

The Honorable Marsha J. Pechman

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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, 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;  
and the UNITED STATES  
DEPARTMENT OF DEFENSE ,

*Defendants.*

Case No: 2:17-cv-1297-MJP

STATE OF WASHINGTON'S  
MOTION TO INTERVENE

NOTE ON MOTION  
CALENDAR: October 13, 2017

ORAL ARGUMENT  
REQUESTED

**I. INTRODUCTION**

1  
2 Instead of honoring the service and commitment of transgender military service  
3 members and recruits, President Trump adopted a facially discriminatory policy targeting  
4 them. The President’s directive reinstates an outdated and discredited policy banning  
5 military accession by openly transgender individuals, and unfairly harms current transgender  
6 service members by prohibiting the Departments of Defense (“DoD”) and Homeland Security  
7 (“DHS”) to pay for certain medical services. The ban constitutes undisguised sex and gender  
8 identity discrimination that serves no legitimate purpose and its implementation will have  
9 significant, damaging impacts on the State of Washington and its residents. The State of  
10 Washington (“Washington” or “State”) seeks to intervene to protect its quasi-sovereign,  
11 proprietary, and sovereign interests from a policy that unconstitutionally targets transgender  
12 Washingtonians. The State’s motion should be granted.

**II. FACTS**

**A. The President Reinstated a Ban on Military Service by Openly Transgender  
Individuals**

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14  
15 On August 25, 2017, President Donald Trump issued a memorandum to the Secretaries  
16 of Defense and Homeland Security directing them to: (1) return to the military’s pre-2016  
17 policy regarding transgender service members; (2) bar openly transgender individuals from  
18 accession, or joining the military; (3) ban the use of DoD and DHS funds to provide certain  
19 medical procedures for transgender service members unless service members are already in the  
20 process of receiving such treatment; and (4) require the Secretaries of Defense and Homeland  
21 Security to issue a plan to implement the above directives, including “how to address  
22 transgender individuals currently serving in the United States military.” Military Service by  
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26

1 Transgender Individuals, 82 Fed. Reg. 41,319 (Aug. 30, 2017) (hereinafter “Transgender  
2 Military Service Ban”).<sup>1</sup> See L. Baker Decl. ¶ 3, Ex. A.

### 3 **B. Military and National Guard Service in Washington State**

4 Washington State is home to approximately 60,000 active, reserve, and National Guard  
5 members, approximately 45,000 of whom are active duty service members. Decl. L. Baker ¶ 4,  
6 Ex. B. Washington hosts six major military installations.<sup>2</sup> Military service members who live  
7 and work in Washington are active participants in Washington’s communities and economy.  
8 Decl. L. Baker ¶ 6, Exs. D and E at 1, 4. The military is the second largest public employer in  
9 Washington State. See [http://www.commerce.wa.gov/growing-the-economy/key-](http://www.commerce.wa.gov/growing-the-economy/key-sectors/military-defense)  
10 [sectors/military-defense](http://www.commerce.wa.gov/growing-the-economy/key-sectors/military-defense) (last visited September 24, 2017). Military members participate in our  
11 housing and consumer markets, generate sales and property tax revenue, and support  
12 businesses statewide. Decl. L. Baker ¶ 7, Exs. D and E at 1, 4. In 2013, Washington’s military  
13 and defense community supported over \$13 billion dollars in annual procurement across the  
14 state, representing over 3% of the state’s GDP. Decl. L. Baker ¶ 8, Ex. F.

15 In addition to the active duty U.S. military, there are more than 8,000 citizen soldiers  
16 and airmen in the Washington National Guard. Decl. D. Postman ¶ 8; Decl. L. Baker ¶ 9; Ex.  
17 G. These Guard members are dedicated to safeguarding lives, property and the economy of  
18 Washington State. Decl. D. Postman ¶¶ 6-11; Decl. L. Baker ¶ 9, Ex. G.<sup>3</sup>

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

24 <sup>2</sup> Locations include Fairchild Air Force Base, Joint Base Lewis-McChord, Whidbey Island Naval Air  
25 Stations, Naval Bases at Everett and Kitsap, and the Thirteenth Coast Guard District. Decl. L. Baker ¶¶ 5-6; Exs.  
26 C and D at 9.

26 <sup>3</sup> However, at any time, Guard members may be called into active duty service in the U.S. military.  
32 U.S.C. § 102. This occurs when there is a determination that more units are needed for national security than  
are in the regular components of the federal ground and air forces. *Id.* When this occurs the National Guard may  
be mobilized and ordered to active federal duty for as long as necessary. *Id.*

1 As Commander-in-Chief of the National Guard, the Governor may deploy the Guard to  
 2 state active service to respond to emergencies and disasters in Washington. Wash. Rev. Code  
 3 §§ 38.04.010; 38.04.040; Decl. D. Postman ¶ 7. When the Governor deploys the Guard for  
 4 state service, Guard members fall under the State’s command and the State pays their wages  
 5 and provides for disability and life insurance benefits related to their service.  
 6 Wash. Rev. Code § 38.24.050; Decl. D. Postman ¶ 9; Decl. L. Baker ¶ 10, Ex. H. The  
 7 Governor has an obligation to make sure that the National Guard conforms to all federal laws  
 8 and regulations, including both state and federal constitutions, when it operates under the  
 9 control of the State. Wash. Rev. Code § 38.08.010; Decl. D. Postman ¶ 4.

10 The Washington National Guard is an integral part of Washington’s emergency  
 11 preparedness and disaster recovery planning. Decl. D. Postman ¶¶ 6-11; Decl. L. Baker ¶ 9,  
 12 Ex. G. Due to the State’s reliance on the Washington National Guard for assistance in  
 13 emergent situations, the State provides the Washington National Guard \$605,615.00 to fund  
 14 three full-time positions: Adjutant General and two Assistant Adjutant Generals. Decl. D.  
 15 Postman ¶ 12. The State also provides \$2,795,512 per year to maintain the buildings utilized  
 16 by the Washington National Guard. Decl. D. Postman ¶ 13. The State also spends \$392,000 to  
 17 fund a special Fire Land training for Washington National Guard members to ensure that  
 18 Guard members have appropriate knowledge, tools, and training when utilized in wildfire  
 19 response. Decl. D. Postman ¶ 11.

20 Since 2007, the Guard has been deployed at least eight times intrastate to fight forest  
 21 fires, battle flooding, and provide rescue services to communities devastated by landslides.  
 22 Decl. D. Postman ¶ 10.

YEAR	DEPLOYMENT	ACTIVATED WASHINGTON NAT'L GUARD MEMBERS	NG STATE ACTIVE DUTY EXPENDITURE
2007-2008	Flooding – Western Washington	480	\$272,232.00
2009	Flooding - Thurston and Pierce Counties	340	\$401,775.00
2012	Taylor Bridge Fire Complex	15	\$396,410.00
2014	SR530 Landslide (Oso Mudslide)	700	\$1,969,570.00
2014	Wildfire Support	800	\$4,969,045.00
2015	Wildfire Support	1500	\$8,058,795.00
2017	March Flooding Eastern WA	41	\$59,526.00
2017	Sep 2017 Wildfire Activation (Note - includes the total for all fires)	356	Currently mobilized and costs not available yet

In 2017, the Washington Guard met 81% of its recruiting goals and 74% of its retention goals. Decl. L. Baker ¶ 11, Ex. I. However, the Washington National Guard expects recruitment challenges in the upcoming years due to changes in United States Army Recruiting Command practices, high recruiter turnover rates, limited recruiting access to certain schools, and potential changes to programs like Military Accessions Vital to National Interest. *Id.*

**III. ARGUMENT**

This Court should permit Washington to intervene. “Intervention is governed by Fed. R. Civ. Proc. 24(a) and (b).” *In re Estate of Ferdinand E. Marcos Human Rts. Litig.*, 536 F.3d 980, 984 (9th Cir. 2008). In determining whether an applicant should be permitted to intervene, courts “follow[] the guidance of Rule 24 advisory committee notes that state that ‘if an absentee would be substantially affected in a practical sense by the determination made in an action, [it] should, as a general rule, be entitled to intervene.’” *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (quoting *Sw. Center for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001)). The Ninth Circuit has held that “[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.”

1 *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (quoting  
 2 *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002)). Pursuant to Rule  
 3 24(a), Washington is entitled to intervene as a matter of right to protect its interests.  
 4 Alternatively, if the Court determines that Washington does not have a right to intervene, the  
 5 Court should grant permissive intervention pursuant to Rule 24(b).

#### 6 **A. Washington Has a Right to Intervene**

7 Intervention as a matter of right should be granted where a party claims an interest in  
 8 the action and is so situated that “disposing of the action may as a practical matter impair or  
 9 impede the movant’s ability to protect its interest, unless existing parties adequately represent  
 10 that interest.” Fed. R. Civ. P. 24(a)(2). Further, the Ninth Circuit “construe[s] Rule 24(a)  
 11 liberally in favor of potential intervenors.” *California ex rel. Lockyer v. United States*, 450  
 12 F.3d 436, 440 (9th Cir. 2006) (citing *Sw. Ctr. for Biological Diversity*, 268 F.3d at 818).

13 When seeking intervention as of right, an applicant must show: (1) a significant  
 14 protectable interest relating to the property or transaction that is the subject of the action; (2)  
 15 the disposition of the action may, as a practical matter, impair or impede the applicant’s ability  
 16 to protect its interest; (3) the application is timely; and (4) the existing parties may not  
 17 adequately represent that applicant’s interest. *Los Angeles*, 288 F.3d at 397 (quoting *Donnelly*  
 18 *v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). Washington meets each of the four  
 19 requirements.

#### 20 **1. Washington has significant protectable interests in protecting the State and its** 21 **residents from discriminatory federal policy**

22 The Transgender Military Service Ban harms Washington’s significant quasi-  
 23 sovereign, proprietary, and sovereign interests.

24 *First*, the Supreme Court has recognized that it is well within the quasi-sovereign  
 25 interests of states to sue as *parens patriae* to protect their residents. *Alfred Snapp & Son, Inc. v.*  
 26 *Puerto Rico ex rel. Barez*, 458 U.S. 592, 601-04 (1982) (explaining that “*parens patriae* is

1 inherent in the supreme power of every State . . . often necessary . . . for the prevention of  
2 injury to those who cannot protect themselves”). In particular, the Court recognizes a state’s  
3 interest “in securing residents from the harmful effects of discrimination.” *Id.* at 609.  
4 Washington’s *parens patriae* authority likewise allows it to ensure that its residents “are not  
5 excluded from the benefits that are to flow from participation in the federal system.” *Id.* at 608.

6 In this matter, Washington has a quasi-sovereign interest in protecting its residents  
7 from a facially discriminatory policy that bans its transgender residents from military and  
8 National Guard service. A policy that restricts employment based on an immutable  
9 characteristic like sex and gender identity, and restricts access to health care based on those  
10 characteristics implicates the “the health and well-being—both physical and economic—of  
11 [Washington] residents.” *See Snapp*, 458 U.S. at 607. Protecting its residents from overt  
12 federal discrimination is squarely within the interest and concern of the State. *Id.* at 609 (“This  
13 Court has had too much experience with the political, social, and moral damage of  
14 discrimination not to recognize that a State has a substantial interest in assuring its residents  
15 that it will act to protect them from these evils.”).

16 *Second*, courts have repeatedly found that any non-trivial economic impact on the  
17 proprietary interests of government entities implicates a concrete, particularized state interest.  
18 *See Texas v. United States*, 787 F.3d 733 (5th Cir. 2015) (holding that Texas has standing to  
19 challenge a federal immigration directive based on the costs of issuing a driver’s licenses to  
20 beneficiaries); *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004) (holding that  
21 potential lost tourist revenues are a sufficient economic concern to trigger a government  
22 entity’s legally cognizable and protectable proprietary interest); *Colo. River Indian Tribes v.*  
23 *Town of Parker*, 776 F.2d 846 (9th Cir. 1985) (holding that potential lost tax revenue was  
24 sufficient to prove that a government entity has a protectable proprietary interest).

25 Here, Washington seeks to intervene to protect its economic and proprietary interests.  
26 Washington collects employment taxes for all workers in Washington State, and, as such, the

1 State's tax revenue will likely be impacted by the loss of military service and advancement  
2 opportunities for Washingtonians who are transgender. The loss of employment and  
3 advancement opportunities for transgender individuals in Washington would also have ripple  
4 effects down the economy, impacting property and sales tax revenues that would be  
5 contributed by transgender Washingtonian military service members and their families.<sup>4</sup> These  
6 impacts on Washington's tax base will negatively impact Washington's proprietary interest in  
7 its own economic health and growth.

8 *Third*, this case implicates Washington's sovereign interests in protecting its territory  
9 and maintaining its antidiscrimination laws. As the Supreme Court has held, a state has a  
10 sovereign interest in "preserv[ing] its sovereign territory." *Massachusetts v. EPA*, 549 U.S.  
11 497, 518-19 (2007) (affirming that states have an "independent interest" in protecting the  
12 natural environments and resources within the state's boundaries) (quoting *Georgia v.*  
13 *Tennessee Copper Co.*, 206 U.S. 230 (1907)). In Washington, a critical part of the National  
14 Guard's mission is to prevent and minimize damage caused by natural disasters like wildfires,  
15 landslides, flooding, and earthquakes. Decl. D. Postman ¶¶ 6-11. Excluding transgender  
16 Washingtonians from the pool of candidates who can join the Washington National Guard may  
17 result in diminished numbers of service members who can provide emergency response and  
18 disaster mitigation in emergent situations when Washington needs assistance the most. Further,  
19 non-transgender individuals may likewise forego National Guard service in favor of an  
20 inclusive and nondiscriminatory employer. Any reduction in qualified service members  
21 negatively impacts the State's interest in responding to and mitigating harms to its territory.

22 In addition to protecting its natural resources, Washington has a sovereign interest in  
23 maintaining and enforcing its longstanding anti-discrimination laws. *See* Wash. Rev. Code  
24 § 49.60.010 (legislative finding that discrimination "menaces the institutions and foundation of  
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26 <sup>4</sup> *See e.g.* Decl. D. Postman ¶ 16 (noting that a transgender Guard member was moved to inactive status due to the soldier's gender transition).

1 a free democratic state”); Decl. D. Postman ¶ 4. “[T]he exercise of sovereign power . . .  
2 involves the power to create and enforce a legal code; both civil and criminal[.]” *Snapp*, 458  
3 U.S. at 601. The Transgender Military Service Ban infringes on Washington’s sovereign  
4 interest by overriding its longstanding anti-discrimination law, also known as the Washington  
5 Law Against Discrimination. Wash. Rev. Code §§ 49.60.010 – 49.60.505. The Transgender  
6 Military Service Ban injures Washington by permitting discrimination against Washingtonians  
7 and even requiring the State to discriminate against its own people by barring transgender  
8 people from joining the Washington National Guard. *Contra* Wash. Rev. Code §§ 49.60.030;  
9 49.60.040(26); 49.60.180 (guaranteeing a civil right to be free from sex or gender identity  
10 discrimination, including in employment); Decl. D. Postman ¶ 4. The Transgender Military  
11 Service Ban impairs the State’s unique interest in making and enforcing its civil rights  
12 protections.

13 In short, Washington faces a mix of harms to its interests as long as the Transgender  
14 Military Service Ban is in place. Washington easily satisfies the first factor for intervention as  
15 of right.

## 16 **2. Disposition of this action will impair or impede Washington’s interests**

17 To determine whether an intervenor’s interests would be impaired or impeded if a  
18 matter continued without the intervenor as a party, a court “must determine whether the  
19 [intervenor’s] interests would as a practical matter be impaired or impeded by the disposition  
20 of th[e] action.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d at 822. “If an absentee  
21 would be substantially affected in a practical sense by the determination made in an action, he  
22 should, as a general rule, be entitled to intervene.” *Citizens for Balanced Use v. Mont.*  
23 *Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting Fed. R. Civ. P. 24 advisory  
24 committee’s note). *See also Lockyer*, 450 F.3d at 441 (affirming that the Ninth Circuit takes  
25 “the view that a party has sufficient interest for intervention purposes if it will suffer a practical  
26 impairment of its interests as a result of the pending litigation”).

1 A decision on the constitutionality of the Transgender Military Service Ban will have  
 2 far-reaching impacts on Washington’s ability to protect its residents’ health, well-being, and  
 3 economic security. Indeed, if the military is allowed to implement this facially discriminatory  
 4 policy, the result will likely: (a) thwart Washington’s ability to protect its residents from  
 5 facially discriminatory federal policies; (b) prevent Washington’s transgender military service  
 6 members from obtaining needed medical care from military providers, with the result that the  
 7 State may be required to pay for such services; (c) reduce Washington State tax revenue due to  
 8 the extinction of military employment and advancement opportunities; (d) impede the  
 9 Washington National Guard’s ability to recruit and retain members to protect Washington’s  
 10 natural resources in times of emergent need; and (e) force Washington to violate its  
 11 longstanding anti-discrimination law and discriminate against its own people in staffing the  
 12 Washington National Guard. Disposition of this case will have lasting impact on those  
 13 interests, and Washington should be allowed to represent its interests and the interests of  
 14 Washingtonians in this matter.

15 **3. Washington’s motion to intervene is timely**

16 There can be no question that Washington’s motion is timely. To determine whether a  
 17 motion to intervene is timely, courts consider (1) “the state of the proceeding at which an  
 18 applicant seeks to intervene,” (2) “the prejudice to other parties,” and (3) “the reason for the  
 19 length of the delay.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004).  
 20 Here, this case is just beginning. The complaint was filed on August 28, 2017, and the  
 21 defendants have yet to file a responsive pleading. Washington’s motion meets the timeliness  
 22 requirement.<sup>5</sup>

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 25 <sup>5</sup> Although a preliminary injunction motion has been filed, the briefing is not complete and the Court has  
 26 not yet ruled. If Washington’s request for intervention is granted, the State will confer with the parties and the  
 Court regarding the appropriateness of the State’s participation in any pending motions.

1           **4. Washington’s interests as a state are inadequately represented by the current**  
2           **parties**

3           Washington’s unique state interests cannot adequately be represented by the parties to  
4 this action. To succeed in a motion to intervene, “[t]he burden on proposed intervenors in  
5 showing inadequate representation is minimal, and would be satisfied if they could  
6 demonstrate that representation of their interests ‘may be’ inadequate.” *Arakaki*, 324 F.3d at  
7 1086 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)). *See also*  
8 *Citizens for Balanced Use*, 647 F.3d at 900 (noting that courts should not require an absolute  
9 certainty that a party’s interests will be impaired or that existing parties will not adequately  
10 represent its interests). Three factors are relevant to determining whether a proposed  
11 intervenor’s interests are adequately represented: (1) “whether the interest of a present party is  
12 such that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the  
13 present party is capable and willing to make such arguments; and (3) whether the proposed  
14 intervenor would offer any necessary elements to the proceeding that other parties would  
15 neglect.” *Arakaki*, 324 F.3d at 1086 (citing *California v. Tahoe Reg’l Planning Agency*, 792  
16 F.2d 775, 778 (9th Cir. 1986)).

17           The State’s interests are multifaceted and complex, and include protecting its residents’  
18 health and economic well-being, ensuring that the State does not lose revenue and taxes,  
19 alleviating barriers to service in the Washington National Guard, and protecting the State from  
20 being forced to discriminate against its own residents. These state interests simply cannot be  
21 adequately represented or even argued by private plaintiffs. These interests are the exclusive  
22 concern of the State, and, as such, are necessarily distinct from the private plaintiffs’ interests.  
23 Allowing this matter to move forward without the State as a party would significantly impede  
24 Washington’s ability to protect its interests. Washington should be permitted to intervene as a  
25 matter of right.  
26

**B. In the Alternative, Permissive Intervention Should Be Granted**

If this Court finds that Washington does not meet the burden for intervention as of right, the Court should nonetheless grant Washington permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B). The rule provides in pertinent part that, “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” *Blum v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013) (quoting Fed. R. Civ. P. 24(b)(1)). Generally, permissive intervention requires “(1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant’s claim or defense and the main action.” *Id.* (quotation marks and citation omitted). In determining whether to exercise its discretion to grant permissive intervention, the Court considers “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Washington meets these requirements. First, as discussed above, Washington has multiple interests that are injured by the Transgender Military Service Ban. Second, Washington’s motion is timely. Third, there is a common question of law and fact between Washington’s claims and the current plaintiffs’ claims: both seek a judicial declaration that the Transgender Military Service Ban is unconstitutional. As such, Washington meets all of the requirements for permissive intervention and Washington’s motion should be granted.

**IV. CONCLUSION**

For the foregoing reasons, Washington asks that this Court grant its motion to intervene and order the clerk to file its proposed Complaint in Intervention attached hereto as Exhibit A.

1 DATED this 25th day of September 2017.

2 ROBERT W. FERGUSON  
3 Washington Attorney General

4 /s/ La Rond Baker  
5 LA ROND BAKER, WSBA No. 43610  
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**CERTIFICATE OF SERVICE**

I hereby certify that the State of Washington’s Motion to Intervene and supporting documents were electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

September 25, 2017

/s/ La Rond Baker  
LA ROND BAKER, WSBA #43610

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# Proposed Complaint Exhibit A

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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.*

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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

[PROPOSED] 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

1 health, safety, and physical and economic well-being extends to all of the State's residents,  
2 including 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  
5 rights and privileges provided by the U.S. Constitution.

6 8. The State has a proprietary interest in protecting the State's economic health  
7 from 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  
12 who can join the Washington National Guard may result in diminished numbers of service  
13 members who can provide emergency response and disaster mitigation. The State has declared  
14 that 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

1 Washington's militia. Between 2007 and September 2017, the Washington National Guard was  
2 deployed eight times to respond to emergencies in Washington State to fight forest fires, battle  
3 flooding, and provide rescue services to communities devastated by landslides. Recruitment for  
4 the Washington National Guard is subject to DoD policies governing accession into military  
5 service, 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,  
11 Transgender 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.  
19 DoD has authority over the United States armed forces and is responsible for implementing  
20 policies 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.

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  
4 service 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  
9 service by openly transgender individuals. The report found that there was no compelling  
10 reason for 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  
14 regarding military service by transgender individuals. On or about July 13, 2015, Secretary  
15 Carter also terminated the practice of involuntarily separating or denying reenlistment or  
16 continuation of active or reserve service on the basis of gender identity – unless it went through  
17 an approval 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  
15 multiyear strategic research and planning regarding implementation of policies that would  
16 allow openly transgender individuals into military service. President Trump also relied upon  
17 his own judgment to determine that “the previous Administration failed to identify a sufficient  
18 basis to conclude that terminating the [military’s] longstanding policy and practice [of  
19 excluding transgender individuals from military service] would not hinder military  
20 effectiveness and lethality, disrupt unit cohesion, or tax military resources[.]” Transgender  
21 Military Service Ban § 1(a). President Trump stated his judgment that “there remain  
22 meaningful concerns that further study is needed” to ensure that allowing openly transgender  
23 individuals into military service would not have 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  
26

1 effective on March 23, 2018. Military Service by Transgender Individuals, 82 Fed. Reg.  
2 41319.

3 **V. LEGAL CLAIMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

6 38. Defendants’ violation causes ongoing harm to Washington State and its  
7 residents.

8 **V. PRAYER FOR RELIEF**

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

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

12 40. Enjoin Defendants from implementing or enforcing the Transgender Military  
13 Service Ban;

14 41. Enjoin Defendants from barring transgender individuals accession into military  
15 service when exclusion is based solely on an individual’s sex, gender identity, or transgender  
16 status;

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

19 43. Enjoin Defendants from denying transgender service members access to  
20 necessary medical care;

21 44. Award reasonable attorneys’ fees and allowable costs of court; and

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

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26

1 DATED September 25, 2017.

2  
3 ROBERT W. FERGUSON  
Washington Attorney General

4 */s/ La Rond Baker*  
5 \_\_\_\_\_  
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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, 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,

*Defendants.*

Case No: 2:17-cv-1297-MJP

[PROPOSED] ORDER GRANTING  
STATE OF WASHINGTON'S  
MOTION TO INTERVENE

Motion Noted: October 13, 2017

1 This matter came before the Court by motion on the State of Washington's Motion to  
2 Intervene. The Court has considered the motion and documents filed therewith, including  
3 declarations, the exhibits attached thereto, the State of Washington's proposed Complaint in  
4 Intervention for Declaratory and Injunctive Relief, and briefing submitted to the Court on this  
5 motion. Having considered the foregoing and been fully informed:

6 IT IS HEREBY ORDERED:

7 \_\_\_\_\_ Washington's Motion to Intervene as of right pursuant to Fed. R. Civ. P.  
8 24(a)(2) is GRANTED;

9 \_\_\_\_\_ Washington's Motion to for permission to intervene pursuant to Fed. R. Civ. P.  
10 24(b)(1)(B) is GRANTED.

11  
12 Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

13  
14 \_\_\_\_\_  
15 UNITED STATES DISTRICT JUDGE

16  
17 Presented by:

18 /s/ La Rond Baker  
19 LA ROND BAKER, WSBA #43610  
20 Assistant Attorney General  
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