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Is It Just Dessert? Female Recruits Don't Get Their Share of the Pie: The Marine Corps Fights Gender Integration of Basic Training, Violating Equal Protection Standards and Cultivating a Culture Where Female Marines Are Left out of the "Brotherhood"

Maria Brekke†

Introduction

Marine Corps basic training remains segregated by sex in violation of the Equal Protection Clause and a recent Department of Defense order requiring the armed services to integrate.¹ The separation based on sex is rooted in recently rescinded restrictions on women serving in combat roles.² Like these past combat restrictions, the separation of men and women in Marine Corps basic training is based on outdated sex stereotypes. This Note argues that Marine Corps leaders violate the Equal Protection Clause, as well as orders from the Secretary of Defense, because of a commitment to sex-based military tradition, and, thus, the separation of men and women in basic training should be abolished. The ramifications of this decision to segregate extend far beyond basic training: Marine Corps devotion to gender-segregated education and training perpetuates stereotypes about female fitness for combat, impedes solidarity in the Marine Corps, and

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1. See Memorandum from Navy Sec'y Ray Mabus to the Commandant of the Marine Corps on Implementation Plan for Gender Integration of Marine Corps Officer and Enlisted Basic Training (Jan. 1, 2016) (on file with author).

2. Memorandum from Sec'y of Def. Les Aspin to the Sec'y of the Army, Sec'y of the Navy, Sec'y of the Air Force, Chairman of the Joint Chiefs of Staff, Assistant Sec'y of Def. (Pers. and Readiness), Assistant Sec'y of Def. (Reserve Affairs) on Direct Ground Combat Definition and Assignment Rule (Jan. 13, 1994) (on file with author).

leads to damaging perceptions of sex in the Marine Corps.³ Part I of this Note offers a background on female membership in the United States Armed Forces, including a discussion of the passage and subsequent appeal of the Combat Exclusion Policy and a description of Marine Corps training regimens. Part I also discusses the Supreme Court's holding in *United States v. Virginia*, which held that state-sponsored education, including military training programs, must be, if not gender-integrated, at least of equal quality for men and women.⁴ Part II of the Note discusses Marine Corps basic training in the context of this Equal Protection jurisprudence, under which gender-segregated education must be equal. This Note argues that Marine Corps basic training does not meet this standard and is in violation of the Equal Protection Clause. Part III of this Note argues that even though the Supreme Court has not directly reached the question of whether gender-based "separate but equal" education is permissible, race-based and other precedents suggest that even equal gender-segregated education violates the Equal Protection Clause in the case of Marine Corps basic training. Finally, in Part IV, this Note posits that, constitutional violations aside, full gender integration of basic training is the best course of action for the Marine Corps, in terms of morale, recruitment, and efficiency.

I. Background

a. *The Combat Exclusion Policy*

From the time women could enter the armed forces until very recently, female service members were excluded from most combat roles. The Combat Exclusion Policy began with the 1948 Women's

3. See Kate Hendricks Thomas et al., *The Consequences of Gender Segregation in Marine Boot Camp*, TASK & PURPOSE (Nov. 6, 2016), <http://taskandpurpose.com/consequences-gender-segregation-marine-boot-camp/> ("Different performance and training standards, as well as segregation, establish women as marginal from the onset, ensuring that they will always be viewed as suspect in terms of capability."); see also Emerald M. Archer, *The Power of Gendered Stereotypes in the U.S. Marine Corps*, 39 ARMED FORCES & SOC'Y 359, 370–74 (2012). Archer conducted interviews in which numerous Marine women told her that when in boot camp, female Marines are categorized into some variation of three typologies that female Marines can be: "bitch," "slut," or "dyke." Archer finds that male Marines tend to view female Marines as "sexually coercive" or "emotional," and are often warned that "women [Marines] are dangerous and have the power to end a male Marine's career" with false accusations. Archer concludes that "such behavior is detrimental to community building. If men are taught that women are not part of the team, it is unlikely that male and female Marines will be able to work cooperatively together while stateside or deployed." *Id.*

4. 518 U.S. 515, 519 (1996).

Armed Services Integration Act.⁵ The 1994 articulation of the Combat Exclusion Policy, known as the Department of Defense “Direct Ground Combat Definition and Assignment Rule,” stated that “[s]ervice members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground.”⁶ This exception encompassed armor, infantry, and field artillery specialties—positions that are “the core of the traditional paths to advancement into the military’s top ranks.”⁷ Women’s exclusion from these roles “severely constrain[ed] their opportunities for top leadership.”⁸ The rule also excluded women from non-combat positions that provided direct support to a combat unit, such as a medic position in an infantry company.⁹ Part of the reason the Marine Corps has a lower percentage of women serving than do the Navy, Army, and Air Force is that the Marine Corps has a greater percentage of positions historically closed to women.¹⁰

b. Women’s History in the United States Marine Corps

The United States Marine Corps dates to 1775 and the founding of the Continental Marines.¹¹ The Continental Marines participated in combat during the United States Revolutionary War, but the force was disbanded after the conflict.¹² President John Adams established the Marine Corps as a permanent military force on July 11, 1798.¹³ Since that date, the Marine Corps has participated in all major United States conflicts.¹⁴

5. Karla R. Kelly, *The Exclusion of Women from Combat: Withstanding the Challenge*, 33 JAG J. 77, 78–79 (1984).

6. Les Aspin, *supra* note 2.

7. Lucinda Joy Peach, *Behind the Front Lines: Feminist Battles over Women in Combat*, in WIVES AND WARRIORS: WOMEN AND THE MILITARY IN THE UNITED STATES AND CANADA 102 (Laurie Weinstein & Christie C. White eds., 1997).

8. *Id.*

9. See KRISTY N. KAMARCK, CONG. RESEARCH SERV., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS 13 (2015).

10. *Id.* at 12–13.

11. ALLAN R. MILLET, SEMPER FIDELIS: THE HISTORY OF THE UNITED STATES MARINE CORPS 7–9 (1980).

12. *Id.* at 26.

13. *Id.* at 28.

14. *Id.*

Though women have served in unofficial roles, including as nurses, domestic workers,¹⁵ and even combatants,¹⁶ in the United States military since the Revolutionary War, it was not until 1901 that Congress created the first official military branch open to women: the Army Nurses Corps.¹⁷ This branch, along with the Navy Nurses Corps, which was founded in 1908, “[was] separate from the four main service branches, and carried no military rank, no equal pay provisions, and no veteran’s or retirement benefits.”¹⁸ In 1918, because of the increased need for male Marines to fill combat positions during World War I, women were permitted to enroll in the Marine Corps to fill clerical positions.¹⁹ That year, over 300 women entered the Marine Corps “to take over stateside clerical duties from battle-ready Marines who were needed overseas.”²⁰ The Marine Corps Women’s Reserve was established during World War II in order to fulfill similar goals of freeing male Marines from clerical positions because more soldiers were needed overseas.²¹

Congress passed the Women’s Armed Services Integration Act to make women a permanent part of all four military branches in 1948, following the conclusion of World War II.²² This Act, however, placed a two-percent ceiling on the number of women who could be on active duty in each branch, excluded women from reaching the highest ranks of service, set different enlistment and dependency standards for men and women, and restricted the types of positions women were permitted to hold within the military.²³ The Act also established a “statutory scheme that allowed the secretary of each branch to distinguish between male and female recruits,” leading to institutionalized discrimination against women in the military.²⁴ The two-percent ceiling remained in place until 1967, when the

15. Lucille M. Ponte, *United States v. Virginia: Reinforcing Archaic Stereotypes About Women in the Military Under the Flawed Guise of Educational Diversity*, 7 HASTINGS WOMEN’S L.J. 1, 7–8 (1996).

16. *Id.* at 8 n.22.

17. *Id.* at 9.

18. *Id.*

19. See WOMEN MARINES HISTORY, WOMEN MARINES ASS’N, <https://www.womenmarines.org/wm-history> (last visited Oct. 23, 2017).

20. *Id.*

21. MARY V. STREMLow, FREE A MARINE TO FIGHT: WOMEN MARINES IN WORLD WAR II, http://www.marines.mil/Portals/59/Publications/Free%20a%20Marine%20to%20Fight%20Women%20Marines%20in%20World%20War%20II%20PCN%2019000312900_1.pdf (last accessed Oct. 23, 2017).

22. *Id.*

23. M. C. DEVILBISS, WOMEN AND MILITARY SERVICE: A HISTORY, ANALYSIS, AND OVERVIEW OF KEY ISSUES 8, 21 (Preston Bryant & Elizabeth Bradley eds., 1990).

24. Ponte, *supra* note 15, at 13.

Johnson administration removed the cap from all branches of the armed forces, allowed greater access to promotions, and standardized retirement packages for male and female service members.²⁵ Despite the removal of the cap, growth of female representation in the Marine Corps has been slow—slower, in fact, than the other branches of the armed forces.²⁶ Women have also been unable to gain a foothold in the most powerful military positions.²⁷ This is due in part to the Combat Exclusion Policy, which was repealed in 2013.²⁸

c. The Repeal of the Combat Exclusion Policy and the Order that Boot Camp Must Be Gender-Integrated

The Combat Exclusion Policy was narrowed over time. In 1993, the Secretary of Defense lifted the combat exclusion from most aviation positions, though women were still excluded from aviation units in direct support of ground combat units.²⁹ This opened almost all Air Force and Navy positions to women.³⁰ In 2012, a policy triggered by recommendations from Congress' Military Leadership Diversity Commission opened over 14,000 positions to women under newly-developed exceptions to the Combat Exclusion Policy.³¹ There were still 238,000 positions, however, for which women were ineligible under the rule.³²

In a historic move, on January 24, 2013, Secretary of Defense Leon Panetta announced that the Combat Exclusion Policy would

25. Act of Nov. 8, 1967, Pub. L. No. 90-130, 81 Stat. 375 (1967).

26. KRISTY N. KAMARCK, CONG. RESEARCH SERV., R44321, DIVERSITY, INCLUSION, AND EQUAL OPPORTUNITY IN THE ARMED SERVICES: BACKGROUND AND ISSUES FOR CONGRESS 28 (2016) ("In 2015, women accounted for nearly one-fifth of all officers in the Air Force, Navy, and Army, and 7.0% of officers in the Marine Corps Among enlisted ranks, the Navy and Air Force have about 18% of their active duty positions filled by female servicemembers while the Army has 13% women and the Marine Corps has about 8%.").

27. *Id.* ("While women make up about 20% of the officer corps, they account for less than 10% of the highest leadership positions.")

28. See Memorandum from Gen. Martin E. Dempsey and Sec'y of Def. Leon E. Panetta to Sec'ys of the Mil. Depts. on Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule (Jan. 24, 2013) (on file with author); Mabus, *supra* note 1.

29. MEGAN K. BECKETT & CHIAYING SANDY CHIEN, NATIONAL DEFENSE RESEARCH INSTITUTE, RAND, THE STATUS OF GENDER INTEGRATION IN THE MILITARY 6 (2002).

30. *See id.*

31. *See US Military to Ease Curbs on Women in Combat Roles*, BBC NEWS (Feb. 10, 2012), <http://www.bbc.com/news/business-16975751>.

32. Claudette Roulo, *Defense Department Expands Women's Combat Role*, DEP'T OF DEF. (Jan. 24, 2013), <http://archive.defense.gov/news/newsarticle.aspx?id=119098>.

be rescinded and that the service branches would each be moving forward with plans to “eliminate all unnecessary gender-based barriers to service.”³³ Panetta affirmed that “[i]f members of our military can meet the qualifications for a job, then they should have the right to serve, regardless of creed, color, gender or sexual orientation.”³⁴ This order meant that women could no longer be barred from any military position based on sex. The Marine Corps was the only service branch to fight the rule change, and it argued that some combat positions should remain closed to women.³⁵ The Marines cited an internal experiment that showed a mixed-gender group of Marines had been less effective than male-only groups.³⁶ Despite the Marine Corps’ request, the Department of Defense mandated that the armed services integrate women into all combat roles by January 1, 2016.³⁷ Carter explained his rejection of the Marine Corps’ request for an exemption, claiming, “[W]e are a joint force and I have decided to make a decision which applies to the entire force.”³⁸

As part of this shift, Navy Secretary Ray Mabus sent a memo to the Commandant of the Marine Corps, Robert Neller, ordering the commencement of gender integration of basic training for both officers and enlisted Marines.³⁹ The memo stated that “colocation,” or training men and women at the same facility but in different units, “does not meet the requirement for gender integrated training.”⁴⁰ Marine Corps leadership’s continued defiance of this order from the Navy Secretary is an insubordination that goes against the hierarchal structure of the military, since the Marine Corps is operated as a branch of the Navy and receives its orders from Navy leadership.⁴¹ Marine Corps basic training is the only

33. *See id.*

34. *Id.*

35. *See* DEPT OF DEF., FACT SHEET: WOMEN IN SERVICE REVIEW (WISR) IMPLEMENTATION 6 (2015).

36. *Integrated Task Force Summary Released*, MARINE CORPS HEADQUARTERS (Sept. 14, 2015), <http://www.marines.mil/News/News-Display/Article/617047/integrated-task-force-summary-released> (quoting Paul Johnson, the principal investigator for the task force, “[t]he overwhelming result was that all-male units outperformed the integrated units. . . . That’s not to say that there weren’t some examples where integrated units outperformed male units.”).

37. *See* Cheryl Pellerin, *Carter Opens All Military Occupations, Positions to Women*, DEPT OF DEF. (Dec. 3, 2015), <https://www.defense.gov/News/Article/Article/632536/carter-opens-all-military-occupations-positions-to-women>.

38. *Id.*

39. Mabus, *supra* note 1.

40. *Id.*

41. *See, e.g., id.* (showing two examples of the Marine Corps receiving orders from the Secretary of the Navy).

training in the entire armed services that is separated by gender.⁴² The Army, Air Force, and Navy all have co-educational training procedures and facilities.⁴³ Marine Corps basic training is done at Marine Corps Recruit Depots in two locations: Parris Island, South Carolina and San Diego, California.⁴⁴ Male recruits residing east of the Mississippi River are trained at Parris Island and those west of the Mississippi train in San Diego.⁴⁵ Because of the smaller number of female recruits and because the facilities were constructed before women were included in basic training, female recruits all train at Parris Island.⁴⁶

Though the male and female recruits at Parris Island are on the island together, their training, living quarters, units, and leaders are almost entirely separate.⁴⁷ Female recruits are housed in separate barracks, and there are separate male and female recruit battalions.⁴⁸ The three male battalions have male leaders, and the single female battalion has female leaders.⁴⁹ Though some of basic training is the same for both male and female recruits, there are many differences in how men and women experience Marine Corps boot camp. As this Note discusses, female recruits do not have the same physical requirements as male recruits,⁵⁰ they have different grooming standards,⁵¹ and they are given less rations (even though smaller men are often given double rations to help them gain muscle).⁵² Though the Marine Corps may be nominally

42. See Thomas Gibbons-Neff, *How Marine Corps Boot Camp Became the New Battlefield for Gender Integration in the Military*, WASH. POST (Jan. 8, 2016), https://www.washingtonpost.com/news/checkpoint/wp/2016/01/08/how-marine-corps-boot-camp-became-the-new-battlefield-for-gender-integration-in-the-military/?utm_term=.133c4a191ff7.

43. *Id.*

44. See *Marine Corps Boot Camp Timeline at a Glance*, MILITARY.COM, <http://www.military.com/join-armed-forces/marine-corps-boot-camp-schedule.html> (last visited Nov. 6, 2017).

45. *Id.*

46. *Id.*

47. See Hope Hodge Seck, *The Boot Camp Gender Divide: The Case for Co-Ed Training*, MARINE CORPS TIMES (Aug. 3, 2015), <https://www.marinecorpstimes.com/story/military/2015/08/03/boot-camp-gender-divide-case-co-ed-training/30884655/>.

48. *Id.*

49. Seck, *supra* note 47.

50. See Jeff Schogol, *Marines Roll Out Tougher Initial Strength Test for Poolees*, MARINE CORPS TIMES (Feb. 26, 2016), <https://www.marinecorpstimes.com/story/military/2016/02/23/marines-roll-out-tougher-initial-strength-test-pooles/80810536/>.

51. ROD POWERS, BASIC TRAINING FOR DUMMIES 20 (Kelly Ewing et al. eds., 2011).

52. See David Bessey, *Parris Island's Strict Food Menu a Recipe for Nutritional Marine Corps Recruit Training*, DEF. VIDEO IMAGERY DISTRIB. SYS. (June 21, 2013),

complying with the rule that all positions must be open to women, they are providing female recruits with different training opportunities to prepare them for those positions. These differences, among others, violate Equal Protection rules and cause a disharmony between male and female Marines that begins on their very first day of basic training.

d. Equal Protection Cases

The Equal Protection Clause of the Fifth Amendment prohibits the federal government from discriminating based on sex, except when the means of discrimination are substantially related to the achievement of important government objectives.⁵³ The Supreme Court applied equal protection analysis to the context of military education and training in *United States v. Virginia*.⁵⁴ In *Virginia*, the State of Virginia justified its exclusion of women from the Virginia Military Institute (“VMI”) on the basis that women are generally physically weaker than men and tend not to do well under an “adversative” model of teaching, so their admission would lower the quality of the school’s training program.⁵⁵ The State proposed a similar but separate school for women: Virginia Women’s Institute for Leadership (“VWIL”).⁵⁶ As to the latter justification for not allowing women to attend VMI, the Court found the exclusion of women to be in violation of the Equal Protection Clause.⁵⁷

First, the Court conveyed that “[w]omen’s successful entry into the federal military academies, and their participation in the Nation’s military forces, indicate that Virginia’s fears for the future of VMI may not be solidly grounded.”⁵⁸ The Court went on to hold that the justification for sex segregation “must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.”⁵⁹

As to Virginia’s scheme to set up a complementary program for women, the Court found that it was impossible for the proposed program to stand as VMI’s equal: “In myriad respects other than

<https://www.dvidshub.net/news/109033/parris-islands-strict-food-menu-recipe-nutritional-marine-corps-recruit-training>.

53. U.S. CONST. amend. V.

54. 518 U.S. 515, 519 (1996).

55. *Id.* at 535.

56. *Id.* at 526.

57. *Id.* at 534.

58. *Id.* at 544–45.

59. *Id.* at 533.

military training, VWIL does not qualify as VMI's equal. VWIL's student body, faculty, course offerings, and facilities hardly match VMI's. Nor can the VWIL graduate anticipate the benefits associated with VMI's 157-year history, the school's prestige, and its influential alumni network.⁶⁰ The Court in this case found that there must be *at least* equal facilities and opportunities for men and women in military education and training.⁶¹ The decision did not reach whether truly equal, separate facilities would violate the Equal Protection Clause, because the program at VMI and the program proposed for VWIL were not equal.⁶²

The separate training systems in place for male and female recruits in Marine Corps basic training do not provide equal opportunity for men and women either. The Supreme Court's decision in *Virginia* leaves only one conclusion regarding the separation of Marine recruits based on sex: the separation cannot be viewed as constitutional under the Equal Protection Clause.

II. Marine Corps Basic Training Does Not Meet the Minimum Requirement the Supreme Court Set Forth in *Virginia*: Gender-Segregated Military Education Must Be Equal

a. The Differences in Fitness and Dietary Requirements for Male and Female Recruits Are Based on Overbroad Generalizations and Do Not Fall Within the Biological Justification Exception to Equal Protection Requirements

Though the length of basic training and its frameworks are the same for male and female recruits, there are key differences between male and female recruits' training regimens, environment, and expectations. These differences effectuate a presumption of "women's status as second class soldiers."⁶³ To qualify for basic training, both male and female recruits must pass a Physical Fitness Test, or PFT.⁶⁴ After basic training, Marines are required to take this same test annually.⁶⁵ Prior to January 1, 2017, male

60. *Id.* at 551.

61. *Id.* at 534.

62. *Id.* at 554.

63. Blythe Leszkay, *Feminism on the Front Lines*, 27 HASTINGS WOMEN'S L.J. 259, 269 (2016).

64. See U.S. Dep't of Navy, Marine Corps Order 6100.13 W/CH 1, Marine Corps Physical Fitness Program 2-1 (Aug. 1, 2008) (providing policies and procedures for the Marine Corps Physical Fitness Program).

65. *Id.*

recruits needed to complete a minimum of three pull-ups, fifty crunches in under two minutes, and a three-mile run in under twenty-eight minutes.⁶⁶ Female recruits were required to complete fifty crunches in under two minutes and the three-mile run in under twenty-eight minutes, but they only needed to perform a flexed-arm hang on the pull-up bar for a minimum of twelve seconds instead of completing three pull-ups.⁶⁷ When the recruits arrive at basic training after successful completion of this test, they undergo another examination called the Initial Strength Test, or IST.⁶⁸ Prior to January 1, 2017, in order to meet the minimum standards required to pass the IST, male recruits were required to complete two pull-ups, forty-four crunches in under two minutes, and a one-and-a-half mile run in thirteen minutes and thirty seconds.⁶⁹ Female recruits were required to complete a flexed-arm hang on the pull-up bar for twelve seconds, forty-five crunches in two minutes, and a one-mile run in ten minutes and thirty seconds.⁷⁰

It may be argued that these different fitness requirements do not pose a constitutional violation because of the Supreme Court's decision that distinctions between men and women based on biological differences do not violate the Equal Protection Clause.⁷¹ The different requirements, however, are not based on any real biological distinction between men and women and only serve to stigmatize female recruits as weaker than male recruits and perpetuate an institutional disdain for female training battalions. If the Marine Corps made these physical fitness requirements uniform for male and female recruits, it is unlikely that the Corps would lose many potential female recruits: the differences now are not substantial and female recruits would be incentivized to reach the level of fitness necessary to complete the same requirements as male recruits. These different requirements cannot be blamed on inherent biological difference because, by the end of basic training, most female recruits have the strength to complete the male requirements.⁷² When conducting training at Parris Island, former

66. *Id.* at 2-5.

67. *Id.*

68. See Stew Smith, *USMC Recruit Training*, MILITARY.COM, <http://www.military.com/military-fitness/marine-corps-fitness-requirements/marine-corps-basic-training> (last visited Nov. 6, 2017).

69. *Id.*

70. *Id.*

71. *Id.*

72. See Jeffrey S. Dietz, *Breaking the Ground Barrier: Equal Protection Analysis of the U.S. Military's Direct Ground Combat Exclusion of Women*, 207 MIL. L. REV. 86, 129-32 (2011), for a discussion of how Marine women have physically

Marine Greg Jacob required the women to do pull-ups alongside the men:

At first, a lot of women weren't able to do it . . . They were able to do one, some were able to do two, but what happened was by having that standard and enforcing that standard, it made my Marines, it made the troops go to the gym and train to that standard.⁷³

Jacob went on to say that within six months, all of the women in his company were doing eight to twelve pull-ups, far beyond the minimum requirements for male recruits.⁷⁴ Making the requirements for the pre-training tests uniform would set female recruits up for success during their training and undermine perceptions that female recruits are weaker than male recruits. This result was, in essence, reached in one aspect of training by Lt. Col. Kate Germano during her time as head of the female recruit battalion at Parris Island. Prior to Lt. Col. Germano's command, female recruits were able to use chairs to sit and rest during formation if they grew tired.⁷⁵ Male recruits were not given the option to sit.⁷⁶ Lt. Col. Germano removed the chairs, saying "I put a stop to that, and lo and behold, we didn't have females dropping out of the formation."⁷⁷

The Marine Corps recently moved toward making the base requirements for the PFT equal, but the scoring rates and passage bars for male and female Marines are still unequal.⁷⁸ The requirements for both the IST and the PFT were updated, with the new requirements becoming effective on January 1, 2017.⁷⁹ In light

distinguished themselves. "Women already train on and perform direct ground combat tasks. . . . The Marine Corps Combat Fitness Test includes an 880 yard run, a thirty pound ammo can lift, and a 300 yard maneuver under fire event that incorporates scurrying, high crawling, dragging a casualty, lifting and carrying a casualty, carrying two thirty pound ammo cans, accurately tossing a dummy grenade, and push-ups." *Id.* at 129–30.

73. Tom Bowman, *Marines: Most Female Recruits Don't Meet New Pullup Standard*, NPR (Dec. 27, 2013), <http://www.npr.org/2013/12/27/257363943/marines-most-female-recruits-dont-meet-new-pullup-standard> (quoting Greg Jacob). See Kyle Hill, *The Mechanics of the Pull-Up (and Why Women Can Absolutely Do Them)*, SCI. AM. GUEST BLOG (Mar. 14, 2013), <https://blogs.scientificamerican.com/guest-blog/the-mechanics-of-the-pull-up-and-why-women-can-absolutely-do-them/> for an in-depth discussion on the ability of women to complete pull-ups.

74. *Id.*

75. See Gretel C. Kovach, *Why Marines Have a Problem with Women in Combat*, SAN DIEGO UNION-TRIB. (Sept. 19, 2015, 3:00 PM), <http://www.sandiegouniontribune.com/military/sdut-marine-women-in-combat-kate-germano-profile-2015sep19-story.html>.

76. *Id.*

77. *Id.*

78. *Id.*

79. See Schogol, *supra* note 50 (detailing the tougher initial strength tests for

of the repeal of the Combat Exclusion Policy, the new requirements for both the IST and the PFT do away with the flexed-arm hang for female recruits and allow all recruits to choose between the completion of push-ups or pull-ups to measure upper body strength.⁸⁰ The scoring sheet for this test indicates that “[a]ll Marines should be encouraged to do pull-ups as this is a better field test of dynamic upper body strength.”⁸¹ To encourage Marines to perform pull-ups, more points are given out for this exercise than for completing push-ups; the only way to achieve a maximum score is by performing pull-ups.⁸² Reading between the lines, since pull-ups have always been the requirement for male Marines, and push-ups were added in place of the previous requirement for female Marines, the push-up option is an implicitly “female” requirement. By giving less points for push-ups, which will be seen as the “female” option regardless of what female Marines choose to do, the Corps is equating “femaleness” with a sense of “less-than” or weakness.

In addition, though male and female recruits now have the option to perform the same exercises, the scoring for women is different than that for men.⁸³ Because of this, female Marines are capped at a maximum of ten pull-ups; beyond that, female Marines cannot continue to earn points.⁸⁴ Similarly, the minimum and maximum standards for female recruits and female Marines for crunches and the three-mile run are lower than the standards for male recruits and male Marines.⁸⁵ Likely anticipating criticisms to

male and female poolees interested in taking combat-related jobs); *see also* Matthew Schehl, *Marine Corps Publishes New PFT and CFT Rules*, MARINE CORPS TIMES (Dec. 20, 2016), <https://www.marinecorpstimes.com/articles/marine-corps-publishes-new-pft-and-cft-rules> (explaining the new updates to the Marines Corps’ physical fitness and combat fitness tests).

80. Schogol, *supra* note 79; Schehl, *supra* note 79.

81. *Push-Up/Pull-Up Hybrid Test Effective January 1, 2017*, U.S. MARINE CORPS, http://www.fitness.marines.mil/Portals/211/Docs/PFT_CFT/PFT_CFT%20Standards/PULLUP_PUSHUP_table20160701.pdf?ver=2017-01-18-163735-190 (last visited Oct. 27, 2017).

82. *Id.*

83. *Id.* For every age group of female recruits and female Marines, the minimum number of pull-ups to pass the test is one pull-up. The maximum ranges from 3–10 pull-ups, depending on the age group. For male recruits and male Marines, the minimum ranges from 3–5, and the maximum ranges from 18–23.

84. *Id.*

85. *See Crunches*, U.S. MARINE CORPS, http://www.fitness.marines.mil/Portals/211/Docs/PFT_CFT/PFT_CFT%20Standards/CRUNCHES_table20160701.pdf?ver=2016-08-05-152206-460 (last visited Nov. 28, 2017) (detailing the different standards required of female and male Marines Corps recruits for crunches); *see also Three-Mile Run*, U.S. MARINE CORPS, http://www.fitness.marines.mil/Portals/211/Docs/PFT_CFT/PFT_CFT%20Standards/RUN_table20160701.pdf?ver=2016-08-05-

the change,⁸⁶ the head of the Force Fitness Branch, Brian McGuire, asserted that “[a]nything we’re doing in our physical fitness test changes is complimentary [sic] . . .” to “making Marines more lethal, resilient and capable on the battlefield.”⁸⁷ The Force’s new PFT requirements are a step in the right direction—the reformed test acknowledges that pull-ups are not the only way to test upper-body strength and equalizes the types of exercises that recruits may perform—but the test still provides an unequal field for female Marines to prove themselves, with different scoring patterns, maximum times, and repetitions.⁸⁸ These new requirements are much more analogous to the requirements for Army, Air Force, and Navy recruits, where the test for each recruit consists of the same exercises, but the scoring is done differently for male and female recruits.⁸⁹

Like the rationale VMI used to justify keeping women out of the school—that women could not meet the exacting physical standards of the training—the difference in physical fitness requirements for male and female Marine Corps recruits (and recruits of the other military branches) is based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.”⁹⁰ In *Virginia*, the Supreme

152206-867 (last visited Nov. 28, 2017) (assigning the minimum and maximum run times for women to be about three minutes longer than the minimum and maximum standards for men).

86. See, e.g., Jonah Bennett, *Marine Corps Gives Women the Option of Ditching Pullups for Pushups Instead*, THE DAILY CALLER, (July 1, 2016, 2:55 PM), <http://dailycaller.com/2016/07/01/marine-corps-gives-women-the-option-of-ditching-pullups-for-pushups-instead/>.

87. See Schehl, *supra* note 79.

88. See KAMARCK, *supra* note 9, at 20, for a discussion of different tests for men and women: “[O]ne occupational requirement might be the ability to rappel down a rope from a helicopter in a certain amount of time. . . . [T]he number of pull-ups a servicemember can achieve may be predictive of their performance in rappelling. . . . [However,] [w]hile the number of pull-ups a man can do might be predictive of his ability to conduct the operational task, a woman who is unable to do a certain number of pull-ups may also be able to successfully rappel out of the helicopter using different techniques or muscles groups.” If the Marine Corps believes that different tests are necessary for male and female recruits in certain situations, the Corps should be required to demonstrate why the test is occupationally necessary and how both the male and female requirements meet the occupational standard, rather than, for instance, simply using a male-focused pull-up test and lowering the standard for women by requiring them only to hang from the bar or requiring less pull-ups. The move toward allowing both men and women to opt for push-ups instead is a good start, but if push-ups are just as indicative of future combat performance, then the maximum points earned should be the same whether the recruit opts for push-ups or pull-ups.

89. *Id.* at 15.

90. *United States v. Virginia*, 518 U.S. 515, 516 (1996).

Court held that “generalizations about ‘the way women are,’ estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.”⁹¹ Creating different expectations and training opportunities for female recruits is a denial of full-Marine membership that leads to female Marines being degraded and not taken seriously.⁹² It does a disservice to female recruits to hold them to this lesser standard: it leads to false perceptions of weakness. In his Military Law Review article, Major Jeffrey S. Dietz discussed data from the Army’s version of the PFT, for which female soldiers were also held to a less-exacting standard than their male counterparts.⁹³ A study conducted by the U.S. Army in 1992 showed that “sixty-eight percent of the cadet women failed to meet the minimum standard required of men their same age.”⁹⁴ First, Deitz argued that a failure rate of sixty-eight percent “fail[ed] to demonstrate that a ‘vast majority’ of women were incapable of meeting the minimum physical standard for job performance.”⁹⁵ In this case, by the end of basic training, many female recruits would be able to meet the standards set out for the male recruits at the outset of training, undermining any justifications of differences in physical strength.⁹⁶ Deitz further argues that holding women to a lower standard means that female recruits will train until they reach that standard, not until they reach the male standard.⁹⁷ Creating a lower standard for female recruits perpetuates lower overall strength in female recruits than in male recruits.⁹⁸ Studies of female performance in a variety of

91. *Id.* at 550 (emphasis in original).

92. Leszkay, *supra* note 63, at 261 (explaining that the Combat Exclusion Policy and the differences in training it created—differences in training that are still in place in the Marine Corps despite the repeal of the Combat Exclusion Policy itself—cultivated an environment where “[m]ost male soldiers have a tendency to presume that a female soldier cannot carry her own weight in a task, especially one that involves physical ability.” Leszkay claims that these differences lead to female soldiers facing a “lack of respect,” belittling of their authority, and even “open resentment and hostility.”).

93. Dietz, *supra* note 72, at 86, 135.

94. *Id.* (citing ROBERT T. HERRES ET AL., THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES, REPORT TO THE PRESIDENT 36 (1992)).

95. *Id.* at 136.

96. *Id.* at 138.

97. *Id.*

98. *Id.* at 137–38 (“[E]vidence that the women held to one standard failed to meet an unknown higher standard is an unpersuasive justification for exclusion. The cadet women took their test knowing the number of repetitions and the speed they needed to run based on their scale. Later pointing out that the women did not meet a higher standard is like moving the football goal posts after the ball has been kicked

areas have shown that “when one’s group is stereotyped as poor performers in a given domain, the heightened concern that one might possibly confirm that stereotype can have the result of actually diminishing performance.”⁹⁹ Researchers have found the “stereotype threat” applies to women’s physical performance, as well as intellectual performances.¹⁰⁰ The Marine Corps has cultivated a reputation as a “special breed,”¹⁰¹ as “one of the world’s greatest fighting formations.”¹⁰² There is no shortage of female Marines who already meet a standard of excellence beyond what the Marine Corps requires of them. Corporal Tori Best, the current female Marine record-holder for pull-ups, can complete 26 pull-ups at a time, far surpassing the male recruit requirement of three to five pull-ups.¹⁰³ The Marine Corps requires exceptionality in its male recruits—it should expect the same from its female recruits.

Another difference in the training male and female recruits undergo is the food they are given. Typical male recruits are granted 3,950 calories each day, whereas female recruits are only allowed 2,700 calories a day, even though all recruits undergo the

and calling it a miss. The data might be persuasive if it demonstrated that women failed to meet a known standard. Alternatively, data demonstrating that women passed the male standard, even when not held to that standard, persuasively demonstrates that the physical requirements justification lacks basis.”)

99. See Denise Sekaquaptewa & Mischa Thompson, *Solo Status, Stereotype Threat, and Performance Expectancies: Their Effects on Women’s Performance*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 68, 69 (2003) (finding that women performed more poorly in situations where they were stereotyped as poor performers, as well as in situations where they were the sole woman); see also Andy Martens et al., *Combating Stereotype Threat: The Effect of Self-Affirmation on Women’s Intellectual Performance*, 42 J. EXPERIMENTAL SOC. PSYCHOL. 236, 241 (2006) (finding “that women who completed a difficult math test under stereotype threat performed significantly worse compared to those not under stereotype threat” unless “they were given the opportunity to affirm themselves.”).

100. See, e.g., Kimberly Hively & Amani El-Alayli, “*You Throw Like a Girl!*” *The Effect of Stereotype Threat on Women’s Athletic Performance and Gender Stereotypes*, 15 PSYCHOL. SPORT & EXERCISE 48, 48–49 (2014) (studying “male and female basketball and tennis athletes,” and finding that the performance of female athletes is likely affected by stereotype threat, though calling for a larger sample size); see also Jeff Stone & Chad McWhinnie, *Evidence that Blatant Versus Subtle Stereotype Threat Cues Impact Performance Through Dual Processes*, 44 J. EXPERIMENTAL SOC. PSYCHOL. 445 (2008) (finding that the performance of female golfers was negatively affected by multiple types of stereotype threats).

101. U.S. Marine Corps, Officer Candidate School Training Command, Customs and Courtesies, GMK 1010 at 2 (Apr. 2011), http://www.usnavy.vt.edu/Marines/PLC_Junior/Fall_Semester/GMK1010_Customs%26Courtesies%20SO.pdf.

102. VICTOR H. KRULAK, *FIRST TO FIGHT: AN INSIDE VIEW OF THE U.S. MARINE CORPS* 1 (1984).

103. See Cpl. Alvin Pujols, *Face of Defense: Marine Strives To Be Best of the Best*, U.S. DEPT OF DEF. (Aug. 22, 2016), <https://www.defense.gov/News/Article/Article/921449/face-of-defense-marine-strives-to-be-best-of-the-best>.

same amount of physical activity each day and the reduced entry requirements for women mean that many women are likely burning more calories as they “catch up” physically.¹⁰⁴ Differences in meals extend beyond simple calorie counting: female recruits are served “more turkey-based products, and desserts consist of only pudding and gelatin,”¹⁰⁵ while male recruits are served a variety of desserts.¹⁰⁶ The stated reason for the different amounts of food and meal composition is that “women are generally smaller and burn calories differently than men.”¹⁰⁷ Again, this difference does not seem to be based on actual biological differences, because there is already a mechanism for deciding whether recruits need more or less calories than the average recruit: “recruits whose weight needs to be managed may receive reduced calories, and recruits who need to gain weight may receive double servings at each meal.”¹⁰⁸ This is a clear means for monitoring caloric intake without limiting all female recruits to just over two-thirds of what male recruits receive to eat.

According to a Harvard Medical School study, “[m]en and women are 98.5% identical in their DNA, and their nutritional [and caloric] needs are more similar than different. . . . A person’s caloric requirement depends on his [or her] body size and exercise level.”¹⁰⁹ In addition, “[c]arb[ohydrates] are gender-neutral.”¹¹⁰ If the Marine Corps plans to monitor nutrient intake based on sex, they should at least monitor it in a way that is based on a biological justification. For example, though calories and carbohydrates are “gender-neutral” nutrient measurements, rendering the restriction of calories and dessert for women meaningless, most women do need more iron than men, because of the iron they lose menstruating.¹¹¹ Men, on the other hand, should avoid too high of an iron intake, because it may lead to hemochromatosis.¹¹² Similarly, men face greater health risks than women from certain types of fats,¹¹³ which

104. See Bessey, *supra* note 52.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. Harvard Men’s Health Watch, *Good Nutrition: Should Guidelines Differ for Men and Women?*, HARV. HEALTH PUBLICATIONS (Sept. 2006), http://www.health.harvard.edu/newsletter_article/good-nutrition-should-guidelines-differ-for-men-and-women.

110. *Id.*

111. See *id.* (explaining that “[t]he RDA of iron for premenopausal women is 18 mg a day, for men [it is] 8mg”).

112. *Id.*

113. *Id.* (referencing Harvard studies showing that alpha-linolenic acid, found in

there is no evidence of the Marine Corps restricting for its male recruits. Since women actually receive *less* iron and fat than their male counterparts during basic training (because red meats are substituted with “more turkey-based products”), and women are needlessly restricted calorically and in sugar intake, it is highly implausible that boot camp’s nutritional disparities are based on any sort of biological justification.¹¹⁴

There is no justification for depriving female recruits of the food required to withstand physical training, and depriving the female recruits of a small portion of dessert while they watch male recruits eat it every day just seems cruel. Like the physical training differences, the disparities between food servings for male and female recruits are based on “generalizations about ‘the way women are’ [and] estimates of what is appropriate for *most women*.”¹¹⁵ Under the standard the Supreme Court set in *Virginia*, such generalizations do not justify disparate treatment in military training.

The differing food requirements for male and female recruits is likely related to the Marine Corps’ different rules for male and female weight. The Marine Corps has minimum and maximum weights for all service members.¹¹⁶ These standards are set based on height and sex, and, across the board, women are required to weigh less than their male counterparts of the same height.¹¹⁷ Just like the calorie disparities, this is based on outdated stereotypes about women’s bodies and serves no real purpose: there is already a test to measure body composition which sets a limit on how much body fat a Marine can have.¹¹⁸ Because women generally have a higher percentage of body fat than men,¹¹⁹ the differing standard could have a biological basis if the Marines did not also have a body composition test. Since this more accurate test of fitness exists, the

different types of oils, may be bad for the prostate).

114. Pujols, *supra* note 103.

115. *United States v. Virginia*, 518 U.S. 515, 517 (1996).

116. Dep’t of the Navy, Marine Corps Order 6110.3A, Marine Corps Body Composition and Military Appearance Program 3-1 (Dec. 15, 2016).

117. *See id.* For example, women who are 60 inches tall have a maximum weight of 130 pounds, while men who are the same height have a maximum of 141 pounds; women who are 70 inches tall have a maximum weight of 181 pounds, while men of the same height have a maximum of 191 pounds; and women who are 80 inches tall have a maximum weight of 236 pounds, while men of the same height have a maximum of 250 pounds.

118. *Id.*

119. Ellen Blaak, *Gender Differences in Fat Metabolism*, 4 CURRENT OPINION IN CLINICAL NUTRITION AND METABOLIC CARE 499, 499 (2001).

weight standards are not only redundant, but also penalize women for gaining muscle mass.

The weight standards for female Marines are slightly closer to the male standards than the rules in place prior to this year,¹²⁰ and Commandant of the Marine Corps Robert Neller explained the new rules as helping female Marines have the opportunity to grow “stronger, faster, and fitter.”¹²¹ He explained that “[b]igger and stronger often means heavier”¹²² and that the “things [he’d] heard as [he’d] gone around and talked to female Marines is, ‘Hey, I’m out working out. I’m lifting weights. I’m getting bigger. And now I’m outside the height-and-weight standards. Are you going to change the height-and-weight standards?’”¹²³ If that is the case, the Marine Corps should do away with sex-based weight standards completely and use the same standards for all Marines, rather than slightly loosening the requirements for women to make their standards a few pounds closer to male standards.

b. *An Old Tradition of Shaving the Heads of Male Recruits as a Rite of Passage Leaves Female Recruits out of One of the First Bonding Experiences of Marine Corps Service: The Marine Corps Should Develop Bonding Experiences that Include All Recruits*

Another example of differing training expectations for male and female recruits is the regulation haircut. When male recruits arrive at Parris Island, they are immediately given a regulation haircut, which requires their hair to be cut almost to the head. This haircut has been called a “rite of passage” with the purpose of cultivating a team mentality by ridding recruits of a marker of individuality, but female recruits do not have their hair cut.¹²⁴ Female recruits have more options regarding hairstyle during training: a female recruit can wear her hair in a bun or she can wear it down if it does not reach her collar, but she is not permitted

120. Dan Lamothe, *Why the Marines Decided to Allow Heavier Women (And Men in Some Cases) to Serve*, WASH. POST (Jul. 5, 2016), https://www.washingtonpost.com/news/checkpoint/wp/2016/07/05/why-the-marines-decided-to-allow-heavier-women-and-men-in-some-cases-to-serve/?tid=sm_tw&utm_term=.ca1f9e70bade.

121. *Id.*

122. *Id.*

123. Claire Landsbaum, *Marine Corps Eases Weight Restrictions for Women*, THE CUT (July 5, 2016, 5:04 PM), <http://nymag.com/thecut/2016/07/marine-corps-eases-weight-restrictions-for-women.html>.

124. POWERS, *supra* note 51.

to shave her head.¹²⁵ If the haircut male recruits receive when they arrive on base is truly a bonding mechanism, female recruits suffer by being barred from that experience. The Marine Corps should create “rites of passage” or symbolic markers of membership that are inclusive of the whole force rather than continuing outdated exclusionary rituals for the sake of tradition.

The Combat Exclusion Policy may have been abolished, but the distinctions in training that male and female recruits receive are remnants of a time in which women were barred from combat positions:

Explicit limitations that are placed on women in the military send a clear message to military women and men, as well as society at large, that servicewomen are not full soldiers. Until they are accepted as full and equal soldiers, servicewomen cannot expect the opportunity, respect, and freedom from harassment that they are entitled to.¹²⁶

In *Virginia*, VMI proposed an alternate training academy for female students.¹²⁷ The academy created a program that the Supreme Court labeled “a ‘pale shadow’ of VMI in terms of the range of curricular choices and faculty stature, funding, prestige, alumni support, and influence.”¹²⁸ Particularly important to the Court was the idea that the women’s school could not possibly have the status of VMI with its excellent faculty reputation, “experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.”¹²⁹ Marine Corps basic training is known as one of the toughest military training programs in the world; Marines take pride in having a longer, more intense, and less “user-friendly” basic training than the other branches of the U.S. Armed Forces.¹³⁰ Unless the Marine Corps makes the requirements for female recruits the same as those for male recruits, Marine Corps servicewomen will continue to be perceived as “second-class” Marines.¹³¹ Under the current structure,

women’s status as second-class soldiers has a strong effect on the women who serve. Most male soldiers have a tendency to presume that a female soldier cannot carry her own weight in a

125. *Id.* at 20, 289.

126. Leszkay, *supra* note 63, at 272 (discussing the status of female soldiers in light of their exclusion from combat positions).

127. 518 U.S. 515, 526 (1996).

128. *Id.* at 553.

129. *Id.* at 554 (quoting *Sweatt v. Painter*, 339 U.S. 629, 634 (1950)) (internal quotations omitted).

130. For an account of Marine Corps training culture, see THOMAS E. RICKS, *MAKING THE CORPS* 73–131 (1997).

131. Leszkay, *supra* note 63, at 269.

task, especially one that involves physical ability. While this presumption can be overcome by a female soldier proving her ability, this is complicated by a lack of opportunity [to do so].¹³²

Simply making the standards uniform for male and female recruits at basic training will not be enough to change perceptions about female Marines; full integration is necessary to remove the stigma that female Marines are “second-class soldiers.”

It may be that the best option is to make female recruits shave their heads along with male recruits, but simply “adding” women into a tradition that developed solely for men is not true integration. The Marine Corps needs to develop traditions and bonding mechanisms with all recruits in mind, rather than simply continuing to uphold old traditions without making room for all who are supposed to be a part of the team.

III. The Supreme Court Has not Reached the Constitutionality of Equal Gender-Divided Education, but the Marines Should Integrate Boot Camp for Constitutional and Policy Reasons

When the Supreme Court ended race-based segregation in *Brown v. Board of Education*, the Court held that the concept of “separate but equal” was unconstitutional because it was a fallacy: “[t]o separate [black students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”¹³³ The Court held that even if the facilities and curriculum were exactly the same, the act of placing students in different schools based on race was inherently unequal.¹³⁴ Sex-based discrimination is not held to the same stringent standard as applies to race-based discrimination, but this Note argues that the principle that made “separate but equal” policies inappropriate in the context of race also applies to the separation of male and female recruits for basic training. The purpose of the separation is driven by the perception that female recruits are not as effective as male recruits, especially in terms of physical strength and fitness.¹³⁵ Even if the Marine

132. *Id.*

133. 347 U.S. 483, 494 (1954).

134. *Id.*

135. A Marine task force studying gender integration of basic training recommended that training remain separated by sex because women did not perform “nearly as well as their male counterparts in the majority of the tested areas.” Thomas Gibbons-Neff, *Navy Secretary Threw Us ‘Under the Bus,’ Say Marines in Gender-Integrated Infantry Unit*, WASH. POST (Sept. 14, 2015),

Corps rectified the discrepancies in training discussed in the previous section of this Note, the very separation itself is based on the perception of inferiority of female recruits. In *Brown*, the Court broadly held that “[s]eparate educational facilities are inherently unequal” and that “such segregation is a denial of the equal protection of the laws.”¹³⁶ The sex-based segregation of basic training excludes female recruits from full belonging in the Marine Corps by relegating them to the sidelines as being less effective and weaker than their male counterparts. Female recruits can only achieve equality if they are brought fully into the fold of the Marine Corps from the beginning of their training.

In *Rostker v. Goldberg*, the Supreme Court found that male-only draft registration did not violate the Equal Protection Clause.¹³⁷ The Supreme Court held that because women were excluded from combat, and “[t]he purpose of registration was to prepare for a draft of combat troops,” exclusion from draft registration did not violate the Due Process Clause.¹³⁸ The Court also asserted that courts should give “greater deference” to “Congress’ authority over national defense and military affairs.”¹³⁹ The Court clarified that “[n]one of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs” and the Court looked closely at whether Congress acted “unthinkingly” or as an “accidental by-product of a traditional way of thinking about females.”¹⁴⁰ Instead, in *Rostker*, the Court found that “[t]he issue was considered at great length, and Congress clearly expressed its purpose and intent.”¹⁴¹

Because the Combat Exclusion Policy was repealed, the Court’s first argument for disparate treatment of women in the military is moot. As to the Court’s argument that deference should be given to Congress in the area of military affairs, the Court gave specific criteria of when this deference should be given: those criteria are not met here. Unlike in *Rostker*, the issue of gender-segregated and gender-differentiated boot camp is not an issue that was “extensively considered by Congress in hearings, floor debate,

https://www.washingtonpost.com/news/checkpoint/wp/2015/09/14/navy-secretary-threw-us-under-the-bus-say-marines-in-gender-integrated-infantry-unit/?utm_term=.e69046559aa3.

136. 347 U.S. at 495.

137. 453 U.S. 57, 78–79 (1981).

138. *Id.* at 77.

139. *Id.* at 64–65.

140. *Id.* at 67, 72, 74 (internal quotations omitted).

141. *Id.* at 74.

and in committee.”¹⁴² The decision to keep Marine Corps basic training segregated by sex was made by Marine officials, not by Congress. The Secretary of the Navy ordered Marine Corps leaders to integrate boot camp.¹⁴³ If anything, the Court should be deferential to the higher-level officers such as the Navy Secretary and the Secretary of Defense, who called for integration,¹⁴⁴ rather than to lower-ranking members of Marine command.

In other cases, where the Supreme Court did not find a compelling government interest in disparate treatment of male and female service members, the Court has found Equal Protection violations. In *Fronterio v. Richardson*, for instance, the Court concluded that “by according differential treatment to male and female members of the uniformed services for the sole purpose of achieving administrative convenience, the challenged statutes violate the Due Process Clause of the Fifth Amendment insofar as they require a female member to prove the dependency of her husband.”¹⁴⁵ The disparate treatment of male and female Marines serves no legitimate purpose other than the administrative convenience of not having to create new plans or standards, develop plans to integrate, and conduct any necessary changes to existing barracks or structures. The Supreme Court found in *Frontiero* that administrative convenience is not a legitimate purpose that allows for disparate treatment based on sex.¹⁴⁶

IV. Integration of Male and Female Recruits Will Build Force Cohesion, Reduce Discrimination and Harassment, Lead to More Effective Military Service, and Boost Morale

Marine Corps basic training’s sex-based standards and sex-based segregation serve to reinforce damaging stereotypes about female Marines that follow them over the course of their entire careers. The different standards for female recruits set those recruits up to feel like they are worth less than their male counterparts:

If female Marines . . . anticipate being marginalized before even joining the fleet, women could be handicapped in profound ways—that is, they may have a deflated sense of self, limited understanding of how to be a successful female Marine, and a

142. *Id.* at 72.

143. *See* Mabus, *supra* note 1.

144. *Id.*

145. 411 U.S. 677, 690–91 (1973).

146. *Id.*

sense that they will truly never be members of the gun club.¹⁴⁷

Segregation in boot camp not only affects female recruits' self-perceptions, but the perceptions of their male counterparts alongside whom they will be working and fighting after boot camp ends. Female Marines assert that they face a widespread lack of trust from their male counterparts because "[d]ifferent performance and training standards, as well as segregation, establish women as marginal from the onset, ensuring that they will always be viewed as suspect in terms of capability."¹⁴⁸ This has been linked to women in the military (and particularly female Marines) reporting low levels of cohesion and feelings of a lack of belonging.¹⁴⁹

After the Combat Exclusion Policy was lifted, the Marine Corps asked RAND's National Defense Research Institute to conduct a study on the effects of female integration into the Marine Corps infantry.¹⁵⁰ Not surprisingly, RAND found that "gender integration is more likely to have negative consequences for unit cohesion when the social context of the unit creates a hostile work environment for women. Where the environment is not hostile toward women, integration is less likely to negatively affect cohesion."¹⁵¹ RAND found that "[l]eaders that treat both women and men fairly, provide support for women, and emphasize the good of the group create cohesive groups in which women are *fully integrated* into group life."¹⁵² RAND also espoused both a gender-neutral standard, which the report stated "may actually reduce barriers to integration because they help to establish an equal foundation among all new recruits," and integrated training, which "appears to improve cohesion and improve the physical readiness of women *more than gender-specific training alone*."¹⁵³

Integration of boot camp will reduce the exclusionary, "alpha male" environment of the Marine Corps and reduce "sexually permissive environments," with pervasive sexual harassment, and lead to a decrease in military sexual assault and trauma.¹⁵⁴

147. Archer, *supra* note 3, at 374 (emphasis omitted).

148. Thomas et al., *supra* note 3.

149. *Id.*; Kate Hendricks Thomas et al., *Predictors of Depression Diagnoses and Symptoms in United States Female Veterans: Results from a National Study and Implications for Programming*, 24 J. MIL. AND VETERAN'S HEALTH 6 (2016).

150. AGNES GEREKEN SCHAEFER ET AL., RAND, IMPLICATIONS OF INTEGRATING WOMEN INTO THE MARINE CORPS INFANTRY, at iii (2015).

151. *Id.* at xiv.

152. *Id.* (emphasis added).

153. *Id.* at xvi (emphasis added).

154. Cindy Huang, *Changing the Culture of Sexual Assault Against Female Service Members*, PBS NEWSHOUR (July 30, 2013), <http://www.pbs.org/newshour/rundown/for-female-marines-sexually-permissive-work-environments-increased->

Stereotypes of women and permissive attitudes toward harassment lead to a “hazardous workplace” for women, and a space where many women feel “marginalized and harassed.”¹⁵⁵ One former Marine said that, at one point, “he realized the differences between jokes directed at men and women is that [the] former aimed to bring each other together, and the latter aimed to keep people out.”¹⁵⁶ The systematic exclusion of women that begins with the very first day of boot camp results in a culture that puts female Marines down, demeans them, and devalues them.

Integration may also improve the military’s capability. In her study of women in the military, Marcia Clemmitt details one way the presence of women in a combat unit may make the unit stronger:

[T]here’s now proof that ‘women in the combat area tend to defuse explosive situations just by their presence’ The evidence comes from the Lioness groups of women soldiers who accompany male Army and Marine Corps units on counterinsurgency missions With the women there, gaining control of explosive situations in hostile territory becomes mainly a matter of separating women and children out and ‘talking rather than shooting’ [W]ith the women there [the Iraqi men] know that their wives won’t be raped,’ and that confidence helps defuse the danger.¹⁵⁷

If integration is important in combat situations, it is vital that male and female servicemembers begin working together during training. According to Brigadier General Rhonda Cornum,

[m]ost guys I know discover, once they have worked with women, that women are just like everybody else There are some [women] that are just awesome, some that are absolutely worthless, and most of them are just in between. And I think the percentage of males who are that way is the same.¹⁵⁸

It is important that women are afforded the opportunity to show their male counterparts that they are equally valuable members of the service, in furtherance of the goal that someday they will no longer have to show them. For now, integration is the best way to controvert the preconceptions about women soldiers that pervade military service.

risk-of-sexual-assault/.

155. *Id.*

156. *Id.* (quoting former Marine Karim Delgado) (internal quotations omitted).

157. See Marcia Clemmitt, *Women in the Military: Should Combat Roles be Fully Opened to Women?*, CQ RESEARCHER (Nov. 13, 2009), [http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2009111300#REF\[11\]](http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2009111300#REF[11]).

158. JOSEPH F. HEALEY, *DIVERSITY AND SOCIETY: RACE, ETHNICITY, AND GENDER* (3d ed. 2012) (quoting Brig. Gen. Rhonda Cornum) (additions in original).

Conclusion

Though the Marine Corps is the only military branch to continue to conduct fully sex-segregated basic training, that is not to say the other branches provide training that is fully inclusive and providing of equal opportunities for their male and female recruits. Women face sex-based discrimination during Army, Air Force, and Navy basic training, though these branches all at least have integrated training programs.¹⁵⁹ The Marine Corps merits a special look for two interwoven reasons: First, its unique and vocal resistance to gender-integrated training speaks to a broader opposition toward women being in the Marines at all. Second, this broader resistance is reflected by the Marine Corps' significantly lower percentage of women servicemembers than that of the other branches.¹⁶⁰ Each branch of the military, however, should look to its training programs to ensure that female servicemembers are afforded equal opportunities.

Nor does sex-based discrimination end with basic training. For instance, military doctors are not allowed to prescribe birth control to women servicemembers because "sex is prohibited."¹⁶¹ Despite this, the military hands out condoms to male servicemembers to combat STDs.¹⁶² Female servicemembers face an uphill battle against discrimination throughout their entire military careers and beyond.¹⁶³ Even after their service is complete, female veterans face sex-based issues. Female veterans do not use the services of Veteran Affairs (VA) health care at nearly as high of rates as their male counterparts: many do not think of themselves "as bona fide veterans whose service makes them eligible for benefits like health care, even when they've served in combat zones, so many don't apply for benefits."¹⁶⁴ Many more female veterans do not utilize VA services to treat "PTSD connected to sexual assaults in the military" because the VA hospitals are set up so that women

159. *See supra* Part I.

160. *See* BECKETT & CHIEN, *supra* note 29, at 16, tbl.2.1 (reporting that "[t]he Marines have a significantly lower representation of women with the percentage female ranging from 4–6% of all enlisted personnel and officers," while "[t]he other three services have about approximately the same percentage female," between 12.5% and 18.1%).

161. *See* Clemmitt, *supra* note 157; *see also* LAURA BROWDER, WHEN JANEY COMES MARCHING HOME: PORTRAITS OF WOMEN COMBAT VETERANS 4 (2010) (explaining that the military prevents doctors from prescribing birth control).

162. Steve Mraz, *Army Fights STDs with Free Condoms*, STARS AND STRIPES (Apr. 15, 2008), <https://www.stripes.com/news/army-fights-stds-with-free-condoms-1.77691#.WOwnSBiZMzY>.

163. *See* Clemmitt, *supra* note 157.

164. *Id.*

have to walk through waiting rooms to get to the restroom or have exam tables that face the door, rather than the wall.¹⁶⁵ There is also a growing number of homeless female veterans, “[forty] percent of whom say they were sexually assaulted by a fellow service member.”¹⁶⁶ Sex-based discrimination is endemic across the military: it is not limited to the Marine Corps or to basic training.¹⁶⁷ The sex-discriminating policies of Marine Corps basic training, however, are unique in that they would be very simple to correct if the leadership simply designed a program with all of its recruits in mind and showed that it values its female recruits as much as it values its male recruits. These policies are indicative of broader themes and larger issues that result in the exclusion of women from full membership into the military, but fixing the systems at the very beginning of service would go a long way toward changing perceptions, helping female servicemembers feel valued, and communicating to the men in the military that the women who serve with them are full and valuable members of their teams.

In the past several months, the future for women—as well as other demographics, including LGBTQ persons—in the military has become shaky.¹⁶⁸ It may seem like the smaller disparities like those discussed in this Note are unimportant in the face of the policies that may be put in place during the Trump era. There are already women who have become full infantry soldiers for the Marine Corps. It seems unlikely that this accomplishment could be taken away from them with a reinstatement of the Combat Exclusion Policy, but if their combat status is revoked, it is likely that the coming months and years will see litigation aimed at re-allowing women to hold combat positions. President Trump has derided what he called a “politically correct military,” and once implied that the high rate of

165. *Id.*

166. *Id.*

167. *See supra* Part I.

168. Dan De Luce & Paul McLeary, *Female and Transgender Troops Fear Combat Exclusion in Trump's Pentagon*, FOREIGN POL'Y (Dec. 19, 2016), <http://foreignpolicy.com/2016/12/19/female-and-transgender-troops-fear-exclusion-in-trumps-pentagon/> (“The Pentagon personnel changes [referring to the 2016 rule changes that allowed transgender troops to serve openly and female troops to serve in combat positions without gender-based restrictions], pushed through by Defense Secretary Ash Carter over the last year, have been portrayed by Trump and his incoming security advisors as ill-advised ‘social engineering’ imposed on the armed forces. That puts the newly won rights for women and transgender troops at risk . . . and calls into question the fate of the groundbreaking policy changes that were years in the making.”).

sexual assault against female servicemembers was due to the integrated nature of the military.¹⁶⁹

On the other hand, President Trump's Secretary of Defense, James Mattis, stated, "I have no plan to oppose women in any aspect of our military."¹⁷⁰ He also said, in response to a question about his position on LGBTQ military policies, "[f]rankly, senator, I've never cared about two consenting adults and who they go to bed with."¹⁷¹ Mattis elaborated on his statement about women in the military, saying "over [fifteen] percent of today's active-duty force is female. Our military could not accomplish its missions without these women. As we ask more from our female enlisted members and officers, we owe them more as well."¹⁷² He also noted that he had not hesitated in placing women on the front lines as a military commander.¹⁷³ The administration has not yet made any changes to the availability of combat roles for women, and it is unclear what the future holds, but women will not easily give up their victory in securing combat roles.¹⁷⁴

169. See Max J. Rosenthal, *About Face: The Pentagon Could Roll Back Soldiers' Rights Under Trump*, MOTHER JONES (Dec. 2, 2016), <http://www.motherjones.com/politics/2016/12/pentagon-progress-may-be-chopping-block> (quoting President Donald Trump, who wrote in a 2013 tweet, "26,000 unreported sexual assaults in the military—only 238 convictions. What did these geniuses expect when they put men & women together?").

170. Richard Sisk, *Mattis at Odds with Trump on Russia, Backs Women in Combat*, MILITARY.COM (Jan. 12, 2017), <http://www.military.com/daily-news/2017/01/12/mattis-odds-with-trump-russia-backs-women-combat.html> (internal quotations omitted).

171. *Id.*

172. *Id.*

173. *Id.*

174. As of December 1, 2017, the administration has still not made any steps to limit women's participation in the military. However, since this Article was accepted for publication, President Trump announced in a three-tweet series that transgender individuals would be banned from serving in the United States military. See Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2017, 6:55 AM); Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2017, 7:04 AM); Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2017, 7:08 AM). General Joseph Dunford, Jr., the Chairman of the Joint Chief of Staffs responded to the tweets with the assertion that the policy would not change until formal rules and guidelines were made, and "[i]n the meantime, we will continue to treat all of our personnel with respect." See Helene Cooper, *Transgender People Can Still Serve for Now, U.S. Military Says*, N.Y. Times (July 27, 2017), <https://www.nytimes.com/2017/07/27/us/politics/transgender-military-trump-ban.html>. One month later, the tweets were followed by a presidential memorandum. See Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security on Military Service by Transgender Individuals (Aug. 25, 2017). So far, two federal judges have issued preliminary injunctions prohibiting enforcement of this memorandum. See *Doe 1 v. Trump*, 2017 WL 4873042 (D.D.C. 2017); *Stone v. Trump*, 2017 WL 5589122 (D. Md. 2017). This is a very troubling time for thousands of transgender and non-binary servicemembers, and the battle is far from over.

In the face of these larger challenges, however, it is still important to remember that even at a time when things were improving for women service members, there were widespread policy discriminations that made military service for women even more difficult than Marine Corps training and service is designed to be. Not getting dessert may seem like it is only about not getting dessert, but the small discriminations female Marines suffer at boot camp follow them throughout their time in the force and contribute to the larger damages to morale, recruitment, and equality that comprise discrimination against, and exclusion of, female Marines. The United States Marine Corps has shown an irrational resistance to allowing women an equal place in its ranks. The Marine Corps prides itself on being the first to every fight, but it has certainly fallen short of that motto in the fight for gender integration in the military.