

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JANE DOE 2 <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No. 17-cv-1597 (CKK)
	)	
DONALD J. TRUMP, in his official capacity as President of the United States, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs write to notify the Court of supplemental authority in further support of their cross-motion for summary judgment and their opposition to Defendants’ pending motion for judgment on the pleadings. ECF Nos. 92, 131.

1. On May 23, 2018, the U.S. District Court for the Southern District of New York issued a judicial “declaration” holding that “the blocking of the individual plaintiffs from the @realDonaldTrump account because of their expressed political views violates the First Amendment.” Op. 73-74, *Knight First Amend. Inst. at Columbia Univ. v. Trump*, No. 17-cv-5205 (S.D.N.Y. May 23, 2018), ECF No. 72. In so doing, the court rejected many of the same arguments Defendants have made in this case regarding the availability of injunctive and declaratory relief against the President. Specifically, the court rejected the “proposition” that federal courts “categorically lack authority to enjoin the President.” *Id.* at 69. Further, while acknowledging the need to minimize intrusion into the functions of the Executive Branch, the court held that “[t]he correction of an unconstitutional act far more closely resembles the performance of ‘a mere ministerial duty,’ where ‘nothing [is] left to discretion,’ than the performance of a ‘purely executive and political’ duty requiring the exercise of discretion vested

in the President.” *Id.* at 71; *see also id.* at 72 (“No government official, after all, possesses the discretion to act unconstitutionally.”). The court “conclude[d] that injunctive relief may be awarded,” but “decline[d]” to enter an injunction against White House officials as a matter of equitable discretion and instead issued declaratory relief on the “assumption” that the President and his subordinates will remedy the actions that the court has “held to be unconstitutional.” *Id.* at 73-74. That opinion fully supports Plaintiffs’ argument that the President is a proper defendant whose actions may likewise be declared unconstitutional in this case.

2. On May 22, 2018, the United States District Court for the Eastern District of Virginia denied a motion to dismiss Title IX and equal protection challenges to a public school policy barring a transgender student from using restrooms consistent with his gender. *Op., Grimm v. Gloucester County School Board*, No. 15-cv-00054, (E.D. Va. May 22, 2018), ECF No. 148. In analyzing the student’s equal protection claim, the court held that heightened scrutiny applies for two independent reasons: (1) “transgender individuals constitute at least a quasi-suspect class,” *id.* at 25; and (2) a policy “classif[y]ing [a student] differently on the basis of his transgender status” “relies on sex-based stereotypes” and is therefore “a sex-based classification” “subject to intermediate scrutiny.” *Id.* at 26-28. That opinion supports the decision of this Court and other courts likewise holding that claims of discrimination against transgender individuals trigger heightened judicial scrutiny. *See* ECF No. 61 at 59-64.

For the convenience of this Court, the opinions in *Knight Institute* and *Grimm* are attached to this notice.

May 24, 2018

Claire Laporte (*pro hac vice*)  
Matthew E. Miller (*pro hac vice*)  
Daniel L. McFadden (*pro hac vice*)  
Kathleen M. Brill (*pro hac vice*)  
Michael J. Licker (*pro hac vice*)  
Rachel C. Hutchinson (*pro hac vice*)  
Lauren Godles Milgroom (*pro hac vice*)  
FOLEY HOAG LLP  
155 Seaport Blvd.  
Boston, Massachusetts 02210  
Telephone: 617-832-1000  
Fax: 617-832-7000

Theresa M. Roosevelt (D.C. Bar No. 1021853)  
FOLEY HOAG LLP  
1717 K St. NW  
Washington, D.C. 20009  
Telephone: 202-223-1200  
Fax: 202-785-6687

Jennifer Levi (*pro hac vice*)  
Mary Bonauto (*pro hac vice*)  
GLBTQ LEGAL ADVOCATES & DEFENDERS  
18 Tremont St., Ste. 950  
Boston, Massachusetts 02108  
Telephone: 617-426-1350  
Fax: 617-426-3594

Shannon P. Minter (*pro hac vice*)  
Amy Whelan (*pro hac vice*)  
Christopher F. Stoll (*pro hac vice*)  
NATIONAL CENTER FOR LESBIAN RIGHTS  
870 Market St., Ste. 370  
San Francisco, California 94102  
Telephone: 415-392-6257  
Fax: 415-392-8442

Respectfully submitted,

/s/ Paul R.Q. Wolfson  
Paul R.Q. Wolfson (D.C. Bar No. 414759)  
Kevin M. Lamb (D.C. Bar No. 1030783)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
1875 Pennsylvania Ave. N.W.  
Washington, D.C. 20006  
Telephone: 202-663-6000  
Fax: 202-663-6363

Alan E. Schoenfeld (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
7 World Trade Center  
250 Greenwich St.  
New York, New York 10007  
Telephone: 212-230-8800  
Fax: 212-230-8888

Christopher R. Looney (*pro hac vice*)  
Harriet Hoder (*pro hac vice*)  
Adam M. Cambier (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
60 State Street  
Boston, Massachusetts 02109  
Telephone: 617-526-6000  
Fax: 617-526-5000

Nancy Lynn Schroeder (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
350 S. Grand Ave., Ste. 2100  
Los Angeles, California 90071  
Telephone: 213-443-5300  
Fax: 213-443-5400

*Attorneys for Plaintiffs*