Do Not Resurrect the Draft: The Current Recruiting Crisis and Why the United States Should Sustain the All-Volunteer Force

MarcAnthony Parrino

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DO NOT RESURRECT THE DRAFT:
THE CURRENT RECRUITING CRISIS AND WHY
THE UNITED STATES SHOULD SUSTAIN THE
ALL-VOLUNTEER FORCE

MarcAnthony Parrino*

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* J.D. Candidate 2024, Fordham University School of Law; B.A., 2014, Union College; Captain, United States Marine Corps Reserve. Many thanks to the editors of the Fordham Urban Law Journal, Professor Karen Greenberg, Karl Kristensen, Katie Rose Logan, Paige O’Brien, and Roger L. Parrino Jr. for their advice throughout this process. I would also like to thank my wife, Sarah, and my daughter, Morgan Grace, for their constant love and support. I dedicate this Note to the Marines of Company F, 2d Battalion, 25th Marines with whom I served in Afghanistan in 2019. Thank you — to you and your families — for your service.
INTRODUCTION

In February 1970, the President’s Commission on an All-Volunteer Armed Force, better known as the “Gates Commission,” 1 concluded that transitioning to an all-volunteer force (AVF) was both feasible and desirable. 2 As a result, on July 1, 1973, the American military transitioned to the AVF and has been staffed strictly by volunteers ever since. 3 Today, the draft endures only as an unutilized emergency standby mechanism. 4 All

1. Named in honor of its leader, former Secretary of Defense Thomas Gates. See infra note 35 and accompanying text.
4. According to the Selective Service System, a national emergency is something that “exceed[s] the Department of Defense’s capability to recruit and retain its total force strength.” In the event of said emergency, Congress would have to amend the Military Selective Service Act to authorize the President to induce draftees. Inductees must be delivered to the military “within 193 days from the onset of a crisis and the law being updated to authorize a draft.” Return to the Draft, SELECTIVE SERV. SYS., https://www.sss.gov/about/return-to-draft/ [https://perma.cc/W5VV-FTHK] (last visited Dec. 20, 2023).
men, but not women, ages 18–25 are required to register with the Selective Service, in case the United States (U.S.) needs to quickly draft in a national emergency.\(^5\)

In truth, the AVF may be a misnomer; the military is an “all-recruited force,” and is arguably facing its worst recruiting crisis ever.\(^6\) Historically low unemployment and declining trust in the military, among other reasons, are causing severe recruiting struggles.\(^7\) These challenges are compounded by the fact that only 23% of youth are eligible for military service without a waiver,\(^8\) and only 9% are interested in possibly serving in the next few years.\(^9\) In Fiscal Year (FY) 2022, the Army missed its recruiting goals by almost 25%, and the other branches barely met their goals.\(^10\) In FY 2023, only the Marine Corps and the Space Force achieved their recruiting goals.\(^11\)

Transitioning to the AVF has also created a situation where “for a growing number of Americans, service in the military, no matter how laudable, has become something for other people to do.”\(^12\) As a result, youth from military areas and military families are shouldering an increasing share of the defense

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7. See infra Section II.A.


burden.13 The military family connection is the greatest variable in determining one’s propensity to serve in the armed forces14 and some worry that this so-called “warrior caste”15 is contributing to a growing civil-military divide.16 With the vast majority of Americans having little connection to the military and its service members, voters may be ignoring (or be ambivalent towards) the use of force in foreign affairs.17

The current recruiting challenge is causing speculation on whether returning to the draft is in the national interest.18 It is worth reexamining the same question posed to the Gates Commission in 1969: is the AVF still feasible and still desirable? Some argue that if the United States utilized conscription19 during the Post-9/11 Wars, which would have led to a more random assortment of military members, voters would have been more personally affected by the wars in Iraq and Afghanistan and, thus, elected candidates who would have stopped them sooner.20 Then again, Americans overwhelmingly wanted the draft eliminated during the height of the Vietnam War 55 years ago. Whether or not to utilize a draft is a contentious issue in American culture, as it pits the American core value of liberty against the American core value of equality. Debates on this topic have always been “particularly sharp,” as seen: during the War of 1812; during the Civil War;

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15. Amy Schafer described the growth of the “warrior caste” as “a trend in which a large proportion of those who do choose to serve come from military families,” stating that this phenomenon is a byproduct of the AVF and offers “both risks and benefits [when] a subset of the U.S. population bear[s] the burdens of war.” Id. at 3.

16. See National Commission, supra note 13, at 30–32; see also Schafer, supra note 14.


20. See Ackerman, supra note 18.
prior to, throughout, and following both world wars; and during the height of the Vietnam War.\textsuperscript{21}

Section I.A of this Note summarizes how military service has been obligatory, especially via a draft, during times of need throughout American history. Section I.B discusses how America transitioned away from a standing draft and has been able to sustain the AVF prior to this current recruiting crisis. Section II.A discusses how the strong economy, the COVID-19 pandemic, the war in Afghanistan, perceptions over sexual assault and post-traumatic stress disorder, and the youth today have contributed to a recruiting crisis with declining propensity and eligibility for military service. Section II.B discusses how the AVF has been disproportionately staffed by Southern youth and relatives of veterans and how it is contributing to a growing civil-military divide. Section II.C analyzes arguments for and against returning to the draft with respect to American ideology and public opinion. Section III.A argues that the United States should not resurrect the draft, while Section III.B provides solutions for sustaining the AVF. Lastly, Section III.C considers potential long-term solutions for sustaining the AVF, namely expanding Selective Service registration to women and creating a National Mandatory Service that includes, but is not limited to, military service.

\section{Relevant Background}

Before debating a return to a national military draft, it is important to understand when and how the draft has been used throughout American history. Additionally, in order to examine the current recruiting crisis, it is vital to explore how and why America transitioned to and sustained the AVF. This Part addresses both questions. Section I.A will provide a historical overview of obligation in American military service. The section discusses the colonial and early republican ideal that every free able-bodied man was required to be part of the militia, the Civil War draft, the draft during both world wars, the Cold War era draft, today’s requirement that all young men register for the Selective Service, and then finally the constitutionality of the draft. Section I.B then discusses how the United States has sustained the AVF prior to the current recruiting crisis.

\subsection{Historical Overview of Obligation in American Military Service}

Historically, the American military has been sourced by volunteers and service was only obligatory during times of need.\textsuperscript{22} The draft has been

\footnotesize\begin{itemize}
\item \textsuperscript{21} Eliot A. Cohen, \textit{Citizens and Soldier} 19 (1985).
\item \textsuperscript{22} See Cong. Rsch. Serv., supra note 5, at 1.
\end{itemize}
utilized only four times in American history: from 1863–1865 during the Civil War, from 1917–1918 to fight World War I, from 1940–1946 to prepare for and fight World War II, and from 1948–1973 to sustain a large standing army during the Cold War and fight the wars in Korea and Vietnam.

There is no historical norm for when conscription has been utilized except that it has been used when Congress found it necessary. Congress has introduced and seriously debated draft bills when preparing for war, at the advent of war, and several years into a war: during the War of 1812, Congress introduced the first conscription bill more than two years after declaring war; Congress enacted conscription nearly two years into the Civil War; Congress introduced the World War I draft bill the day after Congress declared war; Congress introduced the World War II draft bill while Europe was engaged in an all-out war, but approximately 17.5 months before Congress declared war; and Congress reauthorized conscription in 1948 during peacetime, after a year without conscription, due to a fear of a forthcoming conflict with the Soviet Union.

1. The Militia Concept and the Civil War Draft

During the colonial times and early republic, all able-bodied free men were obligated to serve in the militia. In the early republic, states required these men to be on militia musters and meet for training several times a
year. States used militias to fulfill local law enforcement and defense needs, and the federal government could utilize them in an emergency. Service was technically universal, but both substitution (hiring someone to take your place) and commutation (paying a fee to the state) were generally acceptable means of avoiding service. Substitution was almost always allowed because it was rooted in European tradition and based on the assumption that those wealthy enough to afford a substitute were more valuable to the nation on the home front than the warfront. These policies both existed during the Civil War draft, but they lost their legitimacy due to a strong perception of class injustice and the saying that it was “a rich man’s war but a poor man’s fight.” Neither policy would reappear in the twentieth century.

The first debates over a national draft occurred during the War of 1812 because the militia system proved to be an ineffective means of expanding the small standing army. The New England states refused to conscript militia forces into the federal service, and some state militias refused to invade Canada because they believed the Constitution did not empower Congress to utilize state militias outside the United States. The New England refusal led to troop shortages and calls for a federal draft, but the war ended before Congress could agree on how to draft.

The expanded war-time army quickly downsized following the conclusion of hostilities and the militia system began to fade away. States gradually “abandoned the enrollment of militiamen and did not enforce their compulsory service laws.” The militia system decayed because of the

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31. See id.

32. See Timothy J. Perri, The Evolution of Military Conscription in the United States, 17.3 INDEP. REV. 429, 429 (2013) (stating substitution occurred in almost every colony, and commutation in some colonies); see also McPherson, supra note 25, at 603.

33. See McPherson, supra note 25, at 431, 603.

34. The Confederacy and the Union both allowed substitution, but only the Union allowed commutation. See McPherson, supra note 25, at 602.


38. See Gates Commission, supra note 35, at 161.

39. Harrop A. Freeman, The Constitutionality of Peacetime Conscription, 31 VA. L. REV. 40, 71 (1945); see also Holmes, supra note 36, at 206 (discussing how Pennsylvania’s militias,
militias’ poor showing during the War of 1812, the lack of effort to correct the militia system’s deficiencies, several decades of relative peace, a growing sense that the universal service provision of the militia system was both undesirable and unmanageable, and the challenges of transforming older men settled in their careers and lives into efficient soldiers.40 When the Civil War began in 1861, compulsory militia units resembled more of a voluntary social club than a military organization.41 The death of the militia concept marked the end of obligatory service without a national draft.

Military service was initially voluntary when the Civil War began in April 1861, but both the Union and the Confederacy eventually resorted to conscription: the Confederacy in April 1862 and the Union in March 1863.42 Drafts became necessary because of expiring voluntary enlistments, fewer unemployed able-bodied males due to the war economy, and because those interested in enlisting for patriotic reasons had probably already done so.43 The goal was primarily to use the threat of a draft to indirectly raise troop levels by stimulating volunteering; directly raising troop levels was a secondary goal.44 Overall, the Civil War draft was a disaster, operating “with such inefficiency, corruption, and perceived injustice that it became one of the most divisive issues of the war and served as a model of how not to conduct a draft in future wars.”45

2. Conscription During the World Wars (1917–1918, 1940–1946)

Conscription would be used during both world wars to quickly grow the small American military into a force capable of fighting in Europe against Germany’s mass army. The World War I draft was markedly different from the Civil War draft, and the World War II draft was based on the World War I conscription model.46 Unlike the Civil War, the drafts were utilized to create a mass army, not incentivize enlistment.47 Additionally, instead of repeating the centralized Civil War method of having military officers go

which consisted of 5–10% of the nation’s total, reduced their annual fine collections from more than $5,120.50 in 1816 to less than $15.00 in 1843).

40. See Holmes, supra note 36, at 205–06.
41. See Timothy J. Perri, The Economics of Civil War Conscription, 10 Am. L. And Econ. Rev. 424, 428 n.10 (2008); see also Holmes, supra note 36, at 199.
42. See Gates Commission, supra note 35, at 161; see also McPherson, supra note 25, at 600. Sometimes militia drafts were utilized prior to federal conscription if a state could not meet their state quota. See McPherson, supra note 25, at 493. See generally Bacevich, supra note 23.
43. See McPherson, supra note 25, at 600.
44. See McPherson, supra note 25, at 600.
45. McPherson, supra note 25, at 600.
47. See Cong. Rsch. Serv., supra note 5, at 2 n.3.
door-to-door to enroll and order individuals to register, potential registrants were ordered to report on a specified date to their local civilian-run draft boards.\textsuperscript{48} In total, 2,810,296 men were drafted from September 1917 to November 1918 to fight in World War I, and 10,110,104 men were drafted from November 1940 through October 1946 to prepare for and fight in World War II.\textsuperscript{49} It is estimated that conscripts represented 59.4\% of the military during World War I and 62.7\% of the military during World War II, the largest total and percentage of conscripts in any war.\textsuperscript{50}

Congress easily approved the World War I conscription bill, but there was a major debate regarding the ages of draftees.\textsuperscript{51} Because the Chairman of the House Committee on Military Affairs stated that he “would never vote . . . to conscript a boy . . . who did not have the right to vote,” and many congressmen agreed, the minimum age was set at 21.\textsuperscript{52} This policy would continue throughout the war and into World War II, until manpower requirements led to drafting men ages 18–20 in 1942.\textsuperscript{53} Unsurprisingly, the decision to conscript 18-year-olds immediately led to the slogan “old enough to fight, old enough to vote,” and eventually, the ratification of the Twenty-Sixth Amendment which lowered the voting age to 18 during the Vietnam War.\textsuperscript{54}

The World War I Congress also debated whether to accept volunteers.\textsuperscript{55} The aversion to volunteerism was the direct result of watching Great Britain’s experience in war, which, unlike the rest of the belligerents, had solely used volunteers during the first two years and lost too many essential factory workers who were needed to support the war effort.\textsuperscript{56} To prevent the Great Britain experience, local draft boards classified registrants into five categories of eligibility based on their value to the domestic war effort.\textsuperscript{57} The lottery then selected draftees starting with the “least essential,” not

\textsuperscript{48} See Tyron, supra note 26, at 342.
\textsuperscript{49} Selective Serv. Sys., supra note 3.
\textsuperscript{50} See Cong. Rsch. Serv., supra note 5, at 13.
\textsuperscript{51} See Tyron, supra note 26, at 343.
\textsuperscript{52} See Tyron, supra note 26, at 342–43.
\textsuperscript{53} See National Commission, supra note 13, at 89.
\textsuperscript{55} There were also debates about whether prostitution and liquor should be available to soldiers. See Tyron, supra note 26, at 343.
\textsuperscript{56} See Tyron, supra note 26, at 341.
advancing to the next classification category until they exhausted the previous classification category.\textsuperscript{58} By 1918, incorporating volunteers alongside the selective service system became too complex, and the military stopped accepting enlistments.\textsuperscript{59}

The World War I draft ceased when the war ended in November 1918, and the draft would not resume until 1940.\textsuperscript{60} By 1919, all registration activities stopped and local draft boards were closed.\textsuperscript{61} Although there were debates during the interwar period on making military service compulsory prior to a crisis, including the idea of universal military training (UMT), the public generally still resisted the idea of a large standing force.\textsuperscript{62}

World War II was initiated when Germany invaded Poland on September 1, 1939, but the United States did not officially enter the war until December 8, 1941, the day after the attack on Pearl Harbor.\textsuperscript{63} However, following Germany’s dominant invasion of France and the Low Countries in May 1940, and Great Britain’s retreat from continental Europe, most Americans became convinced that American involvement was a foregone conclusion.\textsuperscript{64} On June 20, 1940, a week after the conquest of Paris, the first peacetime draft bill in American history was introduced in the Senate.\textsuperscript{65} Supporters urged that peacetime conscription was needed to ensure a strong national defense at this critical juncture, while critics viewed peacetime conscription as unnecessary and a dangerous precedent.\textsuperscript{66} Public support favored conscription,\textsuperscript{67} and on September 16, 1940, peacetime conscription became law.\textsuperscript{68} The draft would remain popular throughout the war despite changes

\textsuperscript{58} Perri, supra note 32, at 432.

\textsuperscript{59} See Cong. Rsch. Serv., supra note 5, at 4; Tyron, supra note 26, at 368.


\textsuperscript{61} Cong. Rsch. Serv., supra note 5, at 4.


\textsuperscript{64} See Ben Johnson, World War 2 Timeline — 1940, Historic UK, https://www.historic-uk.com/HistoryUK/HistoryofBritain/World-War-2-Timeline-1940/ [https://perma.cc/5BCQ-CN5Q] (last visited Dec. 18, 2023); Gallup and Fortune Polls, 5 Pub. Op. Q. 470, 476 (1941) (In May 1940, 62% believed that American would eventually be involved in the war, compared with 32% in February 1940.).

\textsuperscript{65} See Grant, supra note 27, at 196.

\textsuperscript{66} See Grant, supra note 27, at 198.

\textsuperscript{67} See Grant, supra note 27, at 196 (discussing how both candidates for the presidency in 1940 made statements supporting conscription in principle); James A. Huston, Selective Service in World War II, 54 Current Hist. 345, 346 (1968) (stating that 71% of Americans favored the draft two weeks prior to the final vote on the bill).

\textsuperscript{68} See National Commission, supra note 13, at 88.
such as replacing the lottery system with quotas issued to draft boards (the lottery would not return until December 1, 1969) and expanding the draft age cohort. Although there was some resistance to the draft, “legal challenges and general opposition to the draft virtually ceased when Pearl Harbor plunged the United States into war.” These legal challenges specifically centered around the constitutionality of peacetime conscription, which two circuits held as constitutional, as the Supreme Court had already upheld wartime conscription during the World War I Era Selective Draft Law Cases.


Immediately after World War II, the military assumed a new global role because American leaders believed the United States should shed its isolationist past and dedicate itself to upholding world order and guaranteeing the security of the free world. With this new responsibility came new peacetime manpower requirements. As the war’s conclusion neared, there was a substantial push to adjust the policy of emergency conscription into a permanent system of UMT. This was embraced by the Roosevelt Administration, which proposed a year of compulsory military training for all physically qualified 18-year-old males. Proponents emphasized how it would improve the health and character of America’s youth and serve as a deterrent to dictators with imperial visions, while opponents stressed how it was antithetical to American ideals and would lead to more war. President Truman also favored UMT because he believed it would help develop trained manpower, patriotism, citizenship, and good health. In the end, Congress again declined to institute a system of

69. See National Commission, supra note 13, at 89; Gates Commission, supra note 35, at 164; Gallup and Fortune Polls, supra note 64, at 492 (May 1941 polls showing 93% of Americans reported that the draft was being handled fairly in their community).

70. Gates Commission, supra note 35, at 164.


73. See generally id.


77. See George Flynn, The Draft and College Deferments During the Korean War, 50 Historian 369, 372 (1988) (citations omitted).
universal service. Instead, Congress extended the draft authority in 1945 and 1946, and allowed it to cease on March 31, 1947.

The hiatus on conscription was short-lived. Congress reauthorized conscription due to low rates of voluntary enlistment and the fear of a forthcoming conflict with the Soviet Union. On June 24, 1948, President Truman signed the new Selective Service Act, and for the next two years, few were inducted because the draft was only used to fill recruiting shortfalls. However, the threat of communism kept the 1948 law alive for 26 years, inducting 4,879,994 men into the military. In 1951, the bill was reenacted with minor modifications as the Universal Military Training and Service Act of 1951. Conscription would subsequently be renewed with “virtually no debate or opposition” in 1955, 1959, and 1963.

The draft was generally accepted prior to the escalation of forces in Vietnam in 1965. The doubling of annual inductions from 1964 to 1965 and the nearly eight-fold rise in troops in Vietnam led Americans to reevaluate standing conscription. Conservatives began to believe that the state had no right to impose military service without individual consent and liberals began to believe that the draft placed an unfair burden on disadvantaged groups less likely to receive deferments. At the same time, the perception of universality was waning because the post-World War II baby boom meant that a smaller percentage of youth was needed each year. Generally, Americans yearned for a return to the historical norm of staffing

78. See CONG. RSCH. SERV., supra note 5, at 7.
79. See CONG. RSCH. SERV., supra note 5, at 7.
80. NATIONAL COMMISSION, supra note 13, at 89.
81. See CONG. RSCH. SERV., supra note 5, at 8; SELECTIVE SERV. SYS., supra note 3.
82. It would be amended and tweaked many times from 1948–1973, but conscription remained the law of the land. The bill was designed as a two-year bill, but the Korean War led to its extension: North Korea invaded South Korea the day after the bill was scheduled to expire. See CONG. RSCH. SERV., supra note 5, at 8.
83. See SELECTIVE SERV. SYS., supra note 3.
84. See CONG. RSCH. SERV., supra note 5, at 8–9.
86. See Gates Commission, supra note 35, at 165.
87. The inductions increased from 112,386 in 1964 to 230,991 in 1965, the highest numbers since 1954, the year after the Korean War ended. See SELECTIVE SERV. SYS., supra note 3.
90. See id.
the military with volunteers during peacetime, and thus, supported dismantling the draft and creating the AVF.91

Sensing the public dissatisfaction with the Vietnam War and the draft, presidential candidate Richard Nixon announced that if elected in 1968, he would end the draft and transition to an all-volunteer military.92 Upon taking office in 1969, he quickly appointed the Gates Commission to explore the feasibility and desirability of transitioning to an all-volunteer force.93 On February 20, 1970, the Gates Commission reported that “[w]e unanimously believe that the nation’s interest will be better served by an all-volunteer force, supported by an effective standby draft, than by a mixed force of volunteers and conscripts.”94 President Nixon concurred and in 1971, requested that Congress pass a law that would only extend the draft for two more years before completing the transition to the AVF.95 Congress overwhelmingly agreed.96 On January 27, 1973, the Secretary of Defense announced that the Department of Defense (DoD) was ready to officially end the draft and the last individual to be inducted would enter the Army on June 30, 1973.97

4. Registration and the Constitutionality of Conscription

Since the transition to the AVF in 1973, the draft has remained an unutilized emergency measure. To readily respond to that emergency, the Selective Service has required all draft-age eligible males to register for the draft, with the exception of a brief hiatus from April 1, 1975–July 1, 1980.98 The Selective Service’s mission is “[t]o register men and maintain a system that, when authorized by the President and Congress, rapidly provides personnel in a fair and equitable manner while managing an alternative-service program for conscientious objectors.”99

92. See id. at 4.
93. See National Commission, supra note 13, at 90; King, supra note 2, at 85.
94. Rostker, supra note 91, at 4.
95. See Rostker, supra note 91, at 4.
98. See Cong. Rsch. Serv., supra note 5, at 14 (President Ford suspended registration in April 1975, placing it in a “deep standby” mode. Following the 1979 Soviet Invasion of Afghanistan, President Carter resumed registration on July 2, 1980.).
Today, almost all male U.S. citizens and immigrants who have turned 18 but have not yet turned 26 are required to register with Selective Service.100 Failing to register is a felony that is punishable by a fine of up to $250,000 and/or five years imprisonment, and that failure can lead to being denied the following benefits: state-based student loans and grant programs in 31 states, federal job training, all federal jobs in the Executive Branch and the U.S. Postal Service, many state and local jobs, and up to a five-year delay in U.S. citizenship proceedings.101 According to 2021 data, the compliance rate is 89%,102 although it varies widely from state to state.103 This is due to the increase in secondary registration systems,104 considering that most registrations are not applicant-initiated but rather initiated by the Selective Service or one of its government partner agencies through data sharing agreements.105 Although the increase in secondary registration systems has generated high compliance rates, they likely contributed to a “limited understanding of Americans’ obligation to serve the Nation in times of national emergency if called to do so” because these systems do not do enough to convey the obligation associated with registering.106

Women are not required to register,107 which the Supreme Court ruled constitutional in 1981 and not a violation of the Due Process Clause of the Fifth Amendment.108 In Rostker v. Goldberg, the Court found that men and women were not similarly situated because women were excluded from combat and “the purpose of registration is to develop a pool of potential


102. See SELECTIVE SERV. SYS., supra note 99.


104. See National Commission, supra note 13, at 8, 92 (examples include the individual states’ departments of motor vehicles when applying for a driver’s license or the Department of Education when applying for federal student aid).

105. See LAURA SEAGO, AUTOMATIC REGISTRATION IN THE UNITED STATES: THE SELECTIVE SERVICE EXAMPLE 2 (Brennan Ctr. for Just., 2009).


107. See CONG. RSLTR. SERV., supra note 5, at 14.

Considering that since January 1, 2016, the restrictions on women in combat have been removed, the constitutionality of male-only registration is ripe for a challenge. In 2020, the Fifth Circuit held that male-only registration is still constitutional because only the Supreme Court can reverse Supreme Court precedent. The Supreme Court denied the petition for a writ of certiorari. Justice Sotomayor issued an opinion respecting the denial, to which Justices Breyer and Kavanaugh joined, where she stated that “at least for now, the Court’s longstanding deference to Congress on matters of national defense and military affairs cautions against granting review while Congress actively weighs the issue” of “whether a male-only registration requirement can be reconciled with the role women can, and already do, play in the modern military.”

A national draft is constitutional, as the Supreme Court unanimously ruled during World War I in The Selective Draft Law Cases. Although certainly influenced by extrajudicial factors, the Court held that Congress’s constitutional authority to conscript comes from their power “to raise and support armies . . . to make rules for the government and regulation of the land and naval forces” and from the “necessary and proper” clause. It is worth noting, however, that a national draft has not always been viewed as constitutional: prior to the Civil War, it may have been held unconstitutional because it would have been considered tyrannical. During the Civil War, Chief Justice Roger Taney penned a draft opinion (despite no case being before the court) concluding that a national draft was unconstitutional.

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109. See id.
113. Id. at 1816.
115. In January 1918, when the Court unanimously upheld the draft, Europe was three years into a full-fledged war where all belligerents used a draft, there was a patriot fervor in the air and tremendous government efforts to drown dissent, American troops were currently fighting in Europe and hundreds of thousands more were scheduled to be sent — so “striking down the draft at that point would have been disastrous.” See Matthew Waxman, Remembering the Selective Draft Law Cases, LAWFARE (Jan. 7, 2022), https://www.lawfaremedia.org/article/remembering-selective-draft-law-cases [https://perma.cc/SYR6-SFCH].
116. See Arver, 245 U.S. at 377 (citing U.S. CONST. art I, § 8, cl. 12–14, 18).
117. See Waxman, supra note 115.
118. See Waxman, supra note 115.
World War I, all three branches regarded a wartime draft as constitutional, and after 1940 a peacetime draft was accepted as constitutional.¹¹⁹

B. Sustaining the All-Volunteer Force (1973–Present)

America’s transition to and sustainment of the AVF has generally been a “stunning success.”¹²⁰ The four main reasons for its success are: (1) attention and leadership from top civilian and military management; (2) the use of quantitative analysis to test, adjust, and evaluate AVF policies; (3) the development of marketing and advertising programs for attracting the necessary type and number of recruits; and (4) adequate financial resources to support pay raises that keep pace with inflation and civilian sector pay increases, provide attractive benefits, and improve the quality of military life to retain service members and their families.¹²¹ Although this Note focuses on the recruiting crisis, retention is also central to sustaining the AVF. The mantra for sustaining the AVF could be summarized as “the military recruits individuals, but it retains families.”¹²² As of 2006, careerists (those who stay in the military beyond their initial contract) made up approximately 50% of the force, as opposed to around 40% during the draft years, making the military more professional and family-focused.¹²³

The transition to the AVF was not “smooth and swift.”¹²⁴ In the late 1970s, many were questioning the effectiveness and feasibility of the AVF.¹²⁵ In 1979, all four services failed to meet their recruiting goals and recruit quality was at “an all-time low.”¹²⁶ In 1980, former President Richard Nixon remarked that despite ending the draft seven years prior, he now “reluctantly concluded that we should reintroduce the draft” because “the volunteer army has failed to provide enough personnel of the caliber we need.”¹²⁷ However, by 1993, following the AVF’s success in the Persian Gulf War, he believed the quality of troops had “dramatically improve[d]” and he “endorse[d] the all-volunteer Army approach without

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¹¹⁹. See Waxman, supra note 115.
¹²¹. See Rostker, supra note 89.
¹²². See ROSTKER, supra note 91, at 687, 753.
¹²³. See ROSTKER, supra note 91, at 753.
¹²₄. See ROSTKER, supra note 91, at 746.
¹²₅. See ROSTKER, supra note 91, at 750.
¹²₆. See ROSTKER, supra note 91, at 750.
¹²₇. See ROSTKER, supra note 91, at 747.
qualification.” President Nixon’s observations reflected the trajectory of recruit quality.

In seeking to find quality recruits, current DoD requirements mandate that no less than 60% of new enlistees score above a 50 on the AFQT (Armed Forces Qualification Test), and no less than 90% have Tier 1 Education credentials (high-school diploma or its equivalent). The military needs to attract these “high-quality” recruits because those with high school diplomas are much more likely to complete their first enlistment than those without one, and above average intelligence is preferred. The intellectual quality of recruits has improved dramatically since the advent of the AVF.

Considering that nearly all enlistees have high school diplomas, the determination of whether an individual is “high-quality” usually depends on whether they score equal to, or above, the average American, which most do.

As the Gates Commission predicted, economic factors play a major role in inducing individuals to enter and remain in the military because the military must “compete aggressively in the civilian labor market for American youth.” Unsurprisingly, recruit quality generally increases during recessions and decreases when unemployment is low. Pay raises have especially helped attract quality candidates: in 1972, Congress enacted an over 60% pay raise to launch the AVF, and then in 1980 and 1981 Congress enacted 11.7% and 14.3% raises, respectively, to save the AVF after all four services failed to achieve their recruiting goals in 1979.

Of all the branches, the Army has the greatest difficulty in obtaining its required volunteer quota. During the Cold War draft-era the Army was the only branch that consistently required draftees; whereas the Navy and

128. See Rostker, supra note 91, at 747.
131. See id. at 13.
132. Id. at 15.
133. Id. at 14 (stating that in FY 2019 97% of new enlistees had high school diplomas).
134. Rostker, supra note 91, at 751; Gates Commission, supra note 35, at 49, 52.
135. See Rostker, supra note 91, at 755.
136. See Rostker, supra note 91, at 754–55.
137. See Gates Commission, supra note 35, at 56.
Marine Corps occasionally required draftees and the Air Force never used the draft.\textsuperscript{138} Knowing this, the Gates Commission recommended that the compensation be set to levels that enable the Army to meet their requirements, because if the Army could attract enough qualified volunteers, the other branches could too.\textsuperscript{139} In recent history, the Army failed to meet its recruiting mission in FY 2005, FY 2018, and FY 2022.\textsuperscript{140} Although the Army is facing the most serious challenge, the entire AVF is arguably facing its toughest recruitment environment yet: the Army, Air Force, and Navy all failed in FY 2023.\textsuperscript{141}

\section*{II. THE ALL-VOLUNTEER FORCE TODAY}

This Note explains the current recruiting crisis and argues that despite the historical challenges, the United States should not resurrect the draft. America wants and needs the AVF, and it is incumbent on policymakers to dedicate resources to saving it. Section II.A will explain the current recruiting crisis, Section II.B explains the demographics behind who generally enlists in the AVF, and Section II.C raises arguments for and against bringing back the draft.

\subsection*{A. The Current Recruiting Crisis}

The Army states that the AVF currently faces five general recruiting challenges: (1) the current labor market is extremely competitive, (2) there is a significant lack of awareness among youth about military service, (3) there is a tremendous lack of qualified youth to meet the current military standards, (4) the vast majority of recruits have relatives who served which has led to the military becoming a family business, and (5) there is a general disconnect with society since a marginal percentage of the country currently serves and the veteran population is declining.\textsuperscript{142} This section will elaborate on those challenges.

\begin{itemize}
  \item \textsuperscript{138} See Gates Commission, supra note 35, at 36.
  \item \textsuperscript{139} See Gates Commission, supra note 35, at 57.
  \item \textsuperscript{141} See Novelly et al., supra note 11.
\end{itemize}
This is currently the “[m]ost challenging labor market since the inception of the all-volunteer force,” as unemployment is currently at historic lows,\textsuperscript{143} which makes it challenging to recruit youth for military service.\textsuperscript{144} As noted previously, economic factors play a major role in influencing young adults to join the military: when the economy is poor and unemployment is high, the military is a much more attractive option vis-à-vis civilian employers.\textsuperscript{145} To compete with the civilian marketplace, the military offers exceptional benefits, including the Post-9/11 G.I. Bill.\textsuperscript{146} If a recruit honorably serves three years on active duty,\textsuperscript{147} they receive 36 months of educational benefits, including tuition coverage and a monthly tax-free housing allowance that, in practice, enables veterans to obtain a free college education.\textsuperscript{148} This type of tuition assistance used to be distinctly a military benefit, but because corporate America is aware that “tuition assistance may be the most valuable incentive” for attracting and retaining talent, major companies are continuing to add to or expand on their tuition assistance programs — making it more difficult for the military to compete.\textsuperscript{149}

1. The Impact of the COVID-19 Pandemic

The shutdown during the COVID-19 pandemic exacerbated the current recruiting crisis. The military was not able to recruit as effectively, because “so much of the recruiting process involves developing good personal

\begin{footnotesize}
\begin{enumerate}
\item See Unemployment Rate, FRED, \url{https://fred.stlouisfed.org/series/UNRATE} (last visited Jan. 26, 2023).
\item See U.S. ARMY RECRUITING COMMAND, supra note 142.
\item See supra Section I.B.
\item This is less than the typical active-duty enlistment contract. See TODAY’S MIL., infra note 256.
\item See U.S. DEP’T OF VETERANS AFFS., supra note 146. Eligible veterans are those who served at least 90 days on active duty. Veterans are eligible for the full benefit if they served on active duty for at least 36 months, received a Purple Heart on or after 9/11, or served at least 30 consecutive days and were discharged because of a service-disconnected disability. Typically, the 36 months is sufficient for pursuing a four-year degree. The Post 9/11 GI Bill covers the total cost of in-state tuition at a “public institution of higher learning,” or up to $27,120.05 at a “private institution of higher learning.” See id. Additionally, many private schools utilize the Yellow Ribbon Program to help students receive a free education. See Education and Training: Yellow Ribbon Program, U.S. DEP’T OF VETERANS AFFS., \url{https://www.va.gov/education/about-gi-bill-benefits/post-9-11/yellow-ribbon-program/} (last visited Jan. 26, 2023).
\item See Jessica Dickler, Many Companies Are Adding, Expanding Tuition Assistance So Workers Can Go Back to College, CNBC (May 29, 2023), \url{https://www.cnbc.com/2023/05/26/many-companies-offer-tuition-assistance-for-workers-to-go-to-college.html} [https://perma.cc/H5XM-USTJ].
\end{enumerate}
\end{footnotesize}
relationships.”150 Early in the pandemic in 2020, the military generally shifted their focus to increasing retention rather than increasing recruitment.151 However, this is not a sustainable way to maintain a military force that needs new members annually. Katherine Kuzminski, head of a bipartisan security think tank remarked, “[y]ou can’t underestimate the fact that we didn’t have recruiters on college and high school campuses for two years.”152 The pandemic restrictions made it more difficult to recruit individuals without a connection to a current service member or veteran.153

Recruiters place great value on the ability to create these in-person connections; as one Marine Corps Colonel currently on recruiting duty claimed that “10-great-looking Marines in a Marine Uniform” will result in more enlistment contracts than “$10 million worth of advertising.”154 The Marine Corps General in charge of the Eastern recruiting region has cited the return to in-person, in-school recruiting as the key driver for why the Marine Corps easily met their mission in FY 2023 and will start FY 2024 strong, despite barely meeting their mission in FY 2022.155 FY 2023 was arguably the last year recruiters could blame COVID for the recruiting crisis; FY 2024 results will be more indicative of longer-term issues.156

The COVID-19 pandemic may have also decreased the quality and interest level of young adults. In 2022, 9% of youth ages 16–21 said they would consider joining the military, down from 13% pre-pandemic.157

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153. See id.
155. See id. (describing statements made by Brigadier General Walker Field).
156. See Novelly et al., supra note 11 (quoting Katherine Kuzminski).
157. See Kesling, supra note 152.
Additionally, the Army estimates that the pandemic’s strain on the education system may have lowered their recruits’ test scores by as much as 9%.158

2. Declining Trust and Confidence in the Military

The public is losing trust and confidence in the military.159 According to the Ronald Reagan Institute, in 2022, 48% of Americans claimed they have a great deal of trust in the military, down from 70% in 2017.160 This was a sharper decline in trust than the other public institutions asked about: the Supreme Court, Congress, the Presidency, news media, or law enforcement.161 Major rationales for decreased confidence included a perception that military leadership was becoming overly politicized;162 along with the performance and competence of the Commander-in-Chief, the military’s civilian leadership, and the military’s uniformed leaders.163 Other reasons cited included the ability to win a potential future war, so-called “woke” practices undermining military effectiveness, the performance in Iraq and Afghanistan, and so-called far-right or extremist individuals serving in the military.164

In 2021 the public exhibited an all-time low level of confidence in military officers’ honesty and ethics.165 Although 61% said military officers had “very high” or “high” honesty and ethics, this was ten percentage points less than the last time Gallup posed this question in 2017.166 This decline has been especially prevalent among Republican / Republican-leaning respondents, who are more likely to be veterans than Democrat/Democratic-leaning respondents.167 In general, the American public is less confident in

158. See Kesling, supra note 152.
159. See Berger, supra note 120.
161. See id.
162. See, e.g., 60 Minutes, Gen. Mark Milley: The 60 Minutes Interview, YOUTUBE, https://www.youtube.com/watch?v=oFVuQ0RP_As [https://perma.cc/MUE2-WGEW] (last visited Jan. 31, 2024) (General Mark Milley discussing his apology for walking with President Trump to St. John’s Church and how it has possibly affected recruiting).
163. See RONALD REAGAN INST., supra note 160.
164. See id. Unsurprisingly, Republican-leaning respondents were more likely to blame “woke practices” and Democratic-leaning respondents were more likely to blame far-right extremism. See id.
166. See id.
the military as an institution than anytime during the post-9/11 era. In 2023, 60% expressed a “great deal” or “quite a lot” of confidence in the military, the lowest number since 1997.\(^{168}\) From 2002–2020, this number was routinely over 70%, with the exception of 2007 (69%), but has been declining since the war in Afghanistan came to an end (69% in 2021, 64% in 2022, and 60% in 2023).\(^{169}\) The loss of institutional confidence is not only facing the military; most American institutions are currently facing historical lows.\(^{170}\)

Considering that the AVF needs to recruit to sustain itself, trust and confidence from the public is essential. Retired Marine Corps Commandant General David H. Berger believes “[t]hat trust is the critical ingredient to preserving the AVF [because] [i]f parents do not believe the military will treat their sons and daughters with respect, or if they believe their children will be assaulted by fellow service members, those kids will not join.”\(^{171}\) He cites several reasons for the decreased confidence: (1) “The character of the U.S. withdrawal from Afghanistan,” (2) “A growing perception of the politicization of the military and senior military leaders,” (3) “Reports of widespread sexual harassment and assault in the ranks,” (4) “A series of preventable mishaps across all the services that suggest a measure of professional incompetence,” (5) “Scandals and examples of poor leadership across the joint force,” and (6) “A perception that the skills developed through military service are less relevant to private sector success than in the past.”\(^{172}\)

The 20 years of fighting the Global War on Terrorism, especially its chaotic ending in Afghanistan, may have reduced parents’ willingness to trust the military with their children.\(^{173}\) Two years after the war ended, polls...
show that there is bipartisan agreement that the 20-year war in Afghanistan was “not worth fighting.”174 Veterans who fought in this war have struggled with the reality that their service did not lead to decisive victory, and seem less likely to recommend military service than they were prior to the withdrawal from Afghanistan.175 This is problematic because the AVF is overwhelmingly supplied by family members of veterans.176 However, ending of the war in Afghanistan may just be a short-term stressor that heals with time.

The public perception of widespread sexual harassment, sexual assault, suicide, and post-traumatic stress disorder (PTSD) in the military has also stressed the recruiting environment.177 The mainstream media’s coverage of the military largely focuses on those salient negative topics, while not covering less salient positive aspects of military life.178 This perception is rooted in reality: active-duty suicide rates have increased throughout the Global War on Terrorism,179 and instances of unwanted sexual contact are rising while reporting and confidence in the sexual assault response system are drastically declining.180 Secretary of the Army Christine Wormuth has

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174. See Linley Sanders & Rebecca Santana, Republicans and Democrats Agree That the Afghanistan War Wasn’t Worth It, an AP-NORC Poll Shows, ASSOCIATED PRESS (Oct. 18, 2023), https://apnews.com/article/afghanistan-911-terrorism-taliban-women-rights-268ebbb40beea7be3b1528ed6ae5808 [https://perma.cc/2XWK-HW9S] (stating that 65% of Democrats and 63% of Republicans agreed that the war in Afghanistan was not worth fighting).

175. See Kesling, supra note 152.

176. See supra Section II.B.


178. See Britzky, supra note 177.


180. See Meghann Myers, The Military’s Sexual Assault Problem Is Only Getting Worse, MIL. TIMES (Sept. 1, 2022), https://www.militarytimes.com/news/your-military/2022/09/01/the-militarys-sexual-assault-problem-is-only-getting-worse/ [https://perma.cc/H5YA-DSPB] (arguing that because reports are rising while confidence is
stated that the military must address these issues effectively if they want to successfully recruit Generation Z because many Generation Z-ers see all of this information and wonder to themselves, “why would I want to be part of that?”

3. Declining Propensity and Eligibility

American youth are becoming increasingly ineligible for military service under the existing standards. According to the 2020 Qualified and Military Available (QMA) Study, only 23% of youth ages 17–24 are qualified for military service without a waiver, down from a previous estimate of 29%. Almost half of the youth that are qualified without a waiver are enrolled in college, in theory leaving only 12% of the 17–24 year old population as being qualified and available for military service without a waiver. The 77% that are disqualified without a waiver are disqualified for various reasons, with more than half being disqualified because of multiple reasons. Since the 2013 study, the largest increases in disqualification have been for mental health or overweight conditions. When considering youth that are disqualified for one reason alone, the reasons are as follows: overweight (11%), drug and alcohol abuse (8%), medical/physical health (7%), mental health (4%), aptitude (1%), conduct (1%), and dependents (1%).

American youth are also becoming less interested in military service. According to the DoD’s Fall 2022 Propensity Survey, only 9% of youth ages 16–21 claimed that they would “definitely” or “probably” serve in the military in the next few years. This is the lowest propensity this century, tying the June 2007 low. The decline is especially prevalent among males, who exhibited the lowest propensity this century. The top ten cited reasons why youth would join the military are pay/money (58%), to pay for future education (49%), travel (43%), health and medical benefits (42%), gain experience / work skills (39%), to help others (36%), pension and retirement benefits (35%), experience adventure (30%), to better my

plummeting, incidents are rising not because survivors are becoming more comfortable with reporting).

181. See Britzky, supra note 177.
182. See Dep’t of Def., supra note 8.
183. See Dep’t of Def., supra note 8.
184. See Dep’t of Def., supra note 8.
185. See Dep’t of Def., supra note 8.
186. See Dep’t of Def., supra note 8.
187. See Dep’t of Def., supra note 9, at 2.
188. See Dep’t of Def., supra note 9, at 2.
189. See Dep’t of Def., supra note 9, at 2.
life (30%), and pride/self-esteem/honor (24%). The top ten cited reasons youth would not join the military are possibility of physical injury/death (70%), possibility of PTSD or other emotional/psychological issues (65%), leaving family and friends (58%), other career interests (46%), dislike of military lifestyle (40%), too long of a commitment (36%), possibility of interference with college education (35%), required to live in places they do not want to live (35%), do not believe they would qualify (33%), and possibility of sexual harassment / assault (33%).

B. Demographics of Enlisted

The main predictor for whether an individual will join is not class or race, but the individual’s familiarity with the military. In 2019, the Army reported that 79% of Army recruits had a family member who served, with nearly 30% having a parent who served. In terms of class, the military is truly a cross-sectional representation of America, although recruits are slightly more likely to come from middle-class neighborhoods. In 2018, 64% of recruits came from communities that represent the middle 60%, with 17% of recruits coming from the upper quintile, and 19% coming from the bottom quintile. Comparatively, enlistments are less in line with society on racial grounds: Black people are overrepresented generally and in every branch, except in the Marine Corps where they are underrepresented; Hispanic people are underrepresented in every branch, except the Marine Corps where they are overrepresented; Asian people are underrepresented in every branch; and minority representation is higher

190. See Dep’t of Def., supra note 9, at 13.
191. See Dep’t of Def., supra note 9, at 14.
193. See id.
195. See id. 2011 data was largely the same. See Diana S. Lien et al., An Investigation of FY10 and FY11 Enlisted Accessions’ Socioeconomic Characteristics, CNA ANALYSIS & SOLS., at 28 (Nov. 2012), https://www.cna.org/archive/CNA_Files/pdf/drm-2012-a-001362-1rev.pdf [https://perma.cc/G2JR-AX72]. 2019 data was also the same, showing that the middle class was slightly overrepresented and the lower class and upper class being slightly underrepresented. See Dep’t of Def., supra note 130, at 22 (2021).
196. See Philipps & Arango, supra note 192.
197. They are also underrepresented in the Coast Guard, but the Coast Guard is in within the Department of Homeland Security and only operates under the DoD during wartime. See Our Forces, Dep’t of Def., https://www.defense.gov/about/our-forces/ [https://perma.cc/BZN3-G7A2] (last visited Jan. 25, 2024).
among female recruits than male recruits. 198 For the Army specifically, the recruiting crisis coincides with a significant drop in white recruits. 199

One of the most significant demographic shifts in the military since the AVF has been the increased role of women, and it is arguable that “the single group most responsible for the success of the all-volunteer force has been women.” 200 In 1972, the year before the transition to the AVF, women comprised about 2% of the military. 201 As of 2022, women comprise 17.3% of the active-duty force and 21.1% of the National Guard and reserves. 202 More importantly, as of January 1, 2016, all jobs, including combat jobs, are open to women. 203


199. Steve Beynon, Army Sees Sharp Decline in White Recruits, MILITARY.COM (Jan. 10, 2024), https://www.military.com/daily-news/2024/01/10/army-sees-sharp-decline-white-recruits.html?ESRC=eb_240111.nl&utm_medium=email&utm_source=eb&utm_campaign=20240111 [https://perma.cc/LYM8-Q787]. In 2018 56.4% (44,042) of recruits were white, but this dropped to 44% (25,070) in 2023. See id. This coincided with increased percentages of Black and Hispanic recruits, but their totals remained “largely flat” over that same five-year period. See id.

200. See ROSTKER, supra note 91, at 559 (due to their increased representation in the military and how they have helped sustain the AVF because most spouses are women and spousal support helps increase rates of reenlistment).

201. See ROSTKER, supra note 91, at 7.


The AVF features tremendous geographic disparity. Although the draft spread military service fairly evenly in terms of geography, the AVF is primarily a Southern enterprise.\textsuperscript{204} In terms of the regional representation ratios since the late 1990s, the South has been significantly overrepresented, the West roughly equally represented, the Midwest slightly underrepresented, and the Northeast significantly underrepresented.\textsuperscript{205} This is true across the board, although there are some differences between branches: the Army is the most dependent upon the South, the Marine Corps is the only branch where the Midwest has the highest regional ratio, and the Marine Corps has the most parity in terms of representation ratio among the four regions.\textsuperscript{206} From FY 2015–FY 2019, the states with the five highest representation ratios in a given year included: Georgia, Florida, South Carolina, Hawaii, Virginia, Alabama, Arizona, and Alaska; and the states with the five lowest representation ratios include Washington D.C.,\textsuperscript{207} North Dakota, Massachusetts, Rhode Island, Utah, New York, Vermont, and Minnesota.\textsuperscript{208} For perspective, an 18–24 year-old living in the state with the highest representation ratio (Georgia, South Carolina, Hawaii) is typically

\begin{footnotesize}
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\item \textsuperscript{204} See Philipps & Arango, supra note 192.
\item \textsuperscript{205} For the chart showing representative ratios over time, see Matthew S. Goldberg et al., Geographic Diversity in Military Recruiting, INST. FOR DEF. ANALYSES, at 14 (Nov. 2018), https://www.ida.org/-/media/feature/publications/g/ge/geographic-diversity-in-military-recruiting/d-9079.ashx [https://perma.cc/Z4RR-FNAE]. The 2019 data, the most recent available, also illustrates this trend. See DEP’T OF DEF., supra note 130, at 16–17. These regions come from the Census Bureau, dividing the U.S. into four regions: Northeast, South, Midwest, and West. See Census Regions and Divisions of the United States, U.S. CENSUS BUREAU, https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf [https://perma.cc/T88Q-Y8NR] (last visited Nov. 8, 2023).
\item \textsuperscript{206} See Goldberg et al., supra note 205, at 16–17.
\item \textsuperscript{207} Washington, D.C. is included as a state for these purposes.
\end{itemize}
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three times as likely to enlist than their counterpart coming from the lowest state, North Dakota.209 Although the South is significantly overrepresented, the highest percentages of high-quality recruits come from the states with the lowest representative ratios, typically north of the Mason-Dixon Line.210

The vast majority of counties with the highest per capita recruiting rates come from below the Mason-Dixon Line, with very few in the northeast United States.211 This trend increased from 1998 to 2018 and has been influenced by the decision to close bases in Northern states because the longer northern winters limited training opportunities.212 Since the South has a disproportionate amount of bases, they have also had a disproportionate amount of new enlistees because more youth join the military when they reside in communities with plenty of adult veteran influencers that steer them towards the military.213 Veterans are almost twice as likely to recommend military service as nonveterans.214 In communities that lack a veteran or military presence, adult influencers are more wary.215

The unequal geographic distribution of recruits and the fact that a vast majority of enlistees have familial connections with the military have led many to talk about the growing military-civil divide. Although many cite this as problematic, others argue that this is a sign of institutional success: those who know most about the military are sticking around to join it.216 It would be more troublesome if military families were discouraging their children from joining.217 Some have argued that trying to appeal to “woke young people” unfamiliar with military life may make the recruiting problem more severe because it will alienate the military’s traditional base that has sustained the AVF.218 Regardless, the heavy reliance on relatives of veterans poses a long-term sustainability risk: the Veteran population is expected to

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209. See supra note 208 and accompanying text.
210. See DEP’T OF DEF., supra note 130, at 20.
211. See Philipps & Arango, supra note 192.
212. See Philipps & Arango, supra note 192.
213. See id. This has led some to speculate that the Army should increase their presence in urban areas, which struggle with per capita recruitment, to help alleviate this long-term stressor on the recruiting environment. See William Jung, The Army Needs to Increase Boots on the Ground in Urban Areas, MIL. TIMES (Aug. 10, 2022), https://www.militarytimes.com/opinion/commentary/2022/08/10/the-army-needs-to-increase-boots-on-the-ground-in-urban-areas/ [https://perma.cc/UR4U-V8WL].
214. See National Commission, supra note 13, at 29.
215. See Philipps & Arango, supra note 192.
216. See Kesling, supra note 152.
217. See Kesling, supra note 152.
decline 34% by 2048 from a current estimated population of 18.3 million to 12.1 million.\textsuperscript{219}

C. Arguments For and Against Bringing Back the Draft

The recruiting crisis mandates considering whether resurrecting peacetime conscription is more desirable because peacetime conscription was enacted in June 1948 to fulfill recruiting shortfalls, not grow the force.\textsuperscript{220} However, in practice, it became a slippery slope to fall back on because the 1948 temporary method quickly became a long-term sustainment solution. One should remember California Representative Jerry Voorhis’ remarks in opposition to the 1940 conscription bill: “Believe me gentlemen, it is going to be difficult to ever repeal such a measure once you get it established.”\textsuperscript{221} His comments appear prophetic.

1. The Draft and American Values: Liberty and Equality

From an ideological point of view, there is debate over whether or not the draft is compatible with American values. As Dr. Jennifer Mittelstadt stated, “does the draft represent the essence of citizenship: by showing your participation, by showing that you owe something? Or is it the opposite: is it this repressive, controlling force — almost a tyrannical force — that compels you to do things that are against your liberty?”\textsuperscript{222} Military service may be a fundamental aspect of citizenship in a democracy, but the existence of the AVF has taken that question off the table — despite fighting a two-decade war.\textsuperscript{223} For some, the nonexistence of a draft has created a relationship between the military and society that is outrageous, fraudulent, and undemocratic.\textsuperscript{224} The very notion of having a volunteer force is that service is someone else’s responsibility.\textsuperscript{225}

\begin{itemize}
\item \textsuperscript{220} See CONG. RSCH. SERV., supra note 5, at 8.
\item \textsuperscript{224} See id. at 1:01 (Colonel Bacevich speaking).
\item \textsuperscript{225} See id. at 1:19 (Colonel Kevin Farrel speaking).
\end{itemize}
America’s two core values, liberty and equality, are in tremendous tension whenever the United States debates how to design its military forces.\(^{226}\) The American commitment to individual liberty suggests that military service should be voluntary.\(^{227}\) The country’s commitment to equality suggests that the burdens of military service should be distributed equally, even if it means performing service involuntarily.\(^{228}\)

The early republic militia system strongly endorsed the view that all were obligated to defend the nation when called.\(^{229}\) George Washington’s May 1783 Sentiments on a Peace Establishment illustrate this position:

> It may be laid down, as a primary position, and the basis of our system, that every Citizen who enjoys the protection of a free Government, owes not only a proportion of his property, but even of his personal services to the defence of it, and consequently that the Citizens of America . . . might be called forth at a Short Notice on any very interesting Emergency.\(^{230}\)

In contrast, Daniel Webster’s 1814 speech against enacting the draft during the War of 1812 strongly endorses the liberty value:

> Where is it written in the Constitution . . . that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it? . . . If the war should continue, there will be no escape, and every man’s fate and every man’s life will come to depend on the issue of the military draft. Who shall describe to you the horror which your orders of conscription shall create in the once happy villages of this country?\(^{231}\)


Current public opinion is strongly opposed to a draft, and it is unquestionably influenced by the historical legacy of the Vietnam War. Gallup polls in April 1995 and November 2000 indicate that more people believe the United States made a mistake sending troops to Vietnam than at

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\(^{227}\) Id.

\(^{228}\) Id.

\(^{229}\) See supra Part I; see also PBS LEARNING MEDIA, supra note 222.


\(^{231}\) See Daniel Webster, *Speech on the Conscription Bill, December 9, 1814, in 14 The Writings and Speeches of Daniel Webster* 61, 65 (1903).
any time during the Vietnam War. In 2004, Representative Chuck Ragel’s
draft bill was overwhelmingly rejected by a vote of 400 to 2. In August
2007, almost six years into the Post-9/11 Wars, 80% of Americans thought
that the United States should not return to the military draft. In July 2022,
only 23% of Americans were in favor of a draft. For the foreseeable
future, the legacy of the unfairness of the Vietnam War draft will heavily
influence public opinion against the draft. Historical perception is a political
reality that policymakers must recognize.

Public opinion has not always been against conscription. The World War
II-era draft, enacted 15 months prior to the attacks on Pearl Harbor, was
popular throughout its entire existence. Both parties’ Presidential
candidates made comments supporting “some form” of selective service
leading up to the election of 1940, and 71% of Americans favored a draft
two weeks before it was enacted. Additionally, Americans generally
accepted the Cold War-era draft until the escalation of forces in Vietnam in
the late 1960s. Unlike the Vietnam War, the Korean War mainly featured
roughly equal rates of approval and disapproval throughout most of the war,
and it largely mirrored the public approval rates of the Iraq War which was
fought with volunteers. During Vietnam, the draft became a contentious
issue because the government abused conscription to pursue an unpopular

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232. See Tom Rosentiel, Polling Wars: Hawks vs. Doves, PEW RSCH. CTR. (Nov. 23, 2009),
[https://perma.cc/739H-V7N9].

233. See House Quashes Draft Bill, 402-2, CBS NEWS POLITICS (Oct. 5, 2004),

234. See Jeffrey M. Jones, Vast Majority of Americans Opposed to Reinstating Military
opposed-reinstating-military-draft.aspx [https://perma.cc/EE4N-3XF8].

235. See Most Americans Still Oppose Military Draft, RASMUSSEN REPS. POLS. (Aug. 11,
2022),

236. See Gates Commission, supra note 35, at 164.

237. See Grant, supra note 27; Huston, supra note 67.

[https://perma.cc/6VL9-R59R]; Rosentiel, supra note 232; Public Attitudes Toward the War
war, leading the draft to become the center of dissent. That being said, the Civil War and World War I drafts were also unpopular.

Conscription raises the cost of entering and sustaining wars. Experiments by Michael Horowitz and Matthew Levendusky, conducted in 2008, illustrate that sending American draftees to war turns public support against war efforts. High casualty rates also turn public support against the war effort, but not as much as a draft. In fact, under their experimental conditions, there was more support for the idea of “No Draft, High Casualties” than for “Draft, Low Casualties,” which reinforces the perception that “a draft places militarism on a leash.” However, Cold War-era conscription arguably unleashed militarism by providing an unlimited supply of cannon fodder to contain communism.

Volunteerism has enabled the military to increase its prestige while decreasing citizens’ sense of obligation to serve it. American youth hold the American military in high esteem but mostly view military service as “a good choice for someone else.” A 2015 Harvard survey of people ages 18–29 illustrates the lack of congruence between supporting the use of force and willingness to serve in that force. Forty-eight percent of respondents “strongly supported” or “somewhat supported” the United States sending ground troops to participate in a military campaign against ISIS, with 48% “opposing,” but when asked if the United States needed additional troops to

241. See Ackerman, supra note 18.
242. The authors acknowledge that because the survey was conducted in 2008, the wars in Iraq and Afghanistan, and the legacy of the Vietnam draft, may have influenced respondents. Michael C. Horowitz & Matthew S. Levendusky, Drafting Support for War: Conscription and Mass Support for Warfare, 73 J. POL. 524, 528 n.5, 529 n.11 (2011).
243. Id. at 529.
244. See id.
245. See id. at 530.
246. See Ackerman, supra note 18.
combat ISIS, few seemed willing to serve: 2% said they already joined, 5% said they definitely would join, 9% said they would strongly consider, 20% said they would probably not join, and 61% said they would definitely not join.  

### III. SOLUTIONS TO THE RECRUITING CRISIS

This Part argues that the United States should not resurrect the draft despite the current recruiting crisis. Section III.A discusses how standing conscription is not in the national interest. Section III.B discusses suggestions for sustaining the AVF while Section III.C suggests long-term solutions for sustaining the AVF including expanding Selective Service registration to women to signal their importance for national defense, incentivizing service opportunities, and creating a Mandatory National Service.

#### A. Do Not Resurrect Peacetime Conscription

The AVF should be sustained because the AVF is more professional, effective, and disciplined than a conscript army because everyone wants to be serving. Turnover today is not a problem to the same degree as it was during the Cold War-era draft, which allows the military to develop institutional knowledge and competence. Equally important, the American public prefers a volunteer force and the legacy of the Vietnam War makes Americans wary of compulsory military service that results in inequitable outcomes.

1. **Too Few are Needed to Warrant Returning to Standing Conscription**

Countries adopt systems of military service to meet the demands of both external necessity and internal ideology. Although it is ideologically appealing to argue that citizenship means you owe service to the nation’s military when called, America’s large population base and current force posture make it unnecessary to call forth citizens during peacetime. Additionally, the external security challenges facing the United States do not

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249. *See id.* The numbers of support increased to 60% supporting and 40% opposing after the November 2015 Paris attacks. *See id.*
251. *See id.* at 8, 19.
252. *See supra Section II.C.2.*
253. *See COHEN, supra note 21, at 25.*
254. *See supra Section II.C.1.*
warrant a troop level that requires a tremendous amount of adults to serve in the military: there are roughly 1.3 million personnel on active duty, and when combined with the selected reserve that participates in annual training exercise, the total current military force is approximately 2,077,630 strong.\footnote{255} To maintain that force posture, approximately 300,000 individuals join the military every year\footnote{256} and there are roughly 35.6 million youth ages 17–24 in the United States.\footnote{257} Utilizing such a low percentage undercuts the claim that the draft is democratic because it is the equal burden of defending the nation, not the equal risk of being called to defend it that makes a draft democratic.\footnote{258}

The United States’ geography, security challenges, and abundant population make it difficult for the American core value of equality to triumph over the core value of liberty when debating peacetime conscription. A wartime draft that requires a much larger percentage of the population is an entirely different matter. This Note focuses on how the draft should not be utilized to maintain the current force posture. A World War I or II-type draft to quickly and temporarily swell the force to meet an emergency is beyond the scope of this Note.\footnote{259}

### 2. The Draft is Economically Inefficient

According to economists, the AVF is cheaper than a conscripted force because even if the AVF requires economic incentives to entice enlistment, there are many hidden costs to a conscripted force.\footnote{260} AVF eliminates the tax-in-kind (the difference in what draftees should be paid for their service based on similar market wages needed to induce them) and the cost of avoiding the draft (which includes adjusting your personal and career plans

\footnote{255. See Dep’t of Def., supra note 197, at 3.}

\footnote{256. Based on the total amount that joined, including both active duty and reserves, as well as officers and enlisted during fiscal year 2018. See Frequently Asked Questions (FAQ), Today’s Mil., https://www.todaysmilitary.com/faq [https://perma.cc/J2M2-VCGJ] (last visited Jan. 30, 2024).}


\footnote{258. See supra Section I.A.3. The rising young adult population during the 1960s contributed in part to the dissatisfaction with the draft, as a declining portion of the eligible population was needed. See Cohen, supra note 21, at 151 (referencing Alexis de Tocqueville’s remark).}

\footnote{259. See supra Section I.A.2.}

\footnote{260. See Cong. Budget Off., supra note 250, at 8, 10.}
to utilize deferments and exemptions. Additionally, turnover rates are lower than they were during the draft because society is not misallocating resources by placing individuals in jobs they despise.

There may be situations in which it would be more economically efficient to draft, but the United States is not currently there. Conscription could be more economically efficient when (1) large increases in wages are needed to attract volunteers, (2) those increases are too costly to raise taxation revenues to sustain paying the AVF, (3) the military needs a large fraction of the eligible youth population, and (4) the draft is structured in a way where it is difficult to avoid in practice. The first two elements are political in nature, and the AVF is not currently too costly. The latter two elements are demographic in nature, and such a miniscule percentage of youth is needed that it would be unnecessary and difficult to structure the draft in a way that made avoidance cumbersome.

3. Draft Deferments and Exemptions Result in Inequitable Outcomes

Since the United States has such a large population, any obligatory service naturally features deferments because the supply of draft-eligible individuals vastly outnumbers the demand for draftees. Additionally, it is usually in the national interest to defer or exempt certain individuals because of their civilian contribution to national security. Examples include exempting ship-builders during World War I, and originally student deferments. During the Korean War, student deferments were popular because Americans believed that a growing expertise in science and technical knowledge was necessary to win against the Soviets in the age of nuclear power.

Although deferments are socially acceptable and necessary, widespread use of deferments fosters a perception that conscription is inequitable, undercutting the claim that conscription is an equitable means to ensure all Americans share the burden of defense. During the Vietnam War, deferments enabled a “legalized class privilege” for elites to avoid military service.

261. Deferments are a temporary “delay in induction” into military service that expires when the cause that for that deferment “ceases to exist,” whereas an exemption is a “reclassification into a class that is not subject to induction.” SELECTIVE SERV. SYS., REPORT ON EXEMPTIONS AND DEFERMENTS FOR A POSSIBLE MILITARY DRAFT (2022), https://www.sss.gov/wp-content/uploads/2022/08/FY2022-NDAA-SEC.-529.pdf [https://perma.cc/NJC7-A5QQ].
265. See supra Part I.
266. See Flynn, supra note 77, at 377–81.
267. See Flynn, supra note 77, at 378.
service, with educational deferments providing “the lion’s share of the more than 15 million men who legally evaded conscription.” 268  Civil War conscription created a similar perception of class privilege: occupational deferments in the Confederacy, commutation in the Union, and substitution in both areas gave rise to the perception that the Civil War was a “rich man’s war but a poor man’s fight.”269  Due to biases or influence, there may also be concerns regarding how draft boards yield their discretion in granting deferments. During World War I, Black men in the South may have been more likely than whites to get an occupational deferment due to their white employer’s influence.270  Yet, they were less likely to receive a dependency exemption because Black women were always hirable as cooks, but white women needed their husband’s employment to support the family.271  Thus, “[c]onscription, designed ostensibly to allocate the burdens of military service equitably, in practice prove[s] extremely adaptable to the systems of privilege.”272

4. Drafts Create Unintended Social Consequences

A draft, especially with its deferments, creates unintended societal consequences. It is estimated that student deferments increased male college attendance rates by 4–6% during the late 1960s.273  As the most popular form of legal draft avoidance, college attendance increased as induction increased from 1964–1968, and decreased with the decrease of inductions from 1968–1973.274  Additionally, the existence of paternity deferments likely affected reproductive behavior, and like student deferments, they rose and fell as inductions increased and decreased.275  While the general fertility rate declined from 1965–1970, the percentage of women having their first births increased, an important pre-condition for receiving a paternity deferment,

269. See McPherson, supra note 25, at 602; supra Part I.
270. See Keith, supra note 240, at 1350.
271. See Keith, supra note 240, at 1350.
272. See Keith, supra note 240, at 1352 (discussing the draft in southern communities during World War I).
274. See id.
and then fell sharply when paternity deferments ended in 1970.\textsuperscript{276} In practice, some were able to string various temporary deferments until they aged out of the draft eligibility.\textsuperscript{277}

One of the less discussed consequences of conscription is the reduced wages for service members. The reduced wages are especially apparent at the lowest ranks of entry into the military: between 1946 and 1966 (peacetime conscription started in 1948) the median real family income increased by 69\%, but privates’ (lowest military rank) real pay declined by 24\%.\textsuperscript{278} In contrast, the senior ranks saw their wages increase with society: generals’ real pay increased by 64\% and senior sergeants’ real pay increased by 48\%.\textsuperscript{279} The phenomenon of paying a conscript army relatively less than a volunteer army is not limited to just the Cold War conscription, as “[h]istorically, whenever conscription has been used, military pay has fallen further behind comparable civilian earnings and, as a result, enlistments have inevitably been discouraged.”\textsuperscript{280}

The reduced wages have impacts beyond an initial tour of duty. Joshua Angrist estimates that “as much as ten years after their discharge from service, white veterans who served at the close of the Vietnam era earned substantially less than nonveterans. The annual earnings loss to white veterans is on the order of $3,500 current dollars, or roughly 15 percent of yearly wage and salary earnings in the early 1980s.”\textsuperscript{281} This is not just an American phenomenon.\textsuperscript{282}

B. Continue Sustaining the All-Volunteer Force

The military has sustained recruiting crises before and likely can do so again. Section III.B.1 discusses how the military can utilize traditional strategies to incentivize and increase reenlistment, while Section III.B.2

\textsuperscript{276} See id. It becomes even more apparent when you compare fertility rates between the United States and Canada. See id.


\textsuperscript{278} See Perri, supra note 32, at 434.

\textsuperscript{279} See Perri, supra note 32, at 434.

\textsuperscript{280} Gates Commission, supra note 35, at 123.

\textsuperscript{281} He continued to state that the effect for nonwhites was not statistically significant. See Joshua Angrist, Lifetime Earnings and the Vietnam Era Draft Lottery: Evidence from Social Security Administrative Records, 80 AM. ECON. REV. 313, 330 (June 1990).

discusses more non-traditional solutions that can help the AVF modernize and overcome the civil-military divide.

1. Utilize Time-Tested Economic Incentives

Stakeholders are keenly aware of the recruiting crisis and are using time-tested strategies to expand the supply of recruits: increase pay, utilize bonuses, increase advertising, and recruiter management. Knowing that pay increases can incentivize potential recruits when unemployment is low, Congress has approved the largest increases in military pay since 2002 over the last two years. This is essential because pay is the most common reason young adults say they would join the military. However, pay increases are the least cost-effective way to improve recruiting when compared with bonuses, recruiters, advertising, and educational benefits because they permanently increase the pay of every single rank. Pay increases will expand the pool, but it is unsustainable to continually raise pay at high percentages.

Bonuses are more cost-effective than pay increases in the short term. That being said, most branches distributed heavy bonuses yet failed to meet their FY 2023 mission. In comparison, the Marine Corps barely utilized recruitment bonuses and met their mission, with their second-in-command stating that for recruits, “[y]our bonus is that you get to call yourself a Marine . . . [t]hat’s your bonus . . . there’s no dollar amount that goes with that.” The Marine Corps still used comparatively minor recruiting bonuses for niche specialties, and utilized retention bonuses as well as recruiter bonuses. The other branches still likely need recruitment...
bonuses because Americans view the Marine Corps as far more prestigious than the other branches. Services must elect individual strategies best suited for their branch.

The main efforts in weathering the current crisis must be increasing advertising and recruitment efforts. They are the most cost-effective long-term strategies for increasing the supply of recruits, especially high-quality recruits. Because the AVF is an all-recruited force, those initiatives are the best way to overcome the civil-military divide. In fact, research indicates that most recruits may actually come from the group claiming to be negatively propensed to the military, not the positively propensed group. Thus, while a 9% propensity rating is still not satisfactory, it is misleading to think that the other 91% cannot be recruited. Much of what recruiters do is converting youth who claim to be disinterested or unsure about joining the military into service members. Recruiters should be incentivized and services should target areas of missed opportunity, such as urban areas.

For example, in 2019 the Army made a push to target 22 liberal-leaning cities where it historically struggled to recruit, and is currently focusing on 15 key cities to improve their recruiting numbers. That effort in 2019 led to a 15% increase in Army enlistments from those 22 cities, boosted especially by New York, Chicago, Boston, and Los Angeles.

2. Widen the Pool: Review and Modernize Waivers and Standards

Besides incorporating time-tested strategies for increasing recruits, the military should engage in introspective analysis on how it could be more

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293. See Asch, supra note 283, at 4–5.
294. See supra Introduction.
295. See Asch, supra note 283, at 3.
296. See supra Section II.A.3.
297. See Asch, supra note 283, at 3.
298. See Asch, supra note 283, at 3.
299. See Asch, supra note 283, at 5–6.
302. See Dickstein, supra note 300.
attractive to young adults. Some contributors to the current crisis, such as COVID-19, are probably short-term stressors that time itself will heal.\textsuperscript{303} Others, such as the declining trust and confidence in the military will take longer. However, the memory of the war in Afghanistan may fade quickly, as evidenced by the recruiting boom in the 1980s despite the Vietnam War’s legacy.\textsuperscript{304} The decision to have independent military prosecutors handle sexual assaults, as opposed to commanders, is a step towards combating the military’s sexual assault problem.\textsuperscript{305}

Individual services and the DoD should examine all existing standards and adjust those that may be outdated.\textsuperscript{306} The individual services should also consider whether they need the same standards for every enlisted contract. For example, individuals with diagnosed AD/HD may be highly suitable for certain military specialties while being unsuitable for most specialties, and individuals who are overweight may be suitable for non-combat jobs. Individuals may also be overweight according to standards but score high on fitness tests, and their weight and body fat percentage should not matter if they score near the top percentiles of military physical fitness. At the same time, the presumption should remain that standards exist for valid reasons. More important than adjusting unnecessary standards will be effectively communicating to American youth that the military is modernizing. This must be done without upsetting the traditional base and still communicating traditional military values.

The military is currently experimenting with ways to assist recruits in meeting standards. The Air Force is granting waivers to recruits who test positive for marijuana during their initial drug screening if they do not test positive 90 days later.\textsuperscript{307} The Army launched the 90-day Future Soldier Preparatory Course to help potential recruits shy of existing body fat and academic standards meet those standards before attending basic training.\textsuperscript{308}

\textsuperscript{303} See \textit{supra} Section II.A.1.

\textsuperscript{304} See \textit{supra} Sections I.B, II.A.2.


\textsuperscript{306} See id.


Thousands have participated in the course, and 95% of attendees have translated to enlistments.\footnote{309} Similarly, the Navy is piloting a three-week Future Sailor Preparatory Course.\footnote{310} Time will tell if these methods result in quality, productive service members.

The military should “[r]ecast the message about what a waiver means.”\footnote{311} In some instances, waivers may be freely granted, but the term “waiver” is often mistakenly interpreted by the press to mean the military is lowering standards and accepting inferior quality.\footnote{312} For example, “the vast majority” of Marine Corps recruits require drug waivers.\footnote{313} Essentially, “waiver” means paperwork and reviews by an officer to manage risk. To improve messaging, it may be better to move away from a binary metric of qualified or disqualified without a waiver. A potential messaging solution would be to breakdown the prospective population into three groups: qualified, probably qualified with a waiver, and disqualified without waiver. Another would be to replace the term “waiver” with “review,” breaking down the prospective population into qualified without review, qualified pending review, and disqualified pending review.

3. Adjusting Marijuana Messaging and Policy

Existing standards surrounding past marijuana use should be adjusted to widen the application pool and make the military more consistent with current civilian norms. Polls conducted in October 2023 indicate that 70% of Americans believe marijuana should be legal, and there is bipartisan support for legalization.\footnote{314} More importantly, this number is highest among those the military seeks to recruit, with 79% of those ages 18–34 supporting...
legalization. That target population also grew up watching calls for legalizing marijuana: Individuals graduating high school in 2022 or 2023 were in third or fourth grade when the majority of Americans first favored legalizing marijuana in 2013 and approval numbers have stayed above 50% since then. Daily marijuana use among college students is also higher than it has ever been, signaling its growing societal acceptance.

The juxtaposition between marijuana being illegal federally (meaning the military prohibits cannabis use) and the growing number of states legalizing marijuana contributes to the civil-military divide. Unlike other reasons for disqualification without a waiver (overweight, medical/physical health, mental health, aptitude, conduct, and dependents), marijuana disqualification is a symbolic separation between conduct society views as socially acceptable (reasonable marijuana usage) and conduct the military views as improper. Following Ohio voters’ decision to legalize marijuana for adult recreational use on November 7, 2023, 24 states and Washington, D.C. now approve adult recreational use. Potential recruits in those 24 states reside in areas where marijuana is treated more like alcohol or cigarettes than LSD or heroin, whereas the federal government still treats marijuana as a Schedule I drug under the Controlled Substances Act. Medical marijuana is currently legal in 38 states and Washington, D.C., and marijuana is illegal in the other twelve states. In FY 2018, almost 19% of Army contracts came from states with legalized recreational use and

315. All age groups support the measure, but that demographic exudes the strongest support. See id.
318. See supra Section II.A.3.
321. Wherever recreational use is allowed, medical use is also allowed.
57% came from states with legalized medicinal use. Since then, twelve states have legalized recreational use and three more states have legalized medical use, meaning those percentages are much greater today. In addition, there is some correlation between states’ positions on marijuana and their enlisted representative ratios, as it appears that there are generally lower representation ratios where recreational use is legal.

Whether federally legalizing recreational marijuana use is in the national interest is beyond the scope of this Note, but it is in the military’s interest. Studies have shown that recruits with a history of marijuana use were just as likely to complete their first enlistment and be promoted to sergeant. Also, it would not be the first time military manpower needs drove major federal legislation: the need to draft 18-year-olds for military service during World War II and the Cold War (especially the Vietnam War) led to the passing of the Twenty-Sixth Amendment in 1971. Federal legalization would enable recruiters to treat marijuana the same as alcohol and avoid the current tightrope they walk around marijuana. Recruiters do not ask individuals under 21 years of age questions about alcohol use unless it is tied to a criminal conviction, whereas questions are asked about marijuana use regardless of age. Federal legalization would certainly reduce the amount of youth who believe they do not qualify and likely decrease the amount opposed to the military lifestyle. In the meantime, because changing federal law is outside the DoD’s control, the DoD should focus on how it can navigate the marijuana issue by distinguishing between marijuana usage and marijuana offenses, especially in states where marijuana is legal. At a minimum, marijuana usage in a state where it is legal, prior to enlistment, should not count against recruits.

323. See Asch, supra note 311, at 38 (up from 15% coming from states with legalized medicinal use in FY 2001).
324. See Burke et al., supra note 322.
325. Compare Burke et al., supra note 322, with Dep’t of Def., supra note 130, at 19.
327. See supra Part I.
329. See Dep’t of Def., supra note 9, at 14 (33% cite “Don’t believe I would qualify” and 40% cite “Dislike of military lifestyle.”).
331. See id.
C. Long-term Solutions: Fostering a Culture of Service and Obligation

To assist with declining propensity to serve, and to counteract the slowing population growth rates, the United States should consider measures that help foster a culture of duty. Section III.C.1 discusses expanding Selective Registration to women, which would signal their importance in defending the nation. Section III.C.2 discusses creating a Mandatory National Service that would obligate all young adults to dedicate some time to national service that would include, but is not limited to, the military. Short of making it legally obligatory, service opportunities should be expanded to incentivize youth and make service a social norm.332

1. Expanding Registration to Women

When President Carter reinstated active registration in 1980, he recommended that Congress amend the Military Selective Service Act to include women.333 Congress rejected the proposal, largely because a Senate Report found that a draft would only be enacted to provide combat replacements, which led to them deciding that women should not register because both law and policy excluded women from combat roles at that time.334 Today, all roles are open to women and Congress has considered expanding registration to women.335 Congress came close in the fall of 2021, when both the House of Representatives and the Senate Armed Services Committee approved the change during debates over the 2022 annual defense spending, but ultimately Congress declined to expand registration.336

Public opinion on expanding registration to women is mixed, with a slight majority of respondents favoring women registering.337 In 2021, 45% of Americans supported drafting women if a draft were reinstated, with only

333. See NATIONAL COMMISSION, supra note 13, at 91.
334. See NATIONAL COMMISSION, supra note 13, at 91.
335. See supra Section I.A.4.
337. See NATIONAL COMMISSION, supra note 13, at 119 (based upon five different polls taken between 2013 and 2015).
36% of women in favor and 55% of men.\textsuperscript{338} These numbers are down from 2016, when 63% of Americans supported drafting women if a draft was reinstated.\textsuperscript{339} This decrease may be related to the opening of combat roles to women in 2016 or related to decreased confidence in American institutions and the military.\textsuperscript{340}

There are various arguments for and against expanding registration. Some oppose expanding registration because they see it as further eroding traditional gender roles and family values.\textsuperscript{341} Some, including Senator Ted Cruz, oppose expanding registration because they see a normative difference between compelled our daughters to fight our nation’s wars and compelled our sons.\textsuperscript{342} In contrast, President Obama believes that expanding registration to women would (1) show a commitment to gender equality throughout the armed services and (2) foster a sense of public service by requiring everyone to register as a ritual of adulthood.\textsuperscript{343} Some also disapprove of expanding registration on fiscal grounds, including politicians who want to eliminate the Selective Service entirely.\textsuperscript{344} The Selective Service is currently appropriated $31.7 million for FY 2023.\textsuperscript{345} Expanding registration would require an additional $16 million of funding the first year and a total of $59 million over the first five years.\textsuperscript{346}

Congress should expand Selective Service registration to women. In March 2020, the National Commission on Military, National, and Public Service published their final report regarding their mandate from Congress.
to (1) “conduct a review of the military selective service process and (2) to consider methods to increase participation in military, national, and public service to address national security and other public service needs of the Nation.” One of their recommendations included extending Selective Service registration to women. Although this would not directly resolve the recruiting crisis, expanding registration to women would be “symbolic of an obligation to serve in the event of a national crisis.” Perhaps the process of draft registration would cause more young women to consider joining the military. Throughout the Post-9/11 Wars, polls have shown that 16–21 year-old women have had little propensity to join the military, with somewhere between 4 and 10% saying that they would definitely or probably serve in the military in the next few years. Requiring registration may change that propensity because “male-only registration sends a message to women not only that they are not vital to the defense of the country but also that they are not expected to participate in defending it.”

2. Creating a Mandatory National Service

Instead of a military draft, policymakers should consider enacting a mandatory national service that includes, but is not limited to, the military. This is distinctly different from past instances of standing conscription because the compulsory aspect of service would extend to other forms of service beyond the military, and it would require all eligible youth to participate. Service for young adults would be obligatory, but they could serve in a variety of different corps with distinctively different missions suited to their temperament, skills, and interests such as AmeriCorps, the Peace Corps, FEMA Corps, the newly launched American Climate Corps, or the Marine Corps. Secretary Pete Buttigieg advocated for such a program during his 2020 presidential campaign, suggesting that it would

347. See NATIONAL COMMISSION, supra note 13, at 1 (internal quotations omitted).
348. See NATIONAL COMMISSION, supra note 13, at 8.
350. See id.
351. See DEP’T OF DEF., supra note 9, at 2 (male responses ranging between 23% and 10%, with Fall 2022 being the lowest recorded response yet.).
352. See NATIONAL COMMISSION, supra note 13, at 118.
353. See supra Section I.A.3.
355. See Dastagir, supra note 332.
Another reason to consider a mandatory national service is that future population trends suggest that recruiting will become more difficult if the same force posture is maintained. First, the veteran population is declining, which poses a long-term threat to the AVF recruiting base. Second, there will be fewer young adults in the forthcoming decades. Preliminary data suggests that there were 19% fewer births in 2022 than there were in 2007. The annual growth rate will slow to 0.2% by 2040, down from 0.5% today and 1.2% in the 1990s. Eighteen years from now, there will simply be fewer 18-year-olds to recruit.

In 2017, 49% of Americans favored requiring young adults to give one year of service to the United States, with 45% opposed. Those who were draft-age eligible during the draft era are overwhelmingly in favor of mandatory service today, while those who the requirement would directly impact oppose the measure. Proponents suggest that a mandatory national service would (1) provide young adults with an opportunity to increase their maturity and develop a natural bridge to adulthood, (2) address the modern-day national security concerns that require more Americans serve their country in positions other than just the military, and (3) foster young adults with a greater sense of purpose and increase a sentiment of national unity. Opponents suggest that (1) volunteerism is always better than compulsion, (2) draft dodging will be an issue and that low-income and minority citizens will shoulder an inequitable burden, as suggested by the Vietnam draft


357. See supra Section II.B.


359. See id.

360. The question was phrased as “Would you favor or oppose requiring all young men and young women in the U.S. to give one year of service to the nation — either in the military forces or in nonmilitary work here or abroad?” More men favor it than women (57% to 41%), more Republicans favor it than Democrats (57% to 44%). See Jim Norman, Half of Americans Favor Mandatory National Service, GALLUP (Nov. 10, 2017), https://news.gallup.com/poll/221921/half-americans-favor-mandatory-national-service.aspx [https://perma.cc/KNY4-YXAZ].

361. Only 39% of young adults (18–29) were in favor, whereas as 66% of those 65 and older were in favor. See id.

experience, and (3) mandatory service infringes on Americans’ liberty. The only material legal question would be whether a mandatory national service would run afoul of the Thirteenth Amendment’s prohibition on involuntary servitude.

Proposals for a mandatory national service date back to William James’s 1906 talk on “The Moral Equivalent of War.” A pacifist and utopian, James was interested in enacting a conscripted form of service separate from military conscription, but the idea has since morphed to include military service. A national service program would foster national unity by mixing individuals from all across the country, educate and improve the moral character of the country’s youth, and help the nation overcome divisions and build bonds between individuals across lines of class, race, religion, and political ideology. The program would bring youth together who are different from each other to serve together to solve public problems — things that happen every day in the military. While proponents see big citizenship, critics see big government. Despite today’s political climate, a mandatory national service program could appeal to both parties: liberals would love the idealism behind these programs while conservatives would love the service aspect. Such a program should include causes that appeal to both parties.

363. See id.
364. “Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. CONST. amend. XIII, § 1. “Congress shall have power to enforce this article by appropriate legislation.” Id. § 2.
370. See Dastagir, supra note 332.
Historically, sometimes when the idea of mandatory national service has been flouted, it has not been proposed independently for its virtues, “but rather as a way of sweetening a proposed military conscription.” Thus, conscription opponents may view mandatory national service as illegitimate because it is still compulsory. However, a mandatory national service program would be much more equitable than standing military conscription because the burdens of service will be shared, albeit differently. Additionally, today when mandatory national service is flouted, it is often proposed independently for its virtues of overcoming social fragmentation. It could help provide America’s “national glue,” much like the popular Swiss mandatory service program binds together a multicultural and multilingual Switzerland.

The National Commission on Military, National, and Public Service did not recommend a mandatory national service program. Instead, they recommended a heavy Congressional investment in increasing service programs with the goal of incentivizing individuals so that eventually, “service is the norm, rather than the exception.” They “challenge[d] the Nation to commit to increasing federally supported [non-military] national service-year opportunities to 1 million annually by 2031, up from 80,000 today.” Their goal was that by 2031, the 70th anniversary of President John F. Kennedy’s famous challenge to “ask not what your country can do for you — ask what you can do for your country,” to have cultivated a culture of service across the Nation. Although they had numerous recommendations for cultivating a culture of service, the signature recommendation was the revitalization of American civics education. With 22% of American adults not being able to mention any of the three branches of government and nearly half of Americans ages 17–35 not being able to name the four largest military branches, they found it necessary to expand federal appropriation for civics education from $5 million to $200

372. See COHEN, supra note 21, at 133.
373. See COHEN, supra note 21, at 132–33.
374. See, e.g., Osnos, supra note 370; Choi, supra note 356.
375. In 2013, 73% of voters voted to uphold military conscription, despite not fighting a war in 200 years. See Swiss Voters Reject Bid to Scrap Military Conscription, REUTERS (Sept. 22, 2013), https://www.reuters.com/article/idUSL5N0HI0MR/ [https://perma.cc/WEJ2-KXJQ]. All males are required to perform military service. Alternatively they can perform civilian service or pay a military service exemption tax. See Stephanie Leber, “Will I Have to Do Military Service When I Return to Switzerland?”, SWISSINFO (Sept. 5, 2023), https://www.swissinfo.ch/eng/business/-will-i-have-to-do-military-service-when-i-return-to-switzerland—/48783776 [https://perma.cc/W5HZ-F9SX].
376. See NATIONAL COMMISSION, supra note 13, at 11–12.
377. See NATIONAL COMMISSION, supra note 13, at 11.
378. See NATIONAL COMMISSION, supra note 13, at 2.
379. See NATIONAL COMMISSION, supra note 13, at 2.
million, along with an additional $250 million for service learning.\footnote{See \textit{National Commission}, supra note 13, at 2, 16–18, 33.} Maybe an expanded civics education will increase propensity for service and overcome societal divisions, and perhaps it is what Americans will have to settle for if a mandatory national service program is impractical.\footnote{See \textit{Boot}, supra note 129.}

**CONCLUSION**

This Note assumes that the United States needs to maintain the same active duty force posture for the foreseeable future and does not discuss larger issues such as whether the American military should be expanded or reduced or the use of the American military in foreign affairs. This Note’s goal is to leave the reader with a historical understanding of how America has employed a military draft, especially throughout the twentieth century, as well as the AVF’s current recruiting crisis. Although there are both short and long-term stressors on the sustainability of the AVF, the AVF is worth saving. A draft would be unpopular, create tremendous social costs, and create a less proficient military. Additionally, in the United States, the draft would be tremendously inequitable due to population demographics. However, drafts are not inequitable or unpopular, per se, as Switzerland’s experience shows.

This Note takes the position that sustaining the AVF is preferred over returning to peacetime conscription while also advocating for expanding the obligation of service. Selective Service registration should be expanded to women and the United States should create a mandatory national service program that would be either legally obligatory or highly incentivized to make service a national social norm. Both should assist in alleviating the recruiting crisis by fostering a culture of service and signaling to young adults that their country needs them. A mandatory national service program should help address the greatest long-term sustainability issue facing the AVF: the civil-military divide. It would expand the pool of recruits, yet by providing military service alongside non-military options, it would be more equitable than America’s previous experience with peacetime conscription. It could also help overcome societal divisions, which may be another reason the trust in the military is declining alongside practically every other American institution. Most importantly, a mandatory national service program would help the nation live up to President John F. Kennedy’s challenge: “Ask not what your country can do for you — ask what you can
do for your country.” As President George H.W. Bush declared in his 1989 inaugural address, government must foster the timeless ideas of “duty, sacrifice, commitment, and a patriotism that finds its expression in taking part and pitching in.”