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

11 NATIONAL COALITION FOR MEN, a  
12 501(c)(3) non-profit organization,  
13 TYLER MCNAMARA, an individual,  
14 CONOR MCKIERNAN, an individual,  
15 NICHOLAS MILILLO, an individual,  
16 NICOLAS MENDIOLA, an individual,  
17 and JORDAN FALCON, an individual,  
18 *Plaintiffs,*

19 v.

20 SELECTIVE SERVICE SYSTEM; JOEL  
21 C. SPANGENBERG, as acting Director  
22 of SELECTIVE SERVICE SYSTEM; and  
23 DOES 1-50, inclusive,  
*Defendants.*

Case No. 2:24-CV-4016

Hon. Andre' Birotte, Jr.

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

Date: September 27, 2024

Time: 10:00 AM

Ctrm.: 7B

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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2  
3 **I. PRELIMINARY STATEMENT**

4  
5 To further its mission, in 2017, the National Coalition for Men (hereinafter referred  
6 to as “NCFM”) filed a similar matter in this court. It is the position of Plaintiff NCFM  
7 along with the individual Plaintiffs, TYLER MCNAMARA, CONOR MCKIERNAN,  
8 NICHOLAS MILILLO, NICOLAS MENDIOLA, and JORDAN FALCON, (who are  
9 also members of NCFM) that male-only registration for the draft is sex-based  
10 discrimination forbidden by the Equal Protection Clause. This discriminatory law  
11 relegates an entire class of citizens, men, to inferior legal status without regard to the  
12 fact that they may potentially lose life or limb if called to war; all the while denigrating  
13 capabilities of an entire class of citizens, women, who currently serve in all military  
14 positions, from generals to combat roles.

15 In 1981, Justice Thurgood Marshall, the first civil rights lawyer to sit on the  
16 Supreme Court bench, called male-only registration “one of the most potent remaining  
17 expressions of ancient canards about the proper role of women.”

18 Much has changed since Justice Marshal made that statement. In the early 1990s  
19 Congress repealed the statutory ban on women serving on combat aircraft and ships.  
20 Pub. L. No. 103–160, § 541, 107 Stat. 1547, 1659 (1993), repealing 10 U.S.C. § 6015  
21 (1988) (ships), Pub. L. No. 102- No. 19–202723 190 § 531, 105 Stat. 1290, 1365  
22 (1991) (aircraft). In its pursuit to end discrimination on the basis of sex within the  
23

1 military, the Department of Defense (hereinafter referred to as “DoD”) opened  
2 remaining combat positions to women in 2013. *Since 2015, there are no longer any*  
3 *positions in the armed services that are closed to women.*

4 A Congressional Study recommended that Congress update the Military Selective  
5 Service Act (hereinafter referred to as “MSSA” or the “Act”) to allow women to  
6 register too, further advising Congress that to do so would increase military  
7 preparedness as well as *promote fairness* in the military. Then Chairman of the Senate  
8 Armed Services Committee, Sen. Jack Reed expressed his ‘hope’ that a gender-neutral  
9 registration requirement would be incorporated into the next national defense bill. Tr.  
10 Of Hearing on Final Recommendations and Report of the [NCMNPS] before the  
11 Senate Committee on Armed Services, 117th Cong., 1st Sess., 21 (Mar. 11, 2021).

12 On June 7, 2021, when the Supreme Court denied NCFM’s Petition for Certiorari in  
13 their previous matter, Justice Sotomayor cited the fact that Congress would be  
14 considering the issue in its next defense bill. Justice Sotomayor stated, “***But at least for***  
15 ***now***, the Court’s longstanding deference to Congress on matters of national defense  
16 and military affairs cautions against granting review while Congress actively weighs  
17 the issue.” (Statement of Justice Sotomayer, Pg. 3, 2021) [emphasis added]. Every year  
18 since 2021 when review was denied, Congress authorized the National Defense Act  
19 and every year Congress failed to end gender-based registration, which would be a  
20 momentous development in equal protection for all citizens. There is no longer any  
21 justification for male-only registration as women serve in every role from battleships to  
22 fields of combat. More than three years after Justice Sotomayer made the above-  
23 referenced statement, Congress has yet to enact gender-neutral registration. Every year

1 since 2021 when the Supreme Court denied NCFM’s Petition for Writ of Certiorari,  
2 Congress had the opportunity to act when they passed the annual defense bill and they  
3 failed to do so based upon archaic stereotypes of both male and female citizens.

4 In the present matter, Plaintiffs denounce the obstruction of Congress for their  
5 arbitrary inaction in their steadfast failure to follow the recommendations of the  
6 commission they funded and abolish male-only registration. Our constitutional  
7 jurisprudence revolves in part around the notion of shielding against arbitrary  
8 government action. In Congress, a single member often has the political clout to block  
9 majorities from voting on important legislation. This type of arbitrary Congressional  
10 inaction embodies the necessity for judicial review.

## 11 **II. STANDARD OF REVIEW**

### 12 ***Motion To Dismiss Under FRCP, Rule 12(b)(6)***

13  
14  
15 FRCP, Rule 8(a)(2) requires only “a short and plain statement of the claim showing  
16 that the pleader is entitled to relief.” To survive a motion to dismiss, a complaint must  
17 contain sufficient factual material to “state a claim that is plausible on its face.” *Bell*  
18 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when  
19 “the plaintiff pleads factual content that allows the court to draw the reasonable  
20 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556  
21 U.S. 662, 678 (2009). In analyzing the complaint’s sufficiency, a court must “accept[ ]  
22 all factual allegations in the complaint as true and constru[e] them in the light most  
23 favorable to the nonmoving party.” *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d

1 1005, 1014 (9th Cir. 2012); *Dual Diagnosis Treatment Ctr., Inc. v. Blue Cross of Cal.*,  
2 No. SACV 15–0736-DOC (DFMx) 2016 WL 6892140, at \* 2 (C.D. Cal. Nov. 22,  
3 2016).

4 **III. THIS COURT SHOULD DENY DEFENDANTS’ MOTION IN ITS**  
5 **ENTIRETY**  
6

7 This Court can reasonably conclude, as the courts have done before in the previous  
8 matter, that Plaintiffs have met their burden stating sufficient facts in their complaint  
9 which reasonably infer that these Defendants are liable for the misconduct alleged in  
10 the complaint.

11 Motions to dismiss under Rule 12 (b) (6) are disfavored and rarely granted. *Gilligan*  
12 *v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). The present motion should be  
13 denied in its entirety as the passage of time between the previous NCFM action and the  
14 present matter have only proved to bolster Plaintiffs’ claims. The U.S. Supreme Court  
15 did not make a decision on the merits of the previous matter filed by NCFM when it  
16 denied Certiorari. Rather, as stated above, Justice Sotomayer stated, “*at least for now*”  
17 the Court would defer to Congress. For Plaintiffs to prevail in their opposition, it is not  
18 mandated that the Court find that Plaintiffs will ultimately prevail, rather, the Court  
19 must decide that Plaintiffs could prove facts in support of their claims that would entitle  
20 them to relief. *Hishon v. King Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d  
21 59 (1984).



1                   **A. PLAINTIFFS’ CLAIMS ARE NOT FORECLOSED BY ROSTKER**  
2

3           Defendants argue that Plaintiffs failed to state a claim upon which relief can be  
4 granted because this Court is bound by Rostker and as such, a dismissal is required.  
5 While the courts have given great deference to Congress over military affairs, the  
6 judicial branch of government does not allow Congress to disregard the Constitution  
7 simply because the action is related to the military. Rostker specifically holds that  
8 Congress must comply with the Constitution in the area of military affairs. *Rostker*, 453  
9 U.S. 67 (1981).

10          Rostker did not hold that Congress receives blind deference in the area of military  
11 affairs. *Rostker*, 453 U.S. at 67.

12          To prevent tyranny, the U.S. Constitution established three separate but equal  
13 branches of government with each branch granted specific powers, limited only by  
14 checks and balances in place to avert absolutism by any branch. Congress is tasked  
15 with making laws and has been granted great deference by the judiciary related to  
16 military affairs. The Court in *Rostker* stated that, “*None of this is to say that Congress*  
17 *is free to disregard the Constitution when it acts in areas of military affairs...Deference*  
18 *does not mean abdication.*” *Rostker*, 453 U.S. at 70.

19          Further, the facts and circumstances have drastically changed since Rostker was  
20 decided in 1981, when women were still barred from combat. Subsequently, in the  
21 early 1990s, Congress repealed the statutory bans on women serving on combat aircraft  
22 and ships. Pub. L. No. 103–160, § 541, 107 Stat. 1547, 1659 (1993), repealing 10  
23 U.S.C. § 6015 (1988) (ships), Pub. L. No. 102-No. 19–202723 190, § 531, 105 Stat.

1 1290, 1365 (1991) (aircraft). In 2013, the Department of Defense (“DoD”) announced  
2 its intention to open all remaining combat positions to women, the last of which it  
3 opened in 2016. Plaintiffs statement of facts drastically differ from those in *Rostker*.

4 The rationale behind *Rostker* is therefore obsolete as women in the military serve in  
5 every capacity from the fields of combat, in aircraft, at sea and four-star generals.

6  
7 **B. The Complaint sufficiently states the injuries suffered by the**  
8 **individual plaintiffs McNamara, McKiernan, Milillo, Mendiola, and**  
9 **Falcon**

10 Defendants’ arguments have been previously rejected. Defendants restate the same  
11 or very similar arguments that the individual plaintiffs lack standing because they have  
12 not suffered an injury. Article III of the U.S. Constitution mandates that a plaintiff must  
13 have standing in order for the court to have jurisdiction. *Friends, of Earth, Inc. v.*  
14 *Laidlaw Env'tl. Servs. (TOC) Inc.*, 528 U.S. 167, 180, 120 S. Ct. 693 (2000). The  
15 individual plaintiffs in this matter assert that they have been harmed because they were  
16 required to register for the draft while their same aged female citizens were not  
17 required to register. Their whereabouts must be repeatedly reported to the government  
18 to remain in compliance with the Act. If these individual plaintiffs fail to remain in  
19 compliance with the draft requirements, he can face harsh penalties, some of which  
20 may last a lifetime. Failure to register is a felony punishable by a fine of up to \$250,000  
21 and/or five (5) years imprisonment. These penalties are not limited to the individual  
22 who fails to register and may extend to a person who knowingly counsels, aids, or abets  
23 another to fail to comply with the registration requirement; these facts are clearly stated

1 in the complaint. The complaint also states that the benefits that can be denied to the  
2 individual plaintiffs include eligibility for most federal employment, some state  
3 employment, security clearance for contractors, and job training under the Workforce  
4 Innovation and Opportunity Act. If the denial of the benefit occurs after one of the  
5 plaintiffs turns twenty-six, there is no possibility to cure his non-compliance and he  
6 will be denied significant government benefits for life. As stated in the complaint,  
7 California is considering tethering receiving a driver’s license to registration, which  
8 includes renewal of a California Identification Card and renewal of a California Driver  
9 License. These individual plaintiffs can also be imprisoned for failure to comply with  
10 the draft requirements. While there has not been a conscription in almost 50 years, in  
11 light of the current state of world affairs, the possibility looms closer than ever before;  
12 escalating Plaintiffs injury. Defendants’ argument that these five plaintiffs have not  
13 suffered an injury is unsupported by the reality of the life of draft-aged young men who  
14 may lose meaningful government benefits, life, limb, or liberty and be subject to  
15 astronomical fines or jail time for failure to comply and remain in compliance. These  
16 facts are sufficient to establish injury.

17 Sex discrimination is injurious in and of itself. Limiting registration to men is based  
18 upon antiquated stereotypes of the capacity of women to serve and fully participate in  
19 military and civic life; and equally archaic and compartmentalized views that men lack  
20 the ability to remain at home as caretakers. The ban assumes women are unsuitable for  
21 military service notwithstanding their own individual abilities and predispositions.  
22 “Legislative classifications that distribute benefits and burdens on the basis of gender  
23 carry the “baggage of sexual stereotypes.” *Orr v. Orr*, 440 U.S. 268, 283 (1979). The

1 limitation on registration to male citizens sanctifies these biases and encapsulates them  
2 in federal law. The Act only serves to enshrine negative gender-based stereotypes of  
3 both male and female citizens and impedes female citizens full participation in civic  
4 life while endangering the lives of young men, jeopardizing their freedom, disturbing  
5 their peace of mind.

6 Finally, the *Rostker* plaintiffs were registered with the Selective Service and the  
7 District Court found that the Rostker plaintiffs suffered an injury because they were  
8 “subject to registration for the draft and subsequent induction into the armed services,”  
9 which rendered the plaintiffs injured as a matter of law. The District Court in *Rostker*  
10 stated that the harm to plaintiffs is neither remote nor hypothetical. The court further  
11 stated that those plaintiffs who already registered are subject to potential  
12 reclassification and induction into the armed services. *Goldberg v. Rostker*, 509 F.  
13 Supp. 586, 590–591 (E.D. Pa. 1980). This ruling has never been overturned.

### 14 **C. NCFM Has Organizational Standing**

15  
16 “It is well-established that an association has Article III standing to bring a suit on  
17 behalf of its members when (a) its members would otherwise have standing to sue in  
18 their own right; (b) the interests it seeks to protect are germane to the organization’s  
19 purpose; and (c) neither the claim asserted nor the relief requested requires the  
20 participation of individual members of the lawsuit.” *Funeral Consumers All., Inc. v.*  
21 *Serv. Corp. Int’l*, 695 F.3d 330, 343 (5th Cir. 2012) (quoting *Hunt v. Washington Apple*  
22 *Adver. Comm’n*, 432 U.S. 333, 343, 97 S. Ct. 2434 (1977)).

1 Plaintiff NCFM is a not-for-profit, 501(c)(3) education and civil rights corporation.  
2 NCFM is committed to ending harmful discrimination and stereotypes against boys,  
3 men, and their families. NCFM philosophically believes that the root causes of  
4 "gendered oppression" are gender roles, which developed for various reasons but were  
5 then enforced by law in an unfair way on both sexes. These laws discriminate against  
6 all genders, in differing ways.

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

12 Further, some of NCFM's members are males ages 18–26 or who will be age 18–26  
13 at some time relative to this lawsuit. The relief this action seeks is germane to the age-  
14 appropriate members of NCFM who are harmed by or subject to discrimination on the  
15 basis of sex from the male-only registration requirements. They are United States  
16 citizens, who are not members of the military, students at military academies, or  
17 otherwise exempt from the draft. Most importantly, these members of NCFM support  
18 equal treatment of all sexes.

19 Some NCFM's members have or are likely to have male children or other loved  
20 ones who presently meet or will meet the criteria for registration upon reaching their  
21 18th birthday. All of these facts related to the vision, purpose, and individual members  
22 of NCFM, all of which are stated in great detail in the complaint. Defendants' argument  
23 that NCFM has failed to allege that a single member has standing is simply untrue.

1 The individual plaintiffs in this matter are all also members of NCFM and have  
2 standing to sue in their own right. It is obvious by the prolific published opinions  
3 generated by litigation where NCFM was a plaintiff all related to ending discrimination  
4 on the basis of sex, that this matter is germane to the purpose and vision of NCFM.  
5 Finally, while the claims asserted in the present matter are asserted by individual  
6 members of NCFM, NCFM still has organizational standing because the claims  
7 asserted and the relief requested does not require the individual participating of its  
8 members.

9  
10 **IV. CONCLUSION**

11 Plaintiffs have satisfied its pleading standard for a claim for relief. The individual  
12 plaintiffs along with NCFM as an organizational plaintiff have standing in this matter  
13 and the Rostker holding is obsolete in the modern era of women serving in combat  
14 roles in the military. Based upon the foregoing, Plaintiffs respectfully request that this  
15 Court deny Defendants' Motion in its entirety.

1 In the alternative, and in the event this Court is inclined to grant the Defendants’  
2 Motion, Plaintiffs respectfully request leave to amend. *See Broam v. Bogan*, 320 F.3d  
3 1023, 1028 (9th Cir. 2003) (FRCP, Rule 12(b)(6) dismissal with prejudice proper only  
4 in “extraordinary” cases).. Under FRCP, Rule 15(a), at least one opportunity to amend  
5 is appropriate before a District Court dismisses an action with prejudice. *Nat’l Council  
6 of La Raza v. Chegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

8 NADINE LEWIS, ATTORNEY AT  
9 LAW

10 Respectfully submitted,

11 Dated: August 23, 2024

12 By: /s/ Nadine Lewis, Esq.

13 Nadine Lewis, Esq.

14 Attorney for Plaintiffs, NATIONAL  
15 COALITION FOR MEN, TYLER  
16 MCNAMARA, CONOR  
17 MCKIERNAN, NICHOLAS  
18 MILILLO, NICOLAS MENDIOLA,  
19 and JORDAN FALCON  
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1 **CERTIFICATE OF COMPLIANCE**

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2  
3 The undersigned, counsel of record for NATIONAL COALITION FOR MEN,  
4 TYLER MCNAMARA, CONOR MCKIERNAN, NICHOLAS MILILLO, NICOLAS  
5 MENDIOLA, and JORDAN FALCON certifies that this Memorandum of Points and  
6 Authorities contains **2,600** words, which complies with the word limit of L.R. 11-6.1.

7  
8 Respectfully submitted,

9 Dated: August 23, 2024

By: /s/ Nadine Lewis

10 Attorney for Plaintiffs, NATIONAL  
11 COALITION FOR MEN, TYLER  
12 MCNAMARA, CONOR  
13 MCKIERNAN, NICHOLAS  
14 MILILLO, NICOLAS MENDIOLA,  
15 and JORDAN FALCON  
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1 **CERTIFICATE OF SERVICE**

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2

3 I hereby certify that on August 23, 2024, I caused the **PLAINTIFFS'**

4 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**

5 **DEFENDANTS' MOTION TO DISMISS** to be electronically filed with the Clerk of

6 the Court using the CM/ECF electronic filing system, which will then send a

7 notification of such filing to counsel of record in this action.

8

9 Respectfully submitted,

10 Dated: August 23, 2024

11 By: /s/ Nadine Lewis

12 Attorney for Plaintiffs, NATIONAL  
13 COALITION FOR MEN, TYLER  
14 MCNAMARA, CONOR  
15 MCKIERNAN, NICHOLAS  
16 MILILLO, NICOLAS MENDIOLA,  
17 and JORDAN FALCON

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