

3/9/26

No. 25-1259

In The
Supreme Court of the United States

VIKRAM VALAME,

Petitioner,

v.

DONALD JOHN TRUMP, 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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March 9, 2026

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QUESTIONS PRESENTED

The Military Selective Service Act requires men, and only men, to register for the draft. 50 U.S.C. § 3802(a). Failure to register carries substantial penalties. In *Rostker v. Goldberg*, 453 U.S. 57 (1981), this Court upheld the act because “[w]omen as a group, * * * unlike men as a group, are not eligible for combat.” *Id.* at 76. Therefore, men and women were “simply not similarly situated for purposes of a draft or registration for a draft.” *Id.* at 78.

From 2013 to 2015, building on congressional action, the Department of Defense completely eliminated restrictions on women in combat. The first question presented is:

1. Whether, in light of Congress and the Department of Defense having lifted the ban on women in combat, the male-only draft violates the equal protection component of the Due Process Clause.

Article V states that constitutional amendments “shall be valid” when proposed by Congress and ratified by three-fourths of the states. U.S. CONST. Art. V. In 1972, Congress proposed the Equal Rights Amendment. In 2020, Virginia became the 38th state to ratify it. The court below held Virginia’s ratification ineffective because Congress purported to impose (and later amend) a deadline on the ratification of the Equal Rights Amendment outside the text of that Amendment. The second question presented is:

2. Whether Congress may impose mutable conditions on the ratification of a constitutional amendment not found in either the text of the Constitution or the text of the proposed amendment.

PARTIES TO THE PROCEEDING

Petitioner Vikram Valame was the plaintiff in the district court and the appellant below.

Respondents the United States of America, the Selective Service System, President Donald J. Trump, Craig T. Brown, Joel C. Spangenberg, Steven L. Kett, and Craig H. Missakian were defendants in the district court and appellees below. Steven L. Kett is sued in his personal and official capacities. All other defendants are sued in their official capacities only.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit:

Vikram Valame v. Joseph R. Biden, No. 5:23-cv-03018 (N.D. Cal.) (June 20, 2023)

Vikram Valame v. Donald J. Trump, No. 24-369 (9th Cir.) (Nov. 4, 2025)

Valame and the United States have agreed that the following additional case be stayed pending disposition of this petition:

Valame v. Wright, No. 1:25-cv-01819 (D.D.C.) (July 2, 2025)

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
STATEMENT OF RELATED PROCEEDINGS	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	vii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	5
JURISDICTION.....	5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE.....	7
A. The Military Selective Service Act.....	7
B. Congress Rejects Women in the Draft.....	8
C. <i>Rostker v. Goldberg</i>	10
D. Integration of Women in Combat.....	12
E. Congress and This Court Consider Selective Service Reform.....	15
F. Factual and Procedural History.....	17
REASONS FOR GRANTING THE PETITION	18
I. THIS COURT SHOULD APPLY <i>ROSTKER</i> TO AN INTEGRATED MILITARY AND HOLD THAT MALE-ONLY REGISTRATION VIOLATES THE FIFTH AMENDMENT.....	18

II. IF NECESSARY, <i>ROSTKER</i> MUST BE OVERRULED	25
A. <i>Rostker</i> Was Wrongly Decided.....	25
B. Subsequent Precedent has Fatally Undermined <i>Rostker</i>	27
C. No Reliance Interests Favor <i>Rostker</i>	28
III. THE VITALITY OF <i>ROSTKER</i> IS AN EXCEPTIONALLY IMPORTANT QUESTION..	29
IV. THIS COURT SHOULD ALSO GRANT REVIEW TO DECIDE IF THE ERA DEADLINE IS VALID	32
A. The Validity of the Equal Rights Amendment is Exceptionally Important.....	32
B. This Court Should Properly Construe Article V Now	35
C. The Ninth Circuit’s Holding on the Deadline Extension Also Warrants Review	38
CONCLUSION	39
TABLE OF APPENDICES	
Appendix A	
Opinion of the United States Court of Appeals for the Ninth Circuit, Filed November 4, 2025.....	1a

Appendix B

Memorandum Disposition of the United States
Court of Appeals for the Ninth Circuit, Filed
July 17, 2025.....4a

Appendix C

Order of the United States District Court for
the Northern District of California, Filed
January 20, 2024.....6a

Appendix D

Resolution Proposing the Twenty-Eighth
Amendment, 86 Stat. 1523.....14a

TABLE OF AUTHORITIES

Cases

<i>Albrecht v. Herald Co.</i> , 390 U.S. 145 (1968)	39
<i>Arizona v. Gant</i> , 556 U.S. 332 (2009)	38
<i>Califano v. Goldfarb</i> , 430 U.S. 199 (1977)	43
<i>Carrington v. Rash</i> , 380 U.S. 89 (1965)	34
<i>Chiafalo v. Washington</i> , 589 U.S. 1165 (2020)	51
<i>Craig v. Boren</i> , 429 U.S. 190 (1976)	14
<i>Davis v. Passman</i> , 442 U.S. 228 (1979)	10
<i>Dobbs v. Jackson Women's Health Org.</i> , 597 U.S. 215 (2022)	38
<i>Frontiero v. Richardson</i> , 411 U.S. 677 (1973) ...	36, 43
<i>Gamble v. United States</i> , 587 U.S. 678 (2019)	32
<i>Goldberg v. Rostker</i> , 509 F. Supp. 586 (E.D. Pa. 1980)	13
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003)	32
<i>Illinois v. Ferriero</i> , 60 F.4th 704 (D.C. Cir. 2023) ...	47
<i>In re Goodell</i> , 39 Wis. 232 (1875)	44
<i>J.E.B. v. Alabama ex rel. T.B.</i> , 511 U.S. 127 (1994)	38, 40
<i>Janus v. AFSCME</i> , 585 U.S. 878 (2018)	39
<i>Mississippi Univ. for Women v. Hogan</i> , 458 U.S. 718 (1982)	27
<i>National Coalition for Men v. Selective Serv. Sys.</i> , 141 S. Ct. 1815 (2021)	4, 24
<i>NOW v. Idaho</i> , 455 U.S. 918 (1982)	52
<i>Orr v. Orr</i> , 440 U.S. 268 (1979)	35
<i>Republican Party of Pennsylvania v. Boockvar</i> , 141 S. Ct. 1 (2020)	51

<i>Rostker v. Goldberg</i> , 448 U.S. 1306 (1980).....	44
<i>Rostker v. Goldberg</i> , 453 U.S. 57 (1981).... i, 1, 14, 15, 19, 25, 26, 27, 31, 35, 36, 37, 40	
<i>Schlesinger v. Ballard</i> , 419 U.S. 498 (1975)	26
<i>Sessions v. Morales-Santana</i> , 582 U.S. 47 (2017)..	31, 43
<i>Shelby County v. Holder</i> , 570 U.S. 529 (2013)	4, 33
<i>South Carolina v. Katzenbach</i> , 383 U.S. 301 (1966)	33
<i>Stanley v. Illinois</i> , 405 U.S. 645 (1972).....	34, 35
<i>State Oil Co. v. Khan</i> , 522 U.S. 3 (1997)	39
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023) ...	32, 33, 37
<i>Tuan Anh Nguyen v. I.N.S.</i> , 533 U.S. 53 (2001)	43
<i>United States v. Virginia</i> , 518 U.S. 515 (1996) .	31, 37
<i>Valame v. Trump</i> , 157 F.4th 1172 (9th Cir. 2025)	3, 5
<i>Weinberger v. Wiesenfeld</i> , 420 U.S. 636 (1975)	35

Statutes

5 U.S.C. § 3328	7
10 U.S.C. § 652(a)(3)(B)	13, 21
28 U.S.C. § 1254(1).....	5
28 U.S.C. § 1331	5
50 U.S.C. § 3801(c).....	30
50 U.S.C. § 3802(a).....	i, 5, 7, 18
50 U.S.C. § 3811(a).....	7
50 U.S.C. § 3811(f)	7
65 Del. Laws, c. 505, § 1.....	31
89 Stat. 1255 (1975)	8

94 Stat. 552 (1980)	10
AK Stat § 39.25.160 (2025)	31
AL Code § 36-26-15.1 (2024).....	31
AR Code § 6-80-104 (2024).....	31
Ariz. Rev. Stat. Ann. § 38-201(D)	31
FL Stat § 110.1128 (2025).....	31
GA Code § 45-20-20 (2024)	31
ID Code § 46-504 (2025).....	31
National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60, 139 Stat. 718 (2025) ..	17, 21, 31
NH Rev Stat § 187-A:39 (2025)	31
Pub. L. No. 102-190, § 531, 105 Stat. 1365 (1991)..	12
Pub. L. No. 103-160, § 541, 107 Stat. 1659 (1993)..	12
Pub. L. No. 109-163, § 541, 119 Stat. 3251 (2006) .	13, 29
Pub. L. No. 110-417, § 596, 122 Stat. 4476 (2008)..	13
Pub. L. No. 111-383, § 535(a), 124 Stat. 4217 (2011)	13
Pub. L. No. 114-328, § 551(b)(3)	15
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Pub. L. No. 114-328, § 593, 130 Stat. 2152 (2016)..	15
Pub. L. No. 96-107, § 811, 93 Stat. 815 (1979).....	8

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Associated Press & NORC, <i>The January 2020 AP-NORC Center Poll</i> (Jan 20, 2020)	33
Brief for Appellants at 13, <i>Valame v. Trump</i> , 157 F.4th 1172 (2025).....	36
Brief in Opposition at 11-12, <i>National Coalition for Men</i> , 141 S. Ct. 1815 (No. 20-928)	16, 20
Brief of Business and Corporate Entities as Amici Curiae at 5, 29, <i>Illinois v. Ferriero</i> , 60 F.4th 704 (2023)	34
Brief of General Michael Hayden, et al. as Amicus Curiae at 20-22, <i>National Coalition for Men</i> , 141 S. Ct. 1815 (2021) (No. 20-928)	30
CICERO, DE OFFICIIS 1.86	30
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David Vergun, <i>Enlisted recruiting numbers up over last 6 months</i> , 12 th Flying Training Wing (Aug. 18, 2025), https://perma.cc/2C8W-U99L	2
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Department of Defense Authorization for Appropriations for Fiscal Year 1981: Hearings on S. 2294 before the Senate Committee on Armed Services, 96th Cong. 1805 (1980)	19

Department of Defense, <i>Fact Sheet: Women in Service Review (WISR) Implementation</i> (December 2015).....	15
Donald J. Trump, <i>Remarks at a Celebration of Military Mothers</i> (May 8, 2025)	23
<i>Facts and Statistics, Women Veterans Health Care</i> , U.S. Department of Veterans Affairs (Sept. 23, 2025), https://www.womenshealth.va.gov/materials-and-resources/facts-and-statistics.asp	12
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<i>Findings and Recommendations of the Commission on the National Defense Strategy</i> , Hearing Before United States Senate Comm. on Armed Servs., 118th Cong. 69-70 (2024)	22
Forbes Breaking News, <i>Reporter To Hegseth: 'Why Not Acknowledge The Female Pilots That Also Participated In This Mission?'</i> , YOUTUBE (June 26, 2025), https://youtu.be/pdTb_PDFE3w	12
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H.J.Res. 638 (1978)	33
H.R. Conf. Rep. 96-1222, 104, 1980 U.S.C.C.A.N. 2666.....	9
H.R. Rep. No. 95-1405 (1978)	38
International Covenant on Civil and Political Rights. 999 U.N.T.S. 171	34

Jordyn Phelps, <i>White House Announces Support for Requiring Women to Register for Military Draft</i> , ABC NEWS (Dec. 1, 2016, 7:31 PM), https://abcnews.com/Politics/story?id=43915014	2, 22
<i>Magna Carta</i> cl. 54 (1215)	32
<i>Memorandum from Chairman of the Joint Chiefs of Staff to Secretary of Defense</i> (Jan. 9, 2013)	14
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Petition for Writ of Certiorari, <i>National Coalition for Men</i> , 141 S. Ct. 1815 (No. 20-928)	16
Pub. L. No. 114-328 § 555(c)(2)(A)	2
Pub. L. No. 114-328 §§ 553(b)(1)	2
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S. Rep. 96-826, 157, 1980 U.S.C.C.A.N. 2612, 2647 1, 9, 20, 23, 30	
Secretary of Defense, <i>Memorandum from Secretary of Defense to Secretaries of the Military Departments</i> (Dec. 3, 2015)	1
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STAFF OF H. COMM. ON ARMED SERVICES, 96 TH CONG., PRESIDENTIAL RECOMMENDATIONS FOR SELECTIVE SERVICE REFORM 3 (Comm. Print 1980)	8
THE FEDERALIST No. 43 (James Madison) (Clinton Rossiter ed. 1961)	4
THE FEDERALIST No. 85, at 525 (Alexander Hamilton)	36
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Undersecretary of Defense for Personnel and Readiness, <i>Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces</i> (Feb. 2012)	14

Treatises

1 THE RECORDS OF THE FEDERAL CONVENTION OF
1787, at 22 (Max Farrand ed. 1937) 35, 36

2 THE RECORDS OF THE FEDERAL CONVENTION OF
1787, at 642 (Max Farrand ed. 1937) 35, 36

2 WILLIAM BLACKSTONE, COMMENTARIES 32

Regulations

32 C.F.R. § 1621.1(a)..... 7, 31

Proclamation No. 4771, 3 CFR 82 (1980)..... 10

Constitutional Provisions

U.S. CONST. Amend. V 5

U.S. CONST. Art. V i, 4, 7, 35, 37

PETITION FOR WRIT OF CERTIORARI

In 1980, Congress justified sex discrimination in the Selective Service on two grounds. “The policy precluding the use of women in combat” was “the most important reason.” S. Rep. 96-826, at 157. Congress worried forming mixed-sex units as an “experiment” during mobilization risked calamity. *Id.* at 157-159. Second, Congress found that “drafting women would place unprecedented strains on family life, whether in peacetime or in time of emergency * * * unacceptable to a large majority of our people.” *Id.* at 159.

Decades of experience and Congress’ own actions have falsified both justifications for “one of the most potent remaining public expressions of ancient canards about the proper role of women.” *Rostker v. Goldberg*, 453 U.S. 57, 86 (1981) (Marshall, J., dissenting).

Beginning in 1991, restrictions on women in combat were progressively relaxed. By 2013, the Department of Defense resolved to open all combat positions to women. In 2015, the Department fulfilled its promise: military positions were opened to women “without exception.” Secretary of Defense, *Memorandum from Secretary of Defense to Secretaries of the Military Departments* (Dec. 3, 2015). Women performed exceptionally in these roles, including in ground combat positions. Senate Committee on Armed Services, *The Implementation of the Decision to Open All Ground Combat Units to Women* at 6 (Feb. 2, 2016) (statement of Sec. Mabus). Due to their effectiveness and strong support from leadership, recruitment of “active-duty enlisted women [has] surged across all service branches.” David Vergun,

*Enlisted recruiting numbers up over last 6 months, 12th Flying Training Wing (Aug. 18, 2025), <https://perma.cc/2C8W-U99L>. Today, “[w]omen in our military * * * continue to make amazing contributions across all aspects of our battlefield.” Senate Committee on Armed Services, *Confirmation Hearing on the Expected Nomination of Mr. Peter B. Hegseth* at 54 (Jan. 14, 2025) (“Hegseth Statement”).*

Both political branches have recognized that female military service implicates the justifications for the male-only draft. In 2016, Congress and the President created and staffed the National Commission on Military, National, and Public Service to evaluate registering women. Pub. L. No. 114-328 §§ 553(b)(1), 555(c)(2)(A). Four years later, that commission recommended that Congress “eliminate male-only registration and expand draft eligibility” to include women. National Commission on Military, National, and Public Service, *Inspired to Serve: Final Report* 111 (March 2020) (*Inspired to Serve*). That position had also been adopted as Executive Branch policy. Jordyn Phelps, *White House Announces Support for Requiring Women to Register for Military Draft*, ABC NEWS (Dec. 1, 2016, 7:31 PM), <https://abcnews.com/Politics/story?id=43915014>.

Congress has had over six years to consider the Commission’s final report alongside thirteen years of data on women in combat positions. Instead of responding to changed circumstances, Congress has opted to stand on *Rostker* and continue imposing selective service burdens on men alone. *But see Shelby County v. Holder*, 570 U.S. 529 (2013) (“the Act imposes current burdens and must be justified by current needs.”).

The time has come for *Rostker* to go. In 2021, three justices of this Court concurred in a denial of certiorari “for now” out of “deference to Congress on matters of national defense and military affairs” while it considered reforming draft registration. *National Coalition for Men v. Selective Serv. Sys.*, 141 S. Ct. 1815, 1818 (2021) (statement of Sotomayor, J.). That consideration is over, and the validity of the draft remains an open question.

This is the ideal vehicle to address the continued vitality of *Rostker*. Unlike the stigmatic injuries alleged in *National Coalition for Men* that the Solicitor General objected to, Petitioner has suffered an indisputably concrete pocketbook injury attributable to the male-only draft. This backwards-looking monetary injury guarantees that neither deficiencies in Article III standing nor mootness will impair this Court’s consideration of Plaintiff’s claims.

This Court should also grant certiorari to decide another significant constitutional question: the validity of the deadline attached to the Equal Rights Amendment.

The Ninth Circuit below contravened the Constitution’s text by ruling that Congress has the power to unilaterally impose and to amend ratification deadlines for constitutional amendments. *Valame v. Trump*, 157 F.4th at 1173 (2025) (recognizing the amended deadline, “June 30, 1982,” as binding). That decision threatens serious harm to the amendment process.

If Congress can unilaterally impose deadlines on constitutional amendments as a “Mode” of ratification, its authority extends to both Congressional proposals

and amendments proposed by constitutional conventions. *See* U.S. CONST. Art. V (granting the power to propose a mode “in either case”). This power would destroy the convention process as a check on Congress; Congress could simply attach an unreviewable and exceptionally short deadline to any amendments proposed by the convention. *But see* THE FEDERALIST No. 43 (James Madison) (Clinton Rossiter ed. 1961) (Article V “equally enables the general and the State governments”). Such a decision would destroy an important part of Article V and threaten chaos in a future constitutional convention.

Additionally, the validity of the ERA is itself a question of profound importance to tens of millions of Americans. Trapping the amendment in legal limbo despite its thirty-eight state ratifications does a profound disservice to the millions of Americans who debated the amendment through the democratic process. While the best reading of the Constitution requires this Court to invalidate the Congressional deadline, a ruling that definitively rejects the ERA would at least allow the democratic process to pursue sex equality from a new starting point.

OPINIONS BELOW

The Ninth Circuit's opinion, as amended upon denial of rehearing, 157 F.4th 1172, is reproduced at App. 1a. The Ninth Circuit's initial opinion, 2025 WL 1983954, is reproduced at App. 4a. The decision of the United States District Court for the Northern District of California, 2024 WL 251415, is reproduced at App. 6a.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331. The Ninth Circuit issued its amended opinion and denied a timely rehearing petition on November 4, 2025. On January 21, 2026, Justice Kagan granted a 35-day extension of time to file this petition. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause, U.S. CONST. Amend. V, provides:

No 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), provides:

Except as otherwise provided in this chapter 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.

Article V of the Constitution provides:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its

consent, shall be deprived of its equal suffrage in the Senate.

U.S. CONST. Art. V. A copy of the resolution proposing the Twenty-Eighth Amendment is reproduced at App. 14a.

STATEMENT OF THE CASE

A. The Military Selective Service Act

The MSSA requires “every male citizen of the United States * * * who * * * is between the ages of eighteen and twenty-six, to present himself for and submit to registration.” 50 U.S.C. § 3802(a). Registrants must provide their personal information to the Selective Service upon registration. Registrants also face an ongoing obligation to notify the Selective Service of a change in mailing address, residence, and name. 32 C.F.R. § 1621.1(a).

Men who fail to register for the Selective Service face a variety of penalties. They may be imprisoned for up to five years. 50 U.S.C. § 3811(a). They may be denied certain student loan aid and training assistance. 50 U.S.C. § 3811(f). Most relevantly to this case, a man who fails to register for the Selective Service “shall be ineligible for appointment to a position in an Executive agency.” 5 U.S.C. § 3328. None of these disabilities are, or could be, applied based on sex in any other context. *See, e.g., Davis v. Passman*, 442 U.S. 228 (1979).

After its passage, the Selective Service Act was invoked to raise several million troops for undeclared wars fought in Korea, Vietnam, and elsewhere. Congressional Research Service, R44452, *The*

Selective Service System and Draft Registration: Issues for Congress 3 (2020). Ultimately, due to the withdrawal of U.S. forces from Vietnam and the unpopularity of the draft, Congress allowed induction authority to lapse in 1973. President Ford suspended all draft registrations in 1975. 89 Stat. 1255 (1975).

B. Congress Rejects Women in the Draft

Congress subsequently directed President Carter to submit a report on Selective Service. *See* Pub. L. No. 96-107, § 811, 93 Stat. 815 (1979). President Carter asked Congress to re-fund the Selective Service and grant the President authority to “register, classify and examine women for service in the armed forces.” STAFF OF H. COMM. ON ARMED SERVICES, 96TH CONG., PRESIDENTIAL RECOMMENDATIONS FOR SELECTIVE SERVICE REFORM 3 (Comm. Print 1980).

In his recommendation, President Carter’s Secretary of Defense recognized that “women are not assigned to jobs involving close combat” and “stated his intent to continue that policy.” *Ibid.* However, the administration found that induction of women was militarily justified because women excelled at non-combat assignments and the induction of women would free men to partake in combat. *Id.* at 22. In any event, because “the pool of draft eligible men [was] sufficiently large to meet projected wartime requirements,” women would not be *needed* for combat even if drafted. *Ibid.*

Congress rejected President Carter’s request to register women. Both houses voted to adopt a report explaining their rationale: “the starting point for any discussion of the appropriateness of registering women for the draft is the question of the proper role

of women in combat.” S. Rep. 96-826, 157, 1980 U.S.C.C.A.N. 2612, 2647.¹ The committee variously described the combat restrictions as “fundamental,” the “linchpin for any analysis of this problem,” and “the most important reason for not including women in a registration system.” *Ibid.*

According to the committee, combat restrictions mattered for two military reasons. First, the primary purpose of a draft would be to supply “combat replacements” for a “very large number of positions * * * in infantry and armor skills” that were both undersupplied by volunteers and only open to men. *Id.* at 2648. Inducting women into noncombat roles would thus not advance military readiness where it was needed. Second, Congress found that “throughout history women have not regularly participated in combat” and that inducting them for the first time during a national crisis would be disastrous. *Id.* at 2647. Specifically, it would “leave the actual performance of sexually mixed units as an experiment to be conducted in war with unknown risk” and create new “administrative problems such as housing and different treatment.” *Id.* at 2647, 2649.

In addition to military justifications, Congress addressed social and legal arguments relating to a sex-neutral draft. Socially, Congress worried that “unpredictable reactions” would occur if women were drafted; the primary concern was that “young mother being drafted and a young father remaining home” would be “unwise and unacceptable to a large

¹ See also H.R. Conf. Rep. 96-1222, 104, 1980 U.S.C.C.A.N. 2666, 2679 (“The conferees endorse the specific findings on registration of women contained in the Senate report.”)

majority” of the American people. *Id.* at 2649. As for the legal arguments, Congress concluded that its military judgment and the “great deference” owed to it by the courts protected the male-only draft from any constitutional challenge.

Congress ultimately chose to retain the pre-existing draft coverage formula for men aged 18 to 26. In separate legislation, it appropriated funds to restart draft registration (while specifically prohibiting inductions absent further authorization). 94 Stat. 552 (1980). Later that year, President Carter issued a proclamation implementing draft registration for men only. Proclamation No. 4771, 3 CFR 82 (1980).

C. Rostker v. Goldberg

Shortly after President Carter restarted draft registrations, a three-judge district court enjoined the male-only draft as violative of the Due Process Clause. The district court found that the government failed to explain why “the *exclusion* of females from registration for selective service promotes an important government objective.” *Goldberg v. Rostker*, 509 F. Supp. 586, 597 (E.D. Pa. 1980) (emphasis added).

This Court reversed. *Rostker*, 453 U.S. at 83. Six justices concluded Congress’ military judgment was entitled to heavy deference because Congress had made a “studied choice of one alternative in preference to another.” *Id.* at 71-72. The Court also applied *legal* deference because “Congress specifically considered the question of the Act’s constitutionality.” *Id.* at 64. The Court therefore applied the intermediate scrutiny test articulated in *Craig v.*

Boren, 429 U.S. 190 (1976) through a doubly deferential lens.

On the merits, the majority agreed with Congress' assessment that "[t]he purpose of registration [...] was to prepare for a draft of *combat troops*." *Rostker*, 453 U.S. at 76 (emphasis in original). The Court then specifically endorsed the Senate report's stance on legal implications of that fact: "The existence of the combat restrictions clearly indicates the basis for Congress' decision to exempt women from registration." *Id.* at 77. Indeed, the combat restrictions were the sole factor cited by the Court that distinguished a permissible male-only draft from an impermissible "all-black" or "all-Catholic" draft: "Men and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft." *Id.* at 78.

Lastly, the Court accepted Congress' judgment that the "administrative problems" created by inducting even a small number of women justified a sex-discriminatory draft. *Id.* at 80-82. These administrative problems were inextricably intertwined with the combat restrictions placed on women. *Rostker*, 453 U.S. at 81-82 (citing training burdens for "women recruits who could not be used in combat," untested differences in "physical standards," and the potential military need to "pull forward" support elements to fill combat positions in an emergency).

Justice Marshall dissented. He argued that even if the Court accepted Congress' factual finding that men alone could satisfy military needs, there was no

important interest advanced by “*completely* excluding” women from draft registration. *Rostker*, 453 U.S. at 112 (Marshall, J., dissenting).

D. Integration of Women in Combat

Since *Rostker* was decided, women have become eligible for an ever-expanding set of combat roles.

In 1991, Congress repealed statutory restrictions on assigning women to combat aircraft. Pub. L. No. 102-190, § 531, 105 Stat. 1365 (1991). Today, female combat pilots successfully participate in the U.S. military’s most important air operations.²

In 1993, Congress repealed statutory restrictions that prevented the assignment of women to Navy ships participating in combat missions. Pub. L. No. 103-160, § 541, 107 Stat. 1659 (1993). Women now make up over 20% of the Navy. *Facts and Statistics, Women Veterans Health Care*, U.S. Department of Veterans Affairs (Sept. 23, 2025), <https://www.womenshealth.va.gov/materials-and-resources/facts-and-statistics.asp>.

In 1994, the Department of Defense rescinded the “risk rule” which had barred women from military occupations at risk of direct combat. Instead, women were excluded from a narrower class of units “whose primary mission [was] to engage in direct combat on the ground.” *Memorandum from the Secretary of Defense to Secretaries of the Army, Navy, Air Force*;

² Forbes Breaking News, *Reporter To Hegseth: ‘Why Not Acknowledge The Female Pilots That Also Participated In This Mission?’*, YOUTUBE (June 26, 2025), https://youtu.be/pdTb_PDFE3w (Secretary Hegseth praising female pilots for their role in operation Midnight Hammer).

Chairman, Joint Chiefs of Staff; and Assistant Secretaries of Defense 1 (Jan. 13, 1994).

In 2006, Congress recognized that progressive integration of women into the armed forces could undermine the continuing vitality of *Rostker*. Congress thus directed the government to provide a report whenever it opened military positions to women. The report was required to include analysis of the decision's effects on the constitutionality of the MSSA. Pub. L. No. 109-163, § 541, 119 Stat. 3251 (2006) (codified at 10 U.S.C. § 652(a)(3)(B)).

In 2008, Congress directed the Department of Defense to study ways to increase the diversity of military leadership. Pub. L. No. 110-417, § 596, 122 Stat. 4476 (2008). The Department of Defense concluded that it should progressively eliminate the combat exclusion policies for women across the entire military. Military Leadership Diversity Commission, *From Representation to Inclusion: Diversity Leadership and the 21st-Century Military* (Mar. 2011).

Congress responded to the Commission's findings by formally ordering "a review of laws, policies, and regulations, including the collocation policy, that may restrict the service of female members of the Armed Forces to determine whether changes in such laws, policies, and regulations are needed." Pub. L. No. 111-383, § 535(a), 124 Stat. 4217 (2011).

The Department of Defense, in consultation with Congress, lived up to its commitment. In 2012, the Department relaxed its ground combat policy, created new regulations to accommodate women's privacy interests, and abolished "co-location" restrictions on women in combat. Undersecretary of Defense for

Personnel and Readiness, *Report to Congress on the Review of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces* (Feb. 2012) (“2012 Defense Report”). Crucially, the Department’s decision was not driven by “equity” alone. *Contra Rostker*, 453 U.S. at 79-80. Rather, the Department concluded that the rationale for combat restrictions “has been made irrelevant by the current battlefield framework.” 2012 Defense Report, *supra*, at 3.

In 2013, the Secretary of Defense found that women were “indispensable to national security” and ordered the rescission of the direct combat ban. Department of Defense & Joint Chiefs of Staff, *Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule* (Jan. 24, 2013). The first principle cited by the Secretary in making his decision was “ensuring the success of our nation’s warfighting forces by preserving unit readiness.” *Memorandum from Chairman of the Joint Chiefs of Staff to Secretary of Defense* (Jan. 9, 2013). Mindful of the administrative complexity of full integration, the Secretary gave the military until 2016 to complete the process.

Over the next three years, the Secretary of Defense “systematically evaluated and laid out the reasoning that backed [his] position” by completing at least 41 studies on opening combat positions to women. Ash Carter, *No Exceptions: The Decision to Open All Military Positions to Women*, BELFER CENTER (Dec. 2018) (“No Exceptions”), <https://perma.cc/8DZP-94N3>. The Secretary concluded that “a bigger pool of eligible recruits to compete for positions” was “a practical necessity” for the military and “that women could

meet the toughest standards the U.S. military can set.” *Id.*; see also Department of Defense, *Fact Sheet: Women in Service Review (WISR) Implementation* (December 2015) (listing over thirty studies by the service branches and “extensive consultation” with foreign militaries like the IDF). Based on this analysis, the Secretary ordered that all remaining combat positions be opened to women. *Id.* Congress subsequently directed the Department of Defense to provide annual reports on the progress of integration, Pub. L. No. 114-328, § 593, 130 Stat. 2152 (2016).

E. Congress and This Court Consider Selective Service Reform

Consistent with its 2006 enactment, Congress recognized that the Department of Defense’s 2015 policy had serious implications for the male-only draft. In 2016, Congress created a National Commission to consider the feasibility of modifying the selective service to include all Americans, regardless of sex. *Id.* at § 551(b)(3). Congress also directed the Department of Defense to report on how the inclusion of women would impact the benefits of the Selective Service System. *Id.* at § 552(b)(1)(C).

The Department of Defense submitted a report concluding that “expanding registration for the draft to include women would enhance further the benefits presently associated with the selective service system.” Office of Under Secretary of Defense for Personnel & Readiness, *Report on the Purpose and Utility of a Registration System for Military Selective Service 17-19* (Mar. 2017) (“2017 Defense Report”). The National Commission on Military, National, and Public Service spent a further three years studying

the question, consulting dozens of experts, hundreds of service organizations, and thousands of comments. *Inspired to Serve* at 1. The Commission reached an emphatic conclusion: “Expanding draft eligibility to women * * * will strengthen U.S. national security.” *Id.* at 118. The commission also directly rejected this Court’s analysis in *Rostker*: “The complexity of modern conflict [...] discredit[s] the notion that a draft would be needed only to replace personnel in frontline, combat roles.” *Id.* at 116.

In 2021—with the Final Report in hand—the National Coalition for Men and ACLU petitioned this Court to invalidate the male-only draft. Petition for Writ of Certiorari, *National Coalition for Men*, 141 S. Ct. 1815 (No. 20-928). Like this petition, the NCFM’s brief argued that military integration had eliminated *Rostker*’s central premise and that the male-only draft could no longer withstand heightened scrutiny.

The Solicitor General did not seriously dispute the NCFM’s factual arguments. Brief in Opposition at 11-12, *National Coalition for Men*, 141 S. Ct. 1815 (No. 20-928) (“Petitioners correctly note that relevant military conditions have changed markedly since *Rostker*.”). Rather, the government offered two limited reasons to deny review. First, it asked this Court to wait because Congress was actively considering the question and “ha[d] not had even one full legislative cycle to consider whether to adopt the recommendations.” *Id.* at 15, 16. Second, the government contested the NCFM’s Article III standing to assert stigmatic injuries from the draft. *Id.* at 16-20.

This Court ultimately denied certiorari. Three justices concurred with that decision, “at least for now” because “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.*” 141 S. Ct. at 1818 (2021) (statement of Justice Sotomayor, joined by Justices Breyer and Kavanaugh) (emphasis added).

Congress ultimately failed to resolve the constitutional infirmities of the male-only draft. After taking no action for some 4½ years, Congress passed the National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60, 139 Stat. 718 (2025). § 535 of the act retains the male-only draft but empowers the Selective Service System to automatically register eligible men. The amendment, which takes effect in December 2026, extends the Selective Service’s authority to demand that men provide personal information to facilitate such registration. *Id.*

F. Factual and Procedural History

In December 2023, petitioner Vikram Valame successfully applied for a paid logistics internship with the Nuclear Regulatory Commission. Although the government selected Valame for his merit, it added a condition of employment based solely on his sex: draft registration. Valame refused to accept illegal sex discrimination as a condition of employment.

Valame subsequently filed the operative complaint in this action, alleging that the male-only draft—and the attendant employment discrimination—violated the Fifth and Twenty-

Eighth Amendments. Valame requested a declaratory judgment, injunction, and nominal damages.

The District Court for the Northern District of California dismissed Valame's claims. It found that only this Court could revise *Rostker's* holding that 50 U.S.C. § 3802(a) was constitutional and held that the Twenty-Eighth Amendment did not exist. App. 6a. The Ninth Circuit affirmed in a memorandum disposition.³ App. 4a. Following a request for publication, the Ninth Circuit published its opinion and explained that it rejected Valame's Twenty-Eighth Amendment claims due to the Congressional deadline and Valame's Fifth Amendment claims because it lacked authority to anticipatorily overrule *Rostker*. App. 1a.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD APPLY *ROSTKER* TO AN INTEGRATED MILITARY AND HOLD THAT MALE-ONLY REGISTRATION VIOLATES THE FIFTH AMENDMENT

A straightforward application of *Rostker* reveals that the male-only draft is no longer constitutional. The only difference the *Rostker* Court found between a legal all-men draft and an illegal all-Catholic draft was the unique combat restrictions on women. 453 U.S. at 78. Today, with a military that has operated for a decade without combat restrictions, that distinguishing factor has vanished. Under *Rostker's* own application of intermediate scrutiny, the current

³ On appeal, the government expressly declined to contest Valame's standing to bring this action. Brief for Appellees at 13, n.4, *Valame*, 157 F.4th 1172 (No. 24-369).

draft is just as impermissible as a race- or religion-based system.

The existence of combat restrictions was evidently both necessary and sufficient for this Court's holding in *Rostker*. After a discussion of deference, the Court opened its substantive analysis by citing to *Schlesinger v. Ballard*, 419 U.S. 498 (1975) for the proposition that combat restrictions supported differential treatment of the sexes. *Rostker*, 453 U.S. at 67. Indeed, *Schlesinger* not only cited combat restrictions as justifying a differential promotion policy, but also approvingly cited areas where the lack of combat restrictions resulted in no differential treatment: "The complete rationality of this legislative classification is underscored by the fact that, in corps where male and female lieutenants *are* similarly situated, Congress has not differentiated between them." *Schlesinger*, 419 U.S. at 509. Today's military—all of it—is just like the 1975 corps in *Schlesinger* where men and women were similarly situated.

The *Rostker* Court's discussion about whether the purpose of the draft is limited to raising combat troops is only relevant because of the combat restrictions. The Court went out of its way to cite specific sections of testimony from Generals Bronars, Yerks, Mayer, and Rogers where they explained both the combat purpose of the draft *and* why women could not accomplish it due to the combat restrictions. *Rostker*, 453 U.S. at 76; *see also Department of Defense Authorization for Appropriations for Fiscal Year 1981: Hearings on S. 2294 before the Senate Committee on Armed Services*, 96th Cong. 1805 (1980) (Marine Corps Lt. Gen. Bronars) ("As we perceive it, our

requirement for registration is based on large numbers of men to replace casualties. We do not employ women in combat roles.”). The purpose of the draft—and any deference given to Congress’ articulation of that purpose—was thus only relevant insofar as it relates to the combat restrictions.

For this reason, the government’s attempt to minimize the centrality of the combat restrictions to this Court’s analysis in *Rostker* by pointing to the Court’s discussion of deference is misguided. See Brief in Opposition at 12, *National Coalition for Men*, 141 S. Ct. 1815 (No. 20-928) (“other portions of the opinion, including the Court’s emphasis on deference [...] are not limited to the former differences in combat eligibility.”). The *objects* of this Court’s deference were the findings made by the Senate and adopted by Congress in support of a male-only draft. Those findings in turn relied almost exclusively on the existence of combat restrictions. S. Rep. 96-826, *supra*, at 157 (describing the restrictions as “the starting point,” “fundamental,” “linchpin for any analysis,” and “the most important reason for not including women”). To the extent that this Court applied deference, it was deference to the judgment that combat restrictions justified the draft. Given the current non-existence of combat restrictions, even an unlimited degree of deference to Congress could not save male-only registration today.

The inappropriateness of deference is doubly clear because Congress has been on notice for *at least twenty years* that the progressive integration of the military would threaten the constitutionality of the MSSA. That is precisely why Congress required the Department of Defense to report on the constitutional

implications of its decision for the MSSA whenever it opened new combat positions to women. 10 U.S.C. § 652(a)(3)(B). When the Department formally opened all military positions, it dutifully informed Congress that its decision would “further alter[]” the factual backdrop of *Rostker* and warned that the Court in *Rostker* had not supplied an alternate rationale for its decision. Undersecretary of Defense for Personnel and Readiness, *Detailed Legal Analysis* (Dec. 7, 2015). Given Congress’ own cognizance of the shaky constitutional status of the draft, the forewarning by the Department of Defense, and the decade of waiting time provided by this Court, a decision striking down the draft would hardly be an act of great disrespect to Congress. This is all the more true because Congress could easily reverse any decision striking down the male-only draft under intermediate scrutiny by merely making constitutionally sufficient findings that a discriminatory draft is reasonably tailored to advancing an important governmental interest.

Even if deference was an independent basis for *Rostker*, it cannot support the revised male-only draft today. The *Rostker* Court relied on thousands of pages of testimony, extensive factual findings approved (near unanimously) by both houses of Congress, and a consistent executive branch view that a sex-neutral draft was unnecessary to military readiness. Every part of that equation is lacking here. Neither the 2026 NDAA nor the Conference report it incorporates, 139 Stat. 749, makes any findings whatsoever with respect to the propriety of the male-only draft. The only finding in the House report that accompanied the automatic registration provision was a CBO statement that it would make some immigrant

naturalizations marginally easier and otherwise have minimal budgetary effects.

The testimony that Congress *has* received directly contradicts its decision to retain the male-only draft. Former Major General Joseph J. Heck, the Chair of the National Commission, testified that “[i]ncluding women in Selective Service registration is what the national security interests of the United States demand.” *Final Recommendations and Report of the National Commission on Military, National, and Public Service*, Hearing Before United States Senate Comm. on Armed Servs., 117th Cong. 12 (2021); *see also Findings and Recommendations of the Commission on the National Defense Strategy*, Hearing Before United States Senate Comm. on Armed Servs., 118th Cong. 69-70 (2024) (Chairwoman Harman supporting female registration but stating that her commission did not consider its effects).

The Executive Branch has also changed its position on the military necessity of a sex-blind draft. The 2017 Defense Report found that universal registration would fulfill manpower needs during an emergency, provide valuable military recruiting leads, and act as a deterrent to potential enemies of the United States. 2017 Defense Report at 16-17. Secretary of Defense Ash Carter officially endorsed sex equality in registration to “recruit and retain the most qualified individuals.” Phelps, *White House Announces Support for Requiring Women to Register for Military Draft*, *supra*. These statements stand in stark contrast to the Carter Administration’s concession that female registration would have no military benefit whatsoever.

If “deference does not mean abdication,” *Rostker*, 453 U.S. at 70, any application of intermediate scrutiny that considers the evidence as it exists today would necessarily strike down the male-only draft.⁴

Accepting this argument does not require petitioner or this Court to meet a “particular burden under *stare decisis*.” *Gamble v. United States*, 587 U.S. 678, 700 (2019). This Court has consistently recognized in the equal protection context that *stare decisis* does not prevent it from invalidating programs that were once justified but no longer meet heightened scrutiny. For example, in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023), this Court

⁴ Worries about “unpredictable reactions” to young mothers being drafted cannot sustain a male-only draft. This justification is one of the “overbroad generalizations about the different talents, capacities, or preferences of males and females” that this Court’s modern equal protection jurisprudence is designed to ferret out. *United States v. Virginia*, 518 U.S. 515, 533 (1996). This Court has repeatedly applied intermediate scrutiny to invalidate “[l]aws according or denying benefits in reliance on [s]tereotypes about women’s domestic roles.” *Sessions v. Morales-Santana*, 582 U.S. 47, 63 (2017) (collecting cases). Even on its own terms, Congress’ justification falls flat today. Far from “unacceptable to a large majority of our people,” military service by women and mothers is looked upon with great gratitude by the American people. Compare S. Rep. 96-826, at 159 with Donald J. Trump, *Remarks at a Celebration of Military Mothers* (May 8, 2025) (“As your Commander-In-Chief let me take this opportunity to salute you and to thank you on behalf of every single American. Every single one respects you and loves you. Thank you.”); see also Breastfeeding Resources, Army Pub. Health Ctr. (Jan. 15, 2020), <https://phc.amedd.army.mil/topics/healthyliving/wh/Pages/BreastfeedingandBreastHealth.aspx>; Dep’t of Def. Instruction 1342.19 § 4(g) (issued May 7, 2010, rev. Nov. 30, 2017).

abolished the discriminatory admissions practices approved of in *Grutter v. Bollinger*, 539 U.S. 306 (2003). Rather than apply *stare decisis* to overrule *Grutter*, the *SFFA* Court applied *Grutter*'s own standards to modern affirmative action plans and declared that they "fail each of these criteria." 600 U.S. at 213. Similarly, in *Shelby County v. Holder*, 570 U.S. 529 (2013), this Court evaluated an equal-sovereignty challenge to § 4 of the Voting Rights Act. Although the formula had been upheld by *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), the Court found that radically changed circumstances required holding the formula unconstitutional without considering the *stare decisis* factors.

In many respects, this case is even easier than *Shelby County* or *SFFA*. In *Shelby County*, "Congress compiled thousands of pages of evidence before reauthorizing the Voting Rights Act," for a limited time. 570 U.S. at 553. The Court nevertheless voided the VRA coverage formula because Congress had not used that evidence to change its scope from 1965. In *SFFA*, the defendant universities at least paid lip service to *Grutter*'s mandate that they update affirmative action plans to achieve a logical end point. *SFFA*, 600 U.S. at 221. Here, Congress has reenacted the same male-only draft requirement with *no supporting findings at all* and despite the complete elimination of the combat restrictions that originally justified it. Far from overruling *Rostker*, striking down the male-only draft in these circumstances would respect the logic and limits set by the majority in that decision and accord with this Court's broader equal protection jurisprudence.

II. IF NECESSARY, *ROSTKER* MUST BE OVERRULED

If this Court concludes that it cannot invalidate the male-only draft without overruling *Rostker*, then *Rostker* must be overruled. *Rostker* was manifestly incorrect the day it was decided, remains inconsistent with this Court's broader sex-equality jurisprudence, and inflicts a serious dignitary harm on men and women alike.

A. *Rostker* Was Wrongly Decided

Rostker's central methodological error was placing the burden on Plaintiffs to justify the *inclusion* of women, while the proper application of heightened scrutiny would have required Congress to justify their *total exclusion*.

The centrality of exclusion to an intermediate scrutiny analysis was well established at the time of *Rostker*. For example, in *Stanley v. Illinois*, 405 U.S. 645, 652 (1972), this Court invalidated an Illinois law that categorically excluded unwed fathers from certain custody proceedings. The Court found that the state realized no "gain" from excluding such fathers without a hearing, even if on balance its system was functional. The *Stanley* Court's citation of *Carrington v. Rash*, 380 U.S. 89 (1965) makes its focus on exclusion even clearer. In *Carrington*, the Court "refused to tolerate a blanket exclusion depriving all servicemen of the vote" when "more precise tests" could have readily assessed a serviceman's residency "on an individualized basis." *Stanley*, 405 U.S. at 655. The *Stanley* majority thus clearly established that the government must show why *exclusion* substantially furthers an important government interest to survive an equal protection challenge. *See also Weinberger v.*

Wiesenfeld, 420 U.S. 636, 645 (1975) (predominance of men in the workforce “cannot suffice to justify the denigration of the efforts of women” by excluding their families from benefits); *Orr v. Orr*, 440 U.S. 268, 282 (1979) (invalidating statute where its “purpose may be effectuated without placing burdens solely on” men).

Rostker disregarded these precedents. The majority found that women “would not be needed” and that their interest in “equity” could not overcome the additional administrative burden created by mobilizing them. *Rostker*, 453 U.S. at 77, 81. The Court should have asked whether the exclusion of women was needed. If the Court had framed its inquiry through that lens, it would have had to engage with the testimony given to Congress that the military had no objections to merely including women in draft registration. *Id.* at 80.

The *Rostker* Court’s focus on the administrative burdens women would create for the military was also flawed. By 1980, the Court had clearly established that administrative convenience could not justify sex discrimination when a better sex-neutral standard of evaluation existed. See *Stanley*, 405 U.S. 645, 656 (“the Constitution recognizes higher values than speed and efficiency”); *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973). Even if the military context of *Rostker* changes that analysis, the specific administrative efficiency claimed by the Court makes no sense. The Court focused primarily on the risk that combat and non-combat troops would be forced to rotate during battle, potentially exposing women to combat. *Rostker*, 453 U.S. at 82, n. 17. However, the Court also credited Congress’ finding that female

volunteers would fill a substantial number of non-combat positions during a major war. *Id.* at 81. If the latter is true, then the former concern cannot justify excluding women from the draft because it would occur irrespective of whether women were drafted. ARISTOTLE, NICOMACHEAN ETHICS 1140a1 (C.D.C. Reeve trans.).

For these reasons, *Rostker* was egregiously incorrect the day it was decided.

B. Subsequent Precedent has Fatally Undermined *Rostker*

Just one year after *Rostker* was decided, this Court returned to analyzing sex discrimination with a focus on exclusion. In *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982), for example, it required Mississippi to open its nursing school to men after finding no evidence that “excluding men from the [school]” was “necessary” to advance the state’s goals. *Id.* at 731. In *United States v. Virginia*, 518 U.S. 515, 547 (1996), the Court was even more emphatic: “the Commonwealth’s great goal is not substantially advanced by women’s categorical exclusion, in total disregard of their individual merit, from the Commonwealth’s premier ‘citizen-soldier’ corps.” If excluding women from direct participation in a military institution was insufficient to meet Virginia’s burden under intermediate scrutiny, then it follows that excluding women from draft registration—which at least applies to *some* non-combat positions—is likewise impermissible.

Subsequent decisions of this Court have also rejected the legal deference given by the *Rostker* Court to Congress. *Rostker*, 453 U.S. at 66-68. While Congress may define military goals and missions as it

sees fit, “any deference must exist within constitutionally prescribed limits.” *Students for Fair Admissions, Inc.*, 600 U.S. at 217. “[I]t is error for a court to defer to the views of an alleged discriminator.” *Id.* at 256 (Thomas, J., concurring) (citing *United States v. Virginia*, 518 U.S. 515 (1996)).

Since *Rostker*, this Court has also relied on the equal protection clause to strike down longstanding systems of exclusion “where, as here, the discrimination serves to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the relative abilities of men and women.” *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 131 (1994). As explained below, that is the case today with the male-only draft.

C. No Reliance Interests Favor *Rostker*

Reliance interests can shield erroneous precedents from reversal “where advance planning of great precision is most obviously a necessity.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 287 (2022). Reliance interests are thus at their strongest in “cases involving property and contract rights.” *Id.* at 288. In contrast, reliance interests are usually not implicated in constitutional cases; a wrongly decided constitutional case does not “establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected” *Arizona v. Gant*, 556 U.S. 332, 349 (2009). Overruling *Rostker* to fully enforce the guarantees of the equal protection clause clearly falls into the latter set of cases.

Reliance interests are particularly weak as applied to *Rostker*. For starters, the central factual

underpinning of the decision—combat restrictions on women—no longer exists. *See, e.g., State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (overruling *Albrecht v. Herald Co.*, 390 U.S. 145, 152–154 (1968) in light of changed circumstances). Further, Congress has been on notice since at least 2006 that opening combat positions to women could impact the legality of the male-only draft. 119 Stat. 3251 (2006). And Congress has had over a decade to consider a solution since the combat restrictions were abolished in 2015. Reliance interests are minimal under these circumstances. *See Janus v. AFSCME*, 585 U.S. 878, 927 (2018) (no reliance interest where unions “ha[d] been on notice for years” about deficiencies in precedent.).

Finally, overruling *Rostker* would not impact any military reliance interests. The most a decision from this Court could do here is find the penalties for draft non-compliance unenforceable as applied to Petitioner. Congress would have a free hand in revising the registration process to comply with the Due Process Clause. Notably, because no draft is ongoing, some Congressional involvement would always be necessary to activate inductions in the case of a national emergency. Since Congressional involvement is required either way to make the draft effective, overruling *Rostker* will not seriously impact military readiness.

III. THE VITALITY OF *ROSTKER* IS AN EXCEPTIONALLY IMPORTANT QUESTION

The male-only draft is one of “the most potent remaining public expressions of ancient canards about the proper role of women.” *Rostker*, 453 U.S. at 86 (Marshall, J., dissenting). “Male-only registration sends a message to women not only that they are not

vital to the defense of the country but also that they are not expected to participate in defending it * * * this is more than an argument for fairness.” *Inspired to Serve*, *supra*, at 118.

Restricting draft registration to men is particularly exclusionary because service to society has long been considered a fundamental civic obligation concomitant with citizenship. *See* 50 U.S.C. § 3801(c); *see also* CICERO, DE OFFICIIS 1.86. “When persons are excluded from participation in our democratic processes solely because of race or gender, this promise of equality dims.” *J.E.B.*, 511 U.S. at 146. That diminishment of equality is not only intrinsically wrong, but also “creates the perception of discrimination and unfair dealing—a tarnish that attaches to the military selective service system writ large.” 2017 Defense Report, *supra*, at 19.

The male-only draft also tarnishes the historical and ongoing contributions of women to America’s military strength. *See* Brief of General Michael Hayden, et al. as Amicus Curiae at 20-22, *National Coalition for Men*, 141 S. Ct. 1815 (2021) (No. 20-928). By reinforcing the stereotype that women could only be integrated into the armed forces by relaxing standards, it disserves the women who have succeeded in the most rigorous training programs the army has to offer as well as in live combat. *Id.* at 8-12. This Court should not uphold a discriminatory draft based on Congress’ prejudice against the “experiment” of an integrated military when the actual experience of the United States Military has proven that experiment a success. *Compare* S. Rep. 96-826 at 157 with Hegseth Statement, *supra*, at 55 (thanking

women “on the battlefield” for their “indispensable contributions.”).

For men, draft registration and the attendant penalties create severe burdens that they alone must bear. 32 C.F.R. § 1621.1(a) (requiring all registered men to send address updates to the government); App. 8a (denying Petitioner a job he earned through merit). The Selective Service System continues to make criminal referrals to the Department of Justice when it identifies a noncompliant man. 2017 Defense Report, *supra*, at 5 n.21. Several states even condition state employment and college enrollment for men on proof of registration.⁵ Automatic draft registration will not erase these burdens, as Congress has expressly retained the Selective Service System’s authority to compel men to provide their address and other identifying information on a regular basis to facilitate registration. 139 Stat. 871.

More concretely, the unrebutted findings of the Executive Branch demonstrate that limiting the draft to men alone harms national security. 2017 Defense Report, *supra*, at 17-19; *see also No Exceptions, supra* (41 studies explaining how a larger pool of female recruits would benefit the military). In the absence of Congressional findings to the contrary, the public interest clearly supports discarding the male-only draft.

⁵ AL Code § 36-26-15.1 (2024) (state employment and university registration); NH Rev Stat § 187-A:39 (2025) (same); AR Code § 6-80-104 (2024) (same); AK Stat § 39.25.160 (2025) (employment); Ariz. Rev. Stat. Ann. § 38-201(D) (same); 65 Del. Laws, c. 505, § 1 (same); FL Stat § 110.1128 (2025) (same); GA Code § 45-20-20 (2024); ID Code § 46-504 (2025)

This Court has granted certiorari to examine sex discrimination in myriad cases over the past 55 years, including cases that touched on core congressional powers. *See Sessions v. Morales-Santana*, 582 U.S. 47 (2017) (immigration); *see also Frontiero*, 411 U.S. 677 (military benefits); *Califano v. Goldfarb*, 430 U.S. 199 (1977) (Social Security benefits); *Tuan Anh Nguyen v. I.N.S.*, 533 U.S. 53 (2001). As one of the last remaining federal statutes that openly classifies individuals by sex, the MSSA deserves the same scrutiny.

In *Rostker* itself, Justice Brennan determined that “[t]he importance of the question and the substantiality of the constitutional issues are beyond cavil.” *Rostker v. Goldberg*, 448 U.S. 1306 (1980) (Brennan, J., in chambers). Justice Brennan later correctly determined that the MSSA was unconstitutional. This Court should follow and hold that a male-only draft is patently unconstitutional today.

IV. THIS COURT SHOULD ALSO GRANT REVIEW TO DECIDE IF THE ERA DEADLINE IS VALID

A. The Validity of the Equal Rights Amendment is Exceptionally Important

At common law, women were legally inferior to men. *Magna Carta* cl. 54 (1215); 2 WILLIAM BLACKSTONE, COMMENTARIES, *362; *In re Goodell*, 39 Wis. 232, 245–246 (1875). Many American women campaigned against the disabling restrictions of the common law for decades, eventually resulting in women gaining the right to vote through the passage of the 19th Amendment in 1920. Soon after gaining the franchise, Alice Paul, the leader of the National

Women's Party, drafted the first iteration of the Equal Rights Amendment.

Every year from 1923 to 1971, committees in both houses of Congress debated the desirability of the proposed amendment. Following a partial passage in the 91st Congress, the House and Senate finally voted to propose the ERA by two-thirds votes in 1972. The proposed amendment included a seven-year deadline purposely placed outside the operative text. Thirty-five states, three short of the required supermajority, voted to ratify the amendment before the deadline expired. Congress subsequently extended the deadline to 1982. H.J.Res. 638 (1978). No further states ratified the Amendment until Nevada, Illinois, and Virginia completed the ratification process between 2017 and 2020.

As the above history demonstrates, the Equal Rights Amendment has been a focus of America's democratic process for over fifty years. At all times, a clear supermajority of the American people has been in favor of the proposal. Associated Press & NORC, *The January 2020 AP-NORC Center Poll* (Jan 20, 2020) (finding 73% approval for the ERA). Accepting the amendment would vindicate the rights of women against the profound impediments placed on them by Anglo-American law over the past 800 years.

The Equal Rights Amendment would also enhance a broad set of social goods. For example, in 2022, eighty-six major businesses highlighted that an explicit guarantee of equality would "result in a more just, vibrant, and productive America" by creating a "legal principle of sex equality" that influences the interpretation of other state and federal laws. Brief of Business and Corporate Entities as Amici Curiae at 5,

29, *Illinois v. Ferriero*, 60 F.4th 704 (2023). Adopting the Equal Rights Amendment would also accord with the United States' treaty commitments under the International Covenant on Civil and Political Rights. See 999 U.N.T.S. 171. That treaty explicitly requests its signatory states to use their appropriate constitutional mechanisms to prohibit all discrimination on the basis of sex. *Id.* at art. 26.

Letting a constitutional amendment linger in legal limbo also does a profound disservice to the will of the American people. Just as the people have an interest in the orderly counting of their votes in elections, *Purcell v. Gonzalez*, 549 U.S. 1 (2006), so too do the people have an even greater interest in an orderly ratification of a constitutional amendment they support. This Court should intervene now to correct the Ninth Circuit's error.

Even if this Court is ultimately inclined to (wrongly) find that the Congressional deadline is valid, its review would still be in the public interest. Because the ERA is currently in "legal purgatory," proponents and opponents have focused their energies on the judicial process and administrative determinations instead of seeking the intervention of their elected representatives.⁶ Russell Berman, *The Biden Appointee Who Could Change the Constitution*,

⁶ Indeed, in *Illinois v. Ferriero*, 60 F.4th 704 (D.C. Cir. 2023), several states opposed to ratification of the ERA attempted to persuade the D.C. Circuit to ignore the limits of its mandamus jurisdiction and decide the validity of the ERA "once and for all." Brief for Intervenor-Appellees at 27, *Ferriero*, 60 F.4th 704 (2023). While that attempt was rightfully rejected, it demonstrates that litigants on both sides of this issue want a final resolution by this Court.

THE ATLANTIC (Feb. 9, 2022), <https://www.theatlantic.com/politics/archive/2022/02/equal-rights-amendment-constitution/621629/>. If the ERA is indeed permanently dead (or dead pending another amendment to the deadline), this Court should say as much and allow interested parties to take their policy concerns to the halls of Congress and state legislatures where they belong.

B. This Court Should Properly Construe Article V Now

The Ninth Circuit's decision in this case is particularly dangerous because it grants Congress near-total control over Article V, in direct contravention of the framers' design.

The Constitution, for all its strengths, is the product of men. As with Articles of Confederation, the Framers' "prejudices, their passions, their errors of opinion, their local interests, and their selfish views" all created imperfections in the document. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 642 (Max Farrand ed. 1937) (Benjamin Franklin). Unlike the Articles, however, the Constitution includes a process for amendment that does not require unanimity. U.S. CONST. Art. V.

One of the essential features of the Article V amendment process, as was explained on the first day of the constitutional convention, is that "the assent of the National Legislature ought not to be required" for the passage of an amendment. 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 22 (Max Farrand ed. 1937). The Framers widely agreed that the states should play a primary role in the amendment process, *id.* at 122, 194, 203, and that a Congressional role was

unwarranted because “the Natl. Legislature [...] may abuse their power.” *Id.* at 202. While the convention ultimately gave Congress the power to *propose* amendments, James Madison assured the delegates that Congress would be “bound to propose” amendments or call a convention when applied for by two-thirds of the states. 2 Farrand at 629-630.

The provision for state-led amendments to the Constitution was essential to ratification. See generally Greg Abbott, *The Myths and Realities of Article V*, 15 Tex. Rev. L. & Pol. 1, 13-26 (2016). Indeed, for many states, including Virginia, Article V may have been the decisive factor that won ratification of the Constitution. *Id.* at 26. Article V was so important that, in the last of the Federalist Papers, Alexander Hamilton made an emphatic promise to the people of New York: “But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this that the national rulers, whenever nine States concur, *will have no option upon the subject.*” THE FEDERALIST No. 85, at 525 (Alexander Hamilton) (emphasis added).

If upheld, the Ninth Circuit’s decision in this case would render the assurances of Alexander Hamilton and James Madison meaningless.

By holding the deadline on the ERA valid, the Ninth Circuit accepted the government’s argument that the power to set a “mode of ratification” outside the text of an amendment includes the power to set a deadline on proposed amendments. Brief for Appellants at 13, *Valame v. Trump*, 157 F.4th 1172 (2025). But the provision of the Constitution that grants Congress the power to select a “mode of

ratification” applies “in either case”—that is, to amendments proposed by conventions and to amendments proposed by Congress. U.S. CONST. ART. V. It is linguistically impossible to read the phrase “in either case” to apply Congress’ authority only to amendments proposed by Congress.

Under an ordinary reading of the Constitution’s text, this is no problem. The power to decide whether ratification will be by state conventions or state legislatures does not imperil the states’ ability to amend the Constitution as they see fit. On the other hand, the Ninth Circuit’s reading of the Constitution would empower Congress to effectively veto a constitutional convention by setting a short deadline (or potentially any other condition) on the ratification of an amendment. The Constitution supplies no judicially manageable standard by which the Courts could strike down an inappropriately burdensome deadline.

This Court should grant review now to reject the Ninth Circuit’s precedential decision. Calls for a constitutional convention have been escalating for decades. *See, e.g.,* Mason Brighton, *Florida’s Governor Backs Kentucky Push for Balanced-Budget Amendment*, Spectrum Noticias (Feb. 18, 2026, 4:46 PM), <https://perma.cc/W68C-RUW8>. A potentially contested constitutional convention followed by Congress imposing dubiously legal deadlines on proposed amendments it disfavors could lead to chaos with no clear mechanism for resolution. Justices of this Court have stated that certiorari is warranted in advance of an election when important legal issues could impact its operation. *See Republican Party of Pennsylvania v. Boockvar*, 141 S. Ct. 1 (2020)

(Statement of Alito, J.); *see also Chiafalo v. Washington*, 589 U.S. 1165 (2020). This Court should follow that logic here to provide clear guidance on the amendment process well in advance of a potential convention.

Even if this Court determines that a constitutional convention implicating the deadline-setting power is unlikely, the Ninth Circuit's decision deals a substantial blow to the federal compromise embodied in Article V. That alone justifies review.

C. The Ninth Circuit's Holding on the Deadline Extension Warrants Review

The Ninth Circuit committed a second major error when it recognized that the amended 1982 deadline controlled this case. This legal error is a natural outgrowth of the court's flawed holding that Congress could set a deadline outside the text of a proposed amendment. If allowed to stand in a published appellate decision, that rule could be cited by a future Congress to inappropriately gerrymander a future constitutional amendment process. Such a process would be entirely inconsistent with justice and equality. *See* H.R. Rep. No. 95-1405 at 3 (1978) (dissenting statement of Mr. McCoy on ERA deadline extension) ("It is because I support the Equal Rights Amendment that I must oppose House Joint Resolution 638.").

This Court has already recognized that the validity of deadline extensions is an exceptionally important question. *See NOW v. Idaho*, 455 U.S. 918, 102 S. Ct. 1273 (1982) (granting certiorari before judgment). If the deadline warranted certiorari in 1982, the post-

1982 ratifications by Virginia, Illinois, and Nevada have only heightened the need for this Court's review.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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