P.S. to the NEWS
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THE DRAFT LAWSUIT

A three-judge federal district court in Philadelphia recently held that the draft registration law is unconstitutional because it is sex discriminatory in requiring men, but not women, to register for the draft. The court pretended to discover a new meaning in the Fifth Amendment which nobody else has seen during our country's two centuries and nine wars.

The U.S. Constitution grants to Congress, not the courts, the powers to provide for and regulate our army and navy. But the court brushed aside those specific constitutional provisions, ignored the separation of powers, and ordered its own terms for draft registration.

If this outrageous decision stands, it would mean that we must draft 19- and 20-year-old women along with men of the same age, while at the same time allowing all the tens of millions of young men, age 21 and older, to avoid military duty. This would mean that all men age 21 and older would escape the draft while their younger sisters, wives and daughters are conscripted to do their fighting for them.

There is no way in the world that anyone can justify a rule which requires our nation to draft 20-year old women while 21-year-old men are exempted. The U.S. Constitution does not and cannot require that, regardless of what the court opinion says.

To prohibit sex discrimination while permitting age discrimination would be so unjust that it would be ridiculous. But that would be the result of the court's decision if it is allowed to stand.

The big losers under this decision would be the young women. But they were not represented in the Philadelphia court which rendered the decision. No woman was involved in the case, and the women's arguments were never presented to the court.

The case was originally brought during the Vietnam War by draft-age men who did not want to serve. The case lay dormant in the files for years. When draft registration was voted this year, the case was mysteriously reincarnated with new male draft-age plaintiffs.

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The defendant in the case is the Director of Selective Service, who is represented by the Justice Department lawyers, who are employees of the Carter Administration. Since President Carter, the Secretary of Defense, and the Director of Selective Service are all on record in favor of drafting women, it is obvious that they want the Justice Department lawyers to lose the case.

It is shocking that the Federal Court in Philadelphia would even hear the case under such circumstances. Our entire system of law is based on the adversary system in which two sides to a controversy, which have direct interests in the case, present their best opposing arguments, so that a fair court can decide between them.

Few principles are as basic to our American system of law and government as the concept that your life, rights or property cannot be taken away in a lawsuit unless you are represented. Yet the Philadelphia court presumed to take away the traditional rights of 19- and 20-year-old American women, which they have enjoyed since the birth of our nation, without hearing a single argument from them.

The court's opinion stated that the principal reason the Justice Department lawyers offered for a male-only registration is that "it provides military flexibility." Of the several dozen good reasons for exempting women from the draft, that is probably the least persuasive.

Immediately upon the announcement of the decision, a spokesman for the American Civil Liberties Union proclaimed it "a great victory for women's rights." That amazing statement sounds very much like Orwellian 1984 Doublespeak.

The court concluded its opinion by issuing an injunction against the draft registration of men during July, but that injunction was stayed by Justice William Brennan, so the registration of men proceeded on schedule as the law specifies.

The issue of compulsory conscription of women now moves directly to the U.S. Supreme Court for consideration in its fall term. It remains to be seen whether the court will ever hear the arguments of the young women upon whom the burden of conscription would fall.

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