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 Log Cabin Republicans

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 12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

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 15 LOG CABIN REPUBLICANS, a non-
 profit corporation,
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 Plaintiff,
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 v.
 18 UNITED STATES OF AMERICA and
 19 ROBERT M. GATES, SECRETARY
 OF DEFENSE, in his official capacity,
 20
 Defendants.

Case No. CV 04-8425 VAP (Ex)

**PLAINTIFF'S STATEMENT OF
 GENUINE ISSUES IN OPPOSITION
 TO MOTION FOR SUMMARY
 JUDGMENT**

Hearing Date: April 26, 2010

Time: 2:00 p.m.

Courtroom: 2

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1 Plaintiff Log Cabin Republicans submits this Statement of Genuine Issues
2 pursuant to Local Rule 56-2 in opposition to the motion for summary judgment
3 herein filed by Defendants United States of America and Robert M. Gates,
4 Secretary of Defense.

5 The responses herein correspond to the proposed facts and supporting
6 evidence presented in the Statement of Uncontroverted Facts filed by the moving
7 party. These facts are followed by additional material facts and supporting
8 evidence showing numerous genuine issues.

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1 **ASSOCIATIONAL STANDING**

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<p>3 <u>MOVING PARTY’S PROPOSED</u></p> <p>4 <u>FINDINGS OF FACT</u></p> <p>5 <u>REGARDING PLAINTIFF’S</u></p> <p>6 <u>ASSOCIATIONAL STANDING</u></p>	<p><u>RESPONSE</u></p>
<p>7 1. Plaintiff, Log Cabin Republicans</p> <p>8 (LCR), filed a complaint on October</p> <p>9 12, 2004 (Doc. 1), challenging the</p> <p>10 constitutionality of the “Don’t Ask,</p> <p>11 Don’t Tell” (DADT) policy.</p>	<p>1. Plaintiff agrees this is undisputed.</p>
<p>12 2. Defendants United States and the</p> <p>13 Secretary of Defense moved to</p> <p>14 dismiss, arguing, among other things,</p> <p>15 Plaintiff failed to establish</p> <p>16 associational standing by identifying</p> <p>17 by name a current member who had</p> <p>18 been harmed by the policy (Doc. 9 &</p> <p>19 12).</p>	<p>2. Plaintiff agrees this is undisputed.</p>
<p>21 3. In ruling on Defendants’ motion to</p> <p>22 dismiss for lack of standing, the Court</p> <p>23 held that LCR had not identified any</p> <p>24 member of its organization who had</p> <p>25 been personally harmed by the DADT</p> <p>26 policy (Doc. 24).</p>	<p>3. Plaintiff agrees that in ruling on</p> <p>Defendants’ motion to dismiss Plaintiff’s</p> <p>original, unamended complaint, the Court</p> <p>held that LCR had not identified any</p> <p>members of its organization who had been</p> <p>personally harmed by the DADT policy.</p>
<p>27 4. The Court, therefore, granted the</p>	<p>4. Plaintiff agrees this is undisputed.</p>

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<p>motion to dismiss without prejudice and “ordered” LCR “to identify, by name, at least one of its members injured by the subject policy” (Doc. 24 at 17). Such named member would have to “submit a declaration establishing that he or she: (1) is an active member of the organization; (2) has served or currently serves in the Armed Forces; and (3) has been injured by the policy” (Doc. 24 at 17).</p>	
<p>5. In purported compliance with the Court’s Order, LCR filed an amended complaint and a declaration from John Alexander Nicholson on April 28, 2006 (Docs. 25, 26).</p>	<p>5. Plaintiff agrees that it filed an amended complaint and a declaration from Mr. Nicholson on April 28, 2006. Plaintiff disputes Defendants’ contention that this was in “purported compliance.” Plaintiff’s filing was in complete, not purported, compliance with the Court’s Order.</p>
<p>6. The First Amended Complaint alleged that Mr. Nicholson was a member of LCR and that he had been discharged pursuant to the DADT policy (Doc. 25 ¶¶ 13-14).</p>	<p>6. Plaintiff agrees this is undisputed.</p>
<p>7. Mr. Nicholson’s April 2006 declaration stated in part, “I am a member of the Log Cabin</p>	<p>7. Plaintiff agrees this is undisputed.</p>

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Republicans” (Doc. 26 ¶ 2).	
8. The organization’s bylaws, at both the national and the local level, require payment of dues to retain membership, and one becomes a member by paying dues to the national organization or to a local chapter (Hamilton Dep. 23:2-12; 29:19-30:16, Mar. 13, 2010, Ex. 1)	8. Plaintiff agrees that Mr. Hamilton testified that the organization’s bylaws require payment of dues by some members. The organization’s bylaws also recognize honorary members whose membership is not contingent on the paying of dues. (Engle Decl. Exh. A, secs. 2.02, 2.03(d).)
9. As of his deposition in March 2010, Mr. Nicholson had never paid dues to LCR; he merely “signed up to be a part of [the organization’s] database” (Nicholson Dep. at 9:14-10:7, Mar. 15, 2010, Ex. 2).	9. Plaintiff agrees that as of his deposition in March 2010, Mr. Nicholson had not paid dues to LCR. Plaintiff disputes that Mr. Nicholson’s purpose in joining LCR was “merely” to be a part of the LCR’s database. Rather, Mr. Nicholson’s intent in joining LCR was in response to other members’ requests that he “get more actively involved” (Nicholson Dep. at 10:12, Mar. 15, 2010). In addition, Mr. Nicholson is current on his payment of dues to Log Cabin Republicans, addressed Log Cabin Republicans’ National Convention in 2006, has spoken at other major Log Cabin Republicans events, and has been considered to be a member of Log Cabin Republicans continuously since

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	the time the First Amended Complaint was filed in this matter. (Hamilton Decl., ¶¶ 5-7.)
10. Mr. Nicholson “signed up to be a part of [the organization’s] database” in April 2006 (Nicholson Dep. at 9:17-18, Mar. 15, 2010, Ex. 2) – the same month he signed the declaration in this case (Doc. 26).	10. Plaintiff agrees that Mr. Nicholson signed up to be a part of the database in April 2006. Plaintiff disputes that Mr. Nicholson signed up solely to be part of LCR’s database. LCR asked Mr. Nicholson to get more actively involved (Nicholson Dep. at 10:12, Mar. 15, 2010). In 2006 Mr. Nicholson was awarded an honorary membership in the Georgia Chapter of Log Cabin Republicans which he has held continuously to this day. He regularly attended meetings of the Georgia Chapter in 2006-07 and has attended several Log Cabin Republicans National Conventions including that in 2009. (Ensley Decl. ¶¶ 4-7.)
11. The First Amended Complaint also alleged that another purported member of LCR, John Doe (anonymous), was then enlisted in the Armed Forces (Doc. 25 ¶ 20).	11. Plaintiff agrees that the First Amended Complaint alleged that John Doe was a member of LCR and was then enlisted in the Armed Forces. Plaintiff disputes Defendants’ contention that Lt. Col. Doe is or was a “purported” member of LCR. Rather, Lt. Col. Doe is and at all

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	relevant times has been an actual member of LCR (Dkt. No. 39 ¶ 2; Bradley Decl. ¶¶ 5-6.).
12. John Doe remains a member of the military, and thus has not been discharged – whether because of a statement or for any other reason (Hamilton Dep. 8:16-21, 33:17-35:20, Ex. 1). And there is no other record evidence to demonstrate that the DADT policy has ever been applied to John Doe, or that any statement he has made has been used by the military for any purpose, let alone for any purpose in connection with its application of the DADT policy.	12. Plaintiff agrees that Lt. Col. Doe remains a member of the military, and thus has not been discharged. He recently returned from a one-year tour of duty in Iraq. Bradley Decl. ¶ 4. Plaintiff disputes the remaining argument in this “proposed finding of fact” and the assertion that there is no other record evidence to demonstrate that the DADT policy has ever been applied to Lt. Col. Doe. Lt. Col. Doe wishes “to serve his country and to be judged on [his] actual ability and performance, without fear of investigation, discharge, stigma, forfeiture of constitutional civil liberties, harassment and other negative repercussions resulting from enforcement of the Policy” (Dkt. No. 39 ¶ 6). Furthermore, as a result of the Policy’s application to him, Lt. Col. Doe may not “communicate the core of emotions and identity to others as granted to heterosexual members of the United States Armed Forces,” nor may he “exercise [his] constitutionally protected

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right to engage in private, consensual homosexual conduct without intervention of the United States government (Dkt. 39 ¶ 7). In addition, by virtue of the DADT policy, Lt. Col. Doe is prevented from actively participating in this lawsuit, including assisting with this Opposition, thereby violating his First Amendment right to petition the Government.

FIRST AMENDMENT CHALLENGE

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<p style="text-align: center;"><u>MOVING PARTY’S PROPOSED FINDINGS OF FACT REGARDING PLAINTIFF’S FIRST AMENDMENT CHALLENGE</u></p>	<p style="text-align: center;"><u>RESPONSE</u></p>
<p>1. Mr. Nicholson was discharged because his statement that he was gay constituted an admission of his propensity to engage in homosexual acts, a presumption that he chose not to rebut: Mr. Nicholson gave his commander a letter stating that “[a]fter considerable thought, [he had] come to the decision to make the very difficult disclosure that [he was] gay” (Nicholson Dep. 43:17-44:6, 58:21-59:12, Ex. 2 & Ex. 6). Mr. Nicholson stated in the letter, moreover, that he knew this disclosure would “require[] [his] involuntary discharge,” but that he “chose to simply tell the truth and come out” (Nicholson Dep. 51:1-9, Ex. 2 & Ex. 6). Further, Mr. Nicholson’s attorney stated in his own letter to the commander that Mr. Nicholson had asked the attorney “to</p>	<p>1. Plaintiff agrees that Mr. Nicholson was discharged after he gave his commander the letter in question; but Plaintiff disputes that Mr. Nicholson was discharged solely as a result of his admission of a likelihood of engaging in homosexual acts. Rather, Plaintiff contends that Mr. Nicholson was discharged on the basis of his statements alone, regardless of their relevance to Mr. Nicholson’s likelihood of engaging in homosexual acts, after a fellow servicemember read a private letter written by Mr. Nicholson, in Portuguese. (Nicholson Depo., 69:3-12.)</p>

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<p>assist [him] in disclosing his sexual orientation to the Army” (Nicholson Dep. 59:18-60:3, Ex. 2 & Ex. 7). The attorney’s letter also stated that Mr. Nicholson was aware that this disclosure “create[d] a rebuttable presumption that he [had] the propensity to engage in’homosexual conduct, ”” but that Mr. Nicholson “elect[ed] not to rebut this presumption” (Nicholson Dep. 62:2-63:3, Ex. 2 & Ex. 7). Mr. Nicholson was thus discharged from the Army as a result of his admission of a likelihood of engaging in homosexual acts, which he chose not to rebut (Nicholson Dep. 63:4-11, 75:21-76:4, Ex. 2).</p>	
<p>2. As for the anonymous John Doe on whom LCR also seeks to rely, he remains a member of the military, and thus has not been discharged – whether because of a statement or for any other reason (Hamilton Dep. 8:16-21, 33:17-35:20, Ex. 1). No statement has thus been used as the basis to discharge John Doe under the</p>	<p>2. Plaintiff agrees this is undisputed. However, Lt. Col. Doe is prevented from participating in this lawsuit, and serves under constant threat of investigation and discharge, by virtue of the application of the DADT policy in practice. <u>See</u> Genuine Issues Nos. 90, 91, 92, and 112, below.</p>

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challenged statute or otherwise.	
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STATEMENT OF GENUINE ISSUES

<u>FACTS SUPPORTING GENUINE ISSUES</u>	<u>SUPPORTING EVIDENCE</u>
<p>1. The assertion contained in 10 U.S.C. § 654 that Don't Ask, Don't Tell advances morale, good order and discipline, and unit cohesion in the United States Armed Forces was at the time of its enactment, and is today, without factual support.</p>	<p>1. MacCoun Report at 2-3, attached to the Declaration of Robert MacCoun at Ex. A; Frank Report at 7-9, attached to the Declaration of Nathaniel Frank at Ex. A; Embser-Herbert Report at 4-5, attached to the Declaration of Melissa Sheridan Embser-Herbert at Ex. A; Hillman Report at 1, attached to the Declaration of Elizabeth Hillman at Ex. A.</p>
<p>2. Documentation, research, academic or sociological studies supporting such an assertion are utterly lacking and defendants have no such evidence.</p>	<p>2. Frank Report at 7-9; <u>see also</u> Defendants' Objections and Responses to Plaintiff's First Set of Interrogatories, No. 3 (wherein Defendants assert that "[t]he facts demonstrating that DADT advances governmental interests and purposes are set forth in the Statute, 10 U.S.C. § 654, and legislative history.") (LCR App. at 0159-0170); <u>see also</u> Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Admission, Nos. 154-156 (wherein Defendants assert that "the text and legislative history of the statute, which</p>

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	<p>embody the considered judgment of Congress, provide the necessary support for the law.”) (LCR App. at 0171-0189). <u>See also infra</u> Genuine Issues Nos. 9, 12, 13.</p>
<p>3. The evidence available then and now demonstrates that Don’t Ask, Don’t Tell actually interferes with those interests.</p>	<p>3. Frank Report at 11-16; Hillman Report at 2; Belkin Report at 4, attached to the Declaration of Aaron Belkin as Ex. B; Korb Report at 8, attached to the Declaration of Lawrence Korb as Ex. A.</p>
<p>4. There is no rational basis for prejudice against homosexuals, or for prejudice against homosexuals serving openly in the military.</p>	<p>4. MacCoun Report at 2,3; Frank Report at 7-9; Embser-Herbert Report at 4,5; Hillman Report at 1; Rand Report <u>passim</u> (LCR App. at 0291-0838); 2005 GAO Report <u>passim</u> (LCR App. at 1025-1072); 1993 GAO Report <u>passim</u> (LCR App. at 0972-1024); 1992 GAO Report <u>passim</u> (LCR App. at 0888-0971); Crittenden Report at 46 (LCR App. at 0218-0290); Sarbin at 33 (LCR App. at 0839-0887); McDaniel <u>passim</u> (LCR App. at 1330-1359); <u>see also</u> Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, Nos. 1, 2, 6 (wherein Defendants admitted that President Obama has declared: “I believe</p>

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	<p>‘don’t ask, don’t tell’ doesn’t contribute to our national security. In fact, I believe preventing patriotic Americans from serving their country weakens national security,” and “these cases [of separations under DADT] underscore the urgency of reversing this policy not just because it’s the right thing to do, but because it’s essential for our national security.”) (LCR App. at 0114-0158).</p>
<p>5. Homosexual servicemembers are no more likely than heterosexual servicemembers to reveal classified or otherwise confidential information; they are no more likely than heterosexual servicemembers to violate military codes of conduct, the UCMJ, or Department of Defense regulations; and they possess no physical or psychological defect that renders them unfit for service.</p>	<p>5. Frank Report at 7-9, citing <u>Report of the Board of Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuals</u> at 46, March 15, 1957 (“Crittenden Report”) (stating “[t]he Board was unable to uncover any statistical data to prove or disprove that homosexuals are in fact more of a security risk than those engaged in other unsocial or immoral activity”) (LCR App. at 0218-0290).</p>
<p>6. No research has ever shown that the presence of openly homosexual servicemembers would cause or has</p>	<p>6. Frank Report at 7-9; National Defense Research Institute, <u>Sexual Orientation and U.S. Military Personnel Policy: Options</u></p>

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<p>caused the deterioration of morale, good order and discipline, or unit cohesion in the military, any more than the presence of women or black men in previous decades caused such ill effects.</p>	<p><u>and Assessment</u> (“RAND Report”) at 103-105, 188-190 (Washington, D.C., 1993) (LCR App. 0291-0838).</p>
<p>7. The 1957 Crittenden Report, commissioned by the Secretary of the Navy, concluded that no factual data exist to support the contention that homosexuals are a greater security risk than heterosexuals.</p>	<p>7. Crittenden Report at 46 (finding that “[t]he Board was unable to uncover any statistical data to prove or disprove that homosexuals are in fact more of a security risk than those engaged in other unsocial or immoral activity.”) (LCR App. at 0218-0290); Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 135 (LCR App. at 0114-0158).</p>
<p>8. Two studies commissioned by the military’s Personnel Security Research and Education Center in 1988 found that the ban on gay and lesbian service was unnecessary and damaging and that sexual orientation had no relationship to job performance or unit cohesion.</p>	<p>8. Theodore Sarbin and Kenneth Karols, <u>Nonconforming Sexual Orientations and Military Suitability</u> at 33, Defense Personnel Security Research and Education Center (“PERSEREC”) (December 1988) (LCR App. at 0839-0887); Michael McDaniel, <u>Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance</u></p>

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	<p><u>Suitability</u>, Defense Personnel Security Research and Education Center ("PERSEREC") (January 1989) (LCR App. at 1330-1359); Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 136 (0114-0158).</p>
<p>9. The current Chairman of the Joint Chiefs of Staff has acknowledged publicly that there "just isn't any objective data out there" regarding the effects of the policy, its impact on military servicemembers and their families of Don't Ask, Don't Tell and its potential repeal.</p>	<p>9. <u>Testimony Regarding DoD 'Don't Ask, Don't Tell' Policy: Hearing Before the S. Armed Services Comm., 111th Cong. 2 (2010)</u> (statements of Robert Gates, Sec. Def. of the United States, and Adm. Mike Mullen, Chairman of the Joint Chiefs of Staff) (available at http://www.jcs.mil/speech.aspx?id=1322, last visited April 1, 2010) (LCR App. 1791-1806); <u>see also</u> Adm. Mike Mullen, <u>The View from the Chair</u> (March 10, 2010), http://dodvclips.mil/?&fr_story=FRdamp367656&referer=http%3A%2F%2Fwww.facebook.com%2Fadmiralmikemullen%3Fv%3Dinfo%26ref%3Dsearch&autoplay=true&skin=oneclip&rf=ev (last visited April 1, 2010).</p>
<p>10. Polls, both of the public at large</p>	<p>10. Frank Report at 18-19, citing a 1992</p>

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<p>and of members of the military, show little concern, and that diminishing steadily with time, regarding the impact of the presence of openly homosexual servicemembers on issues of privacy, sexual tension, and the like.</p>	<p>NBC News/Wall Street Journal poll which found that 46 percent of the public favored lifting the gay ban, while 49 percent opposed lifting it; a 2003 Fox News poll identifying the number of respondents who support gay service at 64 percent; a 2003 Gallup poll that identified the number of total respondents who support gay service at 79 percent and which showed that 91 percent of Americans between ages eighteen and twenty-nine favored lifting DADT; a 2008 ABC News/Washington Post poll which found that 75 percent of Americans favored openly gay service, including a majority of white evangelicals, veterans, and Republicans, whose support has doubled since 1993, and which showed that nearly two-thirds of conservatives as well as 82 percent of white Catholics supported letting open gays serve.</p>
<p>11. In February 2010, defendant Gates notified Congress that, reversing a policy of over 100 years' standing, the Navy intends to permit women to serve on submarines.</p>	<p>11. Julian E. Barnes, <u>Navy Moves to Allow Women on Submarines</u>, L.A. Times, Feb. 24, 2010 (available at http://www.latimes.com/news/nation-and-world/la-na-women-subs24-2010feb24,0,3205611.story, last visited</p>

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	April 1, 2010) (LCR App at 2618-2621).
12. In February 2010, the Chairman of the Joint Chiefs of Staff, Admiral Mullen, testified to the Senate Armed Services Committee that he was unaware of any evidence suggesting repeal of DADT would undermine unit cohesion, and that there had been no thorough or comprehensive study of that since 1993.	12. <u>Testimony Regarding DoD ‘Don’t Ask, Don’t Tell’ Policy: Hearing Before the S. Armed Services Comm., 111th Cong. 2 (2010)</u> (statements of Robert Gates, Sec. Def. of the United States, and Adm. Mike Mullen, Chairman of the Joint Chiefs of Staff) (available at http://www.jcs.mil/speech.aspx?id=1322 , last visited 4/1/10) (LCR App. at 03452-03467).
13. The Secretary of Defense, defendant Robert M. Gates, also testified to the Senate Armed Services Committee, with regard to whether repealing DADT would undermine unit cohesion, that the Defense Department needed “to address a number of assertions that have been made for which we have no basis in fact.”	13. <u>Testimony Regarding DoD ‘Don’t Ask, Don’t Tell’ Policy: Hearing Before the S. Armed Services Comm., 111th Cong. 2 (2010)</u> (statements of Robert Gates, Sec. Def. of the United States, and Adm. Mike Mullen, Chairman of the Joint Chiefs of Staff) (available at http://www.jcs.mil/speech.aspx?id=1322 , last visited 4/1/10) (LCR App. at 03452-03467).
14. A Zogby poll taken in 2006 indicated that roughly two thirds of servicemembers returning from Iraq and Afghanistan knew or suspected a gay person had served in their unit.	14. Sam Rogers, <u>Opinions of Military Personnel on Gays in the Military</u> at 5, Zogby International (Dec. 2006) (LCR App. at 1073-1099).

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15. Many of the stated bases for Don't Ask, Don't Tell – including such purported justifications as the avoidance of sexual tension, concern about communal showers, and the like – do not apply in the case of women and lesbians.

15. Embser-Herbert Report at 4-5.

16. The total cost of DOD's homosexual conduct policy cannot be estimated because DOD does not collect relevant cost data on inquiries and investigations, counseling and pastoral care, separation functions, and discharge reviews. However, DOD does collect data on recruitment and training costs for the force overall. Using these data, GAO estimated that, over the 10-year period, it could have cost the DOD about \$95 million in constant fiscal year 2004 dollars to recruit replacements for servicemembers separated under the policy. Also, the Navy, Air Force, and Army estimated that the cost to train replacements for separated servicemembers by occupation was approximately \$48.8 million, \$16.6

16. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, Nos. 20, 21 (LCR App at 0114-0158); 2005 GAO Report to Congress entitled "Military Personnel: Financial Costs and Loss of Critical Skills to the DOD's Homosexual Conduct Policy Cannot Be Completely Estimated," text available online at <http://www.gao.gov/new.items/d05299.pdf> (LCR App. at 1025-1072).

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<p>million, and \$29.7 million, respectively.</p>	
<p>17. In 1993, the National Defense Research Institute prepared a study for the Office of the Secretary of Defense titled “Sexual Orientation and U.S. Military Personnel Policy: Options and Assessments” which concluded that the available evidence demonstrated that circumstances could exist under which the ban on homosexuals could be lifted with little or no adverse consequences for recruitment or retention.”</p>	<p>17. Defendants’ Objections and Responses to Plaintiff’s Second Set of Requests for Admission, No. 138 (LCR App. 0171-0189).</p>
<p>18. All research conducted by or on behalf of Defendants prior to January 1, 1994 demonstrating the need for, or advisability of, implementing the Policy is limited to the 7046 pages of documents received by Plaintiff on January 14, 2010. Nothing in those documents reflects any research or studies whatsoever supporting a rational basis for the Policy or its congruence with Congressional objectives.</p>	<p>18. Defendants’ Objections and Responses to Plaintiff’s First Set of Interrogatories, No. 15 (LCR App. at 0159-0170).</p>

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<p>19. All research conducted by or on behalf of Defendants since December 31, 1993, evaluating whether the Policy is furthering the interests and goals identified by the text of the statute underlying the Policy and its legislative history is limited to the 7046 pages of documents received by Plaintiff on January 14, 2010. Nothing in those documents reflects any research or studies whatsoever supporting a rational basis for the Policy or its congruence with Congressional objectives.</p>	<p>19. Defendants' Objections and Responses to Plaintiff's First Set of Interrogatories, No. 16 (LCR App. at 0159-0170).</p>
<p>20. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 1994 without any discernible benefit to the U.S. Armed Forces.</p>	<p>20. Conduct Unbecoming: The First Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, March 24, 1995 (produced by Log Cabin at LCR 04013 to 04044) (LCR App. at 1982-2013).</p>
<p>21. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 1995 without any discernible benefit to the U.S. Armed</p>	<p>21. Conduct Unbecoming: The Second Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, 1996</p>

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Forces.	(produced by Log Cabin at LCR 04045 to 04080) (LCR App. at 2014-2049).
22. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 1996 without any discernible benefit to the U.S. Armed Forces.	22. Conduct Unbecoming: The Third Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, 1997 (produced by Log Cabin at LCR 04081 to 04120) (LCR App. at 2050-2089).
23. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 1997 without any discernible benefit to the U.S. Armed Forces.	23. Conduct Unbecoming: The Fourth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, 1998 (produced by Log Cabin at LCR 04121 to 04199) (LCR App. at 2090-2168).
24. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 1998 without any discernible benefit to the U.S. Armed Forces.	24. Conduct Unbecoming: The Fifth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, 1999 (produced by Log Cabin at LCR 04200 to 04284) (LCR App. at 2169-2253).
25. Don't Ask, Don't Tell ended the careers of hundreds of patriotic	25. Conduct Unbecoming: The Sixth Annual Report on "Don't Ask, Don't Tell,

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<p>Americans in 1999 without any discernible benefit to the U.S. Armed Forces.</p>	<p>Don't Pursue, Don't Harass," Service Members Legal Defense Network, March 9, 2000 (produced by Log Cabin at LCR 04285 to 04371) (LCR App. at 2254-2340).</p>
<p>26. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 2000 without any discernible benefit to the U.S. Armed Forces.</p>	<p>26. Conduct Unbecoming: The Seventh Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, March 15, 2001 (produced by Log Cabin at LCR 04372 to 04474) (LCR App. at 2341-2443).</p>
<p>27. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 2001 without any discernible benefit to the U.S. Armed Forces.</p>	<p>27. Conduct Unbecoming: The Eighth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, March 14, 2002 (produced by Log Cabin at LCR 04475 to 04531) (LCR App. at 2444-2500).</p>
<p>28. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 2002 without any discernible benefit to the U.S. Armed</p>	<p>28. Conduct Unbecoming: The Ninth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, March</p>

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<p>Forces.</p>	<p>25, 2003 (produced by Log Cabin at LCR 04532 to 04592) (LCR App. at 2501-2561).</p>
<p>29. Don't Ask, Don't Tell ended the careers of hundreds of patriotic Americans in 2003 without any discernible benefit to the U.S. Armed Forces.</p>	<p>29. Conduct Unbecoming: The Tenth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," Service Members Legal Defense Network, March 24, 2004 (produced by Log Cabin at LCR 04593 to 04648) (LCR App. at 2562-2617).</p>
<p>30. In enacting Don't Ask, Don't Tell, Congress and the President ignored studies demonstrating that permitting openly gay and lesbian individuals to serve in the U.S. Armed Forces would have no adverse effect on those interests.</p>	<p>30. <u>See, e.g.</u>, Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Admission, No. 175 (wherein Defendants admitted that the Military Working Group charged with providing options to reform the Department of Defense's policy on homosexuals "did not have the final report of the RAND National Defense Research Institute entitled "Sexual Orientation and U.S. Military Personnel Policy: Options and Assessments," prepared for the Secretary of Defense.) (LCR App. at 0171-0189); <u>see also</u> Defendants'</p>

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Objections and Responses to Plaintiff’s
Second Set of Requests for Admission
Nos. 176, 180-185 (wherein Defendants
acknowledge that they are unable to
confirm whether or not the Military
Working Group or the Secretary of
Defense provided the 103rd Congress
with: the RAND Report; the
memorandum from Craig Alderman, Jr.,
Deputy Undersecretary of Defense for
Policy, to the DOD Personnel Security
Research Center (“PERSEREC”) Director
regarding PERS-TR-89-002,
“Nonconforming Sexual Orientations and
Military Suitability,” dated January 18,
1989; the memorandum from Carson K.
Eoyang, PERSEREC Director, to Deputy
Undersecretary of Defense for Policy,
regarding PERSEREC research on
homosexuality and suitability, dated
January 30, 1989; the memorandum from
Craig Alderman, Jr., Deputy
Undersecretary of Defense for Policy,
regarding the PERSEREC draft report
“Nonconforming Sexual Orientations,”
dated February 10, 1989; PERSEREC
report entitled “Preservice Adjustment of

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	<p>Homosexual and Heterosexual Military Accessions: Implications for Security Clearance and Suitability,” dated January 1989; PERSEREC report entitled “Homosexuality and Personnel Security,” dated September 1991; and the Crittenden Report.) (LCR App. at 1071-0189).</p>
<p>31. The General Accounting Office (“GAO”) in 1992 strongly suggested that the ban on gay and lesbian individuals serving openly be reconsidered.</p>	<p>31. U.S. Gov’t Accountability Office (GAO), <u>Defense Force Management: DOD’s Policy on Homosexuality</u> at 43 (June 12, 1992), http://archive.gao.gov/d33t10/146980.pdf (last visited April 1, 2010) (LCR App. at 0888-0971).</p>
<p>32. A year later, the GAO and the RAND Corporation (in a separate study commissioned by the Secretary of Defense) both reported that permitting openly gay and lesbian servicemembers to serve did not impair the functioning of numerous foreign militaries.</p>	<p>32. U.S. Gov’t Accountability Office (GAO), <u>Homosexuals in the Military: Policies and Practices of Foreign Countries</u> at 10 (June 1993), http://archive.gao.gov/t2pbat5/149440.pdf (last visited April 1, 2010) (LCR App. at 0972-1024); RAND Report at 101-104 (LCR App. at 0291-0838).</p>
<p>33. RAND further concluded that sexual orientation was irrelevant to determining whether an individual was fit for military service.</p>	<p>33. RAND report, pp. 329-330 (LCR App. 0291-0838).</p>

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<p>34. RAND also reported that U.S. police and fire departments – domestic analogs to the military – integrated gays and lesbians and witnessed improved effectiveness and unit cohesion after doing so.</p>	<p>34. Frank Report at 8; RAND Report at 121-154 (LCR App. 0291-0838).</p>
<p>35. A statistical analysis of United States military units in the Iraq and Afghanistan conflicts (Moradi and Miller, 2009) showed no correlation between the presence of openly gay servicemembers in the unit and the unit’s cohesion, quality, or combat readiness.</p>	<p>35. B. Moradi and L. Miller, <u>Attitudes of Iraq and Afghanistan War Veterans toward Gay and Lesbian Servicemembers</u>, 36 <i>Armed Forces and Society</i> 397, 416 (2009), available at http://www.palmcenter.org/files/active/0/randstudy%283%29.pdf (last visited April 1, 2010) (LCR App. at 1281-1292).</p>
<p>36. Persons who have identified themselves as lesbians and gay men have received honorable discharges from the United States Armed Forces.</p>	<p>36. Defendants’ Objections and Responses to Plaintiff’s Second Set of Requests for Admission, No. 168 (LCR App. at 0171-0189).</p>
<p>37. The Military Working Group responsible for many of the conclusions underlying the purported rationale for the Policy, did not review the final report of the RAND National Defense Research Institute entitled “Sexual Orientation and U.S. Military Personnel Policy: Options and</p>	<p>37. Defendants’ Objections and Responses to Plaintiff’s Second Set of Requests for Admission, No. 175 (LCR App. at 0171-0189).</p>

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Assessments,” released in 1993.	
38. The Military Working Group charged with submitting recommendations to Congress on the U.S. Armed Forces' homosexuality policy ignored evidence regarding the relevance of sexual orientation to military service in their report.	38. Office of the Sec'y of Def., <u>Summary Report of the Military Working Group</u> , July 1 1993 (Bates Nos. OSD P&R 007428-007454) (LCR App at 1764-1790).
39. In 1993, the Army Research Institute ("ARI") was initially assigned by the Army's Chief of Staff to conduct extensive research regarding President Clinton's proposal to lift the ban on homosexuals from serving openly in the Armed Forces. However, "[d]ue to decisions at senior levels, ARI was never given the 'green light' to pursue the tasking to the full extent. In particular, there were stringent restrictions on seeking attitudes and opinions, through surveys or discussion groups, from service members."	39. Future Organizational Change – U.S. Army Focus Army Task Force, Documentation Book, Bates No. ARI 062124 (LCR App. at 1755).
40. Approximately 25 nations have	40. <u>Gays in Foreign Militaries 2010: A</u>

<p>1 already included openly gay and 2 lesbian service members in their 3 military without a negative impact on 4 morale, recruitment, retention, 5 readiness, or overall combat 6 effectiveness. 7</p>	<p><u>Global Primer</u> (Palm Center February 2010), Exhibit 22 to Deposition of Nathaniel Frank (LCR App. at 1129- 1280).</p>
<p>8 9 41. The United Kingdom Defence 10 Ministry reported that lifting its ban 11 on openly gay and lesbian 12 servicemembers was met with 13 “widespread acceptance” and had “no 14 discernible impact” on recruitment. 15 16 17 18 19 20 21 22 23</p>	<p>41. A. Belkin and R.L. Evans, <u>The Effects of Including Gay and Lesbian Soldiers in the British Armed Forces</u> at 4, white paper, Palm Center, University of California, Santa Barbara, 2000 (available at http://www.palmcenter.org/files/active/0/ Britain1.pdf, last visited April 1, 2010) (LCR App. at 1807-1876); Aaron Belkin, <u>Don’t Ask, Don’t Tell: Is the Gay Ban Based on Military Necessity?</u> Parameters (Summer 2003) at 111 (available at http://www.carlisle.army.mil/usawc/Para meters/03summer/belkin.pdf, last visited April 1, 2010). (LCR App. at 1877-1888)</p>
<p>24 42. The integration of gays and 25 lesbians into the British military 26 produced no discernible impact on 27 military readiness. 28</p>	<p>42. U.K. Ministry of Defense, “A Review of the Armed Forces Policy on Homosexuality” (2000), available at http://www.mod.uk/NR/rdonlyres/ACED4</p>

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	F62-2C04-4B19-AC50-E49552732385/0/impact_studies_homosexuality.pdf (last visited April 4, 2010) (LCR App. at 2821-2836).
43. In 2000, a comprehensive study regarding several foreign militaries' experience after removing the ban on gay and lesbian servicemembers reported no observed impact on military effectiveness, unit cohesion, recruitment, or retention.	43. A. Belkin and R.L. Evans, <u>The Effects of Including Gay and Lesbian Soldiers in the British Armed Forces</u> at 2, white paper, Palm Center, University of California, Santa Barbara (Nov. 1, 2000) (LCR App. at 1807-1876); A. Belkin and J. McNichol, <u>The Effects of Including Gay and Lesbian Soldiers in the Australian Defence Forces: Appraising the Evidence</u> at 2-3, white paper, Palm Center, University of California, Santa Barbara (September 1, 2000) (LCR App. at 1889-1928); A. Belkin and M. Levitt, <u>Homosexuality and the Israel Defense Forces</u> , 27 <i>Armed Forces and Society</i> 541, 542 (2001) (LCR App. at 1100-1128).
44. In February 2010, the Chairman of the Joint Chiefs of Staff, Admiral Mullen, testified before the Senate Armed Services Committee that his counterparts in countries that allow	44. <u>Testimony Regarding DoD 'Don't Ask, Don't Tell' Policy: Hearing Before the S. Armed Services Comm.</u> , 111th Cong. 2 (2010) (statements of Robert Gates, Sec. Def. of the United States, and

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<p>gays and lesbians to serve openly report “no impact on military effectiveness.”</p>	<p>Adm. Mike Mullen, Chairman of the Joint Chiefs of Staff) (available at http://www.jcs.mil/speech.aspx?id=1322, last visited 4/1/10) (LCR App. at 1791-1806).</p>
<p>45. At least 23 countries allow openly gay and lesbian individuals to serve openly in their respective armed forces; these countries include Australia, Austria, Belgium, the United Kingdom, Canada, the Czech Republic, Denmark, Estonia, Finland, France, Ireland, Israel, Italy, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, Sweden, and Switzerland.</p>	<p>45. Defendants’ Supplemental Responses to Plaintiff’s First Set of Requests for Admission, No. 81-82, 84-105 (LCR App. at 0212-0217).</p>
<p>46. No such nation has reported any detriment to any metric of military effectiveness, including unit cohesion, readiness, morale, retention, good order, or discipline.</p>	<p>46. <u>See e.g. A. Belkin and R.L. Evans, The Effects of Including Gay and Lesbian Soldiers in the British Armed Forces</u> at 2-3, white paper, Palm Center, University of California, Santa Barbara (Nov. 1, 2000) (LCR App. 1807-1876); A. Belkin and J. McNichol, <u>The Effects of Including Gay and Lesbian Soldiers in the Australian Defence Forces: Appraising the Evidence</u></p>

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	<p>at 2-3, white paper, Palm Center, University of California, Santa Barbara (September 1, 2000) (LCR App. at 1889-1928); A. Belkin and M. Levitt, <u>Homosexuality and the Israel Defense Forces</u>, 27 <i>Armed Forces and Society</i> 541, 542 (2001) (LCR App. at 1100-1128).</p>
<p>47. The integration of gays and lesbians into the Canadian military produced no discernible impact on military readiness.</p>	<p>47. A. Belkin and J. McNichol, <u>Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the Canadian Forces: Appraising the Evidence</u> at 2, white paper, Palm Center, University of California at Santa Barbara (April 2000), available at http://www.palmcenter.org/files/active/0/Canada5.pdf (last visited April 4, 2010) (LCR App. at 2837-2878); Okros Report, <u>passim</u>.</p>
<p>48. The Canadian experience demonstrates that the inclusion of openly gay and lesbian servicemembers in combat units is a non-issue in terms of military effectiveness and that military effectiveness is determined by the</p>	<p>48. Okros Report at 4-5.</p>

1	competence of individual soldiers, not	
2	their sexual orientation.	
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4	49. The Army was informed, through	49. U.S. Army Research Institute (ARI)
5	a study it commissioned, at least as	Research Report 1657, "Perspectives on
6	early as January 1994 that the	Organizational Change in the Canadian
7	Canadian Forces (CF) had	Forces," January 1994, Okros Depo. Exh.
8	experienced "virtually no	1001 [Bates No. ARI 60206-72] (LCR
9	consequences of lifting the ban on	App. at 1492-1558); email of November
10	known homosexuals in the CF for all	1, 2000 from Franklin C. Pinch to Paul A.
11	important dimensions," and confirmed	Gade, ARI, Bates No. ARI 062002-04
12	about seven years later that	(LCR App. at 1559-1561).
13	"homosexuality is still a non-issue" in	
14	the CF.	
15	50. In both Afghanistan and Iraq,	50. Defendants' Objections and
16	members of the United States Armed	Responses to Plaintiff's First Set of
17	Forces have fought and continue to	Requests for Admission No. 118 (LCR
18	fight side by side with coalition forces	App. at 0114-0158).
19	from such nations, including Great	
20	Britain and Australia.	
21	51. Such forces include openly gay	51. Defendants' Supplemental Responses
22	and lesbian commanding officers.	to Plaintiff's First Set of Requests for
23		Admission Nos. 81-82, 84-104 (LCR App.
24		at 0212-0217).
25	52. The Department of Defense has	52. Defendants' Objections and
26	no record of any adverse effects	Responses to Plaintiff's First Set of
27	arising from the cooperation in	Requests for Admission, No. 119 (LCR
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<p>Afghanistan and Iraq of United States servicemembers with gay and lesbian servicemembers from Great Britain and Australia, or with the servicemembers of any other country that permits gay and lesbian servicemembers to serve openly.</p>	<p>App. at 0114-0158).</p>
<p>53. In the majority of Western industrialized societies, the inclusion of openly gay and lesbian individuals has no impact on military readiness.</p>	<p>53. Gwyn Harries-Jenkins, <u>Comparative International Military Personnel Policies</u> at 18, U.S. Army Research Institute for the Behavioral and Social Sciences (May 1993) (Bates-stamped ARI 060755-060779) (LCR App. at 1730-1754).</p>
<p>54. The Policy has been applied more frequently in peacetime than in times of war, when unit cohesion, as defendants posit the concept, is in theory most vital.</p>	<p>54. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, Nos. 31-45 (LCR App. at 0114-0158).</p>
<p>55. The year 2001, during most of which the United States was not in a state of war, yielded the highest number of discharges under Don't Ask, Don't Tell.</p>	<p>55. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 37 (LCR App. at 0114-0158).</p>
<p>56. Since the commencement of Operation Enduring Freedom in</p>	<p>56. Defendants' Objections and Responses to Plaintiff's First Set of</p>

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<p>Afghanistan in October 2001 and Operation Iraqi Freedom in Iraq in March 2003, discharges of lesbian and gay members of the United States Armed Forces have decreased dramatically. The Department of Defense separated 49% fewer servicemembers under the Policy in fiscal year 2008 than it separated in fiscal year 2001.</p>	<p>Requests for Admission, Nos. 37-45, 80 (LCR App. at 0114-0158).</p>
<p>57. Army officers are instructed not to discharge servicemembers based on homosexuality from units on or about to be placed on active duty status. Their discharge is to be postponed until their return to the United States.</p>	<p>57. <u>See</u> Defendants’ Objections and Responses to Plaintiff’s Second Set of Requests for Admission, No. 137 (LCR App. at 0171-0189); Dep’t of the Army, Army Forces Command (“FORSCOM”) Reg. 500-3-3 at 33 (1999) (“If discharge is not requested prior to the unit’s receipt of alert notification, discharge is not authorized. Member will enter AD [active duty] with the unit.”) (LCR App at 2622-2772).</p>
<p>58. In 1999, Regulation 500-3-3 [FORSCOM] allowed active duty deployment of Army reservists and National Guard troops awaiting resolution of the allegation of</p>	<p>58. Defendants’ Objections and Responses to Plaintiff’s Second Set of Requests for Admission, No. 137 (LCR App. at 0171-0189).</p>

1	homosexual conduct or statements.	
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3	59. In each year from 1994 through	59. Embser-Herbert Report at 3; 2005
4	the present, Don't Ask, Don't Tell has	GAO Report at 10 (LCR App. 1025-
5	disproportionately impacted women in	1072); Defendant's Objections and
6	the Armed Forces.	Responses to Plaintiff's First Set of
7		Requests for Admission, No. 48, 49 (LCR
8		App. at 0114-0158).
9	60. Between 1994 and 2003, women	60. Defendants' Objections and
10	constituted less than 20% of the	Responses to Plaintiff's First Set of
11	United States Armed Forces yet	Requests for Admission, 48, 49 (LCR
12	accounted for over 40% of the	App. at 0114-0158).
13	servicemembers discharged under the	
14	Policy.	
15	61. In 2008, women accounted for	61. Embser-Herbert Report at 3.
16	14% of the Armed Forces but	
17	accounted for 36% of those	
18	discharged under the Policy.	
19	62. Don't Ask, Don't Tell uniquely	62. Embser-Herbert Report at 6, 7.
20	impairs unit cohesion and military	
21	effectiveness among female	
22	servicemembers.	
23		
24	63. Don't Ask, Don't Tell requires	63. Embser-Herbert Report at 8.
25	that female servicemembers avoid	
26	appearing too strong, assertive, and	
27	masculine – and thus stereotypically	
28	lesbian – although they are expected	

1	to operate in a male-dominated	
2	military environment.	
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4	64. Many female servicemembers,	64. Embser-Herbert Report at 8.
5	lesbian or not, must choose whether to	
6	perform their duties with full	
7	competence and risk being labeled a	
8	lesbian or to purposefully act in a	
9	more feminine but less competent	
10	manner. Effectiveness is sacrificed.	
11	65. By making homosexuality illegal,	65. Embser-Herbert Report at 9.
12	Don't Ask, Don't Tell encourages	
13	allegations of lesbianism if female	
14	servicemembers refuse sexual	
15	advances by males.	
16	66. Don't Ask, Don't Tell	66. Embser-Herbert Report at 9-10.
17	discourages female servicemembers	
18	from reporting sexual harassment,	
19	impairing the unit cohesion and	
20	morale of all female servicemembers,	
21	not just those who are actually lesbian.	
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23	67. Between 1997 and 2003, 4,385	67. Defendants' Objections and
24	women were discharged under the	Responses to Plaintiff's First Set of
25	Policy, accounting for 40.36% of all	Requests for Admission, No. 48 (LCR
26	separations under the Policy during	App. at 0114-0158).
27	that period.	
28	68. Between 1994 and 2003,	68. Defendants' Objections and

1 2 3 4	servicewomen accounted for less than 20% of all servicemembers in the United States Armed Forces.	Responses to Plaintiff's First Set of Requests for Admission, No. 49 (LCR App. at 0114-0158).
5 6 7 8	69. The Policy applies to all members of the United States Armed Forces regardless of whether they serve in combat or non-combat positions.	69. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 72 (LCR App. at 0114-0158).
9 10 11 12 13 14 15 16 17	70. Servicemembers in critical combat and non-combat occupations, including translators, explosive ordinance disposal specialists, signal intelligence analysts, and missile and cryptologic technicians, have been discharged under Don't Ask, Don't Tell.	70. U.S. Gov't Accountability Office (GAO), <u>Military Personnel: Financial Costs and Loss of Critical Skills Due to DOD's Homosexual Conduct Policy Cannot Be Completely Estimated</u> at 4, 35 (Feb. 2005), http://www.gao.gov/new.items/d05299.pdf (last visited April 1, 2010) ("2005 GAO Report") (LCR App. at 1025-1072).
18 19 20 21 22 23 24 25 26	71. Among the thousands of others discharged under Don't Ask, Don't Tell are servicemembers with skills in intelligence, combat engineering, medicine, JAG Corps members, military police and security, nuclear, biological, and chemical warfare, missile guidance and operation, and other skills and professions.	71. 2005 GAO Report at 2, 35 (LCR App. at 1025-1072); Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, Nos. 73-78 (LCR App at 0114-0158).
27 28	72. Such discharges occurred despite	72. Frank Report at 12-13; <u>see</u> Steven

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<p>shortages in such personnel and despite force-wide recruitment and retention challenges.</p>	<p>Myers, <u>Military Reserves Are Falling Short in Finding Recruits</u>, N.Y. Times, August 28, 2000 (available at http://www.nytimes.com/2000/08/28/us/military-reserves-are-falling-short-in-finding-recruits.html?pagewanted=1, last visited April 2, 2010) (LCR App at 2773-2775).</p>
<p>73. These shortages harmed troop morale by necessitating extended deployments, an over-reliance on the less-qualified national guard, stop-loss orders, and more frequent combat duty while the United States fought two wars and the global war on terror.</p>	<p>73. Frank Report at 12, 13.</p>
<p>74. The United States cannot afford to cut from its military ranks people with the critical skills it needs to fight, and the United States cannot afford – for our military’s integrity – to force those willing to do so into careers encumbered and compromised by having to live a lie.</p>	<p>74. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 12 (LCR App. at 0114-0158).</p>
<p>75. Military personnel in non-combat positions, for example instructors at the service academies, are also subject</p>	<p>75. Hillman Deposition, 37:8-15, 151:14-23.</p>

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<p>to the Policy and some voluntarily leave military service because of the effects of the Policy.</p>	
<p>76. These patriots possess critical skills and years of training and have served this country well.</p>	<p>76. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 6 (wherein Defendants admitted that President Obama has stated that the Policy has resulted in the discharge of “patriots who often possess critical language skills and who’ve served this country well.”) (LCR App. at 0114-0158).</p>
<p>77. Don’t Ask, Don’t Tell has also caused the separation of hundreds of servicemembers with “important foreign language” skills.</p>	<p>77. U.S. Gov’t Accountability Office (GAO), <u>Military Personnel: Financial Costs and Loss of Critical Skills Due to DOD’s Homosexual Conduct Policy Cannot Be Completely Estimated</u> at 4 (Feb. 2005), http://www.gao.gov/new.items/d05299.pdf (last visited April 1, 2010) (LCR App. at 1025-1072); Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 6 (LCR App. at 0114-0158).</p>
<p>78. In just the two years following the attacks of September 11, 2001, the</p>	<p>78. Defendants’ Objections and Responses to Plaintiff’s First Set of</p>

1 2 3 4 5	U.S. Armed Forces discharged 71 linguists under the Policy -- some with skills in Arabic, Korean, Farsi, Chinese or Russian.	Requests for Admission, No. 74 (LCR App. at 0114-0158); 2005 GAO Report at 39 (LCR App. at 1025-1072).
6 7 8 9	79. In fiscal year 2002, the Department of Defense separated 33 linguists under the Policy.	79. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 74 (LCR App. at 0114-0158).
10 11 12 13	80. In fiscal year 2003, the Department of Defense separated 38 linguists under the Policy.	80. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 74 (LCR App. at 0114-0158).
14 15 16 17	81. By 2003, the number of Arabic language specialists discharged under Don't Ask, Don't Tell climbed to 54.	81. Frank Report at 12; 2005 GAO Report at 39 (LCR App. at 1025-1072).
18 19 20 21 22 23	82. 322 of the servicemembers separated from the United States Armed Forces pursuant to the Policy had "some skills in an important foreign language such as Arabic, Farsi, or Korean."	82. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 24 (LCR App. at 0114-0158).
24 25 26 27 28	83. Discharging individuals with these language skills has demonstrable negative effects on intelligence gathering, analysis, communications, force support, and hence national	83. Frank Report at 11-14.

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security.	
84. Members of the United States Armed Forces work closely with personnel from other agencies, such as the United States Central Intelligence Agency, National Security Agency, and Federal Bureau of Investigation, all of which prohibit discrimination on the basis of sexual orientation.	84. <u>See</u> Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, Nos. 120-122 (LCR App. at 0114-0158).
85. No analogous domestic agency, such as police or fire departments, that allows gays and lesbians to serve openly has reported any negative impact on cohesion, readiness, morale, or discipline.	85. RAND Report at 141 (LCR App. at 0291-0838).
86. The Commander in Chief can be openly homosexual without repercussion.	86. Defendants’ Objections and Responses to Plaintiff’s Second Set of Requests for Admission, Nos. 166-167 (LCR App. at 01710-0189).
87. Don’t Ask, Don’t Tell does not contribute to America’s national security, and the effects of the Policy – preventing patriotic Americans from serving their country – in fact weaken national security.	87. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, Nos. 1, 2, 6 (wherein Defendants admitted that President Obama has declared: “I believe ‘don’t ask, don’t tell’ doesn’t contribute to our national security. In fact, I believe

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	<p>preventing patriotic Americans from serving their country weakens national security,” and “these cases [of separations under DADT] underscore the urgency of reversing this policy not just because it’s the right thing to do, but because it’s essential for our national security.”) (LCR App. at 0114-0158).</p>
<p>88. The DADT policy forces members of the armed services to lie about who they are in order to defend their fellow citizens.</p>	<p>88. <u>Testimony Regarding DoD ‘Don’t Ask, Don’t Tell’ Policy: Hearing Before the S. Armed Services Comm., 111th Cong. 2 (2010)</u> (statements of Robert Gates, Sec. Def. of the United States, and Adm. Mike Mullen, Chairman of the Joint Chiefs of Staff) (available at http://www.jcs.mil/speech.aspx?id=1322, last visited 4/1/10) (LCR App. at 1791-1806).</p>
<p>89. On June 29, 2009, President Obama stated that “‘don’t ask, don’t tell’ doesn’t contribute to our national security”; that “preventing patriotic Americans from serving their country weakens our national security”; that the Policy has resulted in the discharge of “patriots who often</p>	<p>89. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, Nos. 1, 2, 6, 9 (LCR App. at 0114-0158); text available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-LBGT-Pride-Month-Reception/ (LCR App. at 1974-1977).</p>

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<p>possess critical language skills and years of training and who've served this country well"; and that "reversing this policy [is] the right thing to do [and] is essential for our national security."</p>	
<p>90. Since June 29, 2009, there has been no stay in the application or enforcement of the Policy.</p>	<p>90. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 17 (LCR App. at 0114-0158).</p>
<p>91. Since June 29, 2009, there has been no stay of investigations pursuant to the Policy.</p>	<p>91. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 18 (LCR App. at 0114-0158).</p>
<p>92. If a gay servicemember disclosed his sexuality to the task force currently studying repeal of DADT, a formal investigation that could lead to discharge would "almost certainly" be required to be pursued.</p>	<p>92. Reported remarks of Gen. Carter F. Ham, leader of that task force, reported at http://www.washingtonpost.com/wp-dyn/content/article/2010/03/31/AR2010033104039.html (LCR App. at 2776-2777).</p>
<p>93. On October 10, 2009, President Obama stated: "We should not be punishing patriotic Americans who have stepped forward to serve this country. We should be celebrating their willingness to show such courage</p>	<p>93. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, Nos. 11, 12 (LCR App. at 0114-0158); text available at <a 522="" 577="" 937="" 954"="" data-label="Page-Footer" href="http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Human-</p></td></tr></table></div><div data-bbox="><p>- 44 -</p></p>

<p>1 2 3 4 5 6 7 8 9 10 11</p>	<p>and selflessness on behalf of their fellow citizens, especially when we're fighting two wars. We cannot afford to cut from our ranks people with the critical skills we need to fight any more than we can afford – for our military's integrity – to force those willing to do so into careers encumbered and compromised by having to live a lie.”</p>	<p>Rights-Campaign-Dinner/ (LCR App. at 1978-1981).</p>
<p>12 13 14 15</p>	<p>94. Between 1994 and 2003, 9,488 servicemembers were separated from the United States Armed Forces pursuant to the Policy.</p>	<p>94. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 22 (LCR App. at 0114-0158).</p>
<p>16 17 18 19 20 21 22</p>	<p>95. 757 of the servicemembers separated from the United States Armed Forces between 1994 and 2003 pursuant to the Policy held “critical occupations, identified by DOD as those occupations worthy of selective reimbursement bonuses.”</p>	<p>95. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 23 (LCR App. at 0114-0158).</p>
<p>23 24 25 26</p>	<p>96. The Department of Defense separated 7,270 servicemembers pursuant to the Policy between fiscal years 1997 and 2003.</p>	<p>96. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 26 (LCR App. at 0114-0158).</p>
<p>27 28</p>	<p>97. Between 1997 and 2003, the</p>	<p>97. Defendants' Objections and</p>

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Department of Defense discharged under the Policy 870 servicemembers with foreign language skills.	Responses to Plaintiff's First Set of Requests for Admission, No. 28 (LCR App. at 0114-0158).
98. The Department of Defense separated 10,935 servicemembers pursuant to the Policy between fiscal years 1997 and 2009.	98. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 29 (LCR App. at 0114-0158).
99. At least 997 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 1997.	99. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 33 (LCR App. at 0114-0158).
100. At least 1,145 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 1998.	100. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 34 (LCR App. at 0114-0158).
101. At least 1,033 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 1999.	101. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 35 (LCR App. at 0114-0158).
102. At least 1,212 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2000.	102. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 36 (LCR App. at 0114-0158).
103. At least 1,217 servicemembers were separated from the United States	103. Defendants' Objections and Responses to Plaintiff's First Set of

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Armed Forces pursuant to the Policy in 2001.	Requests for Admission, No. 37 (LCR App. at 0114-0158).
104. At least 885 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2002.	104. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 38 (LCR App. at 0114-0158).
105. At least 770 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2003.	105. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 39 (LCR App. at 0114-0158).
106. At least 653 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2004.	106. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 40 (LCR App. at 0114-0158).
107. At least 726 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2005.	107. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 41 (LCR App. at 0114-0158).
108. At least 612 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2006.	108. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 42 (LCR App. at 0114-0158).
109. At least 627 servicemembers were separated from the United States Armed Forces pursuant to the Policy	109. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 43 (LCR

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in 2007.	App. at 0114-0158).
110. At least 619 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2008.	110. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 44 (LCR App. at 0114-0158).
111. At least 275 servicemembers were separated from the United States Armed Forces pursuant to the Policy in 2009.	111. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 45 (LCR App. at 0114-0158).
112. Without a change in policy, the Department of Defense will continue to authorize the separation of servicemembers for homosexual acts, for statements that demonstrate a propensity or intent to engage in homosexual acts, or for homosexual marriage or attempted homosexual marriage.	112. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 47 (LCR App. at 0114-0158).
113. Many veterans of the wars in Iraq and Afghanistan believe that DADT impairs their ability to bond with their fellow service members.	113. Nathaniel Frank, <u>Gays and Lesbians at War: Military Service in Iraq and Afghanistan under "Don't Ask, Don't Tell,"</u> at 2, white paper, Palm Center, University of California at Santa Barbara, 2004 (LCR App. at 2946-2993) (characterized by the Department of Defense as a “thoughtful study” in an

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	untitled memorandum produced by Defendants at pages Bates stamped OSD P&R Plans 058910-11) (LCR App. at 1790a-1790b).
114. The difficulty of recruiting qualified officers and seamen has led the Navy to expand the pool of prospects for that mission, even as it culls its ranks elsewhere under Don't Ask, Don't Tell.	114. Frank Report at 13-14; Michael Boucai, <u>Balancing Your Strengths Against Your Felonies: Considerations for Military Recruitment of Ex-Offenders</u> at 3, white paper, Palm Center, University of California, Santa Barbara, September 2007 (available at http://www.palmcenter.org/files/active/1/boucaiM_strengthsFelonies_092007.pdf , last visited April 1, 2010) (LCR App. at 2778-2820).
115. Many heterosexual individuals who would otherwise enlist view the military as out of touch as a result of Don't Ask, Don't Tell.	115. Gary Gates, <u>Lesbian, Gay, and Bisexual Men and Women in the U.S. Military: Updated Estimates</u> at 2, Williams Institute, University of California Los Angeles School of Law (2010) (LCR App. at 1936-1973); <u>see also</u> Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Admission, No. 139 (LCR App. at 0171-0189).
116. An additional 41,000 gay and	116. Gary Gates, <u>Lesbian, Gay, and</u>

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<p>lesbian Americans might join the military if the ban were lifted, and an additional 4,000 personnel might remain in uniform each year if they could do so without having to conceal their identities.</p>	<p><u>Bisexual Men and Women in the U.S. Military: Updated Estimates</u> at 2, Williams Institute, University of California Los Angeles School of Law (2010) (LCR App. at 1936-1973).</p>
<p>117. Because of recruitment shortfalls, the U.S. military now recruits less qualified servicemembers rather than admitting openly gay and lesbian individuals.</p>	<p>117. Frank Report at 13-14; Michael Boucai, <u>Balancing Your Strengths Against Your Felonies: Considerations for Military Recruitment of Ex-Offenders</u> at 3, white paper, Palm Center, University of California, Santa Barbara, September 2007 (available at http://www.palmcenter.org/files/active/1/boucaiM_strengthsFelonies_092007.pdf, last visited April 1, 2010) (LCR App. at 2778-2820).</p>
<p>118. The executive branch has the authority to suspend application of Don't Ask, Don't Tell if separation would not be in the best interest of the armed forces, to ensure the nation's combat effectiveness.</p>	<p>118. 10 U.S.C. § 654(e)(1-2).</p>
<p>119. The military has recruited thousands of servicemembers despite low scores on military aptitude tests,</p>	<p>119. Frank Report at 13-14; Michael Boucai, <u>Balancing Your Strengths Against Your Felonies: Considerations for</u></p>

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<p>despite felony and serious misdemeanor convictions, and despite substance abuse that would normally prohibit service.</p>	<p><u>Military Recruitment of Ex-Offenders</u> at 3, white paper, Palm Center, University of California, Santa Barbara, September 2007 (available at http://www.palmcenter.org/files/active/1/boucaiM_strengthsFelonies_092007.pdf, last visited April 1, 2010) (LCR App. at 2778-2820).</p>
<p>120. The military has issued “moral waivers” for servicemembers convicted of murder, kidnapping, assault, illegal drug use, and making terrorist threats, and currently counts 4000 or more felons among its ranks.</p>	<p>120. Frank Report at 13-14; Michael Boucai, <u>Balancing Your Strengths Against Your Felonies: Considerations for Military Recruitment of Ex-Offenders</u> at 3, white paper, Palm Center, University of California, Santa Barbara, September 2007 (available at http://www.palmcenter.org/files/active/1/boucaiM_strengthsFelonies_092007.pdf, last visited April 1, 2010) (LCR App. at 2778-2820).</p>
<p>121. As a result of Don’t Ask, Don’t Tell, U.S. taxpayers have spent hundreds of millions of dollars to separate thousands of capable, needed servicemembers and to recruit and train replacements.</p>	<p>121. Frank Report at 12; 2005 GAO Report at 12; Gary Gates, <u>Lesbian, Gay, and Bisexual Men and Women in the U.S. Military: Updated Estimates</u> at 2, Williams Institute, University of California Los Angeles School of Law (2010) (LCR App. at 1936-1973).</p>

1 2 3 4 5 6 7	122. Don't Ask, Don't Tell has deterred countless heterosexual and homosexual Americans who are able, committed, and patriotic from enlisting to fight for their country during a time of two wars.	122. Gary Gates, <u>Lesbian, Gay, and Bisexual Men and Women in the U.S. Military: Updated Estimates</u> at 2, Williams Institute, University of California Los Angeles School of Law (2010) (LCR App. at 1936-1973).
8 9 10 11	123. Congress has authorized the enlistment in the United States Armed Forces of persons convicted of a felony under 10 U.S.C. § 504.	123. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 52 (LCR App. at 0114-0158).
12 13 14 15 16 17	124. The Department of Defense cannot accurately determine the number of felons who enlisted in the United States Armed Forces using "moral waivers" between 2003 and 2007.	124. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 53 (LCR App. at 0114-0158).
18 19 20 21 22 23 24	125. The Department of Defense cannot accurately determine the number of persons convicted of a serious misdemeanor who enlisted in the United States Armed Forces using "moral waivers" between 2003 and 2007.	125. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 59 (LCR App. at 0114-0158).
25 26 27 28	126. The Department of Defense cannot accurately determine the number of known illicit narcotic	126. Defendants' Objections and Responses to Plaintiff's First Set of Requests for Admission, No. 60 (LCR

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<p>abusers who enlisted in the United States Armed Forces using “moral waivers” between 2003 and 2007.</p>	<p>App. at 0114-0158).</p>
<p>127. The United States Army includes kidnapping, child abuse, making terrorist threats, hate crimes, rape and murder among its offenses permissible under the “moral waiver” program for new recruits.</p>	<p>127. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, Nos. 62-66 (LCR App. at 0114-0158).</p>
<p>128. The rhetoric during the national debate over whether to lift the ban on homosexual servicemembers in 1992 and 1993 was characterized by a well-organized and effective campaign by religious conservatives to stigmatize gays and lesbians.</p>	<p>128. Frank Report at 2-5.</p>
<p>129. Influencing passage of Don’t Ask, Don’t Tell were unfounded and unsupported assertions with no evidentiary support. Those assertions included, for example,</p> <ul style="list-style-type: none">➤ that homosexuality is a moral virus,➤ that the homosexual lifestyle is unhealthy,➤ that homosexuals are perverted	<p>129. Frank Report at 2-5.</p>

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<p>and promiscuous,</p> <ul style="list-style-type: none">➤ that homosexual servicemembers are rife with disease,➤ that homosexuals would increase transmission of sexually transmitted diseases, including AIDS,➤ that homosexuals are abnormal and mentally unstable,➤ that homosexuals are more prone to criminal activity,➤ that homosexuals are sexual predators and pedophiles,➤ that servicemembers could not respect and take orders from individuals who enjoy anal sex, and➤ that likened homosexuals to cowards and thieves.	
<p>130. The “unit cohesion” and other rationales stated in the Don’t Ask, Don’t Tell statute were mere pretext.</p>	<p>130. Frank Report at 6; Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 128 (LCR App. at 0114-0158).</p>
<p>131. Members of the 1993 Military Working Group decided to retain the ban on openly gay and lesbian</p>	<p>131. Frank Report at 4.</p>

1 2 3	servicemembers before ever convening.	
4 5 6 7 8	132. The 1993 Military Working Group never weighed research or empirical data about service of homosexual servicemembers in the military.	132. Frank Report at 5.
9 10 11 12 13	133. The 1993 Military Working Group reached its conclusions on the basis of fear, politics, prejudice, stereotypes, and resistance to any change in military tradition.	133. Frank Report at 5.
14 15 16 17 18 19 20 21	134. DoD's public pronouncements regarding the DADT policy state "A Service member's sexual orientation is considered a personal and private matter, and is not a bar to continued service under this paragraph unless manifested by homosexual conduct."	134. DoD Instruction Number 1332.14, http://www.defense.gov/news/DoDI%201332%2014%20-%20REVISIONS%20032510.pdf (LCR App. at 2882-2895).
22 23 24 25 26 27 28	135. However, discharges under DADT are categorized as discharges for Homosexuality," not "homosexual conduct." This is the same nomenclature used pre-DADT, when DoD's directives stated	135. Active Duty Separations By Service & ISC As of FY 2008, Bates No. DMDC 000003-04 (LCR App. at 1756-1757); ARI Research Note 92-72, Update of the U.S. Army Research Institute's Longitudinal Research Data Base of

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<p>"homosexuality is incompatible with military service."</p>	<p>Enlisted Personnel, at A-30 (August 1992) (LCR App. at 2995-3093).</p>
<p>136. A servicemember who advocates, in a public, off-base forum, for repeal of DADT is subject – on that basis alone – to both investigation and discharge.</p>	<p>136. Document “Hypothetical Teaching Scenarios for Commanders and Personnel Involved in Recruiting, Accession Processing, Criminal Investigations, and Administrative Separations,” Bates No. Navy 058969-74, Situation 6 on page 058974 (LCR App. at 1758-1763)</p>
<p>137. One Log Cabin member was discharged under DADT for criticizing a superior officer’s biased comments regarding homosexuals. Other servicemembers, including at least two Log Cabin members, have been discharged under DADT for “statements” without their ever having indicated a supposed “propensity to engage in ‘homosexual acts’” to either their superior officers or other servicemembers, or indeed without ever admitting during separation proceedings they had committed such acts. In one of these cases, the statement that launched the investigation was something like “I</p>	<p>137. Log Cabin Military Survey of Membership, produced by plaintiff as Bates Nos. LCR 001-017 and included as Exhibit B to the Declaration of Terry Hamilton, filed herewith.</p>

1	have a profile on Myspace.”	
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3	138. In another case, the investigation	138. Testimony of Maj. Michael D. Almy
4	was launched after a new commander	to the Senate Committee on Armed
5	searched through the servicemember’s	Services, Thursday, March 18, 2010 (LCR
6	private emails to friends and family.	App. at 2896-2936 [8-10 of hearing
7		transcript])
8	139. From fiscal years 1997 to 2003,	139. Charts “Homosexual Separations by
9	670 of 770 discharges under DADT	Service and Reason” DoD Official
10	(87.0%) were for statements, as	Numbers FY 97-FY 03 and FY 04-08
11	opposed to acts or conduct, and from	[Bates 007171-72] (LCR App. at 1593-
12	fiscal years 2004 to 2008, 9059 of	1594).
13	10,507 discharges (86.2%) were for	
14	statements.	
15	140. While a servicemember who is	140. Memorandum to the Vice Chief of
16	to be separated under DADT for	Naval Operations, Bates No.
17	commission of homosexual acts can in	Navy 058930-31 (LCR App. at 1728-
18	theory rebut the presumption that he	1729).
19	or she has a propensity or intent to	
20	engage in such acts, the number of	
21	cases in which a servicemember has	
22	successfully done so has not been	
23	statistically significant.	
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25	141. In a 2003 article in the National	141. Defendants’ Objections and
26	Law Review, Rear Admiral John	Responses to Plaintiff’s First Set of
27	Hutson (ret.) described the Policy as	Requests for Admission, No. 126 (LCR
28	“odious” and “virtually unworkable in	App. at 0114-0158).

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the military.”	
142. In a New York Times essay dated January 2, 2007, General John Shalikashvili (ret.), former chairman of the Joint Chiefs of Staff, wrote: “When [the repeal of DADT] comes, gay men and lesbians will no longer have to conceal who they are, and the military will no longer need to sacrifice those whose service it cannot afford to lose.”	142. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 127 (LCR App. at 0114-0158).
143. Former Vice President Dick Cheney described the security risk rationale underlying policies banning gays and lesbians from service in the United States Armed Forces as “a bit of an old chestnut.”	143. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 128 (LCR App. at 0114-0158).
144. Former NATO Commander Wesley Clark (ret.) said on June 15, 2003 that “[p]eople were much more irate about [gay service in the military] in the early nineties, for whatever reason, [perhaps because of] younger people coming into the military. It just didn’t seem to be the emotional hot button issue by ninety-	144. Defendants’ Objections and Responses to Plaintiff’s First Set of Requests for Admission, No. 129 (LCR App. at 0114-0158).

1	eight, ninety-nine, than it had been in	
2	ninety-two, ninety-three.”	
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4	145. In a 2007 Wall Street Journal	145. Defendants’ Objections and
5	essay, former Republican	Responses to Plaintiff’s First Set of
6	Congressman Bob Barr wrote: “The	Requests for Admission, No. 130 (LCR
7	bottom line here is that, with nearly a	App. at 0114-0158).
8	decade and a half of the hybrid ‘don’t	
9	ask, don’t tell’ policy to guide us, I	
10	have become deeply impressed with	
11	the growing weight of credible	
12	military opinion which concludes that	
13	allowing gays to serve openly in the	
14	military does not pose insurmountable	
15	problems for the good order and	
16	discipline of the services.”	
17	146. In a May 2005 national poll	146. Defendants’ Objections and
18	conducted by the Boston Globe, 79%	Responses to Plaintiff’s Second Set of
19	of respondents said openly gay people	Requests for Admission, No. 139 (LCR
20	should be allowed to serve in the	App. at 0171-0189).
21	military.	
22	147. In a 2008 Washington Post-ABC	147. Defendants’ Objections and
23	News poll, 75% of respondents said	Responses to Plaintiff’s Second Set of
24	that openly gay people should be	Requests for Admission, No. 140 (LCR
25	allowed to serve in the military.	App. at 0171-0189).
26		
27	148. In a 2006 Zogby International	148. Defendants’ Objections and
28	poll of current and/or former United	Responses to Plaintiff’s Second Set of

1 2 3 4 5 6 7	States servicemembers, 66% of respondents who had experience with gays or lesbians in their units said that the presence of gay or lesbian unit members had no impact on their personal morale.	Requests for Admission, No. 141 (LCR App. at 0171-0189).
8 9 10 11 12 13 14	149. In December 2007, 28 retired generals and admirals urged Congress to repeal the Policy, citing evidence that 65,000 gay men and women were currently serving and that there were over 1 million gay veterans at that time.	149. Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Admission, No. 143 (LCR App. at 0171-0189).
15 16 17 18	150. In November 2008, 104 retired generals and admirals signed a statement urging Congress to repeal the Policy.	150. Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Admission, No. 144 (LCR App. at 0171-0189).
19 20 21 22 23	151. On July 5, 2009, General Colin Powell said, "this is a policy and a law that should be reviewed," in reference to the Don't Ask, Don't Tell Policy.	151. Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Admission, No. 145 (LCR App. at 0171-0189).
24 25 26 27	152. On February 3, 2010, Gen. Powell formally reversed his previous position and announced his support for the repeal of DADT.	152. Remarks quoted at http://www.thecaucus.blogs.nytimes.com/2010/02/03/powell-favors-repeal-of-dont-ask-dont-tell/ (LCR App. at 3094)
28	153. In September 2009, Air Force	153. Defendants' Objections and

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<p>Colonel Om Prakash published an article which won the Secretary of Defense National Security Essay Competition for 2009 and concluded that there was a lack of scientific basis for the proposition that unit cohesion is compromised by homosexuals serving openly in the military; that DADT exacts tremendous costs to the U.S. Armed Forces and its members, and is completely lacking in any evidentiary support.</p>	<p>Responses to Plaintiff's Second Set of Requests for Admission, Nos. 146-149 (LCR App. at 0171-0189); Col. Om Prakash, <u>The Efficacy of "Don't Ask, Don't Tell,"</u> Joint Forces Quarterly, Issue 55, 4th Quarter 2009 (LCR App. at 1929-1935).</p>
<p>154. On December 11, 1999, President Clinton stated, "What I'd like to do is focus on making the policy we announced back in 1993 work the way it's intended to, because it's out of whack now, and I don't think any serious person could say it's not."</p>	<p>154. Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Admission, No. 157 (LCR App. at 0171-0189).</p>
<p>155. Charles Moskos, one of the authors of DADT, has stated "fuck unit cohesion, I don't care about that."</p>	<p>155. Deposition of Nathaniel Frank, at 119:8-120:8.</p>
<p>156. Alan Simpson, Republican Senator from Wyoming from 1979 to</p>	<p>156. Alan K. Simpson, <u>Bigotry That Hurts Our Military</u>, Washington Post,</p>

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<p>1997 who originally voted in favor of DADT has since stated that "[t]his policy has become a serious detriment to the readiness of America's forces as they attempt to accomplish what is arguably the most challenging mission in our long and cherished history."</p>	<p>March 14, 2007 (LCR App. at 2879-2881).</p>
<p>157. Former Secretary of Defense William Cohen, in office during the enactment of DADT, has since advocated for its repeal.</p>	<p>157. CNN Interview with William Cohen, January 30, 2010, transcript available at http://archives.cnn.com/TRANSCRIPTS/1001/30/cnr.07.html (last visited April 4, 2010) (LCR App. at 2937-2945).</p>
<p>158. Former NATO Supreme Allied Commander and 2004 Democratic presidential candidate Wesley Clark has advocated for the repeal of DADT.</p>	<p>158. John McArdle, <u>Wesley Clark Backs Cunningham in North Carolina</u>, Roll Call, March 29, 2010, available at http://www.rollcall.com/news/44793-1.html?type=printer_friendly, last visited on April 4, 2010 (LCR App. at 2994).</p>

1 Dated: April 5, 2010

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3 By: 
4 Dan Woods
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