



NEW YORK
CITY BAR

CAREY R. DUNNE
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
cdunne@nycbar.org

November 15, 2012

Hon. Kirsten Gillibrand
United States Senate
478 Russell
Washington, DC 20510

Re: S.3182 A bill to require a report on implementation of the termination of the ground combat exclusion policy for female members of the Armed Forces

Dear Senator Gillibrand:

We are writing on behalf of the Association of the Bar of the City of New York (the “City Bar”) to express our support for your leadership in the matter of eliminating the ground combat exclusion policy for female members of the Armed Forces. The time has come to cease discrimination in any form in the United States military, and to assign each job to the service member best able to meet the military requirements for that position.

The City Bar, founded in 1870, is a private, non-profit organization of more than 23,000 attorneys, judges and law professors, and is one of the oldest bar associations in the United States. The City Bar’s committees regularly address legal and policy issues on a local, state and national level, including issues involving civil rights and the military. The City Bar actively supported the repeal of “Don’t Ask Don’t Tell.” We similarly submit that there is no room in the United States military for discriminating against women on the basis of their gender.¹

Women in the military should be measured by the same criterion by which military men are measured, that is, by merit and merit alone. Career progression for women should not be inhibited by any limitations or restrictions on their service in “combat” positions. This is particularly important now, when the distinctions between combat and noncombat positions have become increasingly arbitrary and doctrinally unsound.

¹ The Committee on Military Affairs and Justice of the City Bar first addressed its concerns regarding combat exclusion laws, primarily from the perspective of the armed services themselves and the contribution women service members could make to the military mission, in its June 17, 1991 report, submitted to Senator William V. Roth, Jr., then Co-Chair of the Congressional Military Reform Caucus, entitled “The Combat Exclusion Laws: An Idea Whose Time Has Gone.”

Since the end of the draft in 1973, an All-Volunteer Force (the “AVF”) has served our nation of which women have comprised a central component. Their contribution to military readiness cannot be disputed. Without women, as was foreseen when the AVF was first established, the military would have manpower shortfalls that they would not be able to fill.² Plainly, it is as much in the interests of the armed services as it is in the interests of the women who serve that this issue be fully and finally resolved.

Indeed, women now comprise about 14.5 percent of the active-duty military.³ Since 2001, some 280,000 women have been deployed to Iraq and Afghanistan. Of these, as of February 2012, 144 had been killed and 865 wounded.⁴ As these statistics illustrate, women already are serving on the front lines despite existing job restrictions.⁵ Continuing to ban women from select jobs in the military has manifestly become, in the words of the former vice chief of the Army, General Peter Chiarelli, an “unnecessary anachronism.”⁶ Indeed, the Department of Defense (“DoD”) has reported that the current combat restrictions no longer make doctrinal sense where “the dynamics of the modern-day battlefield are non-linear, meaning there are no clearly defined front line and safer rear area where combat support operations are performed within a low-risk environment.”⁷

Moreover, the existing job restrictions for our military women negatively affect both the DoD and women in the military. The DoD implicitly recognizes the harm to the military itself, and to women serving in the military. The DoD expects the proposal to eliminate the “co-location exclusion”⁸ will:

² A member of the City Bar’s Committee on Military Affairs and Justice researched the issue of women in combat only five years after the AVF was launched. During a visit to the Pentagon, she was privileged to speak to officers from each branch of the armed services that were acting as point persons concerning the induction of women into the military. Even then, it was their unanimous opinion that to ensure that the AVF would be able to meet its manpower needs, qualified women had to be fully integrated into the force. Moreover, premised on the research then extant, they were united in the belief that women were altogether capable of assuming combat roles. DoD has not deviated from that basic view over the lifetime of the AVF. See Military Leadership Diversity Council, Issue Paper #56, “Women in Combat: Legislation on Policy, Perceptions, and the Current Operational Environment” at 2, 4 (November 2010), available at http://diversity.defense.gov/Resources/Commission/issue_papers.aspx (Accessed on November 14, 2012) (hereinafter, “Women in Combat”).

³ Under Secretary of Defense, Personnel and Readiness, “Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces” at 3 (February 2012) (hereinafter “February 2012 Report to Congress”).

⁴ Craig Whitlock, “Pentagon to ease restrictions on women in some combat roles,” Washington Post, (February 9, 2012), http://www.washingtonpost.com/world/national-security/pentagon-to-ease-restrictions-on-women-in-some-combat-roles/2012/02/09/gIQAwL41Q_story.html (Accessed November 14, 2012).

⁵ See Margaret C. Harrell *et al.*, Rand Corporation, Monograph “Assessing the Assignment Policy for Army Women” at xiv (2007) (“[N]either the Army nor the DoD assignment policies for women are clearly understandable . . . There is no shared interpretation of the meaning of many of the words used in the policy, including *enemy*, *forward* or *well forward*, and *collocation*.”)

⁶ *Id.*

⁷ *Id.* at 3.

⁸ The “co-location exclusion” concerns “units and positions that are doctrinally required to physically co-locate and remain with direct ground combat units that are closed to women.” “February 2012 Report to Congress” at ii.

1. Expand career opportunities for women;
2. Provide a greater pool of qualified members from whom our combatant commanders may draw;
3. Reduce the operational tempo for male counterparts by increasing the total number of personnel available for assignment to units co-located with direct combat forces; and,
4. Improve consistency concerning assignment policy impacting women and provide field commanders with greater flexibility in meeting combat support mission requirements.⁹

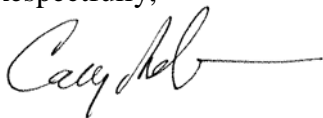
The military should expect these same positive effects to result from the elimination of the ground combat exclusion policy.

Despite their current level of participation in the armed forces, because promotions often require combat branch training and experience, women represent only 7.25 percent of general/flag officers (only half of their *pro rata* contribution) and 10.86 percent of the senior enlisted force.¹⁰ The career limitations imposed on them through these combat restrictions also negatively impact their current and future earnings, their potential for promotion and advancement, their future retirement benefits, and their access to veterans' benefits and services.¹¹

While we applaud the progress made so far as well as the DoD's commitment to continuing to examine these issues, the City Bar maintains that the full equal rights of military women should not be further delayed, either as a matter of national security or of civil rights. Consistent with the policy of nondiscrimination, all formal barriers to the progress of women in the military should be removed. Only by this means can the ultimate goals of equality and best filling military needs be ensured.

In light of the City Bar's profound commitment both to equality in the military and military readiness, it is prepared to render its support to this important cause in any manner that you might find beneficial.

Respectfully,



Carey R. Dunne

⁹ *Id.* at 4.

¹⁰ *Id.* at 3.

¹¹ See "Women in Combat" at 4. The DOD in its February 2012 Report to Congress stated that it "had reviewed all available information from the Military Services and did not find indication of females having less than equitable opportunities to compete and excel under current assignment policy." The existence of a separate "equitable" career track does not, however, translate into equality. See *United States v. Virginia*, 518 U.S. 515, 547 (1996).