



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

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October 25, 2017

The Honorable Mark Schoesler
307 Legislative Building
PO Box 40409
Olympia, WA 98504

Dear Senator Schoesler:

I recently received an inquiry from Senate Republican caucus staff on behalf of “multiple,” apparently anonymous Senate Republicans. The inquiry concerned my office’s legal work on behalf of the people and the state of Washington challenging unlawful and unconstitutional actions by the Trump Administration.

I am proud of our continued success protecting Washingtonians from harmful actions taken by the president – at negligible cost to taxpayers – and welcome the opportunity to share our successes with you and your colleagues.

Every court to rule on our lawsuits has ruled in favor of Washington state. We have been successful in four lawsuits without losing a single case. Including cases in which my office filed amicus briefs challenging unlawful actions by the Trump Administration, Washington is 6-0 in federal lawsuits since January 1.

Because the inquiry came at the request of anonymous Senate Republicans, I am providing a response to you directly, trusting you can get this to the interested members of your caucus. I am also making my response public.

I welcome direct conversations with individual legislators to discuss particular cases my office is pursuing, or the whole of our work on behalf of the people of Washington. I extended this invitation to the Legislature back in January. No member of your caucus has accepted. Please extend, once again, my invitation to your members. It is my belief that direct conversations are more productive than anonymous legislators making requests through their staff.

Senate Republicans requested a “list of all lawsuits currently pending against any entity of the federal government or its employees filed by the Washington state Attorney General’s Office since January first of this year.”

As requested by your staff, I am providing a summary of 17 lawsuits filed by the Washington state Attorney General’s Office since January 1, 2017. In order to provide a comprehensive look at our work with respect to the Trump Administration, I am also including four lawsuits in which we intervened on the side of the federal government in order to defend an agency rule, doubting that agency’s ability or willingness to defend their own rule. While these are not technically lawsuits “against” the Trump Administration, we are taking legal action to preserve important Obama-era rules, because the Trump Administration will not provide an adequate defense. I suspect the anonymous members of your caucus will be interested in these cases as well.

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I am also including summaries of three cases in which my office drafted amicus briefs in support of lawsuits against the administration, and summaries of two lawsuits against the Obama Administration. I am providing the name of the case, the date we filed, a summary of the dispute and the description of the stakes, the lead state, the other states involved in the litigation, and the status of the case.

It is unfortunate that my office has had to take so many legal actions against the Trump Administration. That said, I want to be very clear – I will continue to challenge any unlawful and unconstitutional actions by the Trump Administration that harm Washingtonians. The president will be accountable to the rule of law.

Successful Outcomes

Every decision issued by a court in a case we have filed against the Trump Administration has been in favor of the Washington state Attorney General's Office. Four of these cases are resolved – all in Washington's favor. The courts resolved two of these cases, while the Trump Administration conceded two cases after I filed a lawsuit.

- 1) *Washington v. Trump* (original travel ban): The travel ban separated families, divided employers from employees, and prohibited students and professors from resuming studies in the United States. In addition, many individuals lawfully in Washington state were denied the right to visit family members abroad, or travel for business. When Washington challenged the constitutionality and legality of the travel ban in the U.S. District Court for the Western District of Washington on January 30, individuals with green cards and valid visas were subject to the travel ban and being turned away at airports.

Washington's complaint included dozens of declarations from Washington businesses, colleges and universities, and national security experts.

Judge James Robart, appointed by President George W. Bush, ruled in Washington's favor on February 3, granting a nationwide temporary restraining order. On February 9, in a unanimous opinion, a panel for the U.S. Court of Appeals for the Ninth Circuit upheld the injunction. The Trump Administration chose not to appeal to the U.S. Supreme Court, rescinded the executive order, and agreed to reimburse Washington's costs related to the appeal.

Washington (lead), joined by Minnesota initially, and later California, Maryland, Massachusetts, New York, and Oregon.

- 2) *New York v. Perry* (energy efficiency standards): On March 31, the Washington state Attorney General's Office and a multistate coalition of attorneys general sought review from the U.S. Court of Appeals for the District of Columbia Circuit on the administration's unlawful delay in implementing new energy efficiency rules for ceiling fans. After the states filed the lawsuit, the U.S. Department of Energy conceded and announced that the rules would go into effect.

The energy efficiency rules are estimated to reduce electrical consumption by about 200 billion kilowatt hours over the next three decades, saving consumers anywhere from \$4.5 billion to \$12.1 billion in energy costs.

New York (lead), Connecticut, Hawaii, Massachusetts, Oregon, Vermont, Washington, and District of Columbia.

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- 3) *Clean Air Council, et al. v. EPA* (new oil and gas facilities): On June 20, state attorneys general intervened in a lawsuit against the EPA challenging delays in implementing a rule regulating emissions from new oil and gas facilities. The rule provides important protections for Washington's residents against the release of methane, a powerful greenhouse gas that has more than 80 times the global warming potential of carbon dioxide. The effects of methane cannot be reversed or undone.

On July 3, the D.C. Circuit ruled in favor of Washington state, finding that the EPA had violated the Clean Air Act. Industry intervenors sought *en banc* review. On August 10, with an 8-3 decision, the D.C. Circuit Court denied *en banc* review.

California (co-lead), Massachusetts (co-lead), Pennsylvania, Connecticut, Delaware, Illinois, Iowa, Maryland, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and District of Columbia.

- 4) *New York v. EPA* (ground-level ozone standards): On August 1, 15 states, including Washington, filed suit against the EPA in the D.C. Circuit after Administrator Pruitt announced his decision to delay designating which areas of the country met the new ground-level ozone standards. The next day, Administrator Pruitt reversed course and withdrew the decision to delay.

New York (lead), California, Connecticut, Delaware, Illinois, Iowa, Maine, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Washington, Massachusetts, Pennsylvania, and District of Columbia.

Unresolved Cases against the Trump Administration in Which Washington is the Lead

In five other cases, my office either filed our own case in the Western District of Washington or led a multistate group of attorneys general. These cases involve challenges to the second and third travel bans, the decision to abolish DACA, the ban on transgender individuals serving in the military, and the new rules restricting contraception access.

New York, et al. v. Trump (DACA): On September 6, Washington and 16 other states filed a lawsuit in the Eastern District of New York seeking to halt President Trump's decision to end the Deferred Action for Childhood Arrivals (DACA) program. The president's decision ends protections for 17,000 Dreamers in Washington state alone. These Dreamers are constituents of the members of your caucus. Dreamers were brought to this country as children through no fault of their own. They are attending our universities, working for our state agencies and local governments, and contributing to our economy.

In addition to seeking a halt to the president's decision to end DACA, this lawsuit seeks to prevent the federal government from misusing personal information Dreamers provided the government in good faith in order to sign up for DACA after being promised that information would not be used to deport them or their families.

The case is currently in the discovery phase. The court scheduled a hearing for January 18, 2018.

Washington (co-lead), New York (co-lead), Massachusetts (co-lead), Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and District of Columbia.

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Washington v. Trump, et al. (contraception access): On October 9, the Washington state Attorney General's Office filed suit in the Western District of Washington challenging President Trump's rules restricting contraception access.

If allowed to go forward, President Trump's rules could have a significant impact on more than 1.5 million Washington workers and their dependents who receive insurance through their employer's self-funded plan. One study by the Center for American Progress found that contraception costs can generally exceed \$1,000 a year without insurance coverage. Some Washington women who currently use contraception may be denied no-cost coverage and be forced to turn to state-funded programs to receive the care they need. State-funded reproductive health services helped more than 90,000 patients in 2016 alone. More than three-quarters of those patients were women who used contraception, saving the state an estimated \$160 million in maternal and birth-related costs, according to a report from the Washington State Department of Health.

Washington v. Trump (amended) (second travel ban): Judge Robart heard Washington's challenge to the revised travel ban on March 15. Before he could rule, judges in Maryland and Hawaii issued nationwide injunctions blocking the implementation of the ban. Judge Robart chose not to issue a ruling given that the revised travel ban was already halted.

Washington (lead), California, Maryland, Massachusetts, New York, and Oregon.

Washington v. Trump (amended) (third travel ban): On October 11, Washington filed a revised complaint in the Western District of Washington challenging President Trump's third travel ban. President Trump's third attempt at a travel ban is broader than previous iterations because rather than imposing a "temporary pause," it indefinitely bans immigration by individuals from affected countries. Washington's complaint includes dozens of declarations from individuals, universities, state agencies, healthcare system administrators, and businesses regarding the travel ban's adverse impacts. Judge Robart set a hearing for oral argument on October 30.

Washington (lead), California, Maryland, Massachusetts, New York, and Oregon.

Karnoski, et al. v. Trump, et al. (military transgender ban): Washington is home to 60,000 members of the active and reserve military, including over 8,000 soldiers and airmen in the Washington National Guard. The National Guard is integral to Washington's emergency preparedness and disaster recovery planning. President Trump's ban on transgender individuals in the military applies to Washington's National Guard as well as the active duty military, restricting the Guard's recruiting pool.

We filed our motion to intervene on September 25 in the Western District of Washington and are currently awaiting the court's ruling.

Other Lawsuits against the Trump Administration

Washington has filed eight additional lawsuits against the Trump Administration. These legal actions are all part of multistate lawsuits with another state serving as the lead. This approach allows states to operate efficiently by sharing the work.

Massachusetts, et al. v. DeVos, et al. (borrower defense rule): On July 6, we joined 18 other attorneys general to file a lawsuit in the D.C. District against Education Secretary Betsy DeVos. The lawsuit followed

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DeVos' announcement that the Department of Education was delaying indefinitely the implementation of the "borrower defense regulations," which were set to go into effect on July 1, 2017. The borrower defense regulations provide important consumer protections for prospective, current, and former students of for-profit colleges. For example, under the rules, a state attorney general's successful litigation against a school for violating consumer protection laws can make its students automatically eligible for student loan forgiveness.

Massachusetts (lead), California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and District of Columbia.

California, et al. v. Zinke, et al. (coal leasing on public lands): On May 9, Washington and three other states filed a lawsuit in the U.S. District Court for the District of Montana, Great Falls Division, challenging the Department of the Interior's decision to restart a program to lease coal-mining rights on public land without supplementing or replacing its nearly 40-year-old environmental study about the environmental harms of mining on federal land.

California (lead), New Mexico, New York, and Washington.

California, et al. v. Perry (energy efficiency standards for appliances): On June 13, Washington and 10 other states filed a lawsuit in the U.S. District Court for the Northern District of California over the Trump Administration's unlawful delay of new energy efficiency standards for walk-in coolers and freezers, portable air conditioners, and other appliances. The standards will save consumers at least \$4.7 billion in energy costs.

California (lead), New York, Connecticut, Illinois, Maine, Maryland, Massachusetts, Oregon, Pennsylvania, Vermont, Washington, and City of New York.

California, et al. v. U.S. Department of Transportation (vehicle emissions rule): On September 20, Washington and eight other states filed a lawsuit in the U.S. District Court for the Northern District of California after the Federal Highway Administration unlawfully suspended the effective date of an important rule aimed at reducing greenhouse gases without notice or opportunity for comment. The rule requires states to measure the amount of greenhouse gases emitted by on-road vehicles on the national highway system and to set targets for reducing those emissions.

California (lead), Iowa, Maryland, Massachusetts, Minnesota, Oregon, Vermont, and Washington.

New York v. Pruitt (Chemical Disaster Rule): On July 24, Washington and 10 other states filed a petition for review with the D.C. Circuit over the Trump Administration's unlawful delay of the Chemical Disaster Rule. The 2010 Tesoro refinery explosion in Anacortes and other high-profile accidents across the nation prompted the Chemical Disaster Rule. The briefing schedule is set to conclude on January 31, 2018.

New York (lead), Illinois, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

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League of United Latin American Citizens v. Pruitt (pesticides): On June 6, Washington, four other states, and the District of Columbia filed a motion in the Ninth Circuit to intervene in this case, in order to ensure that the EPA completes its review of the neurotoxic pesticide chlorpyrifos to protect farmworkers and those living in agricultural communities. The motion is pending.

New York (lead), Maryland, Vermont, Washington, Massachusetts, and District of Columbia.

California, et al. v. Trump (cost sharing reduction subsidies): On October 14, Washington, 16 other states, and the District of Columbia filed a lawsuit challenging the Trump Administration's decision to unilaterally terminate cost-sharing reduction subsidies, which reduce out-of-pocket health care costs for low-income Americans. The lawsuit, filed in the Northern District of California, asserts that the president's decision to withhold the payments is illegal and unconstitutional. The Trump Administration's action will increase the premiums of 100,000 Washingtonians by as much as 28 percent.

California (lead), Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and District of Columbia.

Maryland, et al. v. Department of Education (gainful employment rule): On October 17, Washington, 16 other states, and the District of Columbia filed a lawsuit against the Department of Education for unlawfully delaying the gainful employment rule. The gainful employment rule keeps colleges from offering worthless degrees and leaving their graduates with high levels of debt. It denies federal financial aid to schools whose graduates do not make enough money to repay the student loans they took out to earn their degrees.

Maryland (co-lead), Pennsylvania (co-lead), California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and District of Columbia.

Cases Where Washington Intervened to Defend a Federal Rule

Since January 1, Washington state has intervened in four cases on the side of the federal government to defend important agency rules that benefit the people of Washington when we doubt the Trump Administration's willingness to adequately defend those rules.

California Association of Private Post-Secondary Schools (CAPPS) v. DeVos (borrower defense rules): On June 29, Washington joined eight other states and the District of Columbia in filing a motion to intervene in a lawsuit filed in the D.C. District by a group of private schools against the U.S. Department of Education, challenging rules protecting students who attend or attended for-profit colleges. These rules benefit Washington students that attended Corinthian Colleges. Education Secretary Betsy DeVos ultimately refused to implement the rules, justifying our lack of faith in the agency to defend their own rules from this challenge. The court has yet to rule on our motion to intervene.

Massachusetts (lead), California, Illinois, Iowa, New York, Oregon, Pennsylvania, Maryland, Washington, and District of Columbia.

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House of Representatives v. Hargan (cost-sharing reduction subsidies): On May 18, Washington, 14 other states, and the District of Columbia filed a motion to intervene in the D.C. Circuit in a lawsuit filed by the U.S. House of Representatives challenging the cost-sharing reduction subsidies – a critical provision of the Affordable Care Act. The collapse of the Affordable Care Act would cause significant harm to health coverage in Washington state. We do not feel the federal government can be relied upon to adequately defend this provision of the Act. The court granted our motion to intervene on August 1.

California (co-lead), New York (co-lead), Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, New Mexico, Pennsylvania, Vermont, Washington, and District of Columbia.

Truck Trailer Manufacturers Association v. EPA (emissions standards for heavy-duty trucks): On January 23, Washington and seven other states filed a motion to intervene to defend the EPA's rule on emissions standards for heavy-duty trucks. These standards are part of an effort to secure nationwide emission reductions that are crucial to mitigate climate impacts.

California (lead), Connecticut, Iowa, Massachusetts, Oregon, Rhode Island, Vermont, and Washington.

Murray Energy Corp. v. EPA (ozone standards): On July 6, Washington, six other states, and the District of Columbia moved to intervene in support of EPA's 2015 ozone standard. After Secretary Pruitt made statements contradicting positions articulated in the EPA's merits brief in the case, the states lost faith in the federal government to defend this important rule, and moved to intervene.

California (lead), New York, Rhode Island, Vermont, Washington, Massachusetts, Delaware, and District of Columbia.

Amicus Briefs in Support of Lawsuits against the Trump Administration

Since January 1, my office has written three amicus briefs in support of legal actions against the Trump Administration. Multiple state attorneys general joined all three of these briefs. Federal judges have issued rulings in two of these cases – both in Washington's favor. Counting these two cases, Washington is 6-0 in cases in which we have asserted the Trump Administration violated the law or the Constitution.

California, et al. v. Zinke, et al. (oil, coal and gas valuation rule): On June 14, Washington filed an amicus brief in the Northern District Court of California in support of California's lawsuit challenging the Trump Administration's unlawful delay of the oil, coal and gas valuation rule. On October 4, the court ruled the Trump Administration violated the Administrative Procedure Act when it delayed the rule.

Washington (lead), Maryland, New York, and Oregon.

California v. Zinke, et al. (waste methane rule): On August 22, we filed an amicus brief in support of California's suit challenging the Department of the Interior's illegal delay in the effectiveness of a rule governing the release of "waste" methane. The court granted our motion to file an amicus. On August 30, the Northern District Court of California ruled the Trump Administration violated the Administrative Procedure Act by unlawfully delaying the rule.

Washington (lead), Oregon, Maryland, and New York.

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Fulcher v. Secretary of Veterans Affairs (transgender veterans' access to medically necessary care): On June 28, Washington filed an amicus contending the Department of Veterans Affairs should amend or repeal the rule excluding "gender alterations" from eligible veterans' medical benefits packages, while providing coverage for similar services for non-transgender veterans.

Washington (lead), California, Connecticut, Hawaii, Illinois, Massachusetts, New York, Oregon, Vermont, and District of Columbia.

Cost to Taxpayers is Minimal

I am proud that taxpayers have incurred minimal expense for this significant body of work on their behalf.

In March 2010, Attorney General Rob McKenna was asked how much his lawsuit against the Affordable Care Act was costing. His spokesperson replied that the costs incurred were "negligible" because Florida was taking the lead. In September 2011, another McKenna spokesperson again described the costs in that lawsuit as "minimal." In March 2012, in an interview with KPLU, McKenna again emphasized that the lawsuit against the Affordable Care Act was not costing the state significant resources because Florida was leading the litigation.

The same is true for the multistate actions Washington joined against the federal administration. Our expenses in these multistate cases are minimal.

Our affirmative litigation divisions are handling a significant amount of the work in the six cases in which Washington is leading. As you know, our affirmative litigation divisions are self-sustaining through recoveries. The Legislature has gradually reduced, and is currently providing no General Fund support for our affirmative legal work on behalf of the people of the state. Consequently, Washington state taxpayers do not incur any of the costs for the work of affirmative litigation divisions, including the Civil Rights Unit and the Consumer Protection Division.

I also want to emphasize that for many of these cases, a significant amount of the work occurred over the weekends and in the evenings. Because Assistant Attorneys General are salaried employees who do not receive additional compensation for the extraordinary hours they work on behalf of the public, this work does not cost taxpayers anything.

There are nearly six hundred Assistant Attorneys General in my office. At any given time, they are working on approximately 20,000 legal matters. So while these 17 lawsuits are extremely important, and therefore receive significant attention, they represent a tiny fraction of the work my office is doing on behalf of the people and the state of Washington each and every day.

I am extremely proud of my legal team for the hard work they do on behalf of the state and the public, including holding the Trump Administration accountable to the rule of law.

Lawsuits against the Obama Administration

Interestingly, your staff did not ask about litigation my office filed against the Obama Administration. Assuming this is an oversight, and that your Republican members are not solely interested in the costs incurred by taxpayers in litigation against a Republican administration, I wanted to pass along to your members that we twice sued the

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Obama Administration regarding the Hanford nuclear facility. The first lawsuit involved the timely cleanup of Hanford, and successfully resulted in a court-ordered timeline far shorter than the one proposed by the Department of Energy. The second lawsuit is ongoing, and seeks to protect Hanford workers from exposure to toxic fumes.

The second Hanford lawsuit is considerably more time and resource intensive than the aforementioned lawsuits against the Trump Administration. We estimate this one case has required more resources than all of the 21 legal actions against the Trump Administration combined. This is primarily due to the fact that we were not able to share the workload with other states, as well as the nature of the litigation, which requires expert witnesses and significant document review.

Because my lawsuit against the Obama Administration involves important issues concerning the health of many Washington workers, I believe the value of the litigation justifies the cost. If you or your colleagues disagree, and believe my office should not be standing up for Hanford workers, please let me know.

In January, my budget staff sent an email to legislative staff informing them that taxpayers had incurred no expense from the original travel ban litigation, and welcoming direct communication with individual legislators. We have been open and consistent with the Legislature since we filed our first legal action against the Trump Administration, and have consistently invited direct conversations about these important legal actions.

If any senators believe I should not be taking action to protect Washington Dreamers, women, students, businesses, and vulnerable individuals in need of affordable health care, I encourage them to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

BOB FERGUSON
Attorney General

RWF/jlg

cc: Washington State Senators