

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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-KK

~~PROPOSED~~ **FEDERAL RULE
OF EVIDENCE 502(d) ORDER**

DISCOVERY MATTER

STATE OF CALIFORNIA,
Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

Pursuant to Federal Rule of Evidence 502(d) and for good cause shown, the Court hereby enters the following Rule 502(d) Order:

Good Cause Statement. Good cause exists for the entry of this Order. This action is one of four related cases challenging the Government’s policy regarding military service by transgender individuals. *See Doe v. Trump*, No. 1:17-cv-1597 (D.D.C.); *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.); and *Karnoski v. Trump*, No. 2:17-cv-01297 (W.D. Wash.). In an attempt to litigate the four related cases efficiently, the parties to each of the four cases have agreed that discovery material that is produced by any party or non-party in any of the named actions will be

1 deemed produced in all four of the cases. In order to facilitate the sharing of
2 discovery materials, the parties to the other three cases have agreed to, and the
3 courts in the other three cases have entered, Rule 502(d) agreements that are
4 similar to this Order. Defendants have already produced substantial discovery
5 materials to the plaintiffs in the other three cases. Those discovery materials
6 include information otherwise generally unavailable to the public or otherwise
7 protected from disclosure under state or federal statutes, court rules, case decisions,
8 or common law, including internal documents of the Department of Defense, the
9 United States Army, the United States Air Force, and the United States Navy.
10 Pursuant to Defendants' agreement with Plaintiffs and Intervenor in this case,
11 Defendants are prepared to provide the discovery materials that they have
12 produced in the other three cases to Plaintiffs and Intervenor, once this Order and
13 the accompanying Protective Order and Cross-Use Agreement have been entered
14 by the Court. Accordingly, to expedite the flow of information, to facilitate the
15 prompt resolution of disputes over confidentiality of discovery materials, to
16 adequately protect information the parties are entitled to keep confidential, and to
17 serve the ends of justice, a protective order covering such information is justified
18 in this matter.

19 **I. NO WAIVER BY DISCLOSURE**

20 1. The production of a document, or part of a document, shall not
21 constitute a waiver of any privilege or protection as to any portion of that
22 document, or as to any undisclosed privileged or protected communications or
23 information concerning the same subject matter, in this or in any other proceeding.
24 This Order applies to the attorney-client privilege, work-product protections, and
25 all other protections afforded by Federal Rule of Civil Procedure 26(b) and
26 governmental privileges. Nothing in this Order shall constitute an admission that
27 any document disclosed in this litigation is subject to any of the foregoing
28 privileges or protections, or that any party is entitled to raise or assert such

1 privileges. Additionally, nothing in this Order shall prohibit parties from
2 withholding from production any document covered by any applicable privilege or
3 other protection.

4 2. This Order shall displace the provisions of Fed. R. Evid. 502(b)(1)
5 and (2). That is, the disclosure of privileged or protected information, as described
6 above, in this litigation shall not constitute a subject-matter waiver of the privilege
7 or protection in this or any other federal or state proceeding, regardless of the
8 standard of care or specific steps taken to prevent disclosure. However, nothing in
9 this Order shall limit a party's right to conduct a pre-production review of
10 documents as it deems appropriate.

11 **II. DEFINITIONS**

12 1. "Document," as used herein, includes all items listed in Fed. R. Civ.
13 P. 34(a)(1)(A) and (B).

14 2. "Documents Produced," as used herein, includes all documents made
15 available for review or produced in any manner during this litigation.

16 **III. PROCEDURES**

17 The procedures applicable to a claim of privilege with respect to a produced
18 document and the resolution thereof shall be as follows:

19 1. If a party discovers a document, or part thereof, produced by another
20 party that is privileged or otherwise protected, the receiving party shall promptly
21 notify the producing party and then return the document or destroy it and certify
22 that it has been destroyed to the producing party. Nothing in this Order is intended
23 to shift the burden to identify privileged and protected documents from the
24 producing party to the receiving party.

25 2. If the producing party determines that a document produced, or part
26 thereof, is subject to a privilege or privileges, the producing party shall promptly
27 give the receiving party notice of the claim of privilege ("privilege notice").

28 3. The privilege notice must contain information sufficient to identify
the document including, if applicable, a Bates number as well as an identification
of the privilege asserted and its basis.

1 4. Upon receiving the privilege notice, if the receiving party agrees with
2 the privilege assertion made, the receiving party must promptly return the specified
3 document(s) and any copies or destroy the document(s) and copies and certify to
4 the producing party that the document(s) and copies have been destroyed. The
5 receiving party must sequester and destroy any notes taken about the document. If
6 a receiving party disclosed the document or information specified in the notice
7 before receiving the notice, it must take reasonable steps to retrieve it, and so
8 notify the producing party of the disclosure and its efforts to retrieve the document
9 or information.

10 5. Upon receiving the privilege notice, if the receiving party wishes to
11 dispute a producing party's privilege notice, the receiving party shall promptly
12 meet and confer with the producing party. The document(s) shall be sequestered
13 and not be used by the receiving party in the litigation (e.g., filed as an exhibit to a
14 pleading or used in deposition) while the dispute is pending. If the parties are
15 unable to come to an agreement about the privilege assertions made in the privilege
16 notice, the receiving party may make a sealed motion for a judicial determination
17 of the privilege claim. Any motion challenging a party's privilege assertion must
18 be brought in strict compliance with Local Rules 37-1 and 37-2, including the Joint
19 Stipulation requirement, and Local Rule 79-5, and may be filed under seal only
20 pursuant to a separate court order authorizing the sealing of the specific Protected
21 Material at issue.

22 6. Pending resolution of the judicial determination, the parties shall both
23 preserve and refrain from using the challenged information for any purpose and
24 shall not disclose it to any person other than those required by law to be served
25 with a copy of the sealed motion. The receiving party's motion challenging the
26 assertion must not publicly disclose the information claimed to be privileged. Any
27 further briefing by any party shall also not publicly disclose the information
28 claimed to be privileged if the privilege claim remains unresolved or is resolved in
the producing party's favor.

1 7. If a document must be returned or destroyed as determined by the
2 process above, that document, along with copies and notes about the document,
3 that exist on back-up tapes, systems, or similar storage need not be immediately
4 deleted or destroyed, and, instead, such materials shall be overwritten and
5 destroyed in the normal course of business. Until they are overwritten in the
6 normal course of business, the receiving party will take reasonable steps to limit
7 access, if any, to the persons necessary to conduct routine IT and cybersecurity
8 functions.

9
10 **SO ORDERED.**

11 Dated: April 25, 2018

12 
13 _____
14 HON. KENLYKIYA KATO
15 United States Magistrate Judge
16
17
18
19
20
21
22
23
24
25
26
27
28