

2005 WL 713816 (unpublished)

Court of Appeal, Second District, Division 1,
California.
COALITION OF FREE MEN et al., Plaintiffs and
Appellants,
v.
STATE of California, Defendant and Respondent.

March 30, 2005.

APPEAL from a judgment of the Superior Court of
Los Angeles County. Malcom H. Mackey, Judge.
Affirmed.

Law Offices of Morse Mehrban and Morse Mehrban
for Plaintiffs and Appellants Coalition of Free Men
and Marc Angelucci.

Bill Lockyer, Attorney General, Louis R. Mauro,
Assistant Attorney General, Christopher E. Krueger
and Susan R. Oie, Deputy Attorneys General, for
Defendant and Respondent.

SUZUKAWA, J.^{FN*}

FN* (Judge of the L.A. Sup.Ct. assigned by
the Chief Justice pursuant to art. VI, § 6 of
the Cal. Const.)

The Coalition of Free Men (CFM) and Marc
Angelucci appeal from the trial court's ruling denying
their facial challenges to numerous California statutes
and several administrative regulations based on the
equal protection clause of the California Constitution.
Appellants claim the targeted statutes impermissibly
include only women and not men in domestic
violence protection, give visitation rights only to
incarcerated mothers and not fathers, create job
training only for women and not men in
nontraditional employment, provide a special office
and ombudsperson only for women and not men
veterans, and create affirmative action goals only for
women.^{FN1}

FN1. The challenged statutes are: Health &
Safety Code sections 124250 and 124251;
Government Code section 11139; Penal
Code sections 166, 243, 262, 273.5-273.65,
1203.097; Military and Veterans Code
section 79.1; Unemployment Insurance

Code sections 9602.5, 15020, 15032, 15043,
15056.6; Penal Code sections 3411, 1174-
1174.9; Public Contract Code sections 2000,
2001, 2050-2056, 10108.7, 10115, 10115.2,
10115.12, 10115.13, 10115.15, 10471,
10472, 10500.5, 10501; Education Code
section 71028; and Labor Code section
1777.5. The challenged regulation is section
59500, title 5 of the California Code of
Regulations. Appellants present no
arguments concerning other statutes
apparently remaining in the lawsuit
following appellants' voluntary dismissals
(see fn. 2, *infra*).

We determine appellants cannot establish standing
and affirm the judgment.

BACKGROUND

In January 2003, appellants filed a complaint
containing 32 causes of action, challenging 81
statutes and four regulations. The State filed a general
denial. In June, the trial court, following a conference
with counsel, determined that this matter was
primarily a matter of law and should be tried as a writ
proceeding. In July, appellants voluntarily dismissed
the tenth through fifteenth and twenty-eighth through
thirtieth causes of action.^{FN2}

FN2. Respondent points out, and appellants
agree that the voluntarily dismissed causes
of action were: the tenth cause of action
(Bus. & Prof.Code, § 24045.3); eleventh
cause of action § Corp.Code, § 318); twelfth
cause of action (Elec.Code, § 6204);
thirteenth cause of action (Gov.Code, §
8790.80); fourteenth cause of action
(Gov.Code, § 14132); fifteenth cause of
action (Gov.Code, § 5703); twenty-eighth
cause of action (Cal.Code Regs., tit. 2, §
1899.522); twenty-ninth cause of action
(Cal.Code Regs, tit. 14, § 4730); and
thirtieth cause of action (Cal.Code Regs., tit.
21, § 2502).

In August, appellants filed an opening brief in
support of their motion seeking declaratory and
injunctive relief. Additional filings were made by
appellants and respondent. On December 5, the trial
court entered its formal ruling denying appellants'

motion.

DISCUSSION

Standing. “The concept of justiciability involves the intertwined criteria of ripeness and standing.” (*California Water & Telephone Co.* (1967) 253 Cal.App.2d 16, 22.) “The essence of the standing inquiry ... is whether a dispute has matured to the point that it is proper for resolution by the judicial branch, i.e., whether ‘the issues presented are ‘definite and concrete, not hypothetical or abstract.’ [Citation.]” “ (*Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 25.)

A litigant's standing to sue is an issue to be resolved before we can reach the merits of a case, and an appellate court may decide the standing issue even if the trial court did not rule on the issue. (*Hernandez v. Atlantic Finance Co.* (1980) 105 Cal.App.3d 65, 71.) “If we were to conclude that plaintiff did not have standing to maintain the action, not having been personally damaged by the defendants' conduct, then there would be no need to address the merits of her cause. Equally wasteful of judicial resources would be a resolution on the merits without reaching the standing issue.” (*Ibid.*) California courts will not address the merits of litigation when the plaintiff lacks standing because “ ‘California courts have no power in mandamus or otherwise to render advisory opinions or give declaratory relief.’ ” (*Municipal Court v. Superior Court (Gonzalez)* (1993) 5 Cal.4th 1126, 1132.) Lack of standing may be raised at any time in the proceedings, including at trial or on appeal. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361.)

The unverified complaint alleged Angelucci was a resident of Monrovia, in Los Angeles County, and that during 2002, he was “assessed for, liable to pay, and ... paid income taxes” to the State. CFM alleged it was a nonprofit corporation, incorporated and operating under the laws of the State of New York, and qualified to do business in California. The complaint stated CFM “promotes the social, political, economic, and legal rights of men throughout the United States” and Angelucci is a member of CFM.

Angelucci quotes *Connerly v. State Personnel Board*

(2001) 92 Cal.App.4th 16, 29, as the principal basis for his claim of taxpayer standing: “Code of Civil Procedure section 526a permits a taxpayer to bring an action to restrain or prevent an illegal expenditure of public money. No showing of special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit. [Citation.]”^{FN3} The Attorney General responds that Angelucci has cited no facts, specific or otherwise, or reasons to believe that any illegal expenditure or injury to the public fisc is occurring or is about to occur with respect to any of the statutes. Appellants' reply appellate brief simply reiterates the assertion that a taxpayer lawsuit can be brought “to prevent the illegal expenditure of public money without any showing of special damage.” That response does not meet the relevant point: there is no current or threatened illegal expenditure of public funds.

FN3. Code of Civil Procedure section 526a provides: “An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be brought against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.

“An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.”

Respondent points out, and appellants do not dispute, that because CFM did not allege it was a taxpayer, it cannot invoke taxpayer standing.

“[T]he essence of a taxpayer action remains an illegal or wasteful expenditure of public funds or damage to public property. [Citation.] The taxpayer action must involve an actual or threatened expenditure of public funds. [Citation.] [¶] General allegations, innuendo, and legal conclusions are not sufficient [citation]; rather, the plaintiff must cite specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur. [Citations.]” (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240; see also *Fiske v. Gillespie* (1988) 200 Cal.App.3d 1243, 1245, 1246 [Code of Civil Procedure section 526a does not authorize general challenge with no reference to specific application of statute; actual expenditure or threat of expenditure of public funds is required].) Appellants' pleading does not allege any actual or threatened expenditure of public funds. Accordingly, appellants have not established Angelucci's qualification to assert taxpayer standing.

Both appellants claim “citizen standing.” They cite *Connerly* : “Citizen suits may be brought without the necessity of showing a legal or special interest in the result where the issue is one of public right and the object is to procure the enforcement of a public duty. [Citation.] Citizen suits promote the policy of guaranteeing citizens the opportunity to ensure that governmental bodies do not impair or defeat public rights. [Citation.]” (*Connerly, supra*, 92 Cal.App.4th at p. 29.) Respondent points out the considerable factual differences between this matter and *Green v. Obledo* (1981) 29 Cal.3d 126, the authority cited in *Connerly*.

In *Green v. Obledo*, the plaintiff class was recipients of benefits under the program for aid to families with dependent children, a program “financed in substantial part” by the federal governments and administered by the states. (29 Cal.3d at p. 131.) The named plaintiffs sought relief for themselves and on behalf of similarly situated AFDC recipients from what plaintiffs contended was the failure of a state welfare regulation to comply with certain language of the Social Security Act (42 U.S.C. § 601 et seq.), requiring the state agency to recognize any expenses reasonably attributable to the earning of income. On plaintiffs' cross-appeal, the court reversed, holding that the plaintiffs, who had specifically alleged only

that the agency had wrongly disallowed their transportation expenses, had standing to pursue a writ of mandate commanding defendants to cease enforcing the entire regulation.

Appellants' lawsuit is a facial challenge to the constitutionality of the statutes and regulation. Neither Angelucci nor CFM, on behalf of its members, claims a personal interest, or involvement with, any of the targeted statutes. Appellants cite a number of cases in support of their assertion that citizen suits may be brought without a showing of special interest. Those cases are materially distinguishable from this matter. In *Waste Management of Alameda County v. County of Alameda, supra*, 79 Cal.App.4th 1223, the appellate court denied citizen standing to the plaintiff corporation, which insisted a competitor waste facility be required to undergo environmental review before being allowed to accept certain wastes. The court set out several factors to consider when a nonhuman entity claims the right to pursue a citizen suit. The court concluded the plaintiff corporation “has not pointed to any beneficially interested persons whom it purports to represent[.]” nor had it “demonstrated that persons who may be beneficially interested in the matter would find it difficult or impossible to vindicate their own interests.” (*Id.* at p. 1238-1239) The court set out a two-pronged test for beneficial interest. The first prong was “whether the plaintiff will obtain some benefit from issuance of the writ or suffer some detriment from its denial. The plaintiff's interest must be direct [citations] and it must be substantial [Citation.] Also, it generally must be special in the sense that it is over and above the interest held in common by the public at large. [Citation.]” (79 Cal.App.4th at p. 1233.) The court held the plaintiff was not entitled to maintain the litigation as a citizen's action.

In *Salton City etc. Owners Assn. v. M. Penn Phillips Co.* (1977) 75 Cal.App.3d 184, a property owners' association filed suit as representative of its members for damages or rescission and restitution of land sale contracts against several defendants. The trial court sustained without leave to amend a demurrer brought by defendant Phillips. The association's complaint alleged its membership consisted of about 2,190 persons who had entered into the challenged contracts. The complaint identified numerous alleged misrepresentations made to all buyers and alleged

that the defendants knew their sales pitches were misrepresentations and that the association members relied on the misrepresentations to their detriment. We held the fact that the association was not a member of the class did not preclude its representation of its members.

In *Tenants Assn. of Park Santa Anita v. Southerns* (1990) 222 Cal.App.3d 1293, an unincorporated association of mobile home park residents sued the park's owners and managers seeking a variety of relief on behalf of its members. The appellate court reversed the trial court's sustaining, without leave to amend, demurrers to the complaint on the ground that the association lacked standing. The association alleged it represented all tenants who were then or had been similarly situated and had been formed for the purpose of pursuing the tenants' legal remedies. The court concluded "that considerations of necessity, convenience and justice provide justification for the use of the representative procedural device. There is an ascertainable class-members of the association who are the tenants and former tenants of the Park. There is also a community of interest in the questions of law and fact-not only was appellant formed to pursue the legal rights of its members, the members have a common interest in seeing that the applicable state and local mobilehome park laws are enforced; furthermore, the members were the victims of the alleged fraudulent actions of respondents."(*Id.* at p. 1304.)

In *Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, we addressed the question of ripeness, a branch of the doctrine of justiciability. A nonprofit organization promoting human treatment of farm animals, including their slaughter, sued defendant, alleging one of the defendant's regulations concerning religious ritualistic slaughter of poultry violated the Humane Slaughter Law (HSL). We reversed the trial court's entry of judgment for the defendant in the plaintiff's declaratory relief action. We concluded the issue was ripe: "[A] significant and imminent injury is inherent in further delay. If, as Farm Sanctuary contends, the ritualistic slaughter regulation authorizes a wholesale exemption from the HSL, poultry may be slaughtered through *inhumane* methods. By delaying a decision on the merits, we run the risk of allowing the needless suffering of animals-the evil that the HSL was intended to prevent."(*Id.* at p. 502.)We also

recognized that the HSL had been enacted for the benefit of animals and that if the ritualistic slaughter regulation was invalid, it would "result in an unlawful injury to poultry, not humans ... [and] we should focus on the potential harm to the beneficiaries of the statute."(63 Cal.App.4th at p. 503.)We added that the organization "should be allowed to challenge the ritualistic slaughter regulation. Assuming that the regulation authorizes an exemption from the HSL's humane slaughter requirement, someone who is granted an exemption is not about to challenge the regulation. By the same token, someone who is denied an exemption might seek to overturn the denial but would not attack the regulation's creation of an exemption. Thus, unless an organization like Farm Sanctuary is permitted to challenge the department's rulemaking authority, the ritualistic slaughter regulation will be immune from judicial review. [Citations.]" (63 Cal.App.4th at p. 503.)

In *Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, a nonprofit civic corporation's members lived in the area of Beverly Glen, a valley traversing the Santa Monica Mountains with a single through traffic artery, Beverly Glen Boulevard. The corporation sought declaratory relief and a writ of mandate to have set aside a conditional use permit granted by the City of Los Angeles to a developer and to have declared unconstitutional a provision of the municipal code. Plaintiff's pleading alleged the project would increase population density beyond what was permitted by the city's Santa Monica Mountain master plan, and that Beverly Glen Boulevard was already inadequate to handle existing traffic and any widening of that street would require removal of members' homes.

In *California Dental Assn v. California Dental Hygienists' Assn.*(1990) 222 Cal.App.3d 49, a dental association (CDA) and two individual member dentists brought an action against a dental hygienists' association and an individual hygienist, alleging the hygienists throughout California were conspiring to fix and inflate compensation paid by dentists to hygienists working for them. The operative complaint sought damages and an injunction. CDA alleged specific harmful acts by defendants. Although CDA alleged present and prospective injuries and damages to CDA as well as to its members, CDA had disclaimed suing for money damages on its own

behalf. It argued it was entitled to bring the action as a representative of its members, to obtain injunctive relief. The appellate court stated the hygienists could not contest that CDA's allegation of harm and threatened injury to its member dentists was sufficient to establish standing on the part of CDA's affected members. As a result, when combined with the allegations that CDA was an incorporated association of dentists, organized in part to represent them in matters affecting their profession, CDA was entitled to bring its claim for injunctive relief, to restrain alleged violations of public law which threatened injury to its members. "Although ... CDA's pleading for purposes of standing 'is not a model' [citation], it sufficiently alleges injury to CDA's members, and facts showing CDA to be an appropriate representative for purposes of injunctive redress, to withstand dismissal on demurrer for lack of standing. [Citation.]" (222 Cal.App.3d at p. 62.)

Appellants alleged CFM was a nonprofit corporation incorporated and operating under New York laws and qualified to do business in California. CFM "promotes the social, political, economic, and legal rights of men through the United States." Angelucci is a CFM member. In their individual causes of action, appellants alleged that facial gender content of the challenged statutes "discriminates against men." Angelucci's declaration in support of appellants' opening brief reiterated the foregoing allegations and added that he had been a Los Angeles County resident since January 6, 2002, was president of the Los Angeles chapter of CFM and that "[n]o less than forty male California residents are currently members of [CFM]."

Appellants contend Angelucci has citizen standing because the issues raised by his challenge are matters of public right and "have concerned" him "for a long time." Appellants contend CFM also has citizen standing because it was founded "to address the issues and rights concerning men," and the Los Angeles chapter has done so since 2000. CFM, say appellants, is the perfect representative plaintiff to pursue the alleged violations by the State of men's civil rights as guaranteed by the California constitution. Appellants contend that like the Beverly Glen residents' association, CFM is entitled to maintain this action because it is the most efficient way to protect its members' interests. Appellants have not, however, addressed the dissimilarity between

property owners imminently threatened with the taking of their property and "no less than 40" California men who apparently have not suffered nor are threatened with harm as a result of the challenged statutes. Appellants say that CFM seeks to eliminate the "inhumane (and unequal) treatment of men," just as Farm Sanctuary, Inc. had the right to protect the significant and imminent wrongful ritualistic slaughter of poultry. Neither appellant has brought themselves into the factual context of the cases appellants cite. Neither appellants' pleading nor evidence presented to the court suggest any harm has occurred, or is threatened, to either appellant, in contrast to the associations or individuals described in the cases appellants cite.

Appellants contend that "[t]o the exten[t] any curable errors or omissions in Appellants' complaint were fatal to the action, the trial court should have allowed them to be cured so the matter could be heard on its merits...." Appellants' claim lacks merit.

"Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment. [Citations.]" (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.) The burden of proving that such a reasonable possibility exists and that such an abuse occurred is squarely on the plaintiff. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Cooper*, p. 636.) "To carry that burden, the "[p]laintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." (*Cooper*, p. 636.) "[S]uch a showing need not be made in the trial court so long as it is made to the reviewing court." (*William S. Hart Union High School Dist. v. Regional Planning Com.* (1991) 226 Cal.App.3d 1612, 1621.) Appellants point us to nothing in the record showing they asked the trial court to permit them to amend their complaint and explained to the court how they would amend. In their request on appeal, appellants present nothing to show in what manner they would amend. Accordingly, we reject their claim of entitlement to amend their complaint.

DISPOSITION

The judgment (December 5, 2003, "Ruling on Injunction, Declaratory Relief, and Writ of Mandate") is affirmed.