

IN THE UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS

Before Panel No. 3

UNITED STATES,

Appellee

v.

Gregory T. Miles
Lance Corporal (E-3)
U.S. Marine Corps,

Appellant

MOTION ON BEHALF OF THE
NATIONAL COALITION FOR
SEXUAL FREEDOM FOR
LEAVE TO FILE A BRIEF
AS *AMICUS CURIAE*

Case No. 201300272

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

In accordance with Rules 15(1) and 26, Rules of Practice and Procedure, counsel for the National Coalition for Sexual Freedom (NCSF) respectfully requests leave to file an *amicus* brief in this case, and to file the attached brief and appendix.

INTEREST OF THE *AMICUS CURIAE*

Amicus Curiae NCSF is a not-for-profit corporation that acts as a national advocacy and education group on behalf of individuals who practice "alternative sexual expression," including polyamory and consensual bondage, discipline, dominance and submission (BDSM). NCSF is engaged in a national advocacy campaign to end unjustified and unconstitutional criminal prosecution of consensual, non-injurious sexual

practices, known as "Consent Counts." The members of NCSF practice consensual sex in various forms, including "threesomes" such as the conduct for which Lance Corporal Miles was prosecuted and convicted in the present case.

NCSF does not seek to appear in support of any party to this appeal, but rather in support of the public interest in constitutional enforcement of criminal laws.

As part of its "Consent Counts" campaign, and to protect the interests of its members and others who engage in non-traditional sexual practices, NCSF seeks in appropriate criminal cases to appear as *amicus* to assist the Court in understanding various forms of sexual conduct and how such conduct is or is not viewed as acceptable in modern America, and to advance arguments to the effect that consensual, non-injurious sexual conduct may not properly or constitutionally be criminally prosecuted.

The case of LCpl Miles is one in which Appellant Miles was not charged with forcible or nonconsensual sexual conduct, nor is NCSF aware of any finding by the trial Court that the conduct in which he engaged was either forcible or nonconsensual. This appeal therefore squarely presents the issue that is central to NCSF's "Consent Counts" campaign and of paramount interest to NCSF's members - namely, whether consensual, non-injurious sexual conduct may be made the subject of criminal prosecution,

whether under a statute that addresses sodomy or under a broadly-worded statute addressing "indecent acts" or "indecent conduct."

NCSF'S ABILITY TO BE OF ASSISTANCE TO THE COURT

The National Coalition for Sexual Freedom has extensively researched, and has thought deeply about, the evolving U.S. law on the extent to which consensual, non-injurious sexual conduct is protected by a liberty interest under the United States Constitution. The present case raises important issues concerning the impact of that evolving constitutional law on criminal prosecution under the Uniform Code of Military Justice (UCMJ). NCSF's expertise in this area, we respectfully submit, can be of assistance to the Court in applying now-recognized constitutional principles to the interpretation of the relevant UCMJ provisions.

In addition, one of the UCMJ provisions under which LCpl Miles was convicted turns on the extent to which specific sexual conduct - in this case, a consensual "threesome" involving several nontraditional sexual acts - may be deemed "sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety." NCSF has extensive expertise concerning the way in which various types of sexual conduct are or are not seen in America today as "repugnant to common propriety." To assist

the Court in its consideration of this issue, we present as an Appendix to this brief a paper on "Non-monogamy and Changing Societal Mores," which surveys the treatment of nontraditional sexual practices (such as those involved in the present case) in academic studies, opinion surveys and the media.

WHEREFORE, counsel for NCSF requests that this Court grant leave to file the attached brief and appendix.

Respectfully submitted,

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Member in good standing of
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