



**Refuse to Register**  
**NO REGISTRAR**  
**CONSCRIPCION NO**

*poster by Fred Moore for the  
National Resistance Committee*

**Resisters.info**

Edward Hasbrouck  
1130 Treat Avenue  
San Francisco, CA 94110

+1-415-824-0214  
edward@hasbrouck.org

<https://resisters.info>

**Statement for the public hearings on “Selective Service” and military conscription  
of the National Commission on Military, National, and Public Service (NCMNPS)**

**Washington, DC, 25 April 2019**

**Brigadier General Heck and members of the Commission, Congress, and the public:**

Thank you for the opportunity to represent those who oppose any requirement for women or men to register with the Selective Service System for a possible military draft.

You have described this hearing as being about “Expanding Selective Service registration to all Americans”, by which you mean whether to expand draft registration to young women as well as young men. But that you could describe a requirement applicable only to young people as being one that applies to “all” people is indicative of the profound and unexamined ageism that underlies any system of conscription based on the idea that old people are entitled to decide how young people’s lives should be used. It is because of this ageism that opposition to the draft has been central to movements for youth liberation, not only in this country and not only in the 1960s but around the world and throughout history.

This Commission was formed because of two problems with the Selective Service System: first, that noncompliance has made the registration requirement unenforceable, and second, that the opening of all combat assignments to women has made it unconstitutional.

That leaves Congress, the President, and this Commission with four options:

**One**, Congress could do nothing, and allow mandatory draft registration to be ended by court order. While I and other opponents of registration and the draft would welcome this outcome, it would leave the Selective Service System in place, wasting money conducting a useless voluntary registration system, and would lead to expensive, confusing, and prolonged Federal and state litigation and uncertainty as to which administrative penalties would still apply to those who had previously not registered.

**Two**, Congress could enact legislation for an orderly shutdown of the Selective Service System, expungement of registration records, repeal of Federal criminal and administrative sanctions for past nonregistration, and preemption of any state sanctions for nonregistration. This would be the simplest and cheapest solution, and the one I recommend.<sup>1</sup>

**Three**, the Commander-In-Chief could rescind the order opening combat assignments to women, in order to try to restore the Constitutionality of the requirement for young men but not young women to register for the draft. Some other witnesses on this panel may support this option. But I am doubtful that, now that a court has found that the male-only registration requirement is unconstitutional, it will be so easy to get that finding reversed. Courts are likely to look skeptically at any ploy to re-legitimize a registration requirement applicable only to men, especially if a draft would be used to fill assignments including ones still open to women. And reinstating the bar on women in combat assignments would do nothing about the continuing failure of the attempt to get *men* to register for the draft.

**Four**, Congress could double down on the failure of draft registration for young men by trying to extend it to young women as well, as another way to try to make it Constitutional.<sup>2</sup>

But whatever the legal merits of such legislation, it would be even more of a practical failure than the attempt to get men to register for the draft has been.

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1. The closest recent approach to such a proposal was H.R. 4523 in the 114th Congress, “To repeal the Military Selective Service Act, and thereby terminate the registration requirements of such Act and eliminate civilian local boards, civilian appeal boards, and similar local agencies of the Selective Service System”, <<https://www.congress.gov/bill/114th-congress/house-bill/4523>>. But H.R. 4523 included neither a mandate for expungement of the registration database nor any provision preempting state sanctions for nonregistration.
  2. These are essentially the same choices as were anticipated by the predecessor to the NCMNPS, the Military Manpower Task Force appointed by President Reagan in 1981: “If the Court chooses to strike down the present system, we would be faced with either of two questions: (a) Whether to expand registration to include women, or (b) Whether to accept Court-ordered termination of all registration.” Memorandum from John McClaughry (Senior Policy Advisor, White House Office of Policy Development) to Martin Anderson (Assistant to the President for Policy Development), “Proposed Defense Manpower Task Force”, 24 April 1981, included as file R0001.pdf on DVD source supplement to Bernard Rostker, *I Want You! The Evolution of the All-Volunteer Force*, RAND Corporation, 2006. Note that the statutory authority of the President to order registration pursuant to 49 U.S.C. §3802 is limited to men. Courts can find a statute unconstitutional, but can neither expand the scope of Presidential authority beyond what Congress has granted nor expand the scope of criminal sanctions beyond that which Congress has seen fit to criminalize. Only by act of Congress – not by court order, Presidential proclamation, or Executive Order – could the Military Selective Service Act be amended to authorize the President to order women to register or create any penalty for women who do not register.

To understand why trying to extend registration to young women as well as young men would fail, it helps to understand how registration of men has failed. I discussed this in some detail in my original written submission to this Commission last year.<sup>3</sup>

Let me walk you through the what would happen if an attempt were made to draft men based on the current Selective Service registration database of names and addresses.

The Selective Service System has given you its self-assessment of so-called “compliance” with draft registration. But the Selective Service System considers anyone who has ever registered, at any address, to be in “compliance”. The purpose of the registration database is to deliver induction notices, however. So the relevant measure of compliance is the percentage of men 18 through 25 years old for whom the Selective Service System has a valid current address on file.

While there are inducements to registration for men who apply for Federal financial aid, naturalization as U.S. citizens, or, in some states, for drivers licenses, none of these measures do anything to get men to notify the Selective Service System of address changes. Compliance with the requirement to tell the Selective Service System every time you move until your 26th birthday is near zero. There’s been no independent audit of the addresses in the Selective Service System database since 1982, but even then, only two years after the start of the current registration process, the GAO estimated that 20-40% of the addresses were already out of date, and that up to 75% would be obsolete by the time registrants reached age 26.<sup>4</sup>

So if the Selective Service System started sending out induction notices to the addresses it has on file, most of them would either be returned as undeliverable, delivered to strangers at former addresses and discarded without reaching the would-be draftees, or delivered to registrants’ parents, if they still live at the same addresses as when their sons registered. Many parents, of course, would either refuse to sign for an induction notice for their child, or would destroy it to protect their child against being drafted. Destroying an induction notice would be a crime on the part of the parent, but many parents would willingly choose to take the risk of prosecution onto themselves to protect their children from being drafted into the military.

Because there is an element of specific intent in the Military Selective Service Act, it would be necessary to deliver actual personal notice to each draftee before they could be prosecuted. When prosecutions of nonregistrants like myself were attempted in the 1980s, this

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3. Edward Hasbrouck, comments to the National Commission on Military, National, and Public Service, NCMNPS Docket No. 05-2018-01, 19 April 2018, available at <<https://resisters.info/Hasbrouck-NCMNPS-19APR2018.pdf>>. Those comments also explained my background and experience and the basis for my expertise with respect to this issue.
  4. “Failure Of Registrants To Report Address Changes Would Diminish Fairness Of Induction Processing”, Government Accounting Office report FPCD-82-45, 24 September 1982, <<http://archive.gao.gov/f0102/119502.pdf>>. “We estimate that about 20% to 40% of addresses in Selective Service files will be outdated for registrants who turn 20 in any given year.... At the end of 8 years, when registrants reach their last year of draft eligibility, the extent of outdated address could reach almost 75%. As a result of outdated addresses, many registrants would not receive induction notices.”

required sending FBI agents to track down each suspect and give them a last chance to comply before they were indicted – a slow, expensive, and unreliable process.<sup>5</sup>

Those who haven't registered will, of course, not be called up in the first place. Since abandoning its brief experiment in show trials of the most outspoken nonregistrants, *pour encourager les autres*, 30 years ago, the Department of Justice – conspicuously absent from the witness list for these hearings – has made neither any estimate of the numbers of violators nor any plan or budget for how to identify, investigate, find, arrest, prosecute, or incarcerate them.

Meanwhile, those who actually receive induction notices will undoubtedly object that the process is unfair because those who have not complied are not being prosecuted.<sup>6</sup>

Resistance to any new attempt to enforce registration or implement a draft will also take new forms. How long will it take after inductions resume before the registration database is hacked – especially if registrants with cyber skills are targeted for a special-skills draft?

Rich parents will pay hundreds of thousands of dollars to bribe or scam their children into more prestigious colleges.<sup>7</sup> How much more will parents pay to keep their children out of being drafted? What will the price be on the “dark Web” to have a hacker remove you, or your child, from the list of potential draftees, or to have someone marked as ineligible for the draft?

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5. See accounts by current and former Selective Service System officials in Steven Nelson, “Gender-Neutral Draft Registration Would Create Millions of Female Felons”, *U.S. News & World Report*, 3 May 2016, <<https://www.usnews.com/news/articles/2016-05-03/gender-neutral-draft-registration-would-create-millions-of-female-felons>>. “In the late '80s the Justice Department discontinued prosecutions. Dick Flahavan, a spokesman for the Selective Service who was with the agency at the time, recalls... ‘The agency [Selective Service System] did agree to what the Justice Department proposed, a suspension of prosecutions... Since they did the prosecutions we didn't have much leverage anyways.’... Flahavan says the Selective Service had hoped for a much stronger approach from federal prosecutors, but was rebuffed... If someone registered just before trial, the prosecution would be dropped, Flahavan notes, making the pursuit of resisters ‘really a losing proposition for the feds’ and often ‘a big waste of time.’” Note also that at present, reasonable reliance on the declaratory judgement of the U.S. District Court for the Southern District of Texas in *National Coalition for Men v. Selective Service System* that the current registration requirement is unconstitutional would negate the element of intent to violate a valid law, making conviction for any violation of the current registration requirement difficult or impossible. See Edward Hasbrouck, “Federal court declares current military draft registration requirement unconstitutional”, 24 February 2019, <<https://hasbrouck.org/blog/archives/002337.html>>.
  6. “The list that they have I doubt could pass the legal definition of a complete and objective list, because it is structurally flawed and Selective Service knows it... It's a list that I'm sure the courts would throw out immediately because it's not accurate.” Bernard Rostker, Director of the Selective Service System, 1979-1981, interviewed by Lillian Cunningham, *Washington Post*, 4 December 2017, <<https://www.washingtonpost.com/news/on-leadership/wp/2017/12/04/episode-12-of-the-constitutional-podcast-the-common-defense/>>.
  7. Press release, U.S. Attorney's office, District of Massachusetts, “Arrests Made in Nationwide College Admissions Scam: Alleged Exam Cheating & Athletic Recruitment Scheme”, 12 March 2019, <<https://www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic>>. See also Bob Sullivan, “Can a high school senior hack his way into college? Young researcher finds flaw at several schools,” 8 April 2019, <<https://bobsullivan.net/cybercrime/can-a-high-school-senior-hack-his-way-into-college-young-researcher-finds-flaw-at-several-schools/>>

The Selective Service System has told this Commission that it thinks “a modern day draft, if marketed carefully and cleverly,” could be successful.<sup>8</sup> But that’s a pipe dream. Enforcement is more than a marketing problem. Any proposal that includes a compulsory element is a naïve fantasy unless it includes a credible enforcement plan and budget which has been endorsed by the Department of Justice and subjected to public and expert scrutiny.<sup>9</sup>

If this Commission is considering recommending continuing or expanding the current Selective Service registration requirement, or replacing it with any new system of *compulsory* registration and/or service, you should schedule an additional formal hearing devoted to the issues of compliance, noncompliance, and enforcement, at which a representative of the Department of Justice is called to testify regarding enforcement history, plans, and budgets.<sup>10</sup>

How much are you prepared to spend, and how much of a police state are you prepared to set up, to round up the millions of current draft registration law violators or enforce a draft?

And if the criminal penalties for noncompliance continue to be unenforced, and the only incentives for compliance or penalties for noncompliance with draft registration or a draft or national “service” remain financial, then the system will remain a *de facto* “poverty draft”.

As for women, is there any reason to think that they will be more willing to provide the government with the information needed to conscript them than men have been? No, just the reverse. Both feminist and anti-feminist women will be more likely to resist being forced into the military than men have been, and more people will support them in their resistance.

There’s a long tradition of antiwar feminism that identifies militarism and war with patriarchy.<sup>11</sup> Women have been an important part of draft resistance movements even when only men were being drafted and when most public attention has been on male resisters.

Both times that legislation to require women to register for a draft has been proposed in the U.S. Congress, it has prompted immediate organizing by women opposed to being drafted.

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8. Report from the Selective Service System to the NCMNPS, 11 December 2017, released 31 January 2019 by the NCMNPS in response to my FOIA request, available at <<https://resisters.info/FOIA/SSS-report-to-NCMNPS.pdf>>.
  9. The most recent hearing at which the Department of Justice testified about the enforcement of draft registration was on 28 July 1982. “Selective Service Prosecutions: Oversight Hearing before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, 97th Congress, 2nd session.”
  10. According to the responses of the NCMNPS to my FOIA requests, the NCMNPS has neither met with the Department of Justice nor received any report, plan, or budget from the Department of Justice for the enforcement of the current draft registration requirement or any alternatives. No witness at any of the NCMNPS public events to date has presented any enforcement proposal, plan, or budget. The NCMNPS has declined to disclose whether its staff or contractors have produced any assessment of past, present, or likely future compliance or any enforcement plan or budget for the current draft registration requirement or any of the compulsory alternatives being considered by the NCMNPS.
  11. “To the liberals’ challenge, ‘If they draft men, why not draft women?’ there’s really only one answer – it’s *not* okay to draft men. And no, it’s not okay to draft women, and no, we don’t owe ... the government ... collusion in as patriarchal and misogynist an institution as the draft... Whatever else it is, war is a patriarchal institution, and *every* war is a war against women.” Karen Lindsay, “Women and the Draft” (speech given at anti-draft rally in Boston), in *Reweaving the Web of Life: Feminism and Nonviolence*, edited by Pam McAllister, New Society Publishers, 1982.

In 1943, when a bill was introduced to require women to register for a draft of nurses, women quickly organized a Women's Committee to Oppose Conscription. Some prominent antiwar women, including Dorothy Day, founder of the Catholic Worker movement, publicly declared their intent to refuse to register if ordered to do so.<sup>12</sup>

In 1980, less than a week after President Carter proposed to require draft registration for both young women and young men, more than eighty Boston-area feminists turned out for the founding meeting of Women Opposed to Registration and the Draft (W.O.R.D.).<sup>13</sup> A few weeks later, the National Resistance Committee was founded at a meeting at the Women's Building in San Francisco.<sup>14</sup> Many women remained active in the draft resistance movement even after Congress limited draft registration to men. The unity statement of the Women's Pentagon Actions in 1980 and 1981 – after Congress had voted to require only men to register – opposed any draft of women or men: “We do not want to be drafted into the Army. We do not want our young brothers to be drafted. We want them equal with us.”<sup>15</sup>

It's self-contradictory to believe that young women are strong enough to wage war, but so weak and submissive that they won't resist being ordered to fight wars they don't want to fight. Strong young women will resist strongly.

While families and friends will have varied attitudes toward women who resist being drafted, gendered differences in social expectations make it more likely that women resisters will have family and community support. Whether or not you or I share these attitudes, many people who condemn a man who refuses to fight as a “sissy” will praise a woman who refuses to fight as a “good girl”.<sup>16</sup> A realistic plan to enforce draft registration will need to include recognition of the likely solidarity of many families, communities, and religious congregations with women who refuse to comply with a draft or draft registration.

You may be tempted to discount the likelihood of resistance to an attempt to enforce registration or to begin inductions into the military because there is little *visible or organized* opposition to draft registration today. But that would be a mistake. It is the spontaneity and lack of dependence on any organizational base that gives the current resistance its resilience.

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12. Dorothy Day, “If Conscription Comes for Women”, *The Catholic Worker*, January 1943, p.1, available at <https://www.catholicworker.org/dorothyday/articles/222.pdf>; Wendy Chmielewski (Curator, Swarthmore College Peace Collection), “The Women's Committee to Oppose Conscription: Women's Peace Politics at Mid-Century”, <http://www.swarthmore.edu/library/peace/DG051-099/dg068.wcoc/dg068.wcohistory.htm>.

13. Lynn Stephen of W.O.R.D., “Making the Draft a Women's Issue”, *Women: A Journal of Liberation*, Vol. 8, No. 1, 1980.

14. Edward Hasbrouck, “About the National Resistance Committee and Resistance News”, <https://resisters.info/nrc.html>; “Women and Draft Registration (‘Selective Service’)”, <https://resisters.info/women.html>.

15. Excerpted in *War No More: Three Centuries of American Antiwar and Peace Writing*, edited by Lawrence Rosenwald, Library of America, 2016, p. 557.

16. See Larry Goldsmith, “Bradley Manning: Rich Man's War, Poor (Gay) Man's Fight”, <https://www.commondreams.org/views/2011/06/07/bradley-manning-rich-mans-war-poor-gay-mans-fight>, reprinted in *Against Equality: Don't Ask to Fight Their Wars*, edited by Ryan Conrad, Against Equality Publishing Collective, 2011, and in *Against Equality: Queer Revolution, Not Mere Inclusion*, AK Press, 2014.

The explicit goal of the government's limited effort to enforce registration was not compliance but perception management: to "maintain the credibility of the system".<sup>17</sup> Only those who had spoken out about our refusal to register were considered for prosecution.<sup>18</sup> The fact that advocating or supporting resistance to draft registration is also a crime further deters many people from visible or organized resistance or explicit advocacy of resistance.<sup>19</sup>

Having deliberately rendered the resistance out of sight and out of mind, and having successfully gotten across the message that there is safety in silence (as well as in numbers) for nonregistrants, it would be the height of self-delusion to misinterpret the resulting silence as a sign of support for the system or of willingness of registrants to be drafted.

Will it make any difference to the levels of compliance and noncompliance or the extent of opposition to the draft if registrants are allowed to indicate, at the time of registration, their intention to seek classification as conscientious objectors if they are drafted? No, it will not.

Most people who oppose the draft wouldn't qualify as conscientious objectors,<sup>20</sup> even if we were willing to do noncombatant or civilian service meeting the government's approval.<sup>21</sup>

There's a continuum of attitudes toward war. There are only a few pacifists like myself who would be unwilling to fight any war, and these are the only people who the government recognizes as conscientious objectors. There are only a few people who would be willing to

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17. "The total number of nonregistrants will doubtless remain very high when measured against the Department's prosecutive resources. However, an initial round of well-publicized, successful prosecutions should have a dramatic effect in further reducing the number of non-registrants....We first would have to accept the simple fact that, although some persons will be prosecuted, there will be others who are neither registered nor prosecuted. Nevertheless, such a policy... might well yield sufficient general deterrence so that the Selective Service System receives sufficient registrations to maintain the credibility of the system." David J. Kline (Senior Attorney, General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice), memorandum over the signature of Lawrence Lippe (Chief, General Litigation and Legal Advice Section) to D. Lowell Jensen (Assistant Attorney General for the Criminal Division), 11 January 1982, disclosed on discovery in *U.S. v. Wayte*, U.S. District Court, Central District of California.
  18. See Edward Hasbrouck, "Prosecutions of Draft Registration Resisters", <<https://resisters.info/prosecutions.html>>, and "The History of Draft Registration and Draft Resistance Since 1980", <<https://resisters.info/background.html>>.
  19. Responses by the FBI to FOIA requests in the 1980s indicated that the National Resistance Committee, with which I then worked, was the subject of a criminal investigation, presumably for draft resistance advocacy and/or conspiracy.
  20. For discussion of some of the diversity of those reasons, see my articles, "Why do some people resist the draft?", <<http://resisters.info/why.html>>, and "Draft Resistance and the Politics of Identity and Status", in *We Have Not been Moved: Resisting Racism and Militarism in 21st Century America*, edited by Elizabeth Betita Martínez, Mandy Carter, and Matt Meyer, PM Press and the War Resisters League, 2012, ISBN 9781604864809, updated 2016 version available at <<http://resisters.info/draft-identity-status.pdf>> and included in my previous written submissions to the NCMNPS.
  21. Many draft resisters, in every U.S. war, have been people who could have qualified as conscientious objectors or for other deferments or exemptions, but who chose to confront and try to stop the draft rather than to be co-opted into accepting deferments, exemptions, or special treatment as C.O.'s while others were drafted into the military. My trial for refusing to register for the draft in 1982, for example, was attended by Dave Dellinger, who had been imprisoned for draft resistance after he renounced his exemption from the draft as a divinity student during World War II, and by John Bach, who had been imprisoned for draft resistance after he renounced his student deferment during the U.S. war in Vietnam. After their release from prison, both remained committed to lifelong activism for peace and justice. Now the Quaker chaplain at Harvard University, Mr. Bach spoke at the NCMNPS public event in Boston on 9 May 2018.

fight any war, and these are the only people who logically ought to register for a draft, since signing up for the draft means agreeing to fight any war one is ordered to fight.

Most people are somewhere in the middle: They believe that there are both some just wars and some unjust wars, and they want to make their own decisions as to which wars – and on which side – they are willing to fight. Most draft resisters come from this silent majority, to whom provisions for conscientious objectors are irrelevant.<sup>22</sup>

I could easily have dodged the draft by quietly staying home. I could have registered just before my 26th birthday, minimizing the amount of time during which I would have been at risk of being drafted, and preserved lifelong eligibility for Federal and state programs. That remains the easiest and safest course of action for those who don't want to be drafted, and I fully respect, support, and commend all those who have made that choice.<sup>23</sup>

Even after I was convicted of refusing to register, I could have avoided prison camp if I had been willing to do “service” work that was politically acceptable to the sentencing judge.

I resisted draft registration, and I persisted in that resistance, not because I wanted to opt out of personal participation in war, but because I wanted to prevent a draft and, by doing so, to limit the ability of the U.S. to wage war. With millions of others who have defied the law, we have succeeded in making draft registration unenforceable and a draft unfeasible.

It's time to admit that, like it or not, draft registration has failed, and should be ended entirely, and to begin to deal with the implications of that fact for military policy.

This Commission's final question is whether draft registration or a draft are “needed”. The implication seems to be that if a draft might be needed, draft registration should be retained. But that's getting it backwards. The failure of draft registration should make clear that a draft would not be enforceable or feasible, even as a fallback. If the Selective Service System is an insurance policy, it is one backed by an underwriter that has been insolvent for decades. If U.S. military plans or commitments to endless wars around the world might require a draft, but a draft would not be feasible, that is a reason to scale back U.S. military activities.

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22. See “Making a Choice: Conscientious Objection or Draft Resistance”, <<https://resisters.info/choice.html>>.

23. As a member of the War Resisters League and a supporter of Courage To Resist, I also support all those within the military who refuse to fight or who fraternize with the people they are told to regard as their “enemies”. See the statement submitted to the NCMNPS by the War Resisters League, “Hell, No! We Still Won't Go! War Resisters League Calls for Renewed Resistance to Conscription and Militarism”, also available at <<https://www.warresisters.org/hell-no-we-still-won't-go-war-resisters-league-calls-renewed-resistance-conscription-and-militarism>>, and the mission statement of Courage to Resist, available at <<https://couragetoresist.org/about-courage-to-resist/>>. “Courage to Resist supports the troops who refuse to fight, or who face consequences for acting on conscience, in opposition to illegal wars, occupations, the policies of empire abroad and martial law at home.... By supporting military resistance, counter-recruitment, and draft resistance, we intend to diminish the number of troops available for unjust war and occupation.”