



Hegar, et al. v. Panetta

The Legal Challenge to the Combat Exclusion Policy

The ACLU has a long history of fighting discriminatory policies within the militaryⁱ and we have long advocated for repeal of the policy excluding servicewomen from ground combat positions. In November 2012, the ACLU, the ACLU of Northern California, and the law firm Munger, Tolles & Olson LLP filed a lawsuit, *Hegar, et al. v. Panetta*, on behalf of four service members and the Service Women Action Network (SWAN).

Plaintiffs challenged as unconstitutional the official policy that categorically excluded them, and all women, from assignments to units whose primary mission is to engage in direct ground combat. Plaintiffs alleged that the policy was based on outdated stereotypes of women, ignored the realities of the modern military and battlefield conditions – under which women already were fighting, and dying, in active combat – and barred women’s advancement to senior military roles.

Additionally, the U.S. Supreme Court has made it clear that government-mandated discrimination based on sex is unconstitutional unless it is supported by an “exceedingly persuasive” justification that is “substantially related” to “important governmental objectives.”ⁱⁱ Any such justification must be genuine, not hypothetical, and cannot rely on “overbroad generalizations about the different talents, capacities, or preferences of males and females.”ⁱⁱⁱ

In January 2013, the Department of Defense announced that it was rescinding the directive that barred women from being assigned to most ground combat units. It ordered the military branches to develop plans for integration into previously-closed jobs (or submit any requests for exemption from integration). Only the U.S. Marine Corps sought such an exemption for its infantry and armor divisions. In December 2015, DoD declared that all military jobs, units, and schools would officially be open to women with “no exceptions” – thus opening roughly 220,000 jobs to women.

The ACLU welcomed DoD’s historic announcement, and celebrated the official end to the “brass ceiling.” The lawsuit remains pending, however, because certain policies and practices continue to exclude or otherwise impede service women’s equal opportunity. These include the Marines’ continued segregation of recruits at basic training and its “Leaders First” policy, which prohibits junior

enlisted officers from entering a combat unit unless and until two women “leaders” have served in that unit for 90 days.

The Plaintiffs in *Hegar v Panetta*:

Major Mary Hegar, Air National Guard

Maj. Mary “MJ” Hegar was a helicopter pilot who served as an Air Guardsman for the California Air National Guard, and served three tours over two deployments in Afghanistan. Maj. Hegar served in the Air Force for 5 years as an Aircraft Maintenance officer, and later served in the Air National Guard for 6 years, where she trained as a Combat Search and Rescue (CSAR) pilot. In her capacity as a CSAR pilot she flew hundreds of Medevac missions, picking up wounded soldiers and civilians from the battlefield.

In order to be qualified to fly over enemy territory in Afghanistan, Maj. Hegar successfully completed a grueling training program called Survival, Evasion, Resistance, and Escape, commonly known as “SERE” training. SERE training is widely regarded as one of the most physically and mentally demanding forms of training offered to combat personnel by DoD.

In July 2009, Maj. Hegar’s aircraft was shot down by enemy fire over Afghanistan, as she and her crew were rescuing three injured soldiers. Maj. Hegar was injured by a bullet that penetrated the helicopter, and once on the ground, she returned fire and successfully completed the rescue mission while under fire. As a result, she was awarded the Purple Heart and the Distinguished Flying Cross with a Valor Device, two of the highest decorations possible for a pilot. Within a week of being shot down, Maj. Hegar and her crew were placed back on flying status to resume medevac missions, until the end of September 2009. She was subsequently upgraded to the position of Aircraft Commander.

Captain Zoe Bedell, U.S. Marine Corps Reserves

Capt. Zoe Bedell was commissioned as an officer in the Marine Corps in 2007. While serving on active duty, she deployed twice to Afghanistan where she served as the Officer-in-Charge of Female Engagement Teams (FETs). After being commissioned, Capt. Bedell graduated with

honors from The Basic School, which is the first phase of Marine Corps officer training. This means that she ranked in the top 10 percent of her class of approximately 300 Marines for the 26 week course, which includes training on weapons, tactics, leadership, and other skills.

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

The Marines under Capt. Bedell's leadership lived with, and went on missions with, all-male combat infantry units. Capt. Bedell's teams often patrolled more than the men, carried the same heavy gear, and frequently encountered combat situations.

Capt. Bedell left active duty for the U.S. Marine Corps Reserves because of the combat exclusion policy.

First Lieutenant Colleen Farrell, U.S. Marine Corps

Lt. Colleen Farrell was an active duty officer in the United States Marine Corps, and deployed to Afghanistan, where she served as a section leader of FETs.

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

Despite the fact that she and the women Marines under her charge worked with, and in direct support of, infantry battalions, Lt. Farrell and her FET members could not be recognized as members of the battalion itself, due to the combat exclusion rule. Out of concern about violating the DoD's combat exclusion policy, Marine commanders also required all FET members to return to their main forward operating base every 45 days. This artificial and unnecessary maneuver disrupted operations and put both men and women serving in and supporting these units in danger.

Lt. Farrell left active duty for the U.S. Marine Corps Reserves because of the combat exclusion policy.

Staff Sergeant Jennifer Hunt , U.S. Army Reserves

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

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

In August 2007, Staff Sgt Hunt deployed to Iraq with a unit engaged in reconstruction. While serving there her Humvee vehicle was hit by an Improvised Explosive Device (IED), which resulted in shrapnel injuries to her face, arms, and back. Staff Sgt Hunt was awarded a Purple Heart in connection with this attack.

Service Women's Action Network (SWAN)

SWAN is a nonpartisan, nonprofit organization that supports, defends, and empowers servicewomen and women veterans through advocacy initiatives and community programs. Its mission includes transforming military culture by securing equal opportunity and freedom to serve without discrimination, harassment, or assault. SWAN also seeks to reform veterans' services to ensure high quality benefits for women veterans and their families.

SWAN's mission and goals are frustrated by the combat exclusion rule, which limits women's opportunities in the military, endangers women in service, and has an ongoing detrimental effect on many women once they become veterans.

For more information, contact Gillian Thomas, senior staff attorney, at gthomas@aclu.org or Vania Leveille, senior legislative counsel, at vleveille@aclu.org.

ⁱ We have successfully challenged military recruitment standards and military academy admissions policies that discriminated against women; fought for servicewomen to receive the same military benefits as their male counterparts; defended the rights of pregnant servicewomen; and advocated for servicewomen's access to reproductive health care. See, e.g., *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Rostker v. Goldberg*, 453 U.S. 57 (1981); *United States v. Virginia*, 518 U.S. 515 (1996).

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

ⁱⁱⁱ *Id.*