essential powers." [1528] Accordingly, in the *Selective Draft Law Cases*,[1529] it dismissed the objection under that amendment as a contention that was "refuted by its mere statement." [1530]

Although the Supreme Court has so far formally declined to pass on the question of the "peacetime" draft,[1531] its opinions leave no doubt of the constitutional validity of the act. In *United States v. O'Brien*,[1532] upholding a statute prohibiting the destruction of selective service registration certificates, the Court, speaking through Chief Justice Warren, thought "[t]he power of Congress to classify and conscript manpower for military service is 'beyond question.'" [1533] In noting Congress' "broad constitutional power" to raise and regulate armies and navies,[1534] the Court has specifically observed that the conscription act was passed "pursuant to" the grant of authority to Congress in clauses 12–14.[1535]

Care of the Armed Forces

Scope of the congressional and executive authority to prescribe the rules for the governance of the military is broad and subject to great deference by the judiciary. The Court recognizes "that the military is, by necessity, a specialized society separate from civilian society," that "[t]he military constitutes a specialized community governed by a separate discipline from that of the civilian," and that "Congress is permitted to legislate both with greater breadth and with greater flexibility when prescribing the rules by which [military society] shall be governed than it is when prescribing rules for [civilian society]." [1536] Denying that Congress or military authori-

---

[1528] Butler v. Perry, 240 U.S. 328, 333 (1916) (upholding state law requiring able-bodied men to work on the roads).

[1529] 245 U.S. 366 (1918).

[1530] 245 U.S. at 390.

[1531] Universal Military Training and Service Act of 1948, 62 Stat. 604, as amended, 50 U.S.C. App. §§ 451–473. Actual conscription was precluded as of July 1, 1973, Pub. L. 92–129, 85 Stat. 353, 50 U.S.C. App. § 467(c), and registration was discontinued on March 29, 1975. Pres. Proc. No. 4360, 3 C.F.R. 462 (1971–1975 Compilation), 50 U.S.C. App. § 453 note. Registration, but not conscription, was reactivated in the wake of the invasion of Afghanistan. Pub. L. 96–282, 94 Stat. 552 (1980).

[1532] 391 U.S. 367 (1968).

[1533] 391 U.S. at 377, quoting Lichter v. United States, 334 U.S. 742, 756 (1948).

[1534] Schlesinger v. Ballard, 419 U.S. 498, 510 (1975).

[1535] Rostker v. Goldberg, 453 U.S. 57, 59 (1981). *See* id. at 64–65. *See also* Selective Service System v. Minnesota Public Interest Research Group, 468 U.S. 841 (1984) (upholding denial of federal financial assistance under Title IV of the Higher Education Act to young men who fail to register for the draft).

[1536] Parker v. Levy, 417 U.S. 733, 743–52 (1974). *See also* Orloff v. Willoughby, 345 U.S. 83, 93–94 (1953); Schlesinger v. Councilman, 420 U.S. 738, 746–48 (1975); Greer v. Spock, 424 U.S. 828, 837–38 (1976); Middendorf v. Henry, 425 U.S. 25, 45–46 (1976); Brown v. Glines, 444 U.S. 348, 353–58 (1980); Rostker v. Goldberg, 453 U.S. 57, 64–68 (1981).