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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12 RIVERSIDE DIVISION

13
 14 **AIDEN STOCKMAN, et al.,**
 15 Plaintiffs,
 16 v.
 17 **DONALD J. TRUMP, in his official**
 18 **capacity as President of the United**
 19 **States, et al.,**
 20 Defendants.

5:17-CV-01799-JGB-KK

**STATE OF CALIFORNIA'S
 NOTICE OF MOTION AND
 MOTION TO INTERVENE
 AS PARTY PLAINTIFF;
 MEMORANDUM OF POINTS
 AND AUTHORITIES**

[Filed Concurrently with Proposed
 Complaint-in-Intervention; the
 Declaration of Enrique A. Monagas;
 and Motion to Shorten Time]

Date: November 20, 2017
 Time: 9:00 a.m.
 Courtroom: 1
 Judge: Hon. Jesus G. Bernal

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TABLE OF CONTENTS

	Page
NOTICE OF MOTION AND MOTION TO INTERVENE.....	1
MEMORANDUM OF POINTS AND AUTHORITIES.....	2
INTRODUCTION	2
BACKGROUND	2
I. 2017 Ban on “Military Service by Transgender Individuals”	2
II. Military Service in the State of California.....	3
A. The California National Guard	3
B. ROTC Programs at California’s Public Universities	5
ARGUMENT	5
I. California Has a Right to Intervene	6
A. California’s Intervention Application Is Timely	7
B. California Has Significant Protectable Interests.....	7
C. Disposition of this Action May Impair or Impede California’s Ability to Protect Its Interests.....	10
D. The Parties Do Not Adequately Represent California’s Interests.....	10
II. Alternatively, Permissive Intervention Should Be Granted	11
CONCLUSION.....	14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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18
19
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25
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TABLE OF AUTHORITIES

Page

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Alfred Snapp & Son, Inc. v. Puerto Rico ex rel. Barez
458 U.S. 592 (1982) 7, 8

Arakaki v. Cayetano
324 F.3d 1078 (9th Cir. 2003) 5, 7, 10, 11

Ass’n of Civilian Technicians, Inc. v. United States
603 F.3d 989 (D.C. Cir. 2010) 4, 5

Blum v. Merrill Lynch Pierce Fenner & Smith, Inc.
712 F.3d 1349 (9th Cir. 2013) 12

California ex rel. Lockyer v. United States
450 F.3d 436 (9th Cir. 2006) 7

Citizens for Balanced Use v. Mont. Wilderness Ass’n
647 F.3d 893 (9th Cir. 2011) 10

City of Sausalito v. O’Neill
386 F.3d 1186 (9th Cir. 2004) 9

Donnelly v. Glickman
159 F.3d 405 (9th Cir. 1998) 12

Employee Staffing Servs., Inc. v. Aubry
20 F.3d 1038 (9th Cir. 1994) 12

Freedom from Religion Found., Inc. v. Geitner
644 F.3d 836 (9th Cir. 2011) 12

Massachusetts v. E.P.A.
549 U.S. 497 (2007) 7, 8

Peruta v. County of San Diego
824 F.3d 919 (9th Cir. 2016) 7

Prete v. Bradbury
438 F.3d 949 (9th Cir. 2006) 6

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TABLE OF AUTHORITIES
(continued)

Page

Spangler v. Pasadena City Bd. of Education
552 F.2d 1326 (9th Cir. 1977)..... 12, 13

Wilderness Soc. v. U.S. Forest Serv.
630 F.3d 1173 (9th Cir. 2011) (en banc)..... 6

STATUTES

10 United States Code
§ 9835, 9
§ 2103 5

28 United States Code
§ 1331 13

32 United States Code
§ 1065, 9
§ 1075, 9
§ 1085, 9

California Civil Code
§ 51 9

California Military and Veterans Code
§ 50 3
§ 51 3
§ 3204
§ 3214
§ 3274

COURT RULES

Civil Local Rule 7-3 1

Federal Rules of Civil Procedure
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NOTICE OF MOTION AND MOTION TO INTERVENE

TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND THE CLERK
OF THE COURT:

PLEASE TAKE NOTICE that on November 20, 2017, at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Jesus G. Bernal, United States District Court for the Central District of California, George E. Brown, Jr. Federal Building and United States Courthouse, 3470 Twelfth Street Riverside, California, 92501-3801, the State of California, will and hereby does move to intervene as a party plaintiff under Rule 24 of the Federal Rules of Civil Procedure.

This motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities in support; the Declaration of Enrique A. Monagas and attached exhibits; the Proposed Complaint-in-Intervention; the separate Motion to Shorten Time; all pleadings and papers filed herein; oral argument of counsel; and any other materials that may be presented to the Court at the hearing.

Because the State’s Motion to Intervene is made in connection with, and in support of, Plaintiffs’ Motion for Preliminary Injunction (Dkt. No. 15), it is outside L.R. 7-3, which exempts motions made “in connection with . . . preliminary injunctions.” In all events, California met and conferred with the parties regarding this motion. Declaration of Enrique Monagas, ¶¶ 8-9.

Dated: November 8, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General
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/s/ Enrique A. Monagas

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The State of California is home to approximately 92,000 transgender adults.¹
4 Like their fellow Californians, transgender residents proudly serve in our nation’s
5 military and our State’s National Guard and have done so, albeit silently, for
6 decades. In August 2017, without any legitimate justification or deliberation,
7 President Trump reversed policy and banned military service by transgender
8 individuals.

9 The State of California respectfully seeks to intervene as a party plaintiff in
10 this action to protect the State and its residents from this patently discriminatory
11 federal policy. If left unchallenged, the transgender military ban would impede the
12 California National Guard’s ability to recruit and retain members to protect the
13 State’s natural resources in times of need; force California to violate its anti-
14 discrimination laws and discriminate against its own residents in staffing the
15 California National Guard; and threaten the State’s ability to safeguard its public
16 institutions of higher education from discrimination in their ROTC programs.

17 The disposition of this important case will have lasting impact on California’s
18 interests. Respectfully, the State’s Motion to Intervene should be granted.

19 **BACKGROUND**

20 **I. 2017 BAN ON “MILITARY SERVICE BY TRANSGENDER INDIVIDUALS”**

21 On June 30, 2016, then-Secretary of Defense Ashton Carter issued a directive
22 setting forth a new policy on military service by transgender individuals. The
23 directive allowed transgender individuals currently in the military to begin serving
24 openly, authorized the Departments of Defense and Homeland Security to fund
25 gender-affirming surgeries, and permitted the enlistment of transgender individuals
26 after July 2017.

27 ¹ Jody L. Herman, et al., “Demographics and Health of California’s
28 Transgender Adults,” UCLA CENTER FOR HEALTH POLICY RESEARCH, *available at*
<https://williamsinstitute.law.ucla.edu/demographics/health-trans-adults-ca/>.

1 A year later, on July 26, 2017, President Donald J. Trump issued a statement
2 via Twitter announcing that “the United States Government will not accept or allow
3 transgender individuals to serve in any capacity in the U.S. Military.” Thus, the
4 President, through social media, suddenly and seemingly without consultation with
5 the military command staff, reversed the policy allowing transgender military
6 personnel to serve openly.

7 Thereafter, on August 25, 2017, the President issued a formal memorandum to
8 the Secretaries of Defense and Homeland Security directing them to: (1) return to
9 the military’s pre-2016 policy regarding transgender service members; (2) bar
10 openly transgender individuals from enlistment; (3) ban the use of Department of
11 Defense and Department of Homeland Security funds to provide certain medical
12 procedures for transgender service members unless service members are already in
13 the process of receiving such treatment; and (4) require the Secretaries of Defense
14 and Homeland Security to issue a plan to implement the above directives, including
15 “how to address transgender individuals currently serving in the United States
16 military.” *Military Service by Transgender Individuals*, 82 Fed. Reg. 41319,
17 2017 WL 3714470 (Aug. 25, 2017) (hereinafter the “August 25 Memorandum”).

18 **II. MILITARY SERVICE IN THE STATE OF CALIFORNIA**

19 **A. The California National Guard**

20 The California National Guard is part of the Military Department of the
21 State of California. Cal. Mil. & Vet. Code §§ 50, 51. The Governor is the
22 Commander-in-Chief of the National Guard and calls upon it to aid in times of
23 emergency. *Id.* §§ 140, 146, subd. (a). The California National Guard currently
24 includes approximately 18,000 service members.² Active Guard members receive
25

26 ² Department of Defense Manpower Data Center June 2017 report entitled
27 “Counts of Active Duty and Reserve Service Members and APF Civilians,”
28 The Department of Defense Manpower Data Center maintains information
databases for the United States Department of Defense, *available at*
www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp (last visited Nov. 7, 2017).

1 pay and healthcare benefits from the State of California. Cal. Mil. & Vet. Code
2 §§ 320, 321, 327.

3 California is home to 31 major military installations, including four used by
4 its National Guard. See http://militarycouncil.ca.gov/s_californiamilitarybases.php
5 (last visited Nov. 7, 2017). The members of the California National Guard are
6 dedicated to safeguarding the lives, property, and the economy of the State of
7 California. The Guard has deployed more than 40,000 times since September 11,
8 2001, and responds to domestic incidents almost continuously. Monagas Dec.,
9 Ex. A. The National Guard provides vital emergency services to California and its
10 citizens. In 2017, this included responding to the massive wildfires in Northern
11 California’s wine country, and preparations to respond to the possible collapse of
12 the Oroville Dam. *Id.*, Exs. B, C.

13 The California National Guard has an estimated economic impact of over
14 \$1.2 billion on the local economy. Monagas Dec., Exs. D, E (California National
15 Guard Fact Sheets). This fiscal year, California will pay more than \$143 million
16 from its state budget to the National Guard, including approximately \$50 million
17 from its General Fund. *Id.*, Ex. F. Service members in the California National
18 Guard are active participants in California’s economy, generate general sales and
19 property tax revenue, and support businesses statewide.

20 According to one study, as of 2014, an estimated 6,700 transgender
21 individuals were serving in the Guard or Reserve forces of all 50 states. GARY J.
22 GATES & JODY L. HERMAN, THE WILLIAMS INSTITUTE, TRANSGENDER MILITARY
23 SERVICE IN THE UNITED STATES, 4 (2014). The study also estimated that
24 transgender individuals are about twice as likely as other adults in the United States
25 to serve or have served their country in the armed forces. *Id.* at 3-4.

26 California’s National Guard is a reserve component of the United States
27 Armed Forces, “play[ing] a dual role, operating under joint federal and state
28 control.” *Ass’n of Civilian Technicians, Inc. v. United States*, 603 F.3d 989, 992

1 (D.C. Cir. 2010) (quoting *Lipscomb v. Fed. Labor Relations Auth.*, 333 F.3d 611,
 2 614 (5th Cir. 2003)). Because of the dual-nature of the National Guard, California
 3 is required to comply with any directive the current Administration issues regarding
 4 transgender service members, or risk losing crucial funding for its National Guard
 5 units. *See id.* at 993; 32 U.S.C. §§ 106-108.

6 **B. ROTC Programs at California’s Public Universities**

7 California currently provides host campuses for the United States Army,
 8 Air Force, and Navy Reserve Officer Training Corps (“ROTC”) programs on
 9 twelve University of California and California State University campuses.³
 10 In addition, many students of California’s public universities participate in ROTC
 11 programs at the campuses of nearby schools. ROTC programs offer significant
 12 scholarship opportunities, including full tuition scholarships for some students.⁴
 13 These programs, however, are subject to federal enlistment requirements. *See*
 14 10 U.S.C. § 2103. Under the 1996 Solomon Amendment, the U.S. Secretary of
 15 Defense may deny federal funds, including research funding, to any university that
 16 prohibits ROTC on campus. 10 U.S.C. § 983.

17 **ARGUMENT**

18 The requirements for intervention in federal actions are set forth in Rule 24
 19 of the Federal Rules of Civil Procedure. “Rule 24 traditionally receives liberal
 20 construction in favor of applicants for intervention,” as “Courts are guided
 21 primarily by practical and equitable considerations.” *Arakaki v. Cayetano*, 324
 22 F.3d 1078, 1083 (9th Cir. 2003). The Ninth Circuit has observed that “[a] liberal
 23 policy in favor of intervention serves both efficient resolution of issues and

24 _____
 25 ³ *See* listings of ROTC programs at California’s public universities at:
 26 <https://www.goarmy.com/rotc/find-schools.html>;
 27 http://www.nrotc.navy.mil/colleges_nrotc_unitsXP3.html;
 28 <https://www.afrotc.com/locator> (last visited Nov. 7, 2017).

⁴ *See* ROTC scholarship websites at:
 27 <https://www.goarmy.com/rotc/scholarships.html>;
 28 <http://www.nrotc.navy.mil/scholarships.html>;
<https://www.afrotc.com/scholarships/types> (last visited Nov. 7, 2017).

1 broadened access to the courts.” *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d
2 1173, 1179 (9th Cir. 2011) (en banc) (quoting *United States v. City of Los Angeles*,
3 288 F.3d 391, 397-98 (9th Cir. 2002)).

4 Under Rule 24(a), California is entitled to intervene as a matter of right to
5 protect its interests. Alternatively, if the Court determines that California does
6 not have a right to intervene, the Court should grant permissive intervention
7 under Rule 24(b).

8 **I. CALIFORNIA HAS A RIGHT TO INTERVENE**

9 Federal Rule of Civil Procedure 24(a) provides:

10 (a) Intervention of Right. On timely motion, the court must permit
11 anyone to intervene who:

- 12 (1) is given an unconditional right to intervene by a federal statute; or
13 (2) claims an interest relating to the property or transaction that is the
14 subject of the action, and is so situated that disposing of the action may
as a practical matter impair or impede the movant’s ability to protect its
interest, unless existing parties adequately represent that interest.

15 Fed. R. Civ. P. 24(a). To intervene under Rule 24(a)(2), the proposed intervenor
16 must show that:

- 17 (1) the intervention application is timely; (2) the applicant has a
18 significant protectable interest relating to the property or transaction
that is the subject of the action; (3) the disposition of the action may,
19 as a practical matter, impair or impede the applicant’s ability to protect
20 its interest; and (4) the existing parties may not adequately represent the
21 applicant’s interest.

22 *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (citation and internal
23 quotation marks omitted). Although the proposed intervenor has the burden of
24 establishing these elements, courts interpret the elements broadly in favor of
25 intervention. *See id.* As discussed herein, California meets each of the four
26 requirements for intervention as a matter of right.

1 **A. California’s Intervention Application Is Timely**

2 To determine whether a motion to intervene is timely, courts “consider ‘(1) the
3 stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to
4 other parties; and (3) the reason for and length of the delay.’” *Peruta v. County of*
5 *San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (quoting *United States v. Alisal*
6 *Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)).

7 Here, California’s Motion to Intervene is being filed at the very beginning of
8 this litigation, before any substantive rulings, and before the November 20, 2017
9 hearing on Plaintiffs’ Motion for Preliminary Injunction. California’s motion meets
10 the timeliness requirement. *See Arakaki*, 324 F.3d at 1084 (“The district court did
11 not abuse its discretion by finding [proposed intervenor’s] motion, filed three weeks
12 after the filing of Plaintiffs’ complaint, timely.”)

13 **B. California Has Significant Protectable Interests**

14 The Ninth Circuit has observed that “a party has a sufficient interest for
15 intervention purposes if it will suffer a practical impairment of its interests as a
16 result of the pending litigation.” *California ex rel. Lockyer v. United States*, 450
17 F.3d 436, 441 (9th Cir. 2006). Here, the August 25 Memorandum, and resulting
18 ban on military service by transgender individuals, harms California’s interests in
19 protecting the State and its residents from a patently discriminatory federal policy.

20 The Supreme Court has recognized that it is well within the quasi-sovereign
21 interests of states to sue as *parens patriae* to protect their residents. *Alfred Snapp &*
22 *Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601-04 (1982) (observing that
23 “*parens patriae* is inherent in the supreme power of every State” and is “often
24 necessary to be exercised in the interests of humanity, and for the prevention of
25 injury to those who cannot protect themselves.”); *see also Massachusetts v. E.P.A.*,
26 549 U.S. 497, 520 n.17 (2007) (recognizing “the long development of cases
27 permitting States ‘to litigate as *parens patriae* to protect quasi-sovereign interests—
28 i.e., public or governmental interests that concern the state as a whole.”).

1 In particular, the Supreme Court has recognized a state’s interest “in securing
2 residents from the harmful effects of discrimination.” *Snapp*, 458 U.S. at 609.

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

14 Further, this case implicates California’s sovereign interests in protecting its
15 territory and maintaining its antidiscrimination laws. As the Supreme Court has
16 held, a state has a sovereign interest in “preserv[ing] its sovereign territory.”
17 *Massachusetts*, 549 U.S. at 518-19 (affirming that states have an “independent
18 interest” in protecting the natural environments and resources within the state’s
19 boundaries).

20 For California, a critical part of its National Guard’s mission is to prevent and
21 minimize damage caused by natural disasters like wildfires, landslides, flooding,
22 and earthquakes. *See Monagas Dec., Exs. C, D.* Excluding transgender
23 Californians from the pool of candidates who can join the California National
24 Guard may result in diminished numbers of service members who can provide
25 emergency response and disaster mitigation in dire situations when California needs
26 assistance the most.

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1 Further, cisgender⁵ individuals may likewise forego National Guard service in
2 favor of an inclusive and nondiscriminatory employer. Any reduction in qualified
3 service members negatively impacts the State's interest in responding to and
4 mitigating harms to its territory.

5 In addition to protecting its natural resources, California has a sovereign
6 interest in maintaining and enforcing its longstanding anti-discrimination laws.
7 Yet, the August 25 Memorandum infringes on California's sovereign interest by
8 overriding its longstanding anti-discrimination laws. *See, e.g.*, Cal. Civ. Code § 51
9 (the Unruh Civil Rights Act). The August 25 Memorandum injures California by
10 permitting discrimination against its residents and even requiring the State to
11 discriminate against its own people by barring transgender citizens from joining
12 the California National Guard. The August 25 Memorandum impairs the State's
13 unique interest in making and enforcing its civil-rights protections.

14 What is more, the Ninth Circuit has held that economic impacts on
15 government entities implicate a concrete and particularized state interest. *See*
16 *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1198-99 (9th Cir. 2004) (holding that
17 potential lost taxes derived from tourist revenues are a sufficient economic concern
18 to trigger a government entity's legally cognizable and protectable proprietary
19 interest, thereby conferring Article III standing). Here, the discriminatory federal
20 policy at issue forces the Hobson's choice of either accepting crucial federal
21 resources to fund the State's universities and National Guard, or refuse to
22 discriminate against transgender Californians and lose those vital funds. *See*
23 32 U.S.C. §§ 106-108 (National Guard); 10 U.S.C. § 983 (ROTC).

24 For these reasons, California has multiple significant protectable interests
25 relating to the discriminatory federal policy that is the subject of this action.

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⁵ "Cisgender" refers to individuals who identify with their sex assigned
at birth.

1 **C. Disposition of this Action May Impair or Impede California’s**
2 **Ability to Protect Its Interests**

3 A decision upholding the constitutionality of a ban on military service by
4 transgender individuals would have far-reaching impacts on California’s ability to
5 protect its residents’ health, well-being, and economic security. Indeed, if the
6 military is allowed to implement this facially discriminatory policy, the result will
7 likely: (a) thwart the State’s ability to protect its residents from facially
8 discriminatory federal policies; (b) prevent California’s transgender military service
9 members from obtaining needed medical care from military providers, with the
10 result that the State may be required to pay for such services; (c) impede the
11 California National Guard’s ability to recruit and retain members to protect the
12 State’s natural resources in times of emergent need; and (d) force California to
13 violate its anti-discrimination laws and discriminate against its own people in
14 staffing the California National Guard. Disposition of this case will have lasting
15 impact on those interests, and California should be allowed to represent its interests
16 and the interests of its residents in this matter.

17 **D. The Parties Do Not Adequately Represent California’s Interests**

18 California’s unique state interests cannot adequately be represented by the
19 current parties to this action. To succeed in a motion to intervene, “[t]he burden on
20 proposed intervenors in showing inadequate representation is *minimal*, and would
21 be satisfied if they could demonstrate that representation of their interests ‘*may be*’
22 inadequate.” *Arakaki*, 324 F.3d at 1086, emphasis added (quoting *Trbovich v.*
23 *United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)). The Ninth Circuit has
24 “stress[ed] that intervention of right does not require an absolute certainty that a
25 party’s interests will be impaired or that existing parties will not adequately
26 represent its interests.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*,
27 647 F.3d 893, 900 (9th Cir. 2011). Rather, “‘if an absentee would be substantially
28 affected in a practical sense by the determination made in an action, [it] should, as a

1 general rule, be entitled to intervene.” *Arakaki*, 324 F.3d at 1086 (quoting *Sw.*
2 *Center for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001)).

3 Three factors are relevant to determining whether a proposed intervenor’s
4 interests are adequately represented: “(1) whether the interest of a present party is
5 such that it will undoubtedly make all of a proposed intervenor’s arguments;
6 (2) whether the present party is capable and willing to make such arguments; and
7 (3) whether the proposed intervenor would offer any necessary elements to the
8 proceeding that other parties would neglect.” *Arakaki*, 324 F.3d at 1086 (citing
9 *California v. Tahoe Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986)).

10 Here, California’s interests are unique to the State, and include protecting its
11 residents’ health and economic well-being, alleviating barriers to service in the
12 California National Guard, safeguarding the State’s public institutions of higher
13 education from discrimination in their ROTC programs, and protecting the State
14 from being forced to discriminate against its own residents. These state interests
15 simply cannot be adequately represented, or even argued, by the private plaintiffs in
16 this action. Instead, these interests are the exclusive concern of the State, and, as
17 such, are necessarily distinct from the private plaintiffs’ interests. Allowing this
18 matter to move forward without the State as a party would significantly impede
19 California’s ability to protect its interests. For all these reasons, California should
20 be permitted to intervene as a matter of right.

21 **II. ALTERNATIVELY, PERMISSIVE INTERVENTION SHOULD BE GRANTED**

22 If this Court finds that California does not meet the burden for intervention as
23 of right, the Court should nonetheless grant California permissive intervention.

24 Under Federal Rule of Civil Procedure 24(b)(1), the Court may permit
25 “anyone to intervene who: (A) is given a conditional right to intervene by a federal
26 statute; or (B) has a claim or defense that shares with the main action a common
27 question of law or fact.” Fed. R. Civ. P. 24(b)(1). “In exercising its discretion, the
28

1 court must consider whether the intervention will unduly delay or prejudice the
2 adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

3 Generally, "[a]n applicant who seeks permissive intervention must prove that
4 it meets three threshold requirements: (1) it shares a common question of law or
5 fact with the main action; (2) its motion is timely; and (3) the court has an
6 independent basis for jurisdiction over the applicant's claims." *Donnelly v.*
7 *Glickman*, 159 F.3d 405, 412 (9th Cir. 1998); *Blum v. Merrill Lynch Pierce Fenner*
8 *& Smith, Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013). However, "the independent
9 jurisdictional grounds requirement does not apply to proposed intervenors in
10 federal-question cases when the proposed intervenor is not raising new claims."
11 *Freedom from Religion Found., Inc. v. Geitner*, 644 F.3d 836, 844 (9th Cir. 2011).

12 In considering a motion for permissive intervention, the Court may consider
13 additional factors such as:

14 [T]he nature and extent of the intervenors' interest, their standing to raise
15 relevant legal issues, the legal position they seek to advance, and its
16 probable relation to the merits of the case . . . whether the intervenors'
17 interests are adequately represented by other parties, whether intervention
18 will prolong or unduly delay the litigation, and whether parties seeking
19 intervention will significantly contribute to full development of the
underlying factual issues in the suit and to the just and equitable
adjudication of the legal questions presented.

20 *Spangler v. Pasadena City Bd. of Education*, 552 F.2d 1326, 1329 (9th Cir. 1977).

21 The district court's discretion to grant or deny permissive intervention is
22 broad. *See Spangler*, 552 F.2d at 1329 (citing *United States v. Board of School*
23 *Commissioners*, 466 F.2d 573, 576 (9th Cir. 1972)). For example, unlike
24 intervention as of right, a legally protectable interest is not required for permissive
25 intervention. *See Employee Staffing Servs., Inc. v. Aubry*, 20 F.3d 1038, 1042 (9th
26 Cir. 1994) (citing *S.E.C. v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 459
27 (1940) (Rule 24(b) "plainly dispenses with any requirement that the intervenor shall
28 have a direct personal or pecuniary interest in the subject of the litigation"))).

1 California meets these requirements. The State's Motion to Intervene is
2 timely, having been filed in the beginning stages of this litigation and before the
3 pending November 20, 2017 preliminary-injunction hearing. Nor will the State's
4 intervention in this action prolong or unduly delay the litigation. Indeed, Plaintiffs
5 support the State's intervention as a party-plaintiff. Monagas Dec., ¶ 8.
6 In addition, as is evident from the State's proposed Complaint-in-Intervention
7 (attached hereto), the State shares both questions of fact and law with Plaintiffs:
8 both seek a judicial declaration that a ban on military service by transgender
9 individuals is unconstitutional. Further, the Court has jurisdiction over the claims
10 raised by both Plaintiffs and the State. 28 U.S.C. § 1331.

11 The factors outlined by the Ninth Circuit in *Spangler* also weigh heavily in
12 favor of permitting intervention. California has multiple interests that are injured
13 by the August 25 Memorandum, which include preventing invidious discrimination
14 harmful to the State's National Guard; avoiding harm to California's veterans,
15 active service members, and those who wish to serve; safeguarding the State's
16 public institutions of higher education from discrimination in their ROTC
17 programs; and protecting the State's transgender community more broadly.

18 In addition, California's unique state interests cannot adequately be
19 represented by the parties to this action. Protecting its residents' health and
20 economic well-being, alleviating barriers to service in the California National
21 Guard, and protecting the State from being forced to discriminate against its own
22 residents are the exclusive concern of the State and, as such, cannot adequately be
23 represented by the private plaintiffs in this action.

24 Further, California's intervention will contribute to the full development of the
25 underlying factual issues in the suit, including through the State's introduction of
26 evidence regarding: (1) the harm caused to California's National Guard, (2) the
27 harmful effects that reinstating the ban will have on the State's public colleges and
28 universities, which support ROTC programs, and (3) how the ban harms the State's

1 transgender community more broadly, including the continued stigma,
2 discrimination, and violence perpetrated against transgender individuals.

3 Thus, California meets all of the requirements for permissive intervention and
4 California’s motion should be granted.

5 **CONCLUSION**

6 For the foregoing reasons, California asks that this Court grant its Motion to
7 Intervene and order the clerk to file its proposed Complaint-in-Intervention,
8 attached hereto.

9 Dated: November 8, 2017

Respectfully submitted,

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