



July 5, 2016

RE: **Vote “YES” on DeFazio-Chaffetz-Coffman Amendments #46 and #47 to H.R. 5485**, the FY17 Financial Services and General Government Appropriations Bill to Defund the Selective Service System.

Vote “NO” on Davidson Amendment #104 to H.R. 5485, the FY17 Financial Services and General Government Appropriations Bill Which Would Prevent Women from Registering with the Selective Service System.

Dear Representative:

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On behalf of the American Civil Liberties Union, we urge you to support the DeFazio-Chaffetz-Coffman amendments (#46 and #47) to the FY17 Financial Services and General Government (FSGG) appropriations bill that defund the Military Selective Service Agency.

Additionally, if Selective Service registration continues, we urge you to oppose Davidson amendment #104 to the FSGG appropriations bill which would prohibit the use of funds to change the Selective Service System registration requirements, effectively preventing women from being required to register for the draft.

Congress Should Repeal the Military Selective Service Act

Involuntary military conscription is a violation of civil liberties and constitutional guarantees, including the right to freedom of association, the right to be free from involuntary servitude, and the right to privacy. The present draft registration law, as well as any resumption of actual induction into the armed services by way of a draft, violates fundamental civil liberties, in the absence of an extreme national emergency. Coercing the American people into defending their country has no place in a free and democratic society.

Because Congress should dismantle the military draft registration system, we urge you to support the DeFazio-Chaffetz-Coffman amendments (#46 and #47) to defund the Selective Service System.

Until the Military Selective Service Act is Repealed, Women Should Be Required to Register

Our opposition to the Selective Service System does not diminish our objection to inequities within the draft registration system. Specifically, the wholesale exclusion of women from conscription and registration requirements reflects discriminatory and paternalistic gender stereotypes about women’s proper role,¹ constitutes invidious gender-based discrimination, fails to acknowledge women’s long service in our nation’s armed forces, and ignores the recent Department of Defense decision to open all combat positions and units to women.

¹ Court decisions sustaining the all-male registration requirement confirm this interpretation. *See, e.g., United States v. Cook*, 311 F. Supp. 618, 621-22 (W.D. Pa. 1970), quoting *United States v. St. Clair*, 291 F. Supp. 122 (S.D.N.Y. 1968) (“[C]ongress made a legislative judgment that men should be subject to involuntary induction but that women, presumably because they are “still regarded as the center of home and family life,” should not. . . . In providing for involuntary service for men and voluntary service for women, Congress followed the teachings of history that if a nation is to survive, men must provide the first line of defense while women keep the home fires burning.”).

The ACLU has long fought, in the courts and in Congress, to end discriminatory restrictions on women's participation in the military.² More than 35 years ago, in *Rostker v. Goldberg*, 453 U.S. 57 (1981), we challenged the constitutionality of a draft registration law that excluded women from its requirements.³ Then, in 2012, in *Hegar v. Panetta*, No. 3:12-CV-06005 (N.D. Cal.),⁴ we challenged the Department of Defense policy and practice of categorically excluding all servicewomen from assignments to units whose primary purpose is to engage in direct ground combat. We argued that the policy and practice were based on outdated stereotypes of women, ignored the realities of the modern military and battlefield conditions, and failed to acknowledge the contributions of women who had been exposed to hostile enemy action, including the many who have died, particularly over the last 15 years in the wars in Iraq and Afghanistan.⁵

In 2013, we joined the celebrations when the Department of Defense decided to repeal the direct ground combat and assignment rule and again, in 2015, when Secretary of Defense Ash Carter announced that the Services and Special Operations Command must open all units and positions to women, without exception. The underlying principle behind repeal of the combat exclusion rule was that no individual who wants to serve her country should be forbidden from competing for or serving in any military capacity because of gender. Instead, every soldier, sailor, airman and Marine must be judged on individual merit, ability, and performance. Merit-based military assignments strengthen and enhance our nation's military readiness and effectiveness.

Given the demise of the combat exclusion policy and the reality of women's service in combat roles, requiring women to register for the draft is an appropriate and necessary government response. This view has bipartisan support within Congress and is supported by top military leaders in our armed forces.⁶


Davidson amendment #104 attempts to prevent women from registering for the draft. We urge you to oppose it because it is premised on anachronistic ideas about women's role in society and in the armed forces. Women have served in our military, with honor and distinction, for decades and, more recently, have been serving in combat in the air, sea, and on the ground. Indeed, it is this record of achievement by women across the forces that led the Department of Defense to lift the combat exclusion policy. There is no doubt that if a military draft should ever be reinstated, women will be able to stand alongside men to meet our nation's needs. Thus, there is no reason to exclude women from any registration requirement imposed on men. We urge you to vote "NO" on the Davidson amendment.

Please contact Vania Leveille, Senior Legislative Counsel, at vleveille@aclu.org or 202-715-0806 with any questions.

Sincerely,



Karin Johanson
Director



Vania Leveille
Senior Legislative Counsel

² In the 1973 Supreme Court case, *Frontiero v. Richardson*, 411 U.S. 677 (1973), future Justice Ruth Bader Ginsburg represented the ACLU in arguing, successfully, that servicewomen should receive certain family benefits under the same terms as servicemen. The ACLU also challenged the exclusion of female customs service employees from working aboard Navy ships, *Beeman v. Middendorf*, 425 F. Supp. 713 (D.D.C. 1977), and later won a ruling that overturned the statutory prohibition against Navy women serving onboard seagoing ships. *Owens v. Brown*, 455 F. Supp. 291 (D.D.C. 1978). For additional information on the ACLU's work to end discrimination in the armed forces, see ACLU's WORK TO END DISCRIMINATION IN THE ARMED FORCES (Apr. 2013), available at https://www.aclu.org/files/assets/aclu_military_fact_sheet_april_2013_website.pdf.

³ In *Rostker*, the Court upheld the exclusion of women as consistent with equal protection because it concluded that Congress intended the registration system to be used to prepare for a draft of combat troops. The justices reasoned that because women were excluded from serving in combat, they were not similarly situated to men and therefore did not have to register.

⁴ The case is still pending in the Northern District of California.

⁵ See also *Hegar, et. al. v. Panetta – Plaintiffs*, ACLU, <https://www.aclu.org/hegar-et-al-v-panetta-plaintiffs?redirect=womens-rights/hegar-et-al-v-panetta-plaintiffs> (last visited June 6, 2016).

⁶ Army Chief of Staff Gen. Mark Milley and Marine Corps Commandant Gen. Robert B. Neller testified before the Senate Armed Services Committee that women should be required to register for future military drafts. See Dan Lamothe, *Army and Marine Corps chiefs: It's time for women to register for the draft*, WASH. POST, Feb. 2, 2016, available at <https://www.washingtonpost.com/news/checkpoint/wp/2016/02/02/army-and-marine-corps-chiefs-its-time-for-women-to-register-for-the-draft>.