

FILED

UNITED STATES COURT OF APPEALS

JUL 06 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LOG CABIN REPUBLICANS, a non-profit corporation,

Plaintiff - Appellee/
Cross-Appellant,

v.

UNITED STATES OF AMERICA; LEON E. PANETTA, Secretary of Defense, in his official capacity,

Defendants - Appellants/
Cross-Appellees.

Nos. 10-56634, 10-56813

D.C. No. 2:04-cv-08425-VAP
Central District of California,
Los Angeles

ORDER

Before: KOZINSKI, Chief Judge, WARDLAW and PAEZ, Circuit Judges.

The Clerk shall amend the docket to reflect that Leon E. Panetta, Secretary of Defense, is substituted for Robert M. Gates, Secretary of Defense, as an appellant/cross-appellee. *See* Fed. R. App. P. 43(c)(2).

Appellee/cross-appellant's motion to lift this court's November 1, 2010, order granting a stay of the district court's judgment pending appeal is granted. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (stating standard); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (same). In their

briefs, appellants/cross-appellees do not contend that 10 U.S.C. § 654 is constitutional. In addition, in the context of the Defense of Marriage Act, 1 U.S.C. § 7, the United States has recently taken the position that classifications based on sexual orientation should be subjected to heightened scrutiny. *See Golinski v. U.S. Office of Pers. Mgmt.*, No. C 3:10-00257-JSW (N.D. Cal.) (Doc. 145, July 1, 2011) (“gay and lesbian individuals have suffered a long and significant history of purposeful discrimination”); Letter from Attorney General to Speaker of House of Representatives (Feb. 23, 2011) (“there is, regrettably, a significant history of purposeful discrimination against gay and lesbian people, by governmental as well as private entities”). Appellants/cross-appellees state that the process of repealing Section 654 is well underway, and the preponderance of the armed forces are expected to have been trained by mid-summer. The circumstances and balance of hardships have changed, and appellants/cross-appellees can no longer satisfy the demanding standard for issuance of a stay.

Appellee/cross-appellant’s alternative request to expedite oral argument is granted. The Clerk shall calendar this case during the week of August 29, 2011, in Pasadena, California.

Briefing is completed.