

Sec. 8—Powers of Congress

Cls. 11, 12, 13, and 14—War; Military Establishment

ties are free to disregard the Constitution when acting in this area,¹⁵³⁷ the Court nonetheless operates with “a healthy deference to legislative and executive judgments” about military affairs,¹⁵³⁸ so that, while constitutional guarantees apply, “the different character of the military community and of the military mission requires a different application of those protections.”¹⁵³⁹

In reliance upon this deference to congressional judgment about the roles of the sexes in combat and the necessities of military mobilization, coupled with express congressional consideration of the precise questions, the Court sustained as constitutional the legislative judgment to provide for registration of males only for possible future conscription.¹⁵⁴⁰ Emphasizing the unique, separate status of the military, the necessity to indoctrinate men in obedience and discipline, the tradition of military neutrality in political affairs, and the need to protect troop morale, the Court upheld the validity of military post regulations, backed by congressional enactments, banning speeches and demonstrations of a partisan political nature and the distribution of literature without prior approval of post headquarters, with the commander authorized to keep out only those materials that would clearly endanger the loyalty, discipline, or morale of troops on the base.¹⁵⁴¹ On the same basis, the Court rejected challenges on constitutional and statutory grounds to military regulations requiring servicemen to obtain approval from their commanders before circulating petitions on base, in the context of circulations of petitions for presentation to Congress.¹⁵⁴² And the statements of a military officer urging disobedience to certain orders could be punished under provisions that would have been of questionable validity in a civilian context.¹⁵⁴³ Reciting the consider-

¹⁵³⁷ *Rostker v. Goldberg*, 453 U.S. 57, 67 (1981).

¹⁵³⁸ 453 U.S. at 66. “[P]erhaps in no other area has the Court accorded Congress greater deference.” *Id.* at 64–65. *See also* *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973).

¹⁵³⁹ *Parker v. Levy*, 417 U.S. 733, 758 (1974). “[T]he tests and limitations [of the Constitution] to be applied may differ because of the military context.” *Rostker v. Goldberg*, 453 U.S. 57, 67 (1981).

¹⁵⁴⁰ *Rostker v. Goldberg*, 453 U.S. 57 (1981). *Compare* *Frontiero v. Richardson*, 411 U.S. 677 (1973), *with* *Schlesinger v. Ballard*, 419 U.S. 498 (1975).

¹⁵⁴¹ *Greer v. Spock*, 424 U.S. 828 (1976), limiting *Flower v. United States*, 407 U.S. 197 (1972).

¹⁵⁴² *Brown v. Glines*, 444 U.S. 348 (1980); *Secretary of the Navy v. Huff*, 444 U.S. 453 (1980). The statutory challenge was based on 10 U.S.C. § 1034, which protects the right of members of the armed forces to communicate with a Member of Congress, but which the Court interpreted narrowly.

¹⁵⁴³ *Parker v. Levy*, 417 U.S. 733 (1974).