



Refuse to Register
NO REGISTRAR
CONSCRIPCION NO

*poster by Fred Moore for the
National Resistance Committee*

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**Statement for conference call with anti-war organizations and members of the
National Commission on Military, National, and Public Service (NCMNPS)**

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Members of the Commission:

Thank you for inviting recommendations from anti-war organizations and activists.

It should be obvious that one of the main reasons for opposition to military conscription is opposition to war, and that many Americans oppose military conscription and Selective Service registration not because they think the draft “unnecessary” for waging war, but because they oppose some or all of the wars that Americans might be conscripted to fight.

It should be equally obvious that whether continuation, enforcement, or expansion to women of Selective Service registration, a draft, or compulsory national service would be “feasible” would depend not only on whether those subject to such a requirement would submit, or how and in what numbers they would resist, but on the response of a larger anti-war and anti-draft movement of women and men of all ages who would support, assist, and join them in acts of resistance – individual and collective, legal and illegal – to conscription and war. Understanding of anti-war and anti-draft sentiment and likely resistance to any draft is therefore essential to your task of assessing the feasibility of these policy options. I would be happy to assist you and your research staff in this process.

Having had the opportunity to testify at one of your earlier hearings concerning whether draft registration should be extended to young women as well as young men,¹ I would like to focus on a question that wasn't asked, and an issue that wasn't part of the terms of reference, for any of your formal hearings: What specific provisions should be included in any legislation proposed by the Commission or enacted by Congress to end draft registration?

I recommend that the Commission recommend to Congress and the President:

- (1) that the requirement for young men to register with the Selective Service System and inform the SSS of address changes be repealed, and not be extended to women;
- (2) that all Federal criminal, administrative, and naturalization sanctions for nonregistration be repealed, and that all state sanctions for nonregistration or other violations of the Military Selective Service Act be preempted by Federal statute; and
- (3) that no form of compulsory national service should be imposed or attempted.

The War Resisters League, of which I am a member, noted in its submission² to you that WRL was founded shortly after World War I to support war resisters who remained in prison or continued to be penalized after the war had ended and conscripts had been demobilized.

This should not be surprising. Every U.S. war in which conscription has been used has been followed by public debate and agitation – sometimes prolonged and often acrimonious – about how to deal with those who resisted or violated the draft law while it was in effect.

After each such war – the Civil War, World War I, World War II, and the U.S. war in Indochina – there has eventually been some sort of formal or informal pardon, amnesty, commutation of sentence, early release from prison, or other official action to mitigate some of the penalties imposed on draft and war resisters during the war and while the draft was in use.

Some of the most heated debate over how to respond to resistance by the “Vietnam generation” concerned how to treat resisters after the U.S. withdrew from Vietnam and the draft was ended. Military and draft resisters and exiles continued to be subject not only to the risk of criminal prosecution but to administrative and immigration sanctions. Two incomplete “amnesties” left penalties in effect for some resisters, and a legacy of bitterness.

The Commission should foresee, and you should point out to Congress and the President, that another – and probably much more prolonged – such controversy can be anticipated if the Selective Service registration requirement is ended without ending and explicitly foreclosing all state and Federal sanctions for past nonregistration. Congress and the President should not repeat the Vietnam-era mistake of ending the draft without, at the same time, foreclosing further punishment of draft resisters, to give closure to the issue.

1. See written testimony at <<https://inspire2serve.gov/api/files/225>>, transcript at <<https://inspire2serve.gov/api/files/291>>, and links to video at <<https://hasbrouck.org/blog/archives/002342.html>>.
2. War Resisters League Statement to the NCMNPS, November 2019, <<https://inspire2serve.gov/api/files/371>>.

This isn't about the fifteen people who were convicted in show trials of selected nonregistrants in the 1980s.³ We remain felons, and I'm not asking you to do anything to change that. But we completed our sentences and went on with our lives decades ago.

I "served" four and a half months in prison after I was convicted of willful refusal to submit to registration with the Selective Service System. Others who took the same action, but who were never accused of any crime, will remain subject to lifetime Federal sanctions unless Congress acts. They never had their day in court, and they should be presumed innocent. And why should the penalties for violating a Federal law vary so greatly by state of residence?

Tens of millions of people have violated the Military Selective Service Act since 1980. Some have done so publicly, some quietly, some knowingly, some unwittingly. All of them have contributed to preventing a return to the draft and to limiting U.S. war-making. All of them will remain subject to lifetime sanctions and disqualifications, for decades to come, unless Congress takes affirmative action to restore their full and equal rights.

Whether or not you think that draft registration resisters should be forgiven (or whether they think the U.S. government should be forgiven for its warmongering, its choices of which wars to fight and on which sides to fight, its imposition of draft registration, or the punishments it has already imposed on nonregistrants), you need to recognize the scope and likely duration of the controversies that will ensue if legislation that ends the Selective Service registration requirement doesn't put an end to all penalties for past nonregistration.

The argument for repeal of Federal sanctions and preemption of state sanctions for nonregistration can be made – like the argument for ending the registration requirement itself as unenforceable and not providing a feasible basis for a draft – on purely pragmatic grounds.

Extended, complex, and costly Federal litigation would of course be inevitable. The Constitutionality of imposing many of these sanctions on individuals who have not been accused or convicted of any crime and who are no longer required or permitted to register remains in doubt. A challenge to the application of sanctions for past nonregistration in such a case didn't reach the Supreme Court until 2012, and the Court decided the case without reaching the Constitutional issue, leaving the question in doubt.⁴

Litigation over state sanctions for past nonregistration would likely be even more prolonged and burdensome to government agencies as well as to nonregistrants and their supporters, and even less likely to produce consistent outcomes or meaningful closure.

As long as nonregistrants continue to be punished or denied equal rights, both anti-draft and anti-war activists and civil libertarians will continue to support them. If the time has come to end draft registration, the time has also come to end all penalties for nonregistration.

3. "Prosecutions of Draft Registration Resisters", <<https://hasbrouck.org/draft/prosecutions.html>>.

4. Elgin et al. v. U.S. Treasury et al., 567 U.S. 1 (2012)