

Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
AIR FORCE; et al.,

Defendants.

Case No. C06-5195-RBL

**DECLARATION OF SHER KUNG IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER PROHIBITING
INTERFERENCE WITH NON-PARTY
WITNESSES BY DEFENDANTS**

I, SHER KUNG, do hereby declare under penalty of perjury under the laws of the United States of America, that the following facts are true and correct:

1. I am over the age of 18 years, have personal knowledge of the facts contained in this Declaration and am competent to testify to them.

2. I am counsel for the plaintiff. In the course of my duties as counsel for Major Witt I have contacted several people who serve, or who previously served, in the 446th Aeromedical Evacuation Squadron, to ask them for information pertinent to the case.

3. Central to the plaintiff's case is the contention that prior to Major Witt's

1 suspension in 2004, several gay and lesbian persons served in the 446th AES for many years; that
2 their sexual orientation was well known to members of the 446th; and that no one was bothered
3 by this fact; and that the unit morale, discipline and cohesion did not suffer as a result. Several
4 witnesses that have already been deposed in this litigation have testified that during their years of
5 service in the 446th AES they suspected that there were gay and lesbian servicemembers serving
6 in the unit, and that the presence of these members did not cause any problems.

7 4. I have attempted to contact numerous current and former members of the 446th
8 AES by telephone over the past two months. Some members have not returned my calls. Of the
9 unit members that I have spoken with, more than one current servicemember has expressed
10 hesitation to talk to me because they fear consequences. The members have told me that this fear
11 stems from a recent Air Force briefing where they were given an instruction not to speak with
12 Plaintiff's counsel without command's permission. I suspect that the reason other members have
13 not responded to my attempts to contact them is that the Air Force instruction has had a chilling
14 effect.

15 5. One member that I have spoken to is reluctant to identify himself/herself to the
16 Court for purposes of a declaration because s/he fears repercussions from his/her supervisors for
17 speaking with me.

18 6. In interviews with Air Force personnel, I ask members questions about the
19 following topics: Major Witt's performance while serving in the 446th AES; knowledge of and
20 reactions to Major Witt's suspension and discharge; suspicions of gay or lesbian persons serving
21 in the 446th AES; whether members' sexual orientation has ever impacted or interfered with job
22 performance, unit morale, unit cohesion and discipline; and service with Major Witt if she were
23 to be reinstated.

24 7. I do not intend to ask any questions that will lead to discovery of classified Air
25 Force information or that could impact national security. Specifically, I will not ask questions
26 about where specific personnel were deployed overseas, the nature

1 or length of their missions, or the purpose of the missions. I only intend to ask whether and
2 when a member has been deployed overseas in order to inquire about experiences with other
3 crews upon deployment, and whether gay or lesbian servicemembers have ever created a
4 problem overseas.
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6 DATED this 27th day of April, 2010, in Seattle, Washington.
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8 /s/ Sher S. Kung
9 Sher S. Kung, WSBA #42077
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 27, 2010, I electronically filed this Declaration of Sher Kung in
3 Support of Motion for a Protective Order Prohibiting Interference with Non-Party Witnesses
4 with the Clerk of the Court using the CM/ECF system which will send notification of such filing
5 to the following:

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14 Attorneys for Defendants

15 DATED this 27th day of April, 2010.

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18 AMERICAN CIVIL LIBERTIES UNION OF
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