

1 LATHAM & WATKINS LLP  
 2 Marvin S. Putnam (SBN 212839)  
 3 *marvin.putnam@lw.com*  
 4 Amy C. Quartarolo (SBN 222144)  
 5 *amy.quartarolo@lw.com*  
 6 Adam S. Sieff (SBN 302030)  
 7 *adam.sieff@lw.com*  
 8 Harrison J. White (SBN 307790)  
 9 *harrison.white@lw.com*  
 10 355 South Grand Avenue, Suite 100  
 11 Los Angeles, California 90071-1560  
 12 Telephone: +1.213.485.1234  
 13 Facsimile: +1.213.891.8763

14 National Center for Lesbian Rights  
 15 Shannon P. Minter (SBN 168907)  
 16 *sminter@nclrights.org*  
 17 Amy Whelan (SBN 2155675)  
 18 *awhelan@nclrights.org*  
 19 870 Market Street, Suite 360  
 20 San Francisco, CA 94102  
 21 Telephone: +1.415.392.6257  
 22 Facsimile: +1.415.392.8442

23 GLBTQ Legal Advocates & Defenders  
 24 Jennifer L. Levi (*pro hac vice pending*)  
 25 *jlevi@glad.org*  
 26 Mary L. Bonauto (*pro hac vice forthcoming*)  
 27 *mbonauto@glad.org*  
 28 30 Winter Street, Suite 800  
 Boston, MA 02108  
 Telephone: +1.617.426.1350  
 Facsimile: +1.617.426.3594

*Attorneys for Plaintiffs*  
*Aiden Stockman, Nicolas Talbott,*  
*Tamasyn Reeves, Jaquice Tate, John Does 1-2,*  
*Jane Doe, and Equality California*

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

AIDEN STOCKMAN; NICOLAS  
 TALBOTT; TAMASYN REEVES;  
 JAQUICE TATE; JOHN DOES 1-2;  
 JANE DOE; and EQUALITY  
 CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-cv-01799-JGB-KKx

SUPPLEMENTAL DECLARATION  
 OF ERIC K. FANNING IN  
 SUPPORT OF PLAINTIFFS’  
 MOTION FOR PRELIMINARY  
 INJUNCTION

Hearing

Date: November 20, 2017  
 Time: 9:00 a.m.  
 Courtroom: 1

1 I, Eric K. Fanning, declare as follows:

2 1. As set forth in my earlier declaration signed and dated September 30,  
3 2017, I oversaw the Department of the Army’s participation in the Working Group  
4 that comprehensively reviewed military policy with regard to transgender persons  
5 serving openly in each of the service branches and which attempted to identify any  
6 practical, objective impediments to such service. It was based upon that review and  
7 the recommendations of that group that the Department of Defense announced on  
8 June 30, 2016, that transgender service members could openly serve in the U.S.  
9 military.

10 2. My earlier declaration also sets forth my awareness of the  
11 announcements of a new policy on transgender service, both through Twitter in  
12 late July 2017, and then in a Presidential Memorandum (“the Memorandum”)  
13 issued by the White House on August 25, 2017. Although providing the  
14 Secretaries of Defense and Homeland Security the opportunity to review the  
15 current policies, the Memorandum sets March 23, 2018 as the date by which the  
16 June 2016 policy “shall” be reversed (section 3) and transgender individuals will  
17 be subject to discharge as a result of disclosure of their transgender status.

18 3. Based on my knowledge and experience in military personnel and  
19 readiness challenges, as a result of service as a senior executive in each of the three  
20 military departments as well as Chief of Staff to the Secretary of Defense, the  
21 recently announced policy change is causing significant harm to current  
22 servicemembers who have already disclosed their status as an individual who is  
23 also transgender to their commanders.

24 4. The Memorandum asserts that the “previous Administration” had an  
25 “[in]sufficient basis” for allowing open service, and therefore, this Administration  
26 is directing the reversal of policy changes that had enabled open service based on  
27 its “meaningful concerns” about the impact of open service on “under military  
28 effectiveness and lethality, disrupt unit cohesion, or tax military resources.”

1           5.     In my experience, this communicates that the Commander in Chief of  
2 the U.S. military believes that transgender service members are unfit for military  
3 duty solely because of their transgender status. It degrades the value of  
4 transgender individuals not only to those service members themselves, but gives  
5 license to their leaders and fellow service members to do the same, in an  
6 environment where the ability to unqualifiedly and mutually rely on each other is  
7 an indispensable element of service. The Memorandum on its face marks these  
8 service members as deserving of impending involuntary discharge.

9           6.     The Memorandum alone, and certainly when animated by the  
10 President’s tweets, causes harm by preventing transgender service members from  
11 serving on equal terms with other service members based on their merit; serves to  
12 substantially limiting their advancement and promotion opportunities in the  
13 military; and undermines their standing with superiors and peers, as described  
14 above. Opportunity to succeed and advance in the military should not depend on  
15 gender identity, nor any other factor other than ability to meet the required  
16 standards.

17           7.     The harm extends beyond the individuals involved to the whole ethos  
18 of the military as a meritocracy where all Americans who want to serve and can  
19 meet its standards should be afforded the opportunity to do so. Unjustified,  
20 categorical bans on Americans qualified and ready to serve diminishes that  
21 organizing principle.

22           8.     Furthermore, the Presidential Memorandum and Secretary of Defense  
23 Jim Mattis’ August 29, 2017 announcement that he will “carry out the president’s  
24 policy direction” by “develop[ing] a study and implementation plan” sends the  
25 clear message to American society that the U.S. Army is not, as General Mark  
26 Milley, the Army’s Chief of Staff and highest ranked officer, declared in 2016  
27 “open to all Americans who meet the standard, regardless of who they are.”  
28

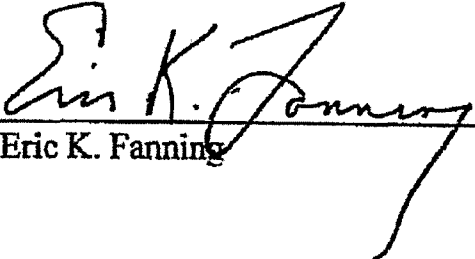
1           9. That declaration is essential to ensuring the military has access to the  
2 best and brightest America has to offer and that those who seek to serve know that  
3 they will be judged by their performance alone, rather than the artificial prejudices  
4 that once hampered the advancement and acceptance of African Americans,  
5 women, religious minorities, and gays and lesbians in our nation's armed forces.

6           10. In addition, when the military fails to keep pace with the demographic  
7 change of our nation and departs from the core principle of opportunity for all that  
8 can meet its high standards, it results in an erosion of understanding between those  
9 who serve and those who freedom those service members defend. The President's  
10 tweets and directive undoubtedly exacerbate this divide, both by creating a single  
11 class of Americans he deems unfit to serve and dividing the nation by telling them  
12 that only these individuals are unfit.

13           11. Finally, during my tenure as Secretary of the Army, I am unaware of  
14 any instance prior to or after June 2016 when a transgender person seeking to enlist  
15 or accept a commission in the Army was granted a waiver from the Army's  
16 medical accession standards.

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

18  
19  
20 Dated: November 2, 2017

  
Eric K. Fanning