



Written by [Dave Bohon](#) on February 26, 2019

Judge Rules Male-only Military Draft Unconstitutional

A federal judge in Texas ruled February 22 that an all-male military draft violates the U.S. Constitution. In his decision, U.S. District Judge Gray Miller of the Southern District of Texas ruled in favor of a group calling itself the National Coalition for Men, which had challenged the military's long-time tradition of a male-only draft, on the grounds that the practice violated the Fifth Amendment's equal protection clause.



"This case balances on the tension between the constitutionally enshrined power of Congress to raise armies and the constitutional mandate that no person be denied the equal protection of the law," wrote Miller in his nearly 20-page opinion. He added that "while historical restrictions on women in the military may have justified past discrimination, men and women are now 'similarly situated for purposes of a draft or registration for a draft.' If there ever was a time to discuss 'the place of women in the Armed Services,' that time has passed."

While Miller ruled against excluding women from the draft, he did not order the Selective Service to initiate a plan to begin registering women. Currently, federal law requires only men to register for the draft within 30 days of their 18th birthday.

Miller's ruling comes as an 11-member federal commission is taking a close look at the future of the draft — including if it should be discontinued. While the U.S. military has been all-voluntary since the draft was discontinued in 1973 at the end of the Vietnam War, the Selective Service System was reactivated in 1980 in anticipation of the possible need of a future draft.

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Marc Angelucci, an attorney for the National Coalition for Men, said that although the ruling will have little immediate effect on registering women for the draft, "it does have some real-world impact. Either they need to get rid of the draft registration, or they need to require women to do the same thing that men do." He added that "women are now allowed in combat, so this decision is long overdue. After decades of sex discrimination against men in the Selective Service, the courts have finally found it unconstitutional to force only men to register."

Military.com reported that in arguing against the lawsuit, the "government pointed to a 1981 U.S. Supreme Court decision that the Military Selective Service Act was constitutional as written, to exclude women, because women restricted from combat were not offered similar opportunities that men had." However, the military site continued, "Miller found that reasoning no longer applicable, since the Department of Defense lifted all gender-based restrictions on military service — including combat roles — in 2015."

In fact, wrote Miller in his opinion, the "average woman could conceivably be better suited physically for some of today's combat positions than the average man, depending on which skills the position required. Combat roles no longer uniformly require sheer size or muscle."

The spirit of Miller's statement is at odds with a 1992 study completed by the Commission on the



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Assignment of Women in the Armed Forces, convened by President George H.W. Bush after the 1990-91 Persian Gulf War. That commission came to the determination by majority vote that women had no place in direct combat on land, in the air, or on submarines and amphibious vessels.

Elaine Donnelly of the Center for Military Readiness, a member of that 1992 commission, said in 2011 that while female soldiers “are indisputably brave ... the military cannot disregard differences in physical strength and social complications that would detract from the strength, discipline, and readiness of direct ground combat units. These troops attack the enemy with deliberate offensive action under fire.... No one’s infantryman son should have to die because a support soldier nearest him cannot lift and single-handedly carry him from the battlefield if he is severely wounded under fire. Most male soldiers have that physical capability. Female soldiers, no matter how competent and brave, do not.”

Another member of the 1992 commission, Colonel Ron Ray (USMC, retired), a decorated veteran of the Vietnam War and former Deputy Assistant Secretary of Defense in the Reagan administration, noted that there is significance behind the term “selective service” used by the military in choosing who will join America’s armed forces. In theory, if not in practice, only the most select of individuals — physically, mentally, and emotionally — are chosen to serve. “Men and women are profoundly different and those enormous differences have military significance,” Ray told *The New American* in 2011. “Across the world men and women do not compete together in sports in the high school, college, Olympic, or professional levels of sport, and it is solely because their physical differences are substantial.”

Ray added that what holds true in athletics is of life-and-death importance on the battlefield. As a combat veteran, Ray lived through a brutal 1967-68 combat tour in Vietnam, including the infamous Tet Offensive. “From my own personal experience,” said Ray, “I can attest to the fact that physical combat, close combat, infantry, artillery, armor combat — all are profoundly more demanding than any sport, and there is no place there for women combatants.”

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