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 13 AND ANTHONY J. LOVERDE

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 MICHAEL D. ALMY, JASON D. KNIGHT,  
 17 and ANTHONY J. LOVERDE,

18 Plaintiffs,

19 v.

20 UNITED STATES DEPARTMENT OF  
 DEFENSE; ROBERT M. GATES, Secretary  
 of Defense; DEPARTMENT OF THE AIR  
 21 FORCE; MICHAEL B. DONLEY, Secretary,  
 Department of the Air Force; DEPARTMENT  
 22 OF THE NAVY; and RAY MABUS,  
 Secretary, Department of the Navy,

23 Defendants.  
 24

Case No. 10-cv-05627-RS

**DECLARATION OF ANTHONY J.  
 LOVERDE IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 PARTIAL SUMMARY JUDGMENT**

Date: September 1, 2011  
 Time: 1:30 p.m.  
 Courtroom: 3, 17<sup>th</sup> Floor  
 Judge: Hon. Richard Seeborg

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I, Anthony J. Loverde, hereby declare as follows:

1. Since childhood, I had an interest in serving in the U.S. military. One of my grandfathers served in the Coast Guard in World War II, another grandfather served in the Army during the Korean conflict and received a Purple Heart, and one of my uncles served in the Marine Corps in Vietnam. I was the first member of my family in this generation to serve in the armed forces. I was followed by my brother and three of my cousins. My brother served in the Army as an Infantryman and currently serves in the Air Force Reserves as a Security Forces Non-Commissioned Officer.

2. I enlisted in the Air Force in February 2001. I served from 2001 to 2004 in the 86th Maintenance Squadron. During this time, I was stationed in Germany and calibrated weapons systems for the squadron as a Precision Measurement Equipment Laboratory Technician. In 2005, I was reassigned to Edwards Air Force Base, California.

3. Although I had the option of leaving the Air Force in 2007, after quite a bit of encouragement from those I served under, I decided to reenlist in 2006 before my original enlistment ended. At that time, I opted to retrain as a C-130 Loadmaster. In this new role, I joined the 37th Airlift Squadron at Ramstein Air Force Base in Germany. In 2007, I deployed with my squadron as part of the troop “surge” in support of Operation Iraqi Freedom.

4. During my service in the Air Force, I received numerous military awards and decorations. These accolades include, but are not limited to, the Air Medal, the Air Force Commendation Medal, the Air Force Outstanding Unit Award, the Air Force Good Conduct Medal, the National Defense Service Medal, the Global War on Terrorism Service Medal, the Air Force Overseas Ribbon, the Air Force Expeditionary Service Ribbon, the Air Force Longevity Service Ribbon, the Air Force NCO PME Graduate Ribbon, the Small Arms Expert Marksmanship Ribbon, and the Air Force Training Ribbon.

5. During my service in the Air Force, my military superiors and evaluators provided uniformly high assessments of me in my annual performance evaluations and promotion recommendations. For example, one former supervisor made the following comment:

1 Unmatched support on channel [mission] . . . key to mission  
2 success . . . superior knowledge/abilities guaranteed readiness . . .  
3 pressing ahead of peers academically . . . agile in body & mind[.]  
4 Earned Distinguished Graduate award from Basic Loadmaster  
5 course . . . Hard charger . . . Airdropped 87 Army & Italian special  
6 forces; critical to joint training exercise—fostered combat  
effectiveness . . . Sincere humanitarian; visited injured soldiers at  
LRMC w/Red Cross pet program—lifted hopes/sped recovery[.]  
Excels in all facets of his duties, consistently improving knowledge  
level and loadmaster skills—promote now.

6 A copy of this performance review is attached hereto as Exhibit 1.

7  
8 6. However, during my deployment to Ali Al Salem Air Force Base in 2007, it  
9 became clear to me that I could no longer continue pretending to be someone I was not. Other  
10 service members talked about loved ones back home and leaned on each other for support, but  
11 because I am gay, I found myself avoiding interaction with my fellow troops so as not to deceive  
12 them.

13 7. Upon my return from deployment in April 2008, I emailed two of my superior  
14 officers to let them know that I am gay. I was mindful of what the Air Force has described as  
15 “Air Force Core Values,” which are “Integrity first, Service before self, and Excellence in all we  
16 do.” I told my superior officers that although I would like to continue to serve, I could not do so  
17 if it also meant continuing to conceal my sexual orientation. A true and correct copy of the email  
18 I sent to MSgt Welch is attached as Exhibit 2.

19 8. On or about April 24, 2008, MSgt Welch telephoned me to request a meeting with  
20 him and Lt. Col. Brian Yates, my commander, to discuss my email sent April 22, 2008. The  
21 following day, my commander asked me to acknowledge the printed email dated April 22, 2008  
22 and to confirm that I sent the email and was not coerced to do so. The commander informed me  
23 that I was the first Don’t Ask, Don’t Tell case that he had to deal with, and that he did not know  
24 what to do about it. The commander said he would contact the Air Force legal department for  
25 further instruction and his official recommendation would be made according to the legal  
26 department’s recommendation.

27 9. The following day, April 25, 2008, my commander informed me that the legal  
28 department recommended discharge. He again let me know that he did not know what to expect

1 in regards to the process, but that I should check in periodically with the First Sergeant to find out  
2 any information that may come available. My commander and First Sergeant then ordered me to  
3 resume my two weeks of reintegration leave that was granted to all returning aircrew members  
4 from deployment and to report back to work at the end of my leave.

5 10. On May 13, 2008, my commander filed an official memorandum with the legal  
6 department regarding the April 22, 2008 email and stated:

7 It is not my opinion that SSgt Loverde made this statement for the  
8 sole purpose of avoiding military service. He recently returned  
9 from a four-month deployment, so the timing of this statement is  
10 not suspect. In addition, SSgt Loverde showed interest in finishing  
11 out his enlistment. SSgt Loverde's military record and performance  
12 has been nothing less than honorable.

13 A copy of this memorandum is attached hereto as Exhibit 3.

14 11. On or about June 9, 2008, I received a memorandum informing me that I was  
15 being recommended for discharge under DADT. A true and correct copy of this memorandum is  
16 attached hereto as Exhibit 4. The memo stated:

17 I am recommending that you receive an honorable discharge  
18 characterization. The commander exercising Special Court-Martial  
19 Convening Authority jurisdiction, or a higher authority, will decide  
20 whether you will be discharged or retained in the United States Air  
21 Force.

22 12. I was concerned that it was nearly impossible to win retention with a board  
23 hearing, and it would only delay the process and discharge would ultimately result in the end.  
24 Moreover, I feared that, although my commander had recommended an honorable discharge, the  
25 higher authority might change the categorization due to some sort of prejudice.

26 13. I am aware of personal prejudice towards homosexuality, and I did not want to risk  
27 my honorable characterization for anything less than what my service record reflected. I asked to  
28 be retained, but if that was not possible, my service record reflected an honorable characterization  
and there was no protection from prejudice in the administrative process. The waiver was the  
only assurance to protect myself from further discrimination under the law.

1           14.     In support of my request for retention, I cited the *Witt v. Department of the Air*  
2 *Force* decision, which had been made on May 21, 2008. I also provided numerous character  
3 references to support the fact that my discharge would not meet the “heightened standard”  
4 required by *Witt*. A true and correct copy of an email in which I made clear to my commanders  
5 that I did not want to be discharged, and that I thought the *Witt* standard should apply, is attached  
6 hereto as Exhibit 5.

7           15.     During the discharge process, many other co-workers and superiors wrote in  
8 support of my retention. Consistent with my high performance reviews throughout my career,  
9 these supporters noted that I “always produced high quality work” and could be counted on “to  
10 get the job done right.” Based on his personal experience working with me, one former superior  
11 officer wrote: “I fully recommend that you consider retaining him in the Air Force. He has the  
12 potential to go very far in whatever endeavor he pursues . . . I hope that includes continued  
13 service to our nation.” Another former superior officer wrote: “If I ever had the opportunity to  
14 build my ‘dream team’ for work, I would take an entire crew of SSgt Loverdes over most other  
15 workers I have encountered.”

16           16.     Nonetheless, on or about June 19, 2008, I received a “Discharge Legal Review”  
17 memorandum again recommending discharge. A true and correct copy of the “Discharge Legal  
18 Review” memorandum is attached hereto as Exhibit 6. The memorandum recommended an  
19 honorable discharge. It cited the basis for this action as the email I sent to my superiors in April.  
20 The memorandum recognized that I wanted the *Witt* standard to be applied to my case, but  
21 dismissed this standard as inapplicable.

22           17.     In face of the discharge recommendation, on June 24, 2008, the Air Force Career  
23 Enhancement office notified me that I was eligible and scheduled for promotion testing on June  
24 25, 2008. I tested for promotion although I was in the process of being kicked out of the Air  
25 Force.

26           18.     Ironically, in August 2008, I was awarded the Air Medal for my “superior ability  
27 in the presence of perilous conditions” during my deployment in support of Operation Iraqi  
28 Freedom—the deployment that ultimately brought me to the decision to come out as gay to the

1 Air Force. The Air Medal Citation noted that "the professional ability and outstanding aerial  
2 accomplishments of Sergeant Loverde reflect great credit upon himself and the United States Air  
3 Force." A true and correct copy of this Air Medal is attached hereto as Exhibit 7.

4 19. I was discharged from the Air Force against my will. Had I not been discharged  
5 under DADT, I would have remained on active duty in the Air Force to this day. I simply wish to  
6 be reinstated into active duty in the Air Force so I can once again serve my country and fulfill the  
7 commitment I made to the Air Force.

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

10 Executed on July 26, 2011 at 2200 hrs Sacramento, CA

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By: 

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Anthony J. Loverde

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