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2017-10-27

**Declaration of Mark J. Eitelberg in Support of  
Plaintiffs' Motion for Preliminary Injunction,  
Brock Stone, et al. v. Donald J. Trump, et al.**

Eitelberg, Mark J.

United States District Court District Court for The District of Maryland

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the All-Volunteer Force; military force management and manpower policy; military manpower selection, classification, and utilization; and equal opportunity and diversity management. My honors include the Robert M. Yerkes Award (for outstanding contributions to military psychology by a non-psychologist) from the Society for Military Psychology, a division of the American Psychological Association, and the Department of the Navy Superior Civilian Service Award. I have served on the Board of Editors of the journals *Armed Forces & Society* and *Military Psychology*. I was Editor-in-Chief of *Armed Forces & Society* from 1998 through 2001. A true and correct copy of my curriculum vitae and a list of my publications are attached to this declaration as Exhibit A.

4. I am aware that, on June 30, 2016, the Department of Defense announced it would begin allowing transgender persons to serve openly in the military. As stated in the official announcement and news release (NR-246-16): “Effective immediately, service members may no longer be involuntarily separated, discharged or denied reenlistment solely on the basis of gender identity. Service members currently on duty will be able to serve openly.” This change in policy followed a careful review by a comprehensive working group that included high-ranking uniformed and civilian personnel as well as medical experts and other highly knowledgeable persons. The new policy assured current service members that they could reveal their gender identity if they chose to do so. The policy also established procedures for transgender service members to receive appropriate medical care for gender transition. Subsequently, many transgender service members informed their chain of command and their peers that they are transgender.

5. I am also aware that, in a series of informal comments on July 26, 2017, and later in a formal memorandum on August 25, 2017, President Donald Trump directed that the policy

allowing transgender individuals to serve openly in the military “return to the longstanding policy and practice” that prohibited transgender persons from serving in any capacity. Up to this point, for over one year previously, transgender service members were told that the Department of Defense had “ended” its ban on transgender Americans serving in the U.S. military. Under this policy and a forthcoming implementation plan, transgender service members will once again be subject to discharge by the Department of Defense on March 23, 2018.

6. Based on my knowledge, experience, and research in the fields of military manpower and personnel policy, military sociology, and military psychology, the newly announced policy is significantly harming service members who have disclosed they are transgender. This is not merely a potential problem or future hardship due to the scheduled March 23, 2018 date on which they will become subject to being separated. The new policy prevents transgender service members from serving equally with their peers; it imposes substantial limitations on their opportunities within the military; and it negatively impacts their day-to-day relationships with co-workers and other service members.

7. Military service opportunities are generally structured through career tracking by occupational area within each separate service, with scheduled training and skill-level assessments, operational assignments (or tours) and deployments, windows for advancement, and increased responsibilities based on experience, time-in-service, conduct, and performance. At the same time, as with any occupation, discretionary judgments or decisions within a service member’s chain of command can have a strong impact on one’s job opportunities or daily life. Naturally, these decisions are influenced by expectations regarding a service member’s future in the military. From an operational perspective, commanders understandably are reluctant to invest significant resources in the training or development of individuals who might leave

military service in the near future, or to entrust them with important assignments. This dynamic is similar to what occurs in other large organizations when an employee is known to be departing several months in advance. Transgender service members who informed others of their gender identity based on the government's pledge that they could serve openly as of June 30, 2016, believing that "ending the ban" would not be temporary, have no secure future in the military beyond March 23, 2018.

8. Transgender service members leaving military service would likely be held in their present duty location, pending a confirmed date of their involuntary separation. Lost opportunities and personal problems would ensue, particularly if the service member has a family, children in school, or other dependents. Previously scheduled training, deployment, change of duty station, or other planned career events would be canceled by the military to save related costs, minimize organizational disruption, and simplify discharge. Some of these service members would continue to work in their present positions until separation; others would be temporarily "stashed" in another work unit; and some might be placed in a "make-work" situation or "holding pattern" while awaiting separation. If the person has a particularly important skill, knowledge, or expertise, she or he may be asked to train a replacement. In other cases, an individual scheduled for discharge may be gradually relieved of duties or assignments as their responsibilities are delegated to others. Depending on the supervisor's views and management style, this might mean the person slated for discharge will be required to perform tasks no one else wants or be assigned less challenging, repetitive tasks that do not enhance their skill development.

9. Such reductions in responsibility have an impact even on service members whose departure from the military is voluntary and who have begun to make plans for their post-

military life. The impact is much more severe for those who had been planning to remain in the military but are unexpectedly facing the prospect of involuntary separation, because their accumulated efforts to excel or advance and their career aspirations essentially disappear upon discharge. The potential harm to these women and men economically is undeniable; added to this is the psychological distress of being told that their performance in service to the nation is meaningless when measured against their gender identity. They had volunteered to serve their country, to accept the associated risks, and to perform well and honorably. The military considered them qualified to serve when they joined. Surely, many would want to understand why their gender identity now makes them unqualified to serve their country, and to such a degree that they should be removed from the military.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 22, 2017

A solid black rectangular box redacting the signature of Mark J. Eitelberg.

Mark J. Eitelberg