

# Attachment 2

Plaintiff's Responses to Defendants' First Set  
of Interrogatories, Document Requests,  
and Requests for Admission

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8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 LOG CABIN REPUBLICANS, a non-  
12 profit corporation,

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. CV 04-8425 VAP (Ex)

**PLAINTIFF'S RESPONSES TO  
DEFENDANTS' FIRST SET OF  
INTERROGATORIES,  
DOCUMENT REQUESTS, AND  
REQUESTS FOR ADMISSION**

18  
19 PROPOUNDING PARTY: Defendants

20 RESPONDING PARTY: Plaintiff Log Cabin Republicans

21 SET NO.: One (1)

22 Pursuant to Federal Rules of Civil Procedure 33, 34, and 36, Plaintiff Log  
23 Cabin Republicans ("LCR") hereby responds to the first set of interrogatories,  
24 document requests, and requests for admission to LCR (the "Requests")  
25 propounded by defendants United States of America and Robert M. Gates,  
26 Secretary of Defense ("Defendants").  
27  
28



1 **INTERROGATORIES**

2  
3 **INTERROGATORY NO. 1:**

4 Identify each person likely to have information relating to your case,  
5 including the subjects of the information that such persons have.

6 **RESPONSE TO INTERROGATORY NO. 1:**

7 LCR objects to Interrogatory No. 1 on the grounds it is overbroad, and vague  
8 and ambiguous as to the terms “likely” and “information relating to your case.”  
9 LCR further objects to Interrogatory No. 1 to the extent it seeks disclosure of  
10 information protected by the attorney work product doctrine. LCR also objects to  
11 Interrogatory No. 1 as premature in that LCR’s investigation and analysis of the  
12 facts developed through discovery is not yet complete and will continue up through  
13 time of trial. LCR has not yet designated witnesses in this action and is not yet  
14 required to do so. Moreover, LCR has yet to receive Defendants’ full document  
15 production and answers to Requests for Admission, and has yet to depose  
16 Defendants’ witness(es). Subject to and without waiving the foregoing general and  
17 specific objections, LCR refers Defendants to its previously served Initial  
18 Disclosures, and additionally responds:

19 LCR refers Defendants to the previously served expert reports of Aaron  
20 Belkin, Melissa Sheridan Embser-Herbert, Nathaniel Frank, Elizabeth L. Hillman,  
21 Lawrence Korb, Robert J. MacCoun, and A.C. Okros, and to the testimony of such  
22 of those experts as have been deposed.

23 John Alexander Nicholson has information regarding his membership within  
24 LCR, his service in and discharge from the United States Army, the effect of Don’t  
25 Ask, Don’t Tell and the U.S. Department of Defense regulations and directives  
26 promulgated pursuant thereto upon his military career, and his desire to return to  
27 the Army were it not for Don’t Ask, Don’t Tell.

28 Terry Hamilton has information regarding LCR, including LCR’s

1 organizational structure, LCR's membership, LCR's purpose, and LCR's survey of  
2 its membership regarding Don't Ask, Don't Tell (previously produced at Bates  
3 Nos. LCR001-017).

4 Numerous other individuals have or may have information relating to the  
5 subject matter of this lawsuit. Based on their public statements alone, for example,  
6 President Obama; defendant Secretary of Defense Robert M. Gates; current or  
7 former CJCS Admiral Michael Mullen, General Colin Powell, and General John  
8 Shalikashvili; and former President William Clinton have information relating to 10  
9 U.S.C. § 654 and its implementing regulations (the "DADT Policy" or the  
10 "Policy"). Former Attorney General Janet Reno, former Secretary of Defense Les  
11 Aspin, and the members of the 1993 Military Working Group have information  
12 relating to the Policy, its basis, and the motives for its enactment. Every member of  
13 Congress at the time of the adoption of the DADT Policy, and every member since  
14 that time, has information relating to the Policy, its basis, and the motives for its  
15 enactment or maintenance. Every member of the United States Armed Services  
16 who has been discharged under the DADT Policy, and every member of the United  
17 States Armed Services who fears his or her discharge, who fears the discharge of a  
18 comrade, or who desires the discharge of another under the DADT Policy, has  
19 information relating to the Policy, its implementation, its consequences, and its  
20 irrationality. Every individual who wishes to enlist in the United States Armed  
21 Services but who is inhibited, dissuaded, or discouraged from doing so by reason of  
22 the threat of discharge under the DADT Policy and the attendant stigma has  
23 information relating to the Policy, its implementation, and its pernicious effect on  
24 national security. Every commander, officer, and fighting member of military  
25 forces allied with the United States, who serves with or commands American  
26 servicemembers, has information relating to the Policy, its implementation, and its  
27 consequences for national security and human dignity, on and off the battlefield.  
28 Every member or supporter of LCR who responded to the survey it conducted

1 (LCR 001-017), whose specific identities are unknown to LCR, has information  
2 relating to the Policy, its implementation, its consequences, and its irrationality.  
3 Every member of the public who participates in or pays attention to the current  
4 national debate over the DADT Policy has information relating to the Policy, its  
5 implementation, its consequences and effects, and its irrationality.

6  
7 **INTERROGATORY NO. 2:**

8 Identify all information of which you are aware, regarding how John  
9 Alexander Nicholson, the member identified in paragraph 13 of plaintiff's First  
10 Amended Complaint, has purportedly been harmed by 10 U.S.C. § 654 or its  
11 implementing regulations, including but not limited to all communications you  
12 have had with Mr. Nicholson regarding how he has purportedly been harmed by  
13 10 U.S.C. § 654 or its implementing regulations.

14 **RESPONSE TO INTERROGATORY NO. 2:**

15 LCR objects to Interrogatory No. 2 to the extent it seeks information  
16 protected from disclosure by the attorney work product doctrine. Subject to and  
17 without waiving the foregoing general and specific objections, LCR responds:

18 Mr. Nicholson has been harmed in numerous ways by the DADT Policy.  
19 First, as a result of the DADT Policy, the U.S. Army discharged Mr. Nicholson  
20 from service on March 22, 2002, depriving him of the honor of defending his  
21 country and forcing him to leave behind a rewarding and challenging career he  
22 loved.

23 Second, Mr. Nicholson's discharge under the DADT Policy foreclosed his  
24 ability to accrue military benefits, including health and retirement benefits,  
25 inhibited his entitlement to educational funding under the GI Bill, and caused him  
26 severe emotional distress.

27 Third, the DADT Policy denied Mr. Nicholson his Constitutional rights to  
28 express himself and to engage in private, consensual behavior.

1 Finally, the DADT Policy has harmed, and continues to harm, Mr. Nicholson  
2 because, if it were not for the DADT Policy, Mr. Nicholson would reenlist in the  
3 Army today and return to his chosen career.

4  
5 **INTERROGATORY NO. 3:**

6 Assuming he was discharged pursuant to 10 U.S.C. § 654, identify the  
7 official basis for John Alexander Nicholson's discharge as indicated on his  
8 Department of Defense Form 214.

9 **RESPONSE TO INTERROGATORY NO. 3:**

10 LCR objects to Interrogatory No. 3 on the grounds it requests information  
11 from documents equally, if not more, available to Defendants. Subject to and  
12 without waiving the foregoing general and specific objections, LCR responds: The  
13 official basis for Mr. Nicholson's discharge, as indicated on his Department of  
14 Defense Form 214 is:

- 15 (1) "Separation Authority" – "AR 635-200, Para 15-3b"  
16 (2) "Separation Code" – "JRB"  
17 (3) "Narrative Reason for Separation" – "Homosexual Admission"  
18

19 **INTERROGATORY NO. 4:**

20 Assuming he was discharged pursuant to 10 U.S.C. § 654, identify the year  
21 John Alexander Nicholson was discharged, the characterization of service he  
22 received, and the record of any transcripts developed pertaining to the discharge.

23 **RESPONSE TO INTERROGATORY NO. 4:**

24 LCR objects to Interrogatory No. 4 on the grounds it requests information  
25 from documents equally, if not more, available to Defendants. LCR further objects  
26 to Interrogatory No. 4 on the grounds it is vague and ambiguous as to the term  
27 "record of any transcripts development pertaining to the discharge." Subject to and  
28 without waiving the foregoing general and specific objections, LCR responds:

1 The Army honorably discharged Mr. Nicholson pursuant to the DADT  
2 Policy on March 22, 2002. LCR has produced all documents in its possession,  
3 custody or control related to Mr. Nicholson's discharge, as documents LCR 018-  
4 082.

5  
6 **INTERROGATORY NO. 5:**

7 Identify all information of which you are aware regarding how John Doe, the  
8 anonymous member identified in paragraph 20 of plaintiff's First Amended  
9 Complaint, has purportedly been harmed by 10 U.S.C. § 654 or its implementing  
10 regulations, including any communications you have had with Mr. Doe regarding  
11 how he has purportedly been harmed by 10 U.S.C. § 654 or its implementing  
12 regulations.

13 **RESPONSE TO INTERROGATORY NO. 5:**

14 LCR objects to Interrogatory No. 5 to the extent it seeks information  
15 protected from disclosure by the attorney work product doctrine. Subject to and  
16 without waiving the foregoing general and specific objections, LCR responds:

17 The DADT Policy has harmed, and continues to harm, John Doe in numerous  
18 ways. First, John Doe has been a member of the United States Army Reserves for  
19 over 20 years, and has earned numerous awards and decorations for his service.  
20 He currently holds the rank of Lieutenant Colonel. The DADT Policy denies John  
21 Doe his Constitutional rights to express himself and communicate to others the core  
22 of his emotions and identity, and to engage in private, consensual intimate  
23 behavior.

24 Second, the DADT Policy places John Doe in constant fear of investigation,  
25 discharge, stigma, forfeiture of benefits, forfeiture of civil liberties, harassment, and  
26 other negative repercussions resulting from enforcement of the DADT Policy.



1 **INTERROGATORY NO. 6:**

2 Assuming he was discharged pursuant to 10 U.S.C. § 654, identify the basis  
3 for John Doe's discharge as indicated on his DD Form 214.

4 **RESPONSE TO INTERROGATORY NO. 6:**

5 Subject to and without waiving the foregoing general objections, LCR  
6 responds: John Doe is currently serving in the United States Army Reserves. He  
7 has not been discharged pursuant to the DADT Policy.

8  
9 **INTERROGATORY NO. 7:**

10 Assuming he was discharged pursuant to 10 U.S.C. § 654, identify the year  
11 John Doe was discharged, the characterization of service he received, and the  
12 record of any transcripts developed pertaining to the discharge.

13 **RESPONSE TO INTERROGATORY NO. 7:**

14 Subject to and without waiving the foregoing general objections, LCR  
15 responds: John Doe is currently serving in the United States Army Reserves. He  
16 has not been discharged pursuant to the DADT Policy.

17  
18 **INTERROGATORY NO. 8:**

19 Other than Mr. Nicholson and John Doe, identify any other individual upon  
20 whom you intend to rely as a basis for establishing standing who has been  
21 discharged pursuant to 10 U.S.C. § 654, and also all information of which you are  
22 aware concerning how each of those individuals has purportedly been harmed by  
23 10 U.S.C. § 654 or its implementing regulations; the date, if any, such member was  
24 discharged; the basis for the discharge, if any, as indicated on his or her Form 214;  
25 the characterization of service the member received; and the record of any  
26 transcripts developed pertaining to the discharge, if any.

27 **RESPONSE TO INTERROGATORY NO. 8:**

28 LCR objects to Interrogatory No. 8 on the grounds it is overbroad, unduly

1 burdensome, and seeks information neither relevant nor reasonably calculated to  
2 lead to the discovery of admissible evidence. The Court ruled in its June 9, 2009  
3 order that “the declaration of one member of an association that he suffered a harm,  
4 coupled with general assertions that other members would suffer similar harm,  
5 suffices to confer standing on an association,” and that LCR had satisfied this test.  
6 LCR need not rely on any individuals other than Mr. Nicholson or John Doe to  
7 establish standing. Subject to and without waiving the foregoing general and  
8 specific objections, LCR refers Defendants to its membership survey regarding  
9 Don’t Ask, Don’t Tell (previously produced at Bates Nos. LCR 001-017). LCR has  
10 not at this time identified specific respondents to that survey but reserves the right  
11 to do so and to call or rely upon them at trial. LCR further refers, though under the  
12 Court’s order it need not, to all other individuals who have been discharged from  
13 the United States Armed Forces under the DADT Policy, whether or not they are  
14 formally members of LCR.

15  
16 **INTERROGATORY NO. 9:**

17 Other than Mr. Nicholson and John Doe, identify any other individual upon  
18 whom you intend to rely as a basis for establishing standing in this lawsuit and  
19 explain the specific nature of the harm each member has allegedly suffered.

20 **RESPONSE TO INTERROGATORY NO. 9:**

21 LCR objects to Interrogatory No. 9 on the grounds it is overbroad, unduly  
22 burdensome, and seeks information neither relevant nor reasonably calculated to  
23 lead to the discovery of admissible evidence. The Court ruled in its June 9, 2009  
24 order that “the declaration of one member of an association that he suffered a harm,  
25 coupled with general assertions that other members would suffer similar harm,  
26 suffices to confer standing on an association,” and that LCR had satisfied this test.  
27 LCR need not rely on any individuals other than Mr. Nicholson or John Doe to  
28 establish standing. Subject to and without waiving the foregoing general and

1 specific objections, LCR refers Defendants to its membership survey regarding  
2 Don't Ask, Don't Tell (previously produced at Bates Nos. LCR001-017). LCR has  
3 not at this time identified specific respondents to that survey but reserves the right  
4 to do so and to call or rely upon them at trial. LCR further refers, though under the  
5 Court's order it need not, to all other individuals who have been discharged from  
6 the United States Armed Forces under the DADT Policy, whether or not they are  
7 formally members of LCR.

8  
9 **INTERROGATORY NO. 10:**

10 In paragraph 36 of the First Amended Complaint, you alleged that the stated  
11 reasons for 10 U.S.C. § 654 and the implementing regulations are a "pretext for  
12 animus towards gay and lesbian members of the United States Armed Forces."  
13 Explain the basis for that statement and identify all information of which you are  
14 aware that supports it.

15 **RESPONSE TO INTERROGATORY NO. 10:**

16 LCR objects to Interrogatory No. 10 on the grounds it is overbroad, and  
17 vague and ambiguous as to the term "information." LCR further objects to  
18 Interrogatory No. 10 as premature in that LCR's investigation and analysis of the  
19 facts developed through discovery is not yet complete and will continue up through  
20 time of trial. Moreover, LCR has yet to receive Defendants' full document  
21 production and answers to Requests for Admission, and has yet to depose  
22 Defendants' witness(es). Subject to and without waiving the foregoing general and  
23 specific objections, LCR responds:

24 The assertion contained in 10 U.S.C. § 654 that Don't Ask, Don't Tell  
25 advances morale, good order and discipline, and unit cohesion in the United States  
26 Armed Forces was at the time of its enactment, and is today, without factual  
27 support. Documentation, research, academic or sociological studies supporting  
28 such an assertion are utterly lacking and defendants have produced no such

1 evidence. In fact, the evidence available then and now demonstrates that Don't  
2 Ask, Don't Tell actually interferes with those interests. Because the Policy is "so  
3 discontinuous with the reasons offered for it," only animus towards gay, lesbian,  
4 and bisexual service members can explain its enactment. *See Romer v. Evans*, 517  
5 U.S. 620, 632 (1996). Some of the evidence demonstrating this is set forth at  
6 length in the previously served expert reports of Aaron Belkin, Melissa Sheridan  
7 Embser-Herbert, Nathaniel Frank, Elizabeth L. Hillman, Lawrence Korb, Robert J.  
8 MacCoun, and A.C. Okros, and in the testimony of such of those experts as have  
9 been deposed, all of which LCR incorporates here by reference. Without limiting  
10 the scope of those reports and testimony, the following summarizes the information  
11 supporting LCR's contention:

12         There is no rational basis for prejudice against homosexuals, or for prejudice  
13 against homosexuals serving openly in the military. Homosexual service members  
14 are no more likely than heterosexual service members to reveal classified or  
15 otherwise confidential information; they are no more likely than heterosexual  
16 service members to violate military codes of conduct, the UCMJ, or Department of  
17 Defense regulations; and they possess no physical or psychological defect that  
18 renders them unfit for service. No research has ever shown that the presence of  
19 openly homosexual servicemembers would cause or has caused the deterioration of  
20 morale, good order and discipline, or unit cohesion in the military, any more than  
21 the presence of women or black men in previous decades caused such ill effects. In  
22 fact, in enacting Don't Ask, Don't Tell, Congress and the President ignored studies  
23 demonstrating that permitting openly gay and lesbian individuals to serve in the  
24 U.S. Armed Forces would have no adverse effect on those interests.

25         The 1957 Crittenden Report, commissioned by the Secretary of the Navy,  
26 stated that "no factual data exist to support the contention that homosexuals are a  
27 greater risk than heterosexuals." Two studies commissioned by the military's  
28 Personnel Security Research and Education Center in 1988 found that the ban on

1 gay and lesbian service was unnecessary and damaging and that sexual orientation  
2 had no relationship to job performance. The current Chairman of the Joint Chiefs  
3 of Staff has acknowledged publicly that “there just isn’t any objective data out  
4 there” regarding the impact on military servicemembers and their families of Don't  
5 Ask, Don't Tell and its potential repeal. And polls, both of the public at large and  
6 of members of the military, show little concern, and that diminishing steadily with  
7 time, regarding the impact of the presence of openly homosexual servicemembers  
8 on issues of privacy, sexual tension, and the like.

9 Indeed, the purported justifications for discharge of homosexuals under the  
10 DADT Policy based on asserted concerns of privacy and sexual tension are belied  
11 by events within the past month. In February 2010, defendant Gates notified  
12 Congress that, reversing a policy of over 100 years’ standing, the Navy intends to  
13 permit women to serve on *submarines* – the epitome of confined isolation, and an  
14 environment where one would expect sexual tension and lack of privacy to be  
15 prime considerations. Yet the difficulty of recruiting qualified officers and seamen  
16 has led the Navy to expand the pool of prospects for that mission, even as it culls its  
17 ranks elsewhere under Don't Ask, Don't Tell.

18 The General Accounting Office (“GAO”) in 1992 recommended that the ban  
19 on gay and lesbian individuals serving openly be reconsidered. A year later, the  
20 GAO and the RAND Corporation (in a separate study commissioned by the  
21 Secretary of Defense) both reported that permitting openly gay and lesbian service  
22 members to serve did not impair the functioning of numerous foreign militaries.  
23 RAND further concluded that sexual orientation was irrelevant to determining  
24 whether an individual was fit for military service. RAND also reported that U.S.  
25 police and fire departments – domestic analogs to the military – integrated gays and  
26 lesbians and witnessed improved effectiveness and unit cohesion after doing so.

27 Studies and reports following enactment of Don't Ask, Don't Tell reached the  
28 same conclusions. The United Kingdom Defence Ministry reported that lifting its

1 ban on openly gay and lesbian service members was met with “widespread  
2 acceptance” and had “no discernible impact” on recruitment. In 2000, a  
3 comprehensive study regarding several foreign militaries’ experience after  
4 removing the ban on gay and lesbian service members reported no observed impact  
5 on military effectiveness, unit cohesion, recruitment, or retention. A statistical  
6 analysis of United States military units in the Iraq and Afghanistan conflicts  
7 (Moradi and Miller, 2009) showed no correlation between the presence of openly  
8 gay servicemembers in the unit and the unit’s cohesion, quality, or combat  
9 readiness. And in February 2010, Admiral Mullen testified before the Senate  
10 Armed Services Committee that his counterparts in countries that allow gays and  
11 lesbians to serve openly report “no impact on military effectiveness.” He also  
12 testified that he was unaware of any evidence suggesting repeal of Don't Ask, Don't  
13 Tell would undermine unit cohesion.

14 As the President has stated, Don't Ask, Don't Tell does not contribute to  
15 America’s national security, and the effects of the Policy – preventing patriotic  
16 Americans from serving their country – in fact weaken national security. Service  
17 members in critical combat and non-combat occupations have been discharged  
18 under Don't Ask, Don't Tell. According to a 2005 GAO report, the military  
19 discharged 757 troops in “critical operations” between fiscal years 1994 and 2003.  
20 Service members in “critical operations” included translators, explosive ordnance  
21 disposal specialists, signal intelligence analysts, and missile and cryptologic  
22 technicians. Again in the President’s words, these “patriots” possess critical skills  
23 and years of training and have served this country well.

24 Don't Ask, Don't Tell has also caused the separation of hundreds of service  
25 members with “important foreign language” skills. In just the two years following  
26 the attacks of September 11, 2001, the U.S. Armed Forces discharged 37 language  
27 experts with skills in Arabic, Korean, Farsi, Chinese or Russian under the Policy.  
28 By 2003, the number of Arabic language specialists discharged under Don't Ask,

1 Don't Tell climbed to 58. Discharging individuals with these language skills has  
2 demonstrable negative effects on intelligence gathering, analysis, communications,  
3 force support, and hence national security. Because of these harmful effects, our  
4 nation's Commander-in-Chief has recognized the urgency, as an essential matter of  
5 national security, of reversing the Don't Ask, Don't Tell Policy.

6 Among the thousands of others discharged under Don't Ask, Don't Tell are  
7 service members with skills in intelligence, combat engineering, medicine, military  
8 police and security, nuclear, biological, and chemical warfare, and missile guidance  
9 and operation. Such discharges occurred despite shortages in such personnel and  
10 despite force-wide recruitment and retention challenges. These shortages harmed  
11 troop morale by necessitating extended deployments, an over-reliance on the less-  
12 qualified national guard, stop-loss orders, and more frequent combat duty while the  
13 United States fought two wars and the global war on terror. The President admits  
14 that the United States cannot afford to cut from its military ranks people with the  
15 critical skills it needs to fight, and that the United States cannot afford – for our  
16 military's integrity – to force those willing to do so into careers encumbered and  
17 compromised by having to live a lie.

18 According to the Williams Institute at the University of California Los  
19 Angeles School of Law, an additional 41,000 gay and lesbian Americans might join  
20 the military if the ban were lifted, and an additional 4,000 personnel might remain  
21 in uniform each year if they could do so without having to conceal their identities.

22 The Policy has been applied more frequently in peacetime than in times of  
23 war, when unit cohesion, as defendants posit the concept, is in theory most vital. If  
24 gay and lesbian service members created an unacceptable risk to unit cohesion, the  
25 frequency of discharges under the Policy would be expected to increase – not  
26 decrease – during periods of war. Yet, 2001 yielded the highest number of  
27 discharges under Don't Ask, Don't Tell. Since the commencement of Operation  
28 Enduring Freedom in Afghanistan in October 2001 and Operation Iraqi Freedom in

1 Iraq in March 2003, discharges of lesbian and gay members of the United States  
2 Armed Forces have decreased dramatically.

3 Indeed, there is evidence that Army officers are instructed not to discharge  
4 service members based on homosexuality from units on or about to be placed on  
5 active duty status. Their discharge is to be postponed until their return to the  
6 United States. Moreover, a Zogby poll taken in 2006 indicated that roughly two  
7 thirds of service members returning from Iraq and Afghanistan knew or suspected a  
8 gay person had served in their unit.

9 The United Kingdom, Canada, Australia, and Israel are among some 25  
10 nations that permit lesbian and gay individuals to serve openly in their armed  
11 forces. No such nation has reported any detriment to any metric of military  
12 effectiveness, including unit cohesion, readiness, morale, retention, good order, or  
13 discipline. The Canadian experience in particular demonstrates that the inclusion of  
14 openly gay and lesbian service members in combat units is a non-issue in terms of  
15 military effectiveness and that military effectiveness is determined by the  
16 competence of individual soldiers, not their sexual orientation.

17 In both Afghanistan and Iraq, members of the United States Armed Forces  
18 have fought and continue to fight side by side with coalition forces from such  
19 nations. Such forces include openly gay and lesbian commanding officers. This  
20 additionally demonstrates that the alleged harm caused by gay and lesbian service  
21 members to military capabilities is simply pretext for animus towards such  
22 members.

23 Many of the stated bases for Don't Ask, Don't Tell – including such purported  
24 justifications as the avoidance of sexual tension, concern about communal showers,  
25 and the like – do not apply in the case of women and lesbians. Furthermore, in each  
26 year from 1994 through the present, Don't Ask, Don't Tell has disproportionately  
27 impacted women in the Armed Forces. In 2003, women constituted 15% of the  
28 United States Armed Forces yet accounted for 33% of the service members



1 discharged under the Policy. In 2008, women accounted for 14% of the Armed  
2 Forces but accounted for 36% of those discharged under the Policy.

3 Moreover, Don't Ask, Don't Tell uniquely impairs unit cohesion and military  
4 effectiveness among female service members. Don't Ask, Don't Tell requires that  
5 female service members avoid appearing too strong, assertive, and masculine – and  
6 thus stereotypically lesbian – although they are expected to operate in a male-  
7 dominated military environment. Many female service members, lesbian or not,  
8 must thus choose whether to perform their duties with full competence and risk  
9 being labeled a lesbian or to purposefully act in a more feminine but less competent  
10 manner. Effectiveness is sacrificed.

11 In addition, by making homosexuality illegal, Don't Ask, Don't Tell  
12 encourages allegations of lesbianism if female service members refuse sexual  
13 advances by males. For the same reason, Don't Ask, Don't Tell discourages female  
14 service members from reporting sexual harassment. This impairs the unit cohesion  
15 and morale of all female service members, not just those who are actually lesbian.

16 Members of the United States Armed Forces also work closely with  
17 personnel from other agencies, such as the United States Central Intelligence  
18 Agency, National Security Agency, and Federal Bureau of Investigation, all of  
19 which prohibit discrimination on the basis of sexual orientation. No federal agency  
20 that allows gays and lesbians to serve openly has reported any negative impact on  
21 cohesion, readiness, morale, or discipline. Even the Commander in Chief can be  
22 openly homosexual without repercussion.

23 Because of recruitment shortfalls, the U.S. military now recruits less  
24 qualified service members rather than admitting openly gay and lesbian individuals.  
25 It does so despite the executive branch's authority to suspend personnel policies  
26 such as Don't Ask, Don't Tell to ensure the nation's combat effectiveness. The  
27 military has recruited thousands of service members despite low scores on military  
28 aptitude tests, despite felony and serious misdemeanor convictions, and despite

1 substance abuse that would normally prohibit service. Indeed, the military has  
2 issued "moral waivers" for service members convicted of murder, kidnapping,  
3 assault, illegal drug use, and making terrorist threats, and currently counts 4000 or  
4 more felons among its ranks even as it discharges honorable, law-abiding, and  
5 valiant homosexuals under Don't Ask, Don't Tell.

6 As a result of Don't Ask, Don't Tell, U.S. taxpayers have spent hundreds of  
7 millions of dollars to separate thousands of capable, needed service members and to  
8 recruit and train replacements, as repeated studies including by the Government  
9 Accountability Office and the Palm Center have concluded. And the costs are not  
10 just financial. Don't Ask, Don't Tell has deterred countless heterosexual and  
11 homosexual Americans who are able, committed, and patriotic from enlisting to  
12 fight for their country during a time of two wars. Many heterosexual individuals  
13 who would otherwise enlist view the military as out of touch as a result of Don't  
14 Ask, Don't Tell.

15 That Don't Ask, Don't Tell was enacted as a result of moral animus is  
16 supported by more than the total absence of evidence supporting the notion that the  
17 Policy would advance morale, good order and discipline, and unit cohesion. The  
18 rhetoric during the national debate over whether to lift the ban on homosexual  
19 service members in 1992 and 1993 was characterized by a well-organized and  
20 effective campaign by religious conservatives to stigmatize gays and lesbians.

21 Influencing passage of Don't Ask, Don't Tell were unfounded and  
22 unsupported assertions, for example, that homosexuality is a moral virus, that the  
23 homosexual lifestyle is unhealthy, that homosexuals are perverted and  
24 promiscuous, that homosexual service members are rife with disease, that  
25 homosexuals would increase transmission of sexually transmitted diseases,  
26 including AIDS, that homosexuals are abnormal and mentally unstable, that  
27 homosexuals are more prone to criminal activity, that homosexuals are sexual  
28 predators and pedophiles, that service members could not respect and take orders

1 from individuals who enjoy anal sex, and that likened homosexuals to cowards and  
2 thieves, all without evidentiary support.

3 Military officials and experts confirm that the “unit cohesion” and other  
4 rationales stated in the Don't Ask, Don't Tell statute were mere pretext. For  
5 example, members of the 1993 Military Working Group decided to retain the ban  
6 on openly gay and lesbian service members before ever convening. The Group  
7 never weighed research or empirical data about service of homosexual service  
8 members in the military. Rather, the Group reached its conclusions on the basis of  
9 fear, politics, prejudice, stereotypes, and resistance to any change in military  
10 tradition. Meanwhile, Professor Moskos, a principal architect of Don't Ask, Don't  
11 Tell, admitted that the real reason for the Policy was not unit cohesion, but  
12 heterosexuals’ “moral right” not to serve with gay and lesbian service members.

13 The irrationality of the Don't Ask, Don't Tell Policy, and its origin in animus  
14 rather than in sound theory or practicality, is demonstrated by all the evidence  
15 summarized above, and confirmed by the public statements of the top military  
16 officer in the United States armed forces, the top civilian official in the Department  
17 of Defense, and their common Commander in Chief, all of whom have stated  
18 plainly that Don't Ask, Don't Tell serves neither the needs nor the morality of the  
19 nation.

20  
21 **INTERROGATORY NO. 11:**

22 In paragraph 32 of plaintiff’s First Amended Complaint, you acknowledge  
23 that “[a] statement by a service member that he or she is homosexual creates a  
24 rebuttable presumption that the officer engages in homosexual conduct or has the  
25 propensity or intent to do so.” (citing Dep’t of Defense Directives 1332.14 at 27;  
26 1332.20 at 202). If you allege that an individual upon whom you intend to rely as a  
27 basis for establishing standing has stated that he or she is a homosexual and has as a  
28 result purportedly suffered injury as a result of 10 U.S.C. § 654 and the

1 implementing regulations, please identify the member who has been subjected to  
2 such treatment and identify the circumstances thereof.

3 **RESPONSE TO INTERROGATORY NO. 11:**

4 LCR objects to Interrogatory No. 11 on the grounds it is overbroad, unduly  
5 burdensome, and seeks information neither relevant nor reasonably calculated to  
6 lead to the discovery of admissible evidence. The Court ruled in its June 9, 2009  
7 order that “the declaration of one member of an association that he suffered a harm,  
8 coupled with general assertions that other members would suffer similar harm,  
9 suffices to confer standing on an association,” and that LCR had satisfied this test.  
10 LCR need not rely on any individuals other than Mr. Nicholson or John Doe to  
11 establish standing. LCR further objects to the term “acknowledge” to the extent it  
12 may be intended to imply that LCR concedes the validity of the presumption; the  
13 allegation in paragraph 32 of the First Amended Complaint merely cites, without  
14 accepting the validity of, the DOD Regulations under the Policy. Subject to and  
15 without waiving the foregoing general and specific objections, LCR responds as  
16 follows:

17 The U.S. Army discharged Mr. Nicholson pursuant to the DADT Policy on  
18 the basis he made “a homosexual admission.” The Army’s investigation of Mr.  
19 Nicholson’s sexual orientation began when another service member intercepted a  
20 private communication between Mr. Nicholson and another individual in  
21 Portuguese.

22 The Army informed Mr. Nicholson that he would face interrogation and the  
23 risk of a less than honorable discharge. Threatened with these indignities, in order  
24 to receive an honorable discharge and avoid further emotional distress Mr.  
25 Nicholson issued a signed statement that he was homosexual.

26 LCR also refers Defendants to its membership survey regarding Don’t Ask,  
27 Don’t Tell (previously produced at Bates Nos. LCR 001-017). LCR has not at this  
28 time identified specific respondents to that survey but reserves the right to do so

1 and to call or rely upon them at trial. LCR further refers, though under the Court's  
2 order it need not, to all other individuals who have been discharged from the United  
3 States Armed Forces under the DADT Policy, whether or not they are formally  
4 members of LCR.

5  
6 **INTERROGATORY NO. 12:**

7 In paragraph 4 of John Doe's declaration, executed on April 27, 2006, he  
8 states: "I am an officer in the United States Army Reserves, and I am currently on  
9 active assignment for the United States Armed Forces, and thus subject to" 10  
10 U.S.C. § 654 or its implementing regulations. Please state whether John Doe is a  
11 current member of the United States Army Reserves and, if he is no longer a  
12 member in the Army Reserves, whether John Doe was discharged pursuant to 10  
13 U.S.C. § 654.

14 **RESPONSE TO INTERROGATORY NO. 12:**

15 Subject to and without waiving the foregoing general objections, LCR  
16 responds: John Doe is currently serving in the United States Army Reserves. He  
17 has not been discharged pursuant to the DADT Policy.

18  
19 **INTERROGATORY NO. 13:**

20 If John Doe is a current member of the United States Army Reserves, please  
21 state John Doe's current rank.

22 **RESPONSE TO INTERROGATORY NO. 13:**

23 Subject to and without waiving the foregoing general objections, LCR  
24 responds: John Doe is a Lieutenant Colonel in the United States Army Reserves.

25  
26 **INTERROGATORY NO. 14:**

27 Of the individuals identified in paragraph I.A. of Plaintiff's Initial  
28 Disclosures, served on December 9, 2009, identify by name and address those

1 individuals Plaintiff intends to call as witnesses at trial, and whether Plaintiff's  
2 counsel represents those individuals for purposes of this litigation.

3 **RESPONSE TO INTERROGATORY NO. 14:**

4 LCR objects to Interrogatory No. 14 to the extent it seeks disclosure of  
5 information protected by the attorney work product doctrine. LCR further objects  
6 to Interrogatory No. 14 as premature. LCR's investigation and analysis of the facts  
7 developed through discovery is not yet complete and will continue up through time  
8 of trial. LCR has is not yet required to designate the individuals it intends to call as  
9 witnesses at trial. Moreover, LCR has yet to receive Defendants' full document  
10 production and answers to Requests for Admission, and has yet to depose  
11 Defendants' witness(es).

12 Subject to and without waiving the foregoing general and specific objections,  
13 the witnesses LCR currently intends to call at trial include the following:

- 14
- 15 • Alex Nicholson  
16 c/o White & Case LLP  
17 633 W. Fifth Street, 19th Floor  
18 Los Angeles, CA 90071  
19 Plaintiff's counsel represents Mr. Nicholson in his capacity as a member of  
20 LCR.
  - 21 • Terry Hamilton  
22 c/o White & Case LLP  
23 633 W. Fifth Street, 19th Floor  
24 Los Angeles, CA 90071  
25 Plaintiff's counsel represents Mr. Hamilton only in his capacity as chairman of  
26 the national board of directors of LCR, not individually.
  - 27 • Admiral Michael Mullen  
28 Chairman of the Joint Chiefs of Staff  
Office of the Chairman  
9999 The Pentagon  
Washington, D.C. 20318-9999  
Plaintiff's counsel does not represent Adm. Mullen.

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- Aaron Belkin  
University of California, Santa Barbara  
Santa Barbara, CA 93106  
Plaintiff's counsel does not represent Dr. Belkin.
  
- Melissa Sheridan Embser-Herbert  
26 Cedar Ridge Drive  
Douglas, New Brunswick E3G 7X1 Canada  
Plaintiff's counsel does not represent Dr. Embser-Herbert.
  
- Nathaniel Frank  
c/o Palm Center  
University of California, Santa Barbara  
Santa Barbara, CA 93106  
Plaintiff's counsel does not represent Dr. Frank.
  
- Elizabeth L. Hillman  
University of California, Hastings College of Law  
200 McAllister St  
San Francisco, CA 94102  
Plaintiff's counsel does not represent Dr. Hillman.
  
- Lawrence Korb  
c/o Center for American Progress  
1333 H Street NW, 10th Floor  
Washington D.C., 20005  
Plaintiff's counsel does not represent Dr. Korb.
  
- Robert J. MacCoun  
University of California, Berkeley School of Law  
215 Boalt Hall  
Berkeley, CA 94720  
Plaintiff's counsel does not represent Dr. MacCoun.
  
- Alan C. Okros  
801 Bay Street #1902  
Toronto, Ontario M5S 1Y9  
Plaintiff's counsel does not represent Dr. Okros.

LCR also intends to introduce at trial public statements of defendants' agents, including the President, the Secretary of Defense, and the Chairman of the Joint

1 Chiefs of Staff, under Fed. R. Evid. 801(d)(2). LCR also reserves the right to call  
2 additional witnesses not specified herein as discovery, including LCR's review of  
3 the defendants' discovery responses when such responses may in the future be  
4 complete, continues.

5  
6  
7 **REQUESTS FOR DOCUMENT PRODUCTION**

8  
9 **REQUEST FOR PRODUCTION NO. 1:**

10 Produce all documents identified or referenced in, or used to respond to any  
11 of your responses to Defendant's Interrogatories.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

13 LCR objects to Request No. 1 on the ground it is overbroad and unduly  
14 burdensome, and to the extent it seeks information protected from disclosure by the  
15 attorney-client privilege or the attorney work product doctrine. Subject to and  
16 without waiving the foregoing general and specific objections, LCR responds that it  
17 has produced its experts' reports and that it used those, as well as the documents,  
18 reports, and other materials cited or discussed therein and in the bibliographies  
19 thereto, in response to the interrogatories herein. LCR also used the documents  
20 produced as LCR 001-082; the Declaration of John Doe dated April 27, 2006; and  
21 publicly available press reports, articles and op-ed pieces, transcripts of official  
22 addresses and Congressional testimony, Department of Defense podcasts, and  
23 public statements of agents and officers of the United States Government and the  
24 United States Armed Forces. LCR also reserves the right to rely on other  
25 documents as discovery and trial preparation continue.

26  
27 **REQUEST FOR PRODUCTION NO. 2:**

28 Produce all documents that you may use to support your case.



1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

2 LCR objects to Request No. 2 on the ground it is overbroad and unduly  
3 burdensome, and to the extent it seeks information protected from disclosure by the  
4 attorney-client privilege or the attorney work product doctrine. LCR further objects  
5 to Request No. 2 to the extent it is premature in that LCR does not yet have in its  
6 custody, possession, or control all documents which it intends to use to support its  
7 case, in part because Defendants have refused to produce requested, relevant  
8 documents and have not yet complied with the Court's order to do so. In addition,  
9 LCR has received within the last week a production of over 55,000 documents from  
10 defendants and has not yet had the opportunity or ability to determine which of  
11 those documents it may use to support its case. Subject to and without waiving the  
12 foregoing general and specific objections, LCR responds that it has produced its  
13 experts' reports and intends to use those, as well as the documents, reports, and  
14 other materials cited or discussed therein and in the bibliographies thereto, to  
15 support its case; the documents produced as LCR 001-082; and reserves the right to  
16 rely on other documents as discovery and trial preparation continue.

17  
18 **REQUEST FOR PRODUCTION NO. 3:**

19 Produce all documents related to Mr. Nicholson's discharge, including his  
20 DD Form 214.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

22 LCR objects to Request No. 3 on the grounds it requests documents equally,  
23 if not more, available to Defendants. Subject to and without waiving the foregoing  
24 general and specific objections, LCR responds that it has produced all responsive  
25 documents in its possession, custody, or control as documents LCR 018-082.

1 **REQUEST FOR PRODUCTION NO. 4:**

2 Other than Mr. Nicholson, if any other individual upon whom you intend to  
3 rely as a basis for establishing standing has been discharged pursuant to 10 U.S.C.  
4 § 654 and its implementing regulations, produce all documents related to his or her  
5 discharge, including his or her DD Form 214.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

7 LCR objects to Request No. 4 on the grounds it is overbroad, unduly  
8 burdensome, seeks information neither relevant nor reasonably calculated to lead to  
9 the discovery of admissible evidence, and seeks information and documents not in  
10 LCR's possession, custody or control and which are more readily available to  
11 Defendants.

12  
13 **REQUEST FOR PRODUCTION NO. 5:**

14 Produce all documents which you contend evidence any harm suffered by  
15 any individual upon whom you intend to rely as a basis for establishing standing in  
16 this lawsuit.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

18 LCR objects to Request No. 5 on the ground it is overbroad and unduly  
19 burdensome, and seeks information neither relevant nor reasonably calculated to  
20 lead to the discovery of admissible evidence.

21  
22 **REQUEST FOR PRODUCTION NO. 6:**

23 Produce all documents or other communication (in whatever form) that you  
24 sent to another person or received from another person, organization, or other entity  
25 regarding this lawsuit.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

27 LCR objects to Request No. 6 to the extent it seeks documents and  
28 information that are subject to the attorney-client privilege, attorney work product

1 doctrine, or other applicable privilege or protection. LCR further objects to this  
2 Request on the ground it is overbroad and unduly burdensome. Subject to and  
3 without waiving the foregoing general and specific objections, LCR responds that it  
4 has produced or will produce the survey of its members (LCR 001-017), and  
5 communications between LCR (or its attorneys) and its experts.

6  
7 **REQUEST FOR PRODUCTION NO. 7:**

8 Produce all documents that you intend to rely upon to demonstrate that the  
9 stated bases for 10 U.S.C. § 654 are irrational.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

11 LCR objects to Request No. 7 on the ground it is overbroad and unduly  
12 burdensome. LCR further objects to Request No. 7 to the extent it is premature in  
13 that LCR does not yet have in its custody, possession, or control all documents  
14 which it intends to use to support its case, in part because Defendants have refused  
15 to produce requested, relevant documents and have not yet complied with the  
16 Court's order to do so. In addition, LCR has received within the last week a  
17 production of over 55,000 documents from defendants and has not yet had the  
18 opportunity or ability to determine which of those documents it may use to support  
19 its case.

20 Subject to and without waiving the foregoing general and specific objections,  
21 LCR responds that it has produced its experts' reports and intends to rely upon  
22 those, as well as the documents, reports, and other materials cited or discussed  
23 therein and in the bibliographies thereto, to support its case; the documents  
24 produced as LCR 001-082; and reserves the right to rely on other documents as  
25 discovery and trial preparation continue.

1 **REQUEST FOR PRODUCTION NO. 8:**

2 If you contend that 10 U.S.C. § 654 is not necessary to address privacy  
3 within the unit, please produce all documents that you intend to rely upon to  
4 support that contention.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

6 LCR objects to Request No. 8 on the ground it is vague, ambiguous,  
7 overbroad and unduly burdensome. LCR further objects to Request No. 8 to the  
8 extent it is premature in that LCR does not yet have in its custody, possession, or  
9 control all documents which it intends to use to support its case, in part because  
10 Defendants have refused to produce requested, relevant documents and have not yet  
11 complied with the Court's order to do so. In addition, LCR has received within the  
12 last week a production of over 55,000 documents from defendants and has not yet  
13 had the opportunity or ability to determine which of those documents it may use to  
14 support its case.

15 Subject to and without waiving the foregoing general and specific objections,  
16 LCR responds that it has produced its experts' reports and intends to use those, as  
17 well as the documents, reports, and other materials cited or discussed therein and in  
18 the bibliographies thereto, to support its case; the documents produced as LCR 001-  
19 082; and reserves the right to rely on other documents as discovery and trial  
20 preparation continue.

21  
22 **REQUEST FOR PRODUCTION NO. 9:**

23 If you contend that 10 U.S.C. § 654 is not necessary to address sexual tension  
24 within the unit, please produce all documents that you intend to rely upon to  
25 support that contention.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

27 LCR objects to Request No. 9 on the ground it is vague, ambiguous,  
28 overbroad and unduly burdensome. The undefined term "sexual tension" could

1 refer to many different behaviors, emotions, or circumstances, some of which may  
2 be addressable through policy or law and others of which are inherent in the human  
3 condition. LCR further objects to Request No. 9 to the extent it is premature in that  
4 LCR does not yet have in its custody, possession, or control all documents which it  
5 intends to use to support its case, in part because Defendants have refused to  
6 produce requested, relevant documents and have not yet complied with the Court's  
7 order to do so. In addition, LCR has received within the last week a production of  
8 over 55,000 documents from defendants and has not yet had the opportunity or  
9 ability to determine which of those documents it may use to support its case.

10 Subject to and without waiving the foregoing general and specific objections,  
11 LCR responds that it has produced its experts' reports and intends to use those, as  
12 well as the documents, reports, and other materials cited or discussed therein and in  
13 the bibliographies thereto, to support its case; the documents produced as LCR 001-  
14 082; and reserves the right to rely on other documents as discovery and trial  
15 preparation continue.

16  
17 **REQUEST FOR PRODUCTION NO. 10:**

18 If you contend that 10 U.S.C. § 654 is not necessary to address unit cohesion,  
19 unit morale, and/or combat readiness, please produce all documents that you intend  
20 to rely upon to support that contention.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

22 Request for LCR objects to Request No. 10 on the ground it is vague,  
23 ambiguous, compound, overbroad and unduly burdensome. LCR further objects to  
24 Request No. 10 to the extent it is premature in that LCR does not yet have in its  
25 custody, possession, or control all documents which it intends to use to support its  
26 case, in part because Defendants have refused to produce requested, relevant  
27 documents and have not yet complied with the Court's order to do so. In addition,  
28 LCR has received within the last week a production of over 55,000 documents from

1 defendants and has not yet had the opportunity or ability to determine which of  
2 those documents it may use to support its case.

3 Subject to and without waiving the foregoing general and specific objections,  
4 LCR responds that it has produced its experts' reports and intends to use those, as  
5 well as the documents, reports, and other materials cited or discussed therein and in  
6 the bibliographies thereto, to support its case; the documents produced as LCR 001-  
7 082; and reserves the right to rely on other documents as discovery and trial  
8 preparation continue.

9  
10 **REQUEST FOR PRODUCTION NO. 11:**

11 Produce all documents consulted or used during the preparation of  
12 Mr. Nicholson's and John Doe's declaration filed with the Court in this case.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

14 LCR objects to Request No. 11 to the extent it seeks documents and  
15 information that are subject to the attorney-client privilege, the attorney work  
16 product doctrine, or other applicable privilege or protection. LCR further objects to  
17 this Request on the ground it is overbroad and unduly burdensome.

18  
19 **REQUESTS FOR ADMISSION**

20 **REQUEST FOR ADMISSION NO. 1:**

21 Admit that John Alexander Nicholson, while on active duty in the Army,  
22 engaged in, attempted to engage in, or solicited another to engage in conduct  
23 defined by 10 U.S.C. § 654(f)(3).

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

25 LCR objects to Request for Admission No. 1 on the grounds that it is vague  
26 and unintelligible. 10 U.S.C. § 654(f)(3) does not define any "conduct"; it defines  
27 several certain specific acts. Because of this vagueness and unintelligibility, LCR  
28 is unable to either admit or deny Request for Admission No. 1. LCR further objects

1 to Request for Admission No. 1 on the grounds it seeks information neither relevant  
2 nor reasonably calculated to lead to the discovery of admissible evidence. Mr.  
3 Nicholson was not discharged for engaging in, attempting to engage in, or soliciting  
4 another to engage in any act defined by 10 U.S.C. § 654(f)(3).

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that John Alexander Nicholson, while on active duty in the Army,  
7 married or attempted to marry a person known to be of the same biological sex.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

9 Deny.

10 **REQUEST FOR ADMISSION NO. 3:**

11 Admit that John Alexander Nicholson, while on active duty in the Army,  
12 disclosed to the Army that he was homosexual.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

14 Admit.

15 **REQUEST FOR ADMISSION NO. 4:**

16 Admit that Mr. Nicholson told the Army that he was homosexual with the  
17 understanding that such a statement creates the rebuttable presumption that he has  
18 the propensity to engage in conduct defined by 10 U.S.C. § 654(f)(3).

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

20 LCR objects to Request for Admission No. 4 on the grounds that it is vague  
21 and unintelligible. 10 U.S.C. § 654(f)(3) does not define any "conduct"; it defines  
22 several certain specific acts. Because of this vagueness and unintelligibility, LCR  
23 is unable to either admit or deny Request for Admission No. 4.

24 **REQUEST FOR ADMISSION NO. 5:**

25 Admit that, following Mr. Nicholson's disclosure to the Army that he was  
26 homosexual, he did not rebut the presumption that he has the propensity to engage  
27 in conduct defined by 10 U.S.C. § 654(f)(3).

28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

2 LCR objects to Request for Admission No. 5 on the grounds that it is vague  
3 and unintelligible. 10 U.S.C. § 654(f)(3) does not define any “conduct”; it defines  
4 several certain specific acts. Because of this vagueness and unintelligibility, LCR  
5 is unable to either admit or deny Request for Admission No. 5.

6 **REQUEST FOR ADMISSION NO. 6:**

7 Admit that Mr. Nicholson waived the right to have his discharge considered  
8 by an administrative separation board.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

10 LCR admits that Mr. Nicholson signed a statement admitting he was  
11 homosexual and waiving his right to have his discharge considered by an  
12 administrative separation board.

13 **REQUEST FOR ADMISSION NO. 7:**

14 Admit that you are unaware of any circumstance in which an individual  
15 serving in the U.S. military has stated that she or he is a homosexual, and that such  
16 a statement has been used by Defendants for any purpose other than to show that  
17 the member has a propensity to engage in conduct defined by 10 U.S.C. § 654(f)(3).

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

19 LCR objects to Request for Admission No. 7 on the ground it is compound,  
20 unintelligible and vague and ambiguous as to the term “for any purpose.” LCR  
21 further objects that its “awareness” of such a circumstance is neither relevant nor  
22 reasonably calculated to lead to the discovery of admissible evidence. LCR also  
23 objects to Request for Admission No. 7 as vague and unintelligible on the separate  
24 basis that 10 U.S.C. § 654(f)(3) does not define any “conduct”; it defines several  
25 certain specific acts. Because of this vagueness and unintelligibility, LCR is unable  
26 to either admit or deny Request for Admission No. 7.

27 **REQUEST FOR ADMISSION NO. 8:**

28 Admit that Mr. Nicholson received an Honorable discharge.



1 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 9:**

4 Admit that you are unaware of any member of the Log Cabin Republicans  
5 who has been discharged under 10 U.S.C. § 654(b)(1).

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

7 LCR objects to Request for Admission No. 9 on the grounds it is overbroad,  
8 unduly burdensome, and seeks information neither relevant nor reasonably  
9 calculated to lead to the discovery of admissible evidence. The Court ruled in its  
10 June 9, 2009 order that “the declaration of one member of an association that he  
11 suffered a harm, coupled with general assertions that other members would suffer  
12 similar harm, suffices to confer standing on an association,” and that LCR had  
13 satisfied this test. LCR need not rely on any individuals other than Mr. Nicholson  
14 or John Doe to establish standing. Subject to and without waiving the foregoing  
15 general and specific objections, LCR responds: Deny.

16 **REQUEST FOR ADMISSION NO. 10:**

17 Admit that the United States has an important governmental interest in the  
18 unit cohesion and morale of the individuals who serve in the Armed Forces.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

20 LCR objects to Request for Admission No. 10 on the grounds that it is  
21 compound, vague, and ambiguous. Subject to and without waiving the foregoing  
22 general and specific objections, LCR admits that the United States has a legitimate  
23 governmental interest in the morale of the individuals who serve in the Armed  
24 Forces. LCR is unable to admit or deny that the United States has a legitimate or  
25 “important” governmental interest in unit cohesion as there is no single  
26 phenomenon called “unit cohesion.” Rather, there are at least two empirically and  
27 psychologically distinct types of group cohesion: “task cohesion” and “social  
28 cohesion.” See, e.g., N. Frank, *Unfriendly Fire* (2009), pp. 129-34, especially the

1 text accompanying and the sources cited in Ch. 5, n. 45; and the expert report of Dr.  
2 Robert J. MacCoun.

3 **REQUEST FOR ADMISSION NO. 11:**

4 Admit that unit cohesion and morale are furthered by minimizing potential  
5 distractions, disturbances, or risks to unit cohesion and morale.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

7 LCR objects to Request for Admission No. 11 on the grounds that it is  
8 compound, vague, and ambiguous. There is no single phenomenon called “unit  
9 cohesion.” Rather, there are at least two empirically and psychologically distinct  
10 types of group cohesion: “task cohesion” and “social cohesion.” See, e.g., N.  
11 Frank, *Unfriendly Fire* (2009), pp. 129-34, especially the text accompanying and  
12 the sources cited in Ch. 5, n. 45; and the expert report of Dr. Robert J. MacCoun.  
13 Because of these ambiguities and imprecisions, LCR is unable to either admit or  
14 deny Request for Admission No. 11.

15 **REQUEST FOR ADMISSION NO. 12:**

16 Admit that sexual tension within a unit could distract, disturb, or otherwise  
17 present a risk to unit cohesion and morale.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

19 LCR objects to Request for Admission No. 12 on the grounds that it is  
20 compound, vague, and ambiguous. The undefined term “sexual tension” could  
21 refer to many different behaviors, emotions, or circumstances, some of which may  
22 be addressable through policy or law and others of which are inherent in the human  
23 condition. Further, there is no single phenomenon called “unit cohesion.” Rather,  
24 there are at least two empirically and psychologically distinct types of group  
25 cohesion: “task cohesion” and “social cohesion.” See, e.g., N. Frank, *Unfriendly*  
26 *Fire* (2009), pp. 129-34, especially the text accompanying and the sources cited in  
27 Ch. 5, n. 45; and the expert report of Dr. Robert J. MacCoun. Because of these  
28 ambiguities and imprecisions, LCR is unable to either admit or deny Request for

1 Admission No. 12.

2 **REQUEST FOR ADMISSION NO. 13:**

3 Admit that unit cohesion and morale are furthered by ensuring that the  
4 privacy of service members is protected.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

6 LCR objects to Request for Admission No. 13 on the grounds that it is  
7 compound, vague, and ambiguous. There is no single phenomenon called “unit  
8 cohesion.” Rather, there are at least two empirically and psychologically distinct  
9 types of group cohesion: “task cohesion” and “social cohesion.” See, e.g., N.  
10 Frank, *Unfriendly Fire* (2009), pp. 129-34, especially the text accompanying and  
11 the sources cited in Ch. 5, n. 45; and the expert report of Dr. Robert J. MacCoun.  
12 Further, the term “privacy” is vague and ambiguous, and covers a multitude of  
13 activities, beliefs, behaviors, and circumstances. Because of these ambiguities and  
14 imprecisions, LCR is unable to either admit or deny Request for Admission No. 13.

15

16 Dated: March 18, 2010

WHITE & CASE LLP

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By: /s/ Patrick Hunnius

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Patrick Hunnius  
Attorneys for Plaintiff  
Log Cabin Republicans

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VERIFICATION

I, Peter Bertelsen, am Vice Chairman of the National Board of Directors of plaintiff Log Cabin Republicans, and am authorized by it to make this Verification on its behalf. I have read the foregoing Responses to Defendants' Interrogatories and am informed and believe that the matters stated therein are true and correct.

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

Executed this 18 day of March, 2010, at Monterey, California.

Peter Bertelsen

Peter Bertelsen

1 PROOF OF SERVICE

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
3 and not a party to the within action. My business address is 633 W. Fifth Street, Suite 1900, Los  
4 Angeles, California 90071-2007. I am employed by a member of the Bar of this Court at whose  
5 direction the service was made.

6 On March 18, 2010, I served the foregoing document(s) described as PLAINTIFF'S  
7 RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES, DOCUMENT  
8 REQUESTS, AND REQUESTS FOR ADMISSION on the person(s) below, as follows:

9 Paul Freeborne, Esq.  
10 Ryan B. Parker, Esq.  
11 United States Department of Justice, Civil Division  
12 Federal Programs Branch  
13 20 Massachusetts Avenue, N.W.  
14 Room 6108  
15 Washington, D.C. 20001

16  **(BY MAIL)** I enclosed the document(s) in a sealed envelope or package  
17 addressed to the person(s) at the address(es) listed above and placed the envelope  
18 for collection and mailing at White & Case LLP, Los Angeles, California,  
19 following our ordinary business practices. I am readily familiar with White &  
20 Case LLP's practice for collection and processing of correspondence for mailing  
21 with the United States Postal Service. Under that practice, the correspondence  
22 would be deposited in the United States Postal Service on that same day in the  
23 ordinary course of business.

24  **(BY OVERNIGHT DELIVERY)** I enclosed the document(s) in an envelope or  
25 package provided by an overnight delivery carrier and addressed to the person(s) at  
26 the address(es) listed above. I placed the envelope or package for collection and  
27 overnight delivery at an office or a regularly utilized drop box of the overnight  
28 delivery carrier, or delivered it to an authorized courier or driver authorized by the  
carrier to receive documents, with delivery fees paid.

**(BY FAX TRANSMISSION)** Based on an agreement of the parties to accept  
service by fax transmission, I faxed the document(s) to the person(s) at the fax  
numbers listed above. The transmission was reported as complete and without  
error. A copy of the record of the fax transmission, which I printed out, is  
attached.

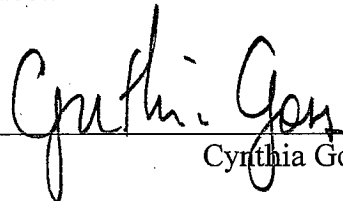
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**(BY PERSONAL SERVICE)** I personally delivered the document(s) to the person(s) at the address(es) listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the document(s) in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the document(s) at the party's residence with some person not less than 18 years of age between the hours of 8:00 a.m. and 6:00 p.m.

**(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted the document(s) electronically to the person(s) at the e-mail address(es) listed above. The transmission was reported as complete and without error.

Executed March 18, 2010, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

  
\_\_\_\_\_  
Cynthia Gomez