



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

Women in the Services Reviews

**Submitted to the Subcommittee on Military Personnel of
the U.S. House Committee on Armed Services**

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On behalf of the American Civil Liberties Union (“ACLU”) and its more than half million members and activists and 53 affiliates nationwide, we thank the members of the House Armed Services Subcommittee on Military Personnel for the opportunity to submit a statement for the hearing on women in our armed forces.

For decades, the ACLU has worked to end discriminatory gender-based policies in our military. For example, we have successfully challenged military recruitment standards and military academy admission policies that discriminated against women; we have fought for servicewomen to receive the same military benefits as men;¹ and we have defended the rights of servicewomen who were subject to mandatory discharges because of pregnancy².

Additionally, since the 1970s, the ACLU has brought legal challenges to policies that prevented servicewomen from competing for positions within the military, and has advocated in Congress for their repeal. Most recently, in November 2012, the ACLU filed a lawsuit, *Hegar, et al. v. Panetta*, challenging the ground combat exclusion policy on behalf of the Service Women’s Action Network and four women who served in Iraq and/or Afghanistan.

The ACLU welcomed the announcement, only a few months after this lawsuit was filed, by then-Secretary of Defense Leon Panetta and the Chairman of the Joint Chiefs of Staff, General Martin Dempsey, that the Department of Defense would at long last eliminate the discriminatory, unnecessary, and outdated 1994 Direct Ground Combat Definition and Assignment Rule. Attention must now turn to implementation of this change in policy and to the full integration of servicewomen into previously closed career fields, positions and schools. The implementation plans submitted recently by the Army, Air Force, Navy, Marine Corps and U.S. Special Operation Command (SOCOM) represent a significant step forward, but important questions remain.

A. The Integration of Women into Combat Units is the Right Policy and Will Bring Military Policy and Practice into Line with the Reality on the Battlefield.

The exclusion of servicewomen from direct ground combat units based solely on their sex is an outmoded practice that does not match the reality of modern warfare.

Pursuant to the recently rescinded ground combat exclusion policy, women were barred from competing for assignment to more than 238,000 positions, including entire career fields, as well as to admission to combat arms schools and training programs. Following the official Department of Defense policy repeal in January of this year, the vast majority of these positions remain closed to women.

These policies and exclusions, however, do not match the reality of modern warfare. Women have been, and are, fighting alongside their male counterparts on the battlefield, in Iraq and still in Afghanistan. They shoot, return fire, and drag wounded comrades to safety. More than 150 have been killed in combat, and hundreds more wounded. The servicewomen described below and represented by the ACLU in the legal challenge to the combat exclusion policy illustrate this reality.

¹ *Frontiero v. Richardson*, 411 U.S. 677 (1973)

² *Struck v. Air Force* 460 F.2d 1372 (9th Cir. 1971), cert. granted, 409 U.S. 947 (1972), vacated and remanded, 409 U.S. 1071 (1972); *Crawford v. Cushman*, 531 F.2d 1114 (2d Cir. 1976).

Major Mary Hegar, Air National Guard

Maj. Mary Hegar is a helicopter pilot currently serving as an Air Guardsman for the California Air National Guard, and has served three tours over two deployments in Afghanistan. Maj. Hegar served in the Air Force for five years as an Aircraft Maintenance officer, and later served in the Air National Guard for six years, where she trained as a Combat Search and Rescue (CSAR) pilot. In her capacity as a CSAR pilot she flew hundreds of Medevac missions, picking up wounded soldiers and civilians from the battlefield.

In order to be qualified to fly over enemy territory in Afghanistan, Maj. Hegar successfully completed a grueling training program called Survival, Evasion, Resistance, and Escape, commonly known as “SERE” training. SERE training is widely regarded as one of the most physically and mentally demanding forms of training offered to combat personnel by the Department of Defense. To complete this training, Major Hegar was required to hike up mountainous terrain carrying heavy gear on her person and complete other physically and mentally arduous tasks.

In July 2009, her aircraft was shot down by enemy fire over Afghanistan, as she and her crew were rescuing three injured soldiers. Maj. Hegar was injured by a bullet that penetrated the helicopter, and once on the ground, she returned fire and successfully completed the rescue mission while under fire. As a result of this incident, she was awarded the Purple Heart and the Distinguished Flying Cross with a Valor Device, two of the highest decorations possible for a pilot. Within a week of being shot down, Maj. Hegar and her crew were placed back on flying status to resume medevac missions, until the end of September 2009. She was subsequently upgraded to the position of Aircraft Commander. Despite her leadership and service, there are still combat jobs she is not permitted to compete for.

Captain Zoe Bedell, U.S. Marine Corps Reserves

Capt. Zoe Bedell was commissioned as an officer in the Marine Corps in 2007. While serving on active duty, she deployed twice to Afghanistan where she served as the Officer-in-Charge of Female Engagement Teams (FETs). She is currently a captain in the United States Marine Corps Reserves. After being commissioned, Capt. Bedell graduated with honors from The Basic School, meaning that she ranked in the top 10 percent of her class of approximately 300 Marines for the 26 week course, which includes training on weapons, tactics, leadership, and other skills.

Although she succeeded in Marine Corps officer training, Captain Bedell did not have the opportunity to compete for assignment to certain combat arms military occupational specialties. Instead, she became a Logistics Officer, an occupational specialty in the Marine Corps that is open to women. From June 2010 through April 2011, Captain Bedell trained and deployed 47 Marines to serve as members of Female Engagement Teams.

The Marines under Capt. Bedell’s leadership lived with, and went on missions with, all-male combat infantry units. Capt. Bedell’s teams often patrolled more than the men— twice a day—and carried the same heavy gear. They lived with the infantrymen for weeks on end in the same sparse conditions in outposts and frequently encountered combat situations.

Capt. Bedell left active duty for the Reserves because of the combat exclusion policy. The policy means the Marine Corps could not fully utilize her and there are positions that she couldn't be assigned, despite her many accomplishments, because she is a woman.

Captain Colleen Farrell, United States Marine Corps Reserves

Captain Colleen Farrell is an officer in the United States Marine Corps Reserves, and has deployed to Afghanistan while on active duty, where she served as a section leader of Female Engagement Teams (FETs).

During her tour, Capt. Farrell managed between 12 and 20 FET members who would go out on patrols with the infantry, doing outreach and intelligence and assessing security issues. Like the infantrymen they served with, the women in Capt. Farrell's charge were regularly in danger of drawing enemy fire, being ambushed or hit by IEDs. Three teams of women Marines under Capt. Farrell's charge were awarded Combat Action Ribbons for receiving and returning fire or being hit by an IED.

Despite the fact that she and the women Marines under her charge worked with, and in direct support of, infantry battalions, Capt. Farrell and her FET members could not be recognized as members of the battalion itself, due to the combat exclusion rule. The combat exclusion policy made it difficult for Capt. Farrell and the women in her charge to perform in their assigned positions. Out of concern about violating the combat exclusion policy, Marine commanders required all FET members to return to their main forward operating base every 45 days. This artificial and unnecessary maneuver disrupted operations and put both men and women serving in and supporting these units in danger. To accommodate the policy, the women Marines were forced to travel to and from the base on dangerous roads, and they were often taken out of crucial missions, sometimes for a week's time.

Staff Sergeant Jennifer Hunt, United States Army Reserves

Staff Sergeant Jennifer Hunt is a noncommissioned officer in the United States Army Reserves in the Civil Affairs Military Occupational Specialty. Staff Sgt. Hunt enlisted in the United States Army Reserves in 2001, in the wake of the September 11 attacks on the United States, and subsequently deployed to both Afghanistan and Iraq.

In 2004, Staff Sgt. Hunt deployed to Afghanistan in a unit engaged in provincial reconstruction. In addition to her regular duties as a Civil Affairs Specialist, which involved coordinating civil-military operations, Staff Sgt. Hunt also accompanied combat arms soldiers on "door-kicking missions," searching villages for insurgents. She was often the only woman and the only person from her unit going on missions with 20 to 30 infantrymen, whose units are officially closed to women.

In August 2007, Staff Sgt. Hunt deployed to Iraq with a unit engaged in reconstruction. While serving there, her Humvee vehicle was hit by an Improvised Explosive Device (IED), which

resulted in shrapnel injuries to her face, arms, and back. Staff Sgt. Hunt was awarded a Purple Heart in connection with this attack.

Despite Staff Sgt. Hunt's service and exposure to combat situations, her military career options were limited by the official combat exclusion policy. Many combat leadership schools exclude women or limit their participation because of the policy. Because she wasn't officially part of the combat units, she is at a disadvantage for promotions compared with male soldiers with similar experience, because male soldiers can officially be in a combat arms specialty.

The stories of these women, while extraordinary portraits in courage and leadership, typify and illustrate many of the problems caused by the combat exclusion policy and attendant practices.

Because women were and remain officially excluded from competing for so many positions and from serving in key career fields, commanders in the field were constrained in their ability to assemble the teams they needed based purely on ability. Instead, commanders were forced to rely on legal fictions to get around the cumbersome combat exclusions so that they could utilize the personnel they needed for missions. Commanders have been forced to rely on temporary assignments, "attaching" women to ground combat units rather than "assigning" them, and relying on special teams of women, drawn from a wide range of official specialties, such as FET and Lioness teams, that would be sent out with ground combat troops on missions and patrols. Frequently, these servicewomen had not been trained with the all-male units they accompanied, did not know those units' operating procedures, and were attached to them on an ad hoc and temporary basis. Despite these challenges, servicewomen in this situation rose to the occasion and fought valiantly on the battlefield.³

At the same time, women in open career fields were prevented from carrying out their duties with certain ground combat units below the brigade or battalion level. Female chaplains, lawyers, admins and logistics officers were – and still are – prevented from serving with certain units deemed to be ground combat units. This arbitrary exclusion of qualified personnel resulted in battlefield inefficiencies, in which units would have to wait for a *male* lawyer or logistics officer, and qualified women would be prevented from serving in many of the units where they might otherwise (if not for their gender) be eligible for assignment.

The exclusion of women from schools and training programs, entire career fields, and many billets even in open career fields also weakened our armed forces on the recruitment and retention ends, resulting in a talent drain of servicewomen.⁴ This ongoing loss of talented, trained servicewomen who leave because certain units and positions remain closed to them is an unacceptable loss that our all-volunteer force cannot sustain.

³ See Capt. Lory Manning, USN (Ret.), *Baloney! A Message to the Women in Combat Naysayers*, WOMEN'S RESEARCH & EDUCATION INSTITUTE, <http://www.wrei.org/Updates.htm> (last visited on July 21, 2013).

⁴ See Elisabeth Bumiller & James Dao, *For 3 Women, Combat Option Came a Bit Late*, NY TIMES, Jan. 26, 2013, at A1, available at <http://www.nytimes.com/2013/01/27/us/for-3-women-combat-option-came-a-bit-late.html?pagewanted=all&r=0>.

Rescinding the ground combat exclusion policy is a welcome first step towards remedying the problems that stem from the arbitrary exclusion of women from certain units and training programs. In the future, women serving with infantry and other ground combat units should be fully integrated members of those units, not “attached” at the eleventh hour without having trained and deployed together. Women should have equal access to training and should train comprehensively with the ground combat units they serve with. Commanders must be free to assign qualified women to any role for which they are suited in battle, and not be constrained by gender in putting together teams for missions. Women should be eligible for the full range of schools and training programs.

B. Categorically Excluding Women from Combat Positions Is Harmful, Unjustified and Unconstitutional.

The U.S. Supreme Court has made it clear that governmentally-mandated discrimination based on sex is unconstitutional unless it is supported by an “exceedingly persuasive” justification that is “substantially related to ‘important governmental objectives.’”⁵ Any such justification must be genuine, not hypothetical, and cannot rely on “overbroad generalizations about the different talents, capacities, or preferences of males and females.”⁶ As we argue in our lawsuit, the Department of Defense’s combat exclusion policy could not meet this exacting standard, nor can any ongoing categorical exclusion of women, regardless of their individual qualifications and capacities.

Historically, the exclusion of women from combat positions was based on the presumption that no woman has the necessary physical strength and mental toughness required to serve in combat. Yet as the plaintiffs in our lawsuit and so many women serving in Iraq and Afghanistan have demonstrated, women can and are already ably acquitting themselves in combat roles. Indeed, and again as the plaintiffs in our lawsuit demonstrate, through legal fictions like “attachment,” women are serving alongside the very units they are currently excluded from.

Servicewomen are harmed by being excluded from combat positions, and they are harmed in a variety of ways, including by denying them opportunities, training, and recognition. Women continue to be excluded from thousands of positions across the armed forces and from entire career fields and schools. Because these positions and fields are viewed as elite and prestigious, categorically excluding women not only denies them the actual opportunity to serve as, for example, an Army Ranger, but also puts them at a significant disadvantage in terms of career advancement, even in the career fields that are open to women. Chances for promotion are frequently enhanced by serving in combat arms positions, and thus the exclusion of women from so many jobs within the core combat arms has functioned as a “brass ceiling” that has both weakened our military and done a disservice to women who have put their lives on the line for our country.

Excluding women altogether from certain positions, fields, and schools is not tethered to a rationale about what each individual woman is able to accomplish. Instead, the combat exclusion policy and the ongoing categorical exclusion of women from combat units, fields, and schools constitute discrimination against women simply because they are women – one of the last vestiges of federal *de jure* discrimination. Nearly a century after women first earned the right of suffrage, this exclusion still

⁵ *U.S. v. Virginia*, 518 U.S. 515, 533 (1996).

⁶ *Id.*

denies women a core component of full citizenship – serving on the equal footing in the military defense of our nation – and is unconstitutional.

C. The Plans Towards Full Integration

After eliminating the Direct Ground Combat Definition and Assignment Rule, each service was required to develop a plan, consistent with the “guiding principles”⁷ articulated by General Dempsey to achieve the full integration of women in combat specialties and units by 2016 or request an exception to policy. The plans were submitted to the Office of the Secretary of Defense (OSD) in May by the services and U.S. Special Operations Command and made public several weeks later. Although these plans are a move in the right direction, they raise questions and concerns. For example:

1. The attempt by each of the services to ensure a “sufficient cadre of midgrade/senior”⁸ women or “critical mass” as they develop and execute their plans, could well act as an obstacle to integration and should thus be carefully considered. These concepts should not be used to limit, slow the pace or interfere with the full integration of women into units or occupations. There is the danger that this will be used as an artificial barrier to women’s participation in infantry, in particular. Additionally, this requirement appears to assume that men cannot or will not take on mentoring roles for junior women entering historically closed fields and units. The history of women’s combat roles in aviation and the more recent service in Afghanistan and Iraq clearly suggests otherwise, as the experience of naval aviator and former ACLU client Capt. Joellen Oslund, along with other aviation pioneers, illustrates.⁹ Finally, the plans do not explain what will happen if no “sufficient cadre” is achieved in the short term or how the services intend to create a “sufficient cadre.”
2. The service plans do not sufficiently describe how the service branches will recognize and build upon the combat experience servicewomen gained in Afghanistan and Iraq and whether these combat veterans will form part of the “cadre” of experienced women. Servicewomen who were attached to or otherwise served alongside combat units in those countries should be eligible to cross-train and compete for leadership in combat specialties and the services should develop a plan to facilitate this transition, as the Army’s plan alludes to. Similarly, the services and/or OSD should consider and report back, in future updates on their integration plans, whether and how mid-career women who served in Female Engagement Teams, Cultural Support Teams and Lioness teams will be eligible to compete to transfer laterally into previously closed military occupational specialties.
3. The lack of consistency, regarding the practice of allowing women to serve in previously closed units in open specialties, is troubling and without explanation. For example, the Army has assigned women to the battalion level in open specialties but not to the company level in combat arms units. The Marine Corps still prohibits women from being assigned to the battalion level in

⁷ Info Memo from General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, on women in the service implementation plan to Leon Panetta, Secretary of Defense (Jan. 9, 2013), available at <http://online.wsj.com/public/resources/documents/DempseyLetter.pdf>.

⁸ *Id.*

⁹ Captain Dwayne Oslund, USN (Ret.), *Excluding Women from Combat Is Just Plain Wrong: A Navy Captain’s Story*, ACLU BLOG OF RIGHTS (May 31, 2013, 10:29 AM), <http://www.aclu.org/blog/womens-rights/excluding-women-combat-just-plain-wrong-navy-captains-story>.

most combat arms units. The services and/or OSD should explain their rationale for these disparate approaches.

4. The Army should expand on its rationale for not opening Ranger School in the early phase of its plan. It is well recognized that Ranger School is a prestigious leadership training course now available only to men in a range of occupational specialties.
5. SOCOM should clarify what “social science assessments” it intends to use to analyze the “psychological and social impacts of integrating women into small SOF units.” Without further explanation from SOCOM, this element of the plan raises many questions. Additionally, it is not clear from the plan what role SOCOM will play in validating service specific qualification standards.

The SOCOM plan appears to be at odds with the stated intent of other service branches to open all positions to women, particularly the Air Force. SOCOM should ensure that its plan fulfills the values and intent of service branches to have a force in which 100% of servicemembers can compete for all positions for which they are otherwise qualified, regardless of gender.

6. The Marine Corps plan appears to raise the alarming possibility that the service may request an exception to policy to close previously open MOSs and units. Clarification of this element of the plan is needed and must be justified. Additionally, the plan asserts that the performance of a small number of women in the Infantry Officer Course will be a factor in the decision-making process regarding whether to open previously closed MOSs. A broader discussion of the purpose and rationale for this approach is appropriate because the Marine Corps has not articulated how a woman’s participation in the IOC, perhaps with little advance training and no possibility of actually joining the infantry even if she passes the course, is an indication of how all women will fare if the MOS were opened and women were allowed to compete.

Next, the Marine Corps plan does not but should address whether and how it will incorporate experiences from the battlefield involving female Marines who served alongside infantry and other combat units as, for example, members of Female Engagement Teams.

Finally, in its plan, the Marine Corps states that it will not open the maintainer MOSs until the operator MOSs become open and cites as an example that the 2417 MOS (Light Armored Vehicle Repair/Technician) will only open if the 0313 MOS (Light Armored Vehicle Crewman) is opened. Yet, it is our understanding that the Army has already graduated 5 women from their Bradley Fighting Vehicle course as Bradley Fighting Vehicle System Maintainers (19M) even though the job of a Bradley crew member (19D) remains closed. Additional information is required to increase the public’s understanding of the Marine Corps approach in this and similar circumstances.

7. The Office of the Secretary of Defense (OSD) should increase its efforts to ensure transparency and openness as the services implement the new integration policy. Results of pilot programs and research studies outlined in the plans, along with the updates that must be submitted quarterly, should be made publicly available.

In conclusion, we applaud the Department of Defense for eliminating the combat exclusion rule. Such action was long overdue. However, six months after the rule was rescinded, the majority of closed positions and career fields remain closed, and it does not appear that the service branches will move to open them in a uniform fashion. Women Marines, in particular, and women hoping to serve in a Special Operations force, lack information about which units and positions will be available to them, even within already-open career specialties. Steady action is required to fulfill the promise of the January announcement rescinding the ground combat exclusion policy.

Should you have any questions, please don't hesitate to contact Senior Legislative Counsel Vania Leveille at 202-715-0806 or vleveille@dcacul.org.