

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

)
LOG CABIN REPUBLICANS,)
Plaintiff-Appellee/Cross-Appellant,)
)
v.) Nos. 10-56634,
) 10-56813
)
UNITED STATES OF AMERICA and)
ROBERT M. GATES, Secretary of Defense)
)
Defendants-Appellants/)
Cross-Appellee)
)

JOINT MOTION TO EXPEDITE APPEAL

Plaintiff-Appellee Log Cabin Republicans has moved to expedite consideration of this appeal. After that motion was filed counsel for both parties met and conferred and agreed to this joint motion to expedite. This joint motion supersedes Log Cabin's prior motion to expedite.

1. This case involves plaintiff Log Cabin Republicans' challenge to the constitutionality of 10 U.S.C. § 654, entitled "Policy concerning homosexuality in the armed forces," and its implementing regulations. The district court concluded that § 654 is unconstitutional and entered

a worldwide injunction prohibiting the military from enforcing the statute and implementing regulations.

The government has appealed. Plaintiff also has filed a cross-appeal for the purpose of challenging the district court's decision to dismiss plaintiff's claim that § 654 violates the Equal Protection Clause.

2. This case presents the question whether the district court correctly entered a permanent worldwide injunction prohibiting enforcement of § 654 on the ground that it violates servicemembers' Fifth Amendment and First Amendment rights. This Court has also granted a stay pending appeal of the district court's permanent injunction. Expediting this appeal would shorten the time during which servicemembers face not only legal uncertainty, but also ongoing and potential discharge proceedings under § 654 that the district court's injunction, if upheld, would prohibit. The parties therefore agree that this appeal presents issues of great public importance that constitute good cause for an expedited schedule. *See Cir. Rule 27-12(3).*

3. The current briefing schedule, which was entered after Log

Cabin filed its cross-appeal, provides as follows:

- Government's opening brief due January 24, 2011
- Log Cabin's response brief and first brief on cross-appeal due February 23, 2011
- Government's reply brief and response brief on cross appeal due March 25, 2011
- Log Cabin's reply brief on cross-appeal due April 8, 2011

The parties agree that the issue Log Cabin seeks to raise in its cross-appeal – whether the district court correctly dismissed Log Cabin's equal-protection claim – can be adequately addressed in a normal three-brief schedule, provided that the word limit for Log Cabin's answering brief be enlarged to 16,500 words, and the word limit for the government's reply brief be enlarged to a maximum of 8,000 words.

There is no need for distinct cross-appeal briefs. Accordingly, the parties propose to reinstate the briefing schedule that applied to this case before Log Cabin filed its cross-appeal, and thus to modify the briefing schedule as follows:

- Government's opening brief and excerpts of record due January 24, 2011
- Log Cabin's answering brief and excerpts of record due February

22, 2011

- Government's reply brief due March 8, 2011

These briefs would be governed by the requirements of Federal Rules of Appellate Procedure 28 and 32 and the corresponding Circuit rules, except that the word limit for Log Cabin's answering brief would be 16,500 words, and the word limit for the government's reply brief would be 8,000 words. The parties also respectfully request that the Court schedule oral argument in this case for this Court's May 9-13, 2011 sitting.

Respectfully submitted,

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NOVEMBER 2010

CERTIFICATE OF SERVICE

I certify that on November 24, 2010, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I further certify that the following counsel for appellee is a registered CM/ECF user and that service on him will be accomplished by the appellate CM/ECF system:

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