

# IMPLICATIONS OF DRAFT REGISTRATION—1980

MONDAY, APRIL 14, 1980

U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COURTS,  
CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE  
OF THE COMMITTEE ON THE JUDICIARY,

*Madison, Wis.*

The subcommittee met at 9:30 a.m., in the assembly chambers, State capitol; Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier and Carr.

Also present: Michael J. Remington, counsel.

Mr. KASTENMEIER. The subcommittee will come to order. Welcome, everyone, to this morning's hearing on the civil liberties and the administration of justice implications of the draft registration.

I regret the delay in convening this hearing because of the inclement weather. The record should reflect that it is snowing and blowing quite heavily. We will have some delays both in terms of member participation and possibly witnesses.

First of all, I would like to remind everyone here that this is a hearing authorized by the House Committee on the Judiciary and therefore the rules of the House of Representatives apply.

I would like to say we are indebted to the Wisconsin State Assembly for permitting us to use its chambers for the purposes of this hearing. The official record of the proceedings will be transcribed and will be ultimately printed as a House hearing record.

I should also say that this is the first of more than one hearing on the subject. We have commenced it here in Madison and I will make further reference to that.

I have attempted to invite testimony from a diverse group of witnesses representing different points of view. I think this is necessary to present a fair inquiry into the issues before us.

You will note that we have scheduled tentatively a second day of hearings for Washington, D.C. That second day of testimony will give us an opportunity to hear from representatives of the Selective Service System, which was not able to send a representative here today for purposes of discussing its views on these questions.

You also will note that today's witness list gives us an opportunity to hear from the Justice Department, from a number of groups including women's organizations, civil rights groups and antiregistration or antidraft groups, and from legal scholars, prosecutors, members of the clergy, and local political representatives.

At this point in time, I would like to announce that unfortunately our first witness, Dr. Curtis Tarr, will not be able to be here because

he was to have flown in this morning from Moline, Ill., and last word was because of blizzard weather conditions he will not be able to make that trip. Dr. Tarr was Director of the Selective Service System between 1970 and 1972 and we were quite anxious to hear his recommendations.

From discussions with him, however, I know he is apprehensive about resorting to registration at this time. For a thorough explanation of his position, we will let his written statement—which has been submitted to us—speak for him. At this point, I ask unanimous consent to insert Dr. Tarr's statement in the hearing record.

[The statement of Dr. Tarr follows:]

#### STATEMENT OF CURTIS W. TARR

Mr. Chairman, distinguished members of this Committee, I appear before you with great appreciation for the issues with which you grapple as you weigh the implications of the nation's return to registration for possible conscription in the event of a national emergency. My only qualification to speak is that I became familiar with these matters when I served as Director of Selective Service from 1970 to 1972. I argued for the continuation of registration in the mid-seventies, on the logic that those practices in a democracy that have become traditional can be maintained more easily than they can be reinstated. Now a different situation requires a careful examination of implications before proceeding with the process.

None of us knows the nature of the emergency our nation someday may face. But skillful opponents would choose a plan most difficult for us to oppose, likely one that would divide the resolve of the American people by employing conventional weaponry in unlikely locations. To meet such a threat, our armed forces would be committed as quickly as possible, although our ability to do so probably would be restricted by available aircraft and perils at sea.

We would encounter serious technical obstacles to producing sophisticated armaments in a short period of time with our industrial plant. Thus the combat units we had at the start of the emergency likely would be those with which we would be forced to wage the continuing battle. Since volunteers probably would not provide sufficient numbers to replace those lost in combat, a draft soon would be necessary.

Article I, Section 8 of the Constitution grants the Congress the power to provide for the common defense, to raise and support armies, and to provide and maintain a navy. Historically, the court have permitted conscription under this authority. I do not believe one could argue successfully that these or any other Constitutional provisions would permit mandatory national service, particularly in view of the safeguards of the first and thirteenth amendments.

Conscientious objection poses delicate problems in the context of these restraints. Toward the close of the war in Southeast Asia, the courts seemed to be applying two forms of pressure upon the Selective Service System. First, they insisted that we interpret the word "religion" as broadly as possible. Second, they required that we administer alternate service as if the man were being inducted into the Army; that is, Selective Service must order the man to his alternate service assignment on the same day he would go into the Army if not a conscientious objector. The only way to do so, where large numbers of conscientious objectors are involved, would be to establish federal programs. An attempt to eliminate alternate service for conscientious objectors would increase the number professing to be so, threatening a continuation of the draft. It also would create serious dissension among the American people.

Registration without conscription presents problems aside from the considerable logistical task of carrying out the registration and utilizing the data. Mostly these difficulties surround the enforcement of the law. As you know, existing statutes grant to the President the authority to order registration of young men for possible call into the armed services. If the President did so, prescribing that the enrollment be carried out within a short time period, rough estimates could be made rather quickly of the extent of violation, that is the failure to register.

But determining who failed to comply would not be an easy task. A law or regulations could require some proof of registration, a means of providing some check on the individual if the person were involved in another difficulty. A draft card, for example, would provide such proof if it were valid. Any attempt to utilize other governmental sources of information surely would run counter to the provisions of the privacy act. Yet, in all honesty, there was no sentiment in Congress, even before passage of the Privacy Act of 1974, to utilize social security or internal revenue records to determine enforcement. Also one must remember that these records would never be definitive; checking them against registration lists would not indicate all offenders. The difficulty of determining offenders is made more grave if the number of offenders is large. My judgment is that in this national climate, offenders would constitute a significant portion of the total pool.

If a person were apprehended for failure to obey the law, the next problem would be prosecution. Presently the penalty for violation far outweighs the gravity of the offense so that I doubt whether U.S. Attorneys or Federal Judges would attempt to convict young people in numbers that would insure reasonable compliance with the law. Reacting to that laxity, counsellors soon would advise young people not to register since the penalty would be inconsequential in the unlikely event that the offender were caught.

Once registration has taken place, then records must be maintained. Enforcing a requirement to notify selective service of a changed address would be even more difficult than enforcing the duty to register. Again, courts would not wish to treat this failure as a serious transgression, a further encouragement to non-compliance.

Thus I foresee the possibility of evasion by large numbers that would overwhelm the agencies for law enforcement and the judiciary. A law that cannot be enforced surely is worse than no law at all. The minimum step that should be taken by Congress would be to set new and reasonable penalties for non-compliance that might have some chance for application by the courts.

Ultimately, however, only those laws that will be supported by most of the people to whom they apply will be sound laws for the nation. Until the danger to our society seems clear and urgent to the youth of America, we invite lawlessness in attempting to force a compliance that seems to them unjust. I speak, therefore, in an attempt to prevent what I believe could be a serious error in national policy. Someday, perhaps soon, selective service again may be crucial to the nation's defense. To protect that possibility, we must make certain that we insure the success of registration before undertaking it.

Mr. Chairman, I would be happy to respond to any questions you may have.

Mr. KASTENMEIER. Without objection, the taking of photographs and televised pictures or anything else of this proceeding is permitted. I would also like to say that we would like to conclude by 12:30 today.

We hope to hear from all our scheduled witnesses. We would like to be able to accommodate witnesses as well who represent organizations and have prepared testimony but who are not scheduled.

I would like to explain again why these hearings are held. One of the responsibilities of the Government is to anticipate changes in law and how these changes will affect the citizen. In other words, we must ask how in fact registration and/or the draft will affect citizens. Will there be strict enforcement, what will be the civil liberties implications for individuals, how many individuals will refuse to register and will become felons.

We do not know the answer to very many of these questions in the year 1980. We had some bitter experiences in the sixties and seventies in that respect.

I think it is incumbent upon those in national leadership and the administration and Congress to anticipate things, to be able to respond to these questions when we are so shortly being asked to reimplement a registration system which may indeed, in the view of many, ultimately lead to the reestablishment of the draft itself.