

ATTACHMENT 1

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16 **UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
18 **EASTERN DIVISION**

19 LOG CABIN REPUBLICANS,
20
21 Plaintiff,
22
23 v.
24
25 UNITED STATES OF AMERICA AND
26 ROBERT GATES, Secretary of Defense,
27
28 Defendants.

No. CV04-8425 (VAP) (Ex)

DEFENDANTS' OBJECTIONS
AND RESPONSES TO
PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION

1 Pursuant to Federal Rules of Civil Procedure 26 and 36, and subject to the
2 objections stated below, Defendants United States and Secretary Gates hereby
3 respond to Plaintiff's First Set of Requests for Admission for purposes of Merits
4 Discovery.

5 GENERAL OBJECTIONS

6 1. Defendants object to the Requests to the extent that Plaintiff seeks discovery
7 to probe the motivations of the Legislative and Executive Branches in passing
8 statutes and promulgating regulations implementing the law. Well-established
9 Supreme Court precedent squarely provides that inquiry into the subjective
10 motives of members of Congress is a "hazardous matter" and that courts will not
11 strike down an otherwise constitutional statute on the basis of an alleged illicit
12 motive." United States v. O'Brien, 391 U.S. 367, 383-84 (1968); Board of Educ.
13 of the Westside Community Schools v. Mergens, 496 U.S. 226, 249 (1990) (in
14 evaluating constitutionality of statute, "what is relevant is the legislative *purpose*
15 of the statute, not the possibly religious *motives* of the legislators who enacted the
16 law") (emphasis in original); Las Vegas v. Foley, 747 F.2d 1294, 1298 (9th Cir.
17 1984) (same). The same is true of attempts to probe the motivations of the
18 Executive Branch. See e.g., Village of Arlington Heights v. Metropolitan Hous.
19 Dev. Corp., 429 U.S. 252, 268 n.18 (1977) ("judicial inquiries into legislative or
20 executive motivation represent a substantial intrusion into the workings of other
21 branches of government").

22 2. Defendants object to the Requests to the extent that they are not reasonably
23 calculated to lead to the discovery of admissible evidence. The Court has ruled
24 that Plaintiff's challenge is governed by the rational basis standard of review. It
25 is well understood that a legislative choice subject to the rational basis test "is not
26 subject to courtroom fact-finding." Federal Communications Comm'n v. Beach
27 Communications, 508 U.S. 307, 315 (1993) (quoting Lehnhausen v. Lake Shore
28

1 Auto Parts Co., 410 U.S. 356, 364 (1973)). Defendants accordingly have “no
2 obligation to produce evidence to sustain the rationality of a statutory
3 classification.” Heller v. Doe, 509 U.S. 312, 320 (1993). The analysis instead
4 asks whether the legislature “rationally *could have believed*” that the conditions of
5 the statute would promote its objective. Western and Southern Life Insurance Co.
6 v. State Bd. of Equalization of California, 451 U.S. 654, 671-72 (1981) (emphasis
7 in original).

8 Rational basis review, moreover, “is not a license for courts to judge the
9 wisdom, fairness, or logic of legislative choices.” Beach Communications, 508
10 U.S. at 313. Rather, “those challenging the legislative judgment must convince
11 the court that the legislative facts on which the classification is apparently based
12 could not reasonably be conceived to be true by the governmental decisionmaker.”
13 Vance v. Bradley, 440 U.S. 93, 111 (1979). While we understand that the Court
14 has permitted Plaintiff to attempt to engage in discovery, the congressional
15 findings and legislative history underlying the statute are “legislative fact[s]”
16 subject to judicial notice and are not appropriate subjects for fact-finding or
17 discovery.

18 3. Defendants object to the Requests to the extent that they attempt to discover
19 information concerning the “continued rationality” of the statute. Classifications
20 subject to rational-basis review are not subject to challenge on the ground of
21 changed circumstances. See, e.g., Montalvo-Huertas v. Rivera-Cruz, 885 F.2d
22 971, 977 (1st Cir. 1989) (“[E]valuating the continued need for, and suitability of,
23 legislation of this genre is exactly the kind of policy judgment that the rational
24 basis test was designed to preclude.”). Indeed, courts have found that even where
25 Congress has determined that a previous enactment is no longer necessary, that
26 finding does not render the statute unconstitutional. See Smart v. Ashcroft, 401
27 F.3d 119, 123 (2d Cir. 2005) (“A congressional decision that a statute is unfair,
28

1 outdated, and in need of improvement does not mean that the statute when enacted
2 was wholly irrational or, for purposes of rational basis review, unconstitutional.”);
3 Howard v. U.S. Dept. of Defense, 354 F.3d 1358, 1361-62 (Fed. Cir. 2004)
4 (“Congress acts based on judgments as to preferable policy; the fact that Congress
5 repeals or modifies particular legislation does not reflect a judgment that the
6 legislation, in its pre-amendment form, lacked rational support.”). Were it
7 otherwise, all legislation subject to rational basis review – even legislation
8 authoritatively sustained as constitutional by the Supreme Court – could
9 potentially be subject to periodic judicial review on the basis of changed
10 circumstances, a prospect incompatible with these principles and the Supreme
11 Court’s well known and repeated admonition that “a legislative choice is not
12 subject to courtroom factfinding and may be based on rational speculation
13 unsupported by evidence or empirical data.” Heller, 509 U.S. at 320.

14 4. Defendants object to any response that calls for information outside of the
15 Department of Defense. This action is subject to review under the Administrative
16 Procedure Act, which limits review to “[a]gency action.” See 5 U.S.C. § 702.
17 Defendants will thus make reasonable inquiry within the agency charged with
18 administering 10 U.S.C. § 654—the United States Department of Defense.

19 5. Defendants object to the sheer volume and scope of these and subsequent
20 Requests, which impose an undue burden. It is not Defendants’ obligation to
21 undertake such an expansive inquiry in response to discovery. Defendants have
22 conducted a reasonable inquiry and responded with information known or readily
23 obtainable.

24 6. Defendants reserve the right to amend, supplement, or alter these objections
25 and responses to the Requests at any time. The following responses are based
26 upon information currently known to Defendants, and Defendants reserve the right
27 to supplement or amend its responses should additional or different information
28

1 become available.

2 7. The foregoing General Objections shall be considered as made, to the extent
3 applicable, in response to each of the Requests, as if General Objections were fully
4 set forth in each response.

5 8. Nothing contained in the following responses constitutes a waiver of any
6 applicable objection or privilege as to the requested discovery.

7 **INDIVIDUAL OBJECTIONS AND RESPONSES**

8 1. Admit that on June 29, 2009, President Barack Obama made a speech in
9 front of any audience attending the Lesbian, Gay, Bisexual and Transgendered
10 Pride Month Reception held at the White House, the text of which speech is
11 available at [http://www.whitehouse.gov/the_press_office/Remarks-by-the-](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-LGBT-Pride-Month-Reception/)
12 [President-at-LGBT-Pride-Month-Reception/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-LGBT-Pride-Month-Reception/).

13 **Response:** Admit.

14 2. Admit that on June 29, 2009, during his speech in front of an audience
15 attending the Lesbian, Gay, Bisexual and Transgendered Pride Month Reception
16 held at the White House, President Barack Obama stated, "As I said before—I'll say
17 it again—I believe 'don't ask, don't tell' doesn't contribute to our national security.
18 In fact, I believe preventing patriotic Americans from serving their country
19 weakens our national security."

20 **Response:** Admit.

21 3. Admit that DADT does not contribute to our national security.

22 **Response:** Defendants object to this request, as it does not call for facts, the
23 application of law to fact, or an opinion about facts or the application of law to
24 fact. See Fed. R. Civ. P. 36(a)(1)(A). Defendants further object to this request
25 because the terms "contribute" and "national security" as used in this context are
26 vague and ambiguous. To the extent a further response is required, Defendants
27 note the responses to requests for admission 1 and 2 supra, but deny this request
28 because it was rational for Congress to have concluded at the time the statute was

1 enacted in 1993 that DADT was necessary "in the unique circumstances of
2 military service," 10 U.S.C. § 654(a)(13).

3 4. Admit that DADT weakens our national security.

4 **Response:** Defendants object to this request, as it does not call for facts, the
5 application of law to fact, or an opinion about facts or the application of law to
6 fact. See Fed. R. Civ. P. 36(a)(1)(A). Defendants further object to this request
7 because the terms "weakens" and "national security" as used in this context are
8 vague and ambiguous. To the extent a further response is required, Defendants
9 note the responses to requests for admission 1 and 2 supra, but deny this request
10 because it was rational for Congress to have concluded at the time the statute was
11 enacted in 1993 that DADT was necessary "in the unique circumstances of
12 military service," 10 U.S.C. § 654(a)(13).

13 5. Admit that discharging members pursuant to DADT weakens our national
14 security.

15 **Response:** Defendants object to this request, as it does not call for facts, the
16 application of law to fact, or an opinion about facts or the application of law to
17 fact. See Fed. R. Civ. P. 36(a)(1)(A). Defendants further object to this request
18 because the terms "weakens" and "national security" as used in this context are
19 vague and ambiguous. To the extent a further response is required, Defendants
20 note the responses to requests for admission 1 and 2 supra, but deny this request
21 because it was rational for Congress to have concluded at the time the statute was
22 enacted in 1993 that DADT was necessary "in the unique circumstances of
23 military service," 10 U.S.C. § 654(a)(13).

1 6. Admit that on June 29, 2009, during his speech in front of an audience
2 attending the Lesbian, Gay, Bisexual and Transgendered Pride Month
3 Reception held at the White House, President Barack Obama stated that
4 DADT has resulted in the discharge of “patriots who often possess critical
5 language skills and years of training and who’ve served this country well.”

6 **Response:** Admit.

7 7. Admit that DADT has resulted in the discharge of service members who
8 possess critical language skills:

9 **Response:** Defendants object to this request, as it does not call for facts, the
10 application of law to fact, or an opinion about facts or the application of law to
11 fact. See Fed. R. Civ. P. 36(a)(1)(A). Notwithstanding this objection, defendants
12 can neither admit nor deny this Request because it does not maintain data on
13 service members who “possess critical language skills”; the Department of
14 Defense instead maintains data by occupation. Defendants admit that service
15 members with language skills have been discharged under the statute.

16 8. Admit that DADT has resulted in the discharge of service members who
17 have served this country well.

18 **Response:** Defendants object to this request, as it does not call for facts, the
19 application of law to fact, or an opinion about facts or the application of law to
20 fact. See Fed. R. Civ. P. 36(a)(1)(A). Notwithstanding this objection, defendants
21 admit that service members have been honorably discharged under the statute.

22 9. Admit that on June 29, 2009, during his speech in front of an audience
23 attending the Lesbian, Gay, Bisexual and Transgendered Pride Month
24 Reception held at the White House, President Barack Obama stated: “What I
25 hope is that these cases underscore the urgency of reversing this policy not
26 just because it’s the right thing to do, but because it is essential for our
27 national security.”

28 **Response:** Admit.

1 10. Admit that reversing DADT is essential for our national security.

2 **Response:** Defendants object to this request, as it does not call for facts, the
3 application of law to fact, or an opinion about facts or the application of law to
4 fact. See Fed. R. Civ. P. 36(a)(1)(A). Defendants further object to this request
5 because the terms "essential" and "national security" as used in this context are
6 vague and ambiguous. To the extent a further response is required, Defendants
7 note the responses to requests for admission 9 supra, but deny this request because
8 it was rational for Congress to have concluded at the time the statute was enacted
9 in 1993 that DADT was necessary "in the unique circumstances of military
10 service," 10 U.S.C. § 654(a)(13).

11 11. Admit that on June 29, 2009, President Barack Obama made a speech at the
12 Walter E. [Washington] Convention Center for the Human Rights Campaign
13 Dinner, the text of which is available at:

14 [http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Human-Rights-Campaign-Dinner/)
15 [Human-Rights-Campaign-Dinner/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Human-Rights-Campaign-Dinner/).

16 **Response:** Admit.

17 12. Admit that on October 10, 2009, President Barack Obama made a speech at
18 the Walter E. [Washington] Convention Center for the Human Rights
19 Campaign Dinner stated: ["We should not be punishing patriotic
20 Americans who have stepped forward to serve this country. We should be
21 celebrating their willingness to show such courage and selflessness on
22 behalf of their fellow citizens, especially when we're fighting two wars. We
23 cannot afford to cut from our ranks people with the critical skills we need to
24 fight any more than we can afford - for our military's integrity - to force
25 those willing to do so into careers encumbered and compromised by having
26 to live a lie.[""]

27 **Response:** Admit.
28

1 13. Admit the United States cannot afford to cut LGBT service members from
2 the ranks of its military.

3 **Response:** Defendants object to this request, as it does not call for facts, the
4 application of law to fact, or an opinion about facts or the application of law to
5 fact. See Fed. R. Civ. P. 36(a)(1)(A). Defendants further object to this request
6 because the term “cannot afford to cut LGBT service members” as used in this
7 context is vague and ambiguous. To the extent a response is required, Defendants
8 deny this request because DADT does not prohibit the service of LGBT service
9 members based upon sexual orientation alone, but does permit discharge based
10 upon certain conduct.

11 14. Admit the United States cannot afford to force LGBT service members to
12 have their careers encumbered by DADT.

13 **Response:** Defendants object to this request, as it does not call for facts, the
14 application of law to fact, or an opinion about facts or the application of law to
15 fact. See Fed. R. Civ. P. 36(a)(1)(A). Defendants further object to this request
16 because the term “cannot afford to force LGBT service members to have their
17 careers encumbered by DADT” as used in this context is vague and ambiguous.
18 To the extent a response is required, Defendants deny this request because DADT
19 does not prohibit the service of LGBT service members based upon sexual
20 orientation alone, but does permit discharge based upon certain conduct.

1 15. Admit the United States cannot afford to force LGBT service members to
2 live a lie.

3 **Response:** Defendants object to this request, as it does not call for facts, the
4 application of law to fact, or an opinion about facts or the application of law to
5 fact. See Fed. R. Civ. P. 36(a)(1)(A). Defendants further object to this request
6 because the term “cannot afford to force LGBT service members to live a lie” as
7 used in this context is vague and ambiguous. To the extent a response is required,
8 Defendants deny this request because DADT does not prohibit the service of
9 LGBT service members based upon sexual orientation alone, but does permit
10 discharge based upon certain conduct.

11 16. Admit that since President Barack Obama’s speech on June 29, 2009, there
12 has been no stay in the application or enforcement of DADT.

13 **Response:** Admit.

14 17. Admit that since President Barack Obama’s speech on June 29, 2009, there
15 has been no stay of separation proceedings initiated pursuant to DADT.

16 **Response:** Admit.

17 18. Admit that since President Barack Obama’s speech on June 29, 2009, there
18 has been no stay of investigations pursuant to DADT.

19 **Response:** Admit.

20 19. Admit that no timeline to repeal DADT has been publicly proposed by
21 President Barack Obama.

22 **Response:** Denied. The President has publicly stated that he intends to seek the
23 repeal of the statute during his Administration.

1 20. Admit that in or around February 2005 the Government Accountability
2 Office issued a report (the GAO Report) to Congress entitled "Military
3 Personnel: Financial Costs and Loss of Critical Skills Due to DOD's
4 Homosexual Conduct Policy Cannot Be Completely Estimated," the text of
5 which is available online at <http://www.gao.gov/new.items/d05299.pdf>.

6 **Response:** Admit.

7 21. Admit that the Government Accountability Office's Report issued in or
8 around February 2005 and entitled "Military Personnel: Financial Costs and
9 Loss of Critical Skills Due to DOD's Homosexual Conduct Policy Cannot
10 Be Completely Estimated" states: ["]The total cost of DOD's homosexual
11 conduct policy cannot be estimated because DOD does not collect relevant
12 cost data on inquiries and investigations, counseling and pastoral care,
13 separation functions, and discharge reviews. However, DOD does collect
14 data on recruitment and training costs for the force overall. Using these
15 data, GAO estimated that, over the 10-year period, it could have cost the
16 DOD about \$95 million in constant fiscal year 2004 dollars to recruit
17 replacements for service members separated under the policy. Also, the
18 Navy, Air Force, and Army estimated that the cost to train replacements for
19 separated service members by occupation was approximately \$48.8 million,
20 \$16.6 million, and \$29.7 million, respectively.["]

21 **Response:** Admit that the report contains the referenced statement.

22 22. Admit the Government Accountability Office's Report issued in or around
23 February 2005 and entitled "Military Personnel: Financial Costs and Loss of
24 Critical Skills Due to DOD's Homosexual Conduct Policy Cannot Be
25 Completely Estimated" found that between 1994 and 2003, 9,488 service
26 members were separated from the United States Armed Forces for
27 homosexual conduct pursuant to DADT.

28 **Response:** Admit that the report contains the referenced estimate.

1 23. Admit the Government Accountability Office's Report issued in or around
2 February 2005 and entitled "Military Personnel: Financial Costs and Loss of
3 Critical Skills Due to DOD's Homosexual Conduct Policy Cannot Be
4 Completely Estimated" found that 757 of the service members separated
5 from the United States Armed Forces between 1994 and 2003 held "critical
6 occupations, identified by DOD as those occupations worthy of selective
7 reimbursement bonuses."

8 **Response:** Admit that the report contains the referenced statement.

9 24. Admit the Government Accountability Office's Report issued in or around
10 February 2005 and entitled "Military Personnel: Financial Costs and Loss of
11 Critical Skills Due to DOD's Homosexual Conduct Policy Cannot Be
12 Completely Estimated" found that 322 of the service members separated
13 from the United States Armed Forces between 1994 and 2003 had "some
14 skills in an important foreign language such as Arabic, Farsi, or Korean."

15 **Response:** Admit that the report contains the referenced estimate.

16 25. Admit that it cost DOD at least \$90 million in constant fiscal year 2004
17 dollars to recruit replacements for service members separated under the
18 policy in the period between 1994 and 2003.

19 **Response:** Defendants are unable to admit or deny this Request. The
20 Department of Defense has not conducted or commissioned a study of the fiscal
21 impact of the Policy.

22 26. Admit the accuracy of the GAO report's finding that at least 9,488 service
23 members have been separated from the military under DADT from 1994 to
24 2003.

25 **Response:** Defendants are unable to admit or deny this Request. The data
26 maintained by the Department of Defense prior to fiscal year 1997 does not permit
27 Defendants to determine with precision the number of service members who were
28 discharged under DADT. Defendants admit that the Department of Defense

1 separated 7,270 service members pursuant to DADT between fiscal years 1997
2 and 2003.

3 27. Admit the accuracy of the GAO Report's finding that at least 757 of the
4 service members separated from the military under DADT from 1994 to
5 2003 held "critical occupations."

6 **Response:** Defendants are unable to admit or deny this Request. The Department
7 of Defense does not code its information by "critical occupations"; the Department
8 instead codes information by occupation. The data maintained by the Department
9 of Defense prior to fiscal year 1997 does not permit Defendants to determine with
10 precision the number of service members who were discharged under DADT.

11 28. Admit the accuracy of the GAO Report's finding that at least 322 service
12 members separated from the military under DADT from 1994 to 2003 had
13 "some important foreign language such as Arabic, Farsi, or Korean."

14 **Response:** Defendants are unable to admit or deny this Request. The
15 Department of Defense does not code its information by language specialty; it
16 instead codes its information by occupation. The data maintained by the
17 Department of Defense prior to fiscal year 1997 does not permit Defendants to
18 determine with precision the number of service members who were discharged
19 under DADT. Defendants admit that between 1997 and 2003, the Department of
20 Defense discharged 870 service members under DADT with foreign language
21 skills.

22 29. Admit that at least 13,000 service members were separated from the United
23 States Armed Forces since 1994 pursuant to DADT.

24 **Response:** Defendants are unable to admit or deny this Request. The data
25 maintained by the Department of Defense prior to fiscal year 1997 does not permit
26 Defendants to say with precision which service members were discharged under
27 DADT. Defendants admits the that 10,935 service members were discharged
28 under DADT for fiscal year 1997 through fiscal year 2009.

1 30. Admit that at least 615 service members were separated from the United
2 States Armed Forces pursuant to DADT in 1994.

3 **Response:** Defendants are unable to admit or deny this Request. The data
4 maintained by the Department of Defense prior to fiscal year 1997 does not permit
5 Defendants to say with precision which service members were discharged under
6 DADT.

7 31. Admit that at least 757 service members were separated from the United
8 States Armed Forces pursuant to DADT in 1995.

9 **Response:** Defendants are unable to admit or deny this Request. The data
10 maintained by the Department of Defense prior to fiscal year 1997 does not permit
11 Defendants to say with precision which service members were discharged under
12 DADT.

13 32. Admit that at least 858 service members were separated from the United
14 States Armed Forces pursuant to DADT in 1996.

15 **Response:** Defendants are unable to admit or deny this Request. The data
16 maintained by the Department of Defense prior to fiscal year 1997 does not permit
17 Defendants to say with precision which service members were discharged under
18 DADT.

19 33. Admit that at least 997 service members were separated from the United
20 States Armed Forces pursuant to DADT in 1997.

21 **Response:** Admit.

22 34. Admit that at least 1,145 service members were separated from the United
23 States Armed Forces pursuant to DADT in 1998.

24 **Response:** Admit.

25 35. Admit that at least 1,033 service members were separated from the United
26 States Armed Forces pursuant to DADT in 1999.

27 **Response:** Admit.
28

1 36. Admit that at least 1,212 service members were separated from the United
2 States Armed Forces pursuant to DADT in 2000.

3 **Response:** Admit.

4 37. Admit that at least 1,217 service members were separated from the United
5 States Armed Forces pursuant to DADT in 2001.

6 **Response:** Admit.

7 38. Admit that at least 885 service members were separated from the United
8 States Armed Forces pursuant to DADT in 2002.

9 **Response:** Admit.

10 39. Admit that at least 770 service members were separated from the United
11 States Armed Forces pursuant to DADT in 2003.

12 **Response:** Admit.

13 40. Admit that at least 668 service members were separated from the United
14 States Armed Forces pursuant to DADT in 2004.

15 **Response:** Denied; in 2004, 653 service members were separated pursuant to
16 DADT.

17 41. Admit that at least 742 service members were separated from the United
18 States Armed Forces pursuant to DADT in 2005.

19 **Response:** Denied; in 2005, 726 service members were separated pursuant to
20 DADT.

21 42. Admit that at least 623 service members were separated from the United
22 States Armed Forces pursuant to DADT in 2006.

23 **Response:** Denied; in 2006, 612 service members were separated pursuant to
24 DADT.

25 43. Admit that at least 627 service members were separated from the United
26 States Armed Forces pursuant to DADT in 2007.

27 **Response:** Admit.
28

1 44. Admit that at least 619 service members were separated from the United
2 States Armed Forces pursuant to DADT in 2008.

3 **Response:** Admit.

4 45. Admit that at least 275 service members were separated from the United
5 States Armed Forces pursuant to DADT in 2009.

6 **Response:** Admit.

7 46. Admit that, in 2009 alone, at least 2,000 former service members have left
8 the United States Armed Forces voluntarily in anticipation of investigation
9 or discharge pursuant to DADT.

10 **Response:** Defendants are unable to admit or deny this Request. The
11 Department of Defense does not track the number of service members who leave
12 the Armed Forces in anticipation of an investigation or discharge pursuant to
13 DADT.

14 47. Admit that without a change in policy DOD will continue to authorize the
15 separation of service members for homosexual acts, for statements by
16 service members that demonstrate a propensity or intent to engage in
17 homosexual acts, or for homosexual marriage or attempted marriage.

18 **Response:** Admit.

19 48. Admit that between 1994 and 2003, servicewomen accounted for 27% of all
20 separations pursuant to DADT.

21 **Response:** Defendants are unable to admit or deny this Request. The data
22 maintained by the Department of Defense prior to fiscal year 1997 does not permit
23 Defendants to say with precision which service members were discharged under
24 DADT. Between 1997 and 2003, 4,385 women were discharged under DADT,
25 accounting for 40.36% of all separations under DADT.

26 49. Admit that between 1994 and 2003, servicewomen accounted for less than
27 20% of all service members in the United States Armed Forces.

28 **Response:** Admit.

1 50. Admit that between 1994 and 2003, DADT disproportionately affected
2 servicewomen in the United States Armed Forces.

3 **Response:** Defendants object to this request because the term “disproportionately
4 affected” is vague and ambiguous. To the extent a response is required, it is
5 denied because, whatever the affect for men and women, the Department of
6 Defense applies DADT in the same manner regardless of gender.

7 51. Admit that DADT continues to disproportionately affect servicewomen in
8 the United States Armed Forces.

9 **Response:** Defendants object to this request because the term “disproportionately
10 affected” is vague and ambiguous. To the extent a response is required, it is
11 denied because, whatever the affect for men and women, the Department of
12 Defense applies DADT in the same manner regardless of gender.

13 52. Admit that known felons are currently permitted to serve in the United
14 States Armed Forces.

15 **Response:** Defendants admit that although Congress prohibits the enlistment of
16 persons convicted of a felony, it has authorized exceptions in meritorious cases, as
17 provided in 10 U.S.C. § 504.

18 53. Admit that at least 824 felons enlisted in the United States Armed Forces in
19 2003.

20 **Response:** Defendants can neither admit nor deny this Request. The information
21 Defendants know or can readily obtain is insufficient for it to admit or deny this
22 Request. The Department of Defense cannot accurately determine the number of
23 enlistment waivers granted for felonies for fiscal year 2003 because, prior to fiscal
24 year 2007, the data that would permit such a determination was not standardized
25 according to offense category and did not distinguish between convicted felons
26 and others who were simply charged with felony offenses and otherwise
27 adjudicated.

1 54. Admit that at least 638 felons enlisted in the United States Armed Forces in
2 2004.

3 **Response:** Defendants can neither admit nor deny this Request. The information
4 Defendants know or can readily obtain is insufficient for it to admit or deny this
5 Request. The Department of Defense cannot accurately determine the number of
6 enlistment waivers granted for felonies for fiscal year 2003 because, prior to fiscal
7 year 2007, the data that would permit such a determination was not standardized
8 according to offense category and did not distinguish between convicted felons
9 and others who were simply charged with felony offenses and otherwise
10 adjudicated.

11 55. Admit that at least 1,163 felons enlisted in the United States Armed Forces
12 in 2005.

13 **Response:** Defendants can neither admit nor deny this Request. The information
14 Defendants know or can readily obtain is insufficient for it to admit or deny this
15 Request. The Department of Defense cannot accurately determine the number of
16 enlistment waivers granted for felonies for fiscal year 2003 because, prior to fiscal
17 year 2007, the data that would permit such a determination was not standardized
18 according to offense category and did not distinguish between convicted felons
19 and others who were simply charged with felony offenses and otherwise
20 adjudicated.

1 56. Admit that at least 1,605 felons enlisted in the United States Armed Forces
2 in 2006.

3 **Response:** Defendants can neither admit nor deny this Request. The information
4 Defendants know or can readily obtain is insufficient for it to admit or deny this
5 Request. The Department of Defense cannot accurately determine the number of
6 enlistment waivers granted for felonies for fiscal year 2003 because, prior to fiscal
7 year 2007, the data that would permit such a determination was not standardized
8 according to offense category and did not distinguish between convicted felons
9 and others who were simply charged with felony offenses and otherwise
10 adjudicated.

11 57. Admit that from 2003 to 2006, the number of felons enlisting in the United
12 States Armed Forces increased by at least 194%.

13 **Response:** Defendants can neither admit nor deny this Request. The information
14 Defendants know or can readily obtain is insufficient for it to admit or deny this
15 Request. The Department of Defense cannot accurately determine the number of
16 enlistment waivers granted for felonies for fiscal year 2003 because, prior to fiscal
17 year 2007, the data that would permit such a determination was not standardized
18 according to offense category and did not distinguish between convicted felons
19 and others who were simply charged with felony offenses and otherwise
20 adjudicated.

1 58. Admit that from 2003 to 2006, the United States Armed Forces allowed at
2 least 4,320 convicted felons to enlist under the "moral waiver" program for
3 new recruits.

4 **Response:** Defendants can neither admit nor deny this Request. The information
5 Defendants know or can readily obtain is insufficient for it to admit or deny this
6 Request. The Department of Defense cannot accurately determine the number of
7 enlistment waivers granted for felonies for fiscal year 2003 because, prior to fiscal
8 year 2007, the data that would permit such a determination was not standardized
9 according to offense category and did not distinguish between convicted felons
10 and others who were simply charged with felony offenses and otherwise
11 adjudicated.

12 59. Admit that from 2003 to 2006, the United States Armed Forces allowed at
13 least 43,977 individuals convicted of serious misdemeanors, such as assault,
14 to enlist under the "moral waiver" program for new recruits.

15 **Response:** Defendants can neither admit nor deny this Request. The information
16 Defendants know or can readily obtain is insufficient for it to admit or deny this
17 Request. The Department of Defense cannot accurately determine the number of
18 enlistment waivers granted for serious misdemeanors for fiscal year 2003 because,
19 prior to fiscal year 2007, the data that would permit such a determination was not
20 standardized according to offense category.

1 60. Admit that from 2003 to 2006, the United States Armed Forces allowed at
2 least 58,561 individuals who had abused illegal drugs to enlist under the
3 “moral waivers” program for new recruits.

4 **Response:** Defendants can neither admit nor deny this Request. The information
5 Defendants know or can readily obtain is insufficient for it to admit or deny this
6 Request. The Department of Defense cannot accurately determine the number of
7 enlistment waivers granted for illegal drug use for fiscal year 2003 because, prior
8 to fiscal year 2007, the data that would permit such a determination was not
9 standardized according to offense category.

10 61. Admit that the United States Army includes kidnapping among its offenses
11 permissible under the “moral waiver” program for new recruits.

12 **Response:** Admit that an enlistment waiver can be obtained under Department of
13 Defense promulgated Directive-Type Memorandum (DTM) 08-018, but further
14 note that such waivers can be denied.

15 62. Admit that the United States Army includes rape among its offenses
16 permissible under the “moral waiver” program for new recruits.

17 **Response:** Admit that an enlistment waiver can be obtained under Department of
18 Defense promulgated Directive-Type Memorandum (DTM) 08-018, but further
19 note that such waivers can be denied.

20 63. Admit that the United States Army includes child abuse among its offenses
21 permissible under the “moral waiver” program for new recruits.

22 **Response:** Admit that an enlistment waiver can be obtained under Department of
23 Defense promulgated Directive-Type Memorandum (DTM) 08-018, but further
24 note that such waivers can be denied.

1 64. Admit that the United States Army includes making terrorist threats among
2 its offenses permissible under the "moral waiver" program for new recruits.

3 **Response:** Admit that an enlistment waiver can be obtained under Department of
4 Defense promulgated Directive-Type Memorandum (DTM) 08-018, but further
5 note that such waivers can be denied.

6 65. Admit that the United States Army includes hate crimes among its offenses
7 permissible under the "moral waiver" program for new recruits.

8 **Response:** Admit that an enlistment waiver can be obtained under Department of
9 Defense promulgated Directive-Type Memorandum (DTM) 08-018, but further
10 note that such waivers can be denied.

11 66. Admit that the United States Army includes murder among its offenses
12 permissible under the "moral waiver" program for new recruits.

13 **Response:** Admit that an enlistment waiver can be obtained under Department of
14 Defense promulgated Directive-Type Memorandum (DTM) 08-018, but further
15 note that such waivers can be denied.

16 67. Admit that the "moral waiver" program does not permit openly gay or
17 lesbian Americans to enlist in the United States Army.

18 **Response:** Defendants object to this Request because the term "openly gay or
19 lesbian" are vague and ambiguous. Defendants further object to this Request on
20 the ground that it suggests that such an enlistment waiver would be necessary.
21 The Directive-Type Memorandum (DTM) 08-018 sets forth enlistment waivers for
22 certain violations of law the DTM has no application to the conduct-based policy
23 set forth in DADT.

1 68. Admit that kidnappers, rapists, child abusers, terrorists, racists, and
2 murderers are more morally capable of serving in the United States Army
3 than gay men and lesbians.

4 **Response:** Defendants deny this Request because the Directive-Type
5 Memorandum (DTM) 08-018 sets forth enlistment waivers for certain violations
6 of law; the DTM has no application to the conduct-based policy set forth in
7 DADT.

8 69. Admit that a bill to repeal DADT has been pending in Congress since 2005.

9 **Response:** Denied, but admit that since 2005 various bills have been introduced
10 in Congress to repeal or modify DADT.

11 70. Admit that over 100 Congress members have co-sponsored a bill to repeal
12 DADT.

13 **Response:** Defendants object to this Request because it does not reference a
14 specific bill. Defendants admit that H.R. 1283, the Military Readiness
15 Enhancement Act of 2009, introduced on March 3, 2009, has 187 cosponsors.

16 71. Admit that gay and lesbian service members' constitutional liberties and
17 right to privacy under the Due Process Clause of the Fifth Amendment
18 encompass and protect intimate, consensual physical acts and relationships
19 with persons of the same gender.

20 **Response:** Defendants object to this request, as it does not call for facts, the
21 application of law to fact, or an opinion about facts or the application of law to
22 fact. See Fed. R. Civ. P. 36(a)(1)(A). The Request is instead calls for a legal
23 conclusion and is thus improper under Rule 36. To the extent a response is
24 required, the Request is denied.

1 72. Admit that DADT applies to members of the armed forces regardless of
2 whether they serve in combat or non-combat positions.

3 **Response:** Admit but note that every service member must be ready, willing, and
4 able to serve in combat.

5 73. Admit that service members who have been separated from the United
6 States Armed Forces under DADT include translators.

7 **Response:** Admit.

8 74. Admit that 37 linguists at the Defense Language Institute were discharged
9 pursuant to DADT in 2002 and 2003.

10 **Response:** Defendants are unable to admit or deny this Request. The
11 Department of Defense is unable to determine from the data it maintains whether
12 discharged service members were serving at the Defense Language Institute. In
13 fiscal year 2002, the Department of Defense discharged 33 linguists under DADT.
14 In fiscal year 2003, the Department of Defense discharged 38 linguists under
15 DADT.

16 75. Admit that service members who have been separated for United States
17 Armed Forces under DADT include medical personnel.

18 **Response:** Admit.

19 76. Admit that service members who have been separated from the United
20 States Armed Forces under DADT include dental care technicians.

21 **Response:** Admit.

22 77. Admit that service members who have been separated from the United
23 States Armed Forces under DADT include ophthalmologists.

24 **Response:** Admit.

25 78. Admit that service members who have been separated from the United
26 States Armed Forces under DADT include members of the JAG Corps.

27 **Response:** Admit.
28

1 79. Admit that discharges under DADT occur more frequently in times of peace
2 than in times of conflict.

3 **Response:** Defendants object to the Request as vague and ambiguous. The
4 Requests define “peace” and “conflict” according to the “scale [of] deployments”
5 in “areas of intense conflict” but nowhere define these terms. Defendants can thus
6 neither admit nor deny this Request because the Department of Defense does not
7 maintain data regarding discharges according to the parameters set forth in this
8 Request. To the extent a response is required, it is denied; although numbers of
9 discharges have fluctuated over time, DADT has been consistently applied.

10 80. Admit that since the commencement of Operation Enduring Freedom in
11 Afghanistan in October 2001 and Operation Iraqi Freedom in March 2003,
12 separations of service members under DADT have decreased by over 45%
13 from a peak of at least 1,217 separations in 2001 to at least 619 separations
14 in 2008.

15 **Response:** Defendants deny that 1,217 service members were separated under
16 DADT in fiscal year 2001. Defendant admits that it separated 1,227 service
17 members in fiscal year 2001 under the DADT policy. Defendants admit that the
18 Department of Defense separated 49% less service members under DADT in fiscal
19 year 2008 than it separated in fiscal year 2001. Defendants admit that it separated
20 19% less service members under the DADT policy in fiscal year 2008 than it
21 separated in 2003.

1 81. Admit that Australia permits openly gay and lesbian service members to
2 enlist and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 82. Admit that Austria permits openly gay and lesbian service members to enlist
10 and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 83. Admit that Bahamas permits openly gay and lesbian service members to
18 enlist and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 84. Admit that Belgium permits openly gay and lesbian service members to
2 enlist and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 85. Admit that the United Kingdom permits openly gay and lesbian service
10 members to enlist and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 86. Admit that Canada permits openly gay and lesbian service members to enlist
18 and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 87. Admit that the Czech Republic permits openly gay and lesbian service
2 members to enlist and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 88. Admit that Denmark permits openly gay and lesbian service members to
10 enlist and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 89. Admit that Estonia permits openly gay and lesbian service members to enlist
18 and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 90. Admit that Finland permits openly gay and lesbian service members to
2 enlist and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 91. Admit that France permits openly gay and lesbian service members to enlist
10 and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 92. Admit that Ireland permits openly gay and lesbian service members to enlist
18 and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 93. Admit that Israel permits openly gay and lesbian service members to enlist
2 and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 94. Admit that Italy permits openly gay and lesbian service members to enlist
10 and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 95. Admit that Lithuania permits openly gay and lesbian service members to
18 enlist and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 96. Admit that Luxembourg permits openly gay and lesbian service members to
2 enlist and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 97. Admit that Netherlands permits openly gay and lesbian service members to
10 enlist and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 98. Admit that New Zealand permits openly gay and lesbian service members to
18 enlist and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 99. Admit that Norway permits openly gay and lesbian service members to
2 enlist and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 100. Admit that Slovenia permits openly gay and lesbian service members to
10 enlist and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 101. Admit that South Africa permits openly gay and lesbian service members to
18 enlist and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 102. Admit that Spain permits openly gay and lesbian service members to enlist
2 and serve in its armed forces.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 103. Admit that Sweden permits openly gay and lesbian service members to
10 enlist and serve in its armed forces.

11 **Response:** Defendants object to this Request because the term “openly gay and
12 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
13 can neither admit nor deny this request. The Department of Defense has not
14 conducted its own independent study of the extent to which service members who
15 engage in homosexual conduct are able to serve in the armed forces of other
16 nations.

17 104. Admit that Switzerland permits openly gay and lesbian service members to
18 enlist and serve in its armed forces.

19 **Response:** Defendants object to this Request because the term “openly gay and
20 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
21 can neither admit nor deny this request. The Department of Defense has not
22 conducted its own independent study of the extent to which service members who
23 engage in homosexual conduct are able to serve in the armed forces of other
24 nations.

1 105. Admit that at least 24 countries allow openly gay and lesbian service
2 members of their respective armed forces to serve.

3 **Response:** Defendants object to this Request because the term “openly gay and
4 lesbian” is vague and ambiguous. To the extent a response is required, Defendants
5 can neither admit nor deny this request. The Department of Defense has not
6 conducted its own independent study of the extent to which service members who
7 engage in homosexual conduct are able to serve in the armed forces of other
8 nations.

9 106. Admit that Australia abandoned its prohibition of military service by openly
10 gay and lesbian service members without any documented adverse impact
11 on unit cohesion.

12 **Response:** Defendants object to this Request because the terms “openly gay and
13 lesbian” “prohibition,” and “documented adverse impact” are vague and
14 ambiguous. Defendants can thus neither admit or deny this Request. To the
15 extent a response is required, Defendants can neither admit nor deny this request.
16 The Department of Defense has not conducted its own independent study of the
17 extent to which service members who engage in homosexual conduct are able to
18 serve in the armed forces of other nations or the impacts of any such service.

19 107. Admit that Australia abandoned its prohibition of military service by openly
20 gay and lesbian service members without any documented adverse impact
21 on troop morale.

22 **Response:** Defendants object to this Request because the terms “openly gay and
23 lesbian” “prohibition,” and “documented adverse impact” are vague and
24 ambiguous. Defendants can thus neither admit or deny this Request. To the
25 extent a response is required, Defendants can neither admit nor deny this request.
26 The Department of Defense has not conducted its own independent study of the
27 extent to which service members who engage in homosexual conduct are able to
28 serve in the armed forces of other nations or the impacts of any such service.

1 108. Admit that Australia abandoned its prohibition of military service by openly
2 gay and lesbian service members without any documented adverse impact
3 on national defense.

4 **Response:** Defendants object to this Request because the terms “openly gay and
5 lesbian,” “prohibition,” and “documented adverse impact” are vague and
6 ambiguous. Defendants can thus neither admit or deny this Request. To the
7 extent a response is required, Defendants can neither admit nor deny this request.
8 The Department of Defense has not conducted its own independent study of the
9 extent to which service members who engage in homosexual conduct are able to
10 serve in the armed forces of other nations or the impacts of any such service.

11 109. Admit that Canada abandoned its prohibition of military service by openly
12 gay and lesbian service members without any documented adverse impact
13 on unit cohesion.

14 **Response:** Defendants object to this Request because the terms “openly gay and
15 lesbian” “prohibition,” and “documented adverse impact” are vague and
16 ambiguous. Defendants can thus neither admit or deny this Request. To the
17 extent a response is required, Defendants can neither admit nor deny this request.
18 The Department of Defense has not conducted its own independent study of the
19 extent to which service members who engage in homosexual conduct are able to
20 serve in the armed forces of other nations or the impacts of any such service.

1 110. Admit that Canada abandoned its prohibition of military service by openly
2 gay and lesbian members without any documented adverse impact on troop
3 morale.

4 **Response:** Defendants object to this Request because the terms “openly gay and
5 lesbian” “prohibition,” and “documented adverse impact” are vague and
6 ambiguous. To the extent a response is required, Defendants can neither admit nor
7 deny this request. The Department of Defense has not conducted its own
8 independent study of the extent to which service members who engage in
9 homosexual conduct are able to serve in the armed forces of other nations or the
10 impacts of any such service.

11 111. Admit that Australia abandoned its prohibition of military service by openly
12 gay and lesbian service members without any documented adverse impact
13 on national defense.

14 **Response:** Defendants object to this Request because the terms “openly gay and
15 lesbian” “prohibition,” and “documented adverse impact” are vague and
16 ambiguous. Defendants can thus neither admit or deny this Request. To the
17 extent a response is required, Defendants can neither admit nor deny this request.
18 The Department of Defense has not conducted its own independent study of the
19 extent to which service members who engage in homosexual conduct are able to
20 serve in the armed forces of other nations or the impacts of any such service.

1 112. Admit that the United Kingdom abandoned its prohibition of military
2 service by openly gay and lesbian service members without any documented
3 adverse impact on unit cohesion.

4 **Response:** Defendants object to this Request because the terms “openly gay and
5 lesbian” “prohibition,” and “documented adverse impact” are vague and
6 ambiguous. Defendants can thus neither admit or deny this Request. To the
7 extent a response is required, Defendants can neither admit nor deny this request.
8 The Department of Defense has not conducted its own independent study of the
9 extent to which service members who engage in homosexual conduct are able to
10 serve in the armed forces of other nations or the impacts of any such service.

11 113. Admit that the United Kingdom abandoned its prohibition of military
12 service by openly gay and lesbian service members without any documented
13 adverse impact on troop morale.

14 **Response:** Defendants object to this Request because the terms “openly gay and
15 lesbian” “prohibition,” and “documented adverse impact” are vague and
16 ambiguous. Defendants can thus neither admit or deny this Request. To the
17 extent a response is required, Defendants can neither admit nor deny this request.
18 The Department of Defense has not conducted its own independent study of the
19 extent to which service members who engage in homosexual conduct are able to
20 serve in the armed forces of other nations or the impacts of any such service.

1 114. Admit that the United Kingdom abandoned its prohibition of military
2 service by openly gay and lesbian service members without any documented
3 adverse impact on national defense.

4 **Response:** Defendants object to this Request because the terms “openly gay and
5 lesbian” “prohibition,” and “documented adverse impact” are vague and
6 ambiguous. Defendants can thus neither admit or deny this Request. To the
7 extent a response is required, Defendants can neither admit nor deny this request.
8 The Department of Defense has not conducted its own independent study of the
9 extent to which service members who engage in homosexual conduct are able to
10 serve in the armed forces of other nations or the impacts of any such service.

11 115. Admit that Israel abandoned its prohibition of military service by openly
12 gay and lesbian service members without any documented adverse impact
13 on unit cohesion.

14 **Response:** Defendants object to this Request because the terms “openly gay and
15 lesbian” “prohibition,” and “documented adverse impact” are vague and
16 ambiguous. Defendants can thus neither admit or deny this Request. To the
17 extent a response is required, Defendants can neither admit nor deny this request.
18 The Department of Defense has not conducted its own independent study of the
19 extent to which service members who engage in homosexual conduct are able to
20 serve in the armed forces of other nations or the impacts of any such service.

1 116. Admit that Israel abandoned its prohibition of military service by openly
2 gay and lesbian service members without any documented adverse impact
3 on troop morale.

4 **Response:** Defendants object to this Request because the terms “openly gay and
5 lesbian” “prohibition,” and “documented adverse impact” are vague ambiguous.
6 Defendants can thus neither admit or deny this Request. To the extent a response
7 is required, Defendants can neither admit nor deny this request. The Department
8 of Defense has not conducted its own independent study of the extent to which
9 service members who engage in homosexual conduct are able to serve in the
10 armed forces of other nations or the impacts of any such service.

11 117. Admit that Israel abandoned its prohibition of military service by openly
12 gay and lesbian service members without any documented adverse impact
13 on national defense.

14 **Response:** Defendants object to this Request because the terms “openly gay and
15 lesbian” “prohibition,” and “documented adverse impact” are vague and
16 ambiguous. Defendants can thus neither admit nor deny this Request. To the
17 extent a response is required, Defendants can neither admit nor deny this request.
18 The Department of Defense has not conducted its own independent study of the
19 extent to which service members who engage in homosexual conduct are able to
20 serve in the armed forces of other nations or the impacts of any such service.

1 118. Admit that in both Afghanistan and Iraq, U.S. Armed Forces fight side by
2 side with coalition forces from Great Britain, Australia, and numerous other
3 coalition member countries that allow lesbian and gay service members to
4 serve openly in their respective militaries.

5 **Response:** Defendants objects to the form of this Request because it is a
6 compound question that violates the requirement in Fed. R. Civ. P 36 (a)(2) that
7 each matter must be separately stated. Defendants also object to the terms “side
8 by side,” “numerous other coalition member countries,” and “openly” as vague
9 and ambiguous. Defendants can thus neither admit or deny this Request.

10 Defendants admit that armed forces from both America and Great Britain
11 conducted or supported combat operations within Afghanistan at the same time.

12 Defendants admit that armed forces from both America and Australia conducted or
13 supported combat operations within Afghanistan at the same time. Defendants
14 admit that, in addition to America, Great Britain, and Australia, armed forces from
15 other countries conducted or supported combat operations within Afghanistan.

16 Defendants admit that armed forces from both America and Great Britain
17 conducted or supported combat operations within Iraq at the same time.

18 Defendants admit that armed forces from both America and Australia conducted or
19 supported combat operations within Iraq at the same time. Defendants admit that,
20 in addition to America, Great Britain, and Australia, armed forces from other
21 countries conducted or supported combat operations within Iraq.

1 119. Admit that since members of the U.S. Armed Forces began fighting side by
2 side with coalition forces from countries that allow lesbian and gay service
3 members to serve openly in their respective militaries, there have been no
4 documented adverse effects arising from the proximity of gay and lesbian
5 coalition soldiers to American soldiers on the unit cohesion or morale of any
6 member or members of the U.S. Armed Forces.

7 **Response:** Defendants object to this Request because it is a compound question
8 that violates the requirement in Fed. R. Civ. P. 36(a)(2) that each matter must be
9 separately stated. Defendants also objects to the terms “side by side,” “coalition
10 forces”, “openly”, and “proximity of gay and lesbian coalition soldiers” as vague
11 and ambiguous. To the extent a response is required, Defendants can neither
12 admit nor deny this Request because Defendants do not keep or track data
13 concerning incidents of American soldiers coming into direct contact with foreign
14 soldiers who engage in homosexual conduct.

15 120. Admit the Federal Bureau of investigation has no ban on the service of
16 openly gay or lesbian agents or employees.

17 **Response:** Defendants object to this request because “openly gay or lesbian
18 agents or employees” is vague and ambiguous. To the extent a response is
19 required, Defendants admit that the FBI has no ban on the service of gay or
20 lesbian individuals.

21 121. Admit that Central Intelligence Agency has no ban on the service of openly
22 gay or lesbian agents or employees.

23 **Response:** Defendants object to this request because “openly gay or lesbian
24 agents or employees” is vague and ambiguous. To the extent a response is
25 required, Defendants admit that the CIA has no ban on the service of gay or
26 lesbian individuals.

1 122. Admit that the National Security Agency has no ban on the service of
2 openly gay or lesbian employees.

3 **Response:** Defendants object to this request because “openly gay or lesbian
4 agents or employees” is vague and ambiguous. To the extent a response is
5 required, Defendants admit that the NSA has no ban on the service of gay or
6 lesbian individuals. To the extent military members are assigned to the NSA,
7 however, they are subject to the conduct-based policy set forth in DADT. Civilian
8 employees are not subject to DADT.

9 123. Admit that at least 21 states forbid discrimination on the basis of sexual
10 orientation.

11 **Response:** Defendants can neither admit nor deny this Request. The information
12 Defendants know or can readily obtain is insufficient for it to admit or deny this
13 Request.

14 124. Admit that at least 21 states allow the service of openly gay or lesbian
15 individuals in their fire departments.

16 **Response:** Defendants object to this Request because the terms “openly gay and
17 lesbian” is vague and ambiguous. The information Defendants know or can
18 readily obtain is insufficient for it to admit or deny this Request.

19 125. Admit that during the 1992 Congressional hearings on the service in the
20 United States Armed Forces by gay and lesbian service members, Senator
21 John Kerry asked how the United States Armed Forces could “properly or
22 righteously or morally protect freedom if its policies deny freedom to
23 significant minority of citizens.”

24 **Response:** Admit.

25 126. Admit that in a 2003 article in the National Law Review, Rear Admiral John
26 Hutson (ret.) Described DADT as “odious” and “virtually unworkable in the
27 military.”

28 **Response:** Admit.

1 127. Admit that in a New York Times essay date January 2, 2007, General John
2 Shalikashvili (ret.), former chairman of the Joint Chiefs of staff, wrote:
3 “When [the repeal of DADT] comes, gay men and lesbians will no longer
4 have to conceal who they are, and the military will no longer need to
5 sacrifice those whose service it cannot afford to lose.”

6 **Response:** Admit.

7 128. Admit that former Vice President Dick Cheney described the security risk
8 rationale underlying policies banning gays and lesbians from service in the
9 United States Armed Forces as “a bit of an old chestnut.”

10 **Response:** Admit.

11 129. Admit that NATO Commander Wesley Clark (ret.) On NBC’s *Meet the*
12 *Press* on June 15, 2003 said: “People were much more irate about [gay
13 service in the military] in the early 90’s, for whatever reason, [perhaps
14 because of] younger people coming into the military. It just didn’t seem to
15 be the same emotional hot button issue by ‘98, ‘99, than it had been in ‘92,
16 ‘93.”

17 **Response:** Admit.

18 130. Admit that in a 2007 Wall Street Journal essay, former Republican
19 Congressman Bob Barr wrote: “The bottom line here is that, with nearly a
20 decade and a half of the hybrid ‘don’t ask, don’t tell’ policy to guide us, I
21 have become deeply impressed with the growing weight of credible military
22 opinion which concludes that allowing gays to serve openly in the military
23 does not pose insurmountable problems for the good order and discipline of
24 the services.”

25 **Response:** Admit.

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1 131. Admit that a 2006 Zogby poll of troops who had served in Afghanistan and
2 Iraq found that 72% of respondents would be personally comfortable
3 interacting with gays and lesbians in the United States Armed Forces.

4 **Response:** Denied; the Zogby Poll did not ask if “respondents would be
5 personally comfortable interacting with gays and lesbians in the United States
6 Armed Forces.”

7 132. Admit that Charles Moskos was one of the principal authors of DADT.

8 **Response:** Defendants object to this Request because the term “principal
9 authors” is vague and ambiguous as used in this context. Defendants deny the
10 Request because Congress enacted, and then-President Bill Clinton signed into
11 law, the DADT statute in 1993 and are therefore the “principal author[s]” of the
12 statute.

13
14 Date: January 28, 2010

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PROOF OF SERVICE

I hereby certify that I served DEFENDANTS' OBJECTIONS AND
RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
by electronic mail and regular mail upon the persons below on January 28, 2010:

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



Paul G. Freeborne