

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017
REPORT [TO ACCOMPANY S. 2943]**

MAY 18, 2016.—Ordered to be printed

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13. MOTION: Motion to strike a provision to require women to register for the selective service beginning in January 1, 2018 and to prohibit court jurisdiction of claims regarding class of persons with a duty to register. **VOTE:** Failed by roll call vote 7–19.

In Favor: Senators Inhofe, Sessions, Wicker, Cotton, Rounds, Lee, and Cruz

Opposed: Senators McCain, Ayotte, Fischer, Ernst, Tillis, Sullivan, Graham, Reed, Nelson, McCaskill, Manchin, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, and Heinrich.

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MINORITY VIEWS OF MR. LEE AND MR. CRUZ

The 2017 National Defense Authorization Act passed by the Senate Armed Services Committee entails a broad range of reforms to the structure of Department of Defense, the Department's acquisitions process, and the military healthcare system. Chairman McCain, Ranking Member Reed, and the members of this committee should be commended for the thorough analysis of these issues that was undertaken over the past year, resulting in a determination that multiple reform efforts were required in order to preserve the military's technological and manpower advantages over potential adversaries. We believe that these concepts, which were written and debated in an embargoed process, should be carefully reviewed with military leaders and service organizations before enactment, to ensure that the implementation of each reform occurs without causing undue harm to the service members or their families.

However, we in good conscience cannot support the legislation passed by the committee due to the inclusion of language requiring women to register for Military Selective Service, and we have concerns regarding the process by which this issue has been handled by the committee. The Secretary of Defense's decision in December, 2015, to open all Military Occupational Specialties (MOS) to war fighters regardless of gender, will fundamentally alter the structure of combat forces. The Secretary has assured Congress that his policy change will improve the combat effectiveness of the military in the long-term and that each military service will uphold their

rigorous physical standards across all combat MOSs. In making this decision however, the Secretary of Defense did not undertake an exhaustive study of secondary consequences as Congress had desired, including any impact on the Military Selective Service Act (MSSA).

In *Rostker vs. Goldberg* (1981), the Supreme Court determined that requiring only men to register for Selective Service was not a violation of the Constitution, in part, because the Department of Defense placed restrictions on women serving in combat occupations. The Secretary's reversal of this policy in 2015 has arguably put the constitutionality of the MSSA back into question. This legal issue can be adjudicated in several ways: Congress could act to amend the MSSA in order to include both men and women, Congress could act to repeal the MSSA all together, or Congress could debate the matter and leave the MSSA unaltered. Additionally, the courts could adjudicate the constitutionality of the MSSA, striking it, remanding it for changes, or reinforcing the current policy.

The decision to compel women into possible combat service through the Selective Service is a different issue entirely than allowing women to voluntarily compete for an assignment in a combat MOS. We strongly believe that it is in the best interests of our national security and American society for this choice to be made by Congress, after an extensive review of the Selective Service system and military personnel requirements. In light of the fact that the decision whether or not to require women to register for the draft will in some way impact virtually every family in the United States, we further contend that the issue must be debated and adjudicated in the full and open view of the American public, not in a closed session of the Committee. On these grounds, we respectfully oppose the legislation that was produced by the Committee and believe that this issue demands open and transparent debate on the floor of the Senate.

MIKE LEE AND TED CRUZ.