

## *Gillibrand vs. McCaskill: Fighting the Invisible War*

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**Abstract:** This case examines the competing legislative plans of Senator Kirsten Gillibrand (D-N.Y.) and Senator Claire McCaskill (D-M.O.) to address the intolerable levels of sexual assault in the U.S. Armed Forces. In November 2013, Gillibrand proposed the *Military Justice Improvement Act* (SB 967), which sought to remove the prosecution of sexual assault cases from the military chain of command. McCaskill, in contrast, proposed reforming the present military justice system in her more moderate *Victims Protection Act of 2014* (SB 1917). As the debate between the two women escalated, Gillibrand garnered support from numerous feminist organizations, sexual assault victims, and fellow senators from both political parties. Despite a valiant effort, Gillibrand failed to overcome a Senate filibuster by McCaskill in early March 2014. *The Military Justice Improvement Act* died on the Senate floor. This case reviews the opposing legislation against a backdrop of the history of the U.S. military justice system, the evolving issue of sexual assault in the U.S. Armed Forces, and the goal of the Congressional Caucus on Women's Issues to improve the lives of women and families through bipartisan collaboration. Further, it discusses the impact of the conflict between Gillibrand and McCaskill on the future of women's leadership within the U.S. Senate.

### **Introduction**

In early February 2014, New York Senator Kirsten Gillibrand (D-N.Y.) braced for the final debate in the U.S. Senate, which focused on how to best address the issue of sexual assault in the U.S. Armed Forces. With support from female military advocates and sexual assault victims, Gillibrand, a graduate of the UCLA School of Law and a former litigator in New York City, planned to argue for her *Military Justice Improvement Act* (SB 967), which would remove the handling of sexual assault cases from the military chain of command (Office of Kirsten Gillibrand 2015a). In contrast, Claire McCaskill (D-M.O.), a graduate of the University of Missouri School of Law and a former sex-crime prosecutor, unexpectedly opposed Gillibrand, planning to promote her *Victims Protection Act of 2014* (SB 1917). McCaskill's bill also proposed reforms regarding the handling of sexual assault in the military but maintained the control of such cases within the military hierarchy (Office of Claire McCaskill 2015). As the competing measures progressed toward a vote on the Senate floor, Gillibrand hit a major roadblock: McCaskill publicly refused to back Gillibrand and vowed to forestall a vote on Gillibrand's bill by filibuster. McCaskill further stated, "[w]e do not believe that [Gillibrand's] bill will protect victims," citing her belief that the bill would neither bring the cases quickly to court nor result in more prosecutions due to workability problems (McAuliff 2014). With Pentagon leaders, Congress, and the White House all acknowledging the need to act and with the

lives of disproportionately female sexual assault victims past, present, and future hanging in the balance, Gillibrand attempted to rally sixty senators to support her bill and overcome the impending filibuster. As Gillibrand focused on overcoming the filibuster, others, particularly the Congressional Dean of Women, Senator Barbara Mikulski (D-M.D.), were concerned with maintaining the credibility of women senators when they were divided on a critical feminist issue.

### **The Players**

Kirsten Gillibrand first became a U.S. Senator in 2009. After attending Dartmouth College for her undergraduate education, Gillibrand eventually graduated from UCLA School of Law in 1991 (Office of Kirsten Gillibrand 2015a). Prior to becoming a Senator, she worked as a law clerk and an attorney in Upstate New York. Since becoming a U.S. Senator, Gillibrand has garnered a reputation for transparency in governance because she posts her daily official meetings on her congressional calendar and posts her federal earmark requests and financial disclosure reports online (Office of Kirsten Gillibrand 2015a). As a Senator, Gillibrand has focused on issues related to the military. She currently works on the Armed Services Committee alongside Senator McCaskill and is the chair of the sub-committee on personnel. Gillibrand was fundamental in repealing the military's "Don't Ask Don't Tell" policy in 2010-2011 (Office of Kirsten Gillibrand 2015a).

Like Gillibrand, Senator Claire McCaskill also comes from a background of law and possesses prior knowledge of U.S. military operations. As the daughter of Bill McCaskill, a World War II veteran, and Betty Anne McCaskill, the first woman to serve on the city council in Columbia, Missouri, McCaskill familiarized herself with politics at an early age (Office of Claire McCaskill 2015). After attending the University of Missouri at Columbia for both her undergraduate and law education, McCaskill became a prosecutor in Kansas City specializing in sex crimes and arson (Office of Claire McCaskill 2015). She won a seat in the Missouri General Assembly in 1982, and she became the first woman elected as Jackson County Prosecutor—the largest county in Missouri—ten years later (Office of Claire McCaskill 2015). In this role, she established a unit specializing in domestic violence, which specifically sought to reduce sexual violence. McCaskill also became the first woman from Missouri elected as a U.S. Senator in 2006, and she was reelected in 2012 (Office of Claire McCaskill 2015). McCaskill has displayed commitment to the U.S. Armed Forces during her time as a Senator, aiding in the passing of the 21<sup>st</sup> Century G.I. Bill and serving as a senior member of the Senate's Armed Services Committee (Office of Claire McCaskill 2015).

### **Evolving Military Justice**

The crucial distinction between the Gillibrand and McCaskill bills centered on whether to remove the investigation and adjudication of sexual assault cases from the military chain of command. Comprehending the ramifications of doing so requires a basic understanding of the military justice system in the United States.

The Second Continental Congress, which began meeting in the summer of 1775 and controlled the colonial war effort during the Revolutionary War, created the first system of military justice in the United States under the Articles of War of 1775 (Sherman 1971). Modeled largely on the pre-Revolutionary War British system of justice as well as that of the Old Roman Code, this early system made identification of the military commander as the head of the system of primary importance (Sherman 1971). While the Articles of War of 1775 governed the

Continental Army, the U.S. Navy operated under a separate justice system entitled the Articles of the Government for the Navy (Sherman 1971). With the exception of several minor revisions to the Articles of War in 1806, 1874, 1916, 1920, and 1948, these two systems went largely unchanged for nearly two centuries until Congress passed the Uniform Code of Military Justice (UCMJ) in May 1950, which President Harry Truman signed into law (Sherman 1971). Under the UCMJ, effective as of May 1951, all branches of the U.S. Armed Forces operate under a singular justice system and have the same disciplinary laws (The Judge Advocate General's School 1959). The offenses covered by the UCMJ include, inter alia, perjury of oath, abuse of authority, bribery, intimidation, failure to supervise, dereliction of duty, unbecoming conduct, and refusal to obey a lawful order. It also includes "civilian" crimes, including homicide and sexual assault, albeit with potentially different standards of proof and punishment than for civilians (The Judge Advocate General's School 1959).

The conflict between the Gillibrand and McCaskill bills rested on the distinction between command *control* and command *influence*. Congress specifically authorizes command control of the military justice system, thereby making it lawful, and places the military commander at the head of the court-martial. Conversely, command influence is unlawful and refers to the scenario in which a commander's personal biases and beliefs infiltrate the court-martial process (Sherman 1971). Interestingly, the UCMJ attempted to address the issue of command *influence*, as objections had been raised about the command hierarchy as early as World War I and continued through World War II (Sherman 1971). Yet, the UCMJ has been largely ineffective at addressing this concern, and the issue of inappropriate command influence continues today. An illustrative example of inappropriate command influence is the case of Lt. Col. James Wilkerson. In August 2012, Lt. Col. James Wilkerson sexually assaulted civilian Kim Hanks at a house party hosted by Wilkerson and his wife. Although prosecutor Don Christensen fought for Hanks and achieved a guilty verdict, General Craig Franklin, the commander at Wilkerson's base, overturned the guilty verdict. Wilkerson, the man who had sexually assaulted Kim Hanks, was released from prison and reinstated at full rank—mainly due to an influx of letters to the general emphasizing Wilkerson's outstanding character (Draper 2014).

When a violation of the UCMJ allegedly occurs, the matter is handled by the specific command of the service member. Under the UCMJ and the rules for the court-martial, convening authorities, who are usually the superior military commanders, have the sole power to create a court-martial, decide whether to send a case to trial, and, if so, determine what type of tribunal, appoint the court members (jurors) to the tribunal, and approve the findings (verdict) and sentence (Sherman 1971).

The Judge Advocate General's Corps is the legal arm of the military. Judge Advocates are responsible for both the defense and prosecution of military law as provided in the UCMJ, as well as adjudicating cases as military judges in the court-martial (The Judge Advocate General's Corps 2014). Judge Advocates are assigned to a specific command and also serve as the primary legal advisors to that command. However, if ordered by the commander, they also may act as defense counsel, prosecuting trial counsel, and the military judge (The Judge Advocate General Corps 2014).

Despite recent efforts to improve objectivity in the investigation and prosecution of sexual offenses, command influence continues to obstruct military justice in cases of alleged sexual assault, such as that involving Lt. Col. Wilkerson. A commander is responsible for ensuring military readiness and success in addition to maintaining unit discipline and conduct, yet these duties often come into direct conflict with one another. This exact dichotomy is evident

in what is known as the “Good Soldier Defense,” in which accused service members are able to draw upon exceptional combat service to prevent or minimize disciplinary action (Hillman 2002). In a military culture that emphasizes rank, loyalty and strength above all else, a commander might look the other way in cases of alleged sexual assault, or a commander’s perceived attitudes may effectively discourage or preclude the reporting of such incidents at all. In fact, according to anonymous surveys conducted by the Rand Corporation, gross underreporting of sexual assaults in the military continues to occur due to fears of retaliation and social backlash from other service members, particularly when the alleged perpetrator is a superior in the chain of command (National Defense Research Institute 2014).

Furthermore, a commander may desire minimal punishment if harsher sentences would weaken the unit’s military security or performance, in effect allowing “good soldiers” to sexually assault fellow soldiers with impunity. Subordinates, such as military judges and chosen jurors, may act according to their beliefs as to what the commander desires, regardless of whether such beliefs are fair and accurate. It is also important to note that a commander’s ability to maintain discipline within their command, including a low incidence of reported sexual assaults, affects their own service record and prospects for career advancement, thus providing a disincentive to adequately address the problem. In turn, these decisions devalue victims – who are disproportionately women – and the harm done to them during service. With more women than ever before serving in the U.S. Armed Forces, the pressing issue of sexual assault has brought the issue of command influence again to the forefront. The Gillibrand-McCaskill debate boiled down to this issue alone: is eliminating command control over the military justice system the only way to diminish inappropriate command influence? Or can further attempts to regulate command control ensure the fair adjudication of these cases?

### **The Invisible War: The Ongoing Issue of Sexual Assault in the Military**

While not new, the issue of sexual assault in the U.S. Armed Forces has drawn increased attention in the past several years. As early as 1991, then-Defense Secretary Dick Cheney emphasized the military’s zero-tolerance policy on sexual assault (Draper 2014). Despite this policy, the U.S. government reports that an estimated 26,000 military sexual assaults occurred in 2012, while only 3,374 were officially reported (Kuersten 2014). Additionally, of the 26,000 estimated military sexual assaults, the Department of Defense (DoD) asserts that 6.1 percent of military women and 1.2 percent of military men were affected (Kuersten 2014). These numbers signify an increase from the 2010 Pentagon data, which estimated 19,000 military sexual assaults that year, affecting 4.4 percent of all service women (Kuersten 2014). Statistically, soldiers have a fifteen times greater probability of being sexually assaulted by a fellow soldier than being killed in combat (Bancroft 2013). Not only does sexual assault within the military ranks negatively impact the physical and mental health of its victims and their families, but it also unquestionably diminishes military morale. These troubling statistics shocked Pentagon officials and outraged lawmakers, and drew unwanted attention to the U.S. Armed Forces, particularly the military justice system. While many question whether the source of the problem resides solely within the military environment or whether the issue represents a larger cultural phenomenon, efforts to curb the problem have been instituted in the military and analyzed for effectiveness. Most recently, the issue was brought to the attention of federal legislators, setting the stage of the Gillibrand-McCaskill showdown.

The 1991 Tailhook Scandal represents an extreme example of the military’s sexual assault problem. The Tailhook Association is an independent, fraternal, nonprofit organization

supporting active and retired Navy aviators and is known for its annual conventions at hotel venues, which are comprised of professional presentations (Simon 1995). While always branded as a particularly rowdy event, the 1991 Annual Tailhook Convention in Las Vegas surpassed its own reputation for excessively promiscuous, indecent behavior (Simon 1995). The wild party behavior of hundreds of male Navy officers led to an accusation of sexual assault from Navy helicopter pilot Paula Coughlin (Simon 1995). Coughlin reported being forced into the “gauntlet”—a mob of over 200 drunken Navy aviators preying on women as they walked the third floor of the Las Vegas Hilton (Knowles 2009). Coughlin initially reported the event to her superior officer, Admiral Jack Snyder, the morning after the event (Knowles 2009). Her initial reports were met with a “boys-will-be-boys” response from many high-ranking military commanders who later admitted that nearly eighty other women had come forward with similar sexual assault accusations (Knowles 2009). After insufficient remedial action by Navy personnel, Coughlin went public with the issue, drawing the attention from then-Secretary of Defense Dick Cheney and then-President George H.W. Bush (Knowles 2009). She eventually settled with the Tailhook Association for \$400,000 and Hilton Hotels for \$5,000,000 for failing to provide her adequate security (Knowles 2009). Regardless of the monetary damages, Coughlin continued to express her skepticism that the Armed Forces have sufficiently addressed the problem in 2009, nearly twenty years after her traumatic experience. As the number of women joining the military has substantially increased—as has the number of women reporting sexual assaults that might previously have gone undocumented—Coughlin stated that it was *still* “completely up to the chain of command to informally or formally make the incident go away” (Knowles 2009). Coughlin remained skeptical of commanders’ resolve to adequately address the sexual assault issue.

The issue of sexual assault in the military has actually statistically increased since the 1991 Tailhook Convention, and activist groups have begun to fight for all affected service members regardless of gender. The Armed Forces instituted several measures in attempts to limit the problem. For example, the concept of restricted reporting, which became policy in 2005 under the Department of Defense Directive 6495.01, allows victims to access necessary medical care, advocacy, or victims’ services without having to notify the command or initiating a criminal investigation if they are fearful of backlash from fellow service members (Kuersten 2014). Additionally, the Pentagon created the Sexual Assault Response Coordinator (SARC) program in 2005 to serve as a single point of service for sexual assault victims (Kuersten 2014). After being notified of an incident, SARC coordinators have the responsibility to report the incident to the military command and handle the case throughout its entire lifespan. SARC coordinators are also responsible for tracking and reporting the prevalence of sexual assault and overseeing the sexual assault awareness training and education with the military (Kuersten 2014). The Sexual Assault Prevention and Response Office (SAPRO), also created in 2005, standardized the handling of sexual assault across all military branches, and provided an outlet for education, training and research (Kuersten 2014). While instituted with good intentions, many of these services have been criticized for their lack of efficacy. For instance, female service members still report that sexual assault training and education is lacking, as well as that the provided education is brief and lacks depth (Holland, Rebelo, and Cortina 2014). The mixed outcomes of the military’s effort to address the sexual assault problem raised the question of whether a more fundamental, organizational issue exists with the military justice system, as evidenced by McCaskill and Gillibrand debate.

Amy Ziering's 2012 documentary, *The Invisible War*, brought the military sexual assault issue to the forefront once again and was a clear example of advocacy that viewed the high prevalence of sexual assault as indicative of a fundamental problem that required increased, proactive attention. Ziering believed that the ineffectiveness of the military's attempt to curb the problem indicated the need for legislative change in military policy (Journal of International Affairs 2013.) She claimed, "[w]e deliberately constructed our film so that the military and Congress would be unable to ignore the film's demands for best practices and be compelled to institute long-overdue reforms" (Journal of International Affairs 2013). She further argued unequivocally that removing sexual assault cases from the chain of command was the most viable solution to the problem. Fortunately, *The Invisible War* sparked reaction and was acclaimed by critics across the country. It received the U.S. Documentary Audience Award when it premiered at Sundance Film Festival in 2012, was nominated for an Academy Award, and later won an Emmy Award. Several politicians, including Secretary of Defense Leon Panetta, also viewed the documentary, which ultimately increased the attention being paid to the issue of military sexual assault in Washington.

### **Feminist Organizations Side with Gillibrand**

Senator Gillibrand was also inspired by *The Invisible War*, which ultimately led her to draft the *Military Justice Improvement Act*. As Ziering intended, Gillibrand incorporated many of the recommendations from *The Invisible War* into her bill. Several feminist organizations also supported the recommendations. For example, the Service Women's Action Network (SWAN) devoted substantial attention to the military sexual assault issue, blaming the epidemic on a "command-centric military legal system that gives commanders and not lawyers the authority to prosecute and manage the criminal courts system" (SWAN: Service Women's Action Network 2011). Their proposed solution is to allow service members to pursue sexual assault perpetrators in civilian court (SWAN: Service Women's Action Network 2011). In addition to SWAN, the National Organization for Women (NOW) also emphasized its firm support for Senator Gillibrand's *Military Justice Improvement Act* and encouraged its members to do the same. The Defense Advisory Committee on Women in the Armed Forces expressed the same sentiment. This coalition, established in 1951, includes civilian men and women appointed by the Department of Defense who have experience with the military or with women's issues (Defense Advisory Committee on Women in the Services 2014). This committee is charged with providing recommendations to the Department of Defense on issues related to women in the U.S. military (Defense Advisory Committee on Women in the Services 2014). On the present issue, they stated:

DoD (Department of Defense) should support legislation to remove from the chain of command the prosecution of military cases involving serious crimes.... Instead the decisions to prosecute, to determine the kind of court-martial to convene, to detail the judges and members of the court-martial, and to decide the extent of punishment, should be placed in the hands of the military personnel with legal expertise and experience and who are outside the chain of command of the victim and the accused (National Organization for Women 2014).

Consensus existed among many feminist organizations that the prevalence of sexual assault in the military required immediate action. Victims' advocacy groups and documentarians

like Ziering continued to complain that the Pentagon had not done enough to combat sexual assault in the military and to make it easier and more acceptable for victims to report cases of sexual assault (Baldor 2014). Most, if not all, feminist organizations sided with Ziering, seeking to remove sexual assault cases from the military chain of command. Unfortunately, no consensus existed among lawmakers for doing so given the added complexity of an entrenched military command structure, competing command objectives, and the unique system of military justice codified by the UCMJ. The recent formation of victims' advocacy groups provided the force necessary to finally institute change, and Congresswomen were the ones spearheading the call for reform.

### **The Congressional Caucus on Women's Issues (CCWI)**

The Congressional Caucus on Women's Issues (CCWI), which is devoted to effectively uniting female politicians regardless of party affiliation, originated in March 1977 as the Congresswoman's Caucus after several years of failed attempts to organize (Gertzog 2004). Prior to 1977, numerous congresswomen expressed reluctance to join a strictly female group focused on feminist policy (Gertzog 2004). With the start of the 95<sup>th</sup> Congress in 1977, Margaret Heckler (R-M.A.) and Elizabeth Holtzman (D-N.Y.) provided the leadership necessary to overcome previous doubts and initiate the caucus (Gertzog 2004). In the years following, the CCWI's progression proved to be turbulent and complex.

The CCWI adopted several strategic goals at its onset. First, Congresswomen Heckler and Holtzman recruited members of both political parties to ensure that their agenda had bipartisan support (Gertzog 2004). Additionally, the CCWI needed to be as diverse as possible to discredit accusations of promoting only upper class, white, and female concerns (Gertzog 2004). A third goal was to acknowledge the varying priorities and viewpoints of its members (Gertzog 2004). During the height of second-wave feminism, it was essential to accept that women themselves had varying notions of womanhood. The CCWI was intended to be an effective forum for discussing these diverse viewpoints and developing a consensus on an item-by-item basis (Gertzog 2004). Additional CCWI concerns included ensuring female issues had representation on the House floor, maintaining rapport with House leaders, and developing a strong relationship with the new Carter administration (Gertzog 2004). Fifteen of the eighteen women in the 95<sup>th</sup> Congress joined the Caucus, and all fifteen congresswomen joined the Caucus during the 96<sup>th</sup> Congress (Women's Policy, INC 2015). Despite this almost unanimous participation, significant organizational and financial strains prevented the group from initially being effective.

After the 1992 elections, an influx of twenty-four new congresswomen increased the number of women in Congress by nearly 70% (Gertzog 2004). Interestingly, 1993 would later become known as the "Year of the Woman" (Women's Policy, INC 2015). These new congresswomen were diverse: five African American congresswomen joined the group, as did two Latina Democrats. These additions also led to an expansion of CCWI (Gertzog 2004). The Caucus during the 103<sup>rd</sup> Congress, which ran from January 1993 to January 1995, produced more feminist legislation than ever before (Gertzog 2004). For the first time, a substantial proportion of women were able to voice their opinions loudly against powerful congressmen. Yet, the "Year of the Woman" also produced challenges for the CCWI, whose membership had, until that point, carefully avoided partisan issues such as abortion rights where its members lacked consensus (Gertzog 2004). Beginning with the election of President Bill Clinton in 1993, the Women's Caucus became increasingly one-sided toward more liberal social policies supported by

Democrats (Gertzog 2004). Friction between Congresswomen also became racial as discord arose between African American Democrats and White Republicans (Gertzog 2004). This initially posed particular problems for the CCWI, whose members wanted to continue to promote feminist policy and worked best through bipartisanship (Gertzog 2004).

Since 1995, the CCWI has survived, and indeed thrived, by focusing on the most salient women's issues. Essential to this objective is finding a workable agenda, which ironically has become more complex as the diversity and number of CCWI members continues to expand (Gertzog 2004). As of 2014, the CCWI is arguably stronger than at any other point in history. Women have been entering the Congress at increasing rates, and the CCWI provides a mechanism to ensure the issues impacting women are heard. Surely, maintaining a strong feminist presence is important for the further progression of feminist ideals. On the Senate side, Senator Barbara Mikulski (D-M.D.), the longest-serving woman in Congress and the unofficial and self-appointed Dean of the Women, often worked behind the scenes to build coalitions among her Senate peers, helping to define their collective role moving forward and demonstrating that they can work together to address pressing women's issues (Office of Barbara A. Mikulski 2014). Despite efforts by the CCWI, and others, like Senator Mikulski, increased numbers of women in Congress by itself did not ensure a feminist presence or a consensus on women's issues.

As the number of women in Congress continues to increase, it becomes more challenging, yet more critical, to generate cooperation among bipartisan female leaders in order to demonstrate that female politicians can work effectively in a historically male institution to address feminist concerns. But, what happens to the credibility of Congresswomen when they are divided on a seemingly feminist issue? How are women voters supposed to side with one woman over another? How will the conflicting agendas of McCaskill and Gillibrand, at least with respect to the sexual assault issue, impact the functioning of the CCWI moving forward? Can women's issues be advanced effectively when there is a lack of consensus among women policymakers? When an unexpectedly pointed policy disagreement surfaced recently between CCWI members, Democrat Susie Tompkins Buell highlighted the implications of the conflict by quoting Madeline Albright: "There's a special place in hell for women who don't help other women" (Cramer 2014).

### **Clashing Women: Gillibrand vs. McCaskill**

In the wake of increased attention to the issue of military sexual assault, the two female Democratic senators met in the spring of 2013 with opposing plans to tackle the same issue. Introduced on the Senate floor in November 2013, the seemingly more radical *Military Justice Improvement Act* (MJIA) of Kirsten Gillibrand (D-N.Y.) called for stripping the power of military commanders to refer serious crimes to the court-martial (Office of Kirsten Gillibrand 2015b). Addressing her fellow Senators, Gillibrand explained, "[s]exual assault in the military is not new, but it has been allowed to fester. It has been festering in the shadows for far too long, and when our commanders for the past twenty-five years have said there is zero-tolerance for sexual assault in the military, what they really meant was there is no accountability" (Gillibrand 2013). Gillibrand proposed instead that an independent professional trial lawyer outside of the military hierarchy should handle the issue. More specifically, the MJIA would maintain the power of the military commander in the prosecution of uniquely military crimes, as well as crimes punishable by less than one year of confinement (Office of Kirsten Gillibrand 2015b). Gillibrand also noted that other modern countries, including Canada, Germany, and the UK, had

taken steps to reduce commander control of sexual assault causes without undermining fighting readiness (Gillibrand 2013). Gillibrand further argued against the notion that her proposal would actually hinder commander accountability since commanders remain solely responsible for maintaining order in their ranks and soldiers may come forward without fear of retaliation if commanders fail to do so (Gillibrand 2013). As the date for floor debate approached in March 2014, Gillibrand's bill had the support of 55 senators, 11 of whom were Republicans, and Senator Ted Blumenthal (D- C.T.) who stated:

My view is that we must remove any concerns about undue command influence on the process so that more victims will seek justice. The only way to deter this heinous, horrific crime is to encourage more reporting so that [there] can be more prosecution and [to] enable more deterrents through strong and swift justice (Blumenthal 2013).

Most importantly, Gillibrand had the support of seventeen out of the twenty female senators serving in the 113<sup>th</sup> Congress (Office of Kirsten Gillibrand 2015b). On the eve of the debate, Senator Barbara Boxer (D-C.A.) spoke about her support of Gillibrand's *Military Justice Improvement Act*:

I am so proud to stand with seventeen of the twenty women members of this Senate on both sides of the aisle and with a large number of colleagues from both sides—a majority—to fight for real change in the way our military addresses the epidemic of military sexual assault (Boxer 2014).

In contrast, Senator Claire McCaskill (D-M.O.) proposed the much more moderate *Victims Protection Act of 2014*. Unlike Gillibrand's bill, McCaskill's legislation, introduced on January 14, 2014, would not strip the commander of control over sexual assault cases (O'Keefe 2014). Rather, it would preclude the use of the "good soldier" defense (O'Keefe 2014). Additionally, victims would get the choice to use either the military or civilian court in instances where sexual assault occurred off of a military base in areas of dual jurisdiction (O'Keefe 2014). It would also require that a commander's handling of sexual assault cases be taken into consideration during every instance of performance review and promotion in the Armed Forces (O'Keefe 2014). When asked to speak of Gillibrand's proposal, McCaskill claimed,

If you want more prosecutions, and if you want to hold the commanders accountable, I think it's a dramatic mistake to allow the commanders to walk away and I think it's a dramatic mistake to say a lawyer half a continent away is going to make the call and that somehow is going to protect this victim more from retaliation and result in more cases going to court (O'Keefe 2014).

As the issue of sexual assault in the military pitted two female senatorial colleagues against one another, the legislative battle piqued the attention of both Congress and the public at large. Neither Senator was willing to back down from her position without a fight, leaving the issue of how best to handle sexual assault cases in the military hanging in the balance and perhaps damaging the collaborative working relationships of female Congressional leadership – at least with respect to traditional women's issues –in the process. Fortunately, Senator Barbara Mikulski was determined to prevent this eventuality. "We're now twenty women total in the

Senate,” Mikulski claimed. “We disagree on some issues, even the bills [Gillibrand’s and McCaskill’s] before us. But we agree on the goal of providing more prosecutorial tools to punish criminals, ensuring fairness in the process and getting help to victims” (Office of Barbara A. Mikulski 2014).

### **Epilogue**

On March 6, 2014, despite passionate pleas from Senators Gillibrand, Chuck Grassley (R-I.A.), John Walsch (D-M.T.), and Barbara Boxer (D-C.A.), Gillibrand was unable to sustain a motion for cloture [the procedural device to end debate and require a vote on a pending bill] and overcome filibuster—*The Military Justice Improvement Act* (SB 967) died on the Senate floor. Shortly thereafter, McCaskill successfully sustained a motion for cloture on her *Victims Protection Act of 2014* (S 1917), forestalling further debate and setting the stage for a final vote.

Before the vote on Monday, March 10, 2014, Senator McCaskill took the floor of the Senate in her last effort to garner support for the *Victims Protection Act of 2014*. She emphasized how her legislation would make it a crime to retaliate against a service member who reports a sexual assault, ensure that all service members reporting a sexual assault will be assigned a special victims’ advocate, and institute a higher-level review of any commander decision not to prosecute a reported case of sexual assault. Furthermore, the “Good Soldier Defense” would be eliminated. The *Victims Protection Act of 2014* also provided that all individuals who report sexual assault would be counseled as to the advantages and disadvantages of seeing their case prosecuted in courts-marital compared to civilian court. Additionally, the prosecutorial preferences of the victims after aforementioned advising would be taken into consideration. The United States Senate shortly thereafter passed the *Victims Protection Act of 2014*. The vote was 97-0 with Gillibrand also voting “yay” (McCaskill 2014).

Since the adoption of the *Victims Protection Act of 2014*, the number of sexual assaults reported by U.S. service members increased by approximately 8 percent, which indicates that victims may now be more willing to come forward (Baldor 2014). In comparison to the estimated 26,000 service members victimized by unwanted sexual contact or sexual assault in 2013, this number dropped to approximately 19,000 in 2014, indicating improvement (Baldor 2014). On the other hand, 60% of the women who reported some type of unwanted sexual contact continued to experience some form of retaliation, and most experienced social backlash from co-workers or other service members (Baldor 2014). Additional research is required to reveal the efficacy of the recent legislation.

More recently, Senator Gillibrand and McCaskill became partners to address the issue of sexual assault on U.S. college campuses through the *Campus Accountability and Safety Act* (S 590). Despite differing views about the most effective way to address military sexual assault, they recognized and joined forces to develop the best way to advocate for college women as partners. Specifically, they suggested mandatory surveys of U.S. colleges and universities to uncover the prevalence of sexual assault on campuses, redress instances of insufficient response to and underreporting of sexual assaults by university administrations, and have promoted the use of Title IX provisions to combat the sexual assault epidemic by allowing the federal government to withhold funding from colleges and universities who fail to remediate these Title IX violations.

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