



Center For Military Readiness 



Promoting high standards and sound priorities for our military men and women.

For Immediate Release

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Amicus Brief asks Supreme Court to Let Stand Fifth Circuit Decision Upholding Male-Only Draft Registration

The **Center for Military Readiness**, along with two additional public policy organizations, six retired general officers, and an expert on physical fitness standards, have filed an **amicus brief** with the **Supreme Court of the United States**, asking the **SCOTUS** to deny a petition seeking to overrule a 1981 case that upheld Congress' decision to limit draft registration to men.

The “**friend of the court**” brief, submitted on Friday, March 12, responded to a petition for a *writ of certiorari*, which the **National Coalition for Men (NCFM)** and two individual plaintiffs filed after the government successfully appealed a lower court decision finding that male-only Selective Service registration was unconstitutional.

A federal district court in Texas [ruled in favor](#) of the NCFM plaintiffs in February 2019, but the **Court of Appeals for the Fifth Circuit** overturned that ruling in August 2020.

In the opinion of the Fifth Circuit Court, the 1981 *Rostker v. Goldberg* landmark Supreme Court decision, which upheld the right of **Congress** to include only men in Selective Service registration requirements, still prevailed.

CMR and the other *amici* on the brief have asked the Supreme Court to deny the NCFM petition for *certiorari*. Denying the petition would allow the Fifth Circuit Court decision to stand, leave *Rostker* as the controlling precedent, and keep the authority to make decisions about **whether to have a draft and who must register** with Congress, where it belongs under **Article 1, Section 8 of the U.S. Constitution**.

The CMR *amicus* brief argues that because the U.S. Constitution assigns decision making power on matters involving the military to Congress, not the courts, SCOTUS should not get involved.

The CMR brief also counters Plaintiffs' claim that repealing limitations on the assignment of women to combat billets changed the "fundamental premise" of *Rostker v. Goldberg* and warrants overruling it:

"Petitioners misperceive *Rostker*'s fundamental premise, ignore the role, authority, and responsibility of Congress in raising and supporting armies, fail to acknowledge the physiological differences between males and females that bear upon the question of whether men and women are **similarly situated** with regard to filling the combat replacement stream during a national mobilization, and seek to short-circuit the ongoing legislative process, which is considering whether to maintain the current selective service system, abandon it altogether, or create a different paradigm" (CMR brief at p. 4, emphasis added)

The *amicus* brief recognizes that *some* women have proved themselves capable of meeting the high standards that combat demands and previous policies regarding women in combat billets have been repealed, but "**the physiological differences between man and women have not been repealed.**" (CMR brief at p. 16, emphasis added).

The *amicus* brief cites several key points of information resulting from a thorough three-year study that the **Marine Corps** conducted from 2012 to 2015. During nine months of field exercises simulating combat requirements, professionally monitored by the **University of Pittsburgh**, the Marine Corps study objectively compared the performance of all-male and mixed-gender units.

A September 2015 [Summary](#) of voluminous research findings (included as Appendix A in the *amicus* brief) reported, among other things: "All-male squads, teams and crews demonstrated higher performance levels on **69%** of tasks evaluated (**93 of 134**) as compared to gender-integrated squads, teams, and crews." (CMR brief at p. 17, emphasis added)

The CMR brief maintains that the purpose of a military draft, which could be reinstated during a time of catastrophic national emergency, would be to provide a ready pool of combat replacements. Accordingly, "... drafting large numbers of women who cannot meet [combat] standards will **hinder** the process of providing timely combat replacements." (CMR brief at p. 15, emphasis added)

Amici joining the brief with the **Center for Military Readiness** include **Eagle Forum** and **Concerned Women for America**, two respected and effective national organizations that advocate for women and families, former **Vice Chief of Naval Operations Adm. (Ret.) Jerome Johnson**, **Lt. Gen. (Ret.) Benjamin R. Mixon**, who served as Commander of the **U.S. Army Command in the Pacific** and the **25th Infantry Division**, **Lt. Gen. (Ret.) William G. Boykin**, former **Commander** and an original member of the Army's elite **Delta Force**, **Maj. Gen. (Ret.) William K. Suter**, who served as **Assistant Judge Advocate General of the Army** and the **19th Clerk of the Supreme Court**, **Rear Adm.**

(Ret.) **Hugh P. Scott**, a physician and expert in medical physical standards who served as **Director, Medical Plans and Policy, Office of the Chief of Naval Operations**, and **Paul O. Davis, Ph.D.**, an expert in physical fitness and employment standards in the public safety sector.

As stated in the CMR *amicus* brief, questions about Selective Service are currently before Congress. The **National Commission on Military, National and Public Service** completed its work last year, and the **Senate Armed Services Committee** conducted a hearing on the Commission's **Final Report** on March 11.

The Center for Military Readiness filed a **Statement for the Record** of that hearing, opposing the National Commission's key recommendations regarding the purpose and eligibility requirements of Selective Service:

Statement for the Record Submitted by Elaine Donnelly, Pres., Center for Military Readiness

Donnelly summarized the legal debate: "The bottom line is that the Constitution assigns these policy decisions to Congress, not the courts. The American people can directly contact and influence their elected representatives as they consider who, when, if, and/or how to conscript civilians to become soldiers. Federal courts should not preclude those options by usurping the constitutional authority of Congress to make policy for our military."

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*The Center for Military Readiness is an independent, non-partisan, public policy organization that reports on and analyses military social issues. CMR President **Elaine Donnelly**, who founded CMR in 1993, can be reached at 734/464-9430. More information is available on the organization's website, www.cmrlink.org.*