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 LIEUTENANT COLONEL VICTOR J. FEHRENBACH

**UNITED STATES DISTRICT COURT  
 DISTRICT OF IDAHO**

LIEUTENANT COLONEL VICTOR J.  
 FEHRENBACH,

Plaintiff,

v.

DEPARTMENT OF THE AIR FORCE;  
 ROBERT M. GATES, Secretary of Defense;  
 MICHAEL B. DONLEY, Secretary,  
 Department of the Air Force; LT. GENERAL  
 GLENN SPEARS, Twelfth Air Force  
 Commander; and COL. RONALD  
 BUCKLEY, 366th Fighter Wing Commander,

Defendants.

Case No.

**DECLARATION OF LIEUTENANT  
 COLONEL VICTOR J. FEHRENBACH IN  
 SUPPORT OF HIS APPLICATION FOR  
 TEMPORARY RESTRAINING ORDER  
 AND PRELIMINARY INJUNCTION**

I, Victor J. Fehrenbach, declare:

1. I am a citizen of the United States and I currently reside in Boise, Idaho. I am stationed at Mountain Home Air Force Base in Mountain Home, Idaho.

2. I am honored to serve the United States as a Lieutenant Colonel in the United States Air Force. I am currently an active duty Air Force officer assigned as Assistant Director of Operations in the 366th Operations Support Squadron.

3. I am trained, and have primarily served, as a Fighter Weapons Systems Officer, flying the F-15E Strike Eagle, the Air Force's most advanced ground attack strike fighter which has played an important role in operations in Iraq and Afghanistan.

4. From an early age, I knew that I wanted to join the United States Air Force. My father retired as a Lieutenant Colonel in the Air Force. In fact, I was born on a United States Air Force Base. For me, serving in the Air Force is not just a job. It has been my calling and is my "way of life." I attended the University of Notre Dame in South Bend, Indiana on a four-year Air Force Reserve Officers Training Corps ("ROTC") scholarship.

5. After graduating from the University of Notre Dame, I entered active duty service in September 1991. Consequently, this year marks my nineteenth year as an active duty officer in the United States Air Force.

6. During my nearly 19-year career, I have deployed to major combat operations six times.

7. My performance as an officer in the United States Air Force has consistently earned me high praise and stellar reviews. True and correct copies of my performance reviews during my career and a draft promotion recommendation from 2008 are attached hereto as Exhibits 1 through 15.

8. As an Air Force Officer, I have had many distinctions bestowed upon me. My service has earned me one Meritorious Service Medal, nine Air Medals, five Commendation Medals, one Navy and Marine Corps Commendation Medal, and several other Combat Campaign and Achievement Medals. True and correct copies of the citations accompanying those medals are attached hereto as Exhibits 16 through 23.

9. The United States Air Force awarded me one of my nine Air Medals in 2003 for heroism while participating in aerial flight and destroying enemy ambush targets under heavy enemy fire during Operation IRAQI FREEDOM. A true and correct copy of the 2003 USAF Air Medal for heroism is attached hereto as Exhibit 24.

10. On May 16, 2008, my Commanding Officer ordered me to accompany him to the Air Force Office of Special Investigations (“AFOSI”) at Mountain Home Air Force Base without telling me the purpose of the visit. During the trip to the AFOSI headquarters, I asked my Commander whether I was being accused or investigated for anything, and that if I was, I wanted to consult a lawyer first and have a lawyer present for questioning. Despite that request, my Commander declined to state the purpose of the meeting and issued a direct order, requiring me to accompany him to AFOSI headquarters. He brought me directly to AFOSI headquarters.

11. At that time, I did not know that AFOSI agents had requested that a Boise Police Department (“BDP”) detective come to AFOSI’s office to interrogate me about my private life. I later learned that the AFOSI and the BDP had initiated an investigation of me based on a false claim of sexual assault by a male civilian.

12. No criminal charges were ever pressed against me by the Ada County District Attorney or AFOSI, but the BDP detective intruded into my private life by asking me questions about my sexual history that were irrelevant to the alleged encounter with the civilian.

13. I later found out that the civilian in question had made the false allegations against me after we engaged in consensual sexual relations at my private off-base residence on May 12, 2008.

14. Neither before, nor during, my interrogation did anyone read to me my rights Under Article 31 of the Uniform Code of Military Justice (“Article 31”). Prior to being interrogated, I was not advised of the Department of Defense policy on homosexual conduct, and I was not told that I was being investigated under “Don’t Ask, Don’t Tell.”

15. Although I requested an attorney at least twice before the actual questioning commenced, my requests were ignored.

16. I did not know that the interrogation was being observed by AFOSI agents, and I also did not know that the interrogation was being recorded by the detective and that he later would provide a copy of the recording to the AFOSI.

17. On September 12, 2008, I received an Air Force Memorandum from Lieutenant General Norman Seip, (former) Twelfth Air Force Commander, indicating that Lt. Gen. Seip had initiated administrative discharge proceedings against me for engaging in “homosexual conduct” at or near Boise, Idaho, on or about May 12, 2008. A true and correct copy of the September 12, 2008 Memorandum from Lt. Gen. Seip is attached hereto as Exhibit 25.

18. Following this Memorandum, Lt. Gen. Seip ordered on December 8, 2008, that a Board of Inquiry (“BOI”) be convened in order to make recommendations as to whether I should be retained on active duty.

19. An administrative BOI convened on April 14 and 15, 2009 to consider whether I should be retained on active duty. During voir dire, four out of the five members of this BOI acknowledged having “moral or religious convictions” that made them believe that “homosexual

conduct is wrong.” Nonetheless, those members were seated on the Board hearing my case. During the Board proceedings, the Air Force did not produce any evidence whatsoever to support the claim that my continued service would be detrimental to good order and discipline, morale, and unit cohesion. Despite this lack of evidence and despite the fact that no one in my squadron or on my base (with the exception of my chain of command, legal, and AFOSI personnel) knew of the nature of the charges against me, the members of the Board made a finding that my continued service would be detrimental to good order and discipline, morale, and unit cohesion. On April 15, 2009, the members of this BOI recommended that I be discharged from the military. True and correct copies of relevant excerpts from the BOI hearing transcript are attached hereto as Exhibit 26.

20. Since that time, I have continued to serve on active duty and I report for daily work at the Mountain Home Air Force Base. My colleagues have remained professional and respectful towards me, and I have continued to receive high ratings on my performance reviews. A true and correct copy of my latest performance review is attached hereto as Exhibit 14.

21. However, on August 4, 2010, my counsel was informed that the Air Force Personnel Board (AFPB) had met and made a recommendation to Secretary Donley’s designee, Mr. Joe Lineberger. Pursuant to Air Force regulations, a recommendation by the AFPB that I should be retained would not need to go to the Secretary or his designee.

22. I do not wish to be discharged from the Air Force. I am willing and able to continue serving with the same high standards at which I have always performed.

23. If I am discharged, I will not earn a retirement pension. In addition to the financial loss to me, this may negatively affect my ability to obtain future employment. I have nearly 19 years of military service, but 20 years are required to receive a retirement pension with

full medical benefits from the Department of Veterans Affairs (VA). Since I will not have these medical benefits if I am involuntarily discharged short of 20 years, a potential employer might not consider me for a position knowing that they could hire a retired officer with similar qualifications who reached his or her 20-year mark. The employer could realize significant cost savings by hiring another candidate to whom the employer would not need to offer medical benefits.

24. If I am discharged, I will be stigmatized by what the military writes in my official discharge papers (Defense Department Form 214, "DD 214"). The military will write a separation code on my DD 214 indicating the reason for my discharge, thus announcing to anyone who reads my DD 214 that I am unfit to serve in the military because I allegedly violated Air Force regulations. The military will also write a negative reenlistment code on my DD 214, indicating that I am banned from ever again serving in the military in any capacity. Based on my nearly 19 years in the Air Force, I understand that, among members of the military and former military personnel, such negative reenlistment codes are often associated with bad conduct.

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25. Most potential employers will read my DD 214. The separation and reentry codes, and the narrative reason for separation on the DD 214, could negatively affect my employment prospects because after reading my discharge papers an employer may discriminate against me, falsely believe the military that I am unfit to serve. I also understand that some employers may have reservations or outright bans about hiring someone with a negative reentry code. In all cases, I will be forced to explain the reason for my involuntary separation from the military after nearly 19 years.

26. By discharging me and writing into my DD 214 the negative reentry code and false label that I am unfit to serve, the military would also inflict a serious personal insult on me given that I have been an exemplary officer for nearly 19 years and am willing and able to continue serving in the Air Force with the same high standards at which I have always performed. That is something I will carry with me for the rest of my life.

I declare under penalty of perjury under the laws of the United States of America and the state of Idaho that the foregoing is true and correct. Executed this 10th day of August, 2010, at Chicago, Illinois.

  
Victor J. Fehrenbach