

Honorable Marsha J. Pechman

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

RYAN KARNOSKI; STAFF SERGEANT  
CATHERINE SCHMID; DREW LAYNE, formerly  
known as K.G.; CHIEF WARRANT OFFICER  
LINDSEY MULLER; PETTY OFFICER FIRST  
CLASS TERECE LEWIS; PETTY OFFICER  
SECOND CLASS PHILLIP STEPHENS; PETTY  
OFFICER SECOND CLASS MEGAN WINTERS;  
JANE DOE; HUMAN RIGHTS CAMPAIGN;  
GENDER JUSTICE LEAGUE; AND AMERICAN  
MILITARY PARTNER ASSOCIATION OF  
AMERICA,

*Plaintiffs,*

v.

DONALD J. 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; MARK ESPER, in his  
official capacity as Secretary of Defense; the  
UNITED STATES DEPARTMENT OF  
DEFENSE; KEVIN MCALEENAN, in his official  
capacity as Acting Secretary of Homeland Security;  
and the UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,

*Defendants.*

Case No: 2:17-cv-1297

STATE OF WASHINGTON'S  
FIRST AMENDED COMPLAINT  
IN INTERVENTION FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

**I. INTRODUCTION**

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

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

10 **II. JURISDICTION AND VENUE**

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

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

15 **III. PARTIES**

16 **Intervenor-Plaintiff State of Washington**

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

22 6. The State has a quasi-sovereign interest in protecting the health, safety, and well-being  
23 of its residents, including protecting its residents from unlawful discrimination and the harms  
24 that result. The State’s interest in preventing and remedying injuries to the public’s health, safety,  
25 and physical and economic well-being extends to all of the State’s residents, including  
26 individuals who suffer indirect injuries and members of the general public.

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

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

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

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

23           11.      The Washington National Guard is an integral part of Washington’s emergency  
24 preparedness and disaster recovery planning and response, as well as a member of Washington’s  
25 militia. Since 2007, the Washington National Guard was activated at least fifteen times to  
26 respond to emergencies in Washington State to fight forest fires, battle flooding, alleviate

1 damage to essential transportation systems and infrastructure, assist during severe storms, and  
2 provide rescue services to communities devastated by landslides; prepare Washington for  
3 emergency response to disasters including earthquake and hazardous materials; and conduct  
4 cyber security operations for Washington’s election system. Recruitment for the Washington  
5 National Guard is subject to DoD policies governing accession into military service, which  
6 includes the Transgender Military Service Ban.

7 **Defendants**

8 12. Defendant Donald Trump is the President of the United States, and issued the  
9 August 25, 2017, Transgender Military Service Ban, requiring the United States military to  
10 return to its longstanding practice of discriminating against transgender individuals by not  
11 allowing them to access medical care or serve in accordance with their gender identity, and  
12 requested DoD create an Implementation Plan for the Ban, and ordered the Implementation Plan  
13 to be presented to him by February 21, 2018.

14 13. Defendant United States of America includes all government agencies and  
15 departments responsible for implementation of the Transgender Military Service Ban.

16 14. Defendant Mark Esper is the Secretary of the Department of Defense. His  
17 predecessor was then-Secretary James N. Mattis. Both Secretaries of the Department of Defense  
18 are or were responsible for implementing the Transgender Military Service Ban, including the  
19 limitations on accession and health care.

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

25 16. Defendant Kevin McAleenan is the Acting Secretary of the Department of  
26 Homeland Security (“DHS”). Secretary McAleenan is responsible for implementing the

1 Transgender Military Service Ban, including the limitations on accession and health care, for the  
2 Coast Guard. Secretary McAleenan is also responsible for the development of additional policies  
3 to implement the directive.

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

#### 8 IV. ALLEGATIONS

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

11 19. In 2014, the military issued its first report analyzing the military's ban on service  
12 by openly transgender individuals. The report found that there was no compelling reason for  
13 banning transgender individuals from military service.

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

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

25 22. After lifting the categorical ban on military service by transgender individuals,  
26 DoD issued guidance regarding the implementation of a policy that would allow openly

1 transgender individuals accession into military service. The policy was to be implemented in  
2 stages over twelve months. The process included training for the entire force, and set July 1,  
3 2017, as the date that the military would allow accession by transgender recruits.

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

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

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



1 34. Defendants’ violation causes ongoing harm to Washington State and its residents.

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

4 35. Plaintiff realleges and incorporates by reference herein all of the allegations of  
5 paragraphs 1 through 34.

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

8 37. The Transgender Military Service Ban, including its Implementation Plan,  
9 without adequate justification, impermissibly burdens fundamental liberty interests of  
10 transgender Washingtonians who currently serve or seek accession into the military.

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

14 39. Through their actions above, Defendants have violated the substantive due  
15 process protections of the Fifth Amendment.

16 40. Defendants’ violation causes ongoing harm to Washington State and its residents.

17 **VI. PRAYER FOR RELIEF**

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

19 41. Declare that the Transgender Military Service Ban, including its Implementation  
20 Plan, is unauthorized by and contrary to the Constitution and laws of the United States;

21 42. Enjoin Defendants from implementing or enforcing the Transgender Military  
22 Service Ban;

23 43. Enjoin Defendants from barring transgender individuals accession into military  
24 service when exclusion is based solely on an individual’s sex, gender identity, or transgender  
25 status;



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was 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.

Dated this 31st day of July 2019 in Seattle, Washington.

s/ Caitilin Hall  
Caitilin Hall  
Legal Assistant

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