

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____	:	
KATE LYNN BLATT,	:	
	:	
Plaintiff,	:	
	:	
v.	:	<b>CIVIL ACTION NO. 5:14-cv-4822-JFL</b>
	:	
CABELA’S RETAIL, INC.	:	
	:	
Defendant.	:	
_____	:	

**STATEMENT OF INTEREST  
OF THE UNITED STATES OF AMERICA**

The United States of America submits this Statement of Interest pursuant to 28 U.S.C. § 517.<sup>1</sup> The United States has an interest in this litigation because Plaintiff has raised a constitutional challenge to a provision of the Americans with Disabilities Act (“ADA”), specifically 42 U.S.C. § 12211(b)(1), which excludes “transsexualism . . . [and] gender identity disorders not resulting from physical impairments” from the ADA’s definition of “disability” (the “GID Exclusion”). *See* Plaintiff’s Opposition to Defendant’s Motion to Dismiss (ECF No. 23); Notice of Constitutional Question (ECF No. 24).

It is well-settled that, wherever possible, courts should avoid resolving cases on constitutional grounds. “If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . .

---

<sup>1</sup> That statute provides: “The Solicitor General, or any other officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” 28 U.S.C. § 517.

unless such adjudication is unavoidable.” *Spector Motor Serv. v. McLaughlin*, 323 U.S. 101, 105 (1944); *see also Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 204-06 (2009); *Siluk v. Merwin*, 783 F.3d 421, 434 (3d Cir. 2015). The United States suggests that, under the circumstances presented in this case, the Court need not address the constitutional challenge to the GID Exclusion.

Rather, the Court first should resolve Plaintiff’s Title VII claims, as such resolution may render it unnecessary to address the constitutionality of the GID Exclusion. As presented in the First Amended Complaint (“FAC”) (ECF No. 9), the facts giving rise to Plaintiff’s Title VII and ADA claims substantially overlap. Moreover, the relief Plaintiff seeks under Title VII and the ADA is identical. *See* FAC ¶ 60.<sup>2</sup> Thus, the outcome of Plaintiff’s Title VII claims could render superfluous her ADA claims and, therefore, would obviate the need to resolve the constitutional challenge to the GID Exclusion. That approach is particularly appropriate given that discrimination because of gender identity, including transgender status, constitutes sex discrimination prohibited by Title VII. *See e.g., Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*, 2 (Dec. 15, 2014), <http://www.justice.gov/file/188671/download>.

Accordingly, the United States respectfully requests that the Court defer ruling upon Plaintiff’s constitutional challenge to the GID Exclusion until after the Title VII claims are

---

<sup>2</sup> Plaintiff’s Complaint includes four counts: (I) Title-VII Sex Discrimination, Hostile Work Environment; (II) Title VII-Retaliation; (III) ADA-Disability Discrimination, Failure to Accommodate; and (IV) ADA-Retaliation. Each count contains an identical description of Plaintiff’s alleged damages. *See* FAC ¶¶ 44-45, 50-51, 54-55, 58-59. Thus, the relief sought by Plaintiff equally applies to all claims. Specifically, Plaintiff seeks: lost wages and benefits; front pay; punitive damages; compensatory damages; interest; and attorneys’ fees. *See* FAC ¶ 60.

resolved, as disposition of Plaintiff's Title VII claims could resolve this case without the need to reach the constitutionality of the GID Exclusion. Should the Court later determine that the constitutional issue cannot be avoided, the United States respectfully reserves the right to intervene or file a supplemental statement of interest at that time.

Dated: July 21, 2015

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

KATHLEEN R. HARTNETT  
Deputy Assistant Attorney General

JENNIFER D. RICKETTS  
Branch Director

JOSHUA E. GARDNER  
Assistant Branch Director

/s/ Emily B. Nestler  
EMILY B. NESTLER  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue NW  
Washington, DC 20530  
Tel: (202) 616-8489  
Fax: (202) 616-8470  
emily.b.nestler@usdoj.gov

*Counsel for the United States of America*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2015, the foregoing United States' Statement of Interest was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ Emily B. Nestler* \_\_\_\_\_

EMILY B. NESTLER  
Trial Attorney  
United States Department of Justice, Civil Division