

## INTRODUCTION

Plaintiffs challenge the constitutionality of the Military Selective Service Act (MSSA), 50 U.S.C., § 3801 et seq., under the Equal Rights Amendment (ERA) and the Equal Protection Provision of the Fourteenth Amendment.

## SUMMARY OF ARGUMENT

Amici submit this brief in support of Plaintiffs' arguments I–IV, pg. 2–14. Specifically, Amici agree that the ERA is valid and must be recognized as the Twenty-Eighth Amendment, and that, regardless of the ERA's validity, women deserve strict scrutiny under the Equal Protection Doctrine.

In further support hereof, Amici submit the following information demonstrating women's suffering and subjugation under the United States Constitution.

## ARGUMENT

### **I. THROUGHOUT HISTORY WOMEN HAVE SUFFERED SEVERE AND PERVASIVE SUBJUGATION AND OPPRESSION IN THE UNITED STATES.**

#### **The Magna Carta**

As early as the founding days of our nation, many colonies relied upon the Magna Carta, both as framework and as codified law for legislative governing. Hazeltine, H. D. (1917). The Influence of Magna Carta on American Constitutional Development. *Columbia Law Review*, 17(1), 7–9, <https://doi.org/10.2307/1110845>.

The Supreme Court itself recently relied upon the Magna Carta when deciding a case that severely weakened women's fundamental rights under the Fourteenth Amendment. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). Justice Alito's wrote that "the right to abortion is not deeply rooted in the Nation's history and traditions," in part because it "lacked an

equivalent historical pedigree” afforded by the Magna Carta. Joshua C. Tate, Magna Carta and the Definition of Fundamental Rights, 59 Tulsa L. Rev. 39, 40–41 (2024), <https://digitalcommons.law.utulsa.edu/tlr/vol59/iss1/5>. Indeed, Justice Alito is correct, however, he failed to acknowledge that the reason why the right to abortion was not deeply rooted is because women were not even considered persons. *Id.*

The Magna Carta established women as inferior and subservient to men. They were either the property of their fathers or the property of their husbands. It also declared women inferior under the law, for example a woman’s testimony in court carried little value compared to that of a man. Magna Carta. (1215) British Library, [www.bl.uk/magna-carta/articles/magna-carta-english-translation](http://www.bl.uk/magna-carta/articles/magna-carta-english-translation); *see also* Carolyn Harris, Magna Carta and Women’s Rights (2015), <https://ottawacitizen.com/news/national/carolyn-harris-magna-carta-and-womens-rights>.

### **Coverture**

In lockstep with the Magna Carta, colonial America adopted the doctrine of coverture. Under coverture, women were considered property of their husbands and lost all autonomy. Thomas Walsh, Coverture and Economic Gender Inequality in Early America (2023) <https://legalresearchclub.ua.edu/blog/2023/04/26/coverture-and-economic-gender-inequality-in-early-america/>; *see also* Richard Keyser, Women under the Traditional System of Coverture, American Legal History (2020) <https://wisc.pb.unizin.org/lr261/chapter/chapter-3-women/>. Because of coverture, a married woman could not own property or seek redress in court, among other legal disabilities. *Id.*

### **The Blackstone Commentaries**

In 1765, propagandist William Blackstone released a commentary on coverture, declaring that “the very being or legal existence of the woman is suspended during the marriage.” William

Blackstone, On Marriage and Coverture (1765) <https://wisc.pb.unizin.org/lc261/chapter/ch-4-1-william-blackstone-on-coverture-1765/>. Blackstone's opinions influenced the Declaration of Independence which declared that "all *men* are created equal" and inspired the men who wrote our constitution. The Declaration of independence. Retrieved from the Library of Congress, [www.loc.gov/item/04033412/](http://www.loc.gov/item/04033412/).

### **The Declaration of Independence and the Constitution**

When John Adams was contemplating the language he would propose for our constitution, he discussed the matter with his wife, Abigail. She admonished him to "[r]emember the [l]adies and be more generous and favo[u]rable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could," John instead remembered the Blackstone Commentaries, adopting Blackstone's language pertaining to the natural and inherent rights of "all men." See Letter from Abigail Adams to John Adams, 31 March - 5 April 1776. *Adams Family Papers: An Electronic Archive*. Massachusetts Historical Society. <http://www.masshist.org/digitaladams>; see also Mateusz Brodowicz, Blackstone's Influence on American Political Philosophy (2024) <https://aithor.com/essay-examples/blackstones-influence-on-american-political-philosophy#3-impact-on-american-founding-fathers>.

Thomas Jefferson, in turn, adopted exact phrasing from the Blackstone Commentaries while drafting the Constitution. *Id.* Blackstone's Commentaries also heavily influenced the drafting of the Fourteenth Amendment, specifically pertaining to the ambidexterity of "privileges or immunities." Eric R. Claeys, *Blackstone's Commentaries and the Privileges or Immunities of United States Citizens: A Modest Tribute to Professor Siegan*, 45 San Diego L. Rev. 777 (2008) <https://digital.sandiego.edu/sdlr/vol45/iss3/9>. Blackstone's commentary regarding privileges and

immunities stated “[t]he rights themselves thus defined by [Magna Carta]...may be reduced to [ ] the right of personal security, [ ] personal liberty, [ ] and private property...as there is no other known method of [ ] abridging *man*’s natural free will, but by an infringement or diminution of...these important rights.” *Id.* (emphasis added).

The continuous incorporation of misogynist language from the Magna Carta into our nation’s founding documents legitimized the subjugation and oppression of women.

### **The Fourteenth Amendment**

Even when the Fourteenth Amendment was adopted in 1868, women were left behind. As Plaintiffs amply demonstrate in their brief, women still suffer subjugation today. *See* P. Mem. at 13.

### **Conclusion**

Despite Abigail Adams’ admonishment, women have yet to achieve equality, but her promise remains ripe: “If p[a]rticular care and attention is not paid to the Ladies we are determined to foment a Rebel[l]ion and will not hold ourselves bound by any Laws in which we have [unequal] voice, [unequal] Representation.” *See* Letter from Abigail Adams, April 5, 1776.

For the foregoing reasons, Amici respectfully request that this Court deny Defendants’ motion to dismiss and affirm the validity of the Equal Rights Amendment.