**Statement for the Record** 

Hearing of Senate Armed Services Committee SD G-50, Dirksen Office Building Final Recommendations and Report of the National Commission on Military, National, and Public Service



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#### Introduction and Overview

The Center for Military Readiness (CMR) appreciates the opportunity to address questions raised by recommendations of the National Commission on Military, National, & Public Service.

I am president of CMR, an independent 501(C)(3) public policy organization founded in 1993, which reports on and analyzes military/social issues. I was pleased to address the National Commission in November 2018 and appreciate the commissioners' efforts.

This Committee and the full **Congress** have the responsibility to answer several important questions. For example: Should the Congress act to discontinue **Selective Service** registration of young men? Should the **Military Selective Service Act (MSSA)** require young women to register on an equal basis? And should the government impose mandatory "national service" requirements on all Americans?

Congress should make decisions on these and related matters by applying sound priorities. Equal opportunity considerations are important, but national security and the needs of the military must come first.

# What is the Purpose of Selective Service Registration?

The mission of Selective Service is to quickly locate, train, and mobilize military personnel to fight in what former Defense Secretary **Chuck Hagel** called a *"catastrophe yet unanticipated.*...

As the Supreme Court recognized in the landmark 1981 case *Rostker v. Goldberg*, the purpose of Selective Service is not to induct people for support or administration jobs. It is to find and train *"combat replacements"* for casualties fallen in battle.<sup>2</sup>

In the **Army** and **Marine Corps**, the largest communities are **infantry**. It is therefore important to consider available research and up-to-date reports on the practicality of including women in

<sup>&</sup>lt;sup>1</sup> Selective Service System <u>PowerPoint</u>, slide 9, <u>Selective-Service-System-Briefing-1.pptx (live.com)</u> (Last visited Mar. 10, 2021)

<sup>&</sup>lt;sup>2</sup> <u>Report on the Purpose and Utility of a Registration System for Military Selective Service</u>, Office of the Under Secretary of Defense for Personnel & Readiness, Mar. 17, 2017, p. 10, emphasis added, citations omitted. "*The military selective service system guarantees the certain and timely fulfillment of military manpower requirements in a national emergency*... Since the SSS resumed registration in 1980, each Administration has preserved the agency and its programs, with the realization that it is the only proven, time-tested mechanism by which to expand the *AVF in the event of a national emergency*." Also see Rostker v. Goldberg, 453 U.S. 57, 75. 1981: "Congress determined that any future draft, which would be facilitated by the registration scheme, would be characterized by a need for combat troops."

combat arms, including infantry units that would be most in need of speedy replacements if a catastrophic national emergency made it necessary to reinstitute a draft.

No one questions the courage of women serving in harm's way in dangerous combat zones. Their service in the **All-Volunteer Force** inspires pride and gratitude. The experiences of women in contingent or incident-related combat, however, have not been the same as direct ground combat missions attacking the enemy with deliberate offensive action.

# Direct Ground Combat – What Are the Physical Requirements?

When the Obama Administration announced policy changes regarding military women in 2012, the U.S. Marine Corps initiated a three-year, comprehensive research project called the Women in Service Restrictions Review (WISRR). During the third year of that \$38 million study, the Marines established the Ground Combat Element Integrated Task Force (GCEITF), which conducted unprecedented field tests at west-coast training bases.

The realistic GCEITF tests employed gender-neutral standards organize volunteers in both gender-mixed and all-male infantry, armor, and artillery units. The **University of Pittsburgh** scientifically monitored and compared evaluations of all units as they performed simulated combat tasks in the field.

Male test participants were of average capabilities, but female participants were above-average graduates of newly opened enlisted infantry training. <sup>3</sup>

The GCEITF field exercises were designed to prove the hypothesis that men and women could perform equally well in all-male and mixed-gender units. After nine months of tests, however, empirical data disproved that hypothesis.

These are a few of the relevant findings, quoted from a summary of voluminous empirical data produced during the GCEITF: <sup>4</sup>

- In tasks resembling requirements of infantry, armor, and artillery units, all-male teams outperformed gender-mixed units in **69%** of ground combat tasks. (93 of 134)
- Gender-related physical deficiencies negatively affected gender-mixed units' speed and effectiveness in simulated battle tasks, including **marching under heavy loads**, **casualty evacuations**, and **marksmanship** while fatigued.

<sup>&</sup>lt;sup>3</sup> Brig. Gen. George W. Smith, Jr., Director, Marine Corps Force Innovation Office, <u>Memorandum for the</u> <u>Commandant, USMC Assessment of Women in Service Assignments</u>, Aug. 18, 2015, p. 4. <u>https://web.archive.org/web/20170714084334/http://cdn.sandiegouniontrib.com:80/news/documents/2015/09/24/US</u> <u>MC\_WISR\_Documents\_Not\_releasable</u>. (Last visited Mar. 10, 2021)

<sup>&</sup>lt;sup>4</sup> <u>Marine Corps Force Integration Plan – Summary, USMCSept.10fourPGSummaryWISRR.pdf (cmrlink.org)</u> uploaded by Dan Lamothe, *Washington Post*, Sept. 10, 2015: <u>Marine Corps gender integration research executive</u> <u>summary | United States Marine Corps | Military (scribd.com)</u>. (Last visited Mar. 10, 2012, pp. 3-4)

- Disadvantages in upper and lower-body strength resulted in **higher fatigue levels** among most women, and increased incidents of **overuse injuries**, such as stress fractures.
- During the GCEITF assessment, **musculoskeletal injury rates** were **roughly double** for females. (40.5% compared to 18.8% for men).
- During research at the **Infantry Training Battalion (ITB)**, enlisted females were injured at more than **six-times** the rate of their male counterparts. (**13% vs. 2%**). Most of the injuries were associated with load carrying tasks.
- Testing revealed that "[f]emales possessed 15% less [anaerobic] power than males; the female top 25<sup>th</sup> percentile overlaped with the bottom 25<sup>th</sup> percentile for males.
- In addition, the study found that males graduated from various Marine training programs at significantly higher rates than females.

The 978-page **Report** of the **Marine Corps Ground Combat Element Integrated Task Force** study, which supported the Summary points above, prompted then-Marine Corps Commandant **General Joseph Dunford** to seek an exception to policy from Secretary of the Navy **Ray Mabus** to keep certain combat assignments, such as the infantry, all-male. <sup>5</sup>

Secretary Mabus and Defense Secretary Ashton Carter disregarded General Dunford's best professional advice.

The Department of Defense and Marine Corps have refused to fully release Gen. Dunford's September 17, 2015, request for exceptions and his supporting rationale. <sup>6</sup> The Defense Department's withholding of this historic, highly relevant document, requesting exceptions to decisions that the Secretary of the Navy already had made, gives rise to legitimate questions.

*What is the Pentagon trying to hide?* Did Gen. Dunford suggest that Marines might die needlessly if men and women were treated as interchangeable in combat missions, based on false

<sup>&</sup>lt;sup>5</sup> Marine Corps Operational Test and Evaluation Activity (MCOTEA) <u>Ground Combat Element Integrated Task</u> Force Experimental Assessment Report, Aug. 15, 2015, <u>https://dod.defense.gov/Portals/1/Documents/wisr-studies/USMC%20-</u>

<sup>&</sup>lt;u>%20Line%20Of%20Effort%203%20GCEITF%20Experimental%20Assessment%20Report2.pdf</u> (*last visited* Mar. 10, 2021).

<sup>&</sup>lt;sup>6</sup> CMR obtained a redacted copy of the September 17, 2015 Dunford Memorandum, titled Memorandum to the Secretary of Navy from then-Commandant Gen. Joseph Dunford, Subject: <u>United States Marine Corps Assessment</u> of Women in Service Assignments -- Recommendations for the Secretary of the

<sup>&</sup>lt;u>Navy</u>. <u>DunfordSep172015MemoExceptionsWICRedctd.pdf (cmrlink.org)</u> (Last visited Mar. 10, 2021) Repeated FOIA requests failed to produce the full, unredacted document. **Judicial Watch** has been seeking the same document, but a judge recently denied their lawsuit. *See Judicial Watch v. DoD*, No. 19-cv-01384, (D. D.C. Jan. 27, 2021) (denying release under FOIA).

illusions of "equality?" Was Gen. Dunford primarily concerned about injuries to women, or did he foresee compromised standards that would put all Marines at greater risk?

Deliberate denial of relevant documents invites such conclusions, and worse.

# Commission Recommendations Disregarded Combat Research and Realities

The National Commission's Final Report correctly noted that women are no longer barred by either statute or military policy from serving in combat billets. In August 2015, three exemplary women made it through the Army's rugged **Ranger** training course, and more have succeeded since then.

The commission erred, however, in concluding that since female volunteers are now eligible for combat arms positions, all women should share equally in Selective Service obligations.

This simplistic argument emphasizes the accomplishments of some remarkable women who have been able to meet the high standards required to qualify for combat arms assignments, but it ignores the draft's fundamental purpose in providing large numbers of combat replacements during a national emergency.

No one is suggesting that Selective Service obligations should be imposed only on the few women who are capable of performing at levels comparable to men. Rather, conscription on an equal basis would require call-ups of great numbers of average-ability men and women, even though women would be far less likely to be combat qualified.

Calling up equal numbers of young men and women would jam the system, making it more difficult to quickly fill the combat casualty replacement stream in a time of catastrophic national emergency.

Congress has the constitutional responsibility under Article 1, Section 8 to raise armies and provide for the nation's defense. In fulfilling this responsibility, Congress cannot act on disproven assumptions and imaginations about battlefields where physical size, strength, speed, and endurance simply do not matter. These qualities do matter, and combat effectiveness depend on them.

It is also important to remember that at all times in history when our nation has been in peril, women have volunteered to serve. There is no reason to believe they would not do so again.

# Gender-Neutral Standards for Combat MOSs Do Not Work

After the administration changed policies regarding female soldiers, Army leaders confidently promised that women would qualify for physically demanding specialties such as the infantry under "gender neutral" standards identical to men. Since then, however, undeniable realities have been shattering illusions of gender equality.

In 2018, **Training & Doctrine Command (TRADOC)** announced plans for a six-event **Army Combat Fitness Test (ACFT)** to be a "gender-neutral" replacement for the longstanding **Physical Fitness Test (PFT)**. The PFT, which was relatively easy to administer and pass, had training requirements and scoring systems that allowed for significant differences in men's and women's physical capabilities. At the same time, however, leaders of the various services pushed for gender quotas of **25%**.<sup>7</sup>

Pressures to achieve demographic, percentage-based "gender diversity metrics" make it impossible to maintain "gender neutral" standards in the combat arms. The Army's difficulty in implementing the ACFT, which is widely perceived to be a fiasco, support that conclusion.

Problems first became apparent when unofficial pass/fail records of **3,206** soldiers in 11 battalions performing resulted in an **84%** failure rate among female trainees and **30%** among male trainees. <sup>8</sup>

The Army has tried to fix the ACFT without setting women up to fail, but the caisson's wheels keep falling off. Plank exercises were substituted for the more difficult "leg tuck" event, but higher failure rates persisted. Recent Army data show a **65%** failure rate for females and **10%** for males. <sup>9</sup>

The latest proposal attempts to account for biological differences by establishing "blind scoring," which would rate women in "percentile" bands without displaying individual scores. With names, photos, and other gender-identifiers omitted, a blind scoring system would compare women's percentile bands with men's rankings in separate percentile bands.

As a result, a "Top 5%" female would be considered the same as a "Top 5%" man. <sup>10</sup> In the real world, no such "equality" exists. Gender-normed or blind scores to obscure or disguise physical differences between men and women do not make sense in advanced training for the combat

<sup>&</sup>lt;sup>7</sup> Derrick Perkins, *Marine Corps Times*, <u>Mabus: 1 in 4 Marine Recruits Should be Women</u>, May 26, 2015. <u>Mabus: 1 in 4 Marine recruits should be women (marinecorpstimes.com)</u> (Last visited Mar. 10, 2021)

<sup>&</sup>lt;sup>8</sup> David Brown, ClearanceJobs: <u>Army Combat Fitness Test Fiasco! Slides ReveArmy Combat Fitness Test Fiasco!</u> <u>Slides Reveal 84% of Women Failing ACFT - ClearanceJobs</u> <u>Army Combat Fitness Test Fiasco! Slides Reveal</u> <u>84% of Women Failing ACFT - ClearanceJobsal 84% of Women Failing ACFT</u>, Oct. 5, 2015 (Last visited Mar. 10, 2021)

<sup>&</sup>lt;sup>9</sup> Letter from **Senators Kirsten Gillibrand** and **Richard Blumenthal** to leaders of the Senate and House Armed Services Committees, Oct. 20, 2020, p. 2. <u>1603297227.pdf</u>, (Last visited Mar. 10, 2021.

<sup>&</sup>lt;sup>10</sup> Kyle Rempfer, <u>Army Looking at Ways to 'Account for Biological Differences' With New Fitness Test</u>, Feb. 12, 2021. <u>Army looking at ways to 'account for biological differences' with new fitness test (armytimes.com)</u>. (Last visited Mar. 10, 2021) Also see Haley Britzky, Task & Purpose: <u>Scores for the Army's New Fitness Test May Not End Up 'Gender-Neutral' After All</u>, Feb. 11, 2021. <u>Army ACFT may not use gender-neutral scoring system</u> (taskandpurpose.com), (Last visited Mar. 10, 2021)

arms. <sup>11</sup> In fact, illusions such as this could cost lives and cause mission failure on the battlefield.

# National Commission Fails to Make Case for Co-Ed Conscription

Last year the National Commission on Military, National, and Public Service issued a Final Report recommending that "Congress amend the Military Selective Service Act (MSSA) to eliminate male-only registration and expand draft eligibility to all individuals of the applicable age cohort."

The commission's four-word rationale for this change was, "*The time is right*." <sup>12</sup> This unsupported, shallow statement, which glosses over evidence to the contrary, should not be taken seriously.

The Commission's Final Report makes 49 recommendations, but it failed to meet congressional expectations for a comprehensive study of the Selective Service issue. The Commission also failed to make a convincing case for changing the *purpose* of Selective Service, or for replacing Americans' **Presumption of Freedom** under the U.S. Constitution with a **Presumption of Service** directed by the government.

In 1980, Congress decided to reinstate Selective Service registration of young men, but after considerable discussion it did not approve **President Jimmy Carter**'s call for the inclusion of women in a possible future draft. The 6-3 landmark *Rostker v. Goldberg* Supreme Court decision (1981) recognized that Congress, not the lower district court, had the constitutional authority to impose Selective Service requirements on young men only.

The Court said that because women were not "similarly situated" in land combat units, exempting them from the draft did not violate equal protection principles. That was an easy call to make. Now that women are eligible for direct ground combat assignments, would the Supreme Court decide the issue in a different way?

No one can guarantee what a future court might do, but a formal Defense Department notice to Congress following the December 2015 decision to open all combat arms positions to women varied from previous statements on the subject: *"The Court in Rostker did not explicitly consider whether other rationales underlying the statute would be sufficient to limit the application of the MSSA to men.*<sup>13</sup>

<sup>&</sup>lt;sup>11</sup> The 1992 **Presidential Commission on the Assignment of Women in the Armed Forces**, on which I served, concluded that "gender-normed" standards to accommodate physical differences between men and women make sense in basic, pre-commissioning, or entry-level training, but not in advanced training for the combat arms.

<sup>&</sup>lt;sup>12</sup> <u>Report to Congress of the National Commission on Military, National, and Public Service</u>, p. 12 and p. 122. <u>Report to Congress of the National Commission on Military, National, and Public Service (inspire2serve.gov)</u>, (Last visited Mar. 10, 2021)

<sup>&</sup>lt;sup>13</sup> Department of Defense, <u>Detailed Legal Analysis – Selective Service</u>. <u>Women In Service Review Selective</u> Service Legal Analysis.pdf (defense.gov) (Last visited Mar. 10, 2021)

Former Campbell University Law **Prof. William A. Woodruff**, who retired as a Colonel in the U.S. Army Judge Advocate Corps and was Chief of the Litigation Division, has analyzed possible reasons why the Supreme Court could still uphold the constitutionality of women's current exemption from Selective Service registration and a possible future draft. <sup>14</sup>

Prof. Woodruff noted that the Military Selective Service Act was written to provide for the rapid induction of sufficient numbers of civilians capable of replacing casualties fighting in a major national emergency. If the draft were reinstated, some women might be able to meet minimal qualifications, but that would not be a good enough reason for determining that <u>all</u> women should be subject to Selective Service mandates. Wrote Prof. Woodruff:

"[T]he question is whether the expenditure of time, effort, and resources to cull from the thousands of women who would be drafted the few who might meet the demanding standards required of combat units, and enter the casualty replacement stream, is a wise use of time, effort, and resources during a time of national mobilization where the very survival of our nation depends upon success on the battlefield.

"Congress could reasonably, rationally, and appropriately decide that even though women who can meet the high standards of combat positions can volunteer and serve in those positions, the physiological reality is that **most women cannot meet those standards while**, **physiologically, most men can**.

"In light of that reality, Congress could decide that in a period of national mobilization, when time is of the essence, when the blood of our soldiers is being spilled on the field of battle, when the situation is so grave that we must abandon the all-volunteer principle that produced the greatest military force in the history of the world, we simply cannot afford to devote time and resources to identifying those few women who may qualify.

"This is especially true in light of the fact that those women who can qualify and who wish to serve are free to volunteer to do so. Excluding the remainder from the draft-eligible pool is an exercise in **reasoned judgment** to provide for the national defense in a time of crisis, not unlawful gender discrimination."

The argument could be made that including women in the draft pool would hinder the flexibility, efficiency, and speed necessary to respond to a national crisis.

As Prof. Woodruff explained in his analysis, if Selective Service called up women and men ages 18-26 in roughly equal numbers, the administrative burden of finding the theoretical one-in-four woman who might be qualified would make it more difficult to find better-qualified persons:

"Congress may well determine that in a time of national emergency, devoting resources to a demographic where three-fourths of the members will be unqualified hinders the ability to efficiently screen [potential draftees.]"

<sup>&</sup>lt;sup>14</sup> Prof. William A. Woodruff, <u>Women, War, and Draft Registration</u>, April 2016, 10 pages. <u>Women\_at\_War\_041116.pdf (cmrlink.org)</u> (Last visited Mar. 10, 2021)

This Committee and Congress could justifiably decide that in a future national emergency, it would not be worth it for Selective Service to seek and find a small percentage of females who might meet minimal infantry qualifications.

The substantial body of highly credible empirical findings that the Marines' three-year research projects produced, together with the Army's inability to implement gender-neutral standards in combat training, contradict the commission's conclusion that *"The time is right"* to treat women like men for purposes of Selective Service registration and a possible future draft.

### Congress Should Not Change the Purpose of Selective Service Registration

The National Commission recommended that the law should be changed to omit the need for "combat replacements" as the primary rationale for a draft. Such a change, which would authorize conscription for less than compelling reasons, would be an obvious, unwise step in the direction of mandatory national service.

Adoption of this recommendation would elevate social/political goals over the needs of the military, ultimately weakening the All-Volunteer Force instead of strengthening it.

Registration and conscription of women and mandatory national service are separate issues. They should not be bracketed as if one is needed to implement the other.

#### Congress Should Not Establish a New Bureaucracy to Enforce Mandatory National Service

Congress should not alter the purpose of Selective Service registration, making it possible to commandeer the lives of young people for less than compelling reasons. Nor should Congress support the Commission's call for a new, cabinet-level **Council on Military, National, and Public Service**, funded by Congress on a permanent basis.

Such a council would be an unprecedented, open-ended expansion of federal government power. Enactment also would amount to Congress abdicating to an executive agency its constitutional power and responsibility to raise armies.

Volunteer service is a good thing and very popular. Americans of all ages engage in volunteer activities all the time, without government encouragement or subsidies of any kind. Opportunities to help others are everywhere; we don't need a government bureaucracy to make volunteerism happen.

More importantly, there is no compelling reason why government bureaucrats should be given power to control young people's lives by directing them to spend time in non-critical government service or involvement with government-approved organizations.

Americans willingly accept some restrictions on personal liberty, such as taxes, speed limits, or even mask mandates to fight a global pandemic. These mandates only work when the clear purpose is to advance the common good.

There is no clear reason why government bureaucrats should be empowered to oversee and restrict the activities of young Americans for two years. Mandatory national service would be a dangerous violation of individual liberty in the **Home of the Brave** and the **Land of the Free**.

Volunteer service benefits communities, but there is no evidence that government mandates to "serve" others would be more beneficial to society than productive individual life choices. For example, if a young person chooses to do uncompensated work as an intern in a career field he or she is interested in, that experience often helps to advance their future plans, including formation of a family. Family formation increases personal wealth and strengthens communities in many ways that mandatory national service could not begin to duplicate.

The claim that parents need not worry about their daughters being drafted because they could opt for mandatory national service instead begs the question. *Where in the Constitution is there authorization for the federal government to commandeer the lives of young people for less than compelling reasons?* 

The National Commission's report and website suggest that all citizens should be "Inspired to Serve." There is a world of difference, however, between inspiration motivated by patriotism and coercion enforced by government.

### Patriotism is the True Inspiration to Serve

Instead of changing the purpose of Selective Service registration and the draft, Congress should reinforce education about the purpose of national defense itself. It is unfortunate that many schools have dropped American History and Civics classes, substituting courses and supplementary materials that are hyper-critical of America's history and Constitution.

**Critical Race Theory (CRT)** programs, which divide and antagonize participants with accusations of "systemic racism" and "white privilege" have become a national security issue. Young people are getting the demoralizing message that America is not worth defending.

CRT indoctrination insists that all participants agree that American institutions are racist. Nonminority participants must confess their own "white privilege," and a person's denial of racism *proves* they are racist. Toxic "anti-racist" ideology nurtures division and resentment by politicizing immutable, skin-deep characteristics. <sup>15</sup>

It is difficult to imagine a more demoralizing course of instruction for officers who will soon lead soldiers, sailors, airmen, and Marines into combat. Unresolved accusations and suspicions of racism eviscerate mutual trust and team cohesion, which are essential for survival and mission accomplishment.

Cultural influences such as this, over time, could eviscerate the foundation and strength of the All-Volunteer Force. This Committee does not have jurisdiction over civilian educational

<sup>&</sup>lt;sup>15</sup> Ben Shapiro, The Problem of 'Anti-Racism'," Townhall, July 1, 2020. <u>The Problem of 'Anti-Racism' by Ben</u> <u>Shapiro (townhall.com)</u> (Last visited Mar. 10, 2021)

programs, but it could support our troops by calling for an end to CRT indoctrination in the military's service academies, colleges, and schools worldwide.

## Alternative Suggestions to Inspire Service to America

Some have suggested that universal Selective Service registration would remind civilians of our men and women in uniform, and this might inspire thoughts about possible military service in the same way that advertising does. But there are better alternatives for achieving such goals.

For example, the **Department of Education** and state or local **Boards of Education** could encourage school counsellors to inform young people of the advantages they might derive from taking the military **ASVAB (Armed Services Vocational Aptitude Battery)** test (perhaps with different, more inviting name). High school students should know that the test is not for military recruits only; the test can help to identify personal talents, strengths, and capabilities that could be developed into a successful career.

Finally, when the next national emergency occurs, comparable to September 11 or worse, the President of the United States should specifically ask for volunteers to serve. This would be especially important if volunteers are needed in the combat arms or positions requiring special skills, such as medical personnel or specialists in cyber warfare. There is no need to impose universal conscription to find these people in a time of greatest need.

# Conclusion

Instead of rubber-stamping commission recommendations, Congress should conduct its own review of the military, legal, and social consequences of drafting young women. Your review should include a close examination of facts like those referenced above.

In particular, the Senate Armed Services Committee should seek and make public conclusions drawn by former Commandant General Dunford, which were supported by three years of empirical research. Public disclosure of that information, which some advocates don't want the public to see, would help in reaching sound conclusions.

Contemporary research findings discredit the notion that calling up equal numbers of men and women in time of national emergency would improve readiness instead of harming it. The National Commission has done its work, but Congress has the responsibility to make policies that are rooted in reality, not illusions about gender equality.

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The Center for Military Readiness is an independent public policy organization that reports on and analyzes military/social issues. More information is available on CMR's website, <u>www.cmrlink.org</u>.