

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

**DEFENDANTS' ANSWER TO STATE
OF WASHINGTON'S FIRST
AMENDED COMPLAINT IN
INTERVENTION**

Defendants, through their undersigned counsel, hereby answer the First Amended Complaint in Intervention by State of Washington for Declaratory and Injunctive Relief (the "Intervenor Complaint") as follows:

I. INTRODUCTION

1. This paragraph consists of Plaintiffs' characterization of this action, to which no answer is required. To the extent an answer may be deemed required, denied.
2. This paragraph consists of Plaintiffs' characterization of this action, to which no answer is required. To the extent an answer may be deemed required, denied.

II. JURISDICTION AND VENUE

- 3. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.
- 4. The first sentence of this paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied. Regarding the second sentence of this paragraph, admitted that the President of the United States, United States agencies, and United States officers sued in their official capacities are named defendants. But denied that those are the only defendants, because the United States of America is an additional named defendant in this case.

III. Parties

Intervenor-Plaintiff State of Washington

- 5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which cover matters of state government and state law. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.
- 6. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.
- 7. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.
- 8. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.
- 9. The first and third sentences of this paragraph consist of legal conclusions, to which no response is required. To the extent a response to those sentences may be deemed required,

1 denied. Defendants lack knowledge or information sufficient to form a belief as to the
2 truth of the allegations in the second sentence of this paragraph.

3 10. The first, second, and third sentences of this paragraph are admitted. Regarding the fourth
4 sentence of this paragraph, admitted that in order to join the military, Washingtonians must
5 meet the accession standards of the Department of Defense (“DOD”), including its
6 policies on military service by transgender individuals. Denied that those policies
7 constitute a “ban” on transgender military service.

8 11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
9 allegations in the first and second sentences of this paragraph, except to admit that the
10 Washington National Guard is a member of Washington’s militia. Regarding the third
11 sentence of this paragraph, admitted that recruitment for the Washington National Guard
12 is subject to DOD policies on military service by transgender individuals. Denied that
13 those policies constitute a “ban” on transgender military service.
14

15
16 **Intervenor-Defendants**

17 12. Admitted that Donald Trump is the President of the United States and admitted that on
18 August 25, 2017 he issued the Executive Memorandum entitled “Military Service by
19 Transgender Individuals” (the “2017 Presidential Memorandum”). Denied that the
20 Presidential Memorandum constituted a “ban” on transgender military service or that
21 current policy relating to transgender military service is an “implementation plan,” insofar
22 as this means that it is not the product of independent military judgment.
23

24 13. Admitted that the United States of America includes all government agencies and
25 departments responsible for implementation of the 2017 Presidential Memorandum.
26 Denied that the 2017 Presidential Memorandum constituted a “ban” on transgender
27 military service.
28

1 14. Defendants admit that Mark Esper is the United States Secretary of Defense and that
2 James N. Mattis preceded him in office. The duties and responsibilities of the Secretary of
3 Defense are specified in 10 U.S.C. § 113. Denied that the referenced policies constitute a
4 “ban” on transgender military service.
5

6 15. Admitted.

7 16. Admitted that Kevin McAleenan is the Acting Secretary of Homeland Security. The duties
8 and responsibilities of the Secretary of Homeland Security are specified in 6 U.S.C. § 112.
9 Denied that the referenced policies constitute a “ban” on transgender military service.
10

11 17. Admitted.

12 **IV. ALLEGATIONS**

13 18. The allegations in this paragraph are vague and ambiguous because they do not specify a
14 particular policy or period of time to which Plaintiffs refer. Defendants therefore lack
15 sufficient information to admit or deny.

16 19. The allegations in this paragraph are vague and ambiguous because they refer to a report
17 without identifying the report itself. Defendants therefore lack sufficient information to
18 admit or deny.

19 20. Admitted.

20 21. This paragraph appears to characterize Department of Defense Directive-Type
21 Memorandum (“DTM”) 16-005, “Military Service of Transgender Service Members” (June
22 30, 2016). Defendants respectfully refer the Court to DTM 16-005 for a complete and
23 accurate statement of its contents. To the extent Plaintiffs’ characterizations constitute
24 legal conclusions or are inconsistent with DTM 16-005, Defendants deny the allegations.
25

26 22. This paragraph appears to characterize DTM 16-005. Defendants respectfully refer the
27 Court to DTM 16-005 for a complete and accurate statement of its contents. To the
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

extent Plaintiffs’ characterizations constitute legal conclusions or are inconsistent with DTM 16-005, Defendants deny the allegations.

- 23. Admitted.
- 24. This paragraph appears to characterize the 2017 Presidential Memorandum. Defendants respectfully refer the Court to the 2017 Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs’ characterizations constitute legal conclusions or are inconsistent with the 2017 Presidential Memorandum, Defendants deny the allegations.
- 25. Defendants deny the first and second sentences of this paragraph to the extent they allege that President Trump relied on *only* his own judgment. Regarding the third sentence of this paragraph, admitted that the quoted statement reflects President Trump’s judgment, but denied that the statement reflects his judgment alone. Finally, this paragraph quotes from the 2017 Presidential Memorandum. Defendants respectfully refer the Court to the 2017 Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs’ quotes are inconsistent with the 2017 Presidential Memorandum or are legal conclusions, Defendants deny the allegations.
- 26. This paragraph appears to characterize the 2017 Presidential Memorandum, the Memorandum for the President by Secretary James N. Mattis entitled “Military Service by Transgender Individuals,” which was issued on February 22, 2018 (the “Mattis Memorandum”), and the document entitled Department of Defense Report and Recommendations on Military Service by Transgender Persons, issued February 2018 (the “DoD Report”). Defendants respectfully refer the Court to these documents themselves for a complete and accurate statement of their contents. To the extent Plaintiffs’ characterizations constitute legal conclusions or are inconsistent with these documents,

1 Defendants deny the allegations. Defendants further deny that current policy relating to
2 transgender military service constitutes a “ban” on such service or is an “implementation
3 plan,” insofar as this means that it is not the product of independent military judgment.
4

5 27. This paragraph appears to characterize the Executive Memorandum entitled “Presidential
6 Memorandum for the Secretary of Defense and Secretary of Homeland Security Regarding
7 Military Service by Transgender Individuals,” which was issued on March 23, 2018 (the
8 “2018 Presidential Memorandum”). Defendants respectfully refer the Court to the 2018
9 Presidential Memorandum itself for a complete and accurate statement of its contents. To
10 the extent Plaintiffs’ characterizations constitute legal conclusions or are inconsistent with
11 the 2018 Presidential Memorandum, Defendants deny the allegations. Defendants further
12 deny that current policy is an “implementation plan,” insofar as this means that it is not the
13 product of independent military judgment.
14

15 28. This paragraph appears to characterize the Mattis Memorandum and the DoD Report.
16 Defendants respectfully refer the Court to these documents themselves for a complete and
17 accurate statement of their contents. To the extent Plaintiffs’ characterizations constitute
18 legal conclusions or are inconsistent with these documents, Defendants deny the
19 allegations. Defendants further deny that these documents or current policy relating to
20 transgender military service are an “implementation plan,” insofar as this means that they
21 are not the product of independent military judgment. Defendants further admit that the
22 policy stated in the Mattis Memorandum became effective on April 12, 2019.
23

24 **V. LEGAL CLAIMS**

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

27 29. The answers to all preceding paragraphs are incorporated herein by reference.
28

1 30. This paragraph consists of legal conclusions, to which no response is required. To the
2 extent a response may be deemed required, denied.

3 31. This paragraph consists of legal conclusions, to which no response is required. To the
4 extent a response may be deemed required, denied.

5 32. This paragraph consists of legal conclusions, to which no response is required. To the
6 extent a response may be deemed required, denied.

7 33. This paragraph consists of legal conclusions, to which no response is required. To the
8 extent a response may be deemed required, denied.

9 34. This paragraph consists of legal conclusions, to which no response is required. To the
10 extent a response may be deemed required, denied.

11
12
13 **SECOND CAUSE OF ACTION**
(SUBSTANTIVE DUE PROCESS VIOLATION)

14 35. The answers to all preceding paragraphs are incorporated herein by reference.

15 36. This paragraph consists of legal conclusions, to which no response is required. To the
16 extent a response may be deemed required, denied.

17 37. This paragraph consists of legal conclusions, to which no response is required. To the
18 extent a response may be deemed required, denied.

19 38. This paragraph consists of legal conclusions, to which no response is required. To the
20 extent a response may be deemed required, denied.

21 39. This paragraph consists of legal conclusions, to which no response is required. To the
22 extent a response may be deemed required, denied.

23 40. This paragraph consists of legal conclusions, to which no response is required. To the
24 extent a response may be deemed required, denied.

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI. PRAYER FOR RELIEF

41–47. Defendants deny that Plaintiffs are entitled to the relief requested in their Prayer for Relief or to any relief whatsoever.

Defendants hereby specifically deny each and every allegation in the Intervenor Complaint not expressly admitted or denied in this Answer, or to which they have responded that they have insufficient information to admit or deny.

Dated: August 28, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

JAMES M. BURNHAM
Deputy Assistant Attorney General

ALEXANDER K. HAAS
Branch Director

ANTHONY J. COPPOLINO
Deputy Director

/s/ James R. Powers
JAMES R. POWERS (TX Bar 24092989)
ANDREW E. CARMICHAEL
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Telephone: (202) 353-0543
Email: james.r.powers@usdoj.gov

Counsel for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28