



Congress Should Lift the Statutory Ban that Prevents Women from Using Private Funds to Access Abortion Services at U.S. Military Facilities

More than 365,000 women currently serve in the Armed Forces. At a time when the United States is engaged in wars on two fronts, and servicewomen put their lives and limbs at risk to preserve our rights and freedom, it is deeply troubling that they are denied access to safe, legal abortion when they serve abroad. This policy is unjust, unfair and should be repealed.

The ban against federal funding of abortion at military medical facilities, except where the life of the woman is in danger, has been in place since 1979 and continues today. However, for many years, service women and military dependents were able to use their own private funds to access abortion care on military facilities overseas. That policy was changed in 1988, via an internal memorandum, by the Department of Defense.

In 1993, President Clinton signed an Executive Order lifting the ban and reinstating the policy that allowed women to use their own funds to pay for an abortion. Unfortunately, in 1995, an anti-choice Congress passed a law that re-imposed the ban¹ and it continues today.

- **The ban on privately funded abortions discriminates against women and their families who have volunteered to serve their country and have been assigned to military posts overseas.**
 - Courts repeatedly recite the principle that “our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes,” *see, e.g., Chappell v. Wallace*, 462 U.S. 296, 304 (1983). By refusing to allow a woman to use her own funds to pay for an abortion at a military facility, except in very limited circumstances, Congress has placed an often insurmountable obstacle in her path. This obstacle does not exist for civilian women.

- **Repeal of the private funding ban would merely require the Department of Defense to return to a policy that existed for many years. Repeal of the ban does not create a wholly new policy and does not change existing conscience protections.**
 - Prior to 1988, military women were allowed to use their own funds to access abortion care on military bases overseas. Indeed, until 1988, “defense officials allowed these procedures under the rationale that at certain overseas (or isolated U.S.) stations, safe and reliable civilian facilities were not always available.”²

¹The ban became law as part of the 1996 Fiscal Year National Defense Authorization Act, Pub. L. No. 104-106 (1996) and is codified at 10 U.S.C. § 1093(b) (1996).

²U.S. Congressional Research Service. Abortion Services and Military Medical Facilities (95-387; April 24, 2002), by David Burelli. Available at: <http://www.policyarchive.org/handle/10207/bitstreams/266.pdf>.

- Refusal provisions or conscience clauses that are in effect today would remain untouched. Lifting the ban on private funding of abortion on military bases overseas would not change military policy on refusals.
- **The Department of Defense and other military individuals and organizations have opposed the private funding ban.**
 - In a May 7, 1999 letter, the Department of Defense stated that “it is unfair to female service members, particularly those assigned to overseas locations, to be denied their constitutional right to the full range of reproductive health care.”³
 - Retired Lieutenant General Claudia Kennedy, one of the highest-ranking women ever to serve in the United States Army, has opposed the ban and stated that it is “imperative that our soldiers have access to safe, confidential abortion services at U.S. military hospitals overseas.”⁴
 - Several organizations that serve military women, veterans, and their families, such as the Service Women’s Action Network, the Alliance for National Defense and the Women’s Education and Research Institute, oppose the ban.
- **The ban on privately funded abortions in military facilities poses grave health risks and leaves service women and their families far worse off than civilian women.**
 - If the servicewoman (or family member) is prohibited from accessing abortion services on a military base she may have to resort to local facilities that are substandard or unsafe. Or she may have to return to the United States. The costs, time, and obvious risks involved prevent some women from obtaining the care they otherwise could have accessed.
 - Because a soldier must obtain permission to leave her duty station, a servicewoman may be required to disclose her private medical decisions to her superiors in order to obtain leave. And any delays in receiving permission only increase the possibilities of medical complications.
- **The ban on private funding for abortion on military bases has real and cruel impacts on servicewomen’s lives. Here are just a few examples:**
 - A recent article, *Military Abortion Ban: Female Soldiers Not Protected by Constitution They Defend*,⁵ recounts the story of a Marine who was stationed in Fallujah when she realized she was pregnant as a result of rape. Faced with being ostracized by her male

³ Letter from Dr. Sue Bailey, Assistant Secretary of Defense for Health Affairs to The Honorable Loretta Sanchez (May 7, 1999)

⁴ Kennedy, Claudia J. “Letter to Senate on Abortion Ban for Women in the Military.” Letter to Senators Snowe and Murray. June 10, 2002. Available at: <http://reproductiverights.org/en/document/letter-from-lieutenant-general-claudia-j-kennedy-to-senate>.

⁵ Joyce, Kathryn. “Military Abortion Ban: Female Soldiers Not Protected by Constitution They Defend.” December 15, 2009. Available online at: <http://kathrynjoyce.com/2009/12/15/military-abortion-ban-female-soldiers-not-protected-by-constitution-they-defend/>.

colleagues if she reported the rape, “Amy” did not do so. Without any options, this Marine attempted to self-abort using the cleaning rod of her rifle.

- The wife of an American serviceman in the Philippines discovered her child would be born with fatal birth defects, but was forced to carry her pregnancy to term because she and her husband could not afford to fly to Japan on his salary.⁶
 - The former head of obstetrics and gynecology at the Subic Bay U.S. Naval Hospital in the Philippines described families spending their life savings to travel to another country for an abortion and an enlisted woman who committed suicide because she could not get an abortion on the base.⁷
- **Given the high incidence of rape and sexual assaults suffered by women in the military, our servicewomen should not be further harmed by the denial of safe abortion services.**
 - A 2003 study⁸ found that 30 percent of female U.S. military veterans report having been raped or suffered a rape attempt during their military service, and military officials report that there were 2,374 cases of sexual assault⁹ among service members reported to military criminal investigators in 2005 – a 40 percent increase from 2004. Although the ban makes an exception for rape and incest, as demonstrated by the tragic story (above) this exception is largely meaningless – as women in the military often feel they can’t report that they have been raped, they too are subject to the ban.

Congress should act now to end the ban on private funding of abortions on military facilities. The women of our Armed Forces deserve more from their country.

⁶ Lautenberg, Frank R. and Tim Wirth. “Abortion Rights? Not in the Military.” *New York Times*. November 13, 1991. Available at: <http://www.nytimes.com/1991/11/13/opinion/abortion-rights-not-in-the-military.html?pagewanted=1>

⁷ IBID

⁸ “UI, VAC Researchers Study Women’s Risks of Rape in Military” *The University of Iowa News Service*. Available at: <http://www.news-releases.uiowa.edu/2003/march/031103military-rape.html>

⁹ “Executive Summary” *Defense.gov*. Available at: <http://www.defense.gov/news/Mar2006/d20060316SexualAssaultReport.pdf>