

Defending America in Mixed Company: Gender in the U.S. Armed Forces

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Abstract: Women have voluntarily served to defend America since the birth of our nation, often driven by necessity or the fight for equal opportunity, but always limited by law or policy grounded in accepted gender roles and norms. Today, women compose 14 percent of the total active-duty military, and more than 255,000 have deployed to combat operations in Iraq or Afghanistan. Despite their exemplary service and performance in combat, women are still restricted from serving in more than 220,000 military positions solely because of their sex. Women also continue to be exempt from the Selective Service System, for which their male counterparts are required by law to register. Are these continued inconsistencies between the sexes in the area of national defense incongruent with democratic tenets? Have we gone too far or not far enough in allowing or compelling women to defend the nation if required?

May all our citizens be soldiers and all our soldiers citizens.

–A toast by Sarah Livingston Jay, the wife of John Jay, at a ball celebrating the end of the Revolution (Fall 1783)¹

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Women have served as volunteers in the defense of America since the birth of our nation, often driven by necessity or the fight for equal opportunity, but always limited by law or policy grounded in accepted gender roles and norms. Today, women make up more than 14 percent of the active-duty military force; since 2001, more than 255,000 have deployed to Operation Enduring Freedom or Operation Iraqi Freedom, in which more than 130 have been killed and almost 700 wounded.² As of April 2011, despite their exemplary performance in direct combat roles in the air, sea, and on the ground, women as a group are still banned by Department of Defense (DOD) policy from being assigned to more than 220,000 of the 1.4+ million authorized active-duty positions – regardless of their individual abilities and qualifications.³ While every American male is required by law, as a basic obligation of

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citizenship, to register for Selective Service within one month of his eighteenth birthday (or potentially suffer fines, imprisonment, and denial of educational and employment opportunities),⁴ women continue to be exempt from this responsibility of citizenship.

Current DOD policies are rife with inconsistencies and inefficiencies, resulting in confusion, inflexibility, and outright violations of the self-imposed restrictions by the military. The male-only Selective Service law and DOD policies are also incongruent with three of America's democratic tenets: 1) a fundamental obligation of full citizenship is the requirement to defend the nation if needed; 2) the armed forces, whether conscripted or volunteer, should reflect the society they defend; and 3) the U.S. Constitution is now interpreted to prohibit discrimination or lack of equal opportunity based solely on gender.⁵

U.S. national security is not being pursued in mixed company consisting of all qualified American citizens; instead, existing restrictions have limited women's full participation in the military.⁶ This essay will explain the gender norms that continue to curtail women's rights and obligations to national defense; elaborate on the three democratic tenets that should drive the composition of America's armed forces; review the history of women's participation in U.S. defense and consideration for Selective Service in light of these tenets and gender norms; discuss the current gender situation in the U.S. military; and make recommendations for the future.

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Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of

the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood....The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.

—U.S. Supreme Court Justice Joseph Bradley, *Bradwell v. State of Illinois* (1873)⁷

War and the military ethos required to fight and win wars have traditionally been considered masculine in nature, with peace and the need to be protected defined as feminine. Men take life and women give life. Men protect and women are protected. Men are strong and courageous and women are weak and emotional. Men are responsible to the state and women to their family. Men are motivated to function in the horror of war by the thought of returning to the normalcy of home as symbolized by mother, wife, sweetheart, and the nurses who care for them in battle. The increasing integration of women in the military has confused and contradicted these gender norms and roles. Nonetheless, female Americans' participation in defense has been and is still limited by these generalizations about what women as an entire class *could* and *should* do.⁸

Take, for example, statements by Kathleen Teague of the Eagle Forum. Testifying before a House Armed Services Committee in 1980 on women's potential inclusion in Selective Service registration, Teague said, "We expect our servicemen to be tough enough to defend us against any enemy – and we want our women to be feminine and human enough to transform our servicemen into good husbands, fathers, and citizens upon their re-

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turn from battle.” She also warned that “she and her colleagues were not about to give up the right to be free from a military obligation ‘just because a handful of women, unhappy with their gender, want to be treated like men.’”⁹

In 1991, General Merrill McPeak, then chief of staff of the U.S. Air Force, testified to a Senate Armed Services Committee (which was deliberating potential repeal of the law that excluded women from flying combat aircraft) that he would pick a less-qualified male pilot over a more-qualified female pilot for a combat mission. He conceded that his view did not make much sense, but it was simply the way he felt. A year later, he told a House Committee: “I believe the combat exclusion law is discrimination against women. And second, that it works to their disadvantage in a career context. ... And I still think it is not a good idea for me to have to order women into combat. Combat is about killing people.... Even though logic tells us that women can [conduct combat operations] as well as men, I have a very traditional attitude about wives and mothers and daughters being ordered to kill people.” At the time, McPeak was responsible for organizing, training, and equipping the Air Force to fly, fight, and win in defense of America, yet he was willing to accept a less-capable force to fit with his personal attitudes on the proper role of women.¹⁰ These are just two illustrations from the last thirty years of how gender norms drive opinions (even ones from otherwise educated professionals) of women’s place in national defense.

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It may be laid down as a primary position and the basis of our system, that every citizen who enjoys the protection of a free government, owes . . . even of his personal services to the defense of it, and conse-

quently, that the Citizens of America (with few legal and official exceptions) from 18 to 50 Years of Age should be borne on the Militia Rolls, provided with uniform Arms, and so far accustomed to the use of them.

–General George Washington, “Sentiments on a Peace Establishment” (May 1783)¹¹

The democratic tenet that binds the rights of citizenship with the obligation to defend the state is rooted in the writings of America’s founding fathers and reflected in our Constitution and laws. This relationship was central to the suffrage and civil rights movements, grounding the arguments that women and African Americans served in defense of the United States and should therefore be granted all rights of citizens.¹² The principle remains strongly present in immigration law: past applicants for citizenship, male and female alike, had their applications rejected if they refused to take an oath that they would bear arms to defend the nation. The current law mandating males ages eighteen to twenty-five to register for Selective Service requires even those males living in the United States as aliens to register as a reflection of obligations of residency and a possible path to citizenship.¹³ Indeed, honorable service in the military is today a guaranteed road to citizenship,¹⁴ further evidence of our belief in the link between military service and citizenship.

The citizen-soldier connection is reinforced in contemporary discussion of whether to continue required Selective Service registration for American males. In 1999, Congress debated the elimination of the Selective Service System (SSS) and the requirement for registration. During the debate, the late Charles Moskos, a well-known military sociologist, stated that if registration was not mandatory for all American eighteen-

year-old male citizens, “it will mean a cut-off of citizenship responsibility. This is the one time in a man’s life he has to sign a document saying he has citizen obligation.” The SSS 2009 Annual Report to Congress struck a similar chord: “By registering with Selective Service, every young man is reminded of his potential obligation to serve our Nation in an emergency.”¹⁵ There is little serious discussion about exactly how American women express this citizen obligation.¹⁶

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[M]y fundamental belief is that we, as a military, must represent our country. We must represent the demographics of it. It is the greatest strength of our country.

—Admiral Michael Mullen, Chairman of the Joint Chiefs of Staff (2009)¹⁷

Another democratic tenet posits that a military force should reflect the society it defends. Women are now almost 51 percent of the U.S. population, but just over 14 percent of the all-volunteer force and only 6 percent of senior officers. In 2009, Congress directed the creation of the Military Leadership Diversity Commission to address the reality that military power structure and leadership in a volunteer force consist predominately of white men and to make recommendations for developing more diversity in the force and leadership.¹⁸

An additional consideration regarding the composition of the armed forces as a full reflection of society is the “business model.” In order to have the most capable force, standards should be set for the positions, and individuals should be recruited from the widest pool possible across society. These efforts result in higher overall aptitude and the flexibility to pick the best individual for any position, regardless of sex.¹⁹

In 2009, the Pentagon reported that 75 percent of young American men and women are ineligible for entering military service based on minimum health, weight, educational, and aptitude standards, as well as other restrictions including criminal records and parenthood. Of the 25 percent eligible, 15 percent go on to college, leaving approximately 10 percent of the young population as potential military recruits. In 2005–2006, the Army significantly lowered educational, medical, aptitude, and criminal standards to meet its recruitment goals during a strong economy and while fighting two wars.²⁰ To fill an all-volunteer force or to guarantee a high-quality conscripted force, it is logical to recruit and select from the largest pool of applicants to ensure the highest aptitude of those responsible for defending America. Setting realistic standards, removing restrictions on whole classes of people, and recruiting people as individuals who can be placed where they are best qualified to serve raises the overall quality of the force.

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There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of “romantic paternalism” which, in practical effect, put women, not on a pedestal, but in a cage.

—U.S. Supreme Court, *Frontiero v. Richardson* (1973)²¹

The Fifth Amendment of the Constitution guarantees that no citizen be “deprived of life, liberty, or property, without due process of law.” The Fourteenth Amendment bars states from the same actions, adding a prohibition against denying citizens equal protection of the laws. The courts have extended the equal

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protection principle to cover the federal government as well, usually under the Fifth Amendment due process clause. In applying the principle to federal or state gender discrimination, the courts now employ “intermediate scrutiny” to decide whether discrimination based on gender classifications is lawful. Under this level of scrutiny, the government must provide an “exceedingly persuasive justification” that a gender classification is designed to meet “important governmental objectives” and that “the discriminatory means employed are substantially related to the achievement of those objectives.”²²

Although scrutiny and judicial opinions have evolved over time, the courts are now especially likely to strike down a gender classification that seems to be based on faulty generalizations or stereotypes about the varying abilities and interests of the two sexes. The most recent Supreme Court opinion on the matter, the 1996 ruling that Virginia violated the Fourteenth Amendment by prohibiting women from attending the Virginia Military Institute, stated, “Generalizations about ‘the way women are’ or estimates of what is appropriate for ‘most women’ do not justify denying opportunity to women whose talent and capacity place them outside the average description.” Furthermore, the government’s justification for discrimination “must not rely on over-broad generalizations about the different talents, capacities, or preferences of males and females”; the government has “no warrant to exclude qualified individuals based on ‘fixed notions concerning the roles and abilities of males and females.’”²³

Some critics erroneously assume that equal opportunity and military effectiveness have an inverse relationship. They argue that inclusion of minorities such as African Americans, women, and homosexuals in the military is “social experi-

mentation,” which only results in a less effective military.²⁴ This argument is based on the alleged importance of high *social cohesion* (that is, male bonding) among white male heterosexuals, especially in combat units. Studies of cohesion in general and the performance and cohesion of integrated military units in particular have disproved this assumption. Diversity in the force can potentially be challenging for leadership, but ultimately it is found to have a positive effect on mission success across civilian and military organizations. Studies have shown, and experts agree, that *task cohesion* – a shared commitment to the group’s mission or goals – is most important for mission effectiveness. In fact, too high a level of social cohesion can be detrimental to performance.²⁵

In September 2010, the U.S. District Court for Central California ruled that the ban on homosexuals serving openly in the military was unconstitutional, rejecting the inverse relationship between equal opportunity and military effectiveness. Based on empirical evidence to the contrary, the court strongly rejected the government’s argument that homosexuals need to be excluded from the military to protect unit cohesion.²⁶ In December 2010, Congress then repealed the law that banned homosexuals from serving openly – also rejecting the premise that “[t]he presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.” In contrast to previous justification, at the signing of the new bill into law later that month, President Obama stated, “This law ... will strengthen our national security and uphold the ideals that our fighting men and women risk their lives to defend.”²⁷

Despite this change in understanding of the positive relationships between diversity, equal opportunity, and national security, many of the cohesion arguments continue to be used to justify the exclusion of women from full participation in the military. Just as homosexuals in the military were successfully, but invisibly, performing their duties under “Don’t Ask, Don’t Tell,” women are involved in ground combat and are necessary to the success of the mission, but are denied the open acceptance of their service in this capacity.

In this next section, I move chronologically through U.S. history, summarizing women’s key contributions to the military during various eras.²⁸ At the same time, I explore these contributions in light of the legal and social practices that defined and circumscribed gender at different points in American history.

The Revolutionary War to Pre-World War I. In the Revolutionary War and Civil War, women served not only as cooks, laundresses, and nurses but also as spies and saboteurs. Some, like Deborah Sampson of Massachusetts, also disguised themselves as men and fought in battles. A few earned pensions and many earned awards for their service, including the Congressional Medal of Honor. In the Spanish American War, 1,500 women were contracted as nurses (without military status) due to the typhoid outbreak. Congress authorized permanent Army and Navy Nurse Corps as a result of these women’s contributions.

Although women were called citizens from the birth of the Republic, most of the early citizen rights and obligations were reserved for white male landowners. At the time, the justification for not allowing women to vote, not calling on women to serve on juries, and not requiring women to register for the militias was based on

the concept of *coverture* that the revolutionaries brought with them from England. Coverture rationalized that women could be called citizens but left out of the new social contract between the governed and those who govern because the man has an obligation to the state; the woman has an obligation only to the man by whom she is “covered”: her husband or father, if she is unmarried. Once married, a woman’s civic identity transferred from her father to her husband. The concept of *coverture* was “incompatible with Revolutionary ideology” but was justified and defended by male decision-makers.²⁹ Ideas about *coverture* and the primary obligation of women to the family continue to shape American laws, lifestyles, and military policy.

World War I through World War II. Thirty-four thousand U.S. women wore the uniform in World War I; four hundred of these women died while serving their country, despite not yet having obtained the right to vote. Coverture logic and the connection between citizenship rights and obligations came to a head in the suffrage movement. Some men argued that women did not have the right to vote because they did not have the obligation to risk their lives in defense of the state. Meanwhile, some suffragists argued that women served in the military in World War I and therefore deserved the right to vote.³⁰ The suffragists eventually prevailed; however, even after earning the right to vote, women continued to be exempt from the right and obligation to defend the nation if capable and required.

Out of sheer necessity, World War II resulted in an unprecedented utilization of volunteer women in uniform. More than four hundred thousand women served; eighty-five became prisoners of war (POWs) and more than five hundred women lost their lives, sixteen of whom were killed in action. Although not trained to

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fight, be under fire, or to survive as a POW, many women demonstrated courage in all theaters during this war. However, the United States struggled with the limits of women's military functions, wrestling with how to adapt as women proved successful in an expanding number of roles. Women flew all aircraft in the inventory as ferry pilots, instructor pilots for men, and target-towing for anti-aircraft (AA) gunner training, but unlike Russia, the United States would not allow women to fly in combat.³¹ After the British began to train and utilize women to operate land-based AA guns (they were allowed to do everything but fire the weapon, a role left to men), the United States conducted a secret experiment to see if American women could fill these positions. The mixed-gender units performed better than all-male units, but the experiment was terminated because it was "not believed that national policy or public opinion [was] yet ready to accept the use of women in field force units."³²

Although most women were demobilized quickly after World War II, the Armed Forces Integration Act of 1948 formally authorized a permanent cadre of women in the military for the first time. The law, however, severely restricted the number of women, the number of officers, the rank they could achieve, and the roles in which they could serve. Women were banned from serving in combat aircraft and all ships except transport/hospital ships; they were not specifically banned from ground combat because this was an assumed restriction. During congressional testimony, General Eisenhower expressed that women would be critical in any future war and should therefore be subject to conscription. His views were dismissed.³³

The 1950s through 1990. Women's opportunities in the military were curtailed in the 1950s and 1960s due to cultural views

of proper gender roles and the reliance on the draft. The tide began to turn in the late 1960s. Restrictions on the number of women and the rank they could achieve were lifted by Congress in 1967. By 1972, both the House and the Senate passed the equal rights amendment to the U.S. Constitution (although it was never ratified by enough states), which had an enormous impact on the roles of women in America. In 1973, as it was recovering from the Vietnam War and the draft, the United States transitioned to the all-volunteer force. As a result, more women were aggressively recruited in order to fill the ranks without lowering the standards. Military leaders acknowledged that female recruits were performing better on aptitude tests and had fewer discipline problems than male recruits. Both military necessity and the equal rights movement had an impact on women in the military. Several important court cases and congressional mandates required the military to abandon the "business as usual" stance they failed to adjust to in the wake of the all-volunteer force.

In 1973, the Supreme Court ruled in *Frontiero v. Richardson* that the military policy that denied equal housing and medical benefits to families of service-women violated the Fifth Amendment due process clause. In 1975, Congress directed all military service academies to open their doors to women. In 1976, a U.S. court of appeals ruled that discharging women for pregnancy violated the Fifth Amendment due process clause since it was founded on the impermissible assumption that pregnant women were permanently unfit for military duty.³⁴ In 1978, a group of Navy women filed a suit challenging the law that banned women from serving on ships. The judge ruled that the exclusion statute violated the Fifth Amendment and "was premised on the notion that duty at sea

is part of an essentially masculine tradition” and suggested “a statutory purpose more related to the traditional way of thinking of women than to the demands of military preparedness.”³⁵ By the end of the 1980s, women could attend the military academies, earn a Reserve Officer Training Corps (ROTC) scholarship, serve on a noncombatant Navy ship, be assigned to a Titan missile crew, and become military pilots again for the first time in more than thirty years. However, they were still excluded from serving in combat roles in the air, sea, or on land.

In 1980, President Carter announced in his State of the Union address that he would reauthorize the Selective Service, in accordance with the Military Selective Service Act (MSSA) of 1948.³⁶ Registration had been discontinued since 1975, but the Soviet invasion of Afghanistan provided the political impetus for reinstating the practice. Although President Carter requested funds from Congress to include women in the registration process, Congress authorized funds for a male-only registration.

In March 1981, the Supreme Court ruled in *Rostker v. Goldberg* that the male-only draft registration did not violate the equal protection principle. In its decision, the Court expressed the need for “healthy deference to legislative and executive judgments in the area of military affairs.” The Court sidestepped a full equal protection analysis of the male-only draft restriction, reasoning that because women were not eligible to serve in combat, men and women were not “similarly situated” for the purposes of the registration exemption.³⁷ The MSSA never specified that the purpose of registration was to draft only combat troops: in fact, its focus is to deliver untrained manpower and trained health care personnel in the event of a national emergency.³⁸ Additionally, even though women were then (and still are)

banned from ground combat positions, actual combat troops (versus combat support) are a significant minority of the total force.³⁹ Some constitutional experts have strongly criticized the Supreme Court’s ruling on the grounds that the deference to the legislative and executive branch on military affairs should not have applied in this case because the issue was about rights of civilians, not internal policies of the military. Interestingly, congressional justification for the exclusion of women was filled with statements about the stereotypical role of women in society and family, statements previously ruled as an unacceptable basis for discriminatory legislation by the courts.⁴⁰

In the 1980s and 1990s, the military increased opportunities for women but continued to justify restrictions by saying women would not be “in combat.” The Army coded all their positions based on the probability of being in direct combat and prohibited women from being assigned to those with the highest probability. In 1988, the DOD adopted the so-called risk rule, which stated that the “risks of exposure to direct combat, hostile fire, or capture are proper criteria for closing noncombat positions or units to women, provided that . . . such risks are equal to or greater than experienced by combat units in the same theater of operations.”⁴¹ These policies endeavored to draw clean lines between *combat* and *noncombat*, keeping women in jobs away from the risks of combat.

On the battlefield, these lines were not so clearly drawn. In 1989, 770 women deployed to Panama, serving in various “combat support” positions as then defined by the DOD. They included Army helicopter pilots who earned air medals for *combat missions* and the commander of a military police company who led her team in firefights. In 1990 and 1991, more than forty thousand U.S. military wom-

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en deployed for Operation Desert Shield/Desert Storm, constituting 7 percent of the total deployed force. Two women in combat support jobs were captured as POWs, and thirteen women were killed. Predictions that there would be public outcry when women were taken as POWs or came home in body bags did not materialize.

1991 through the Present. Based on women's performance in Panama and Desert Storm, Congress repealed the law that prohibited women from flying combat aircraft (enacted December 5, 1991) and serving on combat ships, except submarines (enacted November 30, 1993). Congress also directed the DOD to provide ninety-days notice for any changes to its ground combat exclusion policy, including analysis of implications for the male-only draft. The DOD then removed restrictions on women flying combat aircraft or serving on combat ships, rescinded the risk rule, and adopted a new ground combat exclusion policy. This policy is still in effect today; it states, "Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground." The policy goes on to define direct combat as "engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with hostile force's personnel. Direct ground combat takes place well forward on the battlefield while locating and closing with the enemy to defeat them by fire, maneuver, and shock effect."⁴²

The decision "to keep Army combat units closed to women was justified in terms of the 'unique bonds' necessary for mortal combat, which are 'best developed in a single gender all male environment.' The U.S. Army Chief of Staff said in 1993

that 'cohesion is enhanced by uniformity, by adherence to a common sense of values and behaviors.'"⁴³ The success of mixed-gender units in combat since then,⁴⁴ the decision to allow homosexual individuals to serve openly in the military, and the results of studies on task cohesion discussed earlier all make these arguments suspect.

In 2005, while the all-volunteer military was stretched thin fighting two wars and was lowering standards as it struggled to meet recruitment goals in a strong economy, Republican Representatives Duncan Hunter, of California, and John McHugh, of New York, introduced an amendment to the annual defense bill that would have codified a ground combat exclusion for the first time in U.S. history and prohibited women from serving in Army forward support companies. If the measure had passed, the Army estimates that 21,925 positions currently open to women would have been closed. The amendment gained immediate public attention and provoked strong objections from Army and DOD leadership as well as many members of Congress. In the end, Hunter and McHugh's efforts were thwarted; the final amendment was a significant compromise, only mandating that the DOD notify Congress of any opening or closing of positions or units under the ground combat exclusion policy or any change that opened or closed a career field related to military operations on the ground.⁴⁵ As during World War II and with the recruitment of the all-volunteer force in the 1970s and 1980s, the need to fill the ranks in order to fight two wars drove the final decision not to decrease women's participation in uniform, despite a desire by many to do so because of their views of proper gender roles.

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We are a nation that says “out of many, we are one.” We are a nation that welcomes the service of every patriot. We are a nation that believes that all men and women are created equal. These are the ideals that generations have fought for. These are the ideals we uphold today.

—President Barack Obama, remarks before signing the repeal of “Don’t Ask, Don’t Tell” (December 2010)⁴⁶

In 2008, the DOD informed Congress that the Marines planned to open counterintelligence and human intelligence specialties to women, and in 2009, the DOD informed Congress that it intended to open submarine duty to women, negating the previous argument that privacy issues prohibited qualified women from serving in jobs requiring close quarters and little privacy.⁴⁷ However, women today are still excluded from more than one hundred thousand positions in combat-arms career fields (for example, infantry, armor, pararescue, combat engineers, and special forces) and support positions within ground combat battalions (for example, medic, logistics, and intelligence). Also, women cannot be assigned to combat support units that are “required to collocate” with ground combat units. This policy accounts for nearly one hundred thousand additional positions being closed to women.⁴⁸

The current restrictions on women in combat are gamed by commanders on a daily basis. The prohibition states that women cannot be “assigned” to these units, but they can be “attached” or “employed” virtually anywhere. At a time of strained resources, the Army is going to great lengths to assign women to positions that, on paper, meet the restrictions, when in reality women are being attached or employed in any way re-

quired for the mission.⁴⁹ This accounting practice degrades combat efficiency and effectiveness. As one prior combat arms battalion commander explained, “[T]he policy is legal fiction . . . and while it is useless, it is not harmless.”⁵⁰ Commanders and human resources personnel must make significant efforts to assign women only to positions open to women. Combat cohesion is also degraded: assigning women to a “legal” position on paper, and then deploying and employing them ad hoc with combat units, precludes these mixed-gender teams from training together prior to deployment, a necessity for building the trust and teamwork required in a complex combat environment. After one female medic earned the Silver Star for her valor in battle in Afghanistan, she was sent home due to elevated publicity about her role and actions, despite her importance to the mission and her unit. Female combat veterans have also suffered from inadequate veterans benefits and services upon returning from war because they are technically prohibited from being in ground combat.⁵¹

In 2007, the RAND Corporation conducted a study on whether the Army was actually complying with its own policies and those of the DOD in Iraq. Because the policies focus on what positions women are assigned to instead of where and how they are employed, RAND concluded that the Army is complying with its prohibition on assigning women to ground combat positions and units. RAND also concluded that the Army is probably violating its own collocation policy, depending on how it is interpreted. The report recommended that the DOD and the Army re-craft the policy or rescind it altogether based on current realities and lessons – and clearly state its actual objective, which is not obvious to most of the leaders tasked to enforce it.⁵²

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Not only have women been necessary to fill the ranks, the nature of combat in Iraq and Afghanistan specifically requires women to do some jobs, such as searching women and children. This requirement resulted in the creation of “Lioness” teams that accompany all-male combat soldiers to perform this function. Women troops are also critical in winning the population over as part of counterinsurgency strategy. Previously, U.S. military efforts focused on engaging with local men only, ignoring 50 percent or more of the population they were trying to protect, engage, and empower. The U.S. military recently formed “female engagement teams” to interact with local Afghan women in order to understand concerns, gain critical information, help meet their needs, and empower the locals. These are roles that military men cannot fill due to cultural sensitivities.

There is no line between combat and noncombat, no place called “well forward” on the battlefield, and no sanctuary from combat risks in Iraq and Afghanistan (or in foreseeable future combat operations). Although women are not officially assigned to positions under the seventeen-year-old DOD ground combat exclusion policy, they are employed every day in combat: as truck drivers, gunners, military police, medics, and other support roles that make them vulnerable to attack and require them to be trained and equipped to fight. They are demonstrating their ability to lead and fight under fire, kill the enemy, and show courage in battle. Arguments that women and men cannot be together in small teams in a combat environment because of privacy or cohesion issues have proved fictitious. Many commanders and service members report that the current ground combat exclusion policies are either confusing or unknown.

Despite these realities, there is little political will to repeal the restrictions owing to the ultimate impact it would have on

gender norms and the potential that women would be required to register for Selective Service.⁵³ In 2010, Democratic Representative Loretta Sanchez, of California, introduced an amendment to the annual defense authorization bill aimed not at directly repealing the combat exclusion policies, but rather allowing commanders in the field the flexibility to assign women to combat positions if they were qualified to accomplish the mission. Even though the amendment did not seem to differ much from current realities, it did not survive a Democrat-controlled Armed Services Committee. Democratic Representative Ike Skelton of Missouri, a consistent supporter of the ground combat exclusion and then-chairman of the House Armed Services Committee, replaced it with another amendment that directed the DOD to review military occupations and policies on servicewomen.⁵⁴ Although there was no such provision in the Senate version, the final bill contained additional language requiring the secretary of defense to “review applicable law, policies, and regulations ... that may restrict the service of female service members and determine whether changes are needed to ensure that female members have an equitable opportunity to compete and excel in the armed forces.” The bill called for the secretary to report the results to Congress by April 15, 2011.⁵⁵

The Military Leadership Diversity Commission made a recommendation to Congress in March 2011 that the DOD should completely repeal the ground combat exclusion policy, but it is not yet clear what weight that will have.⁵⁶ Liberal and feminist interest groups united with significant manpower, resources, and political pressure to help repeal “Don’t Ask, Don’t Tell.” Perplexingly, they are providing little to no effort to remove the remaining restrictions on women.⁵⁷

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There was a time when African-Americans weren't allowed to serve in combat. And yet, when they did, not only did they perform brilliantly, but ... they helped to change America, and they helped to underscore that we're equal. And I think that if women are registered for service – not necessarily in combat roles, and I don't agree with the draft – I think it will help to send a message to my two daughters that they've got obligations to this great country as well as boys do.

–Senator Barack Obama, answering a question about whether women should register for Selective Service, Democratic Presidential Debate (July 23, 2007)

“Women are already serving in combat [in Iraq and Afghanistan] and the current policy should be updated to reflect realities on the ground,” said Wendy Morigi, Mr. Obama's national security spokeswoman. “Barack Obama would consult with military commanders to review the constraints that remain.”

–*Pittsburgh Post-Gazette* (October 13, 2008)⁵⁸

Women have served and continue to serve in the defense of America, never under compulsion, despite often being treated as second-class troops and citizens without the same benefits of service or obligations of citizenship. By and large, gender roles have driven the historic and contemporary restrictions on American women in uniform. Nonetheless, the arguments that women are not capable of fighting or enduring the stresses of combat have been disproved.

It has been almost three decades since Americans have engaged in any serious national discussion about the male-only nature of Selective Service registration. Nearly twenty years have passed since any review of the rationale behind ex-

cluding women from more than two hundred thousand jobs in the military. The recent repeal of the ban on homosexuals in the military was driven by democratic tenets of equal opportunity and the “business case” for ensuring the highest quality force. It is time for America to decide that its democratic philosophy should also shape the role of women in the military and national security decision-making, rather than archaic beliefs about proper gender norms. With that in mind, I make the following recommendations:

- 1) The DOD should notify Congress that it will rescind the current ground combat exclusion policy for women and modify its accessions, placement, and other policies as required for a gender-neutral assignment system.
- 2) If the DOD itself does not rescind the exclusions (historically, the DOD has not taken this kind of initiative until directed to do so by the president, Congress, or courts), Congress should direct the repeal.
- 3) If neither the DOD nor Congress acts to repeal the ground combat exclusion policy in FY 2011, qualified and capable females aspiring to serve in combat roles should file litigation based upon the equal protection principle. Such a suit has never been filed and would require the government to justify exclusion of all women from these roles.
- 4) Congress should amend the MSSA to require female citizens and those females living in the United States as aliens, ages eighteen to twenty-five, to register for Selective Service and should authorize the funding and personnel for the SSS to administer this change.⁵⁹

If these actions are taken, the toast that Sarah Jay gave 228 years ago will finally be fulfilled, and America's national defense will indeed be fully pursued in mixed company.

Martha E.
McSally

- ¹ The title of this essay derives in part from the statement “national defense can be pursued in mixed company,” as included in Mary Ann Tetreault, “Gender Belief Systems and the Integration of Women in the U.S. Military,” *Minerva Quarterly Report on Women and the Military* 6 (1) (1988): 44–62. Toast from Sarah Livingston Jay quoted in Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998), 236.
- ² Information on women serving active duty provided by Lory Manning at the Women’s Research and Education Institute, July 2010. Due to the increase in Army and Marine combat units since 2002, and the prohibition on women serving in those units, the total percentage dropped from 15 percent in 2002 to 14.3 percent in 2009. Information on women serving in Afghanistan and Iraq from the National Defense Authorization Act for Fiscal Year 2011, HR 5136, 111th Cong., 2nd sess., Congressional Record (June 28, 2010): sec. 534. For updated numbers, see http://www.msnbc.msn.com/id/41083172/ns/us_news-life/.
- ³ See “Direct Ground Combat Definition and Assignment Rule,” a memorandum from Secretary of Defense Les Aspin to the Secretaries of the Army, Navy, Air Force, et al., January 13, 1994; and General Accounting Office (GAO), National Security & International Affairs Division, *Gender Issues: Information on DOD’s Assignment Policy and Direct Ground Combat Definition* (Washington, D.C.: GAO, 1998), <http://www.gao.gov/archive/1999/ns99007.pdf>. Because the Army and Marines have increased their numbers of combat units since this GAO study, the number of positions closed to women is now higher.
- ⁴ Military Selective Service Act (as amended), 50 USC Appendix 451–472. Although no one has been prosecuted for failure to register since the mid-1980s, denial of federal employment and financial assistance is still enforced at the federal level, and several states have laws mandating denial of benefits as well.
- ⁵ On this third tenet, see the Fourteenth Amendment’s equal protection clause. Gender was not always considered as a class covered by the equal protection clause, and the failure of the equal rights amendment to be ratified resulted in women having no constitutional protection from discrimination for almost two hundred years. The courts have only recently included gender under the Fourteenth Amendment, with less stringent scrutiny than classifications such as race. Gender is now covered under “intermediate scrutiny.” The most recent Supreme Court guidelines on this issue will be addressed later in this essay.
- ⁶ The United Nations Security Council Resolution on Women, Peace and Security (UNSCR 1325) was passed in October 2000; among other recommendations, it urged “member states to ensure increased representation of women at all decision-levels in national, regional, and international institutions and mechanisms for prevention, management, and resolution of conflict.” In the declaration at the Lisbon Summit in November 2010, twenty-eight NATO members agreed to an action plan to mainstream UNSCR 1325 into NATO-led operations and missions. Currently, NATO’s focus is on gender training and deployment of gender advisors. These often awkward efforts would be less necessary if there simply were more women serving in the military and security sector in all ranks throughout the power structure. They would then naturally and competitively earn seats at the decision-making tables at all levels.
- ⁷ *Frontiero v. Richardson* 411 U.S. 677 (1973) (citing *Bradwell v. State of Illinois*, 16 Wall. 130, 141 [1873]).
- ⁸ For more detailed analysis and discussion of gender and war, see Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge: Cambridge University Press, 2001). For more detailed discussion of the arguments against women in the military, see Lorry M. Fenner, “Moving Targets: Women’s Roles in the U.S. Military in the 21st Century,” in Lorry M. Fenner and Marie E. deYoung, *Women in Combat: Civic Duty or Military Liability?* (Washington, D.C.: Georgetown University Press, 2001).
- ⁹ Quoted in Kerber, *No Constitutional Right to Be Ladies*, 286–287.

- ¹⁰ See Jeanne Holm, *Women in the Military: An Unfinished Revolution*, rev. ed. (Novato, Calif.: Presidio Press, 1992), 483; and “Military Resisting Women Top Officers, Cite the Male ‘Combat Spirit,’” *Los Angeles Times*, July 31, 1992. In April 1993, I stood next to General McPeak at a press conference, where he announced that the Air Force would remove the restrictions barring women from flying combat (fighter/bomber) aircraft and introduced three of us who would now become fighter pilots based on our performance in pilot training. He was queried about his earlier testimony and simply replied, “There is always a small chance I was wrong.” Today, the Air Force has more than ninety female active-duty, reserve, and Air National Guard combat pilots who have completed gender-blind training and certifications, flown thousands of combat missions in the Balkans, Iraq, and Afghanistan, earned hundreds of combat medals, and served as instructor pilots and commanders of combat units without issue – proving that McPeak was in fact wrong.
- ¹¹ George Washington, “Sentiments on a Peace Establishment,” a letter to Alexander Hamilton, written from Newburgh, New York, May 1, 1783; George Washington Papers, Library of Congress, 1741–1799: Series 3a Varick Transcripts, Letter Book 7, image 69, http://memory.loc.gov/cgi-bin/ampage?collId=mgw3&fileName=mgw3a/gwpage007.db&recNum=70&tempFile=./temp/~ammem_aQSS&filecode=mgw&next_filecode=mgw&itemnum=1&ndocs=100.
- ¹² For detailed analysis of the relationship between gender, civic obligations, and military service, see Kerber, *No Constitutional Right to Be Ladies*. See also Fenner and deYoung, *Women in Combat*, 54–55.
- ¹³ See 50 USC Appendix Sec. 453. The Selective Service Agency website encourages even illegal male immigrants to register for Selective Service as a potential path to future legal status; see <http://www.sss.gov/default.htm>. See also Kerber, *No Constitutional Right to Be Ladies*, 246–250.
- ¹⁴ See 8 USC Sec. 1439.
- ¹⁵ Charles Moskos, as quoted in Jessica Lee, “Draft Agency’s Number May Be Up, Some Question Need for Selective Service,” *USA Today*, August 24, 1999. See Selective Service Agency, *Annual Report to the Congress of the United States Selective Service System Fiscal Year 2009*, <http://www.sss.gov/PUBLIC.HTM#anrepcon> (accessed December 7, 2010).
- ¹⁶ Kathleen Teague’s congressional testimony from 1980 (mentioned above) represents a different tenet that somehow women as a class have a right to be exempt from this obligation. She stated that the right to be excused from the draft was a “right which every American woman has enjoyed since our country was born and wanted to know what they would get for giving up their ‘constitutional right to be treated like American ladies’”; see Kerber, *No Constitutional Right to Be Ladies*, 287. In my limited study of the U.S. Constitution, I have not been able to locate a reference to this right.
- ¹⁷ Michael Mullen, speech to the Military Leadership Diversity Commission, September 17, 2009; transcript at <http://mldc.whs.mil/index.php/activities/meeting-september09> (accessed December 10, 2010).
- ¹⁸ See Duncan Hunter National Defense Authorization Act for FY2009, Public Law 110-417, 110th Cong., 2nd sess. (2008), 596. Information on the proportion of women in the United States taken from the U.S. Census Bureau, <http://www.census.gov/popest/national/asrh/2008-nat-res.html>; figures on women in the military from Admiral Mullen’s speech to the Military Leadership Diversity Commission.
- ¹⁹ On the topic of standards and aptitude, opponents of opening ground combat positions to women focus on the physical strength requirements for ground combat and the fact that women, on average, are not as strong as men. While this is true, the argument fails to treat people as individuals. It also neglects the fact that an effective soldier is not one who possesses just brute strength, but a combination of qualities and skills, including strength, endurance, agility, intellect, aptitude, judgment, courage, restraint when required, and, more recently, cultural and language skills. In the contemporary age of the “strategic corpo-

ral” fighting a “three block war,” skills other than strength can be more significant. For more discussion of these issues, see Martha McSally, “Women in Combat: Is the Current Policy Obsolete?” *Duke Journal of Gender Law and Policy* 14 (2007).

²⁰ See Curtis Gilroy, testimony before the House Armed Services Personnel Subcommittee, *Recruitment, Retention, and End Strength*, 111th Cong., 1st sess., March 3, 2009; Associated Press, “Lower Standards Help Army Meet Recruiting Goal,” *USA Today*, October 9, 2006, http://www.usatoday.com/news/washington/2006-10-09-army-recruiting_x.htm?csp=34; and Joint Chiefs of Staff, Directorate for Manpower and Personnel (JCS/J1), *Recruiting, Retention, and End Strength Report* from October 11, 2006 (on file with author). The JCS/J1 produces this report weekly and monthly for the chairman of the Joint Chiefs of Staff.

²¹ *Frontiero v. Richardson*, 411 U.S. 677 (1973).

²² *United States v. Virginia*, 518 U.S. 515 (1996).

²³ *Ibid.* Despite this recent judicial ruling related to a state-funded military school and gender, the courts often defer to Congress and the military in cases of specific military policies touted as necessary for combat capability. For example, the courts have deferred to Congress and the military in all challenges to the male-only Selective Service registration, as discussed later in this essay.

²⁴ For example, see Martin Van Creveld, *Men, Women, and War* (London: Cassell, 2001).

²⁵ *Social cohesion* refers to the nature and quality of the emotional bonds of friendship, liking, caring, and closeness among group members. A group is socially cohesive to the extent that its members like each other, prefer to spend their social time together, enjoy each other’s company, and feel emotionally close to one another. *Task cohesion* refers to members’ shared commitment to achieving a goal that requires the collective efforts of the group. A group with high task cohesion is comprised of members who share a common goal and who are motivated to coordinate their efforts as a team to achieve that goal. See Laura L. Miller and John Allen Williams, “Do Military Policies on Gender and Sexuality Undermine Combat Effectiveness?” in *Soldiers and Civilians: The Civil-Military Gap and American National Security*, ed. Peter D. Feaver and Richard H. Kohn (Cambridge, Mass.: MIT Press, 2001); and Admiral Mullen’s speech to the Military Leadership Diversity Commission.

²⁶ *Log Cabin Republicans v. United States*, Case No. CV 04-08425-VAP (Ex).

²⁷ See 10 USC 654 (15). For the quote from President Obama, see <http://www.whitehouse.gov/the-press-office/2010/12/22/remarks-president-and-vice-president-signing-dont-ask-dont-tell-repeal-a>.

²⁸ For the most detailed book on women in the U.S. military, see Holm, *Women in the Military*. Unless otherwise cited, all historical information presented in this section was derived from Holm’s book. See also Darlene Iskra, *Women in the United States Armed Forces: A Guide to the Issues* (Santa Barbara, Calif.: Praeger, 2010).

²⁹ Kerber, *No Constitutional Right to Be Ladies*, 12.

³⁰ Some also argued that women’s obligation to the family puts them at high risk of death during childbirth; therefore, all citizens risked their lives in some way for the perpetuation of the nation, and accordingly, women should gain the right to vote. See *ibid.*, 244–245.

³¹ In Russia’s case, national survival and defense took precedence over gender norms in World War II. After the German invasion in 1942, women fought in startling numbers in all capacities in the air and on the ground. For example, Russia trained three regiments of pilots: the 586th regiment of fighter pilots, the 587th bomber pilots, and the famous 588th night bombers, nicknamed the “night witches” due to their effectiveness in hitting their targets. According to Soviet records, these women flew “a combined total of more than 30,000 combat sorties, produced at least 29 Heroes of the Soviet Union (of the 33 female aviators and 93 total women who received that medal) and included in their ranks at least three fighter aces.” Russian women also fought extensively in ground combat. See Reina Pennington,

- “Do Not Speak of the Services You Rendered’: Women Veterans of Aviation in the Soviet Union,” in *A Soldier and A Woman: Sexual Integration in the Military*, ed. Gerald J. DeGroot and Corinna Peniston-Bird (New York: Longman, 2000), 152–153. Martha E. McSally
- ³² D’Ann Campbell, “Women in Combat: The World War Two Experience in the United States, Great Britain, Germany, and the Soviet Union,” *Journal of Military History* 57 (2) (1993): 305.
- ³³ Kerber, *No Constitutional Right to Be Ladies*, 265.
- ³⁴ *Seaman Anna Flores v. Secretary of Defense*, 355 F. Supp. 93 (N.D. Fla. 1973).
- ³⁵ *Owens v. Brown*, 455 F. Supp. 291, 306 (1978).
- ³⁶ Kerber, *No Constitutional Right to Be Ladies*, 278.
- ³⁷ *Rostker v. Goldberg*, 453 U.S. 57 (1981).
- ³⁸ Military Selective Service Act of 1948, sec. 451, 62 Stat. 604 (80th Cong., 2nd sess. 1948).
- ³⁹ GAO, *Gender Issues*. Only approximately one hundred thousand of the 1.4 million positions in the active-duty military are closed due to classification as “direct combat” roles.
- ⁴⁰ See Ellen Oberwetter, “Rethinking Military Deference: Male-Only Draft Registration and the Intersection of Military Need with Civilian Rights,” *Texas Law Review* 78 (1) (November 1, 1999): 191–192, 195, n.129.
- ⁴¹ Holm, *Women in the Military*, 433.
- ⁴² The policy also provides guidance to the military services on the establishment of their specific regulations on the matter: “These policies and regulations may include restrictions on the assignment of women: where the Service Secretary attests that the costs of appropriate berthing and privacy arrangements are prohibitive; where units and positions are doctrinally required to physically collocate and remain with direct ground combat units that are closed to women; where units are engaged in long range reconnaissance operations and Special Operations Forces missions; and where job related physical requirements would necessarily exclude the vast majority of women service members”; see “Direct Ground Combat Definition and Assignment Rule.”
- ⁴³ Goldstein, *War and Gender*, 195.
- ⁴⁴ Steven Lee Meyers, “Women Transform Life on U.S. Military Bases; Women Transform Combat: A Preserve of Men Gives Way, and Without Worst Fears Materializing,” *International Herald Tribune*, August 18, 2009.
- ⁴⁵ National Defense Authorization Act for Fiscal Year 2006, Public Law No. 109-163, 119 Stat. 336 (2006).
- ⁴⁶ See <http://www.whitehouse.gov/the-press-office/2010/12/22/remarks-president-and-vice-president-signing-dont-ask-dont-tell-repeal-a>.
- ⁴⁷ Lance Corporal Stefanie C. Pupkieicz, “Counter, Human Intel MOS Opens to Female Marines,” *United States Marine Corps News*, September 12, 2008; Jennifer Grogan, “Female Future Submariners Say They’re Eager to Get the Job Done,” *The Day* (New London, Conn.), May 7, 2010.
- ⁴⁸ GAO, *Gender Issues*.
- ⁴⁹ RAND, *Assessing the Assignment Policy for Army Women* (Santa Monica, Calif.: RAND Corporation, 2007).
- ⁵⁰ Lieutenant Colonel Paul Yingling, email message to author, December 6, 2010. For a compilation of articles on the issue of women in combat and how the policies are employed in the field from the perspective of contemporary Army officers, see Michele M. Putko and Douglas V. Johnson II, eds., *Women in Combat Compendium* (Carlisle, Penn.: Strategic Studies Institute, U.S. Army War College, 2008), <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub830.pdf>.

⁵¹ See Ann Scott Tyson, “Woman Gains Silver Star – And Removal from Combat,” *The Washington Post*, May 1, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/30/AR2008043003415.html> (accessed September 23, 2010); Meg McLagan and Daria Sommers, “The Combat Ban and How It Negatively Affects Women Veterans,” <http://www.pbs.org/pov/regardingwar/conversations/women-and-war/the-combat-ban-and-how-it-negatively-affects-women-veterans.php>.

⁵² RAND, *Assessing the Assignment Policy for Army Women*, 63 – 66, 68.

⁵³ There are some who believe that the DOD and Army would be open to doing away with restrictions on women in order to increase combat efficiency and flexibility but are concerned that sending notification to Congress to repeal restrictions could spark new efforts like Representatives Hunter and McHugh’s to further limit women. (McHugh is now Secretary of the Army, so he would not be likely to pursue such a tactic.) Recruitment and retention have improved since 2005 (most likely due to the economic crisis), and women are being employed in combat with no backlash; thus, the status quo seems the road of least resistance. In October 2010, Secretary of Defense Robert Gates stated that he foresees a day when women will be admitted into special operations, speaking as if he were not the one who could make that decision now: the prohibition is his policy.

⁵⁴ National Defense Authorization Act for Fiscal Year 2011, HR 5136. See also Dena Bunis, “Sanchez: Let Women into Combat: Current Rules Limit Advancement in the Military Ranks, Lawmaker Says,” *Orange County Register*, May 20, 2010.

⁵⁵ Joint Explanatory Statement of the Committees of Armed Services of the U.S. Senate and House of Representatives on HR 6523, Ike Skelton National Defense Authorization Act for Fiscal Year 2011, <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:2:./temp/~bdPRsE:./home/LegislativeData.php?n=BSS;c=1111>. April 15 has now come and gone, with no sign of the requested report.

⁵⁶ Military Leadership Diversity Commission, “From Representation to Inclusion, Diversity Leadership for the 21st Century,” March 15, 2011, <http://mldc.whs.mil/index.php/final-report>.

⁵⁷ In my view, this is because women’s groups are not united on this issue, and radical feminists strongly object to women serving in combat or registering for the draft. While some groups or politicians have taken a position that the ground combat exclusion should be repealed, they often include the caveat that women would be placed in combat positions only if they qualified and *desired* to do so. Critics then argue that even in a volunteer force where an individual can enlist with a guarantee of a specialty, once a man takes an oath to enlist in the Army or Marines, he has the potential of being ordered to a combat arms job if required, regardless of his desires. Thus, if women want equal opportunity, they need to be subject to the same risk. Should the ground combat exclusion policy be rescinded, then women should also be subject to Selective Service registration and the potential for individual women to be drafted into ground combat if required. This final clash between full integration of women in the military and gender norms remains a barrier for any change from the status quo.

⁵⁸ Democratic Presidential Debate, July 23, 2007; transcript at <http://www.cnnstudentnews.cnn.com/TRANSCRIPTS/0707/23/se.01.html>; Jerome L. Sherman, “Candidates Differ on Female Draft,” *Pittsburgh Post-Gazette*, October 13, 2008, <http://www.post-gazette.com/pg/08287/919582-470.stm?cmpid=elections.xml>.

⁵⁹ In 1998, the GAO studied the requirements to register women for Selective Service. It concluded that the MSSA would naturally have to be amended to direct women to register, which at that time would have increased the number of personnel in the registry from 13 million males to 27.4 million citizens; see GAO, *Gender Issues: Changes would be Needed to Expand Selective Service Registration to Women*, GAO/NSIAD-98-199 (Washington, D.C.: GAO, 1998), <http://www.gao.gov/archive/1998/>.