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Lesmeister

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NATIONAL COALITION FOR MEN and
JAMES LESMEISTER, Individually
and on behalf of others similarly
situated,

PLAINTIFFS,

v.

SELECTIVE SERVICE SYSTEM;
LAWRENCE G. ROMO, as Director of
SELECTIVE SERVICE SYSTEM; and
DOES 1 through 50, Inclusive,

DEFENDANTS.

Case No. CV13-02391 DSF (MANx)

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

Hearing Date: October 24, 2016
Time: 1:30 p.m.
Location: Courtroom 840
Royball Federal Building, 255 E.
Temple St., Los Angeles, CA
Judge: Dale S. Fischer
Magistrate: Margaret A. Nagle
Action Filed: April 4, 2013

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1 Plaintiffs National Coalition For Men ("NCFM") and James
2 Lesmeister ("Mr. Lesmeister") (together, "Plaintiffs") submit the
3 following Opposition to Defendants' Motion to Dismiss ("Motion"):

4 **SUMMARY**

5 During oral argument on appeal, the Court of Appeal expressed
6 disagreement with the arguments Defendants set forth herein.

7 Defendants have asserted them again here nonetheless. But
8 Defendants are incorrect.

9 Plaintiffs have standing because they asserted the ultimate
10 facts necessary for standing, and because by law if one plaintiff
11 has standing, they all do for purposes of a motion to dismiss.

12 Venue is proper because (1) NCFM has a chapter in Los Angeles, is
13 registered in California, and (2) the events giving rise to the
14 cause of action substantially occurred and continue to occur in Los
15 Angeles and California.

16 **ARGUMENT**

17 **I. THE COMPLAINT MUST BE CONSTRUED FAVORABLY TO PLAINTIFFS.**

18 Motions to dismiss are strongly discouraged. *Polich v.*
19 *Burlington N., Inc.*, 942 F.2d 1467, 1422 (9th Cir. 1991). On a motion
20 to dismiss under Rule 12(b)(6), the court must accept as true all of
21 the factual allegations, draw inferences in the light most favorable
22 to plaintiff, and construe the complaint liberally. *Barker v.*
23 *Riverside County Office of Ed.*, 584 F3d 821, 824 (9th Cir. 2009).
24 Courts must assume all general allegations "embrace whatever
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1 specific facts might be necessary to support them." *Peloza v.*
2 *Capistrano Unified School Dis.*, 37 F3d 517, 521 (9th Cir. 1994).
3 This Court has even held that motions to dismiss civil rights
4 complaints should be scrutinized with special care. *Johnson v.*
5 *State of Calif.*, 207 F3d 650, 653 (9th Cir. 2000).

6
7 **II. PLAINTIFFS HAVE STANDING.**

8 In this case, Plaintiffs sufficiently pled the ultimate facts
9 necessary for standing. Moreover, if one plaintiff has standing,
10 they all have standing for purposes of a motion to dismiss.

11 **A. Mr. Lesmeister Has Standing.**

12 Defendants argue Mr. Lesmeister lacks standing because he has
13 not pled an injury and he is already registered, thus requiring
14 women to register would not redress the injury (p. 9). Defendants
15 are incorrect.
16

17 First, the Complaint seeks redress by way of either requiring
18 women to register, or requiring the end of the draft. Paragraph 1
19 of the Prayer asks only that Defendants end the sex discrimination,
20 while Paragraph 4 requests any other relief the Court deems just.
21

22 Second, by excluding women from the requirement to register,
23 the pool of available draftees is reduced, making Mr. Lesmeister and
24 all other registered men much more likely to be drafted into the
25 military if a draft occurs. Thus, not requiring women to register
26 does adversely affect Plaintiffs, and requiring women to register
27 benefits Plaintiffs. Either way, Plaintiffs are affected.
28

1 Third, Defendants' argument would lead to the absurd conclusion
2 that men must violate federal law in order to have standing. If a
3 man sues before he turns 18, and the case drags on for years like
4 this one has, he will eventually become of draft age. Must he risk
5 being convicted of a felony punishable by a fine of up to \$250,000
6 or a prison term up to five years, losing out on student loans and
7 other federal funds, and even federal jobs, just in order to
8 maintain standing to bring an equal protection lawsuit against
9 Selective Service? It would be absurd to require people to break the
10 law in order to have standing for an equal protection lawsuit.
11

12 Fourth, sex discrimination is injurious *per se*. Legislative
13 classifications that distribute benefits and burdens on the basis of
14 sex carry "the baggage of sexual stereotypes." *Orr v. Orr*, 440 U.S.
15 268, 283 (1979). The California Supreme Court has unanimously held:
16

17 Men and women alike suffer from the stereotypes
18 perpetrated by sex-based differential treatment. When
19 the law emphasizes irrelevant differences between men
20 and women, it cannot help influencing the content and
21 the tone of the social, as well as the legal,
22 relations between the sexes. . . . As long as organized
23 legal systems . . . differentiate sharply, in
24 treatment or in words, between men and women on the
25 basis of irrelevant and artificially created
26 distinctions, the likelihood of men and women coming
27 to regard one another primarily as fellow human beings
28 and only secondarily as representatives of another sex
will continue to be remote. When men and women are
prevented from recognizing one another's essential
humanity by sexual prejudices, nourished by legal as
well as social institutions, society as a whole
remains less than it could otherwise become.

Koire v. Metro Car Wash, 40 Cal.3d 24, 34-35 (1985).

1 By analogy, if a statute required only Latinos to show a voter
2 identification card in order to vote, would Latinos lack standing to
3 challenge the discrimination after obtaining an identification card?
4 If a statute required only women to have their cognitive sense of
5 distance tested before obtaining a driver's license, would women who
6 passed the test lack standing to challenge the discrimination?
7

8 In *Goldberg v. Rostker*, 509 F. Supp. 586 (1980), the District
9 Court specifically found that men who already registered for the
10 draft had standing to challenge the sex discrimination in the
11 Selective Service. *Id.*, at 589 - 590, fn 4. The court found the
12 harm to them was "neither remote nor hypothetical," as they were
13 "subject to registration for the draft and subsequent induction into
14 the Armed Services," they had to continuously report their
15 whereabouts, and they were "subject to potential reclassification
16 and induction into the armed services." *Id.*, at 590 - 591. In a
17 sharply divided decision, the Supreme Court reversed, but only on
18 the ground that men and women were not similarly situated because
19 women are not allowed in any combat roles. *Rostker v. Goldberg*, 453
20 U.S. 57, 58 (1981). As the Court of Appeals declared in its
21 decision in this case, circumstances have changed, because the
22 government has announced that all combat roles will be opened for
23 women. It follows that there is no basis to find that Mr.
24 Lesmeister lacks standing.
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1 Nonetheless, if necessary, Mr. Lesmeister requests leave to
2 amend the Complaint to further allege each requirement for draft
3 eligibility, and more specifically that he suffered an injury above
4 and beyond what he has already alleged he has suffered.

5 **B. NCFM Has Standing.**

6 An organization that has not suffered any injury itself may
7 nevertheless sue in a representative capacity for injuries of its
8 members by alleging that (1) At least one member has standing in his
9 or her own right to present the claim asserted by the association;
10 (2) The interests sought to be protected are germane to the
11 association's purpose; and (3) Neither the claim asserted nor the
12 relief requested requires that the members participate individually
13 in the suit. *Hunt v. Washington State Apple Advertising Comm'n* (432
14 US 333, 343 (1977)).

15 Defendants argue NCFM lacks standing because NCFM does not (1)
16 allege their members are harmed by or subject to registration
17 requirements, (2) allege some NCFM members are males who are U.S.
18 citizens and are members of the military or students at military
19 academies or otherwise exempt from the draft, and (3) identify any
20 NCFM member who has standing.

21 However, the Complaint asserts that NCFM members include males
22 ages 18-25 who "would otherwise have standing to sue in their own
23 right." (Complaint, p. 3.) The Complaint goes on to explain that
24 NCFM's membership includes men who will be of said age at some time

1 in the future relative to this lawsuit and many of whom have male
2 children who are ages 18-25 as well. Those are ultimate facts
3 sufficient for both organizational and associational standing.

4 This Court has held that the complaint should identify the
5 member or members who have standing. *Associated Gen. Contractors of*
6 *America, San Diego Chapter, Inc. v. California Dept of Transp.*, 713
7 *F3d 1187, 1194 - 1195 (2013)*. However, because Mr. Lesmeister has
8 standing, all co-plaintiffs also have standing in this case. By
9 law, if any plaintiff has standing, it satisfies the standing
10 requirement for all co-plaintiffs who are proper parties on the same
11 complaint seeking the same relief. The "presence of one party with
12 standing assures that (the) controversy before (the) Court is
13 justiciable." *Department of Commerce v. United States House of*
14 *Representatives*, 525 US 316, 328, 119 S.Ct. 765, 773 (1999)
15 (parentheses added); *Village of Arlington v. Metropolitan Housing*
16 *Develop. Corp.*, 429 US 252, 264, 97 S.Ct. 555, 563, fn 9 (1977).
17 Therefore, NCFM has standing.

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21 Nonetheless, if the Court finds NCFM lacks standing, Plaintiffs
22 request leave to amend so that NCFM can identify its members that
23 would have standing and, if necessary, assert specific
24 characteristics of its qualifying members.

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26 **III. VENUE IS PROPER.**

27 Defendants argue that this Court is an improper venue because
28 (1) Defendants do not reside in California or Los Angeles, (2) the

1 events giving rise to the cause of action did not substantially
2 occur in California or Los Angeles, and (3) there is no evidence or
3 assertion that Plaintiffs reside in California.

4 Defendants may be correct that Defendants do not reside in Los
5 Angeles. But they are incorrect on the other points.

6 First, the events giving rise to the cause of action
7 substantially occur in California. Men in California, by far the
8 most populous state, are subject to and register under the MSSA,
9 while women in California are not so required. There is no basis to
10 assert that these events only occur in Washington D.C. Indeed,
11 *Rostker* was initially heard in the Eastern District Court of
12 Pennsylvania, not in Washington D.C., and the Pennsylvania venue was
13 considered proper.
14

15
16 Second, regarding residence, a non-profit making a federal
17 constitutional challenge where property is not at issue may file an
18 action in a district where they maintain an office, pursuant to
19 United States Code, Title 28, section 1391, subd. (e)(1)(C). *Center*
20 *for Biological Diversity v. National Science Foundation*,
21 D.C.Cal.2002, WL 31548073, 55 ERC 1873 (2002); see also, *Natural*
22 *Resources Defense Council v. Abraham*, C.A.9th, 244 F.3d 742 (2001).
23

24 Here, Defendants admit that NCFM has a Los Angeles chapter (see
25 Motion to Dismiss, p. 11, fn 4). That alone should suffice, as a
26 chapter is more than just an office. And the California Supreme
27 Court amicus brief referenced by Defendants is not the only judicial
28

1 reference to NCFM's Los Angeles chapter ("NCFM-LA"), which is a
2 subsidiary of NCFM. The California Court of Appeal recognized NCFM-
3 LA by mentioning how a male victim of domestic violence contacted
4 NCFM-LA for help. *Woods v. Horton*, 167 Cal.App.4th 648, 659 (2008).
5 Plaintiffs request judicial notice of this. Also, Federal District
6 Court Justice David Haschen wrote a letter to NCFM's Los Angeles
7 address praising NCFM for its work on preventing paternity fraud.¹

9 If necessary, Plaintiffs will show that NCFM-LA and NCFM
10 members have been active in Los Angeles for over 15 years. For
11 example, NCFM-LA was a founding member of the official government
12 Male Victims Task Force, formed as part of the Los Angeles County
13 Domestic Violence Council in 2015. NCFM persuaded the City of
14 Glendale, located in Los Angeles County, to create a self-defense
15 class for men, or for men and women, as Glendale had planned for
16 only women, and NCFM had full support from the local newspaper.²
17 NCFM has also had significant media coverage in Los Angeles.³ NCFM
18 was even quoted in the Los Angeles Daily Journal several times,
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23 ¹ [http://ncfm.org/wp-content/uploads/2012/10/100811-Letter-from-](http://ncfm.org/wp-content/uploads/2012/10/100811-Letter-from-Judge-Hanschen.pdf)
24 [Judge-Hanschen.pdf](http://ncfm.org/wp-content/uploads/2012/10/100811-Letter-from-Judge-Hanschen.pdf)

25 ² [www.glendalenevnewspress.com/tn-gnp-editorial-news-press-editorial-in-](http://www.glendalenevnewspress.com/tn-gnp-editorial-news-press-editorial-in-defense-of-the-male-only-class-20140620,0,7456457.story)
26 [defense-of-the-male-only-class-20140620,0,7456457.story](http://www.glendalenevnewspress.com/tn-gnp-editorial-news-press-editorial-in-defense-of-the-male-only-class-20140620,0,7456457.story)

27 ³ A partial list is available at <http://la.ncfm.org/media-coverage/>.
28

1 including on May 3, 2004, August 11, 2004, September 24, 2004,
2 February 23, 2006, and March 8, 2007.

3 Moreover, Plaintiffs are represented pro bono in this civil
4 rights action by a Los Angeles attorney. Transferring the case to
5 Washington, D.C. or Virginia would be a significant strain on
6 Plaintiffs and their attorney in terms of time, travel, expenses,
7 and appearances. On the other hand, the United States Attorney
8 General has not alleged any burden by the venue.
9

10 Accordingly, venue is proper. Nonetheless, if the Court finds
11 venue is not proper, NCFM requests that the case transfer to the
12 Southern District of California, which covers the city where NCFM's
13 national headquarters is (San Diego). (See, Schwarzer, Tashima &
14 Wagstaffe, RUTTER GROUP PRAC. GUIDE: FED. CIV. Pro. Before trial
15 (The Rutter Group 2015), § 9:145.2; *Johnson v. Payless Drug Stores*
16 *Northwest, Inc.*, 950 F.2d 586, 58 (9th Cir. 1991). A dismissal would
17 force Plaintiffs to re-file, which is contrary to judicial economy.
18
19

20 **CONCLUSION**

21 Plaintiffs have standing because they alleged the requisite
22 ultimate facts, and if one of them has standing, they all do. Venue
23 is proper because NCFM has a chapter in Los Angeles and the events
24 giving rise to the cause of action substantially have occurred and
25 continue to occur in Los Angeles and in California.
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Respectfully Submitted.

Law Office of Marc E. Angelucci

Date: 9/25/16

By: // Marc E. Angelucci //
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