



ISSUE ADVISORY – Women and the Draft; Moving Two Steps Closer to Equality

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The role of women in the military has long been a contentious issue, one plagued by sexist notions that devalue women's physical abilities and emotional maturity. Many feminists will recall that Phyllis Schlafly, architect of the Stop ERA movement, asserted that the Equal Rights Amendment would subject women to the draft and for that reason and a few others like unisex bathrooms, the amendment should be opposed. Well, here we are in 2016 closer to what feminists urged: equal treatment for women and men when it comes to military service.

Senate Approves Women Registering for Draft - Currently women are not required to register for the draft, as registration only applies to men between the ages of 18 and 25. In June of this year Congress entered an increasingly contentious discussion regarding the role of women in the military, as it debated whether women should be required to register for the draft upon turning 18. The Senate approved on June 14 an expansive military bill that in a historic move would require women to register for the draft for the first time in the country's history. All women must sign up with the Selective Service within 30 days of turning 18, beginning January 2018. Although the draft has not been used since the Vietnam War in 1973, the symbolic significance of such a move is profound in the implications it holds for women's role in the military.

The exclusion of women from the registration process was first challenged in the 1981 case *Rostker v. Goldberg*, 453 U.S. 57 (1981). Prominent feminist organizations, including the National Organization for Women, submitted briefs to the Court in an effort to emphasize the inherently sexist nature of this exclusion. The brief filed by NOW held that harmful repercussions result from the exclusion of women "from the compulsory involvement in the community's survival" that is perceived as "entitling people to lead it and to derive from it the full rights and privileges of citizenship."

Eleanor Smeal, NOW's president during that time, stated that by excluding women even from registration, the government held that "every man, regardless of any disability, must register, but that all women, regardless of competency, cannot," a distinction which created the "myth that all men are more competent than all women."

SCOTUS Ruling Used to Justify Exclusion - In a 6-3 vote, the Supreme Court held in *Rostker* that the practice was constitutional as it did not violate the Due Process Clause of the 14th Amendment due to existing combat restrictions on women. This ruling has been utilized over the past decades to justify the exclusion of women from the draft, despite objections from feminist organizations that argued this exclusion is inherently sexist and is based upon harmful gender roles.

Language in Section 591 the FY 17 National Defense Authorization Act (NDAA) has been opposed by some conservative legislators, including Sen. Ted Cruz (R-Tex.), who stated that the idea that "young girls" should be conscripted "makes little sense" to him, and added that he "could not in good conscience vote to draft our daughters into the military." Drafting our sons

and young men, never infantilized as “boys,” is acceptable however. The conservative group Heritage Action for America asserted that the bill is a “clear example” of Washington’s prioritization of “liberal social engineering” over “military objectives and preparedness,” echoing sexist sentiments that discount women’s abilities and military contributions.

Bipartisan Support for Selective Service Requirement - However, the provision has received a significant amount of support from Republican leaders and women in both parties, including Senate Majority Leader Mitch McConnell (R-Ky.) and women on the Senate Armed Services Committee. Sen. John McCain (R-Ariz.), a supporter of the bill, responded to Cruz’s statements, stating that while he “[respected]” his view, it is “too bad” that the view is “not shared by our military leadership,” those who “have had the experience in combat with women.”

McCain, went on to say, “The fact is that every single leader in this country, both men and women, members of the military leadership, believe it’s fair since we opened up all aspects of the military to women that they would also be registering for Selective Service.”

Top uniformed officers in each of the military branches testified in favor of the new Selective Service sign-up for women, but they also said that the all-volunteer force is working well and did not want a return to conscription.

House Votes to Block Draft Registration - The consensus on this matter in the House, however, differs significantly from that in the Senate. On July 4 the conservative-led House approved an amendment, sponsored by Rep. Warren Davidson (R-Ohio), which essentially bars women from the requirement to register for the draft. In a 217-203 vote, the House backed an amendment that would block the Selective Service System from using any money to change draft registration requirements, which currently apply only to men between the ages of 18 to 25. The amendment was added to a financial services spending bill, and marks a victory for conservatives intent upon upholding antiquated and sexist gender roles.

It is expected that the two opposing provisions regarding women and the draft will be negotiated during conference meetings that will hammer out final versions of the defense appropriations and financial services spending bills.

Combat Exclusion of Women Repealed - All of these developments were preceded by an historic action taken on Jan. 23, 2013 by then-Secretary of Defense Leon Panetta who rescinded the ban on women serving in ground combat units and announced a plan to implement this policy change. Up until that time, thousands of positions, along with entire career fields and combat arms schools and training programs, remained closed to military women. Exclusions from these programs and consequently from having combat experience meant dead-ended military careers for women.

This momentous policy change came about after the American Civil Liberties Union (ACLU) and ACLU of Northern California filed a lawsuit, *Hegar et al. v. Panetta*, on behalf of four decorated servicewomen and the Service Women’s Action Network (SWAN) in November, 2012.

In December, 2015, Secretary of Defense Ash Carter announced that the Services and Special Operations Command must open all units and positions to women, without exception. In a letter to Senate Armed Services leaders signed by many women’s rights and human rights organizations, including the National Organization for Women, it was noted that the repeal of the combat exclusion policy “acknowledged the combat roles that women have undertaken, in the

air, at sea, and on the ground for many years, but especially since the 1990s, including in the wars in Iraq and Afghanistan.”

“The underlying principle behind repeal of the combat exclusion rule was that no individual who wants to serve her country should be forbidden from competing for or serving in any military capacity solely because of gender,” as stated in the letter sent by women’s and civil rights groups to the Senate Armed Services Committee in support of Selective Service registration for women. “Instead, every soldier, sailor, airman and Marine should be judged on individual merit, ability, and performance. Merit-based military assignments strengthen and enhance our nation’s military readiness and effectiveness.”

More Information

Women Join Battle on All-Male Draft

<http://www.nytimes.com/1981/03/22/us/women-join-battle-on-all-male-draft.html>

Backgrounder: Women and the Draft

<https://www.sss.gov/Registration/Women-And-Draft/Backgrounder-Women-and-the-Draft>

House Approves Measure to Bar Women from Draft Registration

<http://www.military.com/daily-news/2016/07/07/house-approves-measure-bar-women-draft-registration.html>

Senate Votes to Require Women to Register for the Draft

<http://www.nytimes.com/2016/06/15/us/politics/congress-women-military-draft.html>

Unseen: Trailblazing Military Women Forced to Fight for Recognition, Equal Treatment

http://www.huffingtonpost.com/2012/05/14/women-at-war-unseen_n_1498291.html

Military Women Challenge Combat Exclusion Rule in Lawsuit Against Defense Department

http://www.huffingtonpost.com/2012/11/27/women-in-combat-defense-department_n_2195462.html

Combat Exclusion Policy For Women – Repeal of the Combat Exclusion Policy and the Way Forward

<https://www.aclu.org/feature/combat-exclusion-policy-women>

SWAN Joins Coalition to Influence HASC/SASC on Women and the Selective Service

<http://www.servicewomen.org/uncategorized/swan-joins-coalition-to-influence-hasc-sasc-on-women-and-the-selective-service/>