

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

RYAN KARNOSKI, et al.,

*Plaintiffs,*

STATE OF WASHINGTON,

*Plaintiff-Intervenor,*

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States, et al.,

*Defendants.*

Case No. 2:17-cv-01297-MJP

**PLAINTIFFS’ OPPOSITION TO  
DEFENDANTS’ MOTION FOR A  
PROTECTIVE ORDER**

1 Defendants' request for a protective order precluding discovery is their latest in a string  
2 of attempts to delay review of their discrimination against transgender Americans. This Court  
3 has already twice denied requests for stays of this litigation, Dkt. No. 121 at 6; Dkt. No. 98 at 3,  
4 and had to compel Defendants to make even basic initial disclosures, Dkt. No. 204 at 3-4.  
5 Defendants' most recent effort to avoid their discovery obligations and delay these proceedings  
6 should likewise be rejected. Indeed, the extraordinary relief they seek—halting all discovery in  
7 the case indefinitely, even after their motion to dismiss was denied and with a preliminary  
8 injunction in place because “Plaintiffs have established a likelihood of success on the merits,”  
9 Dkt. No. 103 at 14—does not even follow logically from the pretextual rationales they offer.

10 Those rationales also fail on their own terms. Defendants premise their latest motion on  
11 the theory that the most recent Presidential Memorandum so changes this litigation as to moot  
12 Plaintiffs' claims. Not so. The new Presidential Memorandum merely orders that the Department  
13 of Defense effectuate an implementation plan the President's August 2017 memorandum ordered  
14 it to provide—and that the Secretary of Defense expressly said was being created to “carry out  
15 the President's policy and directives.” DoD Interim Guidance, Dkt. No. 69-1 at 1. The President  
16 cannot erase this history by asserting at the end of the process *he ordered* that he actually had no  
17 role in the decision *he made* and instructed his subordinates to justify. No amount of circular  
18 reasoning or doublethink can break the unmistakable causal chain. Plaintiffs' claims are not  
19 moot, and there are no new circumstances justifying a stay of discovery.

20 Nor is there any merit to Defendants' claim that Plaintiffs' constitutional challenges can  
21 be limited to an unspecified administrative record under the Administrative Procedure Act, or  
22 that the interests of justice favor postponing the fact-finding only *they* argue is necessary before  
23 the Court can decide constitutional claims crucial to thousands of transgender military personnel.  
24 Certainly the prospect of routine privilege and relevance discovery disputes is no basis to  
25 preclude discovery altogether. Defendants do not carry their burden of justifying the sweeping  
26 protective order they seek, and their motion should be denied.



1 The President’s August 2017 Memorandum ordered the Secretary of Defense to develop  
2 an Implementation Plan reflecting the discriminatory and unconstitutional policies first  
3 articulated by the President in his July 2017 tweets and then reiterated in his August 2017  
4 Memorandum. *See* Dkt. No. 90 at 3 (admitting that the President ordered the Secretary of  
5 Defense “to submit an implementation plan by February 21, 2018”). The Secretary of Defense,  
6 having received those unambiguous orders from his Commander-in-Chief, responded with  
7 Interim Guidance confirming “DoD will carry out the President’s policy and directives” set forth  
8 in that Memorandum. DoD Interim Guidance, Dkt. No. 69-1, at 1. The Secretary delivered that  
9 preordained policy, as ordered, in February 2018, and the President endorsed it the following  
10 month.

11 Nothing Defendants do or say—including proclaiming that the prior Memorandum is  
12 “revoked”—can expunge the events that led to this point or render them “irrelevant” to  
13 Plaintiffs’ suit. *See* Mot. at 4. The President’s unconstitutional policy of targeting transgender  
14 individuals for discrimination is alive and well in the Implementation Plan developed at his  
15 explicit request. That Plan is not a new policy, but the same invidious discrimination, just this  
16 time spelled out in more than 140 characters and with the “create justification” placeholders  
17 filled in. *See* Dkt. No. 227 at 1-4.

18 Nor has anything changed with respect to Plaintiffs’ standing. As Plaintiffs explained in  
19 their recent supplemental brief, they still suffer cognizable injuries that are redressable through  
20 declaratory and injunctive relief in their favor, and at least one plaintiff maintains standing to  
21 challenge each aspect of the Ban. *Id.* at 5-7. And, independently, Defendants’ mootness  
22 arguments run headlong into binding Ninth Circuit precedent on voluntary cessation. *Id.* at 6-7  
23 (citing, *e.g.*, *Bell v. City of Boise*, 709 F.3d 890, 899-901 (9th Cir. 2013); *McCormack v. Herzon*,  
24 788 F.3d 1017, 1024-26 (9th Cir. 2015)).

25 Not to mention, Defendants premise their mootness arguments on their pending motion to  
26 dissolve the Court’s preliminary injunction. But the fact the Court will eventually issue a ruling  
27 and an appeal may follow is no reason to stay discovery in the meantime. *See Caribbean Marine*  
28 *Servs. Co. v. Baldrige*, 844 F.2d 668, 673 (9th Cir. 1988) (expressing disapproval of stay of

1 discovery pending appeal of preliminary injunction order because “[o]ur resolution of these  
2 issues will not determine the merits of the underlying legal issues presented in this litigation, and  
3 will only temporarily affect the rights of the parties”); *Republic of Philippines v. Marcos*, 640 F.  
4 Supp. 737, 739 (S.D.N.Y. 1986) (“Nor would a dissolution of the preliminary injunction by the  
5 Court of Appeals necessarily be a reason to terminate discovery. . . . The possibility that  
6 defendants might take such action to defeat plaintiff’s prospects of effective recovery is not a  
7 reason to stay discovery.”). Even if the Court were to dissolve the preliminary injunction, it  
8 would not end the case. With or without an injunction, Plaintiffs are entitled to test the  
9 constitutionality of Defendants’ discriminatory ban.

## 10 **II. THIS CASE CANNOT BE LIMITED TO AN ADMINISTRATIVE RECORD.**

11 Defendants next argue that any further litigation “should be confined to the  
12 administrative record” pursuant to the Administrative Procedures Act (APA). Mot. at 5. Of  
13 course, Plaintiffs have pled no claims under the APA. Defendants’ reason for raising the issue  
14 for the first time now is transparent: they hope to prevent Plaintiffs from uncovering even more  
15 evidence to confirm that the “new policy” is mere *post hoc* rationalization for the same  
16 unconstitutional animus that has motivated the Ban since its inception. But Defendants cannot  
17 avoid reckoning with their unconstitutional actions by funneling them through an administrative  
18 process.

19 To begin, Defendants do not specify what the “administrative record” would even entail  
20 in this case. They failed to supplement their initial disclosures with this purported material, and  
21 their conclusory argument does not explain how this case may be properly conceived of as one  
22 involving administrative action at all.

23 No matter: Under settled law, Plaintiffs’ freestanding constitutional challenges are not  
24 subject to the APA. Actions are properly brought under the APA only when “there is no other  
25 adequate remedy in a court.” *Nw. Coal. for Alternatives to Pesticides v. U.S. E.P.A.*, 920 F. Supp.  
26 2d 1168, 1175 (W.D. Wash. 2013) (quotations omitted). But it has long been “established  
27 practice . . . to sustain the jurisdiction of federal courts to issue injunctions to protect rights  
28 safeguarded by the Constitution,” and plaintiffs thus need not rely on the APA for an adequate

1 remedy. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010)  
 2 (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)). “[C]onstitutional provisions confer private  
 3 rights of action such that parties may sue directly under them and need not proceed under the  
 4 APA for those claims.” *Clouser v. Espy*, 42 F.3d 1522, 1528 (9th Cir. 1994). Simply put, because  
 5 “[a] direct constitutional challenge is reviewed independent of the APA . . . the court is entitled  
 6 to look beyond the administrative record.” *Bolton v. Pritzker*, No. 15-cv-1607 MJP, 2016 WL  
 7 4555467, at \*4 (W.D. Wash. Sept. 1, 2016) (Pechman, J.).<sup>2</sup>

8 Furthermore, actions by the president are never subject to the APA. *See Franklin v.*  
 9 *Massachusetts*, 505 U.S. 788, 801 (1992) (explaining that presidential actions nevertheless “may  
 10 still be reviewed for constitutionality”). This case involves action taken by President Trump, who  
 11 ordered the Ban on Twitter and then directed its implementation in the Presidential  
 12 Memorandum. It also includes claims for declaratory relief directly against the President. For  
 13 both of these reasons, Defendants’ APA argument fails as a matter of law. *Id.*

14 **III. THE INTERESTS OF JUSTICE AND JUDICIAL ECONOMY DO NOT FAVOR**  
 15 **DELAYING DISCOVERY.**

16 Defendants’ plan to invoke various privileges is no reason to stay all discovery either.  
 17 Defendants take the unprecedented position that the President—just one of several named  
 18 defendants in this suit—is shielded from all civil discovery and that he need not answer a single  
 19 one of Plaintiffs’ interrogatories, requests for production, or requests for admission in this case.  
 20 What is more, all Defendants with the exception of the President have provided a privilege log,  
 21 meaning the President is in direct violation of Rule 26(b)(5). Without such a log, Plaintiffs  
 22 cannot evaluate or challenge a single privilege claim by the President, nor could the Court  
 23 conduct the necessary *in camera* analysis.

24  
 25  
 26 <sup>2</sup> In fact, even if the APA *did* apply to this litigation, Plaintiffs would still be entitled to seek discovery beyond any  
 27 purported administrative record. While Defendants argue there is a “strong presumption against discovery” in APA  
 28 cases, Mot. at 5, district courts are nevertheless permitted to allow discovery beyond the agency record “if necessary  
 to determine whether the agency has considered all relevant factors and explained its decision,” “when the agency has  
 relied on documents not in the record,” or “when plaintiffs make a showing of agency bad faith.” *Tri-Valley CAREs*  
*v. U.S. Dep’t of Energy*, 671 F.3d 1113, 1130 (9th Cir. 2012); *see also Ctr. for Biological Diversity v. U.S. Fish &*  
*Wildlife Serv.*, 450 F.3d 930, 943 (9th Cir. 2006) (same).

1 Defendants root their untenable positions in *Cheney v. U.S. Dist. Court for the Dist. of*  
2 *Columbia*, 542 U.S. 367 (2004), which concerned overly broad discovery served on then Vice  
3 President Cheney. But far from shielding the Executive from civil discovery, the Supreme Court  
4 merely stated that a district court must engage in the “weighty separation-of-powers objections”  
5 raised in such instances before assessing whether the Executive must invoke privileges. *Id.* at  
6 391. The Court did not purport to shield the Executive from all civil discovery, nor would such a  
7 broad reading be justified. It is beyond dispute that the presidential communications privilege is  
8 “qualified, not absolute, and can be overcome by an adequate showing of need.” *In re Sealed*  
9 *Case*, 121 F.3d 729, 745 (D.C. Cir. 1997). Those circumstances exist here, where the President  
10 himself ordered his government to violate Plaintiffs’ constitutional rights.

11 More fundamentally, these sorts of privilege disputes are routine in litigation involving  
12 the government. The proper procedural route to address Defendants’ concerns is not to freeze  
13 discovery, but rather for Defendants to assert whatever privilege they believe is justified and let  
14 the propriety of those concrete and specific objections play out how the federal and local rules  
15 contemplate—through the required meet-and-confer process, followed if necessary by motion  
16 practice. Just like in any other case, the rules provide a mechanism to address and resolve any  
17 privilege disputes, and Defendants offer no legitimate reason to short-circuit those processes,  
18 much less halt all discovery.

19 The specter of a separation-of-powers dispute is likewise no reason to delay this  
20 litigation. Not only has the Supreme Court “rejected the argument that the potential burdens on  
21 the President violate separation-of-powers principles,” but “those burdens are appropriate  
22 matters for the District Court to evaluate in its management of the case.” *Clinton v. Jones*, 520  
23 U.S. 681, 707 (1997). The Court is eminently capable of adjudicating any privilege disputes, and  
24 Defendants’ desire to avoid that fight altogether is no reason to stay discovery. *See, e.g., Citizens*  
25 *for Responsibility & Ethics in Wash. v. Cheney*, 580 F. Supp. 2d 168, 180 (D.D.C. 2008)  
26 (denying motion to stay where defendants asserted that the court was “running ‘headlong’ into a  
27 separation of powers issue”).  
28

1 Indeed, other courts handling litigation over the Ban have already engaged with  
2 Defendants' privilege objections and easily rejected their untenably broad formulation of the  
3 presidential communications privilege. *See* 2/16/2018 *Doe v. Trump* Hr'g Tr. at 6:14-17 ("I think  
4 you need to figure out how to get around the fact that what you're saying is that it's an absolute  
5 privilege, and it's not.") (attached as Ex. 1); Defs.' Mot. for Protective Order, 1:17-cv-01597-  
6 CKK, ECF No. 89 (D.D.C. Feb. 27, 2018); Pls.' Opp'n to Defs.' Mot., 1:17-cv-01597-CKK,  
7 ECF No. 91 (D.D.C. Mar. 12, 2018). It simply is not true that this Court will need to wade into  
8 uncharted separation-of-powers questions.

9 Finally, there is no reason why Plaintiffs' concerns about discovery involving the  
10 President supports Defendants' request for a protective order halting all discovery, involving any  
11 defendant. If anything, it shows that Defendants recognize all roads in discovery lead back to the  
12 President and his July 2017 tweets. The disconnect between the purported issue Defendants  
13 identify (discovery directed at the President) and the relief they seek (no discovery directed at  
14 any defendant) highlights that separation-of-powers concerns are nothing but pretext—another  
15 attempt to put off having to defend indefensible discrimination.

16 Both judicial economy and the interests of justice favor proceeding with discovery. A  
17 stay of discovery would not only be "oppressive in its consequences" to Plaintiffs, it would not  
18 promote the public welfare in any way. *Clinton*, 520 U.S. at 707 (quoting *Landis v. N. American*  
19 *Co.*, 299 U.S. 248, 254 (1936)). Defendants' motion for a protective order staying discovery  
20 should be denied.

## 21 CONCLUSION

22 For all of these reasons, the Court should deny the government's request for a protective  
23 order staying all discovery in these proceedings.

1 Respectfully submitted this 11th day of April, 2018.

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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on April 11, 2018.



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# Exhibit 1

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BEFORE THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JANE DOE 1, et al.,	.	
	.	Case Number 17-cv-1597
Plaintiffs,	.	
	.	
vs.	.	Washington, D.C.
	.	Friday, February 16, 2018
DONALD J. TRUMP, in his official	.	2:42 p.m.
capacity as President of the	.	
United States, et al.,	.	
	.	
Defendants.	.	

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TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by stenotype shorthand.  
Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Kotelly.  
3 Let me call the case. This is the case of Jane Doe, et al.,  
4 versus Donald Trump, 17-cv-1597. I am sorry about being late  
5 for the phone call, but I was still in court with a criminal  
6 case.

7 So if we could have plaintiffs' counsel identify  
8 themselves.

9 MR. WOLFSON: Good afternoon, your Honor. This is  
10 Paul Wolfson with the plaintiffs. With me on the line are  
11 Daniel McFadden and Kevin Lamb. There's a little bit of static  
12 on the line. I apologize for that. I hope it will be okay.

13 THE COURT: It's fine on my end, but it may be a  
14 problem on yours. Let me know if it is a problem. We can have  
15 you call in again.

16 MR. WOLFSON: Okay.

17 THE COURT: And who is on for the defense?

18 MR. PARKER: Your Honor, this is Ryan Parker for the  
19 defense, and with me is my colleague, Drew Carmichael.

20 THE COURT: Okay. So we are resuming our discussion  
21 that we had on Tuesday, and we left two issues to be discussed  
22 initially here.

23 And you were, Mr. Parker, going back to your clients to see  
24 whether there was a proposal that could be made for the Court to  
25 review in camera the documents or some way in terms of deciding

1 on the presidential communications privilege that would not  
2 leave the posture of the case in it being, in essence, an  
3 absolute privilege, but to set something up so that the Court  
4 could make an independent decision.

5 They also were to -- the parties were to meet and confer to  
6 resolve or narrow about the deliberative process privilege. If  
7 you weren't able to resolve it, then I requested plaintiffs  
8 identify documents that they would request that I review in  
9 camera to make some decisions.

10 So let me start with you, Mr. Parker. Where are we?

11 MR. PARKER: Thank you, your Honor.

12 Let me start with the deliberative process privilege.  
13 Plaintiffs provided us with a list of the documents that they  
14 allege contain information that has been inappropriately  
15 withheld under the deliberative process privilege. There were  
16 approximately 300 documents.

17 We have provided the lists to the different services,  
18 offices, and components that have produced documents. We've  
19 asked them to look at the documents and specifically the  
20 withholdings, and we intend to get back to the plaintiffs next  
21 week with our decision regarding the documents and the  
22 withholdings at issue.

23 We have also, before this call, had a call with plaintiffs'  
24 counsel to discuss how we wanted to proceed with the  
25 deliberative process privilege, and I think our plan is to call

1       them next week and let them know the results of our review of  
2       the documents that they've identified.

3               We would then like to discuss with them whether providing  
4       additional information about the documents themselves might be a  
5       pathway to resolving some of the documents that remain at issue  
6       so that we can try to narrow the issue as much as possible  
7       before bringing it back to the Court, if necessary.

8               And I would propose that that's the way that we proceed,  
9       but I'm happy to let plaintiffs' counsel interject and confirm  
10       that that is consistent with our discussion.

11               THE COURT:   Okay.   So why don't we deal with this  
12       issue first.

13               Mr. Wolfson, I assume you're the spokesperson.

14               MR. WOLFSON:   Yes.   Thank you, your Honor.

15               That's right.   We did speak about that, and we are willing  
16       to -- we are, you know, appreciative that Mr. Parker and his  
17       clients are taking another look at these documents, and we're  
18       happy to talk to them next week after they've done a further  
19       review.

20               We are hopeful that they will be able to provide us with, I  
21       will say, more robust information about the documents beyond  
22       what we've received so that we will be in a better position to  
23       test whether -- to evaluate whether we think we should test  
24       whether they really are predecisional.   And we're willing to  
25       sort of do, you know, a couple of more steps on those lines but

1 reserving the right to go back to the Court, obviously, and ask  
2 the Court to review in camera if we can't reach a resolution.

3 THE COURT: All right. So it sounds like you are both  
4 on the same page, and that seems to me to be a perfectly  
5 sensible way of trying to resolve it or, if nothing else, trying  
6 to narrow it so what, if anything, is brought back to me will be  
7 a much more limited issue.

8 Where are we on the presidential communication privilege?

9 MR. PARKER: Thank you, your Honor. This is  
10 Mr. Parker.

11 We have conferred with our clients about the prospect of  
12 providing information regarding who the president and his  
13 advisors met with regarding transgender -- military service by  
14 transgender individuals and when those meetings occurred. And  
15 we are not willing to submit that information to the Court for  
16 in camera review.

17 Because this is an issue of great importance, we would  
18 respectfully request that the Court allow us to fully and  
19 adequately brief it before the Court issues a decision, and if  
20 your Honor would like, I would be happy to lay out sort of the  
21 reasoning behind our decision, or we could put that in briefing,  
22 if that would be better for the Court.

23 THE COURT: Okay. I think you should just put it in  
24 briefing. We had a discussion -- you know my position. It  
25 sounds as if it's tantamount to being an absolute privilege, and

1 it's not, and therefore, if you don't want to do this -- I mean,  
2 I felt that this was one prospect. I left it to you as to  
3 whether there is something else that could be provided to the  
4 Court that would give me some idea of how it's actually being  
5 applied in terms of the documents at issue. It sounds as if  
6 you've decided that there's nothing that can be given to the  
7 Court in camera.

8 Is that correct?

9 MR. PARKER: Your Honor, that is correct.

10 THE COURT: Okay.

11 MR. PARKER: And we would like an opportunity --  
12 excuse me. I'm sorry.

13 THE COURT: That's okay. That's why I think it's  
14 useless to have further discussion. You need to file it. I  
15 think you need to figure out how to get around the fact that  
16 what you're saying is that it's an absolute privilege, and it's  
17 not.

18 So if you want to have briefing and the Court to decide in  
19 that posture, give careful thought. I, of course, will as well.  
20 But this is something that, however it comes out, will go to the  
21 Court of Appeals and the Supreme Court, and you will have case  
22 law, good or bad.

23 So let me set out a briefing schedule for you. When can  
24 you -- it seems to me, since you're asserting it, that you  
25 should go first.

1 MR. PARKER: Okay, your Honor. That works for us. We  
2 would ask for 10 business days. Could we have until March 5th  
3 to brief this issue for the Court?

4 THE COURT: Okay. Mr. Wolfson, it seems to me that  
5 this is an important enough issue that we should get a full  
6 briefing. Do you have a problem?

7 MR. WOLFSON: I think that's a little slow, your  
8 Honor. Let me just look at the calendar a minute.

9 THE COURT: Sure. You said, what, March 5th?

10 MR. PARKER: Yes, your Honor. I asked just for 10  
11 business days, until March 5th.

12 MR. WOLFSON: Your Honor, I think we would prefer to  
13 compress that a little bit, just because we have depositions  
14 that are coming up, and, you know, we're going to need this  
15 information to be able to take at least some of those  
16 depositions. Maybe 10 calendar days instead of 10 business  
17 days, you know, something like have the defendants file their  
18 brief on the 26th or 27th of February. That's more like 11 or  
19 12. But otherwise, I think this won't get -- we won't be fully  
20 briefed until the end of March.

21 THE COURT: Well, if you propose to do it  
22 February 26th, when would you respond? Obviously, you need to  
23 respond quickly, too.

24 MR. WOLFSON: All right. So I would say also 10  
25 calendar days. So March 9th. I think that's 11 and 11. Sorry.

1 Go ahead, Ryan.

2 MR. PARKER: I was just going to say, because we are  
3 working with a federal holiday on Monday, could we have until  
4 the 27th, which would be Tuesday, the 27th of February?

5 THE COURT: Yes; that's fine.

6 MR. WOLFSON: Your Honor, if we could have, let's say,  
7 March 12th.

8 THE COURT: All right. And when do you want to file  
9 your reply?

10 MR. PARKER: Can we say March 23rd, your Honor?

11 MR. WOLFSON: Your Honor, that seems like --

12 THE COURT: That's too long; that's too long. This is  
13 an issue that you are pushing in terms of coming up with it, and  
14 you're going to have to figure out how this is not an absolute  
15 privilege and how, by not letting me look at anything, somehow  
16 this is not an absolute privilege.

17 So I assume you've thought it through and, therefore, had a  
18 consultation and that you figured out a strategy of how you're  
19 going to do that. It seems to me it's a fairly narrow issue.  
20 The documents are broader, but the issue of the Court not being  
21 able to look at anything -- I mean, I'm open to any proposal,  
22 whether it's the president or, I had mentioned, some of the  
23 other people that would -- are asserting it that are not the  
24 president, such as Mattis or some of the other people. I was  
25 open to considering that. But if it's a blanket no to all of

1 it, it seems to me you need to move a little faster.

2 I think by March 19th, we get the reply, so that we can --  
3 this is not going to -- so that the Court has enough time to get  
4 an opinion out without dragging everything else. Obviously,  
5 even with the schedule, it's going to affect how you proceed  
6 with the rest of the discovery.

7 MR. PARKER: Thank you, your Honor.

8 THE COURT: All right. Hang on one second. Let me  
9 just look at my notes for a minute and see if there's anything  
10 else I want to bring up. Hold on.

11 (Pause.)

12 THE COURT: All right. I've looked over my notes, and  
13 there's nothing else. So I will simply await on the  
14 deliberative process privilege for you to -- and the process  
15 you've laid out, which sounds reasonable. And plaintiffs, you  
16 can get back to me if there's anything else for the Court to do.

17 MR. WOLFSON: Thank you very much.

18 THE COURT: I won't set a date. I will leave it to  
19 you to come back to me when you need to.

20 And we will proceed -- this is going to be a motion that is  
21 styled what, Mr. Parker?

22 MR. PARKER: Your Honor, I think we will style it as a  
23 motion for a protective order, if that seems appropriate to the  
24 Court.

25 THE COURT: I will leave it to you how you want to do

1 it.

2 Keep in mind that what I asked for was any proposal, I  
3 would consider, that would allow me to see how it's being tested  
4 and also that it can not necessarily be the president, it can be  
5 some of the other people who are less than the president but who  
6 are also asserting it, since it's being asserted across the  
7 board.

8 I will say only one other thing. I sincerely hope this is  
9 not just a dilatory tactic, because you're going to wind up with  
10 a decision on this. I know you don't make the decision;  
11 somebody else does.

12 So if there's nothing else -- Mr. Wolfson?

13 MR. WOLFSON: Your Honor, one final thing. This is  
14 Paul Wolfson.

15 We had e-mailed the Court a request that the Court file in  
16 docket the e-mail correspondence.

17 THE COURT: I'm sorry. I didn't mean to interrupt.

18 Yes, we are doing that. They require scanning. So it  
19 takes a little bit of time to do that. But they have it, and  
20 they should, hopefully, be getting it up today, including the  
21 exhibits that were attached to it.

22 MR. WOLFSON: Thank you very much.

23 THE COURT: But scanning does take more time.

24 MR. PARKER: Your Honor, could I just note for the  
25 Court very briefly that the documents that plaintiff provided to

1 the Court in its most recent e-mail were the documents that the  
 2 parties would like to have put on the docket. There were some  
 3 documents that were initially sent to the Court that contained  
 4 office telephone numbers --

5 THE COURT: No, no, no, we're not doing that. This is  
 6 strictly going to be the letters that set out your -- it's not  
 7 going to be with any phone numbers or anything else.

8 MR. PARKER: Okay. Thank you, your Honor.

9 THE COURT: All right. If there's nothing else, the  
 10 parties are excused.

11 (Proceedings adjourned at 2:56 p.m.)

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17 CERTIFICATE OF OFFICIAL COURT REPORTER

18  
 19 I, Sara A. Wick, certify that the foregoing is a  
 20 correct transcript from the record of proceedings in the  
 21 above-entitled matter.

22  
 23  
 24 /s/ Sara A. Wick

February 20, 2018

25 SIGNATURE OF COURT REPORTER

DATE