

HB

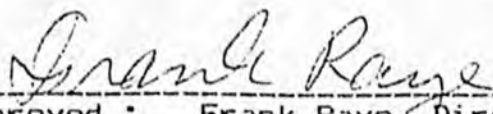
176

POSITION PAPER
CS FOR HOUSE BILL 176

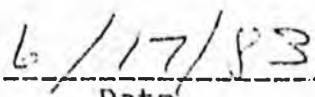
This bill is a committee substitute for House Bill No. 176. It would amend the State Personnel Act contained in chapter 25 of title 39, Alaska Statutes. The CS for HB 176 would amend subsection (19) which provides an employment preference for honorably discharged veterans with 181 days of military service during one of the specified periods of time during which the United States was engaged in armed conflict, i.e., wartime service.

Under the statute now in effect, a veteran (as described above) is entitled to have an additional 5 points added to his or her passing score for the purpose of obtaining employment in the classified service. A "disabled veteran" as defined in AS 39.25.150 (19)(B) is entitled to have an additional 10 points added to his or her score. This assistance in obtaining employment is limited in that it is of no benefit for promotional purposes and "the additional points may be used only the first time a veteran obtains a position in the classified service...." The CS for HB 176 would remove the above quoted provision. This proposed modification of statute would enable a qualified veteran or disabled veteran to exercise his or her preference on more than one occasion. The statutory provision which provides that the preference is not for application "within the area of promotion..." would remain unchanged. Therefore the effect of the proposed statutory amendment would be to allow a veteran to utilize the preference in obtaining a job in the state classified service, discontinue that employment with the state, and subsequently apply for state employment and again take advantage of the statutory preference.

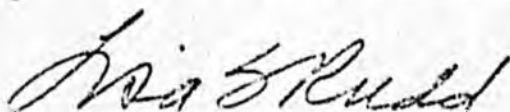
The Department of Administration is unable to support the CS for HB 176. A purpose of the veterans preference statute is to assist qualified veterans in obtaining a job with the state of Alaska subsequent to discharge from military service. The statute now in effect accomplishes this purpose. If the bill were enacted, a qualified veteran would be able to invoke preferential treatment for employment purposes many times, throughout the veterans lifetime. This would result in an adverse impact on the ability of non-veterans to obtain state jobs.



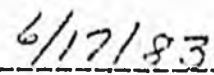
Approved: Frank Raye, Director
Div. of Personnel



Date



Approved: Lisa Rudd, Commissioner
Department of Administration
LNL/LNL



Date

AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN
DIVISION

April 1981

To: Members of the Senate State Affairs
From: Susan R. Clark, Legislative Chair, Alaska Division of the
American Association of University Women
1109 C Street, Juneau, Alaska 99801 (586-6952)

Re: Veterans' Preference for State Employment (SB 193, SB 104)

I would like to begin first with an acknowledgement to Sen. Bradley, because I know that his hard work in this area has been done in good faith and out of a sincere concern for the welfare of those men and women who made personal sacrifices for the sake of our country's safety.

I also want to point out that I personally grew up in the military. My father, godfather, and father-in-law were all career officers in the armed services, and my husband and brother were both active in the military during the Vietnam war. I had planned at one time to make the Navy a career. I also want to point out that the new Alaska division president of A.A.U.W. is herself a veteran.

A.A.U.W. feels that we must bring to the attention of the legislature that while the goals of preference are legitimate, and while the current state statute may not have been enacted for the purpose of discriminating against women, the exclusionary impact upon women is so severe as to require the state to further its goals through a more limited form of preference.

Looking at the current law as too broad, please consider who is covered: a person with a minimum of 90 (181 is a change currently being proposed) days active service serving during World War I, World War II, and Vietnam or Korea who has been honorably discharged. According to the Veterans' Preference Act of 1944, such preference was designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well disciplined people to civil service occupations. In terms of the last reason, it should be pointed out that preference itself has little if any relevance to actual job performance. The first two reasons for preference seem the most pertinent to Alaska - reward for sacrifice and ease of transition into civilian life. Both reasons are valid, but as lifetime preferences, they are subject to the objection that they give the veteran more than a square deal. Certainly upon returning to civilian status, a veteran should have access to his or her job, and perhaps for 5 years or so after returning, preference could be given as reward and help for veterans, but there should be some sort of limit on the length of time one can reap rewards for what can be a brief and un Hazardous term of service.

Because the extent to which the status of veteran is one that few women have been permitted to achieve, every hiring preference for veterans, however modest or extreme, must admit inherent gender-bias, and therefore legislated preference must be considered with due caution and careful consideration. The 5 points for veterans and 10 points for disabled veterans comes directly from the 1944 Federal Veterans' Preference Act. These points are added to a veteran's score after other written tests are administered. In Alaska where mere hundreths of a single point can separate job applicants, the system is overly weighted, especially when compared with other handicapped, disadvantaged or suspect classes of people.

Conceding that the goal here is to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal reserves a major sector of public employment to an already established class, which, as a matter of historical fact, is already 80% male in categories other than the clerical and para-professional jobs. The current point system and lifetime preference, only compounds and contributes to sex bias in all levels of state employment.

Women have been overtly excluded from the military, and not just by tradition and culture. During WW I for example "a variety of proposals were made to enlist women for work in the Army as doctors, telephone operators, and clerks, but all were rejected by the War Dept." Navy women did achieve military rank and status during this time, and were the first women to do so. While the Army Nurse Corps was the first official military unit for women they were not granted full military rank until 1944 - forty-three years later. During the Second World War several temporary women's units were formed including WRAC (Women's Army Auxiliary Corps), WAVES (Women Accepted for Voluntary Emergency Service), and WASP (Women Airforce Pilots). These women, however, were in fact civilians and had no regular military status, and thus no veteran status. In fact, although the WASP personnel were filling some of the most hazardous of flying jobs, that of towing targets for air gunnery practice, and testing planes fresh out of repair depots, they were denied commissions based on the fact that "the authority of the act of September 1941, to make temporary appointments as officers in the U.S. Army 'from among qualified persons' refers to and contemplates men exclusively, and may not be regarded as authority for commissioning women as officers..." These women finally won their hard earned veterans' status in September 1976, but other women who had been active in the war have not.

Women's services were finally established on a permanent basis in 1948, however quotas were placed on the numbers that could enlist. Women were not to exceed 2% of the total enlisted strength, their eligibility requirements were more stringent than were those for men, and career opportunities were also limited. In addition women were involuntarily removed from service for pregnancy, parenthood, and even marriage. These structures have carried on into the '60's and '70's. Not until 1967 was the 2% quota lifted, and the many restrictive policies concerning women's participation in the military were not modified or eliminated until the 1970's. Amazingly, or perhaps not so, once the barriers were down women joined in large numbers.

In just three years from 1973-1975 the percentage of enlisted women in the military had doubled.

There are two ways to ameliorate the effects of the veterans' preference on women and minorities. One is to modify the point system and to place a time limit on preferential access to jobs. The other solution is to look to expanding what is considered by the word veteran, and thereby include in this law others who have served their country every bit as well and as patriotically as have those on "military active duty". Other states include language that recognizes nurses and other women who were discharged and so served in any "corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States..." Language should also recognize those who underwent severe hardship because of the war. In WW II both the Aleut Americans and the Japanese Americans were uprooted and forced into relocation camps. We have never rewarded their sacrifices with jobs or appeasements of any sort. In expanding the concept of who is a veteran, we need also to look at the men and women who served in civil defense jobs, with the American Red Cross, the Civil air patrol, as war correspondants, and in the merchant marine (who incidentally were in the same waters as navy destroyers and also under attack, but receive no reward in terms of their patriotism, personal sacrifice and danger).

Looking again at the contributions of women to the war effort, we are but slightly aware of the sacrifices and contributions of over 2 million World War II women who took the places of the absent men working in the American war industries: in shipyards, aircraft plants, ammunition plants. The call to "inlist" in the factories was every bit as organized and strong as for men in the armed forces. Concern about dangerous working conditions and long hours took a back seat to America's call to keep up the production to supply the war with weapons, and ammunition. For the short-handed women in the farm communities, the call was to get out the crops to feed the troops. If personal sacrifice, patriotism and danger is a standard for preference, then these women deserve veterans' status every bit as much as the service veterans. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." Where was and is their reward? For their commitment and patriotism, they received not preferred lifetime access to civil service jobs, but firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were even then the major financial support for their families, this transition meant leaving highly skilled, well paying jobs to go back to the dead end drudgery and poverty wages of domestic work.

It is interesting to note that the Federal Veterans' Preference Act of 1944 included in its preference the wives of disabled service personnel and the unmarried widows of deceased ex-service personnel. We tend to look at patriotic service and personal sacrifice as being a military male prerogative, but I feel we need to look hard at the patriotism and sacrifice of the service personnel spouses who held the country and family together as essentially single parents, frequently having to hold down another job to

support their families because the salary range for enlisted personnel in the military is so low that those families qualify for government assistance. Vietnam vets, in addition, currently have the highest divorce rate of any class of Americans. a rate that is generally high among all military personnel. This means, for example, that those women who held families together during the father's service, and who now must have full time employment to support themselves and their children (of whom women still usually have custody), who traditionally are not educated for well-paying jobs, and who have traditionally been denied many levels of employment advancement, now in addition find that the men to whom they gave support are receiving preferential treatment in the jobs the women need to support their families.

As you can see, equitable expansion of the term veteran would be a formidable legislative task, but should be attempted so that families of veterans and those who served alongside veterans can be recognized. As it now stands, the Alaska statute exacts a substantial price from a group of individuals who have long been subject to employment discrimination, and who, because of circumstances totally beyond their control, have had little if any chance of becoming members of the preferred class. Admitting that any hiring preference for veterans does at this time have a severe impact on the public employment opportunities of women, we nevertheless recognize the sacrifice and hardship of military veterans must not be ignored. Through workable modifications in the law, we can strive together to discover solutions that recognize the needs, sacrifices, and contributions of both the military veteran groups and the groups of minorities and women which are so impacted by historical discrimination.

Alaska State Legislature

MAY - 5 1983

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

MEMORANDUM

TO: Senator Vic Fischer
Senate State Affairs Chairperson

FROM: Representative Barbara Lacher *Lacher*
House C&RA Chairperson

SUBJECT: HB 176

DATE: May 3, 1983

The purpose of this legislation is to amend the Statutes pertaining to veterans preference for employment with state agencies (AS 39.25.150 (19)).

The original form of the bill amended the Statutes so that an additional five points be added to a Veterans Merit System Examination any one [the first] time a veteran applies for employment in the classified service. The House State Affairs Committee CS amends the bill so that the veteran may add an additional five points to a Veterans Merit System Examination every [any one (the first)] time he/she applies for classified service employment. A disabled veteran could receive ten additional points in the existing law and in this proposed legislation.

I urge your support of this legislation.

I. REQUEST

Bill/Resolution No.: CSHB176 (St. Aff.)
 Title: Employment Pref. for Veterans
 Sponsor: Lacker, et. al
 Requestor: House State Affairs

II. FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: Cent. Adm. Svc.
 BRU, Program of Subprogram(s) Affected:
 Personnel

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

None needed

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Frank Raye *Frank Raye*
 Division: Personnel

Phone: 465-4430
 Date: 04/14/83

Approved by Commissioner: Lisa Rudd *LJR*
 Department: ADMINISTRATION

Date: 04/14/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

The amendment proposed by the House State Affairs Committee substitute returns to the means of providing employment preference which was in effect prior to July 1, 1982. Very minor costs, which will be absorbed in the current year budget, will be incurred in returning to the former method.



Official Business

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: House Majority Caucus

From: Rep. Ramona Barnes,
House Majority Leader

Date: April 21, 1983

Re: CS HB 176 (State Affairs): "An Act relating to
employment preference
rights for veterans."

Existing statute allows a veteran to receive preference points only the first time the veteran obtains a position in the classified service.

Should objections in any form occur it would likely be to the preference point system in that it discriminates against all non-veterans. Veterans should be entitled these as they have given of themselves in the defense and protection of our country. There should however, be no serious opposition to this bill.

POSITION PAPER
CS FOR HOUSE BILL 176

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The Department of Administration is unable to support the CS for HB 176. A purpose of the veterans preference statute is to assist qualified veterans in obtaining a job with the state of Alaska subsequent to discharge from military service. The statute now in effect accomplishes this purpose. If the bill were enacted, a qualified veteran would be able to invoke preferential treatment for employment purposes many times, throughout the veterans lifetime. This would result in an adverse impact on the ability of non-veterans to obtain state jobs.

Frank Raye

Approved: Frank Raye, Director
Div. of Personnel

6/17/83

Date

Lisa Rudd

Approved: Lisa Rudd, Commissioner
Department of Administration

6/17/83

Date

LNL/LNL

May 31, 1983

Memo
Vic from Lewis
Telephone conversation re HB 176

File

Vic, I just phoned Paul Faulkner (344-1017) about his request that the state affairs committee schedule this bill (veterans preference) at once.

Per our conversation I carefully explained to him that the remaining time of the committee would be necessarily taken up with House and Senate priorities, and that bills which cannot be taken up this session would, perforce, be held over until next year. I made no comment on the substance of the bill.

He responded that we could expect to be inundated with POMs, and that one should not make veterans angry. I politely asked him if I could "tell the senator that he had been threatened." Faulkner said that, no, you were his personal friend, but that he couldn't agree with not taking an action "that would take only 15-20 minutes to deal with and the bill could be passed."

I suggested that the subject had been dealt with at length two years ago and that it was likely that the legislature would like to take the time to carefully consider the merits. He said that the state, because of this law, was in violation of federal guidelines.

This is no big deal, but I thought that you would like to know where this heat, if in fact it materializes, is coming from.

CHAPTER = 39.25
SECTION = 39.25.080
TITLE = 39

HEADINGS TITLE 39.
PUBLIC OFFICERS AND EMPLOYEES.
CHAPTER 25.
STATE PERSONNEL ACT.
ARTICLE 1.
ADMINISTRATION.

CITATION SEC. 39.25.080.

CATCH LINE

PUBLIC RECORDS.

TEXT (A) STATE PERSONNEL RECORDS, INCLUDING EMPLOYMENT APPLICATIONS AND EXAMINATION MATERIALS, ARE CONFIDENTIAL AND ARE NOT OPEN TO PUBLIC INSPECTION EXCEPT AS PROVIDED IN THIS SECTION.

(B) THE FOLLOWING INFORMATION IS AVAILABLE FOR PUBLIC INSPECTION, SUBJECT TO REASONABLE REGULATIONS ON THE TIME AND MANNER OF INSPECTION:

- (1) THE NAMES AND POSITION TITLES OF ALL STATE EMPLOYEES;
 - (2) THE POSITION HELD BY A STATE EMPLOYEE;
 - (3) PRIOR POSITIONS HELD BY A STATE EMPLOYEE;
 - (4) WHETHER A STATE EMPLOYEE IS IN THE CLASSIFIED, PARTIALLY EXEMPT, OR EXEMPT SERVICE;
 - (5) THE DATES OF APPOINTMENT AND SEPARATION OF A STATE EMPLOYEE; AND
 - (6) THE COMPENSATION AUTHORIZED FOR A STATE EMPLOYEE.
- (C) A STATE EMPLOYEE HAS THE RIGHT TO EXAMINE THE EMPLOYEE'S

AS39.25.080 DOCUMENT= 3 OF 7 PAGE = 2 OF 2
OWN PERSONNEL FILES AND MAY AUTHORIZE OTHERS TO EXAMINE THOSE FILES.

(D) AN APPLICANT FOR STATE EMPLOYMENT WHO APPEALS AN EXAMINATION SCORE MAY REVIEW WRITTEN EXAMINATION QUESTIONS RELATING TO THE EXAMINATION UNLESS THE QUESTIONS ARE TO BE USED IN FUTURE EXAMINATIONS.

HISTORY (SEC. 18 CH 144 SLA 1960; AM SEC. 5 CH 112 SLA 1982)
END OF DOCUMENT

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY



Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 5, 1981

MEMORANDUM

TO: Representative Pat O'Connell

FROM: Leslie Longenbaugh ✓
Research Staff

RE: Rights of Discharged Military Personnel
Research Request Number 81-117

You have asked that we provide information on the rights and privileges accorded by the State and federal governments to those who, having served in the armed forces, receive a general or dishonorable discharge.

FEDERAL PRIVILEGES GIVEN TO HONORABLY DISCHARGED VETERANS

The federal laws regarding discharges from the armed forces distinguish three types of discharge: 1) general discharge; 2) dishonorable discharge; and 3) discharge "under conditions other than honorable." Those who receive general discharges are considered eligible, if other qualifications are met, for federal veterans' benefits. Those who receive dishonorable discharges have been tried by a court martial, usually for a serious offense, and are ineligible for any of the federal benefits accorded to generally discharged veterans. The third group, those whose separation from the armed forces took place under conditions other than honorable, are not categorically denied federal veterans' benefits. Their cases are reviewed by the Veterans' Administration, which decides on a case-by-case basis whether to allow them veterans' benefits.

According to Bill Harrell, of the Veterans' Administration office in Anchorage¹, cases of a true "dishonorable discharge" are extremely rare; he estimates that in his twenty years with the VA, he has seen no more than six such cases. Of veterans whose discharge was under conditions other than honorable, however, the VA in Anchorage has reviewed 30 cases in the past year, deciding an estimated 20% in favor of granting veterans' benefit to the requesting veteran.

¹Veterans' Administration, 235 E 8th Avenue, Anchorage; telephone: Zenith 2500.

Representative O'Connell
May 5, 1981
Page 2

Mr. Harrell listed the following privileges given to veterans who have been honorably discharged, and to those whose discharges under conditions other than honorable have been favorably reviewed by the Veterans' Administration's three-member Board of Adjudication.

- Counseling
- Educational benefits for Viet Nam veterans
- Guaranteed rehire of public employees who leave their jobs to serve in the military
- Health care in Veterans' Administration hospitals
- Housing loan guarantees
- Pensions
- Survivors' benefits and pensions
- Vocational rehabilitation services for disabled veterans

Dishonorably discharged veterans are ineligible for these benefits.

STATE PRIVILEGES GIVEN TO HONORABLY DISCHARGED VETERANS

In regard to the character of the discharge, Alaska statutes often state only that those wishing to be considered eligible for State veterans' benefits must have been discharged "under honorable conditions." Thus, a veteran who is discharged under conditions other than honorable may be eligible for federal veterans' benefits, but not for some of the State benefits offered only to honorably discharged veterans. A veteran who falls into this category may appeal his or her discharge to the Veterans' Administration, hoping to have the status changed to "honorable."

A search of the Alaska statutes reveals several instances where veterans are accorded privileges. These privileges are granted, in most cases, only when the veteran has been honorably discharged from the armed forces. (Some statutes require that the discharge be "other than dishonorable," which would make eligible, presumably, a veteran whose discharge is "under conditions other than honorable.") The qualifications for honorably discharged veteran status were established by the Alaska Legislature in 1980 (AS 18-56.101, attached), specifying dates between which the veteran must have served in order to be eligible for State benefits.

Below is a list, by category, of those Alaska statutes which afford privileges to qualified veterans.

Housing and Business Loans

AS 18.56.101. Alaska Housing Finance Corporation (AHFC) offers an interest rate of 9.0% to qualified, honorably discharged veterans and Alaska National Guard enlistees, on home improvement, home purchase and construction mortgages (nonveterans, veterans discharged under conditions other than honorable, and otherwise unqualified veterans pay 10.0%).

AS 44.47.380. The Nonconforming Housing Loan Program offers an interest rate of 9.0% for qualified veterans (the rate is 10% for nonveterans, and for veterans discharged under conditions other than honorable, and for other veterans who do not meet the eligibility requirements).

AS 18.55.330. Alaska State Housing Authority (ASHA) is statutorily authorized to sponsor a housing loan program for the construction of moderately-priced housing; half of the housing financed by loans from the program must be offered initially to qualified, "honorably separated" veterans. This program is now inactive.

AS 26.15.010. The Division of Business Loans, in the Department of Commerce and Economic Development, may make loans for multiple-family dwellings and business owned by qualified, honorably discharged veterans. The Division is no longer making these loans.

Land Discounts

AS 38.05.058. A qualified, honorably discharged veteran who wishes to purchase land from the State at a restricted sale may receive a discount of up to 75%, or \$37,500, from the price of the land. (Others may purchase the land at a discount of no more than 50%, or \$25,000, depending upon the length of their residency in the state.)

Employment Benefits

AS 39.25.150(23). Honorably discharged veterans are given preference in hiring within the State's personnel division, which gives points for test scores, experience, and veteran status. Veterans are also given preference in layoffs within the State government, i.e., they are dismissed only after nonveterans have been laid off.

AS 39.35.340. The Public Employees' Retirement System benefits are increased for qualified veterans who "did not receive a dishonorable discharge," through a formula crediting military service as public employment for the purposes of computing retirement benefits.

Representative O'Connell
May 5, 1981
Page 4

AS 14.25.100. The Teachers' Retirement System benefits are increased by a method similar to that used in the Public Employees' Retirement System, where military service is credited as public employment for the purposes of computing retirement benefits, for veterans who have received a discharge "other than dishonorable."

AS 26.10.060. Honorably discharged veterans who were employed by the State before their service in the military must be rehired upon their discharge from the armed forces.

Parking and Vehicle Registration

AS 28.10.181(d). Vehicles owned by disabled veterans (no further definition is given of "veteran") are entitled to special parking stickers which allow them to park in accessible parking slots.

AS 28.10.421(b)(3). Disabled veterans (no further definition is given of "veteran") pay no registration fee for their vehicles.

RIGHTS DENIED DISHONORABLY DISCHARGED VETERANS

According to Mr. Harrell, each state decides on the enfranchisement of its dishonorably discharged veterans. The Alaska State Division of Elections reports that dishonorably discharged veterans are not barred from voting in this State. Although some states do not allow the dishonorably discharged veteran to vote, no other rights are denied a dishonorably discharged veteran in this country, unless he or she has been convicted in a civilian court of a felony.

If we can be of further assistance, please call on us.

LL/dp

Encl.

trustee under the trust and that title to the mortgage loans subject to the trust shall be considered to have passed as provided in the trust agreement. To the extent provided in the trust agreement, the effect of a sale of a beneficial interest or participation in a mortgage loan is the same as the sale of the mortgage loan subject to the trust. (§ 27 ch 106 SLA 1980)

Cross reference. — For certain definitions applicable to this section, see AS 18.56.098(f). SLA 1980, makes this section effective June 21, 1980, in accordance with AS 01.10.070(c).

Effective date. — Section 83, ch. 106,

Sec. 18.56.100. Housing development fund.

(e) The corporation may provide for the issuance, at one time or from time to time, of housing development fund notes for the purposes of providing money for the fund.
(am § 28 ch 106 SLA 1980)

Effect of amendment. — The 1980 amendment, effective June 21, 1980, substituted "money" for "funds" near the end of present subsection (e), and deleted the last four sentences in subsection (e) as they appear in the main pamphlet.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 18.56.101. Eligibility for veterans' interest rates. The following persons are eligible veterans for the purposes of AS 18.56.098(d):

(1) a person who served in the armed forces of the United States for 90 days or more, or whose service was for less than 90 days because of injury or disability incurred in the line of duty, after April 6, 1917,

(A) who at the time of induction into the service was a resident of the territory or state, who had been a resident for not less than one year immediately before his induction, and who returned to the territory or state within one year after discharge as a resident with the intention of remaining in the territory or state; or

(B) who, not being a bona fide resident of the territory or state at the time of entry into the service, has been a resident of the territory or state for at least one year at the time of the loan application and has been a resident of the territory or state for at least five years; and

(C) whose discharge was under honorable conditions;

(2) the widow or widower of a member of the armed forces of an eligible veteran if

(A) The member or veteran was a resident of the territory or state for one year before induction into the service;

(B) the member or veteran served in the armed forces for at least 90 days after April 6, 1917; and



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

June 10, 1983

MEMORANDUM

TO: Representative Don Clocksin
FROM: Leslie Longenbaugh ✓
Research Staff
RE: Veterans' Benefits
Research Request 83-191

Jan Rice asked that we provide a list of all benefits offered by the State of Alaska to qualified veterans of the armed services. I have attached a copy of a 1981 memorandum that addresses this question. The following are amendments or additions to the benefits listed in 81-117.

Fishing and Hunting Licenses

AS 16.05.341 (1982). A disabled veteran may receive a resident hunting and sport fishing license without charge.

Housing Loans

In November 1982, the electorate approved a constitutional amendment to allow the sale of general obligation bonds to finance veterans' housing loans. Since that time, Alaska Housing Finance Corporation (AHFC) has sold bonds and used the proceeds to buy the mortgages of qualified veterans. Because they are financed through the sale of tax-exempt bonds, veterans' mortgages over \$90,000 carry lower interest rates than other loans offered by AHFC.

AS 18.56.098. In 1981, the legislature amended this part of AHFC's statute, which formerly specified an interest rate of 9.0 percent for qualified veterans and a rate of 10.0 percent for all other borrowers under the Special Mortgage Loan Purchase Program, AHFC's most active housing loan program. The amendment ties the interest rate to the cost of the funds, but retains the one-point advantage for veterans.

Land Disposal

AS 38.05.067. Before offering certain unoccupied residential lands for sale to the general public, the State must offer the land at a restricted sale at which only veterans may buy.

Representative Clocksin
June 10, 1983
Page 2

Tuition Assistance

AS 26.05.296. Active and retired members of the Alaska National Guard and the Alaska Naval Militia who are not eligible for federal veterans' student aid may receive 50 percent of the tuition and fees for an educational, vocational or technical training program.

* * *

We have listed only the statutory and constitutional benefits accorded veterans. Any benefit that might exist only in regulation is not included in these memoranda. If you have questions or further needs for research, please call on us.

LL

Attachment: Research Request 81-117, House Research Agency

(C) his discharge was under honorable conditions;

(3) a person who has served in the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia or who has served in a reserve unit of the United States armed forces in Alaska if the reserve unit required, as a minimum, one weekend each month of duty and 15 consecutive days of active duty training each year for not less than five years and whose discharge was under honorable conditions. (§ 29 ch 106 SLA 1980)

Effective date. — Section 83, ch. 106, June 21, 1980, in accordance with AS SLA 1980, makes this section effective 01.10.070(c).

Sec. 18.56.103. Federal taxation of interest on bonds and bond anticipation notes. If the interest on bonds or bond anticipation notes of the corporation issued after June 1, 1980, becomes taxable under the income tax laws of the United States, the legislature may appropriate an amount sufficient to pay the outstanding principal and interest on the bonds or bond anticipation notes. Nothing in this section creates a debt or liability of the State of Alaska. (§ 29 ch 106 SLA 1980)

Effective date. — Section 83, ch. 106, June 21, 1980, in accordance with AS SLA 1980, makes this section effective 01.10.070(c).

Sec. 18.56.105. Allocation of lending activities. The corporation shall designate regions within the state which in the aggregate, encompass the entire state. In participating in the making or purchasing of loans under AS 18.56.090(1) — (3) or under AS 18.56.100, the corporation shall make its money available through the private financial institutions in the state within each region designated by the corporation under this section. The corporation shall allocate its money among the regions on the basis of recent and future anticipated lending activity as well as the potential need for the loans in each region and may reallocate its money among the regions as it considers appropriate to reflect changes in lending activity or need in the regions. (§ 29 ch 106 SLA 1980)

Effective date. — Section 83, ch. 106, June 21, 1980, in accordance with AS SLA 1980, makes this section effective 01.10.070(c).

Sec. 18.56.115. Independent financial advisor. In negotiating the private sale of bonds or bond anticipation notes to an underwriter, the corporation shall retain a financial advisor who is independent from the underwriter. (§ 4 ch 102 SLA 1974; am § 2 ch 130 SLA 1978)

Effect of amendment. — The 1978 legislature finds that there is a potential conflict of interest in negotiating a private sale of bonds or bond anticipation notes to underwriters and therefore, determines

Editor's note. — Section 1, ch. 130, SLA 1978 provides: "FINDINGS. The

Veteran's preference

- original bill.

- court case

- women in

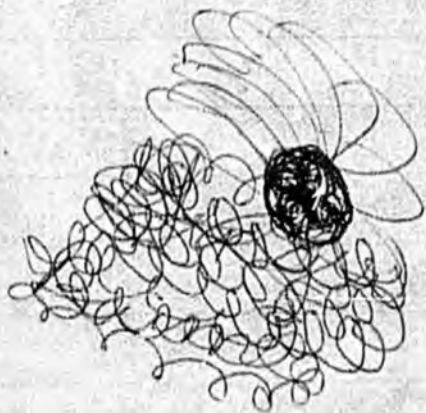
- military

- now, Susan

- women's lobby

- Washington D.C.

Now - for position
papers.



A Survey of Veterans' Preference Legislation in the States

By Charles E. Davis

FOR NEARLY 40 YEARS, the American military veteran has benefited from governmental personnel policies designed to provide compensation for services rendered and disrupted career plans.¹ The Veterans' Preference Act of 1944, for example, boosted employment opportunities of veterans seeking jobs in the federal government by adding individuals honorably discharged from active duty in the armed services or their dependents to the list of those eligible for preference.

Benefits ranged from absolute preference for selected positions (e.g., guards, elevator operators, messengers and custodians) to the addition of five points to any non-disabled veteran achieving a passing score on a civil service exam. It also provided preferential treatment for veterans in any subsequent reductions-in-force. Under the Veterans' Readjustment Act of 1966, these privileges were extended to peacetime veterans serving as little as six months of military service. The impact of these laws is illustrated by some recent statistics cited by Alan K. Campbell. Although veterans comprise only one fourth of the eligible workers in the United States, they make up 50 percent of the federal work force and hold 65 percent of the top civil service positions.²

Despite the continuing importance of veterans' preference legislation (hereafter referred to as VPL) in affecting the recruitment, selection, promotion and tenure of federal public employees, state-related developments have received little attention from personnel analysts or students of the administrative process. These trends merit a further look for two principal reasons. While much of the state veterans' preferential legislation is patterned after federal initiatives, there is, nevertheless, considerable diversity in the number and variety of benefits offered. For example, most states require reemployment rights for veterans in their premilitary vocation, preferred status vis-a-vis nonveteran public employees should reduction-in-force become necessary, and absolute preference for

selected jobs usually associated with a bureau or division of veterans' affairs. In addition, however, a few states have granted bonus points for promotional considerations or employment privileges for the spouse of a nondisabled veteran as well as various idiosyncratic practices scattered throughout the country.

It is evident that state policymakers will be faced with serious questions regarding the compatibility of already generous VPL with an increasing number of women and minorities seeking public employment. Information about the kinds of benefits available to veterans in various states would better enable public officials to balance such differing values as "reward for prior military sacrifice and/or service" with "equity" and "merit" in the process of making personnel-related decisions. The central purpose of this article is to provide a brief analysis of state laws affecting the employment prospects of veterans. Of particular concern is the relative generosity of each state in awarding preference benefits to veterans and the sociodemographic characteristics which differentiate more liberal states from those providing fewer benefits.

Findings

To make valid comparisons about the relative strength of veterans' preference legislation, an index was constructed for each state (see Table 1). The criteria used in the calculation of these indices included appointment or promotional preference for nondisabled veterans in selected jobs (1 point), absolute preference or bonus points for all or most jobs under classification (2 points), and bonus points for promotions in all or most civil service jobs (2 points). A like number of points were also awarded in each category if the spouse of a nondisabled veteran were granted similar privileges. The cumulative scores ranged from no points (Delaware) to six points (Indiana and New Jersey), and a slight majority of the states (26) emerged with a three-point total.

The next step was to determine whether states providing generous veterans' preference benefits had any distinctive political or demographic features. As Table 2

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indicates, the strength of the state VPL index was somewhat more pronounced in the Midwest and Northeast, while Western states were least likely to provide veterans with statutory advantages for public employment. For example, Arizona and New Mexico give preference to veterans seeking employment in their respective bureaus of veterans' affairs, but do not extend these privileges to include jobs classified under state civil service. No Western states awarded absolute preference or bonus points for promotions within the state civil service, and only Montana permitted the addition of bonus points to the test scores of a veteran's family members. A small number of Northeastern and Midwestern states, on the other hand, were inclined to adopt these measures.

Of equal importance are the socioeconomic and demographic characteristics of state governmental jurisdictions. States ranking high on the VPL index tend to be more populous, wealthier on a per capita basis, and less receptive to the influence of interest groups (see Table 2). These results would appear to contradict the more commonsensical view that military life and the well-being of its personnel have always been held in greater esteem in the more traditional parts of the country—i.e., the South and the West. One might presume that veterans would benefit not only from the good will and political support of Southern legislators wielding positions of authority in the armed services committees of the U.S. House of Representatives and the Senate, but also a favorable political climate which has resulted in the disproportionate allocation of federal military installations in the South.¹ Under these circumstances, politically conservative state legislators would perceive veterans' preference benefits not as social welfare legislation but as the just rewards for individual military service or sacrifice.

A more plausible interpretation of these findings, however, directs attention to the perception of veterans by state legislators as a significant political constituency. The negative relationship found between interest group strength in the states and the provision of generous veterans' preference benefits suggests that legislative success does not result from the organizational or lobbying skills of veterans organizations, such as the American Legion, the Veterans of Foreign Wars or the Disabled Veterans. As Levitan and Cleary have indicated, these groups have tended to play a more passive role in the legislative process, preferring to rely on the judgment of elected policymakers for the appropriate level of benefits received.² It thus appears that support for VPL may be less a function of group mobilization than the realization by individual political candidates of the electoral benefits to be gained from appeals to the interests of veterans and their families.

Discussion

The survey results indicate that the number and variety of veterans' preference laws in the states are affected by such demographic factors as population size, region, per

capita income and interest group strength. Veterans seeking employment in state government are likely to compete with relatively greater advantage in the more populous, wealthier states of the Midwest and the Northeast.

Although it is beyond the scope of this paper to provide a detailed analysis of the interrelationships between veterans' preference and other personnel issues of concern to state decision-makers, a number of policy implications and suggestions for further research bear mention. Veterans' preference affects nearly all phases of personnel management, but it is obviously the selection of public employees which has provoked the most serious controversy. All states classified as "medium" or "high" on the VPL index gave nondisabled veterans at least a five-point bonus on civil service exams—a practice which is viewed with a measure of disdain by civil service reformers favoring strict adherence to merit principles as well as supporters of affirmative action programs who feel that minorities and women have long been excluded from responsible government jobs. An additional irritant to affirmative action proponents is the awarding of bonus points to veterans for promotional purposes by a few of the more generously inclined states. Clearly, more research on the impact of veterans' preference laws on the proportion of minorities and women hired by state government (in relation to their numbers in the general population or relevant labor markets) would be of interest to elected public officials as well as manpower analysts.³

To a lesser degree, state VPL is of concern to nonveteran members of public unions or employee associations. Any advantages enjoyed by ex-veteran public employees in regard to promotions or reductions-in-force may be viewed as contrary to the seniority principle, which is viewed by many labor officials as the fairest method of deciding who benefits (as well as who loses—a point often made by affirmative action proponents). Ultimately, policymakers hoping to achieve the allocation of human resources in an equitable and efficient manner will have to confront the necessity of trade-offs. The reconciliation of such diverse values as "reward," "merit," "equity," and "organizational tenure" into an integrated policy framework is an undertaking deserving a prominent place on the research agenda of the 1980s.

Notes

1. The most concise treatment of veterans' preference legislation in the federal government is found in O. Glenn Stahl, *Public Personnel Administration* (4th ed. (New York, N.Y.: Harper & Row, 1971), p. 137-43.

2. Alan E. Campbell, "Civil Service Reform: A New Commitment," *Public Administration Review*, 38 (March/April 1978), pp. 99-103.

3. Nicholas Henry, *Public Administration and Public Affairs*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1980), p. 420.

4. Sar Levitan and Karen A. Cleary, *Old Wars Remain Unfinished: The Veterans Benefit System* (Baltimore, Md.: Johns Hopkins University Press, 1973), p. 15.

5. The author has begun such a task in an exploratory fashion; see, e.g., Charles E. Davis, "Veterans' Preference, Affirmative Action, and Public Employment," a paper presented at the 1980 annual meeting of the Southwest Political Science Association in Houston.

Table 1
THE RELATIVE STRENGTH OF STATE VETERANS' PREFERENCE LEGISLATION

States (a)	Veterans' Preference Benefits						Total points (b)
	Selected positions			Civil Service positions			
	Appointment preference or bonus points	Appointment preference or bonus points (veteran's relatives)	Preference or bonus points for promotions	Appointment preference or bonus points	Preference or bonus points (veteran's relatives)	Preference or bonus points for promotion	
Alabama	1	1	..	2	..	..	4
Arizona	..	..	..	2	..	..	2
Arkansas	..	..	..	2	..	..	2
California	1	..	..	2	..	..	3
Colorado	1	..	..	2	..	..	3
Connecticut	..	..	..	2	2	..	4
Delaware	..	..	..	..	..	..	0
Florida	1	..	..	2	..	..	3
Georgia	1	1	..	2	..	..	4
Idaho	1	..	..	2	..	..	3
Illinois	1	..	1	2	..	..	4
Indiana	1	1	..	2	2	..	6
Iowa	1	..	..	2	..	2	5
Kansas	1	..	..	2	..	..	3
Kentucky	1	..	..	2	..	..	3
Louisiana	1	..	..	2	..	..	3
Maine	1	..	..	2	2	..	5
Maryland	1	..	..	2	..	..	3
Massachusetts	1	..	..	2	..	..	3
Michigan	1	..	..	2	..	..	3
Minnesota	1	..	..	2	..	..	3
Mississippi	1	..	..	2	..	..	3
Missouri	1	..	..	2	..	..	3
Montana	1	..	..	2	2	..	5
Nebraska	1	..	..	2	..	..	3
Nevada	1	..	..	2	..	..	3
New Hampshire	1	..	..	2	..	..	3
New Jersey	1	..	1	2	2	..	6
New Mexico	1	..	..	..	..	..	1
New York	1	..	..	2	..	2	5
North Carolina	1	..	..	2	..	2	5
North Dakota	1	..	..	2	..	..	3
Ohio	1	1	..	2	..	..	4
Oklahoma	1	..	..	2	..	..	3
Oregon	1	..	..	2	..	..	3
Pennsylvania	1	..	..	2	..	..	3
Rhode Island	1	..	..	2	..	..	3
South Carolina	1	..	..	2	..	..	3
South Dakota	1	..	..	2	..	2	5
Tennessee	1	..	..	2	..	..	3
Texas	1	..	1	2	..	..	4
Utah	1	..	1	2	..	..	4
Vermont	..	..	..	2	..	..	2
Virginia	..	..	..	2	..	..	2
Washington	1	..	..	2	..	..	3
West Virginia	1	..	..	2	..	..	3
Wisconsin	1	..	..	2	..	..	3
Wyoming	1	..	..	2	..	..	3

Source: U.S. Congress, Committee on Veterans' Affairs, *State Veterans' Laws*, House Committee Print No. 6, 96th Congress, 1st sess., 1979.

(a) Alaska and Hawaii were excluded from the analysis. Their politics are imbued with cultural and ethnic strains not typical of the contiguous United States, and their experience with veterans' preference legislation is comparatively recent.

(b) The criteria used in the calculation of these indexes included appointment or promotional preference for nondisabled veterans in selected jobs (one point), absolute preference or bonus points for all or most jobs under classification (two points), and bonus points for promotions in all or most civil service jobs (two points). A like number of points was also awarded in each category if the spouse of a nondisabled veteran were granted similar privileges. The decision to assign one point or two for a given benefit was based on the number of people likely to be affected by such legislation: for example, a statute reserving the directorship of a state veterans bureau for military veterans would have little impact and thus be assigned one point.

Table 2
THE STRENGTH OF VETERANS' PREFERENCE LEGISLATION, INCOME RANK, POPULATION RANK, REGION, AND INTEREST GROUP LEVERAGE

States	Strength of veterans' preference legislation (a)	Income rank (h)	Population rank (b)	Region (c)	Interest group leverage (d)
Alabama	strong	46	21	3	high
Arizona	weak	26	32	4	high
Arkansas	weak	50	33	3	high
California	moderate	7	1	4	high
Colorado	moderate	12	28	4	low
Connecticut	strong	3	24	1	low
Delaware	weak	15	48	1	medium
Florida	moderate	14	8	3	high
Georgia	strong	37	14	3	high
Idaho	moderate	36	41	4	..
Illinois	strong	8	5	2	medium
Indiana	strong	29	12	2	low
Iowa	strong	22	25	2	high
Kansas	moderate	20	31	2	medium
Kentucky	moderate	43	23	3	high
Louisiana	moderate	49	20	3	high
Maine	strong	44	38	1	high
Maryland	moderate	4	18	3	medium
Massachusetts	moderate	16	10	1	medium
Michigan	moderate	17	7	2	high
Minnesota	moderate	19	19	2	high
Mississippi	moderate	51	29	3	high
Missouri	moderate	33	15	2	low
Montana	strong	31	43	4	high
Nebraska	weak	27	35	2	high
Nevada	moderate	6	47	4	medium
New Hampshire	moderate	32	42	1	..
New Jersey	strong	5	9	1	low
New Mexico	weak	12	37	4	high
New York	strong	11	2	1	medium
North Carolina	strong	41	11	3	high
North Dakota	moderate	9	46	2	..
Ohio	strong	24	6	2	medium
Oklahoma	moderate	39	27	3	high
Oregon	moderate	21	30	4	high
Pennsylvania	moderate	30	4	1	medium
Rhode Island	moderate	25	35	1	low
South Carolina	moderate	45	26	3	high
South Dakota	strong	35	45	2	medium
Tennessee	moderate	42	17	3	high
Texas	strong	34	3	3	high
Utah	strong	38	36	4	medium
Vermont	weak	40	49	1	medium
Virginia	weak	18	13	3	medium
Washington	moderate	13	22	4	high
West Virginia	moderate	47	34	3	medium
Wisconsin	moderate	..	16	2	high
Wyoming	moderate	23	50	4	low

(a) The following criteria were employed to classify states as "weak," "moderate," or "strong": the allocation of appointment preference to nondisabled veterans or their relatives for selected jobs (1 point), the allocation of preference or bonus points to nondisabled veterans or their relatives for promotions in selected jobs (1 point), the allocation of appointment preference or bonus points to veterans and their relatives for jobs classified under state civil service (2 points), and the allocation of preference or bonus points for promotions to nondisabled veterans for civil service jobs (2 points). States receiving a cumulative score of two points or less were classified as "weak," those with three points were termed "moderate," and the "strong" states had more than three points.

(b) These figures were obtained from the 1977 *City and County Data Book* (Washington, D.C.: Bureau of the Census).

(c) States were grouped into four regional categories: 1—Northeast, 2—Midwest, 3—South, 4—West. The classification scheme was adopted from studies conducted by the Center for Political Studies at the University of Michigan.

(d) The measure of interest group strength used here is actually a composite index based on three variables—strength of party competition, legislative cohesion, and the socioeconomic variables of the urban population (including per capita income and the percentage of the population employed in occupations other than agriculture, forestry, and fishing). This index was adopted from L. Harmon Zeigler and Hendrick van Dalen, "Interest Groups in the American States," in Herbert Jacob and Kenneth N. Vines, eds., *Politics in the American States*, 2nd edition (Boston, Mass.: Little, Brown & Co., 1971), p. 127.

PERSONNEL ADMINISTRATOR OF MASSACHUSETTS et al.,
Appellants,

v

HELEN B. FEENEY

442 US 256, 60 L Ed 2d 870, 99 S Ct 2282

[No. 78-233]

Argued February 26, 1979. Decided June 5, 1979.

Decision: Massachusetts law operating to advantage of males by giving veterans lifetime preference for state employment, held not violative of equal protection.

SUMMARY

A female nonveteran who had taken and passed a number of open competitive examinations for civil service positions with the state of Massachusetts failed to secure employment for positions on several occasions because of the Massachusetts Veterans Preference Statute, which grants an absolute lifetime preference to veterans by requiring that "any person, male or female, including a nurse," qualifying for a civil service position, who was honorably discharged from the United States Armed Forces after at least 90 days of active service, at least one day of which was during wartime, must be considered for appointment to a civil service position ahead of any qualifying nonveterans. Alleging that the absolute preference formula, by inevitably operating to exclude women from consideration for the best Massachusetts civil service jobs, denied women equal protection of the laws in violation of the United States Constitution, the woman brought an action in the United States District Court for the District of Massachusetts. The District Court declared the law unconstitutional and enjoined its operation (415 F Supp 485), but on direct appeal from the decision of the three-judge District Court, the United States Supreme Court vacated the judgment and remanded the case for further consideration in light of an intervening Supreme Court decision holding that a neutral law does not violate the Fourteenth Amendment's equal protection clause solely because it results in a racially disproportionate impact, it being necessary to trace such disproportionate impact to a purpose to discriminate. On remand, the District Court reaffirmed its original judgment, concluding that a veterans' hiring

SUBJECT OF ANNOTATION

Beginning on page 1188, infra

Validity, under equal protection clause of Fourteenth Amendment, of gender-based classifications arising by operation of state law

Briefs of Counsel, p 1186, infra.

PERSONNEL ADMINISTRATOR OF MASS. v FEENEY

442 US 256, 60 L Ed 2d 870, 99 S Ct 2282

preference is inherently nonneutral because it favors a class from which women have traditionally been excluded, and that the consequences of the Massachusetts absolute preference formula for the employment opportunities of women were too inevitable to have been unintended (451 F Supp 143).

On direct appeal from the decision of the three-judge District Court, the United States Supreme Court reversed and remanded. In an opinion by STEWART, J., joined by BURGER, Ch. J., and WHITE, POWELL, BLACKMUN, REHNQUIST, and STEVENS, JJ., it was held that the Massachusetts Veterans Preference Statute does not violate the equal protection clause of the Fourteenth Amendment on sex discrimination grounds, since the distinction drawn by the statute between veterans and nonveterans is not a pretext for gender discrimination, and it had not been shown that the law in any way reflects a purpose to discriminate on the basis of sex.

STEVENS, J., joined by WHITE, J., concurring, expressed the view that the claim that the law was intended to benefit males as a class over females as a class was refuted by the fact that the number of males disadvantaged by the law (1,867,000) was sufficiently large and sufficiently close to the number of disadvantaged females (2,954,000).

MARSHALL, J., joined by BRENNAN, J., dissenting, expressed the view that Massachusetts' choice of an absolute veterans preference system evinced purposeful gender-based discrimination and could not withstand scrutiny under the equal protection clause because the statutory scheme bore no substantial relationship to a legitimate governmental objective.

TOTAL CLIENT-SERVICE LIBRARY⁵ REFERENCES

77 Am Jur 2d, Veterans and Veterans' Laws § 122
USCS, Constitution, 14th Amendment
US L Ed Digest, Constitutional Law § 325
L Ed Index to Annos, Equal Protection of the Laws; Sex;
Veterans' Preference Act; Women
ALR Quick Index, Sex Discrimination; Veterans
Federal Quick Index, Civil Service; Equal Protection of the
Laws; Sex Discrimination; Veterans

ANNOTATION REFERENCES

Validity, under equal protection clause of Fourteenth Amendment, of gender-based classifications arising by operation of state law. 60 L Ed 2d 1188.

Sex discrimination. 27 L Ed 2d 935.

Race discrimination. 94 L Ed 1121, 96 L Ed 1291, 99 L Ed 962, 100 L Ed 488, 3 L Ed 2d 1556, 6 L Ed 2d 1302, 10 L Ed 2d 1105, 15 L Ed 2d 990, 21 L Ed 2d 915.

HEADNOTES

Classified to U. S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 325 — equal protection — state employment — veterans preference — sex discrimination

1a-1d. A state law granting an absolute lifetime preference to veterans, by requiring that "any person, male or female, including a nurse," qualifying for a civil service position, who was honorably discharged from the United States Armed Forces after 90 days of active service, at least one day of which was during wartime, must be considered for appointment to a civil service position ahead of any qualifying nonveterans, does not violate the equal protection clause of the Fourteenth Amendment as discriminating on the basis of sex, notwithstanding that the preference operates to the advantage of males, where the distinction drawn by the statute between veterans and nonveterans is not a pretext for gender discrimination, and it is not shown that the law in any way reflects a purpose to discriminate on the basis of sex. (Marshall and Brennan, JJ., dissented from this holding.)

[See annotation p 1188, *infra*]

Constitutional Law § 317 — Fourteenth Amendment — equal protection — classification

2. The equal protection guarantee of the Fourteenth Amendment does not take from the states all power of classification.

Courts § 92.7 — legislative and judicial responsibility — effects of law

3. The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility.

Constitutional Law § 317 — equal protection — legislative classification

4. In assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification.

Civil Rights § 4.5 — racial classification — equal protection

5. A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification, and such applies as well to a classification that is ostensibly neutral but is an obvious pretext for racial discrimination; however, even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the equal protection clause of the Fourteenth Amendment only if that impact can be traced to a discriminatory purpose.

Constitutional Law § 325 — sex classification

6. Classifications based upon gender must bear a close and substantial relationship to important governmental objectives.

[See annotation p 1188, *infra*]

Constitutional Law § 325; Officers §§ 5, 13 — public employment — states' discretion — preference of males — equal protection

7. Although public employment is not a constitutional right, and the states have wide discretion in framing employee qualifications, any state law overtly or covertly designed to prefer males over females in public employment will require an exceedingly persuasive justification to withstand a constitutional challenge under the equal protection clause of the Fourteenth Amendment.

[See annotation p 1188, *infra*]

Constitutional Law § 314 — Fourteenth Amendment

8. The Fourteenth Amendment guarantees equal laws, not equal results.

Constitutional Law § 325 — gender-based distinctions — equal protection

9. For purposes of equal protection, when a statute gender-neutral on its face is challenged on the ground that its effects upon women are disproportionate,

PERSONNEL ADMINISTRATOR OF MASS. v FEENEY

442 US 256, 60 L Ed 2d 870, 99 S Ct 2282

ably adverse, a two-fold inquiry is appropriate: the first question is whether the statutory classification is indeed neutral in the sense that it is not gender-based; if the classification itself, covert or overt, is not based upon gender, the second question is whether the adverse effect reflects invidious gender-based discrimination, and in the second inquiry, impact provides an important starting point, although purposeful discrimination is the condition that offends the United States Constitution.

[See annotation p 1168, *infra*]

Constitutional Law § 316 — equal protection — discrimination — intent — degree of discrimination

10. For purposes of equal protection, invidious discrimination does not become less so because the discrimination accomplished is of a lesser magnitude than that intended; discriminatory intent is not amenable to calibration.

Evidence §§ 166, 178 — presumption — intent — criminal and civil law

11. In both criminal and civil law, it is

presumed that a person intends the natural and foreseeable consequences of his voluntary actions.

Constitutional Law § 316 — equal protection — discriminatory intent

12a, 12b. For purposes of equal protection analysis, the inevitability or foreseeability of consequences of a neutral rule may bear upon the existence of discriminatory intent, and when the adverse consequences of a law upon an identifiable group are inevitable, a strong inference that the adverse effects were desired can reasonably be drawn, but in such inquiry—made as it is under the United States Constitution—an inference is a working tool, not a synonym for proof, and when the impact is essentially an unavoidable consequence of a legislative policy that has always been deemed legitimate in itself, and when the statutory history and all of the available evidence affirmatively demonstrate the opposite of the inference, the inference does not ripen into proof.

SYLLABUS BY REPORTER OF DECISIONS

During her 12-year tenure as a state employee, appellee, who is not a veteran, had passed a number of open competitive civil service examinations for better jobs, but because of Massachusetts' veterans' preference statute, she was ranked in each instance below male veterans who had achieved lower test scores than appellee. Under the statute, all veterans who qualify for state civil service positions must be considered for appointment ahead of any qualifying nonveterans. The statutory preference, which is available to "any person, male or female, including a nurse," who was honorably discharged from the United States Armed Forces after at least 90 days of active service, at least one day of which was during "wartime," operates overwhelmingly to the advantage of males. Appellee brought an action in Federal District Court, alleging that the absolute-preference formula established in the Massachusetts statute inevitably operates to exclude women from consideration for the best state civil service

jobs and thus discriminates against women in violation of the Equal Protection Clause of the Fourteenth Amendment. A three-judge court declared the statute unconstitutional and enjoined its operation, finding that while the goals of the preference were legitimate and the statute had not been enacted for the purpose of discriminating against women, the exclusionary impact upon women was so severe as to require the State to further its goals through a more limited form of preference. On an earlier appeal, this Court vacated the judgment and remanded the case for further consideration in light of the intervening decision in *Washington v Davis*, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040, which held that a neutral law does not violate the Equal Protection Clause solely because it results in a racially disproportionate impact and that, instead, the disproportionate impact must be traced to a purpose to discriminate on the basis of race. Upon remand, the District Court

reaffirmed its original judgment, concluding that a veterans' hiring preference is inherently nonneutral because it favors a class from which women have traditionally been excluded, and that the consequences of the Massachusetts absolute-preference formula for the employment opportunities of women were too inevitable to have been "unintended."

Held: Massachusetts, in granting an absolute lifetime preference to veterans, has not discriminated against women in violation of the Equal Protection Clause of the Fourteenth Amendment.

(a) Classifications based upon gender must bear a close and substantial relationship to important governmental objectives. Although public employment is not a constitutional right and the States have wide discretion in framing employee qualifications, any state law overtly or covertly designed to prefer males over females in public employment would require an exceedingly persuasive justification to withstand a constitutional challenge under the Equal Protection Clause.

(b) When a statute gender-neutral on its face is challenged on the ground that its effects upon women are disproportionately adverse, a twofold inquiry is appropriate. The first question is whether the statutory classification is indeed neutral in the sense that it is not gender-based. If the classification itself, covert or overt, is not based upon gender, the second question is whether the adverse effect reflects invidious gender-based discrimination.

(c) Here, the appellee's concession and the District Court's finding that the Massachusetts statute is not a pretext for gender discrimination are clearly correct. Apart from the fact that the definition of "veterans" in the statute has always been neutral as to gender and that Massachusetts has consistently defined veteran status in a way that has been inclusive of women who have served in the military, this is not a law that can plausibly, or even rationally, be explained only as a gender-based classification. Significant numbers of nonveter-

ans are men, and all nonveterans—male as well as female—are placed at a disadvantage. The distinction made by the Massachusetts statute is, as it seems to be, quite simply between veterans and nonveterans, not between men and women.

(d) Appellee's contention that his veterans' preference is "inherently nonneutral" or "gender-biased" in the sense that it favors a status reserved under federal military policy primarily to men is wholly at odds with the District Court's central finding that Massachusetts has not offered a preference to veterans for the purpose of discriminating against women; nor can it be reconciled with the assumption made by both the appellee and the District Court that a more limited hiring preference for veterans could be sustained, since the degree of the preference makes no constitutional difference.

(e) While it would be disingenuous to say that the adverse consequences of this legislation for women were unintended, in the sense that they were not volitional or in the sense that they were not foreseeable, nevertheless "discriminatory purpose" implies more than intent as volition or intent or awareness of consequences; it implies that the decision-maker selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects upon an identifiable group. When the totality of legislative actions establishing and extending the Massachusetts veterans' preference are considered, the law remains what it purports to be: a preference for veterans of either sex over nonveterans of either sex, not for men or women.

(f) Although absolute and permanent preferences have always been subject to the objection that they give the veteran more than a square deal, the Fourteenth Amendment "cannot be made a refuge from ill-advised . . . laws." *District of Columbia v Brooke*, 214 US 138, 150, 53 L Ed 941, 29 S Ct 560. The substantial edge granted to veterans by the Massachusetts statute may reflect unwise pol-

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icy, but appellee has simply failed to demonstrate that the law in any way reflects a purpose to discriminate on the basis of sex.

451 F Supp 143, reversed and remanded.

Stewart, J., delivered the opinion of

the Court, in which Burger, C. J., and White, Powell, Blackmun, Rehnquist, and Stevens, JJ., joined. Stevens, J., filed a concurring opinion, in which White, J., joined. Marshall, J., filed a dissenting opinion, in which Brennan, J., joined.

APPEARANCES OF COUNSEL

Thomas R. Kiley argued the cause for appellants.

Richard P. Ward argued the cause for appellee.

Briefs of Counsel, p 1186, infra.

OPINION OF THE COURT

[442 US 259]

Mr. Justice Stewart delivered the opinion of the Court.

[1a] This case presents a challenge to the constitutionality of the Massachusetts veterans' preference statute, Mass Gen Laws Ann, ch 31, § 23, on the ground that it discriminates against women in violation of the Equal Protection Clause of the Fourteenth Amendment. Under ch 31, § 23,¹ all veterans who qualify for state civil service positions must be considered for appointment ahead of any qualifying nonveterans. The preference operates overwhelmingly to the advantage of males.

The appellee Helen B. Feeney is not a veteran. She brought this action pursuant to 42 USC § 1983 [42 USCS § 1983], alleging that the absolute preference formula established in ch 31, § 23, inevitably operates to exclude women from consideration

for the best Massachusetts civil service jobs and thus unconstitutionally denies them the equal protection of the laws.² The three-judge District Court agreed, one judge dissenting. *Anthony v Massachusetts*, 415 F Supp 485 (Mass 1976).³

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The District Court found that the absolute preference afforded by Massachusetts to veterans has a devastating impact upon the employment opportunities of women. Although it found that the goals of the preference were worthy and legitimate and that the legislation had not been enacted for the purpose of discriminating against women, the court reasoned that its exclusionary impact upon women was nonetheless so severe as to require the State to further its goals through a more limited form of preference. Finding

1. For the text of ch 31, § 23, see n 10, infra. The general Massachusetts Civil Service law, Mass Gen Laws Ann, ch 31, was recodified on Jan. 1, 1979, 1978 Mass Acts, ch 393, and the veterans' preference is now found at Mass Gen Laws Ann, ch 31, § 26 (West 1979). Citations in this opinion, unless otherwise indicated, are to the ch 31 codification in effect when this litigation was commenced.

2. No statutory claim was brought under Title VII of the Civil Rights Act of 1964, 42 USC §§ 2000e et seq. [42 USCS §§ 2000e et seq.]. Section 712 of the Act, 42 USC § 2000e-11 [42 USCS § 2000e-11], provides that "Nothing contained in this subchapter shall

be construed to repeal or modify any Federal, State, territorial or local law creating special rights or preference for veterans." The parties have evidently assumed that this provision precludes a Title VII challenge.

3. The appellee's case had been consolidated with a similar action brought by Carol A. Anthony, a lawyer whose efforts to obtain a civil service Counsel I position had been frustrated by ch 31, § 23. In 1975, Massachusetts exempted all attorney positions from the preference, 1975 Mass Acts, ch 134, and Anthony's claims were accordingly found moot by the District Court. *Anthony v Massachusetts*, 415 F Supp 485, 495 (Mass 1976).

that a more modest preference formula would readily accommodate the State's interest in aiding veterans, the court declared ch 31, § 23, unconstitutional and enjoined its operation.⁴

Upon an appeal taken by the Attorney General of Massachusetts,⁵ this Court vacated the judgment and remanded the case for further consideration in light of our intervening decision in *Washington v Davis*, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040. *Massachusetts v Feeney*, 434 US 884, 50 L Ed 2d 224, 97 S Ct 345. The *Davis* case held that a neutral law does not violate the Equal Protection Clause solely because it results in a racially disproportionate impact; instead the disproportionate impact must be traced to a purpose to discriminate on the basis of race. 426 US, at 238-244, 48 L Ed 2d 597, 96 S Ct 2040.

Upon remand, the District Court, one judge concurring and one judge again dissenting, concluded that a veterans' hiring preference is inherently nonneutral because it favors a

class from which women have traditionally been excluded, and that

[442 US 261]

the consequences of the Massachusetts absolute-preference formula for the employment opportunities of women were too inevitable to have been "unintended." Accordingly, the court reaffirmed its original judgment. *Feeney v Massachusetts*, 451 F Supp 143. The Attorney General again appealed to this Court pursuant to 28 USC § 1253 [28 USCS § 1253], and probable jurisdiction of the appeal was noted. 439 US 891, 58 L Ed 2d 236, 99 S Ct 247.

I

A

The Federal Government and virtually all of the States grant some sort of hiring preference to veterans.⁶ The Massachusetts preference, which is loosely termed an "absolute lifetime" preference, is among the most generous.⁷ It

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applies to all positions in the State's classified civil

4. The District Court entered a stay pending appeal, but the stay was rendered moot by the passage of an interim statute suspending ch 31, § 23, pending final judgment and replacing it with an interim provision granting a modified point preference to veterans. 1976 Mass Acts, ch 200, now codified at Mass Gen Laws Ann, ch 31, § 26 (West 1979).

5. The Attorney General appealed the judgment over the objection of other state officers named as defendants. In response to our certification of the question whether Massachusetts law permits this, see *Massachusetts v Feeney*, 429 US 66, 50 L Ed 2d 224, 97 S Ct 345, the Supreme Judicial Court answered in the affirmative. *Feeney v Commonwealth*, — Mass —, 366 NE2d 1262 (1977).

6. The first comprehensive federal veterans' statute was enacted in 1944. Veterans' Preference Act of 1944, 55 Stat 387. The Federal Government has, however, engaged in preferential hiring of veterans, through official policies and various special laws, since the Civil War. See, e.g., Res of Mar. 3, 1865, No. 27, 13 Stat 571 (hiring preference for disabled veter-

ans). See generally House Committee on Veterans' Affairs, *The Provision of Federal Benefits for Veterans: An Historical Analysis of Major Veterans' Legislation, 1862-1954*, 84th Cong, 1st Sess, 256-265 (Comm Print 1955). For surveys of state veterans' preference laws, many of which also date back to the late 19th century, see *State Veterans' Laws, Digests of State Laws Regarding Rights, Benefits, and Privileges of Veterans and Their Dependents*, House Committee on Veterans' Affairs, 91st Cong, 1st Sess (1969); Fleming & Shanor, *Veterans Preferences in Public Employment: Unconstitutional Gender Discrimination?*, 26 Emory LJ 13 (1977).

7. The forms of veterans' hiring preferences vary widely. The Federal Government and approximately 41 States grant veterans a point advantage on civil service examinations, usually 10 points for a disabled veteran and 5 for one who is not disabled. See Fleming & Shanor, *supra* n 6, at 17, and n 12 (citing statutes). A few offer only tie-breaking preferences. *Id.*, at n 14 (citing statutes). A very few States, like Massachusetts, extend absolute

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service, which constitute approximately 60% of the public jobs in the State. It is available to "any person, male or female, including a nurse," who was honorably discharged from the United States Armed Forces after at least 90 days of active service, at least one day of which was during "wartime."⁸ Persons who are deemed veterans and who are otherwise qualified for a particular civil service job may exercise the preference at any time and as many times as they wish.⁹

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Civil service positions in Massachusetts fall into two general cate-

gories, labor and official. For jobs in the official service, with which the proofs in this action were concerned, the preference mechanics are uncomplicated. All applicants for employment must take competitive examinations. Grades are based on a formula that gives weight both to objective test results and to training and experience. Candidates who pass are then ranked in the order of their respective scores on an "eligible list." Chapter 31, § 23, requires, however, that disabled veterans, veterans, and surviving spouses and surviving parents of veterans be ranked—in the order of their respective scores—above all other candidates.¹⁰

hiring or positional preferences to qualified veterans. *Id.*, at n 13. See, e.g., NJ Stat Ann § 11:27-4 (West 1976); SD Comp Laws Ann § 3-3-1 (1974); Utah Code Ann § 34-30-11 (1953); Wash Rev Code §§ 41.04.010, 73.16.010 (1976).

8. Massachusetts Gen Laws Ann, ch 4, § 7, Forty-third (West 1976), which supplies the general definition of the term "veteran," reads in pertinent part: "Veteran" shall mean any person, male or female, including a nurse, (a) whose last discharge or release from his wartime service, as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States for not less than ninety days active service, at least one day of which was for wartime service"

Persons awarded the Purple Heart, ch 4, § 7, Forty-third, or one of a number of specified campaign badges or the Congressional Medal of Honor are also deemed veterans. Mass Gen Laws Ann, ch 31, § 26.

"Wartime service" is defined as service performed by a "Spanish War veteran," a "World War I veteran," a "World War II veteran," a "Korean veteran," a "Vietnam veteran," or a member of the "WAAC." Mass Gen Laws Ann, ch 4, § 7, Forty-third (West 1976). Each of these terms is further defined to specify a period of service. The statutory definitions, taken together, cover the entire period from September 16, 1940, to May 7, 1975. See *ibid.*

"WAAC" is defined as follows: "any woman who was discharged and so served in any corps or unit of the United States established for the purpose of enabling women to serve

with, or as auxiliary to, the armed forces of the United States and such woman shall be deemed to be a veteran." *Ibid.*

9. The Massachusetts preference law formerly imposed a residency requirement, see 1954 Mass Acts, ch 627, § 3 (eligibility conditioned upon Massachusetts domicile prior to induction or five years' residency in State). The distinction was invalidated as violative of the Equal Protection Clause in *Stevens v Campbell*, 332 F Supp 102, 105 (Mass 1971). Cf. *August v Bronstein*, 369 F Supp 190 (SDNY 1974) (upholding, *inter alia* non-durational residency requirement in New York veterans' preference statute), summarily *aff'd*, 417 US 901, 41 L Ed 2d 208, 94 S Ct 2596.

10. Chapter 31, § 23, provides in full:

"The names of persons who pass examinations for appointment to any position classified under the civil service shall be placed upon the eligible lists in the following order:—

"(1) Disabled veterans . . . in the order of their respective standing; (2) veterans in the order of their respective standing; (3) persons described in section twenty-three B (the widow or widowed mother of a veteran killed in action or who died from a service-connected disability incurred in wartime service and who has not remarried) in the order of their respective standing; (4) other applicants in the order of their respective standing. Upon receipt of a requisition, names shall be certified from such lists according to the method of certification prescribed by the civil

Rank on the eligible list and availability for employment are the sole factors that determine which candidates are considered for appointment to an official civil service position. When a public agency has a vacancy, it requisitions a list of "certified eligibles" from the state personnel division. Under formulas prescribed by civil service rules, a small number of candidates from the top of an appropriate list, three if there is only one vacancy, are certified. The appointing agency

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is then required to choose from among these candidates." Although the veterans' preference thus does not guarantee that a veteran will be appointed, it is obvious that the preference gives to veterans who achieve passing scores a well-nigh absolute advantage.

B

The appellee has lived in Dracut, Mass., most of her life. She entered the work force in 1948, and for the next 14 years worked at a variety of jobs in the private sector. She first entered the state civil service system in 1963, having competed successfully for a position as Senior Clerk Stenographer in the Massachusetts Civil Defense Agency. There she worked for four years. In 1967, she was promoted to the position of Federal Funds and Personnel Coordinator in the same agency. The agency,

and with it her job, was eliminated in 1975.

During her 12-year tenure as a public employee, Ms. Feeney took and passed a number of open competitive civil service examinations. On several she did quite well, receiving in 1971 the second highest score on an examination for a job with the Board of Dental Examiners, and in 1973 the third highest on a test for an Administrative Assistant position with a mental health center. Her high scores, however, did not win her a place on the certified eligible list. Because of the veterans' preference, she was ranked sixth behind five male veterans on the Dental Examiner list. She was not certified, and a lower scoring veteran was eventually appointed. On the 1973 examination, she was placed in a position on the list behind 12 male veterans, 11 of whom had lower scores. Following the other examinations that she took, her name was similarly ranked below those of veterans who had achieved passing grades.

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Ms. Feeney's interest in securing a better job in state government did not wane. Having been consistently eclipsed by veterans, however, she eventually concluded that further competition for civil service positions of interest to veterans would be futile. In 1975, shortly after her civil defense job was abolished, she commenced this litigation.

service rules. A disabled veteran shall be retained in employment in preference to all other persons, including veterans."

A 1977 amendment extended the dependents' preference to "surviving spouses," and "surviving parents." 1977 Mass Acts, ch 815.

11. A 1978 amendment requires the appointing authority to file a written statement of reasons if the person whose name was not highest is selected. 1978 Mass Acts, ch 393, § 11, currently codified at Mass Gen Laws Ann, ch 31, § 27 (West 1979).

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C

The veterans' hiring preference in Massachusetts, as in other jurisdictions, has traditionally been justified as a measure designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well-disciplined people to civil service occupations.¹² See, E.g., *Hutcheson v Director of Civil Service*, 361 Mass 480, 281 NE2d 53 (1972). The Massachusetts law dates back to 1884, when the State, as part of its first civil service legislation, gave a statutory preference to civil service applicants who were Civil War veterans if their qualifications were equal to those of nonveterans. 1884 Mass Acts, ch 320, § 14 (sixth). This tie-breaking provision blossomed into a truly absolute preference in 1895, when the State enacted its first general veterans' preference law and exempted veterans from all merit selection requirements. 1895 Mass Acts, ch 501, § 2. In response to a challenge brought

by a male nonveteran, this statute was declared violative of state constitutional provisions guaranteeing that government should be
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for the "common good" and prohibiting hereditary titles. *Brown v Russell*, 166 Mass 14, 43 NE 1005 (1896).

The current veterans' preference law has its origins in an 1896 statute, enacted to meet the state constitutional standards enunciated in *Brown v Russell*. That statute limited the absolute preference to veterans who were otherwise qualified.¹³ A closely divided Supreme Judicial Court, in an advisory opinion issued the same year, concluded that the preference embodied in such a statute would be valid. *Opinion of the Justices*, 166 Mass 589, 44 NE 625 (1896). In 1919, when the preference was extended to cover the veterans of World War I, the formula was further limited to provide for a priority in eligibility, in contrast to an absolute preference in hiring.¹⁴ See *Corliss v Civil Service Comm'rs*. 242

12. Veterans' preference laws have been challenged so often that the rationale in their support has become essentially standardized. See, e.g., *Koelfgen v Jackson*, 355 F Supp 243 (Minn 1972), summarily *aff'd*, 410 US 976, 36 L Ed 2d 173, 93 S Ct 1502; *August v Bronstein*, *supra*; *Rios v Dillman*, 499 F2d 329 (CA5 1974); *cf. Mitchell v Cohen*, 333 US 411, 419 n 12, 92 L Ed 774, 68 S Ct 518. See generally Blumberg, *De Facto and De Jure Sex Discrimination Under the Equal Protection Clause: A Reconsideration of the Veterans' Preference in Public Employment*, 26 *Buffalo L Rev* 3 (1977). For a collection of early cases, see *Annot. Veterans' Preference Laws*, 161 ALR 494 (1946).

13. 1896 Mass Acts, ch 517, § 2. The statute provided that veterans who passed examinations should "be preferred in appointment to all persons not veterans . . ." A proviso

stated: "But nothing herein contained shall be construed to prevent the certification and employment of women."

14. 1919 Mass Acts, ch 150, § 2. The amended statute provided that "the names of veterans who pass examinations . . . shall be placed upon the . . . eligible lists in the order of their respective standing, above the names of all other applicants," and further provided that "upon receipt of a requisition not especially calling for women, names shall be certified from such lists . . ." The exemption for "women's requisitions" was retained in substantially this form in subsequent revisions, see, e.g., 1954 Mass Acts, ch 627, § 5. It was eliminated in 1971. 1971 Mass Acts, ch 219, when the State made all single sex-examinations subject to the prior approval of the Massachusetts Commission Against Discrimination. 1971 Mass Acts, ch 221.

Mass 61, 136 NE 356 (1922). In *Mayor of Lynn v Commissioner of Civil Service*, 269 Mass 410, 414, 169 NE 502, 503-504 (1929), the Supreme Judicial Court, adhering to the views expressed in its 1896 advisory opinion, sustained this statute against a state constitutional challenge.

Since 1919, the preference has been repeatedly amended to cover persons who served in subsequent wars, declared or

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undeclared. See 1943 Mass Acts, ch 194; 1949 Mass Acts, ch 642, § 2 (World War II); 1954 Mass Acts, ch 627 (Korea); 1968 Mass Acts, ch 531, § 1 (Vietnam).¹⁵ The current preference formula in ch 31, § 23, is substantially the same as that settled upon in 1919. This absolute preference—even as modified in 1919—has never been universally popular. Over the years it has been subjected to repeated legal challenges, see *Hutcheson v Director of Civil Service*, supra (collecting cases), to criticism by civil service reform groups, see, e.g., Report of the Massachusetts Committee on Public Service on Initiative Bill Relative to Veterans' Preference, S No. 279 (1926); Report of Massachusetts Special Commission on Civil Service and Public Personnel Administra-

tion 37-43 (June 15, 1967) (hereinafter 1967 Report), and, in 1926, to a referendum in which it was reaffirmed by a majority of 51.9%. See id., at 38. The present case is apparently the first to challenge the Massachusetts veterans' preference on the simple ground that it discriminates on the basis of sex.¹⁶

D

The first Massachusetts veterans' preference statute defined the term "veterans" in gender-neutral language. See

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1896 Mass Acts, ch 517, § 1 ("a person" who served in the United States Army or Navy), and subsequent amendments have followed this pattern, see, e.g., 1919 Mass Acts, ch 150, § 1 ("any person who has served . . ."); 1954 Mass Acts, ch 627, § 1 ("any person, male or female, including a nurse"). Women who have served in official United States military units during wartime, then, have always been entitled to the benefit of the preference. In addition, Massachusetts, through a 1943 amendment to the definition of "wartime service," extended the preference to women who served in unofficial auxiliary women's units. 1943 Mass Acts, ch 194.¹⁷

15. A provision requiring public agencies to hire disabled veterans certified as eligible was added in 1922. 1922 Mass Acts, ch 463. It was invalidated as applied in *Hutcheson v Director of Civil Service*, 351 Mass 480, 281 NE2d 53 (1972) (suit by veteran arguing that absolute preference for disabled veterans was arbitrary on facts). It has since been eliminated and replaced with a provision giving disabled veterans an absolute preference in retention. See Mass Gen Laws Ann, ch 31, § 26 (West 1979). See n 10, supra.

16. For cases presenting similar challenges to the veterans' preference laws of other States, see *Ballou v State Department of Civil Service*, 75 NJ 365, 382 A2d 1118 (1978) (sus-

taining New Jersey absolute preference); *Feinerman v Jones*, 356 F Supp 252 (MD Pa 1973) (sustaining Pennsylvania point preference); *Branch v Du Bois*, 418 F Supp 1128 (ND Ill 1976) (sustaining Illinois modified point preference); *Wisconsin Nat. Organization for Women v Wisconsin*, 417 F Supp 978 (WD Wis 1976) (sustaining Wisconsin point preference).

17. The provision, passed shortly after the creation of the Women's Army Auxiliary Corps (WAAC), see n 21, infra, is currently found at Mass Gen Laws Ann, ch 4, § 7, cl 43 (West 1976), see n 8, supra. "Wartime service" is defined as service performed by a member of the "WAAC." A "WAAC" is "any woman

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When the first general veterans' preference statute was adopted in 1896, there were no women veterans.¹⁸ The statute, however, covered only Civil War veterans. Most of them were beyond middle age, and relatively few were actively competing for public employment.¹⁹ Thus, the impact of

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the preference upon the employment opportunities of nonveterans as a group and women

in particular was slight.²⁰

Notwithstanding the apparent attempts by Massachusetts to include as many military women as possible within the scope of the preference, the statute today benefits an overwhelmingly male class. This is attributable in some measure to the variety of federal statutes, regulations, and policies that have restricted the number of women who could enlist in the United States Armed Forces,²¹ and largely to the

who was discharged and so served in any corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States and such woman shall be deemed to be a veteran." *Ibid.*

18. Small numbers of women served in combat roles in every war before the 20th century in which the United States was involved, but usually unofficially or disguised as men. See M. Binkin & S. Bach, *Women and the Military* 5 (1977) (hereinafter Binkin and Bach). Among the better known are Molly Pitcher (Revolutionary War), Deborah Sampson (Revolutionary War), and Lucy Brewer (War of 1812). Passin, as one "George Baker," Brewer served for three years as a gunner on the U. S. S. Constitution ("Old Ironsides") and distinguished herself in several major naval battles in the War of 1812. See J. Laffin, *Women in Battle* 116-122 (1967).

19. By 1887, the average age of Civil War veterans in Massachusetts was already over 50. Massachusetts Civil Service Commissioners, *Third Annual Report* 22 (1887). The tie-breaking preference which had been established under the 1884 statute had apparently been difficult to enforce, since many appointing officers "prefer younger men." *Ibid.* The 1896 statute which established the first valid absolute preference, see *supra*, at 266, 60 L Ed 2d, at 879, again covered only Civil War veterans. 1896 Mass Acts, ch 517, § 1.

20. In 1896, for example, 2,504 persons applied for civil service positions; 2,031 were men, of whom only 32 were veterans; 773 were women. Of the 647 persons appointed, 525 were men, of whom only 9 were veterans; 122 were women. Massachusetts Civil Service Commissioners, *Thirteenth Annual Report* 5, 6 (1896). The average age of the applicants was 38. *Ibid.*

21. The Army Nurse Corps, created by Congress in 1901, was the first official military unit for women, but its members were not granted full military rank until 1944. See Binkin and Bach 4-21; M. Treadwell, *The Women's Army Corps* 6 (Dept. of Army, 1954) (hereinafter Treadwell). During World War I, a variety of proposals were made to enlist women for work as doctors, telephone operators, and clerks, but all were rejected by the War Department. See *ibid.* The Navy, however, interpreted its own authority broadly to include a power to enlist women as Yeoman F's and Marine F's. About 13,000 women served in this rank, working primarily at clerical jobs. These women were the first in the United States to be admitted to full military rank and status. See *id.*, at 10.

Official military corps for women were established in response to the massive personnel needs of World War II. See generally Binkin and Bach; Treadwell. The Women's Army Auxiliary Corps (WAAC)—the unofficial predecessor of the Women's Army Corps (WAC)—was created on May 14, 1942, followed two months later by the WAVES (Women Accepted for Voluntary Emergency Service). See Binkin and Bach 7. Not long after, the United States Marine Corps Women's Reserve and the Coast Guard Women's Reserve (SPAR) were established. See *ibid.* Some 350,000 women served in the four services; some 800 women also served as Women's Airforce Service Pilots (WASPs). *Ibid.* Most worked in health care, administration, and communications; they were also employed as airplane mechanics, parachute riggers, gunnery instructors, air traffic controllers, and the like.

The authorizations for the women's units during World War II were temporary. The Women's Armed Services Integration Act of 1948, 62 Stat. 356, established the women's services on a permanent basis. Under the Act,

simple

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fact that women have never been subjected to a military draft. See generally *Binkin and Bach* 4-21.

When this litigation was commenced, then, over 98% of the veterans in Massachusetts were male; only 1.8% were female. And over one-quarter of the Massachusetts population were veterans. During the decade, between 1963 and 1973 when the appellee was actively participating in the State's merit selection system, 47,005 new permanent appointments were made in the classified official service. Forty-three percent of those hired were women, and 57% were men. Of the women appointed, 1.8% were veterans, while 54% of the men had veteran status. A large unspecified percentage of the female appointees were serving in lower paying positions for which males traditionally had not applied.²²

women were given regular military status. However, quotas were placed on the numbers who could enlist, 62 Stat 357, 360-361 (no more than 2% of total enlisted strength), eligibility requirements were more stringent than those for men, and career opportunities were limited. *Binkin and Bach* 11-12. During the 1950's and 1960's, enlisted women constituted little more than 1% of the total force. In 1967, the 2% quota was lifted, § 119XE), 81 Stat 375, 10 USC § 3209(b) (10 USCS § 3209(b)), and in the 1970's many restrictive policies concerning women's participation in the military have been eliminated or modified. See generally *Binkin and Bach*. In 1972, women still constituted less than 2% of the enlisted strength. *Id.*, at 14. By 1975, when this litigation was commenced, the percentage had risen to 4.6%. *Ibid.*

22. The former exemption for "women's requisitions," see nn 13, 14, supra, may have operated in the 20th century to protect these types of jobs from the impact of the preference. However, the statutory history indicates

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On each of 50 sample eligible lists that are part of the record in this case, one or more women who would have been certified as eligible for appointment on the basis of test results were displaced by veterans whose test scores were lower.

At the outset of this litigation appellants conceded that for "many of the permanent positions for which males and females have competed" the veterans' preference has "resulted in a substantially greater proportion of female eligibles than male eligibles" not being certified for consideration. The impact of the veterans' preference law upon the public employment opportunities of women has thus been severe. This impact lies at the heart of the appellee's federal constitutional claim.

II

[1b] The sole question for decision

that this was not its purpose. The provision dates back to the 1896 veterans' preference law and was retained in the law substantially unchanged until it was eliminated in 1971. See n 14, supra. Since veterans in 1896 were a small but an exclusively male class, such a provision was apparently included to ensure that the statute would not be construed to outlaw a pre-existing practice of single-sex hiring explicitly authorized under the 1884 Civil Service statute. See Rule XIX.3, Massachusetts Civil Service Law and Rules and Regulations of the Commissioners (1974) ("In case the request for any . . . certification, or any law or regulation, shall call for persons of one sex, those of that sex shall be certified; otherwise sex shall be disregarded in certification"). The veterans' preference statute at no point endorsed this practice. Historical materials indicate, however, that the early preference law may have operated to encourage the employment of women in positions from which they previously had been excluded. See Thirteenth Annual Report, supra n 20, at 5, 6; Third Annual Report supra n 19, at 23.

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on this appeal is whether Massachusetts, in granting an absolute lifetime preference to veterans, has discriminated against women in violation of the Equal Protection Clause of the Fourteenth Amendment.

A

[2-4] The equal protection guarantee of the Fourteenth Amendment does not take from the States all power of classification. Massachusetts Bd. of Retirement v Murgia, 427 US 307, 314, 49 L Ed 2d 520, 96 S Ct 2562. Most laws classify, and many affect certain groups [442 US 272]

unevenly, even though the law itself treats them no differently from all other members of the class described by the law. When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. New York City Transit Authority v Beazer, 440 US 568, 59 L Ed 2d 587, 99 S Ct 1355; Jefferson v Hackney, 406 US 535, 543, 32 L Ed 2d 285, 92 S Ct 1724. Cf. James v Valtierra, 402 US 137, 28 L Ed 2d 678, 91 S Ct 1331. The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility. Dandridge v Williams, 397 US 471, 25 L Ed 2d 491, 90 S Ct 1153; San Antonio School Dist. v Rodriguez, 411 US 1, 36 L Ed 2d 16, 93 S Ct 1273. In assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification. Barrett v Indiana, 229 US 26, 29-30, 57 L Ed 1050, 33 S Ct 692; Railway Express Agency v New York, 336 US 108, 93 L Ed 533, 69 S Ct 463. When some other independent right is not at stake, see, e.g.,

Shapiro v Thompson, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322, and when there is no "reason to infer antipathy." Vance v Bradley, 440 US 93, 97, 59 L Ed 2d 171, 99 S Ct 939, it is presumed that "even improvident decisions will eventually be rectified by the democratic process" Ibid.

[5] Certain classifications, however, in themselves supply a reason to infer antipathy. Race is the paradigm. A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification. Brown v Board of Education, 347 US 483, 98 L Ed 873, 74 S Ct 686, 53 Ohio Ops 326, 38 ALR2d 1180; McLaughlin v Florida, 379 US 184, 13 L Ed 2d 222, 85 S Ct 283. This rule applies as well to a classification that is ostensibly neutral but is an obvious pretext for racial discrimination. Yick Wo v Hopkins, 118 US 356, 30 L Ed 220, 6 S Ct 1064; Guinn v United States, 238 US 347, 59 L Ed 1340, 35 S Ct 926; cf. Lane v Wilson, 307 US 268, 83 L Ed 1281, 59 S Ct 872; Gomillion v Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125. But, as was made clear in Washington v Davis, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040, and Arlington Heights v Metropolitan Housing Dev. Corp. 429 US 252, 50 L Ed 2d 450, 97 S Ct 555, even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.

[442 US 273]

[6, 7] Classifications based upon gender, not unlike those based upon race, have traditionally been the touchstone for pervasive and often

subtle discrimination. *Caban v Mohammed*, 441 US 380, 395, 60 L Ed 2d 297, 99 S Ct 1760 (Stewart, J., dissenting). This Court's recent cases teach that such classifications must bear a close and substantial relationship to important governmental objectives. *Craig v Boren*, 429 US 190, 197, 50 L Ed 2d 397, 97 S Ct 451, and are in many settings unconstitutional. *Reed v Reed*, 404 US 71, 30 L Ed 2d 225, 92 S Ct 251; *Frontiero v Richardson*, 411 US 577, 36 L Ed 2d 583, 93 S Ct 1764; *Weinberger v Wiesenfeld*, 420 US 636, 43 L Ed 2d 514, 95 S Ct 1225; *Craig v Boren*, supra; *Califano v Goldfarb*, 430 US 199, 51 L Ed 2d 270, 97 S Ct 1021; *Orr v Orr*, 440 US 268, 59 L Ed 2d 306, 99 S Ct 1102; *Caban v Mohammed*, supra. Although public employment is not a constitutional right, *Massachusetts Bd. of Retirement v Murgia*, supra, and the States have wide discretion in framing employee qualifications, see, e.g., *New York City Transit Authority v Beazer*, supra, these precedents dictate that any state law overtly or covertly designed to prefer males over females in public employment would require an exceedingly persuasive justification to withstand a constitutional challenge under the Equal Protection Clause of the Fourteenth Amendment.

B

[8] The cases of *Washington v Davis*, supra, and *Arlington Heights v Metropolitan Housing Dev. Corp.*, supra, recognize that when a neutral law has a disparate impact upon a group that has historically been the victim of discrimination, an unconstitutional purpose may still be at

work. But those cases signaled no departure from the settled rule that the Fourteenth Amendment guarantees equal law, not equal results. *Davis* upheld a job-related employment test that white people passed in proportionately greater numbers than Negroes, for there had been no showing that racial discrimination entered into the establishment or formulation of the test. *Arlington Heights* upheld a zoning board decision that tended to perpetuate racially segregated housing patterns, [442 US 274]

since, apart from its effect, the board's decision was shown to be nothing more than an application of a constitutionally neutral zoning policy. Those principles apply with equal force to a case involving alleged gender discrimination.

[9] When a statute gender-neutral on its face is challenged on the ground that its effects upon women are disproportionately adverse, a two-fold inquiry is thus appropriate. The first question is whether the statutory classification is indeed neutral in the sense that it is not gender-based. If the classification itself, covert or overt, is not based upon gender, the second question is whether the adverse effect reflects invidious gender-based discrimination. See *Arlington Heights v Metropolitan Housing Dev. Corp.*, supra. In his second inquiry, impact provides an "important starting point," 429 US, at 266, 50 L Ed 2d 450, 97 S Ct 555, but purposeful discrimination is the condition that offends the Constitution. *Swann v Charlotte-Mecklenburg Board of Education*, 402 US 1, 16, 28 L Ed 2d 554, 91 S Ct 1267.

It is against this background of

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precedent that we consider the merits of the case before us.

III

A

[1c] The question whether ch 31, § 23, establishes a classification that is overtly or covertly based upon gender must first be considered. The appellee has conceded that ch 31, § 23, is neutral on its face. She has also acknowledged that state hiring preferences for veterans are not per se invalid, for she has limited her challenge to the absolute lifetime preference that Massachusetts provides to veterans. The District Court made two central findings that are relevant here: first, that ch 31, § 23, serves legitimate and worthy purposes; second, that the absolute preference was not established for the purpose of discriminating against women. The appellee has thus acknowledged and the District Court has thus found

(442 US 275)

that the distinction between veterans and nonveterans drawn by ch 31, § 23, is not a pretext for gender discrimination. The appellee's concession and the District Court's finding are clearly correct.

If the impact of this statute could not be plausibly explained on a neutral ground, impact itself would signal that the real classification made by the law was in fact not neutral. See *Washington v Davis*, supra, at 242, 48 L Ed 2d 597, 96 S Ct 2040; *Arlington Heights v Metropolitan Housing Dev. Corp.*, supra, at 266, 50 L Ed 2d 450, 97 S Ct 555. But there can be but one answer to the question whether this veteran preference excludes significant numbers of women from preferred state jobs because they are women or because

they are nonveterans. Apart from the fact that the definition of "veterans" in the statute has always been neutral as to gender and that Massachusetts has consistently defined veteran status in a way that has been inclusive of women who have served in the military, this is not a law that can plausibly be explained only as a gender-based classification. Indeed, it is not a law that can rationally be explained on that ground. Veteran status is not uniquely male. Although few women benefit from the preference, the nonveteran class is not substantially all female. To the contrary, significant numbers of nonveterans are men, and all nonveterans—male as well as female—are placed at a disadvantage. Too many men are affected by ch 31, § 23, to permit the inference that the statute is but a pretext for preferring men over women.

Moreover, as the District Court implicitly found, the purposes of the statute provide the surest explanation for its impact. Just as there are cases in which impact alone can unmask an invidious classification, cf. *Yick Wo v Hopkins*, 118 US 356, 30 L Ed 220, 6 S Ct 1064, there are others in which—notwithstanding impact—the legitimate noninvidious purposes of a law cannot be missed. This is one. The distinction made by ch 31, § 23, is, as it seems to be, quite simply between veterans and nonveterans, not between men and women.

(442 US 276)

B

The dispositive question, then, is whether the appellee has shown that a gender-based discriminatory purpose has, at least in some measure, shaped the Massachusetts veterans' preference legislation. A: did the

District Court. she points to two basic factors which in her view distinguish ch 31, § 23, from the neutral rules at issue in the *Washington v Davis* and *Arlington Heights* cases. The first is the nature of the preference, which is said to be demonstrably gender-biased in the sense that it favors a status reserved under federal military policy primarily to men. The second concerns the impact of the absolute lifetime preference upon the employment opportunities of women, an impact claimed to be too inevitable to have been unintended. The appellee contends that these factors, coupled with the fact that the preference itself has little if any relevance to actual job performance, more than suffice to prove the discriminatory intent required to establish a constitutional violation.

1

The contention that this veterans' preference is "inherently non neutral" or "gender-biased" presumes that the State, by favoring veterans, intentionally incorporated into its public employment policies the panoply of sex-based and assertedly discriminatory federal laws that have prevented all but a handful of women from becoming veterans. There are two serious difficulties with this argument. First, it is wholly at odds with the District Court's central finding that Massachusetts has not offered a preference to veterans for the purpose of discriminating against women. Second, it cannot be reconciled with the assumption made by both the appellee and the District Court that a more

limited hiring preference for veterans could be sustained. Taken together, these difficulties are fatal.

[10] To the extent that the status of veteran is one that few
[442 US 277]

women have been enabled to achieve, every hiring preference for veterans, however modest or extreme, is inherently gender-biased. If Massachusetts by offering such a preference can be said intentionally to have incorporated into its state employment policies the historical gender-based federal military personnel practices, the degree of the preference would or should make no constitutional difference. Invidious discrimination does not become less so because the discrimination accomplished is of a lesser magnitude.²³ Discriminatory intent is simply not amenable to calibration. It either is a factor that has influenced the legislative choice or it is not. The District Court's conclusion that the absolute veterans' preference was not originally enacted or subsequently reaffirmed for the purpose of giving an advantage to males as such necessarily compels the conclusion that the State, intended nothing more than to prefer "veterans." Given this finding, simple logic suggests that an intent to exclude women from significant public jobs was not at work in this law. To reason that it was, by describing the preference as "inherently non neutral" or "gender-biased," is merely to restate the fact of impact, not to answer the question of intent.

To be sure, this case is unusual in

²³ This is not to say that the degree of impact is irrelevant to the question of intent. But it is to say that a more modest preference, while it might well lessen impact and,

as the State argues, might lessen the effectiveness of the statute in helping veterans, would not be any more or less "neutral" in the constitutional sense.

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that it involves a law that by design is not neutral. The law overtly prefers veterans as such. As opposed to the written test at issue in *Davis*, it does not purport to define a job-related characteristic. To the contrary, it confers upon a specifically described group—perceived to be particularly deserving—a competitive headstart. But the District Court found, and the appellee has not disputed, that this legislative choice was legitimate. The basic distinction between veterans and nonveterans, having been found not gender-based, and the goals of the

[442 US 278]

preference having been found worthy, ch 31 must be analyzed as is any other neutral law that casts a greater burden upon women as a group than upon men as a group. The enlistment policies of the Armed Services may well have discriminated on the basis of sex. See *Frontiero v Richardson*, 411 US 677, 36 L Ed 2d 583, 93 S Ct 1764; cf. *Schlesinger v Ballard*, 419 US 498, 42 L Ed 2d 610, 95 S Ct 572. But the history of discrimination against women in the military is not on trial in this case.

2

[11] The appellee's ultimate argument rests upon the presumption, common to the criminal and civil law, that a person intends the natural and foreseeable consequences of his voluntary actions. Her position was well stated in the concurring opinion in the District Court:

"Conceding . . . that the goal here

was to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal would freeze women out of all those state jobs actively sought by men. To be sure, the legislature did not wish to harm women. But the cutting-off of women's opportunities was an inevitable concomitant of the chosen scheme—as inevitable as the proposition that if tails is up, heads must be down. Where a law's consequences are *that* inevitable, can they meaningfully be described as unintended?" 451 F Supp, at 151.

This rhetorical question implies that a negative answer is obvious, but it is not. The decision to grant a preference to veterans was of course "intentional." So, necessarily, did an adverse impact upon nonveterans follow from that decision. And it cannot seriously be argued that the Legislature of Massachusetts could have been unaware that most veterans are men. It would thus be disingenuous to say that the adverse consequences of this legislation for women were unintended, in the sense that they were not volitional or in the sense that they were not foreseeable.

[442 US 279]

[12a] "Discriminatory purpose," however, implies more than intent as volition or intent as awareness of consequences. See *United Jewish Organizations v Carey*, 430 US 144, 179, 51 L Ed 2d 229, 97 S Ct 996 (concurring opinion).²⁴ It implies that

24. Proof of discriminatory intent must necessarily usually rely on objective factors, several of which were outlined in *Arlington Heights v Metropolitan Housing Dev. Corp.*, 429 US 252, 266, 50 L Ed 2d 459, 97 S Ct 555. The inquiry is practical. What a legislature or any official entity is "up to" may be plain

from the results its actions achieve, or the results they avoid. Often it is made clear from what has been called, in a different context, "the give and take of the situation." *Cramer v United States*, 325 US 1, 32-33, 49 L Ed 1441, 65 S Ct 919 (Jackson, J.)

the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects upon an identifiable group.²⁵ Yet nothing in the record demonstrates that this preference for veterans was originally devised or subsequently re-enacted because it would accomplish the collateral goal of keeping women in a stereotypic and predefined place in the Massachusetts Civil Service.

To the contrary, the statutory history shows that the benefit of the preference was consistently offered to "any person" who was a veteran. That benefit has been extended to women under a very broad statutory definition of the term veteran.²⁶ The preference formula itself, which is the focal

[442 US 280]

point of this challenge, was first adopted—so it appears from this record—out of a perceived need

25. [12b] This is not to say that the inevitability or foreseeability of consequences of a neutral rule has no bearing upon the existence of discriminatory intent. Certainly, when the adverse consequences of a law upon an identifiable group are as inevitable as the gender-based consequences of ch 31, § 23, a strong inference that the adverse effects were desired can reasonably be drawn. But in this inquiry—made as it is under the Constitution—an inference is a working tool, not a synonym for proof. When as here, the impact is essentially an unavoidable consequence of a legislative policy that has in itself always been deemed to be legitimate, and when, as here, the statutory history and all of the available evidence affirmatively demonstrate the opposite, the inference simply fails to ripen into proof.

26. See nn 8, 17, supra.

27. The appellee has suggested that the former statutory exception for "women's requisitions," see nn 13, 14, supra, supplies evidence that Massachusetts, when it established and subsequently reaffirmed the absolute-pref-

to help a small group of older Civil War veterans. It has since been reaffirmed and extended only to cover new veterans.²⁷ When the totality of legislative actions establishing and extending the Massachusetts veterans' preference are considered, see *Washington v Davis*, 426 US. at 242, 48 L Ed 2d 597, 96 S Ct 2040, the law remains what it purports to be: a preference for veterans of either sex over nonveterans of either sex, not for men over women.

IV

[1d] Veterans' hiring preferences represent an awkward—and, many argue, unfair—exception to the widely shared view that merit and merit alone should prevail in the employment policies of government. After a war, such laws have been enacted virtually without opposition. During peacetime, they inevitably have come to be viewed in many quarters as undemocratic and unwise.²⁸ Absolute and permanent pref-

erence legislation, assumed that women would not or should not compete with men. She has further suggested that the former provision extending the preference to certain female dependents of veterans, see n 10, supra, demonstrates that ch 31, § 23, is laced with "old notions" about the proper roles and needs of the sexes. See *Califano v Goldfarb*, 430 US 199, 51 L Ed 2d 270, 97 S Ct 1021; *Weinberger v Wiesenfeld*, 420 US 636, 43 L Ed 2d 514, 95 S Ct 1225. But the first suggestion is totally belied by the statutory history, see supra, at 267-271, and nn 19, 20, 60 L Ed 2d, at 880-882, and the second fails to account for the consistent statutory recognition of the contribution of women to this Nation's military efforts.

28. See generally Hearings on Veterans' Preference Oversight before the Subcommittee on Civil Service, of the House Post Office and Civil Service Committee, 95th Cong, 1st Sess (1977); Report of Comptroller General, *Conflicting Congressional Policies: Veterans' Preference and Apportionment vs Equal Employment Opportunity* (Sept. 29, 1977).

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ferences, as the troubled history of this law demonstrates, have always been subject to the objection that they give the veteran

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more than a square deal. ~~But the Fourteenth Amendment, "cannot be made a refuge from ill-advised laws."~~ District of Columbia v Brooke, 214 US 138, 150, 53 L Ed 941, 29 S Ct 560. The substantial edge granted to vet-

erans by ch 31, § 23, may reflect unwise policy. The appellee, however, has simply failed to demonstrate that ~~the law in any way reflects a purpose to discriminate on the basis of sex.~~

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SEPARATE OPINIONS

Mr. Justice Stevens, with whom Mr. Justice White joins, concurring

While I concur in the Court's opinion, I confess that I am not at all sure that there is any difference between the two questions posed ante, at 274, 60 L Ed 2d, at 884. If a classification is not overtly based on gender, I am inclined to believe the question whether it is covertly gender based is the same as the question whether its adverse effects reflect invidious gender-based discrimination. However the question is phrased, for me the answer is largely provided by the fact that the number of males disadvantaged by Massachusetts' veterans' preference (1,867,000) is sufficiently large—and sufficiently close to the number of disadvantaged females (2,954,000)—to refute the claim that the rule was intended to benefit males as a class over females as a class.

Mr. Justice Marshall, with whom Mr. Justice Brennan joins, dissenting.

Although acknowledging that in some circumstances, discriminatory intent may be inferred from the inevitable or foreseeable impact of a statute, ante, at 279 n. 25, 60 L Ed 2d, at 886, the Court concludes that no such intent has been established here. I cannot agree. In my judgment, Massachusetts' choice of an

absolute veterans' preference system evinces purposeful

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gender-based discrimination. And because the statutory scheme bears no substantial relationship to a legitimate governmental objective, it cannot withstand scrutiny under the Equal Protection Clause.

I

The District Court found that the "prime objective" of the Massachusetts veterans' preference statute, Mass Gen Laws Ann, ch 31, § 23, was to benefit individuals with prior military service. Anthony v Commonwealth, 415 F Supp 485, 497 (Mass 1976). See Feeney v Massachusetts, 451 F Supp 143, 145 (Mass 1978). Under the Court's analysis, this factual determination "necessarily compels the conclusion that the State intended nothing more than to prefer 'veterans.' Given this finding, simple logic suggests that an intent to exclude women from significant public jobs was not at work in this law." Ante, at 277, 60 L Ed 2d, at 886. I find the Court's logic neither simple nor compelling.

That a legislature seeks to advantage one group does not, as a matter of logic or of common sense, exclude the possibility that it also intends to

disadvantage another. Individuals in general and lawmakers in particular frequently act for a variety of reasons. As this Court recognized in *Arlington Heights v Metropolitan Housing Dev. Corp.*, 429 US 252, 265, 50 L Ed 2d 450, 97 S Ct 555 (1977), "[r]arely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern." Absent an omniscience not commonly attributed to the judiciary, it will often be impossible to ascertain the sole or even dominant purpose of a given statute. See *McGinnis v Royster*, 410 US 263, 276, 277, 35 L Ed 2d 282, 93 S Ct 1055 (1973); *Ely, Legislative and Administrative Motivation in Constitutional Law*, 79 Yale LJ 1205, 1214 (1970). Thus, the critical constitutional inquiry is not whether an illicit consideration was the primary or but-for cause of a decision, but rather whether it had an appreciable role in shaping a given legislative enactment. Where there is

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"proof that a discriminatory purpose has been a motivating factor in the decision, . . . judicial deference is no longer justified." *Arlington Heights v Metropolitan Housing Dev. Corp.*, supra, at 265-266, 50 L Ed 2d 450, 97 S Ct 555 (emphasis added).

Moreover, since reliable evidence of subjective intentions is seldom obtainable, resort to inference based on objective factors is generally unavoidable. See *Beer v United States*, 425 US 130, 148-149, n 4, 47 L Ed 2d 629, 96 S Ct 1357 (1976) (Marshall, J., dissenting); cf. *Palmer v Thompson*, 403 US 217, 224-225, 29 L Ed 2d 438, 91 S Ct 1940 (1971); *United States v O'Brien*, 391 US

367, 383-384, 20 L Ed 2d 672, 88 S Ct 1673 (1968). To discern the purposes underlying facially neutral policies, this Court has therefore considered the degree, inevitability, and foreseeability of any disproportionate impact as well as the alternatives reasonably available. See *Monroe v Board of Commissioners*, 391 US 470, 459, 20 L Ed 2d 733, 88 S Ct 1700 (1968); *Goss v Board of Education*, 372 US 683, 688-689, 10 L Ed 2d 632, 83 S Ct 1405 (1963); *Gomillion v Lightfoot*, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960); *Griffin v Illinois*, 351 US 12, 17 n 11, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055 (1956). Cf. *Albemarle Paper Co. v Moody*, 422 US 405, 425, 45 L Ed 2d 280, 95 S Ct 2362 (1975).

In the instant case, the impact of the Massachusetts statute on women is undisputed. Any veteran with a passing grade on the civil service exam must be placed ahead of a nonveteran, regardless of their respective scores. The District Court found that, as a practical matter, this preference supplants test results as the determinant of upper level civil service appointments. 415 F Supp, at 488-489. Because less than 2% of the women in Massachusetts are veterans, the absolute preference formula has rendered desirable state civil service employment an almost exclusively male prerogative. 451 F Supp, at 151 (Campbell, J., concurring).

As the District Court recognized, this consequence follows foreseeably, indeed inexorably, from the long history of policies severely limiting women's participation in the military.¹

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Although neutral in form,

1. See *Anthony v Massachusetts*, 415 F Supp 465, 490, 495-499 (Mass 1976); *Feeney v Massachusetts*, 451 F Supp 143, 145, 148 (Mass 1978). In addition to the 2% quota on

women's participation in the Armed Forces, see ante, at 270 n 21, 60 L Ed 2d, at 882, enlistment and appointment requirements

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the statute is anything but neutral in application. It inescapably reserves a major sector of public employment to "an already established class which, as a matter of historical fact, is 08% male." *Ibid.* Where the foreseeable impact of a facially neutral policy is so disproportionate, the burden should rest on the State to establish that sex-based considerations played no part in the choice of the particular legislative scheme. Cf. *Castaneda v Partida*, 430 US 482, 51 L Ed 2d 498, 97 S Ct 1272 (1977); *Washington v Davis*, 426 US 229, 241, 48 L Ed 2d 597, 96 S Ct 2040 (1976); *Alexander v Louisiana*, 405 US 625, 632, 31 L Ed 2d 536, 92 S Ct 1221 (1972); see generally *Brest, Palmer v Thompson; An Approach to the Problem of Unconstitutional Legislative Motive*, 1971 Sup Ct Rev 95, 123.

Clearly, that burden was not sustained here. The legislative history of the statute reflects the Commonwealth's patent appreciation of the impact the preference system would have on women, and an equally evident desire to mitigate that impact only with respect to certain traditionally female occupations. Until 1971, the statute and implementing civil service

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have been more stringent for females than males with respect to age, mental and physical aptitude, parental consent, and educational attainment. *M. Binkin & S. Bach, Women and the Military* (1977) (hereinafter *Binkin and Bach*); Note, *The Equal Rights Amendment and the Military*, 62 *Yale LJ* 1533, 1539 (1973). Until the 1970's the Army Forces precluded enlistment and appointment of women, but not men, who were married or had dependent children. See 415 F Supp. at 490; App 55; *Id.* 95, 99, 100, 114. Sex-based restrictions on advancement and training opportunities also diminished the incentives for

regulations exempted from operation of the preference any job requisitions "especially calling for women." 1954 Mass Acts, ch 627, § 5. See also 1896 Mass Acts, ch 517, § 6; 1919 Mass Acts ch 150, § 2; 1945 Mass Acts, ch 725, § 2(e); 1965 Mass Acts, ch 53; ante, at 266, nn 13, 14, 60 L Ed 2d, at 879. In practice, this exemption, coupled with the absolute preference for veterans, has created a gender-based civil service hierarchy, with women occupying low-grade clerical and secretarial jobs and men holding more responsible and remunerative positions. See 415 F Supp. at 488; 451 F Supp. at 148 n 9.

Thus, for over 70 years, the Commonwealth has maintained, as an integral part of its veterans' preference system, an exemption relegating female civil service applicants to occupations traditionally filled by women. Such a statutory scheme both reflects and perpetuates precisely the kind of archaic assumptions about women's roles which we have previously held invalid. See *Orr v Orr*, 440 US 268, 59 L Ed 2d 306, 99 S Ct 1102 (1979); *Califano v Goldfarb*, 430 US 199, 210-211, 51 L Ed 2d 270, 97 S Ct 1021 (1977); *Stanton v Stanton*, 421 US 7, 14, 43 L Ed 2d 688, 95 S Ct 1373 (1975);

qualified women to enlist. See *Binkin and Bach* 10-17; *Beans, Sex Discrimination in the Military*, 67 *Mil L Rev* 19, 59-63 (1975). Cf. *Schlesinger v Bullard*, 419 US 496, 508, 42 L Ed 2d 610, 95 S Ct 572 (1975).

Thus, unlike the employment examination in *Washington v Davis*, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040 (1976), which the Court found to be demonstrably job related, the Massachusetts preference statute incorporates the results of sex-based military policies irrelevant to women's current fitness for civilian public employment. See 415 F Supp. at 496-499

Weinberger v Wiesenfeld, 420 US 636, 645, 43 L Ed 2d 514, 95 S Ct 1225 (1975). Particularly when viewed against the range of less discriminatory alternatives available to assist veterans.² Massachusetts' choice of a formula that so severely restricts public employment opportunities for women cannot reasonably be thought gender-neutral. Cf. *Albemarle Paper Co. v Moody*, supra, at 425, 45 L Ed 2d 280, 95 S Ct 2362. The Court's conclusion to the contrary—that "nothing in the record" evinces a "collateral goal of keeping women in a stereotypic and predefined place in the

[442 US 266]

Massachusetts Civil Service," ante, at 279, 60 L Ed 2d, at 892—displays a singularly myopic view of the facts established below.³

II

To survive challenge under the Equal Protection Clause, statutes reflecting gender-based discrimination must be substantially related to the achievement of important governmental objectives. See *Califano v Webster*, 430 US 313, 316-317, 51 L Ed 2d 360, 97 S Ct 1192 (1977); *Craig v Boren*, 429 US 190, 197, 50 L Ed 2d 397, 97 S Ct 451 (1976); *Reed v Reed*, 404 US 71, 76, 30 L Ed 2d 225, 92 S Ct 251 (1971). Appellants here

advance three interests in support of the absolute preference system: (1) assisting veterans in their readjustment to civilian life; (2) encouraging military enlistment; and (3) rewarding those who have served their country. Brief for Appellants 24. Although each of those goals is unquestionably legitimate, the "mere recitation of a benign, compensatory purpose" cannot of itself insulate legislative classifications from constitutional scrutiny. *Weinberger v Wiesenfeld*, supra, at 648, 43 L Ed 2d 514, 95 S Ct 1225. And in this case, the Commonwealth has failed to establish a sufficient relationship between its objectives and the means chosen to effectuate them.

With respect to the first interest, facilitating veterans' transition to civilian status, the statute is plainly overinclusive. Cf. *Trimble v Gordon*, 430 US 762, 770-772, 52 L Ed 2d 31, 97 S Ct 1459, 4 Ohio Ops 3d 296 (1977); *Jimenez v Weinberger*, 417 US 628, 637, 41 L Ed 2d 363, 94 S Ct 2496 (1974). By conferring a permanent preference, the legislation allows veterans to invoke their advantage repeatedly, without regard to their date of discharge. As the record demonstrates, a substantial

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majority of those currently enjoying the benefits of the system are not re-

2. Only four States afford a preference comparable in scope to that of Massachusetts. See Fleming & Shanor, *Veterans' Preferences and Public Employment: Unconstitutional Gender Discrimination?*, 26 *Emory LJ* 13, 17 n 13 (1977) (citing statutes). Other States and the Federal Government grant point or tie-breaking preferences that do not foreclose opportunities for women. See *id.*, at 13, and nn 12, 14; ante, at 261 n 7, 60 L Ed 2d, at 577; Hearings on Veterans' Preference Oversight before the Subcommittee on Civil Service of the House Committee on Post Office and Civil Service, 95th Cong., 1st Sess., 4 (1977) (statement of Alan Campbell, Chairman, United States

Civil Service Commission).

3. Although it is relevant that the preference statute also disadvantages a substantial group of men, see ante, at 281, 60 L Ed 2d, at 889 (Stevens, J., concurring), it is equally pertinent that 47% of Massachusetts men over 18 are veterans, as compared to 0.8% of Massachusetts women. App 83. Given this disparity, and the indicia of intent noted at 284-285, 60 L Ed 2d, at 891-892, supra, the absolute number of men denied preference cannot be dispositive, especially since they have not faced the barriers to achieving veteran status confronted by women. See n 1, supra.

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cently discharged veterans in need of readjustment assistance.⁴

Nor is the Commonwealth's second asserted interest, encouraging military service, a plausible justification for this legislative scheme. In its original and subsequent re-enactments, the statute extended benefits retroactively to veterans who had served during a prior specified period. See ante, at 265-267, 60 L Ed 2d, at 879-880. If the Commonwealth's "actual purpose" is to induce enlistment, this legislative design is hardly well suited to that end. See *Califano v Webster*, supra, at 317, 51 L Ed 2d 360, 97 S Ct 1192; *Weinberger v Wiesenfeld*, supra, at 648, 43 L Ed 2d 514, 95 S Ct 1225. For I am unwilling to assume what appellants made no effort to prove, that the possibility of obtaining an ex post facto civil service preference significantly influenced the enlistment decisions of Massachusetts residents. Moreover, even if such influence could be presumed, the statute is still grossly overinclusive in that it bestows benefits on men drafted as well as those who volunteered.

Finally, the Commonwealth's third interest, rewarding veterans, does not "adequately justify the salient features" of this preference system. *Craig v Boren*, 429 U.S. at 202-203, 50 L Ed 2d 397, 97 S Ct 451. See *Orr v Orr*, supra, at 281, 59 L Ed 2d 306, 99 S Ct 1102. Where a particular statutory scheme visits substantial hardship on a class long subject to discrimination, the legislation

cannot be sustained unless "carefully tuned to alternative considerations." *Trimble v Gordon*, supra, at 772, 52 L Ed 2d 31, 97 S Ct 1459, 4 Ohio Ops 3d 296. See *Caban v Mohammed*, 441 US 380, 392-393, n 13, 60 L Ed 2d 297, 99 S Ct 1760 (1979); *Mathews v Lucas*, 427 US 495, 49 L Ed 2d 651, 96 S Ct 2755 (1976). Here, there are a wide variety of less discriminatory means by which Massachusetts could effect its compensatory purposes. For example, a point preference system, such as that maintained by many States and the Federal Government,

[442 US 288]

see n 2, supra, or an absolute preference for a limited duration, would reward veterans without excluding all qualified women from upper level civil service positions. Apart from public employment, the Commonwealth, can, and does, afford assistance to veterans in various ways, including tax abatements, educational subsidies, and special programs for needy veterans. See *Mass Gen Laws Ann*, ch 59, § 5, Fifth (West Supp 1979); *Mass Gen Laws Ann*, ch 69, §§ 7, 7B (West Supp 1979); and *Mass Gen Laws Ann*, chs. 115, 115A (West 1969 and Supp 1978). Unlike these and similar benefits, the costs of which are distributed across the taxpaying public generally, the Massachusetts statute exacts a substantial price from a discrete group of individuals who have long been subject to employment discrimination,⁵ and who, "because of circumstances totally beyond their control, have

4. The eligibility lists for the positions Ms. Feeney sought included 95 veterans for whom discharge information was available. Of those 95 males, 4 (67%) were discharged prior to 1960. App. 1, n. 150-151, 168-170.

5. See *Frontiero v Richardson*, 411 US 677, 689 n. 20, 36 L Ed 2d 580, 93 S Ct 1754 (1973).

Kahn v Shevin, 416 US 351, 353-354, 40 L Ed 2d 189, 94 S Ct 1734 (1974); United States Bureau of the Census, Current Population Reports, No. 177, Money Income and Poverty Status of Families and Persons in the United States: 1975 Advance Report, Table 7, Sept. 1977.

[had] little if any chance of becoming members of the preferred class." 415 F Supp. at 499. See n 1. supra.

In its present unqualified form, the veteran's preference statute precludes all but a small fraction of Massachusetts women from obtaining any civil service position also of

interest to men. See 451 F Supp. at 151 (Campbell, J., concurring). Given the range of alternatives available, this degree of preference is not constitutionally permissible.

I would affirm the judgment of the court below.

EDITOR'S NOTE

An annotation on "Validity, under equal protection clause of Fourteenth Amendment, of gender-based classifications arising by operation of state law," appears p 1188, *infra*.

dance with a valid agreement entered into in accordance with AS 23.40;

(3) the use of employee selection methods, including open competitive examinations, when appropriate, that will fairly test the capacity and fitness of the person examined to discharge the duties of the class in which employment is sought;

(4) the establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examinations;

(5) the procedure for certifying eligible candidates; the rule adopted under this paragraph may include procedures providing a preference for certifying local residents when appropriate;

(6) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service and promotion shall be by competitive examination whenever possible; in considering promotions, the applicants' qualifications, performance record, seniority, and conduct shall be evaluated;

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period and may be demoted to a former class without right of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

(8) nonpermanent and emergency appointments to positions in the state service in accordance with AS 39.25.195 — 39.25.200;

(9) provisional appointment without competitive examination when appropriate eligible lists are not available;

(10) transfers from one department to another and from another merit system jurisdiction to the state service;

(11) transfers from one area of the state to another;

(12) the reinstatement of a person who resigns in good standing;

(13) layoffs for reason of lack of money or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;

(14) the development, maintenance, and use of employee performance records;

(15) the establishment of disciplinary measures which may include disciplinary suspension without pay;

(16) the procedures for review of disputed personnel actions, for resolving employee and interagency grievances, and for resolving grie-

(17) hours of work for all employees in the state service;

(18) methods and procedures covering overtime work and pay;

(19) the granting of employment preference rights to a veteran not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter; in an examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran, but the additional points may be used only the first time the veteran obtains a position in the classified service; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; this paragraph may not be interpreted to amend the terms of a collective bargaining agreement; in this paragraph

(A) "veteran" means a person with 181 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and November 7, 1975;

(B) "disabled veteran" means a veteran who is entitled to compensation under laws administered by the United States Veterans' Administration, or a person who was honorably discharged or released from active duty because of a service-connected disability;

(20) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of two persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees;

(21) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;

(22) the establishment of programs facilitating the employment of disadvantaged persons;

(23) the delegation, when feasible of personnel responsibilities and duties to the principal departments of the executive branch;

(24) the establishment of a transition period of up to 12 months for

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

~~XXXXXXXXXXXXXXXXXXXX~~
Bill Sheffield, Governor

3341 FAIRBANKS ST.
ANCHORAGE, ALASKA 99503
PHONE: (907) 279-6441

January 20, 1983

Mr. Wayne J. Pinguoch
Box 315
Wasilla, Alaska 99687

Dear Mr. Pinguoch:

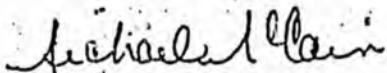
Your name has been on State of Alaska eligible lists with Veteran's Preference Points.

① [Recent legislative changes to the State Personnel Act have affected the criteria for awarding Veteran's Preference Points. Effective July 1, 1982, the law has been changed to allow points only for first time entry into the classified service. Once an individual is hired into a permanent/probationary position s/he loses all future rights to veteran's points.]

Review of your current application indicates you have been previously employed by the State of Alaska. Therefore, in compliance with the law, I have removed your Veterans' Preference Points from all lists on which your name appears.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Michael McCain
Personnel Technician

MM:aj

cc: Certifications



Official Business

Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1983

Mr. Wayne J. Pinguoch
Box 315
Wasilla, Alaska 99687

Dear Wayne:

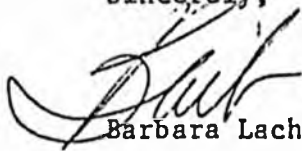
Unfortunately, the state personnel law was changed, as had been explained to you in the letter you received from Michael McCain of the Division of Personnel. The language of this new law reads: "...but the additional (veteran's preference) points may be used only the first time the veteran obtains a position in classified service..."

Since you have held a classified position previously, by law, you lose the right to ever use your veteran's preference again.

The situation you presently find yourself in is very unfair, and I will be having a bill drafted that change the language so that a veteran's preference may be used once, but not necessarily the first time a veteran obtains a classified position. This would ensure the veteran's right to use the preference points whenever those points would most benefit the veteran.

I'm sorry that there is nothing I can do to immediately help the situation, but I will do everything possible to correct this unfair law.

Sincerely,


Barbara Lacher
Representative
District 16

VETERANS PREFERENCE (HB 176/HB31)

Rich Wilson
Re: ACUTAW IS
BLD. Inv
276-7742

CONTACTS:

FRANK RAY - Director, Personall (Department of Administration)
DEANA DISOMONE - Recruitment and Examining

465-4430

Bert Finley - Employment Security, Department of Labor

1. How many veterans are currently state employees?
Can this be broken down by what era veteran it was?
(i.e. VietNam or later, and WWII/Korea etc.)
2. How many times was ~~is~~ the veterans preference ~~the~~ the deciding point in who gets the job? (ie. when test scores are within three points of each other, you can assume that the five point veterans preference was the deciding factor)
3. What percentage of the vets applying for state jobs are white men? White women? Minority women/men?
4. What percentage of vets are denied veterans preference because of a less than honorable discharge (ie. "bad paper") and are these vets primarily VietNam era and later?
5. What percentage of state jobs are decided by less than five points?
6. Does the state use any other preference points? (ie. local hire, minorities, etc.) *Employee credits.*
- 7.

→ PARDED ABOVE
575 if them
written in the
DEPART.

MONDAY 8/15/83 - SPOKE WITH DEANA DISOMONE. SHE WILL ANSWER ABOVE QUESTIONS (EXCEPT FOR #4) IN WRITING. EXPECT LETTER BY ~~XXXX~~ FIRST WIEEK IN SEPTEMBER.
GD

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL

BILL SHEFFIELD, GOVERNOR

POUCH C - 0201
JUNEAU, ALASKA 99811
PHONE:

(907) 465-4430

HB174

September 15, 1983

Ms. Ginger Banes
Senator Fisher's Office
221 E. 7th Avenue, #204
Anchorage, AK 99501

Dear Ms. Banes:

I will try to answer some of the questions you asked over the telephone last month about veteran's preference. I am sorry it has taken so long, and that I cannot fully answer all your questions. A lot of the information you asked for in questions one and three is not available except through a manual files search of tens of thousands of records, and I do not have the staff to do that. The following is the incomplete information we have on our applicant computer records.

1. How many State employees are veterans?

I can only tell you how many employees, who have also applied for a classified State job within the past two years, are veterans. There are 470 veterans in that group. As a comparison, we have 7,005 employees on our applicant files, so veterans are 6.7% of the total. However, excluded from this figure are those employees who have not applied for a classified State job within the past two years. This would mean that long-term employees are probably underrepresented in that percentage.

2. What percentage of veterans applying for State jobs are female?

Eight percent of veterans who have applied for a classified State job are female.

3. How many times are the top five ranks separated by fewer than five points from the sixth rank?

Without an extensive manual search I cannot answer this question. Most individual candidates on certifications appear to be separated by fewer than five points, however, I cannot give a definitive answer without further research.

Ms. Ginger Banes

-2-

September 15, 1983

4. Does the Division of Personnel give other numerical preference points to groups other than veterans?

Yes, to permanent State employees as provided by union contract and long-standing practice. These employee credits are variable according to length and quality of State service.

Thank you for your patience in waiting for this letter. Let me know if you have questions about the information I provided.

Sincerely,



Diane DeSimone
Chief, Recruitment & Examining

DD/je
0/01/0914-18

Senator Vic Fischer

Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954



June 20, 1983

Mr. Mike Hennessey
2500 Leeward Drive
Anchorage, Alaska 99502

Dear Mike:

you say
I'm not sure why people are under the impression that I don't consider HB 176 "important." ~~That's simply not true.~~

It is true that there are numerous bills in the Senate State Affairs Committee, which I chair, and several of them deal with employment preferences including veterans. None of these bills was included in the House or Senate priority list of legislation that must be voted on this session.

That certainly doesn't mean that anyone thinks the bill isn't "important." In fact, its absence from the priority lists could just as easily mean its sponsors believe that it's too important to push through without ample public hearings. There are currently over 700 bills pending in the Legislature and less than 50 are on the priority lists. Obviously, many bills that address important and critical issues are not going to be heard this year. There simply isn't time.

I, or my staff, would be happy to speak to you about this bill, either in my Juneau office (if we are still in session) 465-4954, or in Anchorage at 278-3654. (Call collect.)

Best regards,
Vic

Senator Vic Fischer

June 20, 1983

Mr. Mike Hennessey
2900 Leawood Drive
Anchorage, Alaska 99502

Dear Mike:

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Best regards,

Senator Vic Fischer

6/8/83, JUNE, ANC LIO, MSNG 23825

9/

TO: SENATOR V. FISCHER

FROM: MIKE HENNESSEY, 2900 LEAWOOD DRIVE, ANCHORAGE, AK 99502
H- 243-5167 W- 272-7587

WHAT DO YOU MEAN THAT HB 176 IS NOT IMPORTANT?

Employment reference/Veteran's
Been in SSA since 4/22
passed H-36-0-4

Dear.....

I'm not sure why people are under the impression that I don't consider HB 176 "important". That's simply not true.

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/gb

HB 176 -
HB 31 - Prof for
Brock Vets

H. G. Allen, Comm. Secy.

- use performance once
for her Bill

- use in session
- use; House priority

add her
PAC - Vets

Paul Tucker 344 1017

Best of luck
on your assignments
for the Vets

VETERAN'S PREFERENCE SURVEY

Sheet number/ date

veteran yes no	veteran yes no
sex	sex
age	age
classification	classification
length of employment	length of employment
pay	pay
race	race
veteran's preference used	veteran's preference used

veteran yes no	veteran yes no
sex	sex
age	age
classification	classification
length of employment	length of employment
pay	pay
race	race
veteran's preference used	veteran's preference used

veteran yes no	veteran yes no
sex	sex
age	age
classification	classification
length of employment	length of employment
pay	pay
race	race
veteran's preference used	veteran's preference used

A Survey of Veterans' Preference Legislation in the States

By Charles E. Davis

FOR NEARLY 40 YEARS, the American military veteran has benefited from governmental personnel policies designed to provide compensation for services rendered and disrupted career plans.¹ The Veterans' Preference Act of 1944, for example, boosted employment opportunities of veterans seeking jobs in the federal government by adding individuals honorably discharged from active duty in the armed services or their dependents to the list of those eligible for preference.

Benefits ranged from absolute preference for selected positions (e.g., guards, elevator operators, messengers and custodians) to the addition of five points to any nondisabled veteran achieving a passing score on a civil service exam. It also provided preferential treatment for veterans in any subsequent reductions-in-force. Under the Veterans' Readjustment Act of 1966, these privileges were extended to peacetime veterans serving as little as six months of military service. The impact of these laws is illustrated by some recent statistics cited by Alan K. Campbell. Although veterans comprise only one fourth of the eligible workers in the United States, they make up 50 percent of the federal work force and hold 65 percent of the top civil service positions.²

Despite the continuing importance of veterans' preference legislation (hereafter referred to as VPL) in affecting the recruitment, selection, promotion and tenure of federal public employees, state-related developments have received little attention from personnel analysts or students of the administrative process. These trends merit a further look for two principal reasons. While much of the state veterans' preferential legislation is patterned after federal initiatives, there is, nevertheless, considerable diversity in the number and variety of benefits offered. For example, most states require reemployment rights for veterans in their premilitary vocation, preferred status vis-a-vis nonveteran public employees should reduction-in-force become necessary, and absolute preference for

selected jobs usually associated with a bureau or division of veterans' affairs. In addition, however, a few states have granted bonus points for promotional considerations or employment privileges for the spouse of a nondisabled veteran as well as various idiosyncratic practices scattered throughout the country.

It is evident that state policymakers will be faced with serious questions regarding the compatibility of already generous VPL with an increasing number of women and minorities seeking public employment. Information about the kinds of benefits available to veterans in various states would better enable public officials to balance such differing values as "reward for prior military sacrifice and/or service" with "equity" and "merit" in the process of making personnel-related decisions. The central purpose of this article is to provide a brief analysis of state laws affecting the employment prospects of veterans. Of particular concern is the relative generosity of each state in awarding preference benefits to veterans and the sociodemographic characteristics which differentiate more liberal states from those providing fewer benefits.

Findings

To make valid comparisons about the relative strength of veterans' preference legislation, an index was constructed for each state (see Table 1). The criteria used in the calculation of these indices included appointment or promotional preference for nondisabled veterans in selected jobs (1 point), absolute preference or bonus points for all or most jobs under classification (2 points), and bonus points for promotions in all or most civil service jobs (2 points). A like number of points were also awarded in each category if the spouse of a nondisabled veteran were granted similar privileges. The cumulative scores ranged from no points (Delaware) to six points (Indiana and New Jersey), and a slight majority of the states (26) emerged with a three-point total.

The next step was to determine whether states providing generous veterans' preference benefits had any distinctive political or demographic features. As Table 2

Charles E. Davis is Assistant Professor in the Department of Public Management at Suffolk University in Boston.

indicates, the strength of the state VPL index was somewhat more pronounced in the Midwest and Northeast, while Western states were least likely to provide veterans with statutory advantages for public employment. For example, Arizona and New Mexico give preference to veterans seeking employment in their respective bureaus of veterans' affairs, but do not extend these privileges to include jobs classified under state civil service. No Western states awarded absolute preference or bonus points for promotions within the state civil service, and only Montana permitted the addition of bonus points to the test scores of a veteran's family members. A small number of Northeastern and Midwestern states, on the other hand, were inclined to adopt these measures.

Of equal importance are the socioeconomic and demographic characteristics of state governmental jurisdictions. States ranking high on the VPL index tend to be more populous, wealthier on a per capita basis, and less receptive to the influence of interest groups (see Table 2). These results would appear to contradict the more commonsensical view that military life and the well-being of its personnel have always been held in greater esteem in the more traditional parts of the country—i.e., the South and the West. One might presume that veterans would benefit not only from the good will and political support of Southern legislators wielding positions of authority in the armed services committees of the U.S. House of Representatives and the Senate, but also a favorable political climate which has resulted in the disproportionate allocation of federal military installations in the South.² Under these circumstances, politically conservative state legislators would perceive veterans' preference benefits not as social welfare legislation but as the just rewards for individual military service or sacrifice.

A more plausible interpretation of these findings, however, directs attention to the perception of veterans by state legislators as a significant political constituency. The negative relationship found between interest group strength in the states and the provision of generous veterans' preference benefits suggests that legislative success does not result from the organizational or lobbying skills of veterans' organizations, such as the American Legion, the Veterans of Foreign Wars or the Disabled Veterans. As Levitan and Cleary have indicated, these groups have tended to play a more passive role in the legislative process, preferring to rely on the judgment of elected policymakers for the appropriate level of benefits received.⁴ It thus appears that support for VPL may be less a function of group mobilization than the realization by individual political candidates of the electoral benefits to be gained from appeals to the interests of veterans and their families.

Discussion

The survey results indicate that the number and variety of veterans' preference laws in the states are affected by such demographic factors as population size, region, per

capita income and interest group strength. Veterans seeking employment in state government are likely to compete with relatively greater advantage in the more populous, wealthier states of the Midwest and the Northeast.

Although it is beyond the scope of this paper to provide a detailed analysis of the interrelationships between veterans' preference and other personnel issues of concern to state decision-makers, a number of policy implications and suggestions for further research bear mention. Veterans' preference affects nearly all phases of personnel management, but it is obviously the selection of public employees which has provoked the most serious controversy. All states classified as "medium" or "high" on the VPL index gave nondisabled veterans at least a five-point bonus on civil service exams—a practice which is viewed with a measure of disdain by civil service reformers favoring strict adherence to merit principles as well as supporters of affirmative action programs who feel that minorities and women have long been excluded from responsible government jobs. An additional irritant to affirmative action proponents is the awarding of bonus points to veterans for promotional purposes by a few of the more generously inclined states. Clearly, more research on the impact of veterans' preference laws on the proportion of minorities and women hired by state government (in relation to their numbers in the general population or relevant labor markets) would be of interest to elected public officials as well as manpower analysts.¹

To a lesser degree, state VPL is of concern to nonveteran members of public unions or employee associations. Any advantages enjoyed by ex-veteran public employees in regard to promotions or reductions-in-force may be viewed as contrary to the seniority principle, which is viewed by many labor officials as the fairest method of deciding who benefits (as well as who loses—a point often made by affirmative action proponents). Ultimately, policymakers hoping to achieve the allocation of human resources in an equitable and efficient manner will have to confront the necessity of trade-offs. The reconciliation of such diverse values as "reward," "merit," "equity," and "organizational tenure" into an integrated policy framework is an undertaking deserving a prominent place on the research agenda of the 1980s.

Notes

1. The most concise treatment of veterans' preference legislation in the federal government is found in O. Glenn Stahl, *Public Personnel Administration*, 6th ed. (New York, N.Y.: Harper & Row, 1971), pp. 137-43.

2. Alan K. Campbell, "Civil Service Reform: A New Commitment," *Public Administration Review*, 38 (March/April 1978), pp. 99-103.

3. Nicholas Henry, *Public Administration and Public Affairs*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1980), p. 420.

4. Sar Levitan and Karen A. Cleary, *Old Wars Remain Unfinished: The Veterans' Benefit System* (Baltimore, Md.: Johns Hopkins University Press, 1973), p. 15.

5. The author has begun such a task in an exploratory fashion; see, e.g., Charles E. Davis, "Veterans' Preference, Affirmative Action, and Public Employment," a paper presented at the 1980 annual meeting of the Southwest Political Science Association in Houston.

Table 1
THE RELATIVE STRENGTH OF STATE VETERANS' PREFERENCE LEGISLATION

States (a)	Veterans' Preference Benefits						Total points (b)
	Selected positions			Civil Service positions			
	Appointment preference or bonus points	Appointment preference or bonus points (veteran's relatives)	Preference or bonus points for promotions	Appointment preference or bonus points	Preference or bonus points (veteran's relatives)	Preference or bonus points for promotion	
Alabama	1	1	..	2	..	..	4
Arizona	..	..	..	2	..	..	2
Arkansas	..	..	..	2	..	..	2
California	1	..	..	2	..	..	3
Colorado	1	..	..	2	..	..	3
Connecticut	..	..	..	2	2	..	4
Delaware	..	..	..	..	..	..	0
Florida	1	..	..	2	..	..	3
Georgia	1	1	..	2	..	..	4
Idaho	1	..	..	2	..	..	3
Illinois	1	..	1	2	..	..	4
Indiana	1	1	..	2	2	..	6
Iowa	1	..	..	2	..	2	5
Kansas	1	..	..	2	..	..	3
Kentucky	1	..	..	2	..	..	3
Louisiana	1	..	..	2	..	..	3
Maine	1	..	..	2	2	..	5
Maryland	1	..	..	2	..	..	3
Massachusetts	1	..	..	2	..	..	3
Michigan	1	..	..	2	..	..	3
Minnesota	1	..	..	2	..	..	3
Mississippi	1	..	..	2	..	..	3
Missouri	1	..	..	2	..	..	3
Montana	1	..	..	2	2	..	5
Nebraska	1	..	..	..	..	..	1
Nevada	1	..	..	2	..	..	3
New Hampshire	1	..	..	2	..	..	3
New Jersey	1	..	1	2	2	..	6
New Mexico	1	..	..	..	..	..	1
New York	1	..	..	2	..	2	5
North Carolina	1	..	..	2	..	2	5
North Dakota	1	..	..	2	..	..	3
Ohio	1	1	..	2	..	..	4
Oklahoma	1	..	..	2	..	..	3
Oregon	1	..	..	2	..	..	3
Pennsylvania	1	..	..	2	..	..	3
Rhode Island	1	..	..	2	..	..	3
South Carolina	1	..	..	2	..	..	3
South Dakota	1	..	..	2	..	2	5
Tennessee	1	..	..	2	..	..	3
Texas	1	..	1	2	..	..	4
Utah	1	..	1	2	..	..	4
Vermont	..	..	..	2	..	..	2
Virginia	..	..	..	2	..	..	2
Washington	1	..	..	2	..	..	3
West Virginia	1	..	..	2	..	..	3
Wisconsin	1	..	..	2	..	..	3
Wyoming	1	..	..	2	..	..	3

Source: U.S. Congress, Committee on Veterans' Affairs, *State Veterans' Laws*, House Committee Print No. 6, 96th Congress, 1st sess., 1979.

(a) Alaska and Hawaii were excluded from the analysis. Their politics are imbued with cultural and ethnic strains not typical of the contiguous United States, and their experience with veterans' preference legislation is comparatively recent.

(b) The criteria used in the calculation of these indexes included appointment or promotional preference for nondisabled veterans in selected jobs (one point), absolute preference or bonus points for all or most jobs under classification (two points), and bonus points for promotions in all or most civil service jobs (two points). A like number of points was also awarded in each category if the spouse of a nondisabled veteran were granted similar privileges. The decision to assign one point or two for a given benefit was based on the number of people likely to be affected by such legislation; for example, a statute reserving the directorship of a state veterans bureau for military veterans would have little impact and thus be assigned one point.

Table 2
THE STRENGTH OF VETERANS' PREFERENCE LEGISLATION, INCOME RANK, POPULATION RANK, REGION, AND INTEREST GROUP LEVERAGE

States	Strength of veterans' preference legislation (a)	Income rank (b)	Population rank (b)	Region (c)	Interest group leverage (d)
Alabama	strong	46	21	3	high
Arizona	weak	26	32	4	high
Arkansas	weak	50	33	3	high
California	moderate	7		4	high
Colorado	moderate	12		4	low
Connecticut	strong	3	24	1	low
Delaware	weak	15	48	1	medium
Florida	moderate	14	8	3	high
Georgia	strong	37	14	3	high
Idaho	moderate	36	41	4	
Illinois	strong	8	5	2	medium
Indiana	strong	29	12	2	low
Iowa	strong	22	25	2	high
Kansas	moderate	20	31	2	medium
Kentucky	moderate	43	37	3	high
Louisiana	moderate	49	13	3	high
Maine	strong	44	38	1	high
Maryland	moderate	4	18	3	medium
Massachusetts	moderate	16	10	1	medium
Michigan	moderate	17	7	2	high
Minnesota	moderate	19	19	2	high
Mississippi	moderate	51	29	3	high
Missouri	moderate	33	15	2	low
Montana	strong	31	43	4	high
Nebraska	weak	27	35	2	high
Nevada	moderate	6	47	4	medium
New Hampshire	moderate	32	42	1	
New Jersey	strong	5	9	1	low
New Mexico	weak	12	37	3	high
New York	strong	11	2	3	medium
North Carolina	strong	41	11		high
North Dakota	moderate	9	46	2	
Ohio	strong	24	6	2	medium
Oklahoma	moderate	39	27	3	high
Oregon	moderate	21	30	4	high
Pennsylvania	moderate	30	4	1	medium
Rhode Island	moderate	25	39	1	low
South Carolina	moderate	45	26	3	high
South Dakota	strong	35	45	2	medium
Tennessee	moderate	42	17	3	high
Texas	strong	34	3	3	high
Utah	strong	38	36	4	medium
Vermont	weak	40	49	1	medium
Virginia	weak	18	13	3	medium
Washington	moderate	13	22	4	high
West Virginia	moderate	47	34	3	medium
Wisconsin	moderate		16	2	high
Wyoming	moderate	23	50	4	low

(a) The following criteria were employed to classify states as "weak," "moderate," or "strong": the allocation of appointment preference to nondisabled veterans or their relatives for selected jobs (1 point), the allocation of preference or bonus points to nondisabled veterans or their relatives for promotions in selected jobs (1 point), the allocation of appointment preference or bonus points to veterans and their relatives for jobs classified under state civil service (2 points), and the allocation of preference or bonus points for promotions to nondisabled veterans for civil service jobs (2 points). States receiving a cumulative score of two points or less were classified as "weak," those with three points were termed "moderate," and the "strong" states had more than three points.

(b) These figures were obtained from the 1977 *City and County Data Book* (Washington, D.C.: Bureau of the Census).

(c) States were grouped into four regional categories: 1—Northeast, 2—Midwest, 3—South, 4—West. The classification scheme was adopted from studies conducted by the Center for Political Studies at the University of Michigan.

(d) The measure of interest group strength used here is actually a composite index based on three variables—strength of party competition, legislative cohesion, and the socioeconomic variables of the urban population (including per capita income and the percentage of the population employed in occupations other than agriculture, forestry, and fishing). This index was adopted from L. Harmon Zeigler and Hendrick van Dalen, "Interest Groups in the American States," in Herbert Jacob and Kenneth N. Vines, eds., *Politics in the American States*, 2nd edition (Boston, Mass.: Little, Brown & Co., 1971), p. 127.

AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN
DIVISION

April 1981

To: Members of the Senate State Affairs
From: Susan R. Clark, Legislative Chair, Alaska Division of the
American Association of University Women
1109 C Street, Juneau, Alaska 99801 (586-6952)

Re: Veterans' Preference for State Employment (SB 193, SB 104)

I would like to begin first with an acknowledgement to Sen. Bradley, because I know that his hard work in this area has been done in good faith and out of a sincere concern for the welfare of those men and women who made personal sacrifices for the sake of our country's safety.

I also want to point out that I personally grew up in the military. My father, godfather, and father-in-law were all career officers in the armed services, and my husband and brother were both active in the military during the Vietnam war. I had planned at one time to make the Navy a career. I also want to point out that the new Alaska division president of A.A.U.W. is herself a veteran.

A.A.U.W. feels that we must bring to the attention of the legislature that while the goals of preference are legitimate, and while the current state statute may not have been enacted for the purpose of discriminating against women, the exclusionary impact upon women is so severe as to require the state to further its goals through a more limited form of preference.

Looking at the current law as too broad, please consider who is covered: a person with a minimum of 90 (181 is a change currently being proposed) days active service serving during World War I, World War II, and Vietnam or Korea who has been honorably discharged. According to the Veterans' Preference Act of 1944, such preference was designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well disciplined people to civil service occupations. In terms of the last reason, it should be pointed out that preference itself has little if any relevance to actual job performance. The first two reasons for preference seem the most pertinent to Alaska - reward for sacrifice and ease of transition into civilian life. Both reasons are valid, but as lifetime preferences, they are subject to the objection that they give the veteran more than a square deal. Certainly, upon returning to civilian status, a veteran should have access to his or her job, and perhaps for 5 years or so after returning, preference could be given as reward and help for veterans, but there should be some sort of limit on the length of time one can reap rewards for what can be a brief and un Hazardous term of service.

Because the extent to which the status of veteran is one that few women have been permitted to achieve, every hiring preference for veterans, however modest or extreme, must admit inherent gender-bias, and therefore legislated preference must be considered with due caution and careful consideration. The 5 points for veterans and 10 points for disabled veterans comes directly from the 1944 Federal Veterans' Preference Act. These points are added to a veteran's score after other written tests are administered. In Alaska where mere hundredths of a single point can separate job applicants, the system is overly weighted, especially when compared with other handicapped, disadvantaged or suspect classes of people.

Conceding that the goal here is to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal reserves a major sector of public employment to an already established class, which, as a matter of historical fact, is already 80% male in categories other than the clerical and para-professional jobs. The current point system and lifetime preference, only compounds and contributes to sex bias in all levels of state employment.

Women have been overtly excluded from the military, and not just by tradition and culture. During WW I for example "a variety of proposals were made to enlist women for work in the Army as doctors, telephone operators, and clerks, but all were rejected by the War Dept." Navy women did achieve military rank and status during this time, and were the first women to do so. While the Army Nurse Corps was the first official military unit for women, they were not granted full military rank until 1944 - forty-three years later. During the Second World War several temporary women's units were formed including WAC (Women's Army Auxiliary Corps), WAVES (Women Accepted for Voluntary Emergency Service), and WASP (Women Airforce Pilots). These women, however, were in fact civilians and had no regular military status, and thus no veteran status. In fact, although the WASP personnel were filling some of the most hazardous of flying jobs, that of towing targets for air gunnery practice, and testing planes fresh out of repair depots, they were denied commissions based on the fact that "the authority of the act of September 1941, to make temporary appointments as officers in the U.S. Army 'from among qualified persons' refers to and contemplates men exclusively, and may not be regarded as authority for commissioning women as officers...." These women finally won their hard earned veterans' status in September 1976, but other women who had been active in the war have not.

Women's services were finally established on a permanent basis in 1948, however quotas were placed on the numbers that could enlist. Women were not to exceed 2% of the total enlisted strength, their eligibility requirements were more stringent than were those for men, and career opportunities were also limited. In addition women were involuntarily removed from service for pregnancy, parenthood, and even marriage. These strictures have carried on into the '60's and '70's. Not until 1967 was the 2% quota lifted, and the many restrictive policies concerning women's participation in the military were not modified or eliminated until the 1970's. Amazingly, or perhaps not so, once the barriers were down women joined in large numbers.

In just three years from 1973-1975 the percentage of enlisted women in the military had doubled.

There are two ways to ameliorate the effects of the veterans' preference on women and minorities. One is to modify the point system and to place a time limit on preferential access to jobs. The other solution is to look to expanding what is considered by the word veteran, and thereby include in this law others who have served their country every bit as well and as patriotically as have those on "military active duty". Other states include language that recognizes nurses and other women who were discharged and so served in any "corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States..." Language should also recognize those who underwent severe hardship because of the war. In WW II both the Aleut Americans and the Japanese Americans were uprooted and forced into relocation camps. We have never rewarded their sacrifices with jobs or appeasements of any sort. In expanding the concept of who is a veteran, we need also to look at the men and women who served in civil defense jobs, with the American Red Cross, the Civil air patrol, as war correspondants, and in the merchant marine (who incidentally were in the same waters as navy destroyers and also under attack, but receive no reward in terms of their patriotism, personal sacrifice and danger).

Looking again at the contributions of women to the war effort, we are but slightly aware of the sacrifices and contributions of over 2 million World War II women who took the places of the absent men working in the American war industries: in shipyards, aircraft plants, ammunition plants. The call to "inlist" in the factories was every bit as organized and strong as for men in the armed forces. Concern about dangerous working conditions and long hours took a back seat to America's call to keep up the production to supply the war with weapons, and ammunition. For the short-handed women in the farm communities, the call was to get out the crops to feed the troops. If personal sacrifice, patriotism and danger is a standard for preference, then these women deserve veterans' status every bit as much as the service veterans. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." Where was and is their reward? For their commitment and patriotism, they received not preferred lifetime access to civil service jobs, but firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were even then the major financial support for their families, this transition meant leaving highly skilled, well paying jobs to go back to the dead end drudgery and poverty wages of domestic work.

It is interesting to note that the Federal Veterans' Preference Act of 1944 included in its preference the wives of disabled service personnel and the unmarried widows of deceased ex-service personnel. We tend to look at patriotic service and personal sacrifice as being a military male prerogative, but I feel we need to look hard at the patriotism and sacrifice of the service personnel spouses who held the country and family together as essentially single parents, frequently having to hold down another job to

support their families because the salary range for enlisted personnel in the military is so low that those families qualify for government assistance. Vietnam vets, in addition, currently have the highest divorce rate of any class of Americans. a rate that is generally high among all military personnel. This means, for example, that those women who held families together during the father's service, and who now must have full time employment to support themselves and their children (of whom women still usually have custody), who traditionally are not educated for well-paying jobs, and who have traditionally been denied many levels of employment advancement, now in addition find that the men to whom they gave support are receiving preferential treatment in the jobs the women need to support their families.

As you can see, equitable expansion of the term veteran would be a formidable legislative task, but should be attempted so that families of veterans and those who served alongside veterans can be recognized. As it now stands, the Alaska statute exacts a substantial price from a group of individuals who have long been subject to employment discrimination, and who, because of circumstances totally beyond their control, have had little if any chance of becoming members of the preferred class. Admitting that any hiring preference for veterans does at this time have a severe impact on the public employment opportunities of women, we nevertheless recognize the sacrifice and hardship of military veterans must not be ignored. Through workable modifications in the law, we can strive together to discover solutions that recognize the needs, sacrifices, and contributions of both the military veteran groups and the groups of minorities and women which are so impacted by historical discrimination.