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7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 EASTERN DIVISION

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

14 Plaintiff,

15 v.

16
 17 UNITED STATES OF AMERICA and
 18 ROBERT M. GATES (substituted for
 19 Donald H. Rumsfeld pursuant to Fed.
 20 R. Civ. P. 25(d)), SECRETARY OF
 DEFENSE, in his official capacity,

21 Defendants.
 22

Case No. ED CV 04-8425-VAP (Ex)

**[PROPOSED] FINAL PRETRIAL
 CONFERENCE ORDER**

Date: June 28, 2010
 Time: 2:30 p.m.
 Crtrm: 2
 Judge: Hon. Virginia A. Phillips

Complaint filed: October 12, 2004
 Trial Date: July 13, 2010

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1 Following the pretrial conference in this matter held on June 28, 2010,
2 pursuant to Fed. R. Civ. P. 16 and L.R. 16, IT IS HEREBY ORDERED:

3 1. The parties are:

4 (a) The Log Cabin Republicans (“LCR”), a non-profit corporation,
5 plaintiff;

6 (b) The United States of America, defendant; and,

7 (c) Robert M. Gates, Secretary of Defense, in his official capacity,
8 defendant.

9 Each of these parties has been served and has appeared. All other parties
10 named in the pleadings and not identified in the preceding paragraph are now
11 dismissed.

12 The pleadings which raise the issues are:

13 (a) The Original Complaint, filed on October 12, 2004;

14 (b) The First Amended Complaint, filed April 28, 2006; and

15 (c) Answer to the First Amended Complaint, filed July 17, 2009.

16 2. Federal jurisdiction and venue are invoked upon the following
17 grounds: federal jurisdiction exists pursuant to 28 U.S.C §§ 1331, 1346, and 2201.
18 Other than standing, jurisdiction is not otherwise in dispute.

19 Plaintiff asserts that the following facts support venue in this district:

20 (1) Plaintiff has chapters in Los Angeles, Orange, and Riverside counties; (2) at
21 least one of Plaintiff’s homosexual members who serves in the United States
22 Armed Forces resides within the district; and (3) multiple United States Armed
23 Forces military installations that have applied and separated homosexual Americans
24 from the United States Armed Forces pursuant to 10 U.S.C. § 654 and the
25 Regulations promulgated thereunder (“DADT”), are located in this district.

26 Defendants do not concede the facts set forth by Plaintiff but do not contest venue.

27 3. Plaintiff estimates that trial will take no more than 10 days, with time
28 to be divided equally among the parties. Defendants do not believe that any trial is

1 necessary. To the extent the Court believes a trial is warranted, moreover,
2 Defendants believe that a trial should last no more than 4 days, and be bifurcated as
3 to standing, discussed below.

4 4. The trial is to be a non-jury trial.

5 The Court's Minute Order Setting Trial and Pretrial Dates, dated June 3,
6 2010, instructed each of the parties to lodge Proposed Findings of Fact and
7 Conclusions of Law no later than June 21, 2010. If the parties have further
8 revisions to their Proposed Findings of Fact and Conclusions of Law, each party
9 shall lodge and serve them by e-mail, fax, or personal delivery, as required by L.R.
10 52-1, at least seven (7) days prior to trial.

11 5. The following facts are admitted and require no proof: none.

12 6. The following facts, though stipulated, shall be admitted without
13 prejudice to any evidentiary objection at trial: none.

14 7. The following claims and defenses, and no others, remain to be
15 litigated at trial:

16 **Plaintiff:**

17 (a) Plaintiff plans to pursue the following claims against Defendants: (1)
18 Due Process (including standard of review, military deference, and post-enactment
19 evidence); (2) First Amendment (including standard of review). Plaintiff also
20 addresses the issue of standing.

21 **Plaintiff has standing**

22 (b) The elements required to establish that Plaintiff has standing are:

23 (1) An association has standing to sue on behalf of its members
24 when "(a) its members would otherwise have standing to sue in their own right; (b)
25 the interests it seeks to protect are germane to the organization's purpose; and (c)
26 neither the claim asserted nor the relief requested requires the participation of
27 individual members in the lawsuit." Hunt v. Wash. State Apple Adver. Comm'n,
28 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977).

1 (2) To show standing, a plaintiff must demonstrate: “(1) he suffered
2 or will suffer an 'injury in fact' that is concrete, particularized, and actual or
3 imminent; (2) the injury is fairly traceable to defendant's challenged action; and (3)
4 the injury is likely, not merely speculative, and will be redressed by a favorable
5 decision.” Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1171 (9th Cir.
6 2002); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct.
7 2130, 119 L. Ed. 2d 351 (1992).

8 (c) In brief, the key evidence that establishes that Plaintiff has standing is:

9 (1) Lay Witness testimony: (i) John Alexander Nicholson will testify
10 to his membership in LCR and his enlistment and discharge under DADT from the
11 United States Army; (ii) Philip Bradley will testify regarding John Doe’s
12 membership in LCR and his current service in the United States Army; and (iii)
13 Jamie Ensley, Terry Hamilton, and C. Martin Meekins will also provide testimony
14 related to standing. The John Doe Declaration provides additional evidence related
15 to standing.

16 (2) Exhibits that include: Ex. Numbers 36, 109, 110, 110A.

17 **Claim 1: DADT violates substantive due process.**

18 **Standard of Review**

19 In its ruling on Defendants’ Motion for Summary Judgment, the Court
20 declared that it was “inclined [to] apply the standard of review set forth in Witt v.
21 Dep’t of the Air Force, 527 F.3d 806, 819 (9th Cir. 2008).” Mot. for Summ. J.
22 Order p. 26. Plaintiff agrees with the Court’s inclination and submits that the Witt
23 Standard applies to its due process challenge. The Court, however, has yet to rule
24 on the applicable standard, in part, because supplemental briefing on the issue will
25 not be complete until June 23, 2010. Accordingly, the two potentially applicable
26 standards are included here.

27 **The Witt Intermediate Scrutiny Standard**

28 (1) “[W]hen the government attempts to intrude upon the personal

1 and private lives of homosexuals, in a manner that implicates the rights identified in
2 Lawrence, the government must advance an important government interest, the
3 intrusion must significantly further that interest, and the intrusion must be necessary
4 to further that interest.” Witt, 527 F.3d at 819.

5 (2) If this test is not met, then DADT is unconstitutional.

6 **Active Rational Basis Standard**

7 (1) Rational basis requires a showing that Congress “rationally
8 *could have believed*” that the conditions of the statute would promote its objective.
9 W. & S. Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648, 671-72, 101 S. Ct.
10 2070, 68 L. Ed. 2d 514 (1981) (emphasis in original).

11 (2) If the rational basis test is satisfied, then the Court must
12 determine whether the challenged statute meets additional requirements.

13 (3) There must be an actual, and not hypothetical, reason to further
14 DADT’s purpose. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 448-
15 50, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).

16 (4) DADT must be grounded in “sufficient factual context” for the
17 Court to ascertain some relationship between the legislation and its asserted
18 purposes. Romer v. Evans, 514 U.S. 620, 632-33, 134 L. Ed. 2d 855, 116 S. Ct.
19 1620 (1996).

20 (5) DADT cannot give private biases effect, directly or indirectly.
21 Palmore v. Sidoti, 466 U.S. 429, 433, 104 S. Ct. 1879, 80 L. Ed. 2d 421 (1984).

22 **Judicial Deference to Military Affairs**

23 (1) “[T]he duty rests on the courts, in time of war as well as in time
24 of peace, to preserve unimpaired the constitutional safeguards of civil liberty.”
25 Hamdan v. Rumsfeld, 548 U.S. 557, 588, 126 S. Ct. 2749, 165 L. Ed. 2d 723
26 (2006).

27 (2) Military-related legislation is subject to a heightened “active”
28 rational basis review. Pruitt v. Cheney, 963 F.2d 1160, 1165-66 (9th Cir. 1991).

1 **Post-Enactment Evidence Is Relevant**

2 (1) Constitutional review of Congressional legislation is not limited
3 to examination of evidence available at the time of enactment. The Court may
4 scrutinize post-enactment evidence and evidence of changed circumstances.

5 (2) “Those who drew and ratified the Due Process Clauses ... knew
6 times can blind us to certain truths and later generations can see that laws once
7 thought necessary and proper in fact serve only to oppress. As the Constitution
8 endures, persons in every generation can invoke its principles in their own search
9 for greater freedom.” Lawrence v. Texas, 539 U.S. 558, 578-79, 156 L. Ed. 2d 508,
10 123 S. Ct. 2472 (2003).

11 (3) Evidence developed at trial is relevant to determine whether the
12 statute has produced the results that its advocates predicted would occur. Western
13 & Southern Life Ins., 451 U.S. at 652, 673-74.

14 (4) The post-enactment evidence includes empirical studies and
15 statistical data presented by authorities in this field. Id. at 673-74.

16 **Due Process Elements**

17 (1) Plaintiff’s members who serve and served in the United States
18 Armed Forces have constitutional liberties and a right to privacy under the Due
19 Process Clause of the United States Constitution.

20 (2) Homosexual servicemembers’ constitutional liberties and right
21 to privacy under the Due Process Clause of the Fifth Amendment encompass and
22 protect intimate, consensual physical acts and relationships with persons of the
23 same gender. Lawrence, 539 U.S. at 578-79.

24 (3) DADT violates homosexual current and former
25 servicemembers’ constitutional liberties and right to privacy under the Due Process
26 Clause of the Fifth Amendment by authorizing the government to investigate their
27 private, consensual intimate relationships.

28 (4) DADT further violates homosexual current and former

1 servicemembers' constitutional liberties and right to privacy under the Due Process
2 Clause of the Fifth Amendment by authorizing the government to discharge
3 homosexuals from the Armed Forces if it is determined that they have engaged in,
4 attempted to engage in, or demonstrated a propensity or intent to engage in private,
5 consensual physical acts with persons of the same gender.

6 (6) As a result of Defendants' implementation and enforcement of
7 DADT, Plaintiff's members have suffered injury and will suffer further irreparable
8 harm to their constitutional rights under the Fifth Amendment if DADT is not
9 declared unconstitutional and defendants are not enjoined from enforcing DADT.

10 (7) Plaintiff's members have no adequate remedy at law.

11 **Requested Relief**

12 (8) Plaintiff seeks a declaration that DADT is unconstitutional;

13 (9) Plaintiff seeks a preliminary and permanent injunction enjoining
14 Defendants from enforcing DADT;

15 (10) Plaintiff seeks attorneys' fees pursuant to the Equal Access to
16 Justice Act, 28 U.S.C. § 2412;

17 (11) Plaintiff seeks costs of suit; and

18 (12) Plaintiff seeks any other relief the Court deems just and proper.

19 (c) In brief, the key evidence Plaintiff relies on in support of its due
20 process claim is:

21 (1) Expert testimony: (i) Nathaniel Frank Ph.D will testify, among
22 other things, about the history and implementation of DADT; (ii) Robert MacCoun
23 Ph.D (by deposition) will describe, among other things, unit cohesion and how
24 DADT impacts it; (iii) Melissa Sheridan Embser-Herbert Ph.D and J.D. will testify,
25 among other things, about DADT's disproportionate impact on women
26 servicemembers and Congress's failure to consider such future impact when
27 enacting DADT; (iv) Elizabeth Hillman J.D.Ph.D and former servicemember will
28 testify, among other things, about how DADT's rationales are not based on

1 evidence and do not apply to women in the military; (v) Former Assistant Secretary
2 of Defense Lawrence Korb will testify, among other things, on the lack of
3 supporting evidence to achieve DADT's purported objective; (vi) Alan Okros Ph.D
4 will testify, among other things, about Canada's policy on homosexual
5 servicemembers and its experience under that policy; and (vii) Aaron Belkin Ph.D
6 will testify, among other things, about the experiences of other countries that permit
7 openly homosexual servicemembers;

8 (2) Lay witness testimony: (i) Joseph Rocha, Jenny Kopfstein,
9 Major Michael Almy, SSgt. Anthony Loverde, J. Alexander Nicholson III, and
10 Stephen J. Vossler will testify regarding discharges of homosexual servicemembers
11 that did not further any government interest; (ii) Col. Jamie Scott Brady (by
12 deposition) will testify regarding a number of issues related to DADT; (iii) Dennis
13 Drogo (by deposition) will testify regarding waivers and admission of felons to the
14 U.S. Armed Forces; and (iv) Paul Gade (by deposition) will testify about the
15 experiences of other countries that permit openly homosexual servicemembers;

16 (3) Documents on the Plaintiff's Exhibit List filed concurrently
17 herewith.

18 **Claim 2: DADT violates the First Amendment.**

19 **Standard of Review**

20 (1) By its express terms, DADT impermissibly restricts, punishes,
21 and chills all public and private speech identifying a servicemember as homosexual.
22 Simon & Schuster, Inc., 502 U.S. 105, 118, 123, 112 S. Ct. 501, 116 L. Ed. 2d 476
23 (1991). DADT provides that "sexual orientation is considered a personal and
24 private matter," and at the same time permits the U.S. Armed Forces to discharge
25 servicemembers for homosexual "conduct." The "conduct," however, includes the
26 statement: "I am a homosexual." This is, undeniably, a restriction on speech;

27 (2) DADT is overbroad in violation of the First Amendment
28 because it punishes and restricts speech that does no more than acknowledge a

1 permissible status. Virginia v. Hicks, 539 U.S. 113, 118-19, 123 S. Ct. 2191, 156
2 L. Ed. 2d 148 (2003); Broadrick v. Oklahoma, 413 U.S. 601, 614, 93 S. Ct. 2908,
3 37 L. Ed. 2d 830 (1973);

4 (3) Restricting a statement of a homosexual identity in civilian life
5 has no rational connection to a compelling governmental interest. Hynes v. Mayor
6 and Counsel of the Borough of Oradell, 425 U.S. 610, 620, 96 S. Ct. 1755, 48 L.
7 Ed. 2d 243 (1976);

8 (4) DADT is unconstitutionally vague because the speech it
9 prohibits is unclear. NAACP v. Button, 371 U.S. 415, 432, 83 S. Ct. 3285, 9 L. Ed.
10 2d 40 (1963);

11 (5) DADT impermissibly prohibits homosexuals from participating
12 meaningfully and freely in discussion of governmental affairs and improperly
13 inhibits their ability to debate on public issues. McDonald v. Smith, 472 U.S. 479,
14 482, 105 S. Ct. 2787, 86 L. Ed. 2d 384 (1985);

15 (6) DADT impermissibly prohibits homosexual servicemembers
16 from contributing to “effective public advocacy . . . enhanced by group
17 association.” NAACP v. Alabama, 357 U.S. 449, 460, 78 S. Ct. 1163, 2 L. Ed. 2d
18 1488 (1958);

19 (7) DADT fails to be viewpoint neutral: “regulations restricting
20 speech on military installations may not discriminate against speech based upon its
21 viewpoint...a regulation is viewpoint based if it suppresses the expression of one
22 side of a particular debate.” Nieto v. Flatau, No. 7:08-CV-185-H, --- F. Supp. 2d --
23 --, 2010 WL 2216199, *12 (E.D.N.C. Mar. 31, 2010) (citations omitted).

24 **First Amendment Elements**

25 (1) Plaintiff’s homosexual members who serve, and served, in the
26 United States Armed Forces, including Mr. Nicholson and John Doe, have the
27 constitutional right to free speech and expression and right to petition under the
28 First Amendment of the United States Constitution.

1 (2) DADT violates Plaintiff's members' rights to free speech and
2 expression and right to petition under the First Amendment by impermissibly
3 restricting, punishing, and chilling all public and private speech that would tend to
4 identify Plaintiff's members and other members of the United States Armed Forces
5 as homosexuals. DADT impermissibly burdens such speech on the basis of the
6 content and viewpoint of such speech.

7 (3) As a result of Defendants' implementation and enforcement of
8 DADT, Plaintiff's members have suffered injury and will suffer further irreparable
9 harm to their constitutional rights under the First Amendment if DADT is not
10 declared unconstitutional and defendants are not enjoined from enforcing DADT.

11 (4) Plaintiff's members have no adequate remedy at law.

12 **Requested Relief**

13 (5) Plaintiff seeks a declaration that DADT is unconstitutional;

14 (6) Plaintiff seeks a preliminary and permanent injunction enjoining
15 Defendants from enforcing DADT;

16 (7) Plaintiff seeks attorneys' fees pursuant to the Equal Access to
17 Justice Act, 28 U.S.C. § 2412;

18 (8) Plaintiff seeks costs of suit; and

19 (9) Plaintiff seeks any other relief the Court deems just and proper..

20 (c) In brief, the key evidence Plaintiff relies on for its First Amendment
21 claim is:

22 (1) Expert testimony: (i) Nathaniel Frank Ph.D will testify, among
23 other things, about the history and implementation of DADT; (ii) Robert MacCoun
24 Ph.D (by deposition) will describe, among other things, unit cohesion and how
25 DADT impacts it; (iii) Melissa Sheridan Embser-Herbert Ph.D and J.D. will testify,
26 among other things, about DADT's disproportionate impact on women
27 servicemembers and Congress's failure to consider such future impact when
28 enacting DADT; (iv) Elizabeth Hillman J.D.Ph.D and former servicemember will

1 testify, among other things, about how DADT's rationales are not based on
2 evidence and do not apply to women in the military; (v) Former Assistant Secretary
3 of Defense Lawrence Korb will testify, among other things, on the lack of
4 supporting evidence to achieve DADT's purported objective; (vi) Alan Okros Ph.D
5 will testify, among other things, about Canada's policy on homosexual
6 servicemembers and its experience under that policy; and (vii) Aaron Belkin Ph.D
7 will testify, among other things, about the experiences of other countries that permit
8 openly homosexual servicemembers;

9 (2) Lay witness testimony: (i) Joseph Rocha, Jenny Kopfstein,
10 Major Michael Almy, SSgt. Anthony Loverde, J. Alexander Nicholson III, and
11 Stephen J. Vossler will testify regarding discharges of homosexual servicemembers
12 that did not further any government interest; (ii) Col. Jamie Scott Brady (by
13 deposition) will testify regarding a number of issues related to DADT; (iii) Dennis
14 Drogo (by deposition) will testify regarding waivers and admission of felons to the
15 U.S. Armed Forces; and (iv) Paul Gade (by deposition) will testify about the
16 experiences of other countries that permit openly homosexual servicemembers;

17 (3) Documents on the Plaintiff's Exhibit List filed concurrently
18 herewith.

19 Defendant(s):

20 (a) Defendants do not assert any counterclaims or affirmative defenses
21 under Fed. R. Civ. P. 8(c). Defendants do not, however, believe that Plaintiff can
22 carry its threshold burden of establishing standing and fundamentally disagree with
23 Plaintiff's legal theory and characterization of what is at issue in this challenge.

24 (b), (c) Defendants do not assert any counterclaims or affirmative defenses.

25 Third Party Plaintiffs and Defendants: None.

26 8. In view of the admitted facts and the elements required to establish the
27 claims, the following issues remain to be tried: see above for Plaintiff's contentions
28 of what remains to be tried. Defendants do not believe a trial is appropriate for all

1 of the reasons set forth in briefing and argument in this case.

2 9. Plaintiff contends that all discovery is complete. Defendants contend,
3 however, that in the event the Court does not strike the declaration of Mr. Meekins,
4 the Court has not yet ruled upon Defendants' request to depose Mr. Meekins.

5 10. All disclosures under Fed. R. Civ. P. 26(a)(3) have been made.

6 The parties were unable to reach an agreement as to the exhibits, so each has
7 filed an exhibit list. The parties will continue to work to create a joint exhibit list as
8 required by L.R. 16-6.1. Unless all parties agree that an exhibit shall be withdrawn,
9 all exhibits will be admitted without objection at trial, except those exhibits listed
10 below:

11 Plaintiff does not object to any of Defendants' Exhibits.

12 Defendants object to Exhibit Nos. 2, 6, 9-13, 15-18, 20-23, 25-27, 29-36, 38,
13 40-41, 43-45, 50-56, 58-67, 69-81, 83, 85-87, 89-90, 95-97, 101, 103-108, 110A,
14 111-129, 131-157, 159-175, 177-178, 180-195, 197-199, 201- 203, 206, 208-213,
15 216-238, 240-287, 289-290, 292-336. In addition to the objections to these
16 exhibits, Plaintiff has identified additional exhibits after the submission of
17 defendants' motion in limine. Defendants object to Plaintiff's Exhibit Nos. 337,
18 338, and 339 on the grounds of relevance and foundation. Defendants also object
19 to Plaintiff's Exhibit No. 340 on the basis of foundation, authentication, and best
20 evidence.

21 The objections and grounds therefor are: Defendants' objections are
22 contained in the chart in docket no. 179-1.

23 11. Witness lists of the parties have been filed with the Court. Defendants
24 stipulate to the authenticity and admissibility of Exhibit A to the Declaration of
25 Craig Engle (Doc. 144), which is a copy of the Bylaws of LCR, Inc. In exchange
26 for this stipulation, Plaintiff has agreed not to call Mr. Engle as a witness at trial.

27 Only the witnesses identified on the respective lists will be permitted to
28 testify (other than solely for impeachment). It is Defendants' position that while

1 they do not at present anticipate calling witnesses on the question of standing,
2 Defendants reserve the right to call witnesses identified on Plaintiff's witness list
3 regarding that question.

4 Each party intending to present evidence by way of deposition testimony has
5 marked such depositions in accordance with L.R. 16-2.7. For this purpose, the
6 following depositions shall be lodged with the Clerk as required by L.R. 32-1:

7 (a) Col. Jamie Scott Brady, c/o U.S. Department of Justice, Civil
8 Division Federal Programs Branch, P.O. Box 883, Washington
9 D.C. 20044, (202) 353-0543;

10 (b) Dennis Drago, c/o U.S. Department of Justice, Civil Division
11 Federal Programs Branch, P.O. Box 883, Washington D.C.
12 20044, (202) 353-0543;

13 (c) Paul Gade, c/o U.S. Department of Justice, Civil Division
14 Federal Programs Branch, P.O. Box 883, Washington D.C.
15 20044, (202) 353-0543;

16 (d) Robert J. MacCoun, University of California, Berkeley, 2607
17 Hearst Avenue, Berkeley, CA 94720-7320, (510) 642-7518.

18 Defendants object to the presentation of testimony by deposition of the
19 following witnesses: Col. Jamie Scott Brady, Dennis Drago, Paul Gade, and Robert
20 J. MacCoun.

21 12. The following law and motion matters and motions in limine, and no
22 others, are pending or contemplated prior to trial:

23 (a) The Court denied Defendants' motion for summary judgment
24 regarding standing, finding triable issues. The Court has yet to
25 rule on the motion as it relates to Plaintiff's substantive due
26 process or First Amendment claims and has requested
27 supplemental briefing on the "application of the Witt standard of
28 review to the DADT Policy."

- 1 (b) Defendants filed a Motion in Limine to exclude Plaintiff's lay
2 witnesses.
- 3 (c) Defendants filed a Motion in Limine to exclude Plaintiff's
4 expert witnesses.
- 5 (d) Defendants filed a Motion in Limine to exclude Plaintiff's
6 exhibits.

7 13. Plaintiff does not believe bifurcation is necessary. As set forth in
8 Defendants' Pretrial Memorandum of Contentions of Fact and Law, to the extent a
9 trial is held in this case, Defendants request that the trial be bifurcated and require
10 Plaintiff be required to first carry its burden of establishing associational standing
11 before the merits are reached.

12 14. The foregoing admissions having been made by the parties, and the
13 parties having specified the foregoing issues remaining to be litigated, this Final
14 Pretrial Conference Order shall supersede the pleadings and govern the course of
15 the trial of this cause, unless modified to prevent manifest injustice.

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17 Dated: June ____, 2010

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VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

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1 Approved as to form and content.

2 WHITE & CASE LLP

3 By: /s/ Dan Woods

4 Dan Woods
5 Attorneys for Plaintiff
6 Log Cabin Republicans

6 UNITED STATES DEPARTMENT
7 OF JUSTICE, CIVIL DIVISION,
8 FEDERAL PROGRAMS BRANCH

8 By: *Terra Myers by consent of Paul Freeborne*
9 Paul Freeborne

10 Attorneys for Defendants
11 United States of America and
12 Robert M. Gates, Secretary of Defense,
13 in his official capacity

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