



Congress Should Lift the Statutory Ban that Prevents Women from Using Private Funds to Access Abortion Services at U.S. Military Facilities

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More than 400,000 women currently serve in the U.S. armed forces. At a time when servicewomen put their lives and limbs at risk to preserve our rights and freedom, it is deeply troubling that they are denied access to safe, legal abortion when they serve abroad. This policy is unjust, unfair and should be repealed.

For many years, servicewomen and military dependents were able to use their own private funds to access abortion care on military facilities overseas. Unfortunately, that policy was changed in 1988 by the Department of Defense. In 1993, President Clinton signed an Executive Order lifting the ban and reinstating the policy that allowed women to use their own funds to pay for an abortion. Unfortunately, in 1995, an anti-choice Congress passed a law that reimposed the ban (with very narrow exceptions).¹

Thus, under current law, a servicewoman or military family member cannot use her own funds to pay for an abortion on a military medical facility except in very limited circumstances (i.e. when she is a victim of rape or incest).

- **The ban on privately funded abortions discriminates against women and their families who have volunteered to serve their country and have been assigned to military posts overseas.**
 - Courts repeatedly recite the principle that “our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes,” *see, e.g., Chappell v. Wallace*, 462 U.S. 296, 304 (1983). By refusing to allow a woman to use her own funds to pay for an abortion at a military facility, except in very limited circumstances, Congress has placed an often insurmountable obstacle in her path. This obstacle does not exist for civilian women.

- **Repeal of the private funding ban would require DoD to return to a policy that existed for many years. Repeal does not create a wholly new policy and does not change existing conscience protections.**
 - Prior to 1988, military women were allowed to use their own funds to access abortion care on military bases overseas. Indeed, until 1988, “defense officials allowed these procedures under the rationale that at certain overseas (or isolated U.S.) stations, safe and reliable civilian facilities were not always available.”²
 - Refusal provisions or conscience clauses that are in effect today would remain untouched. Lifting the ban on private funding of abortion on military bases overseas would not change military policy on refusals.

¹The ban became law as part of the 1996 Fiscal Year National Defense Authorization Act, Pub. L. No. 104-106 (1996) and is codified at 10 U.S.C. § 1093(b) (1996).

²David Burrelli, ABORTION SERVICES AND MILITARY MEDICAL FACILITIES, CONG. RESEARCH SERV. (April 24, 2002), <http://www.policyarchive.org/handle/10207/bitstreams/266.pdf>.

- **The Department of Defense, military organizations and officers have opposed the private funding ban.**
 - In a May 7, 1999 letter, the Department of Defense stated that “it is unfair to female service members, particularly those assigned to overseas locations, to be denied their constitutional right to the full range of reproductive health care.”³
 - Retired Lieutenant General Claudia Kennedy, one of the highest-ranking women ever to serve in the United States Army, has opposed the ban and stated that it is “imperative that our soldiers have access to safe, confidential abortion services at U.S. military hospitals overseas.”⁴
 - Several organizations that serve military women, veterans, and their families, such as the Service Women’s Action Network, the Alliance for National Defense and the Women’s Education and Research Institute, oppose the ban.

- **The ban on privately funded abortions in military facilities poses grave health risks and leaves service women and their families far worse off than civilian women.**
 - If the servicewoman (or family member) is prohibited from accessing abortion services on a military base she may have to resort to local facilities that are substandard or unsafe. Or she may have to return to the United States. The costs, time, and obvious risks involved prevent some women from obtaining the care they otherwise could have accessed.
 - Because a soldier must obtain permission to leave her duty station, a servicewoman may be required to disclose her private medical decisions to her superiors in order to obtain leave. And any delays in receiving permission only increase the possibilities of medical complications.

- **The ban on private funding for abortion on military bases has real and cruel impacts on servicewomen’s lives. Here are just a few examples:**
 - A recent article, *Military Abortion Ban: Female Soldiers Not Protected by Constitution They Defend*,⁵ recounts the story of a Marine who was stationed in Fallujah when she realized she was pregnant as a result of rape. Faced with being ostracized by her male colleagues if she reported the rape, “Amy” did not do so. Without any options, this Marine attempted to self-abort using the cleaning rod of her rifle.
 - The wife of an American serviceman in the Philippines discovered her child would be born with fatal birth defects, but was forced to carry her pregnancy to term because she and her husband could not afford to fly to Japan on his salary.⁶
 - The former head of obstetrics and gynecology at the Subic Bay U.S. Naval Hospital in the Philippines described families spending their life savings to travel to another country for an abortion and an enlisted woman who committed suicide because she could not get an abortion on the base.⁷

³ Letter from Dr. Sue Bailey, Assistant Secretary of Defense for Health Affairs to the Honorable Loretta Sanchez (May 7, 1999).

⁴ Letter from Claudia J. Kennedy, Lt. Gen. (retired), to Senators Snowe and Murray (June 10, 2002), <http://reproductiverights.org/en/document/letter-from-lieutenant-general-claudia-j-kennedy-to-senate>.

⁵ Kathryn Joyce, *Military Abortion Ban: Female Soldiers Not Protected by Constitution They Defend*, RELIGION DISPATCHES (December 15, 2009), <http://www.religiondispatches.org/archive/politics/2111/>.

⁶ Frank R Lautenberg & Tim Wirth, *Abortion Rights? Not in the Military*, N.Y. TIMES, November 13, 1991, <http://www.nytimes.com/1991/11/13/opinion/abortion-rights-not-in-the-military.html?pagewanted=1>.

- **Given the high incidence of rape and sexual assaults suffered by women in the military, our servicewomen should not be further harmed by the denial of safe abortion services.**
 - According to the Department of Defense, in fiscal year 2010, 3,158 military sexual assaults were reported, many of which were reports of rape.⁸ That number alone is shocking, but it barely scratches the surface. Most servicewomen who have experienced sexual violence do not report the incident;⁹ one study found that 75% of military women who have been raped do not report it to a ranking officer.¹⁰ Researchers estimate that over time, up to one third of women experience an attempted or completed rape during their military service.¹¹ Although the ban makes an exception for rape and incest, as demonstrated by the tragic story (above), this exception is hard to use in practice – as women in the military often feel they can't reveal that they have been raped, they too are subject to the ban.

**Congress should act now to end the ban on private funding of abortions on military facilities.
The women of our Armed Forces who serve and sacrifice deserve more from their country.**

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⁷ *Id.*

⁸ DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2010 3(2011), http://www.sapr.mil/media/pdf/reports/DoD_Fiscal_Year_2010_Annual_Report_on_Sexual_Assault_in_the_Military.pdf.

⁹ *See, e.g.*, U.S. GOV'T. ACCOUNTABILITY OFFICE, DO D'S & THE COAST GUARD'S SEXUAL ASSAULT PREVENTION & RESPONSE PROGRAMS FACE IMPLEMENTATION & OVERSIGHT CHALLENGES 33, 35 (2008), <http://www.gao.gov/new.items/d08924.pdf>.

¹⁰ Sadler et al., *Factors Associated with Women's Risk of Rape in the Military Environment*, 43 AM. J. OF INDUS. MED. 262, 266 (2003).

¹¹ Jessica A. Turchick & Susan M. Wilson, *Sexual Assault in the U.S. Military*, 15 AGGRESSION & VIOLENT BEHAV. 267, 268 (2010).