



Refuse to Register
NO REGISTRAR
CONSCRIPCION NO

*poster by Fred Moore for the
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Briefing for Congressional staff on Selective Service, September 13, 2022

- **Is the Selective Service System fit for purpose?**
- **Would a draft based on the current registration database be feasible?**

The debate about whether to end Selective Service registration or expand it to women has been framed as a debate about whether registration is desirable as a fallback for military mobilization. But the question Congress needs to answer first is whether registration of anyone is even capable of serving any military purpose.

The simple fact is that, like it or not, Selective Service registration is a failure, and any attempt to expand it to women will be a similar failure.

That's a strong statement, but that's not just my opinion. Dr. Bernard Rostker, who set up the present system in 1980 as Director of the Selective Service System, testified in 2019 to the National Commission on Military, National, and Public Service that the current database is so incomplete and inaccurate that it would be “**less than useless**” for an actual draft, and that the Military Selective Service Act should be repealed rather than expanded to women.

When the former head of a Federal agency says it no longer serves its purpose and should be shut down. I think we ought to listen. But the NCMNPS ignored Dr. Rostker's testimony.

Paul Jacob and I were two of only 20 nonregistrants who were singled out for prosecution in the early 1980s. The Department of Justice hoped that “a few well-publicized prosecutions will restore the credibility of the system”. But even though our public statements could be used to convict us, and even though we were sent to prison, prosecuting only the most vocal

nonregistrants called attention to the fact that the government has no way to prove the requisite criminal intent for most nonregistrants. Show trials of activists called attention to the resistance and **caused compliance to fall** as young men learned that there was both **safety in numbers** and **safety in silence** for most nonregistrants – as there still is today.

The DOJ abandoned enforcement of registration in 1988 as ineffective and pointless. In 2021, the Selective Service System referred more than 200,000 names of suspected nonregistrants to the DOJ each year, but the DOJ did nothing to investigate or prosecute any of them. That number is likely to increase substantially next year, when the questions about Selective Service registration are to be removed from the FAFSA financial aid application form as a result of Congressional action two years ago to de-link Selective Service and Federal student aid.

The requirement to report address changes is entirely unenforced and, as was noted last year by the House Armed Services Committee Chair, Rep. Adam Smith, “almost universally” ignored. There’s been no audit of the database since 1982, when the GAO estimated that up to 40% of the addresses on file with Selective Service could be out of date before registrants reached age 20, and up to 75% before they reach age 26. An internal review by the Selective Service System after a 2018 mobilization exercise concluded that, even of those who are registered, “**almost 50% of inductees will not receive reporting orders**” as a result of out-of-date addresses and “massive undeliverable/return to sender” problems.

Most men register only if it’s required for some other government program. Selective Service depends primarily on laws in some states that automatically register applicants for drivers’ licenses. But not all states have such laws. As Dr. Rostker noted, “California does not share driver’s license [information] — so, hey, move to California and you’re exempt from being drafted”. Other states with no such laws include Pennsylvania, New Jersey, and Massachusetts.

Most of the laws linking drivers’ licenses to Selective Service apply only to men. Expanding registration will require amending these laws, **state by state**, to apply to women as well. State legislators who were happy to help register men for the draft may be reluctant to use their state motor vehicle laws to register women for the draft. These debates on using state laws to register women for the draft will be **divisive and potentially damaging to members of Congress** from those states who supported expanding registration to women.

Many young women, especially in states without laws linking drivers’ licenses to Selective Service registration, will ignore the registration requirement. Some will defy it publicly.

As in the 1980s with men, the DOJ may feel they have little choice but to prosecute at least a token few female nonregistrants for deterrence. But young women who don’t want to be forced to fight will be **sympathetic defendants**, and locking them up may generate a **backlash** against members of Congress who supported expanding registration.

Is your office prepared for questions from constituents asking whether young women who don’t want to be drafted belong in prison?

When registration was reinstated in 1980, Congress held hearings specifically about enforcement. Witnesses including both anti-draft activists and another former director of Selective Service predicted all of the problems that led the DOJ to abandon enforcement of registration. Had Congress heeded the testimony it received, it could have avoided this fiasco.

Congress should not repeat the mistake it made in 1980 by failing to anticipate compliance and enforcement problems. Given the inevitability that some young women will not voluntarily register, **Congress should insist that any proposal to expand registration include a credible enforcement plan and budget** – which current proposals do not.

Congress can't just wave a magic wand and make all young people sign up. **There will be resistance.** The question is how the government will respond.

That's not a question that the National Commission tried to answer.

The Commission focused on the **desirability** of registration rather than its **feasibility**. The Commission conducted no research on the accuracy of the database, and devoted none of its hearings to issues of **compliance, noncompliance, or enforcement**. The Commission report included no enforcement plan or budget. For the hearing at which I was invited to testify, Commission staff tried to find a witness from the Department of Justice, but were unable to identify anyone at the DOJ who had given any thought to Selective Service enforcement.

Because the Commission did not consider **compliance or enforcement**, it's critical for **Congress itself to hold hearings with independent witnesses** on these issues.

For Congress to ignore the inevitability of noncompliance and the likely impossibility of effective enforcement of an expanded registration requirement is to invite an **embarrassing and politically costly** fiasco. The easiest way out of this political dilemma is to recognize that registration is not working and to enact the **Selective Service Repeal Act**.

As we said in a joint letter to Congress last year, “The choice is not between male-only draft registration and expanding registration to women. The real choice is whether to expand registration to women or to end it entirely.... Expanding draft registration to women would bring about a semblance of equality in war (although women in the military would likely still be subject to disproportionate sexual harassment and abuse). Ending draft registration would bring about real equality in peace and freedom.”

More information:

- Selective Service compliance, noncompliance, and enforcement: <https://hasbrouck.org/draft/compliance.html>
- My testimony to the National Commission on Military, National, and Public Service: <https://hasbrouck.org/draft/Hasbrouck-NCMNPS-25APR2019-final.pdf>