

1 **I. Nature and Complexity of the Case**

2 **A. Plaintiffs' Statement**

3 Plaintiffs filed this action challenging the constitutionality of Defendants' policy
4 prohibiting military service by openly transgender individuals ("Ban"). Specifically, Plaintiffs
5 allege that the Ban violates Plaintiffs' right to equal protection under the law, to due process, and
6 to freedom of expression as guaranteed by the First Amendment.

7 Plaintiff-Intervenor Washington State ("Washington") joined this action to challenge the
8 constitutionality of Defendants' policy prohibiting military service by openly transgender
9 individuals and to protect transgender Washingtonians from discrimination, to preclude the
10 Washington National Guard from discriminating against its members, and to ensure that
11 Washington is able to protect its natural resources and residents in times of emergency need by
12 ensuring that all Washingtonians who wish to serve in the Washington National Guard can.
13 Specifically, Washington alleges that the Ban violates the substantive due process and equal
14 protection guarantees of the Fifth Amendment.

15 Hereinafter, the term "Plaintiffs" includes the *Karnoski* plaintiffs and Washington.

16 **B. Defendants' Statement**

17 After months of study and consideration by military leaders, the Department of Defense,
18 in coordination with the Department of Homeland Security, has announced a new policy
19 regarding military service by transgender individuals. The Department of Defense's new policy
20 is focused on addressing a medical condition – gender dysphoria – and the various treatments for
21 that condition. Among other provisions, the Department of Defense's new policy generally
22 allows currently serving service members who have been diagnosed with gender dysphoria to
23 continue serving in their preferred gender and receive medically necessary treatment for their
24 condition. The Department of Defense's new policy also generally allows transgender
25 individuals without a history or diagnosis of gender dysphoria, who are otherwise qualified for
26 service, to serve in the military, like all other service members, in their biological sex.

27 The Department of Defense's new policy moots Plaintiffs' claims and leaves them
28 without standing. Yet, even if Plaintiffs had standing to challenge the Department of Defense's

1 new policy, that policy clearly passes constitutional muster. A panel of military leaders has
2 studied the issues thoroughly and exercised their military judgment in forming a comprehensive
3 policy to address a medical condition. The Department of Defense's determination regarding the
4 composition of the fighting force is entitled to substantial deference. The Court should not
5 substitute its judgment for the considered judgment of military leaders on the issue of how
6 medical conditions should be addressed in the armed forces. The Department of Defense's new
7 policy is, therefore, plainly constitutional.

8 **C. Joint Statement**

9 The case is not unusually complex as defined by Local Civil Rule 102.

10 **II. Proposed Deadline for Joining Additional Parties**

11 The parties propose **May 18, 2018** as the deadline to add additional parties without leave
12 of Court.

13 **III. Consent to Magistrate Judge**

14 The parties do not consent to a Magistrate Judge.

15 **IV. Discovery Plan**

16 **A. Initial Disclosures**

17 The parties exchanged initial disclosures on **February 9, 2018**.

18 **B. Subjects, Timing, and Potential Phasing of Discovery**

19 **1. Plaintiffs' Statement**

20 Plaintiffs plan to conduct discovery regarding the ban on military service by transgender
21 individuals, including the process that led to the Ban, Defendants' asserted justifications for the
22 Ban, and communications regarding the Ban. The *Karnoski* Plaintiffs have already served written
23 discovery on Defendants. Plaintiff State of Washington has not served discovery requests.
24 Plaintiffs anticipate to begin taking depositions after receiving and reviewing documents relevant
25 to the deponents at issue, which may first require resolution of potential disputes regarding
26 privilege objections raised by Defendants. As noted below, the parties are also working to
27 coordinate discovery across the cases challenging the Ban, but Plaintiffs reserve the right to take
28 the deposition of any witness whose deposition has not been noticed in this case. Plaintiffs are

1 meeting and conferring with Defendants regarding their responses to Plaintiffs' written discovery
2 and Defendants' assertions of privilege.

3 **2. Defendants' Statement**

4 Defendants plan to conduct discovery regarding Plaintiffs' standing to sue; opinions
5 offered in declarations by former Service and Under Secretaries and a former Chairman of the
6 Joint Chiefs of Staff concerning military readiness, unit cohesion, morale, and cost; and the
7 qualifications of Plaintiffs' two proffered expert witnesses to provide their opinions, as well as
8 the bases and reliability of those opinions. Defendants anticipate serving written discovery and
9 deposing the individual Plaintiffs, and the individuals who have provided declarations in support
10 of Plaintiffs' claims.

11 **3. Joint Statement**

12 The parties agree that discovery produced by Defendants in *Doe v. Trump*, No. 17-1597
13 (D.D.C.), *Stone v. Trump*, No. 17-2459 (D. Md.), and *Stockman v. Trump*, No. 17-cv-1799 (C.D.
14 Cal.) can be used as if the discovery was taken in this litigation. Accordingly, the parties have
15 agreed to a stipulated protective order and cross-use agreement that was entered by the Court on
16 February 14, 2018. *See* Dkt. No. 183.

17 The parties will also continue to discuss the possibility of further coordination of
18 discovery, including depositions, across the related cases.

19 The parties do not propose staging or phasing discovery.

20 **C. Electronically Stored Information**

21 The parties agree that electronically stored information (ESI) is likely to be responsive to
22 discovery requests in this case, and are negotiating an ESI protocol.

23 **D. Privilege Issues**

24 If discoverable but confidential information is sought, the parties agree to follow the
25 provisions set forth in the Stipulated Uniform Protective Order and Cross-Use Agreement, Dkt.
26 No. 183. If any inadvertent disclosures occur, the parties agree to follow the provisions of the
27 Stipulated Fed. R. Evid. 502(d) Order, Dkt. No. 182.

1 **1. Plaintiffs' Statement**

2 The *Karnoski* Plaintiffs have received written discovery responses from Defendants
3 raising numerous privilege objections, and Plaintiffs have received document productions with
4 voluminous redactions and withheld documents. The *Karnoski* Plaintiffs are currently in the
5 process of reviewing those objections and Defendants' privilege logs and anticipate that they
6 may require motion practice to resolve, depending on the outcome of the meet-and-confer
7 process.

8 **2. Defendants' Statement**

9 Defendants have raised various privileges in response to Plaintiffs' discovery requests.
10 To the extent Plaintiffs choose to challenge the invocation of those privileges, Defendants are
11 committed to working with Plaintiffs to try to limit the scope of the parties' disputes.

12 **E. Proposed Limitations on Discovery**

13 **1. Plaintiffs' Statement**

14 Plaintiffs propose that the Rule 30(a)(2)(A)(ii) limit on the number of depositions per
15 side be increased from 10 to 15 depositions, given the number of individuals likely to have
16 discoverable information concerning the challenged policy. Courts in other cases challenging the
17 policy have similarly permitted 15 depositions per side. *See, e.g., Stone v. Trump*, No. 1:17-CV-
18 2459-MJG, Dkt. No. 100 (D. Md. Dec. 27, 2017). Where appropriate and feasible, Plaintiffs may
19 be able to rely upon depositions taken in these other cases, but they should not be prohibited
20 from obtaining the particular discovery they believe is necessary to prosecute their own case.
21 Plaintiffs note that Defendants themselves have indicated that they anticipate taking up to 19
22 depositions. Dkt. No. 179, ¶¶ 4-6. Plaintiffs also do not agree that any *decrease* in the number of
23 document requests, interrogatories, or requests for admission permitted in ordinary litigation
24 would be appropriate in this case.

25 **2. Defendants' Statement**

26 Because Plaintiffs may participate in the depositions that are taking place in the other
27 three related cases, and Plaintiffs may use any of the discovery Defendants are producing in the
28 other cases, a decrease in the presumptive discovery limits are appropriate here. In particular,

1 Defendants suggest that Plaintiffs be limited to five depositions beyond those that are taking
2 place in the other cases, 20 interrogatories, 20 requests for admissions, and 20 document
3 production requests. These limitations are proportionate to the needs of the case, particularly
4 given the voluminous discovery Defendants are providing in the other related cases.

5 **F. Need for Discovery-Related Orders**

6 None at this time.

7 **V. Local Civil Rule 26(f)(1) Items**

8 **A. Prompt Case Resolution**

9 The parties have met and discussed the possibility of settling or otherwise resolving the
10 case. The parties have been unable to come to any agreements that obviate the need for this
11 Court to resolve Plaintiffs' claims and Defendants' defenses.

12 **B. Alternative Dispute Resolution**

13 The parties do not intend to seek mediation or arbitration at this time.

14 **C. Related Cases**

15 Plaintiffs have notified this Court of other actions in other jurisdictions challenging the
16 Ban. *See* Dkt. No. 27.

17 **D. Discovery Management**

18 At this time, the parties do not expect significant or protracted discovery. The parties
19 agree to cooperate in a manner that minimizes expenses while preserving each side's ability to
20 assert their claims and defenses. The parties are amenable to resolving discovery disputes
21 through informal means (such as through telephone conferences or letter briefs) at the Court's
22 direction. The parties have also agreed that service via email is acceptable pursuant to Federal
23 Rule of Civil Procedure 5(b)(2)(E). The parties also agree that for any third-party that has
24 provided a declaration on behalf of a party, the party that has submitted the declaration will agree
25 to accept service of a Rule 45 subpoena on behalf of that third party where authorized to do so.

26 **E. Anticipated Discovery Sought**

27 The parties anticipate written discovery, depositions, and third-party discovery.
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1 **F. Phasing Motions**

2 Not at this time.

3 **G. Preservation of Discoverable Information**

4 The parties do not anticipate any issues preserving discoverable information.

5 **H. Privilege Issues**

6 *See* Section IV.D, *supra*.

7 **I. Model Protocol for Discovery of ESI**

8 The parties are currently negotiating an ESI protocol that will be used in this case as well
9 as in *Doe v. Trump*, No. 17-1597 (D.D.C.), *Stone v. Trump*, No. 17-2459 (D. Md.), and *Stockman*
10 *v. Trump*, No. 17-cv-1799 (C.D. Cal.).

11 **J. Alternatives to Model Protocol**

12 None at this time (*see* Section V.I, *supra*).

13 **VI. Date for Discovery Completion & Deadline to File Dispositive Motions**

14 Plaintiffs propose a discovery cutoff of **September 14, 2018**, inclusive of both fact and
15 expert discovery and that all dispositive motions be filed on or before **September 28, 2018**.

16 Defendants propose a discovery cutoff of **November 1, 2018**, inclusive of both fact and expert
17 discovery and that all dispositive motions be filed on or before **November 16, 2018**.

18 The parties propose that proponents serve expert reports no later than **August 15, 2018**,
19 and that opponents serve any rebuttal reports no later than **September 12, 2018**.

20 **VII. Bifurcation of Liability and Damages Issues or Other Issues**

21 Plaintiffs are not seeking damages. At this time, the parties do not believe that the case
22 should be bifurcated.

23 **VIII. Pretrial Statements and Pretrial Order**

24 At this time, the parties are not willing to waive pretrial statements and the pretrial order.

25 **IX. LCR 39.2 Individualized Trial Program**

26 The parties do not agree to an Individualized Trial Program.

27 **X. Other Suggestions for Shortening or Simplifying Case**

28 None at this time.

1 **XI. Month of Trial**

2 **A. Plaintiffs' Statement**

3 Plaintiffs propose **December 2018** as the trial month.

4 **B. Defendants' Statement**

5 Defendants propose **April 2019** as the trial month.

6 **C. Jury / Non-Jury Trial**

7 Plaintiffs have not demanded a jury.

8 **XII. Length of Trial**

9 The parties estimate 5-10 days.

10 **XIII. Trial Counsel**

11 **A. For Plaintiffs**

12 Vanessa Barsanti, Kirkland & Ellis LLP

13 Tara Borelli, Lambda Legal Defense and Education Fund, Inc.

14 Sasha Buchert, Lambda Legal Defense and Education Fund, Inc.

15 Carl Charles, Lambda Legal Defense and Education Fund, Inc.

16 Jordan Heinz, Kirkland & Ellis LLP

17 James F. Hurst, P.C., Kirkland & Ellis LLP

18 Kara Ingelhart, Lambda Legal Defense and Education Fund, Inc.

19 Scott Lerner, Kirkland & Ellis LLP

20 Derek A. Newman, Newman Du Wors LLP

21 Stephen R. Patton, Kirkland & Ellis LLP

22 Peter Perkowski, OutServe-SLDN, Inc.

23 Peter Renn, Lambda Legal Defense and Education Fund, Inc.

24 Daniel Siegfried, Kirkland & Ellis LLP

25 Jason B. Sykes, Newman Du Wors LLP

26 Camilla B. Taylor, Lambda Legal Defense and Education Fund, Inc.

27 Ben Tyson, Kirkland & Ellis LLP

1 **B. For State of Washington**

2 La Rond Baker, Assistant Attorney General

3 **C. For Defendants**

4 Ryan Parker, U.S. Department of Justice

5 Andrew Carmichael, U.S. Department of Justice

6 Ashley Cheung, U.S. Department of Justice

7 Courtney Enlow, U.S. Department of Justice

8 Robert Norway, U.S. Department of Justice

9 Matthew Skurnik, U.S. Department of Justice

10 **XIV. Service Status**

11 All Defendants have been served.

12 **XV. Scheduling Conference**

13 To the extent necessary to resolve any disputes, or if it would be of assistance to the
14 Court, the parties are available for a scheduling conference.

15 **XVI. Corporate Disclosure Statement**

16 Plaintiffs Human Rights Campaign, the American Military Partners Association, and
17 Gender Justice League have filed corporate disclosure statements. *See* Docket Nos. 2, 3, 114.

18 **XVII. Video Recording of Proceedings**

19 The parties agree to the use of cameras and/or video equipment at trial in this matter.
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1 Respectfully submitted May 4, 2018.

2 **NEWMAN DU WORS LLP**

3 s/ Jason B. Sykes

4 Derek A. Newman, WSBA #26967

5 *dn@newmanlaw.com*

6 Jason B. Sykes, WSBA #47533

7 *jason@newmanlaw.com*

8 2101 Fourth Ave., Ste. 1500

9 Seattle, WA 98121

10 (206) 274-2800

11 **LAMBDA LEGAL DEFENSE AND EDUCATION
12 FUND, INC.**

13 Camilla B. Taylor (admitted pro hac vice)

14 Tara L. Borelli, WSBA #36759

15 Peter C. Renn (admitted pro hac vice)

16 Natalie Nardecchia (admitted pro hac vice)

17 Sasha Buchert (admitted pro hac vice)

18 Kara N. Ingelhart (admitted pro hac vice)

19 Carl Charles (admitted pro hac vice)

20 **OUTSERVE-SLDN, INC.**

21 Peter Perkowski (admitted pro hac vice)

22 **KIRKLAND & ELLIS LLP**

23 James F. Hurst, P.C. (admitted pro hac vice)

24 Stephen R. Patton (admitted pro hac vice)

25 Jordan Heinz (admitted pro hac vice)

26 Scott Lerner (admitted pro hac vice)

27 Vanessa Barsanti (admitted pro hac vice)

28 Daniel Siegfried (admitted pro hac vice)

Ben Tyson (admitted pro hac vice)

Attorneys for Plaintiffs

UNITED STATES DEPARTMENT OF JUSTICE

s/Ryan B. Parker

Ryan B. Parker

Gerald Brinton Lucas

Andrew Carmichael

United States Department of Justice

Civil Division, Federal Programs Branch

950 Pennsylvania Ave., NW Rm 7326

Washington, DC 20530

Ryan.parker@usdoj.gov

Brinton.lucas@usdoj.gov

Andrew.e.carmichael.usdoj.gov

Attorneys for Defendants

**OFFICE OF THE WASHINGTON STATE
ATTORNEY GENERAL**

s/La Rond Baker

La Rond Baker

Colleen Melody

Assistant Attorneys General

Civil Rights Unit

Office of the Washington State Attorney
General

800 Fifth Avenue, Suite 200

Seattle, WA 98104

larondb@atgwa.gov

colleenm1@atg.wa.gov

*Counsel for Plaintiff-Intervenor State of
Washington*

CERTIFICATE OF SERVICE

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The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on May 4, 2018.

s/ Jason B. Sykes
Jason B. Sykes, WSBA #47533
jason@newmanlaw.com
Newman Du Wors LLP
2101 Fourth Ave., Ste. 1500
Seattle, WA 98121
(206) 274-2800