

EXHIBIT 10

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA
3 EASTERN DIVISION
4
5 LOG CABIN REPUBLICANS,)
6 Plaintiff,)
7 v.)
8 UNITED STATES OF AMERICA AND) No. CV-04-8425 (VAP) (Ex)
9 ROBERT GATES, Secretary of)
10 Defense,)
11 Defendants.)

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14 Deposition of TERRY HAMILTON, taken in the
15 above-entitled matter before Lindsay Pinkham, Certified
16 Shorthand Reporter No. 3716, Certified Realtime Reporter
17 within and for the State of California, taken at the
18 offices of WHITE & CASE, 633 West Fifth Street, Suite
19 1900, Los Angeles, California 90071, on Saturday, March
20 13, 2010, commencing at 10:00 A.M.

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1 (Recess 11:07 to 11:14 a.m.)

2 Q BY MR. FREEBORNE: Mr. Hamilton, putting aside
3 Mr. Nicholson and John Doe, are you aware of any other
4 members of the Log Cabin Republicans who have been
5 harmed by Don't Ask, Don't Tell?

6 A I've heard stories. I don't know that I can
7 recall the exact names of people.

8 Q Well, do you know the names of any of the
9 individuals?

10 A I don't think so. I think it's difficult to
11 determine which ones were telling the story during the
12 time of Don't Ask, Don't Tell or the time before Don't
13 Ask, Don't Tell.

14 Q Now, we looked earlier at Exhibit 36, which is
15 the survey that you conducted. And I believe you
16 testified that you purposely made that survey anonymous.
17 Correct?

18 A Yes.

19 Q Would there be any way to determine the
20 identities of the individuals that are referenced in
21 Exhibit 36?

22 A I don't believe so.

23 Q Did you undertake any effort to determine one
24 way or the other the truth of the statements that we see
25 in Exhibit 36?

1 A No.

2 Q Let me ask you to look at Exhibit 36, and I
3 direct your attention to a few pages, and they've been
4 identified as LCR 1 through 17. If you look at page 5,
5 do you see the fifth member there identified as veteran
6 under the heading, "What is your military service
7 status?" and then there's another column which asks,
8 "Have you been negatively impacted by the Don't Ask,
9 Don't Tell policy?" this veteran says "Yes, in other
10 ways"? Do you see that?

11 A I do.

12 Q Any way to determine the identity of that
13 person?

14 A No.

15 Q Let me ask you to turn to page 6. And again,
16 the veteran referenced in the fifth -- basically, the
17 fifth category down, veteran, then under the column,
18 "Have you been negatively impacted by the Don't Ask,
19 Don't Tell policy?" "Yes, it was used to terminate my
20 service." See that?

21 A Yes.

22 Q Any way to determine the identity of that
23 individual?

24 A No.

25 Q Turn to page 15 with me, and I'm looking at the

1 A No.

2 Q Okay. Now, when I was looking through the
3 currently serving members -- well, strike that.

4 Are you aware of a circumstance in which a Log
5 Cabin Republicans member has made a statement that he or
6 she is gay or lesbian and that statement has been used
7 for a purpose other than to show a propensity to engage
8 in homosexual conduct or acts?

9 A Could you repeat the question, please?

10 Q Have you read Judge Phillips's June 9 order
11 granting in part and rejecting in part the government's
12 motion to dismiss in this case?

13 A I believe so.

14 Q Are you aware that she ruled that with respect
15 to the First Amendment claim, that the Log Cabin has the
16 right to pursue a claim in which statements have been
17 used for a purpose other than an admission under the
18 policy?

19 A Yes.

20 Q And my question to you is, are you aware of any
21 member of the Log Cabin Republicans that would fit
22 within that category?

23 A Other than what I've seen in the survey, no.

24 Q And do you see anything in the survey that
25 would suggest that?

1 A I'd have to go back and reread the whole
2 survey.

3 MR. WOODS: I'm also going to object to the
4 question on the ground that it calls for a legal
5 conclusion.

6 Q BY MR. FREEBORNE: Why don't you take a moment
7 to read through the survey and see if you see any of
8 those individuals.

9 A (Examining document.)

10 Q Do you see anyone that fits within that
11 category?

12 A I'm trying to remember what the category is.
13 It was about speech, I understand.

14 Q In which a statement has been used as evidence
15 of something -- has been used for a purpose other than
16 as an admission under the policy.

17 MR. WOODS: Same objection. Calls for a legal
18 conclusion or interpretation of Judge Phillips's order.
19 You can answer the question.

20 THE WITNESS: Well, I believe in a broad
21 interpretation of speech, and every last one of these
22 that I read could fit under free speech, as far as I'm
23 concerned. That's my personal opinion.

24 Q BY MR. FREEBORNE: But my question to you, do
25 you see anything in the survey in which the military has

1 used someone's statement for a purpose other than an
2 admission that the member is likely to engage in
3 homosexual acts?

4 A I really don't know how to answer that
5 question, because it's so insidious that in my opinion,
6 it could be used in all sorts of different ways, and
7 probably -- I don't know.

8 Q My question to you is, do you see anything in
9 the survey in which it has been used for a purpose other
10 than what I just described?

11 MR. WOODS: Same objection.

12 You can answer.

13 THE WITNESS: It seems to me, as I was reading
14 through this and trying to keep your question in mind,
15 was that if they answered the question yes, in other
16 ways have you been negatively impacted, that that meant
17 that they had not been terminated already. So
18 obviously, someone who is currently serving is still
19 operating under these situations, where they have to
20 either lie or prevent the truth from coming out. And I
21 don't know what the government or the military might
22 use, or whether they have used it, based on those
23 statements. It's not clear to me.

24 Q Right. But in the circumstance you were just
25 describing, a statement has not even been made; right?

1 A I don't know that I can answer that one way or
2 another.

3 Q Let's go back. I missed a few, and I just want
4 to be sure that we're clear.

5 Again, on Exhibit 36, take a look at page 4,
6 the second member that we see on that page, veteran,
7 under the column, "Have you been negatively impacted by
8 the Don't Ask, Don't Tell policy?" "Yes, it was used to
9 terminate my service." Do you see that?

10 A Yes.

11 Q Any way to identify that person by name?

12 A No.

13 Q Okay. Let's turn to page 8. Do you see the
14 veteran that's the second line from the bottom, again,
15 "Yes, it was used to terminate my service," in response
16 to the question, "Have you been negatively impacted by
17 the Don't Ask, Don't Tell policy?"

18 A Yes.

19 Q Any way to identify that person by name?

20 A (Examining document) No.

21 Q In fact, you set up this survey so that there
22 would be no way to go back and identify the individual;
23 right?

24 A That is true.

25 Q And you didn't make any distinction between

1 over a period of about a week or so.

2 Q Is there a particular type of survey tool that
3 you used, a software program or something of that sort?

4 A Yes.

5 Q What is it called?

6 A It's called SurveyMonkey.

7 Q And do you have any reason to believe that the
8 comments that were provided in response to the survey
9 under the column, "Tell us what happened" are not true?

10 A No.

11 Q Do you have any reason to believe that the
12 answers to any of the questions on the survey that you
13 received are not true?

14 A No.

15 Q You were asked some questions about whether
16 there was anything in the survey that related to the
17 First Amendment claims in this case. Do you recall
18 that?

19 A I do.

20 Q Rather than ask you to look through all 17
21 pages of this survey response, let me ask you to look on
22 page 1, please, the next to last entry, which refers to
23 a veteran who says he or she was negatively impacted and
24 that the policy was used to terminate the service. Do
25 you see that one?

1 A I do.

2 Q And the actual comments here, under the column,
3 "Tell us what happened," say this:

4 "I was actually discharged twice,
5 once for annulling my marriage to a
6 woman; the second time, I spoke out
7 against former chairman of the joint
8 chiefs General Peter Pace when he was
9 quoted as saying that gays were
10 immoral in 2007."

11 Q Having now focused on that particular response
12 to the survey, do you believe that that response may at
13 least fit into the category of the First Amendment
14 claims in this case?

15 A I do.

16 Q Then directing your attention to page 4 of the
17 survey response, the second item there under the column,
18 "Tell us what happened," is rather lengthy, but it
19 basically has to do with a naval flight officer that
20 served for over six years who appears to have been
21 discharged once it was discovered that he listed himself
22 as gay on a MySpace page. Do you see that?

23 A I do.

24 Q Do you think that, in your opinion, as a
25 nonlawyer, might fit into the First Amendment category

1 that you were questioned about before, now that you've
2 had a chance to focus on that one this particular?

3 A Yes.

4 MR. WOODS: That's all I have.

5

6 FURTHER EXAMINATION

7 BY MR. FREEBORNE:

8 Q Going back to Exhibit 36 and first the veteran
9 that Mr. Woods just directed you to, any way to identify
10 that person?

11 A No.

12 Q Any way to learn about, to flesh out the
13 explanation that we see in, "Tell us what happened"?

14 A No.

15 Q Same question on page 4, the veteran that
16 Mr. Woods just made reference to, the Facebook veteran.
17 Do you see that?

18 A I do.

19 Q Any way to identify that person by name?

20 A No.

21 Q Any way to learn more about the circumstances
22 of that particular veteran's discharge?

23 A No.

24 Q Going back to the first veteran that Mr. Woods
25 just walked you through, he said that he was discharged

1 twice, once for annulling his marriage to a woman. Do
2 you see that?

3 A I do.

4 Q And then a second time for speaking out against
5 the chairman of the joint chiefs. Do you see that?

6 A I do.

7 Q Do you agree that it calls for speculation to
8 say that he was discharged because of a statement that
9 he made about his sexual orientation?

10 MR. WOODS: Objection. Vague and ambiguous.
11 Go ahead.

12 THE WITNESS: Well, I'm not a lawyer, so I
13 don't know whether that calls for speculation or not.

14 Q BY MR. FREEBORNE: Well, is another plausible
15 reading that he spoke out against the chairman of the
16 joint chiefs and perhaps was discharged because of that
17 reason?

18 A I don't believe so.

19 Q Why?

20 A It's just my belief.

21 Q Okay. Nothing more than that.

22 A Nothing more.

23 Q Okay. And with respect to the veteran that we
24 see on page 4, again, summarizing, who listed his sexual
25 orientation as gay on a publicly available Facebook

1 page, where in there do you see that the statement was
2 used for a purpose other than to show that that
3 particular service member was likely to engage in
4 homosexual acts?

5 A Quite frankly, I don't know how to respond to
6 your question. Could you rephrase it in a different
7 way, please?

8 Q Well, I think we've already established,
9 you're aware of Judge Phillips's ruling in this case
10 that she will allow the First Amendment claim to go
11 forward in this case if Log Cabin can point to a member
12 in which the member has made a statement that he or she
13 is gay or lesbian, and the military has used that
14 statement for a purpose other than to show -- other than
15 as an admission that that service member is likely to
16 engage in homosexual acts. Correct?

17 MR. WOODS: I object to the question. You've
18 misstated the judge's order. She never said that the
19 Log Cabin Republicans were required to prove that it has
20 a member in that particular category. You're misstating
21 the record dramatically.

22 MR. FREEBORNE: I don't believe so.

23 MR. WOODS: Then point me to, please, a portion
24 of her order where it says that. You keep saying that,
25 but that is not what her order says. You're misstating

1 it, and I object to it, and I'm going to instruct the
2 witness not to answer any questions prefaced by a false
3 statement that you're making about the judge's July
4 order.

5 MR. FREEBORNE: You're instructing him not to
6 answer?

7 MR. WOODS: If you preface it with the preface
8 that misstates her order, yes, I will.

9 Q BY MR. FREEBORNE: Well, let me put it this
10 way. Are you aware of any member of the Log Cabin
11 Republicans who has made a statement that he or she is
12 gay and that the military has used that statement for a
13 purpose other than as an admission that that service
14 member is likely to engage in homosexual acts?

15 A I'm going to have to answer "no" to that
16 question.

17 Q Okay. And that would include the service
18 member that we see on page 4 of Exhibit 36, the second
19 veteran there?

20 A I don't know how to answer that. You've
21 phrased it negatively and requested a positive answer, I
22 believe. So I guess the answer in a general way is no.

23 Q You're not aware of a member that fits within
24 that category?

25 A I personally am not aware.

1 Q Okay. Now, do you believe that the second
2 veteran that we see on page 4, that Mr. Woods just
3 walked you through, fits within that category?

4 MR. WOODS: Objection. Calls for a legal
5 conclusion.

6 MR. FREEBORNE: He seemed very comfortable
7 offering that testimony a second ago in response to your
8 question. So I'm asking the same question.

9 THE WITNESS: Do I believe? Yes, I believe.

10 Q BY MR. FREEBORNE: Why?

11 A Based on everything I read there.

12 Q And what do you read there that leads you to
13 the conclusion that he fits within that category?

14 A I believe that personal places like MySpace are
15 speech.

16 Q My question is, anything in that narrative in
17 which the service member says, the military used my
18 statement, for a purpose other than the admission that
19 we just discussed?

20 A No.

21 MR. FREEBORNE: I have no further questions.

22 THE REPORTER: Do you put any kind of
23 stipulation on the record?

24 MR. FREEBORNE: I assume the witness is going
25 to read and sign.