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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 EASTERN DIVISION
 13

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

16 Plaintiff,

17 v.

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

20 Defendants.
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Case No. CV04-8425 VAP (Ex)

**DECLARATION OF MELANIE C.
 SCOTT IN SUPPORT OF
 PLAINTIFF LOG CABIN
 REPUBLICANS' OPPOSITION TO
 DEFENDANTS' MOTION *IN*
 LIMINE TO EXCLUDE LAY
 WITNESS TESTIMONY**

Date: June 28, 2010

Time: 2:30 p.m.

Place: Courtroom of Judge Phillips
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DECLARATION OF MELANIE C. SCOTT

I, Melanie C. Scott, declare:

1. I am an attorney admitted to practice before all courts of the State of California and the United States District Court for the Central District of California. I am an associate with the firm White & Case LLP, counsel of record for Plaintiff Log Cabin Republicans (“Log Cabin”). I submit this declaration in support of Log Cabin’s opposition to Defendants’ Motion *in Limine* to Exclude Lay Witness Testimony. I have personal knowledge of the facts stated herein or know of such facts from my review of the file in this case, and, if called upon to do so, could competently testify thereto.

2. At the hearing on April 26, 2010, the Court stated that it was inclined to apply the heightened standard of scrutiny adopted by the Ninth Circuit in Witt v. Dep't of the Air Force, 527 F.3d 806, 819 (9th Cir. 2008). Based on the Court’s statement, Log Cabin’s counsel realized the necessity of introducing testimony of former servicemembers at trial to show DADT’s impact on the military and the manner of its enforcement.

3. Three weeks prior to the hearing, on April 6, 2010, I had emailed, via Facebook, Former Mjr. Michael Almy and Former Sgt. Stephen Vossler requesting they contact me to discuss their experiences under DADT so that I could determine whether they had information relevant to this case. On April 7, 2010, I spoke with Former Sgt. Vossler, and on April 8, 2010, I spoke with Former Mjr. Almy. During those conversations, Former Mjr. Almy and Former Sgt. Vossler explained their experiences in the military, and I gave them general information concerning this case. At that time, we had not decided whether fact testimony was relevant to Log Cabin’s case.

EXHIBIT A

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12 Attorneys for Plaintiff
13 LOG CABIN REPUBLICANS

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 LOG CABIN REPUBLICANS)

17 Plaintiff,)

18 vs.)

19 UNITED STATES OF AMERICA and)
20 ROBERT M. GATES, SECRETARY)
21 OF DEFENSE, in his official capacity,)

22 Defendants.)
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Case No. CV 04-8425 VAP (Ex)

LOG CABIN REPUBLICANS'
NOTICE OF DEPOSITION OF
UNITED STATES OF AMERICA and
ROBERT M. GATES, SECRETARY
OF DEFENSE PURSUANT TO
F.R.C.P. 30(b)(6)

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 25, 2010, commencing at
3 9:00 a.m. at the offices of White & Case LLP located at 701 Thirteenth Street, NW,
4 Washington, District of Columbia, 20005-3807, or at such other time as the parties
5 agree, Plaintiff LOG CABIN REPUBLICANS will take the deposition upon oral
6 examination under oath of Defendants UNITED STATES OF AMERICA and
7 ROBERT M. GATES, SECRETARY OF DEFENSE, pursuant to Federal Rule of
8 Civil Procedure 30(b)(6). If the deposition is not completed on the agreed upon day, it
9 will continue day to day, excluding weekends and holidays, as necessary, until
10 completed. The deposition will take place before a certified court reporter authorized
11 to administer oaths and will be recorded stenographically, by videotape, and through
12 the instant visual display of testimony. Plaintiff reserves the right to use the videotape
13 of the deposition at the time of trial or at such other time as may be appropriate.

14 This notice names a governmental agency as a deponent. Under the provisions
15 of Rule 30(b)(6), Defendants shall identify and produce for deposition one or more
16 officers, directors, managing agents and other persons who consent to testify on its
17 behalf and are the officers, directors, agents or other persons most knowledgeable as
18 to the matters set forth below.

19 At the deposition, testimony will be sought related to the following topics. If
20 Defendants have an objection to providing testimony concerning any specific topic,
21 we request that Defendants let us know of that objection well prior to the noticed date
22 of the deposition so that we will have time to attempt to resolve the objection prior to
23 the date of deposition. Further, we request that Defendants identify the representative
24 who will be testifying on each topic at least five business days prior to the deposition
25 to assist us in conducting an efficient and productive deposition.

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1 I. DEFINITIONS

2 The following terms shall have the meanings set forth below:

3 1. "Defendants" means United States of America, and its current and former
4 employees, attorneys, accountants, agents, officers, departments, and representatives.

5 2. "DOD" means the United States Department of Defense.

6 3. The term "relating to" means consisting of, constituting, concerning,
7 referring to, embodying, comprising, reflecting, identifying, stating, dealing with,
8 commenting on, responding to, describing, evidencing, analyzing, containing
9 information concerning, or in any way pertaining to the subject matter of the
10 Requests, whether directly or indirectly.

11 4. "Policy" shall mean the so-called "Don't Ask, Don't Tell, Don't Pursue"
12 policy, codified as federal law in Title 10, Section 654 of the United States Code,
13 entitled "Policy Concerning Homosexuality in the Armed Forces," and any
14 Department of Defense regulations promulgated pursuant to Title 10, Section 654 of
15 the United States Code, including, but not limited to, the following:

16 (a) the memorandum dated February 5, 1994 from Defense Secretary
17 Les Aspin to the service secretaries and the Chairman of the Joint Chiefs of Staff
18 entitled "Implementation of DOD Policy on Homosexual Conduct in the Armed
19 Forces" (referred to hereinafter as the "Implementation Memorandum");

20 (b) DOD Directive 1304.26 entitled "Qualification Standards for
21 Enlistment, Appointment and Induction";

22 (c) the memorandum from Assistant Defense Secretary Edwin Dorn to
23 the assistant service secretaries entitled "Briefing Armed Forces Applicants" (referred
24 to hereinafter as the "Briefing Memorandum");

25 (d) DOD Directive 1332.14 entitled "Enlisted Administrative
26 Separations";

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1 (e) DOD Directive 1332.30 entitled "Separation of Regular
2 Commissioned Officers";

3 (f) DOD Instruction 5505.8 entitled "Investigations of Sexual
4 Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law
5 Enforcement Organizations";

6 (g) the memorandum from the Deputy Defense Secretary to the
7 secretaries of the military departments entitled "Implementation of 'Policy Guidelines
8 on Homosexual Conduct in the Armed Forces' in Personnel Security Investigation and
9 Adjudication" (referred to hereinafter as the "Investigation and Adjudication
10 Memorandum"); and

11 (h) the memorandum from Assistant Defense Secretary Edwin Dorn to
12 the assistant service secretaries entitled "Training Guidance for DOD Policy on
13 Homosexual Conduct in the Armed Forces," and the attached "DOD Policy on
14 Homosexual Conduct Training Plan" (referred to hereinafter collectively as the
15 "Training Plan Memorandum").

16 5. "United States Armed Forces" refers to all branches of the United States
17 military including the Air Force, Army, Marines, Navy, National Guard, Coast Guard
18 and any other special military forces.

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20 II. AREAS REGARDING WHICH PLAINTIFFS SEEK TESTIMONY

21 1. The application of the Policy to women service members, including: (1)
22 the manner in which the Policy is implemented with respect to them; (2) the manner in
23 which allegations concerning women service members are investigated; (3) the
24 number of women service members against whom investigations and separation
25 proceedings are initiated as a percentage of investigations and separation proceedings
26 initiated against all service members; and (3) the number of women service members

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1 discharged under the Policy as a percentage of the total number of discharges pursuant
2 to the Policy.

3 2. The application of the Policy to medical, linguistic, administrative, or
4 other non-combat-assigned service members.

5 3. The application of the Policy to service members deployed overseas to
6 combat theatres from 2001 to the present, such as Operation Enduring Freedom in
7 Afghanistan and Operation Iraqi Freedom, including the total number of service
8 members discharged or investigated pursuant to the Policy, any consideration,
9 discussion or deliberation regarding whether to suspend either the Policy, any
10 investigation pursuant to the Policy or any discharge proceeding initiated under the
11 Policy.

12 4. The compatibility or incompatibility of gay and lesbian Americans with
13 service in the United States Armed Forces, including the effect of the presence of such
14 individuals, if any, on unit cohesion, combat effectiveness, unit morale, good order,
15 discipline, and readiness to fight.

16 5. The effect or lack of effect of Lawrence v. Texas, 539 U.S. 558 (2003) on
17 the Policy, the application of the Policy, or the legality of the Policy.

18 6. Reports, studies or analyses conducted by or on behalf of Defendants
19 relating to the experience of the armed forces of nations other than the United States
20 with military service by individuals with a homosexual orientation or by individuals
21 who engage in homosexual conduct, including the consideration or evaluation of such
22 service by those foreign states or their armed forces.

23 7. Reports, research, or analysis concerning United States Armed Forces
24 personnel and homosexual conduct or homosexual orientation commissioned,
25 requested, or received by Defendants from any person or organization, including, but
26 not limited to, the RAND Corporation, Family Research Council, the Defense
27 Readiness Council, the Center for Military Readiness, The Retired Officers
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1 Association (now the Military Officers Association of America), TROA, the
2 American Security Council Foundation, the Conservative Resource Center, Exodus
3 International, Regeneration, the Jackson Institute, Walter Reed Army Institute of
4 Research, PERSEREC (Defense Personnel Security Research and Education Center),
5 Military Working Group Study, US Government Accountability Office, and the
6 Homosexual Study Group.

7 8. Defendants' contention that the Policy is rationally related to a legitimate
8 purpose.

9 9. Deployment of known or suspected gay or lesbian service members from
10 the year 2001 to the present, including any policies, procedures, handbooks, rules,
11 guidelines, or communications relating to such deployments.

12 10. Deployment of gay or lesbian service members who were
13 contemporaneously either in the process of discharge proceedings for homosexual
14 conduct or under investigation for allegedly engaging in homosexual conduct or any
15 other alleged breach of the Policy from the year 2001 to the present.

16 11. The recruiting and hiring policies of private contractor corporations
17 employed since 2002 by the United States in Iraq or Afghanistan, specifically relating
18 to any non-discrimination policies or DOD guidelines as to those policies.

19 12. Statistics regarding discharges from 1994 through the present pursuant to
20 the Policy, including: (1) the total number of service members discharged; (2) the total
21 number of women discharged; (3) the total number of officers discharged; (4) the total
22 number of persons discharged specified by specialty and/or category (e.g., number of
23 translators, doctors, nurses, attorneys, linguists, mechanics, etc.); the total number of
24 persons that contested their discharge; and (5) the number of persons that were
25 subjected to discharge proceedings, contested their discharge, and ultimately were not
26 discharged.

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1 13. The annual total number of felons, identified as such prior to enlistment,
2 serving in the United States Armed Forces since the adoption of the policy permitting
3 felons' service in the United States Armed Forces.

4 14. The history, consideration, development, creation, authorization, reasons
5 for authorization, adoption, and implementation of each branch of the United States
6 Armed Forces' respective policy regarding moral waivers of prior felony convictions,
7 including any amendments to such policies or changes in the implementation of or
8 criteria for such policies since 2001.

9 15. Polls conducted by or on behalf of the Defendants measuring public
10 opinion regarding service by gay or lesbian individuals or persons who engage in
11 homosexual conduct in the United States Armed Forces, including both polls that
12 measure public opinion within the United States Armed Forces and polls measuring
13 public opinion among United States citizens.

14 16. The fiscal effect of the Policy, including any studies, reports, research or
15 analysis regarding the expenses associated with the Policy, the costs of recruiting
16 additional personnel to replace service members discharged pursuant to the Policy,
17 and the costs expended training service members discharged pursuant to the Policy.

18 17. The identity of the person or persons primarily responsible for the
19 administration of the Policy either for the United States Government as a whole, the
20 Department of Defense and/or each branch of the United States Armed Forces.

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22 Dated: December 21, 2009

WHITE & CASE LLP

23
24 By 

Patrick Hunnius

Attorneys for Plaintiff

LOG CABIN REPUBLICANS

PROOF OF SERVICE

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

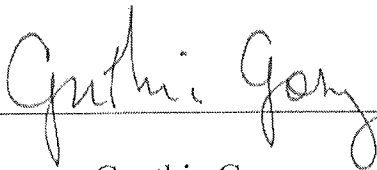
On December 2, 2009, I served the foregoing document(s) described as LOG CABIN REPUBLICANS' NOTICE OF DEPOSITION OF UNITED STATES OF AMERICA and ROBERT M. GATES, SECRETARY OF DEFENSE PURSUANT TO F.R.C.P. 30(b)(6) on the person(s) below, as follows:

Roger West, AUSA First Assistant Chief U.S. Department of Justice United States Attorney Central Division of California Federal Building, Suite 7516 300 North Los Angeles Street Los Angeles, CA 90012 Telephone: (213) 894-2461 Facsimile: (213) 894-7819/7385	Tony West Vincent M. Garvey Paul G. Freeborne U.S. Department of Justice, Civil Div. Federal Programs Branch P.O. Box 883 Washington, DC 20044 Telephone: (202) 353-0543 Fax: (202) 616-8460 / (or) (202) 616-8202
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(BY MAIL) I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing at White & Case, LLP, Los Angeles, California, following our ordinary business practices. I am readily familiar White & Case's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

Executed on December 2, 2009 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