, pp. 137-153.

<sup>14</sup> Jim Golby, "In the Wake of Chaos: Civil-Military Relations Under Secretary Jim Mattis," *War on the Rocks*, February 4, 2019.

<sup>15</sup> In the American system of civilian control of the military, the relationship between civilian and military leaders is intended to be unequal in that the military is subordinate to civilian leadership and direction. Some observers contend, however, that an unintended consequence of the 1986 Goldwater-Nichols DOD Reform Act, the Joint Staff has been empowered and strengthened relative to their civilian counterparts. See, for example: Luke Strange, "The Office of the Secretary of Defense and the Joint Chiefs: An Unequal Dialogue in Which Direction?" *The Strategy Bridge*, January 15, 2019.

<sup>16</sup> Jim Golby, "In the Wake of Chaos: Civil-Military Relations Under Secretary Jim Mattis," *War on the Rocks*, February 4, 2019.

<sup>17</sup> CRS Report R44994, *The North Korean Nuclear Challenge: Military Options and Issues for Congress*, coordinated by Kathleen J. McInnis; Peter Feaver, "Mattis Was the Best Secretary of Defense Trump Could Have Had," *Foreign Policy*, February 12, 2019, <https://foreignpolicy.com/2019/02/12/mattis-was-the-best-secretary-of-defense-trump-could-have-had/>.

<sup>18</sup> Heidi Urben, "Generals Shouldn't Be Welcome At These Parties: Stopping Retired Flag Officer Endorsements," *War on the Rocks*, July 27, 2020, <https://warontherocks.com/2020/07/generals-shouldnt-be-welcome-at-these-parties-stopping-retired-flag-officer-endorsements/>.

<sup>19</sup> CRS In Focus IF11566, *Congress, Civilian Control of the Military, and Nonpartisanship*, by Kathleen J. McInnis.

Secretary of Defense Esper also subsequently expressed regrets at being perceived as part of a partisan political act and affirmed that the U.S. military remains a nonpartisan institution.<sup>20</sup> Questions regarding the appropriate—and inappropriate—use of the military to respond to domestic political unrest by senior political leaders is now a factor in the discourse surrounding civilian control of the military.

## Institutional Health of the Department of Defense?

Four years ago, this committee heard testimony on the risks that confirming a recently-retired General Officer into the position of Secretary of Defense might introduce. It was observed that tactical and operational leadership, dependent upon deeply hierarchical and nonpartisan organizational structures, can provide poor preparation for the complexity of a Secretary's inherently political roles. The Secretary of Defense is the only unelected civilian leader in the military chain of command; the Secretary is responsible for adjudicating differences amongst key stakeholders in the preparation of budgets—which is inherently political and contentious within the DOD bureaucracy; the Secretary serves as the principal advisor to the President on defense matters; the Secretary serves a key node for Congress's exercise of oversight and civilian control of the military; the Secretary serves as a point of communication and transparency between DOD and the American public, and all the while the Secretary must constantly and vigorously protect the military from politicization.

The multifaceted nature of the position Success, in large part, depends upon the health of the Department of Defense as an institution and in particular, the Office of the Secretary of Defense, which helps the Secretary accomplish their civilian oversight responsibilities on a day to day basis. Unfortunately, a growing chorus of defense experts argue that those civilian institutions are in a state of disarray and might therefore need to be shored up in order to provide effective authority, direction, and control over the Armed Forces.<sup>21</sup> Some examples that observers point to include:

- failures to nominate and confirm experienced and effective political appointees, which has allowed, if not encouraged, other institutions in the Department to supplant civilian leadership on matters such as planning;<sup>22</sup>
- mandated headquarters personnel reductions, which, as a result of their execution, have served to increase the workload on a shrinking staff;<sup>23</sup> and
- the prioritization of “best military advice,” in strategy formulation, sidelining civilian voices in key decisions.<sup>24</sup>

This combination of factors, some argue, existed when Secretary Mattis assumed the reins of the Department of Defense, and have since accelerated. Some observers argue that the net result has been to create an inversion of the civilian-military relations dialogue, with the military now more dominant on defense matters, in practice on a day-to-day basis, than their civilian counterparts. This is why the bipartisan NDSC stated in 2018 that they were struck by the relative imbalance of civilian and military voices on critical issues of strategy development and implementation. They came away with what they

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<sup>20</sup> General Mark Milley, “Statement on Lafayette Square,” as linked by Helene Cooper, “Milley Apologizes for Role in Trump Photo Op: ‘I Should Not Have Been There,’” *The New York Times*, June 11, 2020.

<sup>21</sup> Loren DeJonge Schulman, *Managing the National Security Workforce Crisis*, Center for a New American Security, May 2019; CRS interviews with current and former Office of the Secretary of Defense Officials (on background), January 7-10, 2021.

<sup>22</sup> CRS interviews with current and former Office of the Secretary of Defense Officials (on background), January 7-10, 2021.

<sup>23</sup> CRS interviews with current and former Office of the Secretary of Defense Officials (on background), January 7-10, 2021.

<sup>24</sup> Mara Karlin and Jim Golby, “Why ‘Best Military Advice’ is Bad for the Military—and Worse for Civilians” *Orbis*, vol. 62, issue 1, 2018, pp. 137-153.

called “a troubling sense that civilian voices were relatively muted on issues at the center of U.S. defense and national security policy, undermining the concept of civilian control.”

## Diversity, Inclusion, and the 2021 Proposed Nomination

Some observers contend that an insufficiently diverse and inclusive national security workforce is a significant challenge to the overall health of the Department of Defense.<sup>25</sup> Relatedly, some maintain that the above civilian-military issues, although important, should be weighed against larger, societal, race-oriented civilian-military issues that might begin to be addressed by a Secretary of Defense nominee, should he or she choose to prioritize diversity and inclusion within DOD.<sup>26</sup> In announcing Austin’s proposed nomination, President-Elect Joseph R. Biden argued

And the next secretary of defense will have to make sure that our armed forces reflect and promote the full diversity of our nation. Austin will bring to the job not only his personal experience, but the stories of the countless young people he has mentored. If confirmed, he will ensure that every member of the armed forces is treated with dignity and respect, including Black, Latino, Asian American, Native American, women, and LGBTQ service members.<sup>27</sup>

One national security expert, Bishop Garrison, asserted

Since the official announcement on Dec. 8, the nomination of retired Gen. Lloyd Austin for secretary of defense has elicited a wide range of responses. Many in the national security community have, rightfully, raised concerns about nominating a general officer so recently out of uniform, potentially weakening proper civilian oversight of the department and bringing the military deeper into partisan politics. However, as this dialogue continues, we cannot and should not lose sight of what Austin’s selection also means for a country that finds itself engulfed in societal discourse and upheaval focused largely on race in a way the United States has not engaged the topic, arguably, since the 1960s Civil Rights Movement.<sup>28</sup>

For many observers, the 2020 George Floyd protests highlighted the disparate treatment by security institutions (in that instance, local police forces) of Black citizens. The protests, in turn, prompted DOD and other government agencies and departments to reflect on issues related to systemic racism, racial issues, and racial/ethnic representation.<sup>29</sup> Statistics from the Department of Defense show that as of May 2018, racial minorities comprised 30.9% of the Active Duty force yet 12.5% of the General/Flag officer Corps.<sup>30</sup> Of those, Black service members comprised 16.8% of the total Active Duty force and 8.1% of

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<sup>25</sup> Trevor Sutton and Carolyn Kenney, “Diversifying and Strengthening Our National Security Workforce,” Center for American Progress, January 10, 2017, at <https://www.americanprogress.org/issues/security/news/2017/01/10/296300/diversifying-and-strengthening-our-national-security-workforce/>; See also: H.R.6395 *National Defense Authorization Act for Fiscal Year 2021*, sections 551-558.

<sup>26</sup> See, for example, Press Release: House Armed Services Vice Chair Anthony Brown: “Gen Lloyd Austin Has the Character and Competence Necessary to Lead the Department of Defense,” December 8, 2020, at <https://anthonybrown.house.gov/news/documentsingle.aspx?DocumentID=1124>.

<sup>27</sup> Joe. Biden, “Why I Chose Lloyd Austin as Secretary of Defense,” *The Atlantic*, December 8, 2020.

<sup>28</sup> Bishop Garrison, “Representation At The Top: The Importance of Race in the Austin Nomination Debate,” *Just Security*, December 11, 2020, at <https://www.justsecurity.org/73833/representation-at-the-top-the-importance-of-race-in-the-austin-nomination-debate/>.

<sup>29</sup> Helene Cooper, “African-Americans Are Highly Visible in the Military But Nearly Invisible At the Top,” *The New York Times*, June 9, 2020, at <https://www.nytimes.com/2020/05/25/us/politics/military-minorities-leadership.html>.

<sup>30</sup> CRS Report R44321, *Diversity, Inclusion, and Equal Opportunity in the Armed Services: Background and Issues for Congress*, by Kristy N. Kamarck.

the General/Flag Officer Corps. White Americans comprised 87.5% of the General/Flag Officer Corps at that time.<sup>31</sup> Of the 41 four-star level officers in the U.S. military, two were Black in June, 2020.<sup>32</sup>

Similarly, according to the Office of Personnel Management's data on the federal civilian workforce, of the 721 persons who served at the General Schedule (GS-15) level in the Office of the Secretary of Defense in September 2019, 142 were minorities; of those, 61 were Black Americans.<sup>33</sup> With respect to the Senior Executive Service (SES) in the entire Department of Defense, 87.3% of the SES-level personnel in 2013 were White; 6.2% of that workforce were Black.<sup>34</sup> In 2019, DOD reported that 6.6% of the SES workforce was Black American.<sup>35</sup> As national security expert Bishop Garrison notes, "No Black person has ever served as deputy secretary of defense or undersecretary of defense for policy."<sup>36</sup> Meg Guliford, another national security expert, writes, "But the further I progressed in my career, the less diverse it became. I have never had a Black or Brown boss and have rarely had Black or Brown co-workers who were not in purely administrative or support roles."<sup>37</sup>

Some contend that this absence of representation at senior levels of DOD has led to blind spots when it comes to race-related issues in the military.<sup>38</sup> Some observers refer to the testimony of General John Hyten in July 2019:

When I came into the military, I came in from Alabama, into Alabama, and racism was a big problem in the military. Overt racism. It's still a systemic problem in our society, but I watched commander after commander after commander take charge, own that, and anytime they saw it, eliminated it from the formation.... Now when I'm in uniform, I-I feel colorblind, which is amazing.<sup>40</sup>

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<sup>31</sup> Ibid.

<sup>32</sup> Helene Cooper, "African-Americans Are Highly Visible in the Military But Nearly Invisible At the Top," *The New York Times*, June 9, 2020, at <https://www.nytimes.com/2020/05/25/us/politics/military-minorities-leadership.html>.

<sup>33</sup> Office of Personnel Management, "Diversity Cube," FedScope Data Set, Accessed 28 December 2020.

<sup>34</sup> Department of Defense Office of Diversity Management and Equal Opportunity, *DOD Diversity and Inclusion Summer 2013 Report*, B6, at <https://web.archive.org/web/20200606192308/https://diversity.defense.gov/Portals/51/Documents/ODMEO%20Diversity%20and%20Inclusion%20Summary%20Report%20FINAL.pdf>.

<sup>35</sup> Department of Defense, Portrait of Black /African American Active Duty Service Members, available at: [https://diversity.defense.gov/Portals/51/Images/AA%202020\\_ACC.pdf?ver=2020-02-18-072209-043](https://diversity.defense.gov/Portals/51/Images/AA%202020_ACC.pdf?ver=2020-02-18-072209-043).

<sup>36</sup> Bishop Garrison, "Representation At The Top: The Importance of Race in the Austin Nomination Debate," Just Security, December 11, 2020, at <https://www.justsecurity.org/73833/representation-at-the-top-the-importance-of-race-in-the-austin-nomination-debate/>.

<sup>37</sup> Meg Guliford, "What Lloyd Austin's Nomination Really Reveals And What It Means For Me," *Inkstick Media*, December 23, 2020.

<sup>38</sup> Helene Cooper, "African-Americans Are Highly Visible in the Military But Nearly Invisible At the Top," *The New York Times*, June 9, 2020, at <https://www.nytimes.com/2020/05/25/us/politics/military-minorities-leadership.html>.

<sup>39</sup> Similar statements were made in the 1970s by senior DOD leaders. A Navy Z-Gram from 17 December 1970 written by Admiral Zumwalt notes, "Last month, Secretary Chafee and I, along with other senior officials of the Navy Department, met on one occasion with Representative Black Navy Officers and their wives and later with a representative group of Black Enlisted men and their wives. Prior to these meetings, I was convinced that, compared with the civilian community, we had relatively few racial problems in the Navy. However, after exploring the matter in some depth with these two groups, I have discovered that I was wrong—we do have problems.... What struck me more than anything else was the depth of feeling of our Black personnel that there is significant discrimination in the Navy. Prior to these meetings, I sincerely believed that I was philosophically prepared to understand the problems of our Black Navymen and their families, and until we discussed them at length, I did not realize the extent and deep significance of many of these matters." U.S. Department of the Navy Library, Z Gram #55; dated 17 December 1970, "Equal Opportunity," at <https://www.history.navy.mil/content/history/nhhc/research/library/online-reading-room/title-list-alphabetically/z/list-z-grams/z-gram-66.html>.

<sup>40</sup> U.S. Congress, Senate Committee on Armed Services, *Senate Armed Services Committee Holds Hearing on the Nomination of John Hyten to be Vice Chairman of the Joint Chiefs of Staff*, 116th Cong., 1st sess., July 30, 2019. This hearing excerpt was also cited by Helene Cooper (above).



This characterization arguably contrasts with recent polling conducted by the *Military Times* which reports

The 2019 survey found that 36 percent of troops who responded have seen evidence of white supremacist and racist ideologies in the military, a significant rise from the year before, when only 22 percent — about 1 in 5 — reported the same in the 2018 poll... Poll participants reported witnessing incidents including racist language and discriminatory attitudes from peers, but also more specific examples like swastikas being drawn on service members' cars, tattoos affiliated with white supremacist groups, stickers supporting the Ku Klux Klan and Nazi-style salutes between individuals.<sup>41</sup>

Participants in the *Military Times* poll are self-selecting; that is, respondents chose to be part of the polling sample and are therefore subject to self-selection bias. In their description of survey methodology, researchers note that they accounted for that aspect of the data in accordance with routine social science survey practice, although this is difficult to verify using the publicly-available information released by the *Military Times*. By comparison, a survey conducted by DOD in 2017 reports that 17.9% of active duty members experienced racial/ethnic harassment or discrimination in the previous year. It further notes that “Black (31.2%) and Asian (23.3%) [service] members were more likely to indicate experiencing racial/ethnic harassment and/or discrimination than other active duty members, whereas White members (12.7%) were less likely.”<sup>42</sup>

## Congressional Tools

In considering Mr. Austin's proposed nomination and whether to waive the provision requiring that seven years elapse between military service and appointment to the position of Secretary of Defense, Congress might also contemplate the extent to which any risks associated with his appointment might be mitigated through addressing any inappropriate civilian-military imbalances that have emerged in recent years. The Secretary of Defense is a critically important individual within the Department of Defense and key figurehead in the American civilian-military relationship. Yet the Department is more than one man; tending to the health of the broader ecosystem of civilian institutions which the Secretary leads on the one hand, and is part of in broader society on the other, might serve to improve civilian control of the military today.

Article 1, Section 8 of the Constitution grants Congress the power to raise and supervise the military, and by extension, the Pentagon. These include the power to lay and collect taxes for the common defense, the sole power to declare war, the ability to raise and support armies, and the authority to establish rules and regulations for the army, navy, and militias when in service of the United States. To further strengthen civilian control of the military, a provision prohibited the appropriation of money for the army for a period longer than two years. In the post-World War II era, Congress has exercised this constitutional authority in a number of ways, including (but not limited to) the following:

- Holding annual strategy and posture hearings overseeing the Department of Defense's (DOD's) plans and programs.
- Annually authorizing the scope and priorities for the military's budget and appropriating monies accordingly.

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<sup>41</sup> Leo Shane III, “Signs of White Supremacy, Extremism Up Again in Poll of Active-Duty Troops,” *The Military Times*, February 6, 2020. <https://www.militarytimes.com/news/pentagon-congress/2020/02/06/signs-of-white-supremacy-extremism-up-again-in-poll-of-active-duty-troops/>

<sup>42</sup> U.S. Department of Defense *Office of People Analytics, 2017 Workplace and Equal Opportunity Survey of Active Duty Members Executive Report*, Defense Technical Information Center, August 2019. p. 14.

- Establishing new service branches of the U.S. military, such as the U.S. Space Force in 2019 (P.L. 116-92).
- Establishing new components of the U.S. military, such as U.S. Special Operations Command (P.L. 99-661).
- Setting key DOD strategy production requirements, such as the National Defense Strategy (P.L. 114-328).
- Consenting upon the nominations of senior leaders to DOD civilian and military positions.
- Cancellation of weapons systems, as with the MBT-70 Supertank in 1971.
- Establishing authorities for DOD’s noncombat cooperative activities with other nations’ military and security establishments (Title 22 *U.S. Code*; Title 10 *U.S. Code*, Chapter 16).
- Organizing the military chain of command, for example through the 1986 Goldwater-Nichols Act (P.L. 99-433).
- Requiring reporting on key issues and areas of interest to Congress, such as the semi-annual Report on Stability and Progress in Afghanistan (P.L. 110-181).
- Setting criteria for military promotions, for example by requiring military staff in a “joint” position before becoming eligible for a General or Flag Officer position in the 1986 Goldwater-Nichols Act (P.L. 99-433).
- Setting personnel policies, including repealing DOD’s “Don’t Ask, Don’t Tell” policy toward gay service members in the military (P.L. 111-321).
- Granting specific authorities for the legal conduct of military operations, such as the 2001 Authorization for the Use of Military Force (P.L. 107-40).

Given these Congressional activities, many observers contend that a top priority for the next Secretary of Defense—in partnership with Congress—should be to solve standing issues with the manner in which DOD might improve its civilian institutions and workforce, thereby strengthening civilian control of the military. Put differently, considerable time and attention is paid to the health of our military’s personnel, equipment, and so on. Yet there are no comparable “metrics” for civilian workforce health and readiness.<sup>43</sup> Regardless of who ultimately sits in the position of Secretary of Defense, addressing this matter may be necessary to revitalize civilian control of the military, should Congress wish to do so.

Mr. Chairman, this body has recently given great attention to the conduct of American elections, due in great part, to the knowledge that American government wields its power through the consent of the governed. The Founders intended that this principle would apply unambiguously to the military as well.

Thank you, and I await your questions.

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<sup>43</sup> Loren DeJonge Schulman, “National Security is Made of People,” *Defense One*, November 7, 2019.