


1-29-2016

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Mary Pat Treuthart

*Gonzaga University School of Law*

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### Recommended Citation

Mary P. Treuthart, *Feminist-in-Chief? Examining President Obama's Executive Orders on Women's Rights Issues*, 91 Chi.-Kent L. Rev. 171 (2016).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol91/iss1/8>

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# FEMINIST-IN-CHIEF? EXAMINING PRESIDENT OBAMA'S EXECUTIVE ORDERS ON WOMEN'S RIGHTS ISSUES

MARY PAT TREUTHART<sup>1</sup>

## I. INTRODUCTION

I didn't run for President so that the dreams of our daughters could be deferred or denied. I didn't run for President to see inequality and injustice persist in our time. I ran for President to put the same rights, the same opportunities, [and] the same dreams within the reach for our daughters and our sons alike. I ran for President to put the American Dream within the reach of all of our people, no matter what their gender, or race, or faith, or station.<sup>2</sup>

The 2008 Democratic primary election presented a dilemma for feminist voters.<sup>3</sup> Who should be the party's nominee for president: Senator Hillary Rodham Clinton or Senator Barack Obama? Would feminists succumb to the media portrayal that the final decision could be reduced to a question of race versus gender, replicating past struggles between the civil rights and women's rights movements?<sup>4</sup> How could carefully-constructed coalitions between groups

1. Mary Pat Treuthart is a Professor of Law at Gonzaga University School of Law in Spokane, Washington. I am pleased with the opportunity to participate in this symposium issue of the Chicago-Kent Law Review. I acknowledge the importance of the support for faculty research projects provided by Gonzaga University School of Law and the beneficial input from my colleagues, especially Ann Murphy, at a winter 2014 faculty workshop presentation and thereafter. Much appreciation goes to Ashley Sundin, research librarian, and to Ruth Ptak, student research assistant, who facilitated my work by making their contributions in a timely, efficient, and cheerful manner. Finally, thank you to the Chicago-Kent Law Review staff for the help provided during the editing process.

2. President Barack Obama, Remarks by the President and the First Lady at International Women's Day Reception (Mar. 8, 2010) (transcript at <https://www.whitehouse.gov/the-press-office/remarks-president-and-first-lady-international-womens-day-reception>).

3. See generally Lakshmi Chaudhry, *What Women See When They See Hillary*, NATION (June 14, 2007), <http://www.thenation.com/article/what-women-see-when-they-see-hillary> (explaining that women who previously supported Hillary are torn when it comes to supporting her bid for the presidency).

4. See Gloria Steinem, *Right Candidates, Wrong Question*, N.Y. TIMES (Feb. 7, 2007), <http://www.nytimes.com/2007/02/07/opinion/07steinem.html> (suggesting that progressives should refuse to be drawn into an irrelevant debate about Clinton versus Obama because it is destructive); see also Mark Leibovich, *Rights vs. Rights: An Improbable Collision Course*, N.Y. TIMES (Jan. 13, 2008), <http://www.nytimes.com/2008/01/13/weekinreview/13leibovich.html> (referencing the division between Elizabeth Cady Stanton and Frederick Douglass about which group should be granted the right to vote first).

traditionally disadvantaged in the political process successfully overcome stereotyped thinking and binary divisions and come together to defeat the Republican candidate in the general election?<sup>5</sup>

Several high-profile feminists weighed in publicly, voicing their preferences for one candidate over the other.<sup>6</sup> There were generational divisions between “second wave” ’70s era feminists, and their “third wave” real and metaphorical daughters.<sup>7</sup> The doves and the hawks squared off, with the former concerned about Clinton’s support for the Iraq War.<sup>8</sup> Discussions and debates about race, gender, and class proliferated.<sup>9</sup> Clinton offered experience; Obama promised change.<sup>10</sup> And, in the end, Barack Obama became the 2008 Democratic presidential nominee.<sup>11</sup>

Political theorist and activist Zillah Eisenstein observed that “one of the most significant things about the 2008 election is that it

5. See Patricia Williams, *I’m a Black Woman. This Is My Dream*, GUARDIAN (Jan. 13, 2008), <http://www.theguardian.com/commentisfree/2008/jan/13/uselections2008.world> (discussing the extraordinary moment in history where there are serious “black and female presidential candidates” who are, “indeed, twice as good as their nearest contenders”).

6. See WHO SHOULD BE FIRST? FEMINISTS SPEAK OUT ON THE 2008 PRESIDENTIAL CAMPAIGN (Beverly Guy-Sheftall & Johnnetta Betsch Cole eds., 2010) for much of the contemporaneous written commentary by feminists preserved for review in this aptly titled book.

7. See, e.g., Maureen Dowd, *Duel of Historical Guilts*, in WHO SHOULD BE FIRST, *supra* note 6, at 25. For a brief primer on the different “waves of feminism,” see JENNIFER BAUMGARDNER, *Is There a Fourth Wave? Does it Matter?*, in F’EM! GOO GOO, GAGA AND SOME THOUGHTS ON BALLS 243, 245 (2011) (explaining that the waves of feminism description can be “useful shorthand in describing the broad strokes of feminist history”).

8. Jon Wiener, *Feminist Leaders Oppose Hillary, Endorse Obama*, HUFFINGTON POST (Mar. 28, 2008), [http://www.huffingtonpost.com/jon-wiener/feminist-leaders-oppose-h\\_b\\_84715.html](http://www.huffingtonpost.com/jon-wiener/feminist-leaders-oppose-h_b_84715.html) (indicating that Clinton’s support for the Iraq War was the main reason she lost the support of the group calling itself “New York Feminists for Peace and Barack Obama!”). Hillary Clinton has since acknowledged that her vote for the Iraq war was “a mistake, plain and simple.” Adam B. Lerner, *Hillary Clinton Says Her Iraq War Vote Was a ‘Mistake,’* POLITICO (May 19, 2015), <http://www.politico.com/story/2015/05/hillary-clinton-iraq-war-vote-mistake-iowa-118109.html>.

9. Dianne M. Pinderhughes, *Intersectionality*, in WHO SHOULD GO FIRST, *supra* note 6, at 171, 181 (concluding in 2008 that “[r]ace, gender, and class, the ‘holy trinity’ of intersectional analysis, are central factors in the electoral outcomes in [that] year’s primaries to date”).

10. STEPHEN SKOWRONEK, PRESIDENTIAL LEADERSHIP IN POLITICAL TIME: REPRISAL AND REAPPRAISAL 168 (2d ed. 2011).

11. *Obama Makes History as Democratic Nominee*, CNN (Aug. 28, 2008), <http://www.cnn.com/2008/POLITICS/08/27/dnc.main/index.html>. At the Democratic National Convention, Clinton made a motion for the delegates to support Obama unanimously without finishing the roll call vote, presumably to demonstrate party unity for his candidacy. *Id.* For one perspective on how Obama captured the presidency in 2008, see *Barack Obama: How He Did It*, NEWSWEEK (Nov. 4, 2008), <http://www.newsweek.com/barack-obama-how-he-did-it-85083>. For an in-depth look at the struggles of the Clinton 2008 primary campaign, see Joshua Green, *The Front-Runner’s Fall*, ATLANTIC (Sept. 2008), <http://www.theatlantic.com/magazine/archive/2008/09/the-front-runner-s-fall/306944>, and Gail Sheehy, *Hillaryland at War*, VANITY FAIR (Aug. 2008), <http://www.vanityfair.com/news/2008/08/clinton200808>.

brought the complexity of feminism to the fore of mainstream politics.”<sup>12</sup> Indeed, Obama’s campaign literature emphasized his commitment to women’s rights issues in the areas of promoting pay equity, investing in women-owned businesses, supporting reproductive autonomy, combatting violence against women, advancing women’s educational opportunities, and protecting women’s health.<sup>13</sup> But even after he won the 2008 general election with the support of a majority of women voters, Obama’s feminist bona fides still appeared to be open for debate.<sup>14</sup> A few weeks before he took office, feminist commentator Katha Pollitt, writing a column in *The Nation*, observed that “[f]or some women who care about women’s equality, the jury is still out on Obama. They voted for him, but they don’t trust him to do the right thing for women.”<sup>15</sup> Pollitt urged him to become “a truly feminist President,” and, in summary, to move beyond platitudes and to “make gender equality a keystone of his administration.”<sup>16</sup>

The editors at *Ms. Magazine* took a different tack. Although future First Lady Michelle Obama declined to characterize herself as a feminist in a 2007 interview with the *Washington Post*, her husband was not reluctant to embrace the label of feminist when speaking with Eleanor Smeal, the publisher of *Ms. Magazine*.<sup>17</sup> Subsequently,

12. ZILLAH EISENSTEIN, *THE AUDACITY OF RACES AND GENDERS: A PERSONAL AND GLOBAL STORY OF THE OBAMA ELECTION* 143 (2009).

13. See *Barack Obama on Women’s Rights: Barack Obama is Dedicated to Improving the Lives of Women*, OBAMA FOR AM., [http://obama.3cdn.net/4ad874dbd8e8eaff7d\\_71m6btc7j.pdf](http://obama.3cdn.net/4ad874dbd8e8eaff7d_71m6btc7j.pdf) (last visited Nov. 7, 2015). Women’s rights issues can be defined as “that set of policies that concern women as *women*.” CHRISTINA WOLBRECHT, *THE POLITICS OF WOMEN’S RIGHTS: PARTIES, POSITIONS, AND CHANGE* 19 (2000) (citing SUSAN CARROLL, *WOMEN AS CANDIDATES IN AMERICAN POLITICS* 15 (1985) (characterizing women’s rights issues as those “where policy consequences are likely to have a more immediate and direct impact on significantly larger numbers of women than men”)).

14. Women comprised 53% of those voting in the 2008 presidential election; 56% of women who cast ballots in the election voted for Obama. *How Groups Voted in 2008*, ROPER CTR. FOR PUB. OP. RESEARCH, <http://www.ropercenter.uconn.edu/polls/us-elections/how-groups-voted/how-groups-voted-2008> (last visited July 31, 2015).

15. Katha Pollitt, *Barack Obama, Feminist in Chief?*, *NATION* (Dec. 22, 2008), <http://www.thenation.com/article/barack-obama-feminist-chief>.

16. *Id.* In a subsequent column, Pollitt, an Obama supporter during the primary campaign, summed up his gender politics in office during the first three months by concluding “he’s been terrific on women’s rights and reproductive rights, here and abroad . . . .” Katha Pollitt, *Obama’s 100-Day Hope Check*, *NATION* (Apr. 20, 2009), <http://www.thenation.com/blog/obamas-100-day-hope-check>.

17. Amanda Hess, *The Feminist Mystique: How Election 2008 Killed a Notorious Word*, *WASH. CITY PAPER* (Jan. 22, 2009), <http://www.washingtoncitypaper.com/blogs/sexist/2009/01/22/the-feminist-mystique-how-election-2008-killed-a-notorious-word> (discussing the progression of the views on “feminism” and “feminist” over the time before and after Obama’s election).

the figure of a newly-elected President Obama was splashed across the front of the 2009 *Ms. Magazine* special inaugural issue striking a Superman-like pose and ripping open his suit jacket to reveal a T-shirt with a logo proclaiming, "This is what a feminist looks like."<sup>18</sup> In explaining the *Ms.* Presidential cover page featuring Obama, Smeal said, "we wanted to tell the world that he self-identifies as a feminist and that he's run on the strongest platform of any major party for women's rights. And we also wanted to capture both the national mood and the feminist mood of high expectations and hope for his presidency."<sup>19</sup>

Indeed, *Ms.* returned with a report card of sorts on President Obama's first 100 days in office, which concluded "[t]he Obama Administration has taken giant strides for women in terms of employment, reproductive health[,] and elevation of women's rights domestically and globally."<sup>20</sup> Particular early achievements noted by the editors included (1) overturning the global gag rule; (2) appointing seven women to cabinet-level positions; (3) creating the position of ambassador-at-large for women's global issues; (4) establishing the White House Council on Women and Girls (CWG); and (5) restarting the contributions by the United States to the United Nations Population Fund (UNFPA).<sup>21</sup> All of this seemed like a propitious start, but the question posed by some observers was: Would the momentum continue?<sup>22</sup>

A year later, the reaction from prominent women leaders to President Obama's progress on gender equality was decidedly more

18. Press Release, *Ms. Magazine*, *Ms. Puts Obama on its 2009 Winter Cover* (Jan. 12, 2008), [http://msmagazine.com/press/2008\\_obamacoveradvisory.asp](http://msmagazine.com/press/2008_obamacoveradvisory.asp). This editorial decision was not embraced wholeheartedly by all feminists. See, e.g., Amy Siskind, *How Feminism Became the F-Word*, *DAILY BEAST* (Jan. 11, 2009), <http://www.thedailybeast.com/articles/2009/01/11/how-feminism-became-the-f-word.html> (expressing concern that "the current vision of 'feminism' is a man striking a Superman pose").

19. Amy Goodman, *Ms. Magazine on Barack Obama: "This is What a Feminist Looks Like,"* *DEMOCRACY NOW* (Jan. 27, 2009), [http://www.democracynow.org/2009/1/27/ms\\_magazine\\_on\\_barack\\_obama\\_this](http://www.democracynow.org/2009/1/27/ms_magazine_on_barack_obama_this).

20. Editors, *Obama's First 100 Days: Giant Strides for Women*, *MS. MAG.* (Spring 2009), <http://www.msmagazine.com/spring2009/GreatStrides.asp> (where Eleanor Smeal commented, "I've been working for women's rights in Washington, D.C. since the days of Jimmy Carter, and I've never seen anything like the constant outreach to and inclusion of women's leaders and the pace of actions for women's rights").

21. *Id.*

22. Hannah Seligson, *Grading the White House on Women's Issues*, *FORBES* (June 10, 2010), <http://www.forbes.com/2010/06/10/womens-rights-obama-administration-white-house-council-on-women-girls-forbes-woman-leadership-equal-pay.html> (asking whether the momentum that existed in 2009 continued to exist as time went on).

mixed. Terry O'Neil, president of the National Organization for Women (NOW) opined that "[t]he administration is not taking enough of an initiative to change the reality for women."<sup>23</sup> Her priorities included securing leadership from the White House to ratify the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) and adopt the Equal Rights Amendment (ERA).<sup>24</sup> Lisa Maatz, the director of public policy and government relations for the American Association of University Women, gave "an A for outreach" to Obama's efforts on women's issues and described the setbacks as not "entirely the fault of the administration."<sup>25</sup> In contrast, Amy Siskind, founder of The New Agenda, a progressive women's leadership organization, expressed her disappointment with the work of the CWG in particular, characterizing its creation as "form over substance" and lamenting the fact "[i]t hasn't done anything."<sup>26</sup> But President Obama had three more years in office—and possibly more—to demonstrate the breadth and depth of his commitment to women's rights.

This begs the question: What *are* women's rights issues? Certain topics may be more readily associated with the concept of women's rights in the policy arena, but there is no single unassailable definition of the term "women's rights issues." A common description is a "set of policies that concern women as *women*."<sup>27</sup> Another approach is to characterize women's rights issues as those "where policy consequences are likely to have a more immediate and direct impact on significantly larger numbers of women than of men."<sup>28</sup> At least one scholar proposes that a degree of intentionality is a prerequisite and that women should be the "intended beneficiary, constituency, or object" of a particular action.<sup>29</sup> Mere heightened interest by women in a specific topic would not necessarily categorize it as a women's *rights* concern; rather, the promotion of greater equality and opportunity for women while recognizing their differences from men is an essential part of the equation.<sup>30</sup> Here,

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. WOLBRECHT, *supra* note 13, at 19.

28. *Id.* (citing CARROLL, *supra* note 13, at 15).

29. Christina Wolbrecht, *Female Legislators and the Women's Rights Agenda: From Feminine Mystique to Feminist Era*, in *WOMEN TRANSFORMING CONGRESS* 170, 173 (Cindy Simon Rosenthal ed., 2002).

30. *Id.*

being mindful of the aforementioned explanation, this examination will concentrate primarily on executive orders that involve the empowerment of women, gender-based violence, reproductive rights, and employment.

## II. OVERVIEW OF DIRECT EXECUTIVE ACTION

Various forms of presidential directives comprise the presidential administrative toolkit including executive orders, proclamations, and memoranda.<sup>31</sup> Executive orders are the most familiar type of presidential directives because they are publicly issued, targeted to officials and agencies within the executive branch, and they “combine the highest level of substance, discretion, and direct presidential involvement.”<sup>32</sup> Implied constitutional and statutory authority provides the basis for the execution as well as the implementation of these orders.<sup>33</sup> Despite the lack of specific constitutional parameters in terms of definition or issuance, executive orders have generally been acknowledged as a legitimate exercise of presidential power from the beginning.<sup>34</sup>

Much of the law review scholarship has centered on the constitutional and separation of powers aspects of presidential directives.<sup>35</sup> In contrast, scholars of the American Presidency from other

31. Kenneth Lowande, *After the Orders: Presidential Memoranda and Unilateral Action*, 44 PRESIDENTIAL STUD. Q. 724, 724 (2014). Depending on the breadth of description, there may be twenty or more different types of directives that have been used by presidents, beginning in the twentieth century. See generally HAROLD RELYEA, CONG. RESEARCH SERV., 98-611 GOV, PRESIDENTIAL DIRECTIVES: BACKGROUND AND OVERVIEW (2008).

32. Andrew Rudalevige, *Executive Orders and Presidential Unilateralism*, 42 PRESIDENTIAL STUD. Q. 138, 142 (2012) (quoting KENNETH R. MAYER, WITH THE STROKE OF A PEN: EXECUTIVE ORDERS AND PRESIDENTIAL POWER 35 (2001)); see also Joshua B. Kennedy, “Do This! Do That! and Nothing Will Happen”: *Executive Orders and Bureaucratic Responsiveness*, 43 AM. POL. RES. 59, 59 (2015), <http://apr.sagepub.com/content/43/1/59> (indicating that “agency responsiveness to executive orders is not at all guaranteed” and a number of factors affect the decision to respond).

33. See VANESSA K. BURROWS, CONG. RESEARCH SERV., RS20846, EXECUTIVE ORDERS: ISSUANCE AND REVOCATION 1 (2010).

34. See Todd F. Gaziano, *The Use and Abuse of Executive Orders and Other Presidential Directives*, 5 TEX. REV. L. & POL. 267, 273–75 (2001).

35. See, e.g., Tara L. Branum, *President or King? The Use and Abuse of Executive Orders in Modern-Day America*, 28 J. LEGIS. 1 (2002); Steven G. Calabresi & Saikrishna B. Prakash, *The President’s Power to Execute the Laws*, 104 YALE. L.J. 541 (1994); Thomas J. Cleary, *A Wolf in Sheep’s Clothing: The Unilateral Executive and the Separation of Powers*, 6 PIERCE L. REV. 265 (2007); E. Donald Elliot, *Why Our Separation of Powers Jurisprudence Is So Abysmal*, 57 GEO. WASH. L. REV. 506 (1989); Gaziano, *supra* note 34; Abner S. Greene, *Checks and Balances in an Era of Presidential Lawmaking*, 61 U. CHI. L. REV. 123 (1994); Henry Monaghan, *The Protective Power of the Presidency*, 93 COLUM. L. REV. 1 (1993); John A. Sterling, *Above the Law: Evolution of Executive Orders (Part One)*, 31 UWLA L. REV. 99

disciplines such as political science are “more concerned with developing and/or testing explanations of presidential behavior.”<sup>36</sup> As a result, greater emphasis is placed on ways that executive orders can be used for different purposes.<sup>37</sup>

Reviewing President Obama’s presidential directives regarding women’s rights issues reveals those subjects he has chosen to highlight when unfettered by partisan politics and congressional gridlock. As one expert has observed, focusing on a specific constituent group such as women and the issues of concern to them allows “insight into the nature of White House decision-making processes and perhaps insight into presidential involvement itself in the process.”<sup>38</sup> Ultimately, examining these executive actions and their context facilitates an analysis of the extent to which Obama has effectively promoted gender equality during his presidency.

### III. EXECUTIVE ORDERS THAT PROMOTE WOMEN’S RIGHTS

#### *Executive Order 13,506*

Less than two months after taking office, President Obama signed Executive Order 13,506, which established the White House Council on Women and Girls (CWG).<sup>39</sup> It is designed to create a “coordinated Federal response” in addressing issues that have a primary effect on women and girls.<sup>40</sup> The heads of every federal agency and major White House office comprise the CWG’s membership.<sup>41</sup> This comports with the view previously expressed by former Secretary of State Madeleine Albright that “in our government,

(2000); Jessica M. Stricklin, Comment, *The Most Dangerous Directive: The Rise of Presidential Memoranda in the Twenty-First Century As a Legislative Shortcut*, 88 TUL. L. REV. 397 (2013).

36. Bryan W. Marshall & Richard L. Pacelle, Jr., *Revisiting the Two Presidencies: The Strategic Use of Executive Orders*, 33 AM. POL. RES. 81, 101 n.1 (2005), <http://apr.sagepub.com/cotnet/33/1/81>.

37. See generally PHILLIP J. COOPER, BY ORDER OF THE PRESIDENT: THE USE AND ABUSE OF EXECUTIVE DIRECT ACTION 47–100 (2d ed. 2014) (providing an in-depth examination of the reasons presidents rely on executive orders).

38. JANET M. MARTIN, THE PRESIDENCY AND WOMEN 5 (2003).

39. Exec. Order No. 13506—Establishing a White House Council on Women and Girls, 3 C.F.R. § 230 (2009).

40. *Id.* at 231.

41. *Id.*



'responsibility for the advancement of women is not the job of any one agency, it's the job of all of them.'"<sup>42</sup>

According to its presidential author, the purpose of the new entity created by Executive Order 13,506 "is to ensure that American women and girls are treated fairly in all matters of public policy."<sup>43</sup> Obama further suggested that progress in the areas of economic security, a balance between work and family, violence against women, and women's health represents "an important measure of whether we are truly fulfilling the promise of our democracy for all our people."<sup>44</sup>

Barack Obama was not the first executive to bring a specialized office dealing with women's issues in-house. Presidents Ford and Carter had created similar programs during their administrations.<sup>45</sup> Thereafter, immediately prior to the United Nations Fourth World Conference on Women in Beijing, President Clinton set up the President's Interagency Council on Women in August 1995 with the goal to implement ideas from the conference.<sup>46</sup> A few months earlier, the president had formed the White House Office for Women's Initiatives and Outreach (OWIO).<sup>47</sup>

The OWIO resulted from consultations between the Chiefs-of-Staff from the Offices of the President and the First Lady with the *ad hoc* D.C.-based feminist group Washington Women's Advocates.<sup>48</sup> The OWIO staff scrutinized legislation and other proposals to assess the effect on women and maintained relationships with women's groups to share information and obtain input.<sup>49</sup> Betsy Myers, the first

42. *About the Council on Women and Girls*, WHITE HOUSE: COUNCIL ON WOMEN & GIRLS, <https://www.whitehouse.gov/administration/eop/cwg/about> (last visited July 27, 2015).

43. Press Release, White House, President Barack Obama Announces White House Council on Women and Girls (Mar. 11, 2009) (on file at <https://www.whitehouse.gov/the-press-office/president-obama-announces-white-house-council-women-and-girls>).

44. *Id.*

45. MARTIN, *supra* note 38, at 256.

46. *President's Interagency Council on Women*, U.S. DEP'T STATE: ARCHIVE, <http://1997-2001.state.gov/www/picw> (last visited Oct. 3, 2015); see also BARBARA FINLAY, *GEORGE BUSH AND THE WAR ON WOMEN: TURNING BACK THE CLOCK ON WOMEN'S PROGRESS* 16 (2006).

47. MARTIN, *supra* note 38, at 256.

48. Noelle Norton & Barbara Morris, *Feminist Organizational Structure in the White House: The Office of Women's Initiatives and Outreach*, 56 POL. RES. Q. 477, 481–82 (2003) (discussing how the advocates group had expressed concern about the dearth of women appointees to government positions and "the inattention to women's issues").

49. Amy Goldstein & Mike Allen, *Bush Has Closed Office for Women's Initiatives: Action Seen As Split from Clinton*, CHI. TRIB. (Mar. 30, 2001), [http://articles.chicagotribune.com/2001-03-30/news/0103300301\\_1\\_women-s-initiatives-meetings-with-senior-administration-white-house-office](http://articles.chicagotribune.com/2001-03-30/news/0103300301_1_women-s-initiatives-meetings-with-senior-administration-white-house-office).

Director of the OWIO, indicated that the office “became a place of refuge for women appointees throughout Washington.”<sup>50</sup> In 1997, the OWIO then became a part of the Executive Office of the President (EOP) within the confines of the White House proper; this geographic proximity arguably allowed for greater access, but the resulting trade-off was the OWIO’s being subsumed within an existing EOP culture that was more structured, competitive, and rule-bound, which are “characteristics identified as masculine by organizational theorists.”<sup>51</sup>

A later case study of the OWIO concluded that it operated more effectively in its initial years when it was physically located outside the White House and was run in an autonomous, yet collaborative, non-hierarchical manner more indicative of a feminist organizational structure.<sup>52</sup> As Myers explained with respect to the original office site, “[o]ur location may have been ‘outside the gates’ of *perceived* power, but it actually became the source of our true power, which was the power to *connect*—with our constituents, with our mission, and with each other.”<sup>53</sup> Despite uncertainties about its real impact on the powerbrokers inside the Beltway, the OWIO “was considered symbolically and strategically important among the many women’s groups that had urged Clinton to open it.”<sup>54</sup>

During the early days of the presidency of George W. Bush, the gender-focused executive offices were abolished, which appeared to be more in keeping with the priorities of his voter base.<sup>55</sup> Newly-elected President Obama received a letter from the leaders of fifty women’s groups pressing him to not only resuscitate the OWIO, but to expand it by establishing a new cabinet-level office on women.<sup>56</sup> Interestingly, many years earlier, in 1977, delegates to the National Women’s Conference that was organized and convened pursuant to President Carter’s Executive Order 11,979 had rejected a proposal

50. BETSY MYERS WITH JOHN DAVID MANN, TAKE THE LEAD 46 (2011).

51. Norton & Morris, *supra* note 48, at 478.

52. *Id.*

53. MYERS WITH MANN, *supra* note 50, at 46.

54. Goldstein & Allen, *supra* note 49.

55. FINLAY, *supra* note 46, at 16. Bush set up the Office of Strategic Initiatives under the auspices of the Public Liaison where the OWIO had been housed. MYERS WITH MANN, *supra* note 50, at 135. For insight into the efforts of some Bush administration officials to retain women’s issues as a priority, see *id.* at 134–36.

56. Kathryn C. Oleson & Sianna Ziegler, *White House Council on Women and Girls*, in ENCYCLOPEDIA OF WOMEN IN TODAY’S WORLD 1547–48 (Mary Zeiss Stange et al. eds., 2011).

for a cabinet-level department of women.<sup>57</sup> According to one media representative who attended the conference, “[s]ome feminists thought it would isolate women or co-opt them into the political establishment, and the conservatives opposed it as more hated bureaucracy.”<sup>58</sup>

Other advocates urged Obama to form a blue-ribbon Presidential Commission on Women.<sup>59</sup> There was some precedent for this particular course of action. President John F. Kennedy had issued Executive Order 10,980 on December 14, 1961, which established the President’s Commission on the Status of Women (PCSW).<sup>60</sup> Eleanor Roosevelt agreed to serve as the PCSW’s “Chairman.”<sup>61</sup> Its assignment was quite broad: The PCSW was expected to “review progress and make recommendations as needed for constructive action” on a myriad of topics such as labor and employment policies and practices, social insurance and tax laws, differential legal treatment in the areas of political and civil rights, special services for women in their roles as wives, mothers and workers including education, counseling and childcare.<sup>62</sup> Pursuant to its mandate, the PCSW issued its report on October 11, 1963, which would have been Eleanor Roosevelt’s seventy-ninth birthday.<sup>63</sup>

57. Exec. Order No. 11979—National Commission on the Observance of International Women’s Year, 1975, 3 C.F.R. § 110 (1977); Lucy Komisar, *With the Women at Houston: Feminism [sic] As National Politics*, NATION 625 (Dec. 10, 1977), <http://www.thekomisarscoop.com/1977/12/with-the-women-at-houston-feminism-as-national-politics>. After the conference ended, President Carter issued Executive Order 12050 titled Establishing a National Advisory Committee for Women. 3 C.F.R. § 171 (1978). He also forwarded policy recommendations to Congress that were never acted upon, given the atmosphere of “cultural and political gridlock” generated by the New Right in the late 1970s. RUTH ROSEN, *THE WORLD SPLIT OPEN: HOW THE MODERN WOMEN’S MOVEMENT CHANGED AMERICA* 294 (2006).

58. Komisar, *supra* note 57, at 625.

59. Josh Gerstein, *Some Women Wanted More from W.H.*, POLITICO (Mar. 12, 2009), <http://www.politico.com/story/2009/03/some-women-wanted-more-from-wh-019936>.

60. Exec. Order No. 10980—Establishing the President’s Commission on the Status of Women, 3 C.F.R. § 138 (Supp. 1961).

61. A sound recording exists of an interview between Eleanor Roosevelt and President Kennedy on the origins of the PCSW and its goals. *Interview with Mrs. Eleanor Roosevelt on the Status of Women*, JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM (Apr. 18, 1962), <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKWHA-085-005.aspx>.

62. 3 C.F.R. §§ 138-39.

63. PRESIDENT’S COMM’N ON THE STATUS OF WOMEN, AMERICAN WOMEN (1963), <http://babel.hathitrust.org/cgi/pt?id=mdp.39015016913678>. Eleanor Roosevelt died on November 7, 1962, and Vice-Chair Esther Peterson assumed responsibility for overseeing completion of the PCSW’s work. BRIGID O’FARRELL, ELEANOR ROOSEVELT PAPERS PROJECT, GEORGE WASHINGTON UNIV., *AMERICAN WOMEN: LOOKING BACK, MOVING AHEAD: THE 50TH ANNIVERSARY OF THE PRESIDENT’S COMMISSION ON THE STATUS OF WOMEN REPORT* 3 (2015),

Despite the various voices clamoring for President Obama to create a different structure to stress the importance of women's issues, he chose instead to launch the CWG in March 2009, appointing Senior Adviser and Assistant to the President for Intergovernmental Affairs and Public Engagement Valerie Jarrett as the Chair and Tina Tchen as the Executive Director.<sup>64</sup> While some activists questioned the selection of Jarrett to lead this effort due to her lack of direct experience in advancing women's rights, others seemed willing—at least at first—to give her a chance to prove herself.<sup>65</sup>

Resistance to the CWG's formation also surfaced from those who took exception to its pointed gender focus, which appeared to omit men and boys who could share an interest in—or be affected by—the work of the CWG.<sup>66</sup> For example, author and educator Dr. Warren Farrell gathered support from thirty-four prominent representatives from the academic, business, and health sectors who urged President Obama to set up a comparable White House Council on Men and Boys.<sup>67</sup> This type of counter-advocacy may have provided part of the impetus for the establishment of the White House's My Brother's Keeper initiative in 2014, which was devised “to address persistent opportunity gaps faced by boys and young men of color.”<sup>68</sup> Perhaps predictably, My Brother's Keeper was then derided for its solely-male focus, as well as for its targeted outreach to private foundations for subsidies.<sup>69</sup>

<http://www.dol.gov/wb/PCSW-03-30-2015.pdf> (containing an excellent history of the context and contributions of PCSW's work with a concentration on labor and employment issues).

64. *About the Council on Women and Girls*, *supra* note 42.

65. Amy Siskind, *Is Valerie Jarrett Anti-Woman?*, DAILY BEAST (Mar. 11, 2009), <http://www.thedailybeast.com/articles/2009/03/11/is-valerie-jarrett-anti-woman.html> (where the author urges feminists to “stand with Valerie Jarrett. Let's unite and focus on women's issues that unite us rather than divide us”). Just a little over six months later, Siskind issued a *mea culpa* suggesting that she had erred earlier and that opponents of Jarrett's selection had been correct, as evidenced in part by Jarrett's taking an immediate leave from her post to lobby for Chicago's selection as the host site for the 2016 Olympic games. Amy Siskind, *Should Women Back Palin in 2012?*, DAILY BEAST (Oct. 4, 2009), <http://www.thedailybeast.com/articles/2009/10/04/should-women-back-palin-in-2012.html>.

66. See, e.g., Lisa Belkin, *Obama's Council on Women and Girls*, N.Y. TIMES: MOTHERLODE (Mar. 11, 2009), <http://parenting.blogs.nytimes.com/2009/03/11/obamas-council-on-women-and-girls>.

67. *About*, COALITION TO CREATE WHITE HOUSE COUNCIL ON BOYS & MEN, <http://whitehouseboysmen.org/blog/about> (last visited Aug. 30, 2015).

68. *My Brother's Keeper*, WHITE HOUSE, <https://www.whitehouse.gov/my-brothers-keeper> (last visited Aug. 27, 2015).

69. See, e.g., Kimberlé Williams Crenshaw, Opinion, *The Girls Obama Forgot: Kimberlé Williams Crenshaw: My Brother's Keeper Ignores Young Black Women*, N.Y. TIMES (July 29,

Since its inception, the CWG has promoted collaboration and served as a clearinghouse for a number of projects. To support the CWG's work, a report titled *Women in America: Indicators of Economic and Social Well-Being* was assembled from materials collated by a myriad of federal statistical agencies.<sup>70</sup> Collectively, this information provided a baseline on "how women are faring in the United States today and how these trends have changed over time."<sup>71</sup> The CWG also worked together with the Office of Science and Technology Policy to get women and girls more directly involved in science, technology, engineering, and mathematics (STEM).<sup>72</sup> Recognizing the intersectionality between race, ethnicity, and gender, the CWG released a report in November 2014 about the barriers and obstacles that exist for women and girls of color; the report concluded by announcing the formation of a working group to explore disparities in sectors such as economic security, education, and health.<sup>73</sup>

Possibly the CWG's most high profile endeavor, the White House Task Force to Protect Students from Sexual Assault, was established pursuant to a presidential directive in January 2014 and placed jointly under the auspices of the CWG and the Office of the Vice President.<sup>74</sup> The first Task Force report was issued three

2014), <http://www.nytimes.com/2014/07/30/opinion/Kimberl-Williams-Crenshaw-My-Brothers-Keeper-Ignores-Young-Black-Women.html>; Howard Husock, *Surprising White House Executive Action Critics: The Brother's Keeper Philanthropy Controversy*, FORBES (Aug. 14, 2014), <http://www.forbes.com/sites/howardhusock/2014/08/14/surprising-critics-of-white-house-executive-action-on-philanthropy-the-brothers-keeper-controversy> (lamenting the White House approach to funding My Brother's Keeper, which risks "undermining the traditional independence and creativity of private philanthropy"); Dani McClain, *'Black Women, Like Black Men, Scar': Conversation on My Brother's Keeper Heats Up*, NATION (June 18, 2014), <http://www.thenation.com/article/black-women-black-men-scar-conversation-my-brothers-keeper-heats>.

70. See U.S. DEP'T OF COMMERCE, ECON. & STATISTICS ADMIN. AND THE EXEC. OFFICE OF THE PRESIDENT, OFFICE OF MGMT. & BUDGET, *WOMEN IN AMERICA: INDICATORS OF SOCIAL AND ECONOMIC WELL-BEING* (2011), [https://www.whitehouse.gov/sites/default/files/rss\\_viewer/Women\\_in\\_America.pdf](https://www.whitehouse.gov/sites/default/files/rss_viewer/Women_in_America.pdf).

71. *Id.*

72. See *Women in STEM*, WHITE HOUSE: OFF. SCI. & TECH., <https://www.whitehouse.gov/administration/eop/ostp/women> (last visited Aug. 27, 2015).

73. Valerie Jarett & Christina Tchen, *Executive Summary of WHITE HOUSE COUNCIL ON WOMEN & GIRLS, WOMEN AND GIRLS OF COLOR: ADDRESSING CHALLENGES AND EXPANDING OPPORTUNITY* (2014), [https://www.whitehouse.gov/sites/default/files/docs/cwg\\_women\\_and\\_girls\\_of\\_color\\_report\\_112014.pdf](https://www.whitehouse.gov/sites/default/files/docs/cwg_women_and_girls_of_color_report_112014.pdf).

74. Memorandum Establishing a White House Task Force to Protect Students from Sexual Assault, 79 Fed. Reg. 4383 (Jan. 27, 2014).

months later.<sup>75</sup> Various aspects of the report generated immediate controversy.<sup>76</sup> Conservative commentators questioned the accuracy of the report's statistic that one in five college women is subjected to sexual assault and characterized this high number as "fraudulent" and "ridiculous."<sup>77</sup> Civil libertarians expressed concern about the lack of due process protections for those accused of sexual assault.<sup>78</sup> Grassroots activists had consistently lobbied for greater transparency regarding the disclosure of the names of colleges and universities that had violated Title IX standards with specifics about non-compliance; they were disappointed that this heightened degree of revelation was not mandated by the report.<sup>79</sup>

There is general agreement among various stakeholders about the fact that oftentimes there is a divergence of interests between institutions of higher learning and sexual assault survivors.<sup>80</sup> Eradicating sexual assault on college campuses, albeit by using different strategies and tactics, remains the common goal.<sup>81</sup> But the ongoing

75. See WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, NOT ALONE (2014), <https://www.notalone.gov/assets/report.pdf>.

76. See Angus Johnston, *Advocates Respond to White House Report on College Sexual Assault*, RH REALITY CHECK (May 6, 2014), <http://rhrealitycheck.org/article/2014/05/06/advocates-respond-white-house-report-college-sexual-assault>.

77. Alexandra Boguhn, *Conservative Media Jump on Sexual Assault Truther Bandwagon, Cry Foul on White House Report*, MEDIA MATTERS FOR AM. (Apr. 30, 2014, 6:07 PM), <http://mediamatters.org/research/2014/04/30/conservative-media-jump-on-sexual-assault-truth/199098>; see also Editorial, *Confusion About College Sexual Assault*, N.Y. TIMES (Feb. 7, 2015), <http://www.nytimes.com/2015/02/08/opinion/sunday/confusion-about-college-sexual-assault.html> (suggesting that claims of underreporting by activists and claims of over-reporting by skeptics indicate that greater clarity and better statistical information is needed).

78. See, e.g., Matt Kaiser & Justin Dillon, *White House Flunks a Test on Sexual Assault*, WALL ST. J. (May 5, 2014), <http://www.wsj.com/articles/SB10001424052702304831304579541970401038080>.

79. See Tyler Kingkade, *Group Pushes Department of Education to Get Tougher on Colleges Mishandling Sexual Misconduct*, HUFFINGTON POST (July 2, 2013), [http://www.huffingtonpost.com/2013/07/02/colleges-sexual-misconduct-department-of-education\\_n\\_3531257.html](http://www.huffingtonpost.com/2013/07/02/colleges-sexual-misconduct-department-of-education_n_3531257.html). The SaVE Act, with its increased data collection requirements and adoption of specific protocols around sexual assault incidents on college campuses, was passed by Congress in 2013 as part of the Violence Against Women Reauthorization Act of 2013. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 304, 127 Stat. 54, 89; see also *The Campus Sexual Violence Elimination Act*, JEANNE CLEARY ACT INFO., <http://www.cleryact.info/campus-save-act.html> (last visited Aug. 29, 2015). In May 2014, the Department of Education did release a list of higher education institutions under investigation for Title IX sexual violations, although little detail was provided. See Press Release, U.S. Dep't of Educ., U.S. Department of Education Releases List of Higher Education Institutions with Open Title IX Sexual Violence Investigations (May 1, 2014), <http://www.ed.gov/news/press-releases/us-department-education-releases-list-higher-education-institutions-open-title-ix-sexual-violence-investigations>.

80. Kingkade, *supra* note 79.

81. Johnston, *supra* note 76.

efforts of the White House, including the CWG, to address sexual assault—although well-intentioned—quickly became somewhat diffuse. The initial Task Force report was titled *Not Alone*, which suggested the emphasis was on support for those subjected to abuse and the necessity for the use of a collaborative approach to address the matter effectively.<sup>82</sup> Simultaneously with the April release of the Task Force report, the vice president's office issued a public service announcement that used the tagline "1 is 2 Many," stressed bystander intervention, and featured commentary by male celebrities.<sup>83</sup> Finally, in September 2014, the White House launched the *It's On Us* campaign with the release of a brief video providing close-up shots of identifiable actors and actresses that asks its audience members to sign a pledge to get personally involved to stop sexual assault on college campuses.<sup>84</sup> While focusing on different aspects of the problem, the multiple White House-linked campaigns have the potential to cause confusion not only about sponsorship but overall intent.

To showcase all of its endeavors, the CWG maintains an active website that is updated regularly with links to its projects and other news.<sup>85</sup> However, a quick review of the programs, photos, and information highlighted on the CWG's website reveals that the content is not exclusively female-focused.<sup>86</sup> Notably, the first item on the CWG Resources page is First Lady Michelle Obama's *Let's Move!* initiative, which is geared toward reducing childhood obesity by promoting better health, good nutrition, and enhanced physical activ-

82. See WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, *supra* note 75, at 2.

83. *1 Is 2 Many*, WHITE HOUSE, <https://www.whitehouse.gov/1is2many> (last visited Aug. 27, 2015).

84. Press Release, White House, Fact Sheet: Launch of the "It's On Us" Public Awareness Campaign to Help Prevent Campus Sexual Assault (Sept. 19, 2014), <https://www.whitehouse.gov/the-press-office/2014/09/19/fact-sheet-launch-it-s-us-public-awareness-campaign-help-prevent-campus->. One feminist blogger critiqued the "It's On Us" campaign for ignoring the systemic causes of sexual violence and focusing instead on a "strategy to avoid violence, not meaningfully reduce it." Dana Bolger, *It's on Us to Go Beyond 'It's On Us,' FEMINISTING* (Sept. 22, 2014), <http://feministing.com/2014/09/22/its-on-us-to-go-beyond-its-on-us>.

85. See WHITE HOUSE: COUNCIL ON WOMEN & GIRLS, <https://www.whitehouse.gov/administration/eop/cwg> (last visited Aug. 27, 2015).

86. See *About the Council on Women and Girls*, *supra* note 42.

ity for girls and boys.<sup>87</sup> This serves to reinforce the notion that it is sometimes difficult to define issues and concerns as gender specific.

In sum, establishing the CWG via an executive order allowed President Obama to demonstrate a clear cut and immediate commitment to women and girls, a gesture that was arguably both substantive and symbolic. On women's issues, he evidenced a clear divide with his Republican predecessor George W. Bush who had dismantled the OWIO set up by Bill Clinton. Throughout his presidency, he has demonstrated his intent for the CWG to serve as a repository for broader policy initiatives such as the Sexual Assault Task Force. The effectiveness of the CWG to promote women's rights, however, remains an open question.

### *Executive Order 13,595*

Pursuant to President Obama's Executive Order 13,595 issued in December 2011, the White House released the *United States National Action Plan on Women, Peace, and Security (NAP)*.<sup>88</sup> The NAP sets forth the approach the U.S. government plans to follow "to accelerate, institutionalize, and better coordinate our efforts to advance women's inclusion in peace negotiations, peacebuilding activities, and conflict prevention; to protect women from sexual and gender-based violence; and to ensure equal access to relief and recovery assistance, in areas of conflict and insecurity."<sup>89</sup>

Along with several other countries, the U.S. had been dilatory in responding to the international community's request to formulate the type of NAP ultimately set forth in Executive Order 13,595.<sup>90</sup> More than a decade earlier, the U.N. Security Council adopted Resolution 1325, which required states to adopt an NAP, to increase women's participation in peacebuilding and political institutions, and to take

87. See *Council on Women and Girls Resources*, WHITE HOUSE: COUNCIL ON WOMEN & GIRLS, <https://www.whitehouse.gov/administration/eop/cwg/resources> (last visited Aug. 27, 2015).

88. See Exec. Order No. 13595—Instituting a National Action Plan on Women, Peace, and Security, 3 C.F.R. § 321 (2011); WHITE HOUSE, UNITED STATES NATIONAL ACTION PLAN ON WOMEN, PEACE, AND SECURITY (2011), [https://www.whitehouse.gov/sites/default/files/email-files/US\\_National\\_Action\\_Plan\\_on\\_Women\\_Peace\\_and\\_Security.pdf](https://www.whitehouse.gov/sites/default/files/email-files/US_National_Action_Plan_on_Women_Peace_and_Security.pdf) [hereinafter NAP].

89. NAP, *supra* note 88, at 1.

90. See generally Barbara Miller et al., *Women in Peace and Security Through United Nations Security Resolution 1325: Literature Review, Content Analysis of National Action Plans, and Implementation 12* (George Washington Univ. Inst. for Glob. & Int'l Studies, Working Paper No. IGIS WP 13/GGP WP 09, 2014), [http://www.gwu.edu/~igis/assets/docs/working\\_papers/igis\\_wp13\\_ggp\\_wp09.pdf](http://www.gwu.edu/~igis/assets/docs/working_papers/igis_wp13_ggp_wp09.pdf).



special measures to protect women and girls from sexual and other forms of gender-based violence in situations of armed conflict.<sup>91</sup> In the subsequent decade, the U.N. Security Council adopted four additional resolutions linked to women, peace, and security concerns.<sup>92</sup>

In the United States, various non-profit groups had been working to memorialize a 1325 NAP.<sup>93</sup> In addition, congressional action called on the U.S. to meet its obligations under Security Council Resolution 1325. For example, in 2007, Representative Eddie Bernice Johnson (D-TX-30) introduced House Resolution 146, which stated:

Expressing the sense of the House of Representatives that the United States should take action to meet its obligations, and to ensure that all other member states of the United Nations meet their obligations, to women as agreed to in United Nations Security Council Resolution 1325 relating to women, peace, and security, and the United States should fully assume the implementation of international law relating to human rights that protects the rights of women and girls during and after conflicts, and for other purposes.<sup>94</sup>

91. S.C. Res. 1325 (Oct. 31, 2000). Subsequent to its promulgation, U.N. Women provided guidance about how to comply with 1325's mandates. See, e.g., *What Is U.N. Security Council Resolution 1325 and Why Is It So Critical Today?*, U.S. INST. OF PEACE, [http://www.usip.org/gender\\_peacebuilding/about\\_UNSCR\\_1325](http://www.usip.org/gender_peacebuilding/about_UNSCR_1325) (last visited Aug. 27, 2015); WOMEN'S INT'L LEAGUE FOR PEACE & FREEDOM, U.S. SECTION, STATEMENT ON U.S. SCR 1325 NATIONAL ACTION PLAN DEVELOPMENT 1 (2011), [http://www.peacewomen.org/sites/default/files/wilpf\\_u.s.\\_statement\\_on\\_u.s.\\_scr\\_1325\\_nap-9\\_11\\_11.pdf](http://www.peacewomen.org/sites/default/files/wilpf_u.s._statement_on_u.s._scr_1325_nap-9_11_11.pdf); *U.N. Security Council Resolution 1325*, WAND EDUC. FUND, <http://www.wand.org/our-work/women-and-security/u-n-security-council-resolution-1325> (last visited Aug. 27, 2015).

92. S.C. Res. 1820 (June 19, 2008) (stating that sexual violence during armed conflict is a war crime and calls for training of troops and disciplinary measures); S.C. Res. 1888 (Sept. 30, 2009) (mandating that peacekeeping missions protect women and children from sexual violence and requests the appointment of a special representative on sexual violence during armed conflict); S.C. Res. 1889 (Oct. 5, 2009) (stressing compliance with international law regarding civilians in armed conflict, reaffirming strengthening women's involvement in peace processes and political participation, and requiring development of progress indicators for compliance with Resolution 1325); S.C. Res. 1960 (Dec. 16, 2010) (reiterating the previous commitments of earlier resolutions and calls for greater accountability of perpetrators of sexual and gender-based violence). Some feminist commentators have criticized the so-called "naming and shaming" provisions contained in paragraph 3 of Resolution 1960. See, e.g., Gina Heathcote, *Naming and Shaming: Human Rights Accountability in Security Council Resolution 1960 (2010) on Women, Peace and Security*, 4 J. HUM. RTS. PRAC. 83 (2012).

93. See, e.g., U.S. INST. OF PEACE, *supra* note 91; WOMEN'S INT'L LEAGUE FOR PEACE & FREEDOM, *supra* note 91; WAND EDUC. FUND, *supra* note 91; *but see* Corinne L. Mason, *Global Violence Against Women as a National Security "Emergency"*, FEMINIST FORMATIONS 25, 55 (2013) (demonstrating the possible negative implications of linking the eradication of violence against women to national security concerns).

94. H.R. Res. 146, 110th Cong. (2007).

During 2008 congressional hearings on this subject, testimony was provided from differing perspectives with most participants underscoring the importance of including women in all phases of the peace and security process.<sup>95</sup> However, Representative Dana Rohrabacher (R-CA-46) expressed opposition to fulfilling the requirements of 1325 based on the concern that compliance “could turn over U.S. domestic policy to an unelected group of so called international experts.”<sup>96</sup> Rohrabacher’s statement highlights the perceived infringement on national sovereignty if the U.S. were to throw in its lot with other U.N. member nations. It is also indicative of a prevalent anti-U.N. sentiment among a majority of Americans during this time period, which would have likely been reflected in pushback by congressional lawmakers on any proposed initiative originating with the U.N.<sup>97</sup>

The favorable treatment of international instruments dealing with women’s rights had been rather dismal in the U.S. Congress. Most notably, CEDAW was never ratified by the Senate after the Carter administration signed the document in 1980.<sup>98</sup> Only a few countries, including the United States, Iran, Somalia, Sudan, Palau, and Tonga, have failed to ratify CEDAW, which is sometimes referred to as the “Women’s Convention.”<sup>99</sup> Although Obama has consistently registered support for the ratification of CEDAW, there is a sense that his administration has been hesitant to push the issue, perhaps due to an unwillingness to risk defeat in Senate.<sup>100</sup>

A similar problem had arisen over the years involving international organizations that provide services in areas that affect women

95. *U.N. Security Council Resolution 1325: Recognizing Women’s Vital Roles in Achieving Peace and Security: Hearing Before the Subcomm. on Int’l Orgs., Human Rights, & Oversight of the H. Comm. on Foreign Affairs*, 110th Cong. (2008).

96. *Id.* at 4.

97. Richard Wike & Jacob Poushter, *Obama Addresses More Popular U.N.*, PEW RESEARCH CTR.: GLOB. ATTITUDES & TRENDS (Sept. 21, 2009), <http://www.pewglobal.org/2009/09/21/obama-addresses-more-popular-un> (explaining that only 48% of Americans in 2007 held a favorable view of the U.N. compared with 77% of Americans in 2001).

98. *Status of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtmsg\\_no=iv-8&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtmsg_no=iv-8&chapter=4&lang=en) (last visited June 18, 2015).

99. *Id.*

100. Linda Lowen, *CEDAW: What is President Obama’s Position on CEDAW?*, ABOUT NEWS: WOMEN’S ISSUES, <http://womensissues.about.com/od/internationalwomensrights/a/CEDAWObama.htm> (last visited Sept. 13, 2015).

and girls. For example, debates about the allocation of funds to support the U.N. Population Fund (UNFPA) were continually contentious, even though the organization does not focus on women exclusively.<sup>101</sup> In 1985, Congress passed the Kemp-Kasten Amendment requiring taxpayer funding to be withheld from any entity operating overseas that the president determines to be supporting or participating in “the management of a program of coercive abortion or involuntary sterilization.”<sup>102</sup> Even though UNFPA funding was not used for prohibited activities, every Republican administration thereafter refused to financially subsidize UNFPA, which led to a grassroots movement in 2002 to replace \$34 million of escrowed taxpayer funding with private donations.<sup>103</sup>

Some commentators suggested that GOP legislators had declared a “war on women” in the domestic realm as well.<sup>104</sup> Senator Barbara Boxer accused her Republican counterparts of repeatedly opposing bills concerning women’s healthcare, pay equity, gender discrimination, and domestic violence.<sup>105</sup> The combined effect of GOP antagonism to U.N. initiatives—regardless of the subject matter—and to women’s rights proposals, both internationally and domestically, suggested a negative fate for NAP if it were forced to navigate a congressional path.<sup>106</sup>

Given these realities, adoption of the NAP through the presidential directive route suggests Obama’s willingness to respond to the international community without forcing a legislative showdown. A few feminists have publicly questioned the potential negative conse-

101. See LUISA BLANCHFIELD, CONG. RESEARCH SERV., R41257, A NEW UNITED NATIONS ENTITY FOR WOMEN: ISSUES FOR CONGRESS 17–18 (2010).

102. Act of Aug. 15, 1985, Pub. L. No. 99-88, 99 Stat. 293, 323.

103. See JANE ROBERTS, 34 MILLION FRIENDS OF THE WOMEN OF THE WORLD 7–9 (2005), <http://www.34millionfriends.org/media/34milwnm.pdf>.

104. See Nia-Malika Henderson, *Democrats’ ‘War on Women’ Strategy Still Works. For Now.*, WASH. POST (June 4, 2014), <http://www.washingtonpost.com/blogs/she-the-people/wp/2014/06/04/democrats-war-on-women-strategy-still-works-for-now/>; Zerlina Maxwell, *Reproductive Health Laws Prove GOP ‘War on Women’ Is No Fiction*, U.S. NEWS & WORLD REP. (Apr. 10, 2012), <http://www.usnews.com/debate-club/is-there-a-republican-war-on-women/reproductive-health-laws-prove-gop-war-on-women-is-no-fiction>.

105. See Barbara Boxer, *Foul Play: War on Women is Real*, POLITICO (Apr. 15, 2012), <http://www.politico.com/news/stories/0412/75143.html>.

106. Despite the seemingly dim prospects for success, some form of legislation dealing with the NAP was introduced in one or both Houses of Congress during several legislative sessions, including the current one. See, e.g., Women, Peace, and Security Act of 2015, S. 224, 114th Cong. (2015); Women, Peace, and Security Act of 2014, S. 1942, 113th Cong. (2014); Women, Peace, and Security Act of 2013, H.R. 2874, 113th Cong. (2013); Women, Peace, and Security Act of 2012, S. 3477, 112th Cong. (2012); Women, Peace, and Security Act of 2012, H.R. 6255, 112th Cong. (2012).

quences of connecting women's human rights issues to global security concerns.<sup>107</sup> As a result, it is somewhat difficult to categorize this particular executive order as an unequivocal advancement of women's rights. The sense is that most advocates have perceived it as a positive step.

### *Executive Order 13,623*

A mere eight months after signing Executive Order 13,595, President Obama again ventured into the area of international women's rights by issuing Executive Order 13,623 titled *Preventing and Responding to Violence Against Women and Girls Globally*.<sup>108</sup> Several provisions in Executive Order 13,623 had been floating around Congress for more than five years in the form of the proposed International Violence Against Women Act (I-VAWA).<sup>109</sup> This order also specifically references the United States Strategy to Prevent and Respond to Gender-Based Violence Globally ("U.S. Strategy") that was included in an appropriations bill from the previous year.<sup>110</sup>

Several years earlier, women's rights advocates in the U.S. made a conscious decision to tackle the global problem of violence against women.<sup>111</sup> In 2005, staff at the non-profit organization Women Thrive Worldwide engaged in a global interviewing process with representatives from grassroots organizations, survivors of abuse, and experts to obtain input on what initiatives actually work in reducing violence against women and what role should be played by the U.S. in these anti-violence efforts.<sup>112</sup> A clear consensus emerged that the United States could—and should—exercise leadership on this issue.<sup>113</sup>

Although the U.S. government had sponsored and funded international projects to combat violence against women, its efforts were scattered and difficult to track.<sup>114</sup> Women Thrive Worldwide part-

107. Mason, *supra* note 93, at 55.

108. Exec. Order No. 13623—Preventing and Responding to Violence Against Women and Girls Globally, 3 C.F.R. § 296 (2012).

109. International Violence Against Women Act of 2007, S. 2279, 110th Cong. (2007).

110. Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 786, 1248.

111. RITU SHARMA, *TEACH A WOMAN TO FISH: OVERCOMING POVERTY AROUND THE GLOBE* 162 (2014).

112. *Id.*

113. *Id.*

114. See generally LUISA BLANCHFIELD ET AL., CONG. RESEARCH SERV., RL34438, *INTERNATIONAL VIOLENCE AGAINST WOMEN: U.S. RESPONSE AND POLICY ISSUES* (2008).

nered with other organizations including Amnesty International and Futures Without Violence to convince U.S. lawmakers to commit to a longer-term, concrete strategy to end violence against women internationally by enacting legislation.<sup>115</sup> The result was the International Violence Against Women Act (I-VAWA), which proposed to fund anti-violence programs in selected countries across borders and to create a women's global leadership position under the auspices of the U.S. Department of State.<sup>116</sup>

Joe Biden, the Democratic Senator from Delaware who was subsequently tapped to be Barack Obama's running mate as vice president, co-sponsored I-VAWA when it was introduced in 2007.<sup>117</sup> He had been the primary sponsor of the 1994 Violence Against Women Act (VAWA) that provided financial support: (1) to enhance law enforcement response in cases of rape and domestic violence; (2) to expand essential services to those subjected to abuse; and (3) to establish a repository for data-tracking and statistics-gathering.<sup>118</sup> Biden has characterized the passage of VAWA as "my proudest legislative accomplishment."<sup>119</sup> Unfortunately, I-VAWA was not as well-received in either the House or the Senate during its initial foray into the legislative arena during the 110th Congress.<sup>120</sup>

After attracting significant bipartisan support, I-VAWA was better positioned for success during its second go-around in the 111th

115. Noha Shawk, *Civil Society Advocacy and the Diffusion of Violence Against Women Norms: An Analysis of the International Violence Against Women Act*, 11 GLOBAL SOC. POL'Y 175, 180 (2011); see also Mary Pat Treuthart, "No Woman, No Cry"—Ending the War on Women Worldwide and the International Violence Against Women Act (I-VAWA), 36 B.U. INT'L L.J. 73, 103 (2015). Although sourced and presented differently, some of the information in this section on Executive Order 13623 was discussed in my earlier article. see *id.* at 111–13.

116. International Violence Against Women Act of 2007, S. 2279, 110th Cong. (2007). Proponents identified the following as some of the most important aspects of I-VAWA: (1) designating one person in the government to be in charge of women's international issues, especially violence against women and girls; (2) formulating a coherent strategy to prevent and reduce violence against women through the use of comprehensive approach based on what works; (3) working with the military and police forces to respond to violence against women and girls; and (4) taking action where rape and brutalization of females was used as a weapon of war. SHARMA, *supra* note 111, at 168–69.

117. See S. 2279, *supra* note 116.

118. Sally F. Goldfarb, "No Civilized System of Justice": The Fate of the Violence against Women Act, 102 W. VA. L. REV. 499, 504–05 (2000).

119. See Joe Biden, *20 Years of Change: Joe Biden on the Violence Against Women Act*, TIME (Sept. 10, 2014), <http://time.com/3319325/joe-biden-violence-against-women/>.

120. See S. 2279 (110th) *International Violence Against Women Act of 2007*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/110/s2279> (last visited Oct. 4, 2015); H.R. 5927 (110th): *International Violence Against Women Act of 2008*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/110/hr5927> (last visited Oct. 4, 2015).

Congress in 2009 and 2010.<sup>121</sup> Members of the public also were positively inclined toward the goals of I-VAWA as evidenced by the results of a 2009 public opinion survey.<sup>122</sup> A number of other factors coalesced and made I-VAWA's passage seem possible, such as a Democratic majority in Congress, an increased number of women lawmakers at the national level, greater awareness of the connection between foreign policy and human rights, and the recognized success of—and support for—VAWA on the domestic front.<sup>123</sup>

Hillary Clinton's appointment as secretary of state also boded well for I-VAWA. She is credited with coining the catchphrase "women's rights are human rights" in a keynote address on gender inequality and gender-based violence at the 1995 Fourth World Conference on Women in Beijing.<sup>124</sup> Soon after Clinton's confirmation, the Office of Global Women's Issues was created, which was a centerpiece of the I-VAWA bill, and Melanne Verveer was placed in charge of its operations as the Ambassador-at-Large.<sup>125</sup> In the meantime, I-VAWA became bogged down in "abortion politics," which splintered the fragile coalition of legislators committed to its

121. See Katie Glueck, 'Landmark' International Violence Against Women Act Receives Bipartisan Support, *POL. DAILY* (Feb. 8, 2010), <http://www.politicsdaily.com/2010/02/08/landmark-international-violence-against-women-act-receives-bip>; see also International Violence Against Women Act of 2010, H.R. 4594, 111th Cong. (2010); International Violence Against Women Act of 2010, S. 2982, 111th Cong. (2010).

122. In a July 2009 public opinion poll conducted by Lake Research, a majority of respondents felt "that both violence against women and girls generally and violence against women and girls globally are serious problems (roughly two-thirds of voters rate these issues between 8 and 10 on a 10-point scale)." Memorandum from Lake Research Partners to Women Thrive Worldwide and Family Violence Prevention Fund 2 (Aug. 28, 2009) (on file at [https://www.futureswithoutviolence.org/userfiles/file/GlobalPrevention/Lake\\_Intl\\_Research\\_Key\\_Findings\\_Memo\\_9-09.pdf](https://www.futureswithoutviolence.org/userfiles/file/GlobalPrevention/Lake_Intl_Research_Key_Findings_Memo_9-09.pdf)). When provided a description of the I-VAWA legislation, sixty-two percent of respondents expressed "intense support" and eighty-two percent expressed support overall, including broad support across party lines. *Id.*

123. Sara Angevine, *Global Women's Rights: A Study of the International Violence Against Women Act (IWA) 14–16* (Sept. 3, 2011) (unpublished manuscript) (on file with author). This paper was presented at the Annual Meeting of the American Political Science Association, which took place from September 1-3, 2011, in Seattle, Washington.

124. See Patrick E. Tyler, *Hillary Clinton, in China, Details Abuse of Women*, *N.Y. TIMES* (Sept. 6, 1995), <http://www.nytimes.com/1995/09/06/world/hillary-clinton-in-china-details-abuse-of-women.html>.

125. Press Release, White House, Nominations Sent to the Senate 3/11/09 (Mar. 11, 2009), <https://www.whitehouse.gov/the-press-office/nominations-sent-senate-31109>. Melanne Verveer, the first Ambassador-at-Large for Women's Global Issues, was confirmed by the Senate on April 2, 2009. 155 CONG. REC. S4402 (daily ed. Apr. 2, 2009). Verveer's successor, Catherine M. Russell, received Senate confirmation on August 1, 2013. 159 CONG. REC. S6261 (daily ed. Aug. 1, 2013).

passage.<sup>126</sup> After Republicans secured a majority in the House of Representatives in the 2010 midterm elections, the momentum on I-VAWA was stalled, despite a favorable eleventh-hour vote in the Senate Foreign Relations Committee.<sup>127</sup>

Although the push for enacting I-VAWA continued, its proponents pivoted to the executive for action, resulting in the issuance of Executive Orders 13,595 and 13,623, which served to implement critical pieces of the bill that had been suspended in legislative limbo.<sup>128</sup> Despite the lack of forward movement on I-VAWA, effective lobbying had resulted in the inclusion of a provision in the aforementioned 2011 spending bill that mandated the president to develop a strategy designed to prevent and respond to violence against women and girls across borders.<sup>129</sup> This imprimatur from Congress helped bolster the appeal to the executive for more aggressive action on gender-based violence globally, which could then be viewed as a joint legislative/executive effort rather than a unilateral presidential move.

Addressing violence against women worldwide was a high priority for two key members of the Obama administration—namely, Vice-President Joe Biden who was an original sponsor of I-VAWA in the Senate, and Secretary of State Hillary Clinton who had been a champion of the rights of women and girls for more than three decades. Women's rights activists were gratified that Obama seemingly took this executive action in an election year without any fear of political fallout. Finally, issuance of this executive order sent a strong symbolic message that the U.S. could assume a leadership role on

126. SHARMA, *supra* note 111, at 171–72.

127. Angevine, *supra* note 123, at 16. Shepherded by Senator John Kerry (D-MA), the Chair of the Senate Foreign Relations Committee, I-VAWA was approved by an eleven-to-eight vote along partisan lines in the Committee on December 14, 2010. See Press Release, U.S. Senate Comm. on Foreign Relations, Chairman Kerry: Senate Foreign Relations Committee Approves Historic Legislation to Combat Violence Against Women and Girls (Dec. 14, 2010) (on file at <http://www.foreign.senate.gov/press/chair/release/chairman-kerry-senate-foreign-relations-committee-approves-historic-legislation-to-combat-violence-against-women-and-girls>).

128. I-VAWA has been introduced in subsequent sessions of Congress without success to date. See, e.g., International Violence Against Women Act of 2013, H.R. 3571, 113th Cong. (2013); International Violence Against Women Act of 2012, H.R. 5905, 112th Cong. (2012). Presidential scholars have asserted that the executive has greater opportunity, if not authority, to act unilaterally in the foreign affairs sphere as compared to the domestic realm. See *generally* Marshall & Pacelle, *supra* note 36.

129. SHARMA, *supra* note 111, at 176; see also Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 786, 1248.

the issue of gender-based violence, even in the absence of CEDAW ratification.

### *Executive Order 13,665*

Signed by Obama on April 8, 2014, Executive Order 13,665 “encourages greater pay transparency by prohibiting federal contractors and subcontractors from discharging or otherwise discriminating against their employees and job applicants for discussing, disclosing or inquiring about compensation.”<sup>130</sup> Executive Order 13,665 amends a previous presidential directive concerning non-discriminatory employment and other practices for federal contractors that was issued by Lyndon Johnson in 1965.<sup>131</sup> President Obama specifically mentioned the negative gender implications of wage secrecy in his accompanying remarks at the signing ceremony.<sup>132</sup>

In issuing Executive Order 13,665, the president was following through on a promise he made during his 2014 State of the Union

130. *Notice of Proposed Rulemaking on Executive Order 13665*, U.S. DEPT. OF LABOR: OFFICE OF FED. CONTRACT COMPLIANCE PROGRAMS, <https://web.archive.org/web/20150908022229/http://www.dol.gov/ofccp/PayTransparencyNPRM.html> (last visited Aug. 27, 2015) (discussing Exec. Order No. 13,665, 3 C.F.R. § 240 (2014)); see also Mohana Ravindranath, *Executive Order: Contractors Must Allow Employees to Discuss Pay with Each Other*, WASH. POST: CAP. BUS. (Apr. 13, 2014), [http://www.washingtonpost.com/business/capitalbusiness/executive-order-contractors-must-allow-employees-to-discuss-pay-with-each-other/2014/04/11/04c40e78-bf48-11e3-bcec-b71ee10e9bc3\\_story.html](http://www.washingtonpost.com/business/capitalbusiness/executive-order-contractors-must-allow-employees-to-discuss-pay-with-each-other/2014/04/11/04c40e78-bf48-11e3-bcec-b71ee10e9bc3_story.html).

Of course, Executive Order 13,665 was not without criticism. see, e.g., Laura Bassett, *Conservatives Push Back Against Equal Pay Efforts*, HUFFINGTON POST (Apr. 8, 2010), [http://www.huffingtonpost.com/2014/04/07/republicans-equal-pay\\_n\\_5106329.html](http://www.huffingtonpost.com/2014/04/07/republicans-equal-pay_n_5106329.html) (disputing, *inter alia*, the “77 cents per dollar” amount often cited in this issue); Aamer Madhani, *Obama, GOP Trade Sharp Rhetoric in Equal Pay Debate*, USA TODAY (Apr. 8, 2014), <http://www.usatoday.com/story/news/politics/2014/04/08/obama-equal-pay-executive-orders/7461035> (discussing how Republicans claimed the order was unnecessary, with discrimination already being illegal, and explaining how the GOP pointed to wage disparities within the Obama administration itself).

131. Exec. Order No. 11,24—Equal Employment Opportunity, 3 C.F.R. § 167 (1965). Johnson’s action has been characterized as a refinement of President Kennedy’s Executive Order 10,925, which also formed the bases for “many of the principles and provisions” of Title VII. See David C. Roth, *Executive Orders and the Struggle for Workplace Equality*, 10 Louis Jackson Nat’l Student Writing Competition, CHI-KENT. INST. L. & WORKPLACE (2015), <https://www.kentlaw.iit.edu/Documents/Institutes and Centers/ILW/Jackson Louis Writing Competition/Executive Orders and the Struggle for Workplace Equality.pdf> (citing Michael H. LeRoy, *Presidential Regulation of Private Employment: Constitutionality of Executive Order 12,954 Debarment of Contractors Who Hire Permanent Striker Replacements*, 37 B.C. L. REV. 229, 259–60 (1996)).

132. President Barack Obama, Remarks by the President on Equal Pay for Equal Work (Apr. 8, 2010) (transcript at <https://www.whitehouse.gov/the-press-office/2014/04/08/remarks-president-equal-pay-equal-work>).



address to work collaboratively and “give every woman the opportunity she deserves” in the employment context.<sup>133</sup> He also made a reference to a popular long-running television series by proclaiming, “It’s time to do away with workplace policies that belong in a ‘Mad Men’ episode.”<sup>134</sup>

At the same time President Obama was signing Executive Order 13,665, Democrats were attempting to bring the Paycheck Fairness Act to the Senate floor for debate.<sup>135</sup> The House had passed an earlier version of this bill in 2008.<sup>136</sup> The impetus behind the Paycheck Fairness Act was to decrease the so-called gender gap in wages through various means including the prohibition of retaliation against workers who disclose wage information.<sup>137</sup> But, as NPR commentator Scott Horsley presciently observed about its 2014 iteration,

[t]hat bill is unlikely to become law, but it does have the potential to put Republicans on the spot. No one wants to be in the position of defending unequal pay. Instead, GOP critics of the law warn of government interference in the free market, and the prospect of runaway lawsuits.<sup>138</sup>

The concept of “equal pay for equal work” was enshrined in federal law beginning with the passage of the appropriately titled Equal Pay Act of 1963.<sup>139</sup> Also prompted by concerns about differ-

133. 160 CONG. REC. H1473, H1476 (daily ed. Jan. 28, 2014) (State of the Union address of President Barack Obama).

134. *Id.* *Mad Men*, an AMC television series that ran from 2007 to 2015, featured storylines revolving around the personal and professional lives of executives and staff in a Madison Avenue advertising agency during the 1960s, complete with striking examples of gender bias, misogyny, and discriminatory treatment of women in the employment and the household settings. See *Mad Men*, IMDB, <http://www.imdb.com/title/tt0804503> (last visited Aug. 27, 2015).

135. Juliet Eilperin, *Obama Takes Executive Action to Lift the Veil of ‘Pay Secrecy,’* WASH. POST (Apr. 8, 2014), <http://www.washingtonpost.com/blogs/post-politics/wp/2014/04/08/obama-takes-executive-action-to-lift-the-veil-of-pay-secrecy>.

136. Paycheck Fairness Act, H.R. 1338, 110th Cong. (2008).

137. See Cong. Research Serv., *Summaries for the Paycheck Fairness Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/110/hr1338/summary> (last visited Oct. 5, 2015) (also explaining that this bill allowed for punitive damages for successful plaintiffs in addition to compensatory damages).

138. Scott Horsley, *Obama’s Executive Orders Take on Unequal Pay for Women*, NPR (Apr. 8, 2014), <http://www.npr.org/2014/04/08/300477854/obama-s-executive-order-to-take-on-unequal-pay-for-women>; see also Amanda Marcotte, *Republicans Are Totally for Equal Pay, Except When They’re Not*, SLATE: XX FACTOR (Apr. 8, 2014), [http://www.slate.com/blogs/xx\\_factor/2014/04/08/equal\\_pay\\_day\\_obama\\_to\\_sign\\_two\\_executive\\_orders\\_for\\_pay\\_transparency\\_and.html](http://www.slate.com/blogs/xx_factor/2014/04/08/equal_pay_day_obama_to_sign_two_executive_orders_for_pay_transparency_and.html) (questioning why Republicans would object to more data that might support their position on gendered pay differences).

139. See 29 U.S.C. § 206(d) (2012). For additional information on the amendment history of the Equal Pay Act, see *The Equal Pay Act of 1963*, U.S. EQUAL EMP. OPPORTUNITY COMM., <http://www.eeoc.gov/laws/statutes/epa.cfm> (last visited Oct. 5, 2015). For an excellent sum-

ences in pay between men and women, the provisions of the Act require the same rates of pay for jobs that depend on “equal skill, effort, and responsibility, and which are performed under similar working conditions.”<sup>140</sup> The following year, Title VII of the Civil Rights Act of 1964 prohibited discrimination in employment based on race, color, religion, sex, or national origin, which expanded the bases for bringing differential pay claims for members of the protected classes.<sup>141</sup>

A major problem with Title VII was its relatively short 180-day filing period from the date of occurrence for asserting a wage discrimination claim.<sup>142</sup> Potential plaintiffs were often disadvantaged because they were unaware of a pay disparity until after the filing deadline had passed.<sup>143</sup> In the 2007 case *Ledbetter v. Goodyear Tire & Rubber Co.*, the U.S. Supreme Court rejected Ledbetter’s paycheck accrual argument that each new paycheck re-started the EEOC charging period and instead upheld a narrow interpretation of the statutory filing period.<sup>144</sup> Due to the lack of salary transparency in her workplace, Ms. Ledbetter did not learn about the pay discrepancy until it was too late.<sup>145</sup> One of President Obama’s first actions after taking office was to sign the Lilly Ledbetter Fair Pay Act of 2009, which permits claimants to file Title VII actions within 180 days after receiving the last discriminatory paycheck.<sup>146</sup>

Despite this welcome change in the law, its underlying assumption continues to be that a worker knows the amount of compensation paid to others. In January 2014, the first survey of its kind to ask

many regarding the history of pay equity, see Marianne DelPo Kulow, *Beyond the Paycheck Fairness Act: Mandatory Wage Disclosure Laws—A Necessary Tool for Closing the Residual Gender Wage Gap*, 50 HARV. J. ON LEGIS. 385 (2013).

140. 29 U.S.C. § 206(d).

141. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended across scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.; Title VII was codified at 42 U.S.C. § 2000(e)).

142. *Id.* A number of courts did not view the plaintiffs’ claims to begin anew with each passing day of continued discrimination; instead, the statute of limitation began to run from the initial point of the discriminatory action. See Jeremy A. Weinberg, *Blameless Ignorance? The Ledbetter Act and Limitations Periods for Title VII Pay Discrimination Claims*, 84 N.Y.U. L. REV. 1756, 1759 n.20 (2009) (describing the circuit split regarding the paycheck accrual rule).

143. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 649–50 (Ginsburg, J., dissenting) (examining the lack of transparency regarding compensation in many workplaces and its attendant issues).

144. *Id.* at 625–28 (majority opinion).

145. *Id.* at 645 (Ginsburg, J., dissenting).

146. Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (codified in scattered sections of 29 U.S.C. and 42 U.S.C.).

directly about workplace policies on secrecy surrounding pay was conducted by the Institute for Women's Policy Research.<sup>147</sup> About half of the surveyed male (47%) and female (51%) workers answered that "the discussion of wage and salary information is either discouraged or prohibited and/or could lead to punishment."<sup>148</sup> Results from a Robert Morris University poll released in March 2014 indicated that over two-thirds (68.4%) of respondents agreed with the statement, "Most employers hide salaries to avoid comparisons of equal pay for equal jobs among men and women."<sup>149</sup> This information is essential to combat pay discrimination and, as one scholarly commentator notes, "[h]ence there is a need for wage disclosure laws."<sup>150</sup>

Through direct presidential action under Executive Order 13,665, President Obama was able to protect only federal contract workers from being disadvantaged for discussing, disclosing, or inquiring about salary information.<sup>151</sup> But it represented forward movement on the overall wage transparency issue, which is noteworthy because the Paycheck Fairness Act of 2014 was ultimately stalled due to a Senate filibuster by Republicans.<sup>152</sup> The president's inclination to take unilateral action on this economic issue resonated with working women and starkly revealed the gap between the two major political parties.<sup>153</sup> His position on wage equity and equal em-

147. INST. FOR WOMEN'S POLICY RESEARCH, QUICK FIGURES: PAY SECRECY AND WAGE DISCRIMINATION 1 (Jan. 2014), <http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1>.

148. *Id.*

149. *Gender Equality*, ROBERT MORRIS UNIV. (Mar. 24, 2014), <http://www.rmu.edu/News.aspx?id=531>.

150. Kulow, *supra* note 139, at 418. One creative response to management's proscription on salary disclosure hails from the 1930s. After being forbidden from discussing their levels of compensation by the owners of *Vanity Fair* magazine, the writers Dorothy Parker, Robert Benchley, and Robert Sherwood listed their respective wages on signs, strung the signs around their necks, and wore them at the office. Naomi Shavin, *How Salary Transparency and an Openly Competitive Job Market Could Improve Your Career*, FORBES (July 30, 2014), <http://www.forbes.com/sites/naomishavin/2014/07/30/how-salary-transparency-and-an-openly-competitive-job-market-could-improve-your-career>.

151. Exec. Order No. 13665—Non-Retaliation for Disclosure of Compensation Information, 3 C.F.R. § 240, 241 (2014).

152. After the successful filibuster, Senator Patty Murray (D-WA) tweeted on April 9, 2014, "This isn't over. We aren't going to let GOP off the hook on #PaycheckFairness. Time for them to give women a #fairshot at #EqualPay" Senator Patty Murray (@Patty Murray), TWITTER (Apr. 9, 2014, 8:48 AM), <https://twitter.com/PattyMurray/status/453922348312592384>.

153. This action was also in line with his "We Can't Wait" campaign in 2011 when he pledged to bypass Congress if necessary to help working families. *We Can't Wait: President Obama Is Not Letting Congressional Gridlock Slow Our Economic Growth*, WHITE HOUSE:

ployment represents the clearest example of promoting women's rights.

#### IV. AN EXECUTIVE ORDER THAT UNDERMINED WOMEN'S RIGHTS (AT LEAST IN THE SHORT RUN)

##### *Executive Order 13,535*

Although controversy has swirled around some aspects of the aforementioned gender-focused Executive Orders in terms of the efficacy of a particular strategy or tactic, it is reasonable to conclude that their primary aim was the *advancement* of women's rights. But President Obama has also issued at least one executive order that negatively affects women's rights in the area of reproductive autonomy.

Things began on a positive note from the vantage point of advocates for reproductive justice when, immediately upon taking office in January 2009, the president signed a Presidential Memorandum revoking the so-called "Global Gag Rule" that had been put in place by his executive predecessor.<sup>154</sup> This rule, also known as the "Mexico City Policy," prohibits the award of federal funds to any entity overseas that provides information, advice, referral, services for legal abortion, or support for the legalization of abortion, even if other money subsidizes those activities.<sup>155</sup> Ronald Reagan initiated this policy during his administration and it was continued during the George H.W. Bush's tenure; Bill Clinton reversed the rule, only to have George W. Bush reinstate it.<sup>156</sup>

In an accompanying statement to the Memorandum, President Obama lamented the fact that family planning assistance had been used as a "political wedge issue" and signaled that he wished to end the debate.<sup>157</sup> The president's timing seemed to suggest his good

JOBES & ECON., <https://www.whitehouse.gov/economy/jobs/we-cant-wait> (last visited Aug. 27, 2015).

154. Memorandum on Mexico City Policy and Assistance for Voluntary Population Planning, 3 C.F.R. § 339 (2009).

155. Suzanne Petroni, *Women Want the Global Gag Rule Gone for Good*, MS. MAG. (Aug. 11, 2014),

<http://msmagazine.com/blog/2014/08/11/women-want-the-global-gag-rule-gone-for-good>.

156. See generally Nina Crimm, *The Global Gag Rule: Undermining National Interests by Doing Unto Foreign Women and NGOs What Cannot Be Done at Home*, 40 CORNELL INT'L L.J. 587 (2007) (containing an overall history and analysis of the Global Gag Rule).

157. Suzanne Malveaux, *Obama Reverses Abortion-Funding Policy*, CNN (Jan. 24, 2009), <http://www.cnn.com/2009/POLITICS/01/23/obama.abortion>.

faith in this regard; the announcement of the policy reversal occurred late on a Friday afternoon with minimal fanfare.<sup>158</sup> Moreover, he pointedly did not take the opportunity to lift the ban the day before, which was the 36th anniversary of the contentious *Roe v. Wade* Supreme Court ruling on abortion.<sup>159</sup>

As a Senator, Barack Obama's record on reproductive autonomy issues was assessed as consistently "pro-choice."<sup>160</sup> In a 2007 speech to the Planned Parenthood Action Fund about health care reform, presidential aspirant Obama stated, "In my mind, reproductive care is essential care. It is basic care, so it is at the center and at the heart of the plan that I propose."<sup>161</sup>

Despite his repeated support for reproductive justice, Obama was compelled to adjust his perspective when it appeared that passage of the Patient Protection and Affordable Care Act (ACA), his signature health care legislation, might be jeopardized by uncertainty about subsidized coverage for abortion procedures.<sup>162</sup> Executive Order 13,535 with its unwieldy title *Patient Protection and Affordable Care Act's Consistency with Longstanding Restrictions on the Use of Federal Funds for Abortion* pledged enforcement to ensure that federal funds would not be used "for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered)."<sup>163</sup>

Obama's presidential directive was perceived as necessary to secure the votes of right-to-life Democrats, such as Rep. Bart Stupak (D-MI), for the ACA without risking an amendment to the bill it-

158. Amy Sullivan, *Shhh. Obama Repeals the Abortion Gag Rule, Very Quietly*, TIME (Jan. 23, 2009), <http://content.time.com/time/nation/article/0,8599,1873794,00.html>.

159. *Id.*

160. NARAL PRO-CHOICE AMERICA, SEN. BARACK OBAMA (D-IL) 1 (2008), <http://www.prochoiceamerica.org/assets/files/obama-fact-sheet.pdf> (a fact sheet published by NARAL Pro-Choice America detailing then-Senator Obama's stance on several reproductive rights policies).

161. Louis Jacobson, *Planned Parenthood Says Obama Promised to "Put Reproductive Health Care at the Center" of Health Reform*, POLITIFACT (Nov. 10, 2009, 6:02 AM), <http://www.politifact.com/truth-o-meter/statements/2009/nov/10/planned-parenthood/planned-parenthood-says-obama-promised-put-reprodu>.

162. Ron Elving, *Abortion Vote Shows How Much Democrats' World Has Changed*, NPR (Jan. 26 2015), <http://www.npr.org/sections/itsallpolitics/2015/01/26/381472527/abortion-vote-shows-how-much-democrats-world-has-changed> (recounting the role of Representative Bart Stupak in the ACA debate over abortion coverage).

163. Exec. Order No. 13535—Patient Protection and Affordable Care Act's Consistency with Longstanding Restrictions on the Use of Federal Funds for Abortion, 3 C.F.R. § 201, 202 (2010).

self.<sup>164</sup> According to William Galston of the Brookings Institution, “[t]he executive order found a sweet spot, which I’m surprised existed . . . Something that didn’t send the base of the party into a tizzy but seems to have satisfied a very important minority within the party. It was the model of win-win pragmatism.”<sup>165</sup>

Unsurprisingly, conservatives in Congress condemned the issuance of Executive Order 13,535 in lieu of Congress’ holding out for substantive change on abortion coverage in the ACA.<sup>166</sup> Both House Minority Leader John Boehner (R-OH) and Rep. Paul Ryan (R-WI) publicly recognized the impermanence of a presidential directive.<sup>167</sup> Ryan, appearing on a *Fox News Sunday* segment, described the Executive Order as “the rule of man” and “not the rule of law.”<sup>168</sup>

But pro-choice proponents also immediately denounced Executive Order 13,535.<sup>169</sup> A National Organization of Women (NOW) statement declared “Obama’s willingness to sign the order demonstrated that ‘it is acceptable to negotiate health care on the backs of women.’”<sup>170</sup> Planned Parenthood representatives expressed regret about the fact “a pro-choice president of a pro-choice nation was

164. See *Choice, Life Groups Slam Obama Order on Abortion Funding*, FOX NEWS (Mar. 21, 2010), <http://www.foxnews.com/politics/2010/03/21/stupak-says-health-care-deal-looming-abortion-funding> (also noting that Stupak was the primary mover behind an amendment to the ACA limiting the provision of abortion services).

165. Michael D. Shear, *Obama Signs Executive Order on Abortion Out of Sight of Media Glare*, WASH. POST: 44 POL. & POL’Y (Mar. 24, 2010), <http://voices.washingtonpost.com/44/2010/03/obama-to-sign-executive-order.html>.

166. Kathleen Parker, *Stupak’s Fall from Pro-Life Grace*, WASH. POST (Mar. 24, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/23/AR2010032302841.html>.

167. See 3 C.F.R. § 201.

168. *Transcript: Reps. Ryan, Wasserman Schultz on ‘FNS,’* FOX NEWS (Mar. 21, 2010), <http://www.foxnews.com/story/2010/03/21/transcript-reps-ryan-wasserman-schultz-on-fns.html>. It was later revealed that during an e-mail exchange with then Solicitor General Elena Kagan, Harvard law Professor Lawrence Tribe made reference to the fact that Executive Order 13535 amounted to “a signing statement on steroids,” which suggested its currency was limited in his opinion. Joel Gehrke, *Emails Show Kagan Excited About Obamacare Passage*, WASH. EXAMINER (Nov. 14, 2011), <http://www.washingtonexaminer.com/emails-show-kagan-excited-about-obamacare-passage/article/957286>. For an analysis of the ways that presidential signing statements can be used to promote a broader policy agenda, see generally Neal Devins, *Signing Statements and Divided Government*, 16 WM. & MARY BILL RTS. J. 63 (2007).

169. Garance Frank-Ruta, *NOW, NARAL Displeased with Obama-Stupak Deal*, WASH. POST: 44 POL. & POL’Y (Mar. 21, 2010), <http://voices.washingtonpost.com/44/2010/03/now-naral-displeased-with-obam.html>.

170. Shear, *supra* note 165.

forced to sign an Executive Order that further codifies the proposed anti-choice language in the health care reform bill."<sup>171</sup>

While the ACA's contraceptive coverage spawned litigation that ultimately reached the U.S. Supreme Court, the apprehension expressed by advocates at the time of the signing of Executive Order 13,535 about the potential to limit coverage for reproductive health was not realized.<sup>172</sup> Ironically, insurers under the ACA seemingly have provided more—not less—coverage.<sup>173</sup> A 2014 Government Accounting Office (GAO) investigation revealed that fifteen of eighteen insurers were selling plans that did not segregate funds for abortion coverage, which is required under the ACA.<sup>174</sup>

By issuing this order, Barack Obama accomplished multiple objectives. He managed to disarm his congressional opponents, pacify equivocal legislators, and ensure the salvation of the ACA. But his executive action on this issue cannot be characterized as pro-feminist, despite the overall end result.

#### V. AN EXECUTIVE ORDER THAT REPRESENTS A MISSED OPPORTUNITY TO ADVANCE WOMEN'S RIGHTS

##### *Executive Order 13,696*

An Executive Order amending the Military's Manual for Courts-Martial was signed by President Obama in June 2015.<sup>175</sup> The terms of Executive Order 13,696 incorporated 2013 legislative changes to the Uniform Code of Military Justice; these included several modifications and additions designed to address sexual assault issues in the military more effectively.<sup>176</sup> Unlike many other executive directives, this order results from the president's role as the Commander-in-Chief of the armed forces in combination with a specific congress-

171. Frank-Ruta, *supra* note 169.

172. See *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); Elizabeth B. Deutsch, Note, *Expanding Conscience, Shrinking Care: The Crisis in Access to Reproductive Care and the Affordable Care Act's Nondiscrimination Mandate*, 124 YALE L.J. 2470, 2490–2500 (2015) (providing an in-depth look at how the non-discrimination provisions in the ACA might be used to advance women's reproductive health services).

173. Jennifer Haberkorn & Burgess Everett, *Report: ACA Abortion Rules Ignored*, POLITICO (Sept. 16, 2014), <http://www.politico.com/story/2014/09/gao-report-obamacare-abortion-rules-ignored-110990.html>.

174. *Id.*

175. Exec. Order No. 13696—2015 Amendments to the Manual for Courts-Martial, United States, 80 Fed. Reg. 35,783 (June 22, 2015).

176. *Id.*

sional delegation of power.<sup>177</sup> In view of the extensive documentation of continued instances of sexual violence in the military, Barack Obama's overall leadership on the subject has been viewed by some as insufficient.<sup>178</sup> But when he had taken the opportunity to speak out forcefully by stating that uniformed perpetrators of sexual assault should be "prosecuted, stripped of their positions, court-martialed, fired, dishonorably discharged," President Obama was accused of "undue command influence" by military defense lawyers and judges with active cases pending.<sup>179</sup>

The problem of sexual assault in the military was brought out into the open after incidents of sexual assault and harassment were reported at the 1991 naval aviator Tailhook Convention in Las Vegas.<sup>180</sup> Groups were formed such as Protect Our Defenders and the Service Women's Action Network to safeguard and promote the rights of individuals with a special mission to aid those who had been subjected to sexual assault while in uniform.<sup>181</sup> Incremental changes had occurred; however, more than two decades later, a number of obstacles remained for survivors of sexual violence in the military: (1) reporting difficulties; (2) inadequate victims' services; (3) chain of command issues; and (4) retaliation.

Numerous instances in each area were highlighted in the media as well as featured in a 2012 documentary film, *The Invisible War*,

177. Uniform Code of Military Justice, 10 U.S.C. § 836 (2006). See also Robinson O. Everett, *Some Comments on the Role of Discretion in Military Justice*, 37 LAW & CONTEMP. PROBS. 173, 173–74 (1972) (contending that the broad congressional delegation of authority to the president renders it unnecessary to determine the scope of executive constitutional authority); William F. Fratcher, *Presidential Power to Regulate Military Justice: A Critical Study of Decisions of the Court of Military Appeals*, 34 N.Y.U. L. REV. 861, 862–63 (1959) (supporting an expansive view of executive constitutional authority in the area of military justice).

178. Anu Bhagwati, *The Invisible President: How Obama's Ignored Military Sexual Assault*, JEZEBEL (Dec. 8, 2014) <http://jezebel.com/the-invisible-president-how-obamas-ignored-military-s-1668212408>.

179. Darlene Iskra, *Is This Really "Unlawful Command Influence"?*, TIME (June 21, 2013), <http://nation.time.com/2013/06/21/is-this-really-unlawful-command-influence>. "Illegal command influence is an attempt to coerce, or by any unauthorized means, influence the action of a court martial in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to such authority's judicial acts." Jonathan P. Tomes & Michael I. Spak, *Practical Problems with Modifying the Military Justice System to Better Handle Sexual Assault Cases*, 29 WISC. J.L. GENDER & SOC'Y 377, 385 (2014) (citing 10 U.S.C. § 837 (2012)).

180. Michael Winerip, *Revisiting the Military's Tailhook Scandal*, N.Y. TIMES (May 13, 2013), <http://www.nytimes.com/2013/05/13/booming/revisiting-the-militarys-tailhook-scandal-video.html>.

181. See PROTECT OUR DEFENDERS, <http://www.protectourdefenders.com> (last visited Aug. 27, 2015); SERVICE WOMEN'S ACTION NETWORK, <http://servicewomen.org> (last visited Aug. 27, 2015).



which was nominated for an Academy Award.<sup>182</sup> For example, over the course of several years, sixty-two trainees at San Antonio's Lackland Air Force Base had been sexually assaulted or subjected to inappropriate conduct at the hands of thirty-two different instructors, but were too fearful to report what had occurred.<sup>183</sup> Despite the supposed services for victims, an Iraqi war veteran who had been sexually assaulted while in basic training revealed that of her friends who attempted to report sexual violence, "none of them were sent a victim's advocate, a counselor or a chaplain."<sup>184</sup> Lt. Col. James Wilkerson was found guilty of aggravated sexual assault, court-martialed, and sentenced to one year in prison, only to have the decision reversed by Lt. Gen. Craig Franklin, Commander of the Third Air Force.<sup>185</sup> In 2015, after an eighteen-month investigation, the international NGO Human Rights Watch released a 113-page report documenting the varied forms of commonplace retaliation against U.S. military sexual assault survivors, which included name-calling, ostracism, bullying, and punishment for collateral misconduct such as underage drinking, negative performance evaluations, and promotion denials.<sup>186</sup>

With the president somewhat hamstrung, at least temporarily, after being accused of a "conflict of interest" as a result of his role as Commander-in-Chief, it was left to Congress to take the lead on shaping public policy on combatting military sexual assault. There was public disagreement about the best way to proceed, which ultimately "pitted two women of the Senate, both Democrats, both lawyers, against each other."<sup>187</sup> Senator Kirsten Gillibrand (D-NY) introduced the Military Justice Improvement Act (MJIA) that would, among other things, take away the authority of commanders to de-

182. *The Invisible War*, IMDB, <http://www.imdb.com/title/tt2120152> (last visited Aug. 27, 2015).

183. James Risen, *Attacked At 19 by an Air Force Trainer, and Speaking Out*, N.Y. TIMES (Feb. 26, 2013), <http://www.nytimes.com/2013/02/27/us/former-air-force-recruit-speaks-out-about-rape-by-her-sergeant-at-lackland.html>.

184. Helen Benedict, *The Private War of Women Soldiers*, SALON (Mar. 7, 2007), [http://www.salon.com/2007/03/07/women\\_in\\_military](http://www.salon.com/2007/03/07/women_in_military).

185. Juana Summers, *Kimberly Hanks Takes on Air Force*, POLITICO (Sept. 9, 2013), <http://www.politico.com/story/2013/09/accuser-kimberly-hanks-takes-on-air-force-96510.html>.

186. *Embattled: Retaliation Against Sexual Assault Survivors in the US Military*, HUMAN RIGHTS WATCH (May 18, 2015), <https://www.hrw.org/report/2015/05/18/embattled/retaliation-against-sexual-assault-survivors-us-military>.

187. Alisa Chang, *Gillibrand, McCaskill Square Off over Military Assault Prosecutions*, NPR (Mar. 7, 2014), <http://www.npr.org/2014/03/07/287117360/gillibrand-mccaskill-square-off-over-military-assault-prosecutions>.

cide whether to convene a court martial for certain types of offenses, including sexual assault.<sup>188</sup> The reform legislation proposed by Senator Claire McCaskill (D-MO) did not remove chain-of-command decision making, but did allow survivors opportunity for input into the way their cases were handled.<sup>189</sup> Although Gillibrand lined up support from fifty-five of her Senate colleagues, she did not have the necessary sixty votes to defeat a threatened filibuster by McCaskill.<sup>190</sup>

Gillibrand vowed to continue fighting to overhaul the military justice system.<sup>191</sup> In May 2015, her office issued a report she had commissioned concerning sexual assault report filing at the four largest U.S. military bases.<sup>192</sup> The findings contained in the report show that survivors continued to face difficulties in the areas of sexual assault reporting and case handling, which seem to strengthen Gillibrand's resolve to bring about structural and systemic changes.<sup>193</sup>

When overtures to the legislative and executive branches failed to alter the chain-of-command problem, some survivors turned to the courts. Although the litigation approach has not been successful to date, a 2015 action was filed in the U.S. District Court for the Eastern District of Virginia requesting an injunction to stop commanders from being placed in charge of sexual assault cases that occur within their units.<sup>194</sup> The lawsuit contends that the close contact and fa-

188. *Comprehensive Resource Center for the Military Justice Improvement Act*, KIRSTEN GILLIBRAND: U.S. SENATOR FOR N.Y., <http://www.gillibrand.senate.gov/mjia> (last visited Aug. 30, 2015).

189. *Id.*

190. *Senate Vote 59—Rejects Blocking Military Commanders from Sexual Assault Cases*, N.Y. TIMES: INSIDE CONGRESS (Mar. 6, 2014), <http://politics.nytimes.com/congress/votes/113/senate/2/59>.

191. Felicia Schwartz, *Hagel Urges That Sexual Assault Cases Stay in Military Command Structure*, WALL ST. J. (Jan. 16, 2015), <http://www.wsj.com/articles/hagel-urges-sexual-assault-cases-stay-in-military-command-structure-1421444631>.

192. See OFFICE OF SENATOR KIRSTEN GILLIBRAND, SNAPSHOT REVIEW OF SEXUAL ASSAULT REPORT FILES AT THE FOUR LARGEST U.S. MILITARY BASES IN 2013 (2015), [http://www.gillibrand.senate.gov/imo/media/doc/Gillibrand\\_Sexual%20Assault%20Report.pdf](http://www.gillibrand.senate.gov/imo/media/doc/Gillibrand_Sexual%20Assault%20Report.pdf).

193. *Id.*; see generally LINDSAY ROSENTHAL & LAWRENCE KORB, TWICE BETRAYED: BRINGING JUSTICE TO THE U.S. MILITARY'S SEXUAL ASSAULT PROBLEM (2013), <https://www.americanprogress.org/wp-content/uploads/2013/11/MilitarySexualAssaultsReport.pdf>; Richard L. Abel et al., *Law Professors' Statement on Reform of Military Justice*, CAAFLOG.COM (June 13, 2013), <http://www.caaflg.com/wp-content/uploads/Law-Professors-Statement.pdf>.

194. See Complaint, *Baldwin v. Dep't of Defense*, No. 1:15-cv-424 (E.D. Va. Mar. 31, 2015). The attorney for the victims in this case, Susan Burke, has filed at least two other cases in which plaintiffs sued the U.S. military for creating a culture that is viewed as tolerating sexual assault and discouraging victims from reporting rape. The first case was dismissed be-

miliarity of commanders with victims and alleged perpetrators who were line reports prevents the necessary impartiality for responsible decision making.<sup>195</sup>

Although First Lady Michelle Obama has no official government position, she, along with the vice president's wife, Dr. Jill Biden, unveiled the *Joining Forces* initiative under the auspices of her White House Office in 2011.<sup>196</sup> Designed to help meet the needs of military members and their families, the initiative has stressed "wellness access" as one of its key pillars.<sup>197</sup> Despite appeals for Michelle Obama to address the trauma of those sexually assaulted while in uniform, she has declined to do so.<sup>198</sup> A 2014 magazine cover story featuring the First Lady and the challenges faced by five female veterans did not discuss the issue of sexual violence in the military.<sup>199</sup> In a 2015 interview, Michelle Obama again deftly side-stepped questions presented about military sexual assault.<sup>200</sup> With her high-impact profile, the First Lady's reluctance to speak out on this issue represents another lost chance for the Obama White House as a whole to take a forceful public stance on sexual violence in the military.<sup>201</sup>

cause "[i]n the more than twenty-five years since the Supreme Court pronounced in *Stanley* that service members will not have an implied cause of action against the government for injuries arising out of or incident to their military service under *Bivens*, Congress has never created an express cause of action as a remedy for the type of claim that Plaintiffs allege here. And it is Congress, not the courts, that the Constitution has charged with that responsibility." *Cioca v. Rumsfeld*, 720 F.3d 505, 517 (4th Cir. 2013). The second case was dismissed for two reasons: the plaintiffs were not entitled to a remedy under *Bivens* when their injuries were incidental to their military service, and second, the facts alleged were not sufficient to overcome the qualified immunity of the defendants. See *Klay v. Panetta*, 924 F. Supp. 2d 8 (D.D.C. 2013).

195. Complaint, *Baldwin*, *supra* note 194, at 16–17.

196. WHITE HOUSE: JOINING FORCES, <https://www.whitehouse.gov/joiningforces/about> (last visited Aug. 27, 2015).

197. *Id.*

198. See, e.g., Erin Rhoda, *A Letter to Michelle Obama in Light of Military Sex Assault Epidemic*, BANGOR DAILY NEWS (May 17, 2013), <http://arguably.bangordailynews.com/2013/05/17/people/a-letter-to-michelle-obama-in-light-of-military-sex-assault-epidemic>.

199. Sandy M. Fernández, *These Women Need You!*, REDBOOK (Oct. 13, 2014) <http://www.redbookmag.com/life/mom-kids/news/a19189/michelle-obama-veterans>.

200. Cindy Leive, *Michelle Obama, Sarah Jessica Parker, and Kerry Washington: The Important Cause Bringing Three Powerhouse Women Together*, GLAMOUR (Apr. 7, 2015), <http://www.glamour.com/inspired/2015/04/michelle-obama-sarah-jessica-parker-kerry-washington-glamour-cover-may-2015>.

201. Michelle Obama was listed at number ten on the Forbes 2015 list of The World's 100 Most Powerful Women. *The World's 100 Most Powerful Women*, FORBES, <http://www.forbes.com/profile/michelle-obama> (last visited Sept. 13, 2015). Although Michelle Obama's favorability rating is consistently between sixty and seventy percent, there is a perception among some "that she has not used her platform to its full advantage." Peter Baker,

President Obama seems disinclined to take a more definitive position on the chain-of-command question. This is not surprising in view of the fact that prominent members of his own party are divided on this issue. But he must find alternative ways to assert his commitment to ending sexual violence in the military such as increasing victims' services and promoting a "zero tolerance" policy to deal with retaliation. Barack Obama's current reticence on this particular sexual assault issue stands in contrast to his administration's posture on ending global violence against women under Executive Order 13,623 and stopping rape on college campuses under the auspices of the CWG and its Task Force. While not necessarily flawless from a feminist perspective, those policies are decidedly more robust.

## VI. CONCLUSION

An examination of President Obama's use of executive orders on women's rights issues does not result in a simple "thumbs up or thumbs down" appraisal. Establishing the CWG under Executive Order 13,506 supports women's empowerment, although its achievements to date in terms of quality and quantity have not necessarily demonstrated a strong leadership role on women's rights in the public policy arena. Executive Orders 13,595 and 13,623 lived up to feminist expectations on addressing global gender-based violence and creating a women's rights oriented agenda in the realm of foreign affairs. The president's issuance of Executive Order 13,665 belongs in the plus column for its promotion of women's equality, generally—and for wage equity, specifically—in the employment sector. The political compromise that resulted in Obama's signing of Executive Order 13,535 caused a furor among reproductive justice advocates at the time, but may have saved the ACA, which could be more beneficial to women in the long run.<sup>202</sup> Finally, Barack Obama has yet to take convincing action on the issue of sexual assault in the military, which seems ripe for a presidential directive geared toward reformation of existing policies under the Department of De-

*Michelle Obama Talks About Race and Success, and Makes It Personal*, N.Y. TIMES (June 10, 2015), <http://www.nytimes.com/2015/06/11/us/michelle-obama-king-college-prep-and-tuskegee-graduation-speeches.html>.

202. See DEP'T OF HEALTH & HUMAN SERVS., OFFICE OF THE ASSISTANT SEC'Y FOR PLANNING & EVALUATION, THE AFFORDABLE CARE ACT: ADVANCING THE INTERESTS OF WOMEN AND CHILDREN (2015), [http://aspe.hhs.gov/sites/default/files/pdf/77191/ib\\_mch.pdf](http://aspe.hhs.gov/sites/default/files/pdf/77191/ib_mch.pdf).

fense and in all branches of the military, as well as those governing the national service academies.

During his final press conference in December 2014, Obama made a point of fielding questions from women reporters only.<sup>203</sup> Many characterized this action as a bold, history making move.<sup>204</sup> A few weeks later, senior administration officials suggested that the White House intended to “pivot away from President Barack Obama’s reliance on executive actions in the coming year and invest more in a legislative strategy aimed at trying to advance key policy goals.”<sup>205</sup> This was not welcomed news for women’s rights activists who knew it was unlikely that a Republican-controlled Congress would have a pro-feminist legislative agenda.<sup>206</sup> However, Barack Obama’s 2015 State of the Union address was surprisingly focused on gender equality concerns.<sup>207</sup> While difficult to reconcile these mixed signals, the president seems ready to advance women’s rights more overtly, albeit more gradually than anticipated when he was first showcased on a magazine cover as “what a feminist looks like” upon taking office in 2009. Assigning him the moniker of feminist-in-chief might be premature, but by presidential directive or otherwise, Barack Obama can still solidify his legacy on women’s rights—not only symbolically, but substantively—if he seizes the opportunity.

203. Nia-Malika Henderson, *That Time Obama Called on Only Women at a Press Conference*, WASH. POST (Dec. 19, 2015), <http://www.washingtonpost.com/blogs/the-fix/wp/2014/12/19/that-time-obama-called-on-all-women-at-a-press-conference>.

204. Kathleen Hennessy, *Obama Takes Questions Only from Women, Apparently a White House First*, L.A. TIMES (Dec. 19, 2014), <http://www.latimes.com/nation/politics/politicsnow/la-pn-obama-reporters-women-20141219-story.html>.

205. Carol E. Lee, *Obama Pivots to Lawmakers*, WALL ST. J. (Jan. 1, 2015), <http://www.wsj.com/articles/obama-pivots-to-lawmakers-1420158788>.

206. See, e.g., Caitlin Morelli, *Women’s Issues in the Obama Era: Expanding Equality and Social Opportunity Under the Obama Administration*, STUDENT PULSE (2015), <http://www.studentpulse.com/a?id=992> (providing an overall assessment that lauds Obama’s women’s rights accomplishments while lamenting the barriers created by Congress that frustrate full realization of the Obama administration’s objectives).

207. E. Tammy Kim, *Women Front and Center in Obama’s State of the Union Address*, AL JAZEERA AM. (Jan. 29, 2014), <http://america.aljazeera.com/articles/2014/1/29/women-front-and-centerinobamasspeech.html>.