

## Form 6. Civil Appeals Docketing Statement

USCA DOCKET # (IF KNOWN)

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
CIVIL APPEALS DOCKETING STATEMENT**

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

<b>TITLE IN FULL:</b> LOG CABIN REPUBLICANS, Plaintiff, vs. UNITED STATES of AMERICA and ROBERT M. GATES, SECRETARY OF DEFENSE, in his official capacity, Defendants.	<b>DISTRICT:</b> CDCA <b>JUDGE:</b> George P. Schiavelli	
	<b>DISTRICT COURT NUMBER:</b> CV04-8425 GPS (ex)	
	<b>DATE NOTICE OF APPEAL FILED:</b> July 22, 2008	<b>IS THIS A CROSS-APPEAL?</b> <input type="checkbox"/> YES
	<b>IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):</b>	
<b>BRIEF DESCRIPTION OF ACTION AND RESULT BELOW:</b> On October 12, 2004, Plaintiff commenced this action seeking a declaration that the "Don't Ask, Don't Tell" policy is unconstitutional because it violates the rights of gay and lesbian service members to: (1) privacy under the Due Process Clause of the Fifth Amendment; (2) freedom of speech under the First Amendment; and (3) equal protection of the laws under the Fifth Amendment. The district court has yet to render a decision on the government's motion to dismiss despite several joint requests for determination. On May 23, 2008, the district court issued an order staying the action in light of the Ninth Circuit's May 21, 2008 decision in Witt v. Department of Air Force, et al.		
<b>PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:</b> Whether the district court erred in staying the action.		
<b>PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS):</b> Witt v. Dep't of Air Force, et al., No. 06-35644		
<b>DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:</b>		
<input type="checkbox"/> Possibility of settlement		
<input type="checkbox"/> Likelihood that intervening precedent will control outcome of appeal		
<input checked="" type="checkbox"/> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (specify) Log Cabin Republicans will likely file a motion to expedite.		
<input type="checkbox"/> Any other information relevant to the inclusion of this case in the Mediation Program		
<input type="checkbox"/> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges.		

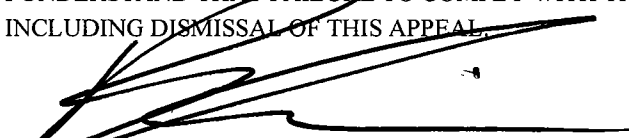
**LOWER COURT INFORMATION**

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT / ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY)	<input type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY):  <input checked="" type="checkbox"/> OTHER (SPECIFY): Order staying action indefinitely	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL / JURISDICTION <input type="checkbox"/> DISMISSAL / MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> JUDGMENT / COURT DECISION <input type="checkbox"/> JUDGMENT / JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input checked="" type="checkbox"/> OTHER (SPECIFY): Order staying action indefinitely	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> INJUNCTIONS: <input type="checkbox"/> PRELIMINARY <input type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED  <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> PENDING  <input type="checkbox"/> COSTS: \$ _____

**CERTIFICATION OF COUNSEL**

**I CERTIFY THAT:**

- COPIES OF ORDER / JUDGMENT APPEALED FROM ARE ATTACHED.
- A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED ( SEE 9<sup>TH</sup> CIR. RULE 3-2
- A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
- I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

  
 \_\_\_\_\_  
 Signature

July 22, 2008  
 \_\_\_\_\_  
 Date

**COUNSEL WHO COMPLETED THIS FORM**

NAME: Patrick Hunnius	+
FIRM: White & Case LLP	+
ADDRESS: 633 West Fifth Street, Suite 1900, Los Angeles, CA 90071	
E-MAIL: phunnius@whitecase.com	+
TELEPHONE: (213) 620-7700	+
FAX: (213) 452-2329	+

\* THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL\*  
 \* IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS\*

1 **SERVICE LIST**

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

6 On July 22, 2008, I served the foregoing document(s) described as CIVIL  
7 APPEALS DOCKETING STATEMENT on the person(s) below, as follows:

8 United States District Court, Central  
9 District  
10 Attention: Honorable George P.  
11 Schiavelli  
12 312 N. Spring Street  
13 Court Room No. 7, 2nd Floor  
14 Los Angeles, CA 90012

15 Telephone: (213) 894-1565 or (213)  
16 894-2215

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

26 Jeffrey Bucholtz  
27 Assistant Attorney General  
28 U.S. Department of Justice, Civil  
Division  
Federal Programs Branch  
P.O. Box 883  
Washington, DC 20044

**Via Federal Express**

Counsel for the United States of  
America and Ronald M. Gates

Telephone: (202) 353-0543  
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8202

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Paul G. Freeborne  
U.S. Department of Justice  
Civil Division  
Federal Programs Branch  
P.O. Box 883  
Washington, DC 20044

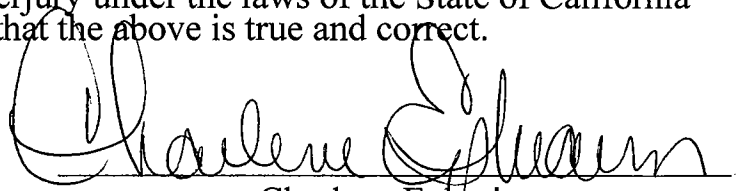
**Via Federal Express**  
  
Counsel for the United States of  
America and Ronald M. Gates

Telephone: (202) 353-0543  
Fax: (202) 616-8460 (or) (202) 616-8202

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

Executed July 22, 2008, 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.

  
Charlene Ephraim