Exhibit C

White & Case LLP
633 West Fifth Street, Suite 1900
Los Angeles, California 90071-2007

Tel +1 213 620 7700
Fax +1 213 452 2329
www.whitecase.com

Direct Dial +1-213-620-7714 phunnius@whitecase.com

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VIA U.S. MAIL AND E-MAIL

Paul G. Freeborne, Esq.
U.S. Department of Justice
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, DC 20044

Re: *Log Cabin Republicans v. United States of America, et al.*
Case No. 04-CV-8425-VAP (Ex)

Dear Paul:

I write in connection with Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission (hereinafter, "RFAs") and further to our efforts to "meet and confer" regarding Plaintiff's 30(b)(6) Notice of Deposition.

Requests for Admission

For the reasons stated below, many of defendants' objections and responses are insufficient and violate Federal Rule of Civil Procedure 36. By this letter, plaintiff requests a conference of counsel to discuss defendants' objections and responses with the aim of eliminating the necessity for filing a motion under Federal Rule of Civil Procedure 36(a)(6).

Requests for Admission 3, 4, 5, 10

Defendants' responses to these Requests for Admission are inadequate. For starters, defendants' objection that the terms "national security," "essential," "contribute," and "weakens" are vague and ambiguous is disingenuous. As demonstrated in RFAs 1, 2, and 9, the Commander in Chief used those precise terms when discussing the Don't Ask Don't Tell statute ("DADT").

Further, defendants' denials fail to "fairly respond to the substance" of the RFAs, thereby violating Federal Rule of Civil Procedure 36(a)(4). The RFAs inquire about the current effect of Don't Ask Don't Tell ("DADT") upon U.S. national security. Instead of admitting or denying

that DADT, and discharging service members under DADT, negatively impacts national security, defendants' responses discuss Congress' purported grounds for enacting the statute 17 years ago. The answers are not responsive. Congress' original justification for enacting the policy is irrelevant to whether DADT negatively impacts national security today or whether reversing DADT is essential to national security. Pursuant to Federal Rule of Civil Procedure 36(a)(6), defendants must serve an amended answer. Otherwise, Log Cabin Republicans will move for an order that the matters are admitted.

Requests for Admission 13, 14, 15

Defendants' responses to RFAs 13, 14, and 15 are similarly inadequate. Again, defendants cannot claim the precise terms used by the Commander in Chief – "cannot afford to cut LGBT service members," "cannot afford to force LGBT service members to have their careers encumbered by DADT," and "cannot afford to force LGBT service members to live a lie" – are vague and ambiguous.

More importantly, defendants' denial does not "fairly respond to the substance" of the RFAs. DADT does not prohibit the service of LGBT service members based solely on conduct. DADT prohibits LGBT service members from speaking about matters of personal identity, even if no accompanying conduct occurs, hence forcing them to "live a lie." The Chairman of the Joint Chiefs of Staff is apparently willing to admit this, even if his attorneys are not. On February 2, 2010, Admiral Mullen testified, under oath, "No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to **lie about who they are** in order to defend their fellow citizens." (emphasis added).

In any case, the basis for separation proceedings under DADT does not speak to whether the U.S. can afford to separate LGBT service members, encumber their careers, or force them to live a lie. Pursuant to Federal Rule of Civil Procedure 36(a)(6), defendants must serve an amended answer that fairly responds to the substance of the RFAs. Otherwise, Log Cabin Republicans will move for an order that the matters are admitted.

Request for Admission 25

Defendants have not sufficiently explained why it cannot admit or deny this RFA regarding the cost to recruit replacements for service members separated under DADT. Defendants claim the Department of Defense has not conducted or commissioned a study of DADT's fiscal impact. A February 2005 Government Accountability Office ("GAO") report, however, reports such data and states that the Department of Defense does collect data on recruitment and training costs for the force overall. Moreover, the GAO report states that the Navy, Air Force, and Army were able to estimate occupation-specific training costs for most of the occupations performed by members separated from service under DADT. Thus, a separate study of the fiscal impact of DADT is not necessary to respond to this RFA. All that is required are simple calculations.

In addition, Federal Rule of Civil Procedure 36(a)(4) provides that a litigant may not refuse to admit or deny an RFA unless it "states that it has made a reasonable inquiry and that the information it knows or can reasonably obtain is insufficient to enable it to admit or deny" the

RFA. Defendants made no such statement in response to RFA 25. Defendants did not explain why it cannot admit or deny this RFA without conducting or commissioning a study of the fiscal impact of the policy. Pursuant to Federal Rule of Civil Procedure 36(a)(6), defendants must serve an amended answer that complies with Rule 36(a)(4). Otherwise, Log Cabin Republicans will move for an order that the matters are admitted.

Requests for Admission 26-32, 48

Defendants state in response to these RFAs that the Department of Defense did not maintain data prior to fiscal year 1997 that permits it to determine the precise number of service members discharged under DADT or which service members were discharged under DADT. Yet the February 2005 GAO report includes a letter from the Under Secretary of Defense, David S.C. Chu, on Department of Defense letterhead, in which Mr. Chu identified and quantified separations based on homosexuality for fiscal years beginning in 1994. The GAO report also includes data from the Defense Manpower Data Center which identifies the characteristics of service members separated under DADT since 1994, including gender and occupation. It thus appears incorrect that the Department of Defense is unable to determine which services members were discharged under DADT prior to 1997.

The same report also states that it adopted the military services' definition of "critical" occupations in arriving at its findings. It is thus improper for defendants to respond that they do not code information by "critical operations."

Again, defendants must undertake a reasonable inquiry before claiming an inability to admit or deny a RFA. Explain the basis of your statements that the Department of Defense cannot determine the requested information despite the data reported to the GAO report. Otherwise, Log Cabin Republicans will move for an order that the matters are admitted.

Requests for Admission 50-51

RFAs 50 and 51 seek an admission that DADT disproportionately affects servicewomen in the U.S. Armed Forces. Defendants' denial – that DADT is applied in the same manner regardless of gender – does not fairly respond to the substance of the RFAs. The RFAs seek information regarding the affect of the government's application of DADT, not how the government applies the policy itself. Further, the term "disproportionately affected" is not vague and ambiguous in the context of the RFA. It simply asks whether the ratio of servicewomen affected by DADT to the number of servicewomen in the military is the same as the ratio of servicemen affected by DADT to the number of servicemen in the military. Please provide a supplemental response.

Requests for Admission 53-60

Defendants state the information it knows or can readily obtain is insufficient to admit or deny these RFAs regarding the moral waiver program. Again, defendants' responses are deficient for failure to undertake a reasonable inquiry prior to claiming lack of knowledge to admit or deny the RFA.

Regardless, defendants assert that Department of Defense data was not standardized according to offense category and did not distinguish between convicted felons and those charged but otherwise adjudicated. It appears, however, Deputy Under Secretary of Defense for Military Recruiting and Waivers provided the requested data to Michael Boucai in connection with his 2007 paper titled, "Balancing Your Strengths Against Your Felonies: Considerations for Military Recruitment of Ex-Offenders."[1] The data provided included the number of moral waivers granted each year from 2003 through 2006 for felony, serious misdemeanors, and for drug convictions. It thus appears the requested information is readily available within the Department of Defense. Please provide a supplemental response.

Requests for Admission 81-117

Defendants object to plaintiff's RFAs relating to whether other nations permit openly gay and lesbian service members to enlist and serve in their armed forces on the basis of the term "openly gay and lesbian" being vague and ambiguous. The objection is improper. Defendants cannot claim the terms to be vague and ambiguous when 10 U.S.C. § 654 uses those very terms to define "homosexual" and "homosexual acts." Further, U.S. military leaders fully understand what it is to be "openly gay or lesbian." In fact, in testimony to Congress about DADT, Admiral Mullen recently used these terms at least three times. Admiral Mullen first stated, "We believe that any implementation plan for a policy permitting **gays and lesbians** to serve **openly** in the armed forces must be carefully derived, ... sufficiently thorough, and thoughtfully executed." He later explained, "[I]t is my personal belief that allowing **gays and lesbians** to serve **openly** would be the right thing to do." And when Senator Collins posed a question using this exact term on the exact topic posed by these RFAs, Admiral Mullen did not claim vagueness:

> SEN. COLLINS: ... Adm. Mullen, we know that many of our NATO allies allow **gays and lesbians** to serve **openly** and many of these countries have deployed troops who are serving with us in Afghanistan. Are you aware of any impact on combat effectiveness by the decision of our NATO allies to allow **gays and lesbians** to serve **openly**?
>
> ADM. MULLEN: Sen. Collins, I've talked to several of my counterparts in countries whose militaries allow **gays and lesbians** to serve **openly**. And there has been, as they have told me, no impact on military effectiveness.
>
> (emphases added).

The term "openly gay and lesbian service members" is not vague or ambiguous.

Defendants also claim the "Department of Defense has not conducted its own independent study of the extent to which service members who engage in homosexual conduct are able to serve in the armed forces of other nations." For several reasons, this is not a sufficient answer. First, the

[1] Available at http://www.palmcenter.org/files/active/1/boucaiM_strengthsFelonies_092007.pdf.

answer does not fairly respond to the substance of the RFAs. The RFAs do not ask defendants to admit whether they have conducted an independent study on these topics. The RFAs ask defendants to admit or deny *facts*. These facts could be derived from, *inter alia*, reports conducted by defendants, commissioned by defendants, or reports prepared by third parties that defendants are aware of. If the facts underlying these RFAs – regardless of their source – are at all at defendants' disposal, plaintiffs are entitled to a response in which defendants admit or deny the RFAs.

Second, even if the facts underlying these RFAs are not immediately at defendants' disposal, defendants may not simply claim a lack of knowledge or information as a basis for refusing to admit or deny the RFAs. "The answering party may assert lack of knowledge or information ... **only if** the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny." Fed. R. Civ. P 36(a)(4) (emphasis added). Defendants fail to state whether it has made reasonable inquiry on this topic.

In fact, it is clear that defendants have not conducted a reasonable inquiry. Defendants could begin such an inquiry by asking Admiral Mullen to identify the foreign militaries with which he recently consulted. In addition, the Department of Defense commissioned the 1993 Rand study which found that Canada, France, Germany, Israel, the Netherlands, and Norway all permitted known homosexuals to serve in some capacity in their armed forces. The 1993 Government Accountability Office report titled, "Homosexuals in the Military," also identified several nations that permitted homosexuals to serve openly in their armed forces. A reasonable inquiry would permit defendants to admit or deny most, if not all, of these RFAs.

Finally, defendants improperly assert a lack of knowledge regarding whether abandoning prohibitions on military service by openly gay and lesbian service members resulted in no adverse impact on unit cohesion, troop morale, and national defense in Australia, Israel, Great Britain, and Canada. Again, Admiral Mullen claimed just last week that his counterparts in countries that permit openly gay or lesbian service members all reported no impact on military effectiveness. If the Chairman of the Joint Chiefs of Staff possesses sufficient knowledge to make this statement to Congress, defendants cannot claim lack of knowledge in response to these RFAs.

Request for Admission 119

Defendants state they can neither admit nor deny "that since members of the U.S. Armed Forces began fighting side by side with coalition forces from countries that allow lesbian and gay service members to serve openly in their respective militaries, there have been no documented adverse effects arising from the proximity of gay and lesbian coalition soldiers to American soldiers on the unit cohesion or morale of any member or members of the U.S. Armed Forces." Defendants claim they do not keep or track of data concerning incidents of U.S. soldiers interacting directly with foreign soldiers who engage in homosexual conduct. This response is insufficient for several reasons. First, defendants must conduct a reasonable inquiry before claiming lack of knowledge in response to a RFA. Defendants failed to state whether it did so. Defendants' response is improper for this reason alone.

Second, defendants' statement does not fairly respond to the substance of the RFA. Whether U.S. service members come in direct contact with foreign soldiers who engage in homosexual conduct is not the substance of the RFA. The RFA asks a broader question – whether defendants possess any documentation of adverse effects on unit cohesion or morale arising from U.S. soldiers serving with coalition forces that are known to include openly gay or lesbian soldiers. Since defendants do not track data on such interactions, it would appear that defendants can admit this RFA.

Finally, Admiral Mullen's recent statements to Congress demonstrate the falsity of defendants' response. In response to Senator Levin's inquiry about U.S. soldiers fighting side by side with militaries who do not exclude openly gay and lesbian service members, Admiral Mullen stated, "Since these wars started in 2003, it has not been brought to my attention that there's been any significant impact of the policies in those countries on either their military effectiveness or our ability to work with them."

Please let me know by Wednesday, February 17, whether Defendants will agree to supplement or amend their responses to the Requests for Admission.

30(b)(6) Notice of Deposition

As you know, earlier this week we held a telephonic "meet and confer" conference regarding Defendants' objections to Plaintiff's 30(b)(6) Notice of Deposition (wherein the government declined to designate a witness on *any* topic identified in Plaintiff's Notice). With one exception (Notice Paragraph 5), we were not able to resolve the Defendants' objections during our meet and confer.

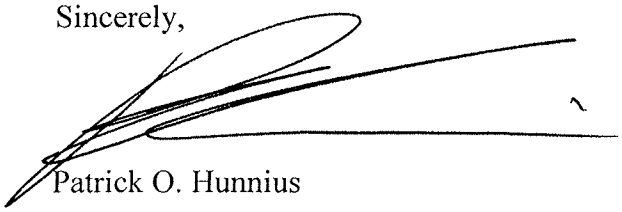
At the conclusion of the conference, both parties maintained their respective contentions that they have grounds for a motion regarding the Notice (for Plaintiff, a motion to compel; for Defendants, a motion for protective order) and we agreed to brief these cross-motions through one L.R. 37 "joint stipulation."

Based on the approaching discovery cutoff (March 15) and both parties' shared interest in resolving the issues relating to the deposition notice, we propose that the parties agree to brief the cross-motions on an expedited basis, on the following schedule:

- Plaintiff's portion of the joint stipulation to be served by email on Defendants on February 22;
- Defendants portion to be served by email on Plaintiff on March 1;
- the joint stipulation to be filed by Plaintiff either on March 1 or March 2); and
- each parties' "reply," if any, to be filed on March 4.

Please let me know by Wednesday if this schedule is agreeable to Defendants; if it is not, we will likely seek guidance from the Court at the status conference regarding how it would prefer to proceed.

Sincerely,



Patrick O. Hunnius