

EQUALITY ON THE FRONTLINES: GENDER-NEUTRAL PHYSICAL FITNESS STANDARDS IN COMBAT MILITARY OCCUPATIONAL SPECIALTIES

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*The views expressed are those of the author and do not reflect the official position of the Department of the Army or Department of Defense. ***

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** As of this Note’s publication, Congress has not amended the Department of Defense’s enabling statute to formally codify its name change to the “Department of War” in accordance with President Trump’s Executive Order. Compare Exec. Order No. 14347, 90 Fed. Reg. 43893 (Sep. 5, 2025) (name change), with 10 U.S.C. § 111(a) (“The Department of Defense is an executive department of the United States.”). Accordingly, this Note uses “Department of Defense” and “DOD” to refer to that executive department.

INTRODUCTION

“I am an American Soldier.
 I am a warrior and a member of a team.
 I serve the people of the United States, and live the Army Values.
 I will always place the mission first.
 I will never accept defeat.
 I will never quit.
 I will never leave a fallen comrade.
 I am disciplined, physically and mentally tough, trained and proficient in
 my warrior tasks and drills.
 I always maintain my arms, my equipment and myself.
 I am an expert and I am a professional.
 I stand ready to deploy, engage, and destroy, the enemies of the United
 States of America in close combat.
 I am a guardian of freedom and the American way of life.
 I am an American Soldier.”¹

This is the Soldier’s Creed.² It is recited by United States Army Soldiers
 as an affirmation of the standard by which all Army personnel are expected
 to abide.³ Other branches of the military have their own dogma that is
 internalized in each of its members.⁴ Each code of conduct embodies the

¹ *Soldier’s Creed*, U.S. ARMY, <https://www.army.mil/values/soldiers.html> [<https://perma.cc/6NWU-LFWF>] (last visited Sep. 21, 2025).

² *Id.*

³ *Profile of the United States Army: The Soldier*, ASS’N OF THE UNITED STATES ARMY [hereinafter *The Soldier*], <https://www.usa.org/publications/profile-united-states-army-soldier> [<https://perma.cc/7KL6-2TJH>] (last visited Sep. 22, 2025).

⁴ See DEP’T OF DEF., AM. FORCES INFO. SERV., CODE OF THE U.S. FIGHTING FORCE (1988); *Airman’s Creed*, U.S. AIR FORCE, <https://www.airforce.com/vision> [<https://perma.cc/F8PH-T4L5>] (last visited Sep. 22, 2025); Harry G. Hamlet, *Creed of the United States Coast Guardsman*, U.S. COAST GUARD, <https://www.history.uscg.mil/Browse-by-Topic/History-Heritage-Traditions/Creed/> [<https://perma.cc/QS3Y-RNXU>] (last visited Sep. 22, 2025); *Creed of the Non-Commissioned Officer*, U.S. ARMY, <https://www.army.mil/values/nco.html> [<https://perma.cc/RKV9-9XCB>] (last visited Sep. 22, 2025); *The Sailor’s Creed*, U.S. NAVY, <https://www.history.navy.mil/browse-by-topic/heritage/customs-and-traditions0/the-sailor-s-creed.html> [<https://perma.cc/F76V-TK6N>] (last visited Sep. 22, 2025); *The Creed of a United States Marine*, U.S. MARINE CORPS, <http://www.usmcu.edu/Research/Marine-Corps-History-Division/Frequently-Requested-Topics/Marines-Rifle-Creed/> [<https://perma.cc/3Q48-VYUB>] (last visited Sep. 22, 2025) (“My rifle and myself are the defenders of my country. We are the masters of our enemy. We are the saviors of my life. So be it, until victory is America’s and there is no enemy, but peace!”); *Ranger Creed*, U.S. ARMY, <http://www.army.mil/values/ranger.html> [<https://perma.cc/E25N->

commitment to triumph in combat and the loyalty service members promise to one another.⁵ This standard applies regardless of race, age, gender, or military occupational specialty (MOS).⁶ Despite sharing a common mission, Soldiers in combat MOS's qualify under different physical fitness standards. This seems to undermine the very principles the creed seeks to instill: complete trust in the abilities of the Soldier fighting next to you.

In 2013, the Secretary of Defense rescinded the 1994 Department of Defense (DoD) combat exclusion policy and committed the military to fully integrating women based on gender-neutral occupational performance standards no later than January 1, 2016.⁷ This was a significant policy change that initiated the integration of women in all occupational specialties across the military, although subsequent policy decisions were necessary to fully realize that goal.⁸ However, despite the assignment of men and women to combat positions, Soldiers qualify for these positions based on different physical fitness standards.⁹

This article suggests that, with the integration of women in combat roles, military personnel in such roles should be required to pass the same minimum physical fitness standards, regardless of gender, due to the unique nature of combat MOS's. This article evaluates the transition from the Army Combat Fitness Test to the Army Fitness Test and focuses specifically on Soldiers in combat positions. This article does not examine the varying age-based fitness standards.

I. THE LEGISLATIVE HISTORY AND CONSEQUENCES OF WOMEN IN COMBAT

A. The Combat Experience

Combat describes the environment where service members are exposed to enemy fire and to a likelihood of direct contact with enemy personnel

NJZN] (last visited Sep. 22, 2025) (“Energetically will I meet the enemies of my country. I shall defeat them on the field of battle for I am better trained and will fight with all my might. Surrender is not a Ranger word. I will never leave a fallen comrade to fall into the hands of the enemy. . .”).

⁵ CODE OF THE U.S. FIGHTING FORCE, *supra* note 4.

⁶ *Id.*

⁷ NAT'L WOMEN'S L. CTR., ASSIGNMENT POLICIES FOR MILITARY WOMEN: HISTORY AND STATUS, 12 (2016) [hereinafter NAT'L WOMEN'S L. CTR.] (citing Info Memo on Women in the Service Implementation Plan for Secretary of Defense from General Martin E. Dempsey, CJCS (Jan. 9, 2013)).

⁸ *See id.*

⁹ *See Army Fitness Test*, U.S. ARMY, <https://www.army.mil/acft/> [https://perma.cc/E7DW-69CR] (last visited Nov. 15, 2025); DEP'T OF THE ARMY, ATP 7-22.01, HOLISTIC HEALTH AND FITNESS TESTING, C2 (2022).

while engaging enemy forces with individual or crew served weapons.¹⁰ Combat experience may include conducting combat patrols or missions, exposure to hostile fire, firing a weapon at the enemy, or personally witnessing someone in their unit be seriously wounded or killed.¹¹ A combat environment is inherently stressful in a way that most people will never experience or fully comprehend.¹² Thus, the demands of combat require a high level of trust between Soldiers, and “[a]bout seven-in-ten combat veterans (69%) say their combat experiences made them feel closer to those who fought alongside them.”¹³

Combat is indiscriminate, and the function of a particular MOS will not vary based on gender.¹⁴ Based on this reality, an individual’s physical assessment should be tailored to the requirements of their MOS.¹⁵ “Gender-neutral standards are based only on the physical capabilities required to perform the job, are the same for men and women, and should not differentially screen out a higher proportion of members of one gender who are, in fact, able to perform the job.”¹⁶ For example, the weight of a 155mm high explosive projectile that must be loaded in the M777 is approximately

¹⁰ See Memorandum from the Sec’y of Def. on Direct Ground Combat Definition & Assignment Rule to the Sec’y of the Army, Sec’y of the Navy, Sec’y of the Air Force, Chairman, Joint Chiefs of Staff, Assistant Sec’y of Def. (Personnel & Readiness), & Assistant Sec’y of Def. (Rsrv. Aff.) (Jan. 13, 1994) (on file with author). For additional information on weapon systems, see also Ctr. for Dev. of Sec. Excellence, *Identification of Arms, Ammunition, and Explosives (AA&E): Security Risk Categories (SRC) I-IV*, www.cdse.edu/Portals/124/Documents/jobaids/physical/PYJ0191-AAE.pdf [https://perma.cc/M6K8-BQFT] (last visited Sep. 14, 2025) (defining crew served weapons as “a weapon system requiring two or more individuals to transport, perform separate tasks, and operate for maximum efficiency.”).

¹¹ Kim Parker et al., *The American Veteran Experience and the Post-9/11 Generation*, PEW RESEARCH CTR. (Sep. 10, 2019), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2019/09/PSDT.10.09.19_veteransexperiences_full.report.pdf [https://perma.cc/KWT2-ZKQA].

¹² See *Demographics of the U.S. Military*, COUNCIL ON FOREIGN RELS. (July 13, 2020, at 09:00 ET), <https://www.cfr.org/background/demographics-us-military> [https://perma.cc/755P-TTME] (“[T]here are about 1.3 million active-duty personnel, or less than one-half of 1 percent of the U.S. population.”).

¹³ See Parker et al., *supra* note 11, at 15.

¹⁴ See Kristen M. Griest, *With Equal Opportunity Comes Equal Responsibility: Lowering Fitness Standards to Accommodate Women Will Hurt the Army—and Women*, MOD. WAR INST. AT WEST POINT (Feb. 25, 2021), <https://mwi.westpoint.edu/with-equal-opportunity-comes-equal-responsibility-lowering-fitness-standards-to-accommodate-women-will-hurt-the-army-and-women/> [https://perma.cc/DDB9-287D] (describing the initial version of the Army Combat Fitness Test: “The entire purpose of creating a gender-neutral test was to acknowledge the reality that each job has objective physical standards to which all soldiers should be held, regardless of gender. The intent was not to ensure that women and men will have an equal likelihood of meeting those standards.”).

¹⁵ See Chaitra M. Hardison et al., *Establishing Gender-Neutral Standards for Closed Occupations A Review of the Services Efforts to Date*, RAND (June 19, 2018), https://www.rand.org/pubs/research_reports/RR1340z1.html [https://perma.cc/AJ5C-WRF9] (prepared for the Office of the Secretary of Defense “in evaluating whether the work undertaken by the services would satisfy the [Fiscal Year 2014 National Defense Authorization Act] requirements.”).

¹⁶ *Id.*

95 pounds.¹⁷ A field artillery Soldier must be able to lift that projectile, whether they are male or female.¹⁸

Physical fitness standards transcend a mere measure of strength and endurance; it is a measure of reliability on the battlefield.¹⁹ One physical fitness standard for combat MOS's will foster trust among Soldiers.²⁰ Trust in one's ability to carry another to safety cultivates trust in their judgment and ability to act decisively.²¹ Moreover, one standard will encourage cohesion within the unit because each member will be qualified under the same minimum requirements, which will help target the gender bias that was a factor in the earlier DoD policies excluding women from combat assignments.²²

B. The Military as a Separate Society

The Supreme Court has historically applied a standard of review known as the military deference doctrine, which requires that a court considering certain constitutional challenges to military regulations afford a heightened level of deference to Congress and the military than would be appropriate if the challenged legislation were in the civilian context.²³ This doctrine is based on the constitutional authority to regulate the military granted to Congress and the President.²⁴ Consequently, the Court has explicitly "recognized that the military is, by necessity, a specialized society separate from civilian society."²⁵

¹⁷ See 155MM M107 HE, GENERAL DYNAMICS (June 15, 2017), https://www.gd-ots.com/wp-content/uploads/2017/11/155mm-M107-HE_US.pdf [<https://perma.cc/CQP9-6VS6>].

¹⁸ See *id.*; see also M777 Lightweight Towed 155mm Howitzer, BAE SYSTEMS (Aug. 2017), <https://www.baesystems.com/en/product/m777> [<https://perma.cc/46EJ-KXHP>] (describing the capabilities of the M777).

¹⁹ See Parker et al., *supra* note 11.

²⁰ See *id.*; see also Griest, *supra* note 14 ("Lower female standards also reinforce the belief that women cannot perform the same job as men, therefore making it difficult for women to earn the trust and confidence of their teammates.").

²¹ See Parker et al., *supra* note 11.

²² See Memorandum from the Sec'y of Def. on Direct Ground Combat Definition & Assignment Rule, *supra* note 10 (The 1994 DoD assignment policy permitted restrictions on the assignment of women (1) "where the Service Secretary attests that the cost of providing appropriate berthing and privacy arrangements are prohibitive"; (2) "where units and positions are doctrinally required to physically collocate and remain with direct ground combat units that are closed to women"; (3) "where units are engaged in long range reconnaissance operations and Special Operations Forces missions"; and (4) "where job related physical requirements would necessarily exclude the vast majority of women Service members.").

²³ See John F. O'Connor, *The Origins and Application of the Military Deference Doctrine*, 35 GA. L. REV. 161 (2000).

²⁴ U.S. CONST. art. I, § 8, cl. 12-14; *id.* art. II, § 2, cl. 1.

²⁵ Parker v. Levy, 417 U.S. 733, 743 (1974) (upholding a conviction under the Uniform Code of Military Justice where an Army officer tried to dissuade Soldiers from going to Vietnam, which normally

In *Parker v. Levy*, the Court illustrated the different application of constitutional rights in the military context:

“While the members of the military are not excluded from the protections granted by the First Amendment, the different character of the military community and of the military mission require a different application of such protections. The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.”²⁶

The unique “character” of the military is based on the fact that “it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.”²⁷ The Court acknowledges that “the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty.”²⁸ This distinction is the Court’s basis for why “the military constitutes a specialized community governed by a separate discipline from that of the civilian.”²⁹

The “separate society” doctrine continued to permeate later Supreme Court decisions and was perhaps most evident in *Rostker v. Goldberg*.³⁰ There, the Court found men and women were “not similarly situated for purposes of a draft or registration for a draft” because of the combat restrictions on women.³¹ Thus, the Court held that Congress’s decision to authorize the registration of only men for the draft did not violate the Due Process Clause.³² Although the Court in *Rostker* found the Fifth Amendment’s Due Process Clause was satisfied based on applicable combat restrictions of that time, there is a renewed argument as to whether women should be required to register for the military draft under the Military Selective Service Act (MSSA) following the revocation of combat exclusions.³³

would have been protected by the First Amendment); see also Tim Bakken, *A Woman Soldier’s Right to Combat: Equal Protection in the Military*, 20 WM. & MARY J. OF WOMEN & L. 271, 277 (2014) (discussing the “separate society” doctrine as it relates to the equal protection of women in the military).

²⁶ *Levy*, 417 U.S. at 758.

²⁷ *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 17 (1955).

²⁸ *Burns v. Wilson*, 346 U.S. 137, 140 (1953).

²⁹ *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953).

³⁰ *Rostker v. Goldberg*, 453 U.S. 57 (1981).

³¹ *Id.* at 78.

³² *Id.* at 78-79.

³³ See *id.* at 78-80; see also Military Selective Service Act, 50 U.S.C. § 3802 (2025); see generally Ander J. Haile, *Redrafting the Selective Service Act: Women and the Military Draft*, 28 UCLA WOMEN’S J. GENDER & L. 121 (2021) (discussing the background relating to the current controversy over “whether women should be required by law to register for the military draft” and arguing that the “[Military Selective Service Act] must be amended so that women, as well as men, register for the draft.”).

Today, the integration of women in combat units contradicts the core of the Court's reasoning in *Rostker* and challenges upholding this decision.³⁴ The basis of the *Rostker* Court's decision was "[t]he fact that Congress and the Executive have decided that women should not serve in combat[, which] fully justifies Congress in not authorizing their registration, since the purpose of registration is to develop a pool of potential combat troops."³⁵ If the same analysis was applied to the facts of today's military, where women serve in combat positions, it is arguable that the Court may reach a different holding.³⁶ Litigation challenging the constitutionality of the MSSA following the elimination of gender-based combat exclusions has occurred and will likely continue in the future as individuals confront the disparate requirement of the military draft.³⁷

Moreover, in *United States v. Virginia*, Virginia failed to show an exceedingly persuasive justification to support the exclusion of women from the Virginia Military Institute (VMI), and the Supreme Court held that VMI's male-only admission policy violated the Equal Protection Clause.³⁸ VMI argued that the admission of women would degrade its "adversative" method of training, "which features physical rigor, mental stress, absolute equality of treatment, absence of privacy, minute regulation of behavior, and indoctrination in desirable values."³⁹ Justice Ginsburg, writing for the majority in *Virginia*, found "[n]either the goal of producing citizen-soldiers nor VMI's implementing methodology is inherently unsuitable to women. And the school's impressive record in producing leaders has made admission desirable to some women."⁴⁰ In rejecting VMI's exclusion of women, the

³⁴ See Dep't of Def., *Fact Sheet: Women in the Service Review (WISR) Implementation* (on file with the WRLR).

³⁵ *Rostker*, 453 U.S. at 79.

³⁶ See Haile, *supra* note 33, at 150-51.

³⁷ See Complaint Class Action for Injunctive Declaratory Relief, *Kyle v. Selective Serv. Sys.*, No. 15-05193 (D.N.J. July 3, 2015); see also Complaint for Injunctive and Declaratory Relief at 17, *Nat'l Coal. for Men v. Selective Serv. Sys.*, 969 F.3d 546 (5th Cir. 2020) (No. 13-02391) (alleging that male-only military draft is unlawful sex discrimination); Tim Darragh, *Should Women be Required to Register for the Draft? Lawsuit Seeks Equal Treatment*, NJ.COM (July 14, 2015, at 20:54 ET), https://www.nj.com/morris/2015/07/should_women_be_required_to_register_for_the_draft.html [<https://perma.cc/NS38-DMQN>] (discussing a complaint alleging the "Selective Service is violating American women's equal protection and due process rights under the U.S. Constitution by requiring only males to register for the draft.").

³⁸ See *United States v. Virginia*, 518 U.S. 515, 534 (1996).

³⁹ *Virginia*, 518 U.S. at 522, 540; see Jeffrey S. Dietz, *Breaking the Ground Barrier: Equal Protection Analysis of the U.S. Military's Direct Ground Combat Exclusion of Women*, 207 MIL. L. REV. 86, 105-06 (2011).

⁴⁰ *Virginia*, 518 U.S. at 520.

Court noted that at every federal military academy, women graduated at the top of their classes.⁴¹

Furthermore, *Frontiero v. Richardson* established that the military cannot justify discriminating based on gender for administrative ease.⁴² In finding constitutionally invalid a policy that provided automatic benefits to the wives of male Soldiers but not to the husbands of female Soldiers, the Court emphasized that “sex characteristic frequently bears no relation to ability to perform or contribute to society.”⁴³ The Court further stated that “statutory distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual members.”⁴⁴

Notably, military women plaintiffs challenged the constitutionality of the exclusionary 1994 DoD assignment policy in federal court.⁴⁵ On May 23, 2012, two female Army Reserve Officers filed a complaint in the District Court for the District of Columbia claiming the DoD policy excluding women from combat assignments violated their equal protection rights under the Fifth Amendment.⁴⁶ Another complaint was filed in the District Court for the Northern District of California on November 27, 2012 by a group of servicewomen claiming “that they had been denied ground combat assignment opportunities solely because they are women, in violation of their rights to equal protection of the law under the Fifth Amendment of the United States Constitution.”⁴⁷ Two months after the latter *Hegar* complaint was filed, Secretary of Defense Panetta rescinded the combat definition and assignment rule.⁴⁸ He directed the Military Services to submit plans to

⁴¹ See *Virginia*, 518 U.S. at 544 n.13; see also Bakken, *supra* note 25, at 293 (comparing the military’s exclusion of women from combat to VMI’s exclusion of women despite women’s ability to excel at military academies).

⁴² See *Frontiero v. Richardson*, 411 U.S. 677, 690-91 (1973).

⁴³ *Frontiero*, 411 U.S. at 686, 686-87; see also Bakken, *supra* note 25, at 284-85 (discussing the Court’s analysis in *Frontiero*).

⁴⁴ *Frontiero*, 411 U.S. at 686-87; see also Bakken, *supra* note 25, at 284-85 (discussing the Court’s analysis in *Frontiero*).

⁴⁵ NAT’L WOMEN’S L. CTR., *supra* note 7, at 11.

⁴⁶ *Baldwin v. Panetta*, No. 1:12-cv-00832-RMC (D.D.C. May 23, 2012) (voluntarily dismissed without prejudice on Nov. 4, 2013); see NAT’L WOMEN’S L. CTR., *supra* note 7, at 11; see also *Case: Baldwin v. Panetta, CIV. RTS. LITIG. CLEARINGHOUSE* (Mar. 26, 2025), <https://clearinghouse.net/case/12068/> [<https://perma.cc/NR6Y-V3NB>] (summarizing a lawsuit alleging “the policy of excluding women from ‘direct combat’ operations violated the Administrative Procedures Act and the plaintiffs’ equal protection rights under the Fifth Amendment.”).

⁴⁷ *Hegar v. Panetta*, No. 3:12-cv-06005-EMC (N.D. Cal. filed Nov. 27, 2012); see NAT’L WOMEN’S L. CTR., *supra* note 7, at 11; see also *Case: Hegar v. Panetta, CIV. RTS. LITIG. CLEARINGHOUSE*, <https://clearinghouse.net/case/12591/> [<https://perma.cc/BJ2L-6DQK>] (“The plaintiffs are individual servicewomen who have served in Afghanistan and/or Iraq and the Service Women’s Action Network, a nonprofit organization that supports servicewomen and veterans.”).

⁴⁸ Memorandum from Leon E. Panetta, Sec’y of Def., and Gen. Martin E. Dempsey, Chairman, Joint Chiefs of Staff on Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule (Jan.

implement this policy change by May 15, 2013 and that women be integrated into the newly opened combat positions no later than January 1, 2016.⁴⁹

C. The Expansion of Opportunities for Women in the Military

Legislation and policy change historically served as a driving force in the integration of women in the Armed Forces.⁵⁰ The table below illustrates the timeline of key legislative and policy actions affecting women in the military.⁵¹

Timeline of Key Legislative and Policy Actions for Integration of Women in the Armed Services: 1901-2015

Year	Key Legislative and Policy Actions	Law
1901	Army Nurse Corps is established under the Army Reorganization Act of 1901.	31 Stat. 753; February 2, 1901
1908	Navy Nurse Corps is established.	P.L. 115; 35 Stat. 146; May 13, 1908
1942	Naval Reserve is opened to Women and the Women's Army Auxiliary Corps is created.	P.L. 689; 56 Stat. 730; July 30, 1942; P.L. 554, 56 Stat. 278, May 14, 1942
1943	Marine Corps Women's Reserve is established, and the Women's Army Corps is established as part of the regular Army on a temporary basis.	P.L. 110; 57 Stat. 371; July 1, 1943
1948	Women's Armed Services Integration Act of 1948 makes women a permanent part of the military, but prohibits their assignment to combatant aircraft and naval vessels and limits the proportion of women in the military to 2% of enlisted and 10% of officers.	P.L. 625; 62 Stat. 356; June 12, 1948
1967	Limits on the percent of women in the military are repealed.	P.L. 90-130; 81 Stat. 374; November 8, 1967

24, 2013) [hereinafter Panetta/Dempsey 2013 Memorandum] (on file with author); *see also* NAT'L WOMEN'S L. CTR., *supra* note 7, at 11 (discussing the rescission of the 1994 Direct Ground Combat Definition and Assignment Rule).

⁴⁹ *See* Panetta/Dempsey 2013 Memorandum, *supra* note 48; *see also* NAT'L WOMEN'S L. CTR., *supra* note 7, at 12 (discussing the timeline for integration of women into combat positions).

⁵⁰ *See* KRISTY N. KAMARCK, CONGR. RSCH. SERV., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS (2015); *see generally* Agnes Gereben Schaefer et al., *History of Integrating Women into the U.S. Military*, in IMPLICATIONS OF INTEGRATING WOMEN INTO THE MARINE CORPS INFANTRY 7, 7-16 (RAND Corp. 2015) (discussing the evolution of women's roles in the military).

⁵¹ *See* KAMARCK, *supra* note 50.

1974	Minimum age requirement for women enlisting without parental consent is reduced from 18 to 17 to be consistent with age of consent for men.	P.L. 93-290; 88 Stat. 173; May 24, 1974
1975	Women are allowed to be admitted to service academies.	P.L. 94-106; 89 Stat. 537; October 7, 1975
1978	Women are permitted to be assigned permanent duty on noncombatant Navy ships and up to six months of temporary duty on other ships.	P.L. 95-485; 92 Stat. 1623; October 20, 1978
1988	DoD implements "risk rule" which excludes women from noncombat units or missions if the risk of exposure to direct combat, hostile fire, or capture were equal to or greater than the risks in the combat units they support.	NA
1991	The Presidential Commission on the Assignment of Women in the Armed Forces is established and repeals statutory limitations on women serving on combat aircraft.	P.L. 102-190; 105 Stat. 1365; December 5, 1991
1993	Congress establishes requirements for gender-neutral occupational standards and repeals remaining prohibitions on women serving on combatant aircraft and vessels.	P.L. 103-160; 107 Stat. 1659 et seq.; November 30, 1993
1994	The "risk rule" is rescinded and DOD issues the Direct Ground Combat and Assignment Rule which limits women from being assigned to units below brigade level whose primary mission is to engage in direct combat on the ground.	NA
2000	Congress mandates 30-day (in-session) notice of any change that would open assignment of women to Navy submarines.	P.L. 106-398; 114 Stat. 1654A-136; October 30, 2000
2006	Congress mandates 30-day (in-session) notification for any change to the 1994 ground combat exclusion policy, or the opening or closing of military career fields to women.	P.L. 109-163; 119 Stat. 3251; January 6, 2006
2008	The Military Leadership Diversity Commission is established with mandate to review promotion and command opportunities in the Armed Services by ethnicity and gender.	P.L. 110-417; 122 Stat. 4476; October 14, 2008
2010	DoD notifies Congress of intent to allow women to serve on submarines.	NA
2011	Congress mandates review of the Direct Ground Combat and Assignment Rule.	P.L. 111-383; 214 Stat. 4217; January 7, 2011
2012	DoD eliminates the colocation restriction from the Direct Ground Combat and Assignment Rule.	NA
2013	DoD repeals the Direct Ground Combat and Assignment Rule, removing barriers to the assignment of women to combat units and occupations and directs implementation by January 1, 2016.	NA

2014	Congress issues validation criteria for the development of gender-neutral occupational standards.	P.L. 113-291; 128 Stat. 1919; September 19, 2014
2015	Congress issues an additional validation criterion for the development of gender-neutral occupational standards and reduces the notify-and-wait period for congressional review to 30 calendar days.	P.L. 114-92, November 25, 2015.

Source: KRISTY N. KAMARCK, CONGR. RSCH. SERV., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS (2015), <https://apps.dtic.mil/sti/pdfs/AD1007840.pdf> [<https://perma.cc/LK34-7A23>].

As the role of women in the military expanded over time, policies infringing on women's career opportunities were scrutinized.⁵² In Section 535 of the National Defense Authorization Act for Fiscal Year 2011, Congress required the Secretary of Defense to coordinate with the Secretaries of the military departments and conduct

a review of laws, policies, and regulations, including the collocation policy, that may restrict the service of female members of the Armed Forces to determine whether changes in such laws, policies, and regulations are needed to ensure that female members have an equitable opportunity to compete and excel in the Armed Forces.⁵³

A report of the results of the review was submitted to the congressional defense committee.⁵⁴ The DoD identified the Secretary of Defense memorandum, Direct Ground Combat Definition and Assignment Rule (DGCDAR) dated January 13, 1994, as the primary policy restricting the service of female members in the U.S. Armed Forces.⁵⁵ The memorandum sets out the direct ground combat assignment rule, which 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. . ."⁵⁶ Direct ground combat is defined as

⁵² See Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, 124 Stat. 4137 (Jan. 7, 2011).

⁵³ *Id.* § 535.

⁵⁴ See U.S. DEP'T OF DEF., REPORT TO CONGRESS ON THE REVIEW OF LAWS, POLICIES AND REGULATIONS RESTRICTING THE SERVICE OF FEMALE MEMBERS IN THE U.S. ARMED FORCES, at 1 (Feb. 2012).

⁵⁵ See *id.*

⁵⁶ Memorandum from the Sec'y of Def. on Direct Ground Combat Definition & Assignment Rule, *supra* note 10.

engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force's personnel. Direct ground combat takes place well forward on the battlefield while locating and closing with the enemy to defeat them by fire, maneuver, or shock effect.⁵⁷

Thus, the 1994 policy had the effect of excluding women from assignment to units and positions whose primary mission is to engage in direct ground combat.⁵⁸ Following the Department's review, 14,325 positions were opened to women in the Army, Navy, and Marine Corps while an additional nine months of study on remaining gender-based barriers to service was conducted.⁵⁹

On January 24, 2013, Secretary of Defense Leon Panetta and Chairman of the Joint Chiefs of Staff Martin Dempsey announced the rescission of the 1994 DGCDAR.⁶⁰ They also directed the integration of women into the newly opened positions by 2016.⁶¹ However, the 2013 policy allowed exclusions that were "narrowly tailored, and based on a rigorous analysis of factual data regarding the knowledge, skills and abilities needed for the position," subject to approval by the Chairman of the Joint Chiefs of Staff and the Secretary of Defense.⁶²

On December 3, 2015, Secretary of Defense Ash Carter announced that he would not grant any exceptions to opening all remaining closed occupations and positions to women.⁶³ Only the Marine Corps had asked for a partial exception for infantry and certain other occupations, but Secretary Carter said: "[W]e are a joint force, and I have decided to make a decision which applies to the entire force."⁶⁴ He stated that all occupations and units would be open to women after the 30-day waiting period required by law⁶⁵ and approved plans began to be implemented in 2016.⁶⁶

Moreover, Secretary Carter provided general guidance for the standards by which women should be integrated into combat arms positions:

⁵⁷ *Id.*

⁵⁸ *See id.*

⁵⁹ *See Fact Sheet: Women in Service Review (WISR) Implementation*, *supra* note 34.

⁶⁰ *See Panetta/Dempsey 2013 Memorandum*, *supra* note 48.

⁶¹ *See id.*

⁶² *Id.*

⁶³ Ash Carter, U.S. Sec'y of Def., Remarks on the Women-in-Service Review (Dec. 3, 2015) [hereinafter Carter December 2015 Remarks]; *see* Memorandum from Ash Carter, Sec'y of Def. on Implementation Guidance for the Full Integration of Women in the Armed Forces (Dec. 03, 2015) [hereinafter Carter December 2015 Guidance] (on file with author).

⁶⁴ Carter December 2015 Remarks, *supra* note 63; NAT'L WOMEN'S L. CTR., *supra* note 7.

⁶⁵ *Id.*

⁶⁶ Carter December 2015 Guidance, *supra* note 63; NAT'L WOMEN'S L. CTR., *supra* note 7.

“The Services will continue to apply previously developed and validated operationally relevant and objective standards for all career fields to ensure that leaders assign tasks and career fields throughout the force **based on ability, not gender** (emphasis added). This approach is integral to preserving unit readiness, cohesion, and morale, and it will continue to form the foundation for full integration.”⁶⁷

This guidance highlights the overriding priority of maintaining mission effectiveness in the integration process.⁶⁸ Enforcing a minimum physical fitness standard for both men and women will facilitate that goal.⁶⁹ The function of the military cannot be altered to accommodate individuals, but rather individuals wishing to join the force must meet the necessary standards.⁷⁰ The full integration of women in the military was realized under Secretary Carter when the DoD “open[ed] the remaining approximately 213,600 closed positions spanning some 52 closed military occupational specialties. . . culminat[ing] nearly five years of extensive research, analysis, and scrutiny.”⁷¹

Today, women comprise 19.3% of the total DoD military force and the number of women serving in combat roles continues to increase following the rescission of the combat exclusion policy.⁷² In the Army, nearly 4,800 women serve in infantry, armor, and artillery positions while 602 female Marines hold infantry, artillery, and combat engineer roles.⁷³ These occupational specialties were closed to women before 2015.⁷⁴ In addition, more than 150 women have successfully completed Army Ranger School—an elite course with an average passage rate of 45-60%.⁷⁵ While the total number of women serving in special operations forces remains relatively

⁶⁷ Carter December 2015 Guidance, *supra* note 63.

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *See id.*

⁷¹ *Fact Sheet: Women in Service Review (WISR) Implementation*, *supra* note 34.

⁷² *See* U.S. DEP’T OF DEF., 2023 DEMOGRAPHICS REP.: PROFILE OF THE MILITARY COMMUNITY (2024) (“Overall, the total DOD military force has 1,642,584 (80.7%) male members and 391,796 (19.3%) female members.”); *see also* Todd South, *First Female Army Guard Enlisted Soldiers Graduate Ranger School*, ARMY TIMES (Dec. 16, 2019), <https://www.armytimes.com/news/your-army/2019/12/16/first-female-army-guard-enlisted-soldiers-graduate-ranger-school> [<https://perma.cc/9Q4B-JCYF>] (“Since 2016, more than 1,200 female soldiers have entered combat career fields such as field artillery, armor and infantry, according to the Army statement.”).

⁷³ *See* Lolita C. Baldor, *Here’s a Look at the Number of Women Serving in U.S. Military Combat Roles*, L.A. TIMES (Nov. 20, 2024), <https://www.latimes.com/world-nation/story/2024-11-20/heres-a-look-at-the-number-of-women-in-military-combat-roles> [<https://perma.cc/Y5A7-E8Q9>].

⁷⁴ *See id.*

⁷⁵ *See id.*; *see also* U.S. DEP’T OF THE ARMY, MANEUVER CTR. OF EXCELLENCE, AIRBORNE & RANGER TRAINING BRIGADE (ARTB), *ARTB Ranger Course Information*, <https://www.moore.army.mil/Infantry/ARTB/Student-Information/content/PDF/20230512%20ARTB%20Ranger%20Course%20Information.pdf> [<https://perma.cc/2KAH-RRP6>] (discussing U.S. Army Ranger School course and statistics).

low,⁷⁶ U.S. Special Operations Command continues to increase efforts to support “women’s ability to join, serve, and advance within the [special operations forces] community, including among our most elite units.”⁷⁷ The overall proportion of women in special operations forces (SOF) increased from 7.9% in 2016 to 12% in 2023.⁷⁸ The Army continues to lead in the recruitment of women to special operations and established the Women in Army Special Operations Forces Initiative to address challenges affecting female special operations Soldiers and to identify opportunities to create equitable policies.⁷⁹

As recognized by the Supreme Court, the military is a distinct environment, separate from civilian society, which may lead to an alternative realization of constitutional rights for military members.⁸⁰ This notion was reflected in Secretary Carter’s integration guidance, stating, “Equal opportunity may not always equate to equal participation by men and women. Small numbers of women in demanding career fields pose challenges that will vary by occupation and Services and will impact the entire Joint Force.”⁸¹ The guidance recognizes the unique demands of combat MOS’s, which lends support for a policy upholding gender-neutral physical fitness standards for such positions.⁸²

II. THE ARMY’S EVOLVING PHYSICAL FITNESS TESTS

The use of gender-based physical fitness minimums contradicts the intent of Congress and the Department of Defense to fully integrate women in the

⁷⁶ See Baldor, *supra* note 73 (reporting that, as of the 2024 budget year, women serving in special operations are reportedly 2 Navy Special Warfare combat crew, 3 Air Force special operations, fewer than 10 Green Berets, and the “total serving in Army Special Operations Command as special forces, civil affairs, psychological operations and helicopter pilots, including in the 160th Special Operations Aviation Regiment: 260 to 270.”).

⁷⁷ See Hope Hodge Seck, *Few Women are Trying for Elite Special Operations Roles, New Data Shows*, MILITARY TIMES (Mar. 7, 2024), <https://www.militarytimes.com/news/your-military/2024/03/08/few-women-are-trying-for-elite-special-operations-roles-new-data-shows/> [<https://perma.cc/NF8X-SCXF>].

⁷⁸ See *id.*

⁷⁹ See *id.*; see generally Joe Lacdan, *USASOC Study Outlines Measures to Optimize Female Soldiers*, ARMY NEWS SERVICE (Aug. 22, 2023), https://www.army.mil/article/269270/usasoc_study_outlines_measures_to_optimize_female_soldiers [<https://perma.cc/TS7G-R3QU>] (“[United States Army Special Operations Command] founded the Women in [Army Special Operations Forces] Initiative to specifically study female-modernization challenges while advising Army and SOF senior leaders. . . . [S]urvey results showed Soldiers had a favorable view of women serving in special operations units with no reported decline in morale. About 72% of women and 64% of men surveyed said they would support their daughter joining Army special operations units.”).

⁸⁰ See Levy, 417 U.S. at 743 (describing the military as a “specialized society separate from civilian society”).

⁸¹ Carter December 2015 Guidance, *supra* note 63, at 2.

⁸² See *id.*

military.⁸³ Gender-based scoring and the reduction of minimum standards for combat arms not only attacks women's credibility and potential, but also poses a dangerous risk to the combat effectiveness of the military.⁸⁴ The physical assessment for service members should require men and women in combat arms to achieve equal minimum standards.⁸⁵

Until May 31, 2025, the Army Combat Fitness Test (ACFT) was the official Army physical fitness test of record.⁸⁶ The ACFT replaced the Army Physical Fitness Test (APFT), which was adopted in 1980 and consisted of two minutes of push-ups, two minutes of sit-ups, and a two mile timed run.⁸⁷ The APFT was criticized for its "limited measure of Soldiers' physical strength", low standards, and inadequate connection to military-related tasks.⁸⁸ The ACFT was designed to form a more comprehensive assessment of physical performance, with the main goals of ensuring Soldiers are prepared for combat and improving physical fitness while reducing the risk of injury.⁸⁹ Field tests for the Army Combat Fitness Test began in October of 2018 and multiple revisions were made following its introduction.⁹⁰ Diagnostic tests for the 2025 version of the ACFT began in April of 2022 and the administration of the test for record began on October 1, 2022.⁹¹ The ACFT employed an age and gender performance-normed scoring scale to evaluate a Soldier's physical fitness in six events: three repetition maximum deadlift, standing power throw, hand release push-up arm extension, sprint-drag-carry, plank, and two mile run.⁹² In contrast, the first version of the ACFT employed an age and gender-neutral standard of evaluation, and the

⁸³ See *id.* at 2-3.

⁸⁴ See Griest, *supra* note 14 ("Proponents of this ACFT standard will undoubtedly claim that it is an appropriate predictor of success for combat arms soldiers; as a recent infantry company commander, I can promise you it is not. While these low standards may have seemed adequate in a controlled study, I know from experience that they will not suffice in reality.")

⁸⁵ See *id.*

⁸⁶ See *Army Fitness Test*, U.S. ARMY, <https://www.army.mil/aft/> [<https://perma.cc/E7DW-69CR>] (last visited Sep. 21, 2025).

⁸⁷ See Douglas Holl, *Why Fitness Matters – Reviewing History of Army Fitness Testing*, U.S. ARMY (Jan. 19, 2022), https://www.army.mil/article/253358/why_fitness_matters_reviewing_history_of_army_fitness_testing [<https://perma.cc/5PVP-JN9K>] (discussing changes to Army physical fitness assessments).

⁸⁸ *Id.*

⁸⁹ See David Vergun, *New Fitness Test Measures Combat Readiness, Army Secretary Says*, U.S. DEP'T OF WAR (Sep. 7, 2018), <https://www.war.gov/News/News-Stories/Article/Article/1623884/new-fitness-test-measures-combat-readiness-army-secretary-says/> [<https://perma.cc/7SDU-RX3B>].

⁹⁰ See *id.*; HOLISTIC HEALTH AND FITNESS TESTING, *supra* note 9.

⁹¹ See *Anticipate Important Changes in Army Combat Fitness Test*, U.S. ARMY JRTC AND FORT POLK (Mar. 28, 2022), <https://home.army.mil/polk/about/garrison-directorates-and-support-offices/public-affairs/design-test-page/news/anticipate-important-changes-army-combat-fitness-test> [<https://perma.cc/H5KV-U499>].

⁹² See *Army Fitness Test*, *supra* note 9; see also HOLISTIC HEALTH AND FITNESS TESTING, *supra* note 9, at 2-8 ("The ACFT is performance normed for age and gender.").

ACFT handbook's foreword emphasized "like combat, the ACFT is both age and gender-neutral."⁹³

Unlike the 2025 version of the ACFT, the initial ACFT set minimum standards of performance based on the fitness requirements of the MOS.⁹⁴ A categorical designation of either heavy, significant, or moderate was used to describe the duties and tasks of the MOS.⁹⁵ The heavy category encompassed more physically demanding jobs that consisted primarily of combat roles, such as infantry, armor, and field artillery.⁹⁶ This categorical approach reflects the considerations of the Army when developing the Army Combat Fitness Test, specifically the unit and individual occupational physical demands.⁹⁷ These principles exceed mere policy considerations.⁹⁸ The ACFT aimed to address the function of combat units as it relates to the deployment of military personnel to combat zones.⁹⁹ The Army Combat Fitness Test Handbook, first circulated in September of 2018, explicitly demonstrates this concept, quoting Command Sergeant Major Edward Mitchell: "War doesn't distinguish between gender and age. This test helps you execute your warrior tasks and battle drills, no matter who you are."¹⁰⁰

Furthermore, the MOS-based methodology of physical fitness evaluation comports with the legislative intent of Congress and addresses considerations made in response to the revocation of the combat exclusion policy.¹⁰¹ Section 524 of the National Defense Authorization Act for Fiscal Year 2015 required the Secretary of Defense to ensure the development of gender-neutral occupational standards that "accurately predict performance of actual, regular, and recurring duties of a military occupation" and are "applied equitably to measure individual capabilities" following the removal of barriers to combat roles in the military.¹⁰² Gender-neutral occupational

⁹³ U.S. ARMY CENTER FOR INITIAL MILITARY TRAINING, THE ARMY COMBAT FITNESS TEST, NO. 18-37, iii (2018) [hereinafter *Initial Military Training*], <https://api.army.mil/e2/c/downloads/2023/01/19/540eecd4/18-37-the-army-combat-fitness-test-handbook-sep-18-public.pdf> [<https://perma.cc/68K8-77G>] (The first version of the ACFT consisted of six events: three repetition maximum deadlift, standing power throw, hand-release push-up, sprint-drag-carry, leg tuck, two-mile run.).

⁹⁴ *See id.* at 77.

⁹⁵ *Id.*

⁹⁶ David Vergun, *Army Implements New Fitness Standards for Recruits and MOS Transfer*, U.S. ARMY (Jan. 3, 2017), https://www.army.mil/article/180199/army_implements_new_fitness_standards_for_recruits_and_mos_transfers [<https://perma.cc/Z9D7-D2K4>].

⁹⁷ *See Initial Military Training*, *supra* note 93, at iii (The focus of the Army Combat Fitness Test is in the name—combat.)

⁹⁸ *See id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 1.

¹⁰¹ *See* National Defense Authorization Act, Pub. L. No. 103-160, § 543, 107 Stat. 1626 (1993); *see also* National Defense Authorization Act, Pub. L. No. 113-291, § 524, 128 Stat. 3292 (2014) (providing guidance for the development of gender-neutral occupational standards).

¹⁰² *See* § 524, 128 Stat. 3292.

performance standards are pursuant to section 543 of the National Defense Authorization Act for Fiscal Year 1994, which states

. . .the Secretary of Defense— (1) shall ensure that qualification of members of the Armed Forces for, and continuance of members of the Armed Forces in, that occupational career field is evaluated on the basis of common, relevant performance standards, without differential standards or evaluation on the basis of gender.¹⁰³

It is argued the original version of the ACFT properly addressed Congress's intent and correctly applied categorical minimum standards based on MOS, irrespective of gender.¹⁰⁴ Gender-based fitness standards undermine women in combat roles and degrade the mission effectiveness of our military—an impact that can have deadly consequences.¹⁰⁵

Moreover, the gender bias that was a factor in the earlier DoD policies excluding women from combat assignments continues to persist in today's military culture and is furthered by gender-based physical fitness minimums.¹⁰⁶ The adoption of differential standards in the military based on gender promotes the stereotypes and bias that inhibit women's equal opportunity within the military.¹⁰⁷ Rather than empowering women, gender-based fitness standards prevent women from being viewed as equally competent in combat positions because there is an implicit inferiority associated with lowering physical fitness standards for women.¹⁰⁸ Not only is a gender-neutral fitness test the appropriate measure of combat-related fitness, but it also positively impacts women's credibility and potential within the military.¹⁰⁹

Women's place in combat has been challenged since the rescission of the combat exclusionary policy and continues to be challenged based on unequal physical fitness minimums, most recently by Secretary of Defense Pete

¹⁰³ See § 543, 107 Stat. 1626.

¹⁰⁴ See Griest, *supra* note 14.

¹⁰⁵ See *id.* (describing a scenario where some Soldiers are unable to run two miles faster than twenty-one minutes referring to ACFT minimum standards: "in combat it could be deadly. Instead of addressing the issue of having some soldiers insufficiently prepared for the physical rigors of combat, which sparked the APFT's revision in the first place, a gender-based ACFT in combat arms will normalize it and make it unmanageable. It is wholly unethical to allow the standards of the nation's premiere fighting units to degrade so badly, just to accommodate the lowest-performing soldiers.").

¹⁰⁶ NAT'L WOMEN'S L. CTR., *supra* note 7, at 1-3; Griest, *supra* note 14.

¹⁰⁷ Griest, *supra* note 14.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* ("While the equity question must be addressed, the answer is not to implement gender-based scoring or reduce the minimum standards for combat arms.").

Hegseth.¹¹⁰ Hegseth, an Army combat veteran, was confirmed as Secretary of Defense on January 24, 2025.¹¹¹ Prior to his appointment as Secretary of Defense, Hegseth stated on a podcast: “I’m straight up just saying we should not have women in combat roles. It hasn’t made us more effective. Hasn’t made us more lethal. Has made fighting more complicated.”¹¹² However, Hegseth clarified his views of women in combat before the Senate Armed Services Committee on January 14, 2025 and emphasized upholding a single standard: “Every service member, regardless of gender, who can meet objective occupational and readiness standards for a career field should have the opportunity to compete for jobs in that field. . . whether it’s a man or a woman, they have to meet the same high standards.”¹¹³ Ultimately, gender-neutral physical fitness standards directly undercuts critics’ arguments against allowing women in combat positions and would bolster women’s credibility in their military careers.¹¹⁴

Much of the debate surrounding women in combat has focused on the different minimum physical fitness standards applied to women, despite the legislative and policy history describing neutral standards.¹¹⁵ In announcing the new policy integrating women in combat roles, Defense Secretary Carter was explicit:

There will be no exceptions. This means that as long as they qualify and meet the standards, women will now be able to contribute to our mission in ways they could not before. They’ll be allowed to drive tanks, fire mortars, and lead infantry soldiers into combat. They’ll be able to serve as Army Rangers and Green Berets, Navy SEALs, Marine Corps infantry, Air Force parajumpers, and everything else that previously was open only to men. And even more

¹¹⁰ See Anne Flaherty, *Hegseth Softens Stance on Women in Combat, Calls for Policies Already in Place*, ABC NEWS (Jan. 24, 2025, at 18:29 ET), <https://abcnews.go.com/Politics/hegseth-softens-stance-women-combat-calls-policies-place/story?id=117669190> [<https://perma.cc/KR9T-SE3Y>].

¹¹¹ See Lisa Mascaro et al., *Hegseth Confirmed as Trump’s Defense Secretary in Tie-Breaking Vote Despite Turmoil Over His Conduct*, AP NEWS (Jan. 24, 2025), <https://apnews.com/article/pete-hegseth-defense-secretary-trump-cabinet-confirmation-12491935023692bce0a04d149663e784> [<https://perma.cc/D8UN-3U96>].

¹¹² Flaherty, *supra* note 110.

¹¹³ *Id.*

¹¹⁴ See *id.*; see also Thomas S. Szayna et al., *Considerations for Integrating Women into Closed Occupations in U.S. Special Operations Forces*, RAND CORP. (Dec. 16, 2015), https://www.rand.org/pubs/research_reports/RR1058.html [<https://perma.cc/UL64-6EH5>] (discussing opposition to the integration of women into Special Operations Forces).

¹¹⁵ See NAT’L WOMEN’S L. CTR., *supra* note 7; see also Carter December 2015 Remarks, *supra* note 63 (“This means that as long as they qualify and meet the standards, women will now be able to contribute to our mission in ways they could not before.”); Flaherty, *supra* note 110 (“Anyone, who can meet operationally relevant and gender neutral standards, regardless of gender, should have the opportunity to serve in any position.”).

importantly, our military will be better able to harness the skills and perspectives that talented women have to offer.¹¹⁶

The DoD policy arguably considers gender-neutral standards as a predicate for women's qualification in combat roles and recognizes the benefit of incorporating diverse perspectives and skills in those positions.¹¹⁷ Nevertheless, as illustrated by the ACFT, service branches have altered minimum standards based on gender.¹¹⁸

Thus, corrective action in the form of gender-neutral physical fitness standards is needed to properly satisfy both the DoD policy and Congressional intent.¹¹⁹

Implementing gender-neutral physical fitness standards for service members became a priority under new DoD leadership.¹²⁰ On March 30, 2025, Defense Secretary Hegseth released a memorandum "directing the Secretaries of the Military Departments to develop comprehensive plans to distinguish combat arms occupations from non-combat arms occupations" in order to identify those occupations requiring exceptional physical performance and endurance.¹²¹ In recognizing the heightened physical demands of combat MOS's, Hegseth also required implementation of "sex-neutral standards" for those occupations:

All entry-level and sustained physical fitness requirements within combat arms positions must be sex-neutral, based solely on the operational demands of the occupation and the readiness needed to confront any adversary. In establishing those standards, the Secretaries of the Military Departments may not establish standards that would result in any existing Service member being held to a lower standard.¹²²

The initiative by Hegseth to require gender-neutral physical fitness standards emphasizes the unique responsibilities of men and women in

¹¹⁶ Carter December 2015 Remarks, *supra* note 63.

¹¹⁷ *See id.*

¹¹⁸ *Army Fitness Test*, *supra* note 9; *see also* HOLISTIC HEALTH AND FITNESS TESTING, *supra* note 9, at Ch. 2 (describing the testing instructions, protocols, and standards of the ACFT).

¹¹⁹ *See* Carter December 2015 Remarks, *supra* note 63; *see also* National Defense Authorization Act, Pub. L. No. 113-291, § 524, 128 Stat. 3292 (2014) (providing guidance for the development of gender-neutral occupational standards).

¹²⁰ *See* Memorandum on Combat Arms Standards from the Sec'y of Def. for the Sec'ys of the Mil. Dep'ts (Mar. 30, 2025) [hereinafter Hegseth March 2025 Directive] (on file with the WRLR).

¹²¹ *Id.*

¹²² *Id.* ("Standards for ground combat occupations should emphasize the ability to carry heavy loads, endure prolonged physical exertion, and perform effectively in austere, hostile environments. Service members in these roles must exhibit speed, strength, agility, and endurance to navigate the demands of combat situations.").

combat roles, where “speed, strength, agility, and endurance” are requirements of the job.¹²³

In accordance with Hegseth’s guidance, the Secretary of the Army released a directive on April 17, 2025 establishing the Army Fitness Test (AFT) as the new record physical fitness test.¹²⁴ It replaced the ACFT and became effective on June 1, 2025.¹²⁵ The AFT consists of five events: max dead lift, hand-release push-up, sprint/drag/carry, plank, and 2-mile run.¹²⁶ Most notably, the AFT features gender-neutral standards for individuals in twenty-one combat MOS’s.¹²⁷ While the gender-neutral fitness standards did not take effect for combat MOS Soldiers in the active component until January 1, 2026 and will not take effect for Reserve and National Guard combat MOS Soldiers until June 1, 2026, the directive addresses the evolving needs of the military and its members.¹²⁸ Gender-neutral physical fitness standards not only promote the combat readiness of our military and the physical performance of the force, but it also acts as a safeguard for the progression and integration of women in the Armed Forces.¹²⁹

III. EQUAL RESPONSIBILITY DEMANDS EQUAL QUALIFICATIONS

The grave realities of combat are why I argue that a gender-neutral physical fitness standard for combat MOS’s is essential.¹³⁰ Unequal fitness requirements endanger the safety of service members and threatens the effectiveness of the military.¹³¹ Moreover, the imposition of lower physical fitness standards for females harms women’s credibility in their professions.¹³² There is an assumption of inferiority associated with lower

¹²³ *Id.*

¹²⁴ See Army Directive 2025-06 (Army Fitness Test) from the Sec’y of the Army (Apr. 17, 2025) (on file with the WRLR).

¹²⁵ Army Fitness Test, *supra* note 9, at 1.

¹²⁶ See Army Directive 2025-06, *supra* note 124, at 1; see also Army Fitness Test, *supra* note 9, at 4-6 (detailing the five events of the Army Fitness Test).

¹²⁷ See Army Directive 2025-06, *supra* note 124, at 1 (identifying the following occupations as combat positions: 11A, 11B, 11C, 11Z, 12A, 12B, 13A, 13F, 18A, 180A, 18B, 18C, 18D, 18E, 18F, 18Z, 19A, 19C, 19D, 19K, and 19Z).

¹²⁸ *See id.*

¹²⁹ *See id.*; see also Army Fitness Test, *supra* note 9 (describing the importance of Soldier readiness and lethality, optimal physical and non-physical performance, and increased effectiveness of the Total Army).

¹³⁰ See Griest, *supra* note 14; see also U.S. ARMY, *Ch. 2: Officer Classification System*, in SMARTBOOK DEP’T OF THE ARMY PAMPHLET, ¶ 2-3 (2022), <https://api.army.mil/e2/c/downloads/2022/05/24/9513c3e9/chapter-2.pdf> [<https://perma.cc/6SCE-ACDF>] (“Combat arms are those branches who’s Soldiers are directly involved in the conduct of actual fighting. . . . The combat arms branches are Air Defense Artillery (14), Armor (19), Aviation (15), Corps of Engineers (12), Cyber (17), Field Artillery (13), Infantry (11), and Special Forces (18).”).

¹³¹ See Griest, *supra* note 14.

¹³² *See id.*

physical fitness standards for women, and it discredits women's ability to achieve necessary physical fitness requirements.¹³³

Based on the combat readiness requirement of the military, physical fitness assessments for individuals in combat MOS's must be task based, not effort based.¹³⁴ There are both men and women who may fail to meet the physical requirements of certain positions.¹³⁵ Some MOS's are characteristically more physical, and as such, the individuals in those positions must be able to meet those physical demands, regardless of gender.¹³⁶ For example, the job duties of an Infantry Soldier are different from those of a Human Resources Specialist.¹³⁷ An Infantry Soldier must be prepared to travel several miles by foot while carrying over fifty pounds of equipment, while a Human Resources Specialist will typically perform their duties utilizing computers in an office setting.¹³⁸ The very nature of certain MOS's may require a higher physical standard, and the minimum physical requirements for such a position should not be lowered to increase the percentage of candidates who qualify.¹³⁹ This is an issue critical to the safety of service members.¹⁴⁰

Congress should provide explicit guidance enforcing gender-neutral physical fitness standards for military personnel in combat positions.¹⁴¹ Although combat positions in the military are uniquely distinguishable from other areas of federal employment, and as such, deference is afforded to

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ See *id.*

¹³⁶ See *Ground Forces: Infantryman 11b*, U.S. ARMY, <https://www.goarmy.com/careers-and-jobs/ground-forces/firearms-ammunition/11b-infantryman> [<https://perma.cc/3797-LK8T>] (last visited Sep. 12, 2025) (describing the role of an Infantry Soldier as "serv[ing] in the field, working to defend our country against any threats on the ground. You'll capture, destroy, and deter enemy forces, assist in reconnaissance, and help mobilize troops and weaponry to support the mission as the ground combat force."); see also *Support and Logistics: Human Resources Specialist 42A*, U.S. ARMY, <https://www.goarmy.com/careers-and-jobs/career-match/support-logistics/admin-financial-support/42a-human-resources-specialist.html> [<https://perma.cc/KJS7-8Z3Z>] (last visited Sep. 10, 2025) (describing the role of a Human Resources Specialist as "crucial [] [in] assisting your fellow Soldiers progress in their Army careers, providing promotion and future training information. You'll ensure the necessary support is also provided to commanders across all branches. You'll be trained in document preparation, drafting requests, and overseeing official documentation, such as ID cards and tags. You'll also learn computer programs that keep personnel data up to date.").

¹³⁷ See *Ground Forces: Infantryman 11b*, *supra* note 136; *Support and Logistics: Human Resources Specialist 42A*, *supra* note 136.

¹³⁸ Lauren Fish & Paul Scharre, *The Soldier's Heavy Load*, THE CTR. FOR A NEW AM. SEC. (Sep. 26, 2018), <https://www.cnas.org/publications/reports/the-soldiers-heavy-load-1> [<https://perma.cc/6M9C-ECBM>].

¹³⁹ See Griest, *supra* note 14. Griest, who was one of the first two women to graduate from Ranger School and became the Army's first female infantry officer in 2016, possesses firsthand knowledge and insight as to the risks of gender specific physical requirements for combat arms, see *id.*

¹⁴⁰ See *id.*

¹⁴¹ See National Defense Authorization Act, Pub. L. 113-291, § 524, 88-89 Stat. 3292 (2014); see also Griest, *supra* note 14 (discussing gender-neutral fitness standards for combat arms).

Congress in the military context,¹⁴² Congress remains limited by Due Process and subject to judicial review by the Court on constitutional questions.¹⁴³ However, a disparate impact caused by gender-neutral physical fitness standards would be justified by both the necessity of combat readiness, and the specific nexus between combat MOS duties and the physical fitness level required to perform the job.¹⁴⁴ In *Rostker*, the Court noted that it was not unconstitutional for Congress to distinguish between men and women because women did not have the same opportunities as men due to combat restrictions.¹⁴⁵ Now, the inverse should be true.¹⁴⁶ Because women are eligible for combat positions, the differences in minimum requirements for job qualifications between men and women may be challenged constitutionally under the Fifth Amendment on equal protection grounds.¹⁴⁷

Additionally, the ability of women to succeed at elite military academies and demanding military training schools demonstrates that women are fully capable of meeting the physical standards required for combat positions.¹⁴⁸ Similar to the women discussed in *Virginia* who wanted to attend VMI, there are women who may desire to work in a combat assignment.¹⁴⁹ The physical requirements for such a position are not unattainable for women.¹⁵⁰ A lower minimum standard is not necessary for women to qualify for combat MOS's, nor is it effective in preparing Soldiers for the realities of a combat environment.¹⁵¹

¹⁴² See *Rostker*, 453 U.S. at 68; see generally *Bauer v. Lynch*, 812 F.3d 340 (4th Cir. 2016) (discussing the Federal Bureau of Investigation's gender-normed physical fitness standards).

¹⁴³ See *Toth*, 350 U.S. at 8.

¹⁴⁴ See § 524, 88 Stat. at 3292; see also 42 U.S.C. § 2000e-2(k)(1)(A)(i) (classifying disparate impact); see generally *Ricci v. DeStefano*, 557 U.S. 557, 578 (2009) (discussing the Civil Rights Act of 1991 and disparate-impact provisions of Title VII: "Under the disparate-impact statute, a plaintiff establishes a prima facie violation by showing that an employer uses 'a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin.' An employer may defend against liability by demonstrating that the practice is 'job related for the position in question and consistent with business necessity.'").

¹⁴⁵ See *Rostker*, 453 U.S. at 67.

¹⁴⁶ See *id.*; see also Panetta/Dempsey 2013 Memorandum, *supra* note 48 (rescinding the 1994 Direct Ground Combat Definition and Assignment Rule).

¹⁴⁷ See *Rostker*, 453 U.S. at 67; see also Panetta/Dempsey 2013 Memorandum, *supra* note 48 (rescinding the 1994 Direct Ground Combat Definition and Assignment).

¹⁴⁸ See *Virginia*, 518 U.S. at 544, n.13; see also Haley Britzky, *100 Women Have Now Graduated US Army Ranger School*, TASK & PURPOSE (Mar. 11, 2022), <https://taskandpurpose.com/news/100-women-army-ranger-school/> [<https://perma.cc/QM3M-WGTW>] (reporting that as of March 2022, 100 women successfully completed Ranger School, "one of the most grueling courses in the Army. . . . The first women graduated Ranger School in August 2015, and since then women have continued breaking barriers. Capt. Kristen Griest, one of the very first women to earn the Ranger tab, became the first female infantry officer in the Army. Another one of the first 10 women to graduate Ranger School, Capt. Shaina Coss, became the first woman to lead Rangers in combat.").

¹⁴⁹ See *Virginia*, 518 U.S. at 523.

¹⁵⁰ See Britzky, *supra* note 148.

¹⁵¹ See Griest, *supra* note 14.

The Court's recognition of women's capabilities in the military supports a policy enforcing one physical fitness standard for combat positions, regardless of gender.¹⁵² Subjecting women to a lower physical fitness standard when they are capable of performing at the same standards as their male counterparts is akin to subjecting an "entire class of females to inferior legal status without regard to the actual capabilities of its individual members."¹⁵³ In addition, women in the military are expected to perform their duties at the same caliber as their male counterparts, and vice versa.¹⁵⁴ The duties of a combat MOS do not change based on gender.¹⁵⁵ Therefore, men and women should qualify for such positions based on the same standards. This will prevent combat eligibility of both men and women who are unable to meet the minimum physical requirements, which aligns with the overall mission and objectives of the military and the policies behind physical fitness assessments.¹⁵⁶

The physical fitness requirements needed to perform the minimum duties of combat are inherently gender-neutral; therefore, gender-neutral physical fitness assessments should be the standard.¹⁵⁷ The implementation of gender-neutral fitness standards will restrict the broad discretion of military leadership from excluding women based on differences in minimum standards of performance.¹⁵⁸ By setting one standard for all, it will address the stereotypes and bias that inhibit women's equal opportunity within the military.¹⁵⁹ I argue that to ensure the equal protection of women in combat, Congress should require one physical fitness standard in combat MOS's.¹⁶⁰ Extensive research and development regarding physical fitness standards has already been completed by the Department of Defense following the 2012 report to Congress and implementation plans submitted in accordance with the 2013 directive.¹⁶¹ Additional research and development will follow

¹⁵² See *Frontiero*, 411 U.S. at 686-87.

¹⁵³ *Id.* at 687; see also Britzky, *supra* note 148 (reporting 100 women "breaking barriers" and graduating Army Ranger School).

¹⁵⁴ See Britzky, *supra* note 148.

¹⁵⁵ See Ch. 2: *Officer Classification System*, *supra* note 130.

¹⁵⁶ See Carter December 2015 Guidance, *supra* note 63; see also Holl, *supra* note 87 (discussing changes to Army physical fitness assessments).

¹⁵⁷ See Ch. 2: *Officer Classification System*, *supra* note 130, at ¶ 2-3; see also Flaherty, *supra* note 110 (quoting Hegseth: "In those ground combat roles, what is true is that the weight of the ruck on your back doesn't change, the weight of the 155 round that you have to carry doesn't change, the weight of the 240 Bravo machine gun you might have to carry doesn't change.").

¹⁵⁸ See generally NAT'L WOMEN'S L. CTR., *supra* note 7 (discussing the exclusionary impact of the 1994 Direct Ground Combat Definition and Assignment Rule on women).

¹⁵⁹ See Griest, *supra* note 14.

¹⁶⁰ See National Defense Authorization Act, Pub. L. No. 113-291, § 524, 88-89 Stat. 3292 (2014); see also Griest, *supra* note 14 (arguing that reverting to gender-based scoring in the APFT would reduce the effectiveness of the military and stigmatize women in combat units).

¹⁶¹ See generally Agnes Gereben Schaefer et al., *supra* note 50 (reporting findings from a study on the implementation process of integrating women into the Marine Corps Infantry); see also THOMAS S.

Defense Secretary Hegseth's directive to the Secretaries of the military departments to refine combat arms standards.¹⁶² Thus, the enactment of gender-neutral physical fitness standards through legislation is the next phase in truly integrating and protecting women in combat positions.¹⁶³

SZAYNA ET AL., RAND CORP., CONSIDERATIONS FOR INTEGRATING WOMEN INTO CLOSED OCCUPATIONS IN U.S. SPECIAL OPERATIONS FORCES (2015) https://www.rand.org/pubs/research_reports/RR1058.html [<https://perma.cc/8JRR-LWSS>] (reporting findings from a study on the implementation process of integrating women into Special Operations Forces).

¹⁶² See Hegseth March 2025 Directive, *supra* note 120.

¹⁶³ See Panetta/Dempsey 2013 Memorandum, *supra* note 48; see also NAT'L WOMEN'S L. CTR., *supra* note 7, at 11 (discussing the rescission of the 1994 Direct Ground Combat Definition and Assignment Rule).