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WOMEN'S DRAFT EXEMPTION ACT

If the Supreme Court affirms the federal district court decision in Rostker v. Goldberg, thereby ruling that women must be drafted anytime men are drafted, Congressman Billy Lee Evans (D.-Ga.) has a game plan ready. He has already introduced into the Congress a bill (H.R. 2791) called the "Women's Draft Exemption Act."

His bill would withdraw jurisdiction from all federal courts, including the Supreme Court, over "any case arising out of any statute, ordinance, rule, regulation, concerning (1) establishing different standards on the basis of sex for the composition of the armed services for assignment to duty therein, or (2) establishing different treatment for males and females concerning induction, or mandatory registration for possible induction, of individuals for training and service in the Armed Forces."

The bill shows the determination of some Congressmen not to let the federal courts arrogate to themselves the power to decide who serves in the U.S. Armed Forces. After all, the U.S. Constitution in Article I, Section 8, grants to Congress alone the power "to raise and support armies ... to provide and maintain a navy ... to make rules for the government and regulation of the land and naval forces."

The Federalist Papers also make it clear that the judiciary has no function whatsoever. As Alexander Hamilton wrote in Federalist 78, "the judiciary has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society."

The plaintiff's suit in Rostker v. Goldberg, which won in the federal district court, is a direct challenge to Congress' power. It is also a demand for the overturning of all previous federal court decisions which have shown great deference to Congress' military powers on a wide variety of cases.

In Parker v. Levy (1974), the Supreme Court dismissed a challenge to the special status of the military, ruling that "For the reasons which differentiate military society from civilian society, we think Congress is permitted to legislate both with greater

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breadth and with greater flexibility when prescribing the rules by which the former shall be governed than it is when prescribing rules for the latter."

Congress, in passing and funding the male-only draft registration law, made a clear-cut judgment. Its reasons were logically stated in Senate Report 96-226: "There are military reasons that preclude very large numbers of women from serving. ... Registering women for assignment to combat or assigning women to combat positions in peacetime then would leave the actual performance of sexually mixed units in an experiment to be conducted in war with unknown risk -- a risk that the committee finds militarily unwarranted and dangerous."

The federal district court rejected the judgment of Congress and substituted its own judgment and arguments. That court gave a back-of-the-hand brush-off to the Constitution, to the separation of powers, and to Congressional reasons and judgment, and instead invoked judicially-invented standards and jargon of review.

We are indebted to a study produced by the Heritage Foundation for collecting this list of the legal mumbo-jumbo used in the pro-draft-women briefs submitted by the plaintiffs and the American Civil Liberties Union, plus the federal district court opinion: "strict scrutiny," "heightened scrutiny," "intermediate scrutiny," "minimal scrutiny," "suspect classifications," "rational basis," "minimally rational basis," "reasonable relationship test," "permissible government purpose," "important government interest," "important government objectives," "proper government purpose," "proper government function," "compelling state interest," "substantial relationship," "close and substantial relationship."

One of the amicus briefs presented in support of the pro-draft-women side of the case based its arguments on 72 sociological, psychological, socio-psychological, economic, historical, and feminist treatises, books, research papers, studies and articles, including one from Sports Illustrated. This illogical brief argued that the exemption of women from the draft consigns women to a "second-class status," increases violence against women, and deprives women of "politically maturing experiences."

If the Supreme Court affirms the federal district court decision, Congressman Evans' bill to withdraw jurisdiction from the federal courts is the constitutional method authorized in Article III to check such judicial tyranny and to restore balance to the government. The bill should pick up co-sponsors fast.

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