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8 Attorneys for Plaintiff  
 9 Log Cabin Republicans

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA

13 LOG CABIN REPUBLICANS, a non-  
 14 profit corporation,

15 Plaintiff,

16 vs.

17 UNITED STATES OF AMERICA and  
 18 ROBERT M. GATES, SECRETARY  
 OF DEFENSE, in his official capacity,

19 Defendants.

Case No. CV04-8425 VAP (Ex)

**DECLARATION OF DAN WOODS  
 IN SUPPORT OF LOG CABIN  
 REPUBLICANS' OPPOSITION TO  
 DEFENDANTS' MOTION FOR  
 SUMMARY JUDGMENT**

**Date: April 26, 2010**

**Time: 2:00 p.m.**

**Place: Courtroom of Judge Phillips**

1 I, Dan Woods, declare:

2 I am an attorney admitted to practice in the State of California. I am a  
3 partner of the firm White & Case LLP, counsel of record for plaintiff Log Cabin  
4 Republicans (“Log Cabin”). I submit this declaration in support of Log Cabin’s  
5 opposition to defendants’ Motion for Summary Judgment. I have personal  
6 knowledge of the facts stated herein or know of such facts from my review of the  
7 file in this case, and, if called upon to do so, could competently testify as follows:  
8

9 **Expert Depositions**

10 1. Attached to Log Cabin’s Appendix of Evidence in Support of Log  
11 Cabin Republicans’ Opposition to Motion for Summary Judgment (“Log Cabin’s  
12 Appendix of Evidence”) at pages 0001-0019 is a true and correct copy of the  
13 relevant portions of the March 5, 2010 deposition of Aaron Belkin, Ph. D. taken in  
14 this action.

15 2. Attached to Log Cabin’s Appendix of Evidence at pages 0020-0034 is  
16 a true and correct copy of the relevant portions of the February 26, 2010 deposition  
17 of Nathaniel Frank, Ph. D. taken in this action.  
18

19 **Lay Depositions**

20 3. Attached to Log Cabin’s Appendix of Evidence at pages 0035-0050 is  
21 a true and correct copy of the relevant portions of the March 18, 2010 deposition of  
22 John Alexander Nicholson, III, taken in this action.  
23

24 **Written Discovery**

25 4. On September 15, 2009, we served Log Cabin’s First Set of Requests  
26 for Production of Document on defendants. Attached to Log Cabin’s Appendix of  
27 Evidence at pages 0051-0113 is a true and correct copy of Defendants’ Objections  
28 and Responses to Plaintiff’s First Set of Requests for Production of Documents,

1 served January 12, 2010.

2 5. On December 10, 2009, we served Log Cabin's First Set of Requests  
3 for Admission on defendants. Attached to Log Cabin's Appendix of Evidence at  
4 pages 0114-0158 is a true and correct copy of Defendants' Objections and  
5 Responses to Plaintiff's First Set of Requests for Admission, served January 28,  
6 2010.

7 6. On December 23, 2009, we served Log Cabin's First Set of  
8 Interrogatories on defendants. Attached to Log Cabin's Appendix of Evidence at  
9 pages 0159-0170 is a true and correct copy of Defendants' Objections and  
10 Responses to Plaintiff's First Set of Interrogatories, served February 22, 2010.

11 7. On December 23, 2009, we served Log Cabin's Second Set of  
12 Requests for Admission on defendants. Attached to Log Cabin's Appendix of  
13 Evidence at pages 0171-0189 is a true and correct copy of Defendants' Objections  
14 and Responses to Plaintiff's Second Set of Requests for Admission, served  
15 February 22, 2010.

16 8. On January 29, 2010, we served Log Cabin's Second Set of Requests  
17 for Production of Documents on defendants. Attached to Log Cabin's Appendix of  
18 Evidence at pages 0190-0204 is a true and correct copy of Defendants' Objections  
19 and Responses to Plaintiff's Second Set of Requests for Production of Documents,  
20 served March 4, 2010.

21 9. On January 29, 2010, we served Log Cabin's Second Set of  
22 Interrogatories on defendants. Attached to Log Cabin's Appendix of Evidence at  
23 pages 0205-0211 is a true and correct copy of Defendants' Objections and  
24 Responses to Plaintiff's Second Set of Interrogatories, served March 4, 2010.

25 10. On March 16, 2010, Magistrate Judge Eick ordered defendants to  
26 serve unqualified admissions or denials in response to several of Log Cabin's First  
27 Set of Requests for Admission. Attached to Log Cabin's Appendix of Evidence at  
28 pages 0212-0217 is a true and correct copy of Defendants' Supplemental Responses

1 to Plaintiff's First Set of Requests for Admission, served March 26, 2010.

2  
3 **Deposition Exhibits**

4 11. Attached to Log Cabin's Appendix of Evidence at pages 0218-0290 is  
5 a true and correct copy of the Report of the Board Appointed to Prepare and Submit  
6 Recommendations to the Secretary of the Navy for the Revision of Policies,  
7 Procedures and Directives Dealing with Homosexuals, March 15, 1957  
8 ("Crittenden Report"), which was Exhibit 4 to the February 26, 2010 deposition of  
9 Nathaniel Frank, Ph. D. taken in this action.

10 12. Attached to Log Cabin's Appendix of Evidence at pages 0291-0838 is  
11 a true and correct copy of the report by the National Defense Research Institute  
12 entitled Sexual Orientation and U.S. Military Personnel Policy: Options and  
13 Assessment (Washington, D.C. 1993) ("RAND Report"), which was Exhibit 8 to  
14 the February 26, 2010 deposition of Nathaniel Frank, Ph. D. taken in this action.

15 13. Attached to Log Cabin's Appendix of Evidence at pages 0839-0887 is  
16 a true and correct copy of the PERSEREC report by Theodore Sarbin and Kenneth  
17 Karols entitled "Nonconforming Sexual Orientations and Military Suitability,"  
18 dated December 1988, which was Exhibit 5 to the February 26, 2010 deposition of  
19 Nathaniel Frank, Ph. D. taken in this action.

20 14. Attached to Log Cabin's Appendix of Evidence at pages 0888-0971 is  
21 a true and correct copy of the a report by the United States Government  
22 Accountability Office ("GAO") published on June 12, 1992, entitled Defense Force  
23 Management: DOD's Policy on Homosexuality, which was Exhibit 6 to the  
24 February 26, 2010 deposition of Nathaniel Frank, Ph. D. taken in this action.

25 15. Attached to Log Cabin's Appendix of Evidence at pages 0972-1024 is  
26 a true and correct copy of the a report by the United States Government  
27 Accountability Office ("GAO") published in June 1993, entitled Homosexuals in  
28 the Military: Policies and Practices of Foreign Countries, which was Exhibit 7 to

1 the February 26, 2010 deposition of Nathaniel Frank, Ph. D. taken in this action.

2 16. Attached to Log Cabin's Appendix of Evidence at pages 1025-1072 is  
3 a true and correct copy of the a report by the United States Government  
4 Accountability Office ("GAO") published in February 2005, entitled Military  
5 Personnel: Financial Costs and Loss of Critical Skills Due to DOD's Homosexual  
6 Conduct Policy Cannot Be Completely Estimated, which was Exhibit 9 to the  
7 February 26, 2010 deposition of Nathaniel Frank, Ph. D. taken in this action.

8 17. Attached to Log Cabin's Appendix of Evidence at pages 1073-1099 is  
9 a true and correct copy of the 2006 report by Sam Rogers entitled Opinions of  
10 Military Personnel on Sexual Minorities in the Military, published by Zogby  
11 International in December 2006, which was Exhibit 11 to the February 26, 2010  
12 deposition of Nathaniel Frank, Ph. D. taken in this action.

13 18. Attached to Log Cabin's Appendix of Evidence at pages 1100-1128 is  
14 a true and correct copy of a report by Aaron Belkin and R.L. Evans entitled  
15 Homosexuality and the Israel Defense Forces, published in 2001 by the Palm  
16 Center at the University of California at Santa Barbara, which was Exhibit 13 to the  
17 February 26, 2010 deposition of Nathaniel Frank, Ph. D. taken in this action.

18 19. Attached to Log Cabin's Appendix of Evidence at pages 1129-1280 is  
19 a true and correct copy of a report entitled Gays in Foreign Militaries 2010: A  
20 Global Primer, published in February 2010 by the Palm Center at the University of  
21 California at Santa Barbara, which was Exhibit 22 to the February 26, 2010  
22 deposition of Nathaniel Frank, Ph. D. taken in this action.

23  
24 **Government Production Documents**

25 20. Attached to Log Cabin's Appendix of Evidence at pages 1281-1292 is  
26 a true and correct copy of a report by Laura Miller and Bonnie Moradi entitled  
27 Attitudes of Iraq and Afghanistan Veterans Toward Gay and Lesbian Service  
28 Members, published in Armed Forces and Society in 2009, produced in response to

1 Log Cabin's requests for document production and Bates stamped DMDC 000011-  
2 000022.

3 21. Attached to Log Cabin's Appendix of Evidence at pages 1293-1294 is  
4 a true and correct copy of the memorandum from Craig Alderman, Jr., Deputy  
5 Undersecretary of Defense for Policy, to the DOD Personnel Security Research  
6 Center ("PERSEREC") Director regarding PERS-TR-89-002, "Nonconforming  
7 Sexual Orientations and Military Suitability," dated January 18, 1989, produced in  
8 response to Log Cabin's requests for document production and Bates stamped DoD  
9 LA 2-6 042450-042451.

10 22. Attached to Log Cabin's Appendix of Evidence at pages 1295-1296 is  
11 a true and correct copy of the September 21, 2006 letter from Under Secretary of  
12 Defense to Senator Ron Wyden, produced in response to Log Cabin's requests for  
13 document production and Bates stamped 13 LC 057312-313 (including redactions  
14 pursuant to protective order).

15 23. Attached to Log Cabin's Appendix of Evidence at pages 1297-1328 is  
16 a true and correct copy of a December 8, 1993 draft of a memorandum titled  
17 DOD/GC Homosexual Conduct Implementation Memo and Service/GC Responses,  
18 produced in response to Log Cabin's requests for document production and Bates  
19 stamped OSD OEPM 013347-378 (including redactions pursuant to protective  
20 order).

21 24. Attached to Log Cabin's Appendix of Evidence at page 1329 is a true  
22 and correct copy of a memorandum from Deputy Undersecretary of Defense for  
23 Policy, regarding the PERSEREC draft report "Nonconforming Sexual  
24 Orientations," dated February 10, 1989, produced in response to Log Cabin's  
25 requests for document production and Bates stamped DOD LA 2-6 042466  
26 (including redactions pursuant to protective order).

27 25. Attached to Log Cabin's Appendix of Evidence at pages 1330-1359 is  
28 a true and correct copy of a draft of the PERSEREC report by Michael McDaniel

1 entitled "Preservice Adjustment of Homosexual and Heterosexual Military  
2 Accessions: Implications for Security Clearance Suitability," dated January 1989,  
3 produced in response to Log Cabin's requests for document production and Bates  
4 stamped DOD LA 2-6 042467-042496.

5 26. Attached to Log Cabin's Appendix of Evidence at pages 1360-1405 is  
6 a true and correct copy of the PERSEREC report entitled "Homosexuality and  
7 Personnel Security," dated September 1991, produced in response to Log Cabin's  
8 requests for document production and Bates stamped PERSEC 007818-007863.

9 27. Attached to Log Cabin's Appendix of Evidence at pages 1406-1491 is  
10 a true and correct copy of the June 26, 1996, report titled Successful Integration of  
11 Stigmatized Minorities Into The U.S. Army prepared for the United States Army  
12 Research Institute, produced in response to Log Cabin's requests for document  
13 production and Bates stamped ARI 059823-908.

14 28. Attached to Log Cabin's Appendix of Evidence at pages 1492-1558 is  
15 a true and correct copy of the U.S. Army Research Institute (AIR) Research Report  
16 1657, "Perspectives on Organizational Change in the Canadian Forces," January  
17 1994, produced in response to Log Cabin's requests for document production and  
18 Bates stamped ARI 60206-272.

19 29. Attached to Log Cabin's Appendix of Evidence at pages 1559-1561 is  
20 a true and correct copy of an email, dated November 1, 2006, from Franklin C.  
21 Pinch to Paul A. Gade, produced in response to Log Cabin's requests for document  
22 production and Bates stamped ARI 062002-04.

23 30. Attached to Log Cabin's Appendix of Evidence at pages 1593-1594 is  
24 a true and correct copy of the charts entitled "Homosexual Separations by Service  
25 and Reason," DoD Official Numbers fiscal year 1997-2003 and fiscal years 2004-  
26 2008, prepared for the Undersecretary of Defense for Plans, dated May 12, 2009,  
27 produced in response to Log Cabin's requests for document production and Bates  
28 stamped OSD P&R Plans 007171-72 (excerpt of OSD P&R Plans 007140-7305 at

1 Appendix pages 1562-1727).

2 31. Attached to Log Cabin's Appendix of Evidence at pages 1728-1729 is  
3 a true and correct copy of a Memorandum to the Vice-Chief of Naval Operations,  
4 produced in response to Log Cabin's requests for document production and Bates  
5 stamped NAVY 058930-31.

6 32. Attached to Log Cabin's Appendix of Evidence at pages 1730-1754 is  
7 a true and correct copy of a report by Gwyn Harries-Jenkins entitled Comparative  
8 International Military Personnel Policies, published by the U.S. Army Research  
9 Institution for the Behavioral and Social Sciences in May 1993, produced in  
10 response to Log Cabin's requests for document production and Bates stamped ARI  
11 060755-060779.

12 33. Attached to Log Cabin's Appendix of Evidence at page 1755 is a true  
13 and correct copy of Future Organizational Change – U.S. Army Focus Army Task  
14 Force, Documentation Book, produced in response to Log Cabin's requests for  
15 document production and Bates stamped ARI 062124.

16 34. Attached to Log Cabin's Appendix of Evidence at pages 1756-1757 is  
17 a true and correct copy of Active Duty Separations By Service & ISC as of FY  
18 2008, produced in response to Log Cabin's requests for document production and  
19 Bates stamped DMDC 000003-04.

20 35. Attached to Log Cabin's Appendix of Evidence at pages 1758-1763 is  
21 a true and correct copy of "Hypothetical Teaching Scenarios for Commanders and  
22 Personnel Involved in Recruiting, Accession Processing, Criminal Investigations,  
23 and Administrative Separations," produced in response to Log Cabin's requests for  
24 document production and Bates stamped Navy 058969-74.

25 36. Attached to Log Cabin's Appendix of Evidence at pages 1764-1790 is  
26 a true and correct copy of the report entitled Summary Report of the Military  
27 Working Group, dated July 1, 1993, produced in response to Log Cabin's requests  
28 for document production and Bates stamped OSD P&R 007428-007454.





1 published in September 2000 by the Palm Center at the University of California at  
2 Santa Barbara, produced to Defendants at pages Bates-stamped LCR 4666-4705.

3 42. Attached to Log Cabin's Appendix of Evidence at pages 1929-1935 is  
4 a true and correct copy of the article by Col. Om Prakash entitled The Efficacy of  
5 "Don't Ask, Don't Tell," published in Joint Forces Quarterly, Issue 55, 4th Quarter  
6 2009, produced to Defendants at pages Bates stamped LCR 4776-4782.

7 43. Attached to Log Cabin's Appendix of Evidence at pages 1936-1973 is  
8 a true and correct copy of the 2010 report by Gary Gates entitled Lesbian, Gay, and  
9 Bisexual Men and Women in the U.S. Military: Updated Estimates, published by  
10 the Williams Institute of the University of California Los Angeles School of Law,  
11 produced by the Williams Institute in response to Log Cabin's subpoena served in  
12 this action and re-produced to Defendants at pages Bates-stamped LCR WI 1013-  
13 1050.

14 44. Attached to Log Cabin's Appendix of Evidence at pages 1974-1977 is  
15 a true and correct copy of Remarks by the President at LGBT Pride Month  
16 Reception on June 29, 2009, available at  
17 [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-at-LGBT-](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-LGBT-)  
18 [Pride-Month-Reception/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-LGBT-) (last visited April 4, 2010), produced to Defendants at  
19 pages Bates-stamped LCR 3999-4002.

20 45. Attached to Log Cabin's Appendix of Evidence at pages 1978-1981 is  
21 a true and correct copy of Remarks by the President at Human Rights Campaign  
22 Dinner on October 11, 2009, available at  
23 [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-at-Human-](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Human-)  
24 [Rights-Campaign-Dinner/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Human-) (last visited April 4, 2010), produced to Defendants at  
25 pages Bates stamped LCR 3995-3998.

26 46. Attached to Log Cabin's Appendix of Evidence at pages 1982-2013 is  
27 a true and correct copy of the report entitled Conduct Unbecoming: The First  
28 Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," published

1 by Service Members Legal Defense Network, March 24, 1995, produced to  
2 Defendants at pages Bates stamped LCR 4013-4044.

3 47. Attached to Log Cabin's Appendix of Evidence at pages 2014-2049 is  
4 a true and correct copy of the report entitled Conduct Unbecoming: The Second  
5 Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," published  
6 by Service Members Legal Defense Network in 1996, produced to Defendants at  
7 pages Bates stamped LCR 4045-4080.

8 48. Attached to Log Cabin's Appendix of Evidence at pages 2050-2089 is  
9 a true and correct copy of the report entitled Conduct Unbecoming: The Third  
10 Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," published  
11 by Service Members Legal Defense Network in 1997, produced to Defendants at  
12 pages Bates stamped LCR 4081-4120.

13 49. Attached to Log Cabin's Appendix of Evidence at pages 2090-2168 is  
14 a true and correct copy of the report entitled Conduct Unbecoming: The Fourth  
15 Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," published  
16 by Service Members Legal Defense Network in 1998, produced to Defendants at  
17 pages Bates stamped LCR 4121-4199.

18 50. Attached to Log Cabin's Appendix of Evidence at pages 2169-2253 is  
19 a true and correct copy of the report entitled Conduct Unbecoming: The Fifth  
20 Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," published  
21 by Service Members Legal Defense Network in 1999, produced to Defendants at  
22 pages Bates stamped LCR 4200-4284.

23 51. Attached to Log Cabin's Appendix of Evidence at pages 2254-2340 is  
24 a true and correct copy of the report entitled Conduct Unbecoming: The Sixth  
25 Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," published  
26 by Service Members Legal Defense Network on March 9, 2000, produced to  
27 Defendants at pages Bates stamped LCR 4285-4371.

28 52. Attached to Log Cabin's Appendix of Evidence at pages 2341-2443 is

1 a true and correct copy of the report entitled Conduct Unbecoming: The Seventh  
2 Annual Report on “Don't Ask, Don't Tell, Don't Pursue, Don't Harass,” published  
3 by Service Members Legal Defense Network on March 15, 2001, produced to  
4 Defendants at pages Bates stamped LCR 4372-4474.

5 53. Attached to Log Cabin’s Appendix of Evidence at pages 2444-2500 is  
6 a true and correct copy of the report entitled Conduct Unbecoming: The Eighth  
7 Annual Report on “Don't Ask, Don't Tell, Don't Pursue, Don't Harass,” published  
8 by Service Members Legal Defense Network on March 14, 2002, produced to  
9 Defendants at pages Bates stamped LCR 4475-4531.

10 54. Attached to Log Cabin’s Appendix of Evidence at pages 2501-2561 is  
11 a true and correct copy of the report entitled Conduct Unbecoming: The Ninth  
12 Annual Report on “Don't Ask, Don't Tell, Don't Pursue, Don't Harass,” published  
13 by Service Members Legal Defense Network on March 25, 2003, produced to  
14 Defendants at pages Bates stamped LCR 4532-4592.

15 55. Attached to Log Cabin’s Appendix of Evidence at pages 2562-2617 is  
16 a true and correct copy of the report entitled Conduct Unbecoming: The Tenth  
17 Annual Report on “Don't Ask, Don't Tell, Don't Pursue, Don't Harass,” published  
18 by Service Members Legal Defense Network in March 2004, produced to  
19 Defendants at pages Bates stamped LCR 4593-4648.

20  
21 **Other Documents**

22 56. Attached to Log Cabin’s Appendix of Evidence at pages 2618-2621 is  
23 a true and correct copy of the Los Angeles Times article by Julian E. Barnes titled  
24 Navy Moves to Allow Women on Submarines, published on February 24, 2010,  
25 and available at [http://articles.latimes.com/2010/feb/24/nation/la-na-women-  
subs24-2010feb24](http://articles.latimes.com/2010/feb/24/nation/la-na-women-<br/>26 subs24-2010feb24) (last visited April 4, 2010).

27 57. Attached to Log Cabin’s Appendix of Evidence at pages 2622-2772 is  
28 a true and correct copy of the Army Forces Command (“FORSCOM”) Regulation

1 500-3-3 (1999), available at  
2 <http://www.transchool.eustis.army.mil/LIC/DISS1/Documents/fr500-3-31.pdf> (last  
3 visited April 4, 2010).

4 58. Attached to Log Cabin's Appendix of Evidence at pages 2773-2775 is  
5 a true and correct copy of the New York Times article by Steven Myers entitled  
6 Military Reserves are Falling Short in Finding Recruits, published on August 28,  
7 2000, available at [http://www.nytimes.com/2000/08/28/us/military-reserves-are-](http://www.nytimes.com/2000/08/28/us/military-reserves-are-falling-short-in-finding-recruits.html?pagewanted=1)  
8 [falling-short-in-finding-recruits.html?pagewanted=1](http://www.nytimes.com/2000/08/28/us/military-reserves-are-falling-short-in-finding-recruits.html?pagewanted=1) (last visited April 4, 2010).

9 59. Attached to Log Cabin's Appendix of Evidence at pages 2776-2777 is  
10 a true and correct copy of the article entitled A 'Don't Ask, Don't Tell' Rules  
11 Complicate Survey of Troops on Policy Change, published in the Washington Post  
12 on March 31, 2010, reporting remarks of General Carter F. Ham, leader of the task  
13 force currently studying repeal of DADT, available at  
14 [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2010/03/31/AR2010033104039.html)  
15 [dyn/content/article/2010/03/31/AR2010033104039.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/03/31/AR2010033104039.html) (last visited April 4, 2010).

16 60. Attached to Log Cabin's Appendix of Evidence at pages 2778-2820 is  
17 a true and correct copy of a study by Michael Boucai entitled Balancing Your  
18 Strengths Against Your Felonies: Considerations for Military Recruitment of Ex-  
19 Offenders, published by the Palm Center at the University of California, Santa  
20 Barbara, available at [http://www.palmcenter.org/files/active/1/](http://www.palmcenter.org/files/active/1/boucaiM_strengthsFelonies_092007.pdf)  
21 [boucaiM\\_strengthsFelonies\\_092007.pdf](http://www.palmcenter.org/files/active/1/boucaiM_strengthsFelonies_092007.pdf) (last visited April 1, 2010).

22 61. Attached to Log Cabin's Appendix of Evidence at pages 2821-2836 is  
23 a true and correct copy of a report entitled "A Review of the Armed Forces Policy  
24 on Homosexuality," published by the United Kingdom Ministry of Defense in  
25 2000, available at [http://www.mod.uk/NR/rdonlyres/ACED4F62-2C04-4B19-](http://www.mod.uk/NR/rdonlyres/ACED4F62-2C04-4B19-AC50-E49552732385/0/impact_studies_homosexuality.pdf)  
26 [AC50-E49552732385/0/impact\\_studies\\_homosexuality.pdf](http://www.mod.uk/NR/rdonlyres/ACED4F62-2C04-4B19-AC50-E49552732385/0/impact_studies_homosexuality.pdf) (last visited April 4,  
27 2010).

28 62. Attached to Log Cabin's Appendix of Evidence at pages 2837-2878 is

1 a true and correct copy of a report by A. Belkin and J. McNichol entitled Effects of  
2 the 1992 Lifting of Restrictions on Gay and Lesbian Service in the Canadian  
3 Forces: Appraising the Evidence, published by the Palm Center at the University of  
4 California, Santa Barbara in April 2000, available at  
5 <http://www.palmcenter.org/files/active/0/Canada5.pdf> (last visited April 4, 2010).

6 63. Attached to Log Cabin's Appendix of Evidence at pages 2879-2881 is  
7 a true and correct copy of a March 14, 2007, article by Alan K. Simpson, Bigotry  
8 That Hurts Our Military, published in the Washington Post, available at  
9 <http://www.washingtonpost.com/wp->  
10 [dyn/content/article/2007/03/13/AR2007031301507.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/03/13/AR2007031301507.html) (last visited April 4, 2010).

11 64. Attached to Log Cabin's Appendix of Evidence at pages 2882-2895 is  
12 a true and correct copy of Department of Defense Instruction Number 1332.14,  
13 available at [http://www.defense.gov/news/DoDI%201332%2014%20-](http://www.defense.gov/news/DoDI%201332%2014%20-%20REVISIONS%20032510.pdf)  
14 [%20REVISIONS%20032510.pdf](http://www.defense.gov/news/DoDI%201332%2014%20-%20REVISIONS%20032510.pdf) (last visited April 4, 2010).

15 65. Attached to Log Cabin's Appendix of Evidence at pages 2896-2936 is  
16 a true and correct copy of the transcript of testimony given by Major Michael D.  
17 Almy to the Senate Committee on Armed Services on Thursday, March 18, 2010  
18 (pages 8-10 of hearing transcript), available at [http://armed-](http://armed-services.senate.gov/Transcripts/2010/03%20March/10-23%20-%2003-18-10.pdf)  
19 [services.senate.gov/Transcripts/2010/03%20March/10-23%20-%2003-18-10.pdf](http://armed-services.senate.gov/Transcripts/2010/03%20March/10-23%20-%2003-18-10.pdf)  
20 (last visited April 4, 2010).

21 66. Attached to Log Cabin's Appendix of Evidence at pages 2937-2945 is  
22 a true and correct copy of the transcript of a January 30, 2010, CNN Interview with  
23 William Cohen, available at [http://archives.cnn.com/TRANSCRIPTS](http://archives.cnn.com/TRANSCRIPTS/1001/30/cnr.07.html)  
24 [/1001/30/cnr.07.html](http://archives.cnn.com/TRANSCRIPTS/1001/30/cnr.07.html) (last visited April 4, 2010).

25 67. Attached to Log Cabin's Appendix of Evidence at pages 2946-2993 is  
26 a true and correct copy of a September 15, 2004 report by Nathaniel Frank, Ph. D.  
27 entitled Gays and Lesbians at War: Military Service in Iraq and Afghanistan under  
28 "Don't Ask, Don't Tell," published by the Palm Center at the University of

1 California at Santa Barbara, available at <http://www.palmcenter.org/system>  
2 /files/Frank091504\_GaysAtWar.pdf (last visited April 4, 2010).

3 68. Attached to Log Cabin's Appendix of Evidence at page 2994 is a true  
4 and correct copy of an article by John McArdle entitled Wesley Clark Backs  
5 Cunningham in North Carolina, published in Roll Call on March 29, 2010,  
6 available at [http://www.rollcall.com/news/44793-1.html?type=printer\\_friendly](http://www.rollcall.com/news/44793-1.html?type=printer_friendly) (last  
7 visited April 4, 2010).

8 69. Attached to Log Cabin's Appendix of Evidence at pages 2995-3093 is  
9 a true and correct copy of the August 1992, Army Research Institute, Research  
10 Note 92-72, Update of the U.S. Army Research Institute's Longitudinal Research  
11 Data Base of Enlisted Personnel, at A-30, available at [http://www.dtic.mil/cgi-](http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA255965&Location=U2&doc=GetTRDoc.pdf)  
12 [bin/GetTRDoc?AD=ADA255965&Location=U2&doc=GetTRDoc.pdf](http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA255965&Location=U2&doc=GetTRDoc.pdf) (last visited  
13 April 4, 2010).

14 70. Attached to Log Cabin's Appendix of Evidence at page 3094 is a true  
15 and correct copy of the February 3, 2010 article by Peter Baker entitled Powell  
16 Favors Repeal of 'Don't Ask, Don't Tell,' published in the New York Times,  
17 available at [http://thecaucus.blogs.nytimes.com/2010/02/03/powell-favors-repeal-](http://thecaucus.blogs.nytimes.com/2010/02/03/powell-favors-repeal-of-dont-ask-dont-tell/?pagemode=print)  
18 [of-dont-ask-dont-tell/?pagemode=print](http://thecaucus.blogs.nytimes.com/2010/02/03/powell-favors-repeal-of-dont-ask-dont-tell/?pagemode=print) (last visited April 4, 2010).

### 20 **Discovery Matters**

21 71. Log Cabin has been prevented from completing all of the discovery it  
22 needs by the conduct of the government. On December 21, 2009, our office served  
23 a Federal Rule of Civil Procedure 30(b)(6) deposition notice on defendants, asking  
24 for testimony on 17 categories of information. The government refused to produce  
25 a witness for the deposition. Following unsuccessful efforts to meet and confer,  
26 during which we withdrew one of the 17 categories, on March 4, 2010, we filed an  
27 *ex parte* application for an order compelling the defendants to appear for the  
28 deposition. Defendants opposed the application. The matter was heard on March

1 15, 2010 by Magistrate Judge Eick. On March 16, 2010, Magistrate Judge Eick  
2 ordered the government to produce a person or persons prepared to testify  
3 concerning 10 of the topics on or before April 15, 2010. The deposition has not  
4 been conducted yet. The government requested that the deposition be conducted on  
5 April 14 or 15 and, by mutual agreement, Log Cabin will conduct the deposition on  
6 April 16, 2010, in Washington, D.C.

7 72. The areas on which Magistrate Judge Eick ordered that the  
8 government deponent(s) must testify are:

- 9 a. The application of the Don't Ask, Don't Tell policy (“DADT”) to  
10 women service members;
- 11 b. The application of DADT to medical, linguistic, administrative, or  
12 other non-combat-assigned service members;
- 13 c. The application of DADT to service members deployed overseas to  
14 combat theatres from 2001 to the present, such as Operation Enduring  
15 Freedom in Afghanistan and Operation Iraqi Freedom;
- 16 d. The compatibility or incompatibility of gay and lesbian Americans  
17 with service in the United States Armed Forces, including the effect of  
18 the presence of such individuals, if any, on unit cohesion, combat  
19 effectiveness, unit morale, good order, discipline, and readiness to  
20 fight;
- 21 e. Reports, studies, or analyses conducted by or on behalf of Defendants  
22 relating to the experience of the armed forces of nations other than the  
23 United States with military service by individuals with a homosexual  
24 orientation or by individuals who engage in homosexual conduct;
- 25 f. Reports, research, or analyses concerning U.S. Armed Forces  
26 personnel and homosexual conduct or homosexual orientation  
27 commissioned, requested, or received by defendants;
- 28 g. The deployment of gay or lesbian service members either in the



- 1 process of being discharged or investigated pursuant to DADT;
- 2 h. The history of each branch of the U.S. Armed Forces' policies
- 3 regarding moral waivers of prior felony convictions since 2001;
- 4 i. Polls conducted by or on behalf of defendants measuring public
- 5 opinion regarding service by gay or lesbian service members in the
- 6 U.S. Armed Forces; and
- 7 j. The identity of the person or persons primarily responsible for
- 8 administering DADT.

9 73. These deposition topics are material to this Court's analysis of the

10 constitutionality of DADT. For instance, if the government plans to rely solely on

11 the congressionally-alleged evidence underlying DADT, then testimony relating to

12 that evidence – if there is any – is relevant. Log Cabin seeks to develop evidence

13 that the government and Congress ignored reports, research, studies, and analyses

14 showing that permitting open service of gays and lesbians would have no adverse

15 impact on unit cohesion, morale, or military effectiveness. Even if the deponent

16 can identify no evidence in support of the Congressional findings cited by the

17 DADT statute, such lack of evidence or knowledge is also relevant to whether

18 DADT is arbitrary and capricious, or motivated solely by animus towards the

19 individuals DADT disadvantages.

20 74. The above testimony will also be probative of whether the government

21 has ever actually believed that DADT would further these interests. For instance,

22 Log Cabin seeks to develop evidence that the government knowingly permits

23 openly gay and lesbian service members to remain in the U.S. Armed Forces during

24 times of active combat because their discharge would impair military effectiveness.

25 75. Log Cabin also seeks testimony regarding the application of DADT to

26 women and other service members not permitted to hold a combat Military

27 Occupation Specialty because that testimony is relevant to the purported rational

28 basis for DADT – it sustains unit cohesion in combat. To the extent the

1 government alleges that gay and lesbian individuals who volunteer to defend their  
2 country are an impediment to their comrades' discipline in combat, Log Cabin  
3 seeks discovery regarding service members subject to DADT who do not and/or are  
4 not permitted to engage in combat.

5 76. As another example, enlistment waivers granted for prior felony  
6 convictions are relevant to the alleged military discipline rationale for DADT. Log  
7 Cabin seeks testimony as to how the U.S. Armed Forces' waivers of service  
8 members' felony offenses impacted discipline and whether this reveals the  
9 discipline rationale to be a mere pretext to exclude law-abiding gay and lesbian  
10 service members.

11 77. On December 10, 2009, we served a set of requests for admission on  
12 the defendants. The defendants served responses on January 20, 2010. Following  
13 unsuccessful meet and confer efforts, we filed, on March 8, 2010, an *ex parte*  
14 application for an order that certain requests be deemed admitted or for further  
15 responses. The government opposed the application. Magistrate Judge Eick also  
16 heard this matter on March 15, 2010. On March 16, 2010, Magistrate Judge Eick  
17 also ordered that the government must provide an unqualified response to 28  
18 requests for admission by March 26, 2010. The government complied with the  
19 order except for three requests for admission. As to those three, the government  
20 asked this Court to review that portion of Judge Eick's order. The matter is fully  
21 briefed and the parties await the Court's ruling. The three requests for admission  
22 ask the government to admit that "DADT does not contribute to our national  
23 security," that "DADT weakens our national security," and that "discharging  
24 members pursuant to DADT weakens our national security." Given that military  
25 effectiveness – and thus national security – is a stated rationale for DADT,  
26 responses to these requests for admission are relevant to constitutional scrutiny of  
27 DADT.

28 78. Log Cabin served numerous requests for production of documents in

1 September 2009. The government did not produce any documents until January 15,  
2 2010, at which time it produced approximately 7,000 pages. It delayed producing  
3 additional documents because, it claimed, it needed a protective order to protect the  
4 privacy interests of individuals referenced in the documents. Log Cabin stipulated  
5 to such a protective order. Following unsuccessful meet and confer sessions  
6 regarding the government's responses and objections, we filed a noticed motion to  
7 compel further production of documents on February 22, 2010. The motion was  
8 also heard by Magistrate Judge Eick on March 15, 2010. That same day, just three  
9 weeks ago, the government produced nearly 55,000 additional pages of documents.  
10 Despite the government's insistence that the production was delayed for the entry  
11 of the protective order, most of the 55,000 pages were not designated as  
12 confidential. On March 16, 2010, Magistrate Judge Eick granted the motion to  
13 compel in large part. The defendants produced another 629 pages on March 30,  
14 2010, in response to Judge Eick's order. Log Cabin has been reviewing all 55,000+  
15 documents diligently. However, given that Log Cabin received the bulk of the  
16 documents only a few weeks ago, and given that counsel for Log Cabin has been  
17 occupied responding to the government's motion for review of Magistrate Judge  
18 Eick's discovery order (discussed above) and responding to the government's  
19 motion for summary judgment, the review is not yet complete. Log Cabin will  
20 likely discover additional documents relevant to this action and the summary  
21 judgment motion following the date of this filing.

22  
23 I declare under penalty of perjury under the laws of the United States of  
24 America that the foregoing is true and correct.

25 Executed this 5th day of April 2010, at Los Angeles, California.

26  
27   
28 \_\_\_\_\_  
Dan Woods