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 8 Attorneys for Defendants United States  
 of America and Secretary of Defense

9 **UNITED STATES DISTRICT COURT**  
 10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
**EASTERN DIVISION**

11 LOG CABIN REPUBLICANS,

12  
 13 Plaintiff,

14 v.

15 UNITED STATES OF AMERICA AND  
 ROBERT M. GATES, Secretary of  
 16 Defense, in his official capacity,

17 Defendants.  
 18  
 19

Case No. EDCV04-8425 VAP

DEFENDANTS' ANSWER TO  
 FIRST AMENDED COMPLAINT

Complaint filed: April 28, 2006

Trial date: None scheduled

20 Defendants United States of America and Robert M. Gates, Secretary of  
 21 Defense, hereby respond to Plaintiff Log Cabin Republicans' First Amended  
 22 Complaint as follows:

23 **FIRST DEFENSE**

24 This Court lacks jurisdiction over this action under Article III of the United  
 25 States Constitution.

26 **SECOND DEFENSE**

27 Plaintiff lacks organizational standing.  
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1 **THIRD DEFENSE**

2 The claims presented fail to state a claim upon which relief can be granted.

3 Answering the numbered paragraphs of Plaintiff’s First Amended

4 Complaint, Defendants respond as follows:

- 5 1. Paragraph 1 consists of conclusions of law and/or statements of Plaintiff’s  
6 position to which no response is required; to the extent a response is  
7 required, denied.
- 8 2. Paragraph 2 consists of conclusions of law and/or statements of Plaintiff’s  
9 position to which no response is required; to the extent a response is  
10 required, denied, except to refer the Court to the cases referenced for a full  
11 and accurate statement of their contents.
- 12 3. Paragraph 3 consists of conclusions of law and/or statements of Plaintiff’s  
13 position to which no response is required; to the extent a response is  
14 required, denied, except to refer the Court to the cases referenced for a full  
15 and accurate statement of their contents.
- 16 4. Paragraph 4 consists of conclusions of law and/or statements of Plaintiff’s  
17 position to which no response is required; to the extent a response is  
18 required, denied, except to refer the Court to the cases referenced for a full  
19 and accurate statement of their contents.
- 20 5. Paragraph 5 consists of conclusions of law and/or statements of Plaintiff’s  
21 position to which no response is required; to the extent a response is  
22 required, denied, except to refer the Court to the cases referenced for a full  
23 and accurate statement of their contents.
- 24 6. Defendants are without information and knowledge sufficient to form a  
25 belief as to the truth or falsity of the allegations contained in the first  
26 sentence of paragraph 6. The remainder of paragraph 6 consists of  
27 conclusions of law and/or statements of Plaintiff’s case to which no  
28 response is required; to the extent a response is required, denied.

1 7. Paragraph 7 consists of conclusions of law and/or statements of  
2 Plaintiff's position to which no response is required; to the extent a  
3 response is required, Defendants are without information and knowledge  
4 sufficient to form a belief as to the truth or falsity of the allegations  
5 contained in paragraph 7.

6 8. Paragraph 8 also consists of conclusions of law and/or statements of  
7 Plaintiff's position to which no response is required; to the extent a  
8 response is required, Defendants are without information and knowledge  
9 sufficient to form a belief as to the truth or falsity of the allegations  
10 contained in paragraph 8.

11 9. Paragraph 9 consists of conclusions of law and/or statements of Plaintiff's  
12 position to which no response is required; to the extent a response is  
13 required, denied.

14 10. Defendants are without information and knowledge sufficient to form a  
15 belief as to the truth or falsity of the allegations contained in paragraph 10.

16 11. Defendants are without information and knowledge sufficient to form a  
17 belief as to the truth or falsity of the allegations contained in paragraph 11.

18 12. Defendants are without information and knowledge sufficient to form a  
19 belief as to the truth or falsity of the allegations contained in paragraph 12.

20 13. Defendants are without information and knowledge sufficient to form a  
21 belief as to the truth or falsity of the allegations contained in paragraph 13,  
22 except to admit that Mr. Nicholson enlisted in the United States Army in  
23 2001 and was trained as a human intelligence collector.

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1 14. Defendants admit that Mr. Nicholson was subject to separation proceedings  
2 and discharged in 2002 pursuant to the statements prong of the statute,  
3 10 U.S.C. § 654(b)(2), and applicable regulations. Defendants are without  
4 information and knowledge sufficient to form a belief as to the truth or  
5 falsity of the remaining allegations contained in paragraph 14.

6 15. Paragraph 15 contains conclusions of law and/or statements of Plaintiff's  
7 position to which no response is required; to the extent a response is  
8 required, denied.

9 16. Paragraph 16 contains conclusions of law and/or statements of Plaintiff's  
10 position to which no response is required; to the extent a response is  
11 required, denied.

12 17. Defendants are without information and knowledge sufficient to form a  
13 belief as to the truth or falsity of the allegations contained in paragraph 17.

14 18. Defendants are without information and knowledge sufficient to form a  
15 belief as to the truth or falsity of the allegations contained in the first  
16 sentence of paragraph 18. The second sentence of Paragraph 18 contains  
17 conclusions of law and/or statements of Plaintiff's case to which no  
18 response is required; to the extent a response is required, denied.

19 19. Paragraph 19 contains conclusions of law and/or statements of Plaintiff's  
20 position to which no response is required; to the extent a response is  
21 required, Defendants are without information and knowledge sufficient to  
22 form a belief as to the truth or falsity of the allegations contained therein.

23 20. Defendants are without information and knowledge sufficient to form a  
24 belief as to the truth or falsity of the allegations contained in the first,  
25 second, and third sentences of paragraph 20. The fourth and fifth sentences  
26 contain conclusions of law and/or statements of Plaintiff's position to  
27 which no response is required; to the extent a response is required, denied.  
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- 1 21. Defendants are without information and knowledge sufficient to form a  
2 belief as to the truth or falsity of the allegations contained in paragraph 21.
- 3 22. Defendants are without information and knowledge sufficient to form a  
4 belief as to the truth or falsity of the allegations contained in paragraph 22.
- 5 23. Denied, except to aver that Robert Gates is the Secretary of Defense and  
6 performs the duties and responsibilities of that office in his official  
7 capacity.
- 8 24. Paragraph 24 consists of conclusions of law and/or statements of Plaintiff's  
9 case to which no response is required; to the extent a response is required,  
10 denied.
- 11 25. Paragraph 25 consists of conclusions of law and/or statements of Plaintiff's  
12 position to which no response is required; to the extent a response is  
13 required, Defendants are without information and knowledge sufficient to  
14 form a belief as to the truth or falsity of those allegations, except to admit  
15 the allegations in the third sentence of paragraph 25.
- 16 26. Paragraph 26 consists of conclusions of law and/or statements of Plaintiff's  
17 position to which no response is required; to the extent a response is  
18 required, denied, except to refer the Court to the Department of Defense  
19 Directive 1332.14 (1981) and Department of Defense regulations for a full  
20 and accurate statement of their contents.
- 21 27. Paragraph 27 consists of conclusions of law and/or statements of Plaintiff's  
22 position to which no response is required; to the extent a response is  
23 required, denied, except to refer the Court to the July 19, 1993 statement of  
24 President Clinton and 10 U.S.C. § 654 for a full and accurate statement of  
25 their contents.
- 26 28. Paragraph 28 consists of conclusions of law and/or statements of Plaintiff's  
27 position to which no response is required; to the extent a response is  
28 required, denied, except to refer the Court to 10 U.S.C. § 654 and the

1 Department of Defense regulations for a full and accurate statement of their  
2 contents.

3 29. Paragraph 29 consists of conclusions of law and/or statements of Plaintiff's  
4 position to which no response is required; to the extent a response is  
5 required, denied, except to refer the Court to 10 U.S.C. § 654 and the  
6 Department of Defense regulations for a full and accurate statement of their  
7 contents.

8 30. Paragraph 30 consists of conclusions of law and/or statements of Plaintiff's  
9 position to which no response is required; to the extent a response is  
10 required, denied, except to refer the Court to 10 U.S.C. § 654 and the  
11 Department of Defense regulations for a full and accurate statement of their  
12 contents.

13 31. Paragraph 31 consists of conclusions of law and/or statements of Plaintiff's  
14 position to which no response is required; to the extent a response is  
15 required, denied, except to refer the Court to 10 U.S.C. § 654 and the  
16 Department of Defense regulations for a full and accurate statement of their  
17 contents.

18 32. Paragraph 32 consists of conclusions of law and/or statements of Plaintiff's  
19 position to which no response is required; to the extent a response is  
20 required, denied, except to refer the Court to 10 U.S.C. § 654 and the  
21 Department of Defense regulations for a full and accurate statement of their  
22 contents.

23 33. Paragraph 33 consists of conclusions of law and/or statements of Plaintiff's  
24 position to which no response is required; to the extent a response is  
25 required, denied, except to refer the Court to 10 U.S.C. § 654 and the  
26 Department of Defense regulations for a full and accurate statement of their  
27 contents.

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1 34. Defendants are without information and knowledge sufficient to form a  
2 belief as to the truth or falsity of the allegations contained in paragraph 34,  
3 except to admit that from 1997-2008 the Department of Defense has  
4 discharged 10,507 members under the 10 U.S.C. § 654 and Department of  
5 Defense regulations; otherwise, denied

6 35. Paragraph 35 (including subparagraphs (a)-(e)) consists of conclusions of  
7 law and/or statements of Plaintiff's position to which no response is  
8 required; to the extent a response is required, denied, except to refer the  
9 Court to 10 U.S.C. § 654 and the Department of Defense regulations for a  
10 full and accurate statement of their contents.

11 36. Paragraph 36 consists of conclusions of law and/or statements of Plaintiff's  
12 position to which no response is required; to the extent a response is  
13 required, denied.

14 37. Paragraph 37 consists of opinion, not an allegation of material fact  
15 requiring a response.

16 38. Defendants incorporate by reference their responses to paragraphs 1  
17 through 37 of Plaintiff's First Amended Complaint.

18 39. Paragraph 39 consists of conclusions of law and/or statements of Plaintiff's  
19 position to which no response is required; to the extent a response is  
20 required, denied.

21 40. Paragraph 40 consists of conclusions of law and/or statements of Plaintiff's  
22 position to which no response is required; to the extent a response is  
23 required, denied.

24 41. Paragraph 41 consists of conclusions of law and/or statements of Plaintiff's  
25 position to which no response is required; to the extent a response is  
26 required, denied.

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1 42. Paragraph 42 consists of conclusions of law and/or statements of Plaintiff's  
2 position to which no response is required; to the extent a response is  
3 required, denied.

4 43. Paragraph 43 consists of conclusions of law and/or statements of Plaintiff's  
5 position to which no response is required; to the extent a response is  
6 required, denied.

7 44. Paragraph 44 consists of conclusions of law and/or statements of Plaintiff's  
8 position to which no response is required; to the extent a response is  
9 required, denied.

10 45. Defendants incorporate by reference their responses to paragraphs 1  
11 through 44 of Plaintiff's First Amended Complaint.

12 46. Paragraph 46 consists of conclusions of law and/or statements of Plaintiff's  
13 position to which no response is required; to the extent a response is  
14 required, denied.

15 47. Paragraph 47 consists of conclusions of law and/or statements of Plaintiff's  
16 position to which no response is required; to the extent a response is  
17 required, denied.

18 48. Paragraph 48 consists of conclusions of law and/or statements of Plaintiff's  
19 position to which no response is required; to the extent a response is  
20 required, denied.

21 49. Paragraph 49 consists of conclusions of law and/or statements of  
22 Plaintiff's position to which no response is required; to the extent a  
23 response is required, denied.

24 50-57. With respect to the remainder of the paragraphs in the First Amended  
25 Complaint, the Court has dismissed Plaintiff's equal protection claim. *See* Order,  
26 dated June 6, 2009 [Dkt. 83], at 18-20. No response is thus required to the  
27 allegations contained in paragraphs 50-57 of Plaintiff's First Amended Complaint.  
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1 All allegations not here before specifically admitted, denied, or modified,  
2 are hereby denied.

3 Wherefore, having fully answered, Plaintiff is not entitled to the relief  
4 requested or to any relief whatsoever and Defendants pray that the Court enter  
5 judgment for Defendants, order the action dismissed with prejudice, and grant  
6 Defendants costs incurred herein and such other and further relief as the Court  
7 may deem just and proper.

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9 Dated: July 14, 2009

Respectfully submitted,

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11 VINCENT M. GARVEY  
Deputy Branch Director

12  
13 /S/  
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