

## What Should We Do When Johnny Comes Marching Home?

By Terry Jason Colberg

As the United States begins its withdrawal of troops from Iraq and Afghanistan, newly discharged veterans are returning home to discover that they are unable to find jobs in a bad economy. Congressman Marlin A. Stutzman (R-IN3), Chairman of the House Committee on Veterans' Affairs' Subcommittee on Economic Opportunity, recently lamented that "data from the Bureau of Labor Statistics ("BLS") show[s] that 35.6 percent of America's Gulf Era II veterans ages 20 to 24 were unemployed."<sup>1</sup> Dan Beucke of Businessweek requested additional data from BLS to examine a broader selection of veterans and found that "for vets aged 18 to 34 . . . their jobless rate grew to 16.6 percent in October [2011], [up] from 12.6 percent a year earlier. For non-veteran men and women of that bracket, the jobless rate shrank, to 11.4 percent from 12.0 percent."<sup>2</sup> In the face of such numbers, both the White House and Congress have acted to counteract this trend.

On Veterans' Day, President Obama launched new administration initiatives<sup>3</sup> to aid unemployed veterans, and the Senate passed the "VOW to Hire Heroes Act of 2011."<sup>4</sup> The Executive Branch's initiatives provide eligible veterans with job application services<sup>5</sup> and a job-posting database targeted specifically at veterans.<sup>6</sup> On November 10th, the Senate passed the "VOW to Hire Heroes Act of 2011," an amalgamation of several previously proposed pieces of legislation that combines tax credits to businesses who hire veterans, mandatory career counseling, and extended GI Bill benefits.<sup>7</sup> The Senate attached the VOW to Hire Heroes Act to HR 674, a bill to repeal a tax withholding requirement for government contractors, and sent it back to the House, which is expected to pass the amended legislation this week.<sup>8</sup> While these actions enhance our veterans' own abilities to market themselves or encourage employers to accept veterans over civilians through tax incentives, there are already laws and policies that incentivize the hiring of veterans.

The policy of hiring veterans over those who have not served is called “veterans’ preference.”<sup>9</sup> While veterans have received some form of preference when applying to Federal jobs since the Civil War,<sup>10</sup> these preference programs have been limited mostly to the public sector, where States and the Federal government have incorporated these preferences as part of their hiring practices.<sup>11</sup> Interestingly, Title VII of the Civil Rights Act of 1964 and the Fourteenth Amendment have limited the adoption of veterans’ preference employment practices by the private sector due to the disparate impact on female employment.

Title VII exempts only veterans’ preference policies created by legislation from equal protection scrutiny, not ones created on a voluntary basis.<sup>12</sup> Some private sector veterans’ preference practices have been instituted through legislation, such as through the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA),<sup>13</sup> which specified that private employers working on Federal contracts had to implement veterans’ preference rules. Only one state,<sup>14</sup> Washington, has passed a law permitting all private employers to give preference to veterans.<sup>15</sup> The ever present concerns of fairness on this issue can be inferred from the fact that Washington state only passed their law this past April.<sup>16</sup> Perhaps this is the beginning of a shift in policy.

As more veterans transition into their post-military lives, will more states pass similar laws to allow private companies to prefer them over other candidates? Fairness will be the center of this public policy debate. While women are now roughly twice as numerous<sup>17</sup> as a percentage of the veteran population, at 8.1 percent, than they were in 1990<sup>18</sup> when the Equal Employment Opportunity Commission wrote its policy guidelines on veterans’ preferences, the population of veterans is still heavily male. Furthermore, states and private companies who choose to implement such policies will have to weigh the fairness of preferring veterans at the expense of similarly or more qualified non-military job applicants, an issue that is already a concern in public sector hiring.

Individual States, and the country as a whole, will need to figure out how to make these choices soon. Since 2001, over 2.3 million “American military personnel [have served in] Iraq, Afghanistan, or both . . . .”<sup>19</sup> With the end to major operations in those two countries on the horizon, how the labor market will reintegrate our soldiers is still up in the air.

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<sup>1</sup> Opening Statement of Hon. Marlin A. Stutzman, Chairman, Subcommittee on Economic Opportunity; House Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity: Hearing, 2011-10-17:

<http://veterans.house.gov/hearing/hiring-heroes-job-creation-veterans-and-guardreserve-members>

<sup>2</sup> Businessweek: [http://www.businessweek.com/finance/occupy-wall-street/archives/2011/11/the\\_vets\\_job\\_crisis\\_is\\_worse\\_than\\_you\\_think.html](http://www.businessweek.com/finance/occupy-wall-street/archives/2011/11/the_vets_job_crisis_is_worse_than_you_think.html)

<sup>3</sup> <http://www.whitehouse.gov/blog/2011/11/07/we-cant-wait-obama-administration-announces-new-initiatives-get-veterans-back-work>

<sup>4</sup> Congressional Record, Senate – 2011-11-10: <http://www.gpo.gov/fdsys/pkg/CREC-2011-11-10/pdf/CREC-2011-11-10-pt1-PgS7336-2.pdf#page=4>

<sup>5</sup> <http://www.whitehouse.gov/blog/2011/11/07/we-cant-wait-obama-administration-announces-new-initiatives-get-veterans-back-work>

<sup>6</sup> <http://www.whitehouse.gov/blog/2011/11/07/how-use-veterans-job-bank>

<sup>7</sup> <http://www.military.com/features/0,15240,238346,00.html?comp=1198882887570&rank=6>

<sup>8</sup> *Id.*

<sup>9</sup> *See* 5 U.S.C. 2108

<sup>10</sup> <http://www.opm.gov/staffingportal/vetguide.asp#2Why>

<sup>11</sup> Note that these preferences exist because of a supporting law, such as the Veterans Preference Act of 1944.

<sup>12</sup> *See* *Mass. v. Feeney*, 442 U.S. 256 (1979) (holding that a Massachusetts law that gave veterans preference in state employment did not violate the Equal Protection Clause of the Fourteenth Amendment); *Bailey v. Southeastern Area Joint Apprenticeship Committee*, 561 F. Supp. 895 (N.D.W. Va. 1983) (holding that employer’s voluntarily implemented policy of preferring veterans over other hires violated equal protection because it disparately impacted women and was not protected from scrutiny by Title VII since it was not created by law).

<sup>13</sup> <http://www.dol.gov/compliance/laws/comp-vevraa.htm>

<sup>14</sup> <http://www.hireamericasheroes.org/index.php/news/hire-americas-heroes-news/27-gov-gregoire-signs-legislation-simplifying-hiring-of-washington-veterans>

<sup>15</sup> HB 1432: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1432&year=2011>

<sup>16</sup> *Id.*

<sup>17</sup> [http://www.dol.gov/\\_sec/media/reports/veteranslaborforce/](http://www.dol.gov/_sec/media/reports/veteranslaborforce/)

<sup>18</sup> [http://www.eeoc.gov/policy/docs/veterans\\_preference.html#fn4](http://www.eeoc.gov/policy/docs/veterans_preference.html#fn4)

<sup>19</sup> <http://abcnews.go.com/Politics/us-veterans-numbers/story?id=14928136#4>