No. _____

In the Supreme Court of the United States

NATIONAL COALITION FOR MEN, TYLER MCNAMARA, CONOR MCKIERNAN, NICHOLAS MILILLO, NICOLAS MENDIOLA, AND JORDAN FALCON,

Petitioners,

v.

SELECTIVE SERVICE SYSTEM, ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX

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APPENDIX

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Appendix A
[Filed: Dec. 4, 2025]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL COALITION FOR MEN, a 501(c)(3) non-profit organization; TYLER MCNAMARA, an individual; CONOR MCKIERNAN; NICHOLAS MILILLO, an individual; NICOLAS MENDIOLA, an individual; JORDAN FALCON, an individual, Plaintiffs - Appellants, v. SELECTIVE SERVICE SYSTEM; JOEL C. SPANGENBERG, as acting Director of Selective Service System, Defendants - Appellees.	No. 24-7746 D.C. No. 2:24-cv-04016-AB-E MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
André Birotte, Jr., District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted October 10, 2025
Pasadena, California

Before: RAWLINSON, MILLER, and JOHNSTONE, Circuit Judges.

The National Coalition for Men ("NCFM") and five of its individual members appeal the Rule 12(b)(6) dismissal of their claim that the Military Selective Service Act's ("Act") male-only registration requirement violates equal protection under the Fifth Amendment. Because Plaintiffs lack Article III standing, we vacate the district court's grant of the 12(b)(6) motion and remand with instructions to dismiss this case without prejudice.

Plaintiffs have not shown that the named individual members have suffered a redressable injury. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). They allege that each individual is a male age 18 to 26 who "has recently registered for the military draft as is required of him as a male" and request injunctive and declaratory relief. But because each individual member has already completed the one-time registration, there is no ongoing injury that can be remedied by the prospective relief that plaintiffs seek. *See Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012) (plaintiffs must show that a court decision would cause a "change in legal status" that would "directly redress[] the injury suffered"); *Summers v. Earth Island Inst.*, 555 U.S. 488, 495 (2009) (rejecting standing based on a "past injury rather than imminent future injury that

is sought to be enjoined"). And no individual has alleged facts suggesting that he intends to move or update his registration information before 26, so any injury based on a continuing obligation to keep one's contact information up to date with the Selective Service is too speculative to confer standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992).

Plaintiffs have also not shown that NCFM has associational standing. NCFM alleges that "[s]ome of NCFM's members are males 18-26 or who will be 18-26 at some time relative to this lawsuit" and are thus subject to the Act, but NCFM does not specifically identify any individual members who would have standing to sue on any grounds other than the named individuals, all of whom have already registered. *See Summers*, 555 U.S. at 498 (plaintiff-organizations must "make specific allegations establishing that at least one identified member had suffered or would suffer harm"); *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep't of Transp.*, 713 F.3d 1187, 1194–95 (9th Cir. 2013). Accordingly, neither this Court nor the district court has subject-matter jurisdiction to hear this case.[1]

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[1] For the first time on appeal, NCFM suggests it has organizational standing. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393–94 (2024). Because it did not plead facts sufficient to establish organizational standing in its complaint, it does not change our conclusion. *See id.* at 395.

VACATED and REMANDED with instructions to dismiss without prejudice for lack of standing.[2]

[2] Each side shall bear its own costs on appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
  - The proceeding involves a question of exceptional importance; or
  - The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d). The deadlines for seeking reconsideration of a non-dispositive order are set forth in 9th Cir. R. 27-10(a)(2).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.
- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.

- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
    - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
    - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic

filing, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form:
http://www.ca9.uscourts.gov/forms/ form10instructions.pdf

9th Cir. Case Number(s) _____

Case Name _____

Name of party/parties requesting costs to be taxed:

_____

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature _____ **Date** _____
*(use "*s/[typed name]*" to sign electronically-filed documents)*

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Reply Brief / Cross-Appeal Reply Brief			$	$
Supplemental Brief(s)			$	$
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee / Appeal from Bankruptcy Appellate Panel Docket Fee/ Appeal from District Court filing portion of fee ($5)				$
			TOTAL:	$

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Appendix B
[C.D. Cali. ECF No. 26]
[Filed: Dec. 9, 2024]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATIONAL COALITION FOR MEN, et al., Plaintiffs, v. SELECTIVE SERVICE SYSTEM, et al., Defendants.	CASE NO.: 2:24-cv-04016 **~~[PROPOSED]~~** **JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 58(a), the Court **ORDERS** and **ENTERS JUDGMENT** for Defendants Selective Service System and Joel C. Spangenberger, in his capacity as acting Director of Selective Service, and against Plaintiffs National Coalition for Men, Tyler McNamara, Conor McKeirnan, Nicholas Milillo, Nicolas Mendiola, and Jordan Falcon, as follows:

Plaintiffs' complaint, ECF No. 1, is **DISMISSED, WITH PREJUDICE**, for the reasons stated in the Court's Order Granting Motion to Dismiss dated November 20, 2024, ECF No. 24.

Dated: December 9, 2024 /s/ André Birotte Jr.
Hon. André Birotte Jr.
U.S. District Judge

Appendix C
[C.D. Cali. ECF No. 24]
[Filed: Nov. 20, 2024]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATIONAL COALITION FOR MEN, et al., Plaintiffs, v. SELECTIVE SERVICE SYSTEM, et al., Defendants.	CASE NO.: 2:24-cv-04016 AB **ORDER <u>GRANTING</u> MOTION TO DISMISS [DKT. NO. 16]**

Before the Court is a Motion to Dismiss ("Motion," Dkt. No. 16-1) filed by the Selective Service System ("Selective Service") and Joel C. Spangenberg ("Spangenberg") in his official capacity as Acting Director of the Selective Service (collectively, "Defendants"). Plaintiffs National Coalition for Men ("NCFM") and individual NCFM members Tyler McNamara, Conor McKiernan, Nicholas Milillo, Nicolas Mendiola, and Jordan Falcon (the "Individual Plaintiffs") (collectively, "Plaintiffs") opposed the Motion and Defendants replied. The Court finds this matter appropriate for decision without oral argument, and the hearing set for November 22, 2024, is **<u>VACATED</u>**. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. For the following

reasons, the Court **DENIES** Defendants' Rule 12(b)(1) Motion and **GRANTS** Defendants' Rule 12(b)(6) Motion.

I. BACKGROUND

A. Factual Background

This is a case about the constitutionality of the Military Selective Service Act's (the "Act") requirement that male citizens and immigrants between the ages of eighteen and twenty-six register with the Selective Service to facilitate their conscription in the event of a military draft. (Compl. ¶ 1, Dkt. 1.) Under the Act, men are required by law to register within thirty days of their 18th birthdays and have a continuing obligation to notify the Selective Service within ten days of any changes to the information they provided on their registration cards, such as a change of address. (*Id.* ¶ 32.) Failure to register is a felony punishable by a fine of up to $250,000 and/or five (5) years imprisonment. (*Id.* ¶ 3.) Young men who fail to register may also be ineligible for certain federal and state employment and job training under the Workforce Innovation and Opportunity Act. (*Id.*) The Act does not require any females of draft-age to register. (*Id.* ¶¶ 2, 62.)

Plaintiffs allege that the Act's requirement that only men—and not women—register with the Selective Service discriminates against men on the basis of sex and thus violates the U.S. Constitution's Fifth Amendment Equal Protection and Due Process Clauses. (*Id.* ¶¶ 7, 9, 16, 60–64.) Plaintiffs seek

declaratory and injunctive relief compelling the Selective Service "to end discrimination on the basis of sex in its military draft registration program and to treat all sexes equally within the Selective Service System." (*Id*. at 2, Prayer for Relief.)

B. Previous Related Litigation

Plaintiffs' legal theory that the Act's requirement that only males must register with the Selective Service violates the Fifth Amendment's Equal Protection Clause has been raised multiple times in federal court. (*See Id*. ¶¶ 10, 37–39, 47, 51.) In 1981, the Supreme Court held in *Rostker v. Goldberg*, 453 U.S. 57 (1981) that the male-only registration requirement did not violate the Fifth Amendment's Due Process Clause, reasoning that because women were (at that time) excluded from combat, men and women were not similarly situated. *Id*. at 78–79.

In 2013, the NCFM and its individual members brought in the Central District of California an action similar to the one presently before this Court. In that case, the Court held that NCFM and its members had standing to sue but transferred the case to the Southern District of Texas where venue was proper. *See Nat'l Coal. for Men v. Selective Serv. Sys.*, 2016 WL 11605246, at *2–3 (C.D. Cal. Nov. 9, 2016). The case was transferred to the Southern District of Texas, which subsequently confirmed that NCFM and its members had standing to sue, *Nat'l Coal. for Men v. Selective Serv. Sys.*, 2018 WL 1694906, at *3 (S.D. Tex.

Apr. 6, 2018), and granted NCFM's motion for summary judgment on the basis that because women were permitted to serve in combat roles, *Rostker* no longer controlled. *Nat'l Coal. for Men v. Selective Serv. Sys.*, 355 F. Supp. 3d 568, 582 (S.D. Tex. 2019). On appeal, the Fifth Circuit reversed and dismissed NCFM's claim, finding *Rostker* still controlled despite changes to the opinion's factual underpinnings because it is the "[Supreme] Court's prerogative alone to overrule one of its precedents." *Nat'l Coal. for Men v. Selective Serv. Sys.*, 969 F.3d 546, 549 (5th Cir. 2020) (internal quotation marks omitted). Plaintiffs subsequently filed a petition for certiorari to the U.S. Supreme Court, which the Supreme Court denied. *Nat'l Coal. for Men v. Selective Serv. Sys.*, 141 S. Ct. 1815 (2021) (mem.). Justice Sotomayor issued a statement with the Supreme Court's denial, saying that it should not "overrule *Rostker*" while Congress, the primary governing body for deciding on matters of national defense and military affairs, was concurrently considering whether to end gender-based registration. *Id*. at 1816.

C. Procedural History

On May 14, 2024, Plaintiffs filed the Complaint. (Compl.) On August 2, 2024, Defendants moved to dismiss Plaintiffs' action under Rule 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim on which relief can be granted. (*See generally* Mot.) On August 23, 2024, Plaintiffs

opposed. (Opp'n, Dkt 18.) On September 13, 2024, Defendants replied. (Reply, Dkt 19.)

II. LEGAL STANDARDS

A. Rule 12(b)(1) Challenge to Subject Matter Jurisdiction

Under Federal Rule of Civil Procedure ("Rule") 12(b)(1), a party may move to dismiss a complaint for lack of subject matter jurisdiction. "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). "In a facial attack, the challenger asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction." *Id.* In a facial attack, the court "assume[s] [plaintiff's factual] allegations to be true and draw[s] all reasonable inferences in his favor." *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). But, as with a Rule 12(b)(6) motion, courts do not accept the truth of any legal conclusions contained in the complaint. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

B. Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim

Federal Rule of Civil Procedure ("Rule") 8 requires a plaintiff to present a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule 12(b)(6), a defendant may move to dismiss a pleading for "failure to

state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

To defeat a Rule 12(b)(6) motion to dismiss, the complaint must provide enough detail to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must also be "plausible on its face," allowing the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* Labels, conclusions, and "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

A complaint may be dismissed under Rule 12(b)(6) for the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). When ruling on a Rule 12(b)(6) motion, "a judge must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). But a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (2009) (internal quotation marks omitted).

III. DISCUSSION

Defendants move to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(1) on the grounds that Plaintiffs lack Article III standing and pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted in light of the Supreme Court's decision in *Rostker*, 453 U.S. 57 (1981). (Mot. at 1.)

The Court will first address Defendants' Rule 12(b)(1) subject matter jurisdiction challenge before it considers Defendants' motion under Rule 12(b)(6) for dismissal on the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998) ("The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.") (cleaned up); *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) ("When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.").

A. Plaintiffs Have Standing to Pursue Their Claims.

Defendants move to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction on the grounds that Plaintiffs fail to establish they have Article III standing. (Mot. at 7.) Defendants contend that Plaintiffs fail to allege that the Individual Plaintiffs suffered a "concrete" injury, one

of the required elements for showing Article III standing. (*Id.* at 8.) Defendants further argue that because the Individual Plaintiffs lack standing, the NCFM lacks associational standing. (*Id.* at 12.)

1. Legal Standard For Standing

Under Article III, § 2, of the Constitution, federal courts only have jurisdiction over a dispute if it is a "case" or "controversy." *Murthy v. Missouri*, 144 S. Ct. 1972, 1985 (2024). An element of the "case-or-controversy requirement is that [Plaintiffs], based on their complaint, must establish that they have standing to sue." *Raines v. Byrd*, 521 U.S. 811, 818 (1997). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). "An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* at 181.

2. The Individual Plaintiffs Have Standing.

Defendants only dispute Individual Plaintiffs' ability to allege the first element of Article III standing, that they have suffered an injury in fact. (Mot. at 7–12.) The Court interprets this as a facial challenge to Plaintiffs' standing because Defendants appear to accept the Plaintiffs' factual allegations as true but contend that as a matter of law, Plaintiffs fail to allege that they have or will suffer an injury.

When a challenged government action imposes an affirmative obligation on the plaintiff, that obligation may constitute a sufficient injury for Article III standing. *See Nat. Res. Def. Council, Inc. v. United States Env't Prot. Agency*, 383 F. Supp. 3d 1, 10 (D.D.C. 2019) (finding EPA's ten-day deadline for responding to its requests for clarification placed a burden on NRDC that constituted an injury in fact); *Doe v. Cnty. of Montgomery, Ill.*, 41 F.3d 1156, 1159 (7th Cir. 1994) (holding plaintiffs had suffered an "injury in fact" because the County required them to "come into direct and unwelcome contact with [a religious sign at a courthouse] in order to fully participate as citizens of the County and to fulfill certain legal obligations"); *United States v. Students Challenging Regul. Agency Procs. (SCRAP)*, 412 U.S. 669, 690 n. 14 (1973) ("An identifiable trifle is enough for standing.")

Plaintiffs allege the Individual Plaintiffs were injured because the Act required them to register with the Selective Service and they are under a continuing

obligation to promptly notify the Selective Service of any changes to their registration information. (Compl. ¶ 62; Opp'n at 10.) These obligations on Individual Plaintiffs are sufficient to establish an injury in fact sufficient for Article III standing. *See E. Texas Baptist Univ. v. Sebelius*, 988 F. Supp. 2d 743, 758–59 (S.D. Tex. 2013) (finding plaintiff alleged an injury where it was required to submit a self-certification form to claim a religious exemption from providing contraceptive coverage to its employees), *rev'd on other grounds sub nom. E. Tex. Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. 2015), *vacated on other grounds sub nom. Zubik v. Burwell*, 136 S. Ct. 1557 (2016). The Court therefore disagrees with Defendants that Plaintiffs "fail to identify any specific, concrete harm that Plaintiffs have suffered or are suffering as a result of having registered." (Mot. at 10.)

The Court's affirmation of Plaintiffs' standing aligns with the holdings of other federal courts that have also found young men who are required by the Act to register with the Selective Service for the military draft and give notice of changes to their information have standing to challenge the constitutionality of the gender-based registration requirement. *See Nat'l Coal. for Men v. Selective Serv. Sys.*, 2018 WL 1694906, at *3 (S.D. Tex. Apr. 6, 2018); *Nat'l Coal. for Men v. Selective Serv. Sys.*, 2016 WL 11605246, at *2 (C.D. Cal. Nov. 9, 2016); *Goldberg v. Rostker*, 509 F. Supp. 586, 590 (E.D. Pa. 1980) (finding plaintiffs had standing because they "[were] under compulsion of

law to present themselves for registration with the Selective Service System") *rev'd on other grounds*, 453 U.S. 57 (1981).

Defendants present two other arguments for why Plaintiffs do not establish a sufficient injury for Article III standing: (1) Plaintiffs' allegations that the prospect of being drafted constitutes an injury is too speculative to support standing (Mot. at 8); and (2) Plaintiffs' allegations that the individuals are harmed because sex-based discrimination is unconstitutional does not support standing (*Id*. at 8–9.) Because the Court finds that the Individual Plaintiffs have otherwise alleged a sufficient injury for standing purposes in the Complaint, it need not consider whether these additional allegations from Plaintiff are also sufficient to demonstrate injury.

For the foregoing reasons, the Court finds the Individual Plaintiffs have Article III standing.

3. The NCFM Has Associational Standing.

Defendants' argument that NCFM lacks standing as an association relies on their argument that the individual NCFM members lack standing. (*Id*. at 12.) Because the Court has found that the Individual Plaintiffs do have standing to sue as individuals, the Court rejects Defendant's argument.

Because the Court finds NCFM and the Individual Plaintiffs have Article III standing, Defendants' Motion pursuant to Rule 12(b)(1) is **DENIED**.

B. Plaintiffs' Fifth Amendment Claim is

Precluded by *Rostker*.

The Court next addresses Defendants' argument that Plaintiffs fail to state a claim because the U.S. Supreme Court's holding in *Rostker* binds this court and requires dismissal. (*Id*. at 12–14.) Defendants further contend that the Supreme Court's recent denial of NCFM's petition for writ of certiorari to review a substantially similar claim reinforces Defendants' position. (*Id*.)

In *Rostker*, the U.S. Supreme Court found that the Act's male-only registration requirement did not violate the Fifth Amendment's Equal Protection Clause, citing the fact that women were "excluded from combat" roles and therefore "would not be needed in the event of a draft." *Rostker*, 453 U.S. at 77. Plaintiffs allege that *Rostker* no longer controls because the rationale for the Supreme Court's holding in that case—that women were excluded from combat positions and thus were not similarly situated to men—no longer exists. (Compl. ¶ 15.) In 2013, under the Obama administration, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff issued a memorandum overturning a 1994 ban on women in combat and directing the military to integrate women into combat positions "as expeditiously as possible" and no later than January 1, 2016. (*Id*. ¶¶ 11–12.) As Defendants point out, however, the Supreme Court has not overturned its *Rostker* holding and thus that opinion is still binding law. (Mot. at 13–14.) This Court agrees. Though "the factual underpinning of the controlling

Supreme Court decision has changed," that does not grant this Court "license to disregard or overrule that precedent." *Nat'l Coal. for Men v. Selective Serv. Sys.*, 969 F.3d 546, 549 (5th Cir. 2020); *see also Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("We reaffirm that if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.") (cleaned up).

More recently, the Supreme Court declined to review NCFM's petition for writ of certiorari after the Fifth Circuit dismissed a similar challenge to the male-only registration requirement's constitutionality. *Nat'l Coal. for Men v. Selective Serv. Sys.*, 141 S. Ct. 1815 (2021) (mem.). Justice Sotomayor issued a statement with the denial explaining that though all military positions were now open to women, the Court should not "overrule *Rostker*" because Congress was, at that time, considering whether to incorporate "a gender neutral registration requirement" into the subsequent national defense bill following the issuance of a National Commission on Military, National, and Public Service report recommending the elimination of male-only registration. *Id.* at 1816. Justice Sotomayor's characterization of NCFM's petition for writ of certiorari as a request for the Supreme Court to "overrule *Rostker*" indicates that *Rostker* directly applies to and controls in the present case.

Defendants argue—and the Court agrees—that *Rostker* remains binding precedent. For this reason, the Court **GRANTS** Defendants' Motion pursuant to Rule 12(b)(6). Because no amendment can overcome this bar, the Motion is granted and the case is **DISMISSED** with prejudice.

IV. CONCLUSION

Defendants' Motion to Dismiss pursuant to Rule 12(b)(1) is **DENIED** and Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) is **GRANTED** without leave to amend. This action is **DISMISSED** with prejudice.

Defendants are **ORDERED** to file a Proposed Judgment within 5 days of this Order. Plaintiffs will have 5 days thereafter to object as to form.

IT IS SO ORDERED.

Dated: November 20, 2024

/s/ André Birotte Jr.
HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES
DISTRICT COURT JUDGE

Appendix D
[C.D. Cali. ECF No. 1]
[Filed: May 14, 2024]

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TYLER MCNAMARA, CONOR MCKIERNAN, NICHOLAS MILILLO, NICOLAS MENDIOLA, and JORDAN FALCON

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATIONAL COALITION FOR MEN, a 501(c)(3) non-profit organization, TYLER MCNAMARA, an individual, CONOR MCKIERNAN, an individual, NICHOLAS MILILLO, an individual, NICOLAS MENDIOLA, an individual, and JORDAN FALCON, an individual, Plaintiffs,	Case No. 2:24-cv-04016 **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** VIOLATION OF EQUAL PROTECTION

vs.	) UNDER THE FIFTH) AMENDMENT TO
SELECTIVE SERVICE SYSTEM; JOEL C. SPANGENBERG, as acting Director of SELECTIVE SERVICE SYSTEM; and DOES 1-50, inclusive,	) THE U.S.) CONSTITUTION)) **DEMAND FOR JURY TRIAL**
Defendants.	)

Plaintiffs NATIONAL COALITION FOR MEN (hereinafter referred to as "NCFM"), TYLER MCNAMARA, (hereinafter referred to as MCNAMARA), CONOR MCKIERNAN, (hereinafter referred to as MCKIERNAN), NICHOLAS MILILLO, (hereinafter referred to as MILILLO), NICOLAS MENDIOLA, (hereinafter referred to as "MENDIOLA"), and JORDAN FALCON (hereinafter referred to as "FALCON"), (collectively referred to as "Plaintiffs"), bring this action against Defendants SELECTIVE SERVICE SYSTEM (hereinafter referred to as "SELECTIVE SERVICE") and its acting Director JOEL C. SPANGENBERG (hereinafter referred to as "SPANGENBERG") (collectively referred to as "Defendants"). Plaintiffs respectfully request injunctive and declaratory relief from Defendants to end sex-based discrimination in its military draft registration program and to treat all sexes equally.

INTRODUCTION

1. May 18, 2024, marks the 107th anniversary of the Selective Service System. The Military Selective Service Act ("Act") requires male citizens and immigrants between the ages of 18 and 26 to register with the Selective Service System to facilitate their conscription if the President initiates the military draft. By registering, a young man remains eligible for federal jobs, state-based student aid in thirty-one states, federally funded job training, and U.S. citizenship for males who are immigrants.

2. *The Act does not require women to register*.

3. If a young man fails to register, he will face harsh penalties, some of which may last a lifetime. Failure to register is a felony punishable by a fine of up to $250,000 and/or five (5) years imprisonment. These penalties are not limited to the individual who fails to register and may extend to a person who knowingly counsels, aids, or abets another to fail to comply with the registration requirement. Young men must register with the Selective Service System to be eligible for most federal employment, some state employment, security clearance for contractors, and job training under the Workforce Innovation and Opportunity Act. A majority of states link receiving a driver's license to registration so young men must be registered to receive a license, permit, or identification card.

4. Currently, in the state of California the Senate Transportation Committee is considering SB 1081,

a bill that would tie applying for or renewing a California drivers' license or California identification card to registering with the Selective Service System for those young men of draft age. Under this proposed legislation, young men, 16 years old, up to age 26, will be deemed to have agreed to automatic registration for the draft by placing their signature on a driver's license application.

5. SELECTIVE SERVICE statistics suggest that more than one million men have been denied some government benefit because they failed to register. If the denial of the benefit occurs after the man turns twenty-six, there is no possibility to cure his non-compliance and he will be denied significant government benefits for life.

6. The U.S. Citizenship and Immigration Services makes registration with the Selective Service System a condition for U.S. citizenship if the man first arrived in the United States before his 26th birthday. Failure to register may cause up to a 5-year delay of U.S. citizenship proceedings for immigrants.

7. Registration under the Act for the Selective Service System is discrimination on the basis of sex and is forbidden by the Equal Protection Clause of the United States Constitution. This discriminatory law burdens an entire class of citizens, draft-age men, to inferior legal status without regard to the fact that they may potentially lose liberty, life, or limb if called to war; all the while diminishing the capabilities of an entire class of citizens, draft-age women, who

currently serve in all military positions, including combat roles.

8. Forty-four years ago, President Carter recommended to Congress that the Act be extended to cover women. Forty-three years ago, Justice Thurgood Marshall, called male-only registration *"one of the most potent remaining expressions of ancient canards about the proper role of women."* Women currently serve in every capacity in the U.S. military from the fields of combat to four-star general.

9. The exclusion of women from registration under the Act and the requirement that only men register violates the Due Process Clause of the Fifth Amendment of the United States Constitution. This case seeks to end Defendants from discriminating on the basis of sex.

BACKGROUND

10. In *Rostker v. Goldberg*, 453 U.S. 57 (1981), male plaintiffs asserted that sex discrimination in the Selective Service System violated their rights, along with other draft-age men, to Equal Protection under the Fifth Amendment to the United States Constitution. In a sharply divided decision, with a vigorous dissent written by Justice Thurgood Marshall, the majority of the Justices ruled against the male plaintiffs on the basis that women were excluded from combat, and therefore, men and women were not similarly situated.

11. In 2013, under the Obama administration, Secretary of Defense Leon E. Panetta and Chairman of the Joint Chiefs of Staff, Martin E. Dempsey, issued a Memorandum that officially rescinded the 1994 ban on women in combat. Secretary Panetta firmly stated, *"Success in our military base solely on ability, qualifications, and performance, is consistent with our values and enhances military readiness."* (Gen. Michael Hayden et al. Amicus Curiae, p. 7, NCFM, et al. v Selective Service System, et al. (2021)) (Leon E. Panetta, Sec'y of Def., and Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, Memorandum for Secretaries of the Military departments Acting Under Secretary of Defends for Personnel and Readiness 1 (Jan. 24, 2018), https://dod.defense.gov/Portals/1/Documents/WISRJointMemo.pdf).

12. The 2013 Memorandum gave the military until May 15, 2013, to submit "detailed plans for the implementation of this directive" and directed that integration of women into combat positions be completed "as expeditiously as possible" and no later than January 1, 2016.

13. As the 2013 Memorandum notes, many changes occurred between the 1981 *Rostker* decision and 2013. In 2012, the military opened over 14,000 positions previously closed to women; by 2013, women served alongside men in Iraq and Afghanistan and were exposed to hostile enemy action.

14. In 2016, Congress authorized the National Commission on Military, National, and Public Service

("NCMNPS") to study whether registration should be conducted "regardless of sex." National Defense Authorization Act ("NDAA") for Fiscal Year 2017, §§551(a), 555(c)(2)(A), 130 Stat. 2130, 2135. In 2020, NCMNPS published a report in which it recommended "eliminat[ing] male-only registration." (NCMNPS Report, 2020, P. 111)

15. Accordingly, the rationale in *Rostker* no longer exists; as women serve alongside men in every capacity, in the air, at sea, and in the fields of combat. Therefore, male, and female servicemembers are similarly situated. With the legal basis requiring only males to register with the Selective Service System inapplicable, Defendants must treat all sexes equally and draw to a close discrimination on the basis of sex.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action under 28 U.S.C. § 1331 which states "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Plaintiffs bring this action under the Fifth Amendment of the United States Constitution to challenge the Selective Service System which is sex-based discrimination against male citizens and immigrants by requiring them to register for the draft for possible induction into the U.S. military. Plaintiffs file this action against Defendants and all of them, in their official capacity as federal officials

under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)*, for violation of their Constitutional rights.

17. Under 28 U.S.C. § 1343(3) & (4), this Court has jurisdiction when the federal government deprives equal rights of citizens within the jurisdiction of the United States; and to secure equitable relief under any act of Congress providing for the protection of civil rights. Defendants and each of them in their official capacity in the federal government continue to violate the civil rights of male citizens and immigrants by requiring them to register with Selective Service System; imposing grave penalties upon them for failure to do so.

18. The Court may grant declaratory relief and other necessary or proper relief pursuant to the declaratory Judgment Act, Title 28 U.S.C. § 2201, which allows the issuance of declaratory judgments in cases with the courts' jurisdiction, restricted to cases and controversies in the constitutional sense and 28 U.S.C. § 1343(3) & (4).

19. Venue is proper in this district pursuant to 28 U.S.C § 1391(e)(1)(B)(C) because of the events giving rise to this Complaint occurred in this District, or a substantial part of property that is the subject of the action is situated in this District and more than 50% of the Plaintiffs reside in Los Angeles County with Plaintiffs MCNAMARA, MCKIERNAN, and MILILLO living in Los Angeles County.

PARTIES

20. Plaintiff NCFM is a not-for-profit, 501(c)(3) education and civil rights corporation organized under the laws of the State of California and of the United States.

21. NCFM is registered with the Combined Federal Campaign for non-profit organizations.

22. NCFM is committed to ending harmful discrimination and stereotypes against boys, men, and their families. NCFM is a gender inclusive, nonpartisan, ethnically diverse organization that effects civil rights reform through advocacy, education, outreach services, and litigation.

23. NCFM philosophically believes that the root causes of "gendered oppression" are gender roles, which developed for various reasons but were then enforced by law in an unfair way on both sexes. These laws discriminate against all genders, in differing ways.

24. NCFM assisted the California legislature in enacting legislation to protect men from paternity fraud and helped overturn unconstitutional laws that discriminated against male victims of domestic violence in *Woods v Horton* (2008) 167 Cal.App.4th 685. NCFM members were the prevailing appellants in the landmark California Supreme Court case *Angelucci v Century Supper Club* (2007) 41 Cal.4th 160, which held that women, people of color, gays and lesbians, and other groups that California businesses discriminated against based on protected personal characteristics did not have to first assert their right to equal

treatment to an offending business in order to have standing to sue for unlawful discrimination under California's Unruh Civil Rights Act.

25. NCFM has associational standing because some NCFM members, including MCNAMARA, MCKIERNAN, MILILLO, MENDIOLA, and FALCON, would otherwise have standing to sue in their own right, the interests NCFM seeks to protect are germane to NCFM's purpose and neither the claim asserted, nor the relief requested, requires the participation of individual NCFM members in this lawsuit.

26. Some of NCFM's members are males ages 18-26 or who will be age 18-26 at some time relative to this lawsuit. The relief this action seeks is germane to the age-appropriate members of NCFM who are harmed by or subject to discrimination on the basis of sex from the male-only registration requirements. They are United States citizens, who are not members of the military, students at military academies, or otherwise exempt from the draft. Most importantly, these members of NCFM support equal treatment of all sexes. Finally, some NCFM's members have or are likely to have male children or other loved ones who presently meet or will meet the criteria for registration upon reaching their 18th birthday.

27. Plaintiff TYLER MCNAMARA is a male age 18-26, and a U.S. citizen residing in Los Angeles County. He is in the age group required by Defendants to register for the military draft and has recently registered for the military draft as is required of him

as a male. He is harmed by or subject to discrimination on the basis of sex by the registration requirements. He is not a member of the military, a student at military academies, or otherwise exempt from the draft. Most importantly, he supports the equal treatment of all sexes.

28. Plaintiff CONOR MCKIERNAN is a male age 18-26, and a U.S. citizen residing in Los Angeles County. He is in the age group required by Defendants to register for the military draft and has recently registered for the military draft as is required of him as a male. He is harmed by or subject to discrimination on the basis of sex by the registration requirements. He is not a member of the military, a student at military academies, or otherwise exempt from the draft. Most importantly, he supports the equal treatment of all sexes.

29. Plaintiff NICHOLAS MILILLO is a male age 18-26, and a U.S. citizen residing in Los Angeles County. He is in the age group required by Defendants to register for the military draft and has recently registered for the military draft as is required of him as a male. He is harmed by or subject to discrimination on the basis of sex by the registration requirements. He is not a member of the military, a student at military academies, or otherwise exempt from the draft. Most importantly, he supports the equal treatment of all sexes.

30. Plaintiff NICOLAS MENDIOLA is a male age 18-26, and a U.S. citizen residing in Riverside County.

He is in the age group required by Defendants to register for the military draft and has recently registered for the military draft as is required of him as a male. He is harmed by or subject to discrimination on the basis of sex by the registration requirements. He is not a member of the military, a student at military academies, or otherwise exempt from the draft. Most importantly, he supports the equal treatment of all sexes.

31. Plaintiff JORDAN FALCON is a male age 18-26, and a U.S. citizen residing in San Bernadino County. He is in the age group required by Defendants to register for the military draft and has recently registered for the military draft as is required of him as a male. He is harmed by or subject to discrimination on the basis of sex by the registration requirements. He is not a member of the military, a student at military academies, or otherwise exempt from the draft. Most importantly, he supports the equal treatment of all sexes.

32. Defendant SELECTIVE SERVICE is an independent agency within the Executive Branch of the Federal Government of United States of America. The SELECTIVE SERVICE collects and maintains information on young males potentially subject to military conscription. Male U.S. citizens and male immigrants between the ages of 18 and 26 are all required by law to register with the Selective Service System within thirty days of their 18th birthdays and must notify the SELECTIVE SERVICE within ten days of any

changes to any of the information they provided on their registration cards, such as a change of address. A 2010 report by the General Accounting Office estimated the Selective Service System's registration rate at 92%, with the names and addresses of over 16.2 million people on file. The SELECTIVE SERVICE provides the names of all registrants to the Joint Advertising Marketing Research & Studies ("JAMRS") program for inclusion in the JAMRS Consolidation Recruitment Database. The names are distributed to various government agencies for recruiting purposes on a quarterly basis.

33. Defendant SPANGENBERG is the acting Director of the Selective Service System. The Director of the SELECTIVE SERVICE is appointed by the President of the United States of America and confirmed by the Senate.

34. Defendants DOES 1 through 50 are sued as fictious entities at this time and will be added to this Complaint by amendment when their true names are ascertained.

35. Plaintiffs are informed and believe and thereon allege that each of the Defendants is responsible and liable for the unlawful and unconstitutional acts alleged herein.

STATEMENT OF FACTS

36. Plaintiffs restate and incorporate by reference, as though fully set forth herein, the allegations and

statements contained in each of the above-referenced paragraphs.

37. NCFM previously filed a similar action in the Central District Court of California. On August 18, 2017, NCFM filed a First Amended Complaint. The Central District Court of California dismissed NCFM without prejudice on a Motion to Dismiss and transferred the case to the Southern District Court of Texas, Houston Division, where one of the prior plaintiffs, whom the Court found had standing, resided.

38. Plaintiffs filed a Motion for Summary Judgment which was granted by the Southern District of Texas on February 22, 2019. On August 13, 2020, the United States Court of Appeals for the Fifth Circuit reversed the Southern District and dismissed the case.

39. On January 8, 2021, NCFM filed a Petition for a Writ of Certiorari with the United States Supreme Court.

40. The National Organization for Women, and the Modern Military Association of America filed Amicus Briefs in support of NCFM's Petition. General Michael Hayden along with nine other military officers also filed an Amicus Briefs in support of NCFM's Petition. General Hayden's brief stated:

> "According to the logic underlying the current draft regime, men are more capable of serving in combat than women. Yet the vast majority of men in fact are not, and – most importantly – have no advantage in readiness over women, who the current

> statutory scheme forbids from registering. Such a regime makes no sense, either as a matter of Fifth Amendment law or of military planning. Doubling the pool of potential draftees would do more than give the military an opportunity to draw on a larger pool of qualified candidates to meet its needs in the face of a large-scale conflict. It would also permit the military to select the most qualified civilian candidates available for any given role in the military – meaning, a more qualified women could be chosen in the place of a less qualified man. Put differently, doubling the pool of potential draftees would raise the overall quality of the candidate pool and, in doing so, increase military readiness and aid the Nation's security." (Gen. Michael Hayden et al. Amicus Curiae, p. 15-16, NCFM, et al. v Selective Service System, et al. (2021))

41. On June 7, 2021, the Supreme Court denied the Petition. Justice Sotomayor cited the fact that Congress would be considering the issue in its next defense bill. Justice Sotomayor stated, "But at least for now, the Court's longstanding deference to Congress on matters of national defense and military affairs cautions against granting review while Congress actively weighs the issue." (Statement of Justice Sotomayer, Pg. 3, 2021).

42. Congress did, in fact, weigh in on the matter when it passed the next defense bill. In July 2021, the Senate Armed Services Committee voted 21-5 to add women to the draft registration system. The House Armed Services Committee approved the change in September in a 35-24 vote. The committee approval came after a congressionally mandated commission in 2020 recommended draft registration be expanded to include women, calling it a "*necessary and fair step*."

43. A small group of six Congressmembers were adamantly opposed to making women register and threatened to vote against the NDAA as a whole if the final bill included the provision to, in its words, *"draft our daughters."*

44. In our government composed of a system of checks and balances, the Supreme Court has historically been a check on arbitrary actions of Congress. The comment above which references *'our daughters'* is the quintessential definition of *'arbitrary'* in that it appears to be based upon random choice or personal whim, rather than any rational or measured thought; nor is the comment based upon the various studies and memorandum which Congress itself authorized; all of which concluded that the draft should include all draft-aged citizens and immigrants without regard to their sex. Every study and military recommendation has unequivocally concluded that a gender-neutral draft promotes fairness in the military and is in the best interest of our national security. The *'daughters'* comment alone makes the case that Congress

failed to end discrimination arising from the Act on the basis of sex for arbitrary reasons.

45. One of the six holdouts, Sen. Josh Hawley, R-Mo., led the charge against the provision in the Senate, he responded to reports that it would be removed from the NDAA by saying he "certainly hope[s] that is the case. *If it is not, then I will keep fighting for a vote on the Senate floor to strip this wrong and misguided provision out of the final bill."* General Hayden and the other military officers who submitted an Amicus Brief in support of women being included in the draft are certainly not misguided and their vast military experience, along with the study Congress authorized is not wrong. These six members of Congress dismiss the fact that registration for the draft does not mandate that all who register are, indeed, drafted; the process has always been *selective*. Each registrant would be drafted based upon their ability to serve, regardless of sex.

46. Those six Congressmembers who opposed including female citizens and immigrants in the Selective Service System went against the Department of Defense, and their arbitrary views do not reflect the present roles of enlisted female servicemembers who serve in all branches of the U.S. military, including in combat roles. These six members of Congress who used political influence by threatening to hold up approval of the defense bill dismissed the fact that gender-neutral registration celebrates the achievements and capabilities of women who currently serve and

readies our country to launch the best possible national defense by allowing the military access to the most qualified people to serve, regardless of their sex.

47. On June 7, 2021, the Supreme Court denied NCFM's Petition for Writ of Certiorari and Justice Sotomayor forewarned that the Court would defer to Congress "at least for now." Three years and four months later and Congress has yet to enact gender-neutral registration. Every year since 2021 when the Supreme Court denied NCFM's Petition for Writ of Certiorari, Congress had the opportunity to act when they passed the annual defense bill which authorizes approximately $900 billion in programs and covers the entire Department of Defense as well as the nuclear program in the Department of Energy.

48. To prevent tyranny, the U.S. Constitution established three separate but equal branches of government with each branch granted specific powers, limited only by checks and balances in place to avert absolutism by any branch. Congress is tasked with making laws and has been granted great deference by the judiciary related to military affairs. The Court in *Rostker* stated that, *"None of this is to say that Congress is free to disregard the Constitution when it acts in areas of military affairs…Deference does not mean abdication." Rostker* (1981) 453 U.S. 67, 70.

49. Congress may enact laws, but the judiciary has the power to declare them unconstitutional. In our system of checks and balances, courts also guard against the concept of arbitrary Congressional action.

With Congressional gridlock at an all time high, the courts must also guard against arbitrary Congressional inaction. Congress is enacting fewer laws, engaging more gamesmanship which more often serves their own political interests but not their constituents. One member may have the political influence to block votes or through tactical delays keep legislation in committee to prevent a vote on the floor. As related to registration for the Selective Service System, this form of Congressional action or inaction is a threat to equal protection under the Fifth Amendment.

50. The Framers drafted the Constitution with separation of powers, in part, to diminish the threat of arbitrary government action. Justice Stevens stated, "I see no reason why the character of their procedures may not be considered relevant to the decision whether the legislative product has caused a deprivation of liberty or property without due process of law." *Fullilove v. Klutznick* (1980) 448 U.S. 448, 248.

51. When the Court denied NCFM's Petition for Certiorari in 2021, Justice Sotomayor stated that "it remains to be seen, of course, whether Congress will end gender-based registration under the Military Selective Service Act. But at least for now, the Court's long-standing deference to Congress on matters of national defense and military affairs cautions against granting review while Congress actively weighs the issue." (Statement of Justice Sotomayer, Pg. 3, 2021)

52. General Hayden's Amicus Brief states that *"[r]equiring women as well as men to register for the*

selective service would send a clear message that the military values the service of its women equally alongside the service of its men" (Gen. Michael Hayden et al. Amicus Curiae, p. 21, NCFM, et al. v Selective Service System, et al. (2021))

53. The rationale behind *Rostker* is therefore obsolete as women serve in every capacity from the fields of combat, in aircraft, at sea and four-star generals. The Act should reflect the present role of women who proudly serve in our military.

54. At first glance, the prohibition of women from registering with the Selective Service System seems to confer a benefit to women. Limiting registration to men is based upon antiquated stereotypes of the capacity of women to serve and fully participate in military and civic life; and equally archaic and compartmentalized views that men lack the ability to remain at home as caretakers. The ban assumes women are unsuitable for military service notwithstanding their own individual abilities and predispositions. The limitation on registration to male citizens sanctifies these biases and encapsulates them in federal law.

55. The Department of Defense advised Congress that allowing women to register would promote military preparedness *and fairness***.** There is simply no justification for the inaction of Congress to prevent and combat discrimination on the basis of sex when they are tasked with passing laws to protect equal rights and uphold the Constitution.

56. It has been 44 years since President Carter suggested Congress enact legislation to include women in the registration.

57. It has been eight years since Congress authorized the NCMNPS to study women in the draft and their final report was published 2020 where they recommended *"eliminat[ing] male-only registration."* (NCMNPS Report, Pg. 111), and it has been three years and four months since the Court denied NCFM's Petition for Writ of Certiorari, deferring matters of the military to Congress.

58. Congress failed to enact legislation in line with military studies and recommendations of the highest-ranking military officers. *"The United States military of the twenty-first century values equal opportunity for all qualified individuals to serve – regardless of race, sex, gender identity, or sexual orientation. The modern history of the military bears this out."* (Gen. Michael Hayden et al. Amicus Curiae, p. 4, NCFM, et al. v Selective Service System, et al. (2021))

59. Plaintiffs seek to end discrimination on the basis of sex as related to registration with the Selective Service System, an action that is long overdue. While there has not been a conscription in almost 50 years, in light of the current state of world affairs, the possibility looms closer than ever before. Equalizing registration with the Selective Service System would ensure that all sexes have the same rights and responsibilities to serve their country if called upon to do so. Eliminating registration on the basis of sex simply

acknowledges the reality that currently exists in our military. A pool of draft-age people, regardless of their sex, will enhance military readiness, and contribute to our national security.

FIRST CAUSE OF ACTION

(Fifth Amendment – Violation of the Equal Protection Clause)

60. Plaintiffs restate and incorporate by reference, as though fully set forth herein, the allegations and statements contained in each of the above-referenced paragraphs.

61. The Equal Protection Clause of the Fifth Amendment guarantees that no person or group will be denied the protection under the law that is enjoyed by similar persons or groups. Under the Fifth Amendment, no person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.

62. The Military Selective Service Act denies male citizens and immigrants equal protection; the Act treats males and females of draft-age differently. Plaintiffs MCNAMARA, MCKIERNAN, MILILLO, MENDIOLA, and FALCON are between the ages of 18 and 26 and were required to register with the Selective Service System; no female citizens or female

immigrants of draft-age were required to register under the Act.

63. Presently, women to serve in every capacity in all the armed forces; including combat roles. Since 2013, there have been a slew of historic firsts, from the first female graduates of the Army Ranger School in 2015, to the first female Marine to lead an infantry platoon in 2018. By 2019, more than 600 female Sailors and Marines were serving in combat arms units previously restricted to men; while more than 650 women held Army combat roles and over 1,000 had accessed Army combat specialties. Therefore, male, and female citizens and immigrants are similarly situated in their roles in all branches of the U.S. Military; and discrimination against Plaintiffs by the Defendants on the basis of sex violates equal protection under the Fifth Amendment of the U.S. Constitution.

64. The above-referenced conduct by Defendants violates the rights of Plaintiffs to equal treatment on the basis of sex under the Fifth Amendment of the United States Constitution and Plaintiffs have been harmed as a result of this discriminatory law.

PRAYER FOR RELIEF

Therefore, Plaintiffs pray as follows for:

1. Injunctive relief enjoining Defendants from pursuing its policy to require male citizens and immigrants to register with the Selective Service System; and to end discrimination on the basis

of sex in its military draft registration program and to treat all sexes equally within the Selective Service System;

2. Declaratory relief regarding the respective rights of Plaintiffs and all Defendants as set forth in this Complaint to issue a declaratory judgment that the practices complained of in this Complaint are unlawful and violate the Fifth Amendment to the U.S. Constitution;
3. Reasonable Attorney fees and costs related to this action pursuant to 42 U.S. Code § 1988 - Proceedings in vindication of civil right and any other provision of law which may be applicable; and,
4. Any other relief that the Court deems in the furtherance of justice.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury of all issues and each and every cause of action so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Civil Rights Act of 1991Plaintiffs demand a trial by jury on all causes of action so triable.[1]

Respectfully Submitted.

Dated: May 14, 2024 NADINE LEWIS,
ATTORNEY AT LAW

[1] Ms. Lewis would like to thank her longtime law clerk Spenscer Greenberg for her thoughtful edits and meticulous research on this Complaint.

By: *Nadine Lewis, Esq.*
Nadine Lewis, Esq.,
Attorney for Plaintiffs,
NATIONAL COALITION
FOR MEN, TYLER
MCNAMARA, CONOR
MCKIERNAN, NICHOLAS
MILILLO, NICOLAS
MENDIOLA, and JORDAN
FALCON

Cite as: 593 U. S. _____ (2021)

SUPREME COURT OF THE UNITED STATES

NATIONAL COALITION FOR MEN, ET AL. *v.*
SELECTIVE SERVICE SYSTEM, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 20–928. Decided June 7, 2021

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE BREYER and JUSTICE KAVANAUGH join, respecting the de-nial of certiorari.

The Fifth Amendment to the United States Constitution prohibits the Federal Government from discriminating on the basis of sex absent an "'exceedingly persuasive justifi-cation.'" *Sessions* v. *Morales-Santana*, 582 U. S. _____, _____ (2017) (slip op., at 9) (quoting *United States* v. *Virginia*, 518 U. S. 515, 531 (1996)); see *Califano* v. *Westcott*, 443 U. S. 76 (1979); *Califano* v. *Goldfarb*, 430 U. S. 199 (1977); *Weinberger* v. *Wiesenfeld*, 420 U. S. 636 (1975); *Frontiero* v. *Rich-ardson*, 411 U. S. 677 (1973). Cf. *Bolling* v. *Sharpe*, 347 U. S. 497 (1954). The Military Selective Service Act re-quires men, and only men, however, to register for the draft upon turning 18. See 85

Stat. 353, 50 U. S. C. §3802(a). In *Rostker* v. *Goldberg*, 453 U. S. 57 (1981), this Court upheld the Act's gender-based registration requirement against an equal protection challenge, citing the fact that women were "excluded from combat" roles and hence "would not be needed in the event of a draft." *Id.,* at 77.

The role of women in the military has changed dramati-cally since then. Beginning in 1991, thousands of women have served with distinction in a wide range of combat roles, from operating military aircraft and naval vessels to participating in boots-on-the-ground infantry missions. See Brief for Modern Military Association of America et al. as *Amici Curiae* 11–18. Women have passed the military's de-manding tests to become U. S. Army Rangers, Navy SEALs, and Green Berets. See Brief for General Michael Hayden et al. as *Amici Curiae* 11–13. As of 2015, there are no longer any positions in the United States Armed Forces closed to women. See Memorandum from Secretary of Defense to Secretaries of the Military Departments et al. Re: Imple-mentation Guidance for the Full Integration of Women in the Armed Forces 1 (Dec. 3, 2015). Petitioners ask the Court to overrule *Rostker* in light of these developments.

Petitioners, however, are not the only ones asking whether a male-only registration requirement can be reconciled with the role women can, and already do, play in the modern military. In

2016, Congress created the National Commission on Military, National, and Public Service (NCMNPS) and tasked it with studying whether Selective Service registration should be conducted "regardless of sex." National Defense Authorization Act for Fiscal Year 2017, §§551(a), 555(c)(2)(A), 130 Stat. 2130, 2135.

On March 25, 2020, the Commission released its final re-port, in which it recommended "eliminat[ing] male-only registration." Inspired to Serve: The Final Report of the [NCMNPS] 111. Among other things, the Commission found that "[m]ale-only registration sends a message to women not only that they are not vital to the defense of the country but also that they are not expected to participate in defending it." *Id.,* at 118. Just a few months ago, the Sen-ate Armed Services Committee held a hearing on the re-port, where Chairman Jack Reed expressed his "hope" that a gender-neutral registration requirement will be "incorpo-rated into the next national defense bill." Tr. of Hearing on Final Recommendations and Report of the [NCMNPS] be-fore the Senate Committee on Armed Services, 117th Cong., 1st Sess., 21 (Mar. 11, 2021).

It remains to be seen, of course, whether Congress will end gender-based registration under the Military Selective Service Act. But at least for now, the Court's longstanding deference to Congress on matters of national defense and military affairs

cautions against granting review while Congress actively weighs the issue. I agree with the Court's decision to deny the petition for a writ of certiorari.

Appendix F
[Filed: Aug. 13, 2020]

United States Court of Appeals
for the Fifth Circuit

No. 19-20272

NATIONAL COALITION FOR MEN; JAMES LESMEISTER, *individually and on behalf of* OTHERS SIMILARLY SITUATED; ANTHONY DAVIS,

Plaintiffs—Appellees,

versus

SELECTIVE SERVICE SYSTEM; DONALD BENTON, AS DIRECTOR OF SELECTIVE SERVICE SYSTEM,

Defendants—Appellants.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-3362

Before WIENER, STEWART, and WILLETT, *Circuit Judges*.

Per Curiam:

Plaintiffs-Appellees James Lesmeister, Anthony Davis, and the National Coalition for Men sued Defendant-Appellants the Selective Service System and its director (collectively, "the Government") alleging that the male-only military draft is unlawful sex

discrimination. The district court granted Plaintiffs-Appellees declaratory judgment, holding that requiring only men to register for the draft violated their Fifth Amendment rights. Because that judgment directly contradicts the Supreme Court's holding in *Rostker v. Goldberg*, 453 U.S. 57, 78–79 (1981), and only the Supreme Court may revise its precedent, we REVERSE.

I. Background

The Military Selective Service Act (the "Act") requires essentially all male citizens and immigrants between the ages of eighteen and twenty-six to register with the Selective Service System, a federal agency, to facilitate their conscription in the event of a military draft. 50 U.S.C. §§ 3802(a), 3809. Men who fail to register or otherwise comply with the Act and its implementing regulations may be fined, imprisoned, and/or denied federal benefits. *Id.* §§ 3328, 3811(a), 3811(f). The Act does not require women to register. *See id.* § 3802(a).

In 1980, President Carter recommended to Congress that the Act be extended to cover women. *See Rostker*, 453 U.S. at 60 (citing House Committee on Armed Services, Presidential Recommendations for Selective Service Reform—A Report to Congress Prepared Pursuant to Pub. L. 96–107, 96th Cong., 2d Sess., 20–23 (Comm. Print No. 19, 1980), App. 57–61). Congress declined after "consider[ing] the question at great length" with "extensive testimony and evidence." *Id.* at 61, 72.

In 1981, the Supreme Court held in *Rostker v. Goldberg* that male-only registration did not violate the Due Process Clause of the Fifth Amendment. *Id.* at 78–79. The court based its reasoning on the fact that women were then barred from serving in combat and deferred to Congress's considered judgment about how to run the military. *See id.* at 76–77.

Since then, the military has gradually integrated women into combat roles. In the early 1990s, Congress repealed the statutory bans on women serving on combat aircraft and ships. Pub. L. No. 103-160, § 541, 107 Stat. 1547, 1659 (1993), *repealing* 10 U.S.C. § 6015 (1988) (ships), Pub. L. No. 102-190, § 531, 105 Stat. 1290, 1365 (1991) (aircraft). In 2013, the Department of Defense ("DoD") announced its intention to open all remaining combat positions to women, the last of which it opened in 2016.

Congress again considered male-only registration in the context of the 2017 National Defense Authorization Act. The Senate version of the bill would have required women to register, S. 2943, 114th Cong. § 591 (as passed by Senate, June 21, 2016), but the final law instead created a commission to study the military Selective Service process to determine, among other questions, whether the process was needed at all and, if so, whether to conduct it "regardless of sex," National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, §§ 551, 555, 130 Stat. 2000, 2130, 2135 (2016). The commission completed its report in March 2020. National Commission on Military, National,

and Public Service, Inspired to Serve (2020), https://inspire2serve.gov/sites/default/files/final-report/Final%20Report.pdf. The 2017 National Defense Authorization Act also directed the Secretary of Defense to issue a report addressing, *inter alia*, the benefits of the Selective Service System and the impact on those benefits of requiring women to register, which the DoD completed in 2017. *Id.* § 552, 130 Stat. at 2123.

Plaintiffs-Appellees sued the Government under 42 U.S.C. § 1983 for violations of their Fifth Amendment rights to be free from sex discrimination. On cross-motions, the district court granted summary judgment for Plaintiffs-Appellees declaring that male-only registration was unlawful, but it declined to issue an injunction. The court reasoned that *Rostker* no longer controlled because women may now serve in combat. The Government appeals, asserting that *Rostker* does control and that, regardless of *Rostker*, male-only registration is still constitutional.

II. Standard of Review

The facts are not in dispute, so we review de novo the district court's grant of summary judgment "to determine whether it was rendered according to law." *United States v. Jesco Const. Corp.*, 528 F.3d 372, 374 (5th Cir. 2008).

III. Analysis

In *Rostker*, the Supreme Court held that the male-only Selective Service registration requirement did not offend due process. 453 U.S. at 78–79. The Court relied heavily on legislative history showing that Congress thoroughly considered whether to require women to register. *See id.* at 71–72, 74, 76, 81–82. Congress, and thus the Court, believed the sole purpose of registration to be the draft of combat troops in a national emergency. *Id.* at 75–76 ("Congress' determination that the need would be for combat troops if a draft took place was sufficiently supported by testimony adduced at the hearings so that the courts are not free to make their own judgment on the question."). Women were then barred from combat, so the Court examined the constitutional claim with those "combat restrictions firmly in mind." *Id.* at 77. The Court concluded, "This is not a case of Congress arbitrarily choosing to burden one of two similarly situated groups. . . . Men and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft." *Id.* at 78–79. Further, the Court rejected the district court's conclusion that women could be drafted in some number into noncombat positions without degrading the military's effectiveness, instead deferring to Congress's determination that the administrative and operational burdens of such an arrangement exceeded the utility. *Id.* at 81–82.

That holding is controlling on this court. The Fifth Circuit is a "strict stare decisis" court and "cannot

ignore a decision from the Supreme Court unless directed to do so by the Court itself." *Ballew v. Cont'l Airlines, Inc.*, 668 F.3d 777, 782 (5th Cir. 2012); *Hernandez v. United States*, 757 F.3d 249, 265 (5th Cir. 2014), *adhered to in part on reh'g en banc*, 785 F.3d 117 (5th Cir. 2015), *vacated and remanded sub nom. Hernandez v. Mesa*, 137 S. Ct. 2003 (2017). "[F]ollow[ing] the law as it is . . . respect[s] the Supreme Court's singular role in deciding the continuing viability of its own precedents." *Perez v. Stephens*, 745 F.3d 174, 180 (5th Cir. 2014).

The Supreme Court is clear on this point as well. In *State Oil Co. v. Khan*, 522 U.S. 3, 22 (1997), the Court held that vertical maximum price fixing was not *per se* unlawful, overruling *Albrecht v. Herald Co.*, 390 U.S. 145 (1968). The Court disagreed with some of the reasoning in *Albrecht* but, relevant to this case, also found that the facts on which *Albrecht* rested had changed. *State Oil Co.*, 522 U.S. at 14–19. For example, the procompetitive potential of vertical maximum price fixing had become more evident since *Albrecht* because other business arrangements that combined with vertical maximum price fixing to help consumers were *per se* illegal at *Albrecht's* time but had since become more common. *Id.* at 14–15. Also, "the ban on maximum resale price limitations declared in *Albrecht* in the name of 'dealer freedom' ha[d] actually prompted many suppliers to integrate forward into distribution, thus eliminating the very independent trader for whom *Albrecht* professed solicitude." *Id.* at

16–17 (quoting 8 P. Areeda, Antitrust Law, ¶ 1635, p. 395 (1989)). The Court nevertheless noted that, "[d]espite. . . *Albrecht's* 'infirmities, [and] its increasingly wobbly, moth-eaten foundations,' . . . [t]he Court of Appeals was correct in applying that principle despite disagreement with *Albrecht*, for it is this Court's prerogative alone to overrule one of its precedents." *Id.* at 20 (quoting *Khan v. State Oil Co.*, 93 F.3d 1358, 1363 (7th Cir. 1996)).

Here, as in *State Oil Co.*, the factual underpinning of the controlling Supreme Court decision has changed, but that does not grant a court of appeals license to disregard or overrule that precedent. *See also Roper v. Simmons*, 543 U.S. 551, 594 (2005) (O'Connor, J., dissenting) (pointing out that only the Supreme Court may overrule its precedents "even where subsequent decisions or factual developments may appear to have 'significantly undermined' the rationale for [the] earlier holding" and therefore the majority should have admonished the circuit court despite affirming its judgment); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."); *Agostini v. Felton*, 521 U.S. 203, 237, 239 (1997) (confirming rule from *Rodriguez de Quijas* that

lower courts may not "conclude [that] recent cases have, by implication, overruled an earlier precedent").

Plaintiffs-Appellees point to no case in which a court of appeals has done what they ask of us, that is, to disregard a Supreme Court decision as to the constitutionality of the exact statute at issue here because some key facts implicated in the Supreme Court's decision have changed. That we will not do.

Rostker forecloses Plaintiffs-Appellees' claims, so the judgment of the district court is REVERSED and the case DISMISSED.

Appendix G
[Filed: Apr. 29, 2019]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATIONAL COALITION FOR MEN, *et al.*, *Plaintiffs*,	§	
v.	§	CIVIL ACTION H-16-3362
SELECTIVE SERVICE SYSTEM, *et al.*, *Defendants*.	§	

MEMORANDUM OPINION AND ORDER

Pending before the court is a motion for relief from judgment filed by plaintiffs National Coalition for Men, Anthony Davis, and James Lesmeister (collectively, "Plaintiffs"). Dkt. 90. Plaintiffs also filed a "supplemental motion for summary judgment" containing additional briefing. Dkt. 91. Defendants Lawrence Romo and the Selective Service System (collectively, "Defendants") responded. Dkt. 92. Having considered the motions, response, and applicable law, the court is of the opinion that Plaintiffs' motions (Dkts. 90, 91) should be DENIED.

This court previously granted summary judgment in Plaintiffs' favor. Dkt. 87. However, the court denied

Plaintiffs' request for injunctive relief because Plaintiffs failed to request an injunction in their motion and did not brief the issue. *Id.* at 19. Plaintiffs now ask the court to reconsider its denial of the injunction request. Dkts. 90, 91. Defendants oppose injunctive relief and have appealed the court's original summary judgment ruling. Dkts. 92, 93.

As a threshold matter, Federal Rule of Civil Procedure 60(b) governs motions for relief from judgment. Typically, "[g]ross carelessness, ignorance of the rules, or ignorance of the law are insufficient bases" for relief under Rule 60. *Edward H. Bohlin Co. v. Banning Co.*, 6 F.3d 350, 357 (5th Cir. 1993). However, even if the court could consider Plaintiffs' request for an injunction strictly on the merits, Plaintiffs' arguments still fail.

First, Plaintiffs fail to demonstrate that they are entitled to relief under a typical injunction analysis. Injunctive relief is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat, Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365 (2008). A plaintiff seeking a permanent injunction must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction."

Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 156–57, 130 S. Ct. 2743 (2010) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837 (2006)).

Here, the third and fourth factors of this test weigh heavily against granting injunctive relief. Plaintiffs request that the court "either require both men and women to register, or require neither men nor women to register, for the [Military Selective Service Act]." Dkt. 90 at 7. Both of these proposed actions would place inequitable hardship on Defendants as well as disserve the public interest. At best, both of these changes would "lead to serious logistical problems, as well as millions of dollars in potentially wasted resources." Dkt. 92 at 10–11. At worst, upheaval of the draft registration system could "compromis[e] the country's readiness to respond to a military crisis." *Id.* at 9. "[A]lthough registration imposes material interim obligations . . . [the court] cannot say that the inconvenience of those impositions outweighs the gravity of the harm to the United States" should registration be enjoined. *Rostker v. Goldberg* (*Rostker I*), 448 U.S. 1306, 1310, 101 S. Ct. 1 (Brennan, Circuit Justice 1980). The balance of equities requires—and the public interest is best served by—preserving the current registration system pending appellate review.

Second, *Rostker v. Goldberg* (*Rostker II*), 453 U.S. 57, 101 S. Ct. 2646 (1981), counsels deference. "The constitutional power of Congress to raise and support armies and to make all laws necessary and proper to

that end is broad and sweeping." *Rostker II*, 453 U.S. at 65 (quoting *United States v. O'Brien*, 391 U.S. 367, 377, 88 S. Ct. 1673 (1968)). While Congress is not "free to disregard the Constitution" in exercising its military powers, "the Constitution itself" requires judicial deference to congressional judgment in this area. *Id.* at 67.

In this case, judicial deference requires the court to deny injunctive relief despite the ongoing constitutional violations. The draft has significant foreign policy, as well as national security, implications. *See Rostker I*, 448 U.S. at 1310 ("[T]he inauguration of registration by the President and Congress was . . . an act of independent foreign policy significance—a deliberate response to developments overseas."). The legislative branch is best equipped—and constitutionally empowered—to reform the draft registration system in light of these important policy considerations. *See Rostker II*, 453 U.S. at 65 ("Not only is the scope of Congress' constitutional power in this area broad, but the lack of competence on the part of the courts is marked."). Moreover, Congress has created a commission that is currently studying draft reform and will make recommendations in the coming years. Dkt. 92 at 9. While these factors do not preclude judicial review entirely, they do strongly suggest that the court should defer to Congress by denying injunctive relief at this time.

Accordingly, Plaintiffs' motions for relief from judgment (Dkt. 90) and summary judgment (Dkt. 91) are DENIED.

Signed at Houston, Texas on April 29, 2019.

/s/ Gray H. Miller
Gray H. Miller
Senior United States District Judge

Appendix H
[Filed: Feb. 22, 2019]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATIONAL COALITION FOR MEN, *et al.*, *Plaintiffs*,	§	
v.	§	CIVIL ACTION H-16-3362
SELECTIVE SERVICE SYSTEM, *et al.*, *Defendants*.	§	

MEMORANDUM OPINION AND ORDER

Pending before the court is: (1) a motion for summary judgment filed by plaintiffs National Coalition for Men ("NCFM"), Anthony Davis, and James Lesmeister ("Plaintiffs") (Dkt. 73); and (2) a cross-motion for summary judgment and motion to stay filed by defendants Selective Service System ("SSS") and Lawrence Romo (collectively, "Defendants") (Dkt. 80). Plaintiffs responded to Defendants' cross-motion. Dkt. 81. Having considered the motions, response, evidence in the record, and applicable law, the court is of the opinion that Plaintiffs' motion for summary judgment (Dkt. 73) should be GRANTED and Defendants'

motion for stay and summary judgment (Dkt. 80) should be DENIED.

I. BACKGROUND

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 laws. U.S. Const. art. I, § 8; U.S. Const. amend. V; *Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693 (1954).

The Military Selective Service Act ("MSSA") requires males—but not females—to register for the draft. The MSSA provides that "every male citizen of the United States, and every other male person residing in the United States . . . between the ages of eighteen and twenty-six," must register with SSS. 50 U.S.C. § 3802(a). After registering, men have a continuing obligation to update SSS with any changes in their address or status. § 3813. Failure to comply with the MSSA can result in up to $10,000 in fines and five years of imprisonment. § 3811(a). Males are also subject to other penalties for failing to register, including denial of federal student loans. § 3811(f).

Plaintiffs challenge the MSSA on equal protection grounds, arguing that the MSSA's maleonly registration requirement violates the Fifth Amendment Due Process Clause. Dkt. 60 at 12. Plaintiffs Lesmeister and Davis are males subject to the draft

requirements.[1] Dkt. 73-2 at 1–2. Both have registered with the SSS, in compliance with the MSSA. *Id.* NCFM is a non-profit, 501(c)(3) educational and civil rights corporation. *Id.* at 3. Some of NCFM's members, including Davis, are males subject to the draft requirements who have already registered or will have to register under the MSSA. *Id.* at 3–4.

In 2013, NCFM and Lesmeister filed suit against Defendants in the Central District of California. Dkt. 1. Initially, Judge Dale S. Fischer, the Central District of California judge, dismissed the case as not ripe for review. Dkt. 20. The Ninth Circuit reversed and remanded, holding that the plaintiffs' claims were "definite and concrete, not hypothetical or abstract, and so ripe for adjudication." *Nat'l Coal. for Men v. Selective Serv. Sys.*, 640 F. App'x 664, 665 (9th Cir. 2016) (citations and quotations omitted). On remand, Judge Fischer granted Defendants' motion to dismiss NCFM without prejudice because the organization lacked associational standing. Dkt. 44 at 4. Further, the court determined that venue was not proper in the Central District of California and transferred the case to the Southern District of Texas, where Lesmeister resides. *Id.* at 5.

Upon transfer, Lesmeister amended his complaint to name NCFM and Davis as plaintiffs. Dkt. 60. This court subsequently determined that all three

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[1] Plaintiffs request judicial notice of certain facts in this case. Dkt. 73-2. To the extent Plaintiffs request judicial notice of facts that are not in dispute, the court grants this request.

plaintiffs have standing. Dkt. 59. Both Plaintiffs and Defendants now move for summary judgment, arguing that current equal protection jurisprudence entitles them to judgment as a matter of law.[2]

II. ANALYSIS

A. Motion to Stay

"The proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708, 117 S. Ct. 1636 (1997). In their pending motion, Defendants first contend that the court should stay the current proceedings. Dkt. 80 at 15–21. Defendants argue that the case is not ripe for review because Congress is currently considering whether to add women to the draft. *Id.* Defendants also argue that, under separation-of-power principles, the court should postpone resolution of the case during congressional debate on the issue. *Id.* Finally, Defendants urge the court to stay the case using its inherent case-management power because the balance of hardships weighs in Defendants' favor. *Id.*

1. Ripeness

The justiciability doctrine of ripeness prevents courts, "through avoidance of premature adjudication,

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[2] A court shall grant summary judgment when a "movant shows that there is no genuinedispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.Civ. P. 56(a). Here, both sides have moved for summary judgment, so the parties agree that thereare no material fact issues to resolve. Dkt. 73; Dkt. 80.

from entangling themselves in abstract agreements." *Choice Inc. of Tex. v. Greenstein*, 691 F.3d 710, 715 (5th Cir. 2012) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149, 87 S. Ct. 1507 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977)). A court must dismiss for lack of ripeness when the case is "abstract or hypothetical." *Id.* (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583, 586 (5th Cir. 1987)). "Ripeness 'requir[es] us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Texas v. United States*, 523 U.S. 296, 300–01, 118 S. Ct. 1257 (1998) (quoting *Abbott Labs.*, 387 U.S. at 149). "A case is generally ripe if any remaining questions are purely legal ones; conversely, a case is not ripe if further factual development is required." *Choice Inc. of Tex.*, 691 F.3d at 715 (quoting *New Orleans Pub. Serv., Inc.*, 833 F.2d at 586).

Defendants argue that the case is not currently fit for judicial decision because Congress recently established the National Commission on Military, National, and Public Service ("the Commission") to consider whether Congress should modify or abolish the current draft registration requirements. Dkt. 80 at 17; National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 551, 130 Stat. 2000, 2130 (2016). Although the Ninth Circuit previously held that the case was ripe despite ongoing congressional debate, Defendants contend that the recently created

Commission now renders Plaintiffs' claims unripe. *Id.* at 19. Defendants request that the court stay proceedings until the Commission has issued its report and Congress has had the opportunity to act on the Commission's recommendations. *Id.* at 21.

However, the existence of the Commission does not affect the ripeness of Plaintiffs' claims. The question of whether the MSSA violates the Constitution is purely legal; no further factual development is necessary for the court to decide the issue. Plaintiffs' claims are not "abstract or hypothetical." *Choice Inc. of Tex.*, 691 F.3d at 715 (quoting *New Orleans Pub. Serv., Inc.*, 833 F.2d at 586)). While the Commission's recommendations could affect the current proceedings, the Commission is not set to release its final report until 2020. Dkt. 86-1 at 4 (Commission interim report). There is no guarantee that the Commission will recommend amending or abolishing the MSSA—and, even if it does, Congress is not required to act on those recommendations. Congress has been debating the male-only registration requirement since at least 1980 and has recently considered and rejected a proposal to include women in the draft. *Rostker*, 453 U.S. at 60; Dkt. 80-3 at 11 (Letter to Armed Services Committee Chairs, Sept. 2016). It is Defendants' arguments—not Plaintiffs' claims—that are too hypothetical for the court's consideration.[3]

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[3] Defendants also argue that deference to Congress is appropriate when pending legislation may render a legal challenge moot, and that such deference applies here. Dkt. 80 at 19–20 (citing

"However, even where an issue presents purely legal questions, the plaintiff must show some hardship in order to establish ripeness." *Choice Inc. of Tex.*, 691 F.3d at 715 (citing *Cent. & S. W. Servs., Inc. v. EPA*, 220 F.3d 683, 690 (5th Cir. 2000)) (quotations omitted). Here, Plaintiffs have demonstrated that they are subject to the MSSA. Dkt. 73-2. NCFM's members include individuals who will have to register under the MSSA in the future and will be subject to ongoing requirements to update their personal information. *Id.* Moreover, "discrimination itself, by perpetuating 'archaic and stereotypic notions' . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group."*Heckler v. Mathews*, 465 U.S. 728, 739–40, 104 S. Ct. 1387 (1984) (citations omitted). Thus, Plaintiffs have shown "some hardship" and the case is ripe.

2. Separation of Powers

Second, Defendants effectively argue that the court *must* grant a stay to give Congress proper deference in the realm of military affairs and avoid violating the separation of powers. Dkt. 80 at 11–13. Defendants cite Congress's broad constitutional power to conduct military affairs and the Supreme Court's decision in *Rostker v. Goldberg*, 453 U.S. 57, 101 S. Ct. 2646

Schlesinger v. Ballard, 419 U.S. 498, 510 n.13, 95 S. Ct. 572 (1975)). However, Defendants do not cite any pending legislation that would add women to the draft.

(1981). Dkt. 80 at 17–19. However, "separation of powers does not mean that the branches 'ought to have no *partial agency* in, or no *controul* over the acts of each other.'" *Clinton*, 520 U.S. at 703 (quoting The Federalist No. 47, at 325–326 (James Madison) (J. Cooke ed., 1961) (emphasis in original)). Even judicial review that "significantly burden[s] the time and attention" of another branch "is not sufficient to establish a violation of the Constitution." *Id.* The Supreme Court has repeatedly affirmed that "concerns of national security . . . do not warrant abdication of the judicial role." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010).

Rostker itself expressly acknowledged that Congress does not receive "blind deference in the area of military affairs." 453 U.S. at 67. Even though congressional power in this area is "broad and sweeping," Congress may not "exceed[] constitutional limitations on its power in enacting such legislation." *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 58, 126 S. Ct. 1297 (2006) (citations and quotations omitted). As this court previously reasoned:

> The court agrees with Defendants that Congress has broad power to raise and regulate armies and navies. *Rostker*, 453 U.S. at 65. Thus, "a healthy deference to legislative and executive judgments in the area of military affairs" should be given by the court. *Id.* at 66. *Rostker* thoroughly explained the reason to provide deference to Congress when dealing

> with military affairs. *See id.* at 64–67. But "[n]one of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs. In that area, as any other, Congress remains subject to the limitations of the Due Process Clause." *Id.* at 67.

Dkt. 66 at 6–7 (denying Defendants' motion to dismiss for failure to state a claim). *Rostker* explicitly requires Congress to comply with the Constitution in the area of military affairs, and Plaintiffs allege that the MSSA violates the Constitution. *Rostker*, 453 U.S. at 67; Dkt. 60 at 12. Additionally, as noted above, Congress has been debating the MSSA's registration requirement for decades with no definite end in sight. Even constitutionally mandated deference does not justify a complete and indefinite stay when parties allege that the federal government is presently violating their constitutional rights.

3. Inherent Power

Finally, Defendants request that the court exercise its discretion to stay the case. This court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton*, 520 U.S. at 706. Even if the burdens on the government do not violate separation-of-powers principles, "those burdens are appropriate matters for the District Court to evaluate in its management of the case." *Id.* at 707. "[T]he power to stay proceedings is incidental to the power

inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Qualls v. EOG Res., Inc.*, No. H-18-666, 2018 WL 2317718, at *2 (S.D. Tex. May 22, 2018) (Miller, J.) (alteration in original) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163 (1936)). The movant must "make out a clear case of hardship or inequity in being required to go forward." *Landis*, 299 U.S. at 254.

Defendants contend that a court ruling at this time "could disrupt or distract a process that may ultimately render [the issue] moot" if the Commission recommends "ending registration in its entirety." Dkt. 80 at 18; *see also* Dkt. 80 at 21 ("Alternatively, such a ruling could require the Government to spend millions of dollars and expend significant resources and effort changing the system of selective service—a considerable hardship—when Congress may wish to change the system in a completely different manner following the Commission's review."). However, if the court stayed the case until Congress acted on the Commission's recommendations, the case could be stayed indefinitely. The Commission is under no obligation to recommend certain outcomes to Congress, and Congress is under no obligation to follow or act on those recommendations. The fact and nature of future congressional action is highly speculative. Thus, the court's time and effort is likely best spent on the case at this stage, rather than at some indefinite time in the future.

Moreover, present resolution of the case will not create such a hardship for Defendants that the hardship justifies a continuous and indefinite violation of Plaintiffs' constitutional rights. Congressional resolution of this issue, if it occurs, will not necessarily be less burdensome for Defendants than judicial resolution. Defendants have not made out a "clear case of hardship or inequity." *Landis*, 299 U.S. at 254. Therefore, the court declines to use its inherent authority to stay the case.

B. *Rostker v. Goldberg* and Changing Opportunities for Women in the Military

On substance, Defendants first argue that the Supreme Court's holding in *Rostker v. Goldberg*, 453 U.S. 57, 101 S. Ct. 57 (1981), forecloses any challenge to gender discrimination in the MSSA. Dkt. 80 at 21–22. However, as this court previously held in denying Defendants' motion to dismiss, *Rostker* is factually distinguishable from the current case. Dkt. 66 (order denying Defendants' motion to dismiss for failure to state a claim). The court again declines to resolve the case on *Rostker* alone.

1. The *Rostker* Opinion

In *Rostker*, the Supreme Court squarely addressed the question of whether the male-only registration requirement in the MSSA violated equal protection principles. 453 U.S. at 83. The Court first noted that judging the constitutionality of a statute passed by

Congress is "the gravest and most delicate duty that this Court is called upon to perform." *Id.* at 64 (quoting *Blodgett v. Holden*, 275 U.S. 142, 148, 48 S. Ct. 105 (1927)). Further, the case arose "in the context of Congress' authority over national defense and military affairs, and perhaps in no other area has the Court accorded Congress greater deference." *Id.* at 64–65. Thus, the *Rostker* Court emphasized that it owed great deference to Congress's judgment in passing the MSSA because "the Constitution itself requires such deference to congressional choice." *Id.* at 67.

The Court held that the MSSA was constitutional. *Id.* at 83. After considering the extensive legislative history of the MSSA, the Court concluded that "the decision to exempt women from registration was not the accidental by-product of a traditional way of thinking about females." *Id.* at 74 (quotations omitted). Instead, the Court acknowledged that women were not eligible for combat, but that the purpose of registration was to prepare for a draft of combat troops. *Id.* at 76–77. The Court reasoned:

> This is not a case of Congress arbitrarily choosing to burden one of two similarly situated groups, such as would be the case with an allblack or all-white, or an all-Catholic or all-Lutheran, or an all-Republican or all-Democratic registration. Men and women, because of the combat restrictions on women, are simply not similarly situated for purposes

> of a draft or registration for a draft. Congress' decision to authorize the registration of only men, therefore, does not violate the Due Process Clause.

Id. at 78–79. Thus, the Court concluded that women's ineligibility for combat "fully justifie[d]" the MSSA's male-only registration requirement. *Id.* at 79. "The Constitution requires that Congress treat similarly situated persons similarly, not that it engage in gestures of superficial equality." *Id.* Because men and women were not similarly situated with respect to combat eligibility, and therefore not similarly situated with respect to the draft, the Court held that the MSSA did not violate equal protection principles. *Id.*

2. Factual Developments Since *Rostker*

In the nearly four decades since *Rostker*, however, women's opportunities in the military have expanded dramatically. In 2013, the Department of Defense officially lifted the ban on women in combat. Dkt. 73-1 at 9. In 2015, the Department of Defense lifted all gender-based restrictions on military service. Dkt. 73-1 at 12. Thus, women are now eligible for all military service roles, including combat positions.

Therefore, although "'judicial deference . . . is at its apogee' when Congress legislates under its authority to raise and support armies," *Rumsfeld*, 547 U.S. at 58 (quoting *Rostker*, 453 U.S. at 70), the *Rostker* holding does not directly control here. The dispositive fact in *Rostker*—that women were ineligible for combat—can

no longer justify the MSSA's gender-based discrimination.[4] "[A] legislative act contrary to the constitution is not law," and it is the "province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 1 Cranch 137, 177, 5 U.S. 137 (1803). The court will consider the constitutionality of the MSSA anew.

C. The MSSA and Equal Protection

1. Standard of Review

Laws differentiating on the basis of gender "attract heightened review under the Constitution's equal protection guarantee." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689 (2017) (citing *Califano v. Westcott*, 443 U.S. 76, 84, 99 S. Ct. 2655 (1979)). Typically, "[t]he defender of legislation that differentiates on the basis of gender must show 'at least that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.'" *Id.* at 1690 (quoting *United States v.*

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[4] Defendants argue that under *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917 (1989), this court is bound by Supreme Court precedent regardless of a change in factual circumstances. Dkt. 80 at 21–22. However, *Rodriguez de Quijas* merely notes that, in the face of two legally conflicting decisions, lower courts should follow the decision most directly on point instead of attempting to overrule one of the conflicting decisions. 490 U.S. at 484. Despite *Rostker*'s undeniable relevance to this case, the *Rostker* holding is not directly on point and therefore does not mandate judgment in Defendants' favor.

Virginia, 518 U.S. 515, 533, 116 S. Ct. 2264 (1996)). Further, "the classification must substantially serve an important governmental interest *today*"—it is insufficient that the law served an important interest in the past. *Id.* (citing *Obergefell v. Hodges*, 135 S. Ct. 2584, 2603 (2015)) (emphasis in original).

Although the MSSA discriminates on the basis of gender, Defendants argue that a lower, rational-basis-like standard of review applies. Defendants contend that "the Court's departures—in *Rostker* and other military cases—from core aspects of strict or intermediate scrutiny demonstrates that its approach most closely resembles rational-basis review." Dkt. 80 at 23. Defendants emphasize the *Rostker* Court's highly deferential approach to reviewing the MSSA and argue that recent precedent, including *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), affirms this lower standard of review in the military context. *Id.* at 24.

However, Defendants' reliance on *Trump* is misplaced. The *Trump* decision concerned judicial review of the President's power over immigration. 138 S. Ct. at 2420. While the *Trump* Court acknowledged that a deferential standard of review applied "across different contexts and constitutional claims," the Court's entire discussion centered on different claims within the realm of immigration law. *Id.* at 2419. Certainly, there are significant similarities between the Court's deference to Congress in military affairs and its deference to the President in immigration affairs.

However, the *Trump* decision is tangential, at best, to the issue currently before the court.

Instead, *Rostker* itself provides the applicable standard of review when Congress exercises its constitutional power to raise and support armed forces. In *Rostker*, as here, the government expressly argued that the Court should "only [] determine if the distinction drawn between men and women bears a rational relation to some legitimate Government purpose." 453 U.S. at 69. However, the Court expressly declined to adopt this position. *Id.* at 69–70. Rather, the Court relied on *Schlesinger v. Ballard*, 419 U.S. 498, 95 S. Ct. 572 (1975), in which the Court upheld naval regulations creating different promotion requirements for female officers. *Rostker*, 453 U.S. at 71. As the Court explained, "[*Schlesinger*] did not purport to apply a different equal protection test because of the military context, but did stress the deference due congressional choices among alternatives in exercising the congressional authority to raise and support armies and make rules for their governance." *Id.* at 71.

The Court emphasized that the judiciary "cannot ignore Congress' broad authority conferred by the Constitution to raise and support armies when we are urged to declare unconstitutional its studied choice of one alternative in preference to another for furthering that goal." *Id.* at 71–72. However, the Court went on to reason that "the Government's interest in raising and supporting armies is an 'important governmental interest,'" and that "[t]he exemption of women from

registration is . . . closely related to Congress' purpose in authorizing registration." *Id.* at 70, 79 (quoting *Craig v. Boren*, 429 U.S. 190, 97 S. Ct. 451 (1976)). The *Rostker* Court therefore subjected the MSSA to a heightened level of scrutiny, even in light of the Court's marked deference to Congress's "studied choice" between alternatives. *Id.* at 72.

2. Analysis

Thus, the dispositive question here is whether the MSSA both serves important governmental objectives and is substantially related to the achievement of those objectives. *Morales-Santana*, 137 S. Ct. at 1689. First, "[n]o one could deny" that the governmental objective of raising and supporting armies is an "important governmental interest." *Rostker*, 453 U.S. at 70. However, Plaintiffs initially counter that registration, and the draft itself, will not necessarily be used to draft combat troops in future wars. Dkt. 73 at 20–21. Plaintiffs contend that the court should analyze the MSSA with the understanding that registrants may be drafted into both combat and non-combat roles, and that Congress's important objective should be understood in that light. *Id.*

However, while future wars may require a draft of non-combat troops, Congress still understands the draft, as it currently exists, to be for the "mass mobilization of primarily combat troops." National Defense Authorization Act, Pub. L. No. 114-328, § 552(b)(4), 130 Stat. at 2131. This determination is well within

Congress's constitutional role of governing and maintaining effective armed forces. *See Rostker*, 453 U.S. at 68. The court's inquiry is thus restricted to whether the MSSA's male-only registration requirement is substantially related to Congress's important objective of drafting and raising combat troops.

Next, Defendants must show that the MSSA's male-only registration requirement is "substantially related" to Congress's objective. *See Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724, 102 S. Ct. 3331 (1982). "The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *Virginia*, 518 U.S. at 533; *see also Rostker*, 453 U.S. at 67 (noting that the Court previously struck down gender-based classifications that were based on "overbroad generalizations"). "[I]f the statutory objective is to exclude or 'protect' members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate." *Mississippi Univ. for Women*, 458 U.S. at 724 (citing *Frontiero v. Richardson*, 411 U.S. 677, 691, 93 S. Ct. 1764 (1973) (plurality opinion)).

Defendants offer two potential justifications for male-only registration.[5] First, Defendants argue that

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[5] In 2016, a Senate-passed version of the National Defense Authorization Act ("NDAA") would have required women to register for the draft. Dkt. 80-3 at 11 (Letter to Armed Services

female eligibility to serve in combat roles "does not answer the question of whether women should be *conscripted* into combat roles" because conscription could lead to "potential tradeoffs" for the military. Dkt. 80 at 27 (emphasis added). Construed liberally, Defendants appear to be arguing that requiring women to register for the draft would affect female enlistment by increasing the perception that women will be forced to serve in combat roles. *Id.* at 28; Dkt. 80-3 at 173.

However, this argument smacks of "archaic and overbroad generalizations" about women's preferences. *Schlesinger*, 419 U.S. at 507–08; *see also*

Committee Chairs, Sept. 2016). The Senate Armed Services Committee acknowledged that "the ban of females serving in ground combat units has been lifted by the Department of Defense, and as such, there is no further justification to apply the selective service act to males only." S. Rep. No. 114-255, at 150–51 (2016). However, opposition to this change remained, and the final version of the NDAA instead created the Commission to explore a number of draft-related topics. National Defense Authorization Act, Pub. L. No. 114-328, § 552, 130 Stat. at 2131; *see* Dkt. 80-3 at 11 (Letter to Armed Services Committee Chairs). However, based on record before the court, Congress generated very little documentation on why it ultimately declined to amend the MSSA. Defendants only offer a 2016 letter from a group of senators formally requesting that the House remove the provision adding women to the draft. Dkt. 80-3 at 11 (Letter to Armed Services Committee Chairs) ("We should not hinder the brave men and women of our armed forces by entrapping them in unnecessary cultural issues . . . The provision of the FY17 NDAA requiring women to register for the Selective Service should be removed."). Defendants do not offer concerns about "unnecessary cultural issues" as a justification for the MSSA's continued discrimination. Thus, the court must primarily rely on congressional records from previous debates on the MSSA.

Virginia, 518 U.S. at 533; *Rostker*, 453 U.S. at 67. At its core, Defendants' argument rests on the assumption that women are significantly more combat-averse than men. Defendants do not present any evidence to support their claim or otherwise demonstrate that this assumption is anything other than an "ancient canard[] about the proper role of women." *Rostker*, 453 U.S. at 86 (Marshall, J., dissenting) (quotations and citations omitted). As the Court reasoned in *Schlesinger*:

> In both *Reed* and *Frontiero*[,] the challenged classifications based on sex were premised on overbroad generalizations . . . that men would generally be better estate administrators than women . . . [and] that female spouses of servicemen would normally be dependent on their husbands, while male spouses of servicewomen would not. In contrast, the different treatment of men and women naval officers . . . reflects, not archaic and overbroad generalizations, but, instead, the demonstrable fact that male and female line officers in the Navy are not similarly situated with respect to opportunities for professional service.

419 U.S. at 507–08. It is not a "demonstrable fact" that fewer women will enlist for fear of being conscripted into combat. This justification fails.

Moreover, this justification appears to have been created for litigation. *See Virginia*, 518 U.S. at 533.

Defendants have not produced any evidence that Congress actually looked to this concern in declining to add women to the draft. Defendants' evidence establishes only that Congress may have considered a similar issue in evaluating the Department of Defense's decision to open combat positions to women. *See* Dkt. 80-3 at 171–74. Thus, although the court must give significant deference to Congress's judgment in military affairs, such deference is not implicated here.

Second, Defendants argue that Congress preserved the male-only registration requirement out of concern for the administrative burden of registering and drafting women for combat. Dkt. 80 at 28. Unlike Defendants' first offered justification, Congress considered this issue extensively in debates over the MSSA. *See* S. Rep. No. 96-826, at 156–61 (1980); *Rostker*, 453 U.S. at 81. Thus, the court's deference to Congress's "studied choice" is potentially at its height. *Rostker*, 453 U.S. at 72.

Typically, "any statutory scheme which draws a sharp line between the sexes, solely for the purpose of achieving administrative convenience, necessarily commands 'dissimilar treatment for men and women who are . . . similarly situated,' and therefore involves the 'very kind of arbitrary legislative choice forbidden by the [Constitution].'" Frontiero, 411 U.S. at 691 (quoting Reed v. Reed, 404 U.S. 71, 77, 92 S. Ct. 251 (1971)). However, even in light of this general rule, the Rostker Court considered and deferred to Congress's administrative concerns. See Rostker, 453 U.S. at 81–

82; accord Schlesinger, 419 U.S. at 507–08. The Court distinguished past precedent by noting that the previous classifications "were based on overbroad generalizations" but that, in contrast, Congress's choice to retain the MSSA was based on "judgments concerning military operations and needs." Id. at 67–68 (quotations omitted). Thus, Rostker affirms that administrative concerns may justify statutory gender classifications in service of Congress's broad power over military affairs.

Congress cited several administrative concerns in its 1980 rejection of adding women to the draft. The primary concern, again, centered around administrative difficulties caused by the ban on women in combat. S. Rep. No. 96-826, at 156–61; see also id. at 157 ("The policy precluding the use of women in combat is, in the Committee's view, the most important reason for not including women in a registration system."). The Committee had also expressed concern that "training would be needlessly burdened by women recruits who could not be used in combat." Rostker, 453 U.S. at 81 (quoting S. Rep. No. 96-226, at 9 (1979)). However, as previously discussed, women are now eligible for and have been integrated into combat units. Thus, although Congress was previously concerned about drafting large numbers of people who were categorically ineligible for combat, this concern factually no longer justifies the MSSA.

However, according to Defendants, Congress also worried about administrative problems caused by

"women's different treatment with regard to dependency, hardship[,] and physical standards." Id. at 28; S. Rep. No. 96-826, at 159. Defendants emphasize that Congress's concern about the physical readiness of women for combat has not changed. Dkt. 80 at 28–29. Defendants point to an acknowledgment by the Department of Defense that "[t]hose who are opposed" to female mandatory registration believe "it would be inefficient to draft thousands of women when only a small percentage would be physically qualified to serve as part of a combat troop." Dkt. 80 at 28; Dkt. 73-1 at 145–46 (Department of Defense, Report on the Purpose and Utility of a Registration System for Military Selective Service, 2017). Therefore, "if men will, for the foreseeable future, comprise the predominant percentage of persons serving in combat forces, then the basis for the MSSA has not materially changed." Dkt. 80 at 29; *see Tuan Anh Nguyen v. INS*, 533 U.S. 53, 73, 121 S. Ct. 2053 (2001) (noting that equal protection principles do not prohibit acknowledgment of biological differences between genders).

Again, however, this argument falls short. At the outset, concerns about female physical ability do not appear to have been a significant factor in Congress's decision-making process regarding the MSSA. Instead, Congress mentioned concerns about female physical ability in passing, within a list, in one sentence of Defendants' cited report. S. Rep. No. 96-826, at 159. In contrast, Congress extensively discussed the ban on women in combat. *Id.* at 156–61. Congress also

focused on the societal consequences of drafting women, such as the perceived impropriety of young mothers going off to war and leaving young fathers to care for children. *Id.* at 159. Defendants' evidence simply does not support the argument that Congress preserved a male-only draft because of concerns about female physical ability. Again, while the court must defer to Congress, the court does not have to defer to proffered justifications that have little, if anything, to do with Congress's actual judgment on the matter. *See Morales-Santana*, 137 S. Ct. at 1696–97 (quoting *Virginia*, 518 U.S. at 533, 535–36) ("It will not do to 'hypothesiz[e] or inven[t]' governmental purposes for gender classifications '*post hoc* in response to litigation.'").

Further, under *Rostker*, the dispositive issue is whether men and women are *similarly situated* in regard to the draft. *Rostker*, 453 U.S. at 79. Thus, the relevant question is not what proportion of women are physically eligible for combat—it may well be that only a small percentage of women meets the physical standards for combat positions. However, if a similarly small percentage of men is combat-eligible, then men and women are similarly situated for the purposes of the draft and the MSSA's discrimination is unjustified. Defendants provide no evidence that Congress ever looked at arguments on this topic and then made a "studied choice" between alternatives based on that information. *Cf. id.* at 71–72.

Had Congress compared male and female rates of physical eligibility, for example, and concluded that it was not administratively wise to draft women, the court may have been bound to defer to Congress's judgment. Instead, at most, it appears that Congress obliquely relied on assumptions and overly broad stereotypes about women and their ability to fulfill combat roles.[6] Thus, Defendants' second proffered justification appears to be an "'accidental by-product of a traditional way of thinking about females,'" rather than a robust, studied position. *Rostker*, 453 U.S. at 74 (quoting *Califano v. Webster*, 430 U.S. 313, 320, 97 S. Ct. 1192 (1977)).

In short, 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." *Rostker*, 453 U.S. at 78. If there ever was a time to discuss "the place of women in the Armed Services," that time has passed. *Id.* at 72. Defendants have not carried the burden of showing that the male-only registration requirement continues to be substantially related to Congress's objective of raising and supporting armies.

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[6] 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. Again, Defendants provide no evidence that Congress considered evidence of alleged female physical inferiority in combat—either in 1980 or 2016—and concluded that drafting women was unwise based on that evidence.

IV. Conclusion

Defendants' motion to stay and motion for summary judgment (Dkt. 80) is DENIED. Although Plaintiffs' complaint requests injunctive relief, Plaintiffs have not briefed the issue and their summary judgment motion only requests declaratory relief. Dkt. 60 at 13; Dkt. 73 at 24. Therefore, Plaintiffs' request for an injunction (Dkt. 60) is DENIED. Plaintiffs' motion for summary judgment (Dkt. 73) is GRANTED.

Signed at Houston, Texas on February 22, 2019.

/s/ Gray H. Miller
Gray H. Miller
Senior United States District Judge

Appendix I
[Filed: Apr. 6, 2018]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATIONAL COALITION FOR MEN, *et al.*, *Plaintiffs*,	§	
v.	§	CIVIL ACTION H-16-3362
SELECTIVE SERVICE SYSTEM, *et al.*, *Defendants*.	§	

MEMORANDUM OPINION AND ORDER

Pending before the court is a motion to dismiss filed by defendants Selective Service System ("SSS") and Lawrence Romo (collectively, "Defendants"). Dkt. 63. Plaintiffs National Coalition for Men ("NCFM"), James Lesmeister, and Anthony Davis (collectively, "Plaintiffs") responded. Dkt. 64. Defendants replied. Dkt. 65. Having considered the complaint, motion, response, reply, and applicable law, the court is of the opinion that the motion to dismiss should be DENIED.

I. BACKGROUND

This is a case about the constitutionality of the Military Selective Service Act's ("MSSA") requirement for males—but not females—to register for the draft.[1]

[1] For the purposes of a motion to dismiss, the court accepts all well-pled facts contained in Plaintiffs' complaint as true. *Kaiser*

Dkt. 60. Unless otherwise provided by the MSSA, "every male citizen of the United States[] and every other male person residing in the United States . . . between the ages of eighteen and twenty-six" must register with SSS. 50 U.S.C. § 3802(a); Dkt. 60 at 10. After registering, men have a continuing obligation to update SSS with any changes in their address or status. 50 U.S.C. § 3813; Dkt. 60 at 10–11. Failure to comply with the MSSA can result in fines or imprisonment. 50 U.S.C. § 3811; Dkt. 60 at 11.

Lesmeister and Davis are males subject to the draft requirements, and both recently registered accordingly. Dkt. 60 at 4–5. NCFM is a non-profit, 501(c)(3) educational and civil rights corporation. *Id.* at 2. Davis is a NCFM member. *Id.* at 3. Like Davis, some of its members are males subject to the draft requirements and have already registered or will have to register. *Id.*

On April 4, 2013, NCFM and Lesmeister filed a complaint in the Central District of California against Defendants alleging violations of the Fifth and Fourteenth Amendments of the Constitution and violation of 42 U.S.C. § 1983 for sex-based discrimination in the draft system. Dkt. 1. Plaintiffs argue that because women can participate in combat, the Supreme Court decision upholding the constitutionality of sex-based discrimination in the draft is no longer applicable. Dkt. 1 (citing *Rostker v. Goldberg*, 453 U.S. 57, 101 S. Ct. 57 (1981)).

Initially, Judge Dale S. Fischer, the Central District of California judge, dismissed the case as not ripe for

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Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc., 677 F.2d 1045, 1050 (5th Cir. 1982).

review. Dkt. 20. The Ninth Circuit reversed and remanded. *Nat'l Coalition for Men v. Selective Serv. Sys.*, 640 F. App'x 664, 665 (9th Cir. 2016). Then, Lesmeister and NCFM voluntarily dismissed their Fourteenth Amendment and § 1983 claims. Dkt. 43. On November 9, 2016, Judge Fischer granted Defendants' motion to dismiss NCFM without prejudice because the organization lacked associational standing. Dkt. 44 at 4. Further, the court determined that venue was not proper in the Central District of California and transferred the case to the Southern District of Texas, where Lesmeister resides. *Id.* at 5. On August 16, 2017, this court granted Lesmeister leave to file an amended complaint. Dkt. 59. Lesmeister's amended complaint named NCFM as a plaintiff and added Davis as a plaintiff. Dkt. 60.

In the instant motion, Defendants move to dismiss Plaintiffs' remaining Fifth Amendment claim under: (1) Rule 12(b)(1) because Plaintiffs do not have standing to sue; and (2) Rule 12(b)(6) because Plaintiffs do not state a claim upon which relief can be granted. Dkt. 63 at 2.

II. Legal Standard

A. Rule 12(b)(1) Standard

A motion to dismiss under Rule 12(b)(1) challenges a federal court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Under Rule 12(b)(1), a claim is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the claim. *Home Builders Ass'n v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). Where, as here, a motion to dismiss for lack of jurisdiction is limited to a facial attack on the

pleadings, it is subject to the same standard as a motion brought under Rule 12(b)(6). *See Benton v. United States*, 960 F.2d 19, 21 (5th Cir. 1992).

B. Rule 12(b)(6) Standard

Rule 8(a)(2) requires that the pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A party against whom claims are asserted may move to dismiss those claims when the nonmovant has failed "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555 (citations omitted). While the allegations need not be overly detailed, a plaintiff's pleading must still provide the grounds of his entitlement to relief, which "requires more than labels and conclusions," and "a formulaic recitation of the elements of a cause of action will not do." *Id.*; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937 (2009). "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995). Instead, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that

the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Evaluating a motion to dismiss is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. "Ultimately, the question for a court to decide is whether the complaint states a valid claim when viewed in the light most favorable to the plaintiff." *NuVasive, Inc. v. Renaissance Surgical Ctr.*, 853 F. Supp. 2d 654, 658 (S.D. Tex. 2012).

III. ANALYSIS

A. Plaintiffs' Standing

Defendants move to dismiss Plaintiffs' claim because Plaintiffs do not have standing to sue.Dkt. 63 at 19. Defendants argue that Lesmeister and Davis lack standing because they have not suffered an injury from the MSSA's male-only registration requirement. *Id.* at 20. They also argue that because the individual plaintiffs lack standing, NCFM lacks associational standing. *Id.* at 23.

1. Lesmeister/Davis Standing

Under Article III of the Constitution, a plaintiff must have standing to sue in order for a court to have jurisdiction. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180, 120 S. Ct. 693 (2000). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 180–81.

Defendants argue that Lesmeister and Davis lack standing because: (1) neither can demonstrate an injurious harm; and (2) they cannot assert a *de facto* injury simply due to the alleged constitutional violation. Dkt. 63 at 20. Plaintiffs respond that they "are harmed because they are required to register for military conscription, continually report their whereabouts to the federal government under penalty of fines, jail, and will be denied federal benefits if they do not." Dkt. 64 at 2. Further, they allege they are harmed due to the sex-based discrimination, which sufficiently constitutes an injury. *Id.* Because the court agrees that Lesmeister and Davis have alleged an injury, the court need not consider whether the sex-based discrimination alone constitutes an injury.

As Judge Fischer previously found in this case, Plaintiffs allege that: (1) the MSSA requires males between the ages of 18 and 26 to register with SSS; (2) a registrant has a continuing obligation to update SSS with any changes in his address or status; (3) failure to comply with the MSSA can result in fines or imprisonment; and (4) Lesmeister and Davis have registered and are subject to the continuing obligation. Dkt. 44 at 3; *see also* Dkt. 60 at 10–11. Although Defendants argue that the prospect of being drafted fails to constitute a concrete harm, the court need not decide that issue because that is not the harm Plaintiffs allege. Defendants also argue that because Lesmeister and Davis have complied with the MSSA, neither is subject to any action to enforce its requirements. *Id.* Regardless, both have a continuing obligation to update SSS with changes to their information. Dkt. 60 at 10–11. That obligation, paired with the requirement to register with SSS, constitutes an injury sufficient for

Article III standing. *See E. Tex. Baptist Univ. v. Sebelius*, 988 F. Supp. 2d 743, 758 (S.D. Tex. 2013) (Rosenthal, J.) ("HBU's injury arises from the fact that the accommodation requires it to comply with the self-certification steps or face severe penalties. . . . HBU is harmed when it has to fill out the form authorizing its TPA to provide coverage and payments for emergency contraceptives, designating its TPA as the administrator for no-cost-sharing contraceptive benefits, and informing the TPA of its statutory and regulatory obligations."), *rev'd on other grounds sub nom. E. Tex. Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. 2015), *vacated on other grounds sub nom. Zubik v. Burwell*, 136 S. Ct. 1557 (2016); *see also Goldberg v. Rostker*, 509 F. Supp. 586, 590–91 (E.D. Pa. 1980), *rev'd on other grounds*, 453 U.S. 57 (1981). Because Lesmeister and Davis have Article III standing, Defendants' motion is DENIED.

2. Associational Standing

"It is well-established that an association has Article III standing to bring a suit on behalf of its members when '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Funeral Consumers All., Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 343 (5th Cir. 2012) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434 (1977)). Defendants argue that because NCFM cannot allege that any members have standing, NCFM also lacks standing. Dkt. 63 at 24. Because Davis is a member of NCFM

and has standing to sue in his own right, NCFM does, too. *See Funeral Consumers*, 695 F.3d at 343; *see also supra* Section III.A.1. Thus, Defendants' argument fails, and the motion is DENIED.

B. Failure to State a Claim

Defendants argue that Plaintiffs fail to state a claim because: (1) entry of the relief sought would impermissibly intrude on Congress's authority over military affairs; and (2) *Rostker* binds the court and requires dismissal. Dkt. 63 at 25, 28. The court disagrees with both arguments. The court agrees with Defendants that Congress has broad power to raise and regulate armies and navies. *Rostker*, 453 U.S. at 65. Thus, "a healthy deference to legislative and executive judgments in the area of military affairs" should be given by the court. *Id.* at 66. *Rostker* thoroughly explained the reason to provide deference to Congress when dealing with military affairs. *See id.* at 64–67. But "[n]one of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs. In that area, as any other, Congress remains subject to the limitations of the Due Process Clause." *Id.* at 67. Plaintiffs allege that th e MSSA violates the Constitution. Dkt. 60 at 12. Because *Rostker* explicitly requires Congress to comply with the Constitution in the area of military affairs, and because Plaintiffs allege Defendants did not, Plaintiffs state a claim upon which relief can be granted. *See Rostker*, 453 U.S. at 67; *see also* Dkt. 60 at 12.

Regarding *Rostker*'s applicability, as the court explained, *Rostker* did not hold that Congress receives blind deference in the area of military affairs. 453 U.S. at 67. And regarding *Rostker*'s holding that the male-

only draft did not violate the Constitution, the factual circumstances of this case are different. *See id.* at 76, 77 ("Women as a group, however, unlike men as a group, are not eligible for combat. . . . The existence of the combat restrictions clearly indicates the basis for Congress'[s] decision to exempt women from registration."). Now, women can serve in combat roles. Dkt. 60 at 7. Because the alleged factual circumstances of this case differ from the dispositive facts in *Rostker*, the court cannot conclude, at this stage, that *Rostker* controls the outcome.

IV. CONCLUSION

Because Plaintiffs have standing and assert a claim upon which relief can be granted, Defendants' motion to dismiss (Dkt. 63) is DENIED.

Signed at Houston, Texas on April 6, 2018.

/s/ Gray H. Miller
Gray H. Miller
Senior United States District Judge

Appendix J

No. 25_____

In the Supreme Court of the United States

VIKRAM VALAME,
Petitioner,

v.

UNITED STATES OF AMERICA, ET AL
Respondents.

Application of Vikram Valame to the Honorable Justice Kagan to Extend the Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

VIKRAM VALAME
3700 O *Street NW*
Washington, D.C. 20057
vik.valame@gmail.com
408-712-4188

Applicant

January 15, 2026

To: Justice Elena Kagan, Circuit Justice for the Ninth Circuit

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 30.2, and 30.3 of the Rules of this Court, Applicant Vikram Valame respectfully requests a 35-day extension of time, up to and including Monday, March 9, 2026, to file his petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. The opinion of the court of appeals (App., infra, 1A-5A) is reported at 157 F.4th 1172. An order of the district court (App., infra, 6A-11A) is unreported but available at 2024 WL 251415.

1. The court of appeals entered its judgment on July 17, 2025. A petition for panel rehearing was denied on November 4, 2025, at which time the Court of Appeals issued an amended opinion. Unless extended, the time within which to file a petition for a writ of certiorari would expire on February 2, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. In 2023, Applicant Vikram Valame successfully applied for a paid internship at the Nuclear Regulatory Commission. The Nuclear Regulatory Commission revoked his offer upon learning that he was a man who had failed to register for the Selective Service. The operative complaint in this case alleges that the NRC's action was unlawful for two reasons. First, the male-only draft violates the Fifth Amendment because the integration of the armed forces has undermined the justifications that supported the draft in *Rostker v. Goldberg,* 453 U.S. 57 (1981). Second, the 2020 ratification of the Equal Rights Amendment-which guarantees equality of rights between men and

women-invalidated the draft upon taking effect in 2022. See U.S. CONST. Amend. XXVIII §§1, 3.

3. The Ninth Circuit erroneously upheld the dismissal of Valame's claims. The court found that it was bound by *Rostker* even though the integration of women into combat positions has eviscerated its rationale. While vertical *stare decisis* may have justified that decision, the lack of substantive defense of *Rostker* only underscores the need for this Court's review. The Ninth Circuit also found the Equal Rights Amendment invalid due to a purported ratification deadline imposed by Congress. However, the Constitution gives Congress only the power to propose amendments and decide whether state conventions or state legislatures will ratify them. The Ninth Circuit's recognition of an implicit deadline-setting power directly contradicts the text of Article V and undermines an essential check on government power.

4. Vikram Valame intends to seek this Court's review on both the Fifth and Twenty-Eighth Amendment questions. Three Justices of this Court have already recognized the tension between *Rostker* and modern military practice. *Nat'l Coal. for Men v. Selective Serv. Sys.,* 141 S. Ct. 1815, 210 L. Ed. 2d 897 (2021) (statement of Justice Sotomayor, joined by Justice Breyer and Justice Kavanaugh). Additionally, the Ninth Circuit's decision to recognize the ERA deadline as expiring on June 30th, 1982, directly contradicts *State of Idaho v. Freeman,* 529 F. Supp. 1107 (D. Idaho 1981), which itself warranted certiorari. *Nat'l Org. for Women, Inc. v. Idaho,* 455 U.S. 918, 102 S. Ct. 1272, 71 L. Ed. 2d 458 (1982).

5. Good cause exists for an extension to prepare a petition for a writ of certiorari in this case.

Undersigned applicant is a full-time student at Georgetown University and faced a significant workload due to final exams in the month of December. Due to the complex issues presented by this case, including (i) Department of Defense's policy surrounding armed forces integration, (ii) the Ninth Circuit's decision to recognize the Congressional deadline extension, and (iii) this Court's printing requirements for paid petitions, an extension of time is necessary.

6. The Applicant has not previously requested an extension. Applicant respectfully requests that the time to file a petition for writ of certiorari be extended 35 days, up to and including March 9th, 2026.

January 15, 2026

Respectfully Submitted,

/s/ Vikram Valame
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APPENDIX

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIKRAM VALAME, *Plaintiff-Appellant,* v. DONALD J. TRUMP; CRAIG T. BROWN; JOEL C. SPANGENBERG; STEVEN L. KETT; UNITED STATES OF AMERICA, Selective Service System; ISMAIL RAMSEY, *Defendants -Appellees.*	No. 24-369 D.C. No. 5:23-cv-03018-NC ORDER AND OPINION

Appeal from the United States District Court
for the Northern District of California
Nathanael M. Cousins, Magistrate Judge, Presiding*

Submitted July 15, 2025**

Filed November 4, 2025

* The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: Barry G. Silverman, Richard C. Tallman, and Patrick J. Bumatay, Circuit Judges.

Order;
Per Curiam Opinion

SUMMARY***

Military Selective Service Act

The panel affirmed the district court's judgment dismissing for failure to state a claim an action brought by Vikram Valame challenging the constitutionality of the Military Selective Service Act ("MSSA").

The panel rejected Valame's allegation that the MSSA's requirement that men, but not women, register with the Selective Service System violates his rights under the Equal Rights Amendment ("ERA"), which Valame contends was ratified as the Twenty-Eighth Amendment to the Constitution. The panel noted that the ERA was not ratified by three-fourths of the States prior to the deadline set by Congress and the Archivist of the United States did not publish or certify the ERA. Therefore, the district court properly dismissed Valan1e's claims under the ERA for failure to state a plausible claim.

The panel held that the district court also properly dismissed, as foreclosed by binding Supreme Court

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*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

precedent, Valame's Fifth Amendment claims challenging the MSSA's male-only registration requirement.

COUNSEL

Vikram Valame, Pro Se, Palo Alto, California, for Plaintiff-Appellant.

Michael S. Raab, Thomas G. Pulham, and Simon C. Brewer, Attorneys, Appellate Staff; Michael J. Gerardi, Senior Trial Counsel, Federal Programs Branch; Ismail J. Ramsey, United States Attorney, Civil Division; Brian M. Boynton, Principal Deputy Assistant Attorney General; United States Department of Justice, Washington, D.C.; for Defendants-Appellees.

ORDER

The petition (Docket Entry No. 46) for panel rehearing is denied.

The request (Docket Entry No. 47) for publication is granted.

The memorandum disposition filed on July 17, 2025, is withdrawn. A replacement opinion will be filed concurrently with this order.

No further petitions for rehearing will be entertained in this closed case.

OPINION

PERCURIAM:

Vikram Valame appeals pro se from the district court's judgment dismissing his action challenging the constitutionality of the Military Selective Service Act ("MSSA"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6). *Wilson v. Lynch,* 835 F.3d 1083, 1090 (9th Cir. 2016). We affirm.

Valame alleges that the MSSA's requirement that men, but not women, register with the Selective Service System violates his rights under the Equal Rights Amendment ("ERA"), which Valame contends was ratified as the Twenty-Eighth Amendment to the Constitution. However, the ERA was not ratified by three-fourths of the States prior to the deadline set by Congress, June 30, 1982, and the Archivist of the United States did not publish or certify the ERA. *See Illinois v. Ferriera,* 60 F.4th 704, 710-13 (D.C. Cir. 2023). Therefore, the district court properly dismissed Valame's claims under the ERA for failure to state a plausible claim. *See Somers v. Apple, Inc.,* 729 F.3d 953, 959 (9th Cir. 2013) (explaining that dismissal "under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory").

The district court also properly dismissed as foreclosed by binding Supreme Court precedent Valame's Fifth Amendment claims challenging the MSSA's male-only registration requirement. *See Rostker v. Goldberg,* 453 U.S. 57, 83 (1981) (upholding the MSSA's gender-based registration requirement

against a Fifth Amendment challenge); *Newman v. Wengler*, 790 F.3d 876, 880 (9th Cir. 2015) (explaining that "we do not engage in anticipatory overruling of Supreme Court precedent").

All pending motions and requests are denied.

AFFIRMED.

[Filed: Jan. 20, 2024]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VIKRAM VALAME, Plaintiff, v. JOSEPH ROBINETTE BIDEN, et al., Defendants.	Case No. 23-cv-03018-NC **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER** Re: ECF 30, 38, 39, 57

Plaintiff Vikram Valame alleges the government's military draft registration requirements discriminate against him on the basis of sex. At the core of his argument, Valame contends the States ratified the Equal Rights Amendment ("ERA") as the 28th Amendment to the Constitution. Defendants counter there is no 28th Amendment and Valame cannot state a claim for relief. Finding no 28th Amendment at the end of the Constitution, this Court agrees with Defendants. Accordingly, this Court finds Valame cannot state a claim for relief and DISMISSES his claims with prejudice. This Court DENIES Valarne's motion for a temporary restraining order on the same grounds.

I. BACKGROUND

A. Military Selective Service Act

Valame challenges the registration provisions of the Military Selective Service Act, 50 U.S.C. §§ 3801-3820 ("MSSA"). Generally, the MSSA requires male citizens and residents of the United States between the ages of 18 and 26 to register with the Selective Service System ("SSS"). 50 U.S.C. §§ 3802(a), 3809. Those who fail to register may face penalties or denial of federal benefits. *See§§* 381 l(a), 381 l(f). Women are not required to register. *See* 50 U.S.C. § 3802(a). Registrants must keep SSS informed of their current address. *See* 32 C.F.R. § 1621.l(a).

B. Factual History

Valame is an 18-year-old male. ECF 51 ("FAC"), ¶ 1. He is a US citizen residing within this District. *Id.* Under the MSSA, Valame is required to register with the SSS. *See id.;* 50 U.S.C. §§ 3802(a), 3809. Valame "has knowingly and willfully refused to register for the draft, despite his obligation to do so." FAC. ¶ 23.

Generally, Valame "does not wish to spend time, postage money, cellular data, or other limited resources registering for the military draft." *Id.* ¶ 20. Nor will Valame "obey the [change in address] notification requirement." *Id.* ¶ 25. According to Valame, this notification requirement harms him because it "requires the expenditure of time and money to pay for communications to the SSS." *Id.* ¶ 25.

Valame also states he "suffers serious stigmatic injury from the implicit view that he is expendable and required to defend his county on an unequal basis with his fellow citizens." *Id.* ¶39. Overall, Valame claims the MSSA requirements cause him to "suffer[] frustration and significant anxiety about his role in society." *Id.* ¶ 25.

Valame claims to experience further harm "because these provisions deny him job opportunities provided by the federal government." *Id.* ¶ 40 (cleaned up). These harms form the basis of his motion for a temporary restraining order. *See* ECF 75 ("TRO"). Valame states he applied for a summer internship with the Nuclear Regulatory Commission. TRO at 2. According to Valame, the NRC tentatively selected him for an internship, before informing him it would revoke his offer if he did not register with the SSS. TRO at 2. Valame asks this Court to restrain Defendants from "taking adverse employment action against" him. TRO at 8.

C. Procedural History

Valame filed his complaint *pro se* on June 20, 2023. ECF 1. He followed with a motion for summary judgment on September 15, 2023. ECF 30. Defendants countered on September 29, 2023, with an opposition to Valame's motion and cross motion to dismiss. ECF 38. Valame filed his own opposition on October 13, 2023. ECF 39.

After a hearing on the parties' cross motions, Valame filed an amended complaint on December 19, 2023. *See* FAC. Valame brings five claims against Defendants: three for declaratory relief under the Administrative Procedures Act; a *Bivens* claim; and a California Bane Act claim. *See id.* at ¶¶ 52-81. Each claim relies on Valame's "constitutional rights under the 28th Amendment." *See id.* at ¶¶ 54, 58, 66, 75, 80. Valame realleges these same claims with reference to the 5th Amendment, though he concedes those

"claims are foreclosed by binding precedent."[1] *Id.* ¶ 82-83.

Per this Court's request, the parties also filed supplemental briefing on the issue of standing.[2] ECF 52, 54. Defendants "incorporate[d] all of the arguments for dismissal contained in their motion to dismiss" into their supplemental brief. *See* ECF 54 at 1 n.1. This Court finds Defendants' incorporated arguments sufficiently address Valame's FAC without need for further briefing.

Before this Court issued a ruling, Valame moved for a temporary restraining order. *See* TRO.

Both parties have consented to magistrate judge jurisdiction. ECF 3, 25.

II. LEGAL ST AND ARD

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block,* 250 F.3d 729, 732 (9th Cir. 2001). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007)). When reviewing a 12(b)(6) motion, a court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the non-moving party." *Retail Prop. Trust v. United Bd. of Carpenters & Joiners of Am.,* 768 F.3d 938, 945

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[1] This Court agrees and DISMISSES with prejudice Valame's claims referencing the 5th Amendment.

[2] Though this Court thanks the parties for their thoughtful briefing on the issue of standing, it decides this matter on other grounds and does not reach that issue.

(9th Cir. 2014). A court, however, need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Secs. Litig.,* 536 F.3d 1049, 1055 (9th Cir. 2008). A facially plausible claim "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

If a court grants a motion to dismiss, leave to amend should be granted unless the pleading could not possibly be cured by the allegation of other facts. *Lopez v. Smith,* 203 F.3d 1122, 1127 (9th Cir. 2000).

III. DISCUSSION

Valame's claims depend on the existence of a 28th Amendment. This Court finds no such amendment in the Constitution. Defendants convincingly cite to persuasive authority supporting this finding. On the other hand, Valame has not provided any court authority indicating otherwise. Accordingly, this Court DISMISSES Valame's claims. Because it relies on the same failed legal theory, this Court also DENIES his TRO.

A. History of the ERA

Though not necessary to our analysis, this Court quotes a brief history of the ERA:

> The Equal Rights Amendment D was introduced in Congress [in 1923]. . . . [B]ut it took until 1970 for the proposal to make it to the House Floor. By a vote of 352 to 15, the body proposed its ratification as the [then] Twenty-seventh Amendment to the United States Constitution. *Illinois v. Ferriera,* 60 F.4th 704, 711-12 (D.C. Cir. 2023). The

> Senate, however, did not take it up and it lapsed. Two years later, both chambers passed the resolution proposing the Amendment for ratification and submitted it to the 50 states. Contained within the resolution, although not the text of the ERA, was a seven-year deadline within which three-quarters of the states, 38 of them, were required to vote affirmatively for the Amendment to be ratified. *Id.* at 712.
>
> As of 1982 only 35 states had voted to ratify, even though the deadline had been extended by three years. For the next 30 years, the ERA was presumably considered dead, but in 2018, Nevada ratified it, followed quickly by Illinois and Virginia. *Id.* at 713. Since then, a battle to accord vitality and validity to the ERA has been fought . . . .

Elizabeth Cady Stanton Tr. v. Neronha, No. 22-cv-00245-MSM, 2023 WL 6387874, at *1 (D.R.I. Sept. 8, 2023) (footnotes omitted).

B. Valame Cannot State a Claim Under a Non-Existent Amendment.

Valame argues a 28th Amendment protects him against discrimination on the basis of sex. *See* FAC ¶ 12. The Constitution does not agree. Nor does persuasive authority. *See, e.g., Ferriera,* 60 F.4th at 719.

1. The Constitution Does Not Include a 28th Amendment.

As an initial matter, no 28th Amendment appears in the Constitution. *See generally* Constitution.

Valame does not cite to any court authority finding otherwise. *See generally* ECF 30, 39. "The United States Constitution provides a pathway for adding new Amendments, and Congress has determined that the last step on that path is certification and publication by the National Archivist." *Elizabeth Cady Stanton Tr.,* 2023 WL 6387874, at *7. The Archivist has not taken those necessary steps. *See Ferriera,* 60 F.4th at 713 (recounting how "the Archivist refused to certify and publish the amendment"). This Court finds the 28th Amendment's lack of publication convincing evidence it does not now exist. *See id.; see also* Constitution (concluding at 27th Amendment).

Beyond the 28 Amendment's current state of nonbeing, the *Ferriera* court took up the question of whether the Archivist owed a duty to bring it to life. *Ferriero,* 60 F.4th 704. The court walked through the ERA's storied history, *id.* at 711-13, and the certification requirements imposed on the Archivist, *id.* at 713-19. At bottom, the court concluded the Archivist did not have a duty to certify and publish the ERA. *Id.* at 719. This Court finds *Ferriero* persuasive. Thus, not only does the Amendment granting Valame his purported rights not exist, but the Government is also under no duty at this time to bring it into existence. *See id.*

Ultimately, either the 28th Amendment simply does not exist. *See Taylor v. El Centro Coll.,* No. 3:21-CV-0999-D, 2022 WL 102611, at *8 (N.D. Tex. Jan. 10, 2022) ("Taylor's claim under the Equal Rights Amendment fails because there is no such amendment to the United States Constitution."); *Ferguson v. Idaho Dep't of Correction,* No. 4:20-CV-00003-DCN, 2020 WL 1016447, at *l n.l (D. Idaho Mar. 2, 2020) ("The Equal Rights Amendment was not ratified and is not part of

the United States Constitution."). Or the Archivist does not owe a duty to certify and publish the ERA, thus precluding its creation. *See Ferriera,* 60 F.4th at 719. For our purposes, the result is the same: there is now no 28th Amendment and Valame cannot state a claim for relief under a constitutional amendment that does not exist.

Therefore, this Court DISMISSES Valame's claims. Because no new allegations would save his claims, this Court finds leave to amend futile. *See Lopez,* 203 F.3d at 1127.

C. Valame TRO Motion is Denied.

Valame's TRO also hinges on his purported rights under the 28th Amendment. Finding he does not possess those rights, this Court DENIES his application for a TRO.

IV. CONCLUSION

This Court DISMISSES Valame's claims with prejudice. As his TRO relies on the same legal theory, this Court also DENIES his motion for a TRO.

IT IS SO ORDERED.

Dated: January 20, 2024

/s/ Nathanael M. Cousins
NATHANAEL M. COUSINS
United States Magistrate Judge

No. 25_____

In the Supreme Court of the United States

VIKRAM VALAME,
Petitioner,

v.

UNITED STATES OF AMERICA, ET AL
Respondents.

Certificate of Service

I, Vikram Valame, the pro se Petitioner in this case, certify that, on January 15th, 2026, one copy of the Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari in the above-captioned case was sent by first-class mail to the following counsel:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N.W.
Room 5616
Washington, DC 20530-0001

I further certify that all parties required to be served have been served.

Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury under the laws of the United States of

America that the foregoing is true and correct. Executed on January 15, 2026.

/s/ Vikram Valame
VIKRAM V ALAME

Appendix K

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIKRAM VALAME, *Plaintiff - Appellant,* v. DONALD J. TRUMP; CRAIG T. BROWN; JOEL C. SPANGENBERG; STEVEN L. KETT; UNITED STATES OF AMERICA, Selective Service System; ISMAIL RAMSEY, *Defendants - Appellees.*	No. 24-369 D.C. No. 5:23-cv-03018-NC ORDER AND OPINION

Appeal from the United States District Court
for the Northern District of California
Nathanael M. Cousins, Magistrate Judge, Presiding*

Submitted July 15, 2025**

Filed November 4, 2025

* The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: Barry G. Silverman, Richard C. Tallman, and Patrick J. Bumatay, Circuit Judges.

Order;
Per Curiam Opinion

SUMMARY***

Military Selective Service Act

The panel affirmed the district court's judgment dismissing for failure to state a claim an action brought by Vikram Valame challenging the constitutionality of the Military Selective Service Act ("MSSA").

The panel rejected Valame's allegation that the MSSA's requirement that men, but not women, register with the Selective Service System violates his rights under the Equal Rights Amendment ("ERA"), which Valame contends was ratified as the Twenty-Eighth Amendment to the Constitution. The panel noted that the ERA was not ratified by three-fourths of the States prior to the deadline set by Congress and the Archivist of the United States did not publish or certify the ERA. Therefore, the district court properly dismissed Valan1e's claims under the ERA for failure to state a plausible claim.

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precedent, Valame's Fifth Amendment claims challenging the MSSA's male-only registration requirement.

COUNSEL

Vikram Valame, Pro Se, Palo Alto, California, for Plaintiff-Appellant.

Michael S. Raab, Thomas G. Pulham, and Simon C. Brewer, Attorneys, Appellate Staff; Michael J. Gerardi, Senior Trial Counsel, Federal Programs Branch; Ismail J. Ramsey, United States Attorney, Civil Division; Brian M. Boynton, Principal Deputy Assistant Attorney General; United States Department of Justice, Washington, D.C.; for Defendants-Appellees.

ORDER

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The request (Docket Entry No. 47) for publication is granted.

The memorandum disposition filed on July 17, 2025, is withdrawn. A replacement opinion will be filed concurrently with this order.

No further petitions for rehearing will be entertained in this closed case.

OPINION

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Vikram Valame appeals pro se from the district court's judgment dismissing his action challenging the constitutionality of the Military Selective Service Act ("MSSA"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6). *Wilson v. Lynch,* 835 F.3d 1083, 1090 (9th Cir. 2016). We affirm.

Valame alleges that the MSSA's requirement that men, but not women, register with the Selective Service System violates his rights under the Equal Rights Amendment ("ERA"), which Valame contends was ratified as the Twenty-Eighth Amendment to the Constitution. However, the ERA was not ratified by three-fourths of the States prior to the deadline set by Congress, June 30, 1982, and the Archivist of the United States did not publish or certify the ERA. *See Illinois v. Ferriera,* 60 F.4th 704, 710-13 (D.C. Cir. 2023). Therefore, the district court properly dismissed Valame's claims under the ERA for failure to state a plausible claim. *See Somers v. Apple, Inc.,* 729 F.3d 953, 959 (9th Cir. 2013) (explaining that dismissal "under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory").

The district court also properly dismissed as foreclosed by binding Supreme Court precedent Valame's Fifth Amendment claims challenging the MSSA's male-only registration requirement. *See Rostker v. Goldberg,* 453 U.S. 57, 83 (1981) (upholding the MSSA's gender-based registration requirement

against a Fifth Amendment challenge); *Newman v. Wengler*, 790 F.3d 876, 880 (9th Cir. 2015) (explaining that "we do not engage in anticipatory overruling of Supreme Court precedent").

All pending motions and requests are denied.

AFFIRMED.

Appendix L
[Filed: Nov. 20, 2024]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE, et al., Plaintiffs, v. SELECTIVE SERVICE SYSTEM, UNITED STATES, Defendant.	Case No. 23-cv-02403-JST **ORDER GRANTING MOTION TO DISMISS** Re: ECF No. 28

Before the Court is Defendant Selective Service System's ("Selective Service") motion to dismiss. ECF No. 28. The Court will grant the motion.

I. BACKGROUND

Under the Military Selective Service Act ("MSSA"), 50 U.S.C. § 3801, all male citizens and residents of the United States between the ages of 18 and 26 are required to register with the Selective Service System. 50 U.S.C. §§ 3802(a), 3809. Males who do not register or otherwise comply with MSSA requirements may be subject to penalties or denied federal benefits. 50 U.S.C. §§ 3811(a), (f). The Act does not require women to register. 50 U.S.C. § 3802(a).

Pro Se Plaintiff Jane Doe brings this action on behalf of her minor son, John Doe. ECF No. 1 at 1. John Doe "was assigned male at birth and is being forced to register" under the MSSA. *Id.* ¶ 18. John Doe alleges that he has been diagnosed with obsessive-compulsive

disorder ("OCD"), and has a medical history of anxiety, psychosis, suicidality, and self-harm that disqualify him from military service. *Id.* ¶¶ 13–15. He alleges that the MSSA's requirement that male citizens and residents of the United States between the ages of 18 and 26 register with the Selective Service System, including disabled males, violates the Fifth Amendment of the Constitution. *Id.* ¶¶ 19, 25, 29. Plaintiffs seek injunctive and declaratory relief excusing John Doe, males with OCD, and all males from registering with the Selective Service. *Id.* at 11–12.

The Selective Service now moves to dismiss each of Plaintiffs' Fifth Amendment Claims pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 28.

II. JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1331.

III. LEGAL STANDARD

A. Rule 12(b)(6)

"Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In determining whether a plaintiff has

met the plausibility requirement, a court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

B. Rule 12(b)(1)

"Article III of the Constitution limits the jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Lance v. Coffman*, 549 U.S. 437, 439 (2007). "One component of the case-or-controversy requirement is standing, which requires a plaintiff to demonstrate the now-familiar elements of injury in fact, causation, and redressability." *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). A defendant may attack a plaintiff's assertion of jurisdiction by moving to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004); *see also* 5B Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 1350 (3d ed. 2004) ("A motion to dismiss an action under Federal Rule 12(b)(1) . . . raises the fundamental question whether the federal district court has subject matter jurisdiction over the action before it.")

"A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal

jurisdiction." *Safe Air for Everyone*, 373 F.3d at 1039. Where, as here, a defendant makes a facial attack, the court assumes that the allegations are true and draws all reasonable inferences in the plaintiff's favor. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004) (citations omitted). A court addressing a facial attack must confine its inquiry to the allegations in the complaint. *See Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cty.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003) (citations omitted).

C. Leave to Amend

Leave to amend a complaint "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). The decision of whether to grant leave to amend is "within the discretion of the district court, which may deny leave due to 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment.'" *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

IV. DISCUSSION

A. Standing

The Selective Service argues that Plaintiffs "fail to explain how they meet the requirements for Article III standing." ECF No. 28 at 13 n.4; *see* ECF No. 36 at 6–7. Specifically, the Selective Service argues that John Doe is a "'minor,'" and is "thus not yet required to register with the Selective Service," ECF No. 28 at 13 n.4. (quoting ECF No. 1 at 1), and that Plaintiffs "fail to

allege any particularized harm suffered as a result of the registration requirement they challenge," ECF No. 28 at 13 n.4. In response, Plaintiffs aver, without any further support, that they "have standing to bring claims." ECF No. 31 at 5. While the Selective Service only raised this argument in a footnote in its motion and in its reply brief, every court "has a special obligation to 'satisfy itself . . . of its own jurisdiction.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)). Therefore, the Court considers the threshold question of whether John Doe satisfies the demands of Article III.

Article III standing requires that a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337–38 (2016). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 339 (quoting *Lujan*, 504 U.S. at 560). While "imminence is concededly a somewhat elastic concept[,] it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (citations and internal quotations omitted).

"The constitutional component of the ripeness inquiry is often treated under the rubric of standing and, in many cases, ripeness coincides squarely with standing's injury in fact prong." *Thomas v. Anchorage*

Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). "When addressing the sufficiency of a showing of injury-in-fact grounded in potential future harms, Article III standing and ripeness issues often 'boil down to the same question.'" *Coons v. Lew*, 762 F.3d 891, 897 (9th Cir. 2014), *as amended* (Sept. 2, 2014) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014)). "In that context, 'ripeness can be characterized as standing on a timeline,' and the analysis for both standing and ripeness is essentially the same." *Coons*, 762 F.3d at 897 (quoting *Thomas*, 220 F.3d at 1138).

Read generously, Plaintiffs' complaint suggests that John Doe is at least 15 years old and will be required to register with the MSSA within three years. ECF No. 1 ¶ 16. Further, unlike cases such as *Clapper*, where "respondents merely speculate[d] and [made] assumptions about whether their communications with their foreign contacts [would] be acquired under" the statute at issue, John Doe is certain to violate the MSSA should he fail to register upon turning 18, which is inevitable. *Clapper*, 568 U.S. at 412. Finally, it would be counterintuitive to force John Doe to actually violate the MSSA in order to confer standing. *See id.* at 409 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) ("[W]e have repeatedly reiterated that 'threatened injury must be certainly impending to constitute injury in fact," and that '[a]llegations of *possible* future injury' are not sufficient."). Thus, while Plaintiffs' allegations concerning standing could have been clearer, they nonetheless pass muster. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (discussing the lower standard for pro se plaintiffs, namely that they are

held to "less stringent standards" with respect to pleadings).

In sum, Plaintiffs have adequately alleged standing. The Court next addresses the merits of Plaintiffs' claims.

B. Disability-Based Equal Protection Challenges

Plaintiffs bring two claims under the Due Process Clause of the Fifth Amendment on the basis of John Doe's disability status. First, they aver that the Selective Service "discriminates against sufferers of [OCD], as a class, by denying them an exemption from registration when females, a similarly situated class, receive an exemption." ECF No. 1 ¶ 19. Second, they contend that the Selective Service "discriminates against [John Doe], as a class of one, by denying [him] an exemption from registration when females, a similarly circumstanced class, receive an exemption." *Id.* ¶ 25. The Selective Service argues that both these challenges fail to state a claim upon which relief can be granted. ECF No. 28 at 13–16.

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). "Analysis of an equal protection claim alleging an improper statutory classification involves two steps. Appellants must first show that the statute, either on its face or in the manner of its enforcement, results in members of a certain group being treated

differently from other persons based on membership in that group." *United States v. Lopez–Flores*, 63 F.3d 1468, 1472 (9th Cir. 1995). "Second, if it is demonstrated that a cognizable class is treated differently, the court must analyze under the appropriate level of scrutiny whether the distinction made between the groups is justified." *Id.*

Plaintiffs' claims fail at the first step because neither John Doe, nor the class of persons who suffer from OCD, are being "treated differently from other persons based on membership in that group." *McLean v. Crabtree*, 173 F.3d 1176, 1185 (9th Cir. 1999), *as amended on denial of reh'g and reh'g en banc* (Apr. 17, 1999) (citation omitted). The MSSA treats disabled and nondisabled males alike. As the Selective Service points out, John Doe "demand[s] that the government treat [him] differently based on his disability status, when in fact the Selective Service System treats him the same as any non-disabled male with regard to the registration requirement he challenges." ECF No. 28 at 14. Thus, Plaintiffs' equal protection claims on the basis of disability necessarily fail.

Plaintiffs' argument that females and disabled males are similarly situated for purposes of the equal protection analysis is unpersuasive. *See* ECF No. 31 at 6. Deferments on a disability basis, unlike deferments on the basis of sex, "'turn on the resolution of factual questions.'" *United States v. Schmucker*, 815 F.2d 413, 419 (6th Cir. 1987) (quoting *McGee v. United States*, 402 U.S. 479, 490 (1971)).[1] As set forth in 32

[1] To the extent this argument raises an equal protection violation on the basis of sex, the Court addresses that argument below. *See infra* at 5.

C.F.R. § 1633.4, registrants seeking a deferment of exemption from service based on disability are "entitled to present all relevant written information which he believes to be necessary to assist the classifying authority in determining his proper classification; such information may include documents, affidavits, and depositions." *See also* 32 C.F.R. § 1633.3 ("no file relating to a registrant's possible classification status will be established prior to that registrant being ordered to report for induction."). The Court therefore agrees with the Selective Service that "Plaintiffs' identified class (disabled individuals) is not being treated differently than females 'based on membership in that group.'" ECF No. 36 at 9 (quoting *McLean*, 173 F.3d at 1185) (emphasis omitted).

In sum, Plaintiff's equal protection challenges on the basis of disability are dismissed. Because amendment would be futile, these claims are dismissed with prejudice. *See Leadsinger, Inc.*, 512 F.3d at 532.

C. Sex-Based Equal Protection Challenges

The Court next turns to Plaintiff's claim that the Selective Service discriminates against males, as a class, in violation of the Fifth Amendment by denying them an exemption from registration "when females, a similarly circumstanced class, receive an exemption." ECF No. 1 ¶ 29. Plaintiff argues that since the "ban on women in combat" was officially rescinded in 2013, women and men should be considered "similarly situated for purposes of a draft or registration for a draft." *Id.* ¶¶ 33, 35; *see* ECF No. 31 at 10–12. The Selective Service responds that this argument is foreclosed by *Rostker v. Goldberg*, 453 U.S. 57 (1981). *See* ECF No.

36 at 11–13. For the reasons set forth below, the Court agrees with the Selective Service.

In *Rostker*, the Supreme Court determined that the male-only Selective Service requirement did not violate due process. 453 U.S. 57 at 71. Drawing on legislative history, the Court reasoned that the purpose of the "registration scheme" is to serve "as a prelude to a draft in a time of national emergency." *Id.* at 75. At the time the Supreme Court decided *Rostker*, women were barred from combat. *See id.* at 76 ("Women as a group, however, unlike men as a group, are not eligible for combat."). Accordingly, the Supreme Court concluded that "[t]his is not a case of Congress arbitrarily choosing to burden one of two similarly situated groups, such as would be the case with an all-black or all-white, or an all-Catholic or all-Lutheran, or an all-Republican or all-Democratic registration. Men and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft." *Id.* at 78.

Plaintiffs contend that the Court should decline to follow the reasoning of *Rostker* because stare decisis need not apply where "'there may be factual differences between the current case and the earlier one.'" ECF No. 31 at 10 (quoting *Hart v. Massanari*, 266 F.3d 1155, 1172 (9th Cir. 2001)). While Plaintiffs are correct that females are now eligible for combat positions, *see* ECF No. 31 at 12, that does not vitiate *Rostker*'s binding effect on this Court. Indeed, in a similar case to the one at hand, the Fifth Circuit explicitly declined to "disregard [the Supreme Court's decision in *Rostker*] as to the constitutionality of the [2017 National Defense Authorization Act] because some key facts [namely, the ban on women in combat]

implicated in the Supreme Court's decision have changed." *Nat'l Coal. for Men v. Selective Serv. Sys.*, 969 F.3d 546, 550 (5th Cir. 2020).

The losing plaintiff in *National Coalition for Men* filed a petition for certiorari in the Supreme Court, but the Court also denied the petition and declined to the invitation to revisit *Rostker*. The Court noted that even though "[t]he role of women in the military has changed dramatically since [*Rostker*]," "the Court's longstanding deference to Congress on matters of national defense and military affairs cautions against granting review while Congress actively weighs the issue." *Nat'l Coal. for Men v. Selective Serv. Sys.*, 141 S. Ct. 1815, 1816 (2021) (Sotomayor, J., respecting the denial of certiorari).

One might reasonably conclude that "[s]eemingly outworn normative judgments" underlay the institution of the male-only draft. Daniel B. Rice, *Repugnant Precedents and the Court of History*, 121 Mich. L. Rev. 577, 617 (2023). "Beginning in 1991, thousands of women have served with distinction in a wide range of combat roles, from operating military aircraft and naval vessels to participating in boots-on-the-ground infantry missions." *Nat'l Coal. for Men v. Selective Serv. Sys.*, 141 S. Ct. at 1816 (Sotomayor, J., respecting the denial of certiorari). Because this Court is bound by decisions of the Supreme Court, however, the Court dismisses Plaintiff's claim. Because amendment would be futile, the claim is dismissed with prejudice. *See Leadsinger, Inc.*, 512 F.3d at 532.

CONCLUSION

For the foregoing reasons, the Court grants the Selective Service's motion to dismiss. Because the Court

finds that amendment of Plaintiffs' claims would be futile, their claims are now dismissed with prejudice.

The Clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: November 20, 2024

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

Appendix M
[Filed: Mar. 4, 2019]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ELIZABETH KYLE-LABELL, on behalf of herself and all others similarly situated, **Plaintiff,** **v.** **SELECTIVE SERVICE SYSTEM, et al.,** **Defendants.**	:	**Civil Action No. 15-5193 (ES) (JAD)** **OPINION**

SALAS, DISTRICT JUDGE

Plaintiff Elizabeth Kyle-LaBell ("Plaintiff") is a 21-year-old female who wants to register for the military draft. She believes it is her right and duty as a United States citizen to do so, but because she is a woman, she is prohibited from registering. She brings this putative class action to challenge the constitutionality of the draft's male-only requirement. The Court has subject matter jurisdiction under 28 U.S.C. § 1331.

Defendants Selective Service System ("SSS") and Donald M. Benton's[1] (together, "Defendants") moved to dismiss Plaintiff's Second Amended Complaint (D.E. No. 54 ("SAC")) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (D.E. No. 80). The Court

[1] Under Federal Rule of Civil Procedure 25(d), Donald M. Benton automatically replaced Lawrence G. Romo in this litigation.

has considered the parties' submissions[2] and oral arguments. For the following reasons Defendants' motion is GRANTED-IN-PART and DENIED-IN-PART.

I. Background

A. Factual Background

The Military Selective Service Act, 50 U.S.C. § 3801, *et seq*. ("MSSA") provides in relevant part that

> it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

50 U.S.C. § 3802. "The MSSA established a plan for maintaining 'adequate armed strength . . . to insure the security of [the] Nation.'" *Rostker v. Goldberg*, 453 U.S. 57, 75 (1981) (quoting 50 U.S.C. App. § 451(b)). "Registration is the first step 'in a united and continuous process designed to raise an army speedily and efficiently. . . .'" *Id.* (quoting *Falbo v. United States*, 320 U.S. 549, 553 (1944)). "Congress provided for the reactivation of registration in order to 'provid[e] the means for the early delivery of inductees in an emergency.'" *Id.* (quoting S. Rep. No. 96–826, at 156 (1980)).

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[2] (D.E. No. 80-1 ("Defs.' Mov. Br."); D.E. No. 81 ("Pl.'s Opp. Br."); D.E. No. 82 ("Defs.' Reply")).

In *Rostker*, the Supreme Court concluded that "Congress acted well within its constitutional authority when it authorized the registration of men, and not women, under the [MSSA]." *Id.* at 83. Particularly, the Court found that "[m]en and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft." *Id.* at 78–79 ("The Constitution requires that Congress treat similarly situated persons similarly, not that it engage in gestures of superficial equality.").

Plaintiff asserts that women are no longer restricted from serving in combat roles, and as a result, the MSSA is now unconstitutional. (*See generally* SAC). Plaintiff has attempted to register for the draft at least twice. (*See id.* ¶ 5). Each time, Plaintiff visited the SSS website and indicated on an online form that she was female. (*See id.* ¶¶ 9–11). When Plaintiff "clicked 'Female' on the top line of the online registration form, she was prevented from registering . . . ." (*Id.* ¶ 10). Plaintiff states that she will "continue to try to register" for the draft because she believes it is her "right and duty" as a U.S. citizen. (*Id.* ¶ 12).

Plaintiff brings this action on behalf of a putative class consisting of over 15 million members. (*Id.* ¶¶ 26–28). Plaintiff alleges that the MSSA creates an unlawful sex-based categorization that violates her and the putative class members' equal-protection and substantivedue-process rights under the Fifth Amendment, because the MSSA (i) requires males and not females to register, and (ii) forbids females from registering. (*See, e.g.*, *id.* ¶¶ 2, 29, 59 & 67). She asserts that "[t]his archaic exclusionary policy sends a message to all U.S. citizens and institutions that women

are not capable of shouldering the responsibilities of citizenship to the same extent as men." (*Id.* ¶ 68).

Plaintiff seeks a declaratory judgment that the MSSA's draft registration is unconstitutional. (*Id.* ¶ 13). Plaintiff also seeks (i) to enjoin Defendants from registering only males; *or* (ii) to require that females register with the SSS; *or* (iii) to require that registration be voluntary for both sexes. (*See id.* ¶ 14).

B. Procedural Background

On July 3, 2015, Allison Marie Kyle initiated this action on behalf of her then minor daughter, Plaintiff. (*See* D.E. No. 1). On October 22, 2015, Plaintiff filed her first amended complaint.[3] (D.E. No. 26). Defendants then moved to dismiss for lack of standing and lack of ripeness under Federal Rule of Civil Procedure 12(b)(1), and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). (D.E. No. 33).

On June 29, 2016, the Court terminated Defendants' motion and ordered supplemental submissions regarding relevant Congressional activity. (D.E. No. 48). On September 29, 2016, Plaintiff filed a Second Amended Complaint which added Plaintiff as the named Plaintiff, while removing Plaintiff's mother. (*See* SAC). On December 21, 2016, the parties reported recent Congressional activities involving the MSSA, including the creation of the National Commission on Military, National, and Public Service (the "Commission"). (D.E. No. 57).

Plaintiff then filed a Motion to Continue the Proceedings, seeking to resume the litigation (D.E. No.

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[3] This amendment added a second named plaintiff, but she later withdrew on February 6, 2016. (*See* D.E. No. 44).

58). On July 27, 2017, the Court granted the motion and permitted Defendants to renew their motion to dismiss on the issue of standing only. (D.E. No. 61). The parties then briefed the standing issue (D.E. Nos. 69–71), and on March 29, 2018, the Court denied Defendants' motion without prejudice, finding that Plaintiff had standing. (*See* D.E. No. 73).

Plaintiff then sought leave to file a request for certification of the putative class and a motion for summary judgment. (D.E. Nos. 74–76). On April 18, 2018, the Court denied this request and permitted Defendants to renew their motion to dismiss under Rule 12(b)(1) for lack of ripeness and under Rule 12(b)(6) for failure to state a claim. (D.E. No. 77). Subsequently, the parties briefed the instant motion, (*see* D.E. Nos. 80–82), and the Court held oral argument on December 4, 2018, (D.E. No. 87).

II. Legal Standard

A. Federal Rule of Civil Procedure 12(b)(1)

A motion to dismiss for lack of ripeness is properly brought pursuant to Federal Rule of Civil Procedure 12(b)(1) because ripeness is a jurisdictional matter. *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 341 (3d Cir. 2001) (citing *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 734 (1997)). A party bringing a motion under Rule 12(b)(1) may assert either a "facial or factual challenge to the court's subject matter jurisdiction." *See Gould Elecs., Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000).

In a facial attack, the moving party "challenges subject matter jurisdiction without disputing the facts alleged in the complaint." *Davis v. Wells Fargo*, 824 F.3d 333, 346 (3d Cir. 2016). A facial attack "requires the

court to consider the allegations of the complaint as true." *See id.* (citation and internal quotation marks omitted). "Thus, a facial attack calls for a district court to apply the same standard of review it would use in considering a motion to dismiss under Rule 12(b)(6), *i.e.*, construing the alleged facts in favor of the non-moving party." *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014); *In re Horizon Healthcare Servs. Inc. Data Breach Litig.*, 846 F.3d 625, 633 (3d Cir. 2017).

In a factual attack, the moving party "attacks the factual allegations underlying the complaint's assertion of jurisdiction, either through the filing of an answer or 'otherwise presenting competing facts.'" *Davis*, 824 F.3d at 346 (quoting *Constitution Party of Pa.*, 757 F.3d at 358) (alteration omitted). "In contrast to a facial challenge, a factual challenge allows a court to weigh and consider evidence outside the pleadings." *Id.* (citation and internal quotation marks omitted).

B. Federal Rule of Civil Procedure 12(b)(6)

To withstand a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

"In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010). But a limited exception exists for "document[s] *integral to or explicitly relied* upon in the complaint." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). "The purpose of this rule is to avoid the situation where a plaintiff with a legally deficient claim that is based on a particular document can avoid dismissal of that claim by failing to attach the relied upon document." *Jeffrey Rapaport M.D., P.A. v. Robins S. Weingast & Assocs., Inc.*, 859 F. Supp. 2d 706, 714 (D.N.J. 2012).

III. Discussion

Defendants raise three main arguments. Defendants first contend that Plaintiff's Complaint should be dismissed, or held in abeyance, on prudential ripeness grounds because Congress has created the Commission to conduct a full review of the SSS. (Defs.' Mov. Br. at 12). Defendants next argue that the Supreme Court's decision in *Rostker* controls the outcome of this case, and since only the Supreme Court can overturn itself, Plaintiff's claims must be dismissed. (*Id.* at 19). Finally, Defendants contend that Plaintiff's substantive due process claim is a request for equal treatment, which should be analyzed under the equal protection framework. (*Id.* at 24).

As discussed in detail below, the Court finds that A) Plaintiff's claims are prudentially ripe; B) the substantive due process claim is subsumed by the equal

protection claim; and C) *Rostker* does not bar Plaintiff's equal protection claim.

A. Prudential Ripeness

Defendants contend that Plaintiff's Complaint should be dismissed, or held in abeyance, on prudential ripeness grounds. (*See id.* at 12; Defs.' Reply at 5; *see also* Tr. 2:5–10; 7:9–17, Dec. 4, 2018).

"[R]ipeness is peculiarly a question of timing." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985). "The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003). "At its core, ripeness works 'to determine whether a party has brought an action prematurely and counsels abstention until such a time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine.'" *Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534, 539 (3d Cir. 2017) (quoting *Peachlum v. City of York*, 333 F.3d 429, 433 (3d Cir. 2003)) (internal ellipsis removed).

Prudential ripeness is a tool a court may employ when the "case will be *better* decided later and that the parties will not have constitutional rights undermined by the delay." *Simmonds v. I.N.S.*, 326 F.3d 351, 357 (2d Cir. 2003). To determine whether a case is prudentially ripe, courts "generally examine: '(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration.'" *See, e.g.*, *Khodara Envtl., Inc. v. Blakey*, 376 F.3d 187, 196 (3d Cir. 2004) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *abrogated on other*

grounds by Califano v. Sanders, 430 U.S. 99 (1977)); *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014).[4]

1. Fitness of The Issues

For the fitness prong, "[t]he principal consideration is whether the record is factually adequate to enable the court to make the necessary legal determinations. The more that the question presented is purely one of law, and the less that additional facts will aid the court in its inquiry, the more likely the issue is to be ripe, and vice-versa." *Artway v. Attorney Gen. of State of N.J.*, 81 F.3d 1235, 1249 (3d Cir. 1996).

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[4] In Driehaus, the Supreme Court questioned "the continuing vitality of the prudential ripeness doctrine." 573 U.S. at 167. The Court noted that the doctrine "is in some tension with our recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." Id. (quoting Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 126 (2014)); see also Plains All Am. Pipeline L.P. v. Cook, 866 F.3d 534, 539 n.3 (3d Cir. 2017) ("In [Driehaus], the Supreme Court also suggested that the prudential components of ripeness may no longer be a valid basis to find a case nonjusticiable. To the extent we discuss prudential ripeness factors, our holding does not rest on them; rather, our holding rests on the constitutional requirements of Article III." (citation omitted)).

The Supreme Court, however, did not resolve that tension. *See Driehaus*, 573 U.S. at 167. Until the prudential ripeness doctrine is actually rejected by the Supreme Court, this Court is bound to apply *Abbott Labs* and decades of precedent confirming the doctrine's vitality. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (advising lower courts to "leav[e] to this Court the prerogative of overruling its own decisions").

Here, the question before the Court—whether the MSSA's sex-based classification violates Plaintiff's constitutional rights—is purely a legal one, which is present, ongoing, and traditionally the type of issue handled by the courts. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186, 226 (1962) (noting that standards under equal protection "are well developed and familiar"). Plaintiff alleges that she has attempted to register at least twice, and each time Defendants applied the MSSA to bar her from doing so only because of her sex. (*See* SAC ¶ 5). She asserts that her rights, and the rights of similarly situated putative class members, are currently being violated as a result. (*See id.* ¶¶ 67–69). Thus, it is unlikely that "additional facts will aid the court in its inquiry." *See Artway*, 81 F.3d at 1249.

Still, Defendants argue that the case is not fit for adjudication because "Congress passed legislation establishing a commission to conduct a bipartisan review of the future of military selective service." (Defs.' Mov. Br. at 13). Defendants place great weight on the Commission, which has been entrusted with conducting a broad bipartisan review of the SSS, and which "must complete its review and report its recommendations to Congress and the President by March 19, 2020." (*Id.* at 13–14 (citing National Defense Authorization Act For Fiscal Year 2017 ("FY17 NDAA"), Pub. L. No. 114-328 § 555(e)(1), 130 Stat. 2000, 2136 (2016)).[5] Based on this ongoing review, Defendants

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[5] The Commission is required to consider

> (1) the need for a military selective service process, including the continuing need for a mechanism to draft large numbers of replacement combat troops;

contend that judicial intervention now would "wrest the issue from the political branches" and "could disrupt or distract" this process, which could "ultimately render that question moot." (*Id.* at 14–15). In short, Defendants contend that "proceeding with the litigation at this time would deprive the political branches of the opportunity to apply their judgment and experience to a matter that is committed to their authority by the text of the Constitution itself." (Defs.' Reply at 5 (citing Defs.' Mov. Br. at 12–18)).

This argument, however, ignores the reality that the Commission serves simply in an advisory capacity. Its sole duty and authority is to review the SSS and draft a report for Congress. *See* FY17 NDAA §§ 551(a),

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> (2) means by which to foster a greater attitude and ethos of service among United States youth, including an increased propensity for military service;
> (3) the feasibility and advisability of modifying the military selective service process in order to obtain for military, national, and public service individuals with skills (such as medical, dental, and nursing skills, language skills, cyber skills, and science, technology, engineering, and mathematics (STEM) skills) for which the Nation has a critical need, without regard to age or sex; and
> (4) the feasibility and advisability of including in the military selective service process, as so modified, an eligibility or entitlement for the receipt of one or more Federal benefits (such as educational benefits, subsidized or secured student loans, grants or hiring preferences) specified by the Commission for purposes of the review.

Pub. L. No. 114-328 § 555(b).

555(e)(1).[6] While the Commission may be taking concrete steps towards providing a recommendation by March 2020, there is no guarantee that the Commission will complete its obligations by then, or that Congress will even act on the Commission's report. *Cf. Am. Petroleum Inst. v. E.P.A.*, 683 F.3d 382, 388 (D.C. Cir. 2012) (finding claim prudentially unripe and holding case in abeyance when there was a proposed rule before the government agency which was required to take final action on the proposed rule by a specified date). Meanwhile, Plaintiff and putative class members continue to have their constitutional rights allegedly violated.

That is not say that Congress or the Commission are not acting in good faith; the Court presumes that they are. *See Marcavage v. Nat'l Park Serv.*, 666 F.3d 856, 861 (3d Cir. 2012). But the Constitution and the rights it protects cannot be held hostage to a possibility that a commission is investigating a particular policy, which may or may not give rise to legislation, which may or may not be enacted into law, which may or may not ultimately make the injury Plaintiff and others similarly situated are *currently* suffering, moot. *See Am. Petroleum Inst.*, 683 F.3d at 388 (noting that government agency cannot "stave off judicial review of a challenged rule simply by initiating a new proposed rulemaking that would amend the rule in a significant way"); *Am. Petroleum Inst. v. U.S. E.P.A.*, 906 F.2d 729, 739–40 (D.C. Cir. 1990) ("If the possibility of

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[6] *See also Request for Information on Improving the Military Selective Service Process and Increasing Participation in Military, National, and Public Service*, 83 Fed. Reg. 7080-2, 7081 (Feb. 16, 2018).

unforeseen amendments were sufficient to render an otherwise fit challenge unripe, review could be deferred indefinitely.").

Similarly, Defendants' reliance on the doctrine of constitutional avoidance is unpersuasive. The principle of constitutional avoidance allows courts to avoid "ruling on federal constitutional matters in advance of the necessity of deciding them [and] to postpone judicial review where it would be premature." *See Armstrong World Indus., Inc. by Wolfson v. Adams*, 961 F.2d 405, 413 (3d Cir. 1992). As such, the Supreme Court has instructed that "even when jurisdiction exists it should not be exercised unless the case 'tenders the underlying constitutional issues in clean-cut and concrete form'" and that "[p]roblems of prematurity and abstractness may well present 'insuperable obstacles' to the exercise of the Court's jurisdiction, even though that jurisdiction is technically present." *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 588 (1972) (citations omitted). Accordingly, courts should be "particularly vigilant to ensure that cases are ripe when constitutional questions are at issue." *Artway*, 81 F.3d at 1249.

However, vigilance does not mean abdication of the Court's responsibilities. After all, the "[C]onstitution controls any legislative act repugnant to it," *Marbury v. Madison*, 5 U.S. 137, 177 (1803), and "[t]he operation of [a] statute is better grasped when viewed in light of a particular application," *Texas v. United States*, 523 U.S. 296, 301 (1998). This is not a case involving an interim act, where the alleged injury rests on "'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *See id.* at 300 (quoting *Thomas*, 473 U.S. at 580–581). Nor is

this a case where there is a definitive end point where the law at issue will be crystalized and final. *See Am. Petroleum Inst.*, 683 F.3d at 388; *Am. Petroleum Inst. v. Envtl. Prot. Agency*, 862 F.3d 50, 56 (D.C. Cir. 2017), *decision modified on reh'g*, 883 F.3d 918 (D.C. Cir. 2018) (noting that the case was held in abeyance for several years as unripe in light of a forthcoming final rule). To the contrary, as alleged by Plaintiff the MSSA is currently being fully enforced against her and other similarly situated women. (*See* Compl. ¶¶ 5 & 9–10). As such, the question before this Court could not be any more "clean-cut and concrete." *See Gilligan*, 406 U.S. at 588; *Oklevueha Native Am. Church of Haw., Inc. v. Holder*, 676 F.3d 829, 838 (9th Cir. 2012) ("In contrast to cases in which the courts are left to hypothesize about how the law might be applied, Plaintiffs' claims arise from an enforcement action that has already occurred.").

Yet, Defendants effectively ask this Court to hold in abeyance Plaintiff's constitutional rights on the hope of "'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *See Texas*, 523 U.S. at 300 (quoting *Thomas*, 473 U.S. at 580–581). After all, Congress has visited and abandoned this very issue at least eight times since 2003. *See, e.g.*, H.R. 1509, 114th Cong. (2015); H.R. 748, 113th Cong. (2013); H.R. 1152, 112th Cong. (2011); H.R. 5741, 111th Cong. (2010); H.R. 393, 110th Cong. (2007); H.R. 4752, 109th Cong. (2006); H.R. 2723, 109th Cong. (2005); H.R. 163, 108th Cong. (2003). And in any event, the courts have not been deterred from adjudicating a concrete Article III controversy even when Congress is concurrently considering a bill which goes directly to the heart of the controversy at issue. *See, e.g.*, *S.*

Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 2099 & 2102–03 (2018) (reaching merits despite the fact that there were three bills pending before Congress addressing the issue, and despite the dissent's concerns that the Court's decision "may have waylaid Congress's consideration of the issue"); *Sure-Tan, Inc. v. N.L.R.B.*, 467 U.S. 883 (1984) (deciding a statutory interpretation issue despite Congress being in the midst of an intense congressional debate regarding directly relevant policy); *Goudy-Bachman v. U.S. Dep't of Health & Human Servs.*, 764 F. Supp. 2d 684, 691 n.3 (M.D. Pa. 2011) ("The court is cognizant of efforts currently underway to repeal the Act. Obviously, it is not the court's role to speculate on pending legislation and we focus solely on the present enactment." (citations omitted)).

Defendants also argue that the Court should defer to "the bodies entrusted with crafting military policy on issues within their sphere of expertise," and that "Plaintiff cannot establish, nor should the Court attempt to predict, what the results" of the current policymaking process will be. (Defs.'Mov. Br. at 15–16). But this mischaracterizes the legal question before the Court. Plaintiff is not challenging the Commission, the Commission's ongoing review, or what Congress may or may not do with the Commission's recommendations. (*See* Pl.'s Opp. Br. at 26). Rather, Plaintiff is challenging the current enforcement of the MSSA. (*Id.*). That present enforcement gives rise to an injury today, and Defendants fail to show how review of that injury would "prove too abstract or unnecessary." *See Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 735 (1998). The question is fit for adjudication.

2. The Hardship to the Parties of Withholding Court Consideration

The hardship factor turns on whether the impact of the particular law is "sufficiently direct and immediate." *Abbott Labs.*, 387 U.S. at 152. *Compare id.* (finding sufficient hardship where challenged policy had a "direct effect on the day-to-day business" of the plaintiffs), *with Texas*, 523 U.S. at 301 (finding no hardship where plaintiff was "not required to engage in, or to refrain from, any conduct"). For ripeness purposes, an evaluation of hardship to the parties "does not mean just anything that makes life harder; it means hardship of a legal kind. . . ." *Nat. Res. Def. Council v. Abraham*, 388 F.3d 701, 706 (9th Cir. 2004) (citing *Sierra Club*, 523 U.S. at 733).

Defendants recycle their standing argument, asserting that "Plaintiff faces no imminent hardship" because she is free to enlist, her career prospects in the military are not hindered, and there is no imminent draft. (Defs.' Mov. Br. at 17–18 & 24). But as Plaintiff points out, and the Court already noted, this argument mischaracterizes Plaintiff's injury:

> [Plaintiff's injury] is *not* that she is kept out of combat positions, *not* that she may be harmed by future inductions, *not* that she is prevented from enlisting, and *not* that possible career opportunities in the military will be hindered *but rather* that she is prevented—solely because of her sex—from *registering for the draft*.

(D.E. No. 72 at 8).

Plaintiff's harm is concrete, "'credible,' and not merely 'speculative.'" *See Artway*, 81 F.3d at 1247. As

it currently stands, the MSSA requires Plaintiff to refrain from registering, unlike her male counterparts. Plaintiff alleges that this enforcement discriminates against her and similarly situated women based solely on their sex. (*See, e.g.*, SAC ¶ 10). Further, in the equal protection context,

> discrimination itself, by perpetuating "archaic and stereotypic notions" or by stigmatizing members of the disfavored group as "innately inferior" and therefore as less worthy participants in the political community, can cause serious noneconomic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.

Hassan v. City of New York, 804 F.3d 277, 290 (3d Cir. 2015) (quoting *Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984)). Therefore, the enforcement of the MSSA creates a "sufficiently direct and immediate" impact on Plaintiff and the millions of similarly situated young women; Plaintiff is currenting suffering a substantial legal hardship. *See Abbott Labs.*, 387 U.S. at 152.

Defendants argue that "proceeding with litigation at this point would deprive the political branches of the opportunity to apply their judgment and expertise to a matter that is committed to their authority by the text of the Constitution itself." (Defs.' Mov. Br. at 18). But Defendants fail to show how exactly this will occur. Regardless of this Court's ultimate decision, the Commission and Congress are free to continue with the current policymaking process, and Congress is free to pass legislation based on the Commission's

recommendation—or not. The courts cannot stop Congress from legislating any more than Congress can stop the courts from interpreting the Constitution and any legislative acts repugnant to it. *See United States v. Nixon*, 418 U.S. 683, 704–05 (1974); *Marbury*, 5 U.S. at 177. After all, the judiciary is an independent branch of our tripartite system of government, entrusted with the "province and duty . . . to say what the law is" when presented with a concrete controversy, without regard to the vagaries of shifting political winds. *See Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322 (2016) (quoting *Marbury*, 5 U.S. at 177); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009) ("We will not shrink from our duty 'as the bulwar[k] of a limited constitution against legislative encroachments. . . .'") (quoting The Federalist No. 78, p. 526 (J. Cooke ed. 1961) (A. Hamilton)). "That duty will sometimes involve the '[r]esolution of litigation challenging the constitutional authority of one of the three branches,' but courts cannot avoid their responsibility merely 'because the issues have political implications.'" *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012) (quoting *INS v. Chadha*, 462 U.S. 919, 943 (1983)). And that duty requires this Court to determine whether the Constitution is being obeyed *today*, not to speculate whether it might be obeyed in the future. Therefore, the Court does not perceive any potential separation of powers issues with proceeding on the merits, and to the extent any may exist, it does not outweigh the hardship befalling Plaintiff.

Finally, Defendants argue that the Court should find the case prudentially unripe because of the deference owed to the "considered professional judgment"

of military officials in military matters. (Defs.' Mov. Br. at 16–17). But while judicial intervention in military matters "should only be undertaken with care and circumspection," *Jaffee v. U.S.*, 663 F.2d 1226, 1238 (3d Cir. 1981), that is ultimately an issue to be studied on the merits with the benefit of a more developed record. *See Dillard v. Brown*, 652 F.2d 316, 323–24 (3d Cir. 1981) ("If the military justification outweighs the infringement of the plaintiff's individual freedom, we may hold for the military on the merits, but we will not find the claim to be non-justiciable and therefore not cognizable by a court.").[7] Indeed, a review of decisions in this area shows "not the slightest hesitancy about reaching the merits even though military affairs were involved." *See Serv. Women's Action Network v. Mattis*, 320 F. Supp. 3d 1082, 1090 (N.D. Cal. 2018) (quoting *Owens v. Brown*, 455 F. Supp. 291, 301 (D.D.C. 1978)) (citing examples).

In short, the Court will uphold its "virtually unflagging" Article III obligation to hear and decide the present case, which falls squarely within its jurisdiction.

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[7] Defendants argue that they have never claimed that Plaintiff's claims are non-justiciable. (Defs.' Reply at 1). But standing and ripeness, two doctrines Defendants have argued bar Plaintiff's Complaint, are parts of the justiciability doctrine. *See Solomon v. United States*, 680 F. App'x 123, 126 (3d Cir. 2017) (quoting *Felmeister v. Office of Attorney Ethics*, 856 F.2d 529, 535 (3d Cir. 1988) ("The ripeness doctrine, like other justiciability doctrines, derives ultimately from the requirement in Article III of the United States Constitution that federal courts are only empowered to decide cases and controversies.")); *see also* 13B Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice and Procedure* § 3529 (3d ed.) (grouping standing, ripeness, mootness, and political question under the "Justiciability" chapter).

See Driehaus, 573 U.S. at 167; *see also Nat'l Coal. for Men v. Selective Serv. Sys.*, 640 F. App'x 664, 665 (9th Cir. 2016).

B. Substantive Due Process Claim

As previously stated, Plaintiff alleges that by forbidding women from registering with the SSS, the MSSA violates her and putative class members' "equal protection rights to equal treatment and opportunity and violat[es] their substantive due process rights to be treated as firstclass, full-fledged citizens. . . ." (SAC ¶ 67). Defendants argue that the substantive due process claim is one of unequal treatment, which is more appropriately analyzed as a claim for equal protection. (Defs.'Mov. Br. at 25). The Court agrees. At their core, these two claims are one and the same and should be analyzed under the equal protection rubric.

The substantive component of due process "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Only fundamental rights and liberties which are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty" qualify for such protection. *Id.* at 721 (citations omitted). Further, the Supreme Court requires "a 'careful description' of the asserted fundamental liberty interest." *Id.*

The Supreme Court "has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125 (1992);

see also Chavez v. Martinez, 538 U.S. 760, 775 (2003) (collecting cases). This is because "[b]y extending constitutional protection to an asserted right or liberty interest," the courts "place the matter outside the arena of public debate and legislative action." *Glucksberg*, 521 U.S. at 720 ("We must therefore exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." (citations and internal quotation marks omitted)).

Here, Plaintiff asserts a fundamental right to be "treated as a first-class, full-fledged citizen." (SAC ¶ 3). Her claim revolves around allegations that under the MSSA women are, as a class, treated differently than men. (*See, e.g.*, SAC ¶ 4 ("Barring young women from registering with the Selective Service System is one of the last vestiges of federal *de jure* discrimination against women."); *id.* ¶ 5 (alleging that Plaintiff tried to register with the SSS but "was refused solely because she is a woman. This violated her right to be treated equally regardless of sex and her substantive due process right to be treated as a first-class, full-fledged citizen"); *id.* ¶ 15 ("This Court will place all similarly situated persons on an equal standing and recognize the first-class, full-fledged citizenship of young women by enjoining all current draft registration or by requiring females to also register or by making registration voluntary for both sexes."); *id.* ¶ 65 ("If the two sexes can fight and die together, they can register together; if not, then no one should have to register."); *id.* ¶ 67 ("The female class members are injured by the government violating their equal protection rights to equal treatment and opportunity and

violating their substantive due process rights to be treated as first-class, full-fledged citizens by not requiring them to register and forbidding them to register."); *see also* Tr. 51:15–17 (stating that by denying Plaintiff's request to register "she's being treated as, basically, a second-class citizen")). At its core, then, Plaintiff demands that the law treats all women citizens equal to all male citizens. This claim falls squarely within the precepts of equal protection. *See United States v. Virginia*, 518 U.S. 515, 532 (1996).

Plaintiff attempts to avoid this conclusion, arguing that "the use of one analysis does not obviate the use of the other." (Pl.'s Opp. Br. at 38 (citing *Lawrence v. Texas*, 539 U.S. 558, 579 (2003)). This may be true in certain circumstances; after all, the equal protection component read into the Fifth Amendment arises from discrimination that is "so unjustifiable as to be violative of due process." *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).[8]

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[8] Defendants rely on *Graham v. Connor*, 490 U.S. 386 (1989), and its progeny for the proposition that "when a particular Amendment provides an explicit textual source of constitutional protection against' a particular sort of governmental behavior, that Amendment, not the more generalized notion of substantive due process must be the guide for analyzing these claims." (Defs.' Mov. Br. at 24–25 (quoting *Graham*, 490 U.S. at 395)). Plaintiff counters that *Graham* is confined to cases where the government has used physical force. (Pl.'s Opp. Br. at 37). The Court does not read *Graham* so narrowly, and indeed, other courts applying the Equal Protection Clause of the Fourteenth Amendment have not either. *See, e.g.*, *Eby-Brown Co., LLC v. Wis. Dep't of Agric.*, 295 F.3d 749, 753–54 (7th Cir. 2002) (refusing to analyze substantive due process claim where "[t]he bulk of the allegations set forth

But this "do[es] not imply that the two are always interchangeable phrases." *Id.* As Justice Kennedy explained in *Obergefell v. Hodges*,

> The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always coextensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case *one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way*, even as the two Clauses may converge in the identification and definition of the right.

135 S. Ct. 2584, 2602–03 (2015) (emphasis added).

Furthermore, it "is not the province of [the courts] to create substantive constitutional rights in the name of guaranteeing equal protection of the laws." *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 33 (1973). Rather, "[t]he protections of substantive due process have for the most part been

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by Eby–Brown seek redress for the alleged unequal treatment it received as a licensed wholesaler of tobacco").

The Fifth Amendment, however, does not contain an "explicit textual source" for equal protection of the laws. *See* U.S. CONT. amend. V. Rather, the Supreme Court has read an equal protection component into the Amendment's express Due Process Clause. *See Bolling*, 347 U.S. at 499. As such, it would appear that *Graham* and its progeny do not support Defendants' argument, and the Court sees no reason to rely on that line of cases here.

accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright v. Oliver*, 510 U.S. 266, 272 (1994). In other words, substantive due process is reserved "for cases involving the most intimate matters of family, privacy, and personal autonomy." *Armbruster v. Cavanaugh*, 410 F. App'x 564, 567 (3d Cir. 2011); *see also Lawrence*, 539 U.S. at 562 ("Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.").

This case does not concern "matters relating to marriage, family, procreation, and the right to bodily integrity." *See Albright*, 510 U.S. at 272. Rather, the core of the fundamental right asserted by Plaintiff—that all citizens, men and women, be treated as equal "first-class, fullfledged citizen"—is one of equal treatment under the laws. While equal protection is in one sense a personal right not to be discriminated against—indeed, a right "stemming from our American ideal of fairness" *Bolling*, 347 U.S. at 499, which is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," *see Glucksberg*, 521 U.S. at 721—it is predominantly "a demand that governmental action that affects an individual not be predicated upon constitutionally defective reasoning." *See Pitts v. Thornburgh*, 866 F.2d 1450, 1455 (D.C. Cir. 1989); *Harris v. McRae*, 448 U.S. 297, 322 (1980) ("The guarantee of equal protection under the Fifth Amendment is not a source of substantive rights or liberties, but rather a right to be free from invidious discrimination in statutory classifications and other governmental activity." (footnote omitted)). The claim here charges invidiousness on account of the statutory classification, rather than an

unwarranted interference with constitutionally secured personal liberties. (*See, e.g.*, SAC ¶ 5).[9] As such, the equal protection analysis "capture[s] the essence of the [asserted] right in a more accurate and comprehensive way." *See Obergefell*, 135 S. Ct. at 2603.

During oral argument Plaintiff pointed the Court to *United States v. Virginia*, 518 U.S. 515 (1996), for support of her alleged fundamental right. (*See* Tr. 47:2-4). Plaintiff placed substantial emphasis on the Supreme Court's language that the government cannot deny "to women, simply because they are women, full citizenship stature." (*See* Tr. 47:2-3 (quoting *Virginia*, 518 U.S. at 532)). Plaintiff argued that the alleged fundamental right to be a "first-class, full-fledged citizen" is just another name for "full citizenship stature." (Tr. 47:5-8). A careful reading of the full quote, however, undercuts Plaintiff's argument that her substantive due process claim should not be subsumed by her equal protection claim:

> Since *Reed*, the Court has repeatedly recognized that neither federal nor state government acts compatibly *with the equal protection principle* when a law or official policy denies to women, simply because they are women, full citizenship stature—*equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities*.

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[9] Indeed, at oral argument Plaintiff admitted that the underlying factual allegations for the substantive due process claim are the same as the equal protection claim. (*See* Tr. 51:19; *see also generally* SAC).

Virginia, 518 U.S. at 532 (relying on the equal protection framework to find that Virginia military college sex-based classification was unconstitutional) (emphasis added). Indeed, the Supreme Court's decisions involving sex-based classifications and unequal treatment between men and women have often involved both equal protection and substantive due process concerns, but overwhelmingly, the decisions in this area rest on an equal protection framework. *See, e.g.*, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689 (2017); *Virginia*, 518 U.S. at 532; *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 731 (1982); *Rostker*, 453 U.S. at 78–79; *Michael M. v. Superior Court*, 450 U.S. 464, 471–73 (1981); *Orr v. Orr*, 440 U.S. 268, 278–83 (1979); *Craig v. Boren*, 429 U.S. 190, 210 (1976); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 652 (1975); *Schlesinger v. Ballard*, 419 U.S. 498, 508–09 (1975); *Frontiero v. Richardson*, 411 U.S. 677, 690–91 (1973); *Reed v. Reed,* 404 U.S. 71, 76–77 (1971); *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996) (noting that the "Court's decisions concerning access to judicial processes . . . reflect both equal protection and due process concerns" but ultimately applying equal protection because "[m]ost decisions in this area, the Court has recognized, res[t] on an equal protection framework." (citations and internal quotation marks omitted) (alterations in original)).

In this respect, then, Plaintiff's reliance on cases such as *Lawrence* is of little help to her substantive due process claim. (*See* Pl.'s Opp. Br. at 37–38). *Lawrence* dealt with the right of consenting adults to engage in intimate sexual conduct, which is fundamentally a matter of personal liberty and autonomy. *See Lawrence*, 539 U.S. at 578. Such non-enumerated

fundamental rights fall within the purview of substantive due process, even while at the same time "the Equal Protection Clause can help to identify and correct inequalities . . . vindicating precepts of liberty and equality under the Constitution." *See Obergefell*, 135 S. Ct. at 2604.

It is not so clear, however, that applying substantive due process here and recognizing a broad fundamental right to be "treated as a first-class, full-fledged citizen," in addition to the already existing equal protection guarantee, will do the same. After all, joining the military is nota personal right, and by inference, neither is registration for the draft. *See Lindenau v. Alexander*,663 F.2d 68, 72 (10th Cir. 1981); *Crawford v. Cushman*, 531 F.2d 1114, 1125 (2d Cir. 1976). But more importantly, recognizing Plaintiff's asserted fundamental right—which would essentially require the application of strict scrutiny any time the government imposes a sex-based classification—could endanger the long line of precedent applying an intermediate scrutiny framework to such classifications. This Court is in no position to do that and will follow the Supreme Court's reluctance "to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins*, 503 U.S. at 125. Accordingly, the Court dismisses the substantive due process claim.

C. Equal Protection Claim

Defendants argue that Plaintiff fails to state a claim because the Supreme Court decision in *Rostker* directly controls this case. (*See* Defs.'Mov. Br. at 19–21). They contend that "Plaintiff asserts a virtually-

identical equal protection claim to the one that the Supreme Court rejected in *Rostker*." (*Id.* at 19). As such, Defendants contend that this Court is bound to follow *Rostker*, because only the Supreme Court can overrule itself. (*Id.* (citing *Rodriguez*, 490 U.S. at 484; *Agostini v. Felton*, 521 U.S. 203, 237 (1997)).[10]

In opposition, Plaintiff asserts that the facts have substantially changed since *Rostker* was decided, and as such, *Rostker* does not directly control the outcome of this case. (Pl.'s Opp. Br. at 30). She argues that she does not seek to overrule *Rostker*, but "is simply asking this Court to enforce her rights under the Due Process Clause by applying the rule in *Rostker* to the present facts." (Pl.'s Opp. Br. at 29–30).

Before analyzing these arguments, the Court finds it helpful to first examine the *Rostker* decision and intervening changes.

1. *Rostker v. Goldberg*

In *Rostker* a group of men challenged the constitutionality of the MSSA. *See Goldberg v. Rostker*, 509 F. Supp. 586, 588 (E.D. Pa. 1980). After discussing the

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[10] Defendants also argue that Plaintiff fails to state a claim because entry of the relief sought would impermissibly intrude on the Commission's, Congress's, and the Military's authority over military affairs. (*See* Defs.' Mov. Br. at 21–24). But Defendants do not explain just how this alleged intrusion, which would arise only if the Court grants Plaintiff's requested relief, somehow means Plaintiff has failed to state a claim. (*See generally id.*). Further, although Congress has broad power to raise and regulate armies and navies, and deserves "healthy deference" in this area, "[n]one of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs." *See Rostker*, 453 U.S. at 66–67. Thus, the Court rejects this argument.

lower court's decision, the Supreme Court began its analysis by recognizing Congress's sweeping and "broad constitutional power" over military affairs. *Rostker*, 453 U.S. at 65. The *Rostker* Court thoroughly explained the reasons for providing deference to the political branches when adjudicating issues within the area of military affairs. *See id.* at 64–67. The Court noted that the judiciary "must be particularly careful not to substitute our judgment of what is desirable for that of [the executive and legislative branches], or our own evaluation of evidence for [their] reasonable evaluation" because "[i]t is difficult to conceive of an area of governmental activity in which the courts have less competence." *Id.* at 65 (quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973)). Thus, courts should give "healthy deference to legislative and executive judgments in the area of military affairs." *Id.* at 66. But "deference does not mean abdication." *Id.* at 70. "None of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs. In that area, as any other, Congress remains subject to the limitations of the Due Process Clause." *Id.* at 67.

Against this backdrop, the Supreme Court examined the legislative record, which demonstrated that the purpose of the MSSA was to prepare and maintain a pool of combat troops in the event of a draft. *Id.* at 76. The Court observed that then-existing statutory and policy restrictions prohibited women from serving in combat roles. *Id.* ("Women as a group, however, unlike men as a group, are not eligible for combat.") (citing 10 U.S.C. §§ 6015, 8549). Thus, "[m]en and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or

registration for a draft." *Id.* at 78. In light of this fact, the Supreme Court noted that since the purpose of registration was to prepare for the draft of combat troops, the restriction on women was "not only sufficiently but also closely related to" that purpose. *See id.* at 79.

The Court also explained that the district court had erred in relying on testimony that the military could absorb a small group of women to serve in non-combat roles, noting that in doing so the district court had ignored "Congress' considered response to this line of reasoning." *Id.* at 81. Particularly, given that women could only serve in non-combat roles, Congress determined that registering and drafting women would "needlessly" burden training, would impose "added burdens" and "administrative problems such as housing and different treatment with regard to dependency, hardship and physical standards," and would "be positively detrimental to the important goal of military flexibility." *Id.* at 81–82. And in light of the deference owed, the Court noted that it was "not for th[e] Court to dismiss such problems as insignificant in the context of military preparedness and the exigencies of a future mobilization." *Id.* at 81. As such, the Court adopted "an appropriately deferential examination of *Congress'* evaluation of that evidence." *Id.* at 83.

As a result, the Court held that the sex-based classification drawn by the MSSA, even though facially discriminatory, was "not invidious, but rather realistically reflect[ed] the fact that the sexes [were] not similarly situated." *Id.* at 79 ("The Constitution requires that Congress treat similarly situated persons similarly, not that it engage in gestures of superficial equality.") (internal quotation marks omitted).

2. Developments Since *Rostker*

As Plaintiff alleges, there have been substantial changes since *Rostker* was decided. (*See* SAC ¶¶ 43 & 54). Soon after the *Rostker* decision, groups of women began to serve in combat zones and in some instances took part in combat operations, including in Operation Urgent Fury, Operation Just Cause, Operation Desert Storm, and more recently in the Iraq and Afghanistan wars. (*See id.* ¶¶ 43a–ww). On December 5, 1991, Congress repealed the statutory ban on women from serving on aircraft engaged in combat missions. National Defense Authorization Act For Fiscal Years 1992 And 1993, Pub. L. No. 102-190 § 531, 105 Stat 1290, 1365 (1991). This was followed by the repeal of the prohibition on assigning women to combat ships on November 30, 1993. National Defense Authorization Act For Fiscal Year 1994, Pub. L. No. 103-160 § 541, 107 Stat. 1547, 1659 (1993). And in 1994 the Secretary of Defense issued a report at the request of President Clinton which "recognized the vastly increased role being played by women in each of the Armed Services, and concluded that [b]ecause of this change in the makeup of the Armed Forces, much of the congressional debate which, in the [Supreme] court's [1981] opinion, provided adequate congressional scrutiny of the issue . . . would be inappropriate today." (SAC ¶¶ 43n–o (internal quotation marks omitted) (alterations in original)).

More recently, in 2010 Secretary of Defense Gates gave notice to Congress of the intent to permit the assignment of women to submarines and to expand the role of women in the Marine Corps. (*Id.* ¶¶ 43y–z). And in 2011 "the congressional Military Leadership

Diversity Commission [ ] issued a final report urging Congress to allow women into male-only land combat units." *Elgin v. U.S. Dep't of Treasury*, 641 F.3d 6, 23 (1st Cir. 2011) (Stahl, J., concurring), *aff'd sub nom. Elgin v. Dep't of Treasury*, 567 U.S. 1 (2012) (citing *From Representation to Inclusion: Diversity Leadership for the 21st–Century Military,* Final Report (Military Leadership Diversity Comm'n, Arlington, Va.) Mar. 15, 2011, at 71–74, 127, *available at* http://mldc.whs.mil/index.php/finalreport).

On January 24, 2013, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff issued a directive rescinding the military's 1994 Direct Ground Combat Exclusion Rule, which had until then restricted the ability of women to serve in certain combat positions. (*See* SAC ¶¶ 45–48).[11] This was followed by a flurry of changes as the different military branches undertook steps to integrate women at almost every position. (*See* SAC ¶¶ 54a–54xx). Then, on December 3, 2015, the Secretary of Defense announced that "no exceptions are warranted to the full implementation of the rescission of the '1994 Direct Combat Definition and Assignment Rule'" and that "[a]nyone, who can meet operationally relevant and gender neutral standards, regardless of gender,

[11] *See also* Memorandum from Secretary of Defense Leon Panetta and Chairman of Joint Chiefs of Staff Martin Dempsey for Secretaries of the Military Departments on Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule (January 24, 2013), https://dod.defense.gov/Portals/1/Documents/WISRJointMemo.pdf.

should have the opportunity to serve in any position."[12]

Following the Secretary of Defense's decision, the House of Representatives and the Senate debated a provision in the FY17 NDAA that would have required women who attain the age of 18 years on or after January 1, 2018, to register with the SSS. (*See* D.E. No. 57); H.R. 4909, 114th Cong. (2016); S. 2943, 114th Cong. (2016). This provision was later removed, and on November 29, 2016, Congress passed the 2017 NDAA which created the Commission. *See* FY17 NDAA, §§ 551–557.

3. Analysis

Against this backdrop, the Court turns to the instant case and finds that Defendants' argument that *Rostker* bars Plaintiff's claim fails for two main reasons.

First, the *Rodriguez* doctrine does not have an application in this case. *Rodriguez* instructs that lower courts should not assume that a newer Supreme Court decision implicitly overrules a prior precedent. *See Rodriguez*, 490 U.S. at 484. In *Rodriguez*, for example, the Supreme Court revisited the thirty-six-year-old precedent *Wilko v. Swan*, 346 U.S. 427 (1953). *Id.* at 479. *Wilko* had held that claims under the Securities Exchange Act could not be arbitrated. *Id.* In a string of decisions in the 1980's, however, the Supreme Court appeared to abandon the *Wilko*'s

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[12] *See* Memorandum from Secretary of Defense Ash Carter for Secretaries of the Military Departments on Implementation Guidance for the Full Integration of Women in the Armed Forces (December 3, 2015), https://dod.defense.gov/Portals/1/Documents/pubs/OSD014303-15.pdf.

underlying reasoning without explicitly overruling *Wilko* itself. *See id.* at 480–81 (collecting cases). The *Rodriguez* Court finally overruled *Wilko*, but in doing so noted:

> We do not suggest that the Court of Appeals on its own authority should have taken the step of renouncing *Wilko*. If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in *some other line of decisions*, the [lower court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.

Id. at 484 (emphasis added).

The Supreme Court has continually re-asserted this rule, which instructs that when a Supreme Court decision directly controls, the lower court should follow that decision even if its reasoning appears to have been rejected by *later decisions* of the Court. *See, e.g.*, *United States v. Hatter*, 532 U.S. 557, 567 (2001) (overruling an earlier decision but noting with approval that the Court of Appeals had not done so because, while doubt had been casted on that earlier decision by *subsequent decisions*, the Supreme Court had not expressly overruled it); *Hohn v. United States,* 524 U.S. 236, 252–53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether *subsequent cases* have raised doubts about their continued vitality.") (emphasis added); *State Oil Co. v. Khan*, 522 U.S. 3, 20–21 (1997) (overruling directly controlling decision but noting that the "Court of Appeals was correct in applying that principle despite disagreement with" that prior

decision, which had been "eroded" by *intervening decisions* of the Supreme Court); *Agostini*, 521 U.S. at 207 ("The Court neither acknowledges nor holds that other courts should ever conclude that its *more recent cases* have, by implication, overruled an earlier precedent.") (emphasis added).

Here, however, Plaintiff has not asked this Court to consider whether a newer Supreme Court decision has implicitly overruled *Rostker*. Rather, Plaintiff asks the Court to consider the effect that intervening actions undertaken by the Pentagon and Congress has had on the current enforcement of the MSSA. (*See, e.g.,* SAC ¶¶ 16–19, 42–43 & 54; Pl.'s Opp. Br. at 30). Neither *Rodriguez* nor its progeny say anything about such a situation. *See Rodriguez*, 490 U.S. at 484.

Defendants point the Court to the concurrence in *Elgin* to support their argument that the *Rodriguez* doctrine applies to intervening factual changes. (Defs.' Mov. Br. at 19 (citing *Elgin*, 641 F.3d at 24 (Stahl, J., concurring)). But *Elgin* is easily distinguishable for two reasons. First, unlike this case, the plaintiffs there argued that an intervening Supreme Court decision had implicitly overturned *Rostker*; i.e., precisely what *Rodriguez* says lower courts cannot do. *See Elgin*, 641 F.3d at 22. And second, unlike the allegations in this case, at the time *Elgin* was decided "women [were] still precluded from ground combat positions." *Id.* at 23. In short, because Plaintiff contends that intervening factual changes have altered the application of the MSSA, and not that an intervening Supreme Court decision has eroded *Rostker's* legal foundation, the rule outlined by *Rodriguez* and its progeny simply does not apply in this case.

Second, even if this Court were to apply the *Rodriguez* doctrine, at this stage of the litigation it cannot be said that the holding in *Rostker* directly controls the question before this Court, and therefore, it cannot be said that *Rostker* bars Plaintiff's equal protection claim. Under *Rodriguez*, a lower court "should follow the case *which directly controls*. . . ." 490 U.S. at 484 (emphasis added). A precedent is controlling if it "compel[s] the outcome" in the later case; that is, if the earlier case "answer[ed] the definitive question" posed by the later one. *See Lambrix v. Singletary*, 520 U.S. 518, 528 n.3 (1997); *United States v. Bruno*, 487 F.3d 304, 306 (5th Cir. 2007) (stating that two prior Supreme Court cases "are not direct precedents" because "[i]n neither did the Court analyze the precise question [a later case] squarely addressed").

As explained above, *Rostker* rested on the fact that at the time "[w]omen as a group, [ ] unlike men as a group, are not eligible for combat" and therefore they were "simply *not similarly situated* for purposes of a draft or registration for a draft." *Rostker*, 453 U.S. at 76, 78 (emphasis added). Having found that men and women were differently situated, the *Rostker* Court proceeded to explain how the classification was justified in light of the purpose of the MSSA. *Id.* at 76–79. Particularly, since the purpose of registration is to prepare for the draft of combat troops, and at the time women were excluded from combat, the Supreme Court determined that the classification was "not only sufficiently but also closely related to" that purpose. *See id.* at 79. Accordingly, the Supreme Court found that, at the time, the classification drawn by the MSSA was constitutional because the "Constitution requires that Congress treat similarly situated

persons similarly, not that it engage in gestures of superficial equality." *Id.*

Defendants ask that this Court apply *Rostker's* holding to the present alleged facts and summarily dismiss Plaintiff's current claim. But "[t]here is . . . a difference between following a precedent and extending a precedent." *Jefferson Cty. v. Acker*, 210 F.3d 1317, 1320 (11th Cir. 2000). When the facts of a Supreme Court decision "do not line up closely with the facts before [the Court]," it cannot be said that the decision "directly controls" the new case. *See id.* Here, Plaintiff alleges that as a result of Pentagon and Congressional actions women can serve in all combat roles, and therefore, men and women are now similarly situated for purposes of the MSSA. (SAC ¶¶ 43, 45 & 56; Pl.'s Opp. Br. at 9). Plaintiff, thus, asks this Court to answer the following question: whether the sex-based classification drawn by the MSSA is substantially related to achieving the purposes of the MSSA, when men and women *are* similarly situated. Consequently, Plaintiff poses a question never addressed by the *Rostker* Court, and as a result, *Rostker* cannot "compel the outcome" of this case. *See Lambrix*, 520 U.S. at 528 n.3. Accordingly, while persuasive and instructive, *Rostker* does not "directly control[ ]" this case. *See Acker*, 210 F.3d at 1320; *Bruno*, 487 F.3d at 306; *United States v. Acosta*, 502 F.3d 54, 60 (2d Cir. 2007) (stating that, where "neither [of two Supreme Court cases], stands as direct precedent requiring" an outcome, "*no* Supreme Court precedent stands in the way of [the lower court's] holding").

Defendants also contend that the "holding in *Rostker* was justified not only by the exclusion of women from combat roles, but also by the significant

administrative burdens that would likely stem from registering and drafting women." (Defs.' Reply at 9 (citing *Rostker*, 453 U.S. at 81)). They contend that these administrative concerns are still applicable today, and therefore, *Rostker* controls the outcome of this case. (*Id.* at 9–10). As described by *Rostker*, however, the administrative concerns supporting Congress's decision to exclude women stemmed from the fact that women could not serve in combat roles. *See Rostker*, 453 U.S. at 81 ("[A]ssuming that a small number of women could be drafted for noncombat roles, Congress simply did not consider it worth the added burdens of including women in draft and registration plans."). And although *Rostker* instructed that courts should give great deference to Congress's evaluation of such administrative concerns, the Supreme Court did not state that administrative convenience alone was sufficient to justify the sex-based classification created by the MSSA. *See id.* To the contrary, the Supreme Court stated that "deference does not mean abdication." *See id.* at 70. Thus, for purposes of this motion, Plaintiff is entitled to the reasonable inference that the administrative concerns described by the *Rostker* Court are not as tangible as they once were, given that today women are already serving in combat roles. *See Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011) (noting that in a motion to dismiss the "plaintiff must be given the benefit of every favorable inference").

It is true that based on the facts as they existed in 1981 the *Rostker* Court held that the MSSA was constitutional. It is also true that in the event this Court ultimately grants judgment in favor of Plaintiff it would mean a finding that the MSSA is

unconstitutional as presently applied. But that does not necessarily mean that *Rostker* will be overturned. And regardless, where a law has been previously sustained the "decision sustaining the law cannot be regarded as precluding a subsequent suit for the purpose of testing [its] validity . . . in the lights of the later actual experience." *Abie State Bank v. Weaver*, 282 U.S. 765, 772 (1931). Indeed, "[a] statute valid as to one set of facts may be invalid as to another. A statute valid when enacted may become invalid by change in the conditions to which it is applied." *Nashville, C. & St. L. RY. v. Walters*, 294 U.S. 405, 415 (1935) (footnote omitted); *United States v. Carolene Products Co.*, 304 U.S. 144, 153 (1938) ("[T]he constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist."); *see also Third Nat. Bank of Louisville v. Stone*, 174 U.S. 432, 434 (1899) ("A question cannot be held to have been adjudged before an issue on the subject could possibly have arisen."). Therefore, in light of the alleged substantial factual changes since *Rostker* was decided, this Court cannot at this stage of the litigation find that *Rostker* controls the outcome of Plaintiff's claim.

In short, Plaintiff asserts that as currently applied the MSSA violates her constitutional right to equal protection. (*See* SAC ¶¶ 19 & 67). She alleges that she received different treatment on account of her sex, that men and women are similarly situated for purposes of the MSSA because they can both serve in combat roles, and that Defendants cannot show that the classification drawn is substantially related to achieving the MSSA's objectives. (*See id.* ¶¶ 5, 18, 35, 42, 45, 49, 54–56 & 61–64). Because *Rostker* explicitly

requires the government to comply with the Constitution in the area of military affairs, and because Plaintiff alleges Defendants did not, Plaintiff states an equal protection claim upon which relief can be granted. *See Rostker*, 453 U.S. at 67; *Twombly*, 550 U.S. at 570; *see also Nat'l Coal. for Men v. Selective Serv. Sys.*, No. 16-3362, 2018 WL 1694906, at *4 (S.D. Tex. Apr. 6, 2018). Accordingly, Defendants motion to dismiss must be denied.

IV. Conclusion

For these reasons, the Court GRANTS-IN-PART and DENIES-IN-PART Defendants' motion. Plaintiff's substantive due process claim is dismissed *with prejudice*. Defendants' motion is denied in all other respects. An appropriate Order accompanies this Opinion.

s/Esther Salas
Esther Salas, U.S.D.J.

Appendix N

CONSTITUTION ANNOTATED
Analysis and Interpretation of the U.S. Constitution

Browse the Constitution Annotated

Article III

Section 2 Justiciability

Clause 1 Cases or Controversies

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Appendix O

Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) AMENDMENTS DURING AND AFTER TRIAL.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice

that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) RELATION BACK OF AMENDMENTS.

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the United States.* When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) SUPPLEMENTAL PLEADINGS. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Notes

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Pub. L. 102–198, §11(a), Dec. 9, 1991, 105 Stat. 1626; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

See generally for the present federal practice, [former] Equity Rules 19 (Amendments Generally), 28 (Amendment of Bill as of Course), 32 (Answer to Amended Bill), 34 (Supplemental Pleading), and 35 (Bills of Revivor and Supplemental Bills—Form); U.S.C., Title 28, §§399 [now 1653] (Amendments to show diverse citizenship) and [former] 777 (Defects of Form; amendments). See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r.r. 1–13; O. 20, r. 4; O. 24, r.r. 1–3.

Note to Subdivision (a). The right to serve an amended pleading once as of course is common. 4 Mont.Rev.Codes Ann. (1935) §9186; 1 Ore.Code Ann. (1930) §1–904; 1 S.C.Code (Michie, 1932) §493; *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r. 2. Provision for amendment of pleading before trial, by leave of court, is in almost every code. If there is no statute the power of the court to grant leave is said to be inherent. Clark, *Code Pleading*, (1928) pp. 498, 509.

Note to Subdivision (b). Compare [former] Equity Rule 19 (Amendments Generally) and code provisions which allow an amendment "at any time in furtherance of justice," (e. g., Ark.Civ.Code (Crawford, 1934) §155) and which allow an amendment of pleadings to conform to the evidence, where the adverse party has not been misled and prejudiced (e.g., N.M.Stat.Ann. (Courtright, 1929) §§105–601, 105–602).

Note to Subdivision (c). "Relation back" is a well recognized doctrine of recent and now more frequent application. Compare Ala.Code Ann. (Michie, 1928) §9513; Ill.Rev.Stat. (1937) ch. 110, §170(2); 2 Wash.Rev.Stat.Ann. (Remington, 1932) §308–3(4).

See U.S.C., Title 28, §399 [now 1653] (Amendments to show diverse citizenship) for a provision for "relation back."

Note to Subdivision (d). This is an adaptation of Equity Rule 34 (Supplemental Pleading).

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

Rule 15(d) is intended to give the court broad discretion in allowing a supplemental pleading. However, some cases, opposed by other cases and criticized by the commentators, have taken the rigid and formalistic view that where the original complaint fails to state a claim upon which relief can be granted, leave to serve a supplemental complaint must be denied. See *Bonner v. Elizabeth Arden, Inc.*, 177 F.2d 703 (2d Cir. 1949); *Bowles v. Senderowitz*, 65 F.Supp. 548 (E.D.Pa.), rev'd on other grounds, 158 F.2d 435 (3d Cir. 1946), cert. denied, *Senderowitz v. Fleming*, 330 U.S. 848, 67 S.Ct. 1091, 91 L.Ed. 1292 (1947); cf. *LaSalle Nat. Bank v. 222 East Chestnut St. Corp.*, 267 F.2d 247 (7th Cir.), cert. denied, 361 U.S. 836, 80 S.Ct. 88, 4 L.Ed.2d 77 (1959). But see *Camilla Cotton Oil Co. v. Spencer Kellogg & Sons*, 257 F.2d 162 (5th Cir. 1958); *Genuth v. National Biscuit Co.*, 81 F.Supp. 213 (S.D.N.Y. 1948), app. dism., 177 F.2d 962 (2d Cir. 1949); 3 *Moore's Federal Practice* 15.01 [5] (Supp. 1960); 1A Barron & Holtzoff, *Federal Practice & Procedure* 820–21 (Wright ed. 1960). Thus plaintiffs have sometimes been needlessly remitted to the difficulties of commencing a new action even though events occurring after the commencement of the original action have made clear the right to relief.

Under the amendment the court has discretion to permit a supplemental pleading despite the fact that the original pleading is defective. As in other situations where a supplemental pleading is offered, the court is to determine in the light of the particular circumstances whether filing should be permitted, and if so, upon what terms. The amendment does not attempt to deal with such questions as the relation of the statute of limitations to supplemental pleadings, the operation of the doctrine of laches, or the availability of other defenses. All these questions are for decision in accordance with the principles applicable to supplemental pleadings generally. Cf. *Blau v. Lamb*, 191 F.Supp. 906 (S.D.N.Y. 1961); *Lendonsol Amusement Corp. v. B. & Q. Assoc., Inc.*, 23 F.R.Serv. 15d. 3, Case 1 (D.Mass. 1957).

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Rule 15(c) is amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall "relate back" to the date of the original pleading.

The problem has arisen most acutely in certain actions by private parties against officers or agencies of the United States. Thus an individual denied social security benefits by the Secretary of Health, Education, and Welfare may secure review of the decision by bringing a civil action against that officer within sixty days. 42 U.S.C. §405(g) (Supp. III, 1962). In several recent cases the claimants instituted timely action but mistakenly named as defendant the United States,

the Department of HEW, the "Federal Security Administration" (a nonexistent agency), and a Secretary who had retired from the office nineteen days before. Discovering their mistakes, the claimants moved to amend their complaints to name the proper defendant; by this time the statutory sixty-day period had expired. The motions were denied on the ground that the amendment "would amount to the commencement of a new proceeding and would not relate back in time so as to avoid the statutory provision * * * that suit be brought within sixty days * * *" *Cohn v. Federal Security Adm.*, 199 F.Supp. 884, 885 (W.D.N.Y. 1961); see also *Cunningham v. United States*, 199 F.Supp. 541 (W.D.Mo. 1958); *Hall v. Department of HEW*, 199 F.Supp. 833 (S.D.Tex. 1960); *Sandridge v. Folsom, Secretary of HEW*, 200 F.Supp. 25 (M.D.Tenn. 1959). [The Secretary of Health, Education, and Welfare has approved certain ameliorative regulations under 42 U.S.C. §405(g). See 29 Fed.Reg. 8209 (June 30, 1964); Jacoby, The Effect of Recent Changes in the Law of "Nonstatutory" Judicial Review, 53 Geo.L.J. 19, 42–43 (1964); see also *Simmons v. United States Dept. HEW*, 328 F.2d 86 (3d Cir. 1964).]

Analysis in terms of "new proceeding" is traceable to *Davis v. L. L. Cohen & Co.*, 268 U.S. 638 (1925), and *Mellon v. Arkansas Land & Lumber Co.*, 275 U.S. 460 (1928), but those cases antedate the adoption of the Rules which import different criteria for determining when an amendment is to "relate back". As lower courts have continued to rely on the *Davis* and *Mellon* cases despite the contrary intent of the Rules, clarification of Rule 15(c) is considered advisable.

Relation back is intimately connected with the policy of the statute of limitations. The policy of the statute limiting the time for suit against the Secretary of HEW would not have been offended by allowing relation back in the situations described above. For the government was put on notice of the claim within the stated period—in the particular instances, by means of the initial delivery of process to a responsible government official (see Rule 4(d)(4) and (5). In these circumstances, characterization of the amendment as a new proceeding is not responsive to the reality, but is merely question-begging; and to deny relation back is to defeat unjustly the claimant's opportunity to prove his case. See the full discussion by Byse, *Suing the "Wrong" Defendant in Judicial Review of Federal Administrative Action: Proposals for Reform*, 77 Harv.L.Rev. 40 (1963); see also Ill.Civ.P.Act §46(4).

Much the same question arises in other types of actions against the government (see *Byse*, supra, at 45 n. 15). In actions between private parties, the problem of relation back of amendments changing defendants has generally been better handled by the courts, but incorrect criteria have sometimes been applied, leading sporadically to doubtful results. See 1A Barron & Holtzoff, *Federal Practice & Procedure* §451 (Wright ed. 1960); 1 id. §186 (1960); 2 id. §543 (1961); 3 *Moore's Federal Practice*, par. 15.15 (Cum.Supp. 1962); Annot., *Change in Party After Statute of Limitations Has Run*, 8 A.L.R.2d 6 (1949). Rule 15(c) has been amplified to provide a general solution. An amendment changing the party against whom a claim is asserted relates back if the amendment satisfies the usual condition of Rule 15(c) of "arising out of the conduct * * * set forth

* * * in the original pleading," and if, within the applicable limitations period, the party brought in by amendment, first, received such notice of the institution of the action—the notice need not be formal—that he would not be prejudiced in defending the action, and, second, knew or should have known that the action would have been brought against him initially had there not been a mistake concerning the identity of the proper party. Revised Rule 15(c) goes on to provide specifically in the government cases that the first and second requirements are satisfied when the government has been notified in the manner there described (see Rule 4(d)(4) and (5). As applied to the government cases, revised Rule 15(c) further advances the objectives of the 1961 amendment of Rule 25(d) (substitution of public officers).

The relation back of amendments changing plaintiffs is not expressly treated in revised Rule 15(c) since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs. Also relevant is the amendment of Rule 17(a) (real party in interest). To avoid forfeitures of just claims, revised Rule 17(a) would provide that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed for correction of the defect in the manner there stated.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

The rule has been revised to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense.

Paragraph (c)(1). This provision is new. It is intended to make it clear that the rule does not apply to preclude any relation back that may be permitted under the applicable limitations law. Generally, the applicable limitations law will be state law. If federal jurisdiction is based on the citizenship of the parties, the primary reference is the law of the state in which the district court sits. *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980). If federal jurisdiction is based on a federal question, the reference may be to the law of the state governing relations between the parties. *E.g., Board of Regents v. Tomanio*, 446 U.S. 478 (1980). In some circumstances, the controlling limitations law may be federal law. *E.g., West v. Conrail, Inc.*, 107 S.Ct. 1538 (1987). Cf. *Burlington Northern R. Co. v. Woods*, 480 U.S. 1 (1987); *Stewart Organization v. Ricoh*, 108 S.Ct. 2239 (1988). Whatever may be the controlling body of limitations law, if that law affords a more forgiving principle of relation back than the one provided in this rule, it should be available to save the claim. Accord, *Marshall v. Mulrenin*, 508 F.2d 39 (1st cir. 1974). If *Schiavone v. Fortune*, 106 S.Ct. 2379 (1986) implies the contrary, this paragraph is intended to make a material change in the rule.

Paragraph (c)(3). This paragraph has been revised to change the result in *Schiavone v. Fortune, supra*, with respect to the problem of a misnamed defendant. An intended defendant who is notified of an action within the period allowed by Rule 4(m) for service of a summons and complaint may not under the revised rule defeat the action on account of a defect in the pleading with respect to the defendant's name, provided that the requirements of clauses (A) and (B) have been met. If the notice requirement is met within the Rule 4(m) period, a complaint may be amended at any time to correct a formal defect such as a misnomer or misidentification. On the basis of the text of the former rule, the Court reached a result in *Schiavone v. Fortune* that was inconsistent with the liberal pleading practices secured by Rule 8. See Bauer, Schiavone: *An Un-Fortune-ate Illustration of the Supreme Court's Role as Interpreter of the Federal Rules of Civil Procedure*, 63 NOTRE DAME L. REV. 720 (1988); Brussack, *Outrageous Fortune: The Case for Amending Rule 15(c) Again*, 61 S. CAL. L. REV. 671 (1988); Lewis, *The Excessive History of Federal Rule 15(c) and Its Lessons for Civil Rules Revision*, 86 MICH. L. REV. 1507 (1987).

In allowing a name-correcting amendment within the time allowed by Rule 4(m), this rule allows not only the 120 days specified in that rule, but also any additional time resulting from any extension ordered by the court pursuant to that rule, as may be granted, for example, if the defendant is a fugitive from service of the summons.

This revision, together with the revision of Rule 4(i) with respect to the failure of a plaintiff in an action

against the United States to effect timely service on all the appropriate officials, is intended to produce results contrary to those reached in *Gardner v. Gartman*, 880 F.2d 797 (4th cir. 1989), *Rys v. U.S. Postal Service*, 886 F.2d 443 (1st cir. 1989), *Martin's Food & Liquor, Inc. v. U.S. Dept. of Agriculture*, 14 F.R.S.3d 86 (N.D. Ill. 1988). *But cf. Montgomery v. United States Postal Service*, 867 F.2d 900 (5th cir. 1989), *Warren v. Department of the Army*, 867 F.2d 1156 (8th cir. 1989); *Miles v. Department of the Army*, 881 F.2d 777 (9th cir. 1989), *Barsten v. Department of the Interior*, 896 F.2d 422 (9th cir. 1990); *Brown v. Georgia Dept. of Revenue*, 881 F.2d 1018 (11th cir. 1989).

CONGRESSIONAL MODIFICATION OF PROPOSED 1991 AMENDMENT

Section 11(a) of Pub. L. 102–198 [set out as a note under section 2074 of this title] provided that Rule 15(c)(3) of the Federal Rules of Civil Procedure as transmitted to Congress by the Supreme Court to become effective on Dec. 1, 1991, is amended. See 1991 Amendment note below.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The amendment conforms the cross reference to Rule 4 to the revision of that rule.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 15 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 15(c)(3)(A) called for notice of the "institution" of the action. Rule 15(c)(1)(C)(i) omits the reference to "institution" as potentially confusing. What counts is that the party to be brought in have notice of the existence of the action, whether or not the notice includes details as to its "institution."

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleading. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a "pleading" as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim.

Amended Rule 15(a)(3) extends from 10 to 14 days the period to respond to an amended pleading.

AMENDMENT BY PUBLIC LAW

1991—Subd. (c)(3). Pub. L. 102–198 substituted "Rule 4(j)" for "Rule 4(m)".

Committee Notes on Rules—2023

Rule 15(a)(1) is amended to substitute "no later than" for "within" to measure the time allowed to amend once as a matter of course. A literal reading of "within" would lead to an untoward practice if a pleading is one to which a responsive pleading is required and neither a responsive pleading nor one of the Rule 12 motions has been served within 21 days after service of the pleading. Under this reading, the time to amend once as a matter of course lapses 21 days after the pleading is served and is revived only on the later service of a responsive pleading or one of the Rule 12 motions. There is no reason to suspend the right to amend in this way. "No later than" makes it clear that the right to amend continues without interruption until 21 days after the earlier of the events described in Rule 15(a)(1)(B).

Appendix P

Constitution of the United States

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Appendix Q

CHAPTER 49—MILITARY SELECTIVE SERVICE

Sec.

ELIMINATION OF TITLE 50, APPENDIX

Title I of act June 24, 1948, ch. 625, which is classified principally to this chapter, was formerly set out in the Appendix to this title, prior to the elimination of the Appendix to this title and the editorial reclassification of title I principally as this chapter. For disposition of sections of the former Appendix to this title, see Table II, set out preceding section 1 of this title.

§3801. Short title; Congressional declaration of policy

(a) This Act may be cited as the "Military Selective Service Act".

(b) The Congress declares that an adequate armed strength must be achieved and maintained to insure the security of this Nation.

(c) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy.

(d) The Congress further declares, in accordance with our traditional military policy as expressed in

the National Defense Act of 1916, as amended, that it is essential that the strength and organization of the National Guard, both Ground and Air, as an integral part of the first line defenses of this Nation, be at all times maintained and assured.

To this end, it is the intent of the Congress that whenever Congress shall determine that units and organizations are needed for the national security in excess of those of the Regular components of the Ground Forces and the Air Forces, and those in active service under this chapter, the National Guard of the United States, both Ground and Air, or such part thereof as may be necessary, together with such units of the Reserve components as are necessary for a balanced force, shall be ordered to active Federal service and continued therein so long as such necessity exists.

(e) The Congress further declares that adequate provision for national security requires maximum effort in the fields of scientific research and development, and the fullest possible utilization of the Nation's technological, scientific, and other critical manpower resources.

(f) The Congress further declares that the Selective Service System should remain administratively independent of any other agency, including the Department of Defense.

(June 24, 1948, ch. 625, title I, §1, 62 Stat. 604; June 19, 1951, ch. 144, title I, §1(a), 65 Stat. 75; Pub. L. 90–40, §1(1), June 30, 1967, 81 Stat. 100; Pub. L. 92–129,

title I, §101(a)(1), Sept. 28, 1971, 85 Stat. 348; Pub. L. 96–107, title VIII, §812, Nov. 9, 1979, 93 Stat. 816.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a), is act June 24, 1948, ch. 625, 62 Stat. 604. Act was comprised of titles I and II, prior to repeal of title II by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641. Title I of the Act is classified principally to this chapter. Title II of the Act was classified to the Articles of War set out in former Title 10, Army and Air Force, to sections 61, 61a, 62a, 65, and 652a of former Title 10, and to section 180 of former Title 14, Coast Guard, prior to repeal. For complete classification of this Act to the Code, see Tables.

The National Defense Act of 1916, referred to in subsec. (d), is act June 3, 1916, ch. 134, 39 Stat. 166, which was classified generally throughout former Title 10, Army and Air Force, prior to repeal by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, and reenactment as parts of Title 10, Armed Forces, and Title 32, National Guard.

This chapter, referred to in subsec. (d), was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 451 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1979—Subsec. (f). Pub. L. 96–107 added subsec. (f).

1971—Subsec. (a). Pub. L. 92–129 substituted "Military Selective Service Act" for "Military Selective Service Act of 1967".

1967—Subsec. (a). Pub. L. 90–40 substituted "Military Selective Service Act of 1967" for "Universal Military Training and Service Act".

1951—Subsec. (a). Act June 19, 1951, substituted "Universal Military Training and Service Act" for "Selective Service Act of 1948".

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–124, §1, Nov. 26, 1969, 83 Stat. 220, provided: "That this Act [see Tables for classification] may be cited as the 'Selective Service Amendment Act of 1969'."

SHORT TITLE OF 1955 AMENDMENT

Act June 30, 1955, ch. 250, §1, 69 Stat. 223, provided: "That this Act [see Tables for classification] may be cited as the '1955 Amendments to the Universal Military Training and Service Act'."

SHORT TITLE OF 1951 AMENDMENT

Act June 19, 1951, ch. 144, title I, §7, 65 Stat. 89, provided that: "This title [see Tables for classification] may be cited as the '1951 Amendments to the Universal Military Training and Service Act'."

SHORT TITLE OF 1950 AMENDMENT

Act Sept. 9, 1950, ch. 939, 64 Stat. 826, which amended section 3803 of this title, is popularly known as the "Doctors Draft Act".

Act June 30, 1950, ch. 445, §4, 64 Stat. 319, provided that: "This Act [see Tables for classification] may be cited as the 'Selective Service Extension Act of 1950'."

SEPARABILITY

Act June 19, 1951, ch. 144, title I, §5, 65 Stat. 88, provided that: "If any provisions of this Act [see Tables for classification] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby."

§3802. Registration

(a) Except as otherwise provided in this chapter it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for

and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder. The provisions of this section shall not be applicable to any alien lawfully admitted to the United States as a nonimmigrant under section 1101(a)(15) of title 8, for so long as he continues to maintain a lawful nonimmigrant status in the United States.

(b) Regulations prescribed pursuant to subsection (a) may require that persons presenting themselves for and submitting to registration under this section provide, as part of such registration, such identifying information (including date of birth, address, and social security account number) as such regulations may prescribe.

(June 24, 1948, ch. 625, title I, §3, 62 Stat. 605; June 19, 1951, ch. 144, title I, §1(c), 65 Stat. 76; Pub. L. 92–129, title I, §101(a)(2), Sept. 28, 1971, 85 Stat. 348; Pub. L. 97–86, title IX, §916(a), Dec. 1, 1981, 95 Stat. 1129.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 453 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1981—Pub. L. 97–86 designated existing provisions as subsec. (a) and added subsec. (b).

1971—Pub. L. 92–129 substituted "male person residing in the United States" for "male person now or hereafter in the United States" and inserted provision making section inapplicable to aliens lawfully admitted to the United States as nonimmigrants under section 1101(a)(15) of Title 8 for so long as they maintain lawful nonimmigrant status in the United States.

1951—Act June 19, 1951, made all male persons now or hereafter in the United States subject to registration.

PROC. NO. 4360. TERMINATION OF REGISTRATION PROCEDURES

Proc. No. 4360, Mar. 29, 1975, 40 F.R. 14567, 89 Stat. 1255, provided:

Under authority vested in the President by the Military Selective Service Act (62 Stat. 604), as amended [see References in Text note set out under section 3801 of this title], procedures have been established for the registration of male citizens of the United States and of other male persons who are subject to registration under section 3 of said act, as amended (85 Stat. 348) [50 U.S.C. 3802].

In order to evaluate an annual registration system, existing procedures are being terminated and will be replaced by new procedures which will provide for periodic registration.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by the Constitution and the statutes of the United States, including the Military Selective Service Act, as amended, do hereby revoke Proclamations No. 2799 of July 20, 1948, No. 2937 of August 16, 1951, No. 2938 of August 16, 1951, No. 2942 of August 30, 1951, No. 2972 of April 17, 1952, No. 3314 of September 14, 1959, and No. 4101 of January 13, 1972; thereby terminating the present procedures for registration under the Military Selective Service Act, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred ninety-ninth.

GERALD R. FORD.

PROC. NO. 4771. REGISTRATION UNDER THE SELECTIVE SERVICE ACT

Proc. No. 4771, July 2, 1980, 45 F.R. 45247, 94 Stat. 3775, as amended by Proc. No. 7275, Feb. 22, 2000, 65 F.R. 9199, provided:

Section 3 of the Military Selective Service Act, as amended (50 U.S.C. App. 453) [now 50 U.S.C. 3802], provides that male citizens of the United States and other male persons residing in the United States who are between the ages of 18 and 26, except those exempted by Sections 3 and 6(a) of the Military Selective Service Act [50 U.S.C. 3802, 3806(a)], must present themselves for registration at such time or times and place or places, and in such manner as determined by the President. Section 6(k) [50 U.S.C. 3806(k)] provides that such exceptions shall not continue after the cause for the exemption ceases to exist.

The Congress of the United States has made available the funds (H.J. Res. 521, approved by me on June 27, 1980 [Pub. L. 96–282, June 27, 1980, 93 Stat. 552]), which are needed to initiate this registration, beginning with those born on or after January 1, 1960.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by the Military Selective Service Act, as amended (50 U.S.C. App. 451 et seq.) [now 50 U.S.C. 3801 et seq.], do hereby proclaim as follows:

1–1. Persons To Be Registered and Days of Registration

1–101. Male citizens of the United States and other males residing in the United States, unless exempted by the Military Selective Service Act, as amended, who were born on or after January 1, 1960, and who

have attained their eighteenth birthday, shall present themselves for registration in the manner and at the time and places as hereinafter provided.

1–102. Persons born in calendar year 1960 shall present themselves for registration on any of the six days beginning Monday, July 21, 1980.

1–103. Persons born in calendar year 1961 shall present themselves for registration on any of the six days beginning Monday, July 28, 1980.

1–104. Persons born in calendar year 1962 shall present themselves for registration on any of the six days beginning Monday, January 5, 1981.

1–105. Persons born on or after January 1, 1963, shall present themselves for registration on the day they attain the 18th anniversary of their birth or on any day within the period of 60 days beginning 30 days before such date; however, in no event shall such persons present themselves for registration prior to January 5, 1981.

1–106. Aliens who would be required to present themselves for registration pursuant to Sections 1–101 to 1–105, but who are in processing centers on the dates fixed for registration, shall present themselves for registration within 30 days after their release from such centers.

1–107. Aliens and noncitizen nationals of the United States who reside in the United States, but

who are absent from the United States on the days fixed for their registration, shall present themselves for registration within 30 days after their return to the United States.

1–108. Aliens and noncitizen nationals of the United States who, on or after July 1, 1980, come into and reside in the United States shall present themselves for registration in accordance with Sections 1–101 to 1–105 or within 30 days after coming into the United States, whichever is later.

1–109. Persons who would have been required to present themselves for registration pursuant to Sections 1–101 to 1–108 but for an exemption pursuant to Section 3 or 6(a) of the Military Selective Service Act, as amended [50 U.S.C. 3802, 3806(a)], or but for some condition beyond their control such as hospitalization or incarceration, shall present themselves for registration within 30 days after the cause for their exempt status ceases to exist or within 30 days after the termination of the condition which was beyond their control.

1–2. PLACES AND TIMES FOR REGISTRATION

1–201. Persons who are required to be registered and who are in the United States shall register at the places and by the means designated by the Director of Selective Service. These places and means may include but are not limited to any classified United States Post Office, the Selective Service Internet web

site, telephonic registration, registration on approved Government forms, registration through high school and college registrars, and the Selective Service reminder mailback card.

1–202. Citizens of the United States who are required to be registered and who are not in the United States, shall register via any of the places and methods authorized by the Director of Selective Service pursuant to paragraph 1–201 or present themselves at a United States Embassy or Consulate for registration before a diplomatic or consular officer of the United States or before a registrar duly appointed by a diplomatic or consular officer of the United States.

1–203. The hours for registration in United States Post Offices shall be the business hours during the days of operation of the particular United States Post Office. The hours for registration in United States Embassies and Consulates shall be those prescribed by the United States Embassies and Consulates.

1–3. MANNER OF REGISTRATION

1–301. Persons who are required to be registered shall comply with the registration procedures and other rules and regulations prescribed by the Director of Selective Service.

1–302. When reporting for registration each person shall present for inspection reasonable evidence of his identity. After registration, each person shall keep the

Selective Service System informed of his current address.

Having proclaimed these requirements for registration, I urge everyone, including employers in the private and public sectors, to cooperate with and assist those persons who are required to be registered in order to ensure a timely and complete registration. Also, I direct the heads of Executive agencies, when requested by the Director of Selective Service and to the extent permitted by law, to cooperate and assist in carrying out the purposes of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

§3803. Persons liable for training and service

(a) Age limits; training in National Security Training Corps; physical and mental fitness; adequate training facilities; assignment to stations and units; training period; medical specialist categories

Except as otherwise provided in this chapter, every person required to register pursuant to section 3802 of this chapter who is between the ages of eighteen years and six months and twenty-six years, at the

time fixed for his registration, or who attains the age of eighteen years and six months after having been required to register pursuant to section 3802 of this title, or who is otherwise liable as provided in section 3806(h) of this title, shall be liable for training and service in the Armed Forces of the United States: *Provided*, That each registrant shall be immediately liable for classification and examination, and shall, as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces: *Provided further*, That, notwithstanding any other provision of law, any registrant who has failed or refused to report for induction shall continue to remain liable for induction and when available shall be immediately inducted. The President is authorized, from time to time, whether or not a state of war exists, to select and induct into the Armed Forces of the United States for training and service in the manner provided in this chapter (including but not limited to selection and induction by age group or age groups) such number of persons as may be required to provide and maintain the strength of the Armed Forces.

At such time as the period of active service in the Armed Forces required under this chapter of persons who have not attained the nineteenth anniversary of the day of their birth has been reduced or eliminated pursuant to the provisions of subsection (k), and except as otherwise provided in this chapter, every

person who is required to register under this chapter and who has not attained the nineteenth anniversary of the day of his birth on the date such period of active service is reduced or eliminated or who is otherwise liable as provided in section 3806(h) of this title, shall be liable for training in the National Security Training Corps: *Provided*, That persons deferred under the provisions of section 3806 of this title shall not be relieved from liability for induction into the National Security Training Corps solely by reason of having exceeded the age of nineteen years during the period of such deferment. The President is authorized, from time to time, whether or not a state of war exists, to select and induct for training in the National Security Training Corps as hereinafter provided such number of persons as may be required to further the purposes of this chapter.

No person shall be inducted into the Armed Forces for training and service or shall be inducted for training in the National Security Training Corps under this chapter until his acceptability in all respects, including his physical and mental fitness, has been satisfactorily determined under standards prescribed by the Secretary of Defense: *Provided*, That the minimum standards for physical acceptability established pursuant to this subsection shall not be higher than those applied to persons inducted between the ages of 18 and 26 in January 1945: *Provided further*, That the passing requirement for the Armed Forces Qualification Test shall be fixed at a percentile score of 10

points: *And provided further*, That except in time of war or national emergency declared by the Congress the standards and requirements fixed by the preceding two provisos may be modified by the President under such rules and regulations as he may prescribe.

No persons shall be inducted for such training and service until adequate provision shall have been made for such shelter, sanitary facilities, water supplies, heating and lighting arrangements, medical care, and hospital accommodations for such persons as may be determined by the Secretary of Defense or the Secretary of Homeland Security to be essential to the public and personal health.

The persons inducted into the Armed Forces for training and service under this chapter shall be assigned to stations or units of such forces. Persons inducted into the land forces of the United States pursuant to this chapter shall be deemed to be members of the Army of the United States; persons inducted into the naval forces of the United States pursuant to this chapter shall be deemed to be members of the United States Navy or the United States Marine Corps or the United States Coast Guard, as appropriate; and persons inducted into the air forces of the United States pursuant to this chapter shall be deemed to be members of the Air Force of the United States.

Every person inducted into the Armed Forces pursuant to the authority of this subsection after June 19, 1951, shall, following his induction, be given full and

adequate military training for service in the armed force into which he is inducted for a period of not less than twelve weeks, and no such person shall, during this twelve weeks period, be assigned for duty at any installation located on land outside the United States, its Territories and possessions (including the Canal Zone): *Provided*, That no funds appropriated by the Congress shall be used for the purpose of transporting or maintaining in violation of the provisions of this paragraph any person inducted into, or enlisted, appointed, or ordered to active duty in, the Armed Forces under the provisions of this chapter.

No person, without his consent, shall be inducted for training and service in the Armed Forces or for training in the National Security Training Corps under this chapter, except as otherwise provided herein, after he has attained the twenty-sixth anniversary of the day of his birth.

(b) Length of service; release of individuals accepted into Army National Guard, Air National Guard, and other Reserve components

Each person inducted into the Armed Forces under the provisions of subsection (a) of this section shall serve on active training and service for a period of twenty-four consecutive months, unless sooner released, transferred, or discharged in accordance with procedures prescribed by the Secretary of Defense (or the Secretary of Homeland Security with respect to the United States Coast Guard) or as otherwise

prescribed by subsection (d). The Secretaries of the Army, Navy, and Air Force, with the approval of the Secretary of Defense (and the Secretary of Homeland Security with respect to the United States Coast Guard), may provide, by regulations which shall be as nearly uniform as practicable, for the release from training and service in the armed forces prior to serving the periods required by this subsection of individuals who volunteered for and are accepted into organized units of the Army National Guard and Air National Guard and other reserve components.

(c) Opportunity to enlist in Regular Army; voluntary induction; volunteers under 18 years old

(1) Under the provisions of applicable laws and regulations any person between the ages of eighteen years and six months and twenty-six years shall be offered an opportunity to enlist in the regular army for a period of service equal to that prescribed in subsection (b) of this section: *Provided*, That, notwithstanding the provisions of this or any other Act, any person so enlisting shall not have his enlistment extended without his consent until after a declaration of war or national emergency by the Congress after June 19, 1951.

(2) Any enlisted member of any reserve component of the Armed Forces may, during the effective period of this Act, apply for a period of service equal to that prescribed in subsection (b) of this section and his application shall be accepted: *Provided*, That his

services can be effectively utilized and that his physical and mental fitness for such service meet the standards prescribed by the head of the department concerned: *Provided further*, That active service performed pursuant to this section shall not prejudice his status as such member of such reserve component: *And provided further*, That any person who was a member of a reserve component on June 25, 1950, and who thereafter continued to serve satisfactorily in such reserve component, shall, if his application for active duty made pursuant to this paragraph is denied, be deferred from induction under this chapter until such time as he is ordered to active duty or ceases to serve satisfactorily in such reserve component.

(3) Within the limits of the quota determined under section 3805(b) of this title for the subdivision in which he resides, any person, between the ages of eighteen and twenty-six, shall be afforded an opportunity to volunteer for induction into the Armed Forces of the United States for the training and service prescribed in subsection (b), but no person who so volunteers shall be inducted for such training and service so long as he is deferred after classification.

(4) Within the limits of the quota determined under section 3805(b) of this title for the subdivision in which he resides, any person after attaining the age of seventeen shall with the written consent of his parents or guardian be afforded an opportunity to volunteer for induction into the Armed Forces of the United

States for the training and service prescribed in subsection (b).

(5) Within the limits of the quota determined under section 3805(b) of this title for the subdivision in which he resides, at such time as induction into the National Security Training Corps is authorized pursuant to the provisions of this chapter, any person after attaining the age of seventeen shall with the written consent of his parents or guardian be afforded an opportunity to volunteer for induction into the National Security Training Corps for the training prescribed in subsection (k).

(d) Transfer to Reserve component; period of service

(1) Each person who hereafter and prior to June 19, 1951, is inducted, enlisted, or appointed and serves for a period of less than three years in one of the armed forces and meets the qualifications for enlistment or appointment in a reserve component of the armed force in which he serves, shall be transferred to a reserve component of such armed force, and until the expiration of a period of five years after such transfer, or until he is discharged from such reserve component, whichever occurs first, shall be deemed to be a member of such reserve component and shall be subject to such additional training and service as may now or hereafter be prescribed by law for such reserve component: *Provided*, That any such person who completes at least twenty-one months of service in the

armed forces and who thereafter serves satisfactorily (1) on active duty in the armed forces under a voluntary extension for a period of at least one year, which extension is authorized, or (2) in an organized unit of any reserve component of any of the armed forces for a period of at least thirty-six consecutive months, shall, except in time of war or national emergency declared by the Congress, be relieved from any further liability under this subsection to serve in any reserve component of the armed forces of the United States, but nothing in this subsection shall be construed to prevent any such person, while in a reserve component of such forces, from being ordered or called to active duty in such forces.

(2) Each person who hereafter and prior to June 19, 1951, is enlisted under the provisions of subsection (g)[1] of this section and who meets the qualifications for enlistment or appointment in a reserve component of the armed forces shall, upon discharge from such enlistment under honorable conditions, be transferred to a reserve component of the armed forces of the United States and shall serve therein for a period of six years or until sooner discharged. Each such person shall, so long as he is a member of such reserve component, be liable to be ordered to active duty, but except in time of war or national emergency declared by the Congress no such person shall be ordered to active duty, without his consent and except as hereinafter

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[1] See References in Text note below.

provided, for more than one month in any year. In case the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force determines that enlistment, enrollment, or appointment in, or assignment to, an organized unit of a reserve component or an officers' training program of the armed force in which he served is available to, and can without undue hardship be filled by, any such person, it shall be the duty of such person to enlist, enroll, or accept appointment in, or accept assignment to, such organized unit or officers' training program and to serve satisfactorily therein for a period of four years. Any such person who fails or refuses to perform such duty may be ordered to active duty, without his consent, for an additional period of not more than twelve consecutive months. Any such person who enlists or accepts appointment in any such organized unit and serves satisfactorily therein for a period of four years shall, except in time of war or national emergency declared by the Congress, be relieved from any further liability under this subsection to serve in any reserve component of the armed forces of the United States, but nothing in this subsection shall be construed to prevent any such person, while in a reserve component of such forces, from being ordered or called to active duty in such forces. The Secretary of Defense is authorized to prescribe regulations governing the transfer of such persons within and between reserve components of the armed forces and determining, for the purpose of the requirements of the foregoing provisions of this

paragraph, the credit to be allowed any person so transferring for his previous service in one or more reserve components.

(3) Each person who, subsequent to June 19, 1951, and on or before August 9, 1955, is inducted, enlisted, or appointed, under any provision of law, in the Armed Forces, including the reserve components thereof, or in the National Security Training Corps prior to attaining the twenty-sixth anniversary of his birth, shall be required to serve on active training and service in the Armed Forces or in training in the National Security Training Corps, and in a reserve component, for a total period of eight years, unless sooner discharged on grounds of personal hardship, in accordance with regulations and standards prescribed by the Secretary of Defense (or the Secretary of Transportation with respect to the United States Coast Guard). Each such person, on release from active training and service in the Armed Forces or from training in the National Security Training Corps, shall, if physically and mentally qualified, be transferred to a reserve component of the Armed Forces, and shall serve therein for the remainder of the period which he is required to serve under this paragraph and shall be deemed to be a member of the reserve component during that period. If the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the Secretary of Transportation with respect to the United States Coast Guard, determines that enlistment, enrollment, or appointment in, or assignment

to, an organized unit of a reserve component or an officers' training program of the armed force in which he served is available to, and can, without undue personal hardship, be filled by such a person, that person shall enlist, enroll, or accept appointment in, or accept assignment to, the organized unit or officers' training program, and serve satisfactorily therein.

(e) Pay and allowances

With respect to the persons inducted for training and service under this chapter there shall be paid, allowed, and extended the same pay, allowances, pensions, disability and death compensation, and other benefits as are provided by law in the case of other enlisted men of like grades and length of service of that component of the armed forces to which they are assigned. Section 3 of the Act of July 25, 1947 (Public Law 239, Eightieth Congress), is amended by deleting therefrom the following: "Act of March 7, 1942 (56 Stat. 143 to 148, ch. 166), as amended". The Act of March 7, 1942 (56 Stat. 143 to 148), as amended, is made applicable to persons inducted into the armed forces pursuant to this chapter.

(f) Additional compensation from civilian sources

Notwithstanding any other provision of law, any person who is inducted into the armed forces under this Act and who, before being inducted, was receiving compensation from any person may, while serving

under that induction, receive compensation from that person.

(g) Occupational deferment recommendations by National Security Council

The National Security Council shall periodically advise the Director of the Selective Service System and coordinate with him the work of such State and local volunteer advisory committees which the Director of Selective Service may establish, with respect to the identification, selection, and deferment of needed professional and scientific personnel and those engaged in, and preparing for, critical skills and other essential occupations. In the performance of its duties under this subsection the National Security Council shall consider the needs of both the Armed Forces and the civilian segment of the population.

(h) Repealed. June 19, 1951, ch. 144, title I, §1(h), 65 Stat. 80

(i), (j) Omitted

(k) Reduction of periods of service; establishment of National Security Training Corps; composition; service; pay

(1) Upon a finding by him that such action is justified by the strength of the Armed Forces in the light of international conditions, the President, upon recommendation of the Secretary of Defense, is authorized, by Executive order, which shall be uniform in its application to all persons inducted under this chapter

but which may vary as to age groups, to provide for (A) decreasing periods of service under this chapter but in no case to a lesser period of time than can be economically utilized, or (B) eliminating periods of service required under this chapter.

(2) Whenever the Congress shall by concurrent resolution declare—

(A) that the period of active service required of any age group or groups of persons inducted under this chapter should be decreased to any period less than twenty-four months which may be designated in such resolution; or

(B) that the period of active service required of any age group or groups of persons inducted under this chapter should be eliminated,

the period of active service in the Armed Forces of the age group or groups designated in any such resolution shall be so decreased or eliminated, as the case may be. Whenever the period of active service required under this chapter of persons who have not attained the nineteenth anniversary of the day of their birth has been reduced or eliminated by the President or as a result of the adoption of a concurrent resolution of the Congress in accordance with the foregoing provisions of this section, all individuals then or thereafter liable for registration under this chapter who on that date have not attained the nineteenth anniversary of the day of their birth and have not been inducted into the Armed Forces shall be liable, effective on such date, for induction into the National Security Training

Corps as hereinafter established for initial military training for a period of six months.

(3), (4) Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 656.

(5) The Commission shall, subject to the direction of the President, exercise general supervision over the training of the National Security Training Corps, which training shall be basic military training. The Commission shall establish such policies and standards with respect to the conduct of the training of members of the National Security Training Corps as are necessary to carry out the purposes of this Act. The Commission shall make adequate provisions for the moral and spiritual welfare of members of the National Security Training Corps. The Secretary of Defense shall designate the military departments to carry out such training. Each military department so designated shall carry out such military training in accordance with the policies and standards of the Commission. The military department or departments so designated to carry out such military training shall, subject to the approval of the Secretary of Defense, and subject to the policies and standards established by the Commission, determine the type or types of basic military training to be given to members of the National Security Training Corps.

(6) Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 656.

(7) Not later than four months following confirmation of the members of the Commission, the

Commission shall submit to the Congress legislative recommendations which shall include, but not be limited to—

(A) a broad outline for a program deemed by the Commission and approved by the Secretary of Defense to be appropriate to assure that the training carried out under the provisions of this Act shall be of a military nature, but nothing contained in this paragraph shall be construed to grant to the Commission the authority to prescribe the basic type or types of military training to be given members of the National Security Training Corps;

(B) measures for the personal safety, health, welfare and morals of members of the National Security Training Corps;

(C) a code of conduct, together with penalties for violation thereof;

(D) measures deemed necessary to implement the policies and standards established under the provisions of paragraph (5) of this subsection; and

(E) disability and death benefits and other benefits, and the obligations, duties, liabilities and responsibilities, to be granted to or imposed upon members of the National Security Training Corps.

All legislative recommendations submitted under this paragraph shall be referred to the Committees on Armed Services of the two Houses, and each of such committees shall, not later than the expiration of the first period of 45 calendar days of continuous sessions of the Congress, following the date on which the

recommendations provided for in this paragraph are transmitted to the Congress, report thereon to its House: *Provided*, That any bill or resolution reported with respect to such recommendations shall be privileged and may be called up by any member of either House but shall be subject to amendment as if it were not so privileged.

(8) No person shall be inducted into the National Security Training Corps until after—

(A) a code of conduct, together with penalties for violation thereof, and measures providing for disability and death benefits have been enacted into law; and

(B) such other legislative recommendations as are provided for in paragraph (7) shall have been considered and such recommendations or any portion thereof shall have been enacted with or without amendments into law; and

(C) the period of service required under this chapter of persons who have not attained the nineteenth anniversary of the day of their birth has been reduced or eliminated by the President or as a result of the adoption of a concurrent resolution of the Congress in accordance with paragraph (2) of this subsection.

(9) Six months following the commencement of induction of persons into the National Security Training Corps, and semiannually thereafter, the Commission shall submit to the Congress a comprehensive report describing in detail the operation of the National

Security Training Corps, including the number of persons inducted therein, a list of camps and stations at which training is being conducted, a report on the number of deaths and injuries occurring during such training and the causes thereof, an estimate of the performance of the persons inducted therein, including an analysis of the disciplinary problems encountered during the preceding six months, the number of civilian employees of the Commission and the administrative costs of the Commission. Simultaneously, there shall be submitted to the Congress by the Secretary of Defense a report setting forth an estimate of the value of the training conducted during the preceding six months, the cost of the training program chargeable to the appropriations made to the Department of Defense, and the number of personnel of the Armed Forces directly engaged in the conduct of such training.

(10) Each person inducted into the National Security Training Corps shall be compensated at the monthly rate of $30: *Provided, however*, That each such person, having a dependent or dependents shall be entitled to receive a dependency allowance equal to the basic allowance for housing provided for persons in pay grade E–1 under section 403 of title 37 plus $40 so long as such person has in effect an allotment equal to the amount of such dependency allowance for the support of the dependent or dependents on whose account the allowance is claimed.

(11) No person inducted into the National Security Training Corps shall be assigned for training at an installation located on land outside the continental United States, except that residents of Territories and possessions of the United States may be trained in the Territory or possession from which they were inducted.

(l) Terminated

(June 24, 1948, ch. 625, title I, §4, 62 Stat. 605; Sept. 9, 1950, ch. 939, §1, 64 Stat. 826; Sept. 27, 1950, ch. 1059, §§1(1)–(5), 3(a), 64 Stat. 1073; June 19, 1951, ch. 144, title I, §1(d)–(j), 65 Stat. 76; July 9, 1952, ch. 608, pt. VIII, §813, 66 Stat. 509; June 29, 1953, ch. 158, §§1, 2, 6, 67 Stat. 86, 89; June 30, 1955, ch. 250, title II, §202, 69 Stat. 224; Aug. 9, 1955, ch. 665, §3(a), 69 Stat. 602; Aug. 10, 1956, ch. 1041, §§22(a)–(c), 53, 70A Stat. 630, 641; Pub. L. 85–62, §§1–3, June 27, 1957, 71 Stat. 206, 207; Pub. L. 85–564, July 28, 1958, 72 Stat. 424; Pub. L. 85–861, §§9, 36A, Sept. 2, 1958, 72 Stat. 1556, 1569; Pub. L. 87–651, title III, §301, Sept. 7, 1962, 76 Stat. 524; Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 656; Pub. L. 90–40, §1(2), June 30, 1967, 81 Stat. 100; Pub. L. 92–129, title I, §101(a)(3)–(7), Sept. 28, 1971, 85 Stat. 348, 349; Pub. L. 94–106, title VIII, §802(c), Oct. 7, 1975, 89 Stat. 537; Pub. L. 105–85, div. A, title VI, §603(d)(5), Nov. 18, 1997, 111 Stat. 1783; Pub. L. 107–296, title XVII, §1704(e)(11)(A), (B), Nov. 25, 2002, 116 Stat. 2315.)

TERMINATION OF INDUCTION FOR TRAINING AND SERVICE

For provisions relating to termination of induction for training and service in the Armed Forces after July 1, 1973, see section 3815(c) of this title.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

This Act, referred to in subsecs. (c)(1), (2), (f), and (k)(5), (7)(A), is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

The effective period of this Act, referred to in subsec. (c)(2), is set out in section 3815 of this title.

Subsection (g) of this section, referred to in subsec. (d)(2), means subsection (g) prior to repeal by act June 19, 1951, §1(h). See 1951 Amendment note below.

Section 3 of the Act of July 25, 1947 (Public Law 239, Eightieth Congress), referred to in subsec. (e), is section 3 of act July 25, 1947, ch. 327, 61 Stat. 451, which is not classified to the Code.

Act of March 7, 1942 (56 Stat. 143 to 148), referred to in subsec. (e), popularly known as the Missing Persons Act, was classified to sections 1001 to 1018 of the

former Appendix to this title, prior to repeal by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenactment as subchapter VII (§5561 et seq.) of chapter 55 of Title 5, Government Organization and Employees, and chapter 10 (§551 et seq.) of Title 37, Pay and Allowances of the Uniformed Services.

The Commission, referred to in subsec. (k)(5), means the National Security Training Commission, which expired June 30, 1957, pursuant to letter of the President on Mar. 25, 1957, following the Commission's own recommendation for its termination.

CODIFICATION

Section was formerly classified to section 454 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2002—Subsecs. (a), (b). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation" wherever appearing.

1997—Subsec. (k)(10). Pub. L. 105–85 substituted "shall be entitled to receive a dependency allowance equal to the basic allowance for housing provided for persons in pay grade E–1 under section 403 of title 37" for "as such terms are defined in the Career Compensation Act of 1949, shall be entitled to receive a dependency allowance equal to the sum of the basic allowance for quarters provided for persons in pay grade E–1 by section 302(f) of the Career Compensation Act

of 1949 as amended by section 3 of the Dependents' Assistance Act of 1950 as may be extended or amended".

1975—Subsec. (a). Pub. L. 94–106 in paragraph relating to military training for persons inducted after June 19, 1951, for service in the armed force into which they were inducted, substituted twelve weeks for four months in two places.

1971—Subsec. (a). Pub. L. 92–129, §101(a)(3), (4), struck out provisions which had given special coverage for male aliens and substituted "Secretary of Transportation" for "Secretary of the Treasury".

Subsec. (b). Pub. L. 92–129, §101(a)(5), substituted "Secretary of Transportation" for "Secretary of the Treasury".

Subsec. (d)(1). Pub. L. 92–129, §101(a)(6), struck out "(except a person enlisted under subsection (g) of this section)" after "inducted, enlisted, or appointed".

Subsec. (d)(3). Pub. L. 92–129, §101(a)(7), substituted "Secretary of Transportation" for "Secretary of the Treasury".

1967—Subsec. (a). Pub. L. 90–40, §1(2)(a), inserted proviso that registrants failing or refusing to report for induction continue to remain liable for induction and to be immediately inducted when available.

Subsec. (g). Pub. L. 90–40, §1(2)(b), added subsec. (g).

1966—Subsec. (k)(3), (4), (6). Pub. L. 89–554 repealed pars. (3), (4) and (6) which established the National Security Training Commission, provided for its composition, tenure, pay and duties, and authorized appointment and pay of employees.

1962—Subsec. (d)(3). Pub. L. 87–651 amended par. (3) generally, striking out provisions which required each person inducted into the National Security Training Corps to serve in the Armed Forces or the National Security Training Corps for a total of eight years, unless sooner discharged because of personal hardship, and requiring each person covered by this subsection who is not a reserve, and who is qualified, upon his release from training, to be transferred to a reserve component to complete the service required by this subsection.

1958—Subsec. (a). Pub. L. 85–564 inserted, at end of third par., proviso authorizing President to modify standards fixed by preceding two provisos, except in war or national emergency.

Subsec. (d)(3). Pub. L. 85–861 repealed provisions that required persons inducted, enlisted, or appointed, in the Armed Forces to serve on active training and service in the Armed Forces and in a reserve component for a total of six years, and inserted provisions requiring transfer to reserve components of persons

released from active training and service in the Armed Forces or from training in the National Security Training Corps and authorizing enlistment, enrollment, or appointment in, or assignment to, an organized unit of a reserve component or an officers' training program of the armed force in which a person served. See section 651 of Title 10, Armed Forces.

1957—Subsec. (a). Pub. L. 85–62, §§1, 9, temporarily inserted next to last paragraph providing that no medical, dental, or allied specialist shall be inducted if he applies or applied for appointment as a Reserve officer in one of such categories and is rejected on the sole ground of physical disqualification. See Effective and Termination Dates of 1957 Amendment note below.

Subsec. (j). Pub. L. 85–62, §§3, 9, temporarily struck out "as referred to in subsection (i)" after "categories of persons" at end of first sentence, and substituted "thirty-fifth" for "fifty-first" in last sentence of second par. See Effective and Termination Dates of 1957 Amendment note below.

Subsec. (l). Pub. L. 85–62, §§2, 9, temporarily added subsec. (l). See Effective and Termination Dates of 1957 Amendment note below.

1956—Subsec. (a). Act Aug. 10, 1956, §53, repealed provisions prohibiting assignment to duty outside the United States until the member of the Armed Forces has had the equivalent of four months of basic

training, and relating to communications with Members of Congress. See sections 671 and 1034 of Title 10, Armed Forces.

Subsec. (b). Act Aug. 10, 1956, §22(a), authorized Secretaries of the Army, Navy, Air Force, and Treasury, to provide by regulations for release from training and service in the Armed Forces of those individuals who are accepted into organized units of the Army National Guard and Air National Guard and other reserve components.

Subsec. (d)(3). Act Aug. 10, 1956, §22(b), purportedly repealed par. (3) and amended it to provide that "Each person who is inducted into the National Security Training Corps shall serve in the armed forces or the National Security Training Corps for a total of eight years, unless he is sooner discharged because of personal hardship under regulations prescribed by the Secretary of Defense. Each person covered by this subsection who is not a Reserve, and who is qualified, shall, upon his release from training, be transferred to a reserve component of an armed force to complete the service required by this subsection." See 1958 and 1962 Amendment notes above.

Subsec. (f). Act Aug. 10, 1956, §53, purportedly repealed subsec. (f). However, section 22(c) of the act amended subsection to clarify authority to receive compensation.

1955—Subsec. (d)(3). Act Aug. 9, 1955, provided for a six-year term of duty for persons who are inducted, enlisted, or appointed after Aug. 9, 1955.

Subsec. (i)(1). Act June 30, 1955, exempted from service persons who attained their thirty-fifth anniversary of their date of birth and who were rejected for service on the ground of physical disqualification, and to reduce maximum age of liability of induction from 51 to 46 years of age.

1953—Subsec. (i)(2). Act June 29, 1953, §6, in cl. "First" struck out "subsequent to the completion of or release from the program or course of instruction" after "Public Health Service"; and, in cl. "Second", substituted "seventeen months" for "twenty-one months", and struck out "subsequent to the completion of or release from the program or course of instruction" after "Public Health Service".

Subsec. (i)(4) to (7). Act June 29, 1953, §1, added pars. (4) to (7).

Subsec. (j). Act June 29, 1953, §2, added third par.

1952—Subsec. (d)(3). Act July 9, 1952, substituted "appointed under any provision of law, in the Armed Forces, including the reserve components thereof," for "appointed in the Armed Forces".

1951—Subsec. (a). Act June 19, 1951, §1(d), lowered age limit from 19 years to 18½, provided for training in National Security Training Corps, lowered physical

and mental standards, provided for a basic training period, and allowed communication with Members of Congress.

Subsec. (b). Act June 19, 1951, §1(e), increased length of service from 21 to 24 months.

Subsec. (c). Act June 19, 1951, §1(f), struck out short-term Army enlistment period and the General Classification Test, and established age for voluntary induction.

Subsec. (d). Act June 19, 1951, §1(g), inserted "and prior to June 19, 1951," after "hereafter" in pars. (1) and (2), and added par. (3).

Subsec. (e). Act June 19, 1951, §1(i), inserted "6g" after "sections" in par. (1), and extended period of service from 21 to 24 months.

Subsec. (g). Act June 19, 1951, §1(h), repealed subsec. (g), which authorized and directed the Secretaries of the Army, the Navy, and the Air Force to accept enlistments for periods of one year in the respective forces from among qualified male persons between the ages of eighteen and nineteen, subject to the authorized one-year enlistee active duty personnel strengths established by section 452 of the former Appendix to this title.

Subsec. (h). Act June 19, 1951, §1(h), repealed subsec. (h) which related to permanent assignment outside continental United States.

Subsec. (k). Act June 19, 1951, §1(j), added subsec. (k).

1950—Subsec. (a). Act Sept. 27, 1950, §1(1)–(4), inserted before period in third sentence of first par. "and such number of persons as in his judgment may be required for the United States Coast Guard", inserted before period in second par. "or the Secretary of the Treasury", inserted after "the Secretary of Defense" in third par. "or the Secretary of the Treasury", inserted after "United States Marine Corps" in fourth par. "or the United States Coast Guard".

Subsec. (b). Act Sept. 27, 1950, §1(5), inserted before period "or the Secretary of the Treasury".

Subsec. (c). Act Sept. 27, 1950, §3(a), added par. (4).

Subsecs. (i), (j). Act Sept. 9, 1950, §§1, 9, temporarily added subsecs. (i) and (j). See Termination Date of Subsection (i) and Former Subsection (j) note below.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a

note under section 5561 of Title 5, Government Organization and Employees.

EFFECTIVE AND TERMINATION DATES OF 1957 AMENDMENT

Pub. L. 85–62, §9, June 27, 1957, 71 Stat. 208, as amended by Pub. L. 86–4, §4, Mar. 23, 1959, 73 Stat. 13; Pub. L. 88–2, §4, Mar. 28, 1963, 77 Stat. 4; Pub. L. 90–40, §4, June 30, 1967, 81 Stat. 105; Pub. L. 92–129, title I, §103, Sept. 28, 1971, 85 Stat. 355, provided that: "This Act [see Tables for classification] takes effect July 1, 1957, and shall terminate July 1, 1973."

EFFECTIVE DATE OF 1952 AMENDMENT

Act July 9, 1952, ch. 608, pt. VIII, §813, 66 Stat. 509, provided that the amendment made by that section is effective as of June 19, 1951.

TERMINATION DATE OF SUBSECTION (I) AND FORMER SUBSECTION (J)

Act Sept. 9, 1950, ch. 939, §7, 64 Stat. 828, as amended by acts June 19, 1951, §2(b); June 29, 1953, §9; and June 30, 1955, §201, and by Pub. L. 85–62, §8, provided that subsecs. (i) and (j) of this section, which were added by act Sept. 9, 1950, shall terminate as of June 30, 1957. See Effective and Termination Dates of 1957 Amendment note set out above with respect to subsec. (j) as reenacted and amended by Pub. L. 85–62.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PROC. NO. 2906. REGISTRATION OF DOCTORS, DENTISTS AND ALLIED SPECIALISTS

Proc. No. 2906, Oct. 6, 1950, 15 F.R. 6845, 64 Stat. Pt. 2, p. A437, as amended Proc. No. 2915, Dec. 28, 1950, 15 F.R. 9419, 64 Stat. Pt. 2, p. A455, provided:

1. Every male person who participated as a student in the Army specialized training program or any similar program administered by the Navy, or was deferred from service during World War II for the purpose of pursuing a course of instruction leading to education in a medical, dental, or allied specialist category, and has had less than twenty-one months of active duty in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, or the Public Health Service subsequent to the completion of, or release from, such program or course of instruction (exclusive of time spent in post-graduate training), and who, on the day or any of the days hereinafter fixed for his registration (a) shall have received from any school, college, university, or similar institution of learning, one

or more of the degrees of bachelor of medicine, doctor of medicine, doctor of dental surgery, doctor of dental medicine, doctor of veterinary surgery, and doctor of veterinary medicine, (b) is within any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, (c) is not a member of any reserve component of the armed forces of the United States, and (d) shall not have attained the fiftieth anniversary of the day of his birth is required to and shall on that day or any of those days present himself for and submit to registration before a duly designated registration official or selective service local board having jurisdiction in the area in which he has his permanent home or in which he may happen to be on that day or any of those days.

2. The special registration of the male persons required to submit to registration by paragraph numbered 1 hereof shall take place in the several States of the United States, the District of Columbia, the Territories of Alaska and Hawaii, Puerto Rico, and the Virgin Islands between the hours of 8:00 a.m. and 5:00 p.m. on the day or days hereinafter designated for their registration, as follows:

(a) Persons who shall have received any of the degrees above referred to on or before October 16, 1950, shall be registered on Monday, the 16th day of October, 1950.

(b) Persons who receive any of the degrees above referred to after October 16, 1950, shall be registered on the day they receive any such degree, or within five days thereafter.

(c) Persons who shall have received any of the degrees above referred to and who enter any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands after October 16, 1950, shall be registered on the day of such entrance, or within five days thereafter.

3. Every male person who has not had active service in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, or the Public Health Service subsequent to September 16, 1940, and every male person not included in the first or the second of the priorities defined in section 4(i)(2) of the Selective Service Act of 1948, as amended [now the Military Selective Service Act, former 50 U.S.C. 3803(i)(2)], who has had active service in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, or the Public Health Service subsequent to September 16, 1940, who on the day or any of the days hereafter fixed by the Director of Selective Service for his registration (a) shall have received from a school, college, university, or similar institution of learning one or more of the degrees of bachelor of medicine, doctor of medicine, doctor of dental surgery, doctor of dental medicine, doctor of veterinary surgery, and doctor of veterinary

medicine, (b) is within any of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands, (c) is not a member of any reserve component of the armed forces of the United States, and (d) shall not have attained the fiftieth anniversary of the day of his birth is required to and shall on that day or any of those days present himself for and submit to registration before a duly designated registration official or selective service local board having jurisdiction in the area in which he has his permanent home or in which he may happen to be on that day or any of those days.

4. The Director of Selective Service is hereby authorized and directed to fix the date or dates for the special registration required under paragraph numbered 3 hereof: *Provided*, that the date or dates so fixed shall be not later than January 16, 1951.

5. The Director of Selective Service is hereby authorized to require special registration of, and fix the date or dates of registration for, all other persons who are subject to registration under section 4(i) of the Selective Service Act of 1948, as amended, and who are not required to register under or pursuant to this proclamation.

6. All orders and directives of the Director of Selective Service issued pursuant to paragraph numbered

4 or paragraph numbered 5 hereof shall be published in the Federal Register.

7. (a) A person subject to registration under or pursuant to this proclamation who, because of circumstances beyond his control, is unable to present himself for and submit to registration during the hours of the day or any of the days fixed for registration shall do so as soon as possible after the cause for such inability ceases to exist.

(b) Every person subject to registration under or pursuant to this proclamation who has registered in accordance with Proclamation No. 2799 of July 20, 1948, issued under the Selective Service Act of 1948, as amended, [now the Military Selective Service Act] and the regulations prescribed thereunder, shall, notwithstanding such registration, present himself for and submit to registration as required by or pursuant to this proclamation.

(c) The duty of any person to present himself for and submit to registration in accordance with Proclamation No. 2799 of July 20, 1948, issued under the Selective Service Act of 1948, as amended [now the Military Selective Service Act] and the regulations prescribed thereunder, shall not be affected by this proclamation.

8. Every person subject to registration under or pursuant to this proclamation is required to familiarize himself with the rules and regulations governing such registration and to comply therewith.

9. I call upon the Governors of each of the several States, the Territories of Alaska and Hawaii, Puerto Rico, and the Virgin Islands and the Board of Commissioners of the District of Columbia, and all officers and agents of the United States and all officers and agents of the several States, the Territories of Alaska and Hawaii, Puerto Rico, the Virgin Islands, and the District of Columbia, and political subdivisions thereof, and all local boards and agents thereof appointed under the provisions of title I of the Selective Service Act of 1948, as amended [now the Military Selective Service Act, 50 U.S.C. 3801 et seq.], or the regulations prescribed thereunder, to do and perform all acts and services necessary to accomplish effective and complete registration.

10. In order that there may be full cooperation in carrying into effect the purposes of section 4(i) of title I of the Selective Service Act of 1948, as amended, I urge all employers and Government agencies of all kinds—Federal, State, territorial, and local—to give those under their charge sufficient time in which to fulfill the obligations of registration incumbent upon them under the said Act and under or pursuant to this proclamation.

PROC. NO. 2915. EXEMPTIONS FROM REGISTRATION

Proc. No. 2915, Dec. 28, 1950, 15 F.R. 9419, 64 Stat. 494, provided:

Proclamation No. 2906 of October 6, 1950 [set out above], be, and it is hereby, amended, effective as of October 6, 1950, so as to exempt from the force and effect thereof, until otherwise directed by the President by proclamation, (1) commissioned officers, warrant officers, pay clerks, enlisted men, and aviation cadets of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service, and (2) aliens who are residing in the United States and have not declared their intention of becoming citizens of the United States and who are also in one of the following categories: (a) alien students admitted under subdivision (e) of section 4 of the Immigration Act approved May 26, 1924, as amended [former 8 U.S.C. 204], (b) aliens recognized as diplomatic, consular, military or civilian officials or employees of a foreign government and members of their families, (c) aliens who are officials or employees of a public international organization recognized under the International Organizations Immunities Act, approved December 29, 1945 (59 Stat. 669) [22 U.S.C. 288 et seq.], and members of their families, (d) aliens who have entered the United States and remain therein pursuant to the provisions of section 11 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, as approved in Public Law 357, 80th Congress (61 Stat. 756) [22 U.S.C. 287 note], (e) aliens who are nationals of a country with which there is in effect a treaty or

international agreement exempting its nationals from military service while they are within the United States, or (f) other aliens whose admission to the United States is for a temporary stay only: *Provided*, That such exemption shall not continue after the cause thereof shall cease to exist.

EX. ORD. NO. 10762. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 10762, Mar. 28, 1958, 23 F.R. 2119, provided:

1. There is hereby delegated to the Secretary of Defense:

(a) The authority vested in the President by section 4(l)(1) of the Universal Military Training and Service Act [50 U.S.C. 3803(l)(1)], as added by section 2 of the Act of June 27, 1957 (P.L. 85–62; 71 Stat. 206), to order to active duty (other than for training) for a period of not more than 24 consecutive months, with or without his consent, any member of a reserve component of the armed forces of the United States who is in a medical, dental, or allied specialist category, who has not attained the thirty-fifth anniversary of the date of his birth, and who has not performed at least one year of active duty (other than for training).

(b) The authority vested in the President by section 5(c) of the Universal Military Training and Service Act [50 U.S.C. 3805(c)], as added by section 5 of the Act of June 27, 1957 (P.L. 85–62; 71 Stat. 207), to

prescribe regulations with respect to the appointment, reappointment, or promotion of any qualified person who (1) is liable for induction or (2) as a member of a reserve component is ordered to active duty as a physician or dentist or in an allied specialist category in the armed forces of the United States.

2. Executive Order No. 10478 of August 5, 1953, as amended by Executive Order No. 10658 of February 15, 1956, is hereby revoked.

DWIGHT D. EISENHOWER.

EX. ORD. NO. 10776. DELEGATION OF PRESIDENT'S AUTHORITY

Ex. Ord. No. 10776, July 28, 1958, 23 F.R. 5683, provided:

By virtue of the authority vested in me by title 3 of the United States Code, and as President of the United States and Commander in Chief of the Armed Forces, there is hereby delegated to the Secretary of Defense the authority (relating to the prescribing of rules and regulations modifying the standards and requirements with respect to induction of persons into the armed forces) vested in the President by the last proviso of section 4(a) of the Universal Military Training and Service Act [50 U.S.C. 3803(a)], added by the act of July 28, 1958 [Pub. L. 85–564]. The Secretary of Defense is hereby authorized to re-delegate that authority to any official of the Department of Defense

who is required to be appointed by and with the advice and consent of the Senate. No person shall be inducted into the armed forces for training and service who does not meet the standards and requirements specified in the rules and regulations prescribed by the Secretary or his designee pursuant to this order.

DWIGHT D. EISENHOWER.

§3804. Volunteer service of physicians and dentists; minimum period

Any physician or dentist who meets the qualifications for a reserve commission in the respective military departments shall, so long as there is a need for the services of such a physician or dentist, be afforded an opportunity to volunteer for a period of active duty of not less than twenty-four months. Any physician or dentist who so volunteers his service, and meets the qualifications for a reserve commission shall be ordered to active duty for not less than twenty-four months, notwithstanding the grade or rank to which such physician or dentist is entitled under the provisions of the Act of September 9, 1950, as amended.

(June 29, 1953, ch. 158, §7, 67 Stat. 89.)

REFERENCES IN TEXT

Act of September 9, 1950, as amended, referred to in text, is act Sept. 9, 1950, ch. 939, 64 Stat. 826. Section 7 of the Act, as amended (71 Stat. 208), provided that the Act, except for sections 3 and 5, shall terminate as of June 30, 1957. Section 3 of the Act amended

section 202 of the National Security Act of 1947, by adding subsections (g) to (i) which were classified to section 171a(g) to (i) of former Title 5 and which were later omitted from the Code following the codification of section 202(a) to (f) and (j) of the National Security Act of 1947 in Title 10, Armed Forces, by Pub. L. 87–651, Sept. 7, 1972, 76 Stat. 506. Section 5 of the Act was classified to section 234b of former Title 37, and was later omitted from the Code following the enactment of Title 37, Pay and Allowances of the Uniformed Services, by Pub. L. 87–649, Sept. 7, 1962, 76 Stat. 451.

CODIFICATION

Section was formerly classified to section 454e of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

Section was not enacted as part of the Military Selective Service Act, title I of which comprises this chapter.

§3805. Manner of selection of men for training and service; quotas

(a) Manner of selection

(1) The selection of persons for training and service under section 3803 of this title shall be made in an impartial manner, under such rules and regulations as the President may prescribe, from the persons who are liable for such training and service and who at the time of selection are registered and classified, but not deferred or exempted: *Provided*, That in the selection

of persons for training and service under this chapter, and in the interpretation and execution of the provisions of this chapter, there shall be no discrimination against any person on account of race or color: *Provided further*, That in the classification of registrants within the jurisdiction of any local board, the registrants of any particular registration may be classified, in the manner prescribed by and in accordance with rules and regulations prescribed by the President, before, together with, or after the registrants of any prior registration or registrations; and in the selection for induction of persons within the jurisdiction of any local board and within any particular classification, persons who were registered at any particular registration may be selected, in the manner prescribed by and in accordance with rules and regulations prescribed by the President, before, together with, or after persons who were registered at any prior registration or registrations: *And provided further*, That nothing herein shall be construed to prohibit the selection or induction of persons by age group or groups under rules and regulations prescribed by the President: *And provided further*, That—

(1) no local board shall order for induction for training and service in the Armed Forces of the United States any person who has not attained the age of nineteen unless there is not within the jurisdiction of such local board a sufficient number of persons who are deemed by such local board to be available for induction and who have attained the

age of nineteen to enable such local board to meet a call for men which it has been ordered to furnish for induction;

(2) no local board shall order for induction for training and service in the Armed Forces of the United States any person who has not attained the age of nineteen, if there is any person within the jurisdiction of such local board who (i) is as much as ninety days older, (ii) has not attained the age of nineteen, and (iii) is deemed by the local board to be available for induction; and

(3) no local board shall order for induction for training and service in the Armed Forces of the United States an alien unless such alien shall have resided in the United States for one year.

(2) Repealed. Pub. L. 91–124, §2, Nov. 26, 1969, 83 Stat. 220.

(b) Basis for determination of quotas

Quotas of men to be inducted for training and service under this chapter shall be determined for each State, Territory, possession, and the District of Columbia, and for subdivisions thereof, on the basis of the actual number of men in the several States, Territories, possessions, and the District of Columbia, and the subdivisions thereof, who are liable for such training and service but who are not deferred after classification, except that credits shall be given in fixing such quotas for residents of such subdivisions who are in the armed forces of the United States on the date

fixed for determining such quotas. After such quotas are fixed, credits shall be given in filling such quotas for residents of such subdivisions who subsequently become members of such forces. Until the actual numbers necessary for determining the quotas are known, the quotas may be based on estimates, and subsequent adjustments therein shall be made when such actual numbers are known. All computations under this subsection shall be made in accordance with such rules and regulations as the President may prescribe.

(c) Terminated

(d) Rules and regulations

Whenever the President has provided for the selection of persons for training and service in accordance with random selection under subsection (a) of this section, calls for induction may be placed under such rules and regulations as he may prescribe, notwithstanding the provisions of subsection (b) of this section.

(e) Number of inductees

Notwithstanding any other provision of this Act, not more than 130,000 persons may be inducted into the Armed Forces under this Act in the fiscal year ending June 30, 1972, and not more than 140,000 in the fiscal year ending June 30, 1973, unless a number greater than that authorized in this subsection for such fiscal year or years is authorized by a law enacted after September 28, 1971.

(June 24, 1948, ch. 625, title I, §5, 62 Stat. 608; June 19, 1951, ch. 144, title I, §1(k), 65 Stat. 83; Pub. L. 85–62, §§4, 5, June 27, 1957, 71 Stat. 207; Pub. L. 90–40, §1(3), June 30, 1967, 81 Stat. 100; Pub. L. 91–124, §2, Nov. 26, 1969, 83 Stat. 220; Pub. L. 92–129, title I, §101(a)(8), (9), Sept. 28, 1971, 85 Stat. 349.)

TERMINATION OF INDUCTION FOR TRAINING AND SERVICE

For provisions relating to termination of induction for training and service in the Armed Forces after July 1, 1973, see section 3815(c) of this title.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

This Act, referred to in subsec. (e), is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 455 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1971—Subsec. (a)(1). Pub. L. 92–129, §101(a)(8), added cl. (3) covering induction orders for aliens residing in the United States for one year, to last proviso.

Subsecs. (d), (e). Pub. L. 92–129, §101(a)(9), added subsecs. (d) and (e).

1969—Subsec. (a). Pub. L. 91–124 repealed cl. (2) which prohibited President from effecting any change in method of determining relative order of induction.

1967—Subsec. (a). Pub. L. 90–40 designated existing provisions as par. (1) and added par. (2).

1957—Subsec. (a). Pub. L. 85–62, §§4, 9, temporarily, substituted third and fourth provisos for former third proviso "that nothing herein shall be construed to prohibit the selection or induction of persons by age group or groups under rules and regulations prescribed by the President:". See Effective and Termination Dates of 1957 Amendment note below.

Subsec. (c). Pub. L. 85–62, §§5, 9, temporarily added subsec. (c). See Effective and Termination Dates of 1957 Amendment note below.

1951—Subsec. (a). Act June 19, 1951, inserted last two provisos.

EFFECTIVE AND TERMINATION DATES OF 1957 AMENDMENT

Amendment by Pub. L. 85–62 to take effect on July 1, 1957, and terminate on July 1, 1973, see section 9 of Pub. L. 85–62, set out as a note under section 3803 of this title.

PROC. NO. 3945. RANDOM SELECTION FOR MILITARY SERVICE

Proc. No. 3945, Nov. 26, 1969, 34 F.R. 19017, 83 Stat. 972, provided:

WHEREAS section 5(a)(1) of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 455(a)(1)) [now the Military Selective Service Act, 50 U.S.C. 3805(a)(1)], provides that selection of persons for training and service under that Act shall be made in an impartial manner without discrimination on account of race or color, under such rules and regulations as the President may prescribe; and

WHEREAS section 5(a)(2) of that Act (50 U.S.C. App. 455(a)(2)) [now 50 U.S.C. 3805(a)(2)] limited the President's authority to prescribe rules and regulations by requiring, in effect, the selection of registrants through a method known as "oldest first"; and

WHEREAS such section 5(a)(2) has been repealed by Public Law 91–124 of November 26, 1969:

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under and by virtue of the authority vested in me by section 5(a) of the Military Selective Service Act of 1967, as

amended, and having determined that a method of random selection will provide the most equitable basis for selection of registrants for military training and service, do hereby proclaim the following:

That a random selection sequence will be established by a drawing to be conducted in Washington, D.C., on December 1, 1969, and will be applied nationwide. The random selection method will use 366 days to represent the birthdays (month and day only) of all registrants who, prior to January 1, 1970, shall have attained their nineteenth year of age but not their twenty-sixth. The drawing, commencing with the first day selected and continuing until all 366 days are drawn, shall be accomplished impartially.

On the day designated above, a supplemental drawing or drawings will be conducted to determine alphabetically the random selection sequence by name among registrants who have the same birthday.

The random selection sequence obtained as described above shall determine the order of selection of registrants who prior to January 1, 1970, shall have attained their nineteenth year of age but not their twenty-sixth and who are not volunteers and not delinquents. New random selection sequences shall be established, in a similar manner, for registrants who attain their nineteenth year of age on or after January 1, 1970.

The random sequence number determined for any registrant shall apply to him so long as he remains subject to induction for military training and service by random selection.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, in the year of our Lord nineteen hundred and sixty-nine, and of the Independence of the United States of America the one hundred and ninety-fourth.

RICHARD NIXON.

§3806. Deferments and exemptions from training and service

(a) In general

(1) Commissioned officers, warrant officers, pay clerks, enlisted men, and aviation cadets of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Environmental Science Services Administration;[1] cadets, United States Military Academy; midshipmen, United States Naval Academy; cadets, United States Air Force Academy; cadets, United States Coast Guard Academy; midshipmen, Merchant Marine Reserve, members of the United States Navy Reserve; students enrolled in an officer procurement program at military colleges the curriculum of which is approved by the Secretary of Defense; members of the reserve components of the Armed

[1] See Transfer of Functions note below.

Forces and the Coast Guard, while on active duty; and foreign diplomatic representatives, technical attachés of foreign embassies and legations, consuls general, consuls, vice consuls and other consular agents of foreign countries who are not citizens of the United States, and members of their families, and persons in other categories to be specified by the President who are not citizens of the United States, shall not be required to be registered under section 3802 of this title and shall be relieved from liability for training and service under section 3803 of this title, except that aliens admitted for permanent residence in the United States shall not be so exempted: *Provided*, That any alien lawfully admitted for permanent residence as defined in paragraph (20) of section 1101(a) of title 8 and who by reason of occupational status is subject to adjustment to nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of such section 1101(a) but who executes a waiver in accordance with section 1257(b) of title 8 of all rights, privileges, exemptions, and immunities which would otherwise accrue to him as a result of that occupational status, shall be subject to registration under section 3802 of this title, but shall be deferred from induction for training and service for so long as such occupational status continues. Any person who subsequent to June 24, 1948, serves on active duty for a period of not less than twelve months in the armed forces of a nation with which the United States is associated in mutual defense activities as defined by the President, may be exempted

from training and service, but not from registration, in accordance with regulations prescribed by the President, except that no such exemption shall be granted to any person who is a national of a country which does not grant reciprocal privileges to citizens of the United States: *Provided*, That any active duty performed prior to June 24, 1948, by a person in the armed forces of a country allied with the United States during World War II and with which the United States is associated in such mutual defense activities, shall be credited in the computation of such twelve-month period: *Provided further*, That any person who is in a medical, dental, or allied specialist category not otherwise deferred or exempted under this subsection shall be liable for registration and training and service until the thirty-fifth anniversary of the date of his birth.

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service while on active duty and assigned to staff the various offices and bureaus of the Public Health Service, including the National Institutes of Health, or assigned to the Coast Guard, the Bureau of Prisons, Department of Justice, the Environmental Protection Agency, or the Environmental Science Services Administration[1] or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C. 2001 et seq.], shall not be required to be registered under section 3802 of this title and shall be

relieved from liability for training and service under section 3803 of this title. Notwithstanding the preceding sentence, commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who, prior to June 30, 1967, had been detailed or assigned to duty other than that specified in the preceding sentence shall not be required to be registered under section 3802 of this title and shall be relieved from liability for training and service under section 3803 of this title.

(b) Persons who served during World War II

(1) No person who served honorably on active duty between September 16, 1940, and June 24, 1948, for a period of twelve months or more, or between December 7, 1941, and September 2, 1945, for a period in excess of ninety days, in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, the Public Health Service, or the armed forces of any country allied with the United States in World War II prior to September 2, 1945, shall be liable for induction for training and service under this chapter, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948.

(2) No person who served honorably on active duty between September 16, 1940, and June 24, 1948, for a period of ninety days or more but less than twelve months in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, the Public Health Service, or the armed forces of any country allied with the

United States in World War II prior to September 2, 1945, shall be liable for induction for training and service under this chapter, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948, if—

(A) the local board determines that he is regularly enlisted or commissioned in any organized unit of a reserve component of the armed force in which he served, provided such unit is reasonably accessible to such person without unduly interrupting his normal pursuits and activities (including attendance at a college or university in which he is regularly enrolled), or in a reserve component (other than in an organized unit) of such armed force in any case in which enlistment or commission in an organized unit of a reserve component of such armed force is not available to him; or

(B) the local board determines that enlistment or commission in a reserve component of such armed force is not available to him or that he has voluntarily enlisted or accepted appointment in an organized unit of a reserve component of an armed force other than the armed force in which he served.

Nothing in this paragraph shall be deemed to be applicable to any person to whom paragraph (1) of this subsection is applicable.

(3) Except as provided in section 3805(a) of this title, and notwithstanding any other provision of this Act, no person who (A) has served honorably on active duty after September 16, 1940, for a period of not less than

one year in the Army, the Air Force, the Navy, the Marine Corps, or the Coast Guard, or (B) subsequent to September 16, 1940, was discharged for the convenience of the Government after having served honorably on active duty for a period of not less than six months in the Army, the Air Force, the Navy, the Marine Corps, or the Coast Guard, or (C) has served for a period of not less than twenty-four months (i) as a commissioned officer in the Public Health Service or (ii) as a commissioned officer in the Coast and Geodetic Survey, shall be liable for induction for training and service under this Act, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948.

(4) No person who is honorably discharged upon the completion of an enlistment pursuant to section 3803(c) of this title shall be liable for induction for training and service under this chapter, except after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948.

(5) For the purposes of computation of the periods of active duty referred to in paragraphs (1), (2), or (3) of this subsection, no credit shall be allowed for—

(A) periods of active duty training performed as a member of a reserve component pursuant to an order or call to active duty solely for training purposes;

(B) periods of active duty in which the service consisted solely of training under the Army specialized training program, the Army Air Force college training program, or any similar program under the

jurisdiction of the Navy, Marine Corps, or Coast Guard;

(C) periods of active duty as a cadet at the United States Military Academy or United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, or in a preparatory school after nomination as a principal, alternate, or candidate for admission to any of such academies; or

(D) periods of active duty in any of the armed forces while being processed for entry into or separation from any educational program or institution referred to in paragraphs (B) or (C);

(c) Persons who were members of Ready Reserve of any Reserve component of the Armed Forces, Army National Guard, or Air National Guard on February 1, 1951, and persons who enlist in Ready Reserve of any Reserve component of the Armed Forces, Army National Guard, or Air National Guard

(1) Persons who, on February 1, 1951, were members of organized units of the federally recognized National Guard, the federally recognized Air National Guard, the Officers' Reserve Corps, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve, the Coast Guard Reserve, or the Public Health Service Reserve, shall, so long as they continue to be such members and satisfactorily participate in scheduled drills and training periods as prescribed by the

Secretary of Defense, be exempt from training and service by induction under the provisions of this chapter, but shall not be exempt from registration unless on active duty.

(2)(A) Any person, other than a person referred to in subsection (d) of this section, who—

(i) prior to the issuance of orders for him to report for induction; or

(ii) prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any organized unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction under this chapter; or

(iii) prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction under this chapter;

enlists or accepts appointment, before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard, shall be deferred from training and service under this chapter so long as he serves satisfactorily as a member of an organized unit of such Reserve or National Guard in

accordance with section 10147 of title 10 or section 502 of title 32, as the case may be, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense. Enlistments or appointments under subparagraphs (ii) and (iii) of this clause may be accepted notwithstanding the provisions of section 3813(d) of this title. Notwithstanding the provisions of subsection (h) of this section, no person deferred under this clause who has completed six years of such satisfactory service as a member of the Ready Reserve or National Guard, and who during such service has performed active duty for training with an armed force for not less than twelve consecutive weeks, shall be liable for induction for training and service under this Act, except after a declaration of war or national emergency made by the Congress after August 9, 1955. In no event shall the number of enlistments or appointments made under authority of this paragraph in any fiscal year in any Reserve component of the Armed Forces or in the Army National Guard or the Air National Guard cause the personnel strength of such Reserve component or the Army National Guard or the Air National Guard, as the case may be, to exceed the personnel strength for which funds have been made available by the Congress for such fiscal year.

(B) A person who, under any provision of law, is exempt or deferred from training and service under this Act by reason of membership in a reserve component, the Army National Guard, or the Air National Guard,

as the case may be, shall, if he becomes a member of another reserve component, the Army National Guard, or the Air National Guard, as the case may be, continue to be exempt or deferred to the same extent as if he had not become a member of another reserve component, the Army National Guard, or the Air National Guard, as the case may be, so long as he continues to serve satisfactorily.

(C) Except as provided in subsection (b) and the provisions of this subsection, no person who becomes a member of a reserve component after February 1, 1951, shall thereby be exempt from registration or training and service by induction under the provisions of this Act.

(D) Notwithstanding any other provision of this Act, the President, under such rules and regulations as he may prescribe, may provide that any person enlisted or appointed after October 4, 1961, in the Ready Reserve of any reserve component of the Armed Forces (other than under section 12103 of title 10), the Army National Guard, or the Air National Guard, prior to attaining age of twenty-six years, or any person enlisted or appointed in the Army National Guard or the Air National Guard or enlisted in the Ready Reserve of any reserve component prior to attaining the age of eighteen years and six months and deferred under the prior provisions of this paragraph as amended by the Act of October 4, 1961, Public Law 87–378 (75 Stat. 807), or under section 1013 of this title, who fails to serve satisfactorily during his obligated period of

service as a member of such Ready Reserve or National Guard or the Ready Reserve of another reserve component or the National Guard of which he becomes a member, may be selected for training and service and inducted into the armed force of which such reserve component is a part, prior to the selection and induction of other persons liable therefor.

(d) Persons who enroll in Armed Forces Officers' Candidate Schools

(1) Within such numbers as may be prescribed by the Secretary of Defense, any person who (A) has been or may hereafter be selected for enrollment or continuance in the senior division, Reserve Officers' Training Corps, or the Air Reserve Officers' Training Corps, or the Naval Reserve Officers' Training Corps, or the naval and Marine Corps officer candidate training program established by the Act of August 13, 1946 (60 Stat. 1057), as amended, or the Reserve officers' candidate program of the Navy, or the platoon leaders' class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or appointed an ensign, United States Navy Reserve, while undergoing professional training; (B) agrees, in writing, to accept a commission, if tendered, and to serve, subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Homeland Security with respect to the United States Coast Guard), not less than two years on active duty after receipt of a commission; and

(C) agrees to remain a member of a regular or reserve component until the eighth anniversary of the receipt of a commission in accordance with his obligation under the first sentence of section 651 of title 10, or until the sixth anniversary of the receipt of a commission in accordance with his obligation under the second sentence of section 651 of title 10, shall be deferred from induction under this chapter until after completion or termination of the course of instruction and so long as he continues in a regular or reserve status upon being commissioned, but shall not be exempt from registration. Such persons, except those persons who have previously completed an initial period of military training or an equivalent period of active military training and service, shall be required while enrolled in such programs to complete a period of training equal (as determined under regulations approved by the Secretary of Defense or the Secretary of Homeland Security with respect to the United States Coast Guard) in duration and type of training to an initial period of military training. There shall be added to the obligated active commissioned service of any person who has agreed to perform such obligatory service in return for financial assistance while attending a civilian college under any such training program a period of not to exceed one year. Except as provided in paragraph (5), upon the successful completion by any person of the required course of instruction under any program listed in clause (A) of the first sentence of this paragraph, such person shall be tendered a

commission in the appropriate reserve component of the Armed Forces if he is otherwise qualified for such appointment. If, at the time of, or subsequent to, such appointment, the armed force in which such person is commissioned does not require his service on active duty in fulfillment of the obligation undertaken by him in compliance with clause (B) of the first sentence of this paragraph, such person shall be ordered to active duty for training with such armed force in the grade in which he was commissioned for a period of active duty for training of not more than six months (not including duty performed under section 10147 of title 10), as determined by the Secretary of the military department concerned to be necessary to qualify such person for a mobilization assignment. Upon being commissioned and assigned to a reserve component, such person shall be required to serve therein, or in a reserve component of any other armed force in which he is later appointed, until the eighth anniversary of the receipt of such commission pursuant to the provisions of this section. So long as such person performs satisfactory service, as determined under regulations prescribed by the Secretary of Defense, he shall be deferred from training and service under the provisions of this Act. If such person fails to perform satisfactory service, and such failure is not excused under regulations prescribed by the Secretary of Defense, his commission may be revoked by the Secretary of the military department concerned.

(2) In addition to the training programs enumerated in paragraph (1) of this subsection, and under such regulations as the Secretary of Defense (or the Secretary of the Treasury with respect to the United States Coast Guard) may approve, the Secretaries of the military departments and the Secretary of the Treasury are authorized to establish officer candidate programs leading to the commissioning of persons on active duty. Any person heretofore or hereafter enlisted in the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve who thereafter has been or may be commissioned therein upon graduation from an Officers' Candidate School of such Armed Force shall, if not ordered to active duty as a commissioned officer, be deferred from training and service under the provisions of this Act so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned. If such person fails to perform satisfactory service in such unit, and such failure is not excused under such regulations, his commission may be revoked by such Secretary.

(3) Nothing in this subsection shall be deemed to preclude the President from providing, by regulations prescribed under subsection (h) of this section, for the deferment from training and service of any category or categories of students for such periods of time as he may deem appropriate.

(4) Omitted

(5) Notwithstanding paragraph (1), upon the successful completion by any person of the required course of instruction under any Reserve Officers' Training Corps program listed in clause (A) of the first sentence of paragraph (1) and subject to the approval of the Secretary of the military department having jurisdiction over him, such person may, without being relieved of his obligation under that sentence, be tendered, and accept, a commission in the National Oceanic and Atmospheric Administration instead of a commission in the appropriate reserve component of the Armed Forces. If he does not serve on active duty as a commissioned officer of the National Oceanic and Atmospheric Administration for at least six years, he shall, upon discharge therefrom, be tendered a commission in the appropriate reserve component of the Armed Forces, if he is otherwise qualified for such appointment, and, in fulfillment of his obligation under the first sentence of paragraph (1), remain a member of a reserve component until the sixth anniversary of the receipt of his commission in the National Oceanic and Atmospheric Administration. While a member of a reserve component he may, in addition to as otherwise provided by law, be ordered to active duty for such period that, when added to the period he served on active duty as a commissioned officer of the National Oceanic and Atmospheric Administration, equals two years.

(e) Aviation cadet applicants

Fully qualified and accepted aviation cadet applicants of the Army, Navy, or Air Force who have signed an agreement of service shall, in such numbers as may be designated by the Secretary of Defense, be deferred, during the period covered by the agreement but not to exceed four months, from induction for training and service under this chapter but shall not be exempt from registration.

(f) Elected officials

The Vice President of the United States; the governors of the several States, Territories, and possessions, and all other officials chosen by the voters of the entire State, Territory, or possession; members of the legislative bodies of the United States and of the several States, Territories, and possessions; judges of the courts of record of the United States and of the several States, Territories, possessions, and the District of Columbia shall, while holding such offices, be deferred from training and service under this chapter in the armed forces of the United States.

(g) Ministers of religion and students preparing for ministry

(1) Regular or duly ordained ministers of religion, as defined in this chapter, shall be exempt from training and service, but not from registration, under this chapter.

(2) Students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time

courses of instruction in recognized theological or divinity schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been preenrolled, shall be deferred from training and service, but not from registration, under this chapter. Persons who are or may be deferred under the provisions of this subsection shall remain liable for training and service in the Armed Forces under the provisions of section 3803(a) of this title until the thirty-fifth anniversary of the date of their birth. The foregoing sentence shall not be construed to prevent the exemption or continued deferment of such persons if otherwise exempted or deferrable under any other provision of this Act.

(h) Persons employed in occupations necessary to national health, safety, or interest

Except as otherwise provided in this subsection the President is authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces of any or all categories of persons whose employment in industry, agriculture, or other occupations or employment, or whose continued service in an Office (other than an Office described in subsection (f)) under the United States or any State, territory, or possession, or the District of Columbia, or whose activity in study, research, or medical, dental, veterinary, optometric, osteopathic, scientific, pharmaceutical, chiropractic,

chiropodial, or other endeavors is found to be necessary to the maintenance of the national health, safety, or interest: *Provided*, That no person within any such category shall be deferred except upon the basis of his individual status: *Provided further*, That persons who are or may be deferred under the provisions of this section shall remain liable for training and service in the Armed Forces under the provisions of section 3803(a) of this title until the thirty-fifth anniversary of the date of their birth. This proviso shall not be construed to prevent the continued deferment of such persons if otherwise deferrable under any other provisions of this Act. The President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces (1) of any or all categories of persons in a status with respect to persons (other than wives alone, except in cases of extreme hardship) dependent upon them for support which renders their deferment advisable, and (2) of any or all categories of those persons found to be physically, mentally, or morally deficient or defective. For the purpose of determining whether or not the deferment of any person is advisable, because of his status with respect to persons dependent upon him for support, any payments of allowances which are payable by the United States to the dependents of persons serving in the Armed Forces of the United States shall be taken into consideration, but the fact that such payments of allowances are payable shall not be deemed conclusively to remove the

grounds for deferment when the dependency is based upon financial considerations and shall not be deemed to remove the ground for deferment when the dependency is based upon other than financial considerations and cannot be eliminated by financial assistance to the dependents. Except as otherwise provided in this subsection, the President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces of any or all categories of persons who have children, or wives and children, with whom they maintain a bona fide family relationship in their homes. No deferment from such training and service in the Armed Forces shall be made in the case of any individual except upon the basis of the status of such individual. There shall be posted in a conspicuous place at the office of each local board a list setting forth the names and classifications of those persons who have been classified by such local board. The President may, in carrying out the provisions of this chapter, recommend criteria for the classification of persons subject to induction under this chapter, and to the extent that such action is determined by the President to be consistent with the national interest, recommend that such criteria be administered uniformly throughout the United States whenever practicable; except that no local board, appeal board, or other agency of appeal of the Selective Service System shall be required to postpone or defer any person by reason of his activity in study, research, or medical,

dental, veterinary, optometric, osteopathic, scientific, pharmaceutical, chiropractic, chiropodial, or other endeavors found to be necessary to the maintenance of the national health, safety, or interest solely on the basis of any test, examination, selection system, class standing, or any other means conducted, sponsored, administered, or prepared by any agency or department of the Federal Government, or any private institution, corporation, association, partnership, or individual employed by an agency or department of the Federal Government.

(i) High school students

(1) Any person who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order for induction shall, upon the facts being presented to the local board, have his induction postponed (A) until the time of his graduation therefrom, or (B) until he attains the twentieth anniversary of his birth, or (C) until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest. Notwithstanding the preceding sentence, any person who attains the twentieth anniversary of his birth after beginning his last academic year of high school shall have his induction postponed until the end of that academic year if and so long as he continues to pursue satisfactorily a full-time course of instruction.

(2) Any person who while satisfactorily pursuing a full-time course of instruction at a college, university,

or similar institution is ordered to report for induction under this chapter, shall, upon the appropriate facts being presented to the local board, have his induction postponed (A) until the end of the semester or term, or academic year in the case of his last academic year, or (B) until he ceases satisfactorily to pursue such course of instruction, whichever is the earlier.

(j) Persons conscientiously opposed to war

Nothing contained in this chapter shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term "religious training and belief" does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this chapter, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 3803(b) of this title such civilian work contributing to the maintenance of the national health,

safety, or interest as the Director may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 3811 of this title, to have knowingly failed or neglected to perform a duty required of him under this chapter. The Director shall be responsible for finding civilian work for persons exempted from training and service under this subsection and for the placement of such persons in appropriate civilian work contributing to the maintenance of the national health, safety, or interest.

(k) Cessation of cause for exemption or deferment

No exception from registration, or exemption or deferment from training and service, under this chapter, shall continue after the cause therefor ceases to exist.

(l) Absence of parental consent

Notwithstanding any other provisions of law, no person between the ages of eighteen and twenty-one shall be discharged from service in the armed forces of the United States while this chapter is in effect because such person entered such service without the consent of his parent or guardian.

(m) Conviction of a criminal offense

No person shall be relieved from training and service under this chapter by reason of conviction of a criminal offense, except where the offense of which he has been convicted may be punished by death, or by imprisonment for a term exceeding one year.

(n) Review of occupational deferment

In the case of any registrant whose principal place of employment is located outside the appeal board area in which the local board having jurisdiction over the registrant is located, any occupational deferment made under subsection (h) of this section may, within five days after such deferment is made, be submitted for review and decision to the appeal board having jurisdiction over the area in which is located the principal place of employment of the registrant. Such decision of the appeal board shall be final unless modified or changed by the President, and such decision shall be made public.

(o) Person with father, mother, brother, or sister killed or in missing status while serving

Except during the period of a war or a national emergency declared by Congress, no person may be inducted for training and service under this chapter unless he volunteers for such induction—

(1) if the father or the mother or a brother or a sister of such person was killed in action or died in line of duty while serving in the Armed Forces after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in line of duty during such service, or

(2) during any period of time in which the father or the mother or a brother or a sister of such person is in a captured or missing status as a result of such service.

As used in this subsection, the term "brother" or "sister" means a brother of the whole blood or a sister of the whole blood, as the case may be.

(June 24, 1948, ch. 625, title I, §6, 62 Stat. 609; Sept. 27, 1950, ch. 1059, §1(6), 64 Stat. 1074; June 19, 1951, ch. 144, title I, §1(l)–(q), 65 Stat. 83; June 30, 1955, ch. 250, title I, §101, 69 Stat. 223; Aug. 9, 1955, ch. 665, §3(b)–(d), 69 Stat. 603, 604; Pub. L. 85–62, §§6, 7, June 27, 1957, 71 Stat. 208; Pub. L. 85–722, Aug. 21, 1958, 72 Stat. 711; Pub. L. 87–378, §1, Oct. 4, 1961, 75 Stat. 807; Pub. L. 87–536, July 18, 1962, 76 Stat. 167; Pub. L. 88–110, §2, Sept. 3, 1963, 77 Stat. 134; Pub. L. 88–360, July 7, 1964, 78 Stat. 296; Pub. L. 90–40, §1(4)–(7), June 30, 1967, 81 Stat. 100–102, 104; Pub. L. 91–604, §15(b)(8)(B), Dec. 31, 1970, 84 Stat. 1712; Pub. L. 92–129, title I, §101(a)(10)–(22), Sept. 28, 1971, 85 Stat. 349–351; Pub. L. 93–638, title I, §104(c), formerly §105(c), Jan. 4, 1975, 88 Stat. 2208, renumbered §104(c), Pub. L. 100–472, title II, §203(a), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 94–106, title VIII, §802(d), Oct. 7, 1975, 89 Stat. 537; Pub. L. 96–584, §3(a), Dec. 23, 1980, 94 Stat. 3377; Pub. L. 98–525, title XV, §1531, Oct. 19, 1984, 98 Stat. 2631; Pub. L. 103–337, div. A, title XVI, §1677(f), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 107–296, title XVII, §1704(e)(11)(C), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 109–163, div. A, title V, §515(g)(3)(A), (h), Jan. 6, 2006, 119 Stat. 3236, 3237.)

TERMINATION OF INDUCTION FOR TRAINING AND SERVICE

For provisions relating to termination of induction for training and service in the Armed Forces after July 1, 1973, see section 3815(c) of this title.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

Act of August 5, 1954 (68 Stat. 674), referred to in subsec. (a)(2), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, which is classified generally to subchapter I (§2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

This Act, referred to in subsecs. (a)(3), (b)(3), (c)(2)(A) to (D), (d)(1), (2), (g)(2), and (h), is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

Section 1013 of this title, referred to in subsec. (c)(2)(D), was repealed by Pub. L. 88–110, §1, Sept. 3, 1963, 77 Stat. 134.

Act of August 13, 1946 (60 Stat. 1057), referred to in subsec. (d)(1), is act Aug. 13, 1946, ch. 962, 60 Stat. 1057, which was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641, section 1 of which enacted Title 10, Armed Forces. Provisions of the 1946 Act relating to the naval and Marine Corps officer candidate training program were reenacted in sections 6903 to 6908 of Title 10, which were repealed by Pub. L. 88–647, §301(17), Oct. 13, 1964, 78 Stat. 1072, and replaced by chapters 102 and 103 of Title 10.

CODIFICATION

Section was formerly classified to section 456 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–163, §515(g)(3)(A), substituted "members of the United States Navy Reserve" for "United States Naval Reserves".

Subsec. (d)(1)(A). Pub. L. 109–163, §515(h), substituted "United States Navy Reserve" for "United States Naval Reserve".

Subsec. (d)(2). Pub. L. 109–163, §515(h), substituted "Navy Reserve" for "Naval Reserve".

2002—Subsec. (d)(1). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation" in two places.

1994—Subsec. (c)(2)(A). Pub. L. 103–337, §1677(f)(1), substituted "section 10147 of title 10" for "section 270 of title 10" in concluding provisions.

Subsec. (c)(2)(D). Pub. L. 103–337, §1677(f)(2), substituted "section 12103 of title 10" for "section 511(b) of title 10".

Subsec. (d)(1). Pub. L. 103–337, §1677(f)(3), substituted "section 10147 of title 10" for "section 270(a) of title 10".

1984—Subsec. (o). Pub. L. 98–525 inserted reference to mother in cls. (1) and (2), exempting from induction any person whose mother was killed in line of duty.

1980—Subsec. (d)(1). Pub. L. 96–584 struck out minimum active duty requirement of not less than three months.

1975—Subsec. (a)(2). Pub. L. 93–638 inserted provision relating to assignment of personnel to assist Indian tribes, groups, bands or communities.

Subsec. (c)(2)(A). Pub. L. 94–106, in provisions relating to deferment of certain persons from induction who completed six years of active service as members of the Ready Reserve or National Guard, substituted requirement of performance of active duty for training with an armed force for not less than twelve consecutive weeks during such service for requirement of

performance of such active duty for not less than four consecutive months.

1971—Subsec. (a)(1). Pub. L. 92–129, §101(a)(10), (11), inserted proviso making subject to registration an alien lawfully admitted for permanent residence who by reason of occupational status is subject to adjustment to non-immigrant status but who executes a waiver of all rights, privileges, exemptions, and immunities which would otherwise accrue to him as a result of that occupational status, and granting a deferment from induction to such alien for so long as such occupational status continues, and substituted "twelve months" for "eighteen months" as the period of requisite service in the armed forces of a nation with which the United States is associated in mutual defense activities in order to gain an exemption from training and service.

Subsec. (b)(3). Pub. L. 92–129, §101(a)(12), substituted "section 3805(a) of this title" for "section 3803(i) of this title".

Subsec. (b)(4). Pub. L. 92–129, §101(a)(13), struck out reference to section 3803(g) of this title.

Subsec. (d)(1). Pub. L. 92–129, §101(a)(14), substituted "Secretary of Transportation" for "Secretary of the Treasury" and "section 651 of Title 10" for "section 3803(d)(3) of this title".

Subsec. (d)(5). Pub. L. 92–129, §101(a)(15), reflected creation of National Oceanic and Atmospheric Administration and transfer to such newly created Administration of former Coast and Geodetic Survey.

Subsec. (g). Pub. L. 92–129, §101(a)(16), changed from an exemption to a deferment the status to be accorded divinity students, with such students to remain liable for training and service until their 35th birthday.

Subsec. (h). Pub. L. 92–129, §101(a)(17), (18), struck out provisions formerly designated as par. (1) which had covered college student deferments, struck the designation "(2)" preceding the remaining provisions which had theretofore been designated par. (2), and, in such provisions, struck out reference to deferments for persons engaged in graduate study.

Subsec. (i)(1). Pub. L. 92–129, §101(a)(19), substituted provisions allowing a postponement of induction for high school students for provisions creating a deferment for such students and inserted provisions allowing an additional postponement of induction until the end of the academic year for high school students who turn 20 during their last year of high school provided that they continue to pursue satisfactorily a full-time course of instruction.

Subsec. (i)(2). Pub. L. 91–129, §101(a)(20), substituted provisions allowing a postponement of induction for college students for provisions creating a

deferment for such students and struck out references to previous deferments and postponements and to the President's former authority to allow for student deferments.

Subsec. (j). Pub. L. 92–129, §101(a)(21), substituted "Director" for "local board pursuant to Presidential regulations" and inserted sentence charging the Director with the responsibility for finding civilian work for persons exempted from training and service and for their placement in appropriate civilian work.

Subsec. (o). Pub. L. 92–129, §101(a)(22), inserted provisions for an exemption from training and service during a period of time in which the father or a brother or sister of a person is in a captured or missing status and struck out provisions limiting the exemption from service provided under this subsection to the sole surviving son of the family.

1970—Subsec. (b)(2). Pub. L. 91–604 inserted "the Environmental Protection Agency," after "Department of Justice,".

1967—Subsec. (a). Pub. L. 90–40, §1(5), designated existing provisions as par. (1), substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey", removed commissioned officers, warrant officers, pay clerks, enlisted men, aviation cadets, and, while on active duty, members of the reserve component, of the Public Health Service from the list of enumerated personnel relieved from the

registration requirement of section 3802 of this title and the training and service requirement of section 3803 of this title, added cadets, United States Air Force Academy, to such lists, and inserted proviso that a person in a medical, dental, or allied specialist category not otherwise deferred or exempted under subsec. (a) be liable for registration, training, and service until the thirty-fifth anniversary of the date of his birth, and added par. (2).

Subsec. (c)(2)(A). Pub. L. 90–40, §1(4), gave standby authority to both the Governors of the individual States, in the case of the National Guard, and to the President, in the case of the other reserve components, to permit the voluntary enlistment of registrants into these components during the period following their receipt of an induction notice and the date required for their actual induction, provided that there had previously issued a proclamation that the Governor or the President is not otherwise able to maintain the personnel strengths of the respective components.

Subsec. (h). Pub. L. 90–40, §1(6), established uniform criteria for all undergraduate deferments to continue only until a registrant receives a baccalaureate degree, fails to pursue a full-time course of instruction satisfactorily, or reaches the age of 24, whichever occurs first, at which point students are required to be exposed to the hazards of induction in the prime age group in the same manner as their contemporaries who had not been provided student deferments,

continued the President's wide latitude in providing deferments for graduate students in medicine, dentistry, or other subjects deemed essential to the national health, safety, or interest, continued the President's authority to prescribe areas of deferment based upon occupations or professions essential to the national interest, and called for greater uniformity in the administration of classification criteria for persons subject to induction.

Subsec. (j). Pub. L. 90–40, §1(7), struck out provision that religious training and belief stem from the individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relationship, and struck out requirement for a hearing by the Department of Justice when there is an appeal from a local board decision denying conscientious objector status.

1964—Subsec. (o). Pub. L. 88–360 exempted sole surviving sons from induction in cases where the father was killed in action or in line of duty, permitted the sole surviving son to volunteer for induction, and terminated the exemption during time of war or national emergency thereafter declared by Congress.

1963—Subsec. (c)(2). Pub. L. 88–110, among other changes, authorized deferment of persons who prior to attaining age 26 and to the issuance of induction orders enlisted or accepted appointment in the Ready Reserve of any reserve component, Army National

Guard, or Air National Guard, and served satisfactorily, exempted such persons from induction after completing 6 years service and who during such service performed active duty for training for not less than 4 consecutive months, and struck out provisions which deferred persons who prior to attaining 18 years and 6 months of age, and prior to issuance of induction orders, enlisted or accepted appointment in any organized unit of the National Guard, exempted such persons from training and service by reason of subsec. (h) of this section after they attained age 28, or who completed 8 years of service in such unit and performed active duty for training for not less than 3 consecutive months, authorized the President to accept enlistments in the Ready Reserve, whenever he determined its strength could not be maintained at a necessary level for defense, of persons who had not attained age 18 years and 6 months, and who had not been ordered to report for induction, and exempted such persons from liability under subsec. (h) of this section after attaining age 28 years, permitted volunteers to perform a period of active duty pursuant to section 1013 of this title, and exempted such persons from induction after serving 8 years in the Ready Reserve.

1962—Subsec. (d). Pub. L. 87–536 inserted "Except as provided in paragraph (5)," before "upon the successful completion by any person" and added par. (5).

1961—Subsec. (c)(2). Pub. L. 87–378, §1(1), included members of the National Guard deferred by

clause (A) of this paragraph, or any person enlisted or appointed in the Ready Reserve of any reserve component other than under section 511(b) of Title 10, Armed Forces, the Army National Guard or the Air National Guard after Oct. 4, 1961, but prior to attaining age 26, who fail to serve satisfactorily as a member of their components within clause (E) of this paragraph, and struck out "or appointed" after "may provide that any person enlisted".

Subsec. (d)(1). Pub. L. 87–378, §1(2), substituted "If, at the time of, or subsequent to, such appointment" for "If, at the time of such appointment", changed the period of active duty for training in grade, where the armed force in which such person is commissioned does not require his service on active duty, from 6 months to a period of not less than 3 months or more than 6 months, not including duty performed under section 270(a) of Title 10, Armed Forces, as is determined to qualify such person for a mobilization assignment, and substituted the requirement that upon being commissioned and assigned to a reserve component, such person must serve therein, or in a reserve component of any other armed force in which he is later appointed, for provisions which required such person to be returned to inactive duty and assigned to an appropriate reserve unit upon completion of the required period of active duty for training.

1958—Subsec. (c)(2)(F). Pub. L. 85–722 added subpar. (F).

1957—Subsec. (b)(5)(E). Pub. L. 85–62, §§6, 9, temporarily, added subpar. (E). See Effective and Termination Dates of 1957 Amendment note below.

Subsec. (d)(4). Pub. L. 85–62, §§7, 9, added par. (4). See Effective and Termination Dates of 1957 Amendment note below.

1955—Subsec. (a). Act June 30, 1955, §101(a), exempted from training and service, but not from registration, those persons who served on active duty for not less than 18 months since June 24, 1948 in the armed forces of a nation with which the United States is associated in mutual defense activities.

Subsec. (b)(3). Act June 30, 1955, §101(b), exempted individuals who have served not less than one year after September 16, 1940, or who were discharged after such date for the convenience of the Government and had served not less than six months, or who served not less than twenty-four months in the Public Health Service or in the Coast and Geodetic Survey.

Subsec. (c)(2). Act Aug. 9, 1955, §3(b), exempted from induction persons who have completed eight years of satisfactory service as members of an organized unit of the National Guard, with a minimum of not less than three consecutive months of active duty for training, and added cls. (C), (D), and (E).

Subsec. (c)(2)(A). Act June 30, 1955, §101(c), inserted provisions to exempt persons from liability for induction after attaining age 28.

Subsec. (d)(1). Act Aug. 9, 1955, §3(c), deferred from induction any person who agrees to remain a member of a regular or reserve component until the sixth anniversary of the receipt of a commission, provided that all qualified graduates must be tendered a commission in the appropriate reserve component, and permitted active duty for training for a period of six months upon completion of which he must serve in the component in which appointed until the eighth anniversary of the receipt of the commission.

Subsec. (d)(2). Act Aug. 9, 1955, §3(d), permitted deferment of commissioned officers who perform satisfactory service in an appropriate unit of the Ready Reserve.

Subsec. (h). Act June 30, 1955, §101(d), provided that determination of deferment shall not be based on existence of a shortage or a surplus of any agricultural commodity.

1951—Subsec. (a). Act June 19, 1951, §1(*l*), exempted Naval reserve midshipmen attending merchant marine schools and students enrolled in military colleges which have approved ROTC courses from registration and induction.

Subsec. (c). Act June 19, 1951, §1(m), substituted "February 1, 1941" for "the effective date of this title" in par. (1), inserted "prior to the determination by the Secretary of Defense that adequate trained personnel are available to the National Guard to enable it to maintain its strength authorized by current appropriations, and prior to the issuance of orders for him to report for induction" after "six months" in par. (2)(A), and inserted ", paragraph (1) of this subsection" after "subsection (b)" in par. (2)(B).

Subsec. (d). Act June 19, 1951, §1(n), continued deferments to ROTC members but increased their period of service from 2 years to 6 years after receiving their commission (including 2 years active duty or 3 years active duty if financial assistance is received), authorized establishment of other training programs, and provided for the President's deferment power.

Subsec. (h). Act June 19, 1951, §1(o), removed the President's authority to defer married men who have no dependents other than a wife solely on a basis of such marriage unless extreme hardship is involved, permitted the induction of persons now deferred until the thirty-fifth anniversary of their birth should the basis for deferment terminate after their 26th birthday, and inserted "dental, optometric, osteopathic, and chiropractic" to list of endeavors which may be considered for deferment purposes.

Subsec. (i). Act June 19, 1951, §1(p), authorized deferment of high school and college students in lieu of postponement of induction in order to give them an opportunity to enlist in the branch of service of their choice during such deferment period.

Subsec. (j). Act June 19, 1951, §1(q), substituted "in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 3803(b) of this title such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 3811 of this title, to have knowingly failed or neglected to perform a duty required of him under this title" for "be deferred" in third sentence, and "he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 3803(b) of this title such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 3811 of this title, to have knowingly failed or neglected to perform a

duty required of him under this title" for "he shall be deferred" in seventh sentence.

1950—Subsec. (b)(2). Act Sept. 27, 1950, struck out of subpars. (A) and (B) "or the Coast Guard", "(or the Coast Guard)", and "or in the Coast Guard" wherever appearing.

CHANGE OF NAME

References to Naval Reserve, other than references to Naval Reserve regarding the United States Naval Reserve Retired List, deemed to refer to Navy Reserve, see section 515(h) of Pub. L. 109–163, set out as a note under section 10101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–584, §3(b), Dec. 23, 1980, 94 Stat. 3377, provided that: "The amendment made by subsection (a) [amending this section] shall apply only to persons

ordered to active duty for training after the effective date of this Act [Dec. 23, 1980]."

EFFECTIVE AND TERMINATION DATES OF 1957 AMENDMENT

Amendment by Pub. L. 85–62 to take effect on July 1, 1957, and terminate on July 1, 1973, see section 9 of Pub. L. 85–62, set out as a note under section 3803 of this title.

SAVINGS PROVISION; REPEAL OF COLLEGE STUDENT DEFERMENT

Pub. L. 92–129, title I, §101(b), Sept. 28, 1971, 85 Stat. 354, provided that: "Notwithstanding the repeal of section 6(h)(1) of the Military Selective Service Act of 1967 [50 U.S.C. 3806(h)(1)] made by subsection (a)(17) of this section, any person (1) who is satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of higher learning, (2) who met the academic requirements of a student deferment prescribed in such section 6(h)(1), and (3) who was satisfactorily pursuing such a full-time course prior to the date of enactment of this Act [Sept. 28, 1971] and during the 1970–1971 regular academic school year shall be deferred from induction for training and service in the Armed Forces under the same terms and conditions such person would have been deferred under the provisions of such section 6(h)(1) had such provision not been repealed."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of all other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in former section 3 (now 103) of Title 14, Coast Guard.

DISCHARGE OF SURVIVING SONS

Pub. L. 92–129, title I, §101(d), Sept. 28, 1971, 85 Stat. 354, provided that:

"(1) Subject to the provisions of paragraph (2) of this subsection any surviving son or sons of a family who (A) were inducted into the Armed Forces under the Military Selective Service Act of 1967 [now the

Military Selective Service Act, see References in Text note set out under section 3801 of this title], (B) have not reenlisted or otherwise voluntarily extended their period of active duty in the Armed Forces, and (C) are serving on active duty with the Armed Forces on or after the date of enactment of this subsection [Sept. 28, 1971], and such son or sons could not, if they were not in the Armed Forces, be involuntarily inducted into military service under the Military Selective Service Act as a result of the amendment made by paragraph (22) of subsection (a) of this section [amending this section], such surviving son or sons shall, upon application, be promptly discharged from the Armed Forces.

"(2) The provisions of paragraph (1) of this subsection shall not apply in the case of any member of the Armed Forces against whom court-martial charges are pending, or in the case of any member who has been tried and convicted by a court-martial for an offense and whose case is being reviewed or appealed, or in the case of any member who has been tried and convicted by a court-martial for an offense and who is serving a sentence (or otherwise satisfying punishment) imposed by such court-martial, until final action (including completion of any punishment imposed pursuant to such court-martial) has been completed with respect to such charges, review, or appeal, or until the sentence has been served (or until any other punishment imposed has been satisfied), as the case

may be. The President shall have authority to implement the provisions of this subsection by regulations.

"(3) Notwithstanding the amendment made by paragraph (22) of subsection (a) of this section [amending this section], except during the period of a war or a national emergency declared by Congress, the sole surviving son of any family in which the father or one or more sons or daughters thereof were killed in action before January 1, 1960, or died in line of duty before January 1, 1960, while serving in the Armed Forces of the United States, or died subsequent to such date as a result of injuries received or disease incurred before such date during such service shall not be inducted under the Military Selective Service Act [see References in Text note set out under section 3801 of this title] unless he volunteers for induction."

PRIOR OBLIGATED SERVICE

Pub. L. 88–110, §5, Sept. 3, 1963, 77 Stat. 136, provided that: "This Act [amending this section, section 3812 of this title and sections 270 and 12103 of Title 10, Armed Forces, and repealing section 1013 of this title] shall not affect any term of obligated service incurred before the effective date of this Act [Sept. 3, 1963]. In addition, the enactment of this Act [Sept. 3, 1963] shall not increase the minimum period of active duty or active duty for training that is required on the day before the effective date of this Act to earn an exemption from training and service under the Universal Military Training and Service Act, as amended (50

U.S.C. App. 451 et seq.) [now 50 U.S.C. 3801 et seq.], in the case of persons who entered the Armed Forces before the effective date of this Act."

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, excepted from transfer when Coast Guard is operating as part of Navy under former sections 1 and 3 (now 101 and 103) of Title 14, Coast Guard.

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau [now National

Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

In order to implement the provisions of Reorganization Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, which covers administration of National Oceanic and Atmospheric Administration, were changed by order of Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, as follows: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated

National Ocean Survey. See notes set out under section 311 of Title 15, Commerce and Trade.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5, Government Organization and Employees. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Director of Selective Service concerning establishment, implementation, and administration of program for return of Vietnam era draft evaders and military deserters, see Ex. Ord. No. 11804, Sept. 16, 1974, 39 F.R. 33299, set out under section 3811 of this title.

PROGRAM FOR RETURN OF VIETNAM ERA DRAFT EVADERS AND MILITARY DESERTERS

Proc. No. 4313, Sept. 16, 1974, 39 F.R. 33293, 88 Stat. 2504, set out under section 3811 of this title, provided for a program for return of Vietnam era draft evaders and military deserters.

EXECUTIVE ORDER NO. 11803

Ex. Ord. No. 11803, Sept. 16, 1974, 39 F.R. 33297, set out under section 3811 of this title, provided for review by Clemency Board of convictions of violations under subsec. (j) of this section.

EX. ORD. NO. 10028. DEFINITION OF NONCOMBATANT SERVICE AND NONCOMBATANT TRAINING

Ex. Ord. No. 10028, Jan. 13, 1949, 14 F.R. 211, provided:

1. The term "noncombatant service" shall mean (a) service in any unit of the armed forces which is unarmed at all times; (b) service in the medical department of any of the armed forces, wherever performed; or (c) any other assignment the primary function of which does not require the use of arms in combat; provided that such other assignment is acceptable to the individual concerned and does not require him to bear arms or to be trained in their use.

2. The term "noncombatant training" shall mean any training which is not concerned with the study, use, or handling of arms or weapons.

HARRY S TRUMAN.

§3807. Bounties for induction; substitutes; purchase of release

No bounty may be paid to induce any person to be inducted into an armed force. A clothing allowance authorized by law is not a bounty for the purposes of this

section. No person liable for training and service under this Act may furnish a substitute for that training or service. No person may be enlisted, inducted, or appointed in an armed force as a substitute for another. No person liable for training and service under section 3803 of this title may escape that training and service or be discharged before the end of his period of training and service by paying money or any other valuable thing as consideration for his release from that training and service or liability therefor.

(June 24, 1948, ch. 625, title I, §8, 62 Stat. 614; Aug. 10, 1956, ch. 1041, §22(d), 70A Stat. 630.)

TERMINATION OF INDUCTION FOR TRAINING AND SERVICE

For provisions relating to termination of induction for training and service in the Armed Forces after July 1, 1973, see section 3815(c) of this title.

REFERENCES IN TEXT

This Act, referred to in text, is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

Section 8 of act June 24, 1948, 62 Stat. 614, cited as a credit to this section, was repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, 678, and provisions thereof (as applicable to induction) were restated in this section by section 22(d) of act Aug. 10, 1956. Provisions of such section 8 (less applicability to induction) were restated by first section of act Aug. 10, 1956, as section 514 of Title 10, Armed Forces.

AMENDMENTS

1956—Act Aug. 10, 1956, struck out provisions which prohibited payment of any bounty to induce any person to enlist into Armed Forces. See section 514 of Title 10, Armed Forces.

§3808. Separation from service

(a) Certificate recording proficiency and merit; physical examination

Any person inducted into the armed forces under this chapter for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 3803(b) of this title shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. In addition, each such person who is inducted into the armed forces under this chapter for training and service shall be given a physical examination at the beginning of such training and service, and upon the completion of

his period of training and service under this chapter, each such person shall be given another physical examination and, upon his written request, shall be given a statement of physical condition by the Secretary concerned: *Provided*, That such statement shall not contain any reference to mental or other conditions which in the judgment of the Secretary concerned would prove injurious to the physical or mental health of the person to whom it pertains: *Provided further*, That, if upon completion of training and service under this chapter, such person continues on active duty without an interruption of more than seventy-two hours as a member of the Armed Forces of the United States, a physical examination upon completion of such training and service shall not be required unless it is requested by such person, or the medical authorities of the Armed Force concerned determine that the physical examination is warranted.

(b) Right to vote; manner; poll tax

Any person inducted into the armed forces for training and service under this chapter shall, during the period of such service, be permitted to vote in person or by absentee ballot in any general, special, or primary election occurring in the State of which he is a resident, whether he is within or outside such State at the time of such election, if under the laws of such State he is otherwise entitled so to vote in such election; but nothing in this subsection shall be construed to require granting to any such person a leave of

absence or furlough for longer than one day in order to permit him to vote in person in any such election. No person inducted into, or enlisted in, the armed forces for training and service under this chapter shall, during the period of such service, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, be required to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof.

(c) Reports on separated personnel

The Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard, shall furnish to the Selective Service System hereafter established a report of separation for each person separated from active duty.

(June 24, 1948, ch. 625, title I, §9, 62 Stat. 614; Sept. 27, 1950, ch. 1059, §1(7)–(10), 64 Stat. 1074; June 19, 1951, ch. 144, title I, §1(s), 65 Stat. 86; July 12, 1955, ch. 327, 69 Stat. 295; July 9, 1956, ch. 523, §1, 70 Stat. 509; Pub. L. 86–632, §1, July 12, 1960, 74 Stat. 467; Pub. L. 87–391, Oct. 4, 1961, 75 Stat. 821; Pub. L. 90–491, §1, Aug. 17, 1968, 82 Stat. 790; Pub. L. 92–129, title I, §101(a)(23), Sept. 28, 1971, 85 Stat. 351; Pub. L. 93–508, title IV, §405, Dec. 3, 1974, 88 Stat. 1600; Pub. L. 107–296, title XVII, §1704(e)(11)(D), Nov. 25, 2002, 116 Stat. 2315.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 459 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted "Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard," for "Secretaries of Army, Navy, Air Force, or Transportation".

1974—Subsecs. (b), (c). Pub. L. 93–508, §405(1), (2), redesignated subsecs. (i) and (j) as (b) and (c), respectively. Former subsecs. (b) and (c), relating to reemployment rights and consideration of training and service in the armed forces as furlough or leave of absence, were struck out.

Subsecs. (d) to (h). Pub. L. 93–508, §405(1), repealed subsecs. (d) to (h) relating to jurisdiction of district courts to enforce compliance with the reemployment provisions, legal assistance by United States attorneys to claimants of reemployment benefits, reemployment by Federal Government, priority of

rights to reemployment, and reemployment benefits to persons enlisting or called to active duty.

Subsecs. (i), (j). Pub. L. 93–508, §405(2), redesignated subsecs. (i) and (j) as (b) and (c), respectively.

1971—Subsec. (j). Pub. L. 92–129 substituted "or Transportation" for "or Treasury".

1968—Subsec. (c)(3). Pub. L. 90–491, §1(1), added par. (3).

Subsec. (d). Pub. L. 90–491, §1(2), included cases where any private employer fails or refuses to comply with provisions of subsec. (c)(3) of this section.

Subsec. (g)(1). Pub. L. 90–491, §1(3), substituted "does not exceed five years, provided that the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government" for "does not exceed four years".

Subsec. (g)(2). Pub. L. 90–491, §1(4), designated existing provisions as par. (A) and added par. (B).

1961—Subsec. (g)(1). Pub. L. 87–391 permitted four years service after Aug. 1, 1961, in addition to four years service between June 24, 1948, and Aug. 1, 1961, without loss of reemployment rights.

Subsec. (g)(2). Pub. L. 87–391 permitted four years service after Aug. 1, 1961, in addition to four years service between June 24, 1948, and Aug. 1, 1961, without loss of reemployment rights.

Subsec. (g)(4). Pub. L. 87–391 struck out requirement that persons who are rejected for military service must have requested a leave of absence from their employers for purpose of determining their physical fitness to enter Armed Forces in order to insure reemployment rights.

Subsec. (g)(5), (6). Pub. L. 87–391 added par. (5) and redesignated former par. (5) as (6).

1960—Subsec. (g)(2). Pub. L. 86–632, §1(1), inserted "and other than for training" after "physical fitness" in parenthetical phrase.

Subsec. (g)(3). Pub. L. 86–632, §1(2), substituted the existing reemployment provisions for provisions granting a leave of absence to perform training duty or to be examined to determine fitness to enter the armed forces and requiring application for reinstatement to be made within thirty days following release from training duty or rejection for service.

Subsec. (g)(4), (5). Pub. L. 86–632, §1(3), added pars. (4) and (5).

1956—Subsec. (d). Act July 9, 1956, inserted reference to subsection (g) of this section.

1955—Subsec. (a). Act July 12, 1955, inserted proviso removing requirement for a final physical examination for inductees who continue on active duty in another status in the Armed Forces.

1951—Subsec. (g). Act June 19, 1951, clarified reemployment rights with respect to restoration to a position of like seniority, status, and pay.

1950—Subsec. (g)(1). Act Sept. 27, 1950, §1(7), struck out "or the Coast Guard (other than a reserve component)" and "or the Coast Guard" after "(other than in a reserve component)".

Subsec. (g)(2). Act Sept. 27, 1950, §1(8), struck out ", the Coast Guard" after "United States".

Subsec. (h). Act Sept. 27, 1950, §1(9), struck out ", the Coast Guard" after "United States".

Subsec. (j). Act Sept. 27, 1950, §1(10), struck out "or" after "Navy" and inserted ", or Treasury" after "Air

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–508 effective Dec. 3, 1974, see section 503 of Pub. L. 93–508, set out as a note under section 3452 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–632, §3, July 12, 1960, 74 Stat. 468, provided that: "This Act [amending this section and

section 1013 of this title] shall take effect upon the expiration of sixty days from the date of its enactment [July 12, 1960]."

EFFECTIVE DATE OF 1956 AMENDMENT

Act July 9, 1956, ch. 523, §2, 70 Stat. 509, provided that: "The amendment made by the first section of this Act [amending this section] shall take effect as of June 19, 1951."

§3809. Selective Service System

(a) Establishment; construction; appointment of Director; termination and reestablishment of Office of Selective Service Records

(1) There is established in the executive branch of the Government an agency to be known as the Selective Service System, and a Director of Selective Service who shall be the head thereof.

(2) The Selective Service System shall include a national headquarters, at least one State headquarters in each State, Territory, and possession of the United States, and in the District of Columbia, and the local boards, appeal boards, and other agencies provided for in subsection (b)(3) of this section.

(3) The Director shall be appointed by the President.

(4) The functions of the Office of Selective Service Records (established by the Act of March 31, 1947) and of the Director of the Office of Selective Service Records are transferred to the Selective Service System and the Director of Selective Service, respectively.

The personnel, property, records, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Office of Selective Service Records are transferred to the Selective Service System. The Office of Selective Service Records shall cease to exist upon the taking effect of the provisions of this chapter: *Provided*, That, effective upon the termination of this chapter and notwithstanding such termination in other respects, (A) the said Office of Selective Service Records is reestablished on the same basis and with the same functions as obtained prior to June 24, 1948, (B) said reestablished Office shall be responsible for liquidating any other outstanding affairs of the Selective Service System, and (C) the personnel, property, records, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Selective Service System shall be transferred to such reestablished Office of Selective Service Records.

(b) Administrative provisions

The President is authorized to undertake the following:

(1) To prescribe the necessary rules and regulations to carry out the provisions of this chapter.

(2) To appoint, upon recommendation of the respective governor or comparable executive official, a State director of the Selective Service System for each headquarters in each State, Territory, and possession of the United States and for the District of

Columbia, who shall represent the governor and be in immediate charge of the state headquarters of the Selective Service System: *Provided*, That no State director shall serve concurrently in an elected or appointed position of a State or local government; to employ such number of civilians, and, subject to subsection (e), to order to active duty with their consent and to assign to the Selective Service System such officers of the selective-service section of the State headquarters and headquarters detachments and such other officers of the federally recognized National Guard of the United States or other armed forces personnel (including personnel of the reserve components thereof), as may be necessary for the administration of the national and of the several State headquarters of the Selective Service System.

(3) To create and establish within the Selective Service System civilian local boards, civilian appeal boards, and such other civilian agencies, including agencies of appeal, as may be necessary to carry out its functions with respect to the registration, examination, classification, selection, assignment, delivery for induction, and maintenance of records of persons registered under this chapter, together with such other duties as may be assigned under this chapter: *Provided*, That no person shall be disqualified from serving as a counselor to registrants, including service as Government appeal agent, because of his membership in a Reserve component of the Armed Forces. He shall create and establish one

or more local boards in each county or political subdivision corresponding thereto of each State, territory, and possession of the United States, and in the District of Columbia. The local board and/or its staff shall perform their official duties only within the county or political subdivision corresponding thereto for which the local board is established, or in the case of an intercounty board, within the area for which such board is established, except that the staffs of local boards in more than one county of a State or comparable jurisdiction may be collocated or one staff may serve local boards in more than one county of a State or comparable jurisdiction when such action is approved by the Governor or comparable executive official or officials. Each local board shall consist of three or more members to be appointed by the President from recommendations made by the respective Governors or comparable executive officials. In making such appointments after September 28, 1971, the President is requested to appoint the membership of each local board so that to the maximum extent practicable it is proportionately representative of the race and national origin of those registrants within its jurisdiction, but no action by any local board shall be declared invalid on the ground that any board failed to conform to any particular quota as to race or national origin. No citizen shall be denied membership on any local board or appeal board on account of sex. After December 31, 1971, no person shall serve on any local

board or appeal board who has served on any local board or appeal board for a period of more than 20 years. Notwithstanding any other provision of this paragraph, an intercounty local board consisting of at least one member from each component county or corresponding subdivision may, with the approval of the Governor or comparable executive official or officials, be established for an area not exceeding five counties or political subdivisions corresponding thereto within a State or comparable jurisdiction when the President determines, after considering the public interest involved, that the establishment of such local board area will result in a more efficient and economical operation. Any such intercounty local board shall have within its area the same power and jurisdiction as a local board has in its area. A local board may include among its members any citizen otherwise qualified under Presidential regulations, provided he is at least eighteen years of age. No member of any local board shall be a member of the Armed Forces of the United States, but each member of any local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction, and each intercounty local board shall have at least one member from each county or political subdivision corresponding thereto included within the intercounty local board area. Such local boards, or separate panels thereof each consisting of three or

more members, shall, under rules and regulations prescribed by the President, have the power within the respective jurisdictions of such local boards to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this chapter, of all individuals within the jurisdiction of such local boards. The decisions of such local board shall be final, except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe. There shall be not less than one appeal board located within the area of each Federal judicial district in the United States and within each Territory and possession of the United States, and such additional separate panels thereof, as may be prescribed by the President. Appeal boards within the Selective Service System shall be composed of civilians who are citizens of the United States and who are not members of the armed forces. The decision of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President. The President, upon appeal or upon his own motion, shall have power to determine all claims or questions with respect to inclusion for, or exemption or deferment from training and service under this chapter, and the determination of the President shall be final. No judicial review shall be made of the classification or processing of any registrant by

local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under section 3811 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction or for civilian work in the case of a registrant determined to be opposed to participation in war in any form: *Provided*, That such review shall go to the question of the jurisdiction herein reserved to local boards, appeal boards, and the President only when there is no basis in fact for the classification assigned to such registrant. No person who is a civilian officer, member, agent, or employee of the Office of Selective Service Records or the Selective Service System, or of any local board or appeal board or other agency of such Office or System, shall be excepted from registration or deferred or exempted from training and service, as provided for in this chapter, by reason of his status as such civilian officer, member, agent, or employee.

(4) To appoint, and to fix, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, the basic pay of such officers, agents, and employees as he may deem necessary to carry out the provisions of this chapter, however, any officer of the armed forces or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this chapter (except to offices or positions on local boards or

appeal boards established or created pursuant to subsection (b)(3)) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the armed forces or as such officer or employee in any department or agency of the United States.

(5) To utilize the services of any or all departments and any and all officers or agents of the United States, and to accept the services of all officers and agents of the several States, Territories, and possessions, and subdivisions thereof, and the District of Columbia, and of private welfare organizations, in the execution of this chapter.

(6) To purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies upon orders placed by the Director of the Government Publishing Office or upon waivers issued in accordance with section 504 of title 44, and to obtain by purchase, loan, or gift such equipment and supplies for the Selective Service System, as he may deem necessary to carry out the provisions of this chapter, with or without advertising or formal contract.

(7) To prescribe eligibility, rules, and regulations governing the release for service in the armed forces, or for any other special service established pursuant to this chapter, of any person convicted of a violation of any of the provisions of this chapter.

(8) Subject to the availability of funds appropriated for such purpose, to procure such space as he

may deem necessary to carry out the provisions of this chapter and the Act of March 31, 1947.

(9) Subject to the availability of funds appropriated for such purposes, to determine the location of such additional temporary installations as he may deem essential; to utilize and enlarge such existing installations; to construct, install, and equip, and to complete the construction, installation, and equipment of such buildings, structures, utilities, and appurtenances (including the necessary grading and removal, repair or remodeling of existing structures and installations), as may be necessary to carry out the provisions of this chapter; and, in order to accomplish the purpose of this chapter, to acquire lands, and rights pertaining thereto, or other interests therein, for temporary use thereof, by donation or lease, and to prosecute construction thereon prior to the approval of the chapter by the Attorney General as required by sections 3111 and 3112 of title 40.

(10) Subject to the availability of funds appropriated for such purposes, to utilize, in order to provide and furnish such services as may be deemed necessary or expedient to accomplish the purposes of this chapter, such personnel of the armed forces and of Reserve components thereof with their consent, and such civilian personnel, as may be necessary. For the purposes of this chapter, the provisions of section 14 of the Federal Employees' Pay Act of 1946 (Public Law 390, Seventy-ninth Congress) with

respect to the maximum limitations as to the number of civilian employees shall not be applicable to the Department of the Army, the Department of the Navy, or the Department of the Air Force.

(c) Delegation of President's authority

The President is authorized to delegate any authority vested in him under this chapter, and to provide for the subdelegation of any such authority.

(d) Acceptance of gifts and voluntary services

In the administration of this chapter, gifts of supplies, equipment, and voluntary services may be accepted.

(e) Assignment of armed forces personnel

The total number of armed forces personnel assigned to the Selective Service System under subsection (b)(2) at any time may not be less than the number of such personnel determined by the Director of Selective Service to be necessary, but not to exceed 745 persons, except that the President may assign additional armed forces personnel to the Selective Service System during a time of war or a national emergency declared by Congress or the President.

(f) Settlement of travel claims, etc.

The Director is authorized to make final settlement of individual claims, for amounts not exceeding $500, for travel and other expenses of uncompensated personnel of the Office of Selective Service Records, or the Selective Service System, incurred while in the

performance of official duties, without regard to other provisions of law governing the travel of civilian employees of the Federal Government.

(g) Reports to Congress

The Director of Selective Service shall submit to the Congress annually a written report covering the operation of the Selective Service System and such report shall include, by States, information as to the number of persons registered under this Act; the number of persons inducted in to the military service under this Act; and the number of deferments granted under this Act and the basis for such deferments; and such other specific kinds of information as the Congress may from time to time request.

(h) Maintenance of System after institution of all volunteer program for meeting manpower needs

The Selective Service system[1] shall be maintained as an active standby organization, with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency (including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces), and (2) personnel adequate to reinstitute immediately the full operation of the System, including military reservists who are

[1] So in original. Probably should be capitalized.

trained to operate such System and who can be ordered to active duty for such purpose in the event of a national emergency.

(June 24, 1948, ch. 625, title I, §10, 62 Stat. 618; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; June 30, 1950, ch. 445, §3, 64 Stat. 319; Sept. 27, 1950, ch. 1059, §3(b), 64 Stat. 1074; June 19, 1951, ch. 144, title I, §1(u), 65 Stat. 87; Pub. L. 90–40, §1(8)–(10), June 30, 1967, 81 Stat. 104, 105; Pub. L. 92–129, title I, §101(a)(24)–(29), Sept. 28, 1971, 85 Stat. 351, 352; Pub. L. 93–176, §3, Dec. 5, 1973, 87 Stat. 693; Pub. L. 96–513, title V, §507(d), Dec. 12, 1980, 94 Stat. 2919; Pub. L. 97–60, title II, §208, Oct. 14, 1981, 95 Stat. 1008; Pub. L. 98–473, title II, §234, Oct. 12, 1984, 98 Stat. 2031; Pub. L. 100–180, div. A, title VII, §715, Dec. 4, 1987, 101 Stat. 1113; Pub. L. 102–190, div. A, title X, §1091, Dec. 5, 1991, 105 Stat. 1486; Pub. L. 104–201, div. A, title IV, §414, Sept. 23, 1996, 110 Stat. 2508; Pub. L. 107–314, div. A, title X, §1062(o)(2), Dec. 2, 2002, 116 Stat. 2652; Pub. L. 112–166, §2(c)(3), Aug. 10, 2012, 126 Stat. 1284; Pub. L. 112–239, div. A, title X, §1076(l), Jan. 2, 2013, 126 Stat. 1956; Pub. L. 113–235, div. H, title I, §1301(d), Dec. 16, 2014, 128 Stat. 2537.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (d), was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified

principally to this chapter. For complete classification of title I to the Code, see Tables.

The Act of March 31, 1947, referred to in subsecs. (a)(4) and (b)(8), is act Mar. 31, 1947, ch. 26, 61 Stat. 31, which is classified as a note under this section.

Section 14 of the Federal Employees' Pay Act of 1946 (Public Law 390, Seventy-ninth Congress), referred to in subsec. (b)(10), is section 14 of act May 24, 1946, ch. 270, 60 Stat. 219, which amended section 947 of former Title 5, Executive Departments and Government Officers and Employees, prior to repeal by act Sept. 12, 1950, ch. 946, title III, §301(85), 64 Stat. 843.

This Act, referred to in subsec. (g), is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 460 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

In subsec. (b)(9), "sections 3111 and 3112 of title 40" substituted for "section 355, Revised Statutes, as amended" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2013—Subsec. (a)(3). Pub. L. 112–239, §1076(l), made technical amendment to directory language of Pub. L. 112–166, §2(c)(3). See 2012 Amendment note below.

2012—Subsec. (a)(3). Pub. L. 112–166, §2(c)(3), as amended by Pub. L. 112–239, §1076(l), struck out ", by and with the advice and consent of the Senate" before period at end.

2002—Subsec. (b)(8). Pub. L. 107–314 substituted "the Act of March 31, 1947" for "Public Law 26, Eightieth Congress, approved March 31, 1947, by lease pursuant to existing statutes, except that the provisions of the Act of June 30, 1932 (47 Stat. 412), as amended by section 15 of the Act of March 3, 1933 (47 Stat. 1517), shall not apply to any lease entered into under the authority of this chapter".

1996—Subsec. (b). Pub. L. 104–201, §414(b)(1), substituted "authorized to undertake the following:" for "authorized—" in introductory provisions.

Subsec. (b)(1). Pub. L. 104–201, §414(b)(2), (4), substituted "To" for "to" at beginning and a period for a semicolon at end.

Subsec. (b)(2). Pub. L. 104–201, §414(a)(1), (b)(2), (4), substituted "To" for "to" at beginning, inserted ", subject to subsection (e)," after "to employ such

number of civilians, and", and substituted a period for a semicolon at end.

Subsec. (b)(3) to (7). Pub. L. 104–201, §414(b)(2), (4), substituted "To" for "to" at beginning and a period for a semicolon at end.

Subsec. (b)(8), (9). Pub. L. 104–201, §414(b)(3), (4), substituted "Subject" for "subject" at beginning and a period for a semicolon at end.

Subsec. (b)(10). Pub. L. 104–201, §414(b)(3), substituted "Subject" for "subject" at beginning.

Subsec. (e). Pub. L. 104–201, §414(a)(2), added subsec. (e).

1991—Subsec. (b)(2). Pub. L. 102–190, §1091(1), struck out "without the approval of the Director" after "local government".

Subsec. (g). Pub. L. 102–190, §1091(2), substituted "annually" for "semiannually".

1987—Subsec. (h). Pub. L. 100–180 substituted "The Selective Service system shall" for "If at any time calls under this section for the induction of persons for training and service in the Armed Forces are discontinued because the Armed Forces are placed on an all volunteer basis for meeting their active duty manpower needs, the Selective Service System, as it is constituted on September 28, 1971, shall, nevertheless," and directed the insertion of "(including a structure

for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces)" after "national emergency", which was inserted in cl. (1) as the probable intent of Congress.

1984—Subsec. (b)(7). Pub. L. 98–473 substituted "release" for "parole".

1981—Subsec. (b)(3). Pub. L. 97–60 struck out provision that had prohibited service on local boards or appeal boards by persons who had attained the age of 65.

1980—Subsec. (b)(4). Pub. L. 96–513 substituted "however, any officer of the armed forces" for "however, any officer on the active or retired list of the armed forces, or any reserve component thereof with his consent," and struck out "or reserve component thereof," after "without loss of or prejudice to his status as such officer in the armed forces".

1973—Subsec. (b)(4). Pub. L. 93–176 substituted "the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, the basic pay" for "the Classification Act of 1949, the compensation" and struck out provisos that compensation of employees of local boards and appeal boards may be fixed without regard to Classification Act of 1949, that employees of local boards having supervisory duties with respect to other employees of one or more local boards be designated

as the executive secretary of the local board or boards, and that the term of employment of executive secretaries not exceed ten years except when reappointed.

1971—Subsec. (a)(3). Pub. L. 92–129, §101(a)(24), struck out provisions setting compensation of Director.

Subsec. (b)(2). Pub. L. 92–129, §101(a)(25), inserted proviso that no State director shall serve concurrently in an elected or appointed position of a State or local government without the approval of the Director.

Subsec. (b)(3). Pub. L. 92–129, §101(a)(26), inserted provisions requiring that local boards and their staffs perform their duties only within the counties or political subdivisions for which they are established with special provisions for intercounty boards and the collocation or multiple use of staffs with executive approval, provided for board membership proportionately representative of the area served, reduced the maximums applicable to board members from 75 years of age or 25 years of service on the board to 65 years of age or 20 years of service respectively, and authorized local boards to include among their members any citizens otherwise qualified under Presidential regulations provided they are at least 18 years of age.

Subsec. (e). Pub. L. 92–129, §101(a)(27), struck out subsec. (e) which authorized Chief of Finance of the United States Army to act as the fiscal, disbursing, and accounting agent of Director.

Subsec. (f). Pub. L. 92–129, §101(a)(28), substituted "$500" for "$50".

Subsec. (h). Pub. L. 92–129, §101(a)(29), added subsec. (h).

1967—Subsec. (b)(3). Pub. L. 90–40, §1(8), prohibited disqualification of members of armed forces reserve components from serving as counselors to registrants, including services as government appeal agents, merely because of such membership in the reserve, set 25 years as maximum length of service on local and appeal boards and 75 years as age after attainment of which members may not serve, prohibited discrimination as to service on boards because of sex, with new limitations on age and sex to be implemented not later than January 1, 1968, and prohibited judicial review of classification or processing of registrants except as a defense to a criminal prosecution instituted under section 3811 of this title, and then only after registrant has responded either affirmatively or negatively to an order to report for induction or for civilian work and to question of jurisdiction reserved to local boards, appeal boards, and President only when there is no basis in fact for classification.

Subsec. (b)(4). Pub. L. 90–40, §1(9), provided for designation of a local board employee having supervisory duties with respect to other employees of one or more local boards as "executive secretary", with such

employee to serve in that position for a maximum of ten years except when reappointed.

Subsec. (g). Pub. L. 90–40, §1(10), substituted "semiannually" for "on or before the 3rd day of January of each year," as time for submission of Director's written report to Congress, and inserted "such other specific kinds of information as the Congress may from time to time request" to enumeration of subjects to be covered by the report.

1951—Subsec. (b)(3). Act June 19, 1951, §1(u)(1), provided for one appeal board in each Federal judicial district in the United States, its territories and possessions, and such necessary panels as the President deems necessary.

Subsec. (g). Act June 19, 1951, §1(u)(2), added subsec. (g).

1950—Subsec. (b)(3). Act Sept. 27, 1950, inserted ", or separate panels thereof each consisting of three or more members" after "Such local boards" in sixth sentence.

Subsec. (b)(4). Act June 30, 1950, struck out comma between "the compensation of" and "such officers".

1949—Subsec. (b)(4). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

CHANGE OF NAME

"Director of the Government Publishing Office" substituted for "Public Printer" in subsec. (b)(6) on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(*l*), Jan. 2, 2013, 126 Stat. 1956, provided that the amendment by section 1076(*l*) is effective as of Aug. 10, 2012, and as if included in Pub. L. 112–166 as enacted.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–176, §4, Dec. 5, 1973, 87 Stat. 694, provided that: "This Act [amending this section and section 5102 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] shall take effect not later than the beginning of the first pay period which begins on or after the ninetieth day following the date of the enactment of this Act [Dec. 5, 1973]."

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

COMPENSATION INCREASES FOR EMPLOYEES OF LOCAL OR APPEAL BOARDS

Pub. L. 93–176, §2, Dec. 5, 1973, 87 Stat. 693, provided that: "The rate of basic pay of each employee in a position under a local board or appeal board of the Selective Service System on and immediately prior to the effective date of this Act [designated as a date not later than the beginning of the first pay period which begins on or after the 90th day following Dec. 5, 1973] shall be adjusted, as of such effective date, under the provisions of section 5334(d) of title 5, United States Code."

Act June 5, 1952, ch. 369, Ch. VII, §701, 66 Stat. 109, authorized increases in the rate of compensation of any employees of local or appeal boards effective as of the first day of the first pay period which began after June 30, 1951 and within ninety days from June 5, 1952, pursuant to the authority contained in section 3809 of this title.

COMPENSATION OF DIRECTOR OF SELECTIVE SERVICE

Compensation of Director, see section 5315 of Title 5, Government Organization and Employees.

OFFICE OF SELECTIVE SERVICE RECORDS

Act Mar. 31, 1947, ch. 26, 61 Stat. 31; Pub. L. 96–513, title V, §507(c), Dec. 12, 1980, 94 Stat. 2919, related to liquidation of the Selective Service System established by the Selective Training and Service Act of 1940 [act Sept. 16, 1940, ch. 720, 54 Stat. 885, see Tables for classification] and establishment of the Office of Selective Service Records for the preservation of Selective Service records accumulated under the 1940 Act, prior to termination of the Office and transfer of its functions and the functions of its Director to the Selective Service System under this chapter and the Director of Selective Service under this chapter. See subsec. (a)(4) of this section.

[Act Mar. 31, 1947, ch. 26, classified as a note above, was formerly classified to sections 321 to 329 of the

former Appendix to this title prior to editorial reclassification as this note.]

Pub. L. 85–844, title I, Aug. 28, 1958, 72 Stat. 1073, related to use of Selective Service System appropriations for destruction of records accumulated under the Selective Training and Service Act of 1940 [act Sept. 16, 1940, ch. 720, 54 Stat. 885, see Tables for classification].

[Title I of Pub. L. 85–844, classified as a note above, was formerly classified to section 330 of the former Appendix to this title prior to editorial reclassification as this note.]

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Director of Selective Service, see Parts 1, 2, and 23 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 10271. DELEGATION OF PRESIDENT'S AUTHORITY

Ex. Ord. No. 10271, July 7, 1951, 16 F.R. 6659, set out as a note under section 3819 of this title, delegates to the Secretary of Defense the President's authority to order members and units of Reserve components into active Federal service.

EX. ORD. NO. 11623. DELEGATION OF AUTHORITY TO ISSUE RULES AND REGULATIONS TO DIRECTOR OF SELECTIVE SERVICE

Ex. Ord. No. 11623, Oct. 12, 1971, 36 F.R. 19963, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 13286, §60, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States, including the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 *et seq*. [now 50 U.S.C. 3801 et seq.], hereinafter referred to as the Act), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. The Director of Selective Service (hereinafter referred to as the Director) is authorized to prescribe the necessary rules and regulations to carry out the provisions of the Act. Regulations heretofore issued by the President to carry out such provisions shall continue in effect until amended or revoked by the Director pursuant to the authority conferred by this Order.

Sec. 2. (a) In carrying out the provisions of this Order, the Director shall cause any rule or regulation which he proposes to issue hereunder to be published in the Federal Register as required by section 13(b) of the Act [50 U.S.C. 3812(b)]. Prior to such publication, the Director shall request the views of the Secretary

of Defense, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Homeland Security (when the Coast Guard is serving under the Department of Homeland Security), the Director of the Office of Emergency Preparedness, and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation.

(b) Any proposed rule or regulation as published by the Director shall be furnished to the officials required to be consulted pursuant to subsection (a). The Director may (not less than 30 days after publication in the Federal Register) issue such rule or regulation as published unless, within 10 days after being furnished with the proposed rule or regulation as published, any such official shall notify the Director that he disagrees therewith and requests that the matter be referred to the President for decision.

(c) Any rule or regulation issued by the Director pursuant to this Order shall be published in the Federal Register with (1) a statement reciting compliance with the prepublication requirement of section 13(b) of the Act [50 U.S.C. 3812(b)], and (2) either (i) approval of such rule or regulation by the President, or (ii) a certification of the Director that he has requested the views of the officials required to be consulted pursuant to subsection (a) and that none of them has

timely requested that the matter be referred to the President for decision. Such rule or regulation shall be effective upon such publication in the Federal Register or on such later date as may be specified therein.

Sec. 3. Nothing in this Order shall be deemed to (i) authorize the exercise by the Director of the President's authority to waive the requirements of section 13(b) of the Act [50 U.S.C. 3812(b)], or (ii) derogate from the authority of the President himself to waive the requirements of such section 13(b), or (iii) derogate from the authority of the President himself to issue such rules or regulations as he may deem necessary to carry out the provisions of the Act.

§3810. Emergency medical care

Under such rules and regulations as may be prescribed by the President, funds available to carry out the provisions of this chapter shall also be available for the payment of actual and reasonable expenses of emergency medical care, including hospitalization, of registrants who suffer illness or injury, and the transportation and burial of the remains of registrants who suffer death, while acting under orders issued under the provisions of this chapter, but such burial expenses shall not exceed the maximum that the Secretary of Veterans Affairs may pay under the provisions of section 2303 of title 38 regarding veterans described in subparagraph (B) or (C) of subsection (a)(2) of such section in any one case.

(June 24, 1948, ch. 625, title I, §11, 62 Stat. 621; Pub. L. 92–129, title I, §101(a)(30), Sept. 28, 1971, 85 Stat. 352; Pub. L. 102–54, §13(t), June 13, 1991, 105 Stat. 282; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 116–315, title II, §2202(b)(2), Jan. 5, 2021, 134 Stat. 4985.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 461 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2021—Pub. L. 116–315 substituted "section 2303 of title 38 regarding veterans described in subparagraph (B) or (C) of subsection (a)(2) of such section" for "section 2302(a) of title 38".

1991—Pub. L. 102–83 substituted "section 2302(a) of title 38" for "section 902(a) of title 38".

Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1971—Pub. L. 92–129 substituted "the maximum that the Administrator of Veterans' Affairs may pay under the provisions of section 902(a) of title 38" for "$150".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–315 applicable to deaths that occur on or after the date that is two years after Jan. 5, 2021, see section 2202(d) of Pub. L. 116–315, set out as a note under section 113 of Title 38, Veterans' Benefits.

§3811. Offenses and penalties

(a) In general

Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this chapter, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said chapter, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making, of any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the

provisions of this chapter, or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this chapter, or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this chapter, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this chapter, or rules, regulations, or directions made pursuant to this chapter, or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this chapter or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this chapter unless such person has been actually inducted for the training and service prescribed under this chapter or unless he is subject to trial by court martial under laws in force prior to June 24, 1948.

(b) Making or possession of false identification or representation; forgery, destruction, or mutilation of certificate; knowing violation or evasion of provisions

Any person (1) who knowingly transfers or delivers to another, for the purpose of aiding or abetting the making of any false identification or representation, any registration certificate, alien's certificate of nonresidence, or any other certificate issued pursuant to or prescribed by the provisions of this chapter, or rules or regulations promulgated hereunder; or (2) who, with intent that it be used for any purpose of false identification or representation, has in his possession any such certificate not duly issued to him; or (3) who forges, alters, knowingly destroys, knowingly mutilates, or in any manner changes any such certificate or any notation duly and validly inscribed thereon; or (4) who, with intent that it be used for any purpose of false identification or representation, photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of any such certificate, or any colorable imitation thereof; or (5) who has in his possession any certificate purporting to be a certificate issued pursuant to this chapter, or rules and regulations promulgated hereunder, which he knows to be falsely made, reproduced, forged, counterfeited, or altered; or (6) who knowingly violates or evades any of the provisions of this chapter or rules and regulations promulgated pursuant thereto relating to the issuance, transfer, or

possession of such certificate, shall, upon conviction, be fined not to exceed $10,000 or be imprisoned for not more than five years, or both. Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of any certificate not duly issued to him, such possession shall be deemed sufficient evidence to establish an intent to use such certificate for purposes of false identification or representation, unless the defendant explains such possession to the satisfaction of the jury.

(c) Expeditious prosecution by Department of Justice

The Department of Justice shall proceed as expeditiously as possible with a prosecution under this section, or with an appeal, upon the request of the Director of Selective Service System or shall advise the House of Representatives and the Senate in writing the reasons for its failure to do so.

(d) Statute of limitations

No person shall be prosecuted, tried, or punished for evading, neglecting, or refusing to perform the duty of registering imposed by section 3802 of this title unless the indictment is found within five years next after the last day before such person attains the age of twenty-six, or within five years next after the last day before such person does perform his duty to register, whichever shall first occur.

(e) Information furnished for purpose of enforcement

The President may require the Secretary of Health and Human Services to furnish to the Director, from records available to the Secretary, the following information with respect to individuals who are members of any group of individuals required by a proclamation of the President under section 3802 of this title to present themselves for and submit to registration under such section: name, date of birth, social security account number, and address. Information furnished to the Director by the Secretary under this subsection shall be used only for the purpose of the enforcement of this Act.

(f) Assistance provided under title IV of the Higher Education Act of 1965; failure to register; statement of compliance

(1) Except as provided in subsection (g), any person who is required under section 3802 of this title to present himself for and submit to registration under such section and fails to do so in accordance with any proclamation issued under such section, or in accordance with any rule or regulation issued under such section, shall be ineligible for any form of assistance or benefit provided under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.].

(2) In order to receive any grant, loan, or work assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), a person who is required under section 3802 of this title to present himself for and submit to registration under such section shall

file with the institution of higher education which the person intends to attend, or is attending, a statement of compliance with section 3802 of this title and regulations issued thereunder.

(3) The Secretary of Education, in agreement with the Director, shall prescribe methods for verifying such statements of compliance filed pursuant to paragraph (2). Such methods may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of persons who have submitted such statements of compliance.

(4) The Secretary of Education, in consultation with the Director, shall issue regulations to implement the requirements of this subsection. Such regulations shall provide that any person to whom the Secretary of Education proposes to deny assistance or benefits under title IV [20 U.S.C. 1070 et seq.] for failure to meet the registration requirements of section 3802 of this title and regulations issued thereunder shall be given notice of the proposed denial and shall have a suitable period (of not less than thirty days) after such notice to provide the Secretary with information and materials establishing that he has complied with the registration requirement under section 3802 of this title. Such regulations shall also provide that the Secretary may afford such person an opportunity for a hearing to establish his compliance or for any other purpose.

(g) Failure to register; termination or inapplicability of requirement; absence of knowledge and willfulness

A person may not be denied a right, privilege, or benefit under Federal law by reason of failure to present himself for and submit to registration under section 3802 of this title if—

(1) the requirement for the person to so register has terminated or become inapplicable to the person; and

(2) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

(June 24, 1948, ch. 625, title I, §12, 62 Stat. 622; Pub. L. 89–152, Aug. 30, 1965, 79 Stat. 586; Pub. L. 90–40, §1(11), June 30, 1967, 81 Stat. 105; Pub. L. 92–129, title I, §101(a)(31), Sept. 28, 1971, 85 Stat. 352; Pub. L. 97–86, title IX, §916(b), Dec. 1, 1981, 95 Stat. 1129; Pub. L. 97–252, title XI, §1113(a), Sept. 8, 1982, 96 Stat. 748; Pub. L. 98–620, title IV, §402(54), Nov. 8, 1984, 98 Stat. 3361; Pub. L. 99–661, div. A, title XIII, §1366, Nov. 14, 1986, 100 Stat. 4002.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

This Act, referred to in subsec. (e), is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

CODIFICATION

Section was formerly classified to section 462 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1986—Subsec. (f)(1). Pub. L. 99–661, §1366(1), substituted "Except as provided in subsection (g), any person" for "Any person".

Subsec. (g). Pub. L. 99–661, §1366(2), added subsec. (g).

1984—Subsec. (a). Pub. L. 98–620 struck out sentence at end requiring that precedence be given by courts to the trial of cases arising under this chapter, and that such cases had to be advanced on the docket for immediate hearing, and that an appeal from the

decision or decree of any United States district court or United States court of appeals would take precedence over all other cases pending before the court to which the case had been referred.

1982—Subsec. (f). Pub. L. 97–252 added subsec. (f).

1981—Subsec. (e). Pub. L. 97–86 added subsec. (e).

1971—Subsec. (d). Pub. L. 92–129 added subsec. (d).

1967—Subsec. (a). Pub. L. 90–40, §1(11)(a), struck out requirement that a request of the Attorney General precede the granting of precedence to the trial of cases arising under this chapter and inserted provision that appeals from a decision or decree of any United States District Court or United States Court of Appeals take precedence over all other cases pending before the court to which the case has been referred.

Subsec. (c). Pub. L. 90–40, §1(11)(b), added subsec. (c).

1965—Subsec. (b)(3). Pub. L. 89–152 prohibited a person from knowingly destroying or knowingly mutilating any registration certificate or other prescribed certificate.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub.

L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–252, title XI, §1113(b), Sept. 8, 1982, 96 Stat. 748, provided that: "The amendment made by subsection (a) [amending this section] shall apply to loans, grants, or work assistance under title IV of the Higher Education Act [20 U.S.C. 1070 et seq.] for periods of instruction beginning after June 30, 1983."

PROC. NO. 4313. PROGRAM FOR RETURN OF VIETNAM ERA DRAFT EVADERS AND MILITARY DESERTERS

Proc. No. 4313, Sept. 16, 1974, 39 F.R. 33293, 88 Stat. 2504, as amended by Proc. No. 4345, Jan. 30, 1975, 40 F.R. 4893, 89 Stat. 1236; Proc. No. 4353, Feb. 28, 1975, 40 F.R. 8931, 10433, 89 Stat. 1246, provided:

The United States withdrew the last of its forces from the Republic of Vietnam on March 28, 1973.

In the period of its involvement in armed hostilities in Southeast Asia, the United States suffered great losses. Millions served their country, thousands died in combat, thousands more were wounded, others are still listed as missing in action.

Over a year after the last American combatant had left Vietnam, the status of thousands of our countrymen—convicted, charged, investigated or still sought for violations of the Military Selective Service Act [see

References in Text note set out under section 3801 of this title] or of the Uniform Code of Military Justice [10 U.S.C. 801 et seq.]—remains unresolved.

In furtherance of our national commitment to justice and mercy these young Americans should have the chance to contribute a share to the rebuilding of peace among ourselves and with all nations. They should be allowed the opportunity to earn return to their country, their communities, and their families, upon their agreement to a period of alternate service in the national interest, together with an acknowledgment of their allegiance to the country and its Constitution.

Desertion in time of war is a major, serious offense; failure to respond to the country's call for duty is also a serious offense. Reconciliation among our people does not require that these acts be condoned. Yet, reconciliation calls for an act of mercy to bind the Nation's wounds and to heal the scars of divisiveness.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States, pursuant to my powers under Article II, Sections 1, 2 and 3 of the Constitution, do hereby proclaim a program to commence immediately to afford reconciliation to Vietnam era draft evaders and military deserters upon the following terms and conditions:

1. *Draft Evaders*—An individual who allegedly unlawfully failed under the Military Selective Service

Act [see References in Text note set out under section 3801 of this title] or any rule or regulation promulgated thereunder, to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete service under section 6(j) of such Act [50 U.S.C. 3806(j)] during the period from August 4, 1964 to March 28, 1973, inclusive, and who has not been adjudged guilty in a trial for such offense, will be relieved of prosecution and punishment for such offense if he:

(i) presents himself to a United States Attorney before March 31, 1975,

(ii) executes an agreement acknowledging his allegiance to the United States and pledging to fulfill a period of alternate service under the auspices of the Director of Selective Service, and

(iii) satisfactorily completes such service.

The alternate service shall promote the national health, safety, or interest. No draft evader will be given the privilege of completing a period of alternate service by service in the Armed Forces.

However, this program will not apply to an individual who is precluded from re-entering the United States under 8 U.S.C. 1182(a)(22) or other law. Additionally, if individuals eligible for this program have other criminal charges outstanding, their

participation in the program may be conditioned upon, or postponed until after, final disposition of the other charges has been reached in accordance with law.

The period of service shall be twenty-four months, which may be reduced by the Attorney General because of mitigating circumstances.

2. *Military Deserters*—A member of the armed forces who has been administratively classified as a deserter by reason of unauthorized absence and whose absence commenced during the period from August 4, 1964 to March 28, 1973, inclusive, will be relieved of prosecution and punishment under Articles 85, 86 and 87 of the Uniform Code of Military Justice [10 U.S.C. 885, 886, 887] for such absence and for offenses directly related thereto if before March 31, 1975 he takes an oath of allegiance to the United States and executes an agreement with the Secretary of the Military Department from which he absented himself or for members of the Coast Guard, with the Secretary of Transportation, pledging to fulfill a period of alternate service under the auspices of the Director of Selective Service. The alternate service shall promote the national health, safety, or interest.

The period of service shall be twenty-four months, which may be reduced by the Secretary of the appropriate Military Department, or Secretary of Transportation for members of the Coast Guard, because of mitigating circumstances.

However, if a member of the armed forces has additional outstanding charges pending against him under the Uniform Code of Military Justice [10 U.S.C. 801 et seq.], his eligibility to participate in this program may be conditioned upon, or postponed until after, final disposition of the additional charges has been reached in accordance with law.

Each member of the armed forces who elects to seek relief through this program will receive an undesirable discharge. Thereafter, upon satisfactory completion of a period of alternate service prescribed by the Military Department or Department of Transportation, such individual will be entitled to receive, in lieu of his undesirable discharge, a clemency discharge in recognition of his fulfillment of the requirements of the program. Such clemency discharge shall not bestow entitlement to benefits administered by the Veterans Administration.

Procedures of the Military Departments implementing this Proclamation will be in accordance with guidelines established by the Secretary of Defense, present Military Department regulations notwithstanding.

3. *Presidential Clemency Board*—By Executive Order I have this date established a Presidential Clemency Board which will review the records of individuals within the following categories: (*i*) those who have been convicted of draft evasion offenses as described

above, (*ii*) those who have received a punitive or undesirable discharge from service in the armed forces for having violated Article 85, 86, or 87 of the Uniform Code of Military Justice [10 U.S.C. 885, 886, 887] between August 4, 1964 and March 28, 1973, or are serving sentences of confinement for such violations. Where appropriate, the Board may recommend that clemency be conditioned upon completion of a period of alternate service. However, if any clemency discharge is recommended, such discharge shall not bestow entitlement to benefits administered by the Veterans Administration.

4. *Alternate Service*—In prescribing the length of alternate service in individual cases, the Attorney General, the Secretary of the appropriate Department, or the Clemency Board shall take into account such honorable service as an individual may have rendered prior to his absence, penalties already paid under law, and such other mitigating factors as may be appropriate to seek equity among those who participate in this program.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred and ninety-nineth.

GERALD R. FORD.

PROC. NO. 4483. PARDON FOR VIOLATIONS OF ACT, AUGUST 4, 1964 TO MARCH 28, 1973

Proc. No. 4483, Jan. 21, 1977, 42 F.R. 4391, 91 Stat. 1719, provided:

Acting pursuant to the grant of authority in Article II, Section 2, of the Constitution of the United States, I, Jimmy Carter, President of the United States, do hereby grant a full, complete and unconditional pardon to: (1) all persons who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act [see References in Text note set out under section 3801 of this title] or any rule or regulation promulgated thereunder; and (2) all persons heretofore convicted, irrespective of the date of conviction, of any offense committed between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, restoring to them full political, civil and other rights.

This pardon does not apply to the following who are specifically excluded therefrom:

(1) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, involving force or violence; and

(2) All persons convicted of or who may have committed any offense in violation of the Military

Selective Service Act, or any rule or regulation promulgated thereunder, in connection with duties or responsibilities arising out of employment as agents, officers or employees of the Military Selective Service system.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, in the year of our Lord nineteen hundred and seventy-seven, and of the Independence of the United States of America the two hundred and first.

JIMMY CARTER.

EX. ORD. NO. 11803. CLEMENCY BOARD TO REVIEW CERTAIN CONVICTIONS AND DISCHARGES

Ex. Ord. No. 11803, Sept. 16, 1974, 39 F.R. 33297, as amended by Ex. Ord. No. 11837, Jan. 30, 1975, 40 F.R. 4895; Ex. Ord. No. 11842, Feb. 28, 1975, 40 F.R. 8935; Ex. Ord. No. 11857, May 7, 1975, 40 F.R. 20261; Ex. Ord. No. 11878, Sept. 10, 1975, 40 F.R. 42731, provided:

By virtue of the authority vested in me as President of the United States by Section 2 of Article II of the Constitution of the United States, and in the interest of the internal management of the Government, it is ordered as follows:

Section 1. There is hereby established in the Executive Office of the President a board of 9 members, which shall be known as the Presidential Clemency

Board. The members of the Board shall be appointed by the President, who shall also designate its Chairman. The President may appoint such additional members to the board as he shall from time to time determine to be necessary to carry out its functions.

Sec. 2. The Board, under such regulations as it may prescribe, shall examine the cases of persons who apply for Executive clemency prior to March 31, 1975, and who (i) have been convicted of violating Section 12 or 6(j) of the Military Selective Service Act (50 App. U.S.C. §462) [now 50 U.S.C. 3811, 3806(j)], or of any rule or regulation promulgated pursuant to that section, for acts committed between August 4, 1964 and March 28, 1973, inclusive, or (ii) have received punitive or undesirable discharges as a consequence of violations of Articles 85, 86 or 87 of the Uniform Code of Military Justice (10 U.S.C. §§885, 886, 887) that occurred between August 4, 1964 and March 28, 1973, inclusive, or are serving sentences of confinement for such violations. The Board will only consider the cases of Military Selective Service Act violators who were convicted of unlawfully failing (i) to register or register on time, (ii) to keep the local board informed of their current address, (iii) to report for or submit to preinduction or induction examination, (iv) to report for or submit to induction itself, or (v) to report for or submit to, or complete service under Section 6(j) of such Act [50 U.S.C. 3806(j)]. However, the Board will not consider the cases of individuals who are

precluded from reentering the United States under [former] 8 U.S.C. 182(a)(22) or other law.

Sec. 3. The Board shall report to the President its findings and recommendations as to whether Executive clemency should be granted or denied in any case. If clemency is recommended, the Board shall also recommend the form that such clemency should take, including clemency conditioned upon a period of alternate service in the national interest. In the case of an individual discharged from the armed forces with a punitive or undesirable discharge, the Board may recommend to the President that a clemency discharge be substituted for a punitive or undesirable discharge. Determination of any period of alternate service shall be in accord with the Proclamation [Proc. No. 4313, set out above] announcing a program for the return of Vietnam era draft evaders and military deserters.

Sec. 4. The Board shall give priority consideration to those applicants who are presently confined and have been convicted only of an offense set forth in section 2 of this order, and who have no outstanding criminal charges.

Sec. 5. Each member of the Board, except any member who then receives other compensation from the United States, may receive compensation for each day he or she is engaged upon the work of the Board at not to exceed the daily rate now or hereafter prescribed by law for persons and positions in GS–18, as authorized

by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the government service employed intermittently.

Sec. 6. Necessary expenses of the Board may be paid from the Unanticipated Personnel Needs Fund of the President or from such other funds as may be available.

Sec. 7. Necessary administrative services and support may be provided the Board by the General Services Administration on a reimbursable basis.

Sec. 8. All department and agencies in the Executive branch are authorized and directed to cooperate with the Board in its work, and to furnish the Board all appropriate information and assistance, to the extent permitted by law.

Sec. 9. The Board shall submit its final recommendations to the President not later than September 15, 1975, at which time it shall cease to exist.

GERALD R. FORD.

EX. ORD. NO. 11804. DELEGATION OF CERTAIN FUNCTIONS OF PRESIDENT TO DIRECTOR OF SELECTIVE SERVICE

Ex. Ord. No. 11804, Sept. 16, 1974, 39 F.R. 33299, provided:

By virtue of the authority vested in me as President of the United States, pursuant to my powers under Article II, Sections 1, 2 and 3 of the Constitution, and under Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. The Director of Selective Service is designated and empowered, without the approval, ratification or other action of the President, under such regulations as he may prescribe, to establish, implement, and administer the program of alternate service authorized in the Proclamation [Proc. No. 4313, set out above] announcing a program for the return of Vietnam era draft evaders and military deserters.

Sec. 2. Departments and agencies in the Executive branch shall, upon the request of the Director of Selective Service, cooperate and assist in the implementation or administration of the Director's duties under this Order, to the extent permitted by law.

GERALD R. FORD.

EX. ORD. NO. 11878. ASSIGNING RESPONSIBILITIES RELATING TO ACTIVITIES OF PRESIDENTIAL CLEMENCY BOARD

Ex. Ord. No. 11878, Sept. 10, 1975, 40 F.R. 42731, provided:

By virtue of the authority vested in me by the Constitution of the United States of America, and as

President of the United States of America, it is hereby ordered as follows:

Section 1. Section 9 of Executive Order No. 11803 of September 16, 1974, as amended [set out above] is amended to read:

"The Board shall submit its final recommendations to the President not later than September 15, 1975, at which time it shall cease to exist."

Sec. 2. Any applications for Executive clemency, as to which the Presidential Clemency Board (established by Executive Order No. 11803) [set out above] has not taken final action shall be transferred, together with the files related thereto, to the Attorney General.

Sec. 3. The Attorney General, with respect to the applications and related files transferred to him by Section 2 of this Order, shall take all actions appropriate or necessary to complete the clemency process and shall expeditiously report to the President his findings and recommendations as to whether Executive clemency should be granted or denied in any case. In performing his responsibilities under this Order, the Attorney General shall apply the relevant criteria and comply with the appropriate and applicable instructions and procedures established by Executive Order No. 11803 of September 16, 1974, as amended [set out above], Proclamation No. 4313 of September 16, 1974, as amended [set out above], Executive Order No.

11804 of September 16, 1974 [set out above], and, to the extent that he deems appropriate, the regulations of the Presidential Clemency Board and the Selective Service System issued pursuant to the foregoing Executive orders.

Sec. 4. The Director of the Office of Management and Budget is hereby designated and empowered to take such action as he deems necessary to ensure the orderly and prompt termination of the activities of the Presidential Clemency Board and the assignment of responsibilities directed by this Order.

Sec. 5. Departments and agencies in the Executive branch shall, to the extent permitted by law, cooperate with and assist the Attorney General, the Director of the Selective Service and the Director of the Office of Management and Budget in the performance of their responsibilities under this Order.

Sec. 6. The responsibilities assigned under this Order are to be completed no later than March 31, 1976, at which time the Attorney General shall submit his final recommendations to the President.

GERALD R. FORD.

EX. ORD. NO. 11967. IMPLEMENTATION OF PARDON FOR VIOLATIONS OF ACT, AUGUST 4, 1964 TO MARCH 28, 1973

Ex. Ord. No. 11967, Jan. 21, 1977, 42 F.R. 4393, provided:

The following actions shall be taken to facilitate Presidential Proclamation of Pardon of January 21, 1977 [Proc. No. 4483, set out above]:

1. The Attorney General shall cause to be dismissed with prejudice to the Government all pending indictments for violations of the Military Selective Service Act [see References in Text note set out under section 3801 of this title] alleged to have occurred between August 4, 1964 and March 28, 1973 with the exception of the following:

(a) Those cases alleging acts of force or violence deemed to be so serious by the Attorney General as to warrant continued prosecution; and

(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

2. The Attorney General shall terminate all investigations now pending and shall not initiate further investigations alleging violations of the Military Selective Service Act [see References in Text note set out under section 3801 of this title] between August 4, 1964 and March 28, 1973, with the exception of the following:

(a) Those cases involving allegations of force or violence deemed to be so serious by the Attorney

General as to warrant continued investigation, or possible prosecution; and

(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

3. Any person who is or may be precluded from reentering the United States under [former] 8 U.S.C. 1182(a)(22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act [see References in Text note set out under section 3801 of this title] shall be permitted as any other alien to reenter the United States.

The Attorney General is directed to exercise his discretion under 8 U.S.C. 1182(d)(5) or other applicable law to permit the reentry of such persons under the same terms and conditions as any other alien.

This shall not include anyone who falls into the exceptions of paragraphs 1(a) and (b) and 2(a) and (b) above.

4. Any individual offered conditional clemency or granted a pardon or other clemency under Executive Order 11803 [set out above] or Presidential Proclamation 4313, dated September 16, 1974 [set out above], shall receive the full measure of relief afforded by this

program if they are otherwise qualified under the terms of this Executive Order.

JIMMY CARTER.

§3812. Nonapplicability of certain laws

(a) Certain provisions in title 18 or Act August 2, 1939

Nothing in sections 203, 205, or 207 of title 18 or in the second sentence of subsection (a) of section 9 of the Act of August 2, 1939 (53 Stat. 1148), entitled "An Act to prevent pernicious political activities", as amended, shall be deemed to apply to any person because of his appointment under authority of this chapter or the regulations made pursuant thereto as an uncompensated official of the Selective Service System, or as an individual to conduct hearings on appeals of persons claiming exemption from combatant or noncombatant training because of conscientious objections, or as a member of the National Selective Service Appeal Board.

(b) Administrative Procedure Act

All functions performed under this chapter shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) [5 U.S.C. 551 et seq. and 701 et seq.] except as to the requirements of section 3 of such Act [5 U.S.C. 552]. Notwithstanding the foregoing sentence, no regulation issued under this Act shall become effective until the expiration of thirty days following the date on which such regulation has

been published in the Federal Register. After the publication of any regulation and prior to the date on which such regulation becomes effective, any person shall be given an opportunity to submit his views to the Director on such regulation, but no formal hearing shall be required on any such regulation. The requirements of this subsection may be waived by the President in the case of any regulation if he (1) determines that compliance with such requirements would materially impair the national defense, and (2) gives public notice to that effect at the time such regulation is issued.

(c) Certain provisions of Act June 16, 1936, or Act August 4, 1942; computation of lump-sum payments

In computing the lump-sum payments made to Air Force reserve officers under the provisions of section 2 of the Act of June 16, 1936, as amended and to reserve officers of the Navy or to their beneficiaries under section 12 of the Act of August 4, 1942, as amended, no credit shall be allowed for any period of active service performed from June 24, 1948, to the date on which this chapter shall cease to be effective. Each such lumpsum payment shall be prorated for a fractional part of a year of active service in the case of any reserve officer subject to the provisions of either such section, if such reserve officer performs continuous active service for one or more years (inclusive of such service performed during the period in which

this chapter is effective) and such active service includes a fractional part of a year immediately prior to June 24, 1948, or immediately following the date on which this chapter shall cease to be effective, or both.

(June 24, 1948, ch. 625, title I, §13, 62 Stat. 623; June 19, 1951, ch. 144, title I, §1(t), 65 Stat. 87; Pub. L. 88–110, §6, Sept. 3, 1963, 77 Stat. 136; Pub. L. 92–129, title I, §101(a)(32), Sept. 28, 1971, 85 Stat. 353.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

Section 9 of the Act of August 2, 1939, referred to in subsec. (a), is section 9 of act Aug. 2, 1939, ch. 410, 53 Stat. 1148, which was classified to section 118i(a) of former title 5, prior to repeal by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378, and reenactment as section 7324(a)(2) of Title 5, Government Organization and Employees. Section 7324 of Title 5 was omitted and a new section 7324 enacted in the general amendment of subchapter III (§7321 et seq.) of chapter 73 of Title 5 by Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1001. See section 7323(b)(2)(A) of Title 5.

The Administrative Procedure Act, referred to in subsec. (b), is act June 11, 1946, ch. 324, 60 Stat. 237, which was classified to sections 1001 to 1011 of former

title 5 and which was repealed and reenacted as subchapter II (§551 et seq.) of chapter 5, and chapter 7 (§701 et seq.), of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378. See Short Title note preceding section 551 of Title 5.

This Act, referred to in subsec. (b), is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

Section 2 of the Act of June 16, 1936, referred to in subsec. (c), is section 2 of act June 16, 1936, ch. 587, 49 Stat. 1524, which is not classified to the Code.

Section 12 of the Act of August 4, 1942, referred to in subsec. (c), is section 12 of act Aug. 4, 1942, ch. 547, 56 Stat. 738, which is not classified to the Code.

CODIFICATION

Section was formerly classified to section 463 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1971—Subsec. (b). Pub. L. 92–129 inserted provisions covering the publication of regulations in the Federal Register.

1963—Subsec. (a). Pub. L. 88–110 substituted "sections 203, 205, or 207 of title 18" for "sections 281, 283, or 284 of title 18, in section 99 of title 5".

1951—Subsec. (a). Act June 19, 1951, brought within its provisions members of the National Selective Service Appeal Board.

§3813. Notice of requirements of this chapter; voluntary enlistments unaffected

(a) Deeming of notice upon publication

Every person shall be deemed to have notice of the requirements of this chapter upon publication by the President of a proclamation or other public notice fixing a time for any registration under section 3802 of this title.

(b) Duty to inform local board of current address and changes in status

It shall be the duty of every registrant to keep his local board informed as to his current address and changes in status as required by such rules and regulations as may be prescribed by the President.

(c) Separability of provisions

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(d) Voluntary enlistments or reenlistments; absence of affect

Except as provided in section 3803(c) of this title, nothing contained in this chapter shall be construed to repeal, amend, or suspend the laws now in force authorizing voluntary enlistment or reenlistment in the Armed Forces of the United States, including the reserve components thereof, except that no person shall be accepted for enlistment after he has been issued an order to report for induction unless authorized by the Director and the Secretary of Defense and except that, whenever the Congress or the President has declared that the national interest is imperiled, voluntary enlistment or reenlistment in such forces, and their reserve components, may be suspended by the President to such extent as he may deem necessary in the interest of national defense.

(e) Furnishing of names and addresses to Secretary of Defense or Secretary of Homeland Security

In order to assist the Armed Forces in recruiting individuals for voluntary service in the Armed Forces, the Director shall, upon the request of the Secretary of Defense or the Secretary of Homeland Security, furnish to the Secretary the names and addresses of individuals registered under this Act. Names and addresses furnished pursuant to the preceding sentence may be used by the Secretary of Defense or Secretary of Homeland Security only for recruiting purposes.

(June 24, 1948, ch. 625, title I, §15, 62 Stat. 624; Pub. L. 92–129, title I, §101(a)(33), Sept. 28, 1971, 85 Stat. 353; Pub. L. 97–86, title IX, §916(c), Dec. 1, 1981, 95 Stat. 1129; Pub. L. 107–296, title XVII, §1704(e)(11)(E), Nov. 25, 2002, 116 Stat. 2316; Pub. L. 118–159, div. A, title V, §532(a), Dec. 23, 2024, 138 Stat. 1886.)

AMENDMENT OF SUBSECTION (E)

Pub. L. 118–159, div. A, title V, §532, Dec. 23, 2024, 138 Stat. 1886, provided that, effective 120 days after Dec. 23, 2024, subsection (e) of this section is amended by striking "the names and addresses" and inserting "the full names, email addresses (if available), dates of birth, phone numbers (if available), and mailing addresses" and by striking "Names and addresses furnished" and inserting "Full names, email addresses, dates of birth, phone numbers, and mailing addresses furnished". See 2024 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c), and (d), was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

This Act, referred to in subsec. (e), is act June 24, 1948, ch. 625, 62 Stat. 604, known as the Military Selective Service Act. For complete classification of this

Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 465 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2024—Subsec. (e). Pub. L. 118–159 substituted "the full names, email addresses (if available), dates of birth, phone numbers (if available), and mailing addresses" for "the names and addresses" and "Full names, email addresses, dates of birth, phone numbers, and mailing addresses furnished" for "Names and addresses furnished".

2002—Subsec. (e). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation" in two places.

1981—Subsec. (e). Pub. L. 97–86 added subsec. (e).

1971—Subsec. (d). Pub. L. 92–129 inserted provision empowering the Director and the Secretary of Defense to authorize voluntary enlistments and reenlistments in the Armed Forces after a person has been issued an order to report for induction and struck out reference to section 3803(g) of this title.

EFFECTIVE DATE OF 2024 AMENDMENT

Pub. L. 118–159, div. A, title V, §532(b), Dec. 23, 2024, 138 Stat. 1887, provided that: "The amendments made by this section [amending this section] shall take effect 120 days after the date of the enactment of this Act [Dec. 23, 2024]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of Title 10, Armed Forces.

§3814. Definitions

When used in this chapter—

(a) The term "between the ages of eighteen and twenty-six" shall refer to men who have attained the eighteenth anniversary of the day of their birth and who have not attained the twenty-sixth anniversary of the day of their birth; and other terms designating different age groups shall be construed in a similar manner.

(b) The term "United States", when used in a geographical sense, shall be deemed to mean the several States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "armed forces" shall be deemed to include the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard.

(d) The term "district court of the United States" shall be deemed to include the courts of the United

States for the Territories and possessions of the United States.

(e) The term "local board" shall be deemed to include an intercounty local board in the case of any registrant who is subject to the jurisdiction of an intercounty local board.

(f) The term "Director" shall be deemed to mean the Director of the Selective Service System.

(g)(1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or

incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a bona fide vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

(h) The term "organized unit", when used with respect to a reserve component, shall be deemed to mean a unit in which the members thereof are required satisfactorily to participate in scheduled drills and training periods as prescribed by the Secretary of Defense.

(i) The term "reserve components of the armed forces" shall, unless the context otherwise requires, be deemed to include the federally recognized National Guard of the United States, the federally recognized Air National Guard of the United States, the Officers' Reserve Corps, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Navy Reserve, the Marine Corps Reserve, and the Coast Guard Reserve, and shall include, in addition to the foregoing, the Public Health Service Reserve when serving with the armed forces.

(June 24, 1948, ch. 625, title I, §16, 62 Stat. 624; Sept. 27, 1950, ch. 1059, §1(12), (13), 64 Stat. 1074; June 19, 1951, ch. 144, title I, §1(v), 65 Stat. 87; Pub. L. 86–70, §36, June 25, 1959, 73 Stat. 150; Pub. L. 86–624, §39,

July 12, 1960, 74 Stat. 422; Pub. L. 92–129, title I, §101(a)(34), Sept. 28, 1971, 85 Stat. 353; Pub. L. 109–163, div. A, title V, §515(g)(3)(B), Jan. 6, 2006, 119 Stat. 3236.)

REFERENCES IN TEXT

This chapter, referred to in introductory provisions, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 466 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2006—Subsec. (i). Pub. L. 109–163 substituted "Navy Reserve" for "Naval Reserve".

1971—Subsec. (g)(3). Pub. L. 92–129 inserted "bona fide" before "vocation".

1960—Subsec. (b). Pub. L. 86–624 struck out "Hawaii," before "Puerto Rico".

1959—Subsec. (b). Pub. L. 86–70 struck out "Alaska," after "District of Columbia,".

1951—Subsec. (b). Act June 19, 1951, brought "Guam" within definition of "United States".

1950—Subsec. (c). Act Sept. 27, 1950, §1(12), struck out "and" after "Corps" and inserted ", and the Coast Guard" before the period.

Subsec. (i). Act Sept. 27, 1950, §1(13), struck out "and" after "Naval Reserve" and ", the Coast Guard Reserve" after "foregoing" and inserted "and the Coast Guard Reserve" after "Marine Corps Reserve".

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of all other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when

President directs as provided in former section 3 (now 103) of Title 14, Coast Guard.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, excepted from transfer when Coast Guard is operating as part of Navy under former sections 1 and 3 (now 101 and 103) of Title 14, Coast Guard.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5, Government Organization and Employees. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

§3815. Repeals; appropriations; termination date

(a) Except as provided in this chapter all laws or any parts of laws in conflict with the provisions of the chapter are repealed to the extent of such conflict.

(b) There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this chapter. All funds appropriated for the administrative expenses of the National Security Training Commission shall be appropriated directly to the Commission and all funds appropriated to pay the expenses of training carried out by the military departments designated by the Commission shall be appropriated directly to the Department of Defense.

(c) Notwithstanding any other provisions of this chapter, no person shall be inducted for training and service in the Armed Forces after July 1, 1973, except persons now or hereafter deferred under section 3806 of this chapter after the basis for such deferment ceases to exist.

(June 24, 1948, ch. 625, title I, §17, 62 Stat. 625; June 23, 1950, ch. 351, 64 Stat. 254; June 30, 1950, ch. 445, §1, 64 Stat. 318; June 19, 1951, ch. 144, title I, §1(w), 65 Stat. 87; June 30, 1955, ch. 250, title I, §102, 69 Stat. 224; Pub. L. 86–4, §1, Mar. 23, 1959, 73 Stat. 13; Pub. L. 88–2, §1, Mar. 28, 1963, 77 Stat. 4; Pub. L. 90–40, §1(12), June 30, 1967, 81 Stat. 105; Pub. L. 92–129, title I, §101(a)(35), Sept. 28, 1971, 85 Stat. 353.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 467 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1971—Subsec. (c). Pub. L. 92–129 extended termination date from July 1, 1971, to July 1, 1973.

1967—Subsec. (c). Pub. L. 90–40 extended termination date from July 1, 1967, to July 1, 1971.

1963—Subsec. (c). Pub. L. 88–2 extended termination date from July 1, 1963, to July 1, 1967.

1959—Subsec. (c). Pub. L. 86–4 extended termination date from July 1, 1959, to July 1, 1963.

1955—Subsec. (c). Act June 30, 1955, extended termination date from July 1, 1955, to July 1, 1959.

1951—Act June 19, 1951, amended section generally to provide for repeal of all conflicting laws, to appropriate certain funds directly to the Commission, and to provide for the termination date of July 1, 1955.

1950—Subsec. (b). Acts June 23, 1950 and June 30, 1950, extended period of effectiveness for fifteen days

until July 9, 1950, and again from July 9, 1950, to July 9, 1951.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–129, title I, §101(a)(35), Sept. 28, 1971, 85 Stat. 353, provided in part that: "The amendment made by the preceding sentence [amending this section] shall take effect July 2, 1971."

TERMINATION OF NATIONAL SECURITY TRAINING COMMISSION

National Security Training Commission expired June 30, 1957, pursuant to a Presidential letter on Mar. 25, 1957, following its own recommendation for its termination.

§3816. Utilization of industry

(a) Placement of orders; Congressional action: notification of committees of certain proposed payment orders, resolution of disapproval, continuity of session, computation of period; "small business" defined

Whenever the President after consultation with and receiving advice from the National Security Resources Board[1] determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United

[1] See Transfer of Functions note below.

States, or for the use of the Atomic Energy Commission,[1] he is authorized, through the head of any Government agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate, except that no order which requires payments thereunder in excess of $25,000,000 shall be placed with any person unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed order and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such order. For purposes of the preceding sentence, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. Any person with whom an order is placed pursuant to the provisions of this section shall be advised that such order is placed pursuant to the provisions of this section. Under any such program of national procurement, the President shall recognize the valid claim of American small business to participate in such contracts, in such manufactures, and in such distribution of materials, and small business shall be granted a fair share of the

orders placed, exclusively for the use of the armed forces or for other Federal agencies now or hereafter designated in this section. For the purposes of this section, a business enterprise shall be determined to be "small business" if (1) its position in the trade or industry of which it is a part is not dominant, (2) the number of its employees does not exceed 500, and (3) it is independently owned and operated.

(b) Precedence of Government placed orders

It shall be the duty of any person with whom an order is placed pursuant to the provisions of subsection (a), (1) to give such order such precedence with respect to all other orders (Government or private) theretofore or thereafter placed with such person as the President may prescribe, and (2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible.

(c) Failure to give precedence; Government possession

In case any person with whom an order is placed pursuant to the provisions of subsection (a) refuses or fails—

(1) to give such order such precedence with respect to all other orders (Government or private) theretofore or thereafter placed with such person as the President may have prescribed;

(2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible as determined by the President;

(3) to produce the kind or quality of articles or materials ordered; or

(4) to furnish the quantity, kind, and quality of articles or materials ordered at such price as shall be negotiated between such person and the Government agency concerned; or in the event of failure to negotiate a price, to furnish the quantity, kind, and quality of articles or materials ordered at such price as he may subsequently be determined to be entitled to receive under subsection (d);

the President is authorized to take immediate possession of any plant, mine, or other facility of such person and to operate it, through any Government agency, for the production of such articles or materials as may be required by the Government.

(d) Payment of compensation by United States

Fair and just compensation shall be paid by the United States (1) for any articles or materials furnished pursuant to an order placed under subsection (a), or (2) as rental for any plant, mine, or other facility of which possession is taken under subsection (c).

(e) Application of Federal and State laws governing employees

Nothing contained in this section shall be deemed to render inapplicable to any plant, mine, or facility of which possession is taken pursuant to subsection (c) any State or Federal laws concerning the health, safety, security, or employment standards of employees.

(f) Penalties

Any person, or any officer of any person as defined in this section, who willfully fails or refuses to carry out any duty imposed upon him by subsection (b) of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than three years, or by a fine of not more than $50,000, or by both such imprisonment and fine.

(g) "Person" and "Government agency" defined

(1) As used in this section—

(A) The term "person" means any individual, firm, company, association, corporation, or other form of business organization.

(B) The term "Government agency" means any department, agency, independent establishment, or corporation in the Executive branch of the United States Government.

(2) For the purposes of this section, a plant, mine, or other facility shall be deemed capable of producing any articles or materials if it is then producing or furnishing such articles or materials or if the President after consultation with and receiving advice from the National Security Resources Board determines that it can be readily converted to the production or furnishing of such articles or materials.

(h) Rules and regulations governing steel industry; mandatory

The President is empowered, through the Secretary of Defense, to require all producers of steel in the United States to make available, to individuals, firms, associations, companies, corporations, or organized manufacturing industries having orders for steel products or steel materials required by the armed forces, such percentages of the steel production of such producers, in equal proportion deemed necessary for the expeditious execution of orders for such products or materials. Compliance with such requirement shall be obligatory on all such producers of steel and such requirement shall take precedence over all orders and contracts theretofore placed with such producers. If any such producer of steel or the responsible head or heads thereof refuses to comply with such requirement, the President, through the Secretary of Defense, is authorized to take immediate possession of the plant or plants of such producer and, through the appropriate branch, bureau, or department of the armed forces, to insure compliance with such requirement. Any such producer of steel or the responsible head or heads thereof refusing to comply with such requirement shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than three years and a fine not exceeding $50,000.

(June 24, 1948, ch. 625, title I, §18, 62 Stat. 625; Pub. L. 93–155, title VIII, §807(d), Nov. 16, 1973, 87 Stat. 616; Pub. L. 101–510, div. A, title XIII, §1303(c), Nov. 5, 1990, 104 Stat. 1669.)

CODIFICATION

Section was formerly classified to section 468 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1990—Subsec. (h). Pub. L. 101–510 struck out "(1)" before "The President is empowered" and struck out par. (2) which read as follows: "The President shall report to the Congress on the final day of each six-month period following November 5, 1990, the percentage figure, or if such information is not available, the approximate percentage figure, of the total steel production in the United States required to be made available during such period for the execution of orders for steel products and steel materials required by the armed forces, if such percentage figure is in excess of 10 per centum."

1973—Subsec. (a). Pub. L. 93–155 provided for notification of Congressional Committees with respect to certain proposed payment orders, Congressional resolution of disapproval, continuity of Congressional session, and computation of period.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Amendment by Pub. L. 93–155 not affecting the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to Nov. 16, 1973, see section 807(e) of Pub. L. 93–155, set out as a note under section 1431 of this title.

TRANSFER OF FUNCTIONS

National Security Resources Board, together with Office of Chairman, abolished by section 6 of Reorg. Plan No. 3 of 1953, eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Chairman of National Security Resources Board under this section, with respect to being consulted by and furnishing advice to President as required by this section, abolished by section 5(a) of Reorg. Plan No. 3 of 1953. Other functions of Chairman transferred to Office of Defense Mobilization by section 2(a) of Reorg. Plan No. 3 of 1953. For subsequent transfers to Office of Emergency Planning, Office of Emergency Preparedness, President, Federal Preparedness Agency, Federal Emergency Management Agency, and Secretary of Homeland Security, see notes set out under former section 3042 of this title.

DELEGATION OF AUTHORITY

For delegation of President's authority under this section with respect to placing of orders for prompt

delivery of articles or materials, see section 102 of Ex. Ord. No. 12742, Jan. 8, 1991, 56 F.R. 1079, set out as a note under section 82 of this title.

§3817. Savings provision

Nothing in this chapter shall be deemed to amend any provision of the National Security Act of 1947 (61 Stat. 495) [50 U.S.C. 3001 et seq.].

(June 24, 1948, ch. 625, title I, §19, 62 Stat. 627.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

The National Security Act of 1947 (61 Stat. 495), referred to in text, is act July 26, 1947, ch. 343, 61 Stat. 495, which is classified principally to chapter 44 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 469 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

§3818. Effective date

This chapter shall become effective immediately; except that unless the President, or the Congress by concurrent resolution, declares a national emergency

after June 24, 1948, no person shall be inducted or ordered into active service without his consent under this chapter within ninety days after June 24, 1948.

(June 24, 1948, ch. 625, title I, §20, 62 Stat. 627; Sept. 27, 1950, ch. 1059, §1(14), 64 Stat. 1074; Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 470 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1956—Act Aug. 10, 1956, repealed provisions requiring the Secretaries of the Army, Navy, and the Treasury to initiate and carry forward intensified voluntary enlistment campaigns for the Army, Air Force, Navy, Marine Corps, and the Coast Guard.

1950—Act Sept. 27, 1950, struck out "and" after "Air Force" and inserted "and the Secretary of the Treasury, for the Coast Guard" after "Marine Corps".

§3819. Authority of President to order Reserve components to active service; release from active duty; retention of unit organizations and equipment

Until July 1, 1953, and subject to the limitations imposed by section 2 of the Selective Service Act of 1948, as amended,[1] the President shall be authorized to order into the active military or naval service of the United States for a period of not to exceed twenty-four consecutive months, with or without their consent, any or all members and units of any or all Reserve components of the Armed Forces of the United States and retired personnel of the Regular Armed Forces. Unless he is sooner released under regulations prescribed by the Secretary of the military department concerned, any member of the inactive or volunteer reserve who served on active duty for a period of 12

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[1] See References in Text note below.

months or more in any branch of the Armed Forces between the period December 7, 1941, and September 2, 1945, inclusive, who is now or may hereafter be ordered to active duty pursuant to this section, shall upon completion of 17 or more months of active duty since June 25, 1950, if he makes application therefor to the Secretary of the branch of service in which he is serving, be released from active duty and shall not thereafter be ordered to active duty for periods in excess of 30 days without his consent except in time of war or national emergency hereafter declared by the Congress: *Provided*, That the foregoing shall not apply to any member of the inactive or volunteer reserve ordered to active duty whose rating or specialty is found by the Secretary of the military department concerned to be critical and whose release to inactive duty prior to the period for which he was ordered to active duty would impair the efficiency of the military department concerned.

The President may retain the unit organizations and the equipment thereof, exclusive of the individual members thereof, in the active Federal service for a total period of five consecutive years, and upon being relieved by the appropriate Secretary from active Federal service, National Guard, or Air National Guard units, shall, insofar as practicable, be returned to their National Guard or Air National Guard status in their respective States, Territories, the District of Columbia, and Puerto Rico, with pertinent records, colors, histories, trophies, and other historical impedimenta.

(June 24, 1948, ch. 625, title I, §21, as added June 30, 1950, ch. 445, §2, 64 Stat. 318; amended June 19, 1951,

ch. 144, title I, §1(x), 65 Stat. 87; July 7, 1952, ch. 584, §1, 66 Stat. 440.)

REFERENCES IN TEXT

Section 2 of the Selective Service Act of 1948, referred to in text, is section 2 of act June 24, 1948, ch. 625, title I, 62 Stat. 605, now known as the Military Selective Service Act, which was classified to former section 452 of the former Appendix to this title prior to repeal by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, and omission in the editorial reclassification of title I of act June 24, 1948, ch. 625, as this chapter.

CODIFICATION

Section was formerly classified to section 471 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1952—Act July 7, 1952, authorized the President to retain unit organizations and their equipment, exclusive of individual members, for a period of five years.

1951—Act June 19, 1951, substituted "July 1, 1953" for "July 9, 1951", "twenty-four months" for "twenty-one months", and inserted last sentence.

EX. ORD. NO. 10271. DELEGATION OF PRESIDENT'S AUTHORITY

Ex. Ord. No. 10271, July 7, 1951, 16 F.R. 6661, as amended by Ex. Ord. No. 13286, §80, Feb. 28, 2003, 68 F.R. 10631, provided:

There is hereby delegated to the Secretary of Defense the authority vested in the President by section 21 of the Universal Military Training and Service Act

(64 Stat. 318), as amended by the 1951 Amendments to the Universal Military Training and Service Act (65 Stat. 87; Public Law 51, 82d Congress) [this section], to order into the active military or naval service of the United States for a period not to exceed twenty-four months, with or without their consent, any or all members and units of any or all Reserve components of the Armed Forces of the United States and retired personnel of the Regular Armed Forces: *Provided*, that so much of the authority of the President under the said section 21, as amended [this section], as relates to any Reserve component of the United States Coast Guard or to retired personnel of the Regular Coast Guard is hereby delegated to the Secretary of Homeland Security.

The Secretary of Defense is hereby authorized to redelegate, subject to such conditions as the Secretary may deem appropriate, to the Secretaries of the Army, Navy, and Air Force such functions under this order as affect their respective services.

§3820. Procedural rights

(a) It is hereby declared to be the purpose of this section to guarantee to each registrant asserting a claim before a local or appeal board, a fair hearing consistent with the informal and expeditious processing which is required by selective service cases.

(b) Pursuant to such rules and regulations as the President may prescribe—

(1) Each registrant shall be afforded the opportunity to appear in person before the local or any appeal board of the Selective Service System to testify and present evidence regarding his status.

(2) Subject to reasonable limitations on the number of witnesses and the total time allotted to each registrant, each registrant shall have the right to present witnesses on his behalf before the local board.

(3) A quorum of any local board or appeal board shall be present during the registrant's personal appearance.

(4) In the event of a decision adverse to the claim of a registrant, the local or appeal board making such decision shall, upon request, furnish to such registrant a brief written statement of the reasons for its decision.

(June 24, 1948, ch. 625, title I, §22, as added Pub. L. 92–129, title I, §101(a)(36), Sept. 28, 1971, 85 Stat. 353.)

CODIFICATION

Section was formerly classified to section 471a of the former Appendix to this title prior to editorial reclassification and renumbering as this section.