

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

BROCK STONE, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

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) Civil Action No. 17-cv-2459 (MJG)
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**DECLARATION OF RAYMOND EDWIN MABUS, JR.
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Raymond Edwin Mabus, Jr., declare as follows:

1. I served as the United States Secretary of the Navy from May 19, 2009 to January 20, 2017.

2. Prior to serving as Secretary of the Navy, I earned a Bachelor's degree in English and Political Science from the University of Mississippi in 1969, a Master's Degree in political science from Johns Hopkins University in 1970, and a J.D. from Harvard Law School in 1976. Prior to attending law school, I served from 1970 until 1972 in the Navy aboard the cruiser USS Little Rock, achieving the rank of Lieutenant, junior grade. Following law school, I worked as a law clerk in the United States Court of Appeals for the Fifth Circuit. From 1977 until 1978, I worked as legal counsel for the Cotton Subcommittee of the Agriculture Committee of the United States House of Representatives. From 1979 to 1980, I was an associate at the law firm of Fried, Frank, Harris, Shriver and Kampleman in Washington, D.C. and from 1980 to 1983, I was Legal Counsel and Legislative Assistant to the Governor of Mississippi. From 1984 to 1988, I served as Mississippi State Auditor (an elected position), and from 1988 to 1992 as Governor of Mississippi. From 1994 to 1996 I served as the United States Ambassador to Saudi

Arabia. From 1998 to 2000 I served as President of Frontline Global Services, a consulting company. From 2003-2007 I served as Chairman of Foamex, Incorporated, a public manufacturing company, and from 2006 to 2007 as Foamex's Chief Executive Officer as well.

3. As Secretary of the Navy, I functioned as the chief executive of the Department of the Navy, with the authority to conduct all of its affairs. As Secretary, I had comprehensive oversight responsibility for (i) the Department of the Navy's annual budget, (ii) overseeing the recruitment, organization, training, supplying, equipping, mobilizing, and demobilizing of Navy personnel, and (iii) overseeing the construction, outfitting, and repair of naval equipment, ships, and facilities. I was also responsible for the formulation and implementation of policies and programs that are consistent with the national security policies and objectives established by the President and the Secretary of Defense.

4. In connection with my personnel-related oversight responsibilities, I oversaw the administration of recruitment, retention, and medical policies for active duty and reserve Navy personnel. As Secretary, I performed these duties before, during, and after the end of the "Don't Ask, Don't Tell" ban on gay service members serving openly in the military in 2011.

5. Also during this period, I oversaw the Navy and the Marine Corps through the end of United States military operations in Iraq and the surge of tens of thousands of United States troops in Afghanistan. I am keenly aware that the recruitment and retention of capable and qualified service members is of critical importance to the readiness of the Navy and the Marines.

6. I was part of a Working Group that comprehensively reviewed military policy with regard to transgender people serving across the service branches. It was based upon that review and the recommendations of that group that the Department of Defense announced in June 2016 that it would begin allowing transgender people to serve openly in the military.

7. I am aware that in a series of announcements made on Twitter on July 26, 2017, and then again in a formal memorandum issued by the White House on August 25, 2017, President Trump announced the reversal of military policy stating that transgender individuals would no longer be able to serve in any capacity. The memorandum set March 23, 2018 as the date when military policy would revert to the pre-June 2016 policy whereby transgender individuals are subject to discharge upon disclosure of their transgender status.

8. Based on my experience in military personnel and operations, the recently announced policy change is presently causing significant harms to current servicemembers who have disclosed that they are transgender. Those harms are not speculative or future harms. They are current harms that prevent transgender service members from serving on equal terms with non-transgender service members and that impose substantial limitations on their opportunities within the military.

9. Consideration of the ways in which deployment decisions are made highlights the current limitations and lost opportunities being experienced by transgender service members. Consistent with naval operations, ships may deploy for up to 9 months at a time. Commanders making decisions about how to staff naval operations must consider the length of time that a sailor will be available for a deployment. If a sailor may not be available for the full length of a deployment, command knows that they will have to expend significant resources to backfill staffing needs in order to address the diminishment of resources. Rather than face those challenges, command will predictably make assignments based on certainty about sailors' ability to serve the full length of deployment.

10. Because of the announcement of the ban on transgender people being able to serve after March 2018, command lacks the requisite certainty that transgender service members will be able to complete the terms of their deployments where they extend beyond that date.

11. Similarly, command must regularly make personnel decisions that relate to “permanent change of station” (PCS) moves. PCS moves are made to ensure maximum utilization of personnel and to achieve military missions. PCS moves involve transporting service members and their families to a different base and duty station, often across the country or the world. The introduction of any uncertainty with regard to a service member’s future service, or status, changes command’s consideration of PCS moves and military operations staffing. Based on my experience, the announced ban on transgender people serving is impacting PCS moves.

12. As a result of the announced ban, transgender service members are losing opportunities for assignments that they are capable of doing. These include lost opportunities for deployment, training, and assignments. These lost opportunities are based not on individual assessment of the service member’s merit but rather based on whether the person is transgender. These lost opportunities, in addition to depriving transgender members of the military of the ability to serve on equal footing with their peers, hinder transgender service members opportunities for advancement and promotions as well.

13. The impact of this immediate harm reaches beyond the individual service member and affects the institution of the military as a whole. The military is designed to be a meritocracy where individuals receive opportunities and tackle assignments based on their ability to do the job. The institution is weakened when people are denied the ability to serve not because they are unqualified or because they cannot do the job but because of who they are.

14. The ban on transgender service members weakens the military in a second way as well. With an all-volunteer force, which is the current structure of the military, a small segment of the population is responsible for the security of the whole. In this circumstance, it becomes even more important to have a diverse military in order to maintain a strong connection between those who serve to protect society and the society that the force is protecting. Banning a segment of the community from service weakens the bond of that connection between the military and society and sends a message that certain segments of the community are not within the scope of the mission. That message interferes with and diminishes military readiness and lethality.

15. I know of no instance either prior to June 2016 or since when a transgender person seeking to enlist was granted a waiver to the ban on service. In any case, it would be futile for a transgender person to seek a waiver to join the military at this point in time since, according to the announced policy, they would be subject to administrative discharge as soon as March 2018.

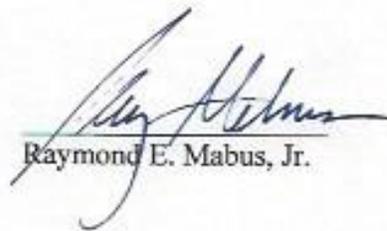
16. This sudden reversal of the DoD policy permitting open service undermines the morale and readiness of other groups who must now deal with the stress and uncertainty created by this dangerous precedent, which represents a stark departure from the foundational principle that military policy will be based on military, not political, considerations. In 2011, the “Don’t Ask, Don’t Tell” policy prohibiting gay, lesbian, and bisexual people from openly serving in the military (Department of Defense Directive 1304.26) was repealed. More recently, DoD also removed remaining barriers for women serving in certain ground combat positions. The sudden reversal of the DoD’s policy with respect to transgender service members sets a precedent suggesting that these policies may be abruptly reversed for baseless reasons as well.

17. This sudden reversal may also have a chilling effect on the confidence of other service members that they will continue to be able to serve. Religious and ethnic minorities who have seen an increase in discrimination under the current administration may fear that the military may seek to ban them next, creating a culture of fear that is anathema to the stability and certainty that makes for an effective military.

18. This sudden reversal undermines the confidence of all service members that important military policy decisions will be made under careful review and consistent with established process. Rational decision making in the adoption of and change to policy impacts the military's ability to recruit and retain competent, high-performing people. The sudden reversal of policy makes recruitment and retention more difficult, as does the damage done to the military's image and reputation as promoting fairness and equality and of being open to all qualified Americans. That image and reputation are critical to the military's ability to attract talented and idealistic young people. Actions that tarnish that reputation cause real harm.

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

DATED: October 19, 2017



Raymond E. Mabus, Jr.