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**The Feres Doctrine Threatens American National Security in the 21st Century**

The Supreme Court case decision to dismiss the tort claims of Feres v. United States set the legal precedent known as the Feres Doctrine. The Feres Doctrine denies military personnel the right to sue the United States government under the Federal Tort Claims Act of 1946 (340 U.S. 135, 1950). The Federal Tort Claims Act (FTCA) of 1946 allowed American citizens the right to sue the federal government and granted “limited waiver of the United States’ immunity from suit, allowing claims for damages” (Federal Tort Claims Act, 1946). FTCA allowed Americans to sue the government for injuries and/or deaths caused by negligence or wrongful acts of federal employees, however, American military service members were excluded in the law (FTCA, 1946). Many of the case dismissals citing the Feres Doctrine, since 1950, are wrongful death lawsuits caused by vehicle and equipment accidents or of major medical malpractice (Dawson, 2012). The precedent of dismissing these lawsuits for over sixty years has forced countless service members with lesser medical malpractice claims to remain silent. Silencing military medical malpractice cases brought against the government by service members has created a culture of distrust in military medical facilities and their staff (Kime, 2016). Service members avoid medical treatment for minor injuries for fear of being harmed worse and are forced to ignore and hide preventable and treatable illnesses and injuries until they are compounded and permanent (VCS, 2012). These permanent injuries eventually cannot continue to go unnoticed and become justification for a military medical evaluation board to determine a service member “unfit” for continued service and results in a medical retirement (Powers, 2017). The systemic consequences of the Feres Doctrine are substandard military healthcare, a military culture of avoiding medical treatment and medical discharges for preventable injuries which results in the loss of the most experienced mid-career service members. Today, American national security is at greater risk from these consequences than ever before because of the fiscal constraints of Congressional Budget Sequestration, 16 years of exhausting war since 9/11, continued military operations in the Middle East and the increasing probability for future protracted military conflicts in the Pacific theater of operations. The FTCA needs to be amended, redefining or eliminating the Feres Doctrine, in order to increase military medical standards and retain experienced military personnel. If military medical standards are not raised and unnecessary medical retirements are not prevented, American Armed Forces will not be ready to protect against the predicted increase of global conflicts in the 21st century.

Feres v. United States dismissal cited the FTCA stating “the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service” (340 U.S. 135, 1950). Since this decision, the term “incident to service” has been interpreted as anything while on active-duty status and has been used to dismiss tort claims of all natures including sexual assault, injury or death while on authorized leave, delivery room and emergency room negligence, and many other types of tort claims that civilians have been allowed to sue and win settlements for (Natelson, 2013). All of these very serious tort claim dismissals have obscured the vast number lesser unreported medical malpractice injuries resulting in medical retirements. The Feres Doctrine creates a double-standard where the military medical system is supposed to provide the same standards of modern medical treatment as the civilian medical system without the same legal protection to maintain adequate medical standards. (LeBlang, 1994)

In the civilian medical system, medical malpractice lawsuits are vital for holding medical professionals and institutions accountable for negligence and misconduct. Without the threat of medical malpractice, there would be no incentive to maintain healthcare standards that patients expect, deserve and pay for. (LeBlang, 1994). Unlike every other American, the inability for service members to hold the military medical system accountable in court has allowed a culture of substandard medical care for the less than one percent of Americans that volunteer to serve and protect the other ninety-nine percent (Kime, 2016). The ‘show no weakness’ culture of the military and fear of losing a ‘ready to deploy’ status is a factor for military personnel avoiding medical treatment for minor injuries, however, the distrust in the military medical system and the fear of being found unfit for duty and medically retired are the paramount factors (Wong & Gerras, 2015).

The medical evaluation board (MEB) process can be initiated by the chain-of-command or the military medical system. Minor injuries result in temporary profiles for service members because they are expected to be cured with treatment and they do not change a deployment ready status. Permanent profiles result when injuries prevent a service member to perform their assigned military occupational specialty (MOS) and they are placed on a non-deployable status. Permanent profiles are referred to the MEB when the injuries are not expected to respond to treatment and return the service member to deployment ready status within a year (Powers, 2017). Sixteen years of continuous war has exhausted the American military and drastically increased the prevalence of undocumented and untreated injuries that continue to lead to permanent injuries and forced medical retirements (Shinkman, 2013). The Budget Control Act (BCA) of 2011, commonly referred to as ‘sequestration’, forced the Department of Defense (DoD) to progressively downsize military personnel. The MEB has become a major tool to cut personnel numbers by medically retiring servicemembers with injuries that would have been medically treated and retained before the effects of the BCA (Feickert, 2014). Downsizing the military in general after periods of war is common, and not detrimental to national security, if there is a corresponding reduction of global military operations and a foreseeable period of peacetime to allow young service members to develop into experienced leaders. (Shrinkman, 2014). Medically retiring service members after only 2-3 years of service does not affect military readiness as significantly as it does to medically retire mid-career, non-commissioned officers and officers with 10-15 years of experience and leadership development. Medically retiring mid-career service members to meet BCA fiscal constraints threatens current and future American national security because of time and training required to produce these mid-career military leaders. Continued military operations in the Middle East, current political tensions with Russia, China, North Korea and the Philippians, and the predicted future conflicts over resources expected to increase in the 21st century require the retention of experienced military leaders (Bachmann & Gunneriusson, 2014).

The American military, like all militaries, are expected to simultaneously engage in and win current conflicts while preparing and adapting for future conflicts. The BCA of 2011 was a reactionary Congressional decision in response to the decade of deficit spending in support of the Global War on Terrorism, Operation Iraqi Freedom and Operation Enduring Freedom. (citation). The Feres Doctrine has always been an unjust denial of military service members civil liberties, however, this policy now threatens American national security given the combined effects of the BCA on DoD budgets, rising nation-state competitors, existing terrorist threats and the future global conflicts over resources predicted in the 21 century. The US Congress must amend the FTCA and eliminate the Feres Doctrine, or at a minimum, redefine “incident to service” to allow for military medical malpractice in order to provide adequate medical treatment, stop preventable mid-career medical retirements and retain the military leaders that are essential for winning current conflicts and transitioning and preparing for future wars.

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