

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMAND SERGEANT MAJOR)
JANE P. BALDWIN)
805 Middlewood Drive)
Tallahassee, FL 32312)

and)

COLONEL ELLEN L. HARING)
9641 Granary Place)
Bristow, VA 20136)

Plaintiffs,)

v.)

THE HONORABLE LEON PANETTA,)
Secretary of Defense)
1000 Defense Pentagon)
Washington, DC 20301-1000)

THE HONORABLE JOHN MCHUGH,)
Secretary of the Army)
101 Army Pentagon)
Washington, DC 20310-0101)

LIEUTENANT GENERAL)
THOMAS P. BOSTICK,)
Deputy Chief of Staff G-1, U.S. Army)
300 Army Pentagon, Room 2E446)
Washington, DC 20310-0300)

and)

THE HONORABLE THOMAS R.)
LAMONT)
Assistant Secretary of the Army)
(Manpower and Reserve Affairs))
111 Army Pentagon, Room 2E468)
Washington, DC 20310-0111)

Defendants.)

Case: 1:12-cv-00832
Assigned To : Collyer, Rosemary M.
Assign. Date : 5/23/2012
Description: Civil Rights-Non-Employ.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Command Sergeant Major Jane P. Baldwin and Colonel Ellen L. Haring (collectively, "Plaintiffs"), hereby allege, by and through their attorneys, as follows:

NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief against Defendants, who are officers of the U.S. government, for excluding women in the U.S. Army and Army Reserve from assignment to certain ground combat units and other positions, solely on the basis of sex. Further, this action challenges the constitutionality and legality of the current Department of Defense ("DoD") and U.S. Army policies excluding women from assignment to certain ground combat units and other positions, solely on the basis of sex. The current policies violate Plaintiffs' right to equal protection under the Fifth Amendment to the U.S. Constitution. The policies also violate the Administrative Procedure Act.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201, and 5 U.S.C. § 702.
3. This Court has personal jurisdiction over each of the Defendants.
4. There exists an actual and justiciable controversy between Plaintiffs and Defendants requiring resolution by this Court.
5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e).

PARTIES

6. Plaintiff Jane P. Baldwin is a Command Sergeant Major in the U.S. Army Reserve and is currently assigned to the 2206th Mobilization Support Battalion Fort Bliss, Texas. She is a resident of Tallahassee, Florida.

7. Plaintiff Ellen L. Haring is Colonel, Civil Affairs, in the U.S. Army Reserve, and is currently assigned to the Joint Staff, J7, Joint and Coalition Warfighting Center in Suffolk, Virginia, as a Joint Concepts Officer. She is a resident of Bristow, Virginia.

8. Defendant Leon Panetta is Secretary of the U.S. Department of Defense and is named here in his official capacity. At all times relevant to this Complaint, Defendant Panetta was acting as an employee and agent of the United States of America. In that capacity, Defendant Panetta is responsible for supervising, promulgating, and implementing the regulations that govern military service in all branches of the U.S. armed forces, and for ensuring the legality and constitutionality of these policies. In this role, he is responsible for the maintenance and enforcement of the Direct Ground Combat Definition and Assignment Rule promulgated in a January 13, 1994 memorandum by the Office of the Secretary of Defense, and its subsequent amendment in February 2012, as well as the maintenance, promulgation, and enforcement of other policies, rules, and regulations that affect the assignment of women, including Plaintiffs, in the armed forces.

9. As the Secretary of Defense, Defendant Panetta is a member of the National Security Council and the President's Cabinet. Defendant Panetta conducts a significant portion of his official duties in Washington, D.C.

10. Defendant John McHugh is Secretary of the U.S. Army and is named here in his official capacity. At all times relevant to this Complaint, Defendant McHugh was acting as an employee and agent of the United States of America. In that capacity, Defendant McHugh has overall responsibility for the U.S. Army and for the policies, rules, and regulations that affect the assignment of women, including Plaintiffs, in the U.S. Army. These policies include the

DoD Direct Ground Combat Definition and Assignment Rule and Army Regulation 600-13, which contains the Army's assignment policy for women.

11. Defendant McHugh conducts a significant portion of his official duties in Washington, D.C.

12. Defendant Thomas R. Lamont is Assistant Secretary of the Army (Manpower and Reserve Affairs) and is named here in his official capacity. At all times relevant to this Complaint, Defendant Lamont was acting as an employee and agent of the United States of America. In that capacity, Defendant Lamont is responsible for approving changes to assignment policies pertaining to female soldiers in the U.S. Army. He monitors the assignment and utilization of soldiers, as implemented by the Direct Combat Position Coding ("DCPC") system, and recommends changes to the Secretary of the Army regarding the female soldier assignment policy. Defendant Lamont's duties involve administering the DoD Direct Ground Combat Definition and Assignment Rule and Army Regulation 600-13.

13. Defendant Lamont conducts a significant portion of his official duties in Washington, D.C.

14. Defendant Lieutenant General Bostick is Deputy Chief of Staff, G-1, U.S. Army and is named here in his official capacity. At all times relevant to this Complaint, Defendant Bostick was acting as an employee and agent of the United States of America. In that capacity, Defendant Bostick has the authority to approve future revisions to guidance and procedures related to exceptions to Army Regulation 600-13.

15. Defendant Bostick conducts a significant portion of his official duties in Washington, D.C.

FACTS

A. The Combat Exclusion Policy

16. The Department of Defense articulated its direct ground combat assignment rule ("DoD Policy") in a January 13, 1994 memorandum from the Office of the Secretary of Defense. *See* Memorandum from Les Aspin, Sec'y of Def., Regarding the Direct Ground Combat Definition and Assignment Rule (Jan. 13, 1994) [hereinafter Aspin Memorandum].

17. The Aspin Memorandum reads in relevant part:

[T]he following direct ground combat assignment rule, and accompanying definition of "direct ground combat," are adopted effective October 1, 1994 and will remain in effect until further notice.

A. Rule. 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, as defined below.

B. Definition. Direct ground combat is 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.

The Services will use this guidance to expand opportunities for women. No units or positions previously open to women will be closed under these instructions.

Id. at 1-2.

18. The Aspin Memorandum also explicitly permits the individual branches of the military to include the following additional restrictions on the assignment of women:

- where the Service Secretary attests that the costs of appropriate berthing and privacy arrangements are prohibitive;
- where units and positions are doctrinally required to physically collocate and remain with direct ground combat units that are closed to women;
- where units are engaged in long range reconnaissance operations and Special Operations Forces missions; and
- where job related physical requirements would necessarily exclude the vast majority of women Service members.

Id. at 2.

19. In a report released on February 9, 2012 (“February Report”), the DoD announced proposed changes to its assignment policy. These proposed changes modify the policy as contained in the Aspin Memorandum.

20. The Army policy for the assignment of women is articulated in Army Regulation 600-13 (“Army Policy”), which went into effect on April 27, 1992.

21. The Army Policy charges the Secretary of the Army with the responsibility to “[e]stablish the Army’s policy for the assignment of female soldiers.” Chapter 1, Section II, 1-4(a).

22. The Army Policy reads in relevant part:

a. The Army’s assignment policy for female soldiers allows women to serve in any officer or enlisted specialty or position except in those specialties, positions, or units (battalion size or smaller) which are assigned a routine mission to engage in direct combat, or which collocate routinely with units assigned a direct combat mission.

b. . . . Once properly assigned, female soldiers are subject to the same utilization policies as their male counterparts. In event of hostilities, female soldiers will remain with their assigned units and continue to perform their assigned duties.

c. Female soldiers will be provided full and equal opportunity to pursue careers in the military and will be assigned to all skills and positions according to the above policy.

Chapter 1, Section III, 1-12(a)-(c).

23. Section II of the Army Policy's Glossary defines "direct combat" as:

Engaging an enemy with individual or crew served weapons while being exposed to direct enemy fire, a high probability of direct physical contact with the enemy's personnel and a substantial risk of capture. Direct combat takes place while closing with the enemy by fire, maneuver, and shock effect in order to destroy or capture the enemy, or while repelling the enemy's assault by fire, close combat, or counterattack.

24. Section II of the Army Policy's Glossary defines "collocation" as:

when the position or unit routinely physically locates and remains with a military unit assigned a doctrinal mission to routinely engage in direct combat. Specifically, positions in units or sub-units which routinely collocate with units assigned a direct combat mission are closed to women. An entire unit will not be closed because a subunit routinely collocates with a unit assigned a direct combat mission. The sub-unit will be closed to women.

25. Chapter 2 of the Army Policy articulates the Direct Combat Position

Coding System, which is used to evaluate positions as combat or noncombat.

B. Relationship Between the DoD Policy and the Army Policy

26. The DoD Policy and the Army Policy (together, "combat exclusion policies" or "Policies") collectively govern the assignment of women in the U.S. Army and U.S. Army Reserve. The DoD Policy postdates the Army Policy, and, to the extent that the two policies conflict, the DoD Policy controls. The most recent amendment to the DoD Policy, announced in the February Report and discussed below, indicates that the changes apply to all branches of the military, including the Army.

27. The Army Policy defines "direct combat" differently than the DoD Policy. Specifically, it adds the requirement that the service member be exposed to "a substantial risk of capture," and it expands the definition of direct combat to include "repelling the enemy's assault by fire, close combat, or counterattack." Glossary, Section II.

28. The DoD Policy and Army Policy formulate their respective combat restrictions differently. The DoD Policy restricts the assignment of women to units whose *primary* mission is direct ground combat. The Army Policy restricts the assignment of women to units whose *routine* mission is direct combat.

29. The Army Policy also restricts assignment of women to units that collocate with direct combat units. The Aspin Memorandum permits the individual branches of the Armed Forces to add this restriction.

C. The Evolution of the Combat Exclusion Policy

30. In the National Defense Authorization Act for Fiscal Year 2006, Congress required the Secretary of Defense to submit a report on the current and future implementation of the DoD Policy for assigning military women. The RAND Corporation issued a report in 2007, sponsored by the Under Secretary of Defense for Personnel and Readiness, to be used as input in DoD decision-making. *See* Margaret C. Harrell et al., RAND Nat'l Def. Research Inst., *Assessing the Assignment Policy for Army Women* (2007) (prepared for the Office of the Secretary of Defense) [hereinafter RAND Report]. The RAND Report made several recommendations for changes to the existing combat exclusion policies, each of which was premised on the conditional: “*If* there continues to be an assignment policy for women in the military” *See id.* at xx (emphasis added). The RAND Report recommended that the policies be “recraft[ed]” to conform to the “nature of warfare today and in the future.” *Id.* It also noted concern about the combat exclusion policies’ adverse effect on military performance, recommending that the DoD “[c]larify whether and how much the assignment policy should constrain military effectiveness.” *Id.*

31. The DoD Policy and Army Policy also were scrutinized by the Military Leadership Diversity Commission (“MLDC”). Created as part of the National Defense

Authorization Act for Fiscal Year 2009, the MLDC was tasked with “conduct[ing] a comprehensive evaluation and assessment of policies that provide opportunities for the promotion and advancement of minority members of the Armed Forces, including minority members who are senior officers.” Military Leadership Diversity Comm’n, *From Representation to Inclusion: Diversity Leadership for the 21st Century* vii (2011) [hereinafter MLDC Report].

32. The MLDC issued its final report on March 15, 2011. The final report identified twenty recommendations to improve diversity among the Armed Forces’ ranks. These included a recommendation that “DoD and the Services should eliminate the ‘combat exclusion policies’ for women, including the removal of barriers and inconsistencies, to create a level playing field for all qualified servicemembers.” *Id.* at 71.

33. Section 535 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 mandated that “[t]he Secretary of Defense, in coordination with the Secretaries of the military departments shall conduct a review of laws, policies, and regulations, including the collocation policy, that may restrict the service of female members of the Armed Forces.” Pub. L. 111-383, § 535(a), 124 Stat. 4217. Section 535 further directed that “the Secretary of Defense shall submit” a report reflecting that review “[n]ot later than April 15, 2011.” *Id.* § 535(b), 124 Stat. 4218.

34. On February 9, 2012, to meet the requirements of Section 535, the DoD submitted its *Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces*. Office of the Under Sec’y of Def. Pers. & Readiness, 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 (2012)

[hereinafter February Report]. In this report, DoD notified Congress of its intent to:

- Eliminate the co-location exclusion from the 1994 policy;
- As an exception to policy, allow Military Department Secretaries to assign women in open occupational specialties to select units and positions at the battalion level (for Army, Navy, and Marine Corps) whose primary mission is to engage in direct combat on the ground;
- Based on the exception to policy, assess the suitability and relevance of the direct ground combat unit assignment prohibition to inform future policy decisions; and
- Pursue the development of gender-neutral physical standards for occupational specialties closed due to physical requirements.

February Report at 15.

35. Additionally, in the February Report, DoD concluded that “there is no compelling reason for continuing the portion of the policy that precludes female Service members from being assigned to units or positions that are doctrinally required to physically co-locate and remain with direct ground combat units.” *Id.* at 3.

36. Despite the changes proposed in the February Report, “[w]omen are still restricted from assignment to units below the battalion level whose primary mission is to engage in direct ground combat and will continue to be excluded from assignments in closed military occupational specialties, such as infantry.” February Report at 15.

37. In a memorandum dated May 7, 2012, the Secretary of the Army issued a directive approving a limited exception to Army Regulation 600-13. Specifically, the exception “permit[s] the assignment of female Soldiers serving in specialties open to women to positions in the battalion headquarters and headquarters companies of maneuver battalions in select units.”

Memorandum from John M. McHugh, Sec'y of the Army, for SEE Distribution 1 (May 7, 2012) [hereinafter May Memo].

38. This is a limited exception to the Army Policy. The combat exclusion policies still exclude women from the vast majority of combat positions. As discussed below, there is no basis on which to justify this continuing arbitrary and discriminatory exclusion.

D. Futile Implementation of the Combat Exclusion Policies

39. American women have fought and served in every U.S. war, beginning with the Revolutionary War. Today, women constitute approximately 14.5% of the 1.4 million Active Component military personnel. February Report at 3. These women have played an integral role in Operations ENDURING FREEDOM (Afghanistan) and IRAQI FREEDOM (Iraq), serving as fighter, bomber, attack, and helicopter pilots, while also serving in ground combat support positions and conducting searches of Iraqi and Afghan civilian women at security checkpoints in Iraq and Afghanistan. The DoD and Army Policies were developed at a time when wars were fought on a linear battlefield. The linear battlefield no longer exists. Rather, the battlefields in Iraq and Afghanistan are nonlinear, containing no “forward area” as contemplated in the Aspin Memorandum. For example, the 2007 RAND Report concluded that “[t]he concepts of *forward* and *well forward* were generally acknowledged to be almost meaningless in the Iraqi theater.” RAND Report at 16 (*italics in original*). Additionally, in modern warfare, soldiers struggle to define “enemy.” The RAND Report found that, “[w]hen asked whether *enemy* had any meaning in the context of operations in Iraq,” soldier-interviewees “generally agreed that, if someone was not actively shooting, it was difficult to ascertain the identity of the enemy.” *Id.* at 14 (*italics in original*).

40. As the Armed Forces have adapted to changing combat conditions in these nonlinear theatres, experience has demonstrated that the combat exclusion policies are irrational

and even dangerous. For example, in order to fight effectively in contemporary battle conditions, the Army has been shifting to a modular, brigade-oriented organization, with its forces arrayed in smaller entities that are more easily deployable. Such restructuring better enables the Army to address modern, asymmetric threats. These new modular structures have rendered compliance with the DoD and Army Policies futile.

41. Because of the new nonlinear battlefield and modular organization—and despite the DoD and Army Policies—many women have been regularly and deliberately exposed to combat during the wars in Iraq and Afghanistan. Indeed, over 800 women have been wounded and over 130 women have died in these operations. David F. Burrelli, *Women in Combat: Issues for Congress*, Cong. Research Serv., Apr. 5, 2012, at 1. The 2011 MLDC Report concluded that, because of the unconventionality of modern warfare, “some of the female servicemembers deployed to Iraq and Afghanistan have already been engaged in activities that would be considered combat related, including being collocated with combat units and engaging in direct combat for self-defense.” MLDC Report at 72. In short, “women are currently engaged in direct combat, even when it is not part of their formally assigned role.” *Id.* at 73. Similarly, the 2007 RAND Report concluded that the Army may not have complied with its own assignment policy. RAND Report at xv. Support unit personnel—including women—are “trained, prepared, and expected to defend themselves and their fellow personnel,” and their missions routinely involve self-defense “against snipers, agents, saboteurs, or terrorist activities.” *Id.* at xvi. The RAND Report also found “considerable evidence that support units are collocated with direct combat units,” where collocation is defined as a matter of proximity, which contravened the Army Policy. *Id.* at xvii.

42. The futile nature of the existing DoD and Army Policies underscores the arbitrariness and irrationality of the female combat exclusion. The arbitrary and irrational character of such exclusion is not surprising in light of the fact that there is no agreement as to the actual purposes, goals, or terms of those Policies. According to the RAND Report, “the policy objectives are not clear.” *Id.* at 19. There is little consensus on either the goals and “spirit” of the DoD and Army Policies, or the actual “letter” of the Policies themselves. *Id.* at 27–28. In fact, some Army personnel interviewed for the RAND Report “expressed surprise or disbelief at [the Army Policy’s] content, as indicated by comments such as ‘I had no idea,’ or laughing during the discussion” of the Army Policy. *Id.* at 49. Additionally, “many” interviewees who had returned from deployment did not even know the policy existed. *Id.* at 60.

E. Army Officials’ Attempts to Circumvent the DoD and Army Policies

43. Although the DoD and Army Policies formally prohibit women from being assigned to ground combat units, Army officials have deliberately circumvented this restriction in practice by “attaching” women to ground combat units. There is no practical difference, in terms of the work that servicewomen do, between “assigning” women to a ground combat unit and “attaching” women to a ground combat unit. For example, in the Marines’ “Lioness” program, female soldiers were attached to Army and Marine ground combat units in Iraq and, among other things, were used to interact with female members of the local population. Felicia R. Lee, *Battleground: Female Soldiers in the Line of Fire*, N.Y. Times, Nov. 5, 2008. These female soldiers, or “Lionesses,” often came under the same enemy fire and enemy attacks as the ground combat units to which they were “attached.” *Id.*

44. Likewise, Army officials have sidestepped the Policy by assigning women to Cultural Support Teams (“CSTs”). These teams “provide direct support to Special Forces” and engage with local populations. Tracy Swanson & Sheila Medeiros, *DoD’s Combat*

Exclusion Policies Limit Commanders and Strain our Current Forces, Small Wars J., Nov. 20, 2011, available at <http://smallwarsjournal.com/jrnl/art/dod%E2%80%99s-combat-exclusion-policies-limit-commanders-and-strain-our-current-forces>. Women serving in CSTs face the same lethal dangers as any other personnel who serve in direct combat. For example, in October 2011, Army First Lieutenant Ashley White died when her joint special operations task force encountered an improvised explosive device. *Id.* In a cruel and potentially deadly irony, the effect of the DoD and Army Policies may be to place these women in more danger than their male combat-arms counterparts. Earlier in their careers, the women now assigned to CSTs were barred by the Policies from receiving the combat arms training that is provided to their male counterparts and that is necessary for on-the-ground interaction with hostile forces.

45. Army officials' purposeful and deliberate actions to circumvent the combat exclusion policies are further evidence of the irrationality and arbitrariness of the DoD and Army Policies. Moreover, these actions establish that the officials themselves know that the policies are irrational and arbitrary.

F. Effect of the DoD and Army Policies on Female Members of the U.S Army and Army Reserves

46. The DoD Policy, as amended by the February Report, bans women "from assignment to units below the battalion level whose primary mission is to engage in direct ground combat and . . . from assignments in closed military occupational specialties, such as infantry." February Report at 15. It also excludes women from assignment to "units [] engaged in long range reconnaissance operations and Special Operations Forces missions." *Id.* These bans exclude women from thousands of positions in the armed forces, no matter how qualified the women may be as individuals. Women are excluded from officer occupations in armor, infantry, and special forces; and female warrant officers are prohibited from serving in Special

Forces. *Id.* at 7. Enlisted women are excluded from serving in certain infantry specialties, combat engineer, field artillery specialties, special forces, armor specialties, and armor or artillery mechanical maintenance specialties. *Id.*

47. The DoD Policy, as amended by the February Report, also permits the exclusion of women “where job related physical requirements would necessarily exclude the vast majority of women Service members.” The policy does not, however, define the physical requirements for these specialties. Women may also be excluded from assignment to positions where “the costs of appropriate berthing and privacy arrangements are prohibitive.”

48. The MLDC Report concluded that the combat exclusion policies constitute a “structural barrier” that limits women’s abilities to pursue careers in the military that are “associated with promotion to flag/general officer grades” and other “career-enhancing assignments.” MLDC Report at 71. The material impact of this “structural barrier” is stark: as of 2006, 80% of general officers in the Army, ranks O-7 and above, “came from combat arms occupations.” *Id.* at 67. These are the precise occupations that the DoD and Army Policies formally close to women for no rational reason.

49. According to the MLDC Report, not only do the combat exclusion policies harm career and advancement opportunities for military women, but they also adversely affect combat effectiveness by “limit[ing] the ability of commanders in theater to pick the most capable person for the job.” MLDC Report at 72. The RAND Report similarly measured a “consistent” opinion among Army personnel that “strict adherence” to the Army policy would detrimentally impact operations. RAND Report at 51.

G. Effect of DoD and Army Policies as Applied to Plaintiffs

1. *Command Sgt. Maj. Baldwin*

50. Command Sgt. Maj. Baldwin began her career in the U.S. Army Reserve in 1987. During her more than 20 years of service, she has served in a variety of positions, including Administrative Specialist, Instructor, Administrative Supervisor, Finance Chief, Postal Supervisor, Platoon Sergeant, Senior Drill Sergeant, Chief Instructor, Senior Observer/Controller, and First Sergeant. Command Sgt. Maj. Baldwin's service has included overseas service in South Korea and Germany, with a deployment to Baghdad, Iraq in 2004.

51. Command Sgt. Maj. Baldwin is a decorated soldier and has served with distinction. During her career she has earned an Army Commendation Medal (2nd Oak Leaf Cluster), Army Achievement Medal (1st Oak Leaf Cluster), Army Reserve Components Achievement Medal (6th Oak Leaf Cluster), National Defense Service Medals, Armed Forces Reserve Medal (Silver Hour Glass with M Device), the Iraq Campaign Medal, the Global War on Terrorism Service Medal, Noncommissioned Officer Professional Development Ribbon (with Numeral 3), the Army Service Ribbon, Army Reserve Components Overseas Training Ribbon (with Numeral 3), Overseas Service Bar, and the Drill Sergeant Badge.

52. The combat exclusion policies affected Command Sgt. Maj. Baldwin's career choices and opportunities. In particular, the career options available to Command Sgt. Maj. Baldwin, as compared to a man who graduated in her peer group, have been limited from the outset of her career.

53. As a direct result of the DoD Policy and the Army Policy, Command Sgt. Maj. Baldwin was banned from applying to two separate positions solely because she is a woman. One of these positions was coded as a combat position, while the other was a *civilian*

position. She first inquired about these positions in October 2010, when she was in the required pay grade of E-8.

54. The combat-coded post was for a First Sergeant position at a new unit in Tallahassee, Florida. Command Sgt. Maj. Baldwin has extensive experience building up a new Army Reserve unit from ground zero. Indeed, while assigned as the First Sergeant at Company E, 3rd Battalion, Small Arms Readiness Group located at Fort Dix, New Jersey, she took a lead role in building a unit from the ground up. After only two years, she had helped establish a full, functioning unit. This experience made her well-suited to the First Sergeant position available at 344th Engineer Company (SAPPERS). Despite this background and expertise, she was not even permitted to apply for the position because the DoD Policy and the Army Policy exclude her from consideration solely because of her sex.

55. The DoD and Army Policies have also affected her ability to obtain certain civilian positions. Specifically, Command Sgt. Maj. Baldwin was not permitted to apply for a position as a civilian unit administrator for the 344th Engineer Company (SAPPERS). This particular unit administrator needed to belong to the unit. Merely because she is a woman, Command Sgt. Maj. Baldwin was barred from belonging to the unit, and thus she was not eligible to apply for this position.

56. There is no rational basis for banning Command Sgt. Maj. Baldwin from applying for positions for which her background and expertise is well suited, on the sole basis that she is a woman. The DoD Policy and the Army Policy have generally prevented Command Sgt. Maj. Baldwin from pursuing her career in the Army Reserve to the full extent of her capabilities, qualifications, and potential. But for the DoD Policy and Army Policy, Command Sgt. Maj. Baldwin would pursue combat positions for which she is qualified.

2. *Colonel Ellen Haring*

57. Col. Ellen Haring graduated from West Point in 1984. During her 28 years with the Army, she has held a number of different positions, including Platoon Leader, Commander, Executive Officer, and Brigade Commander. Additionally, she served for three years as an associate professor at the Army's Command and General Staff College. Col. Haring currently serves on the Joint Staff as a Joint Concept Officer for the Joint and Coalition Warfighting Center in Suffolk, Virginia.

58. The combat exclusion policies affected Col. Haring's career choices and opportunities. In particular, the career options available to Col. Haring, as compared to a man who graduated in her class, have been limited from the outset of her career.

59. Col. Haring has served with distinction, earning the Meritorious Service Medal (with 1 Oak Leaf Cluster), the Army Commendation Medal (with 7 Oak Leaf Clusters), the National Defense Service Medal, the Army Service Ribbon, the Overseas Service Ribbon, the Army Reserve Components Overseas Training Ribbon, and the Air Assault Badge. She has also published two papers: "Conflict Analysis and Military Planning," Cornwallis Group Conference Proceedings, Vienna, Austria (April 2009), and "Mobilizing Identity in the Pashtun Tribal Belt," Small Wars Journal (March 2010).

60. The DoD Policy and the Army Policy have prohibited Col. Haring from pursuing or obtaining positions commensurate with her capabilities, qualifications, and potential. Specifically, from the beginning of her military career, her options were limited to support positions with no possibility to compete within the combat arms. At the mid-point in her career, Col. Haring changed her specialty to Civil Affairs in order to become a supporting member of the Special Operations community. However, when she applied to a non-combat support

position in Special Operations Command, Col. Haring was overlooked for the position and it was instead given to a lower ranked, Special Forces-qualified male. Accordingly, despite her other qualifications and her association with the Special Operations community, Col. Haring's lack of Special Forces branch qualification—a direct result of the combat exclusion policies—impacted her ability to obtain the job.

61. The DoD Policy and the Army Policy have limited Colonel Haring's assignment options and her ability to compete for positions that provide advancement within the Army commensurate with her skills and experience. But for the DoD Policy and Army Policy, Colonel Haring would pursue combat positions for which she is qualified.

H. Irreparable Harm

62. Absent injunctive relief, Defendants' continued enforcement of the DoD Policy and the Army Policy will prevent Plaintiffs from applying for and pursuing their desired assignments, which are currently open only to Plaintiffs' male counterparts. This limitation on Plaintiffs' careers restricts their current and future earnings, their potential for promotion and advancement, and their future retirement benefits. It additionally causes them to suffer invidious discriminatory treatment in a work environment that institutionalizes the unequal treatment of women solely because of their sex and notwithstanding their individual abilities. This invidious discriminatory treatment stigmatizes Plaintiffs, causes irreparable damage to their professional careers and personal dignity, and infringes upon their constitutional rights.

63. Additionally, any continued enforcement of the DoD Policy and the Army Policy further engrains and validates institutional discrimination against women and the stigmatization of women as inferior, which has deprived and continues to deprive Plaintiffs of their constitutional rights.

COUNT ONE

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

64. Plaintiffs hereby incorporate and reallege paragraphs 1–63, as if fully set forth herein.

65. By excluding plaintiffs from assignment, solely because of their sex, to units below the battalion level whose primary mission is to engage in direct ground combat and to closed occupational specialties, Defendant Panetta has acted in a manner that is arbitrary and capricious, without reasoned explanation, not in accordance with law, and contrary to constitutional right—all in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

66. By permitting the Secretary of the Army to restrict plaintiffs' assignments, solely because of their sex, "where the Service Secretary attests that the costs of appropriate berthing and privacy arrangements are prohibitive; . . . where units are engaged in long range reconnaissance operations and Special Operations Forces missions; and where job related physical requirements would necessarily exclude the vast majority of women Service members," Defendant Panetta has acted in a manner that is arbitrary and capricious, without reasoned explanation, not in accordance with law, and contrary to constitutional right—all in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

67. By excluding plaintiffs from assignment, solely because of their sex, to "specialties, positions, or units (battalion size or smaller) which are assigned a routine mission to engage in direct combat, or which collocate routinely with units assigned a direct combat mission," Defendants McHugh, Lamont, and Bostick have acted in a manner that is arbitrary and capricious, without reasoned explanation, not in accordance with law, and contrary to constitutional right—all in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

68. Plaintiffs have no adequate remedy at law.

COUNT TWO

DENIAL OF EQUAL PROTECTION UNDER THE FIFTH AMENDMENT: DISCRIMINATION ON THE BASIS OF SEX

69. Plaintiffs hereby incorporate and reallege paragraphs 1–68, as if fully set forth herein.

70. By excluding plaintiffs from assignment, solely because they are women, to units below the battalion level whose primary mission is to engage in direct ground combat and to closed military occupational specialties, Defendant Panetta has denied to Plaintiffs equal protection of the laws on the basis of their sex, in violation of the Fifth Amendment to the U.S. Constitution.

71. By permitting the Secretary of the Army to restrict plaintiffs' assignments, solely because of their sex, "where the Service Secretary attests that the costs of appropriate berthing and privacy arrangements are prohibitive; . . . where units are engaged in long range reconnaissance operations and Special Operations Forces missions; and where job related physical requirements would necessarily exclude the vast majority of women Service members," Defendant Panetta has denied to Plaintiffs equal protection of the laws on the basis of their sex, in violation of the Fifth Amendment to the U.S. Constitution.

72. By excluding plaintiffs' assignment, solely because of their sex, to "specialties, positions, or units (battalion size or smaller) which are assigned a routine mission to engage in direct combat, or which collocate routinely with units assigned a direct combat mission," Defendants McHugh, Lamont, and Bostick have denied to Plaintiffs equal protection of the laws on the basis of their sex, in violation of the Fifth Amendment to the U.S. Constitution.

73. Plaintiffs have no adequate remedy at law.

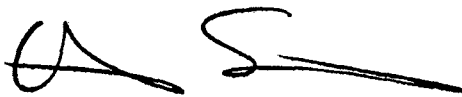
Prayer for Relief

WHEREFORE, Plaintiffs seek the following relief:

1. A declaratory judgment that the Department of Defense assignment policy is illegal and unconstitutional, both on its face and as applied in this case;
2. A declaratory judgment that the U.S. Army assignment policy is illegal and unconstitutional, both on its face and as applied in this case;
3. A permanent injunction of Defendants from any further enforcement of the Department of Defense assignment policy;
4. A permanent injunction of Defendants from any further enforcement of the U.S. Army assignment policy;
5. A permanent injunction requiring Defendants to make all assignments and training decisions without any regard to sex;

6. Reasonable attorney fees and allowable costs of court; and
7. Such other relief as this Court deems appropriate.

Respectfully submitted,



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