

PTSD AND WOMEN WARRIORS: CAUSES, CONTROLS AND A CONGRESSIONAL CURE

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INTRODUCTION

The high incidence of Post Traumatic Stress Disorder (“PTSD”) among male veterans is nothing new. Dating as far back as the Trojan War,² male soldiers have been struggling with the “after-shocks” of war long after the battles end. For female veterans, however, this problem is a relatively recent development. Women have been restricted for many years in the role that they have been allowed to play in the military.³ In addition, the Department of Veterans’ Affairs (“VA”) did not provide mental-health services to female veterans until 1988.⁴

But female veterans have certainly made up for lost time. Women comprise one of the “fastest growing segments of the veteran population.”⁵ Among the 1.8 million female veterans, more than 230,000 women have served in Iraq or Afghanistan.⁶ As of February 3, 2012, 852 have been wounded in action; 144 have been killed.⁷ By the military’s own estimates, almost twenty percent of female

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² Peyton Cooke, *Post-Traumatic Stress Disorder and the Military Justice System*, 79 MISS. L. J. 485, 485 (2010). The label given to PTSD has changed throughout the years. The condition has been known at various times as “insanity,” “melancholy,” “shell shock,” and “combat fatiguc,” among others. David Weigand, *HBO’s Wartorn Offers Chilling Look at PTSD in Vets*, HOUS. CHRON. (Nov. 10, 2010), <http://www.chron.com/disp/story.mpl/ent/7288704.html>. One writer notes that the labels can be “absurdly understated.” *Id.* “Combat fatiguc,” for instance, was particularly troublesome, because it suggested that “all a mentally shattered GI needed to get back on the front lines was a nice long nap.” *Id.*

³ Military personnel policy bars women from serving in some combat branches. See 10 U.S.C. § 652 (2006). See also Elisabeth Bumiller, *For Female Marines, Tea Comes with Bullets*, N.Y. TIMES (Oct. 3, 2010), <http://www.nytimes.com/2010/10/03/world/asia/03marines.html>. In the past, Congress imposed even more restrictions on the role women could play in the military. *Id.*

⁴ See William Porter, *Denver’s Brandon Center Serves Women Who Served*, DENV. POST (July 13, 2010), http://www.denverpost.com/headlines/ci_15500403.

⁵ Lindsay Wise, *Houston VA Sees Spike in Female Veterans Seeking Care*, HOUS. CHRON. (Sept. 29, 2010), <http://www.chron.com/news/houston-texas/article/Houston-VA-sccc-spike-in-female-veterans-seeking-1711861.php>.

⁶ Porter, *supra* note 4.

⁷ See U.S. Department of Defense, Military Casualty Information,

veterans—literally thousands—are returning home with PTSD.⁸ Research suggests that women veterans returning from Iraq are more likely than their male counterparts to report mental health concerns such as PTSD, depression and suicidal thoughts.⁹

The prevalence of PTSD among women in the United States Armed Forces is exacerbated by the unique status that women hold in modern-day military. Federal policy still bans women from units engaged in direct ground combat. Despite the policy restrictions, the “combat ban” exists only on paper, and women have served in record numbers in Iraq and Afghanistan. However, the policy effectively precludes women from getting access to meaningful treatment for PTSD. Though there have been recent strides in easing treatment options, the mental health needs of women in the military are still unmet by the newest VA guidelines. This Article asserts that one of the major contributors to the high rates of PTSD among women in the military is the effective bar from direct combat that the United States still imposes on women in the military.¹⁰

Military restrictions have made it especially difficult for women to access mental health treatment for PTSD. In 2010, President Barack Obama advanced new regulations that promise to liberalize the standards for veterans who seek treatment for PTSD.¹¹ In fact, veterans’ advocates have specifically cited the VA guidelines as being especially helpful for women, who have struggled in the past to satisfy the causation element previously needed to support a claim for PTSD.¹² However, the new guidelines for treatment of PTSD cannot reduce the number of newly-reported cases of PTSD among women. The military must achieve full gender integration, an essential element of alleviating some of the isolation that contributes to the PTSD that afflicts female soldiers. A congressionally mandated report issued in March 2011 calls for the elimination of “combat exclusion policies.”¹³ To reduce the high incidence of PTSD among women troops, this Article contends, Congress must dismantle all of the combat exclusion policies for women in the military.

<http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm> (last visited Feb. 3, 2012).

⁸ Faye Fiore, *Female Veteran Fights an Invisible Injury*, L.A. TIMES (Apr. 9, 2011), <http://articles.latimes.com/2011/apr/09/nation/la-na-ptsd-women-20110409>.

⁹ Dawn Vogt, *Research on Women, Trauma and PTSD*, U.S. DEPT. OF VETERAN AFFAIRS (Jan. 1, 2007), <http://www.ptsd.va.gov/professional/pages/women-trauma-ptsd.asp>. Early research indicates that mental health concerns among female veterans returning from Iraq are voiced by 24% of the population compared to 19% among male veterans returning from Iraq. *Id.*

¹⁰ See 10 U.S.C. § 652 (2006); Bumiller, *supra* note 3.

¹¹ *New Regulations on PTSD Claims*, U.S. DEP’T OF VETERAN AFFAIRS (July 12, 2010), http://www.va.gov/PTSD_QA.pdf.

¹² Matthew D. LaPlante, *Female Veterans Suffering PTSD Overlooked, Experts Say*, DAILY LOCAL NEWS, Oct. 11, 2010, <http://www.dailylocal.com/articles/2010/10/11/lifc/doc4cb324675a17c768505346.txt>.

¹³ See generally MILITARY LEADERSHIP DIVERSITY COMM’N, FROM REPRESENTATION TO INCLUSION: DIVERSITY LEADERSHIP FOR THE 21ST CENTURY MILITARY (2011), available at http://mldc.whs.mil/download/documents/Final%20Report/MLDC_Final_Report.pdf [hereinafter DIVERSITY LEADERSHIP].

Part I will review the role of women in the military and will compare current policies regarding service from women with current practices for women in the armed services. Part II will track the causes of PTSD among female veterans, with special attention to the unique contributors to the high rates of PTSD among women serving in Iraq and Afghanistan. Next, Part III will explore the link between the combat exclusion policies and PTSD among women who serve in the military. Some of the controls that can be used to curb the incidence of PTSD among women veterans and troops will then be explored in Part IV. These controls include the new guidelines in place for mental health claims and the implicit reasoning of the Supreme Court's case law regarding sex-role stereotyping. Ultimately, however, this Article asserts in Part V that only a proper congressional "cure" can effectively reduce the growing rates of PTSD among female veterans. Surprisingly, one important way to alleviate PTSD among women in the military is to lift all of the combat exclusion policies that restrict their service. Bringing women fully within the ranks of the military—both in practice and policy—will lead to earlier identification of PTSD among women and better treatment for women suffering from PTSD. It may also minimize cases of PTSD in the future, as women would be recognized for their contributions, rather than marginalized for their differences.

I. WOMEN IN THE MILITARY

The role of women in the United States military has long been marked by competing needs for increased available human-power to do the work and restrictions on the roles that women can play in battle. Even pacifists recognize the difficulty of defending military sex-based discriminatory practices that subordinate women.¹⁴ Despite the serious risk to life and health that military service engenders, military service confers many definite benefits to active members, including training and extensive veterans' benefits.¹⁵ Veterans often receive benefits or preferences in housing, employment, and education.¹⁶ In addition,

¹⁴ "For the pacifists, violence is always to be shunned . . ." Jeane Bethke Elshtain, *Women and War: Ten Years On*, in *WOMEN IN THE MILITARY* 33, 39 (Rita James Simon ed., 2001); see also, e.g., Laura L. Miller, *Feminism and the Exclusion of Army Women from Combat*, in *WOMEN IN THE MILITARY* 103, 106 (Rita James Simon ed., 2001) (noting the pacifists commitment advanced by feminists in the relational versus individualist movement); Annette Weber, *Feminist Peace and Conflict Theory*, in *ROUTLEDGE ENCYCLOPAEDIA ON PEACE AND CONFLICT THEORY* (2006), available at <http://www.uibk.ac.at/peacestudies/downloads/peacelibrary/feministpeace.pdf> (discussing the difficulties in reconciling the beliefs of feminist pacifists with war). Even the limited views expressed here represent only a fraction of the different layers, iterations and options feminists have advanced regarding the proper role of women in the military. To be sure, no one is asserting that feminists are a monolithic group on the issue of women in combat, or any other issue impacting gender. Like any other group of scholars and activists, there are several valid, competing views of what best serves equality.

¹⁵ Benefits to veterans are offered by the Federal Government and practically all States. See generally *Federal Benefits for Veterans, Benefits and Survivors*, U.S. DEP'T OF VETERANS AFFAIRS (2010), http://www.va.gov/opa/publications/benefits_book.asp; see also, e.g., *Benefits Overview*, CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS, <http://www.calvet.ca.gov/Default.aspx>.

¹⁶ The catalogue of benefits available to veterans is expansive, ranging from health care and

service in the military bestows on veterans an intangible societal benefit: status as a veteran and its concomitant cultural advantages. Service in the armed forces also confirms full citizenship, which has been recognized by the courts.¹⁷

Women have not been shy about their participation in the United States military. In fact, women have actively participated in every American military crisis since the American Revolution.¹⁸ However, the role of women in the military was always at odds with society's expectations for them. Throughout history, women's military service was severely restricted due to the state's commitment to reinforcing a domestic role for women. It was not until 1948 that women actually gained permanent status in the military.¹⁹

However, the Women's Armed Services Integration Act ("WASIA") intended to "integrate" women into the military but instead codified a systemic exclusion of women from service.²⁰ The Act banned women from registration, conscription and most combat missions.²¹ It also barred women from serving aboard combat aircrafts and ships.²² Because the definition of ground combat was difficult to resolve, the precise role of women in the Army was left up to the Secretary for the Army.²³ However, Congress made it clear that it was opposed to women being directly involved on the battlefield.²⁴ In keeping with the promotion of sex-role stereotyping, a 1951 Executive Order from President Harry Truman provided that women could be discharged for motherhood or pregnancy.²⁵

The formal efforts to equalize opportunities for women in the military date back more than thirty years. In 1980, President Jimmy Carter proposed to register women with the Selective Service System.²⁶ Just one year later, however, the United States Supreme Court in *Rostker v. Goldberg* refused to find that male-only registration violated the United States Constitution.²⁷

education to loans and life insurance. See generally *Federal Benefits for Veterans*, *supra* note 15.

¹⁷ See Jill Elaine Hasday, *Fighting Women: The Military, Sex and Extrajudicial Constitutional Change*, 93 MINN. L. REV. 96, 104 (2008); see also *Arver v. United States*, 245 U.S. 366, 390 (1918) (calling military service a citizen's "supreme and noble duty").

¹⁸ Melinda Beck et al., *Our Women in the Desert*, NEWSWEEK, Sept. 10, 1990, at 22.

¹⁹ See Women's Armed Services Integration Act of 1948, Pub. L. No. 80-625, 62 Stat. 356 (1948). The statute did not allow women's service in the military to exceed two percent. *Id.* § 102.

²⁰ See *id.* § 102.

²¹ See *id.* § 210; Hasday, *supra* note 17, at 106.

²² WILLIAM B. BREUER, WAR AND AMERICAN WOMEN, HEROISM, DEEDS AND CONTROVERSY 63 (1997).

²³ *Id.*

²⁴ *Id.* The Women's Armed Services Integration Act "capped women's participation at a maximum of two percent of the military; excluded women from registration, conscription, upper officer ranks, and combat positions . . ." Hasday, *supra* note 17, at 106.

²⁵ See Excc. Order No. 10,240, 16 Fed. Reg. 3689 (Apr. 27, 1951). Rather than grant a woman a temporary leave or reassignment during pregnancy, a pregnant servicewoman was subject to involuntary discharge because military officials believed that a pregnant woman's "loyalty and duty are to her family and no longer to the service." Hasday, *supra* note 17, at 107 (citation omitted).

²⁶ BREUER, *supra* note 22, at 127.

²⁷ *Rostker v. Goldberg*, 453 U.S. 57, 78-79 (1981).

A. Current Policies

The current set of Department of Defense and Service assignment policies is known collectively as “combat exclusion policies.”²⁸ These policies work to subordinate women in the military in two ways. First, they explicitly prohibit women from serving in certain tactical fields.²⁹ Currently, Pentagon policy bars women from serving in any unit below the brigade level³⁰ whose primary mission is direct combat.³¹ These officially off-limits branches of service include the infantry.³² The Department of Defense assignment policy states, “Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground. . . .”³³ Second, within the fields open to women, military policies may also bar women from receiving certain assignments because they prohibit women from being assigned to units likely to be involved in direct offensive ground combat. Army policy also prohibits the assignment of women to units that “collocate routinely with units assigned a direct combat mission.”³⁴ Almost all Air Force and Navy positions are open to women.³⁵ While women have also taken on more expansive roles in the Army and Marine Corps, they still remain restricted from ground combat roles.³⁶

Despite these limitations, however, women are presently permitted to serve in units that may face combat-related action.³⁷ While the current policies limit what roles women can be assigned to, they do not actually limit what women can do. As the policy collides more and more with current practice, critics of the guideline

²⁸ DIVERSITY LEADERSHIP, *supra* note 13, at 66.

²⁹ *Id.*

³⁰ A brigade is a military unit commanded by a “colonel and composed of two or more subordinate units, such as regiments or battalions.” *Brigade (Military Unit)*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/79480/brigade> (last visited Oct. 30, 2011).

³¹ Ed O’Keefe & Jon Cohen, *7 in 10 Americans Support Allowing Women in Ground Combat*, WASH. POST (Mar. 16, 2011), http://www.washingtonpost.com/blogs/federal-cyc/post/7-in-10-americans-support-allowing-women-in-ground-combat/2011/03/16/ABqJ6Bc_blog.html.

³² Bumiller, *supra* note 3. “The Infantry is the main land combat force and core fighting strength of the Army. It’s equally important during peacetime and in combat. The role of an Infantry Officer is to be a leader in operations specific to the Infantry and to lead others in all areas of land combat.” *Infantry Officer*, GOARMY.COM, <http://www.goarmy.com/careers-and-jobs/browse-career-and-job-categories/combat/infantry-officer.html> (last visited Oct. 31, 2011).

³³ Memorandum from Len Aspin, Secretary of Defense, on Direct Ground Combat Definition and Assignment Rule (Jan. 13, 1994), available at <http://cmrlink.org/CMRNotes/LenAspin%20DGC%20DefAssign%20Rule%20011394.pdf>.

³⁴ MILITARY LEADERSHIP DIVERSITY COMM’N, WOMEN IN COMBAT, LEGISLATION AND POLICY, PERCEPTIONS, AND THE CURRENT OPERATIONAL ENVIRONMENT 2, 2 (2010), available at http://mldc.whs.mil/download/documents/Issue%20Papers/56_Women_in_Combat.pdf [hereinafter WOMEN IN COMBAT]. The Army policy, which is more restrictive about women’s assignments, predates the Department of Defense policy. *Id.*

³⁵ *Id.* at 1.

³⁶ *Id.*

³⁷ O’Keefe & Cohen, *supra* note 31.

restrictions for women have become more vocal. The current policy has been criticized as “outdated” and inapplicable “to the type of war [the United States is] fighting.”³⁸ Moreover, the current policies are difficult to understand and apply, especially in Iraq and Afghanistan.³⁹

B. Current Practices

Despite the wide-sweeping reach of the exclusionary policies, the practices of the Armed Forces have long included women in combat duty. This tension between official policy and actual practice undercuts the status of women in the military and contributes to the stigmas that propel the incidence of PTSD among female veterans.

The number of women who have actively served in the military easily exceeds the tens of thousands.⁴⁰ The wars in Iraq under Operation Iraqi Freedom (“OIF”) and Afghanistan—Operation Enduring Freedom (“OEF”)—have increased the need for trained soldiers, both male and female. These wars also mark the first time that women have routinely served in combat.⁴¹ Despite the policy ban in place, the military regards women as necessary to its operations in these conflicts, and it has continually found ways to circumvent official policy restrictions.⁴² For example, while women are officially barred from serving in combat branches, the practice is often circumvented through so-called “attachments” to the same units.⁴³ Female engagement teams even “accompany” Marines infantry units on patrols.⁴⁴

Catherine Ross, who served in the Army Reserves for eight years with deployments in Iraq in 2003 and 2004 as a civil affairs sergeant, attests that the military’s policy barring women from combat does not reflect the common experiences of most women in the military.⁴⁵ Although she acknowledges that she wasn’t trained to be an infantryman, she says her experiences in Iraq felt like combat to her:

Well, I was part of a four-person team. And my team was attached to an infantry battalion. And right there, were kind of bending the rules because females, again, are not supposed to be found at the battalion levels, a ground-combat unit. But we were attached to this battalion, and we went

³⁸ Bumiller, *supra* note 3.

³⁹ WOMEN IN COMBAT, *supra* note 34, at 1.

⁴⁰ Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law*, 85 N.Y.U. L. REV. 83, 156 (2010).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Bumiller, *supra* note 3.

⁴⁴ *Id.* More specifically, women are not allowed more than “temporary stays” at combat bases. *Id.* To comply with the policy, female Marines in one outpost were directed to return to the combat outpost every six weeks and stay overnight at a big base, only to return to their “temporary” combat outpost the next morning. *Id.*

⁴⁵ *Writer: Ending Ban on Women in Combat is Long Overdue*, NPR RADIO BROADCAST (Mar. 1, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=124199184>.

everywhere that they did. My team had to go outside the wire – that’s what we say when we have to leave our operating bases and go to say, a school or medical facility to conduct an assessment. You know, we had to go outside the wire pretty much every day that we were there . . . And every day that you leave the wire, you’re at risk for IEDs, small-arms fires, rocket-propelled grenades. So, you face these dangers as same as the infantry did.⁴⁶

For Ross and many other women like her, the experiences of combat are barely distinguishable from those of the men with whom she serves. As women’s advocates have long argued, current federal policy is not in line with current practices.⁴⁷ Despite the federal policy that bans women from units engaged in ground combat, OIF and OEF have seen record service from women.⁴⁸ Moreover, the nature of the wars in Iraq and Afghanistan has made the combat and non-combat “distinction” for women in the military even more absurd. Professor Helen Benedict asserts that the experiences of the female troops in Iraq and Afghanistan belie the artificial distinction for thousands of women: “Because these are guerilla wars, no front line divides combat from non-combat troops, and because women are allowed in ‘combat support’ jobs, their work is often indistinguishable from that of the men.”⁴⁹ The unique circumstances of the current wars, combined with the increasing role of women in the military, have made the typically severe consequences of battle even more pronounced among women who serve.

II. PTSD AMONG FEMALE VETERANS

PTSD typically is the result of exposure to “an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury[.]”⁵⁰ Symptoms of PTSD may include nightmares, difficulty falling asleep, hyper vigilance, and outbursts of anger.⁵¹ Furthermore, people suffering from PTSD show a high correlation with major depression, panic disorders, obsessive-compulsive disorders and social phobias.⁵² Combat has long

⁴⁶ *Id.*

⁴⁷ See *Women in Combat, The Facts*, SERVICE WOMEN’S ACTION NETWORK (Feb. 2011), <http://servicewomen.org/wp-content/uploads/2011/01/97-WIC-fact-sheet.pdf>. The Service Women’s Action Network (“SWAN”) are advocates for female soldiers and equality in the military. *Id.* This organization works with senators and representatives to inform them on the issues that affect service women and female veterans, especially repealing restrictions on women in combat. See generally SERVICE WOMEN’S ACTION NETWORK, <http://servicewomen.org> (last visited Oct. 31, 2011).

⁴⁸ See Steven Lee Myers, *Living and Fighting Alongside Men, and Fitting In*, N.Y. TIMES (Aug. 17, 2009), <http://www.nytimes.com/2009/08/17/us/17women.html>.

⁴⁹ Helen Benedict, *The Combat Ban: Female Soldiers Are Already in Combat*, PBS, Feb. 24, 2010, <http://www.pbs.org/pov/rcgardingwar/conversations/women-and-war/the-combat-ban-female-soldiers-are-already-in-combat.php>.

⁵⁰ AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 463 (4th ed. 2000) [hereinafter DSM].

⁵¹ *Id.* at 464.

⁵² *Id.* at 465.

been one of the most severe stressors for PTSD.⁵³ As the troops prepare to come home,⁵⁴ more veterans will seek mental health care. According to a recent Pentagon study, hundreds of thousands of troops from Iraq and Afghanistan are showing symptoms of PTSD.⁵⁵ In fact, PTSD rates are as high as eighteen percent between OEF and OIF veterans,⁵⁶ a jump of ten percent when compared to veterans of the first Gulf War.⁵⁷ Among soldiers recently returned from deployment, almost forty percent are struggling with PTSD.⁵⁸ So, how do women fit into this phenomenon?

Women make up about fifteen percent⁵⁹ of today's active-duty military, and one in ten veterans, including both men and women, return from deployment in Iraq with mental health issues.⁶⁰ The veterans' group "Swords to Plowshares" reports that female veterans suffer from PTSD at rates twice that of their male counterparts.⁶¹ While women are at high risk for PTSD because of the usual triggers mentioned above, those women who serve in Iraq and Afghanistan face heightened triggers, stemming in part because of their high risk of exposure to military sexual trauma.⁶² Furthermore, Veterans' advocates say women are unable to access the care needed at VA hospitals that are primarily experienced in treating male patients.⁶³ VA medical facilities have already been criticized as deficient in meeting the needs of women for primary medical care.⁶⁴ For example, a 2010

⁵³ *Id.* at 466.

⁵⁴ Helene Cooper & Sheryl Gay Stolberg, *Obama Declares End to Combat Mission in Iraq*, N.Y. TIMES (Aug. 31, 2010), <http://www.nytimes.com/2010/09/01/world/01military.html> (reporting President Barack Obama's announcement of an end to the seven-year American combat mission in Iraq).

⁵⁵ Ann Scott Tyson, *Pentagon Report Criticizes Troops' Mental-Health Care*, WASH. POST (June 16, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/14/AR2007061401643.html>.

⁵⁶ *Mental Health Effects of Serving in Afghanistan and Iraq*, U.S. DEP'T OF VETERANS AFFAIRS (last updated June 21, 2011), <http://www.ptsd.va.gov/public/pages/overview-mental-health-effects.asp>.

⁵⁷ *See Effects of Persian Gulf War on U.S. Veterans*, U.S. DEP'T OF VETERANS AFFAIRS (June 21, 2011), <http://www.ptsd.va.gov/public/pages/effects-persian-gulf-war-vets.asp>.

⁵⁸ Tyson, *supra* note 55.

⁵⁹ Amanda Falcone, *Their Band of Sisters; Connecticut Women Share Experiences In Veterans' Network*, HARTFORD COURANT, Sept. 7, 2010, available at 2010 WLNR 17941241 (stating that 14.3 percent of active duty personnel nationwide are women).

⁶⁰ Porter, *supra* note 4.

⁶¹ Michael B. Farrell, *Wounds of Iraq War: U.S. Struggles With Surge of Returning Veterans*, CHRISTIAN SCIENCE MONITOR, Aug. 16, 2010, <http://www.csmonitor.com/USA/Military/2010/0816/Wounds-of-Iraq-war-US-struggles-with-surge-of-returning-veterans>.

⁶² *See* Marilyn Elias, *15% of Female Veterans Tell of Sexual Trauma*, USA TODAY (Oct. 28, 2008), http://www.usatoday.com/news/health/2008-10-28-military-women-sexual-trauma_N.htm. A wide-sweeping study of more than 125,000 people who received care from the VA between October 2001 and October 2007 was the first of its kind to screen veterans for sexual harassment and sexual assaults. *Id.* An informal survey of health care providers at Walter Reed Army Medical Hospital and Bethesda Naval Hospital found that almost 65 percent of the respondents said sexual trauma was an issue for female patients with PTSD. *PTSD in Women Returning From Combat: Future Directions in Research and Service Delivery*, SOCIETY FOR WOMEN'S HEALTH RESEARCH 1, 4 (2008), http://www.womenshealthresearch.org/site/DocServer/PTSD_in_Women_Returning_From_Combat--reduced_file_size.pdf?docID=2661 [hereinafter SWH RESEARCH].

⁶³ Farrell, *supra* note 61.

⁶⁴ *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-287, VA HEALTH CARE, VA HAS TAKEN

report from the Government Accountability Office stated that the VA has failed to protect the comfort and privacy of women seeking gynecological care.⁶⁵ Mental health experts say such failures translate to more reluctance among women who need to seek help from VA for other problems, including physical and mental health issues.⁶⁶

Most research models intended to improve patient care for soldiers with PTSD have been built around men.⁶⁷ More psychobiological research is needed to better understand the impact of high-stress populations among large populations of women.⁶⁸ Further, men and women exhibit stress differently, and many screening models reflect implicit male bias.⁶⁹ According to the Society of Women's Health Research, which studies PTSD among women returning from combat, there are some key sex differences among people suffering from PTSD.⁷⁰

For instance, women generally are more susceptible to developing PTSD because they have more ruminative coping patterns, as well as greater frequency and greater intensity of negative emotions.⁷¹ Women also display more autonomic responses to aversive content than their male counterparts, another contributor to PTSD.⁷² Researchers have also found that women with PTSD are more likely than males to have major depressive disorder and tend to experience symptoms for a longer duration.⁷³

For example, a female former Army medical assistant who served in the Persian Gulf War was discharged in late 1991 and returned to her home life unable to leave her house on most days, even a decade after her discharge.⁷⁴ "Things fell apart," she told a reporter, explaining that her "life felt like a slow-motion picture."⁷⁵ Former Army Sergeant Angel Harris experienced similar isolation and

STEPS TO MAKE SERVICES AVAILABLE TO WOMEN VETERANS, BUT NEEDS TO REVISE KEY POLICIES AND IMPROVE OVERSIGHT PROCESSES (2010). "The health care services needed by women veterans are significantly different from those required by their male counterparts in several respects." *Id. at 1*.

⁶⁵ *Id. at 21*.

⁶⁶ *Id.*

⁶⁷ SWH RESEARCH, *supra* note 62, at 9.

⁶⁸ *Id.* The phenomenon of women and PTSD could be reviewed in the context of law enforcement, for example. *Id.*

⁶⁹ *Id. at 3*.

⁷⁰ *See generally id.*

⁷¹ *Id.* Women, according to some research, are more likely to "hold onto" negative memories more than their male counterparts. *Id. at 3*. A survey of health care providers at Walter Reed Army Medical Hospital and Bethesda Naval Hospital found that 35 percent of clinicians responding said their female PTSD patients reported more depressive symptoms than their male PTSD patients, who reported more irritability and anger. *Id. at 4*.

⁷² *Id. at 3*.

⁷³ *Eliminating the Gaps: Examining Women Veterans' Issues: Hearing Before the Subcommittee on Disability Assistance and Memorial Affairs, House Veterans' Affairs*, 111th Cong. 32 (2009) (statement of Janice Krupnick, Professor, Department of Psychiatry, Director, Trauma and Loss Program, Georgetown University Medical Center), 2009 WLNR 13839549.

⁷⁴ Nguyet Le Thomas, *The Invisible Epidemic*, ORANGE CNTY METRO., Sept. 16, 2004, available at 2004 WLNR 15571303.

⁷⁵ *Id.*

paranoia when she returned from Afghanistan.⁷⁶ The combat photographer said during her stay in the Army that she moved from a fearless warrior to a tormented soldier; by the time she left the service, she had one nagging, persistent feeling: “something is wrong with me.”⁷⁷ After surviving tours that exposed her to the mangled wreckage of a down helicopter and dead soldiers and a mortar attack on a village, Harris returned to her former life in the suburbs and tried to assume the role of wife, mother and play-date organizer.⁷⁸ None of it worked.⁷⁹ She filed for divorce and rented an apartment.⁸⁰ After years of suffering, she was approved for PTSD benefits and started getting weekly treatments.⁸¹

Because women are faced with additional stressors that contribute to PTSD—serving as primary caregivers for children and trying to defy stereotypes—⁸²the VA must develop more gender-sensitive programs to improve the diagnosis and treatment of female veterans suffering from PTSD.⁸³

As more women return home—an increase fueled by more women in the military generally and the dawn of the wars in Iraq and Afghanistan—⁸⁴the VA will be pressed to provide adequate mental health care treatment for women veterans. Unless and until the special contributors for PTSD among women in the military are addressed, the VA will not be able to respond properly to this crisis among female veterans. It is critical that the government improve its screening process for women in combat struggling with PTSD. In addition, treatment options for women suffering from PTSD should be expanded to address the way in which the disorder manifests in women. Despite heightened public awareness and United States government investments in treatment programs for veterans, the number of male and female soldiers and veterans suffering from PTSD continues to rise among troops who have served in Iraq and Afghanistan.⁸⁵

As will be demonstrated in more detail below, American troops serving in Iraq and Afghanistan are also confronted with several specific contributors to the high incidence of PTSD. These contributors include multiple deployments,⁸⁶

⁷⁶ Faye Fiore, *Women Vets' Uphill Fight*, CHI. TRIB., Apr. 15, 2011, available at 2011 WLNR 7363247.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Holly Scscl, Mary Sorisio & Paul Sorisio, *Consequences of Combat: A Review of Haunted by Combat: Understanding PTSD in War Veterans Including Women, Reservists, and Those Coming Back from Iraq: And Moving A Nation to Care: Post-Traumatic Stress Disorder and America's Returning Troops*, 1 VETERANS L. REV. 254, 260 (2009).

⁸³ *See id.* at 264.

⁸⁴ LaPlantc, *supra* note 12 (stating that nearly a quarter of a million women have served in Afghanistan and Iraq).

⁸⁵ James C. McKinley Jr., *Despite Army Efforts, Soldier Suicides Continue*, N.Y. TIMES (Oct. 11, 2010), <http://www.nytimes.com/2010/10/11/us/11suicides.html>.

⁸⁶ Devon Haynic, *Deployments Take Heavy Toll; Stress Symptoms Rise with Multiple Tours*, FORT WAYNE J. GAZETTE (Jan. 17, 2010), <http://www.journalgazette.net/article/20100117/LOCAL12/>

ambivalence from the general public regarding the legitimacy of the wars,⁸⁷ waging war against combatants with unconventional practices,⁸⁸ the stigma associated with mental-health treatment,⁸⁹ and advances in body-blocking armor.⁹⁰

Research findings by mental health experts suggest that multiple deployments aggravate the circumstances surrounding PTSD and combat.⁹¹ The incidence of PTSD has grown as more and more United States troops have been exposed to combat.⁹² The extension of war zone rotations is also identified as a prime contributor to the prevalence of PTSD between OEF and OIF veterans.⁹³ Rotations are now longer than ever,⁹⁴ and more troops are being sent on repeated tours.⁹⁵ A military report compiled as part of the military's suicide prevention program found that there was a "significant relationship between suicide attempts and number of days deployed' in Iraq, Afghanistan, or nearby countries where troops are participating in the war effort."⁹⁶ A 2008 study conducted by the United States Army Surgeon General confirmed the correlation between multiple deployments and mental health issues.⁹⁷ The study found an 11.9% incidence of mental health problems among soldiers with a single deployment, 18.5% among those with two deployments and 27.2% among those with three or four deployments.⁹⁸ Soldiers serving in Iraq and Afghanistan are not only serving longer tours but are also serving multiple tours of duty.⁹⁹ The strong correlation between deployments and PTSD suggests that the longer soldiers are exposed to deployment, the more likely they will exhibit signs of mental health problems such as PTSD.¹⁰⁰

301179914/1028/LOCAL12.

⁸⁷ Jia-Rui Chong, *Percentage of Veterans With Mental Health Problems Jumps Dramatically*, L.A. TIMES (July 16, 2009), http://latimesblogs.latimes.com/booster_shots/2009/07/veterans-mental-health-veterans-affairs-study-.html.

⁸⁸ Farrell, *supra* note 61.

⁸⁹ See Olympia Duhart, *OutCrit Jurisprudence and Soldier Suicides: An Anti-Subordination Analysis*, 44 CREIGHTON L. REV. 883 (2011).

⁹⁰ Mark Thompson, *An Rx for the Army's Wounded Minds*, TIME, Aug. 16, 2010.

⁹¹ *Id.*

⁹² James Cogan, *Sharp Increase in Mental Illness Among US Troops During 2007*, WORLD SOCIALIST WEBSITE (May 29, 2008), <http://www.wsws.org/articles/2008/may2008/ptsd-m29.shtml>.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Pauline Jelinek, *Army Suicides Highest in 26 Years*, WASH. POST (Aug. 16, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/15/AR2007081502027.html>.

⁹⁷ Haynie, *supra* note 86.

⁹⁸ *Id.*; see also Captain Gene Thomas Gomulka, *Saving Military Families*, MIL. REV. (Jan.-Feb. 2010), http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/Military_Review_20100228_art017.pdf.

⁹⁹ *America Owes its Veterans a Proper Welcome*, THE MODESTO BEE, Feb. 8, 2010, <http://www.modbee.com/2010/02/08/1040682/america-owes-its-veterans-a-proper.html>.

¹⁰⁰ See Major Tiffany M. Chapman, *Leave No Soldier Behind: Ensuring Access to Health Care for PTSD-Afflicted Veterans*, 204 MIL. L. REV. 1, 16 n.76 (2010).

Public opinion of the war involvement may also contribute to the incidence of PTSD among troop members.¹⁰¹ At its high, 68 percent of surveyed Americans opposed the United States' war in Iraq.¹⁰² Research on soldier suicides suggests that waning public support increases the risk of mental health problems among veterans returning from Iraq and Afghanistan.¹⁰³ Popular sentiment about the war impacts the psychological well-being of veterans in many ways. Apathy and estrangement from the public strips the veteran of the ability to see positive meaning for his or her involvement in the war.¹⁰⁴ An unpopular war also increases avoidance symptoms for veterans as they attempt to distance themselves from the war as they privately "battle existential conflicts, feelings of shame, alienation, homelessness, and unemployment."¹⁰⁵ The nontraditional characteristics of the wars in Iraq and Afghanistan also contribute to the problem.¹⁰⁶ Unconventional tactics used by insurgents in Iraq and Afghanistan, such as suicide attackers and the use of roadside bombs and improvised explosive devices, "have wreaked havoc on the military as well as on veterans' psyches."¹⁰⁷ One of the results of being in life-threatening situations with people wielding home-made explosive devices is that such weapons are usually set off in close proximity to intended targets and often include the death or injury of civilians.¹⁰⁸ Furthermore, the likelihood of indiscriminate violence is particularly charged. It increases significantly the chance that the soldier will see or be forced to handle human remains, another contributor to PTSD.¹⁰⁹

Body-blocking armor may also play a role in the high incidence of PTSD among Iraq and Afghanistan veterans. In short, advanced body armor and battlefield medical procedures are able to keep seriously injured soldiers alive.¹¹⁰ Researchers have identified a double-edged sword to the technological advances that spare the lives of veterans. Yes, more soldiers are surviving attacks that would have killed them in the past.¹¹¹ However, the success over physical demise means that survivors are left to combat excessive psychological duress.¹¹² Consequently,

¹⁰¹ Chong, *supra* note 87.

¹⁰² *Iraq*, POLLINGREPORT.COM (Jan. 21-23, 2011), <http://www.pollingreport.com/iraq.htm>.

¹⁰³ Chong, *supra* note 87. Low public support translates to low morale among troops. *Id.* It is likely that the veteran returning from an unpopular war is even more isolated than his or her counterpart returning from a war with strong public support. *Id.* Such isolation contributes to feelings of depression. *Id.*

¹⁰⁴ Seescl et al., *supra* note 82, at 264.

¹⁰⁵ *Id.*

¹⁰⁶ See James Dao, *Vets' Mental Health Diagnoses Rising*, N.Y. TIMES (July 16, 2009), <http://www.nytimes.com/2009/07/17/health/vicws/17vets.html>.

¹⁰⁷ Farrell, *supra* note 61. The blurry front lines have made the mission more complicated and decreased stability for servicemembers.

¹⁰⁸ See Cooke, *supra* note 2, at 491.

¹⁰⁹ *Id.*

¹¹⁰ Vernon Loeb, *Number of Wounded in Action on Rise*, WASH. POST (Sept. 2, 2003), <http://www.washingtonpost.com/ac2/wp-dyn/A12096-2003Sep1>.

¹¹¹ *Id.*

¹¹² See Greg Jaffe, *Military Reckons with the Mental Wounds of War*, WASH. POST (July 18, 2010),

veterans who have survived massive destruction are not capable of effectively processing their experiences.¹¹³ Additionally, body-blocking armor may also contribute to a high incidence of brain injuries among veterans.¹¹⁴ Surviving soldiers are plagued with more brain injuries because the armor that has protected their bodies has exposed their skulls and brains to serious injury.¹¹⁵ For example, medical researchers have linked bruised brains to “persistent stress-hormone releases” that lead to PTSD.¹¹⁶

These “signature” wounds—traumatic brain injuries and PTSD—have been overwhelmingly debilitating for both men and women serving in Iraq and Afghanistan.¹¹⁷ For male and female soldiers fighting in Iraq and Afghanistan, these usual triggers for PTSD have been heightened.¹¹⁸ Women in the military are already navigating the PTSD triggers that plague every service member; however, women are also confronted with the additional stressor of the combat exclusion.

III. COMBAT EXCLUSION AS A CONTRIBUTOR TO PTSD AMONG WOMEN

The combat restrictions that apply to women in the military have also had deleterious effects on the women in uniform who are struggling to gain recognition for their accomplishments and treatment for their injuries. The primary complaint about the so-called “combat ban” is that the policy does not match the reality for many women serving the United States.¹¹⁹ Historically, women have been deliberately excluded from military service. However, as noted above, a comparison of the current policies and the current practices reveals that official policy rarely aligns with the actual practices. This fiction exacerbates the stress that women face and further complicates their battles with PTSD. On one hand, women are relegated to non-combat status through official policy; on the other hand, women are actually serving in combat. Such service exposes them to all of the risks of combat while stripping them of any of the rewards, including the most basic “reward” of service recognition. As discussed below, the lack of unit cohesion is a major factor in the isolation that depressed veterans struggle against.

<http://www.washingtonpost.com/wp-srv/special/nation/mental-wounds/TBI-1.html>.

¹¹³ See Haynic, *supra* note 86. For example, one soldier reported that during a second tour in Iraq, he witnessed his closest friends being fatally shot by a sniper, the death of four soldiers by being burned in a Humvee and “scores of dead Iraqi civilians.” *Id.*

¹¹⁴ See VANESSA WILLIAMSON & ERIN MULHALL, INVISIBLE WOUNDS: THE PSYCHOLOGICAL AND NEUROLOGICAL INJURIES CONFRONT A NEW GENERATION OF VETERANS 3 (2009), available at http://iava.org/files/IAVA_invisible_wounds_0.pdf. Closed head wounds from blasts, which can damage the brain without leaving a mark, affect almost 70 percent of the 33,000 wounded in action in blast-related incidents in Iraq. *Id.* The “invisible” nature of the wounds compounds screening and treatment effectiveness. *Id.*

¹¹⁵ Mark Thompson, *An Rx for the Army's Wounded Minds*, TIME, Aug. 16, 2010, <http://www.time.com/time/magazine/article/0,9171,2008886,00.html>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Duhart, *supra* note 89.

¹¹⁹ *Writer: Ending Ban on Women in Combat is Long Overdue*, *supra* note 45.

The combat ban as applied to women destroys their opportunity to participate fully in the military and experience the safety net of unit cohesion.

Moreover, the combat ban contributes to the public's confusion regarding the role of women in the military and frustrates mental health services for female veterans battling PTSD.¹²⁰ Specifically, the misperception about women's limited role in the military complicates the delivery of mental health services by both government and private providers because the ban reinforces the myth that women are not directly exposed to combat situations. This erroneous perception likely makes PTSD among women misdiagnosed. Doctors in the VA and in private practice are still uneducated about the combat role that many women are playing in the military; therefore, they are less likely to screen for serious mental health disorders—such as PTSD—typically associated with combat. The current combat ban is thus a critical contributor to PTSD among women veterans. If women have been serving at record numbers in the war, taking on many of the same tasks as their male counterparts, and sacrificing their safety and lives in the service, why is the federal government so reluctant to correct the disconnect¹²¹ that exists between the service and policy guidelines?

Normative expectations also exacerbate the risk of PTSD among women in the military. In the United States military, the historical exclusion of women has been justified through arguments rooted in societal perception of women as mothers and domestic beings.¹²² Hyper-masculine images of war troops are manifested in some of the unspoken concerns that men have about women joining them in battle. General William Westmoreland said what a lot of his colleagues think: “No man with any gumption wants a woman to fight his nation's battles.”¹²³ Such views are not limited to a single outspoken opponent to women in combat. These views have been implicitly endorsed by the United States Supreme Court in *Rostker v. Goldberg*, where the Court indirectly supported the combat restriction on women through its direct support of restricting the Selective Service registration to

¹²⁰ The combat ban negatively impacts the screening process both within and beyond the VA. Because health professionals are under the misconception that women do not participate in combat, “PTSD symptoms may go unrecognized or be misdiagnosed.” SWH RESEARCH, *supra* note 62, at 9.

¹²¹ In the movie *Lioness*, filmmakers Meg McLagan and Daria Sommers highlighted the “paperwork disconnect” between the official verified record of female soldiers and documentation trail once required by the VA to process claims. Meg McLagan & Daria Sommers, *The Combat Ban and How it Negatively Affects Women Veterans*, PBS, Mar. 22, 2010, <http://www.pbs.org/pov/regardingwar/conversations/women-and-war/the-combat-ban-and-how-it-negatively-affects-women-veterans.php>. The film was screened on Capitol Hill in 2009 before members of Congress and veterans advocates to raise awareness about the inherent difficulty in the VA claims process for women seeking treatment for PTSD. *Id.*

¹²² “Women are the ones who give birth, without which the propagation of the species would not be perpetuated. I just don't believe we have to subject women to the horrors and rigors of war.” RUSH LIMBAUGH, III, *THE WAY THINGS OUGHT TO BE* 201 (Pocket ed., 1st ed. 1992).

¹²³ Statement of General Westmoreland, who expressed a one-time common attitude. See KATHARINE T. BARTLETT & DEBORAH L. RHODE, *GENDER AND LAW: THEORY, DOCTRINE, AND COMMENTARY* 367 (4th ed. 2006).

men.¹²⁴ More importantly, the Court's reliance on a 1980 report by the Senate Committee on Armed Services demonstrated its adherence to gender-based expectations for combat roles. The report stated, "[T]he principle that women should not intentionally and routinely engage in combat is fundamental, and enjoys wide support among our people."¹²⁵ First, both houses of Congress adopted the report, evidencing congressional endorsement for these views in 1980.¹²⁶ Second, since the report was adopted, Congress has had an opportunity to address the combat ban—and has made some changes¹²⁷—but has still not taken the critical step of banning fully gender-based assignments in the military. Therefore, Congress has still not successfully repudiated its support of gender norms related to women in the military.¹²⁸

The societal norms that negatively impact women in the military, as displayed by action—and inaction—by federal lawmakers, justices and military leaders, reinforce the subordination of women. These norms may also limit a female service member's willingness to request assistance for mental health issues, for she is already aware of society's limited expectations for her and is therefore less likely to request assistance for dealing with the mental strains of war. Furthermore, women in the military naturally may be more reluctant than their male counterparts to seek treatment for mental health disorders. Counselors have identified a phenomenon that challenges the standard assumption that women are more sensitive to pain than their male counterparts.¹²⁹ Among veterans, experts say, females "tend to be even more stoic than men,"¹³⁰ and counselors say that women tend to be suspicious of the VA's bureaucracy and more likely to "put up with bad situations longer" than men.¹³¹ This phenomenon may be even more pronounced in the military, where many women are still battling stereotypes about their inability to fully participate in combat. A congressional study commission that recently recommended an end to the ground combat ban has crystallized the

¹²⁴ *Rostker v. Goldberg*, 453 U.S. 57 (1981); see also John M. Kang, *The Burdens of Manliness*, 33 HARV. J.L. & GENDER 477, 496-499 (discussing, in part, the ground combat prohibition on women as proof of America's stereotypical expectations regarding men and bravery).

¹²⁵ S. REP. NO. 96-826, at 157 (1980), reprinted in 1980 USCCAN 2612, 2647.

¹²⁶ See *Rostker*, 453 U.S. at 65.

¹²⁷ See discussion, *supra* pp. 331-333 and accompanying notes.

¹²⁸ In a 1992 hearing by the House Committee on Armed Services, an Army General commented during a debate regarding the exclusion of women from combat. While recognizing that excluding women from combat limited their professional advancement, he ultimately concluded that he held a "traditional attitude about wives and mothers and daughters being ordered to kill people." *Gender Discrimination in the Military: Hearings Before the Military Personnel And Compensation Subcommittee and Defense Policy Panel, Committee on Armed Services*, 102nd Cong. 78 (1992) (statement of General Merrill A. McPeak, Chief of Staff, U.S. Air Force).

¹²⁹ *In Pain, Women Soldiers May Be Tougher*, N.Y. TIMES BLOG (Oct. 30, 2009, 7:17 PM), <http://atwar.blogs.nytimes.com/2009/10/30/in-pain-women-soldiers-may-be-tougher> (reviewing a study of the records of veterans from Iraq and Afghanistan that found that women were less likely than men to report physical pain than men).

¹³⁰ Porter, *supra* note 4.

¹³¹ *Id.*

connection between the service restriction placed on women and the perceptions about their resilience.¹³² “[B]eing ineligible for infantry may be perceived to make a female soldier ‘less Army.’”¹³³ As a result, women may be reluctant to seek help for combat-stress related illness for fear that it will make them appear weak,¹³⁴ a stereotype reinforced by the combat ban exclusions that restrict them.

Despite the persistence of norms that highlight the sex-role stereotyping, current circumstances may lead to a swing in normative expectations. First, however, there must be a concerted effort to correct many of the cultural misconceptions that exist about women’s roles in the military and their roles at home. These cultural shifts can open the door for women and alleviate the high rates of PTSD among them. It may also fuel a reexamination of the discriminatory military policies. The limits imposed in the 1980s are now so far removed from reality and such a contributor to gender roles in the 21st century that they now appear “wrong, inequitable and even invidious.”¹³⁵

IV. CONTROLS FOR PTSD AMONG WOMEN

Though the cards seemed stacked in so many ways against women in the military, there are opportunities to address the high incidence of PTSD among female veterans. One control that may help address PTSD among women has emerged through reform efforts of the VA to improve PTSD treatment options for women who have served in the military. Although the new guidelines promulgated by the VA are an important first step in improving access to mental health care, anti-subordination efforts will also require a complete transformation in the official Department of Defense policy. Such a change may also be accomplished by the Pentagon itself or through a ruling by the United States Supreme Court.¹³⁶

¹³² DIVERSITY LEADERSHIP, *supra* note 13, at 117.

¹³³ WOMEN IN COMBAT, *supra* note 34, at 4; *see also The Reality of Women at War*, N.Y. TIMES (Apr. 14, 2011), <http://www.nytimes.com/2011/04/14/opinion/14thu4.html>.

¹³⁴ *Women & PTSD*, NAVAL CENTER COMBAT & OPERATIONAL STRESS CONTROL (Mar. 2007) <http://www.med.navy.mil/sites/nmcsc/nccosc/serviceMembers/Pages/ptsdBasicFacts/womenAndPTSD.aspx>.

¹³⁵ Hasday, *supra* note 17, at 103.

¹³⁶ Even if the United States Supreme Court does not rule on a policy, concerns about the constitutionality of Department of Defense policy could help shape more gender-neutral guidelines, serving as another “control” for the gender-based exclusion policies.

A. Reform Efforts as a Remedy

In July 2010, the VA simplified the process by which veterans with PTSD could access health care benefits.¹³⁷ The new regulations liberalize the evidentiary standard and the earlier requirement of a corroboration of a PTSD stressor—a rule that often blocked access for female veterans seeking treatment for PTSD.¹³⁸

Prior to the new guidelines, which took more than a year of work by administration officials under President Barack Obama, female veterans had a more difficult time earning benefits because of the Pentagon restrictions on combat.¹³⁹ Previously, women faced additional causation hurdles in trying to process medical claims benefits.¹⁴⁰ Prior to the new legislation, the VA's Office of Inspector General found that women were denied PTSD claims at a higher rate than men because the VA required a combat badge or ribbon prior to approving compensation.¹⁴¹

Restricted on paper to noncombat roles, women were not able to satisfy the evidentiary standard for demonstrating a service connection for combat-related PTSD diagnosed post-service as readily as their male counterparts.¹⁴² Moreover, troops in noncombat roles were required to prove harm to satisfy a claim; therefore, the higher burden made claims for these veterans more difficult to collect.¹⁴³ This hurdle proved to be extremely problematic in the realm of PTSD treatment because

¹³⁷ See generally Caregivers and Veterans Omnibus Health Services Act of 2010, Pub. L. No. 111-163, 124 Stat. 1130; see also National Center for PTSD, *Fact Sheet: New Regulations on PTSD Claims*, U.S. DEP'T OF VETERANS AFFAIRS (July 12, 2010), http://www.va.gov/PTSD_QA.pdf. The new guidelines liberalize the causation requirement for veterans seeking benefits, thus making it easier for women and men to access mental health care benefits. Jeremy Schwartz, *More Vets May Get Treatment for PTSD: Women, Barred From Combat But Still in Danger, Stand to Benefit From Change*, AMERICAN STATESMAN (July 13, 2010), <http://www.statesman.com/news/texas-politics/more-vets-may-get-treatment-for-ptsd-801048.html>. Previously, claims often stalled under the pressure on veterans to show that the complained of injury was caused by combat. *Id.* The old rules were primarily a formality for combat troops, but women were unfairly denied claims because of their inability to prove that their PTSD was connected to a "service-related stressor." *Id.*

¹³⁸ Eric Shinkeski, *For Vets With PTSD, End of an Unfair Process*, USA TODAY (July 12, 2010), http://www.usatoday.com/news/opinion/forum/2010-07-12-column12_ST2_N.htm.

¹³⁹ Ed O'Keefe, *Rules Eased for Filing PTSD Claims*, WASH. POST (July 9, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/08/AR2010070806109.html>.

¹⁴⁰ Schwartz, *supra* note 137.

¹⁴¹ Fiore, *supra* note 8. To clarify, women are eligible for combat action badges, provided they meet the requirements. See Army Regulation 600-8-22, Personnel-General, Military Awards, Section 8-8, Combat Action Badge.

¹⁴² Jennifer Schingle, *A Disparate Impact on Female Veterans: The Unintended Consequences of Veterans Affairs Regulations Governing the Burdens of Proof for Post-Traumatic Stress Disorder Due to Combat and Military Sexual Trauma*, 16 WM. & MARY J. WOMEN & L. 155, 157-58 (2009); see also Bryan A. Liang & Mark S. Boyd, *PTSD in Returning Wounded Warriors: Ensuring Medically Appropriate Evaluation and Legal Representation Through Legislative Reform*, 22 STAN. L. & POL'Y REV. 177, 197 (2011) (asserting that "noncombat" veterans had a difficult time proving service connectedness, especially in claims for PTSD).

¹⁴³ Liang & Boyd, *supra* note 143, at 196-97.

the combat experiences of women, and the correlated stressors, were not adequately recorded on their official verified service records.¹⁴⁴

Though there are more men in combat, the VA has still not provided adequate resources to meet the needs of the women in service. VA medical facilities lack the trained personnel and specialized programs to treat women suffering from PTSD.¹⁴⁵ The lack of combat recognition has made it much more difficult for women to receive early screening and treatment for PTSD. Because most medical professionals do not realize that so many women are serving in combat, women who need treatment for combat-related PTSD often fall through the cracks and thus their symptoms often go “unrecognized” or are “misdiagnosed.”¹⁴⁶

According to veterans’ advocates, however, there are still gaps in the protections offered to veterans. First, the new guidelines require final determination of a veteran’s PTSD case to be made by a psychiatrist or psychologist who works for the veterans department.¹⁴⁷ The final determination requirement puts more burdens on the fixed number of reviewers in the Department of Veterans Affairs and delays the adjudication process.¹⁴⁸ Some observers have also questioned whether the new process will invite abuse by those bringing fraudulent claims for financial gain.¹⁴⁹ The new guidelines are certainly a step in the right direction, but they do not go far enough to minimize the problem. Other potential remedies, including equal protection challenges, warrant consideration.

B. Equal Protection As a Remedy

The United States Constitution may also offer a means to help control the problem of PTSD among female veterans. Through a reading of the Fourteenth Amendment’s Equal Protection Clause,¹⁵⁰ the United States Supreme Court may find the combat exclusion policies unconstitutional. The gender-based classification may violate the equal protection guarantees. Such a step could help eradicate the stratifications between men and women in the military and alleviate some of the isolation that contributes to PTSD among women.

¹⁴⁴ See McLagan & Sommers, *supra* note 121.

¹⁴⁵ Penny Wakefield, *PTSD Doubly Disturbing for Female Vets*, 35 ABA HUMAN RIGHTS MAGAZINE 19 (2008); see also discussion *supra* pp. 336-37.

¹⁴⁶ SWH RESEARCH, *supra* note 62, at 9.

¹⁴⁷ James Dao, *V.A. Is Easing Rules to Cover Stress Disorder*, N.Y. TIMES (July 7, 2010), <http://www.nytimes.com/2010/07/08/us/08vets.html>.

¹⁴⁸ *Id.*

¹⁴⁹ Schingle, *supra* note 143, at 172-73.

¹⁵⁰ The 14th Amendment of the United States Constitution reads, in part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1 (emphasis added).

With *Rostker v. Goldberg*, the leading Supreme Court case on gender-based differences in the military, sex inequality in the military remained legalized.¹⁵¹ In *Rostker*, the United States Supreme Court considered a constitutional challenge to the Military Selective Service Act, which required male-only draft registration.¹⁵² The Court ruled that the gender-based distinction did not violate the Constitution, relying in large part on deference to Congress with regard to military affairs and Congress's endorsement of the "exclusion of women from combat in exempting women from registration."¹⁵³ As Professor Jill Elaine Hasday notes, restricting the role of women in the military "remained committed to restricting women's military service on the belief that women's real responsibilities were domestic and private rather than political and public."¹⁵⁴ The Court's decision in *Rostker* is fundamentally inconsistent with constitutional law jurisprudence connected to gender-based discrimination in other arenas.¹⁵⁵ In particular, the ruling cannot be reconciled with the Court's indictment of sex-role discrimination. A court committed to eradicating discrimination based on gender cannot justify a gender-based discriminatory military policy.

The United States Supreme Court has recognized since the 1970s that equal protection guarantees are violated through legislation that reinforces "sex-role pigeonholing."¹⁵⁶ Laws that enforce traditional sex roles contribute to women's subordination.¹⁵⁷ The combat ban reinforces the confinement of men and women to "separate spheres,"¹⁵⁸ and therefore is inconsistent with constitutional jurisprudence of sex equality.¹⁵⁹ Gender-based regulations are subject to intermediate scrutiny, a standard that has recently been strengthened in large part by the Court's treatment of gender-based regulations in cases such as *United States v. Virginia*.¹⁶⁰ In *Virginia*, the long-established test of intermediate scrutiny—that the government regulation be substantially related to an important state interest¹⁶¹—was reviewed through the "exceedingly persuasive justification" standard.¹⁶²

¹⁵¹ See *Rostker v. Goldberg*, 453 U.S. 57 (1981).

¹⁵² *Id.*

¹⁵³ *Id.* at 76-77.

¹⁵⁴ Hasday, *supra* note 17, at 99.

¹⁵⁵ *Id.* at 100.

¹⁵⁶ Franklin, *supra* note 40, at 123; see also Ruth Bader Ginsburg, *Women's Right to Full Participation in Shaping Society's Course: An Evolving Constitutional Precept*, in TOWARD THE SECOND DECADE: THE IMPACT OF THE WOMEN'S MOVEMENT ON AMERICAN INSTITUTIONS 176 (Betty Justice & Renate Pore eds., 1981).

¹⁵⁷ See Franklin, *supra* note 40, at 124 (asserting that United States Supreme Court Associate Justice Ruth Bader Ginsburg developed the link between sex-role enforcing laws and equal protection claims through looking at her briefs in two previous cases which, "[t]aken together...articulated a new constitutional argument" regarding sex-based stereotypes and equal protection).

¹⁵⁸ *Id.* at 89. See also, e.g., *Craig v. Boren*, 429 U.S. 190 (1976) (stating that classifications based on gender must serve important governmental objectives and be substantially related to the achievement of those objectives to withstand constitutional challenge).

¹⁵⁹ See generally Hasday, *supra* note 17.

¹⁶⁰ *United States v. Virginia*, 518 U.S. 515 (1996).

¹⁶¹ See *Craig*, 429 U.S. at 197; *Orr v. Orr*, 440 U.S. 268, 279 (1979); *Kirchberg v. Feenstra*, 450

Some scholars have dubbed the new standard “intermediate review with teeth,” essentially adding a fourth, higher tier for review impacting gender-based state regulations.¹⁶³

First, under the traditional, intermediate standard of review, gender-based combat restrictions are unlikely to survive. The federal government would have to demonstrate that it has an important interest in maintaining male-only combat units, an argument undermined by the military’s own practice of using women to serve in combat despite the paper-ban. In the alternative, the government might argue that the important state interest at stake would be the maintenance of military readiness and strength, another argument that fails because the military has not been harmed by the unofficial inclusion of women in combat. The state would also be unable to show that a male-only combat restriction is substantially related to the actual interest because of current reliance on females in combat. Next, applying the heightened standard of “exceedingly persuasive justification” makes the task even more daunting for the government. Elevating the standard of review, despite the state’s asserted interest, makes it less likely for a gender-based combat restriction to survive an Equal Protection challenge.

The United States Supreme Court in *United States v. Virginia* also recognized the inherent differences between men and women but stressed that the differences cannot justify “artificial constraints on an individual’s opportunity.”¹⁶⁴ The Court pointedly warned against state action that “denies opportunity to women (or to men).”¹⁶⁵ *Virginia* highlights the dangers of perpetuating women’s subordinated role in society.¹⁶⁶

In *Virginia*, the Supreme Court considered an equal protection challenge to the once all-male Virginia Military Institute.¹⁶⁷ Although the case did not address the role of women in active military service, there is no other arena more rife for exploration of the sex-role stereotyping doctrine than the military. As one observer noted:

It would be difficult to conceive of an activity more antithetical to the traditional conception of women’s role than military service. Historically, eligibility to serve in the military functioned as a defining characteristic of American manhood; like the franchise, it marked one as a full citizen of the

U.S. 455, 459-60 (1981).

¹⁶² *Virginia*, 518 U.S. at 558 (stating that the Commonwealth had not shown an “exceedingly persuasive justification” for withholding from women the training VMI afforded).

¹⁶³ Kathryn A. Lee, Note, *Intermediate Review ‘With Teeth’ in Gender Discrimination Cases: The New Standard in United States v. Virginia*, 7 TEMP. POL. & CIV. RTS. L. REV. 221 (1997). *But see Virginia*, 518 U.S. at 559 (Rehnquist, J., concurring) (stating that the “exceedingly persuasive justification” should be confined to an observation on the difficulty of meeting the applicable test, not a formulation of the test itself).

¹⁶⁴ *Virginia*, 518 U.S. at 533.

¹⁶⁵ *Id.* at 532.

¹⁶⁶ *See Franklin, supra* note 40, at 146.

¹⁶⁷ *United States v. Virginia*, 518 U.S. 515 (1996).

United States. Women traditionally counted as citizens in a different way; their contributions to the nation were defined principally in relation to wife- and motherhood.¹⁶⁸

By refusing to integrate women fully in the military, the combat ban solidifies the exclusion of women from one of the defining marks of full citizenship. It also impairs women and relegates them to a limited domestic role. Moreover, the ban codifies sex-based stereotyping about the capacity of women to effectively serve in the military.¹⁶⁹ Secondly, it imposes artificial constraints that deny women in the military the opportunity to be officially recognized for their service. In light of what the current practices are regarding the active role that women play in combat, the persistence of the ban on paper is also exploitative. It capitalizes on a woman's willingness and need to serve on ground combat while stripping women of the ability to gain recognition for such service. This on-going marginalization has created additional psychological obstacles for women as they seek to establish themselves among other members of the military.

The public support for integrating women fully into combat,¹⁷⁰ the negative impact that the discriminatory policy has on women, and the overwhelming evidence that women are actually serving in combat exemplify why the Supreme Court must re-examine the *Rostker* decision and its discriminatory endorsements.¹⁷¹ However, remedying the gender discrimination issues through the Court would require a litigant willing to challenge the assignment policies and a court willing to recede from its usual deference to military policy.¹⁷² Despite the potential case for a constitutional challenge to the combat exclusion policies, resolving the combat exclusion policies through the court system has its obvious challenges.

V. A CONGRESSIONAL CURE: REMOVING THE COMBAT EXCLUSION POLICES

Though it may appear counter-intuitive—given that war is such an acute stressor for people suffering from PTSD—one possible “cure” for the increasing rates of PTSD among women is an absolute repeal of all combat exclusion policies. Key research findings point to the need to dismantle all possible gender-based combat exclusion policies in the military by the passage of new legislation.¹⁷³ For

¹⁶⁸ Franklin, *supra* note 40, at 155.

¹⁶⁹ See generally Valorie K. Vojdik, *Beyond Stereotyping in Equal Protection Doctrine: Reframing the Exclusion of Women from Combat*, 57 ALA. L. REV. 303, 323-49 (2005).

¹⁷⁰ Notably, seven out of ten Americans surveyed support permitting women to serve in direct combat. O'Keefe & Cohen, *supra* note 31.

¹⁷¹ See Hasday, *supra* note 17, at 97.

¹⁷² Even in the face of clear moral imperatives, the United States Supreme Court has deferred to the military's expertise. See, e.g., *Winters v. Natural Resources Def. Council*, 555 U.S. 7 (2008) (deferring to the military's technical expertise in allowing the Navy to deafen and kill marine mammals while conducting submarine warfare training).

¹⁷³ Lisa Daniel, *Panel Says Rescind Policy on Women in Combat*, ARMED SERVICES PRESS SERVICE, Mar. 7, 2011, <http://www.defense.gov/news/newsarticle.aspx?id=63057>.

such a change to be uniformly implemented among various branches, and to recognize the critical role that women are playing in combat, statutory change is needed.

The United States Constitution gives the federal legislative branch broad power over the military.¹⁷⁴ Congress is explicitly granted the power in the Constitution to “raise and support Armies,”¹⁷⁵ “provide and maintain a Navy,”¹⁷⁶ and “make Rules for the Government and Regulation of the land and naval Forces.”¹⁷⁷ Furthermore, the United States Supreme Court has consistently noted that Congress’s power over the military is expansive: “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.”¹⁷⁸ Presently, Congress permits, but does not require, military services engaged in combat to place women in assignments. For instance, women in the United States military are used as “female engagement teams” to reach out to the community, especially Afghan women.¹⁷⁹ Women are also used to search Afghan women for improvised explosive devices.¹⁸⁰ As one Army Lieutenant said, every soldier in times of war is “in harm’s way.”¹⁸¹ Allowing women to gain the formal recognition for full participation in combat will mitigate the contributors in place for PTSD and strengthen the controls already advanced.

In light of the role that women are playing in the military and pressure from troop advocates and women’s rights advocates, Congress is once again considering an all-out repeal of the combat exclusion policy for women in the Armed Forces.¹⁸² Society’s view of women’s role in the military—a factor that helped propel change for gay and lesbian service-members—¹⁸³also drives the re-examination of these

¹⁷⁴ U.S. CONST. art. I, § 8.

¹⁷⁵ U.S. CONST. art. I, § 8, cl. 12.

¹⁷⁶ U.S. CONST. art. I, § 8, cl. 13.

¹⁷⁷ U.S. CONST. art. I, § 8, cl. 14.

¹⁷⁸ *United States v. O’Brien*, 391 U.S. 367, 377 (1968).

¹⁷⁹ Elisabeth Bumiller, *In Camouflage or Veil, A Fragile Bond*, N.Y. TIMES (May 28, 2010), <http://www.nytimes.com/2010/05/30/world/asia/30marines.html>.

¹⁸⁰ Lolita C. Baldor, *Death highlights women’s role in Special Ops teams*, Associated Press, Oct. 25, 2011, http://www.google.com/hostednews/ap/article/ALeqM5i9kS_0H8Tfx3pz3Jlckg190TsNA?docId=9805f16be7204b1e9bb1b187796e1ecf.

¹⁸¹ BARTLETT & RHODE, *supra* note 123, at 376.

¹⁸² See discussion regarding the new proposed legislation *infra* p. 351 and accompanying notes. In addition, a Department of Defense report on whether women should be allowed into direct combat was due to Congress on October 1, 2011. Rick Maze, *Report on Women in Combat Delayed Until October*, ARMY TIMES, Apr. 14, 2011, <http://www.armytimes.com/news/2011/04/military-report-on-women-in-combat-report-dclayed-until-october-041411w>.

¹⁸³ As the new repeal of “Don’t Ask, Don’t Tell” takes effect, it is an appropriate time for the military to reconsider another exclusionary policy in the United States Armed Forces; it is time to allow women in combat. In December 2010, Congress repealed the “Don’t Ask, Don’t Tell” policy that prevented openly gay and lesbian service people from serving in the United States Armed Forces. Devin Dwyer, *Senate Approves Repeal of ‘Don’t Ask Don’t Tell,’* ABC NEWS, Dec. 18, 2010, <http://abcnews.go.com/Politics/dont-ask-dont-tell-senate-advances-repeal-ban-gays-military/story?id=12429640>.

outmoded policies. In March 2011, a congressionally mandated commission recommended an end to the current ban. Chartered by Congress, the Department of Defense Military Leadership Diversity Commission was established as part of the National Defense Authorization Act of 2009.¹⁸⁴ Its report, which specifically alludes to the “perceptual barriers” that prevent women from obtaining key assignments within career ascension,¹⁸⁵ presents a compelling case for lifting the combat ban. The commission identified several negative consequences of the combat exclusion policies, most notably their impact on unit cohesion.¹⁸⁶

Unit cohesion is “the mutual support and bonds of friendship among members of the military unit.”¹⁸⁷ Furthermore, unit cohesion has been linked to determining the mental health effects of combat on troops.¹⁸⁸ A recently released study of National Guard members under mandatory deployment to Iraq found that women were more than twice as likely as their male counterparts to meet the criteria for PTSD after returning home.¹⁸⁹ It is important to note that there were no significant reported differences between the level of combat exposure for the men and women in the study.¹⁹⁰ There was, however, a marked difference in the reports of unit cohesion. The women were more likely to report a lack of unit cohesion during deployment.¹⁹¹

According to the report from the Military Leadership Diversity Commission:

[T]he Commission addressed arguments related to readiness and mission capability. One frequently cited argument in favor of the current policies is that having women serving in direct combat will hamper mission effectiveness by hurting unit morale and cohesion. Comparable arguments were made with respect to racial integration, but were ultimately never borne out. Similarly, to date, there has been little evidence that the integration of women into previously closed units or occupations has had a negative impact on important mission-related performance factors, such as unit cohesion.¹⁹²

Considering the expected positive impact on unit cohesion, it is likely that lifting the combat exclusion policies will improve the psychological resilience of women serving in the military. In the commission report, Recommendation 9 specifically calls on the Department of Defense and the Armed Services to

¹⁸⁴ O’Keefe & Cohen, *supra* note 31.

¹⁸⁵ DIVERSITY LEADERSHIP, *supra* note 13, at 68.

¹⁸⁶ *Report: Women Should Be Allowed in Combat Units*, USA TODAY (Jan. 16, 2011), http://www.usatoday.com/news/washington/2011-01-14-women-combat_N.htm.

¹⁸⁷ Shari Roan, *Women on War Front More Likely to Get Post-Traumatic Stress Disorder Than Men, Study Finds*, L.A. TIMES (May 19, 2011), <http://articles.latimes.com/2011/may/19/news/la-hcb-ptsd-women-military-20110519>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² DIVERSITY LEADERSHIP, *supra* note 13, at 71-72.

eliminate combat exclusion policies for women in the military, “including the removal of barriers and inconsistencies, to create a level playing field for all qualified servicemembers.”¹⁹³ The commission recommends a time-phased approach for opening units in “direct ground combat” to qualified women.¹⁹⁴ All recommendations will be reviewed by the Department of Defense.¹⁹⁵

Congress has already begun to respond to the call for lifting the ban. In May 2011, Representative Loretta Sanchez¹⁹⁶ sponsored H. R. 1928, the Women’s Fair and Equal Right to Military Service Act.¹⁹⁷ The bill would repeal all combat exclusions now in place and require the Secretary of Defense to revise the military personnel policies of the Department of Defense to prohibit any changes in military personnel policies that are based on gender.¹⁹⁸ According to the text of the bill, the purpose of the legislation is:

1) to ensure that modern military combat policies reflect the current operational environment of the combat operations; and 2) to raise the profile of the recognition that female members of the Armed Forces should receive for their service, particularly when it involves their contribution with regard to direct combat operations.¹⁹⁹

The “combat exclusion” policies have led to controversy regarding their application even within the military.²⁰⁰ By announcing a new policy that expressly forbids the military from making assignments based on gender, Congress can improve the status of women in the military in several ways. First, Congress can eliminate the confusion regarding assignment policies and practices for women in the military. Women will serve openly, be recognized for their service and stand in line to receive the benefits—professionally and psychologically—of serving in combat. It will also help both VA and private sector doctors screen women more readily for PTSD. Second, lifting the combat exclusion policies will bring the government’s official policy in line with what is already happening on the ground. Though combat is a contributor to PTSD, a change in policy does not actually alter the combat exposure risk to women in the military. However, as noted previously, it will legitimize the combat duty many already undertake.²⁰¹ Such legitimacy will promote full integration for women in the military and improve unit cohesion, the absence of which has been linked to PTSD. Finally, as also mentioned, lifting the combat ban can offer women the chance to be recognized fully for their

¹⁹³ *Id.* at 127.

¹⁹⁴ *Id.*

¹⁹⁵ Karen Parrish, *Congressional Commission Studies Women in Combat*, AMERICAN FORCES PRESS SERVICE, Jan. 14, 2011, <http://www.af.mil/news/story.asp?id=123238462>.

¹⁹⁶ Representative Loretta Sanchez is a Democrat from the 47th District of California.

¹⁹⁷ H.R. 1928, 112th Cong. (2011).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See DIVERSITY LEADERSHIP, *supra* note 13, at 71-74.

²⁰¹ See *supra* pp. 332-33 and accompanying notes.

commitments, dismantling the pattern of marginalization that has been entrenched for so many years in military policies. While lifting the combat ban in all branches of the military offers the greatest hope for full integration for women in the military, the concept of women in combat has reactivated several opponents to the change in policy.

A. *Counterarguments and Responses*

Opponents to women in ground combat are re-asserting many of the same arguments that have been used to frustrate progress on this issue for decades. Among the criticism of full integration are assertions that a government policy that requires gender-neutral combat assignments would weaken the military and expose women to more risk.²⁰² Others argue that both the courts and Congress should show more deference to the military operations in light of the special circumstances surrounding troops.²⁰³ And some opponents of including women in ground combat are pacifists opposed to war efforts waged by any gender.²⁰⁴

Opponents of having women in combat have long argued that the physical differences between the sexes simply precludes women from engaging in combat and that it also puts the entire unit in danger.²⁰⁵ As this contention goes, a woman in a combat unit would effectively weaken the unit of the group. A former tank commander in Desert Storm said: “A crew is a primary group, as the psychologists call it, and we believe that in combat motivation you fight for the primary group, which is only as good as its weakest member.”²⁰⁶ What is implicit in the statement, of course, is that any woman in a ground combat unit would undoubtedly be the “weakest member” of the unit.

However, a 2009 study by the Defense Department Advisory Committee on Women in the Services “actually found that a majority of focus group participants felt that women serving in combat in Iraq and Afghanistan have had a positive impact on mission accomplishment.”²⁰⁷ Participants also reported that “blanket restriction for women limits the ability of commanders in theater to pick the most capable person for the job.”²⁰⁸ Instead of having gender-based policies, “[a]s in civilian contexts, military positions requiring particular levels of strength,

²⁰² Wendy Kamincer, *Demasculinizing the Army*, N.Y. TIMES (June 15, 1997), http://www.nytimes.com/books/97/06/15/reviews/970615.15kaminet.html?_r=1.

²⁰³ *Rostker v. Goldberg*, 453 U.S. 57, 70 (1981) (defending the exclusion of women from the draft registration requirement largely on the basis of the need to maintain deference to the legislature, noting that broad power is given to the legislature to protect military flexibility). See also *Female Troops: Combat Ban Out of Step with Reality*, NPR RADIO BROADCAST (Mar. 1, 2011), <http://www.npr.org/2011/03/01/134168091/Female-Troops-Combat-Ban-Out-Of-Step-With-Reality>.

²⁰⁴ Mary E. Hunt, *Medals on Our Blouses? A Feminist Theological Look at Women in Combat*, 3 WATERSHED 3 (1990).

²⁰⁵ BREUER, *supra* note 22, at 173.

²⁰⁶ *Id.*

²⁰⁷ DIVERSITY LEADERSHIP, *supra* note 13, at 72.

²⁰⁸ *Id.*

endurance, or agility can be allocated under gender-neutral guidelines that match individual capabilities with job requirements.”²⁰⁹ Full inclusion of women in the military helps, rather than hinders, military readiness.

In response to the issue of continued deference to the military, Congress should not yield to discriminatory practices by the nation’s largest employer.²¹⁰ As we have seen, exclusions of women from combat have a negative impact on career opportunities for women who serve in the officer corps, and particularly in the Army and Marine Corps.²¹¹ Moreover, as noted, lifting the combat ban would also play a role in eradicating discrimination against women beyond the military.²¹² In addition, Congress’s usual deference to military policy should be trumped by the greater societal value of stamping out discrimination.

Truly, there is no adequate response to those categorically opposed to war efforts. However, the reality is that as the wars in Iraq and Afghanistan continue, women who are prohibited on paper from participating in direct combat are often doing so. Many have also lost their lives. Changing policy to reflect the reality of military practices offers some recognition for women who are serving in the Armed Forces. Finally, the incidence of PTSD among women veterans—exacerbated in large part by adherence to sex-role stereotyping—only strengthens the call to end discriminatory practices in the military. The higher rates of PTSD among women in the military and the shifting roles of women in service demand a heightened impetus to newly review the combat restrictions on women in the military.

CONCLUSION

The prevalence of PTSD among women in the United States Armed Forces is exacerbated by the unique status that women hold in modern-day military. Primarily, the high rates of PTSD among women in the military can be tied to the disconnect between the policy that effectively bars women from direct combat and practices that require them to fight—a conflict that highlights the gender-based expectations that still plague female soldiers as they attempt to succeed in dual roles. These patterns have made it especially difficult for women to access mental health treatment for PTSD. Despite the new regulations that went into effect in July 2010 to improve standards for women and other veterans who seek treatment for PTSD, the mental health needs of women in the military are still largely unmet. With so much at stake, waiting for federal courts to address the issue is too uncertain.

²⁰⁹ BARTLETT & RHODE, *supra* note 123, at 367.

²¹⁰ See generally Schingle, *supra* note 143.

²¹¹ WOMEN IN COMBAT, *supra* note 34, at 4.

²¹² See Robin Rogers, Comment, *A Proposal for Combatting Sexual Discrimination in the Military: Amendment of Title VII*, 78 CALIF. L. REV. 165 (1990). “Equality within the military would give women greater involvement and responsibility both within and outside the military.” *Id.* at 195.

On the heels of the congressionally mandated Military Leadership Diversity Commission report, Congress should feel empowered to act. Additionally, the high incidence of PTSD among women in the military should re-invigorate the challenge to the direct combat ban as applied to women and weaken Congress's deference to military policy. Congress's embrace of sex-neutral military policies will serve several important policies. It will bring outmoded military policies that ban women in combat into alignment with the current military practices. It will also reflect recognition by the government that sex-role stereotyping is inconsistent with constitutional guarantees. Finally, lifting the combat ban on women in the military will contribute in significant ways in efforts to minimize PTSD among women in the military. It will streamline and improve screening practices for military women suffering from PTSD, help build better treatment models for women and, hopefully, reduce new cases. By liberating female military members from the assigned sex roles that contribute to their isolation, the government can integrate them fully into the military, reduce their marginalization, and also bring long-denied equality to women willing to fight and die for their country.