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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

RYAN KARNOSKI; STAFF
SEARGEANT CATHERINE SCHMID;
D.L., formerly known as K.G., by his
next friend and mother, LAURA
GARZA; HUMAN RIGHTS
CAMPAIGN; and GENDER JUSTICE
LEAGUE,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

STATE OF WASHINGTON,

Intervenor-Plaintiff,

v.

DONALD TRUMP, in his official
capacity as President of the United
States; the UNITED STATES OF
AMERICA; JAMES N. MATTIS, in his
official capacity as Secretary of Defense;
the UNITED STATES DEPARTMENT
OF DEFENSE; ELAINE C. DUKE, in
her official capacity as Acting Secretary
of Homeland Security; and the UNITED
STATES DEPARTMENT OF
HOMELAND SECURITY,

Intervenor-Defendants.

Case No: 2:17-cv-1297

COMPLAINT IN
INTERVENTION BY STATE
OF WASHINGTON FOR
DECLARATORY AND
INJUNCTIVE RELIEF

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I. INTRODUCTION

1. The State of Washington (“State”) brings this action to protect itself, its residents, and the Washington National Guard from a facially discriminatory policy that targets transgender individuals who wish to serve their country and their State.

2. The State brings this action to ensure that the health, well-being, and economic interests of the State, its residents, and the Washington National Guard are not unconstitutionally infringed by the federal government’s implementation of a ban on military service by transgender individuals and a policy that denies federal funding for transgender service members to access certain medical procedures – simply because of their sex, gender identity, or gender expression.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1). Defendants are the President of the United States, United States agencies, and United States officers sued in their official capacities.

III. PARTIES

Intervenor-Plaintiff State of Washington

5. The Governor is the chief executive officer of the State. The Governor is responsible for overseeing the operations of the State and ensuring the faithful execution of its laws, including adherence to state and federal constitutional protections. The Governor is also the commander-in-chief of the Washington National Guard and is responsible for ensuring Washington’s safety in times of disaster or emergency.

6. The State has a quasi-sovereign interest in protecting the health, safety, and well-being of its residents, including protecting its residents from unlawful discrimination and the harms that result. The State’s interest in preventing and remedying injuries to the public’s health,

1 safety, and physical and economic well-being extends to all of the State’s residents, including
2 individuals who suffer indirect injuries and members of the general public.

3 7. The State also has a quasi-sovereign interest in ensuring that its residents are not
4 excluded from the benefits that flow from participation in the federal system, including the rights
5 and privileges provided by the U.S. Constitution.

6 8. The State has a proprietary interest in protecting the State’s economic health from
7 the loss of military service and advancement opportunities for Washingtonians who are
8 transgender, and the attendant loss to Washington of employment, property, and sales tax
9 revenues that would be contributed by transgender service members and their families.

10 9. The State has a sovereign interest in protecting its territory and maintaining its
11 antidiscrimination laws. Excluding transgender Washingtonians from the pool of candidates who
12 can join the Washington National Guard may result in diminished numbers of service members
13 who can provide emergency response and disaster mitigation. The State has declared that
14 practices that discriminate against any of its inhabitants because of sex, sexual orientation,
15 gender identity, or gender expression are matters of public concern that threaten the rights and
16 proper privileges of the State and harm the public welfare, health, and peace of the people. *See*
17 *Wash. Rev. Code § 49.60.010.*

18 10. The United States military is the second largest employer in Washington State
19 and an important economic driver in Washington. There are approximately 60,000
20 Washingtonians engaged in military service either as active, reserve, or Guard members. These
21 Washingtonians serve their State and country at six major military bases in Washington State.
22 To serve in the United States’ military, Washingtonians must meet the accession standards of
23 the Department of Defense (“DoD”), which include the Transgender Military Service Ban
24 described below.

25 11. The Washington National Guard is an integral part of Washington’s emergency
26 preparedness and disaster recovery planning and response, as well as a member of Washington’s

1 militia. Between 2007 and September 2017, the Washington National Guard was deployed eight
2 times to respond to emergencies in Washington State to fight forest fires, battle flooding, and
3 provide rescue services to communities devastated by landslides. Recruitment for the
4 Washington National Guard is subject to DoD policies governing accession into military service,
5 which includes the Transgender Military Service Ban.

6 **Intervenor-Defendants**

7 12. Defendant Donald Trump is the President of the United States, and issued the
8 August 25, 2017, Transgender Military Service Ban challenged here.

9 13. Defendant United States of America includes all government agencies and
10 departments responsible for implementation of President Trump’s August 25, 2017, Transgender
11 Military Service Ban.

12 14. Defendant James N. Mattis is the Secretary of the Department of Defense.
13 Secretary Mattis is responsible for implementing the Transgender Military Service Ban,
14 including the limitations on accession and health care. Secretary Mattis is also responsible for
15 the development of additional policies to implement the directive.

16 15. Defendant DoD is a Cabinet-level department that is responsible for overseeing
17 the Army, Navy, and Air Force including the United States Special Operations Command. The
18 DoD provides military forces needed to deter war and to protect the security of our country. DoD
19 has authority over the United States armed forces and is responsible for implementing policies
20 governing accession and service in the armed forces.

21 16. Defendant Elaine Duke is the Acting Secretary of the Department of Homeland
22 Security (“DHS”). Secretary Duke is responsible for implementing the Transgender Military
23 Service Ban, including the limitations on accession and health care, for the Coast Guard.
24 Secretary Duke is also responsible for the development of additional policies to implement the
25 directive.
26

1 17. Defendant DHS is a Cabinet-level department that is responsible for the
2 coordination and unification of national security efforts. DHS has authority over the United
3 States Coast Guard including setting and implementing policies governing accession and service
4 in the Coast Guard.

5 **IV. ALLEGATIONS**

6 18. The military has a longstanding policy and practice of excluding transgender
7 individuals from serving in the military.

8 19. In 2014, the military issued its first report analyzing the military’s ban on service
9 by openly transgender individuals. The report found that there was no compelling reason for
10 banning transgender individuals from military service.

11 20. In July 2015, then-Secretary of Defense Ashton Carter created a work group
12 composed of senior representatives from each of the Military Departments, Joint Staff, and
13 relevant members of the Office of the Secretary of Defense to formulate policy options regarding
14 military service by transgender individuals. On or about July 13, 2015, Secretary Carter also
15 terminated the practice of involuntarily separating or denying reenlistment or continuation of
16 active or reserve service on the basis of gender identity – unless it went through an approval
17 process chaired by the Under Secretary of Defense for Personnel and Readiness.

18 21. On June 30, 2016, after a year-long, research-based assessment, which included
19 the leadership of the Armed Services, military medical and personnel experts, transgender
20 service members, outside medical experts, advocacy groups, and the RAND Corporation, DoD
21 lifted its categorical ban on military service by transgender individuals.

22 22. After lifting the categorical ban on military service by transgender individuals,
23 DoD issued guidance regarding the implementation of a policy that would allow openly
24 transgender individuals accession into military service. The policy was to be implemented in
25 stages over 12 months. The process included training for the entire force, and set July 1, 2017,
26 as the date that the military would allow accession by transgender recruits.

1 23. On or around June 30, 2017, Secretary Mattis delayed the date that the military
2 would allow accession by openly transgender individuals to January 1, 2018.

3 24. On August 25, 2017, President Trump issued a memorandum titled “Military
4 Service by Transgender Individuals,” which set new policy directives for the military regarding
5 accession and military service by transgender individuals. Military Service by Transgender
6 Individuals, 82 Fed. Reg. 41,319 (Aug. 30, 2017) (“Transgender Military Service Ban”). The
7 memorandum directs the Secretaries of Defense and Homeland Security to (1) return to the
8 military’s pre-2016 policy regarding transgender service members; (2) bar openly transgender
9 individuals from accession, or joining the military; (3) ban the use of funds from the DoD and
10 DHS to fund certain medical procedures for transgender service members unless the service
11 members are already in the process of receiving such treatment; and (4) require the Secretaries
12 of Defense and Homeland Security to issue a plan to implement the above directives, including
13 “how to address transgender individuals currently serving in the United States military.”

14 25. President Trump relied upon his own judgment to reverse the military’s multiyear
15 strategic research and planning regarding implementation of policies that would allow openly
16 transgender individuals into military service. President Trump also relied upon his own judgment
17 to determine that “the previous Administration failed to identify a sufficient basis to conclude
18 that terminating the [military’s] longstanding policy and practice [of excluding transgender
19 individuals from military service] would not hinder military effectiveness and lethality, disrupt
20 unit cohesion, or tax military resources[.]” Transgender Military Service Ban § 1(a). President
21 Trump stated his judgment that “there remain meaningful concerns that further study is needed”
22 to ensure that allowing openly transgender individuals into military service would not have
23 negative consequences for the military. *Id.*

24 26. The effective dates on the provisions of the Transgender Military Service Ban
25 vary—the accession ban goes into effect January 1, 2018, with the remaining provisions effective
26 on March 23, 2018. Military Service by Transgender Individuals, 82 Fed. Reg. 41319.

V. LEGAL CLAIMS

**FIRST CAUSE OF ACTION
(EQUAL PROTECTION VIOLATION)**

27. Plaintiff realleges and incorporates by reference herein all of the allegations of paragraphs 1 through 26.

28. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying transgender individuals equal protection of the laws.

29. The Transgender Military Service Ban is a facially discriminatory policy that constitutes sex and gender identity discrimination and targets individuals for discriminatory treatment without lawful justification.

30. The discriminatory terms of the Transgender Military Service Ban are arbitrary and cannot be sufficiently justified by federal interests.

31. Through their actions above and by maintaining the Transgender Military Service Ban, Defendants have violated the equal protection guarantee of the Fifth Amendment.

32. Defendants' violation causes ongoing harm to Washington State and its residents.

**SECOND CAUSE OF ACTION
(SUBSTANTIVE DUE PROCESS VIOLATION)**

33. Plaintiff realleges and incorporates by reference herein all of the allegations of paragraphs 1 through 32.

34. The substantive component of the Due Process Clause of the Fifth Amendment protects fundamental rights that are implicit in the concept of ordered liberty.

35. The Transgender Military Service Ban, without adequate justification, impermissibly burdens fundamental liberty interests of transgender Washingtonians who currently serve or seek accession into the military.

36. The Transgender Military Service Ban, without adequate justification, impermissibly burdens fundamental liberty interests of transgender Washingtonians currently serving in the military who need particular medical treatments.

1 37. Through their actions above, Defendants have violated the substantive due
2 process protections of the Fifth Amendment.

3 38. Defendants' violation causes ongoing harm to Washington State and its residents.

4 **V. PRAYER FOR RELIEF**

5 Wherefore, the State of Washington prays that the Court:

6 39. Declare that the Transgender Military Service Ban is unauthorized by and
7 contrary to the Constitution and laws of the United States;

8 40. Enjoin Defendants from implementing or enforcing the Transgender Military
9 Service Ban;

10 41. Enjoin Defendants from barring transgender individuals accession into military
11 service when exclusion is based solely on an individual's sex, gender identity, or transgender
12 status;

13 42. Enjoin Defendants from taking adverse employment actions that are based solely
14 on a service member's sex, gender identity, or transgender status;

15 43. Enjoin Defendants from denying transgender service members access to
16 necessary medical care;

17 44. Award reasonable attorneys' fees and allowable costs of court; and

18 45. Award such additional relief as the interests of justice may require.

DATED December 14, 2017.

ROBERT W. FERGUSON
Washington Attorney General

/s/ La Rond Baker

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