

*SYMPOSIUM: THE 19<sup>TH</sup> AMENDMENT AT 100: FROM THE  
VOTE TO GENDER EQUALITY*

**CITIZEN SOLDIERS AND THE FOUNDATIONAL FUSION OF  
MASCULINITY, CITIZENSHIP, AND MILITARY SERVICE**

*Jamie R. Abrams\* & Nickole Durbin\*\**

Sarah Livingston Jay famously toasted revelers in 1783: “May all our citizens be soldiers, and all our soldiers citizens.”<sup>1</sup> This toast conveyed “a foundational fusion” within our republican government tradition—coupling military service, citizenship, and masculinities.<sup>2</sup> The Akron Law School’s conference on the 100th anniversary of the passage of the Nineteenth Amendment offered the chance to fight the eulogization of the Nineteenth Amendment and explore its modern relevance.<sup>3</sup> This paper concludes that the Nineteenth Amendment cannot be understood without connecting it to broader conceptions of citizenship, masculinities, and military service, thus revealing its ongoing relevance to military inclusion and integration.<sup>4</sup>

In Professor Abrams’ prior article published in the West Virginia Law Review, the foundational fusion of military service, citizenship, and masculinities was presented and explored. We highlight the framework of

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\* Jamie R. Abrams (LL.M., Columbia University School of Law; J.D., American University Washington College of Law; B.A., Indiana University Bloomington) is a Professor of Law and Assistant Dean for Intellectual Life at the University of Louisville Louis D. Brandeis School of Law. The Author extends her sincerest thanks to participants in the University of Akron Center for Constitutional Law’s symposium on the 19<sup>th</sup> amendment.

\*\* Nickole Durbin is a J.D. candidate for the Class of 2020 at the University of Louisville Louis D. Brandeis School of Law. She received her B.A. in political science from Brescia University in 2017. She is the Region X Representative for the Law Student Division of the Hispanic National Bar Association and the Notes Editor for the Journal of Animal and Environmental Law.

1. LINDA K. KERBER, NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP 236 (1998).

2. See generally Jamie R. Abrams, EXAMINING ENTRENCHED MASCULINITIES IN THE REPUBLICAN GOVERNMENT TRADITION, 114 W. VA. L. REV. 165 (2011).

3. U.S. CONST. amend. XIX (enacted 1919).

4. See generally Abrams, *supra* note 2.

that argument in the next section and invite readers to explore the full prior article.<sup>5</sup>

### I. THE FOUNDATIONAL FUSION: MILITARY SERVICE, CITIZENSHIP, AND MASCULINITIES

Male performance of the citizen-soldier tradition framed the early republic.<sup>6</sup> Militias expressed citizenship, reinforced constitutional values, and structured local communities. They were heavily local, entirely male, white, and intertwined with civic participation. The Militia Act of 1792 codified the local citizen-soldier duty requiring the enrollment of every free, white, able-bodied male citizen between eighteen and forty-five.<sup>7</sup>

The Guarantee Clause positioned these citizen-soldier defenses centrally. Article IV, Section 4 guaranteed republican government to every state and protection from invasion.<sup>8</sup> It set out the form of our new government, contrasting the monarchy and linking the type of government to protection from invasion. While the republic would not be protected with the king's men; the republic's *men* would still protect it. The clause positioned men as symbiotic in self-governance and self-defense. This reflected citizen-soldier traditions that those who voted should also serve in the military; and those who served should vote.

The citizen-soldier tradition was also rooted in the masculinities of the era. The word republic itself derives from Latin *res publica*, and *publica* comes from the word "pubic," which means manhood or

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5. *See id.*

6. See generally Jenna Bednar, The Madisonian Scheme to Control the National Government, in JAMES MADISON: THE THEORY AND PRACTICE OF REPUBLICAN GOVERNMENT 217, 238-39 n.3 (Samuel Kernell ed., 2003) (noting that defending the union from "external military threat[s]" was a "primary motivation" for the Founders as they sensed the need to protect the union from threats posed by Great Britain and Spain).

7. Act of May 8, 1792, ch. 33, 1 Stat. 271 ("Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside . . . . That every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powderhorn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder . . . .").

8. U.S. CONST. art. IV, § 4.

maturity.<sup>9</sup> Military service in the early republic thus allowed men to become citizens and boys to become men.

While the founding model abandoned English monarchies and professional armies, it left untouched men's governance over women in the home. Reflecting the republican government tradition *in the home*, men bore the privileges of governance and the responsibilities of it.<sup>10</sup>

From the founding, women's lack of military service underscored their exclusion from self-governance. John Adams summarized the argument stating that men are "fit for the hardy [e]nterprises of [w]ar . . . [and] arduous cares of [s]tate" while women's attention is "with the nurture of their children . . ."<sup>11</sup> Long before women's suffrage, the political framing fused military service and political citizenship.

In this framework, women had to carve forms of civic participation that carefully navigated this foundational fusion. They defined roles as mothers of citizens of the republic. In the republican mother tradition, women leveraged indirect principles of service, such as allegiance and loyalty. Gradually, republican mothers moved into public reforms that cultivated the health of the republic through advocating for aid to widows and orphans, health care, and other social reforms that positioned women to support the survival, longevity, and health of the republic.<sup>12</sup>

In 1848, the formal women's suffrage movement began, and women pressed for political rights directly in a movement spanning seventy years. To win the vote, women needed to convince men to give up their representation of women, risk the demographic upheaval of women's suffrage, and reconcile women's role in the public sphere. The Civil War catalyzed seismic shifts that transformed suffrage for both women and black men.

The Civil War presented dire shortages in manpower that forever changed military service and citizenship. Lincoln first attempted to man the army with volunteers.<sup>13</sup> These efforts were initially successful and

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9. Virginia Bernhard et. al., *FIRSTHAND AMERICA: A HISTORY OF THE UNITED STATES* (Forrest McDonald et. al. eds., 2d ed. 1992), *reprinted in WOMEN'S RIGHTS IN THE UNITED STATES: A DOCUMENTARY IN HISTORY* 35, 36 (Winston E. Langley & Vivian C. Fox eds., 1994) (addressing whether women gained from the revolution).

10. Husbands, for example could be liable for their wives' crimes under certain circumstances and bound to fulfill their wives' contractual obligations.

11. Letter from John Adams to James Sullivan (May 26, 1776), *in* 9 *THE WORKS OF JOHN ADAMS* 375, 376 (Charles Francis Adams ed., 1854).

12. DENNIS W. JOHNSON, *THE LAWS THAT SHAPED AMERICA: FIFTEEN ACTS OF CONGRESS AND THEIR LASTING IMPACT* 108 (2009).

13. After the 1861 battle at Fort Sumter, some 700,000 men answered President Lincoln's call and enlisted voluntarily. EUGENE CONVERSE MURDOCK, *PATRIOTISM LIMITED 1862-1865: THE*

then proved inadequate. Congress then took the unprecedented step of compelling national male military enlistment, and Lincoln signed the first American draft act in 1862.<sup>14</sup> The first compulsory national draft was still local, relying on the then-antiquated local militia systems.<sup>15</sup> It authorized the President to call able-bodied men between 18–45 into service for nine months on a state quota system.<sup>16</sup> Implementation troubles, protest, and fraud quickly dominated the draft.<sup>17</sup> It yielded relatively few men, but it transformed military service and citizenship in enduring ways.

Unprecedentedly deploying the Commander-in-Chief power, Lincoln's next war measure to field an Army was the Emancipation Proclamation freeing slaves and investing them in a Union victory.<sup>18</sup> Over 200,000 men responded to Lincoln's call for arms, undermining Southern power and tipping demographics to the North.<sup>19</sup>

These war measures forever changed the terms of citizenship and military service. "After the Civil War, Congress formally repealed the Militia Act and shifted to a nationalized militia system."<sup>20</sup> The Civil War thus changed military service and its relationship to citizenship. It solidified a shift from local militia functions to national compulsory registration and draft obligations. This ended the citizen-soldier local performative tradition.

## II. THE ENDURANCE OF THE FOUNDATIONAL FUSION AND ITS ENTRENCHED MASCULINITIES PERSISTED AFTER THE CIVIL WAR

The post-war amendments revealed that bullets for ballots endured as a catalyst for citizenship for black men. This in turn revealed that

CIVIL WAR DRAFT AND THE BOUNTY SYSTEM 4–5 (1967). Indeed, the initial volunteer surge was so sizeable that the Secretary of War closed up its recruiting offices. *Id.*

14. See Act of July 17, 1862, ch. 201, 12 Stat. 597. See, e.g., EUGENE CONVERSE MURDOCK, PATRIOTISM LIMITED 1862-1865: THE CIVIL WAR DRAFT AND THE BOUNTY SYSTEM 5 (1967) (explaining that this extraordinary step came just two weeks after meager numbers of volunteers responded to Lincoln's renewed call for enlistment).

15. See Act of July 17, 1862, ch. 201, 12 Stat. 597 ("[T]he President of the United States shall call forth the militia of the States, to be employed in the service of the United States . . .").

16. See Act of July 17, 1862, ch. 201, 12 Stat. 597 ("[H]e may specify in his call the period for which such service will be required, not exceeding nine months . . . [A]nd the enrollment of the militia shall in all cases include all able-bodied male citizens between the ages of eighteen and forty-five, and shall be apportioned among the States according to representative population.").

17. EUGENE CONVERSE MURDOCK, PATRIOTISM LIMITED 1862-1865: THE CIVIL WAR DRAFT AND THE BOUNTY SYSTEM 10 (1967).

18. Proclamation No. 17, 12 Stat. 1268 (Jan. 1, 1863), <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation/transcript.html> [<https://perma.cc/9L8P-VZ24>]. President Lincoln issued this "Emancipation Proclamation" in the third year of the Civil War.

19. *Id.*

20. Abrams, *supra* note 2, at 180.

vestiges of the foundational fusion of citizenship, military service, *and* masculinities had also endured.

The Fifteenth Amendment was a response to the Emancipation Proclamation's call to arms.<sup>21</sup> Elizabeth Cady Stanton sought to leverage women's war efforts, writing to Lincoln seeking votes for women.<sup>22</sup> Stanton explained that she too was inspired by true patriotism and was working under the national flag, but the "woman question" was deferred for another day, another war.<sup>23</sup>

The largest post-Civil War setback for women's suffrage was the word "male" inserted in the Fourteenth Amendment.<sup>24</sup> This reinforced principles of male governance, supporting this entrenched masculinities thesis *over* broader equality principles. One editorial described the Fourteenth Amendment as a spider-crab walking backwards, laying legal disabilities on women.<sup>25</sup>

The word "male" revealed the changing political paradigm regarding citizenship and sex. While the *implied* disenfranchisement of women was enough in the founding era, increased agitation for public roles necessitated careful drafting after the Civil War to avoid enfranchising women. The Fourteenth and Fifteenth Amendments worked together to do this.<sup>26</sup>

While it was not the woman's hour after the Civil War, the Fifteenth Amendment became the structural parallel to the Nineteenth Amendment.<sup>27</sup> The Fifteenth Amendment was about political rights

21. U.S. CONST. amend. XV. ("The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.").

22. THE LOYAL WOMEN OF THE COUNTRY TO ABRAHAM LINCOLN (1863), *reprinted in* WOMEN'S RIGHTS IN THE UNITED STATES, A DOCUMENTARY HISTORY, 125–26 (Winston E. Langley & Vivian C. Fox eds., 1994).

23. Linda K. Kerber, "Ourselves and Our Daughters Forever": *Women and the Constitution 1787-1876*, in ONE WOMAN, ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 21, 31 (Marjorie Spruill Wheeler ed., 1995). This reality was troubling for suffragists in the backdrop of the divisive question at the outset of the war of whether to get involved in the war effort or continue suffrage activism. *See generally* Andrea Moore Kerr, *White Women's Rights, Black Men's Wrongs*, in ONE WOMAN ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 63 (Marjorie Spruill Wheeler ed., 1995) (articulating the competing claims of race and sex).

24. U.S. CONST. amend. XIV.

25. Theodore Tilton of the New York Independent, Regarding Women's Suffrage and the Fourteenth Amendment (1865), *reprinted in* WOMEN'S RIGHTS IN THE UNITED STATES, A DOCUMENTARY HISTORY, 127, 128–29 (Winston E. Langley & Vivian C. Fox eds., 1994).

26. Reva B. Siegel, Collective Memory and the Nineteenth Amendment: Reasoning about "the Woman Question" in the Discourse of Sex Discrimination, in HISTORY, MEMORY, AND THE LAW 131, 147 (Austin Sarat & Thomas R. Kearns eds., 2002).

27. *See generally* Marjorie Spruill Wheeler, *A Short History of the Woman Suffrage Movement in America*, in ONE WOMAN ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 9

yielded by military service. The Fourteenth Amendment at that time was distinctly framed around civil rights, separate from political rights (the right to vote, hold office, serve on a jury, and serve in a militia).<sup>28</sup> Black men's enfranchisement was notably not just about voting; it was about attaining full political rights and responsibilities. Other statutes worked with the Fifteenth Amendment to position black men to serve on juries and to stand for office.<sup>29</sup> Because the Fifteenth Amendment was about *male* political rights, overt discussions of the military service and citizenship were moot.

### III. THE NINETEENTH AMENDMENT LEVERAGES THE FOUNDATIONAL FUSION

After seventy years of grassroots activism, women won the right to vote.<sup>30</sup> Two aspects of suffragists' Nineteenth Amendment strategy inform its relevance to military integration: the shift from state to federal suffrage campaigns and leveraging the masculinities of the time.

#### A. *The state suffrage victories bypassed the military integration*

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(Marjorie Spruill Wheeler ed., 1995). A South Carolina Senator said in 1919, "Here is exactly the identical same amendment applied to the other half of the Negro race. The southern man who votes for the Susan B. Anthony Amendment votes to ratify the fifteenth amendment." Reva B. Siegel, *SHE THE PEOPLE: THE NINETEENTH AMENDMENT, SEX EQUALITY, FEDERALISM, AND THE FAMILY*, 115 HARV. L. REV. 947, 1003 (2002) (citing 58 CONG. REC. 618 (1919) (statement of Sen. Smith)).

28. Akhil Reed Amar, *Women and the Constitution*, 18 HARV. J.L. & PUB. POL'Y 465, 471–72 (1995) (noting that today when we talk about civil rights we mean voting, but when the Fourteenth Amendment was ratified it meant to own property, to contract, to sue, to pursue a career, to inherit, to worship, to assemble, etc.).

29. *Id.*

30. Women did not get the vote for another seventy years, following 56 referendum campaigns, 480 state campaigns to put the amendment in front of voters, 47 state constitutional amendment campaigns, 277 fights to put suffrage on party platforms, 30 political party platform fights in presidential elections, and 19 congressional campaigns over 38 years. DENNIS W. JOHNSON, *THE LAWS THAT SHAPED AMERICA: FIFTEEN ACTS OF CONGRESS AND THEIR LASTING IMPACT* 108 (2009). MELVIN I. UROFSKY & PAUL FINKELMAN, *A MARCH OF LIBERTY, A CONSTITUTIONAL HISTORY OF THE UNITED STATES* 608 (2d ed. Oxford Univ. Press 2002). The Nineteenth Amendment was approved on Aug. 18, 1920, after Tennessee became the thirty-sixth state to ratify it. UROFSKY & FINKELMAN, *supra*. This democratic achievement nearly doubled the number of eligible voters. UROFSKY & FINKELMAN, *supra*. The achievement was a "capstone of a multigenerational effort to change the terms of the original constitutional compact that women might count, equally with men, among the ranks of "We, the People." Reva B. Siegel, *Collective Memory and the Nineteenth Amendment: Reasoning about "the Woman Question" in the Discourse of Sex Discrimination*, in *HISTORY, MEMORY, AND THE LAW* 131, 152 (Austin Sarat & Thomas R. Kearns eds., 2002).

*question directly*

Because the suffrage movement shifted from state to federal campaigns at transformative times in military history, the suffrage debate subdued and bypassed the direct question of military integration. In the late 1800s, suffrage was moving through the Western states.<sup>31</sup> It lacked the momentum and support for a full-fledged federal campaign. Importantly, during this progress of the state suffrage movement, the state militia function was largely dissolved.

Absent compulsory state militia service coinciding with citizenship, women's enfranchisement at the state level bypassed any discussion of the correlating obligations of citizenship and military service. But women's state suffrage victories did yield their right to serve on juries. Women were integrated on juries in Utah in 1898, Washington in 1911, Kansas in 1913, California in 1917, New Jersey in 1917, and Michigan in 1918, all just years after women got the vote suggesting they followed the Fifteenth Amendment model linking voting rights to political rights.<sup>32</sup>

*B. Challenging the protectionist underpinnings that excluded women from the foundational fusion*

Suffragists ultimately won the vote by successfully leveraging their loyalty and military service within the foundational fusion *and* prevailing masculinities of the time. From 1913–1920, the suffrage movement shifted from state to national strategies.<sup>33</sup> This shift followed the momentum of state suffrage victories, the progressive era reforms, and new framings of suffrage arguments within a national and international lens.<sup>34</sup>

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31. In 1890, Wyoming came into the union as the first state to enfranchise women. CHRISTINE LUNARDI, *FROM EQUAL SUFFRAGE TO EQUAL RIGHTS 2* (1986). Colorado and Utah followed in 1893 and 1896, respectively, then Idaho. *Id.* at 2-3. It was another fourteen years before Washington enfranchised women (1910) and fifteen until California followed suit (1911). *Id.*

32. DENNIS W. JOHNSON, *THE LAWS THAT SHAPED AMERICA: FIFTEEN ACTS OF CONGRESS AND THEIR LASTING IMPACT* 108, 137 (2009).

33. LUNARDI, *supra* note 31, at 2, xiii.

34. One particularly famed moment of suffragists' protest included the banner in front of the White House stating: "Kaiser Wilson: Have You Forgotten Your Sympathy With the Poor Germans Because They Were Not Self-Governed? 20,000,000 American Women Are Not Self-Governed. Take the Beam Out of Your Own Eye." Suffragist Banner Outside the White House (1918), *available at* Virginia Arnold [holding Kaiser Wilson banner], LIBRARY OF CONGRESS, <https://www.loc.gov/resource/mnwp.160030> [<https://perma.cc/9U8W-YF7B>]. These tactics marked dramatic transformations in women's political activity—from the highly deferential strategies of early suffragists to direct personal challenges undermining male authority within the republican government tradition.

Suffragists challenged male protectionist ideologies of national leaders. For example, Alice Paul staged the suffrage parade that upstaged Wilson's inauguration. The parade was a near riot as police stood idly by and did nothing to restore order as hostile onlookers antagonized and attacked marchers.<sup>35</sup> Paul strategically challenged the protectionist assumptions that supported separate sphere ideologies of republican government.<sup>36</sup> Harriot Stanton Blanch wrote to Wilson:

[T]he Government, which is supposed to exist for the good of all, left women, while passing in peaceful procession in their demand for political freedom, at the mercy of a howling mob on the very streets which are at this moment so efficiently officered for the protection of men.<sup>37</sup>

Suffragists used these contradictions to stir national support for a federal amendment. Paul and others continued this campaign by publicizing widely their later arrests and the brutality of their confinements.<sup>38</sup> These tactics successfully challenged protectionist assumptions, which simultaneously challenged the republican government principles that had justified women's exclusion from political citizenship.

Wilson, like Lincoln, invoked his Commander-in-Chief power to declare suffrage a vital war measure. Wilson's 1918 State of the Union address said that "women were important in the war effort and the least tribute we can pay them is to make them the equals of men."<sup>39</sup> Wilson declared the amendment vital to the winning of the war.<sup>40</sup> This invoked the tradition of military service catalyzing enfranchisement and leveraged the new national tenor of military service.

This article originally concluded that the Nineteenth Amendment was an advocacy tool for women's military integration when understood in the context of the foundational fusion. The Nineteenth Amendment affirms women's larger political equality. It drew heavily on Reva Siegel's groundbreaking work uncovering early expansive interpretations

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35. LUNARDI, *supra* note 31, at 29.

36. *Id.* at 9, 29 (crediting Alice Paul with critical tactical shifts in the suffrage movement as she brought a dynamic force that "propelled American suffragism to its successful end"). Paul sought to hold the political leaders directly "responsible for the fate of a federal suffrage amendment." *Id.* at 20.

37. JOHNSON, *supra* note 32, at 106–07.

38. Lynda G. Dodd, PARADES, PICKETS, AND PRISON: ALICE PAUL AND THE VIRTUES OF UNRULY CONSTITUTIONAL CITIZENSHIP, 24 J. L. & POL. 339, 404–07 (2008).

39. Woodrow Wilson, U.S. President, State of the Union (Dec. 2, 1918) <http://www.let.rug.nl/usa/presidents/woodrow-wilson/state-of-the-union-1918.php> [<https://perma.cc/5A5H-RE6D>].

40. LUNARDI, *supra* note 31, at 145.



of the Nineteenth Amendment.<sup>41</sup> The Nineteenth Amendment's historical erasure, combined with the historical timing of suffrage victories, obscured the connection to military service and full citizenship.

Just as the Fifteenth Amendment was not just about voting (it was about attaining the full rights and responsibilities in the political domain), so too could the Nineteenth Amendment. Because the Fifteenth Amendment was about male political rights, overt discussion of the military service obligations it imposed was mooted. Indeed, after the Nineteenth Amendment, women's jury service became the next question of political equality. Several more states accordingly amended their codes.<sup>42</sup>

By the time that women's military integration emerged on the feminist agenda in the 1970s, the act of historical erasure that Reva Siegel and others have described excluded the Nineteenth Amendment's deeper historical roots.<sup>43</sup> The original article therefore concluded that the Nineteenth Amendment should not be eulogized so fast, but rather had modern relevance to women's military integration.<sup>44</sup>

#### IV. MODERN MANIFESTATIONS OF THE FOUNDATIONAL FUSION

The original thesis bears considerable relevance to several rights movements that relate to achieving full equality of military service. If military service, citizenship, *and masculinities* were fused in their historical roots, removing gendered notions of citizenship is critical to achieving full gender equality. This suggests that the women's movement should be actively engaged in other movements to include women in the draft registration process; to ensure the meaningful and successful integration of women in combat; to ensure the equal treatment of transgender troops; and to fulfill guarantees of citizenship extended with military service.

##### A. *Women's inclusion in the draft*

This analysis supports women's full inclusion in the military selective service process. In February 2019, the Federal District Court for

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41. See generally Reva B. Siegel, SHE THE PEOPLE: THE NINETEENTH AMENDMENT, SEX EQUALITY, FEDERALISM, AND THE FAMILY, 115 HARV. L. REV. 947 (2002).

42. JOHNSON, *supra* note 32, at 137.

43. Reva B. Siegel, Collective Memory and the Nineteenth Amendment: Reasoning about "the Woman Question" in the Discourse of Sex Discrimination, in HISTORY, MEMORY, AND THE LAW 131, 166–68 (Austin Sarat & Thomas R. Kearns eds., 2002) ("[B]y 1970, there was a sketchy body of precedents that viewed the Nineteenth Amendment as recognizing women's equal civil status.").

44. Abrams, *supra* note 2, at 207.

the Southern District of Texas held in *National Coalition for Men v. Selective Service System* that the Military Selective Service Act is unconstitutional in requiring men only to register for the draft.<sup>45</sup> Since the *Rostker* decision upholding the constitutionality of the male-only draft registration requirement,<sup>46</sup> the Department of Defense had lifted the ban prohibiting women in combat in 2015,<sup>47</sup> so the court in *National Coalition for Men* considered the question anew. Applying intermediate scrutiny, the court easily accepted that raising and supporting an army is an important government interest and that Congress understands that to be for primarily combat troops.<sup>48</sup> The government argued that the male-only draft is still necessary because, while women *can serve* in combat roles, the draft would increase the perception that women will be forced to do so.<sup>49</sup> The court found this to be an archaic and overbroad generalization (and a manufactured explanation at that!) about women, dripping with gendered stereotypes about women's relative combat aversion to men's.<sup>50</sup> Nor would administrative burdens support the male-only draft now that men and women were similarly situated in their ability to serve.<sup>51</sup>

The National Commission on Military, National, and Public Service began hosting public forums and hearings in an attempt to prepare recommendations regarding Selective Service registration.<sup>52</sup> The Commission then used the recommendations to prepare a report, targeted for a March 2020 release.<sup>53</sup> One notable hearing the Commission

45. See generally *Nat'l Coal. for Men v. Selective Serv. Sys.*, 355 F. Supp. 3d 568 (S.D. Tex. 2019), *motion for relief from judgment denied*, No. CV H-16-3362, 2019 WL 1902693 (S.D. Tex. Apr. 29, 2019).

46. See *Rostker v. Goldberg*, 453 U.S. 57 (1981).

47. Cheryl Pellerin, *Carter Opens All Military Occupations, Positions to Women*, U.S. DEP'T OF DEF., (Dec. 3, 2015), <https://www.defense.gov/Explore/News/Article/Article/632536/carter-opens-all-military-occupations-positions-to-women/> [<https://perma.cc/J8UH-BLZ5>].

48. See generally *Nat'l Coal. for Men v. Selective Serv. Sys.*, 355 F. Supp. 3d 568 (S.D. Tex. 2019); *motion for relief from judgment denied*, *Nat'l Coal. for Men v. Selective Serv. Sys.*, No. H-16-3362, 2019 WL 1902693, at \*12–13 (S.D. Tex. Apr. 29, 2019).

49. *Nat'l Coal. for Men*, 355 F. Supp. 3d at 579 (asserting further that a male-only registration requirement supported the administrative logistics of combat registration).

50. *Id.* at 579–580. See generally Rebecca Cook & Cornelia Weiss, *Gender Stereotypes in the Military: Insights From Court Cases*, in *STEREOTYPES AND HUMAN RIGHTS LAW* 175, 197 (eds. Eva Brems and Alexander Timmer, Intersentia 2016) (“Where women take on warrior and leadership roles that have traditionally belonged to men, hostile stereotyping emerges to keep women out of, invisible in, or relegated to support roles in, the military rather than embraced by it.”).

51. *Nat'l Coal. for Men*, 355 F. Supp. 3d at 580–581.

52. *Selective Service Hearing: Should Registration Expand to All Americans? - Arguments against expansion*, NAT'L COMM'N ON MIL., NAT'L, AND PUB. SERV., <https://www.inspire2serve.gov/hearings/selective-service-hearing-should-registration-be-expanded-all-americans-arguments-against> [<https://perma.cc/54SA-U4HE>].

53. *Id.*

conducted addressed the case for continued restrictions on registration to male-only registration.<sup>54</sup> As of the time of this article, there has been no new movement requiring women to register with Selective Service or to be subject to a future draft.<sup>55</sup> But according to the Selective Service System, with some additional resources, it is fully capable of implementing women into the draft with its existing infrastructure.<sup>56</sup> With the thesis of this research in mind, there should be no question that a gender-neutral draft is an important priority of the women's movement to achieve equal citizenship for men and women.

### B. *Women's full military integration*

This thesis also supports ongoing efforts to achieve women's full integration in the military. The year 2020 is a critical one for integration as pilot implementations conclude and various studies relating to readiness and injury rates will be released.<sup>57</sup>

The results so far differ slightly across the various branches. In the Army, the current status seems to be "slow and steady progress." The Army's integration plan would include a plan for gender-neutral testing and training, encompassing a gender-neutral physical assessment test.<sup>58</sup> Although the progress remains slow, with fewer women signing up than initially, 500 women now serve in previously closed combat units while hundreds more wait in training.<sup>59</sup> Moreover, 12 women have graduated from Ranger School, a school once exclusively for men.<sup>60</sup>

The Marine Corps requested a Department of Defense waiver from integrating women into combat roles. This led to a study concluding that of the 134 tasks tested, all-male groups outperformed integrated groups in 93 of the tasks. It also concluded that women had greater risks for injuries, such as stress fractures, from "load-bearing exercise."<sup>61</sup> Until the ACLU

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54. *Id.*

55. *Registration: Women and the Draft*, SELECTIVE SERVICE SYSTEM (2016), <https://www.sss.gov/Registration/Women-And-Draft> (last visited Oct. 15, 2019).

56. *Id.*

57. Meghann Myers, *Has Combat Arms Gender Integration Been Successful? The Army Will Let You Know in 2020.*, ARMY TIMES (Oct. 11, 2018), <https://www.armytimes.com/news/your-army/2018/10/11/has-combat-arms-gender-integration-been-successful-they-army-will-let-you-know-in-2020/> [<https://perma.cc/3WJW-F597>].

58. Andrew Swick & Emma Moore, *The (Mostly) Good News on Women in Combat*, CTR. FOR A NEW AM. SEC. (Apr. 19, 2018), <https://www.cnas.org/publications/reports/an-update-on-the-status-of-women-in-combat> [<https://perma.cc/VGY5-UFQR>].

59. Myers, *supra* note 58.

60. Swick & Moore, *supra* note 59.

61. *Id.*

filed a suit challenging gender-segregated training, the Marines still segregated basic training.<sup>62</sup> There are now limited integrated units, and the first integrated class graduated in April 2019.<sup>63</sup> Yet, concerns fester about the trajectory for success. A recently removed lieutenant colonel in charge of the female basic training reported concerns about the “attitude and treatment of women” positioning “women at a disadvantage in basic training [that] hinders the ability of female recruits to succeed.”

While the Navy and Air Force do not directly work as much in infantry and direct combat compared to other branches of the military, historically, they both have higher numbers of women, likely due to the greater flexibility these branches offer pertaining to job assignments.<sup>64</sup> The Navy specifically struggles systematically with lack of accommodations for women on ships and submarines.<sup>65</sup> While females continue making strides and are now reaching the same retention rates as officers compared to men, only one-fifth of submarines are integrated.<sup>66</sup>

While the pace differs in each branch, there is undoubtedly more work to do to achieve successful military integration in all branches. Doing so is critical to fully actualizing women’s political citizenship.

### C. *Transgender military service*

The arguments and reasoning of this paper further support the urgency of integration for persons who are transgendered serving in the military. The Department of Defense announced a policy allowing for the open service of transgender service members in June 2016, near the end of the Obama administration.<sup>67</sup> In September 2016, the Department released an implementation handbook designed to “assist transgender Service members in their gender transition, help commanders with their

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62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. With the new policy in 2016, the Department of Defense lifted the ban prohibiting transgender Americans from serving in the United States military. The new policy allowed transgender soldiers to serve openly along with banning the discharge and separation from the military solely on the basis for being transgender. Moreover, the new policy included specific provisions regarding the medical treatment of transitioning individuals to ensure that the person received the same medical care and treatment as any other diagnosed medical treatment required by all other serving soldiers. See *Transgender Service Member Policy Implementation Fact Sheet* (2016), [https://dod.defense.gov/Portals/1/features/2016/0616\\_policy/Transgender-Implementation-Fact-Sheet.pdf](https://dod.defense.gov/Portals/1/features/2016/0616_policy/Transgender-Implementation-Fact-Sheet.pdf) [<https://perma.cc/5U6G-W6P2>].

duties and responsibilities, and help all Service members understand new policies enabling the open service of transgender Service members.”<sup>68</sup>

On August 25, 2017, President Trump reinstated the “longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016” stating that this policy would govern “until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have . . . negative effects[.]”<sup>69</sup> Constitutional challenges were immediately filed arguing that this policy was discriminatory. This constitutional challenge, brought by transgender individuals who serve in the military and later by the State of Washington, alleged that the 2017 Memorandum unconstitutionally discriminated.<sup>70</sup> The district court in this case issued a preliminary injunction. The President appealed, which was then voluntarily withdrawn.<sup>71</sup> The proceeding continued, while not ruling on the constitutional merits of the motion to dissolve the preliminary motion, the Ninth Circuit remanded the case back to the district court.<sup>72</sup> Many transgender individuals already are serving honorably in uniform. This policy is discriminatory and disruptive. This issue reveals the festering power of the foundational fusion in ways that couple citizenship and masculinities in worrisome ways.

#### *D. Military service as a path to citizenship*

Finally, immigrants have enlisted in all branches of the U.S. military since the Revolutionary War.<sup>73</sup> Maintaining the integrity and ethics of a “bullets for ballots” strategy is critical. Dangling military services as a means to citizenship and then revoking it is a deeply worrisome practice.

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68. *Transgender Service in the U.S. Military: An Implementation Handbook*, U.S. DEP'T OF DEF. 1, 8 (Sep. 30, 2016), [https://dod.defense.gov/Portals/1/features/2016/0616\\_policy/DoDTGHandbook\\_093016.pdf](https://dod.defense.gov/Portals/1/features/2016/0616_policy/DoDTGHandbook_093016.pdf) [<https://perma.cc/4RMU-P8W2>].

<sup>69</sup> Memorandum from President Trump on Mil. Serv. by Transgender Individuals for the Sec'y of Def. & the Sec'y of Homeland Sec., 82 Fed. Reg. 41157, 41319 (Aug. 30, 2017).

70. *Karnoski v. Trump*, 926 F.3d 1180, 1186 (9th Cir. 2019).

71. *Id.*

72. *See generally id.*

73. Jie Zong & Jeanne Batalova, *Immigrant Veterans in the United States*, MIGRATION POL'Y INST. (May 16, 2019), <https://www.migrationpolicy.org/article/immigrant-veterans-united-states> [<https://perma.cc/92MY-G4NQ>]. Today, veterans in the United States Armed Forces amount to three percent of all veterans, totaling 530,000 soldiers total since the Revolutionary War. Looking specifically at individual countries, Mexico and the Philippines account for 17 percent each in 2017. Overall, the racial and ethnic makeup of veterans born outside the United States encompassed a larger pool of diversity, with almost two-thirds identifying as either Hispanic or Asian/Pacific Islander in 2018.

The modern military should follow through on its commitments to immigrants who have served honorably.

The United States military allowed enlistment as a path to naturalization through the Military Accessions Vital to the National Interest Program (MAVNI) beginning in 2009, so long as the service member was discharged honorably.<sup>74</sup> The program enlisted non-citizens with language and medical skills who were in the U.S. legally, giving them a fast-track path to citizenship.<sup>75</sup> Approximately 10,400 foreign-born members have joined the military in reliance on the MAVNI arrangement.<sup>76</sup>

The program was suspended entirely in 2017,<sup>77</sup> but many individuals remain subject to its terms as the program phases out. There were media reports of this policy being manipulated by the Army conducting “suitability review” of each recruit that includes a security screening.<sup>78</sup> Immigrant service members reported that they were discharged even though they signed up with the MAVNI program.<sup>79</sup> Hundreds of personnel are languishing in “administrative purgatory,” not able to pass the added security checks.<sup>80</sup> The *Military Times* reported as many as 1,000 participants will be released from their contracts.<sup>81</sup> These personnel are timing out of the program as their visas or lawful-status papers expire. There are still applications pending this added layer of security screening with no deadline or timeline governing when they will be processed.<sup>82</sup> Lawyers argue that the personnel are entitled to due process rights of notice and an opportunity to be heard.<sup>83</sup> These issues are relevant to achieving equal access to citizenship. Our nation’s long legacy of “bullets for ballots” should be an honorable one that results in follow-through.

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74. See *Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot Program*, U.S. DEP’T. OF DEF., (2009), <https://dod.defense.gov/news/mavni-fact-sheet.pdf> [<https://perma.cc/UU5L-DB9W>]. The Secretary of Defense first authorized this program in 2009 in an attempt to recruit non-citizens with specific skills considered vital to national interest. Following the Ft. Hood shooting, the program was suspended, then reinstated, finally eventually ending in 2016 with applications accepted through 2017.

75. Vanessa Romo, *U.S. Army is Discharging Immigrant Recruits Who Were Promised Citizenship*, N.P.R. (July 19, 2018), <https://www.npr.org/2018/07/09/626773440/u-s-army-is-discharging-immigrant-recruits-who-were-promised-citizenship> [<https://perma.cc/GB2Q-WVP8>].

76. *Id.*

77. AILA Doc. No. 18081533, DEP’T OF THE ARMY, (Aug. 15, 2018), <https://www.aila.org/infonet/dod-temporarily-suspends-separation-actions> [<https://perma.cc/ZK2E-T883>].

78. Romo, *supra* note 76.

79. *Id.*

80. *Id.*

81. Myers, *supra* note 58.

82. Romo, *supra* note 76.

83. *Id.*

Another variation of our “bullets for ballots” framework to achieve full political citizenship sits in the relationship of Puerto Rico to citizenship and to military service. Puerto Rican citizens acquired United States citizenship in time for Puerto Ricans to fight on behalf of the U.S. in World War I.<sup>84</sup> With citizenship came the requirement to register for the draft.<sup>85</sup> Yet, while the Constitutional requirement of draft registration extended to Puerto Ricans, not all protections afforded by the Constitution equally extended to these same citizens. At the same time, the Supreme Court held that “‘Puerto Rico belongs to but is not part of’ the United States.”<sup>86</sup>

The rate of Puerto Ricans serving and dying in the U.S. military is disproportionately higher than any other group.<sup>87</sup> Beginning in World War I, 236,000 Puerto Ricans registered for the draft, with 20,000 actually serving.<sup>88</sup> In fact, Lt. Teofilo Marxuach fired the first shot of the war for the United States.<sup>89</sup> Yet, in World War II, the United States Army still segregated the units, sending the 65th Infantry, which consisted primarily of Puerto Ricans, to Panama.<sup>90</sup> Puerto Rican identity remained strong during the Korean War, with 61,000 total Puerto Ricans serving, more than 750 died.<sup>91</sup>

In 2010, Puerto Rican veterans totaled 116,029. Of that number, more than 1,225 died fighting for the nation.<sup>92</sup> This nation still has yet to afford these soldiers the right to vote, both in Congress and individually in national elections, if living on the island.

## V. CONCLUSION

Modern politics can be understood better in full historic context. We should not cabin the Nineteenth Amendment’s relevance to a closed historic chapter of suffrage victories. Rather, the roots of our framings of political citizenship demand that we work to extract the masculinities underpinning political citizenship. Until our military service is fully

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84. James Dietz, *The Puerto Rican Political Economy*, 3 *LATIN AM. PERSPECTIVES* 3, 5 (1976).

85. *Id.*

86. *Id.*

87. H.R. 1726, 113th Cong. § 1(26) (2014).

88. Shannon Collins, *Puerto Ricans Represented Throughout U.S. Military History*, U.S. DEP’T OF DEF. (Oct. 14, 2016), <https://www.defense.gov/Newsroom/News/Article/Article/974518/puerto-ricans-represented-throughout-us-military-history/> [<https://perma.cc/5JFH-EUJQ>].

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

integrated and honoring its commitments to those who serve, we are not fulfilling our constitutional values. This article has presented several barriers to full political equality and reveals vestiges of our republication government tradition rooted in prevailing masculinities. The anniversary of the passage of the Nineteenth Amendment presents a perfect opportunity to take these final steps in military integration to ensure equal citizenship to all.