



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Civil Rights Unit

800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104
(206) 442-4492

January 9, 2019

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Karnoski, et al v. Trump*, 18-35347 – Washington’s Response to Defendants-Appellants’ Letter of Supplemental Authority regarding *Doe 2 v. Patrick M. Shanahan*, 18-5257 (D.C. Cir. Jan. 4, 2019)

Dear Ms. Dwyer,

For the reasons detailed in Washington’s briefs and below, *Doe* does nothing to change the proper result here. This Court should affirm the district court’s decision to maintain the preliminary injunction.

First, the *Doe* order provides no basis for the D.C. Circuit’s determination that it was error to find the Implementation Plan constituted a significant change and was not a new policy but merely an implementation of the 2017 Presidential Memorandum—even though the D.C. Circuit acknowledged there is a fact dispute as to whether actions taken to create the Implementation Plan were independent.

Second, the D.C. Circuit mistakenly believed that the Implementation Plan constitutes a significant change warranting dissolution of the injunction. The “reliance exception,” for example, was expressly contemplated by the 2017 Presidential Memorandum, and in any event, is severable if relied upon in any ruling unfavorable to Defendants-Appellants. Similarly, the Implementation Plan’s requirement of service only in accordance with “biological sex” does not constitute a significant change as it does exactly the President had previously

ATTORNEY GENERAL OF WASHINGTON

Molly C. Dwyer
January 9, 2019
Page 2

ordered—barring transgender individuals from serving openly in accordance with their gender identity. The D.C. Circuit did not address any of these issues.

Third, although the D.C. Circuit noted the purpose of interim equitable relief is to protect against irreparable injury and balance equities as the litigation moves forward, it did not address either. Specifically, it did not address what the district court here found—that regardless of whether the Implementation Plan constitutes a “new policy,” it inflicts the same irreparable harms as the policy previously enjoined: discriminatory stigma, loss of economic opportunity, and forcing the State to discriminate against its own residents. Nor did the D.C. Circuit balance the harms to transgender servicemembers against the purported harms to Defendants-Appellants or discuss why the public interest does not benefit from the status quo until the matter is resolved.

The *Doe* decision does not alter the correct result here. The district court properly declined to dissolve the preliminary injunction.

Respectfully submitted,

s/ La Rond Baker

LA ROND BAKER, WSBA No. 43610
COLLEEN MELODY, WSBA No. 42275
ERIC MENTZER, WSBA No. 21243

Assistant Attorneys General

ALAN D. COPSEY, WSBA 23305

Deputy Solicitor General

Washington State Attorney General

800 Fifth Ave, Suite 2000

Seattle, WA 98104

(206) 516-2999

LaRondB@atg.wa.gov

ColleenM1@atg.wa.gov

EricM@atg.wa.gov

AlanC@atg.wa.gov

ATTORNEY GENERAL OF WASHINGTON

Molly C. Dwyer
January 9, 2019
Page 3

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2019, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the CM/ECF system. Service of such filing will be accomplished by the CM/ECF system upon all participants.

s/ La Rond Baker _____
LA ROND BAKER, WSBA No. 43610