

ROSTKER v. GOLDBERG, 448 U.S. 1306 (1980)

SEX DISCRIMINATION AND THE DRAFT

The Facts

Early in 1980, President Carter ordered draft registrations for military service. He did so “as necessary to preserving and enhancing our national security interests” in light of the Soviet Union’s invasion of Afghanistan. Federal law authorized the President to require “every male citizen” between the ages of 18 and 26 to register for the draft. Although the President recommended that both men and women be required to register for the draft, Congress disagreed with his recommendation and passed a resolution requiring only men between the ages of 18 and 21 to register.

Several draft age men filed suit and argued that it was unconstitutional sex discrimination to require men, and not women, to register for the draft. They alleged a violation of the Fifth Amendment to the United States Constitution. The District Court held that the gender-based discrimination implied in the draft law violated the Due Process Clause of the Fifth Amendment. The decision was appealed to the Supreme Court by the Selective Service System, the federal agency that administers the draft.

Issues for Discussion

1. Is it fair to require only men to register for the draft? Is it fair to women to exclude them from the draft and from combat? In today’s technological warfare, can’t women fight as well as men?
2. Shouldn’t women and men have the same obligation and same opportunity to serve in the Armed Forces? Why or why not?
3. Are laws that treat men and women so differently unreasonable? Can they be fair and just? Under what circumstances, if any, should such laws be upheld by the Court? When should they be declared unconstitutional?

Decision of the United States Supreme Court

Congress acted well within its constitutional authority when it authorized the draft registration of men, and not women. Therefore, the decision of the district court was reversed.

Reasoning of the Court

The majority reasoned that since the Constitution gives power to Congress “to raise and support Armies” and “provide and maintain a Navy” and to “make rules for the Government and Regulation of the land and naval forces,” Congress was the appropriate body to deal with these matters. The Court recognized its lack of qualifications to judge military matters, while Congress had the means to examine them.

The Court also noted that Congress made its decision to exclude women from the draft after thoroughly considering the matter. Furthermore, since federal law and military policy generally excluded women from combat, Congress acted reasonably in treating men and women differently for the purposes of draft registration, since a key purpose of registration was to prepare for a draft of combat troops.

The three dissenting Justices argued that the draft law excluded women from a “fundamental civic obligation,” military service for national defense. Justice Marshall further argued that under equal protection principles, the draft is faulty, for the different treatment of men and women on the basis of sex was not substantially related to the important governmental objective of maintaining a military force. He found that the registration of women would not detract from the draft, since a modern military requires many skills women can perform. He drew on the Congressional testimony of various Defense Department officials who concluded “. . . that there are not good reasons for refusing to register them.”