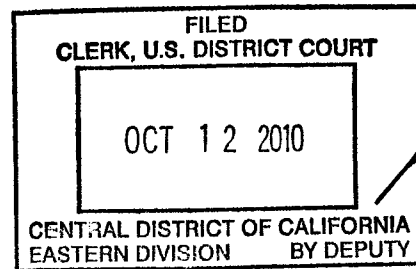


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9 Log Cabin Republicans



*Muna Pro Tunc AS OF  
July 10, 2010*

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

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

13  
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  
21 DEFENSE, in his official capacity,

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. <sup>LA</sup>~~EX~~ 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

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. On July 6, 2010, the Court issued its ruling, denying

27 *DS' Motion* **The Witt Intermediate Scrutiny Standard** *holding the Witt standard governed Plaintiff's substantive due process claim. ref*

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." *The Court denied AS' motion  
for summary judgment on July 6, 2010. vsp*

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- (b) Defendants filed a Motion in Limine to exclude Plaintiff's lay witnesses.
- (c) Defendants filed a Motion in Limine to exclude Plaintiff's expert witnesses.
- (d) Defendants filed a Motion in Limine to exclude Plaintiff's exhibits.

*These motions were denied as set forth in the Court's written ruling of July 1, 2010 (Doc. 210)*

13. Plaintiff does not believe bifurcation is necessary. As set forth in Defendants' Pretrial Memorandum of Contentions of Fact and Law, to the extent a

trial is held in this case, Defendants request that the trial be bifurcated and require Plaintiff be required to first carry its burden of establishing associational standing before the merits are reached. *The request for bifurcation is denied*

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

Dated: ~~June~~ *July* 10, 2010

*Virginia A. Phillips*  
 \_\_\_\_\_  
 VIRGINIA A. PHILLIPS  
 UNITED STATES DISTRICT JUDGE

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: *David Meyers by consent of Paul Freeborne*  
9 Paul Freeborne

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

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