

1 M. ANDREW WOODMANSEE (CA SBN 201780)  
 MAWoodmansee@mofocom  
 2 STEPHANIE L. FONG (CA SBN 240836)  
 SFong@mofocom  
 3 KIMBERLY R. GOSLING (CA SBN 247803)  
 KGosling@mofocom  
 4 JESSICA A. ROBERTS (CA SBN 265570)  
 JRoberts@mofocom  
 5 MORRISON & FOERSTER LLP  
 12531 High Bluff Drive  
 6 San Diego, California 92130-2040  
 Telephone: 858.720.5100  
 7 Facsimile: 858.720.5125

8 AARON D. TAX (DC SBN 501597)  
 adt@sldn.org  
 9 JOHN M. GOODMAN (DC SBN 383147)  
 jgoodman@sldn.org  
 10 SERVICEMEMBERS LEGAL DEFENSE NETWORK  
 P. O. Box 65301  
 11 Washington, DC 20035-5301  
 Telephone: 202.328.3244  
 12 Facsimile: 202.797.1635

13 Attorneys for Plaintiffs  
 MICHAEL D. ALMY, ANOTHNY J. LOVERDE,  
 14 AND JASON D. KNIGHT

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17

18 MICHAEL D. ALMY, ANTHONY J.  
 19 LOVERDE, and JASON D. KNIGHT,

20 Plaintiffs,

21 v.

22 UNITED STATES DEPARTMENT OF  
 DEFENSE; ROBERT M. GATES, Secretary of  
 23 Defense; DEPARTMENT OF THE AIR FORCE;  
 MICHAEL B. DONLEY, Secretary, Department  
 24 of the Air Force; DEPARTMENT OF THE  
 NAVY; and RAY MABUS, Secretary,  
 25 Department of the Navy,

26 Defendants.  
 27  
 28

Case No. 3:10-cv-5627 (RS)

**FIRST AMENDED COMPLAINT  
 FOR DECLARATORY AND  
 INJUNCTIVE RELIEF FOR  
 VIOLATIONS OF THE UNITED  
 STATES CONSTITUTION AND  
 ADMINISTRATIVE  
 PROCEDURES ACT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NATURE OF THE ACTION**

1. This is a civil action to reinstate plaintiffs Michael D. Almy and Anthony J. Loverde into active duty in the United States Air Force, and to reinstate plaintiff Jason D. Knight into active duty in the United States Navy, following the plaintiffs' unlawful discharges from their respective branches of the military by defendants on account of the federal law colloquially known as "Don't Ask, Don't Tell," concerning gay, lesbian, and bisexual armed forces service members ("DADT").

2. This action is also brought to declare unconstitutional the discharges of plaintiffs Almy, Loverde, and Knight under DADT, and to declare the DADT statute, 10 U.S.C. § 654, and the regulations, policies, and guidance that implement it, unconstitutional on their face.

**THE PARTIES**

3. Plaintiff Michael D. Almy is a citizen of the United States and resident in the District of Columbia. He served for thirteen years in the United States Air Force ("Air Force"), including four deployments to the Middle East. He is a highly trained communications officer. During his thirteen-year Air Force career, former Major Almy received numerous military awards and decorations. In 2006, he was discharged from the Air Force under DADT.

4. Plaintiff Anthony J. Loverde is a citizen of the United States and resident in the State of California. He served for seven years in the Air Force. He is a trained C-130 Loadmaster and Precision Measurement Equipment Laboratory Technician. During his seven-year Air Force career, former Staff Sergeant Loverde received numerous military awards and decorations. In 2008, he was discharged from the Air Force under DADT.

5. Plaintiff Jason D. Knight is a citizen of the United States and resident in the State of California. He served for a total of five years in the United States Navy ("Navy"). He is a trained Cryptological Technician Interpretive Linguist. During his five-year Navy career, former Petty Officer Second Class Knight received numerous military awards and decorations. In 2005, he was discharged from the Navy under DADT. Mr. Knight was recalled to active duty in 2006 but was discharged again in 2007 under DADT.

1           6.     Defendant United States Department of Defense is an executive department of the  
2 United States.

3           7.     Defendant Robert M. Gates is the Secretary of the United States Department of  
4 Defense, sued here in his official capacity.

5           8.     Defendant Department of the Air Force is a military department of the United  
6 States within which Mr. Almy and Mr. Loverde were formerly employed.

7           9.     Defendant Michael B. Donley is the Secretary of the Department of the Air Force,  
8 sued here in his official capacity.

9           10.    Defendants United States Department of Defense, Secretary Gates, Department of  
10 the Air Force, and Secretary Donley are hereinafter referred to collectively as the “Air Force  
11 Defendants.”

12          11.    Defendant Department of the Navy is a military department of the United States  
13 within which Mr. Knight was formerly employed.

14          12.    Defendant Ray Mabus is the Secretary of the Department of the Navy, sued here in  
15 his official capacity.

16          13.    Defendants United States Department of Defense, Secretary Gates, Department of  
17 the Navy, and Secretary Mabus are hereinafter referred to collectively as the “Navy Defendants.”

18          14.    Judgment is sought against each defendant as well as his agents, assistants,  
19 successors, employees, attorneys, and all persons acting in concert or cooperation with any of  
20 them or at the direction or under the control of any of them.

### **JURISDICTION AND VENUE**

21                 **JURISDICTION AND VENUE**

22           15.    This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §  
23 1331 because the defendants are acting on behalf of the United States and this action arises under  
24 the United States Constitution (“Constitution”), including at least its First and Fifth Amendments;  
25 and federal laws, regulations, and policies, including the Administrative Procedure Act, 5 U.S.C.  
26 § 702; the federal statute governing DADT, 10 U.S.C. § 654; and federal regulations, policies,  
27 and guidance issued under 10 U.S.C. § 654, including but not limited to Air Force Instruction  
28 (“AFI”) 36-3206, entitled *Administrative Discharge Procedures for Commissioned Officers*, AFI

1 36-3208, entitled *Administrative Separation of Airmen*, and Navy MILPERSMAN 1910-148,  
2 entitled *Separation by Reason of Homosexual Conduct*.

3 16. Venue is proper in this judicial district pursuant to at least 28 U.S.C. § 1391(e)  
4 because Mr. Knight resides in this judicial district, Mr. Loverde maintains his permanent  
5 residence and is registered to vote in this judicial district, and no real property is involved in the  
6 action.

### 7 **FACTS**

#### 8 **PLAINTIFF ALMY**

9 17. Mr. Almy comes from a family with a long history of military service. His father  
10 is a West Point graduate who taught chemistry at the Air Force Academy, flew helicopters in  
11 Vietnam, and ultimately retired from the Air Force as a senior officer. One of Mr. Almy's uncles  
12 retired as a Master Gunnery Sergeant from the Marine Corps, with service in World War II,  
13 Korea and Vietnam. Another uncle served in the Army in Korea.

14 18. Mr. Almy joined Air Force ROTC in 1988 and was awarded a scholarship. He  
15 earned his jump wings following Army Airborne Training at Fort Benning, Georgia, in 1991. In  
16 1992, he graduated from ROTC in the top ten percent of all graduates nationwide.

17 19. In 1993, Mr. Almy went on active duty in the Air Force. When Mr. Almy first  
18 entered active duty, he attended Basic Communications-Electronics Officer Training at Keesler  
19 Air Force Base ("AFB") in Mississippi. Following completion of this course, he was stationed at  
20 the Air Intelligence Agency at Kelly AFB in Texas. After nine months of service at Kelly AFB,  
21 Mr. Almy was accepted for and attended navigator training at Randolph AFB in 1994.

22 20. In July 1995, he was assigned to Scott AFB in Illinois. He initially worked in  
23 systems support for the J2 Directorate of United States Transportation Command. Following this,  
24 he worked at the help desk for all Air Mobility Command and Control Systems.

25 21. In 1998, Mr. Almy was stationed at the Third Combat Communications Group at  
26 Tinker AFB in Oklahoma. While stationed in Oklahoma, he was named officer of the year for his  
27 unit of nearly 1,000 people. In September 1998, he deployed to Eskan Village, Saudi Arabia, as  
28 the senior communicator from his unit, with approximately 60 personnel in his squadron. There

1 the squadron supported all the base-level communications requirements during Operation Desert  
2 Fox.

3 22. In September 1999, Mr. Almy again deployed to Saudi Arabia. He served as the  
4 executive officer for the 363rd Expeditionary Operations Group at Prince Sultan Air Base, where  
5 the group was deployed in support of Operation Southern Watch.

6 23. In July 2001, Mr. Almy was one of six officers selected from the entire Air Force  
7 to attend Professional Military Education at the Quantico Marine Corps Base in Virginia.

8 24. In June 2002, Mr. Almy was stationed at Ramstein Air Base, Germany, in the  
9 Communications Directorate of Headquarters for the U.S. Air Force Europe. There he worked on  
10 tactical communications and airborne communications projects. In December 2002, he again  
11 deployed to Prince Sultan Air Base in support of the invasion of Iraq at the beginning of  
12 Operation Iraqi Freedom. He was directly responsible for setting up new communications bases  
13 throughout the theaters in Jordan, Saudi Arabia, and Iraq.

14 25. After returning from Saudi Arabia, Mr. Almy was promoted to the rank of Major  
15 and accepted a position as the Chief of Maintenance at the 606th Air Control Squadron (“ACS”)  
16 at Spangdahlem Air Base in Germany. He reported to Spangdahlem Air Base in September 2003,  
17 where he was in charge of a directorate of 180 troops.

18 26. In September 2004, Mr. Almy’s unit deployed to three locations in Iraq in support  
19 of Operation Iraqi Freedom. This marked his fourth deployment to the Middle East during his Air  
20 Force career. During this deployment, his unit controlled the airspace over two-thirds of Iraq, and  
21 his troops maintained the equipment necessary for that mission. This included air support for the  
22 liberation of Fallujah, Iraq. Mr. Almy’s base came under daily mortar attacks, one of which  
23 struck one of his Airmen and also caused significant damage to their equipment. Towards the end  
24 of this deployment to Iraq, Mr. Almy received the Leo Marquez Field Grade Officer of the Year  
25 Award, which recognized Mr. Almy as one of the top officers in his career field for the entire Air  
26 Force.

27 27. During his service in the Air Force, Mr. Almy received numerous other military  
28 awards and decorations. These accolades include, but are not limited to, the Joint Service

1 Commendation Medal, three Air Force Commendation Medals, the Air Force Achievement  
2 Medal, the Air Force Outstanding Unit Award, the Air Force Organizational Excellence Award,  
3 the Combat Readiness Medal, the National Defense Service Medal, the Armed Forces  
4 Expeditionary Medal, the Iraq Campaign Medal, the Global War on Terrorism Expeditionary  
5 Medal, the Global War on Terrorism Service Medal, the Humanitarian Service Medal, the Air  
6 Force Overseas Long Tour Ribbon, the Air Force Longevity Service Award, the Small Arms  
7 Expert Marksmanship Ribbon, the Air Force Training Ribbon, the Company Grade Officer of the  
8 Year award, the Senior Communications and Information Badge, and a recognition as  
9 Distinguished Air Force ROTC Graduate.

10 28. During Mr. Almy's service in the Air Force, his military superiors and evaluators  
11 provided uniformly high assessments of him in his annual performance evaluations and  
12 promotion recommendations. For example, when Mr. Almy served as Maintenance Operations  
13 Officer in the 606th ACS at Spangdahlem Air Base, a supervisor commented about Mr. Almy:  
14 "Outstanding leader of my largest directorate; immediate impact on morale/mission—  
15 maintenance never stronger . . . Complete leader . . . Superb leader ready for command; simply  
16 incredible results in every endeavor." Similarly, another supervisor commented: "Deployed  
17 superstar; engineered unprecedented mission results during local deployments in  
18 Germany/Holland[.] Top-shelf comm[unications] officer and outstanding leader; impact player  
19 ready for command."

20 29. During Mr. Almy's deployment in Iraq that began in 2004, the Air Force  
21 prohibited Airmen from using private email accounts. Airmen in Iraq were forced to use  
22 government-provided computers and email accounts for personal correspondence. Specifically,  
23 AFI 33-119 authorized service members to use their government email accounts for personal  
24 correspondence for "morale, health, and welfare purposes." Mr. Almy therefore used his Air  
25 Force email account for personal emails. Shortly after Mr. Almy left Iraq in January 2005, during  
26 a purportedly "routine" search of his computer files, another member of the Air Force found  
27 personal emails in a separate folder labeled "Friends," including at least one email from Mr.  
28 Almy to another man discussing same-sex conduct. These emails were brought to the attention of

1 Mr. Almy's commander, who confronted him with the emails, read him the DADT law, and  
2 pressured him to acknowledge he is gay.

3 30. Mr. Almy subsequently was relieved of his duties, his security clearance—  
4 Sensitive Compartmented Information, one of the highest level security clearances available in  
5 the military—was suspended, and part of his pay was terminated. He received notice that  
6 administrative board proceedings were being convened to determine whether to recommend a  
7 discharge under DADT.

8 31. During the discharge process, many of Mr. Almy's colleagues, including his  
9 superiors as well as individuals who had served under his command, wrote letters in resounding  
10 support of his retention. For instance, a retired Army Colonel wrote: "My view is that Major  
11 Almy has been, and will continue to be an excellent officer." The Lieutenant Colonel who was  
12 Mr. Almy's squadron commander during the discharge process also wrote: "I am convinced the  
13 Air Force, its personnel, mission and tradition remains unchanged and unharmed despite his  
14 alleged [violations of DADT]."

15 32. Other character reference letters included the following comments from a First  
16 Lieutenant who had been under Mr. Almy's supervision in the 606th ACS:

17 As a graduate of the Virginia Military Institute I have seen plenty of  
18 examples of good and bad leadership. Based on my personal and  
19 professional interaction with Maj Almy I can say that he is truly  
20 one of the best. . . . One would be hard pressed to find someone in  
21 the directorate that did not respect him. His troops loved working  
22 for him and were willing to do anything for him at a moment's  
23 notice. He demands the best out of his people and always gets it. If  
24 given the opportunity to work for Maj Almy again, my answer  
25 would be a resounding YES! If removed, the Air Force would be  
26 losing a great man and a great leader. When he was relieved of his  
27 duties as Chief of Maintenance the 606 ACS fell apart. It became  
28 painfully evident how important Maj Almy was not only to the  
mission but to his troops.

24 Another First Lieutenant whom Mr. Almy supervised in the 606th ACS wrote that Mr. Almy  
25 "was one of the most respected leaders in the squadron thanks to his no nonsense approach to  
26 mission accomplishment and dedication to the squadron in both directions of the chain of  
27 command. . . . I can say without any reservation that Maj. Almy was the best supervisor I have  
28

1 ever had. . . . It would be an absolute travesty to lose such an outstanding officer and superior  
2 leader.”

3 33. While his discharge proceedings were pending, Mr. Almy remained at  
4 Spangdahlem Air Base performing ad hoc duties. Approximately a year after Mr. Almy was  
5 relieved of his command duties, his Wing Commander formally recommended to the Air Force  
6 promotion board that Mr. Almy be promoted to Lieutenant Colonel “below promotion zone”—in  
7 other words, ahead of his peers—even though the Air Force was actively pursuing Mr. Almy’s  
8 discharge.

9 34. Despite his long and distinguished service record and the recommendations of  
10 numerous colleagues in the armed forces, the Air Force ultimately discharged Mr. Almy under  
11 DADT, for making a statement about his sexual orientation in private email correspondence while  
12 he was deployed in Iraq. He received an Honorable Discharge on or about July 21, 2006. A true  
13 and correct copy of the first page of Mr. Almy’s discharge order is attached to this complaint as  
14 Exhibit 1.

15 35. Mr. Almy was discharged from the Air Force against his will. Had he not been  
16 discharged under DADT, he would have remained on active duty in the Air Force to this day.  
17 Mr. Almy does not seek lost wages or other benefits that directly flow from reinstatement in this  
18 lawsuit. He simply wishes to be reinstated into active duty in the Air Force so he can once again  
19 serve his country and fulfill the commitment he made to the Air Force.

#### 20 **PLAINTIFF LOVERDE**

21 36. Since childhood, Mr. Loverde has had an interest in serving in the U.S. military.  
22 One of his grandfathers served in the Coast Guard in World War II, another grandfather served in  
23 the Army during the Korean conflict and received a Purple Heart, and one of his uncles served in  
24 the Marine Corps in Vietnam. Mr. Loverde was the first member of his family in his generation  
25 to serve in the armed forces. He was followed by his brother and three of his cousins. Mr.  
26 Loverde’s brother served in the Army as an Infantryman and currently serves in the Air Force  
27 Reserves as a Security Forces Non-Commissioned Officer.  
28



1           37.     Mr. Loverde enlisted in the Air Force in January 2001. He served from 2001 to  
2 2004 in the 86th Maintenance Squadron. During this time, he was stationed in Germany and  
3 calibrated weapons systems for the squadron as a Precision Measurement Equipment Laboratory  
4 Technician. In 2005, Mr. Loverde was reassigned to Edwards Air Force Base, California.

5           38.     Mr. Loverde reenlisted in 2006, opting to retrain as a C-130 Loadmaster. In this  
6 new role, Mr. Loverde joined the 37th Airlift Squadron at Ramstein Air Force Base in Germany.  
7 In 2007, Mr. Loverde deployed with his squadron as part of the troop “surge” in support of  
8 Operation Iraqi Freedom.

9           39.     During his service in the Air Force, Mr. Loverde received numerous military  
10 awards and decorations. These accolades include the Air Medal, the Air Force Commendation  
11 Medal, the Air Force Outstanding Unit Award, the Air Force Good Conduct Medal, the National  
12 Defense Service Medal, the Global War on Terrorism Service Medal, the Air Force Overseas  
13 Ribbon, the Air Force Expeditionary Service Ribbon, the Air Force Longevity Service Ribbon,  
14 the Air Force NCO PME Graduate Ribbon, the Small Arms Expert Marksmanship Ribbon, and  
15 the Air Force Training Ribbon.

16           40.     During Mr. Loverde’s service in the Air Force, his military superiors and  
17 evaluators provided uniformly high assessments of him in his annual performance evaluations  
18 and promotion recommendations. For example, one former supervisor made the following  
19 comment about Mr. Loverde:

20                   Unmatched support on channel [mission] . . . key to mission  
21                   success . . . superior knowledge/abilities guaranteed readiness . . .  
22                   pressing ahead of peers academically . . . agile in body & mind[.]  
23                   Earned Distinguished Graduate award from Basic Loadmaster  
24                   course . . . Hard charger . . . Airdropped 87 Army & Italian special  
25                   forces; critical to joint training exercise—fostered combat  
26                   effectiveness . . . Sincere humanitarian; visited injured soldiers at  
27                   LRMC w/Red Cross pet program—lifted hopes/sped recovery[.]  
28                   Excels in all facets of his duties, consistently improving knowledge  
                    level and loadmaster skills—promote now.

26           41.     During Mr. Loverde’s deployment to Ali Al Salem Air Force Base in 2007, it  
27 became clear to Mr. Loverde that he could no longer continue pretending to be someone he was  
28 not. Other service members talked about loved ones back home and leaned on each other for

1 support, but because Mr. Loverde is gay, he found himself avoiding interaction with his fellow  
2 troops so as not to deceive them.

3 42. Upon his return from deployment in April 2008, Mr. Loverde emailed two of his  
4 superior officers to let them know that he is gay. Mr. Loverde was mindful of what the Air Force  
5 has described as “Air Force Core Values,” which are “Integrity first, Service before self, and  
6 Excellence in all we do.” He told his superior officers that although he would like to continue to  
7 serve, he could not do so if it also meant continuing to conceal his sexual orientation.

8 43. On or about June 9, 2008, Mr. Loverde received a memorandum informing him  
9 that he was being recommended for discharge under DADT. On or about June 19, 2008, he  
10 received a “Discharge Legal Review” memorandum again recommending discharge.

11 44. During the discharge process, many of Mr. Loverde’s co-workers and superiors  
12 wrote in support of his retention. Consistent with his high performance reviews throughout his  
13 career, these supporters noted that Mr. Loverde “always produced high quality work” and could  
14 be counted on “to get the job done right.” Based on personal experience working with Mr.  
15 Loverde, one former superior officer wrote: “I fully recommend that you consider retaining him  
16 in the Air Force. He has the potential to go very far in whatever endeavor he pursues . . . I hope  
17 that includes continued service to our nation.” Another former superior officer wrote: “If I ever  
18 had the opportunity to build my ‘dream team’ for work, I would take an entire crew of SSgt  
19 Loverdes over most other workers I have encountered.”

20 45. Despite his numerous service awards, his consistently excellent performance  
21 reviews, and the recommendations of others, at the conclusion of Air Force administrative  
22 separation proceedings, Mr. Loverde was discharged under DADT for making a statement that he  
23 is gay. He received an Honorable Discharge on or about July 13, 2008. A true and correct copy  
24 of Mr. Loverde’s discharge order is attached to this complaint as Exhibit 2.

25 46. Ironically, in August 2008, Mr. Loverde was awarded the Air Medal for his  
26 “superior ability in the presence of perilous conditions” during his deployment in support of  
27 Operation Iraqi Freedom—the deployment that ultimately brought Mr. Loverde to the decision to  
28 come out as gay to the Air Force. The Air Medal Citation noted that “the professional ability and

1 outstanding aerial accomplishments of Sergeant Loverde reflect great credit upon himself and the  
2 United States Air Force.”

3 47. Mr. Loverde was discharged from the Air Force against his will. Had he not been  
4 discharged under DADT, he would have remained on active duty in the Air Force to this day.  
5 Mr. Loverde does not seek lost wages or other benefits that directly flow from reinstatement in  
6 this lawsuit. He simply wishes to be reinstated into active duty in the Air Force so he can once  
7 again serve his country and fulfill the commitment he made to the Air Force.

### 8 **PLAINTIFF KNIGHT**

9 48. Like thousands of Americans before him, Mr. Knight joined the military both to  
10 serve his country and to be able to afford college under the G.I. Bill. He enlisted in the Navy on  
11 or about April 4, 2001. He served from 2001 to 2003 in the Navy Ceremonial Guard in  
12 Washington, D.C. During his service in the Ceremonial Guard, he represented the United States  
13 at official White House ceremonies and during state and military funerals at Arlington National  
14 Cemetery and the Tomb of the Unknown Soldier. He was present at more than 1,500 military  
15 funerals as part of the firing party rendering the 21-gun salute.

16 49. In July 2003, following his service in the Ceremonial Guard, Mr. Knight began  
17 training as a Hebrew Linguist—formally, a Cryptological Technician Interpretive (CTI),  
18 Linguist—at the Defense Language Institute in Monterey, California. After his graduation in  
19 December 2004, he reported for duty at Fort Gordon, Georgia, where he attained the rank of Petty  
20 Officer Third Class.

21 50. In 2004, Mr. Knight filed paperwork annulling his marriage because he realized  
22 that he is gay. In keeping with the Navy’s core values of honesty and integrity, he provided the  
23 Navy with copies of his annulment and with a written statement to his commander, in which Mr.  
24 Knight revealed his sexual orientation. The Navy then began administrative discharge  
25 proceedings under DADT.

26 51. Ultimately, at the conclusion of Navy administrative proceedings, Mr. Knight was  
27 discharged under DADT for making a statement that he is gay. He received an Honorable  
28 Discharge on or about April 3, 2005. Although discharge under DADT is ordinarily accompanied

1 by a lifetime ban on future military service, indicated by an “RE-4” negative reentry code, Mr.  
2 Knight’s discharge papers made him eligible for active duty recall due to a bureaucratic error. A  
3 true and correct copy of Mr. Knight’s April 3, 2005 discharge order is attached to this complaint  
4 as Exhibit 3.

5 52. On or about July 24, 2006, Mr. Knight received a letter from the Navy recalling  
6 him to active duty service. On or about September 11, 2006, he was deployed to Kuwait in  
7 support of Operation Iraqi Freedom for a yearlong tour of duty with the Navy Customs Battalion  
8 Romeo. During this entire tour of duty, he served as an openly gay man out to his immediate  
9 chain of command and to most of the rest of his command. He attained the rank of Petty Officer  
10 Second Class during this tour of duty.

11 53. During his service in the Navy, Mr. Knight received numerous military awards and  
12 decorations. These accolades include the Navy and Marine Corps Achievement Medal, the Navy  
13 Good Conduct Medal, the National Defense Service Medal, the Global War on Terrorism Service  
14 Medal, and the Navy Pistol Marksmanship Medal. Mr. Knight’s accolades also include the  
15 following awards and decorations that he received during his service as an openly gay man: a  
16 second Navy and Marine Corps Achievement Medal, the Army Achievement Medal, the Global  
17 War on Terrorism Expeditionary Medal, the Sea Service Deployment Ribbon, the Navy and  
18 Marine Corp Overseas Service Ribbon, and the Armed Forces Reserve Medal.

19 54. Mr. Knight’s second Navy and Marine Corps Achievement Medal contained the  
20 following recognition:

21 CTI2 Knight consistently performed his duties in an exemplary and  
22 professional manner. He excelled in the coordination, logistics and  
23 transportation requirements for over 100 personnel for Customs  
24 Romeo and FWD Echo [Morale, Welfare and Recreation] trips to  
25 Kuwait City. His attention to detail directly contributed to the  
26 extraordinary success of the mission. CTI2 Knight’s exceptional  
27 professionalism, unrelenting perseverance, and loyal devotion to  
28 duty reflected credit upon him and were in keeping with the highest  
traditions of the United States Naval Service.

55. During Mr. Knight’s service in the Navy, his military superiors and evaluators  
provided consistently positive assessments of him in his annual performance evaluations and

1 promotion recommendations, including those performance evaluations and promotion  
2 recommendations issued during the time when Mr. Knight was serving openly.

3 56. In March 2007, after General Peter Pace, Chairman of the Joint Chiefs of Staff,  
4 publicly expressed his personal views of homosexuality as “immoral,” Mr. Knight wrote a letter  
5 to the editor of the Stars & Stripes, a military newspaper, responding to General Pace’s  
6 comments. In May 2007, Mr. Knight was the subject of an article in the Stars & Stripes regarding  
7 his service in Kuwait while openly gay. Shortly thereafter, the Navy began administrative  
8 discharge proceedings under DADT against Mr. Knight for the second time.

9 57. At the conclusion of administrative separation proceedings, Mr. Knight was once  
10 again discharged by the Navy under DADT for making a statement that he is gay. He received an  
11 Honorable Discharge on or about May 18, 2007. True and correct copies of Mr. Knight’s May  
12 2007 discharge orders are attached to this complaint as Exhibit 4 and Exhibit 5, respectively.

13 58. Mr. Knight was discharged from the Navy twice against his will. Had he not been  
14 discharged either time under DADT, he would have remained on active duty in the Navy to this  
15 day. Mr. Knight does not seek lost wages or other benefits that directly flow from reinstatement  
16 in this lawsuit. He simply wishes to be reinstated into active duty in the Navy so he can once  
17 again serve his country and fulfill the commitment he made to the Navy.

## 18 **CLAIMS FOR RELIEF**

### 19 **CLAIM ONE** 20 **(DENIAL OF SUBSTANTIVE DUE PROCESS—AS-APPLIED—** 21 **BY PLAINTIFF ALMY AGAINST THE AIR FORCE DEFENDANTS)**

22 59. Mr. Almy incorporates by reference and re-alleges each preceding paragraph as if  
23 fully set forth herein.

24 60. In *Lawrence v. Texas*, 539 U.S. 558 (2003), the United States Supreme Court  
25 recognized a constitutional substantive due process right to engage in private, consensual sexual  
26 conduct with any adult, including one of the same gender, without government intervention.

27 61. In light of *Lawrence*, to discharge a service member for allegedly violating DADT,  
28 the military bears the burden of proving that the service member’s discharge significantly

1 furthers, and is necessary to further, the government's interests in proper military discipline, unit  
2 cohesion, morale, and good order.

3 62. At no point prior to the discharge of Mr. Almy did the Air Force meet, or even  
4 attempt to meet, its burden of proving that the discharge of Mr. Almy under DADT significantly  
5 furthered, and was necessary to further, the government's interests in proper military discipline,  
6 unit cohesion, morale, and good order.

7 63. In fact, the Air Force ignored evidence that the discharge of Mr. Almy would  
8 actually harm the government's interests in proper military discipline, unit cohesion, morale, and  
9 good order.

10 64. Due to the Air Force's failure to meet its burden as described above, the discharge  
11 proceedings and subsequent discharge of Mr. Almy violated his substantive due process right  
12 under the Due Process Clause of the Fifth Amendment to the Constitution, as recognized in  
13 *Lawrence*.

14 65. To remedy the unconstitutional discharge of Mr. Almy pursuant to 10 U.S.C. §  
15 654, and the regulations, policies, and guidance that implement it, including but not limited to  
16 AFI 36-3206, the Air Force must reinstate Mr. Almy immediately into active duty and give him  
17 credit towards retirement for the time he would have served in the Air Force had he not been  
18 unlawfully discharged under DADT.

19 **CLAIM TWO**  
20 **(DENIAL OF SUBSTANTIVE DUE PROCESS—AS-APPLIED—**  
21 **BY PLAINTIFF LOVERDE AGAINST THE AIR FORCE DEFENDANTS)**

22 66. Mr. Loverde incorporates by reference and re-alleges each preceding paragraph as  
23 if fully set forth herein.

24 67. At no point prior to the discharge of Mr. Loverde did the Air Force meet, or even  
25 attempt to meet, its burden of proving that the discharge of Mr. Loverde under DADT  
26 significantly furthered, and was necessary to further, the government's interests in proper military  
27 discipline, unit cohesion, morale, and good order.  
28







1 **CLAIM SIX**  
2 **(DENIAL OF EQUAL PROTECTION—**  
3 **BY PLAINTIFF LOVERDE AGAINST THE AIR FORCE DEFENDANTS)**

4 82. Mr. Loverde incorporates by reference and re-alleges each preceding paragraph as  
5 if fully set forth herein.

6 83. 10 U.S.C. § 654 and the regulations, policies, and guidance that implement it  
7 intentionally create an impermissible distinction between the status, speech, and conduct of  
8 heterosexual service members, on the one hand, and the status, speech, and conduct of gay and  
9 lesbian service members, on the other hand, by intentionally subjecting gay and lesbian service  
10 members to different and punitive treatment.

11 84. This facially disparate treatment on the basis of sexual orientation and gender  
12 violates Mr. Loverde’s rights under the Equal Protection Clause of the Fifth Amendment to the  
13 Constitution.

14 **CLAIM SEVEN**  
15 **(DENIAL OF EQUAL PROTECTION—**  
16 **BY PLAINTIFF KNIGHT AGAINST THE NAVY DEFENDANTS)**

17 85. Mr. Knight incorporates by reference and re-alleges each preceding paragraph as if  
18 fully set forth herein.

19 86. 10 U.S.C. § 654 and the regulations, policies, and guidance that implement it  
20 intentionally create an impermissible distinction between the status, speech, and conduct of  
21 heterosexual service members, on the one hand, and the status, speech, and conduct of gay and  
22 lesbian service members, on the other hand, by intentionally subjecting gay and lesbian service  
23 members to different and punitive treatment.

24 87. This facially disparate treatment on the basis of sexual orientation and gender  
25 violates Mr. Knight’s rights under the Equal Protection Clause of the Fifth Amendment to the  
26 Constitution.

27 **CLAIM EIGHT**  
28 **(VIOLATION OF THE FIRST AMENDMENT—**  
29 **BY PLAINTIFF ALMY AGAINST THE AIR FORCE DEFENDANTS)**

30 88. Mr. Almy incorporates by reference and re-alleges each preceding paragraph as if  
31 fully set forth herein.

1 89. Mr. Almy has the rights to freedom of speech, to freedom against compelled  
2 speech, to receive information, and to expressive association, all of which are guaranteed by the  
3 First Amendment to the Constitution.

4 90. 10 U.S.C. § 654 and the regulations, policies, and guidance that implement it  
5 impermissibly restrict, punish, chill and burden all service members’ First Amendment rights on  
6 the basis of content and viewpoint “24 hours each day . . . on base or off base . . . on duty or off  
7 duty.” 10 U.S.C. § 654(a)(9)-(10).

8 91. The discharge of Mr. Almy directly resulted from the content of his speech—  
9 namely, statements he made that revealed his sexual orientation. Based entirely on those  
10 statements, the Air Force separated him from the Air Force under 10 U.S.C. § 654 and the  
11 regulations, policies, and guidance that implement it.

12 92. The discharge of Mr. Almy under 10 U.S.C. § 654 and the regulations, policies,  
13 and guidance that implement it therefore violated his First Amendment rights.

14 **CLAIM NINE**  
15 **(VIOLATION OF THE FIRST AMENDMENT—**  
16 **BY PLAINTIFF LOVERDE AGAINST THE AIR FORCE DEFENDANTS)**

17 93. Mr. Loverde incorporates by reference and re-alleges each preceding paragraph as  
18 if fully set forth herein.

19 94. Mr. Loverde has the rights to freedom of speech, to freedom against compelled  
20 speech, to receive information, and to expressive association, all of which are guaranteed by the  
21 First Amendment to the Constitution.

22 95. 10 U.S.C. § 654 and the regulations, policies, and guidance that implement it  
23 impermissibly restrict, punish, chill and burden all service members’ First Amendment rights on  
24 the basis of content and viewpoint “24 hours each day . . . on base or off base . . . on duty or off  
25 duty.” 10 U.S.C. § 654(a)(9)-(10).

26 96. The discharge of Mr. Loverde directly resulted from the content of his speech—  
27 namely, statements he made that revealed his sexual orientation. Based entirely on those  
28 statements, the Air Force separated him from the Air Force under 10 U.S.C. § 654 and the  
regulations, policies, and guidance that implement it.



1 took steps to segregate his personal emails from his work correspondence in a separate folder and  
2 to label them as such.

3 105. Furthermore, under Air Force policy, email accounts may not be searched unless  
4 authorized by proper legal authority or by an individual at the level of squadron commander or  
5 higher in the military chain of command.

6 106. The search of Mr. Almy's personal emails, which directly led to the initiation of  
7 administrative discharge proceedings under DADT, was done in contravention of the Air Force  
8 policies and the expectation of privacy described in paragraphs 104 and 105.

9 107. Accordingly, the Air Force's initiation of administrative discharge proceedings,  
10 and the subsequent administrative determination that Mr. Almy should be discharged pursuant to  
11 DADT, were done without observance of procedures required by law; were arbitrary, capricious,  
12 an abuse of discretion, or otherwise not in accordance with law; and were unsupported by  
13 substantial evidence, all in violation of the Administrative Procedures Act.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, plaintiffs respectfully request that the Court:

16 A. Issue a judgment, declaring that 10 U.S.C. § 654, and the regulations, policies, and  
17 guidance that implement it, including but not limited to AFI 36-3206, AFI 36-3208, and  
18 MILPERSMAN 1910-148, are on their face null and void as violating the United States  
19 Constitution.

20 B. Issue a judgment, declaring that the order discharging Mr. Almy from the Air  
21 Force under 10 U.S.C. § 654, and the regulations, policies, and guidance that implement it, is on  
22 its face null and void as violating the United States Constitution and the Administrative  
23 Procedures Act.

24 C. Issue a mandatory injunction ordering the Air Force Defendants, and these  
25 defendants' agents, assistants, successors, employees, attorneys, and all persons acting in concert  
26 or cooperation with them or at their direction or under their control, to reinstate Mr. Almy into  
27 active duty in the Air Force.

1 D. Issue a judgment, declaring that the order discharging Mr. Loverde from the Air  
2 Force under 10 U.S.C. § 654, and the regulations, policies, and guidance that implement it, is on  
3 its face null and void as violating the United States Constitution.

4 E. Issue a mandatory injunction ordering the Air Force Defendants, and these  
5 defendants' agents, assistants, successors, employees, attorneys, and all persons acting in concert  
6 or cooperation with them or at their direction or under their control, to reinstate Mr. Loverde into  
7 active duty in the Air Force.

8 F. Issue a judgment, declaring that the orders discharging Mr. Knight from the Navy  
9 under 10 U.S.C. § 654, and the regulations, policies, and guidance that implement it, are on their  
10 face null and void as violating the United States Constitution.

11 G. Issue a mandatory injunction ordering the Navy Defendants, and these defendants'  
12 agents, assistants, successors, employees, attorneys, and all persons acting in concert or  
13 cooperation with them or at their direction or under their control, to reinstate Mr. Knight into  
14 active duty in the Navy.

15 H. Grant plaintiffs' costs, including reasonable attorneys' fees.

16 I. Grant such other relief that the Court considers proper.

17 Dated: May 4, 2011

M. ANDREW WOODMANSEE  
STEPHANIE L. FONG  
KIMBERLY R. GOSLING  
JESSICA A. ROBERTS  
MORRISON & FOERSTER LLP

AARON D. TAX  
JOHN M. GOODMAN  
SERVICEMEMBERS LEGAL DEFENSE  
NETWORK

24 By: /s/ M. Andrew Woodmansee  
M. ANDREW WOODMANSEE

25 Attorneys for Plaintiffs  
26 MICHAEL D. ALMY, ANTHONY J.  
27 LOVERDE, AND JASON D. KNIGHT  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 4, 2011, a true and correct copy of the foregoing document was filed electronically with this Court. As such, this document was served on all counsel who have consented to electronic service.

/s/ M. Andrew Woodmansee  
M. Andrew Woodmansee