No. _____

In the Supreme Court of the United States

NATIONAL COALITION FOR MEN, TYLER MCNAMARA, CONOR MCKIERNAN, NICHOLAS MILILLO, NICOLAS MENDIOLA, AND JORDAN FALCON,

Petitioners,

v.

SELECTIVE SERVICE SYSTEM, ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition presents an issue of national and constitutional significance under the Military Selective Service Act, which requires men, but not women, to register with the Selective Service System, to be called upon to serve in the military if the President initiates a draft.

1. Standing: Whether the individual Plaintiffs have standing under Article III of the U.S. Constitution, established by allegations of a concrete and particularized injury-in-fact; and whether the organizational Plaintiff possesses standing by virtue of an injury to itself or through the injuries sustained by its members. Whether leave to amend the complaint should have been granted.

2. Justiciable: Whether this Court's continued deference to Congress concerning the male-only registration requirement of the Act is consistent with constitutional principles and judicial standards of review.

3. Constitutional: The paramount question is whether the male-only registration requirement is discrimination on the basis of sex and therefore a violation of Petitioners' Fifth Amendment guarantee of equal protection.

PARTIES TO THE PROCEEDINGS

The National Coalition for Men ("NCFM"), Tyler McNamara, Conor McKiernan, Nicholas Milillo, Nicolas Mediola, and Jordan Falcon, petitioners on review, were the plaintiffs-appellees below.

The Selective Service System and Joel C. Spangenberg, as Acting Director of Selective Service System, Does 1-50, respondents on review, were the defendants-appellants below.

CORPORATE DISCLOSURE STATEMENT

The National Coalition for Men is a 501(c)(3) nonprofit corporation, and no publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

National Coalition for Men, et al. v. *Selective Service System*, No. 2:24-cv-04016-AB (Nov. 20, 2024) (dismissal without prejudice)

National Coalition for Men, et al. v. *Selective Service System*, No. 2:24-cv-04016-AB (Dec. 9, 2024) (dismissal without prejudice)

United States Court of Appeals (CA9):

National Coalition for Men, et al. v. *Selective Service System*, No. 24-7746 (Dec. 4, 2025) (district court affirmed)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

OPINIONS BELOW

The Ninth Circuit's opinion is reproduced in the Appendix at App. 1-13. The Central District of California's decisions are reproduced in the Appendix at App. 14-28.

JURISDICTION

The Ninth Circuit's decision was entered on December 4, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

U.S. Const., Article III, Section 2, Clause 1:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The Due Process Clause, U.S. Const., Amdt. V, states in part that: "[n]o person shall […] be deprived of life, liberty, or property, without due process of law"

The Military Selective Service Act, 50 U.S.C. §3802(a), states in relevant part:

> … it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

50 U.S.C. §3802(a).

Fed. R. Civ. P. 15(a)(2), states in part:

"The court should freely give leave when justice so requires."

INTRODUCTION

The Military Selective Service Act ("MSSA" or "Act") requires young men between the ages of 18 and 26 to register with the Selective Service System.

By registering, a young man remains eligible for federal jobs, driver's license in some states, state-based student aid, federally-funded job training, and U.S. citizenship for men who are immigrants. Failure to register is a felony punishable by a fine of up to $250,000 and/or five (5) years imprisonment. See 50 U.S.C. §3802(a); Proclamation No. 4771, 45 Fed. Reg. 45,247 (July 2, 1980), *reprinted in* 94 Stat. 3775, as amended by Proclamation No. 7275, 65 Fed. Reg. 9,199 (Feb. 22, 2000).

Selective Service statistics suggest that more than one million men have been denied some government benefit because they failed to register.[1] If the denial of benefit occurs after the man turns twenty-six, there is no possibility to cure, and he will be denied benefits for life. These benefits and penalties are also contingent upon registrants keeping the government informed of any change of address until they age out of the system. In 1982, the Department of Justice began prosecution of those men who willfully refused to register for selective service.[2] In the June 1983 Selective

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[1] Gregory Korte, *For a Million U.S. Men, Failing to Register for the Draft Has Serious, Long-Term Consequences*, USA Today (Apr. 2, 2019), available at https://www.usatoday.com/story/news/nation/2019/04/02/failing-register-draft-women-courtconsequences- men/3205425002/.

[2] See Selective Service System, *Semiannual Report of the Director of Selective Service*, October 1, 1982-March 31, 1983, June 8, 1983.

Service semiannual report to Congress, the agency reported that it had referred 341 persons to DOJ for investigation. At the time of the report, there were 11 indictments and 2 convictions.

The Act does not require women to register.

In *Rostker* v. *Goldberg*, 453 U.S. 57 (1981), plaintiffs asserted that the male-only registration requirement violated their right to Equal Protection under the Fifth Amendment. In a sharply divided decision, with a trenchant dissent written by Justice Marshall, the majority of the Justices ruled against plaintiffs on the premise that women were excluded from combat, and therefore, men and women were not similarly situated, giving Congress a basis to exempt women from registration. *Rostker*, 453 U.S. at 78.

In 2013, then Secretary of Defense Leon Panetta rescinded the ban on women in combat: *"Success in our military base solely on ability, qualifications, and performance, is consistent with our values and enhances military readiness."*[3]

The military opened over 14,000 positions previously closed to women; by 2013, women served alongside men in Iraq and Afghanistan and were exposed to hostile enemy action. *Ibid.*

In 1980, President Carter recommended to Congress that the Act be extended to women.[4] In 1981,

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[3] See Memorandum from Leon E. Panetta, Sec'y of Def., and Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, to Sec'ys of the Military Dep'ts et al., *Elimination of the 1994 Direct Ground Combat Definition and Assignment* Rule 1 (Jan 24. 2013) (emphasis added), available at https://www.womenvetsusa.org/library/library-info.php/num-57/.

[4] See Carter, James Earl, Proclamation 4771 on Registration Under the MSSA (July 2, 1980).

Justice Marshall called male-only registration *"one of the most potent remaining expressions of ancient canards about the proper role of women." Rostker*, 453 U.S. at 86 (Marshall, J., dissenting) (emphasis added).

In supporting the first NCFM petition, General Hayden's Amicus Brief stated that *"[r]equiring women as well as men to register for the selective service would send a clear message that the military values the service of its women equally alongside the service of its men"* Brief for Gen. Michael Hayden et al. as Amici Curiae Supporting Petitioner, *National Coalition for Men* v. *Selective Service System*, No. 20–928, 21 (Mar. 1, 2021) (emphasis added).

Ten years ago, Congress authorized the National Commission on Military, National, and Public Service ("NCMNPS") to study whether registration should be conducted "regardless of sex." National Defense Authorization Act ("NDAA") for Fiscal Year 2017, Pub. L. No. 114–328, §§551(a), 555(c)(2)(A), 130 Stat. 2130, 2135 (2016).

In 2020, NCMNPS published a report in which it recommended "eliminat[ing] male-only registration." Nat'l Comm'n on Military, Nat'l, & Pub. Serv., *Inspired to Serve: The Final Report of the National Commission on Military, National, and Public Service* 111 (Mar. 2020).[5]

Five years ago, this Court denied NCFM's first petition for writ of certiorari, with Justice Sotomayor noting that Congress was weighing the issue and that since it was a matter of the military, the Court would give deference to Congress. *National Coalition for*

Available at https://s3.us-west-2.amazonaws.com/napa-2021/Final-Report-National-Commission-PDF.pdf

Men, 593 U.S. at 3 (Sotomayor, J., statement respecting denial of *certiorari*), App. 56.

This case presents the ideal vehicle to examine *Rostker* as the issue has been litigated in at least four district courts and the Fifth and Ninth Circuits, yet the issue has evaded review by this Court.

STATEMENT OF THE CASE

A. The Male-Only Registration Requirement

Pursuant to the Act, every male citizen, as well as every other male residing in the country between the ages of eighteen and twenty-six, is required to register within thirty days of either his eighteenth birthday or his arrival in the United States. 50 U.S.C. §3802(a). These young men must provide their full name, date of birth, address, and Social Security number, and they must continue to update their personal information when they move until they age out of the system. 50 U.S.C. §3802(b). Failure to abide by this law subjects these young men and anyone who helps them evade registration to up to five years in prison and $250,000. 50 U.S.C. §3811(a); 18 U.S.C.§3571(b). These men may be denied a driver's license, student aid, federal jobs, federal student loans, and job training. 50 U.S.C. §3328(a); 50 U.S.C. §3811(f); 29 U.S.C. §3249(h). Non-citizen men could also be denied citizenship. See Immigration Reform and Control Act of 1986, Pub. L. No. 99–603, §201(a) and §245A(a)(4)(D), 100 Stat. 3359, 3395 (codified at 8 U.S.C. §1255a(a)(4)(D)); 8 C.F.R. §245a.11 (d)(3)).

Women are not required to register, nor do they have the privilege to be called upon to serve their country as equal citizens. Women do not face the

possibility of fines, imprisonment, or the loss of significant government benefits.

B. The Evolution of Women in the Military

Over the course of the last 250 years, women have faced and surmounted significant obstacles in order to serve alongside men in a meaningful manner, including serving in combat roles. Women played a significant role in America's quest for independence. In the Revolutionary War, Margaret Corbin disguised herself as a man and went to the front lines at the Battle of Fort Washington and other battles. In recognition of her service, she was awarded a military pension and, posthumously, was reinterred at West Point with full military honors. Civil War historians estimate that about 1,000 women disguised themselves as men to engage in combat. World War I was the first time women were allowed to serve (this despite the fact that women could not vote). Thereafter, in World War II, almost 350,000 women served. In 1948, President Harry S. Truman signed the *Women's Armed Services Integration Act* into law, officially allowing women to serve in all branches of the Armed Forces. Remarkably, most of the 11,000 women who served in Vietnam volunteered to go.[6]

Despite forging their way in the military, women were prohibited from serving in combat positions by statute, with respect to the Air Force and Navy, and by "established policy," with respect to the Army and Marines. *Rostker*, 453 U.S. at 76. There was also a

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[6] See Danielle DeSimone, O*ver 200 Years of Service: The History of Women in the U.S. Military*, U.S. Serv. Orgs., Feb. 28, 2023, available at https://www.uso.org/stories/3005-over-200-years-of-service-the-history-of-women-in-the-usmilitary.

prohibition for women from serving on most ships. See Women's Armed Services Integration Act of 1948 §§104(c), 104(d)(3), 203, 210, 212, 303(c).

Slowly these restrictions were eliminated. Congress eliminated prohibitions on women serving on ships. See Cong. Rsch. Serv., R44321, *Diversity, Inclusion, and Equal Opportunity in the Armed Services: Background and Issues for Congress* 25–26 (2019) ("CRS Diversity Report"). In 2013, the ban prohibiting women from serving in combat roles was officially eradicated.[7]

C. *Rostker* v. *Goldberg*: 1981–Men and Women were Not Similarly Situated

This Court granted review of an Eastern District of Pennsylvania opinion that found the male-only registration requirement was unconstitutional discrimination, depriving Plaintiffs equal protection under the law. This Court reversed. *Rostker*, 453 U.S. at 63, 83. Applying the standard of review articulated in *Craig* v. *Boren*, 429 U.S. 190 (1976), "[t]he existence of the combat restrictions clearly indicates the basis for Congress' decision to exempt women from registration," this Court explained, and thus the "exemption of women from registration is not only sufficiently but closely related to Congress' purpose in authorizing registration." *Rostker*, 453 U.S. at 77, 79. "The purpose of registration…was to prepare for a draft of combat troops," and "[w]omen as a group…unlike men as a group, are not eligible for combat." *Id.* at 76. "Men

[7] See Memorandum from Chairman of the Joint Chiefs of Staff, and Sec'y of Def., to Sec'ys of the Military Dep'ts Acting Under Sec'y of Def. for Personnel and Readiness, and Chiefs of the Military Services (Jan. 24, 2013).

and women," this Court held, "because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft." *Ibid.*

Justice Marshall, joined by Justice Brennan, issued a trenchant dissent.

In *Rostker*, Justice Marshall and Brennan argued that the male-only draft registration under the Act violates the equal protection component of the Fifth Amendment by perpetuating outdated stereotypes about women's roles. 453 U.S. at 86, 87. They emphasized that gender-based classifications must satisfy heightened scrutiny, requiring a substantial relationship to an important governmental objective, and found no adequate justification for excluding women from registration. *Id.* at 88–89, 100–01. Justice Marshall criticized the majority for deferring excessively to Congress and for relying on hypothetical scenarios which "…appear (s) to exist only in the Court's imagination." *Id.* at 97. Justice Marshall further observed that speculative burdens do not justify total exclusion of the female sex. *Id.* at 99, 111.

Justice White, joined by Justice Brennan, also dissented, arguing that the exclusion of women was not justified by the record or by congressional findings. *Rostker*, 453 U.S. at 83. Justice White noted that Congress did not clearly conclude that all military positions, including noncombat roles, must be filled by combat-ready men, and that experience and testimony from military authorities indicated many positions could be filled by women, even during mobilization. *Id.* at 84. Justice White emphasized that the Defense Department estimated approximately 80,000 women could be productively drafted in the first six

months of a major mobilization, a figure not contradicted by Congress. *Ibid.*; Hearings on S. 2294, 96th Cong., 2d Sess., 1681, 1688 (1980); Hearings on H.R. 6569, 96th Cong., 2d Sess., 16 (1980). Justice White rejected the Court's reliance on administrative convenience as insufficient to justify gender-based discrimination in registration and conscription. *Id.* at 85. Justice White found no adequate justification for excluding women from the draft and therefore dissented. *Id.* at 86.

D. Post-*Rostker*: Women in Combat Roles

The scope of combat roles available to women post-*Rostker* steadily broadened; ultimately the ban against women serving in combat was entirely eradicated. By 2013, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff rescinded the ban. This change was intended to "fully integrate women without compromising our readiness, morale, or war fighting capacity."[8] Though the rescission was "effective immediately," the Defense Secretary allowed the military additional time to consider whether some roles should nonetheless remain closed to women. *Ibid.*

Following "three years of extensive studies," in 2015, the Defense Secretary determined no exceptions were warranted and women "should have the opportunity to serve in any position."[9]

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[8] See Memorandum from Chairman of the Joint Chiefs of Staff, and Sec'y of Def., to Sec'ys of the Military Dep'ts Acting Under Sec'y of Def. for Personnel and Readiness, and Chiefs of the Military Services (Jan. 24, 2013).

[9] See Dep't of Def. Press Briefing by Sec'y Carter in the Pentagon Briefing Room, Dep't of Def. (Dec. 3, 2015) ("2015 Press Briefing").

This decision followed a "rigorous analysis of factual data" demonstrating that the Department of Defense's previous standards were "either outdated or didn't reflect the tasks actually re[]quired in combat" given "real-world operational requirements." 2015 Press Briefing, *supra* n. 6. Women would now be permitted to "drive tanks, fire mortars, and lead infantry soldiers into combat. They'[d] be able to serve as Army rangers and green berets, Navy SEALS, Marine Corps infantry, Air Force parajumpers and everything else that was previously open only to men." *Ibid.*[10]

There are nearly 4,600 women in the Army's conventional combat arms forces. In 2024, another 700 women were in Marine Corps combat roles.[11]

Between 1980 and 2022, there have been 3,539 women who have given their lives in service to this country.[12] "Women have fought and died in every U.S. conflict since the American Revolution," Emelie Vanasse, one of the first women to pass the grueling Ranger School Course, "[o]ur combat service is not

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[10] The Defense Secretary approved the Services' final implementation plans for the full integration of women in March 2016. Memorandum from Sec'y of Def. to Sec'ys of the Military Dept's; Under Sec'y of Def. for Pers. & Readiness; Chiefs of the Military Servs.; and Commander, U.S. Special Operations Command (Mar. 9, 2016), available at https://www.hsdl.org/?view&did=791183.

[11] See Patty Nieberg, *Women in ground combat jobs say they prove their 'effectiveness' every day*, Task & Purpose (Jan. 6, 2026), available at https://taskandpurpose.com/news/womenreact-review-combat-jobs/.

[12] See U.S. Dep't of Def., Defense Manpower Data Center, U.S. Service Member Deaths by Race, War/Conflict and 1980-Present (Apr. 20, 2022), available at https://dcas.dmdc.osd.mil/dcas/assets/Documents/RACE-OMB-WC-2022.pdf.

new; ending the ground combat exclusion policy was merely a recognition and a continuation of years of dedication to the defense of our nation." [13]

E. Congress Failed to Enact Legislation Aligned with Advisements for Gender-Neutral Registration

A U.S. Department of Defense ("DoD") report to Congress stated that a gender-neutral registration requirement would have numerous direct and indirect benefits…and it would "promote fairness and equity…" NDAA for Fiscal Year 2017 Defense Report, §§551(a), 555(c)(2)(A), 130 Stat. 2130, 2135 (2017). The Senate version of the 2016 NDAA would have required women to register because, now that **"***the ban on females serving in ground combat units has been lifted… there is no further justification to apply the [MSSA] to males only*." S. Rep. No. 114–255, at 150–151 (2016) (emphasis added).

In the Commission's final report, it emphatically recommended taking that "necessary—and overdue—step." *Inspired to Serve*, *supra*, at 122. Further stating, this measure would promote the national security of the United States by allowing the President to leverage the full range of talent and skills available during a national mobilization and reaffirm the Nation's fundamental belief in a common defense, and signal that

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[13] See Steve Beynon, Drew F. Lawrence & Konstantin Toropin, *Thousands of Women Serve in Combat Roles. Pentagon Nominee Hegseth Says They Shouldn't*, Military.com (Nov. 18, 2024), available at https://www.military.com/dailynews/2024/11/18/thousands-of-women-serve-combat-rolespentagon-nominee-hegseth-says-they-shouldnt.html.

both men and women are valued for their contributions in defending the Nation." *Id.* at 115.

Notwithstanding the DoD's stance on the issue along with the Commission's final report which states it is not only necessary step but one that is overdue, Congress failed to take any legislative action to enact gender-neutral registration. *Inspired to Serve*, *supra*, at 122.

F. Procedural History

The individual petitioners registered with the Selective Service upon turning eighteen and are required to continually maintain their registration in the face of severe penalties and a loss of government benefits if they fail to do so within ten days of moving.

Petitioner NCFM is a 501(c)3, national organization committed to ending harmful discrimination and stereotypes against boys and men. Its members include men between the ages of eighteen and twenty-six subject to the Act's registration requirement and their loved ones who could also be prosecuted under the Act.

Petitioners challenged the male-only registration requirement before the Central District of California. Petitioners contend that, following the rescission of the combat ban, the precedent established in *Rostker* is no longer controlling, and that the gender-based registration requirement is discrimination on the basis of sex in violation of their Fifth Amendment right to equal protection.

The Central District of California dismissed Petitioner's action citing to Justice Sotomayor's characterization of NCFM's first petition for writ of certiorari as a request for this Court to overrule *Rostker*. The Hon. Judge Birotte then reasoned that *Rostker*

controls. Judge Birotte found that the individual Plaintiffs had standing and as such NCFM had organizational standing. App. 14-29, 23-25. Plaintiffs filed a timely appeal.

The Ninth Circuit held that the individual plaintiffs failed to establish that they suffered a redressable injury and that NCFM lacked organizational standing because they failed to establish one individual who suffered harm. App. 2.

REASONS FOR GRANTING THE PETITION

At its core, the issues raised in this petition are of national and constitutional importance. These issues have been repeatedly litigated in district courts, including the Central and Northern Districts of California, the Southern District of Texas, and the District of New Jersey. There have also been multiple appeals in the Fifth and Ninth Circuits; along with two previous submissions to this Court (not including the present petition). App. 14-29, 132, 66, 98, 144, 54, and 1.

Despite litigation of the same or similar claims, the fundamental question presented here has evaded review by this Court.

I. This Case Presents Facts and Legal Issues that are Materially Indistinguishable from Those in *Rostker*

There are a handful of similar cases that have been or are currently being litigated in various lower district and circuit courts; only this case presents facts and legal issues that are substantially indistinguishable from those in *Rostker*.

In NCFM's first case, the Fifth Circuit did not rule on standing as the government did not raise that issue

on appeal. The opinion of the Fifth Circuit relied solely on *Rostker* when it reversed because the court concluded *Rostker* is "controlling" and only this Court can revisit that decision. *Nat'l Coal. for Men* v. *Selective Serv. Sys.*, 969 F.3d 546, 549 (CA5 2020). App. 54.

In the present matter, the Central District of California held that both the individual and organizational Plaintiffs had standing. App. 23-25. On appeal, the Ninth Circuit held that petitioners lacked standing and did not rule on the fundamental issue in the matter. App. 2-3.

Parallel Litigation in the Lower Courts:

There are two similar cases involving female litigants*: Valame* v. *Trump*, No. 24–369 (CA9), App. 107 and 112, and *Kyle-Labell* v. *Selective Serv. Sys.*, No. 15–5193 (ES) (JAD), (D.N.J. Dec. 16, 2016), App. 144. There is another matter with a male litigant who also challenged the Act under the Americans with Disabilities Act, *Doe* v. *Selective Serv. Sys.*, No. 23-cv-02403-JST (N.D. Cal. 2024), App.132.

Therefore, only the present case is directly on point with *Rostker*, making it the most appropriate vehicle for this Court to reexamine *Rostker*.

II. Archaic Stereotypes Codified in the Act are an Issue of Constitutional Importance

At first glance, the prohibition of women from registering with the Selective Service System seems to confer a benefit to women. However, limiting registration to men is based upon antiquated stereotypes of the capacity of women to serve and fully participate in military and civic life; and equally archaic views that

men lack the ability to remain at home as caretakers. The ban assumes women are unsuitable for military service notwithstanding the fact that women have served in combat roles since the nation's quest for independence. The limitation on registration to male registrants sanctifies these biases and encapsulates them in federal law.

If a young man fails to register, he will face harsh penalties. Failure to register is a felony punishable by a fine of up to $250,000 and/or five years imprisonment. 50 U.S.C. §3811(a); 18 U.S.C. §3571(b).

Selective Service statistics indicate that more than one million men have been denied some government benefit because they failed to register.[14] If the denial of benefits occurs after age twenty-six that man will be denied benefits for his lifetime.[15]

Women do not register and do not face any of these penalties. The Act's discrimination on the basis of sex diminishes the capabilities of an entire class of citizens, draft-age women, who currently serve in combat roles. The Act presumes that men cannot stay home and take care of family, while making an equally offensive assumption that women's place is only at home without any thought as to their vast contributions in the military every day at home and abroad.

Historically, this Court has held that the right to equal protection protects against sex discrimination and has granted certiorari in dozens of cases involving sex-based classifications. This Court invalidated those classifications in nearly all cases, including those related to the military. See *Reed* v. *Reed*, 404 U.S. 71

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[14] Korte, *supra* n. 1.
[15] *Ibid.*

(1971); See, *e.g.*, *United States* v. *Virginia*, 518 U.S. 515, 539–40 (1996); *J.E.B.* v. *Alabama ex rel. T.B.*, 511 U.S. 127, 130–31 (1994); *Mississippi Univ. for Women* v. *Hogan*, 458 U.S. 718, 729–730 (1982); *Craig*, 429 U.S. at 204; See also *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975); *Frontiero* v. *Richardson*, 411 U.S. 677, 686–88 (1973) (plurality opinion).

At the heart of those decisions is the recognition that "[w]hen persons are excluded from participation in our democratic processes solely because of race or gender, th[e] promise of equality dims." *J.E.B.*, 511 U.S. at 146.

This Court's continued deference to Congress is tantamount to endorsing archaic stereotypes about the roles men and women should play in our society. Traditional roles may have been intact when the Selective Service Act of 1948 was signed by President Truman, but they no longer exist today.

This Court should intervene, as it has historically done in the prior decisions, to prevent the "ratif[ication] and reinforce[ment]" of "prejudicial views of the relative abilities of men and women." *J.E.B.*, 511 U.S. at 140.

General Hayden's Amicus Brief states that *"[r]equiring women as well as men to register for the selective service would send a clear message that the military values the service of its women equally alongside the service of its men."* Brief for Hayden et al. at 21 (emphasis added).

The imposition of involuntary military service, which compels registrants to leave home and face grave danger in combat, constitutes an extraordinary burden. The imposition of disclosing personal

information to the government within ten days of moving in an extremely mobile society imposes another burden on registrants. Under current law, these obligations are imposed exclusively upon young men. Accordingly, the Act's male-only registration requirement is inconsistent with the principles of equal protection enshrined in the Constitution.

III. Standing

Article III standing requires a plaintiff to show: (1) an injury in fact, (2) that the injury is fairly traceable to the defendant's conduct, and (3) that a favorable court decision will likely redress the injury. *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 337–38 (2016). An injury in fact must be concrete, particularized, and actual or imminent, not hypothetical. *Id.* at 339; *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "Discrimination itself, by perpetuating 'archaic and stereotypic notions' . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group." *Heckler* v. *Mathews*, 465 U.S. 728, 739–40 (1984) (citations omitted).

Under 50 U.S.C. §3802(a), all men ages eighteen to twenty-six must register with the Selective Service and update their information within ten days of any change. 32 C.F.R. §1621.1(a). Failure to comply is punishable by up to five years in prison or a $10,000 fine and denial of significant government benefits. 50 U.S.C. §3811(a).

In the present matter, in denying Defendants' motion to dismiss the Central District of California determined all Plaintiffs had requisite standing to pursue their claims. App. 23-25. In the same order, the

lawsuit was dismissed on the basis that the Fifth Amendment claim was precluded by *Rostker*. Without considering the *Rostker* analysis, the Ninth Circuit held that Plaintiffs lacked Article III standing. App. 2-3. "Plaintiffs have not shown any of the named individual members suffered a redressable injury." App. 2-3. (citing *Friends of the Earth, Inc.* v. *Laidlaw Env't Servs. (TOC) Inc.*, 528 U.S. 167, 180–81 (2000)).

The Ninth Circuit's injury analysis failed to comport with the established parameters for Article III standing. In reaching its conclusion, the Ninth Circuit stated: "But because each individual member has already completed the one-time registration, there is no ongoing injury that can be remedied by the prospective relief that plaintiffs seek." App. 2-3. Finally, the Ninth Circuit added: "And no individual has alleged facts suggesting that he intends to move or update his registration information before 26, so any injury based on a continuing obligation to keep one's contact information up to date with the Selective Service is too speculative to confer standing." App. 2-3.

These statements are not supported by the facts. Men who fall within the registration requirements of the Act experience transitions in living arrangements at a rate of almost 25%.[16] Notwithstanding Plaintiffs' contention they have satisfied the requirements set forth in *Spokeo* and *Friends of the Earth*, the Ninth Circuit effectively denied Plaintiffs leave to amend and the opportunity to correct any pleading oversight

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[16] See *Young Adults Most Likely to Change Living Arrangements*, U.S. Census Bureau (Aug. 2020), available at https://www.census.gov/library/stories/2020/08/young-adultsmost-likely-to-change-living-arrangements.html.

when leave to amend a complaint "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2).

A case is only moot if no effective relief can be granted. *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013). If the parties still have any concrete interest, the case is not moot. Mootness issues often arise when (1) the defendant voluntarily stops the challenged conduct—mooting the case only if it is unlikely to recur—or (2) the conduct could happen again but is too brief to fully litigate, and there is a reasonable expectation the same party will face it again. *FBI* v. *Fikre*, 601 U.S. 234, 241 (2024); *FEC* v. *Wisconsin Rt. To Life, Inc.*, 551 U.S. 449, 462 (2007).

This Court recognizes an exception to mootness for cases "capable of repetition, yet evading review." However, if a plaintiff is likely to face the same injury again, the case is not moot, regardless of how long the conduct lasts. The key question is whether the challenged behavior could reasonably recur against the same plaintiff; if so, a live controversy remains. *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 92 (2013); *Kingdomware Techs., Inc.* v. *U.S.*, 579 U.S. 162, 170 (2016); *Friends of the Earth*, 528 U.S. at 213–14.

"Where the conduct has ceased for the time being but there is a demonstrated probability that it will recur, a real-life controversy between parties with a personal stake in the outcome continues to exist." *Friends of the Earth*, 528 U.S. at 213–14 (Scalia, J., dissenting, joined by O'Connor, J.) (quoting *Honig* v. *Doe*, 484 U.S. 305, 341 (1988)).

This understanding accords with standing doctrine, too. For purposes of analyzing standing at the outset, the Court has held that "future injuries" "may suffice

if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.'" *Dep't of Com.* v. *New York*, 588 U.S. 752, 767 (2019) (quoting *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158 (2014)). The critical point, however, is that when the injury can reasonably be expected to recur, "a case based on th[e] dispute remains live." *Turner* v. *Rogers*, 564 U.S. 431, 439 (2011).

The Ninth Circuit, in Footnote No. 1, stated that Petitioners raised the issue of organizational standing the first time on appeal and did not state such facts in its Complaint. App. 3. This is inconsistent with the record. Petitioners' Complaint states:

> "NCFM has associational standing because some NCFM members, including MCNAMARA, MCKIERNAN, MILILLO, MENDIOLA, and FALCON, would otherwise have standing to sue in their own right, the interests NCFM seeks to protect are germane to NCFM's purpose and neither the claim asserted, nor the relief requested, requires the participation of individual NCFM members in this lawsuit."

App. 38.

In *National Coalition for Men* v. *System*, Case No. 4:16-cv-03362 (S.D. Tex. Apr. 6, 2018), the Southern District of Texas denied defendants' motion to dismiss on the basis of standing. In the prior case, the government argued that plaintiffs "lack standing because they have not suffered an injury from the MSSA's male-only registration requirement." App. 102-105. Defendants further argue that "because the

individual plaintiffs lack standing, NCFM lacks associational standing." *Ibid.* Like *Rotsker*, the Southern District of Texas Court found that the matter is plainly justiciable. There, the Order stated that "all three plaintiffs have standing." App. 104, 106. The Government did not contest that conclusion on appeal.

The Southern District of Texas relied upon the Supreme Court opinion in *Friends of the Earth, Inc.* "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth*, 528 U.S. at 180–81.

Plaintiffs, on the other hand, argued they "are harmed because they are required to register for military conscription, continually report their whereabouts to the federal government under penalty of fines, jail, and will be denied federal benefits if they do not." App. 103.

The Southern District of Texas ultimately held that the obligation to update registration information, "paired with the requirement to register with SSS, constitutes an injury sufficient for Article III standing." App. 103-104, (citing *E. Tex. Baptist Univ.* v. *Sibelius*, 988 F. Supp. 2d 743, 758 (S.D. Tex. 2013)).

While this Court considers whether to grant review, it is worth noting that the District Court of New Jersey, in a similar case held that a female plaintiff challenging the Act had standing, The Hon. Justice Salas stated: "That present enforcement gives rise to an injury today, and Defendants fail to show how review of

that injury would "prove too abstract or unnecessary." *Ohio Forestry Ass'n* v. *Sierra Club*, 523 U.S. 726, 735 (1998). The question is fit for adjudication." App. 158.

Similarly, the Northern District of California held that the 15-year-old challenging the Act also had standing:

> Read generously, Plaintiffs' complaint suggests that John Doe is at least 15 years old and will be required to register with the MSSA within three years. Further, unlike cases such as *Clapper*, where "respondents merely speculate[d] and [made] assumptions about whether their communications with their foreign contacts [would] be acquired under" the statute at issue, John Doe is certain to violate the MSSA should he fail to register upon turning 18, which is inevitable. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 412. Finally, it would be counterintuitive to force John Doe to actually violate the MSSA in order to confer standing. See *id.* at 409 (quoting *Whitmore* v. *Arkansas*, 495 U.S. 149, 158 (1990)) ("[W]e have repeatedly reiterated that 'threatened injury must be certainly impending to constitute injury in fact," and that '[a]llegations of *possible* future injury' are not sufficient."). Thus, while Plaintiffs' allegations concerning standing could have been clearer, they nonetheless pass muster."

App. 137.

IV. Continued Deference to Congress Constitutes Abdication of This Court's Essential Constitutional Duty

On June 7, 2021, this Court denied NCFM's first petition for writ of certiorari. Since Congress would be considering the issue in its next defense bill, Justice Sotomayor stated, "But at least for now, the Court's longstanding deference to Congress on matters of national defense and military affairs cautions against granting review while Congress actively weighs the issue." *Nat'l Coal. for Men* v. *Selective Serv. Sys.*, 593 U.S. at 3 (2021) (Sotomayor, J., statement), App. 56–57.

Congress did, in fact, weigh in on the matter when it passed the next defense bill. In July 2021, the Senate Armed Services Committee voted 21–5 to add women to the draft registration system. The House Armed Services Committee approved the change in September 2021, in a 35–24 vote. The committee approval came after the NCMNPS recommended draft registration be expanded to include women, calling it a "necessary and fair step." See *Inspired to Serve*, *supra*, at 8.

A small group of six Congressmembers were adamantly opposed to making women register and threatened to vote against the NDAA as a whole if the final bill included the provision to, in its words, *"draft our daughters."* (emphasis added).[17]

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[17] Rebecca Kheel, Congress Drops Effort to Add Women to the Draft, Military.com (Dec. 7, 2021), available at https://www.military.com/daily-news/2021/12/07/congressdrops-effort-add-women-draft.html (reporting that provisions to include women

One of the six holdouts, Sen. Josh Hawley, R-Mo., led the charge against the provision in the Senate; he responded to reports that it would be removed from the NDAA by saying he *"certainly hope[s] that is the case. If it is not, then I will keep fighting for a vote on the Senate floor to strip this wrong and misguided provision out of the final bill." Ibid* (emphasis added). Certainly, the DoD, the NCMNPS commission along with other high ranking military officers are not misguided. These six members of Congress dismiss the fact that registration for the draft does not mandate that all who register are, indeed, drafted; the process has always been selective. Each registrant would be drafted based upon their ability to serve, regardless of sex.

When this Court denied NCFM's first petition Justice Sotomayor forewarned that the Court would defer to Congress "at least for now." *Nat'l Coal. for Men*, 593 U.S. at 3 (Sotomayor, J. Statement), App. 56. Almost five years have passed, and Congress has yet to enact gender-neutral registration despite having an opportunity to act when the annual defense bill was passed each year.

In *Rostker*, this Court has consistently recognized Congress's "broad constitutional power" to raise and regulate armies and navies, citing to *Schlesinger* v. *Ballard*, 419 U.S. 498, 510 (1975) *Rostker*, 453 U.S. at 65. As the Court noted in considering a challenge to the selective service laws: "The constitutional power of Congress to raise and support armies and to make all laws necessary and proper to that end is broad and

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in draft registration were removed from the National Defense Authorization Act).

sweeping." *Ibid.*; see also *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968); see also *Lichter* v. *United States*, 334 U.S. 742, 755 (1948). Congress is not free to disregard the Constitution when it acts in the area of military affairs. In that area, as any other, Congress remains subject to the limitations of the Due Process Clause. See *Ex parte Milligan*, 4 Wall. 2 (1866); see also *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 156 (1919).

But while judicial intervention in military matters "should only be undertaken with care and circumspection," *Jaffee* v. *United States*, 663 F.2d 1226, 1238 (CA3 1981), that is ultimately an issue to be studied on the merits with the benefit of a more developed record. See *Dillard* v. *Brown*, 652 F.2d 316, 323–24 (CA3 1981) ("If the military justification outweighs the infringement of the plaintiff's individual freedom, we may hold for the military on the merits, but we will not find the claim to be non-justiciable and therefore not cognizable by a court.").

A review of decisions demonstrates "not the slightest hesitancy about reaching the merits even though military affairs were involved." See *Service Women's Action Network* v. *Mattis*, 320 F. Supp. 3d 1082, 1090 (N.D. Cal. 2018) (quoting *Owens* v. *Brown*, 455 F. Supp. 291, 301 (D.D.C. 1978) (citing examples)).

While it is well-established that this Court will give deference to Congress in matters of the military, deference does not mean abdication. See *Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 103 (1973). However, vigilance does not mean abdication of the Court's responsibilities. After all, the"[C]onstitution controls any legislative act repugnant to it." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177

(1803). A decision which holds that the Act is discrimination on the basis of sex will not tether Congress to a specific action. Rather, Congress would retain independent legislative authority in its response to this matter.

This Court should grant review, for deference in military affairs must not interfere with the judiciary's role as guardian of the Constitution where fundamental liberties are at stake. To decline review here would be to forsake that essential duty. If the petitioners are entitled to equal protection under the law, they are entitled to equal protection now, not sometime in the future.

V. The Role of Women in Combat Compels This Court Reconsider the Validity of *Rostker*

A. *Stare Decisis* is Not Absolute

Rostker was decided 45 years ago, under the specific circumstance that women were banned from combat roles. This Court's majority reasoned then that the Act's male-only registration requirement was not discrimination on the basis of sex because men and women in the military were not similarly situated as a result of the ban.

The ban on women in combat roles has been wholly eradicated. By 2024, over 5,000 women serve in combat roles in the Army and Marine Corps.[18]

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[18] Patty Nieberg, *Women in Ground Combat Jobs Say They Prove Their "Effectiveness" Every Day*, Task & Purpose (Jan. 9, 2026), available at https://www.taskandpurpose.com/news/women-react-review-combat-jobs/.

The Act's male-only registration requirement stands as one the last federal laws which codifies discrimination on the basis of sex. Here, Congressional inaction has been shielded by the precedent set in *Rostker*. Since 1981, the justification for the gender-based distinction in *Rostker* has been irrevocably eradicated. Under heightened scrutiny, sex-based classifications must be reevaluated as circumstances change. See *Harper* v. *Virginia State Bd. of Elections*, 383 U.S. 663, 669–670 (1966).

While stare decisis favors adherence to precedent, it "is not an inexorable command." *Pearson* v. *Callahan*, 555 U.S. 223, 233 (2009) (internal quotation marks omitted). This Court may properly overrule a prior decision where later developments have "eroded" its "underpinnings," the original decision cannot be squared with related decisions, *United States* v. *Gaudin*, 515 U.S. 506, 521 (1995), and reliance interests are limited, *S. Dakota* v. *Wayfair*, 585 U.S. 878, 921, 928 (2018). See, *e.g.*, *Janus* v. *Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 918–19 (2018).

This notion is not new. The decision in *Marbury*, 5 U.S. (1 Cranch) 137, declaring unconstitutional for the first time an act of Congress, established the principle of judicial review applicable to this matter. In *Plessy* v. *Ferguson*, 163 U.S. 537 (1896) this Court held that "equal but separate accommodations" on railroad cars did not violate the Equal Protection Clause of the Fourteenth Amendment; this was subsequently overturned by *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954). There are times when a decision of this Court is tolerable in society and times when society demands change. With the

rationale in *Rostker* eradicated, the codification of archaic stereotypes concerning the roles of men and women in society can no longer be tolerated. "This is what this suit is about. Power. The allocation of power among Congress, the President, and the courts in such fashion as to preserve the equilibrium the Constitution sought to establish." *Morrison* v. *Olson*, 487 U.S. 654, 697 (Scalia, J., dissenting).

The former Dean of Harvard Law School said, "The law must be stable, but it must not stand still."[19] This maxim highlights the balancing test between precedent and profound societal changes. Here, military policies have been dramatically altered since 1981 and with these changes no factual justification exists sufficient to defend a male-only registration requirement. Historical precedent which conflicts with constitutional principles of equality must not be invoked as a defense for discrimination on the basis of sex. Accordingly, justice demands this Court reconsider *Rostker*.

B. The Rationale in *Rostker* No Longer Exists

Here, the factual basis for the decision has not only been eroded, but it has also been wholly eradicated. Therefore, reliance upon the central premise of a gender-based combat restriction cannot be sound reasoning to uphold *Rostker* today.

Since the ban was rescinded, both men and women serve in combat and can serve to replace combat troops. Now, under the reasoning in *Rostker*, women

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[19] This quote is often attributed to Roscoe Pound's book, "Interpretations of Legal History" (1923).

are "similarly situated" to men for purposes of registration. *Rostker*, 453 U.S. at 78.

In NCFM's initial 2021 petition before this Court, The National Organization for Women and the Modern Military Association of America filed Amicus Briefs in support of their Petition. General Michael Hayden along with nine other military officers also filed Amicus Briefs in support of NCFM's Petition. General Hayden's brief stated:

> "According to the logic underlying the current draft regime, men are more capable of serving in combat than women. Yet the vast majority of men in fact are not, and – most importantly – have no advantage in readiness over women, who the current statutory scheme forbids from registering. Such a regime makes no sense, either as a matter of Fifth Amendment law or of military planning. Doubling the pool of potential draftees would do more than give the military an opportunity to draw on a larger pool of qualified candidates to meet its needs in the face of a large-scale conflict. It would also permit the military to select the most qualified civilian candidates available for any given role in the military – meaning, a more qualified women could be chosen in the place of a less qualified man. Put differently, doubling the pool of potential draftees would raise the overall quality of the candidate pool and, in

> doing so, increase military readiness and aid the Nation's security."

Brief for Hayden et al. at 15–16.

Today, men and women stand on equal footing concerning registration. There is no rational basis to demand this duty of citizenship from men while excluding women. To do so is to ignore the capabilities, commitment, and equal responsibility of women in serving in the military while imposing a heavy burden on an entire class of registrants simply on the basis of their sex. In light of the role of women in combat, there are substantial grounds to reconsider *Rostker*.

C. *Rostker* is Inconsistent with Subsequent Precedent

Under the analysis of heightened-scrutiny this Court invalidated most sex-based classifications it has considered. The Act's male-only registration requirement should be decided in the same manner.

Historically, heightened scrutiny applies to all sex-based classifications. See *Sessions* v. *Morales-Santana*, 582 U.S. 47, 57–58 (2017); *Hogan*, 458 U.S. at 723–24. Any gender distinction must be substantially related to achieving an important government objective; and any justifications offered must be "'exceedingly persuasive,'" and the "demanding" "burden of justification … rests entirely on the State." *United States* v. *Virginia*, 518 U.S. at 532–533 (quoting *Hogan*, 458 U.S. at 724).

Rostker did not hold to these same standards. Instead of examining whether *excluding* women from registration was substantially related to furthering the government's interest in raising and supporting

armies, the Court asked whether *including* women was *necessary* to meet that interest. *Rostker*, 453 U.S. at 77 (explaining that because women were banned from combat, there was no need to register women) and *id.* at 81 ("Congress simply did not consider it worth the added burdens of including women in draft and registration plans."), with *id.* at 105 (Marshall, J., dissenting) ("[I]t is incumbent on the Government to show that excluding women from a draft to fill those positions substantially furthers an important governmental objective.").

One Term after *Rostker*, this Court rejected the notion that admitting only women to a state nursing school furthered the state's purported objective of providing opportunities for women to obtain training in that field. See *Hogan*, 458 U.S. at 729–30. *Hogan* did not ask whether the state could meet its goal by admitting only women; it asked whether *excluding men* was substantially related to achieving that goal, and found it was not. *Id.* at 731 ("[T]he record in this case is flatly inconsistent with the claim that excluding men…is necessary to reach any of [Mississippi University for Women's] educational goals."). Similarly, in *Virginia*, the Court did not inquire whether Virginia's goal of producing citizen soldiers could be achieved without admitting women; the state's history made that self-evident. *Virginia et al.*, 518 U.S. at 520. Rather, the decision hinged on the finding that the state's goals were not "substantially advanced by women's categorical *exclusion*." *Id.* at 545–46 (emphasis added); see also *J.E.B.*, 511 U.S. at 137 (considering whether gender-based peremptory challenges "provide substantial aid to a litigant's effort to secure a fair and impartial jury").

The departure from precedent in *Rostker* undermines the fundamental principle that the Government must be held accountable for any policy that denies equal treatment under the law. At the time *Rostker* was decided, the legislative record showed that women at the time were qualified to serve in some 80,000 non-combat positions, freeing an equal number of men to serve in combat positions. *Rostker*, 453 U.S. at 80–81; *Id.* at 100 (Marshall, J., dissenting).

The Court in *Rostker* accepted the Government's argument that should a draft be put in place, there would be no need for women because there were enough men in the registrant pool and women could not serve in combat roles. The *Rostker* Court allowed one sex-based distinction to justify another. An argument this Court has repeatedly rejected. See, *e.g.*, *Virginia*, 518 U.S. at 545 (rejecting as "notably circular" the government's stated justification that preserving VMI's men-only admission policy was necessary to preserve the institution's single-sex character).

Rostker relied heavily on a Senate Armed Services Committee Report, later adopted by both Houses of Congress, about military preparedness and needs. *Rostker*, 453 U.S. at 65. In reinforcing archaic stereotypes of the roles of men and women the report emphasized the *"sweeping implications for our society" and "unprecedented strains on family life" conscripting women would cause.* S. Rep. No. 96–826, at 159. *Imagine "a young mother being drafted and a young father remaining home with the family in a time of national emergency,"* the report warned. *Ibid.* (emphasis added). Such a result, it concluded, would be *"unwise and unacceptable to a large majority of our people." Id* (emphasis added).

The Senate Armed Services Committee's concern about the "unacceptable" result of fathers raising their children is precisely that sort of stereotype. S. Rep. No. 96–826, at 159; see *Nevada Dep't of Hum. Res.* v. *Hibbs*, 538 U.S. 721, 736 (2003) (rejecting the "self-fulfilling cycle of discrimination that force[s] women to continue to assume the role of primary family caregiver"). This Court's conclusion in *Rostker* that "the decision to exempt women from registration was not the 'accidental byproduct of a traditional way of thinking about females'" did not acknowledge these facts contained in the record. *Rostker*, 453 U.S. at 74 (quoting *Califano* v. *Webster*, 430 U.S. 313, 320 (1977)).

Rostker failed to consider whether the male-only registration requirement "create[d] or perpetuate[d] the legal, social, and economic inferiority of women." *Virginia*, 518 U.S. at 534. The duty to defend one's country is central to citizenship. Excluding women from this obligation diminishes their status and perpetuates inequality in the burden to men, an injustice *Rostker* did not address.

Heightened scrutiny demands a rigorous examination, not mere reliance on government statements without examination of the complete record. See *J.E.B.*, 511 U.S. at 140, n. 11 (equal protection analysis "requires that state actors look beyond the surface before making judgments about people that are likely to stigmatize as well as to perpetuate historical patterns of discrimination.").

Here, Petitioners respectfully request that this Court inquire whether the combat ban was itself premised on "overbroad generalizations about the…talents, capacities, or preferences" of women, *Virginia*, 518 U.S. at 533, or upon attitudes of

"romantic paternalism." *Frontiero* v. *Richardson*, 411 U.S. at 684 (plurality opinion).

Rostker remains a stark departure from this Court's sex discrimination jurisprudence which is fundamentally indefensible today. The injustice it upholds is now more apparent and intolerable in light the role of women in combat. It is imperative that this Court grant this petition to rectify this injustice.

D. A Gender-Neutral Draft Strengthens Our National Security and No Significant Reliance Interests Justifies Preserving *Rostker*

The DoD has acknowledged that extending the registration requirement to women carries many benefits. See 2017 Defense Report, *supra*, at 17–19. The Commission has concluded there is no rationale for continuing to exclude women. See *Inspired to Serve*, *supra*, at 116. Presently, there is no imminent threat of the draft being reinstated. Overturning *Rostker* now leaves time for Congress and the military to remedy the issue. Any reliance interests that may exist, moreover, do not "outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected." *Arizona* v. *Gant*, 556 U.S. 332, 349 (2009).

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To prevent tyranny, the U.S. Constitution established three separate but equal branches of government with each branch granted specific powers, limited only by checks and balances in place to avert absolutism by any branch. Congress is tasked with making laws and has been granted great deference by the judiciary related to military affairs. This Court in

Rostker stated that, "*[n]one of this is to say that Congress is free to disregard the Constitution when it acts in areas of military affairs* [...]*Deference does not mean abdication.*" *Rostker*, 453 U. S. at 70.

CONCLUSION

This Court should grant certiorari.

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