



The ACLU's Work to End Discrimination in the Armed Forces

The ACLU champions the right of qualified women to serve in combat.

For decades, the ACLU has worked in the courts and in Congress to end the combat exclusion policies that prevent women from serving alongside their fellow servicemen. In November 2012, the ACLU, the ACLU of Northern California, and the law firm Munger, Tolles & Olson LLP filed a lawsuit, *Hegar, et al. v. Panetta*, on behalf of four women and the Service Women's Action Network (SWAN), challenging the Defense Department's longstanding policy barring women from thousands of ground combat positions, known as the "combat exclusion policy."

The four service members have all completed tours in Iraq or Afghanistan, where they served in combat or led female troops who went on missions with combat infantrymen. Two of the plaintiffs were awarded the Purple Heart after being wounded in combat during their deployments. One earned a Distinguished Flying Cross with a Valor Device for extraordinary achievement and heroism while engaging in direct ground fire with the enemy, after being wounded when her helicopter was shot down over Afghanistan. However, their careers and opportunities have been limited by a policy that does not grant them the same recognition for their service as their male counterparts. The combat exclusion policy also makes it harder for them to do their jobs.

On January 23, 2013, Secretary Leon Panetta announced that the Department of Defense (DoD) will lift the ban on women serving in combat and he rescinded the combat exclusion policy. The ACLU welcomed the news with cautious optimism. Currently, thousands of positions, as well as career fields and schools, remain closed to military women. The change in policy should be implemented fairly and quickly so that servicewomen can compete to serve in the same units, schools, and specialties as their male counterparts.

The ACLU successfully challenged military recruitment standards and military academy admissions policies that discriminated against women.

Before 1979, the U.S. Army required that women, unlike men, have a high school diploma to enlist, and that women attain a higher "mental ability" score. The ACLU filed a lawsuit, and the Army decided to equalize the requirements. Then, in 1995, the ACLU brought a successful challenge to a state military college (the Citadel) policy of excluding women.

The ACLU fought for servicewomen to receive the same benefits as men.

In the 1973 Supreme Court case, *Frontiero v. Richardson*, future Justice Ruth Bader Ginsburg represented the ACLU and argued

that servicewomen should receive the same military benefits as servicemen. At that time, servicemen could claim their wives as dependents and receive benefits automatically, while servicewomen had to prove that their husbands were dependent on them for more than half of their support. The Court ruled that military benefits given to service members' families cannot be given out differently because of sex. In a landmark ruling, the Court held that classifications based on sex are inherently suspect, because of our Nation's "long and unfortunate history of sex discrimination," and must therefore be subjected to close judicial scrutiny.

The ACLU successfully defended the rights of pregnant servicewomen.

As early as 1972, then-ACLU lawyer (and now Supreme Court Justice) Ruth Bader Ginsburg argued in a brief to the Supreme Court that the mandatory discharge of a pregnant officer in the Air Force constituted unlawful sex discrimination. While the Supreme Court never ruled in the case because the Air Force granted the officer a last-minute waiver, the ACLU continued to tackle the issue. A few years later, the ACLU successfully challenged a Marine Corps regulation that required automatic discharge of pregnant Marines.

And thanks to the ACLU's efforts in 2009, women in the New York National Guard serving on a state

active duty task force are no longer required to take mandatory pregnancy tests or face automatic dismissal if they become pregnant. The New York National Guard's discriminatory policy also required women serving on active duty to periodically sign a form agreeing that becoming pregnant would end their assignments and cancel all associated health benefits, while male National Guard soldiers on state active duty whose spouses became pregnant were not fired and their families retained health benefits.

The ACLU holds the government accountable to servicewomen who are victims of sexual assault, sexual harassment, and domestic violence.

In December 2010, the ACLU and SWAN filed a federal lawsuit against DoD and the Department of Veterans Affairs (VA) for their failure to respond to Freedom of Information Act requests seeking records documenting incidents of sexual assault, sexual harassment, and domestic violence in the military and how the government addresses this violence. The goal of the lawsuit is to "obtain the release of records on a matter of public concern, namely, the prevalence of military sexual trauma (MST) within the armed services, the policies of DoD and the VA regarding MST and other related disabilities, and the nature of each agency's response to MST."

The ACLU advocated for servicewomen to have access to emergency contraception.

In 2006, the ACLU joined a broad coalition of women in the military, medical professionals, and advocates for women's health and rights urging members of Congress to support an amendment to the National Defense Authorization Act that would ensure that emergency contraception (EC) was available by prescription at all military health facilities. In 2010, DoD instituted a policy requiring that EC be available at all military facilities.

The ACLU worked to repeal bans on abortion access and ensure that, at minimum, servicewomen don't have less access to care than civilian women.

The ACLU was a leader in supporting the Shaheen Amendment to the National Defense Authorization Act (NDAA) for FY13, which provides servicewomen and military dependents who are survivors of rape and incest the same abortion coverage provided to other women enrolled in federal healthcare. Previously, servicewomen and members of military families seeking an abortion following rape or incest were denied insurance coverage for their care. The Shaheen Amendment was met with bi-partisan support in the House and Senate and was included in the final version of the bill that was signed into law on January 2, 2013. The amendment strikes down a decades-old policy that discriminated against servicewomen and military families.

The ACLU fought to end discrimination against lesbian, gay and bisexual service members.

The ACLU brought its first challenge to an anti-gay military policy in 1970 and continues to advocate against discriminatory military policies affecting members of the LGBT community.

In 1997, the ACLU helped secure a hard-won – but all too brief – victory for LGBT service members in the case of *Able v. United States*, in which a federal district court in New York agreed with the ACLU's arguments that "Don't Ask, Don't Tell" violated the Equal Protection Clause of the Constitution. Unfortunately, an appeals court reversed the decision. In 2010, the ACLU successfully argued in federal court that the U.S. Air Force should reinstate Major Margaret Witt, a decorated U.S. Air Force flight nurse, who had been dismissed in 2006 under the military's "Don't Ask,

Don't Tell" policy because she is a lesbian.

In 2010, the ACLU joined forces with other LGBT and civil rights organizations to urge Congress to repeal "Don't Ask, Don't Tell." The ACLU submitted statements to the House and Senate Armed Services Committees, and also advocated for passage of the Don't Ask, Don't Tell Repeal Act of 2010, which was eventually signed into law by President Obama. On September 20, 2011, "Don't Ask, Don't Tell" officially ended, opening the door to military service for all qualified individuals regardless of their sexual orientation.

In October 2011, the ACLU filed a class action lawsuit challenging a discriminatory internal DoD policy that cut the separation pay in half for honorably discharged service members who was discharged under "Don't Ask, Don't Tell." In January 2013, the ACLU announced that had won a settlement in which DoD agreed to pay these honorably discharged service members 100% of the separation pay they would have received in the absence of the discriminatory policy.