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 19 *Jane Doe, and Equality California*

20 UNITED STATES DISTRICT COURT
 21 CENTRAL DISTRICT OF CALIFORNIA

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

25 Plaintiffs,

26 v.

27 DONALD J. TRUMP, et al.

28 Defendants.

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

**DECLARATION OF RAYMOND
 EDWIN MABUS, JR. IN
 SUPPORT OF PLAINTIFFS'
 MOTION FOR PRELIMINARY
 INJUNCTION**

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

2 **Background and Experience**

3 1. I served as the United States Secretary of the Navy from May 19,
4 2009 to January 20, 2017.

5 2. Prior to serving as Secretary of the Navy, I earned a Bachelor's degree
6 in English and Political Science from the University of Mississippi in 1969, a
7 Master's Degree in political science from Johns Hopkins University in 1970, and a
8 J.D. from Harvard Law School in 1976. Prior to attending law school, I served
9 from 1970 until 1972 in the Navy aboard the cruiser USS Little Rock, achieving
10 the rank of Lieutenant, junior grade. Following law school, I worked as a law
11 clerk in the United States Court of Appeals for the Fifth Circuit. From 1977 until
12 1978, I worked as legal counsel for the Cotton Subcommittee of the Agriculture
13 Committee of the United States House of Representatives. From 1979 to 1980, I
14 was an associate at the law firm of Fried, Frank, Harris, Shriver and Kampleman in
15 Washington, D.C. and from 1980 to 1983, I was Legal Counsel and Legislative
16 Assistant to the Governor of Mississippi. From 1984 to 1988, I served as
17 Mississippi State Auditor (an elected position), and from 1988 to 1992 as Governor
18 of Mississippi. From 1994 to 1996 I served as the United States Ambassador to
19 Saudi Arabia. From 1998 to 2000 I served as President of Frontline Global
20 Services, a consulting company. From 2003-2007 I served as Chairman of
21 Foamex, Incorporated, a public manufacturing company, and from 2006 to 2007 as
22 Foamex's Chief Executive Officer as well.

23 3. As Secretary of the Navy, I functioned as the chief executive of the
24 Department of the Navy, with the authority to conduct all of its affairs. As
25 Secretary, I had comprehensive oversight responsibility for (i) the Department of
26 the Navy's annual budget, (ii) overseeing the recruitment, organization, training,
27 supplying, equipping, mobilizing, and demobilizing of Navy personnel, and (iii)
28 overseeing the construction, outfitting, and repair of naval equipment, ships, and

1 facilities. I was also responsible for the formulation and implementation of
2 policies and programs that are consistent with the national security policies and
3 objectives established by the President and the Secretary of Defense.

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

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

14 **The Navy**

15 6. The Department of the Navy comprises two uniformed Services of the
16 United States Armed Forces: the United States Navy and the United States Marine
17 Corps. It is one of the three military departments of the Department of Defense
18 (“DoD”). The Navy, with an annual budget of more than \$160 billion, maintains
19 more than 270 deployable battle force ships, operates more than 3,700 military
20 aircraft, and employs nearly 900,000 active duty, reserve, and civilian employees.

21 7. The mission of the Navy is to maintain, train and equip combat-ready
22 Naval forces capable of winning wars, deterring aggression and maintaining
23 freedom of the seas.

24 **Development of DoD Policy Relating to Service** 25 **by Openly Transgender Persons**

26 8. On July 28, 2015, Secretary of Defense Ashton Carter ordered Brad
27 Carson, Acting Undersecretary of Defense for Personnel and Readiness, to
28 convene a working group to identify and address the practical issues related to

1 transgender Americans serving openly in the Armed Forces, and to develop an
2 implementation plan that addressed those issues with the goal of maximizing
3 military readiness (the “Working Group”). A true and accurate copy of this order
4 is attached hereto as Exhibit A. The Working Group was ordered to present its
5 findings and recommendations to the Secretary of Defense within 180 days. In the
6 interim, pursuant to the July 28, 2015 order, no service member could “be
7 involuntarily separated or denied reenlistment or continuation of active or reserve
8 service on the basis of their gender identity, without the personal approval of the
9 Under Secretary of Defense for Personnel and Readiness.”

10 9. As Secretary of the Navy, I was responsible for supervising the
11 Department of the Navy’s participation in the Working Group. The Working
12 Group met as a whole and also assigned various sub-groups to research and
13 analyze discrete issues and report their findings. I met multiple times per week
14 with my deputy to the Working Group, the Navy General Counsel, who would
15 update me on the progress of the Working Group and the Navy’s positions on the
16 issues discussed.

17 10. The Working Group was tasked with evaluating the hurdles,
18 impediments, and concerns potentially raised by open service of transgender
19 service members. They sought to identify all potential impacts on the Services and
20 develop recommendations to address them.

21 11. The Working Group met and engaged in a detailed, deliberative,
22 carefully run process. The goal was to ensure that the input of the Services would
23 be fully considered before any changes in policy were made and that the Services
24 were on board with those changes.

25 12. The Working Group conducted a comprehensive review of relevant
26 evidence, including: research and data; information obtained from medical,
27 personnel, and readiness experts; and information obtained from discussions with
28 transgender service members and commanders who supervised transgender service

1 members. The Working Group also considered the experiences of civilian
2 employers and insurance companies.

3 13. The Working Group also considered a study that the DoD
4 commissioned from the RAND Corporation. That study examined all of the
5 available research about the healthcare needs of transgender service members, the
6 anticipated costs of providing healthcare coverage for transition-related treatments,
7 and the potential readiness implications of allowing transgender service members
8 to serve openly. A true and accurate copy of the report, entitled *Assessing the*
9 *Implications of Allowing Transgender Personnel to Serve Openly* (“RAND
10 Report”), is attached as Exhibit B.

11 14. The RAND Report concluded that the cost of caring for the medical
12 needs of transgender personnel would be extremely small and that there was no
13 evidence that allowing transgender people to serve openly would negatively impact
14 unit cohesion, operational effectiveness, or readiness. The RAND Report also
15 concluded that the Military Health Service could provide appropriate transition-
16 related healthcare to transgender persons. The RAND Report also identified
17 various DoD policies that would need to be changed to permit transgender service
18 members to serve openly, including “transgender-specific DoD instructions that
19 may contain unnecessarily restrictive conditions and reflect outdated terminology
20 and assessment processes.”

21 15. Members of the Working Group discussed the full range of
22 considerations relevant to assessing the potential impacts of permitting transgender
23 service members to serve openly, including evidence relating to the costs of
24 providing appropriate healthcare and evidence relating to the impact of service by
25 transgender people on operational effectiveness and readiness. For example, the
26 Working Group considered that while some transgender service members might be
27 undeployable for short periods due to medical treatments, the overall loss of
28 deployable time would not be significant and was consistent with the standard

1 applied to other service members, who may take time off due to comparable
2 medical treatments.

3 16. The Working Group also noted that many private and public health
4 insurance plans now cover transition-related care and that all civilian federal
5 employees have access to a health insurance plan that provides comprehensive
6 coverage for such care. This was helpful to ascertain both the costs of providing
7 such care and utilization rates, as well as to demonstrate the need for the military to
8 keep pace with contemporary medical science and practice in the provision of
9 healthcare to our service members.

10 17. The Working Group also consulted with representatives from the
11 Armed Forces of other nations that permit openly transgender persons to serve.
12 Those consultations confirmed that permitting such service is not disruptive to
13 military readiness and has not led to significantly increased costs or posed any
14 other significant problems. The RAND Report considered the experiences of other
15 countries as well and found no evidence of any adverse impacts. Noting the most
16 extensive research on how a policy of open service affects readiness and unit
17 cohesion has been conducted in Canada, the RAND Report noted that “the
18 researchers heard from commanders that the increased diversity improved
19 readiness.”

20 18. The Working Group considered that banning service by openly
21 transgender people has numerous negative impacts, including requiring the
22 discharge of highly trained and experienced service members, causing unexpected
23 vacancies in operational units, and requiring the expensive and time-consuming
24 recruitment and training of replacement personnel.

25 19. The Working Group also recognized that despite a ban on transgender
26 service members, transgender persons continued to serve in the military, but were
27 forced to lie about and hide their identities, to the detriment both of those service
28 members and of the military as a whole. As a result, the Working Group

1 recognized that the primary impact of the policy was to cause harms similar to
2 those caused by “Don’t Ask, Don’t Tell.”

3 20. During the period in which the Working Group was in operation, the
4 proceedings of the Working Group were reported to and reviewed by upper level
5 Department of Defense personnel at meetings attended by the Joint Chiefs of Staff,
6 the Chairman, the Vice Chairman, the Service Secretaries, the Secretary of
7 Defense, and the Assistant Secretary of Defense. At these meetings, the activities
8 of the Working Group would be shared along with their preliminary views. The
9 meeting attendees would then discuss any comments they may have had on those
10 views.

11 21. By the conclusion of its discussions and analysis, all members of the
12 Working Group (including the senior uniformed military personnel) expressed
13 their agreement that transgender people should be permitted to serve openly in the
14 United States Armed Forces.

15 22. In or around April 2016, the Working Group communicated its view
16 to the Secretary of Defense along with detailed recommendations regarding the full
17 range of relevant policies and practical concerns, such as guidelines involving
18 access to healthcare, housing and uniform standards, and when a transitioning
19 service member should be authorized to conform to the standard of the gender to
20 which they were transitioning.

21 23. On June 30, 2016, Secretary of Defense Ashton Carter accepted the
22 recommendations of the Working Group, and issued Directive-type Memorandum
23 (DTM) 16-005, entitled “Military Service of Transgender Service Members”
24 (“DTM 16-005”), a true and accurate copy of which is attached as Exhibit C.

25 **Change, Development, and Implementation of Navy Policy**

26 24. Following the Secretary of Defense’s announcement, the Navy’s
27 implementation of the new policy was straightforward. We focused on the
28 administrative tasks of promulgating and implementing the appropriate processes.

1 Having presided over the Navy during the rollout of prior policy changes such as
2 the repeal of “Don’t Ask, Don’t Tell” and the complete integration of women into
3 ground combat, I can confirm that the implementation of open service for
4 transgender service members was relatively low-key, triggered fewer emotional
5 responses, and was viewed as “no big deal.”

6 25. To implement DTM 16-005 as applied to the Navy, on November 4,
7 2016, I issued SECNAV Instruction 1000.11 concerning Service of Transgender
8 Sailors and Marines (the “Instruction”). A true and accurate copy of the
9 Instruction is attached hereto as Exhibit D.

10 26. The policy and guidance in the Instruction, which was effective
11 immediately for all Department of Navy (“DON”) personnel, established “policy
12 for the accession and service of transgender Sailors and Marines, to include the
13 process for transgender Service Members to transition to transgender in-service.”
14 The policies and procedures in the Instruction “are based on the premise that open
15 service by transgender persons who are subject to the same medical, fitness for
16 duty, physical fitness, uniform and grooming, deployability, and retention
17 standards and procedures is consistent with military service and readiness.” The
18 Instruction provides that “transgender individuals shall be allowed to serve openly
19 in the DON,” and that any “discrimination based on gender identity is a form of
20 sex discrimination.”

21 27. Pursuant to the Instruction, on November 7, 2016, Chief of Naval
22 Personnel, Vice Admiral R. P. Burke, issued interim guidance in NAVADMIN
23 248/16 (the “Policy”) regarding “policy, regulations and procedures related to the
24 service of transgender Navy personnel.” The Policy, which “applies to all Navy
25 military personnel,” remains in effect “until superseded or cancelled.” A true and
26 accurate copy of the Policy is attached hereto as Exhibit E.

27 28. As with the Instruction, the Policy provides that “transgender
28 individuals shall be allowed to serve openly in the Navy. The Policy was

1 “premised on the conclusion that transgender persons are fully qualified and are
2 subject to the same standards and procedures as other Service Members with
3 regard to their medical fitness for duty, physical fitness, uniform and grooming
4 standards, deployability, and retention.” The Policy thus declares that “[n]o
5 otherwise qualified Service Member may be involuntarily separated, discharged, or
6 denied reenlistment or continuation of service solely on the basis of gender identity
7 or an expressed intent to transition gender.”

8 29. With respect to individuals serving in the Navy or Marine Corps, the
9 Instruction and Policy state that transgender Sailors and Marines will be
10 responsible to meet all standards for uniforms and grooming, body composition
11 assessment, physical readiness testing, Military Personnel Drug Abuse Testing
12 Program participation and other military standards according to their gender
13 marker in DEERS, subject to the approval of an Exception to Policy (“ETP”)
14 request.

15 30. To allow DON commanders to address medical needs in a manner
16 consistent with military mission and readiness, the Policy sets forth detailed
17 procedures concerning medical treatment for transgender service members with a
18 diagnosis from a medical military provider indicating that gender transition is
19 medically necessary. Service members with such a diagnosis must notify their
20 commanding officer and request commanding officer approval for the timing of
21 medical treatment associated with gender transition. The commanding officer is
22 the final approval authority for a transition plan. Commanding officers must
23 respond to a gender transition request “within a framework that ensures readiness
24 by minimizing impacts to the mission (including deployment, operational, training,
25 exercise schedules, and critical skills availability), as well as the morale, welfare,
26 and good order and discipline of the command.” Furthermore, the Policy provides
27 that timing of a medical treatment plan “should consider the individual’s planned
28 rotation date (PRD), deployment or other operational schedules, and potential

1 impact on major career milestones, whenever possible.”

2 31. The Policy further provides detailed instructions regarding an in-
3 service transition. The transition plan is considered complete once (1) a military
4 medical provider documents that the service member has completed the care
5 outlined in a medical treatment plan; (2) the service member obtains an appropriate
6 document showing legal proof of gender change; (3) the service member’s
7 commanding officer provides written permission to change the gender marker in
8 the Navy Personnel Administrative Systems/DEERS; (4) the service member
9 submits for the gender marker change; and (5) the gender marker is changed in the
10 Navy Personnel Administrative Systems/DEERS.

11 32. As set forth in the Policy, in order to have a gender marker changed in
12 the Navy Personnel Administrative Systems/DEERS, the service member must
13 submit the required documentation showing legal proof of gender change and the
14 commanding officer’s written approval to Navy Personnel Command.

15 33. The Policy also provides that “[a]ll Service Members are world-wide
16 assignable as their medical fitness for duty permits.” “Any determination that a
17 transgender Sailor or Marine is non-deployable at any time will be consistent with
18 established DON standards, as applied to other Sailors and Marines whose
19 deployability is similarly affected in comparable circumstances unrelated to gender
20 transition.”

21 34. Both the Instruction and Policy provide that effective July 1, 2017, the
22 Navy and Marine Corps will begin accessing transgender applicants who meet all
23 standards.

24 35. In addition, the Policy included policy changes related to: (1) privacy
25 in berthing and showering facilities as set forth in OPNAVINST 3120,32D,
26 Standard Organization Regulations of the U.S. Navy; (2) drug testing and
27 urinalysis as set forth in OPNAVINST 5350.4D, Navy Alcohol and Drug Abuse
28 Prevention and Control Program; and (3) physical fitness assessment standards as

1 set forth in OPNAVINST 6110.1J, Physical Readiness Program.

2 36. On September 30, 2016, the Department of Defense issued
3 Transgender Service in the Military, An Implementation Handbook (“DoD
4 Handbook”). A true and accurate copy of the DoD Handbook is attached hereto at
5 Exhibit F. The DoD Handbook is intended as a practical day-to-day guide to assist
6 all service members in understanding the Department of Defense’s policy of
7 allowing the open service of transgender service members. To that end, the DoD
8 Handbook instructs all service members:

9 The cornerstone of DoD values is treating every Service member with
10 dignity and respect. Anyone who wants to serve their country,
11 upholds our values, and can meet our standards, should be given the
12 opportunity to compete to do so. Being a transgender individual, in
13 and of itself, does not affect a Service member’s ability to perform
14 their job.

14 **The Impact of Reversing the Policy Permitting Service by**
15 **Openly Transgender People**

16 37. Numerous military personnel disclosed their transgender status to the
17 military in 2016 and 2017 in reliance upon the Department of Defense’s statements
18 that it would not discharge them on that basis, as articulated in DTM 16-005 and
19 other documents. I did not receive any reports that such disclosures harmed the
20 operational effectiveness of any Navy units.

21 38. On July 26, 2017, President Donald Trump issued a statement that
22 transgender individuals will not be permitted to serve in any capacity in the Armed
23 Forces due to “the tremendous medical costs and disruption that transgender in the
24 military would entail.”

25 39. On August 25, 2017, President Trump issued a memorandum to the
26 Secretary of Defense and the Secretary of Homeland Security to reverse the policy
27 adopted in June 2016 that permitted military service by openly transgender
28 persons. That memorandum stated: “In my judgment, the previous Administration

1 failed to identify a sufficient basis to conclude that terminating the Departments'
2 longstanding policy and practice would not hinder military effectiveness and
3 lethality, disrupt unit cohesion, or tax military resources, and there remain
4 meaningful concerns that further study is needed to ensure that continued
5 implementation of last year's policy change would not have those negative effects.”

6 40. President Trump’s stated rationales for reversing the policy and
7 banning military service by transgender people make no sense. They have no basis
8 in fact and are refuted by the comprehensive analysis of relevant data and
9 information that was carefully, thoroughly, and deliberately conducted by the
10 Working Group.

11 41. As discussed above, the RAND Report concluded that any costs
12 associated with providing appropriate healthcare to transgender service members
13 would be “exceedingly small.” In fact, the maximum financial impact estimated
14 by the RAND Report is an amount so small it was considered to be “budget dust,”
15 hardly even a rounding error, by military leadership.

16 42. The claim that permitting transgender people to serve openly would
17 be “disruptive” has no foundation. The same claim was used to oppose racial
18 integration of the military in the 1940s, the increased recruiting of women in the
19 1970s, and the repeal of “Don’t Ask Don’t Tell.” In each case, the prediction that
20 disruption would ensue has not been borne out. Studies have shown that diversity
21 actually improves unit cohesion. Units become closer when individual service
22 members are respected for who they are.

23 43. Any evidence that permitting such service would be disruptive is
24 entirely lacking. Since the policy permitting open service went into effect,
25 transgender service members have been able to serve openly and have caused no
26 disruption.

27 44. In addition to being contrary to the overwhelming weight of the
28 evidence considered by the Working Group and the Secretary of Defense, a

1 reversal of the DoD policy permitting open service and the banning of accessions
2 by transgender people, in my assessment, based on my experience as Secretary of
3 the Navy, disserves the public interest, for several reasons.

4 **45. Loss of Qualified Personnel.** First, banning transgender service
5 members will produce vacancies in the Services, creating an immediate negative
6 impact on readiness. The United States Armed Forces rely on an all-volunteer
7 force, some portion of which are transgender service members. The impact of the
8 loss of those individuals, who serve at all levels of service, is significant. Banning
9 transgender service members will cause the loss of competent and experienced
10 individuals, who will be difficult to replace. The Navy has invested in their
11 education, and training. In addition to losing any return on that investment,
12 taxpayers will bear the cost of identifying, recruiting, and training replacement
13 personnel. Our ability to replace those individuals will also be hampered by the
14 parallel reduction in the size of our potential recruiting pool. Artificial
15 exclusionary barriers like this weaken the military.

16 **46. Unit Cohesion.** Second, banning transgender service members
17 negatively impacts unit cohesion, a fundamental component of readiness. The only
18 relevant qualification for the job of serving in the Armed Forces is whether an
19 individual is capable of performing the job. Diversity in the form of nationality,
20 religion, race, who one loves, gender, or gender identity only strengthens the force.
21 Conversely, when the military asks people to lie about who they are in order to
22 enlist or remain in the military, it weakens the military and has a negative impact
23 on unit cohesion. Members of units know each other well and develop strong
24 bonds. Unit members can tell when other unit members are lying. A policy that
25 forces unit members to be dishonest with one another, including a ban on service
26 by openly transgender people, weakens these bonds.

27 **47. Erosion of Trust in Command.** Third, arbitrary decisionmaking
28 erodes trust in military leadership. I was dismayed by the abrupt reversal, because

1 so much careful thought had gone into development of the policy, with consensus
2 at the highest levels of military leadership. Furthermore, the initial directive to
3 reverse policy through the Twitter medium was delivered entirely outside the
4 normal pathway of legitimate orders issued through the chain of command, and the
5 most recent memorandum of August 25, 2017 was also issued in a highly unusual
6 manner. It is also unprecedented to reverse policy in such an abrupt manner. I
7 cannot recall another instance in United States military history of such a stark and
8 unfounded reversal of policy, or of any example in our nation's history in which a
9 minority group once permitted to serve has been excluded from the military after
10 its members had been allowed to serve openly and honestly.

11 48. Even individuals who had reservations at the time the Working Group
12 was announced trusted in the process and believed it was a fair and deliberative
13 process that met the high standards of the military. This abrupt reversal leaves the
14 impression among service members that military decision making is instead
15 arbitrary and subject to political whims.

16 49. For transgender service members themselves, the reversal represents
17 the ultimate mistreatment and breach of trust. In DTM-005 and in other
18 documents issued by the Department of Defense, the military informed transgender
19 service members that they could come forward to disclose their transgender status
20 and serve openly, rather than facing discharge. Many transgender service members
21 came forward based on those statements. They risked their jobs, housing, and
22 progress towards retirement benefits in reliance on our word that we would treat
23 their disclosures fairly and in good faith. Using that information now as a basis for
24 separating these soldiers from their service is an unprecedented betrayal of the trust
25 that is so essential to achieving the mission of all of the armed forces. The reversal
26 penalizes transgender service members for doing what DoD encouraged them to
27 do. Transgender service members, their chain of command, and their colleagues
28 who may lose people on whom they rely, must now deal with this enormous

1 distraction, thus detracting from military readiness.

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

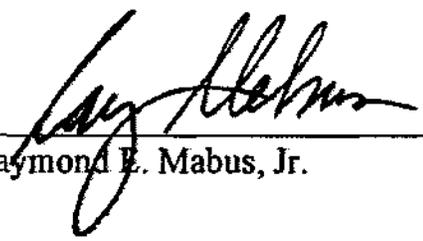
13 51. This sudden reversal may also have a chilling effect on the confidence
14 of other service members that they will continue to be able to serve. Religious and
15 ethnic minorities who have seen an increase in discrimination under the current
16 administration may fear that the military may seek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

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

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

DATED: September 24, 2017



Raymond E. Mabus, Jr.