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UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

LIEUTENANT COLONEL VICTOR J. )  
FEHRENBACH )

Plaintiff, )

vs. )

DEPARTMENT OF THE AIR FORCE; )  
ROBERT M. GATES, Secretary of )  
Defense; MICHAEL B. DONLEY, )  
Secretary, Department of the Air Force; )  
LT. GENERAL GLEN SPEARS, )  
Twelfth Air Force Commander, and )  
COL. RONALD BUCKLEY, 366<sup>th</sup> )  
Fighter Wing Commander, )  
Defendants. )

Case No. 1:10-CV-00402-EJL

CONSENT MOTION TO EXTEND  
TIME TO ANSWER OR OTHERWISE  
RESPOND TO COMPLAINT FOR  
INJUNCTIVE RELIEF AND  
DECLARATORY JUDGMENT

\_\_\_\_\_ )

Defendants, through undersigned counsel, respectfully request that this Court extend the time for the defendants to answer or otherwise respond to the Complaint for Injunctive Relief and Declaratory Judgment. Specifically, the defendants request that their time to answer or otherwise respond to the Complaint be extended until 30 days from the date of this Court's ruling on the plaintiff's application for a preliminary injunction, which remains pending. The undersigned counsel has conferred with the plaintiff's counsel, Mr. M. Andrew Woodmansee, who indicates that the plaintiff consents to this extension request. In support of this motion, the defendants state as follows:

1. On August 11, 2010, the plaintiff, an active duty Air Force officer, filed this action seeking to enjoin the Air Force from discharging him under the Don't Ask, Don't Tell statute, 10 U.S.C. § 654. Simultaneously with the filing of the Complaint, the plaintiff also sought a temporary restraining order and a preliminary injunction. The United States Attorney for the District of Idaho was served on August 12, 2010.

2. On August 17, 2010, the parties filed a stipulation (dkt. no. 16), whereby the defendants agreed to notify this Court and the plaintiff's counsel the same day that the Secretary of the Air Force or his designee has made a decision whether to discharge the plaintiff. The defendants further agreed not to take any steps to give effect to a decision to discharge the plaintiff for 21 days following the notification. The plaintiff, in turn, agreed to withdraw his application for a temporary restraining order. The parties further stipulated to a briefing scheduling for the plaintiff's application for a preliminary injunction if the Secretary or his designee decides to discharge the plaintiff. On August 17, 2010, this Court issued an order adopting the terms of the parties' stipulation. *See* dkt. no. 17.

3. To date, no final decision regarding whether to discharge or retain the plaintiff has been made by the Secretary or his designee. The defendants' answer is currently due on October 12, 2010.

4. In the interests of judicial economy and conserving the parties' resources, the defendants believe that rather than answering the complaint or otherwise moving to dismiss this action, the better course is to await the Secretary or his designee's decision regarding whether to discharge the plaintiff, and, if applicable, to first resolve the plaintiff's motion for a preliminary injunction. Accordingly, the defendants respectfully request that their time to answer or otherwise respond to the Complaint be extended until 30 days from the date of this Court's ruling on the plaintiff's application for a preliminary injunction.

Dated: October 7, 2010

Respectfully submitted,

IAN HEATH GERSHENGORN  
Deputy Assistant Attorney General

WENDY J. OLSON  
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JOSEPH H. HUNT  
Director

VINCENT M. GARVEY  
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/s/ Jean Lin  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of October, 2010, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel for the plaintiff to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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AND I FURTHER CERTIFY that on such date I served the foregoing on the following  
non-CM/ECF Registered Participants via first class mail, postage prepaid addressed as follows:

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